

SUBDIVISION AND PLATTING ACT - Application of "occasional sale" exemption;  
MONTANA CODE ANNOTATED - Title 76, chapter 3; sections 76-3-102, 76-3-103(3), 76-3-103(7), 76-3-103(15), 76-3-201 to 76-3-210, 76-3-207, 76-3-207(1)(d);  
OPINIONS OF THE ATTORNEY GENERAL - 38 Op. Att'y Gen. No. 117 (1980), 41 Op. Att'y Gen. No. 21 (1985).

HELD: When a parcel of land is divided into two parcels, each under 20 acres in size, and one of the parcels is sold as an "occasional sale" under the Montana Subdivision and Platting Act, the remaining parcel may not, in the absence of another legitimately claimed exemption, be sold without subdivision review within 12 months following sale of the first parcel.

10 January 1986

Leo Fisher  
City Attorney  
City of Whitefish  
P.O. Box 158  
Whitefish MT 59937

Dear Mr. Fisher:

You have requested my opinion on the following question:

When a parcel of land is divided into two parcels, each under 20 acres in size, and one of the parcels is sold as an "occasional sale" under the Montana Subdivision and Platting Act, may the remaining parcel be sold without subdivision review within 12 months following sale of the first parcel?

The Montana Subdivision and Platting Act (the Act) is found in Title 76, chapter 3, MCA. One stated purpose of the Act is to "promote the public health, safety, and general welfare by regulating the subdivision of land." § 76-3-102, MCA. A "subdivision" is defined generally as a "division of land" creating one or more parcels of less than 20 acres to be conveyed by sale, rental, lease, or otherwise. § 76-3-103(15), MCA. A "division of land" is defined as:

[T]he 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 ....

§ 76-3-103(3), MCA. Certain divisions of land which would normally result in the creation of subdivisions are exempted by statute from the review provisions of the Act. Section 76-3-207, MCA, provides in pertinent part:

[U]nless the method of disposition is adopted for the purpose of evading this chapter, the following divisions of land are not subdivisions under this chapter but are subject to the surveying requirements of 76-3-401 for divisions of land not amounting to subdivisions:

....

(d) a single division of a parcel outside of platted subdivisions when the transaction is an occasional sale ....

An "occasional sale" is defined as "one sale of a division of land within any 12-month period." § 76-3-103(7), MCA. The 12-month period commences with the actual transfer of the parcel of land from the grantor to the grantee. 38 Op. Att'y Gen. No. 117 at 412 (1980).

As a form of legislation enacted to promote the public health, safety, and welfare, the Act must be liberally

construed to effectuate its "beneficent objectives." Exemptions to the provisions of the Act must consequently be given a narrow interpretation. State ex rel. Florence-Carlton School District v. Board of County Commissioners, 180 Mont. 285, 291, 590 P.2d 602, 605 (1978). Section 76-3-207(1)(d), MCA, expressly limits the occasional sale exemption to "a single division of a parcel." (Emphasis added.) Moreover, an occasional sale is explicitly defined as "one sale of a division of land within any 12-month period." § 76-3-103(7), MCA. (Emphasis added.) In 41 Op. Att'y Gen. No. 21 (1985) I noted:

Although the "occasional sale" exception could arguably be construed as applying separately to each new parcel of land created by a subdivision, such an interpretation would effectively permit multiple divisions of land during a 12-month period without compliance with subdivision review requirements. ... [C]learly once a particular parcel of land has benefited from application of the exception, none of the land contained within that parcel may be exempted from subdivision review by operation of the "occasional sale" exception if subdivided during the next 12 months.

Under the factual situation you have described, only the sale of the first parcel would qualify for the occasional sale exemption during the applicable 12-month period. The remaining parcel of land could not be disposed of during that period without subdivision review unless it was eligible for another exemption under the Act. See §§ 76-3-201 to 210, MCA. Any other conclusion would in effect sanction the segregation and sale of two parcels of the same land within 12 months without subdivision review pursuant to the "occasional sale" exemption, a result contrary to the stated purpose and the express provisions of the Act.

THEREFORE, IT IS MY OPINION:

When a parcel of land is divided into two parcels, each under 20 acres in size, and one of the parcels is sold as an "occasional sale" under the Montana Subdivision and Platting Act, the remaining parcel may not, in the absence of another legitimately claimed exemption, be sold without subdivision

review within 12 months following sale of the first  
parcel.

Very truly yours,

MIKE GREELY  
Attorney General