

APPENDIX K

EXEMPTIONS FROM SUBDIVISION REVIEW FOR CERTAIN DIVISIONS OF LAND

Certain divisions of land are exempt from subdivision review as provided under 76-3-201 and 76-3-207, MCA. The governing body shall review each of these divisions of land to determine whether the claim for exemption is valid pursuant to the Montana Subdivision and Platting Act or if the claim for exemption is made for the purpose of evading review as a subdivision.

2005 MCA Reference:

76-3-201. Exemption for certain divisions of land -- fees for examination of division. (1) Unless the method of disposition is adopted for the purpose of evading this chapter, the requirements of this chapter may not apply to any division of land that:

(a) 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 this state pursuant to the law of eminent domain, Title 70, chapter 30;

(b) subject to subsection (3), 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) creates an interest in oil, gas, minerals, or water that is severed from the surface ownership of real property;

(d) creates cemetery lots;

(e) is created by the reservation of a life estate;

(f) is created by lease or rental for farming and agricultural purposes;

(g) is in a location over which the state does not have jurisdiction; or

(h) is created for rights-of-way or utility sites. A subsequent change in the use of the land to a residential, commercial, or industrial use is subject to the requirements of this chapter.

(2) Before a court of record orders a division of land under subsection (1)(a), the court shall notify the governing body of the pending division and allow the governing body to present written comment on the division.

(3) An exemption under subsection (1)(b) applies:

(a) to a division of land of any size;

(b) if the land that is divided is not conveyed to any entity 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. A transfer of the divided land, by the owner of the property at the time that the land was divided, to any party other than those identified in this subsection (3)(b) subjects the division of land to the requirements of this chapter.

(c) to a parcel that is created to provide security as provided in subsection (1)(b). The remainder of the tract of land is subject to the provisions of this chapter if applicable.

(4) The governing body may examine a division of land to determine whether or not the requirements of this chapter apply to the division and may establish reasonable fees, not to exceed \$200, for the examination.

76-3-207. Divisions of land exempted from review but subject to survey requirements and zoning regulations -- exceptions -- fees for examination of division. (1) Except as provided in subsection (2), unless the method of disposition is adopted for the purpose of evading this chapter, the following divisions of land are not subdivisions under this chapter but are subject to the surveying requirements of [76-3-401](#) for divisions of land not amounting to subdivisions and are subject to applicable zoning regulations adopted under Title 76, chapter 2:

(a) divisions made outside of platted subdivisions for the purpose of relocating common boundary lines between adjoining properties;

(b) 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;

(c) divisions made outside of platted subdivisions by gift, sale, or 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 governing body and the property owner that the divided land will be used exclusively for agricultural purposes;

(d) for five or fewer lots within a platted subdivision, relocation of common boundaries and the aggregation of lots; and

(e) 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 to those areas.

(2) Notwithstanding the provisions of subsection (1):

(a) within a platted subdivision filed with the county clerk and recorder, a division of lots that results in an increase in the number of lots or that redesigns or rearranges six or more lots must be reviewed and approved by the governing body and an amended plat must be filed with the county clerk and recorder;

(b) a change in use of the land exempted under subsection (1)(c) for anything other than agricultural purposes subjects the division to the provisions of this chapter.

(3) (a) Subject to subsection (3)(b), a division of land may not be made under this section unless the county treasurer has certified that all real property taxes and special assessments assessed and levied on the land to be divided have been paid.

(b) (i) If a division of land includes centrally assessed property and the property taxes applicable to the division of land are not specifically identified in the tax assessment, the department of revenue shall prorate the taxes applicable to the land being divided on a reasonable basis. The owner of the centrally assessed property shall ensure that the prorated real property taxes and special assessments are paid on the land being sold before the division of land is made.

(ii) The county treasurer may accept the amount of the tax prorated pursuant to this subsection (3)(b) as a partial payment of the total tax that is due.

