

HOUSE BILL NO. 520

INTRODUCED BY L. BREWSTER

A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THAT PROHIBITIONS ON CONVEYING FAMILY TRANSFER PARCELS DO NOT APPLY TO CONVEYANCES INVOLVING LENDERS; AND AMENDING SECTION 76-3-207, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 76-3-207, MCA, is amended to read:

"76-3-207. Divisions or aggregations of land exempted from review but subject to survey requirements and zoning regulations -- exceptions -- fees for examination of division. (1) Except as provided in subsection (2), unless the method of disposition is adopted for the purpose of evading this chapter, the following divisions or aggregations of tracts of record of any size, regardless of the resulting size of any lot created by the division or aggregation, are not subdivisions under this chapter but are subject to the surveying requirements of 76-3-401 for divisions or aggregations of land other than subdivisions and are subject to applicable zoning regulations adopted under Title 76, chapter 2:

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

(b) divisions made outside of platted subdivisions for the purpose of a single gift or sale in each county to each member of the landowner's immediate family;

(c) divisions made outside of platted subdivisions by gift, sale, or agreement to buy and sell in which the landowner enters into a covenant for the purposes of this chapter with the governing body that runs with the land and provides that the divided land will be used exclusively for agricultural purposes, subject to the provisions of 76-3-211;

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

(e) divisions made for the purpose of relocating a common boundary line between a single lot within a platted subdivision and adjoining land outside a platted subdivision. A restriction or requirement on the

1 original platted lot or original unplatted parcel continues to apply to those areas.

2 (f) aggregation of parcels or lots when a certificate of survey or subdivision plat shows that the  
3 boundaries of the original parcels have been eliminated and the boundaries of a larger aggregate parcel are  
4 established. A restriction or requirement on the original platted lot or original unplatted parcel continues to apply  
5 to those areas.

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

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

11 (b) (i) a division within a platted subdivision is exempt from additional subdivision reviews and is  
12 subject to applicable zoning regulations adopted under Title 76, chapter 2, unless the method of disposition is  
13 adopted for the purpose of evading this chapter, if the division:

14 (A) is within a subdivision that has been approved by a local governing body;

15 (B) creates parcels of a size allowed within the subdivision; and

16 (C) is gifted or sold to a member of the landowner's immediate family;

17 (ii) an amended plat must be filed with the county clerk and recorder after a division provided in  
18 subsection (2)(b)(i) occurs; and

19 (iii) except as otherwise provided in this subsection (2)(b), a restriction or requirement on the  
20 platted subdivision continues to apply to a division allowed in subsection (2)(b)(i);

21 (c) a division of land exempted under subsection (1)(b) that is also located in a zoning district is  
22 allowed if each family transfer parcel created by the division is at least 5 acres, unless the zoning district allows  
23 for smaller lot sizes; and

24 (d) a division of land transferred to an immediate family member pursuant to subsection (1)(b) or  
25 (1)(c) may be transferred regardless of age and may be owned jointly with that immediate family member's  
26 spouse.

27 (3) (a) Subject to subsection (3)(b), a division of land may not be made under this section unless  
28 the county treasurer has certified that all real property taxes and special assessments assessed and levied on

1 the land to be divided have been paid.

2 (b) (i) If a division of land includes centrally assessed property and the property taxes applicable to  
3 the division of land are not specifically identified in the tax assessment, the department of revenue shall prorate  
4 the taxes applicable to the land being divided on a reasonable basis. The owner of the centrally assessed  
5 property shall ensure that the prorated real property taxes and special assessments are paid on the land being  
6 sold before the division of land is made.

7 (ii) The county treasurer may accept the amount of the tax prorated pursuant to this subsection  
8 (3)(b) as a partial payment of the total tax that is due.

9 (4) The governing body:

10 (a) may examine a division or aggregation of land to determine whether or not the requirements of  
11 this chapter apply to the division or aggregation;

12 (b) may establish reasonable fees, not to exceed \$400, for the examination;

13 (c) shall complete the examination and approve or deny the application for a division or  
14 aggregation of land under this section within 20 working days of the receipt of an application containing all  
15 materials and information required by the governing body to conduct its review under regulations adopted  
16 pursuant to 76-3-504(1)(p); and

17 (d) may not impose conditions on the approval of a division or aggregation of land under this  
18 section except for conditions necessary to ensure compliance with the survey requirements of Title 76, chapter  
19 3, part 4.

20 (5) (a) An immediate family member or the spouse of an immediate family member who receives a  
21 division of land pursuant to subsection (1)(b) or (2)(b) may not transfer or otherwise convey the division of land  
22 for a period of up to 2 years after the date of the division unless the governing body sets a period of less than 2  
23 years.

24 (b) This subsection (5) does not preclude the recipient of a division of land pursuant to subsection  
25 (1)(b) or (2)(b) from conveying an interest in the land under a mortgage or trust indenture for the purpose of  
26 securing an obligation owed to another person or entity.

27 (c) The restriction in subsection (5)(a) does not apply to a transfer or conveyance of the land  
28 pursuant to a foreclosure sale or by deed in lieu of foreclosure. The restriction on transferring the land under

1 subsection (5)(a) does not apply to a person or entity who acquires title to the division of land by purchase at a  
 2 foreclosure sale or by deed in lieu of foreclosure. A person or entity who acquires title to the land by purchase  
 3 at a foreclosure sale or by deed in lieu of foreclosure may freely transfer or convey the land.

4 (d) A governing body may authorize variances from these requirements to address hardship  
 5 situations.

6 (6) (a) If a governing body can prove by documented evidence in a court of competent jurisdiction  
 7 that a person has knowingly evaded subdivision regulations through the use of a division of land pursuant to  
 8 subsection (1)(b) or (2)(b), that person is subject to a civil penalty of \$5,000 for each division of land, payable to  
 9 the governing body.

10 (b) The governing body may not:

11 (i) impose a civil liability on the person or entity to whom the division of land or security interest in  
 12 the land was conveyed pursuant to subsection (5)(b) or (5)(c);

13 (ii) impair or affect the validity or priority of a security interest in the division of land conveyed  
 14 pursuant to subsection (5)(b); or

15 (iii) prohibit or impair the use of, the conveyance of an interest in, or the transfer of a division of  
 16 land by a person or entity who acquires the division of land pursuant to subsection (5)(c)."

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