Montana Subdivision and Platting Act (MSPA)

“Exemptions, Surveys, and other miscellaneous topics”

November 6, 2013
Montana Land Title Association 2013 Fall Education Seminar
**Montana Subdivision & Platting Act (MSPA) and Sanitation in Subdivision Act (MSIS) Exemptions**

Subdivisions in Montana are regulated by two separate laws:

1. The MSPA covers the nuts and bolts of creating a Certificate of Survey (COS) or a subdivision.
2. The MSIS covers the water supply, wastewater system and storm drainage that will serve the subdivision.

MSPA subdivision is a tract of **160 acres or less**, including a condo or division that creates multiple spaces for RVs or mobile homes*.

MSIS subdivision is a tract **20 acres or less**, including a condo or division that creates multiple spaces for RVs or mobile homes*.

Â Any COS being filed that is less than 20 acres should have a Certificate of Subdivision Approval (COSA) issued by the Montana Department of Environmental Quality (DEQ).

*Buildings for lease or rent are now under 7-1-2121 pr 7-1-4127 MCA; no longer under subdivision law.

**County Review of Exemptions**

COS’s are not subject to subdivision review, but:

Â Must be properly prepared.

Â Are subject to MSIS if they meet the definition of a subdivision.

Â Must be shown to be **eligible** for filing as a COS rather than as a subdivision plat.

When a COS is submitted for filing, the Clerk and Recorder faces 3 major issues:

1. Is it **eligible** to be filed as a COS?
2. Does the division require DEQ approval under MSIS? If yes, needs a COSA or an exemption.
3. Does the COS meet the Uniform Standards (Administrative Rules of Montana)?
MSPA and MSIS Exemptions

Many Counties have developed a process to determine when a COS is eligible for filing. This process involves:

- Pre-application
- Application & fees
- Review

The review is not for the purposes of ensuring proper land development design. It is simply for the purpose of determining if a proposed exemption qualifies and if so, that the survey document conforms to the uniform standards.

**Exemptions**

Exempt from MSPA, MSIS & Survey requirements*:

- **Court-Ordered Division (76-3-201(1)(a), MCA).** 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, Title 70, Chapter 30.

- **Mortgage Security (76-3-201(1)(b), MCA).** A division of land created to provide security for mortgages, liens, or trust indentures for the purpose of construction, improvements to the land being divided, or refinancing purposes. **DOES NOT CREATE A TRACT OF RECORD UNLESS FORECLOSURE OCCURS.** Financer may require an unfiled Certificate of Survey be produced.

- **Subsurface Interest (76-3-201(1)(c), MCA).** A division of land that creates an interest in oil, gas, minerals, or water that is severed from the surface ownership of real property;

- **Cemetery Lots (76-3-201(1)(d), MCA).** A division of land that creates cemetery lots;

- **Life Estate (76-3-201(1)(e), MCA).** A division of land is created by the reservation of a life estate;

- **Agricultural Lease (76-3-201(1)(f), MCA).** A division of land is created by lease or rental for farming and agricultural purposes.
**MSPA and MSIS Exemptions**

- **Federal and Tribal Lands (76-3-201(1)(g), MCA)**. A division of land is in a location over which the state does not have jurisdiction; or
- **Rights of Way and Utilities (76-3-201(1)(h), MCA)**. A division of land is created for rights-of-way or public utility sites.

*A Certificate of Survey may still need to be produced if a parcel cannot be described as 1/32 or larger aliquot parts of a United States government section or a United States government lot.

**Exempt from MSPA and Survey requirements* but not MSIS:**

- **Airport Lands (§ 76-3-205, MCA)**. A division of land created by lease or rental of contiguous airport-related land owned by a city, county, the state, or a municipal or regional airport authority (for onsite weather or air navigation facilities; the manufacture, maintenance, and storage of aircraft; or air carrier-related activities)
  - An airport land division that meets the MSIS definition must be reviewed or use a proper exemption.
- **State-Owned Lands (§ 76-3-205, MCA)**. 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.
  - A state owned division of land that meets the MSIS definition must be reviewed or use a proper exemption.
- **Conveyances Prior to July 1, 1974 (§ 76-3-206, MCA)**. Deeds, contracts, leases, or other conveyances executed prior to July 1, 1974.
MSPA and MSIS Exemptions

Â Certain Condominiums (§ 76-3-203, MCA). Condominiums constructed on land subdivided in compliance with regulations and parts 5 and 6 of the MSPA, or on lots within incorporated cities and towns, if:
   ï The approval of the original subdivision of land expressly contemplated the construction of the condominiums and Section 76-3-621, MCA, is complied with; or
   ï The condominium proposal is in conformance with applicable zoning regulations when local zoning regulations are in effect.

Â Lands Acquired for State Highways (§ 76-3-209, MCA). Instruments of transfer of land acquired for state highways. Such instruments may refer by parcel and project number to state highway plans that have been recorded in compliance with 60-2-209, MCA.
   ï If such parcels are not shown on highway plans or record, instruments of transfer must be accompanied by and refer to appropriate COS or plat for recording.

*A Certificate of Survey may still need to be produced if a parcel cannot be described as 1/32 or larger aliquot parts of a United States government section or a United States government lot.  Why? ........................

76-3-401, MCA, Survey requirements for lands other land subdivisions. All divisions of land for sale other than a subdivision after July 1, 1974, into parcels which cannot be described as 1/32 or larger aliquot parts of a United States government section or a United States government lot must be surveyed by or under the supervision of a registered land surveyor.

So what’s a “1/32 aliquot part”?

Section 3-32, Manual of Survey Instruction, 2009: Relative to rectangular surveys the square mile, or section, is the unit of subdivision. The regular township includes 36 sections in all, 25 of which are regular sections returned as containing 640 acres each, subdivided into regular “aliquot parts” based on midpoint protraction and intersections.
### Sectional Map of Township

#### Subdivisions of a Section

1. NW 1/4 NE 1/4
2. Standard form is usually shown with the north and/or west lines of a section or township and the numbers may be more or less than 160.

#### Section 6

**Montana State Highway Commission**

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**Square footage calculations**

- An acre is 43,560 square feet.
- An acre equals 160 square rods.
- An acre is 208.7 (plus or minus) square rods.
- 40 rods equals 1 acre.
- 320 acres equals 1 square mile.

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**Square footage in acres**

- 40 Acres
- 80 Acres
- 160 Acres

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**A SECTION TO LAND-640 ACRES**

**80 acres = 320 rods = 5280 feet**

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**Notes:**

- In common practice in Montana, it is written as NW 1/4 NE 1/4.
- Standard form usually shows the north and/or west lines of a section or township and the numbers may be more or less than 160.