(4) The governing body may examine a division of land to determine whether or not the requirements of this chapter apply to the division and may establish reasonable fees, not to exceed \$200, for the examination.

A. PROCEDURES AND GENERAL REQUIREMENTS

1. Any person seeking exemption from the requirements of the Subdivision and Platting Act (76-3-101 et. seq., MCA) shall submit to the Clerk and Recorder (1) a certificate of survey, exempt amended plat, or where a survey is not required an instrument of conveyance, and (2) evidence of, and an affidavit affirming, entitlement to the claimed exemption along with the required Exemption Review Fee listed in the Fee Schedule found in **Error! Reference source not found.**
2. When a certificate of survey, exempt amended plat, or instrument of conveyance is submitted to the County Clerk and Recorder, the Clerk and Recorder shall cause the documents to be reviewed by the designated agents of the governing body: (the Sweet Grass County Planner, Sanitarian, Treasurer, and Clerk and Recorder). The agents shall review the proposed land division to determine whether it complies with the requirements set forth in these regulations, the Montana Subdivision and Platting Act, and the Montana Sanitation in Subdivisions Act.
3. After the review to evaluate compliance with the requirements contained in these regulations, the agents shall submit a written determination whether the use of the exemption is intended to evade the purposes of the Act, after which the written recommendation will be presented to the County Commissioners for their review.
4. If the designated agents find that the proposed use of the exemption complies with the statutes and these criteria, they shall advise the Clerk and Recorder to file the certificate of survey, exempt amended plat, or record the instrument of conveyance and accompanying documents. If the agents find that the proposed use of the exemption does not comply with the statutes and these criteria, they shall advise the Clerk and Recorder to not file or record the documents, and the Clerk shall return the materials to the landowner.

5. Any person whose proposed use of exemption has been denied by the designated agents may appeal the agents' decision to the County Commissioners. The person may request a hearing, and may submit additional evidence to show that the use of the exemption in question is not intended to evade the Act.

If the governing body concludes that the evidence and information overcomes the presumption that the exemption is being invoked to evade the Act, they may authorize the use of the exemption in writing. A certificate of survey claiming such an exemption from subdivision review, which otherwise is in proper form, may be filed (or an exempt amended plat or an instrument of conveyance recorded) if it is accompanied by written authorization of the governing body.

6. Landowners or their representatives are encouraged to meet with the County's designated agents to discuss whether a proposed land division or use of an exemption is in compliance with these criteria.

The agents 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 Clerk and Recorder.

7. The County Commission and its agents, when determining whether an exemption is claimed for the purpose of evading the Act, shall consider all of the surrounding circumstances. These circumstances may include but are not limited to: (1) the nature of the claimant's business, (2) the prior history of the particular tract in question, (3) the proposed configuration of the tracts if the proposed exempt transaction is completed, and (4) any pattern of exempt transactions that will result in the equivalent of a subdivision without local government review (State ex rel. Dreher v. Fuller, 50 St. Rptr 454, 1993).
8. Exempt divisions of land that would result in a pattern of development equivalent to a subdivision shall be presumed to be adopted for purposes of evading the Act. A "pattern of development" occurs whenever 3 or more parcels of less than 160 acres with common covenants or facilities have been divided from the original tract.
9. Any proposed use of family conveyance exemption to divide a tract that was created through use of an exemption will be presumed to be adopted for purposes of evading the Act. This presumption is in effect regardless of previous ownership of the tracts and pertains to remaining tracts of less than 160 acres as well as to those tracts that were created through the exemptions.
10. The use of family conveyance exemptions 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 shall be presumed to be adopted for purposes of evading the Act.
11. To assist in the implementation of this review process and to monitor those parcels by exemption the Clerk and Recorder shall cause the following letter system to be added to the numbering of recorded certificates of survey filed after the effective date of this resolution.

