

## V. EVASION CRITERIA

### A. PROCEDURES AND GENERAL REQUIREMENTS

1. Any person seeking exemption from the requirements of the MSPA (76-3-101, MCA) shall submit to the County:

a. A certificate of survey, exempt amended plat, or, where a survey is not required, an instrument of conveyance; and

b. evidence of, and an affidavit affirming, entitlement to the claimed exemption.

2. When a certificate of survey, exempt amended, plat or instrument of conveyance is submitted to the Planning Office, it shall be reviewed by the County Planner, Sanitarian, Treasurer, and Clerk and Recorder as the designated agents of the governing body. The agents shall review the proposed land division to determine whether it complies with the requirements set forth in the Montana Subdivision and Platting Act and Title 24, Administrative Rules of Montana.

3. Any person whose proposed use of exemption has been denied by the designated agents because the use of the exemption raised a rebuttable presumption established by these guidelines may appeal the decision to the County Commissioners.

a. The person may request a hearing, and may submit evidence to show that the use of the exemption in question is not intended to evade the Act, and, thereby overcome the rebuttable presumption.

b. If the governing body concludes that the evidence and information overcomes the presumption that the exemption is being invoked to evade these criteria, they may authorize the use of the exemption in writing.

c. A certificate of survey claiming such an exemption from subdivision review, which otherwise is in proper form, may be filed (or an instrument of conveyance recorded) if it is accompanied by written authorization of the governing body.

4. Advisory Examination. 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 County.

5. The local governing body 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:

- a. the nature of the claimant's business;
- b. the prior history of the particular tract in question;
- c. the proposed configuration of the tracts if the proposed exempt transaction is completed; and
- d. 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).

6. 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 three or more parcels of less than 160 acres would result in a pattern of development with such characteristics as common roads, sewer, water, utility easements, restrictive covenants, open space, or common marketing or promotional plan.

7. If the use of an exemption is determined to be an evasion of the Act, the landowner must 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)(b), MCA)**

1. The intention of this exemption is to allow a landowner to convey one parcel to each of member of the immediate family without local subdivision review.

2. MCA 76-3-103(8) defines "immediate family" as the spouse, children by blood or adoption, or parents of the grantor.

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 following:

- a. name of the grantee;
- b. relationship to the landowner;
- c. the parcel to be conveyed under this exemption; and
- d. the landowner's certification of compliance.

4. One conveyance of a parcel to each member of the landowner's immediate family is eligible for exemption from subdivision review under this provision. However, the use of the exemption may not create more than one remaining parcel of less than 160 acres.

5. The use of the family conveyance exemption to create a pattern of development which is the equivalent of a subdivision with such characteristics as common roads, sewer, water, 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. This exemption allows 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 or construction of a home on the property.

2. When this exemption is to be used, the landowner shall submit to the County a signed statement from the owner of record of the property to be divided 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.

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; and
- b. the loan is for someone other than the owner of record of the parcel to be divided; and
- c. the use of the mortgage exemption will create a pattern of development which is the equivalent of a subdivision with such characteristics as common roads, sewer, water, utility easements, restrictive covenants, open space or common marketing or promotional plan.

4. This exemption requires the County Treasurer's certification, but does not require review by County or State health agencies.

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

1. The intent 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, provided the applicable exemptions are 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 landowner and any other parties to the transaction 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.

b. Any change in use of the land for anything other than agricultural purposes subjects the parcel to review as a subdivision.

c. No building or structure requiring sewage facilities will be erected or utilized on the property. 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.

4. This exemption requires the County Treasurer's certification, but does not require review by County or State health agencies.

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

1. The intended purpose of this exemption is to allow a change in the location of a boundary line between parcels to transfer a tract or a portion of a tract to effect the change in boundary without subdivision review.

2. Certificates of survey or exempt amended plats claiming this exemption 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. The appropriate certification must be included on the certificate of survey or exempt amended plat.

3. 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.

4. This exemption requires the County Treasurer's certification, and may require review by County or State health agencies if such relocation affects approved County Health or DEQ sanitary provisions.

**F. OTHER EXEMPTIONS (MCA 76-3-201(1)(c) through (h))**

1. Divisions creating an interest in oil, gas, minerals, or water that is severed from the surface ownership of real property.

2. Divisions creating cemetery lots.

3. Divisions creating a life estate.

4. Divisions created by lease or rental for farming and agricultural purposes.

5. Divisions over which the State has no jurisdiction.

6. Divisions created by rights-of-way or utility sites.

7. These exemptions do not require certification by the County Treasurer or review by County or State health agencies.

**G. AGGREGATION OF LOTS (MCA 76-3-207(1)(f))** The 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 aggregated parcel are established, are exempt from subdivision review; however, restrictions and conditions on the original platted lot or original unplatted parcel continue in effect. (See also MCA 76-3-103(16)(b) and (c)).

Such exemptions require the County Treasurer's certification and review by County or State health agencies (MCA 76-4-125(2)(a) and Montana Attorney General Opinion No. 7, August 17, 2001).