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**Drawn by:**

**Approved by:** [Signature]
MSPA Exemptions

Exempt from MSPA but not MSIS or surveying requirements:

- Relocation of Common Boundaries Outside Platted Subdivision (76-3-207(1)(a), MCA). DEQ defines boundary changes as creating new parcels, so if the boundary relocation meets MSIS definition it must be reviewed or have a proper exemption. Applies when:
  - The parcels are adjoining; and
  - The proposed relocation does not create additional tracts of record.

- Gift or Sale to Immediate Family (76-3-207(1)(b), MCA).
  - Applicability. This exemption applies to tracts of record located outside of a platted subdivision.
  - The landowner of such a parcel may gift or sell a single portion thereof to each member of his or her immediate family in each county where the landowner owns such a parcel.
  - The term “immediate family” means the spouse, children (by blood or adoption), or parents of the landowner (76-3-103(8), MCA).
  - This exemption may be used only by landowners who are natural persons and not by non-corporal legal entities such as corporations, companies, partnerships, and trusts.
  - If the gift meets MSIS definition it must be reviewed or have a proper exemption.

- Division of Land Proposed for Agricultural Use Only (76-3-207(1)(c), MCA).
  - Applicability. This exemption applies to parcels located outside of a platted subdivision.
  - The landowner of such a parcel may gift, sell, or enter into an agreement to buy and sell a portion thereof to be used exclusively for agricultural purposes.
  - MSIS typically sees a no facilities exemption on these.
  - Residential uses, whether for agricultural purposes or not, are not permitted on a tract of land created pursuant to this exemption.
  - Any change in use of the land for anything other than agricultural purposes subjects the parcel to review as a subdivision.
MSPA Exemptions

Exempt from MSPA but not MSIS or surveying requirements:

Å Relocation of Common Boundaries Within Platted Subdivisions (76-3-207(1)(d), MCA).
  ï Applicability. The relocation of common boundaries or aggregation of lots;
  ï For five or fewer lots within a platted subdivision.
  ï The proposed relocation does not create additional tracts of record.

Å Relocation of Common Boundaries – Lots Within and Outside of Platted Subdivisions (76-3-207(1)(e), MCA).
  ï Applicability. This exemption applies to the relocation of a common boundary between a single lot within a platted subdivision and adjoining land outside a platted subdivision.
  ï The exemption may not be used if the proposed relocation creates one or more additional tract(s) of record.
  ï MSIS – if meets definition, need COSA or needs exemption.

Å Aggregation of Lots (76-3-207(1)(f), MCA).
  ï Applicability. This exemption applies to the aggregation of parcels or lots when a COS or subdivision plat shows that the boundaries of the original parcels have been eliminated and the boundaries of a larger aggregate parcel are established.
  ï A restriction or requirement on the original platted lot or original unplatted parcel continues to apply to those areas.
  ï MSIS – if meets the definition, need COSA or needs exemption.
MSPA and MSIS Exemptions

Remaining Tracts of Record
Occasionally tracts of record are created after an exemption is used to divide a parcel of land. The term “remainder” has been used to refer to that portion of an original tract which is not itself created for transfer but which is left after other tracts are segregated for transfer.

The Montana Supreme Court ruled in the decision *Mills v. Alta Vista*, 2008 that there is no such thing as a “remainder” in the MSPA.

A “remaining” tract of record less than 160 acres in size, contiguous to and created by a subdivision is considered a lot in that subdivision and reviewed by the local authority as such.

A remaining parcel of land created through the use of a valid statutory exemption is a tract of record.

MSIS recognizes remainders in § 76-4-125(2)(b)(ii), MCA and defines a remainder as having a wastewater facility that discharged to groundwater prior to April 29, 1993.

DEQ does not care who retains the remainder and there may be only one remainder per division.

Example: Family Transfer creates two parcels, one for transfer and the “remaining” parcel that transferor keeps. MSPA – two parcels created under exemption; MSIS – only the parcel for transfer is reviewed; remaining parcel is exempt.
MSPA and MSIS Exemptions

Deeds & Other Conveyances

Deeds and “contracts for deed” are the most common documents used to convey the title of land from one person (the grantor) to another (the grantee).

- The Clerk & Recorder (C&R) may not record a deed or other document conveying title to property unless the proper filing requirements are met.
- § 76-4-2617(1), MCA states that an instrument to be recorded has to be “authorized by law”.
- § 76-3-302, MCA: Restrictions on recording instruments relating to land subject to surveying requirements. “the county clerk and recorder of any county may not record any instrument that purports to transfer title to or possession of a parcel or tract of land that is required to be surveyed by this chapter unless the required certificate of survey or subdivision plat has been filed with the clerk and recorder and the instrument of transfer describes the parcel or tract by reference to the filed certificate or plat.”
  - § 76-3-302, MCA is law, so a C&R can only file a deed transferring title for an existing tract of record.
  - When presenting a deed, a landowner should provide evidence of a previously recorded Deed, COS, or Subdivision Plat.
# Exemptions from the Subdivision and Platting Act and the Sanitation in Subdivision Act

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<tr>
<th>Exemption</th>
<th>Platting Act</th>
<th>Sanitation Act</th>
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<tbody>
<tr>
<td>Court order, eminent domain</td>
<td>§ 76-3-201, MCA</td>
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<td>Mortgage security</td>
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<td>Location where state does not have jurisdiction</td>
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<td>Certain condominiums</td>
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<td>Lease of airport and state lands</td>
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<td>Family transfer</td>
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<td>Agricultural use</td>
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<td>Additional land for a DEQ approved parcel, if no new water or sewer</td>
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<td>§ 76-4-125, MCA</td>
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<td>Subdivisions for which municipal facilities are provided</td>
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<td>§ 76-4-125, MCA</td>
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<td>Certain remainder parcels</td>
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<td>Parcels with no water, sewer, or solid waste facilities</td>
<td>ARM 17.36.605</td>
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<td>Alteration of DEQ approved parcels if no new facilities are proposed and existing facilities are not affected</td>
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COMMONLY SUBMITTED SURVEYS
IN LESS POPULATED COUNTIES

Three most commonly submitted surveys in counties with less population density:
- Retracement
  - Survey / Certificate Of Survey of a record parcel
- Exemption
- Minor Subdivision

Each of these have State Statutes that govern them. The following are examples of review processes that various Counties have put into plat to ensure proper procedures are followed.
Certificate of Survey Review

COS reviewed for compliance to the Administrative Rules of Montana (ARM) Uniform Standards and mathematical accuracy.

