

## 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 MSPA.

### IX-B. Procedures and General Requirements

1. Any person seeking exemption from the requirements of the regulations and from the requirements of the MSPA, shall furnish evidence of entitlement to the claimed exemption. Each certificate of survey shall contain a landowner statement referencing the appropriate exemption.
2. For those parcels for which an exemption from subdivision is claimed, a paper copy of the Certificate of Survey, in its final form, along with a traverse showing the exterior boundary closure and acreage, must be submitted to the Clerk and Recorder. The Board of County Commissioners shall appoint a review committee to review all such surveys. This review must be completed by the appointed committee within 21 working days of a sufficient submittal.
3. If the committee determines that the claimed exemption may constitute an evasion of the MSPA under this Resolution, the Clerk and Recorder shall notify the landowner or surveyor in writing of the reason leading to such a determination.
4. If the committee does not make such determination and the instrument otherwise complies with all laws; the instrument is eligible for recording. The Clerk and Recorder shall notify the County Commissioners of the proposed certificate with the applicable exemption.
5. To aid in the monitoring of exempted parcels, the Clerk and Recorder shall cause the following letter system to be added to the numbering of recorded certificates of survey filed. The Certificate of Survey may be voided by the Clerk and Recorder whenever it is determined that the decision by the review committee to approve the Certificate of Survey was based on the submittal of inaccurate information. An Amended Certificate of Survey to reasonably correct the inaccurate information may be sought by the Clerk and Recorder and refilled upon approval of the review committee.
  - a. CO: Court Order (76-3-201(1), MCA)
  - b. M: Mortgage (76-3-201(2), MCA)
  - c. CB: Common Boundary (76-3-207(1)(a), MCA)

- d. FT: Family Transfer (76-3-207(1)(b), MCA)
- e. A: Agricultural (76-3-207(1)(c), MCA)
- f. R: Retracement

### IX-C. Criteria for Review

The following criteria shall be used to review an exemption claim.

#### IX-C-1. Gift or Sale to Member of the Immediate Family

1. The proper use of the exemption as a single gift or sale in each county to each member of the immediate family is to convey one parcel of land to a member of the landowner's immediate family for the benefit of the grantee. A deed transferring the property to the grantee must be recorded along with the recording of the certificate of survey.
2. A proposed division of land as a family transfer may be declared to be an evasion of the MSPA if it is determined that one or more of the following conditions exist:
  - a. The proposed new parcel would result in a pattern of development;
  - b. The transfer is the second or subsequent family transfer of property owned by the grantor to the same member of the immediate family;
  - c. The name of the grantee and relationship to the grantor do not appear on the face of the proposed certificate of survey;
  - d. The grantee is also one of the grantors.
3. "Immediate family" is defined as the spouse, children by blood or adoption, or parents of the grantor (76-3-103(7), MCA).

#### IX-C-2. Relocation of Common Boundary Lines (Section 76-3-207(1)(a), MCA)

1. The proper use of the exemption for relocating common boundary lines is to establish a new boundary between adjoining parcels of land.
2. Certificates of survey showing the relocation of common boundary lines must be accompanied by a quit claim or warranty deed from adjoining property owners for the entire newly described parcel or that portion of the tract that is being affected.
3. Certificates of survey must clearly distinguish between the existing 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 labeled "existing" or "new."

4. A proposed relocation of common boundary line may be considered an evasion of the MSPA if it is determined that:
  - a. The documentation submitted does not support the stated reason for relocation; or
  - b. It creates a parcel of less than 160 acres which, prior to the relocation, had more than 160 acres.

IX-C-3. Security for Construction Financing (Section 76-3-201(2), MCA)

1. The proper use of this 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.
2. When the security for construction financing exemption is to be used, documents shall be submitted, in addition to other documents as may be required, to the Clerk and Recorder:
  - a. Explaining how many parcels within the original tract will be created upon foreclosure/default;
  - b. Explaining who will have title to and possession of the remainder of the original parcel should title to the exempted parcel be conveyed; and
  - c. Including a signed statement from a lending institution or mortgagee that the creation of the exempted parcel is necessary to secure a loan for mortgages, liens, or trust indentures for the purpose of construction, improvements to the land being divided or refinanced.
3. Exemptions under this section apply:
  - a. To divisions 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 to any entity other than the financial or lending institution subjects the property exempted at the time that the land was divided to subdivision review requirements.
  - c. To a parcel that is created to provide security, with the remainder of the tract of land subject to subdivision regulations if applicable.
4. At the time the deed creating the division of land is filed, all instruments/documents including the statements described in item 2 above shall be presented to the Clerk and Recorder.

5. Once the loan to provide security for mortgages, liens, or trust indentures for the purpose of construction or improvements has been satisfied, the exemption is no longer applicable and the boundaries delineating the exempt parcel are extinguished and the acreage previously identified reverts back into the acreage of the initial parcel.

#### IX-C-4. Agricultural Purposes (Section 76-3-207(1)(c), MCA)

1. The proper use of this exemption is to allow a landowner to create a parcel without review when the parcel will be used only for production of livestock or agricultural crops where no residential, commercial, or industrial buildings will be built.
2. The certificate of survey must contain an agricultural covenant signed by the property owner which will run with the land and is revocable only by mutual consent of the governing body and the property owner. Any change in use of the land for anything other than agricultural purposes subjects the parcel to full review as a subdivision.

#### IX-C-5. Court Order (Section 76-2-201(1), MCA)

A certificate of survey using this exemption must be accompanied by a copy of the court order.

#### IX-C-6 Remainder

A remainder may not be created for the purpose of conveyance.

#### IX-C-7 Retracement

A Retracement survey may be filed when a previously created parcel of land is surveyed and no new division of land occurs. The certificate of survey must contain the appropriate exemption certification.

#### IX-D. Appeals

1. Any person whose proposed use of an exemption has been denied because the proposed division of land has been deemed an attempt to evade the MSPA, and these regulations, may appeal the agents' decision to the governing body. 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 MSPA or these regulations, and, thereby overcome the rebuttable presumption.
2. If the governing body concludes that the evidence and information overcomes the presumption that the exemption is being invoked to evade the MSPA or

these regulations, it may authorize the use of the exemption in writing. A certificate of survey claiming an exemption from subdivision review, which otherwise is in proper form, and which the governing body has found not to be an attempt to evade the MSPA or these regulations, may be filed (or an instrument of conveyance recorded) if it is accompanied by written authorization of the governing body.

3. If the person proposing to use an exemption does not seek to rebut the rebuttable presumption or if the governing body determines that the proposed use of the exemption was for the purpose of evading the MSPA, the landowner may proceed with the subdivision review process for the proposed land division.

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