

IX. DIVISIONS OF LAND EXEMPT FROM SUBDIVISION REVIEW

IX-A. Purpose

The State of Montana provides that certain divisions of land, which would otherwise constitute subdivisions, are exempt from local subdivision review and approval, unless the transactions are an attempt to evade the Act, Section 76-3-101 et. seq. MCA.

IX-B. Divisions of Land Entirely exempt from the Requirements of These Regulations and the Montana Subdivision and Platting Act

Unless the method of disposition is adopted for the purpose of evading these Regulations or the MSPA, the requirements of these Regulations and the MSPA may not apply when:

- a. A division of land is created by order of any court of record in this state or by operation of law or that, in the absence of agreement between the parties to the sale, could be created by an order of any court in the state pursuant to the law of eminent domain, Title 70, Chapter 30;
 - i. Before a court of record orders a division of land, the court shall notify the Commission of the pending division and allow the Commission to present written comments on the subdivision.
- b. A division of land is created to provide security for mortgages, liens, or trust indentures for the purpose of construction, improvements to the land being divided, or refinancing purposes;
- c. A division of land creates an interest in oil, gas, minerals, or water that is severed from the surface ownership of real property;
- d. A division of land creates cemetery lots;
- e. A division of land is created by the reservation of a life estate;
- f. A division of land is in a location over which the state does not have jurisdiction;
- g. A division of land is created for public rights-of-way or public utility sites;
- h. The land upon which an improvement is situated has been subdivided in compliance with these regulations and the MSPA, the sale, rent, lease or other conveyance of one or more parts of a building, structure, or other improvement situated on one or more parcels of land is not a division of land;

- i. Condominiums are constructed on land divided in compliance with these Regulations and the MSPA provided that:
 - i. The approval of the original division of land expressly contemplated the construction of the condominiums and 76-3-621 MCA, is complied with; or
 - ii. The condominium proposal is in conformance with applicable zoning regulations.
- j. The sale, rent, lease, or other conveyance of one or more parts of a building, structure, or other improvement, whether existing or proposed, is not a division of land;
- k. A division of land created by lease or rental of contiguous airport related land owned by a city, county, the state, or a municipal or regional airport authority provided that the lease or rental is for onsite weather or air navigation facilities, the manufacture, maintenance, and storage of aircraft, or air carrier related activities;
- l. A division of state-owned land unless the division creates a second or subsequent parcel from a single tract for sale, rent, or lease for residential purposes after July 1, 1973;
- m. Deeds, contracts, leases, or other conveyances which were executed prior to July 1, 1973.

IX-C. Specific Exemptions from Review but Subject to Survey Requirements and Zoning Regulations

Unless the method of disposition is adopted for the purpose of evading these Regulations or the MSPA, the following divisions of land are not subdivisions under these regulations and the MSPA, but are subject to the surveying requirements of 76-3-401. MCA and zoning regulations adopted under Title 76 chapter 2. A division of land may not be made under this section unless the County Treasurer has certified that no real property taxes and special assessments assessed and levied on the land to be divided are delinquent. The Clerk shall notify the Planning Office of any land division described in this section or 76-3-207(1) MCA.

- a. Divisions made outside of platted subdivisions for the purpose of a single gift or sale in each county to each member of the landowner's immediate family;
- b. Divisions made outside of platted subdivisions by gift, sale, or a agreement to buy and sell in which the parties to the transaction enter a covenant running with the land and revocable only by mutual consent of the County and the property owner that the divided land will be used exclusively for agricultural purposes;

- c. Divisions made outside of platted subdivision for the purpose of relocating common boundary lines between adjoining properties;
- d. Divisions made for the purpose of relocating a common boundary line between a single lot within a platted subdivision and adjoining land outside a platted subdivision. A restriction or requirement on the original platted lot or original unplatted parcel continues to apply in those areas.
- e. For five (5) or fewer lots within a platted subdivision, relocation of common boundaries.
- f. Aggregation of parcels or lots when a certificate of survey or subdivision plat shows that the boundaries of the original parcels have been eliminated and the boundaries of a larger aggregate parcel re established. A restriction on the original platted lot or original unplatted parcel continues to apply to those areas.

