

## **GALLATIN COUNTY**

### **Subdivision Exemption Claim Application**

#### **EXEMPTIONS FROM SUBDIVISION & PLATTING ACT REVIEW**

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Sections 76-3-201 through 76-3-207 MCA list divisions of land that are exempt from review and approval under the Montana Subdivision and Platting Act, unless the governing body determines the division is an attempt to evade the Act.

State law requires that in order to complete any of these divisions, a Certificate of Survey (COS) or amended subdivision plat must be completed by a Montana registered surveyor or registered engineer. A COS is not required when requesting an aggregation by deed involving parcels that have previously been surveyed. Contact the Planning Department when proposing to aggregate by deed for additional information.

#### **CLAIMANT'S RESPONSIBILITIES**

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- Familiarity with the requirements for the type of exemption you are claiming. (See Section 14 of the Gallatin County Subdivision Regulations)
- Hire a licensed surveyor to complete the survey of the property and the certificate of survey (the legal map of the property).
- Submit a complete application and \$200 filing fee to the Planning Department.
- Awareness that review of the exemption does not include review of public health and safety standards such as legal and physical access, adequacy of emergency response, provision of a fire protection water supply, floodplain hazards, water quality, wastewater treatment, and other similar items, nor does review as an exemption provide any assurance that the resulting parcels are buildable.

#### **GALLATIN COUNTY'S RESPONSIBILITIES**

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Montana State Statutes require the County Commission allow these specific instances of divisions of land that are exempt from the Montana Subdivision and Platting Act and the Gallatin 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 Commission 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 Commission will evaluate all relevant circumstances including the nature of the claimant's business, prior history of the particular tract, and the proposed configuration.
- An exemption will be reviewed for compliance with applicable zoning requirements.
- An exemption will be reviewed for compliance with applicable Sanitation in Subdivision Act requirements or correctly stated sanitation exemption.

## **APPLICATION PROCESS**

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1. Claimant hires a licensed surveyor to complete the certificate of survey.
  - *You should be aware that in many instances, your professional surveyor will take your exemption through this process.*
2. Claimant pays all real property taxes and special assessments assessed and levied on the land(s) involved to the County Treasurer, except when claiming the exemption for Security for Construction Financing.
3. Claimant obtains all plat signatures except County Commission and Clerk and Recorder.
4. Claimant submits a complete application to the Planning Department that includes:
  - An application form and fee, including a complete digital copy of the application materials (no file greater than 20 MB).
  - Certificate of survey (2 Mylar's with all original signatures; 6 paper copies folded to Subdivision Regulation Requirements).
  - Deeds exchanging ownership - current and sample of proposed. (Do **NOT** submit original proposed deeds.)
5. Planning Department works with the Clerk & Recorder, Environmental Health, and County Attorney to review the application.
6. Planning Department schedules application with the County Commission. (Up to 30 working days)
7. Claimant attends meeting before the County Commission prepared to:
  - Answer any questions.
  - Explain the claim for the exemption.
8. County Commission makes a determination whether the exemption is an attempt to evade the Montana Subdivision and Platting Act.
9. Planning Department submits mylars to County Commission.
10. County Commission returns signed mylars to Planning Department.
11. Planning Department notifies claimant that Planning Department portion is completed.
12. Claimant obtains deed signatures and approval of sanitary facilities, if required.  
Claimant pays Clerk and Recorder to record certificate of survey and all required documents.

## **TYPES OF COMMON EXEMPTIONS**

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### **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.

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

- Purpose is to 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.
- May include boundary relocation between land within a platted subdivision and land outside the subdivision; however, any restrictions on the platted land will continue to apply.

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

- Purpose is to rearrange and/or aggregate tracts of record.
- A deed(s) exchanging recorded interest from every person having a recorded interest in the adjoining properties for the entire newly described parcel(s) 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.

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**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.
- For a gift to a minor child, must be placed in a trust.
- 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.

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**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.

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**Creation of Townhouse Lot(s)**

- This exemption may not be used for the creation of Townhouse lots not in conformance with Section 76-2-203 MCA.

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**Creation of Condominiums**

- Gallatin County utilizes a different process and application form for creation of condominiums pursuant to Section 76-2-203 MCA. Please contact the Planning Department for more information.



## GALLATIN COUNTY Subdivision Exemption Claim Application

**1. Claimant(s)** *(if more than two claimants, please attach additional sheets)*

**a.** Name \_\_\_\_\_ Occupation \_\_\_\_\_  
 Address \_\_\_\_\_ Phone \_\_\_\_\_  
 Email \_\_\_\_\_

**b.** Name \_\_\_\_\_ Occupation \_\_\_\_\_  
 Address \_\_\_\_\_ Phone \_\_\_\_\_  
 Email \_\_\_\_\_

**2. Surveyor**

Name \_\_\_\_\_ Firm \_\_\_\_\_  
 Address \_\_\_\_\_ Phone \_\_\_\_\_  
 Email \_\_\_\_\_

