

## VI. SUBDIVISION EXEMPTIONS

Divisions of land meeting one or more of the descriptions listed below are not subject to review under Chapter II. of these regulations, but they may be subject to some procedural requirements. In accordance with 76-3-504(1)(p), MCA, the governing body has established criteria to determine whether a proposed exemption is an attempt to evade the subdivision review process.

### VI-A. PURPOSE

Montana state statutes provide that certain divisions of land which would otherwise constitute subdivisions are exempt from local subdivision review and approval, [emphasis added] **unless the transactions are an attempt to evade the subdivision review process as outlined in the Montana Subdivision and Platting Act (76-3-101 et seq., MCA).**

The purpose of this Chapter is to outline (a) the types of allowable exemptions, (2) the exemption request and review procedures used by Madison County for certain exemptions, and (3) the evasion criteria used by Madison County to determine whether or not the proposed use of certain exemptions would evade the Act.

### VI-B. TYPES OF EXEMPTIONS

Table VI-1. summarizes the divisions of land which, under 76-3-101 et seq., MCA and 76-4-101 et. seq., MCA, are exempt from subdivision review, survey requirements, and/or sanitation review.

1. Subdivision Exemptions Within Platted Subdivisions -- Subject to Survey Requirements
  - a. For five (5) or fewer lots, the relocation of common boundaries (commonly called boundary adjustment).
  - b. For five (5) or fewer lots, the aggregation of lots.
  - c. The relocation of 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.
  - d. Condominiums constructed on land divided in compliance with 76-3-101 et seq., MCA.
2. Subdivision Exemptions Outside of Platted Subdivisions -- Subject to Survey Requirements

**TABLE VI-1**

**[Table adapted from Ravalli County Subdivision Regulations of 1/97]**

Summary of Exemptions from Surveying Requirements, Subdivision Review, and Sanitation Review

	Exemptions from Surveying Requirements		Exemptions from Subdivision Review		Exemptions from Sanitation Review	
	Exempt	Citation Allowing The Exemption	Exempt	Citation Allowing The Exemption	Exempt	Citation Allowing The exemption
Within Platted Subdivisions						
Aggregation of Lots for 5 or fewer lots	No	---	Yes	76-3-207(1)(d) MCA	Yes (2)	ARM 16.16.605(2)(d),(e)
Boundary Relocation for 5 or fewer lots	No	---	Yes	76-3-207(1)(d) MCA	Yes (2)	ARM 16.16.605(2)(d),(e)
Boundary Relocation With Platted & Unplatted Land	No	---	Yes	76-3-207(1)(e) MCA	No	---
Condominiums	No	---	Yes	76-3-203 MCA	No	---
Outside of Platted Subdivisions						
Boundary Relocation	No	---	Yes	76-3-207(1)(a) MCA	No	---
Family Transfer	No	---	Yes	76-3-207(1)(b) MCA	No	---
Agricultural Covenant	No	---	Yes	76-3-207(1)(c) MCA	Yes	ARM 16.16.605 (1)(b)
Aggregation of Parcels	No	---	Yes	Implicit	No	---
Condominiums	No	---	No	---	No	---
Within and Outside of Platted Subdivisions						
Major Subdivision	No	---	No	---	Yes (3)	76-4-124 MCA
Minor Subdivision	No	---	No	---	Yes (3)	76-4-124 MCA
Eminent Domain, Condemnation, Order of Court	Yes (4)	76-3-201(a) MCA	Yes	76-3-201(a) MCA	Yes	76-4-125(2)(a) MCA
Security for Const. Mortgage, Lien, Trust Indenture	Yes (4)	76-3-201(b) MCA	Yes	76-3-201(b) MCA	Yes	76-4-125(2)(a) MCA
Oil, Gas, Water or Mining Claim	Yes (4)	76-3-201(c) MCA	Yes	76-3-201(c) MCA	Yes	76-4-125(2)(a) MCA
Cemetery Lots	Yes (4)	76-3-201(d) MCA	Yes	76-3-201(d) MCA	Yes	76-4-125(2)(a) MCA
Life Estate	Yes (4)	76-3-201(e) MCA	Yes	76-3-201(e) MCA	Yes	76-4-125(2)(a) MCA
Farming and Agricultural Lease	Yes (4)	76-3-201(f) MCA	Yes	76-3-201(f) MCA	Yes	76-4-125(2)(a) MCA
Certain State-Land Divisions	Yes	76-3-205 MCA	Yes	76-3-205 MCA	No	---
Highway Relocation	Yes	76-3-209 MCA	Yes	76-3-209 MCA	Yes	ARM 16.16.605(2)(c)
Retracement Surveys	No	---	Yes	Implicit	Yes	Implicit
Utility Siting, Easements, etc.	No	---	No	---	Yes	76-4-125(2)(c) MCA
Correction Survey	No	---	Yes	Implicit	Yes	Implicit
Affidavit of Correction	Possibly	Implicit	Yes	Implicit	Yes	Implicit
Correct Construction Errors	No	---	Yes	---	Yes	ARM 16.16.605(2)(b)