CO.....Court Order (76-3-201(1)(a), MCA)
 MTG.....Mortgage Exemption (76-3-201(1)(b), MCA)
 LE.....Life Estate (76-3-201(1)(e), MCA)
 RCBRelocation of Common Boundary (76-3-207(a), (d), (e), MCA)

FC.....Family Conveyance (76-3-207(b), MCA)
AG.....Agricultural Exemption (76-3-207(c), MCA)
AL.....Aggregation of Lots (76-3-207(e), MCA)

12. If the use of an exemption is determined to be an evasion of the Act, the landowner may submit a subdivision application for the proposed land division.

B. EXEMPTION AS A GIFT OR SALE TO A MEMBER OF THE IMMEDIATE FAMILY (76-3-207(1)(a), MCA)

1. Statement of Intent: The intention of this exemption is to allow a landowner to convey one parcel to each member of the 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.
2. "Immediate family" is defined as the spouse, children by blood or adoption, or parents of the grantor (76-3-103(7),MCA).
3. 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 shall be accompanied by a deed or other conveying document.
4. One conveyance of a parcel to each member of the landowner's immediate family is eligible for exemption from subdivision review under this Resolution. However, the use of the exemption may not create more than one remaining parcel of less than 160 acres.
5. Any proposed use of family conveyance exemption to divide a tract that was created through use of an exemption will be presumed to be adopted for purposes of evading the Act. This presumption is in effect regardless of previous ownership of the tracts and pertains to remaining tracts of less than 160 acres as well as to those tracts that were created through the exemptions.
6. 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 shall constitute a rebuttable presumption that the use of the exemption is adopted for purposes of evading the Act.

C. EXEMPTION TO PROVIDE SECURITY FOR A CONSTRUCTION MORTGAGE, LIEN OR TRUST INDENTURE (76-3-201(1)(b) MCA)

1. Statement of Intent: Under policies of many lending institutions and federal home loan guaranty programs, a landowner who is buying a tract with financing or through a contract for deed is required to hold title to the specific site on which the residence will be built. The intended purpose of this exemption is to allow a landowner who is buying a tract using financing or contract for deed to segregate a smaller parcel from the tract for security for financing construction of a home on the property.
2. When this exemption is to be used, the landowner shall submit to the City County Planning Office:

- a) a signed statement from the landowner and the lending institution that the creation of the exempted parcel is necessary for the owner to secure financing through a construction mortgage, lien or trust indenture on the exempted parcel.
 - b) any certificate of survey that uses this exemption must bear the acknowledged certificate of the property owner stating that the division of land in question is exempted from review as a subdivision, cite the exemption claimed, and include the language provided in item G.(3) of these Evasion Criteria.
3. The use of this exemption is presumed to have been adopted for the purpose of evading the Act if:
- a. it will create more than one building site;
 - b. the loan is for someone other than the owner of record of the parcel to be divided.
 - c. it will create a pattern of development which is equivalent to a subdivision with such characteristics as common roads, sewer, water, utility easements, restrictive covenants, open space or common marketing or promotional plan.

D. EXEMPTION FOR AGRICULTURAL PURPOSES (76-3-207 (1)[c], MCA)

- 1. Statement of Intent: The intention of this exemption is to allow a landowner to create a parcel without local review where the parcel will be used only for production of livestock or agricultural crops and where no residential, commercial, or industrial buildings will be built.
- 2. "Agricultural purpose," for purposes of these evasion criteria, means the use of land for raising crops or livestock, or for the preservation of open space, and specifically excludes residential structures and facilities for commercially processing agricultural products. Agricultural lands are exempt from review by the MDEQ, provided the applicable exemption is properly invoked by the property owner.
- 3. The following conditions must be met or the use of the exemption will be presumed to have been adopted for the purposes of evading the Act:
 - a. The parties to the transaction by gift, sale, or agreement, must enter into a covenant running with the land and revocable only by mutual consent of the County Commissioners and the property owner that the divided land will be used exclusively for agricultural purposes or open space. The covenant must be signed by the property owner, the buyer or lessee and the County Commissioners. An example of a covenant is provided on page K-9.
 - b. The landowner must demonstrate that the planned use of the exempted parcel is for agricultural purposes and that no residential, commercial or industrial buildings will be built (e.g., a statement signed by the buyer).
 - c. Any change in use of the land for anything other than agricultural purposes subjects the parcel to review as a subdivision.
 - d. Residential, commercial and industrial structures, including facilities for commercial processing of agricultural products are excluded uses on parcels created under this exemption unless the covenant is revoked and the land division is reviewed under MCA Title 76, Chapter 3.

