



Procedures & Requirements for Family Transfer Exemption Claims

A. Preface:

The Lincoln County Subdivision Regulations (as amended on April 2017) provide the following for review of Family Transfer Exemptions:

- The MSPA provides that certain divisions of land, which would otherwise constitute subdivisions, are exempt from local subdivision review and approval, unless the use of the exemption is an attempt to evade the MSPA. [Montana Platting and Subdivision] Act, Section 76-3-201 et. seq. MCA;
- In accessing the claimant's purpose the Planning Department & COS Review Committee (made up of Planning, GIS, Clerk & Recorder, and Environmental Health) will evaluate all relevant circumstances including the nature of the claimant's business and use of the parcel, the prior history of the particular tract in question, the proposed configuration of the tract(s) if the proposed exempt transactions are completed, and any pattern of exempt transactions that will result in the equivalent of a subdivision without local government review;
- If it is determined as evasion by the Planning Department & COS Review Committee, a review by the Governing Body to hear the staff report findings, the claimant may present evidence in support of the exemption (Attorney General Opinion further provides that the Claimant has the burden of proof in satisfying the Commission that the exemptions claim is appropriate. (40 A.G. Op. No. 16).

B. Family Transfer Procedures

In order to prevent abuses of the family transfer exemption, claims will be evaluated as follows:

- Applicant submits complete application to Planning Department with applicable review fees;
- Planning Department & COS Review Committee reviews application materials for completeness and appropriateness of exemption, and determines that application is complete and acceptable;



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- If Acceptable; the Planning Department shall prepare a staff report and schedule a Public Review for the consideration of the exemption claim(s) with County Commissioners; or
- If NOT Acceptable, Planning Department will return the application to the surveyor with a letter explaining what was determined as the proposed use of the exemption was for the purpose of evading the Act; the landowner may submit a subdivision application for the land division.

C. Family Transfer General & Evasion Criteria

- A title in mixed ownership, such as a brother and sister cannot claim the family exemption;
- Lots within platted subdivisions are not eligible for family exemptions;
- Lots previously created through the use of another exemption may not be divided through the use of this exemption
- Each lot must have physical and legal access; Naming of a road and signage could be a requirement. Claimant will be responsible for those additional costs & road sign **MUST** be installed and approved before filing of final survey;
- A transfer of a parcel of land by one family member to another, by quitclaim deed, followed by an attempted use of the exemption will result in the presumption the method of disposition is adopted for the purpose of evading the MSPA and these regulations;
- Statement of Intent: The intention of this exemption is to allow a landowner to convey one (1) parcel to each member of his or her immediate family without local subdivision review;
- The term “immediate family” means the spouse, children (by blood or adoption), or parents of the grantor [76-3-103(8), MCA]. This exemption may be used only by grantors who are natural persons and not by non-corporal legal entities such as corporations, partnerships, and trusts;
- 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, *on the face of the plat*, the “Landowner Certification of Exemption - Family Gift or Family Sale” (See below);



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- 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;
- Any proposed use of the family conveyance exemption used in conjunction with a five lot minor subdivision will imply association with the minor subdivision and cause the exempted parcels to be included in the number of subdivision lots for the purposes of subdivision review. The family conveyance(s) will not necessarily be considered an evasion and will be exempt from local subdivision review; however the effects of the entire development will be reviewed as cumulative; and
- 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 raises a rebuttable presumption that the use of the exemption is adopted for purposes of evading the Act.

LAND OWNER CERTIFICATION OF EXEMPTION - FAMILY GIFT OR FAMILY SALE

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 _____, our (my) _____ and that this exemption complies with all conditions imposed on its use. This is the first and single gift or sale in this county to this member of my immediate family and the owner of record certification of compliance and that the tract/parcel will not be transferred back to the grantor within 24 months of filing without written consent of the governing body. Therefore, this survey is exempt from review as a subdivision pursuant to Section 76-3-207(1)(b), MCA, and the Lincoln County Subdivision Regulations.

Dated This _____ Day of _____ 20____.

Grantor Signature

Grantor Signature