- Notes:
1. This is a summary only, intended to show the various exemptions in a simple format. Specific provisions of this Code and State law apply in all cases.
  2. Exempt only when the lots are served by public water and sewer, or the plat indicates such facilities will not be erected.
  3. Exempt only when the subdivision meets all of the requirements as outlined in Section 76-4-124, MCA.
  4. A survey may be filed if the applicable exemption is cited on the face of the plat.
- MCA denotes Montana code Annotated.  
ARM denotes Administrative Rules of Montana

- a. The relocation of common boundaries between adjoining properties (commonly called boundary adjustment).
  - b. A single gift or sale to each member of the landowner's immediate family (commonly called family conveyance).
  - c. Land divisions made 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 (commonly called agricultural exemption).
3. Subdivision Exemptions Within and Outside of Platted Subdivisions -- Not Subject to Survey Requirements

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.

Pursuant to 76-3-201(2), MCA, before a court of record orders this type of division of land, the court shall notify the governing body of pending division and allow that governing body to present written comment on the division. In preparing its written response on the division, the governing body shall consider:

- (1) provision of legal and physical access to the land in question;
- (2) provision of utility easements, including irrigation ditch easements;
- (3) the public interest criteria outlined in 76-3-608(3)(a), MCA;
- (4) the three additional public interest criteria outlined in Chapter II, Section E.2.c. of these regulations; and
- (5) whether or not the division would be in substantial compliance with the Growth Policy.
- (6) whether or not the division is legally described and recordable, upon consultation with the Madison County clerk and recorder.

The governing body shall also suggest to the court, that it require the landowner to have the land surveyed and then file a certificate of survey, including a legal description and cause number of the court order.

- b. Is created to provide security for construction mortgages, liens, or trust indentures (commonly called mortgage exemption).
- 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 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, 1974.

Also:

- a. 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. 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 [Note: County road easements and rivers may not automatically create property boundaries].
- b. The sale, rent, lease, or other conveyance of one or more parts of a building, structure, or other improvement, whether existing or proposed, situated on one or more parcels of land.
- c. Deeds, contracts, leases, or other conveyances executed prior to July 1, 1974.

### **VI-C. EXEMPTION REQUEST AND REVIEW PROCEDURES (PERTINENT TO EXEMPTIONS LISTED IN SUBSECTIONS 1a., 1b., 1c., 2a., 2b., 2c., and 3b. above)**

1. Request for Exemption. Any landowner seeking an exemption from the requirements of the Montana Subdivision and Platting Act, as set forth in Sections 76-3-201(1)(b), MCA and 76-3-207(1)(a), (b), (c), and (d), MCA, shall submit to the Madison County clerk and recorder three (3) sets of the following items:
  - a. As required, a certificate of survey in either draft or final form.
  - b. A completed Request for Exemption Review (Appendix T).
  - c. Any supporting documents or evidence of entitlement to the claimed exemption.

In addition, pursuant to 76-3-201(4), MCA, the landowner shall pay the subdivision exemption review fee.

2. Exemption Request Review by Evasion Review Board. The clerk and recorder shall distribute the exemption request materials to the evasion review board (See Appendix A for definition). The evasion review board shall meet to review the proposed exemption. The landowner requesting the exemption shall be notified in advance of the evasion review board meeting. In accordance with the Montana open meeting law, evasion review board meetings shall be properly noticed.

At the meeting, the evasion review board will consider whether or not the proposed exemption is exempt from the Montana Subdivision and Platting Act (76-3-101 et seq., MCA) and the Sanitation in Subdivision Act (76-4-101 et seq., MCA), as well as the criteria listed in Section VI-D. below (See also Appendix U. for evasion review checklist). All three members of the evasion review board must participate in the review. Each evasion review board member may have a designated alternate to serve in his or her absence.

Within fifteen (15) working days of the clerk and recorder's receipt of a complete set of the exemption request materials, the evasion review board shall review the exemption request.

If the board finds that the proposed exemption meets the statutes and the criteria stated herein, it shall approve the exemption request. If the board finds that the proposed exemption does not meet the statutes and the criteria stated herein, it shall deny the exemption request. The clerk and recorder shall notify the landowner or landowner's representative of the board's decision.