E. RELOCATION OF COMMON BOUNDARY (76-3-207(1) (a, d and e), MCA)

- 1. Statement of Intent: The intended purpose of this exemption is to allow a change in the location of a boundary line between two parcels and to allow a one-time transfer of a tract to effect that change in location without subdivision review.

2. If the relocation of a common boundary would result in the permanent creation of an additional parcel of land, the division of land must be reviewed as a subdivision.
3. Certificates of survey or amended plats claiming this exemption must be clearly distinguished between existing the boundary location and the new boundary. This shall be accomplished by representing the existing boundary with a dashed line and the new boundary with a solid line. The appropriate certification must be included on the certificate of survey as provided in item G.(5, 6, or 7) of these Evasion Criteria.

F. REMAINDER PARCELS

1. Statement of Intent: A "remainder" parcel is that part of an original tract that is left following the segregation of other parcels from the tract for the purpose of transfer. A "remainder" may not be created for the purpose of conveyance and must be retained by the owner. A "remainder" that is created by the segregation of a subdivision from a larger original tract is not part of the subdivision nor is it subject to the surveying requirements of the MSPA. Although the term "remainder" does not appear in the MSPA, the possibility that remainder parcels may exist is implicit in the express provisions of the MSPA (Attorney General Letter opinion to Robert McCarthy, April 22, 1987).
2. A landowner claiming that a parcel is a "remainder" must present evidence that the parcel is in fact intended to be retained and is not to be transferred. Examples of such evidence include the existence of the landowner's residence on the parcel; building plans for a structure to be built by or for the landowner.

G. CERTIFICATIONS FOR USE OF SUBDIVISION & PLATTING ACT EXEMPTIONS

1. Statement of Intent: In order to file exempted amended plats of certificates of survey, the exempted amended plat or certificate of survey must include certification that it is exempt from review under the Montana Subdivision and Platting Act. Exemption Certifications should read substantially as shown below.
 - 2.a. Gift or Sale to Member of Immediate Family:

“I (we) hereby certify that the purpose for this division of land is to transfer parcel _ # _ as shown on this certificate of survey to ____ (Grantee)____, my (our)(daughter, son, mother, father, wife or husband), that this is the first and only gift or sale to this person on or after April 1, 1993. I (we) am (are) entitled to use this exemption in that I (we) am (are) in compliance with all conditions imposed on the use of this exemption; therefore, this division of land is exempt from review as a subdivision pursuant to section 76-3-207(1)(b) MCA”.
 - 2.b. Gift or Sale to Member of Immediate Family & exempt from surveying requirements:

“The grantor(s) hereby certifies (y) that the purpose for this division of land is to transfer the aliquot part of a section described in this deed to ____ (Grantee)____, my (our) (daughter, son, mother, father, wife or husband), that this is the first and only gift or sale to this person on or after April 1, 1993. Furthermore, I (we) am (are) entitled to use this exemption in that I (we) am (are) entitled to use this exemption in that I (we) am (are) in compliance with all conditions imposed on the use of this exemption; therefore, this division of land is exempt from review as a subdivision pursuant to section 76-3-207(1)(b) MCA and is furthermore exempt from any survey requirements pursuant to 76-3-401 MCA.”
3. Construction mortgages, liens, or trust indentures: (*Certifications must be signed by owner of*

record and lender).