Review Process

**Step 1:** Certificates of Survey (COS) submitted electronically to the County for review by applicant. Preferred electronic format is .pdf, however, various forms can be used, including AutoCADD .dwg files.

**Step 2:** County staff forwards the COS to the reviewer – the forwarded email serves as an official request by the County for the review.

**Step 3:** Review will be completed within 5 business days or less – typical turn around is 1 day.

**Step 4:** Reviewer sends comments back to County staff and, if necessary, any required changes or corrections are sent to the applicant for additional response.

**Step 5:** Document/Survey Approval statement is sent to submitter.

**Step 6:** Applicant delivers Certificate of Survey for filing along with a copy of the approval statement.

*Electronic submittal is faster and less expensive than submitting paper copies for review.*

Electronic submittal also prevents multiple trips to the County Courthouse by the applicant and greatly speeds the review time. Current Counties using this process are averaging approvals the next business day after submittal.
Aministrative Rules of Montana (ARM) that govern Certificates of Surveys

24.183.1101     UNIFORM STANDARDS FOR MONUMENTATION

24.183.1104     UNIFORM STANDARDS FOR CERTIFICATES OF SURVEY

In April of 2013, the Montana Board of Professional Engineers and Land Surveyors revised 24.183.1104, ARM. Copies of current ARM’s are included in the back of this packet.
EXEMPTION PROCESS

EXEMPTION PROCESS

The actions listed below are all considered to be exempt from local subdivision review, unless the transaction is an attempt to evade the Montana Subdivision and Platting Act:

- Give or sell a piece of your property to an immediate family member.
- Give or sell property to another party to be used exclusively for agricultural purposes.
- Relocate the boundaries between five or fewer parcels without creating a new parcel.
- Aggregate lots and/or relocate common boundaries between five or fewer lots within a platted subdivision without increasing the total number of parcels.
- Provide security for construction mortgages, lien, or trust indentures, when a survey of the parcel has been required by one of the parties.

State law requires that in order to complete any of these transactions a Certificate of Survey by a Montana Professional Land Surveyor must be completed. In addition, the County must determine that the exemption is not an attempt to evade the Montana Subdivision and Platting Act.

Claimant's Responsibilities:

- Familiarity with the requirements for the type of exemption you are claiming.
- Hire a qualified person or firm to complete the survey of the property and the certificate of survey (the legal map of the property) and application.
- Submit a complete application and applicable review fee to the County.
- Awareness that completion of an exemption does not ensure that a new parcel has legal access and the exemption may require new sanitary review.

County’s Responsibilities:

Montana State Statutes allow specific instances of divisions of land that are exempt from the Montana Subdivision and Platting Act and County Subdivision Regulations but are subject to the survey requirements unless the method of disposition is adopted for the purposes of evading the Montana Subdivision and Platting Act.

- The County shall allow or disallow the exemption within 30 days of the determination that the application is complete.
- In assessing the claimant's purpose, the County will evaluate all relevant circumstances.
- If less than 20 acres, the exemption may require new sanitary review.

BASIC STEPS

Claimant submits exemption survey and application.

County Review.

Claimant addresses review (i.e., changes/corrections to the Certificate of Survey, etc.)

Claimant records the Certificate of Survey or plat.

You should be aware that, in many instances, your professional will take your exemption through this process.
EXEMPTION PROCESS

GENERAL PROCESS

1. Claimant hires a qualified professional to complete the certificate of survey.
2. Claimant pays all real property taxes and special assessments assessed and levied on the land involved, except when claiming the exemption for Security for Construction Financing.
3. Claimant submits a complete application to the County that includes:
   > An application form.
   > Certificate of survey.
   > Deeds exchanging ownership (current and sample of proposed).
4. County has 3 working days to determine if the application is complete.
5. County reviews application/Certificate of Survey.
6. Claimant addresses review and re-submits if applicable.
7. County sends Survey Approval Form.
8. Claimant brings final full copies of Certificate of Survey, Survey Approval, approval of sanitary facilities (if required), and new Deeds to County Clerk and Recorder for filing.

Agricultural Exemption

- The parties to the transaction must enter into a covenant running with the land, revocable only by mutual consent of the County Commission and the transferee/property owner, that the divided land will be used exclusively for agricultural purposes.
- No building or structure requiring water or sewer facilities shall be utilized on such parcel.
- A change in the use of the land for anything other than agricultural purposes subjects the division to subdivision regulations.

Aggregation of Lots and/or Relocation of Common Boundaries within a Platted Subdivision

- Must rearrange and/or aggregate five or fewer lots within a platted subdivision.
- May not increase the total number of lots.
- A deed(s) exchanging recorded interest from every person having a recorded interest in the adjoining properties for the entire newly described parcel(s) (five or fewer) that are acquiring additional land must accompany the claim.

Relocation of Common Boundary Lines

- A deed(s) exchanging recorded interest from every person having a recorded interest in the adjoining properties for the entire newly described parcel(s) (five or fewer) that are acquiring additional land must accompany the claim.
- Documentation showing the need or reason for the relocation (for example, structure encroachment, surveyor error or enhancement of the property configuration) must accompany the claim.

Gift or Sale to an Immediate Family Member

- Must be the spouse or, by blood or adoption, a son, daughter, mother or father.
- May only be used to convey one parcel to each family member.
- Must be placed in trust for a minor child.
- Must be accompanied by a copy of the deed transferring interest in the parcel being created or a statement detailing where the deed is in escrow, how long it will be in escrow and authorization to contact the escrow agent for verification.

Security for Construction Financing

- This exemption may not be used for the purpose of conveyance. The financing may not be used for construction on land other than the exempt parcel.
- A written statement explaining how many parcels within the original tract will be created by the use of the exemption must accompany the claim.
- A written statement explaining who will have title to and possession of the remainder of the original parcel must accompany the claim.
- A signed and notarized statement from the lending institution that the creation of the exempt parcel is necessary to secure a construction loan for buildings or other improvements on the parcel must accompany the claim.
- The written statements and the instruments creating the security shall be filed at the same time with the Clerk and Recorder.
- The mortgaged parcel must meet the minimum zoning requirements.