**3. Existing Parcel(s)** *(if more than two parcels, please attach additional sheets)*

**a.** Address \_\_\_\_\_  
 Section \_\_\_\_\_ Township \_\_\_\_\_ Range \_\_\_\_\_  
 Other legal description \_\_\_\_\_  
 Zoning District \_\_\_\_\_ Zoning Designation \_\_\_\_\_  
 Assessor Parcel #   R   \_\_\_\_\_  
 DOR#   06   \_\_\_\_\_  
(2) (4) (2) (1) (2) (2) (4)

**i.** How and when was the parcel created *(example: Occasional Sale, COS 999, 5/1/92)?*

\_\_\_\_\_  
\_\_\_\_\_

**ii.** Has a subdivision application for the parcel been withdrawn or denied?  Yes  No

**b.** Address \_\_\_\_\_  
 Section \_\_\_\_\_ Township \_\_\_\_\_ Range \_\_\_\_\_  
 Other legal description \_\_\_\_\_  
 Zoning District \_\_\_\_\_ Zoning Designation \_\_\_\_\_  
 Assessor Parcel #   R   \_\_\_\_\_  
 DOR#   06   \_\_\_\_\_  
(2) (4) (2) (1) (2) (2) (4)

CLAIMANTS' INITIALS \_\_\_\_\_

i. How and when was the parcel created (example: Occasional Sale, COS 999, 5/1/92)?

\_\_\_\_\_

\_\_\_\_\_

ii. Has a subdivision application for the parcel been withdrawn or denied? \_\_\_ Yes \_\_\_ No

**4. Type of Exemption and Reason or Justification**

**Gift or Sale to Immediate Family Member ("Family Transfer")**

<u>Recipient(s)</u>	<u>Relationship to Claimant</u>	<u>Age</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

- Attach copies of all deeds, contracts, restrictions and covenants related to this property recorded within the past year.
- If recipients are under age 18, attach documentation of trust, custodianship pursuant to the Montana Uniform Transfers to Minors Act., etc.
- Date Claimant(s) became sole owner(s) of parcel to be divided \_\_\_\_\_

Note: See attached *Procedures for Family Transfer Exemption Claims*.

**Agricultural Exemption**

(Covenant running with the land, revocable only by mutual consent of the Commission and the property owner, that the land will be used exclusively for agricultural purposes. No Structure requiring water or sewer facilities shall be utilized on this parcel.)

Description of current and proposed agricultural use:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**Relocation of Common Boundary Lines Outside or Adjoining a Platted Subdivision**

Describe and provide documentation showing the need or reason for the relocation:

(attach supporting documentation: \_\_\_ Aerial Photo \_\_\_ Site Plan)

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

CLAIMANTS' INITIALS \_\_\_\_\_

**Lot Aggregation/Relocation of Common Boundary Lines within Platted Subdivision**

Describe and provide documentation showing the need or reason for the relocation:

(attach supporting documentation: \_\_\_\_Aerial Photo \_\_\_\_Site Plan)

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**Security for Construction ("Mortgage Survey")**

Attach signed and notarized statement from lending institution confirming that the exempt parcel is necessary to secure a construction loan for buildings or other improvements on the parcel.

**Townhouse Lot Creation**

Attach site plan for the parcel showing the building lines, utilities, easements, etc.:

**Other**

Reason/justification:

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**5. Intentions for Use**

Claimants' and recipients' intentions for the use of each parcel (including existing, new and remainder parcels) (i.e. will the parcel(s) be used for agriculture, residences, etc.?):

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**6. Intentions for Disposition**

Claimants' and recipients' long term and short term intentions for the disposition of each parcel (including existing, new and remainder parcels) (i.e. after this transaction is finalized, will the parcel(s) be retained by recipient, sold, gifted, etc.?):

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CLAIMANTS' INITIALS \_\_\_\_\_

**7. Required Attachments For All Exemption Types**

Certificate of Survey (to include:)

Six paper copies

Two (or more) mylar copies with all required certificates including:

County Commission's certificate

Surveyor's certificate, *signed*

Clerk & Recorder's certificate

Treasurer's certificate, *signed*

Claimants' Certificates of Exemption, *signed and notarized*

Digital Copy of Plat and application materials (no file greater than 20 MB).

Copies of recorded deeds documenting present ownership in all affected parcels.

Copies of proposed deeds for exchange of ownership, if any exchange is proposed.

Copies of proposed deed restrictions or covenants, if any. (Ag Exemptions)

**If claim is for Relocation of Common Boundary Lines, provide documentation showing the need or reason for the relocation:**

Aerial Photo

Site Plan

Surveyor Error

Structure Encroachment

Enhancement of the Configuration of the Property

Other (please describe): \_\_\_\_\_

**If parcel is in a Zoning District, also include:**

Site plan showing all existing and proposed structures and proposed property lines.

**If Aggregating by Deed, also include:**

No Certificate of Survey, Signed Surveyor's certificate, or mylar's.

**If claim is for Family Transfer Exemption, also include:**

Copies of all deeds, contracts, restrictions and covenants related to this property recorded within the past year.

