

SENATE BILL NO. 287

INTRODUCED BY E. STONINGTON

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A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE EXEMPTION FROM SUBDIVISION REVIEW FOR DIVISIONS OF LAND FOR THE PURPOSE OF A GIFT OR SALE TO A MEMBER OF A LANDOWNER'S IMMEDIATE FAMILY; INCLUDING CHILDREN BY MARRIAGE IN THE DEFINITION OF "IMMEDIATE FAMILY"; AMENDING ~~SECTION~~ SECTIONS 76-3-103 AND 76-3-207, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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) "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.

(3) "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.

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

(5) "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.

(6) "Governing body" means a board of county commissioners or the governing authority of a city



1 or town organized pursuant to law.

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

3 (8) "Irregularly shaped tract of land" means a parcel of land other than an aliquot part of the  
4 United States government survey section or a United States government lot, the boundaries or areas of  
5 which cannot be determined without a survey or trigonometric calculation.

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

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

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

15 (12) "Registered land surveyor" means a person licensed in conformance with Title 37, chapter  
16 67, to practice surveying in the state of Montana.

17 (13) "Registered professional engineer" means a person licensed in conformance with Title 37,  
18 chapter 67, to practice engineering in the state of Montana.

19 (14) "Subdivider" means a person who causes land to be subdivided or who proposes a subdivision  
20 of land.

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

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

30 (b) Each individual tract of record continues to be an individual parcel of land unless the owner

1 of the parcel has joined it with other contiguous parcels by filing with the county clerk and recorder:

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

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

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

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12 **Section 2.** Section 76-3-207, MCA, is amended to read:

13 **"76-3-207. Subdivisions exempted from review but subject to survey requirements -- exceptions.**

14 (1) Except as provided in subsection (2), unless the method of disposition is adopted for the purpose of  
15 evading this chapter, the following divisions of land are not subdivisions under this chapter but are subject  
16 to the surveying requirements of 76-3-401 for divisions of land not amounting to subdivisions:

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

19 (b) divisions made outside of platted subdivisions ~~that do not create parcels of less~~ WHEN:

20 ~~(i) THE REMAINING PARCEL THAT IS NOT TRANSFERRED IS MORE than 20 acres; when~~

21 ~~(i)(i) the divisions are~~ DIVISION IS for the purpose of a single gift or sale in each county to each  
22 member of the landowner's immediate family; AND

23 ~~(ii)(ii) THE PARTIES TO THE TRANSACTION ENTER INTO A COVENANT RUNNING WITH THE LAND FOR 5 YEARS THAT~~  
24 PROHIBITS THE DIVISION OF LAND FROM BEING TRANSFERRED AGAIN WITHIN 5 YEARS AND THAT IS REVOCABLE ONLY BY  
25 SUBJECTING THE DIVISION OF LAND TO THE PROVISIONS OF THIS CHAPTER;

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

30 (d) for five or fewer lots within a platted subdivision, relocation of common boundaries and the

1 aggregation of lots; and

2 (e) divisions made for the purpose of relocating a common boundary line between a single lot  
3 within a platted subdivision and adjoining land outside a platted subdivision. A restriction or requirement  
4 on the original platted lot or original unplatted parcel continues to apply to those areas.

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

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

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

12 (3) A division of land may not be made under this section unless the county treasurer has certified  
13 that all real property taxes and special assessments assessed and levied on the land to be divided have  
14 been paid."

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16 NEW SECTION. **Section 3. Effective date.** [This act] is effective ~~July 1, 2001~~ ON PASSAGE AND  
17 APPROVAL.

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