If you have any additional questions, please contact the County Subdivision Administrator.
FIRST MINOR SUBDIVISION PROCESS

To transfer ownership of a parcel containing less than 160 acres, State law requires that the property be subdivided. If the land has never been divided before and it involves five (5) or fewer lots (including the original tract), the process is called a "first minor subdivision"

Subdivider's Responsibilities:
- Hire a qualified professional to complete the survey of the property, the plat (the legal map of the property), and applicable supplemental information.
- Submit a complete application to the Subdivision Administrator with plat, supplemental information, and review fee.
- Address necessary fire protection provisions and methods of providing adequate fire protection.
- Discuss subdivision access with the County Road Office to determine needed road improvements and location of access easements.
- Ensure provision of appropriate utilities.
- Obtain approval from the Montana Department of Environmental Quality (MDEQ) and/or County Sanitarian for provision of water and disposal of sewage.

County’s Responsibilities:
According to Montana State Statute:
- The Commission must make a decision on a first minor subdivision within 35 working days following submittal of a complete application, unless the subdivider provides a written extension. If a variance is requested, a public hearing is required and the Commission will make a decision in 60 working days.
- If the minor subdivision does not fit the criteria for a Low Impact Minor Subdivision, the Commission must ask the Planning Board for advice and recommendation on the proposed subdivision, which it must submit to the Commission within 10 days. The County Commission must issue a written finding of fact weighing the following criteria:
  a) The effect on agriculture, agricultural water user facilities, local services, the natural environment, wildlife and wildlife habitat, and public health and safety.
  b) Compliance with the survey requirements of the Montana Subdivision and Platting Act.
  c) Compliance with County Subdivision Regulations and required review process.
  d) The provision of easements for the location and installation of any necessary utilities.
  e) The provision of legal and physical access to each parcel within the subdivision and the required notation of that access on the plat and any instrument transferring the parcel.

BASIC STEPS
Submittal of preliminary plat and application.  ↓
Planning Board meeting (if appropriate).  ↓
County Commission meeting.  ↓
Commission decision with conditions of approval.  ↓
Completion of conditions of approval.  ↓
Submittal of the final plat and application.  ↓
County Commission finalizes plat.  ↓
Plat is recorded.

GENERAL PROCESS
1. Subdivider hires a qualified professional to prepare preliminary plat.
2. Subdivider meets submittal deadline for Planning Board meeting 18 days prior to the next available Planning Board meeting.
3. Subdivider submits a complete application packet.
4. Subdivision Administrator has three working days to determine if the application is complete.
5. Subdivider will be notified of any deficiencies.
6. Subdivision Administrator distributes to other agencies.
7. Adjoining property owners are notified.
8. Subdivider is notified of Planning Board meeting date; and is provided a copy of Subdivision Administrator’s review notes/recommendations.
9. Subdivider attends the Planning Board meeting.
10. Planning Board provides written advice and recommendation to the County Commission.
11. Subdivision Administrator prepares report for Commission with recommended conditions for approval.
12. County notifies subdivider of County Commission meeting date with copy of the staff report.
13. Subdivider or subdivider’s representative attends Commission meeting prepared to:
  - Answer any questions.
  - Express preference for mitigating impacts.
FIRST MINOR SUBDIVISION PROCESS

14. County Commission approves, conditionally approves, or denies the subdivision.
15. Subdivision Administrator prepares findings of fact.
16. County Commission approves findings of fact.
17. Subdivision Administrator sends copy of approved findings of fact to subdivider.
18. Subdivider has up to 3 years to complete all conditions of approval.
19. Subdivider obtains encroachment permits from the County Road Office, if applicable.
20. County Road Office explains procedure for road improvements to subdivider, if applicable.
21. Subdivider installs road improvements, if applicable.
22. Subdivider has road improvements approved by the County Road Office, if applicable.
23. Subdivider obtains MDEQ and/or County Sanitarian approval.
24. Subdivider hires qualified person or firm to complete final plat.
25. Subdivider obtains and submits certificate of a licensed title abstractor to county attorney's office no earlier than 90 days prior to submittal.
26. Subdivider submits the following items to the county attorney's office:
   - Platting certificate.
   - Covenants, if applicable.
   - Establishment of property owners' association, if applicable.
27. Subdivider pays all real property taxes and special assessments assessed and levied on the land to be subdivided.
28. Subdivider submits complete final plat packet to Subdivision Administrator.
   - A letter addressing how all conditions of approval have been met.
29. Subdivider produces mylars and obtains all plat signatures except County Commission and Clerk and Recorder.
30. County notifies subdivider of date for the Commission's consideration of final plat.
31. Subdivider produces two mylars copies of plat and obtains all plat signatures except County Commission and Clerk and Recorder.
32. County Commission returns two signed mylars to Clerk and Recorder.
33. County notifies subdivider that plat is ready to be recorded.
34. Subdivider pays Clerk and Recorder to record plat and all required documents.

In many instances, your professional will take your project through the Minor Subdivision process.

Check Current Fee Schedule
(Appendix D Subdivision Regulations)
Aministrative Rules of Montana (ARM) that govern Certificates of Surveys

24.183.1107  UNIFORM STANDARDS FOR FINAL SUBDIVISION PLATS

In April of 2013, the Montana Board of Professional Engineers and Land Surveyors revised 24.183.1107, ARM. Copies of current ARM’s are included in the back of this packet.
QUESTION: **Do I need a survey?**
(which usually means: “Can I sell the property and record a deed today?”)

Are you creating a Parcel less than 160 acres?

- **Yes**
  - Can it be described as an 1/32 aliquot part (see definition)?
    - **Yes**
      - If it qualifies under the exemptions listed under 76-3-201 or 76-3-205, survey not required.*
    - **No**
      - Need a survey and an exemption claim or subdivision submittal
  - **No**
    - Need a survey but not an exemption claim or subdivision submittal

- **No**
  - Can it be described as an 1/32 aliquot part or larger)?
    - **No**
      - Need a survey but not an exemption claim or subdivision submittal
    - **Yes**
      - No Survey needed.

* Often times, even if a survey is not required, consulting a professional land surveyor is and revised to help through the submittal and County review.
Other Common Questions:

Q: “I own the entire Section. Can I sell (deed) a ¼ section of it without County review or a survey?”

A: Yes – 160 acres (MSPA definition), so not a subdivision and can be described as aliquot part of a section so no survey needed.

Q: “I own Government Lots in a Section. Can I sell (deed) them individually without County review or a survey?”

A: This is actually two questions: First, is it a subdivision, and second, does it need to be surveyed.

