

HOUSE BILL NO. 588

INTRODUCED BY G. EVERETT

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A BILL FOR AN ACT ENTITLED: "AN ACT ADDING AN EXEMPT SALE PROVISION TO THE LAW GOVERNING DIVISIONS OF LAND THAT ARE EXEMPT FROM SUBDIVISION REVIEW; DEFINING "EXEMPT SALE"; AND AMENDING SECTIONS 76-3-103 AND 76-3-207, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**Section 1.** Section 76-3-103, MCA, is amended to read:

**"76-3-103. Definitions.** As used in this chapter, unless the context or subject matter clearly requires otherwise, the following definitions apply:

(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) "Exempt sale" means one sale of a parcel created by a division of land within any 5-year period for which legal access is shown on the title insurance issued by a licensed title insurer and is verified by the office



1 of the county attorney or city attorney.

2 ~~(6)~~(7) "Final plat" means the final drawing of the subdivision and dedication required by this chapter to  
3 be prepared for filing for record with the county clerk and recorder and containing all elements and requirements  
4 set forth in this chapter and in regulations adopted pursuant to this chapter.

5 ~~(7)~~(8) "Governing body" means a board of county commissioners or the governing authority of a city or  
6 town organized pursuant to law.

7 ~~(8)~~(9) "Immediate family" means a spouse, children by blood or adoption, and parents.

8 ~~(9)~~(10) "Minor subdivision" means a subdivision that creates five or fewer lots from a tract of record.

9 ~~(10)~~(11) "Planned unit development" means a land development project consisting of residential clusters,  
10 industrial parks, shopping centers, or office building parks that compose a planned mixture of land uses built in  
11 a prearranged relationship to each other and having open space and community facilities in common ownership  
12 or use.

13 ~~(11)~~(12) "Plat" means a graphical representation of a subdivision showing the division of land into lots,  
14 parcels, blocks, streets, alleys, and other divisions and dedications.

15 ~~(12)~~(13) "Preliminary plat" means a neat and scaled drawing of a proposed subdivision showing the  
16 layout of streets, alleys, lots, blocks, and other elements of a subdivision that furnish a basis for review by a  
17 governing body.

18 ~~(13)~~(14) "Public utility" has the meaning provided in 69-3-101, except that for the purposes of this chapter,  
19 the term includes county or consolidated city and county water or sewer districts as provided for in Title 7, chapter  
20 13, parts 22 and 23.

21 ~~(14)~~(15) "Subdivider" means a person who causes land to be subdivided or who proposes a subdivision  
22 of land.

23 ~~(15)~~(16) "Subdivision" means a division of land or land so divided that it creates one or more parcels  
24 containing less than 160 acres that cannot be described as a one-quarter aliquot part of a United States  
25 government section, exclusive of public roadways, in order that the title to or possession of the parcels may be  
26 sold, rented, leased, or otherwise conveyed and includes any resubdivision and further includes a condominium  
27 or area, regardless of its size, that provides or will provide multiple space for recreational camping vehicles or  
28 mobile homes.

29 ~~(16)~~(17) (a) "Tract of record" means an individual parcel of land, irrespective of ownership, that can be  
30 identified by legal description, independent of any other parcel of land, using documents on file in the records of

1 the county clerk and recorder's office.

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

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

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

9 (c) An instrument of conveyance does not merge parcels of land under subsection ~~(16)(b)(i)~~ (17)(b)(i)  
10 unless the instrument states, "This instrument is intended to merge individual parcels of land to form the  
11 aggregate parcel(s) described in this instrument" or a similar statement, in addition to the legal description of the  
12 aggregate parcels, clearly expressing the owner's intent to effect a merger of parcels."  
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14 **Section 2.** Section 76-3-207, MCA, is amended to read:

15 **"76-3-207. Divisions of land exempted from review but subject to survey requirements and zoning**  
16 **regulations -- exceptions -- fees for examination of division.** (1) Except as provided in subsection (2), unless  
17 the method of disposition is adopted for the purpose of evading this chapter, the following divisions of land are  
18 not subdivisions under this chapter but are subject to the surveying requirements of 76-3-401 for divisions of land  
19 not amounting to subdivisions and are subject to applicable zoning regulations adopted under Title 76, chapter  
20 2:

21 (a) divisions made outside of platted subdivisions for the purpose of relocating common boundary lines  
22 between adjoining properties;

23 (b) divisions made outside of platted subdivisions for the purpose of a single gift or sale in each county  
24 to each member of the landowner's immediate family;

25 (c) divisions made outside of platted subdivisions by gift, sale, or agreement to buy and sell in which the  
26 parties to the transaction enter a covenant running with the land and revocable only by mutual consent of the  
27 governing body and the property owner that the divided land will be used exclusively for agricultural purposes;

28 (d) for five or fewer lots within a platted subdivision, relocation of common boundaries and the  
29 aggregation of lots; ~~and~~

30 (e) divisions made for the purpose of relocating a common boundary line between a single lot within a

1 platted subdivision and adjoining land outside a platted subdivision. A restriction or requirement on the original  
2 platted lot or original unplatted parcel continues to apply to those areas.

3 (f) a division that creates a parcel outside of a platted subdivision that qualifies as an exempt sale.

4 (2) Notwithstanding the provisions of subsection (1):

5 (a) within a platted subdivision filed with the county clerk and recorder, a division of lots that results in  
6 an increase in the number of lots or that redesigns or rearranges six or more lots must be reviewed and approved  
7 by the governing body and an amended plat must be filed with the county clerk and recorder;

8 (b) a change in use of the land exempted under subsection (1)(c) for anything other than agricultural  
9 purposes subjects the division to the provisions of this chapter.

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

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

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

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

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