

# EXEMPT LAND DIVISION REVIEW PROCESS

*For the City of Glendive, Town of Richey, and County of Dawson*

Adopted October 2010

## EXEMPT LAND DIVISIONS

*The State of Montana allows for certain divisions of land, which would otherwise constitute subdivisions, to be exempt from local subdivision review and approval, unless the division is an attempt to evade the Montana Subdivision and Platting Act (MSPA). The governing body and its agents shall examine all circumstances surrounding a proposed exempt division to determine whether or not that division qualifies as exempt.*

*Exempt land divisions can include either amended subdivision plats or a Certificate of Survey (C.O.S.)*

*This document is intended to summarize and clarify the local review process for both types of exempt land divisions.*

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## EXEMPT LAND DIVISION REVIEW PROCESS

The City of Glendive and Dawson County have adopted an examination process for exempt land divisions. That process is outlined below:

- The first step is to confirm with the City/County Planning Department that the exemption you are requesting is valid and legal. Please bring enough information to the planning office to describe the existing and proposed property boundaries, property location, and show any adjacency to rivers or streams.
- Once the land division and exemption type is determined, the second step is to hire a surveyor to create a new plat or C.O.S. of the new boundaries of the proposed land division. The surveyor must be licensed to practice in the state of Montana.
- Once the survey is complete, the property owner or owner's designated agent submits a preliminary copy of the Certificate of Survey or Amended Plat and any required associated documents to the Planning Department. At a minimum, required associated documents will include a completed and signed intake/application form, review fee, and Subdivision Guarantee for Amended Plats.
- The Planning Department will review the preliminary C.O.S./Amended Plat and then the document will be routed to all pertinent City or County departments for their review, corrections and comments, including the County Clerk and Recorder, County Sanitarian, City of Glendive Public Works, and the City/County Attorney, as appropriate.
- When the routed COS/Amended Plat is returned to the Planning Department, typically within 1-2 weeks, the City/County Planner will contact the applicant or designated agent regarding any corrections that need to be made prior to submittal of the mylar and associated documents. The applicant or agent will then contact their surveyor for required changes and gather any other required documentation.

- The applicant or agent shall then submit a corrected preliminary Amended Plat or C.O.S. and any required supporting documents to the City/County Planning Department.
- The revised and additional documents will be reviewed for completeness.
- The City/County Planner will contact the applicant or agent with any additional corrections or to let them know that the revised document is complete. The applicant or agent will contact their surveyor with final changes or to request the final mylar.
- The applicant or agent will gather notarized signatures on the mylar for all involved property owners, any lienholders, as well as the stamped surveyor's signature and signature of the County Treasurer. The applicant or agent will then submit the signed mylar and any additional required supporting documents to the City/County Planning Department with the appropriate recording fee. The Planning Department will gather signatures from the Governing Body, if required.
- The Clerk and Recorder will record the mylar and provide a copy of the recorded document to the applicant or applicant's agent.

## **FEE SCHEDULE**

### Review Fees

- C.O.S.—The fee for reviewing an exempt division being recorded by COS or a retracement survey is \$75.00.
- Amended subdivision plats that are exempt from subdivision review are charged a \$200.00 review fee.

### Recording Fees

- \$5.00 per document (per mylar sheet or required accompanying document)
- \$0.50 per lot up to 100 lots
- \$0.25 per lot over 100 lots

**Gift or Sale to a Member of the Immediate Family (FC)**

***[76-3-207(1) (b), MCA]***

The intention of this exemption is to allow a landowner to convey one parcel outside of a platted subdivision to each member of the immediate family without undergoing 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. Immediate family is defined as the spouse, children by blood or adoption, or parents of the grantor (76-3-103(7), MCA). Grantors must be natural persons and may not be corporations, partnerships, or trusts. The use of this exemption must also consider the following:

- The exemption may not create more than one new parcel per eligible family member.
- The exemption may not create more than one additional or remaining parcel of less than 160 acres.
- Lots previously created through the use of another exemption may not be divided through the use of this exemption.
- All resultant parcels of the survey must meet lot sizes prescribed by the zoning on the property, if applicable.
- Each lot must have physical and legal access.

