



## LINCOLN COUNTY PLANNING DEPARTMENT

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### EXEMPT SURVEY REVIEW GUIDELINES

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). While exempt plats are not subject to subdivision review, they are subject to survey requirements, zoning where applicable, and examination for errors and omissions by the County. While state law does not identify a specific review process for exempt plats, Lincoln County has adopted an examination process for these types of land divisions, as outlined below:

***NOTE: Refer to Chapter VI of the Lincoln County Subdivision Regulations for a comprehensive evaluation for each exemption***

- A licensed surveyor will need to be retained after confirming with the Planning Department that the exemption you are requesting is valid and legal. The Planning Department cannot recommend any surveyors, however any Montana State licensed surveyor is permissible.
- The surveyor will prepare a draft survey and submit to the Planning Department for review and routing the following:
  - **two (2) paper copies** of the check print of the Certificate of Survey
  - closure report
  - any associated documents
  - review fee
- The check print survey will be scheduled for a Survey Review Meeting involving all pertinent County departments for corrections and comments.
- Following the internal Survey Review meeting, the County will mail the check copy and approval letter to the surveyor with any corrections that need to be made prior to submittal of the final mylar (official) survey and associated documents (typically 2-3 weeks).
- Once the corrections are made to the check copy, the surveyor will submit:
  - Two (2) mylars for recording;
  - The check copy reviewed by the examining land surveyor
  - Filing/Recording fees
- Upon receipt of the mylar and associated documents, they will be distributed to the appropriate reviewing agencies for signatures. The time frame for routing is dependent upon when the surveyor resubmits it to the Planning Department and could take an additional 2-3 weeks for processing prior to recording at the Clerk and Recorder's Office.

**FAMILY CONVEYANCE (TRANSFER) EXEMPTION**  
**(76-3-207(1)(b), MCA)**

The intention of this exemption is to allow a landowner to convey one parcel to each member of the immediate family without undergoing local subdivision review. Immediate family is defined as the spouse, children by blood or adoption, or parents of the grantor (76-3-103(8), MCA). The use of this exemption must also consider the following:

See **Exemption Application for Family Transfers** for a list of required documents and Chapter VI of the Lincoln County Subdivision Regulations for a list of evasion criteria.

- One gift or sale of a parcel to each member of the landowner's immediate family in each county is eligible for exemption from subdivision review;
- The use of the exemption may not result in more than one remaining parcel of less than 160 acres;
- All resultant parcels of the survey must meet minimum lot sizes prescribed by the zoning on the property, if applicable;
- A corporation or partnership cannot claim a family exemption;
- A title in mixed ownership, such as a brother and sister cannot claim a family exemption;
- Lots within platted subdivisions are subject to any conditions of approval from the original subdivision.
- Recipients of family transferred lots may not transfer them for a period of 2 years (MCA 76-3-207(6)).
- If the Exemption creates a new access requiring a road name, an application for a Private Road, Road Sign & associated fee(s) will be required.
- DEQ approval is required to ensure that the parcel can obtain a septic permit.
- Any proposed use of the family conveyance exemption to divide a tract that was previously created through use of an exemption shall be presumed to be an evasion of the MSPA if it creates a pattern of development consistent with an overall plan with characteristics such as common roads, utility easements, restrictive covenants, open space or common marketing.

The following language must appear on the face of the survey:

<b>CERTIFICATION OF EXEMPTION (FOR FAMILY GIFT OR FAMILY SALE PURPOSES)</b>	
<p>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.</p>	
<p>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.</p>	
<p>Dated This _____ Day of _____ 20____.</p>	
_____ Grantor Signature	_____ Grantor Signature

**AGRICULTURAL EXEMPTION:  
(76-3-207(1)(c) and 76-3-211 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 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. 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.

Lots within platted subdivisions are not eligible for agricultural exemptions.

If the Exemption creates a new access requiring a road name, an application for a Private Road, Road Sign & associated fee(s) will be required.

