



CHECKLIST FOR:

LAKE COUNTY SUBDIVISION EXEMPTION CLAIM APPLICATIONS

This checklist is to assure your application is complete so it can be processed promptly. Please use the check boxes next to each item. You will be notified within 5 working days if any key elements are missing. Be reminded that additional information may be required as the application goes through the review process.

You are welcome to schedule an **Informal Project Preview** with the Planning Department staff prior to submitting an application. This is a free service to ensure projects go as smoothly as possible from the beginning. We are more than happy to discuss your project and provide feedback!

Submit the checklist, application materials (**5 copies**) and fee to:

Lake County Planning Department
106 4th Avenue East
Polson MT 59860

Phone 406.883.7235
FAX 406.883.7205
Email planning@lakemt.gov

Please check that you have completed the following:

- \$75 Fee To Lake County Planning Department
 - Property Owner Contact Information And Occupation
 - Surveyor/Representative Contact Information
 - Property Descriptions
 - Information On Application Form About The Requested Exemption – Fill In All Applicable Portions
 - Copies Of Recorded Deeds Documenting Present Ownership In Affected Parcels
 - Copies Of All Deeds, Contracts, Restrictions, And Covenants Related To This Property Recorded Or Entered Into Within The Past Year
 - Proof Of Relationship (For Family Transfer Exemptions)
 - Site Plan Or Draft Survey
 - For Divisions That Will Not Require A Survey, Copies Of Proposed Deeds For Exchange Of Ownership
 - Copies Of Existing And Proposed Deed Restrictions Or Covenants, If Any
 - Documentation In Support Of The Sanitation Exemption(s), If Applicable (See Attached Sheets)
 - Copies Of Any Applicable Permits For The Development On The Property
 - Signed Acknowledgements
 - Be Sure To Submit The Signed Original Plus 4 Copies Of The Above (5 Total)
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See the department webpage for regulations and other information:

www.lakemt.gov/planning/planning.html

AN OVERVIEW OF THE PROCESS IS ON THE FOLLOWING PAGE.

Overview of Exemption Process:

This sheet is intended to give an overview of the process Lake County uses to ensure certain **exempt divisions** of land comply with Section III of the Lake County Subdivision Regulations (Resolution #10-15) and the Montana Subdivision and Platting Act (MCA 76-3).

On July 2, 2013, the Board of Lake County Commissioners decided on procedural changes to the exemption review process. Through these changes, the committee known as the Exemption Review Committee was rescinded. However, the “designated agents”, still comprised of the county officials described by Chapter III of the subdivision regulations (County Attorney, Clerk & Recorder, Sanitarian, Treasurer, and subdivision administrator), must still perform the functions outlined by the subdivision regulations, as applicable. For most exemptions, the revised process is standard and follows the following basic steps, while family transfer applications require special considerations per the subdivision regulations, as described specifically below.

The following process is to be followed for exemption applications:

1. Exemption Claim Application is submitted to the Lake County Planning Department.
2. Lake County Planning Department distributes applications to designated agents of the governing body. Transmittals of family transfer applications clearly state they are family transfer applications.
3. Subdivision administrator obtains comments from the designated agents of the governing body.
 - a. For family transfers:
 - i. Lake County Planning Department sets meeting with applicants/agents and designated agents of the governing body per III.D.2.b of the subdivision regulations to discuss the use of the exemption.
 - ii. Lake County Planning Department notifies applicants and agents before meeting of criteria and/or concerns so additional documentation can be brought to the meeting.
 - iii. The applicants meet with the subdivision administrator/designated agents to discuss the use of the exemption, the application, any determinations of the designated agents, and how the exemption appears to fit with the regulations and the evasion criteria.
4. Lake County Planning Department notifies the applicants of the determinations of the designated agents and issues Lake County’s decision to approve or deny the proposed exemption. Any denial includes description of appeal process.
5. Any appeal is set with the Board of Lake County Commissioners in accordance with Chapter III of the subdivision regulations.