1) Government Lots are not considered “tracts of record” unless somewhere back in the chain of title you can show that they have been deeded individually. If they haven’t historically been deeded separately, then it is a subdivision. (Per 76-3-103, MCA, "Tract of record" means an individual parcel of land, irrespective of ownership, that can be identified by legal description, independent of any other parcel of land, using documents on file in the records of the county clerk and recorder's office. Attorney General Opinion 10 held parcels of land are not exempt from the Subdivision and Platting Act solely my virtue of the fact that they are described by reference to boundaries established by a United States Government Survey.)
Other Common Questions (continued):

2) No, a survey is not required by Statute. Per 76-3-401, MCA, all divisions of land which cannot be described as 1/32 or larger aliquot pars of a United States government section or a United States government lot must be surveyed. HOWEVER, if a subdivision is taking place, local subdivision regulation requirements of a subdivision application typically call for a preliminary and final plat, which would be very hard if not impossible to produce without a modern survey being performed. Therefore, the simple answer to this question is if the answer to part one was yes, it is a subdivision, then the answer to part two is yes, it needs a survey. If the answer to part one is no, then the answer to part two is no.
LAND USE - Application of Subdivision and Platting Act to parcels created by United States Government Survey;
PUBLIC LANDS - Survey by United States Government and application of Subdivision and Platting Act;
SUBDIVISION AND PLATTING ACT - Parcels created by United States Government Survey;
SURVEYORS - Application of Subdivision and Platting Act to parcels created by United States Government Survey;
MONTANA CODE ANNOTATED - Sections 76-3-102, 76-3-103(3), (15), 76-3-206, 76-3-609(1);
UNITED STATES CODE - Title 43, section 753.

HELD:

Parcels of land are not exempt from the requirements of the Subdivision and Platting Act solely by virtue of the fact that they are described by reference to boundaries established by a United States Government Survey.

December 30, 1997

Mr. Bob Slomski
Sanders County Attorney
P.O. Box 519
Thompson Falls, MT 59873

Dear Mr. Slomski:

You have requested my opinion on a question which I have framed as follows:

Are parcels of land exempt from the requirements of the Subdivision and Platting Act solely by virtue of the fact that they are described by reference to boundaries established by a United States Government Survey?

Resolution of this question requires an understanding of United States Government Survey Maps and their relevance to state statutes regulating divisions of land.

United States Government Survey Maps (U.S. Survey Maps) evolved during the establishment of the United States in the late eighteenth century and its westward expansion during the nineteenth century. The first public land surveys were made under an ordinance passed by the Continental Congress in 1775. The Land Ordinance of 1785 adopted the rectangular grid system of surveying which provided a means of dividing the public domain into an orderly arrangement of square mile sections and placing monuments upon the ground to locate and fix land divisions for all time. See DeJongh v. Johnson, 698 P.2d 399, 401 (Idaho 1985). Eight subsequent clarifying acts were passed by Congress, and a Manual of Surveying Instructions for the Surveying of the Public Lands of the United States and the Federal Government was published and updated on a regular basis.

The federal law and surveying manual provided a common method of property description which facilitated settlement of the West and disposition of the public domain. George Cameron Coquins and Charles F. Wilkinson, Federal Public Land and Resource Law 43 (1981). Public lands were surveyed by the General Land Office which prepared a U.S. Survey Map. The U.S. Survey Map was recorded at the office of the United States Surveyor General. The surveyed lands could then be disposed through a federal patent that simply identified the particular section, quarter section or government lot to be conveyed with reference to the U.S. Survey Map. See Chapman v. Polack, 11 P. 764 (Cal. 1886).
The federal survey system resulted in the establishment of townships composed of 36 sections each. A standard section comprises a square mile of land, or 640 acres, and consists of aliquot parts of sections (half section, quarter section, quarter-quarter section) originally established by the U.S. Survey Map.

In addition to these regular fractions of government sections, thousands of "government lots" exist in Montana. "Government lots" are rectangular or irregularly shaped parcels which were surveyed as projected in the course of laying out the rectangular grid system which is the framework of the government survey system. Due to the curvature of the earth, a township of land commonly includes some sections which comprise slightly more or less than the traditional 640 acres. According to the survey system, these irregular sections are found along the west and north borders of the township.

Rather than comprising 640 acres divided into four quarter sections of equal size, these irregular sections might, for example, comprise only 630 acres, more or less, divided into two full quarter sections of 160 acres each, two half quarter sections of 80 acres each, and four smaller rectangular "government lots" of somewhat less than 40 acres each. Other "government lots" are irregular in size and shape and resulted from the presence of irregularly shaped bodies of water or other features that prevented the surveying of an entire section into regularly sized and shaped aliquot parts. Your question essentially asks whether a property owner may convey these component aliquot parts of sections and government lots, described and identified in a deed on file with the county clerk and recorder and less than 160 acres in size (see Mont. Code Ann. § 76-3-103(15) (1997)), without complying with the requirements of the Subdivision and Platting Act.

The Subdivision and Platting Act's review requirements only apply to the conveyance of parcels that were created after the effective date of the Act, July 1, 1973. 35 Op. Att'y Gen. 55 (1973); see Mont. Code Ann. § 76-3-206. The argument has been advanced that the work of the Government Land Office in the late nineteenth century preparing the U.S. Survey Maps "subdivided" the public domain land, that government lots and aliquot parcels were created and described in deeds that predated the Subdivision and Platting Act and, thus, that the Act cannot be applied to their subsequent conveyance. It is suggested that any interpretation of the Subdivision and Platting Act that would require review of these federal "subdivisions" would void the federal law under which the U.S. Survey Maps were prepared.

From the perspective of surveying, as well as in common parlance, it may be said that the U.S. Survey Maps "subdivided" the public domain. Federal statutes dealing with the creation and application of the federal survey system refer to aliquot parts of sections as having been "subdivided." See, e.g., 43 U.S.C. §753 ("fractional sections containing one hundred and sixty acres or upwards shall in like manner as nearly as practicable be subdivided"). However, the proper focus of my analysis is not whether in some sense the federal survey system accomplished what in another context might be called a "subdivision," but rather whether the process of surveying these lands accomplished a "division of land" for purposes of the Montana Subdivision and Platting Act.

I note initially that the objectives of the federal survey laws and those of the Montana Subdivision and Platting Act are distinct. Federal survey laws were adopted to facilitate the conveyance of lands in the public domain into private ownership. See generally 4 Robert M. Anderson, American Law of Zoning §25.01, at 263-64 (3d ed. 1986). The purpose of the Subdivision and Platting Act, in contrast, is generally to regulate divisions of land and conveyances of property among private landowners. It does not generally regulate conveyance of federal lands, see 42 Op. Att'y Gen. 36 at 149 (1987), and therefore does not conflict directly with the purpose of the federal land survey system.