IX-D. Exemption from Survey and filing Requirements but Subject to Review

Subdivisions created by rent or lease are exempt from the surveying and filing requirements of these Regulations but must be submitted for review and approved by the Commission before portions thereof may be rented or leased, except when:

- a. The approval of the original division of land expressly contemplated the construction of the condominiums and applicable park dedication requirements of 76-3-621 MCA, are complied with; or
- b. The condominium proposal is in conformance with applicable zoning regulations.

IX-E. Exemption from Survey and Platting Requirements for Lands Acquired for State Highways

Instruments of transfer of land which is acquired for state highways may refer by parcel and project number to state highway plans which have been recorded in compliance with 60-2-209 MCA, and are exempted from the surveying and platting requirements of these regulations and the MSPA. If such parcels are not shown on highway plans of record, instruments of transfer of such parcels shall be accompanied by and refer to appropriate certificates of survey and plats when presented for recording.

IX-F. Procedures and General Requirements for Review of Exemptions

The following procedures, criteria and requirements shall be used to review an exemption claim from subdivision review and to determine whether the division of land is for the purpose of evading the MSPA.

- a. The Commission designates the Planning Office as its agent for purposes of this these Regulations. All certificates of survey claiming an exemption shall be submitted to the Planning Office along with the application form in Appendix E. The procedures and requirements of this subsection are limited to the exemptions specified in these Regulations.
- b. Claimants are encouraged to meet with the Planning Staff to discuss whether a proposed land division or use of an exemption is in compliance with these criteria. The Planning Staff may issue an advisory opinion only, and the opinion creates no commitment on the local officials when the documents creating the proposed land division are submitted to the Planning Office.
- c. Claim for Exemption Submittal. A claimant seeking an exemption under the Act and these Regulations shall submit a claim on the appropriate application forms if needed, including a plat or deed with a signed certificate of exemption, together with sufficient evidence to support the claim and any other information required by these Regulations to the Planning Office.
- d. Determination. The Planning Office, Clerk, and County Attorney shall review the claimed exemption. The Planning Office shall make a report on the findings of the review and issue a determination to allow or disallow the claim.
 - i. In assessing the claimant's purpose the Planning Office will evaluate all relevant circumstances including the nature of the claimant's business and use of the parcel, the prior history of the particular tract in question, the proposed configuration of the tract(s), if the proposed exempt transactions are completed, and patterns of development. Any pattern of development which is the equivalent of a subdivision which has not been reviewed may be presumed to be adopted for the purposes of evading the act. A "pattern of development" occurs whenever three (3) or more parcels of less than one hundred sixty (160) acres with common covenants or facilities, such as roads and utilities, have been divided from the original tract of record.
 - ii. If the Planning Office finds that the proposed use of the exemption complies with the statutes and these criteria, the Planning Office shall advise the Clerk and Recorder to file the certificate of survey or record the instrument of conveyance and any accompanying documents. If the Planning Office finds that the proposed use of the exemption does not comply with the statutes and these Regulations, the Planning Office shall provide notification of its determination to disallow to the person claiming the exemption and advise the Clerk and Recorder to not file or record the documents.
- e. Appeal. The claimant may appeal a determination to evade the Act to the Commission.