**H. EXEMPTIONS REQUIRING NO CERTIFICATE OF SURVEY (MCA 76-3-401)**

1. Exempted parcels which can be described as 1/32 or larger (20 acres or larger) aliquot parts (i.e., S1/2, NW1/4, SW1/4) are exempt from survey requirements. Deeds conveying exempted parcels, which are also exempt from the survey requirements, must include required certification language in or with the deed. If a parcel exempt from subdivision review cannot be described by aliquot parts, it must be surveyed and a certificate of survey must be filed.

## **I. EXEMPTION FOR CERTAIN CONDOMINIUMS (MCA 76-3-203)**

Condominiums, townhomes, or townhouses, as those terms are defined in 70-23-102, MCA, constructed on land divided in compliance with this chapter are exempt from the provisions of this chapter if:

1. The approval of the original division of land expressly contemplated the construction of the condominiums, townhomes, or townhouses and any applicable park dedication requirements in 76-3-621 are complied with; or
2. Local zoning regulations are adopted and the condominium, townhome, or townhouse proposal is in conformance with such zoning.

## **J. EXEMPTION FOR AIRPORT LAND AND STATE-OWNED LANDS-EXCEPTION (76-3-205 MCA)**

1. A division of land created by lease or rental of contiguous airport-related land owned by Columbus, Stillwater County, the state, or an airport is not subject to the requirements of this chapter if the lease or rental is for onsite weather or navigation facilities, the manufacture, maintenance, and storage of aircraft, or air carrier-related activities.

2. A division of State-owned land is not subject to the requirements of these Regulations unless the division creates a second or subsequent parcel from a single tract for sale, rent, or lease for residential purposes after July 1, 1974.

## **K. REMAINDER TRACT OF RECORD**

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 subdivision. If the remaining tract of record is less than 160 acres, it shall be considered an additional lot and must be included in the subdivision. A remaining tract of record can be less than 160 acres if it has been created by the use of an exemption to the MSPA and these Regulations (both tracts of record are exempt); the remaining tract of record cannot have been created for the purpose of transfer. As per MCA 76-4-125(3), a remainder parcel under 20 acres in size must be reviewed and approved by DEQ, and all tracts over 20 acres but under 160 must be reviewed and approved by Stillwater County Sanitarian. Only one remainder parcel can be established in the parcel segregation process, and new residential construction may not be started on the remainder tract without review by and approval of DEQ/County Sanitarian.

The County Planner or designee shall determine during the pre-application process whether or not evidence sufficient to rebut the presumption of evasion has been provided

with respect to a proposed remainder. If the Planner finds that evasion is evident, the subdivider may appeal to the County Commissioners.

## **L. CERTIFICATIONS FOR USE OF SUBDIVISION AND PLATTING ACT EXEMPTIONS**

1. In order to file exempted amended plats or 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 and 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) 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: "We hereby certify that the purpose of this survey is to describe (tract description) pursuant to 76-3-201(1)(b), the creation of which is necessary for the owner of record of the parcel to be divided to obtain a loan for said property and to provide security for the lender through a construction mortgage, lien, or trust indenture." The lender must provide a letter substantiating the need for use of this exemption.

4.a. 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."

4.b. 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. Re-arranging or Re-designing 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."

## **M. EXEMPTIONS TO THE USE OF SANITATION IN SUBDIVISIONS ACT**

1. In order to file any subdivision plat, amended plat, or certificate of survey, the plat or certificate of survey must include certification by the owner that it is excluded from review by Department of Environmental Quality for one of the following situations:

2.a. a parcel that has no existing facilities for water supply, wastewater disposal, and solid waste disposal, if no new facilities will be constructed on the parcel;

2.b. a parcel that has no existing facilities for water supply, wastewater disposal, or solid waste disposal other than that were previously approved by the reviewing authority under Title 76, chapter 4, part 1, MCA or that were exempt from such review, if:

a. no new facilities will be constructed on the parcel; and

b. the division of land will not cause approved facilities to violate any conditions of approval, and will not cause exempt facilities to violate any conditions of exemption (ARM 17.36.605(2)(a) and (b)).

3. Divisions made for the purpose of acquiring additional land to become part of an approved parcel, provided that water or sewage disposal facilities may not be constructed on the additional acquired parcel and that the division does not fall within a previously platted or approved subdivision (MCA 76-4-125(2)(b)).

4. Divisions made for purposes other than the construction of water supply or sewage and solid waste disposal facilities as per DEQ (MCA 76-4-125(2)(c)).

5. Divisions located within jurisdictional areas that have adopted growth management plans (MCA 76-4-125(2)(d)).

6. A remainder of an original tract created by segregating a parcel from the tract for purposes of transfer if:

a. the remainder is served by a public or multiple-user sewage system approved before January 1, 1997, pursuant to local regulations or DEQ; or

b. the remainder is 1 acre or larger and has an individual sewage system that was constructed prior to April 29, 1993, and, if required when installed, was approved pursuant to local regulations or DEQ.

c. Consistent with the applicable provisions of MCA 50-2-116(1)(i), the County Sanitarian may require that, prior to the filing of a plat or a certificate of survey subject to review under this part for the parcel to be segregated from the remainder referenced in paragraph 6.a. above, the remainder include acreage or features sufficient to accommodate a replacement drainfield.