The board shall approve or disapprove the exemption request within twenty (20) working days of the clerk and recorder's receipt of the complete submittal.

Action on an exemption request may be deferred if the evasion review board determines it contains inaccurate or incomplete information. In such a case, the "clock" starts over once the clerk and recorder receives the revised material.

3. Certification of Exemption. Where required, a certificate of survey pertaining to any division of land which is created according to one of the subdivision exemptions listed above may not be filed by the clerk and recorder unless it bears the acknowledged certificate of property owners stating that the division of land in question is exempted from review as a subdivision and citing the applicable exemption [8.94.3002(5)(a), ARM].
4. Appeal. A landowner whose exemption request has been denied may submit a written appeal of the decision to the governing body within twenty (20) working days after receiving notification of the evasion review board's decision. The appeal must be accompanied by an explanation of why the proposed exemption should be approved. The governing body may reverse the decision of the evasion review board.

5. To assist in the monitoring and enforcement of the criteria listed in Section VI-D. below, the clerk and recorder shall incorporate the following abbreviations into the certificate of survey filing system.

ME Mortgage Exemption [76-3-201(1)(b), MCA]  
BA Boundary Adjustment [76-3-207(1)(a) and (d), MCA]  
FC Family Conveyance [76-3-207(1)(b), MCA]  
AE Agricultural Exemption [76-3-207(1)(c), MCA]

## **VI-D. EVASION CRITERIA**

1. General Criteria

In its review of an exemption request, the evasion review board shall consider all of the surrounding circumstances. These circumstances may include, but are not limited to, the following: (a) the prior history of the tract in question; (b) whether the claimant has engaged in prior exempt transactions involving the tract; (c) the 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.

2. Specific Criteria

- a. Use for Family Conveyance

(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 (See Appendix A for definition) 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) The proposed use of the family conveyance exemption to divide tracts of land under an overall development plan exhibiting such characteristics as common roads, utility easements, restrictive covenants, open spaces, a common marketing or promotional scheme, or other similar characteristics, shall be presumed to be adopted for purposes of evading the Act.

(3) The proposed use of the family conveyance exemption must not create more than one remainder parcel of less than 160 acres.

(4) There must be no evidence at the time of review, indicating that the proposed new tract is intended to be sold. Further, this

exemption may not be used as an alternative to a proposed subdivision for which an application has been submitted.

(1) In accordance with 76-3-207(1)(b), MCA, the land proposed for a family conveyance exemption shall not be located within a subdivision platted since July 1, 1973.

(2) The deed transferring the land shall accompany the COS at the time of recording.

b. Use for Agriculture (Agricultural Exemption).

(1) Statement of Intent. The intention of this exemption is to allow a landowner to create a parcel without local subdivision and sanitation review, where the land will be used only for the raising of crops or livestock or for the preservation of open space, and where no residential, commercial or industrial buildings will be built.

(2) Permitted buildings. Agricultural sheds, outbuildings, and wells for stock watering are permitted. Facilities for the commercial processing of agricultural products are prohibited.

(3) The parties to the transaction must enter into a covenant (See Appendix V. for a sample covenant) running with the land and revocable only by mutual consent of the governing body and the landowner, that the divided land will be used exclusively for agricultural purposes or open space. The covenant must be signed by both the property owner and the buyer or lessee in the presence of a notary public.

(4) Any change in use of the land for other than agricultural purposes subjects the division to review as a subdivision.

(5) Revocation of the agricultural exemption shall come only as a part of the governing body's approval of the division of land as a subdivision (See Appendix W. for Request Form to Lift an Agricultural Exemption).

c. Relocation of Common Boundary (Boundary Adjustment)

(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 transfer of a tract to effect that change in location without local subdivision review.

(2) Certificates of survey 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 landowner certification must be included on the certificate of survey.

(3) Where the boundary adjustment will affect more than one set of landowners, a certificate of survey showing the relocation of common boundary lines must be accompanied by a quit claim deed from the adjoining property owner(s) for the newly described parcel or parcels.

(4) The boundary adjustment must not result in the permanent creation of an additional parcel of land.

d. Division to Provide Security for a Construction Mortgage, Lien or Trust Indenture

(1) When this exemption is to be used, the landowner shall submit to the clerk and recorder:

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.

(2) Pursuant to 76-3-201(3), the land divided by this exemption may be of any size. Further, this exemption applies 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 subjects the division of land to the subdivision review requirements outlined in Chapter II.