- i. If the Commission concludes that the evidence overcomes the determination and that from all the circumstances the exemption is justified, the Commission will allow the exemption. If the Commission concludes that the determination to evade the Act is not overcome and that from all the circumstances the exemption is not justified, the Commission shall make findings and disallow the exemption.
- f. If the claimant proposing to use an exemption does not seek to appeal the determination to disallow, or if the Commission determines that the proposed use of the exemption was for the purpose of evading the Act, the landowner may proceed according to the procedures for a subdivision application for the proposed land division.
- g. If the exemption is allowed, the Commission shall direct the Clerk and Recorder to record the certificate of survey.
- h. A certificate of survey of a division of land which is exempted from review may not be filed by the Clerk and Recorder unless it bears the certificate of the person having recorded interest claiming exemption stating that the division of land is exempted from review as a subdivision and citing the applicable exemption.
- i. To assist in the implementation of this review process and to monitor those parcels divided by exemption the Clerk and Recorder shall cause the following identification codes to be added to the numbering of recorded certificates of survey.
 - CO ... Court order [76-3-201(1)(a), MCA]
 - MTG ... Mortgage Exemption [76-3-201(1)(b), MCA]
 - RB ... Relocation of Common Boundary [76-3-207(1)(a), MCA]
 - FT ... Family Transfer and conveyance [76-3-207(1)(b), MCA]
 - AG ... Agricultural Exemption [76-3-207(1)(c), MCA]
 - AL ... Aggregation of Lots [76-3-207(e), MCA]
 - RE ... Retracement of an Existing parcel
- j. Each newly created parcel less than one hundred sixty (160) acres shall have a certificate of exemption.
- k. These Regulations shall not be applicable to deeds, contracts, leases or other conveyances executed prior to July 1, 1973.
- l. An exemption may not be requested or made under this section unless the Treasurer has certified that all real property taxes and special assessments assessed and levied on the land to be divided have been paid except for Security for Construction financing and Court Orders.

IX-G. Exemptions as a Gift or Sale to a Member of the Immediate Family

- a. **Purpose.** The proper use of this exemption is to allow a landowner to convey one parcel to each member of his or her immediate family without local subdivision review. A single parcel may be conveyed to each member of the immediate family under this exemption in each county where the landowner owns property.
- b. The term “immediate family” means the spouse, children (by blood or adoption), or parents of the grantor [76-3-103(8), MCA]. This exemption may be used only by grantors who are natural persons and not by non-corporal legal entities such as corporations, partnerships, and trusts.
- c. Filing of any certificate of survey (or recording of an instrument of conveyance) that would use this exemption to create a parcel for conveyance to a family member must show the name of the grantee, relationship to the landowner, and the parcel to be conveyed under this exemption, and the landowner’s certification of compliance. Also, the certificate of survey or instrument of conveyance must be accompanied by a deed or other conveying document.
- d. One conveyance of a parcel to each member of the landowner’s immediate family is eligible for exemption from subdivision review under these Regulations.
- e. The use of the family conveyance exemption to divide tracts that were created as part of an overall development plan with such characteristics as common roads, utility easements, restrictive covenants, open space or common marketing or promotional plan raises a rebuttable presumption that the use of the exemption is adopted for purposes of evading the Act.

IX-H. Security for Mortgages, Liens, or Trust Indentures for the Purpose of Construction, Improvements to the Land Being Divided, or Refinancing Purposes

- a. **Purpose.** The proper use of the exemption is to provide security for mortgages, liens, or trust indentures for the purpose of construction, improvements to the land being divided, or refinancing purposes, when a survey of the parcel has been required. Any parcel created for security shall not be conveyed, except to the lending institution during foreclosure.
- b. A rebuttable presumption exists when a division of land that is created to provide security is adopted for the purpose of evading the Act under the following conditions:
 - i. If the division of land is created for the purpose of conveyance;

