

## Procedures for Family Transfer Exemption Claims:

- ❖ 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 Subdivision and Plating] Act, Section 76-3-201 et. Seq MCA
- ❖ The Clerk and Recorder is prohibited from filing a division that does not meet the sanitation requirements of 76-4-122(2), MCA. The landowner is responsible for obtaining the sanitation approvals necessary for a division of land to be filed with the Clerk and Recorder. All divisions reviewed as exemptions under these regulations are subject to review by DEQ for parcels of less than 20 acres, or to the Beaverhead County Sanitarian for parcels 20 acres or greater, unless a qualifying exemption under the Sanitation in Subdivisions Act (Title 76, Chapter 4 et seq., MCA) is deemed applicable and approved by the Beaverhead County Sanitarian. The requirement for sanitation review applies to all parcels resulting from a division of a tract of record, not only the parcel created via the exemption under 76-3-201 or 76-3-207 et seq., MCA
- ❖ At the hearing by the Commission to hear the report, 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 exemption claim is appropriate. (40 A.G. Op. No. 16)
- ❖ In accessing the claimant's purpose, the Commission 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.

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

1. Landowner submits complete application to Planning Department. The Questionnaire will be included in this application packet and the landowner will need to have it notarized
2. Survey Review Committee reviews application materials for completeness and appropriateness of exemption.
3. Survey Review Committee determines that application is complete and acceptable.
4. Planning Department prepares staff report and schedules consideration of exemption claim with County Commission. Exemption claim is placed on Commission's regular agenda.
5. Staff member presents a summary of the proposed division of land and any questions about the Claimant's potential intent to evade subdivision review.

6. Commission Chair requests that the landowner (or representative with power of attorney) come forward, and administers the following oath: DO YOU SOLEMNLY SWEAR [OR AFFIRM] THAT THE TESTIMONY THAT YOU ARE ABOUT TO GIVE ABOUT THE \_\_\_\_\_ FAMILY TRANSFER EXEMPTION IS THE TRUTH, THE WHOLE TRUTH, AND NOTHING BUT THE TRUTH?
7. County Commission evaluates whether the claim is an appropriate exemption or an attempt to evade the Montana Subdivision and Platting Act and/or the Beaverhead County Subdivision Regulations.
8. If approved, Chair signs survey (and/or additional documents) confirming the Commission's approval of the exemption, then returns the documents to the Planning Department.
9. Claimant picks up signed documents from Planning Department and then records documents with Clerk and Recorder.
10. **The County may file a court action to set aside land transfers which violate either the Montana Subdivision and Platting Act or the County's Subdivision Regulations. Applicants or persons acting on their behalf who misrepresented their intentions regarding a family transfer exemption are subject to criminal prosecution as provided in Section 76-3-105, MCA.**

## **FAMILY TRANSFER EXEMPTION CLAIM QUESTIONNAIRE**

- ❖ **The following questions are aimed to determining whether the exemption claim is an attempt to evade subdivision review.**
- ❖ **The LANDOWNER will need to complete these questions and have their signature notarized.**
- ❖ **These questions and answers will be reviewed by the Survey Review Committee and Commissioners.**

1. Are you aware of and understand the 18-month hold period for family transfers that is required by Beaverhead County Subdivision Regulations?  
Yes No
2. Are you or any of your immediate family real estate professionals, developers, builders, etc.?  
Yes No
3. Have you made prior subdivision exemption claims on any property in Beaverhead County?  
Yes No
4. Is your primary residence located on this parcel?  
Yes No

5. Do you own more than one parcel in Beaverhead County?

Yes No

6. Why are you proposing this division of land?

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7. Is the Grantee one of the Grantors?

Yes No

**If yes,** Is the division of land for the purpose of a gift for the grantor's spouse?

Yes No

8. Is the recipient a minor?

Yes No

**If yes,**

a. Do you have a trust established for the child(ren) to hold the property?

Yes No

b. Who is the trustee of the trust or who controls it? \_\_\_\_\_

c. If the property is sold, will the money be held in trust?

Yes No

**If no,**

a. Will the property be developed?

Yes No

b. Will the recipient of the property be residing on the property?

Yes No

9. Do you own this parcel free and clear?

Yes No

a. If no, is your lender or mortgage company aware of the parcel split? Please explain: \_\_\_\_\_

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10. Does the retirement of debt influence your desire to divide this land?

Yes No

11. Please describe any previous family transfers in which you or the intended recipients have been involved.

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12. Have you (or a recent owner) previously expressed an interest in subdividing the parcel?

Yes No

a. If yes, why didn't you (or the recent owner) pursue subdivision? Please explain:

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13. Have you previously attempted to sell any portion of this parcel?

Yes No

a. If Yes, When and why did you attempt to sell it? Please explain:

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b. When and why did you decide not to sell it?

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14. Are any persons other than your immediate family members interested in purchasing or developing any of the tracts involved in this division of land?

Yes No

If yes, please explain:

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15. Have you, or your immediate family members, had any discussion with a person interested in purchasing a portion of your land?

Yes No

If yes, please explain:

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16. Other than the intended disposition set forth in your application on file with the Survey Review Committee, is there any type of agreement, verbal or written, regarding the creation, sale or development of the tracts involved in the division of land?

Yes No

If yes, please explain:

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17. Do you know that any parcel under 20 acres will have to be reviewed by the DEQ prior to construction of any structure requiring water or sewer or If the parcel is over 20 acres it will need to be reviewed by the local Sanitarian?

Yes No

❖ If this property is sold, the seller should inform the buyer of DEQ approval.

By signing below the landowner states the answers given above are true and correct to the best of their knowledge.

\_\_\_\_\_  
Signature of landowner

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of landowner

\_\_\_\_\_  
Date

State of Montana

County of \_\_\_\_\_

This instrument was signed and sworn before me on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ by,

\_\_\_\_\_

(Seal/Stamp)

\_\_\_\_\_  
Notary Signature