Notes:

- 1) In all instances, Lake County will comply with time requirements in regulations.
- 2) Designated agents will only be responsible for making determinations as to the parts of the application that relate to each individual’s position.
- 3) For all exemptions, landowners or their agents are encouraged to meet with the subdivision administrator to discuss whether a proposed land division or use of an exemption is in compliance with the regulations.



EXEMPTION CLAIM APPLICATION FOR MISCELLANEOUS EXEMPTIONS IN 76-3-201, MCA (COURT ORDERED DIVISIONS, MORTGAGE EXEMPTIONS, ETC.)

Attach a check payable to the Lake County Planning Department for **\$75.00** and submit the application materials (Original, plus 4 copies; **5 total**) to the Lake County Planning Department, 106 Fourth Avenue East, Polson, MT, 59860.

1. Property owner(s):

(If more than 2, please attach additional sheets)

a. Name: _____ Occupation: _____
 Address: _____ Phone: _____
 City, State, Zip: _____ Email: _____

b. Name: _____ Occupation: _____
 Address: _____ Phone: _____
 City, State, Zip: _____ Email: _____

2. Surveyor/Representative:

Name: _____ Firm: _____
 Address: _____ Phone: _____
 City, State, Zip: _____ Email: _____

3. Parcel Description(s) of Existing Tract(s):

(If more than 2, please attach additional sheets)

a. Address: _____
 Tax ID Number: _____ Geocode: _____
 Section: _____ Township: _____ Range: _____
 Other legal description: _____
 Zoning District: _____ Subdistrict/Density designation: _____
How and when the parcel was created (example: Occasional Sale COS 999, 10/3/92):

b. Address: _____
 Tax ID Number: _____ Geocode: _____
 Section: _____ Township: _____ Range: _____
 Other legal description: _____
 Zoning District: _____ Subdistrict/Density designation: _____

How and when the existing parcel was created (example: Occasional Sale COS 999, 10/3/92):

4. Proposed Exemption(s):

This application is used for proposals involving the exemptions outlined in 76-3-201, MCA and III.C of the Lake County Subdivision Regulations. **Please indicate which exemptions apply to this proposal by checking the appropriate box(es) for the specific division of land:**

- Court Order: A division of land that 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;
- Mortgage Exemption: A division of land that 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;
- Other 76-3-201 exemptions:
 - A division of land that creates an interest in oil, gas, minerals, or water that is severed from the surface ownership of real property;
 - A division of land that creates cemetery lots;
 - A division of land that is created by the reservation of a life estate;
 - A division of land that is created by lease or rental for farming and agricultural purposes;
 - A division of land that is in a location over which the state does not have jurisdiction;
 - A division of land that 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.

a. Reasons/justification for use of the exemption:

b. Intentions for uses of the property (List or discuss the property owners' intentions for the use of each resulting parcel. For example, will the parcel(s) be used for agriculture, commercial, residences, cemetery lots, a right-of-way, etc.):

c. Intentions for disposition (For example, is the intent to prepare tracts for sale, secure a construction loan, settle an estate or divorce, etc.):

5. Required attachments:

Submit the original signed application, along with four additional copies of the completed application and the information listed below.

- a. Copies of recorded deeds documenting present ownership in affected parcels.
- b. Copies of all deeds, contracts, restrictions, and covenants related to this property recorded or entered into within the past year.
- c. Site plan (or draft certificate of survey) showing the approximate gross and net lot sizes (in acreage or square feet), proposed property lines, and all existing and proposed structures. Show existing and proposed wells, sewer systems, and similar infrastructures. If parcel is in a local zoning district, the site plan should also identify property line setbacks, impervious surface coverage, slopes >25%, and any other information necessary to demonstrate compliance with the zoning district regulations:
- d. Copies of existing and proposed deed restrictions or covenants, if any.
- e. All documentation in support of the sanitation exemption(s), if applicable (see attached sheets).
- f. Copies of any existing permits for the development on the property (zoning conformance, floodplain, sanitation, etc.), as applicable.
- g. Other Required Materials for specific exemptions:

1) Court Orders: Before a court of record orders a division of land under 76-3-201(1)(a), MCA, the court shall notify the governing body of the pending division and allow the governing body to present written comment on the division.