Moreover, compliance with the federal survey laws does not accomplish all the purposes of the Subdivision and Platting Act. Mont. Code Ann. §76-3-102 sets forth the purposes of the Act as follows:

It is the purpose of this chapter to:

(1) promote the public health, safety, and general welfare by regulating the subdivision of land;

(2) prevent overcrowding of land;
(3) lessen congestion in the streets and highways;

(4) provide for adequate light, air, water supply, sewage disposal, parks and recreation areas, ingress and egress, and other public requirements;

(5) require development in harmony with the natural environment;

(6) protect the rights of property owners; and

(7) require uniform monumentation of land subdivisions and transferring interests in real property by reference to a plat or certificate of survey.

See 38 Op. Att’y Gen. 106 at 389-70 (1980). While some of these purposes, particularly in the monumentation and transfer-clause found in subsection (7), are consistent with those supporting the federal survey laws, the overarching objectives of the state statutes to provide safeguards against social and environmental effects of unregulated land development, see 42 Op. Att’y Gen. 16 at 60 (1987) are not advanced by compliance with the federal law. The Subdivision and Platting Act achieves these goals through ensuring the proper arrangement of streets, installation of utilities, access for fire and emergency equipment, and other worthy objectives which are not advanced by the federal land survey laws.

Regulated subdivision activity occurs under Montana’s Act when there has been a “division of land.” This keystone phrase is defined as follows:

“Division of land” means the segregation of one or more parcels of land from a larger tract held in single or undivided ownership by transferring or contracting to transfer title to or possession of a portion of the tract or properly filing a certificate of survey or subdivision plat establishing the identity of the segregated parcel pursuant to this chapter. The conveyance of a tract of record or an entire parcel of land that was created by a previous division of land is not a division of land.

Mont. Code Ann. §76-3-103(3) (1997). The last sentence of this definition was added by an amendment in 1997 and will be discussed below.

Under the Act, a “division of land” consists of “segregation of one or more parcels from a larger tract held in single or undivided ownership,” and occurs in one of two ways: (1) by conveying or contracting to convey ownership or possession of a portion of the tract, or (2) by properly filing of a plat or certificate of survey “establishing the identity of the segregated parcels pursuant to [the Act].” Mont. Code Ann. §76-3-103(3). The establishment of boundaries for a tract of land through the federal survey system does not. That is that the acts of surveying a section of land, monumenting the results of the survey on the ground, and depicting the results of the survey on a federal survey map do not convey or contract to convey ownership or possession of the tract. Neither do they constitute “properly filing a certificate of survey or subdivision plat... pursuant to” the Subdivision and Platting Act. Cl. John Taft Corp. v. Advisory Agency, 207 Cal. Rptr. 840 (Cal. Ct. App. 1984) (surveying of parcels under federal survey laws did not create a “subdivision” under California subdivision laws).

In 38 Op. Att’y Gen. 66 (1980), Attorney General Greeley concluded that the “division of land” definition includes the segregation of an aliquot part of a government section from a larger tract, even though the parcel to be segregated is separately described in an underlying deed. “The crucial factor is single or undivided ownership of a larger tract, not the description in the deed by which the owner obtained the tract.” 39 Op. Att’y Gen. 66 at 231. Under this opinion the “division of land” definition applies to any segregation of a parcel of fewer than 160 acres “from a larger tract” unless otherwise exempted from the Act’s provisions. It has been suggested that this exception to the Act’s provisions. It has been suggested that legislative amendments adopted since 1900 have undermined the authority of this opinion, and I now turn to that question.

Prior to 1993, the term “tract of record” appeared only in one section of the Act dealing with minor subdivisions. See Mont. Code Ann. §76-3-609(1) (1991). In 1993, for reasons that do not clearly appear from other statutes legislative history, the legislature adopted a statutory definition of the term “tract of record,” defining it as follows: “Tract of record” means a parcel of land, irrespective of ownership,
that can be identified by legal description, independent of any other parcel of land, using documents on file in the records of the county clerk and recorder.” 1993 Mont. Laws, ch. 272, §2. In 1997, the legislature further amended this definition, inserting the word “individual” to modify “parcel of land” where the term first appears in the definition and adding two new subsections dealing with the process for taking affirmative action to aggregate individual parcels into a single tract of record. 1997 Mont. Laws, ch.303, §1. The same bill also added the following language to the definition of “division of land” in Mont. Code Ann. §76-3-113(4), quoted above: “The conveyance of a tract of record or an entire parcel of land that was created by a previous division of land is not a division of land.” [Id., codified at §76-3-103(16)]. This sentence clarified the effect of the statute by stating that an individual parcel remaining after a prior “division of land” could be conveyed without accomplishing a second “division of land.”

It is argued that the effect of the addition of a definition of “tract of record” and the provision that conveyance of a “tract of record” is not a “division of land” effectively overrides 38 Op. Att’y Gen. 66 (1980), at least with respect to property which is described in a deed on file with the county clerk and recorder by reference to aliquot parts of a government section or government lots depicted on survey maps. This assertion is advanced in reliance on the observation that reference to such aliquot parts or lots in a deed would allow identification of each aliquot part “by legal description, independent of any other parcel of land.”

However, this argument overlooks the fact that in order to qualify as a “tract of record” the parcel must first be an “individual parcel of land.” If, for example, a deed conveys adjoining quarter-sections found in different sections, it has been assumed for purposes of the Act that a single “parcel” is conveyed, albeit described by reference to two aliquot parts of different government sections. That is the effect of 38 Op. Att’y Gen. 66 (1980). Neither aliquot part constitutes an “individual parcel” although either could be separately identified by reference to the deed. Rather, the earlier conveyance transferred a single parcel described by reference to two aliquot parts of two government survey sections. Nothing in the 1997 amendments to the Act undermines this assumption, and there is no indication in the legislative history of the amendments that it was the intention of the legislature to do so.

To the contrary, during the same legislative session that adopted the 1997 amendments a separate bill was proposed, House Bill 450, that would have had the effect of exempting conveyance of these parcels from subdivision review. As proposed, the bill would have specifically included in the definition of “tract of record” the following:

[A] parcel of land, irrespective of ownership, that can be identified by legal description, independent of any other parcel of land, using documents on file in the records of the county clerk and recorder’s office or federal repository and includes a quarter quarter section or government lot created by an approved survey conducted under federal law.