“We hereby certify that the purpose of this survey is for construction mortgage (lien or trust indenture) purposes only pursuant to 76-3-201(1)(b),MCA, and is for the parcel of ground described in this survey. Furthermore, the boundaries of the parcel are extinguished and the acreage reverts back into the initial acreage upon satisfactory payment of the mortgage, lien or trust indenture with the filing of a Satisfaction Document with the Clerk and Recorder.”

4a Use for Agriculture:

“I (we) hereby certify that the purpose of this survey is to create a parcel as an agricultural tract, and that a covenant has been entered into, with the landowner, buyer, or lessee revocable only by mutual consent of the governing body and the property owner, that the land will be used exclusively for agricultural use, and that this division of land is therefore exempt from review as a subdivision pursuant to Section 76-3-207 (1)(c) MCA.”

4b. Use for Agriculture and exempt from surveying requirements:

“The grantor(s) hereby certifies (y) that the division(s) of land described in this deed as (aliquot part description) is (are) an agricultural tract(s), and that a covenant has been entered into, with the buyer, revocable only by mutual consent of the governing body and the property owner, that the land will be used exclusively for agricultural use and that this division of land is therefore exempt from review as a subdivision pursuant to section 76-3-207 (1)(c) MCA, and is furthermore exempt from survey requirements pursuant to 76-3-401 MCA.”

5. Relocation of Common Boundary Outside of Platted Subdivisions:

“I (we) hereby certify that the purpose of this survey is to relocate common boundary lines between adjoining properties outside of platted subdivisions and is exempt from subdivision review pursuant to 76-3-207(1)(a), MCA.”

6. Rearranging or Redesigning Lots Within a Platted Subdivision:

“I (we) hereby certify that the purpose of this survey is to relocate common boundary lines and the aggregation of five or fewer lots within a platted subdivision, fewer than six (6) lots are affected, and no additional lots are hereby created; therefore, this survey is exempt from review as a subdivision pursuant to Section 76-3-207 (1)(d), MCA.”

7. Relocating Common Boundaries between a Lot Within a Platted Subdivision and Land Outside:

“I (we) hereby certify that the purpose of this survey is to relocate a common boundary line between a single lot within a platted subdivision and adjoining land outside a platted subdivision; therefore, this survey is exempt from review as a subdivision pursuant to section 76-3-207(1)(e), MCA.”

“SAMPLE”
DECLARATION OF COVENANT

This declaration made this _____ day of _____, _____ by _____, hereinafter referred to as the “Declarants”;

That whereas, declarants are parties to the gift, sale or agreement to buy or sell the property described on Certificate of Survey Number _____ on file and of record in the Office of the Clerk and Recorder of Sweet Grass County, Montana.

Now, therefore, Declarants hereby declare that the parcel(s) described above which contain less than one hundred sixty acres shall be held, sold, and conveyed in any manner subject to this covenant, which shall run with the real property and be binding on all parties having any right, title or interest in the described property (properties) or any part thereof, their heirs, executors, successors, administrators and assignees, and shall bind each owner thereof. This covenant may be revoked by mutual consent of the owners of the involved parcel(s) and the governing body of Sweet Grass County. The governing body is deemed to be a party to and may enforce this covenant. TO WIT.

The parcel(s) shown on the Certificate of Survey Number _____ as containing less than one hundred sixty acres, shall be used exclusively for agricultural purposes and that no building or structure requiring sewage facilities will be erected or utilized.

IN WITNESS WHEREOF, the undersigned, being the Declarants, herein, has hereunto set his hand this _____ day of _____, _____.

Signature of Property Owner

Signature of Buyer or Lessee

Acknowledgment and Notarization

Signature of Governing Body

Note: Any change in use of the land for anything other than agricultural purposes subjects the parcel(s) to review and approval following the procedures for a subdivision section 76-3-207 (2) (b) MCA.