Any person seeking an exemption through an order of a court shall move the court to issue notice to the governing body pursuant to 76-3-201. The person seeking the exemption shall further ensure that, along with notice of the proposed division, the Lake County Attorney's Office is provided with evidence of entitlement to the exemption. The County Attorney shall cause the documents to be reviewed by the designated agents of the governing body and submit comment to the court.

2) Mortgage Exemptions: When the Mortgage Exemption is to be used, the landowner must submit with this application:

- i. A statement of how many interests within the original tract will be created by use of the exemption;
- ii. The deed, trust indenture or mortgage for the exempted interest which states that the interest is being created only to secure a construction mortgage, lien or trust indenture and that the original tract reverts to its former status upon satisfaction of the mortgage;
- iii. A statement explaining who will have title to and possession of the balance of the original parcel if title to the exempted interest is conveyed upon foreclosure; and
- iv. A signed, notarized statement from a licensed financial institution that the creation of the parcel is necessary to secure a loan and they will not finance the entirety of the existing tract;

Note: A draft survey is not required at this time; however, if the landowner chooses to submit a survey for use with the mortgage exemption, the survey will need to indicate that the original tract reverts to its former status upon satisfaction of the mortgage.

6. Acknowledgments:

I/We, the undersigned landowner(s) and exemption claimant(s) 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 or local subdivision regulations.

I/We affirm that this exemption claim is not an attempt to evade the Montana Subdivision and Platting Act or the Lake County Subdivision Regulations.

I/We recognize that I/We may be subject to penalties if my actions are deemed to be an effort to evade subdivision review, as set forth in Montana law:

- 76-3-301(3), MCA: If transfers not in accordance with the Montana Subdivision and Platting Act are made, the County Attorney shall commence action to enjoin further sales or transfers and complete compliance with all provision of the Montana Subdivision and Platting Act. The cost of such action shall be imposed against the party not prevailing.
- Violations: Any person who violates any provision of the Montana Subdivision and Platting Act 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.
- I/We also recognize that making false statements on this form could subject me to criminal prosecution for False Swearing (per MCA 45-7-202) and Perjury (per MCA 45-7-201).
- I/We also recognize that per 45-7-203(1), MCA (Unsworn falsification to authorities), A person commits an offense under 45-7-203 if, with the purpose to mislead a public servant in performing an official function, the person:
 - (a) makes any written false statement that the person does not believe to be true;
 - (b) purposely creates a false impression in a written application for any pecuniary or other benefit by omitting information necessary to prevent statements from being misleading;
 - (c) submits or invites reliance on any writing that the person knows to be forged, altered, or otherwise lacking in authenticity; or
 - (d) submits or invites reliance on any sample, specimen, map, boundary mark, or other object that the person knows to be false.

7. Signatures:

I/We, as Claimant(s), has/have read the foregoing Exemption Claim Application, and affirm that my/our statements and information are true and correct to the best of my/our knowledge.

_____ Date: _____
Property owner's/Claimant's signature

_____ Date: _____
Property owner's/Claimant's signature

Sanitation Exclusions for Exemption Claim Applications

The Exemption Claim Applications require that this form be attached if an exclusion from sanitation review is being proposed. Please indicate on this form which sanitation exclusion(s) is/are being proposed and for which parcel. Also, attach supporting pertinent information for each exemption used such as:

- > Copy of a Lake County Wastewater Treatment System permit for any existing wastewater treatment system
- > Copy of a Certificate of Subdivision Approval for the property
- > Copy of a Removal of Sanitary Restriction for the property

The above information and/or assistance with completing this form may be obtained from the Lake County Environmental Health Department, 406-883-7236, envhealth@lakemt.gov, or 106 4th Avenue East, Polson MT 59860.