(Emphasis added.) The underscored language would have specified that an aliquot portion (or at least one that could be described as a “quarter quarter section”) or government lot was a “tract of record.” House Bill 450 was tabled in committee, suggesting that its objective was not within the legislature’s intent. See Montana Contractors’ Ass’n, Inc. v. Department of Highways, 220 Mont. 392, 396, 715 P.2d 1056, 1059 (1986) (legislative rejection of proposed bill supports inference that object of rejected legislation was not within legislative intent).

In my opinion, a government lot or an aliquot part of a government survey section is not a “tract of record” simply by virtue of the fact that its description appears in a deed on file with the clerk and recorder, unless it satisfies the requirement that it be an “individual parcel of land,” either through its having been segregated and conveyed individually prior to the effective date of the Act or through segregation or conveyance in compliance with the Act. A government lot or an aliquot part that is aggregated with other contiguous lots or aliquot parts in an earlier conveyance is not an “individual parcel” and cannot later be segregated from the other lots or aliquot parts without compliance with the Act unless otherwise exempted from review.

I note that neither Montana statute nor case law has specifically recognized parcels created by U.S. Survey Maps as existing “divisions of land” for purposes of the Subdivision and Platting Act. The Act in
particular is silent on this point. In the absence of statutory language addressing government surveys, it is difficult to construe such an exemption by implication, and I do not do so here.

The U.S. Survey Map is a method of property description and survey. Government lots and survey sections were created by federal map to facilitate their disposition, not to ensure orderly growth of future communities. As I have indicated, the goals of federal surveying statutes and state subdivision law are distinct; compliance with the federal law does not supplant the need for state review. Similarly, recognition of state subdivision review authority does not conflict with federal law. Boundaries and monuments established by the U.S. Survey Map are given their full legal effect regardless of subsequent state review of property division and conveyance.

Finally, I note that the Subdivision and Platting Act is legislation enacted for the promotion of public health, safety and general welfare, Mont. Code Ann. §76-3-102(1). As such, it is entitled to liberal construction with a view toward the accomplishment of its highly beneficial objectives. Exemptions should be given a narrow interpretation. *State ex rel. Dreher v. Fuller*, 237 Mont. 445, 448-49, 849 P.2d 1045, 1047 (1993); *State ex rel. Fawor v. County Comm.,* 180 Mont. 283, 291, 590 P.2d 602, 606 (1978); see 41 Op. Att'y Gen. 40 at 157-58 (1986); 40 Op. Att'y Gen. 233-34 (1984). This rule of law is more than a mere form of words. It has specific legal effect in construing doubtful language in the Act, and counsels against resolving ambiguities in the Act in favor of creating a broad new exemption to its coverage. A holding that parcels of land identified in filed deeds by reference to aliquot portions of government survey sections or government lots could on that basis alone be conveyed without compliance with the Act would have the effect of exempting conveyance of hundreds, if not thousands, of parcels of land in Montana from subdivision review under the Act. As the above discussion shows, there is no clear indication in the Act that the legislature intended such a dramatic change in the law in framing the language that now exists in the statutes.

**THEREFORE, IT IS MY OPINION:**

Parcels of land are not exempt from the requirements of the Subdivision and Platting Act solely by virtue of the fact that they are described by reference to boundaries established by a United States Government Survey.

Sincerely,

JOSEPH P. MAZUREK
Attorney General
Pertinent Statute
76-3-103 Definitions

(1) "Certificate of survey" means a drawing of a field survey prepared by a registered surveyor for the purpose of disclosing facts pertaining to boundary locations.

(2) "Cluster development" means a subdivision with lots clustered in a group of five or more lots that is designed to concentrate building sites on smaller lots in order to reduce capital and maintenance costs for infrastructure through the use of concentrated public services and utilities, while allowing other lands to remain undeveloped.

(3) "Dedication" means the deliberate appropriation of land by an owner for any general and public use, reserving to the landowner no rights that are incompatible with the full exercise and enjoyment of the public use to which the property has been devoted.

(4) "Division of land" means the segregation of one or more parcels of land from a larger tract held in single or undivided ownership by transferring or contracting to transfer title to or possession of a portion of the tract or properly filing a certificate of survey or subdivision plat establishing the identity of the segregated parcels pursuant to this chapter. The conveyance of a tract of record or an entire parcel of land that was created by a previous division of land is not a division of land.

(5) "Examining land surveyor" means a registered land surveyor appointed by the governing body to review surveys and plats submitted for filing.

(6) "Final plat" means the final drawing of the subdivision and dedication required by this chapter to be prepared for filing for record with the county clerk and recorder and containing all elements and requirements set forth in this chapter and in regulations adopted pursuant to this chapter.

(7) "Governing body" means a board of county commissioners or the governing authority of a city or town organized pursuant to law.

(8) "Immediate family" means a spouse, children by blood or adoption, and parents.

(9) "Minor subdivision" means a subdivision that creates five or fewer lots from a tract of record.
Definitions: 76-3-103

(10) "Planned unit development" means a land development project consisting of residential clusters, industrial parks, shopping centers, or office building parks that compose a planned mixture of land uses built in a prearranged relationship to each other and having open space and community facilities in common ownership or use.
(11) "Plat" means a graphical representation of a subdivision showing the division of land into lots, parcels, blocks, streets, alleys, and other divisions and dedications.
(12) "Preliminary plat" means a neat and scaled drawing of a proposed subdivision showing the layout of streets, alleys, lots, blocks, and other elements of a subdivision that furnish a basis for review by a governing body.
(13) "Public utility" has the meaning provided in 69-3-101, except that for the purposes of this chapter, the term includes county or consolidated city and county water or sewer districts as provided for in Title 7, chapter 13, parts 22 and 23, and municipal sewer or water systems and municipal water supply systems established by the governing body of a municipality pursuant to Title 7, chapter 13, parts 42, 43, and 44.
(14) "Subdivider" means a person who causes land to be subdivided or who proposes a subdivision of land.
(15) "Subdivision" means a division of land or land so divided that it creates one or more parcels containing less than 160 acres that cannot be described as a one-quarter aliquot part of a United States government section, exclusive of public roadways, in order that the title to or possession of the parcels may be sold, rented, leased, or otherwise conveyed and includes any resubdivision and further includes a condominium or area, regardless of its size, that provides or will provide multiple space for recreational camping vehicles or mobile homes.