The following are required with the submittal of a C.O.S. for a family transfer exemption:

- A properly executed deed or method of conveyance
- A \$75.00 processing fee for the Planning Department written to Dawson County

*Below is an example of certification required on the face of the survey:*

<b>CERTIFICATE OF EXEMPTION (FAMILY GIFT OR SALE)</b>	
I (We) certify that the purpose of this survey is to create Tract # _____ for transfer of ownership as a family gift or sale and that no prior family sale has been conveyed to ((name), our (my) (relationship)_____ and that this exemption complies with all conditions imposed on its use. Therefore, this survey is exempt from review as a subdivision pursuant to Section 76-3-207(1)(b), MCA, and the Dawson County /City of Glendive Subdivision Regulations.	
DATED THIS _____ day of _____, 20_____.	
_____	_____
(Signature) Grantor	(Signature) Grantee
	Relationship to Grantor _____

**Exemption to Provide Security for a Construction Mortgage, Lien, or Trust Indenture (ME)**

***[76-3-201(1) (b), MCA]***

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. This exemption is intended to allow a buyer to segregate a smaller parcel from the tract for security for financing the construction of a home on the larger parcel.

The following criteria must be met in order to use this exemption:

- The lending institution must require the landowner to hold title to a smaller parcel of a larger tract as security for a construction loan;
- The person named as possessor of the larger tract if title to the exempted parcel is conveyed must be the same person as the borrower of funds for construction;
- Financing must be for construction or improvements to occur on the exempted parcel;
- The borrower of funds must be the owner of record or the recorded contract purchaser;
- The division of land must be created only for the purpose of conveyance of the exempted parcel to the financial or lending institution to which the mortgage, lien, or trust indenture is given;
- Title to the exempted parcel must be initially obtained by the lending institution in the event of foreclosure. (The division of land may be conveyed by the lending institution to an outside purchaser upon foreclosure of the mortgage, lien, or trust indenture.)

The following are required with the submittal of a C.O.S for a mortgage exemption:

- A statement of the number of interests in the original tract to be created by the exemption;
- A statement explaining who will have title to and possession of the balance of the original tract after title to the exempted interest is conveyed;
- A deed, trust indenture, or mortgage for the exempted parcel stating that the interest is being created only to secure such deed, trust indenture, or mortgage;
- A signed statement from a lending institution stating that the creation of the interest is necessary to secure a construction loan; and
- A \$75.00 processing fee for the Planning Department written to Dawson County

*Below is an example of certification required on the face of the survey:*

<b>CERTIFICATE OF EXEMPTION (SECURITY FOR MORTGAGE, LIEN OR TRUST INDENTURE)</b>	
I certify that the purpose of this survey is to create a parcel of land to provide security for mortgage or loan purposes and that this exemption complies with all conditions imposed on its use. Therefore, this survey is exempt from review as a subdivision pursuant to Section 76-3-201(1)(b) MCA and from review by the Montana Department of Environmental Quality (16.16.605(1)(b)). Title to and possession of the balance of the original tract shall belong to _____ after title to the exempted interest in conveyed. ___ interests in the original tract will be created by the exemption.	
DATED THIS _____ day of _____, 20_____.	
_____	_____
(Signature) Lending Institution	(Signature) Purchaser

## Exemption for Agricultural Purposes

### *[76-3-207(1) (c), MCA]*

The intention of this exemption is to allow a landowner to create a parcel that will be used only for production of livestock or agricultural crops and where no residential, commercial, or industrial buildings, which require water or sewer, will be built. Agricultural Purpose, for purposes of these exemption 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.

Any change in the use of the land for anything other than agricultural purposes subjects the parcel to full review as a subdivision. Residential, commercial and industrial structures, including facilities for commercial processing of agricultural products, are prohibited uses on parcels created under this exemption unless the covenant is revoked and the land division is reviewed as a subdivision. The governing body must approve lifting the agricultural covenant.

Agricultural lands under this exemption are exempt from review by the Montana Department of Environmental Quality (MDEQ), provided the applicable exemption is properly invoked by the property owner.

The following conditions must be met for the use of this exemption:

- 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 governing body 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 governing body.
- 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 owner or buyer describing the existing or proposed agricultural use of the property). The parcel must meet the criteria for an agricultural designation as defined under section 15-7-202, MCA.

The following are required with the submittal of a C.O.S. for an agricultural survey:

- A separate, recordable, signed covenant running with the land and stating that the land shall be used only for agricultural purposes, in accordance with 76-3-207(1)(c), MCA. The C.O.S. must also bear a signed recitation of this covenant.
- A \$75.00 processing fee for the Planning Department written to Dawson County

**Exemption for Agricultural Purposes (Continued)**

*Below is an example of certification required on the face of the survey:*

**CERTIFICATE OF EXEMPTION (FOR AGRICULTURAL PURPOSES)**

I (We) certify that the purpose of this survey is to create Tract # \_\_\_\_\_, as shown on this certificate of survey, for gift or sale, which is to be used for agricultural purposes only, and that this exemption complies with all conditions imposed on its use. Therefore, this survey is exempt from review as a subdivision pursuant to Section 76-3-207(1)(c), MCA and the Dawson County/City of Glendive Subdivision Regulations.