FOR PARCELS < 20 ACRES EXCLUSIVE OF PUBLIC ROADWAYS:

- Tract/Lot/Parcel** is excluded from sanitation review by the Department of Environmental Quality pursuant to MCA 76-4-111(1) as condominiums, townhomes, or townhouses constructed on land divided in compliance with the Montana Subdivision and Platting Act and the Sanitation in Subdivision Act.
- Tract/Lot/Parcel** is excluded from sanitation review by the Department of Environmental Quality pursuant to MCA 76-4-111(2) as the parcel of land has previously been reviewed under either department requirements or local health requirements and has received approval for a given number of living units, the construction or conversion of the same or a fewer number of condominium units, townhomes, or townhouses on that parcel if no new extension of a public water supply system or extension of a public sewage system is required.
- Tract/Lot/Parcel** is excluded from sanitation review by the Department of Environmental Quality pursuant to MCA 76-4-125 (1) (a) as the division is created by order of any court of record in this state or by operation of law or that in absence of agreement between the parties to the sale, could be created by an order of a court in this state pursuant to the law of eminent domain, Title 70, chapter 30.
- Tract/Lot/Parcel** is excluded from sanitation review by the Department of Environmental Quality pursuant to MCA 76-4-125 (1) (a) as the division 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.
- Tract/Lot/Parcel** is excluded from sanitation review by the Department of Environmental Quality pursuant to MCA 76-4-125 (1) (a) as the division creates an interest in oil, gas, minerals, or water that is severed from the surface ownership of real property.
- Tract/Lot/Parcel** is excluded from sanitation review by the Department of Environmental Quality pursuant to MCA 76-4-125 (1) (a) as the division creates cemetery lots.
- Tract/Lot/Parcel** is excluded from sanitation review by the Department of Environmental Quality pursuant to MCA 76-4-125 (1) (a) as the division is created by the reservation of a life estate.
- Tract/Lot/Parcel** is excluded from sanitation review by the Department of Environmental Quality pursuant to MCA 76-4-125 (1) (a) as the division is created by lease or rental for farming and agricultural purposes.
- Tract/Lot/Parcel** is excluded from sanitation review by the Department of Environmental Quality pursuant to MCA 76-4-125 (1) (a) as the division is in a location over which the state does not have jurisdiction.
- Tract/Lot/Parcel** is excluded from sanitation review by the Department of Environmental Quality pursuant to MCA 76-4-125 (1) (a) as the division 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 Title 76.