See **Exemption Application for Agricultural Exemption** for a list of required documents; and Chapter VI of the Lincoln County Subdivision Regulations for a list of evasion criteria.

The following language must appear on the face of the survey:

<b>CERTIFICATE OF EXEMPTION (FOR AGRICULTURAL PURPOSES)</b>	
<p>I (We) certify that the purpose of this survey is to create Tract # _____, as shown on this certificate of survey, 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 Lincoln County Subdivision Regulations.</p>	
Dated This _____ Day of _____ 20____.	
_____ Grantor Signature	_____ Grantor Signature

**COURT ORDER EXEMPTION**  
**(76-3-201(1)(a), and (2) MCA**

This is a division of land created by order of any court of record in this state or by law, or 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. It is not considered a subdivision under this chapter if not more than four new lots or parcels are created from the original lot or parcel.

See **Exemption Application for Court Order Division** for a list of required documents; and Chapter VI of the Lincoln County Subdivision Regulations for a list of evasion criteria.

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**BLA or AGGREGATION OF LOTS:**  
**(76-3-207(1)(a), (d) (e), and (f), MCA)**

The intended purpose of this exemption is to allow a change in the location of a boundary line between two parcels without subdivision review. 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.

Within a platted subdivision, a division of lots that redesigns or rearranges six (6) or more lots must be reviewed and approved by the governing body and an amended plat must be filed with the County Clerk and Recorder in accordance with the Amended Plat procedures found in the Subdivision Regulations.

All Boundary Line Adjustments must contain language from 24.183.1104(1)(f)(iii)(c) Montana ARMs and must conform to any zoning requirements.

If the Exemption creates a new access requiring a road name, an application for a Private Road, Road Sign & associated fee(s) will be required;

The following language must appear on the face of the survey:

**CERTIFICATE OF EXEMPTION**  
**(RELOCATION OF COMMON BOUNDARY/AGGREGATION)**

I (We) certify that the purpose of this survey is to relocate common boundary line between adjoining properties outside a platted subdivision (or inside a platted subdivision) (or between a single lot within a platted subdivision and adjoining land outside a platted subdivision) and that no additional parcels are hereby created. Therefore this survey is exempt from review as a subdivision 76-3-207(1)(a), (d), or (e) MCA.

Dated This \_\_\_\_\_ Day of \_\_\_\_\_ 20\_\_\_\_.

\_\_\_\_\_  
Grantor Signature

\_\_\_\_\_  
Grantor Signature

**UTILITY/RIGHT-OF-WAY EXEMPTION:**  
**(76-3-201(1)(h), MCA)**

This exemption applies to a division of land created for the purpose of rights-of-way or utility sites on a property. Any subsequent change in the use of the property as residential, commercial or industrial uses shall subject the land division to the subdivision regulations. (76-3-201, MCA)

- For Utility Lease, a copy of the lease agreement must be provided.

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**MORTGAGE (CONSTRUCTION), LIEN, TRUST INDENTURES:**  
**(76-3-201(1)(b), MCA)**

The purpose of this exemption is to allow the creation of a parcel to provide financing security for mortgages, liens, or trust indentures for construction, improvements to the land being divided, or refinancing purposes. Under policies of many lending institutions and federal home loan guaranty programs, a landowner who is seeking financing for improvements to a tract of land is required to hold title to the specific site on which the residence or improvements will be built.

*The created parcel may not be conveyed to any other entity, except the lending institution in the event of foreclosure of the mortgage, lien, or trust indenture.*

- A signed letter from the lending entity on their letterhead requesting the survey and stating the reason for the survey must be included.

The following language must appear on the face of the survey:

**CERTIFICATE OF EXEMPTION**  
**(SECURITY FOR MORTGAGE, LIEN OR TRUST INDENTURE)**

I (We) 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\_\_\_\_.

\_\_\_\_\_  
Grantor Signature

\_\_\_\_\_  
Grantor Signature