I also hereby enter a covenant, to run with the land, that Tract \_\_\_\_\_ as shown hereon, will be used exclusively for agricultural purposes only. No building or structure requiring water or sewer facilities shall be utilized on Tract \_\_\_\_\_. This covenant is revocable only by the mutual consent of the governing body and the property owner.

DATED THIS \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_

(Signature) Property Owner(s)

(Signature) Property Owner(s)



**Exemption for Agricultural Purposes (Continued)**

*Example Agricultural Covenant for an Agricultural Exemption, to be a separate, recordable document reciting the covenant located on the face of the C.O.S.*

A Certificate of Survey of the following described lands is being submitted for recordation in the office of the Dawson County Clerk & Recorder whereby the landowners, \_\_\_\_\_ and \_\_\_\_\_ wish to enter into a covenant, running with the land and revocable only by mutual consent of the governing body of Dawson County/City of Glendive and the property owner, or their successor in interest, that the land shall be used exclusively for agricultural purposes, and meets the agricultural designation under section 15-7-202, MCA.

Legal Description:

Tract A, Certificate of Survey,

Recorded as Document Number \_\_\_\_\_

Whereas the landowner has signed on the face of the Certificate of Survey his/her intent and desire to enter into said covenant, the Board of County Commissioners of Dawson County do hereby accept and agree to the covenant being placed upon the above described land. A change in use of the land for anything other than agricultural purposes subjects the land to the provisions of the Montana Subdivision and Platting Act in the Montana Code Annotated.

Dated this \_\_\_ day of \_\_\_\_\_, 20\_\_.

Dawson County Commissioners

\_\_\_\_\_

Chairperson

\_\_\_\_\_

Attest:

Commissioner

\_\_\_\_\_

\_\_\_\_\_

Commissioner

Clerk & Recorder

State of Montana )

County of Dawson )

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, before me, a Notary Public for the State of Montana, personally appeared, James E. Reno, Bill Kennedy and John Ostlund, members of the Board of County Commissioners, and Tony Nave, County Clerk & Recorder, known to me to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notary seal the day and year first above written.

(seal )

\_\_\_\_\_

Print Name: \_\_\_\_\_

Notary Public for the State of Montana

Residing at \_\_\_\_\_, Montana

My commission expires \_\_\_\_\_

**Relocation of Common Boundary Line (RL)**

***[76-3-207 (1)(a), (d), (e) and (2) (a), MCA]***

The intended purpose of this exemption is to allow a change in the location of a common boundary line between two parcels without subdivision review. Relocations can occur outside of a platted subdivision, for five or fewer lots within a platted subdivision, or between a single lot in a platted subdivision and land outside of a platted subdivision. ***Within a platted subdivision, a relocation of boundary lines that redesigns or rearranges six or more lots must be reviewed and approved by the governing body.***

For any relocation of common boundary involving a platted subdivision, an Amended Plat must be filed. Amended Plats may be subject to the procedures for reviewing major or minor subdivisions, if the proposed changes are determined to be significantly out of character with the original subdivision or if proposed changes pose significant issues concerning public health, safety, or welfare.

The following criteria must be met for use of this exemption:

- Resulting lots within a subdivision must be consistent with the approved subdivision and uses within it.
- Resulting lots must comply with existing zoning, covenants, and/or deed restrictions.

The following are required with the submittal of a C.O.S. or Amended Plat for relocations:

- If the ownership of all parcels with common boundaries being relocated is not the same, then a Quit Claim deed to the owner receiving the additional land shall be required
- A Subdivision Guarantee (Certificate of Title) is required for all amended plats
- A \$75.00 processing fee for the Planning Department written to Dawson County (if the relocation or aggregation is not within a platted subdivision)
- A \$200.00 processing fee for the Planning Department written to Dawson County (if the relocation involves a platted subdivision)

*Below is an example of certification required on the face of the survey:*

<b>CERTIFICATE OF EXEMPTION (RELOCATION OF COMMON BOUNDARY)</b>	
I (We) certify that the purpose of this survey is to relocate common boundaries between adjoining properties existing (outside of a platted subdivision) or ( inside a platted subdivision) or ( between a single lot within a platted subdivision and adjoining land outside a platted subdivision). Therefore this survey is exempt from review as subdivision pursuant to Section 76-3-207 (1)(a), (d), or (e), MCA.	
DATED THIS _____ day of _____, 20_____.	
_____	_____
(Signature) Seller	(Signature) Purchaser

**Aggregation of Lots (AL)**

***[76-3-207(1)(f), MCA]***

The intended purpose of this exemption is to allow the aggregation of lots outside of a subdivision and the aggregation of internal lot lines within a platted subdivision.