- Tract/Lot/Parcel** is excluded from sanitation review by the Department of Environmental Quality pursuant to MCA 76-4-125 (1) (b) as the division is made for the purpose of acquiring additional land to become part of an approved parcel, provided that water or sewer disposal facilities may not be constructed on the additional acquired parcel and that the division does not fall within a previously platted or approved subdivision. *(Note: it may be preferable to use ARM 17.36.605(2)(b) for parcels with a previous approval – see below.)*
- Tract/Lot/Parcel** is excluded from sanitation review by the Department of Environmental Quality pursuant to MCA 76-4-125 (1) (d) as certified pursuant to MCA 76-4-127. The certification that adequate storm water drainage and adequate municipal facilities will be provided for the subdivision must be sent by the certifying authority to the reviewing authority prior to final plat approval.
- Tract/Lot/Parcel** is excluded from sanitation review by the Department of Environmental Quality pursuant to MCA 76-4-125 (1) (e) (i) as a remainder of an original tract created by segregating a parcel from the tract for purposes of transfer because the remainder is served by public or multiple-user sewage system approved before January 1, 1997, pursuant to local regulations or MCA Title 76, Chapter 4.
- Tract/Lot/Parcel** is excluded from sanitation review by the Department of Environmental Quality pursuant to MCA 76-4-125 (1) (e) (ii) as a remainder of an original tract created by segregating a parcel from the tract for purposes of transfer because the remainder is 1 acre or larger and has an individual sewage system serving a discharge source that was in existence prior to April 29, 1993, and if required when installed, the system was approved pursuant to local regulations or MCA Title 76, Chapter 4.
- Tract/Lot/Parcel** is excluded from sanitation review by the Department of Environmental Quality pursuant to ARM 17.36.605 (2) (a) as a parcel that has no facilities for water supply, wastewater disposal, storm drainage or solid waste disposal, if no facilities will be constructed on the parcel.
- Tract/Lot/Parcel** is excluded from sanitation review by the Department of Environmental Quality pursuant to ARM 17.36.605 (2) (b) as a parcel that has a previous approval issued under Title 76, chapter 4, part 1, MCA if: (i) no facilities other than those previously approved exist or will be constructed on the parcel; and (ii) the division of land will not cause approved facilities to deviate from the conditions of approval, in violation of 76-4-130, MCA;
- Tract/Lot/Parcel** is excluded from sanitation review by the Department of Environmental Quality pursuant to ARM 17.36.605(2)(c) as a parcel that will be affected by a proposed boundary line adjustment, if the parcel has existing facilities for water supply, wastewater disposal, storm drainage, or solid waste disposal that were not subject to review, and have not been reviewed, under Title 76, chapter 4, part 1, MCA, and if: (i) no facilities, other than those in existence prior to the boundary line adjustment, or those that were previously approved as replacements for the existing facilities, will be constructed on the parcel; (ii) existing facilities on the parcel complied with state and local laws and regulations, including permit requirements, which were applicable at the time of installation; and (iii) the local health officer determines that existing facilities are adequate for the existing use. As a condition of the exemption, the local health officer may require evidence that: (A) existing septic tanks have been pumped within the previous three years; (B) the parcel includes acreage or features sufficient to accommodate a replacement drainfield; (C) existing wells are adequate for the proposed uses; and (D) adequate storm drainage and solid waste disposal are provided.
- Tract/Lot/Parcel** is excluded from sanitation review by the Department of Environmental Quality pursuant to ARM 17.36.605(3) as an aggregation of parcels, except that an aggregation is subject to review under 76-4-130, MCA, if any parcel included in the aggregation has a previous approval issued under Title 76, chapter 4, part 1, MCA.

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The following are not exclusions cited in law or rule but can provide information on a survey as to why a parcel is not undergoing sanitation review; each jurisdiction may choose to include this information on surveys:

FOR PARCELS ≥20 ACRES EXCLUSIVE OF PUBLIC ROADWAYS:

For parcels ≥ 20 acres, exclusive of public roadways, and **exempt from** MCA 76-3 Subdivision and Platting Act:

- Tract/Lot/Parcel** is 20 acres or greater, exclusive of public roadways, and is therefore not subject to sanitation review by the Department of Environmental Quality pursuant to M.C.A. 76-4-102 (22).
(NOTE: For creation of agricultural tracts ≥20 acres, do not include a sanitation exclusion on the survey.)

For parcels ≥ 20 acres, exclusive of public roadways, and **subject to** MCA 76-3 Subdivision and Platting Act:

Tract/Lot/Parcel is excluded from sanitation review under M.C.A. 76-3-622(2) per: *(state one of the exemptions listed above for parcels <20 acres – NOTE: the ability to cite MCA 76-4 exclusions for ≥20 parcels is not specifically allowed by MCA 76-3-622, but is implied.)*

OR

Tract/Lot/Parcel is not subject to the submittal requirements under MCA 76-3-622 for sanitation review as the subdivision will not include new water supply or wastewater facilities.

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NOTES:

1. *Each exclusion must be customized for the survey by use of identifying tract, lot, or parcel number(s).*
2. *MCA 76-4-122 (2) A county clerk and recorder may not accept a subdivision plat or certificate of survey subject to review under this part for filing until one of the following conditions has been met:
(c) the person wishing to file the plat or certificate of survey has placed on the plat or certificate of survey an acknowledged certification that the subdivision is exempt from review under this part. The certification must quote in its entirety the wording of the applicable exemption.*
3. *The term "approved" in the above exclusions means approved under MCA 76-4 Sanitation in Subdivisions Act.*