- ii. The financing is for construction on land other than on the exempted parcel;
 - iii. The person named in the statement explaining who would have possession of the remainder parcel if title to the exempted parcel is conveyed is anyone other than the borrower of funds for construction;
 - iv. Title to the exempted parcel will not be initially obtained by the lending institution if foreclosure occurs; or
 - v. It appears that the principle reason the parcel is being created is to create a building site and using the parcel to secure a construction loan is a secondary purpose.
- c. When the security for mortgages, liens, or trust indentures for the purpose of construction, improvements to the land being divided, or refinancing purposes exemption is to be used, the landowner shall submit, in addition to such other documents as may be required, a written statement explaining:
- i. How many parcels within the original tract will be created by use of the exemption?
 - ii. Who will have title to and possession of the remainder of the original parcel?
 - iii. A signed statement from a lending institution that the creation of the exempted parcel is necessary to secure a construction loan for buildings or other improvements on the parcel, or refinancing purposes.
- d. The exempted parcel may be of any size, providing that the parcel size is in compliance with any officially adopted zoning regulation.
- e. The exempted parcel shall be delineated by a dotted line within the survey.
- f. The written statement of lending institution and the instruments creating the security shall be filed at the same time with the Clerk and Recorder.
- g. A transfer of the exempted parcel, by the owner of the property at the time that the land was divided, to any party other than the financial or lending institution to which the mortgage, lien, or trust indenture was given or to a purchaser upon foreclosure of the mortgage, lien, or trust indenture, subjects the division of land to the requirements of these Regulations.

IX-I. Relocation of Common Boundaries within a Platted Subdivision

- a. Purpose. The proper use of the exemption for relocation of common boundaries is to rearrange five (5) or fewer lots within a platted subdivision and does not increase the total number of lots. The plat shall contain the title “Amended Plat” and must be filed with Clerk and Recorder.

- b. The Amended Plat showing the relocation of common boundary within a platted subdivision must be accompanied by:
 - i. A deed(s) exchanging recorded interest from every person having a recorded interest in adjoining properties for the entire newly-described parcel(s) that are acquiring additional land; and
 - ii. Documentation showing the need or reason for the relocation (for example: structure encroachment, surveyor error or enhancement of the configuration of the property).
- c. A rebuttable presumption exists when a proposed relocation of common boundaries within a platted subdivision is adopted for the purpose of evading the Act if it determines that six (6) or more lots are affected by the proposal.
- d. Any division of lots which results in an increase in the number of lots or which redesigns or rearranges six (6) or more lots must be reviewed and approved by the Commission prior to the filing of the final plat.

IX-J. Relocation of Common Boundary Lines

- a. General. Divisions made outside of platted subdivisions for the purpose of relocating common boundary lines between adjoining properties, and divisions made for the purpose of relocating a common boundary line between a single lot within a platted subdivision and adjoining land outside a platted subdivision.
- b. Purpose. The proper use of the exemption for relocating common boundary lines is to:
 - i. Establish a new boundary between adjoining parcels of land, without creating an additional parcel; or
 - ii. Establish a new common boundary line between a single lot within a platted subdivision and adjoining land outside a platted subdivision. A restriction or requirement on the original platted lot or original unplatted parcel continues to apply to those areas.
- c. Certificates of Survey showing the relocation of common boundary lines must be accompanied by:
 - i. A deed(s) exchanging recorded interest from every person having a recorded interest in adjoining properties for the entire newly-described parcel(s) that are acquiring additional land; and

- d. A presumption of evasion exists when a proposed relocation of common boundary lines is adopted for the purpose of evading the Act, if:
 - i. The Commission determines that the documentation submitted according to this section does not support the stated reason for relocation or created an additional parcel, and/or
 - ii. The Certificate of Survey for the relocation of common boundary lines significantly rearranges multiple parcels with little or no resemblance to the original configuration of the parcels.

IX-K. Agricultural Exemption

- a. Purpose. An agricultural exemption is a division of land made outside of a platted subdivision by gift, sale or agreement to buy and sell in which the parties to the transaction enter a covenant running with the land, revocable only by mutual consent of the Commission and the transferee/property owner, that the divided land will be used exclusively for agricultural purposes. No building or structure requiring water or sewer facilities shall be utilized on such a parcel. The parcel involved in the division must be outside of a platted subdivision.
- b. A change in use of the land for anything other than agricultural purposes subjects the division to these Regulations.

