

RESOLUTION NO. 2020-24

RESOLUTION TO AMEND THE FAMILY CONVEYANCE EXEMPTION CRITERIA OF THE POWELL COUNTY SUBDIVISION REGULATIONS.

WHEREAS, pursuant to Mont. Code Ann. § 76-3-207(1)(b), divisions of land made outside of planned subdivisions for the purpose of a single gift or sale to a member of a landowner's immediate family are exempt from subdivision review, provided that the division is not made for the purpose of evading such review. This is called the "family conveyance exemption."

And WHEREAS, the Powell County Planning Board has authority under Mont. Code Ann. § 76-3-504 at (1)(p), to establish criteria used to determine whether use of a family conveyance exemption is an attempt to evade subdivision review; and these are set forth in Appendix A to V-E-2.

And WHEREAS, on July 9, 2020, the Powell County Planning Board met and approved revised criteria for the Board's review of an application for a family conveyance exemption.

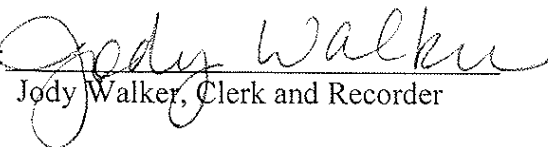
And WHEREAS, at a regular public meeting noticed for and held before the Powell County Governing Body on August 17, 2020, no one appeared in opposition to the proposed amendments, and the Board's decision to adopt the revised criteria was entered into the minutes;

NOW, THEREFORE, the Powell County Commissioners do accept these amendments and include them in the Powell County Subdivision Regulations.

The Powell County Clerk and Recorder is directed to file a certified copy of this resolution in its office.

This resolution was passed and approved by the County Commission by a vote of 2 in favor, 0 opposed, on August 17, 2020.

By 
Powell County Commission

Attest: 
Jody Walker, Clerk and Recorder

V-E-2. A Gift or Sale to a Member of the Immediate Family, 76-3-207(1)(b), MCA

a. Statement of Intent

Under Montana law, any division of land must be reviewed with public notice, under local criteria set forth in subdivision regulations for the purpose of protecting public health, safety and welfare. State law however, allows for a family member to give a single gift of property, outside a platted subdivision, to each immediate family member without the public review process. Historically, the intent of this exemption is to enable agricultural landowners to provide land for continued farming and ranching by a son or daughter. Recently however, the law has been abused. Powell County must assure that such family transfers are not done for the purpose of evading subdivision review. The County adopted the following criteria to assess a proposed family conveyance to ensure legitimate use of the exemption from subdivision review.

b. Required Information

- i. A certificate of survey (or recording of an instrument of conveyance) that uses this exemption to create a parcel for conveyance to a family member must show the name of the grantee, relationship to the landowner, and the parcel to be conveyed under this exemption, and the landowner's certification of compliance, Uniform Standards for Certificates of Survey, 24.183.1104(1)(f), ARM;
- ii. The Certificate of Survey or instrument of conveyance must be accompanied by a deed or other conveying document.

c. Use of Exemption

- i. One gift or sale of a parcel to each member of the landowner's immediate family in each county is eligible for exemption from subdivision review under Title 76, Chapter 3, MCA, and these regulations;
- ii. The use of the exemption may not create more than one new parcel per eligible family member;
- iii. A request for a family transfer/conveyance will prompt the Planning Department to mail letters to adjacent landowners of the subject property informing them of the request for an exemption from subdivision review and notifying them of the date and time of the Planning Board meeting to hear the request;
- iv. Upon executing a family transfer and filing the survey, the sold or gifted parcel(s) may not be sold, re-gifted or transferred for thirty-six months from the date of recording without written permission from the Board of Adjustments (exceptions for hardship will be heard by the Board of Adjustments upon written request from the grantor or grantee);
- v. Upon executing a family transfer, both the grantor and the grantee will sign an affidavit (see Exhibit) stating that they will retain the property for three years from the date of approval (except for an involuntary sale).
- vi. A corporation, partnership or trust cannot claim a family exemption;

- vii. Legal access may be considered when evaluating a proposed exemption from subdivision review;
- viii. Lots within platted subdivisions are not eligible for family exemption;
- ix. Prior use of a subdivision exemption, on the land or by the family, may be considered during the evaluation of a proposed Family Conveyance;
- x. The Planning Board will not authorize a Family Conveyance exemption if the use of the exemption divides tracts with an overall development plan with such characteristics as common roads, utility easements, restrictive covenants, open space or common marketing or promotional plan;
- xi. “Immediate Family” is defined as the spouse, children (blood or adopted), or parents of the grantor 76-3-103(8), MCA.

Note: Execution of a family conveyance does not guarantee suitability of the land for future development, water availability, or sanitation compliance