If recipients are under age 18, documentation of trust, custodianship pursuant to the Montana Uniform Transfers to Minors Act, etc.

**If claim is for Mortgage Exemption, also include:**

Statement from lending institution confirming need.

No Proposed Deeds.

**If claim involves a parcel that was created as a railroad or road "parcel", also include:**

A copy of the deeds and instruments that originally established the railroad or road "parcel".

**8. Acknowledgements**

- **I understand** that the State of Montana provides that certain divisions of land, which would otherwise constitute subdivisions, are exempt from local subdivision review and approval, unless the transactions are an attempt to evade the Montana Subdivision and Platting Act.
- **I affirm** that this exemption claim is not an attempt to evade the Montana Subdivision and Platting Act.
- **I recognize** that I may be subject to penalty if my actions are deemed to be an effort to evade subdivision review, as set forth in the [Montana Code Annotated](#):

CLAIMANTS' INITIALS \_\_\_\_\_

- [76-3-301\(3\)](#) If transfers not in accordance with this chapter [i.e., Chapter 3, Local Regulation of Subdivisions] are made, the county attorney shall commence action to enjoin further sales or transfers and compel compliance with all provisions of this chapter. The cost of such action shall be imposed against the party not prevailing.
- [76-3-105](#) Violations.  
Any person who violates any provision of this chapter [i.e., Chapter 3, Local Regulation of Subdivisions] or any local regulations adopted pursuant thereto shall be guilty of a misdemeanor and punishable by a fine of not less than \$100 or more than \$500 or by imprisonment in a county jail for not more than 3 months or by both fine and imprisonment. Each sale, lease, or transfer of each separate parcel of land in violation of any provision of this chapter or any local regulation adopted pursuant thereto shall be deemed a separate and distinct offense.
- [45-7-201](#) Perjury.
  - (1) A person commits the offense of perjury if in any official proceeding he knowingly makes a false statement under oath or equivalent affirmation or swears or affirms the truth of a statement previously made, when the statement is material.
  - (2) A person convicted of perjury shall be punished by imprisonment in the state prison for any term not to exceed 10 years or shall be punished by a fine of not more than \$50,000, or by both such fine and imprisonment.
  - (3) Falsification is material, regardless of the admissibility of the statement under rules of evidence, if it could have affected the course or outcome of the proceeding. It is no defense that the declarant mistakenly believed the falsification to be immaterial. Whether a falsification is material in a given factual situation is a question of law
  - (4) It is not a defense to prosecution under this section that the oath or affirmation was administered or taken in an irregular manner or that the declarant was not competent to make the statement. A document purporting to be made upon oath or affirmation at any time when the offender presents it as being so verified shall be deemed to have been duly sworn or affirmed.
  - (5) No person shall be guilty of an offense under this section if he retracted the falsification in the course of the proceeding in which it was made before it became manifest that the falsification was or would be exposed and before the falsification substantially affected the proceeding.
  - (6) Where the defendant made inconsistent statements under oath or equivalent affirmation, both having been made within the period of the statute of limitations, the prosecution may proceed by setting forth the inconsistent statements in a single count alleging in the alternative that one or the other was false and not believed by the defendant. In such case it shall not be necessary for the prosecution to prove which statement was false but only that one or the other was false and not believed by the defendant to be true.
  - (7) No person shall be convicted of an offense under this section where proof of falsity rests solely upon the testimony of a single person other than the defendant.
- [45-7-202](#) False swearing.
  - (1) A person commits the offense of false swearing if he knowingly makes a false statement under oath or equivalent affirmation or swears or affirms the truth of such a statement previously made when he does not believe the statement to be true and:
    - (a) the falsification occurs in an official proceeding;
    - (b) the falsification is purposely made to mislead a public servant in performing his official function; or
    - (c) the statement is one which is required by law to be sworn or affirmed before a notary or other person authorized to administer oaths.
  - (2) Subsections (4) through (7) of [45-7-201](#) apply to this section.
  - (3) A person convicted of false swearing shall be fined not to exceed \$500 or be imprisoned in the county jail for any term not to exceed 6 months, or both.

CLAIMANTS' INITIALS \_\_\_\_\_



**9. Affidavit**

\_\_\_\_\_, Claimant(s),  
being first duly sworn upon oath, deposes and says as follows:

I, as Claimant, have read the foregoing Subdivision Exemption Claim Application  
and affirm that it is true and correct.

\_\_\_\_\_  
*Claimant's Signature* Date \_\_\_\_\_

State of \_\_\_\_\_

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

Subscribed and sworn to before me on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

(seal)

\_\_\_\_\_  
Notary Public for the State of \_\_\_\_\_

Residing at \_\_\_\_\_

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

\_\_\_\_\_  
*Claimant's Signature* Date \_\_\_\_\_

State of \_\_\_\_\_

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

Subscribed and sworn to before me on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

(seal)

\_\_\_\_\_  
Notary Public for the State of \_\_\_\_\_

Residing at \_\_\_\_\_

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

CLAIMANTS' INITIALS \_\_\_\_\_