IX-L. Aggregation of Parcels or Lots

- a. Purpose. This exemption is to allow for aggregating parcels or lots by eliminating the boundaries of the original parcels and establishing the boundary of a single larger aggregate parcel.
- b. Required Information. Certificates of survey or amended plats claiming this exemption must clearly distinguish between the existing boundary locations and the new aggregate boundary. This must be accomplished by representing the boundaries of existing lots or parcels with dashed lines and the new boundary with a solid line. Each parcel and lot included in the aggregation must be identified on the Certificate of survey or amended plat. Restrictions or requirements (such as covenants or zoning) on existing parcels must be identified. Ownership of each parcel/lot must be identified and the certificate of survey or amended plat must include signatures of all owners. Where the aggregation involves multiple landowners, the certificate of survey or amended plat must be accompanied by quit claim(s), warranty deed(s), or other recordable transfer document(s) transferring ownership to a single landowner or undivided interest ownership. Any aggregation that includes six or more lots in a platted subdivision must be reviewed and approved by the governing body before an amended plat may be filed with the clerk and recorder (76-3-207(2)(a), MCA).

a. Rebuttable presumptions.

- i. If the boundary of the aggregate tract is different from the perimeter boundary of all combined individual parcels.
- ii. If the resulting parcel includes areas that previously were subject to with existing zoning, covenants, and/or deed restrictions, and those requirements appear to have been eliminated, the use of the exemption will be presumed to have been adopted for the purpose of evading the MSPA.

IX-L. Court Order and Lands acquired for state highways, 76-3-209. MCA

The proper use of this exemption is when the division of land is created by order of any court of record in this state or by operation of law or which, in the absence of agreement between the parties to the sale, could be created by an order of any court in this state pursuant to the law of eminent domain, when a survey of the parcel has been required.

76-3-209. MCA. Exemption from surveying and platting requirements for lands acquired for state highways. Instruments of transfer of land which is acquired for state highways may refer by parcel and project number to state highway plans which have been recorded in compliance with 60-2-209, MCA and are exempted from the surveying and platting requirements of the chapter.

IX-M. Correction of Errors

Corrections of errors that in the opinion of the Clerk and Recorder will not materially alter the survey may be made by the submission of a corrected certificate of survey to be filed in the Office of the Clerk and Recorders.

IX-N. Uniform Standards for Certificate of Survey

A certificate of survey may not be filed by the Clerk and Recorder unless it complies with the requirements of ARM 8.94.3002 Uniform Standards for Certificates of Survey.

IX-0. Remainders

a. The Subdivision Act defines a "Division of land" as

the segregation of one or more parcels of land from a larger tract held in single or undivided ownership by transferring or contracting to transfer title to or possession of a portion of the tract or properly filing a certificate of survey or subdivision plat establishing the identity of the segregated parcels pursuant to this chapter. The conveyance of a tract of record or an entire parcel of land that was created by a previous division of land is not a division of land.

The portion of the larger tract left after segregation of the transferred and/or identified parcels is denominated a "remainder." Only one remainder can be established in the parcel segregation process.

b. To qualify as a remainder, a parcel must not have been created for the purpose of transfer. Rather, the remainder must be retained by the owner. Remainders claimed created in conjunction with requests for exemption from subdivision review of a tract or tracts under §§ 76-3-201 and 76-3-207, M.C.A., shall be examined to determine if the remainder is created for evasion of the subdivision process. The Planning Director or designee shall determine during the plat examination process whether the remainder was created to evade the subdivision process. If the proposed remainder is found to be created for the purpose of evasion of the Act, the subdivider may submit an appeal of the determination by the Planning Director or designee with the preliminary plat application. If an appeal is submitted, the Commissioners shall make the final determination as to whether or not a proposed remainder is being created for the purpose of transfer.

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