

MORTGAGE EXEMPTION INFORMATION

The Montana Subdivision and Platting Act (SPA) defines how land may be legally divided. Generally, to divide land, a property owner will either subdivide lots according to subdivision regulations or use an exemption to the SPA.

One type of exemption is the mortgage exemption. The mortgage exemption is a limited purpose exemption which allows creation of a legal description to secure a loan on the property. By law, mortgage exemption parcels may only be transferred by the owner of the property who obtained the mortgage exemption to the financial or lending institution that holds the mortgage. The mortgage exemption is a lightly used exemption. We estimate that since this statute was adopted in 1973, Missoula County has approved approximately 400 mortgage exemptions. To put that number in perspective, there are approximately 48,000 parcels of land in Missoula County.

The Clerk and Recorder and County Attorney's office have specified duties to see that transfers of land occur in accordance with the SPA. In Missoula County, however, the Clerk and Recorder's office has sometimes erroneously recorded transfers of land that didn't comply with the restrictions on mortgage exemptions. Missoula County must recognize the requirements of the SPA but will allow future recording of certain mortgage exemption parcels, as follows.

1. No Foreclosure/Transfer of Mortgage Exemption Parcel Recorded: When there has been no foreclosure but the owner who created the mortgage exemption parcel has transferred the mortgage exemption parcel as a separate parcel to another party and the transfer was recorded, the new owner may record a future transfer. This will apply regardless of whether the transfer to the new owner occurred before or after 2003. This protects the innocent purchaser of a non-compliant parcel.
2. No Foreclosure/Transfer of Remainder Recorded: Remainder refers to the property outside the mortgage exemption lot. When the owner of a mortgage exemption remainder has transferred the remainder as a separate parcel to another party and the transfer was recorded, the new owner may record future transfers. This will apply regardless of whether the transfer to the new owner occurred before or after 2003. This protects the innocent purchaser of a non-compliant parcel.

It's important to know that recording of a non-compliant mortgage exemption parcel will not constitute a legal opinion about the validity of the title nor will it affect the applicability of other land use laws and regulations to the parcels.

There may be situations where property owners may be able to demonstrate that an unrestricted transfer of a mortgage exemption should occur, based on Missoula County's actions specific to the property. If a property owner believes they should be able to transfer a mortgage exemption parcel or a remainder without foreclosure, we will consider information unique to the property to determine if recording should occur. The information unique to the property includes, but is not limited to:

- a. history of the parcel or remainder;
- b. mortgage exemption application and approval;
- c. the information on the face of the Certificate of Survey;
- d. development of the property;
- e. any other information showing Missoula County actions specific to the property which created a reasonable expectation in the creating property owner that the property was not subject to the requirements of the SPA;
- f. indications of good faith of the property owners; and
- g. any other considerations unique to the property.

If it is not possible to identify Missoula County actions specific to the property that can be the basis for recording a non-compliant mortgage exemption parcel or remainder, we can assist in identifying other solutions. Property owners do not need to hire consultants or attorneys to review their mortgage parcels with us. We remain available to discuss any questions property owners may have about mortgage exemption properties before recording or as part of land use planning.

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