NOTE: See also 76-3-104
Definitions: 76-3-103

(16) (a) "Tract of record" means an individual parcel of land, irrespective of ownership, that can be identified by legal description, independent of any other parcel of land, using documents on file in the records of the county clerk and recorder's office.

(b) Each individual tract of record continues to be an individual parcel of land unless the owner of the parcel has joined it with other contiguous parcels by filing with the county clerk and recorder:

(i) an instrument of conveyance in which the aggregated parcels have been assigned a legal description that describes the resulting single parcel and in which the owner expressly declares the owner's intention that the tracts be merged; or

(ii) a certificate of survey or subdivision plat that shows that the boundaries of the original parcels have been expunged and depicts the boundaries of the larger aggregate parcel.

(c) An instrument of conveyance does not merge parcels of land under subsection (16)(b)(i) unless the instrument states, "This instrument is intended to merge individual parcels of land to form the aggregate parcel(s) described in this instrument" or a similar statement, in addition to the legal description of the aggregate parcels, clearly expressing the owner's intent to effect a merger of parcels.
Pertinent Statute

76-3-104. What constitutes subdivision. A subdivision comprises only those parcels containing less than 160 acres that cannot be described as a one-quarter aliquot part of a United States government section when the parcels have been segregated from the original tract. The subdivision plat must show all the parcels whether contiguous or not.

76-3-201. Exemption for certain divisions of land -- fees for examination of division. (1) Unless the method of disposition is adopted for the purpose of evading this chapter, the requirements of this chapter may not apply to 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;

(b) subject to subsection (3), is created to provide security for mortgages, liens, or trust indentures for the purpose of construction, improvements to the land being divided, or refinancing purposes;

(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 in a location over which the state does not have jurisdiction; or

(h) is created for rights-of-way or utility sites. A subsequent change in the use of the land to a residential, commercial, or industrial use is subject to the requirements of this chapter.

(2) Before a court of record orders a division of land under subsection (1)(a), the court shall notify the governing body of the pending division and allow the governing body to present written comment on the division.
(3) An exemption under subsection (1)(b) applies:
(a) to a division of land of any size;
(b) 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 (3)(b) subjects the division of land to the requirements of this chapter.
(c) to a parcel that is created to provide security as provided in subsection (1)(b). The remainder of the tract of land is subject to the provisions of this chapter if applicable.
(4) The governing body may examine a division of land to determine whether or not the requirements of this chapter apply to the division and may establish reasonable fees, not to exceed $200, for the examination.
Pertinent Statute

76-3-207. Divisions or aggregations of land exempted from review but subject to survey requirements and zoning regulations -- exceptions -- fees for examination of division. (1) Except as provided in subsection (2), unless the method of disposition is adopted for the purpose of evading this chapter, the following divisions or aggregations of land are not subdivisions under this chapter but are subject to the surveying requirements of 76-3-401 for divisions or aggregations of land other than subdivisions and are subject to applicable zoning regulations adopted under Title 76, chapter 2:
(a) divisions made outside of platted subdivisions for the purpose of relocating common boundary lines between adjoining properties;
(b) divisions made outside of platted subdivisions for the purpose of a single gift or sale in each county to each member of the landowner's immediate family;
(c) divisions made outside of platted subdivisions 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;
(d) for five or fewer lots within a platted subdivision, the relocation of common boundaries;
(e) divisions made for the purpose of relocating 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.
(f) aggregation of parcels or lots when a certificate of survey or subdivision plat shows that the boundaries of the original parcels have been eliminated and the boundaries of a larger aggregate parcel are established. A restriction or requirement on the original platted lot or original unplatted parcel continues to apply to those areas.
(2) Notwithstanding the provisions of subsection (1):
(a) within a platted subdivision filed with the county clerk and recorder, a division, redesign, or rearrangement of lots that results in an increase in the number of lots or that redesigns or rearranges six or more lots must be reviewed and approved by the governing body before an amended plat may be filed with the county clerk and recorder;
(b) a change in use of the land exempted under subsection (1)(c) for anything other than agricultural purposes subjects the division to review under parts 5 and 6 of this chapter.
Pertinent Statute: 76-3-307

(3) (a) Subject to subsection (3)(b), a division of land may not be made under this section unless the county treasurer has certified that all real property taxes and special assessments assessed and levied on the land to be divided have been paid.

(b) (i) If a division of land includes centrally assessed property and the property taxes applicable to the division of land are not specifically identified in the tax assessment, the department of revenue shall prorate the taxes applicable to the land being divided on a reasonable basis. The owner of the centrally assessed property shall ensure that the prorated real property taxes and special assessments are paid on the land being sold before the division of land is made.

(ii) The county treasurer may accept the amount of the tax prorated pursuant to this subsection (3)(b) as a partial payment of the total tax that is due.

(4) The governing body may examine a division or aggregation of land to determine whether or not the requirements of this chapter apply to the division or aggregation and may establish reasonable fees, not to exceed $200, for the examination.
Pertinent Statute

76-3-209. Exemption from surveying and platting requirements for lands acquired for state highways.
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 and are exempted from the surveying and platting requirements of this chapter. 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.

76-3-302. Restrictions on recording instruments relating to land subject to surveying requirements. (1) Except as provided in subsection (2), the county clerk and recorder of any county may not record any instrument that purports to transfer title to or possession of a parcel or tract of land that is required to be surveyed by this chapter unless the required certificate of survey or subdivision plat has been filed with the clerk and recorder and the instrument of transfer describes the parcel or tract by reference to the filed certificate or plat. (2) Subsection (1) does not apply when the parcel or tract to be transferred: (a) is in a location in which the state does not have jurisdiction; or (b) was created before July 1, 1973, and the instrument of transfer for the parcel or tract includes a reference to a previously recorded instrument of transfer or is accompanied by documents that, if recorded, would otherwise satisfy the requirements of this subsection. The reference or document must demonstrate that the parcel or tract existed before July 1, 1973. (3) The reference or documents required in subsection (2) do not constitute a legal description of the property and may not be substituted for a legal description of the property.

76-3-401. Survey requirements for lands other than subdivisions. All divisions of land for sale other than a subdivision after July 1, 1974, into parcels which cannot be described as 1/32 or larger aliquot parts of a United States government section or a United States government lot must be surveyed by or under the supervision of a registered land surveyor. Surveys required under this section must comply with the requirements of 76-3-406.
Resources

MACO/JPIA Land Use Attorneys
Tara DuPuy
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Community Technical Assistance Program (CTAP)
commerce.mt.gov, Community Development link
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