Aggregations can occur outside of a platted subdivision, for five or fewer lots within a platted subdivision, or between a single lot in a platted subdivision and land outside of a platted subdivision. ***Within a platted subdivision, an aggregation of internal lot lines that redesigns or rearranges six or more lots must be reviewed and approved by the governing body.***

For any aggregation of lots involving a platted subdivision, an Amended Plat must be filed. Amended Plats may be subject to the procedures for reviewing major or minor subdivisions, if the proposed changes are determined to be out of character with the original subdivision or if proposed changes pose significant issues concerning public health, safety, or welfare.

The following criteria must be met for use of this exemption:

- Resulting lots within a subdivision must be consistent with the approved subdivision and uses within it and must comply with existing zoning, covenants, or deed restrictions;
- The amended plat or C.O.S. must show fewer lots or parcels than originally existed.

The following are required with the submittal of an amended plat or C.O.S. for an aggregation:

- If the ownership of all parcels with common boundaries being relocated is not the same, then a Quit Claim deed to the owner receiving the additional land shall be required
- A Subdivision Guarantee (Certificate of Title) is required for all amended plats
- A \$75.00 processing fee for the Planning Department written to Dawson County (if the aggregation is not within a platted subdivision)
- A \$200.00 processing fee for the Planning Department written to Dawson County (if the aggregation is within a platted subdivision)

*Below is an example of certification required on the face of the survey:*

<b>CERTIFICATE OF EXEMPTION (AGGREGATION OF LOTS)</b>	
I (We) certify that the purpose of this survey is to eliminate the boundaries of the original parcel and establish a larger aggregate parcel. Of properties existing outside of a platted subdivision (or inside a platted subdivision) (or between a single lot within a platted subdivision and adjoining land outside a platted subdivision). Therefore this survey is exempt from review as subdivision pursuant to Section 76-3-207 (1)(a), (d), or (e), MCA.	
DATED THIS _____ day of _____, 20_____.	
_____	_____
(Signature) Seller	(Signature) Purchaser

**Court Order Exemption (CO)**

**(76-3-201(1)(a), MCA)**

This is a division of land 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. The Court must notify the governing body of the pending division and allow the governing body to present written comments on the ordered land division.

The following are required with the submittal of a mylar for a court order:

- Properly executed deeds for the transfer of the property
- A copy of the court order
- The docket number for the court order needs to be cited on the survey
- A \$75.00 processing fee for the Planning Department written to Dawson County

**Right-of-Way/Utility Exemption (UE)**

**(76-3-201(1)(h), MCA)**

This is a division of land created for the purpose of rights-of-ways or utility sites on a property. The proposed use of the land must meet the definition of a utility provided in 69-3-101, MCA, except that the term, for purposes of this exemption, includes county or consolidated city and county water or sewer districts as provided for in Title 7, Chapter 13, parts 22 and 23.

Any subsequent change in the use of the property as residential, commercial or industrial uses shall subject the land division to the subdivision regulations.

The following are required with the submittal of a C.O.S. for a right-of-way/utility:

- A deed transferring the parcel to the appropriate entity
- A copy of the lease if it is a utility lease site
- A \$75.00 processing fee for the Planning Department written to Dawson County

### **Retracement Certificate of Survey (RT)**

Except as provided in 70-22-105, MCA, within 180 days of the completion of a survey, the registered land surveyor responsible for the survey, whether the surveyor is privately or publicly employed, shall prepare and submit for filing a Certificate of Survey in the county in which the survey was made if the new survey (76-3-404, MCA):

- Provides material evidence not appearing on any map filed with the county clerk and Recorder or contained in the records of the United States bureau of land management;
- Reveals a material discrepancy in the map;
- Discloses evidence to suggest alternate locations of lines or points; or
- Establishes one or more lines not shown on a recorded map, the positions of which are not ascertainable from an inspection of the map without trigonometric calculations.
- A certificate of survey is not required for any survey that is made by the United States bureau of land management, that is preliminary, or that will become part of a subdivision plat being prepared for recording under the provisions of this chapter.

The following are required with the submittal of a C.O.S. for a Retracement Survey:

- A \$75.00 processing fee for the Planning Department written to Dawson County