HOUSE BILL NO. 714

INTRODUCED BY L. BREWSTER

A BILL FOR AN ACT ENTITLED: “AN ACT REVISING LAWS RELATED TO THE DIVISIONS OF LAND THAT ARE EXEMPT FROM SUBDIVISION REVIEW; REQUIRING A GOVERNING BODY TO REVIEW CERTAIN DIVISIONS AND AGGREGATIONS OF LAND; REQUIRING APPLICANTS TO PROVIDE NOTICE TO ADJOINING PROPERTY OWNERS AND ALLOWING FOR A PUBLIC HEARING; REQUIRING A GOVERNING BODY TO USE AN AFFIDAVIT FORM PROVIDED BY THE ATTORNEY GENERAL WHEN DETERMINING WHETHER AN APPLICANT INTENDS TO EVADE THE REQUIREMENTS; INCREASING A FINE; PROVIDING DEFINITIONS; AMENDING SECTION 76-3-207, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.”

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 -- definitions.** (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, including a gift made as a part of a landowner's estate;

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

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

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

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

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

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

(B) creates ~~parcels~~ lots of a size allowed within the subdivision, whether imposed by the governing body or through a private covenant; and

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

(ii) ~~an~~ a certificate of survey labeled amended plat must be filed with the county clerk and recorder after a division provided in subsection (2)(b)(i) occurs; and

(iii) except as otherwise provided in this subsection (2)(b), a restriction or requirement on the platted subdivision continues to apply to a division allowed in subsection (2)(b)(i), whether imposed by the governing body or through a private covenant;

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

(d) a division of land transferred to an immediate family member pursuant to subsection (1)(b) ~~or~~, (1)(c), or (2)(b) may be transferred regardless of age and may be owned jointly with that immediate family member's spouse, but a transfer to a minor must comply with Title 72, chapter 26, part 6.

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

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

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

(4) The governing body:

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

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

(c) shall require the applicant to provide notice of the application to adjoining landowners within 5 working days after filing the application and, on the request of one or more adjoining landowners, hold a public meeting;

~~(c)~~ (d) shall complete the examination and approve or deny the application for a division or aggregation of land under this section within ~~20~~ 30 working days of the receipt of an application containing all materials and information required by the governing body to conduct its review under regulations adopted pursuant to 76-3-504(1)(p) and subsection (5); and

~~(d)~~ (e) may not impose conditions on the approval of a division or aggregation of land under this

section except for conditions necessary to ensure compliance with the survey requirements of Title 76, chapter 3, part 4.

(5) The governing body may not deny an application for a division of land pursuant to subsection (1)(b), (1)(c), or (2)(b) unless the governing body can prove by documented evidence that the applicant is seeking to evade this chapter. The attorney general shall prepare a form affidavit to be used by a governing body to conduct the examination required by this section. The application used by the governing body under subsection (4) must be accompanied by an affidavit from the applicant setting forth the applicant's intentions, including that the proposed use of an exemption is not for the purpose of evading this chapter. A governing body may not force an applicant to appear before the governing body during the examination period.

~~(5)~~ (6) An immediate family member or the spouse of an immediate family member who receives a division of land pursuant to subsection (1)(b), (1)(c), or (2)(b) may not transfer or otherwise convey the division of land 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 years. A governing body may authorize variances from these requirements to address hardship situations.

~~(6)~~ (7) If, after initial approval, a governing body can prove by documented evidence in a court of competent jurisdiction that a person has knowingly evaded ~~subdivision regulations~~ this chapter through the use of a division of land pursuant to subsection (1)(b), (1)(c), or (2)(b), ~~that person is~~ the exclusive remedy available to the governing body is for the person to be subject to a civil penalty of ~~$5,000~~ $10,000 for each division of land, payable to the governing body.

(8) For the purposes of this section, the following definitions apply:

(a) (i) "Documented evidence" means written documents, photographs, video, microfilm, digital data, or affidavits.

(ii) The term does not include general observations, opinions, or oral statements unless they are made by the applicant.

(b) "Immediate family member" means a spouse, parent, grandparent, child, grandchild, or sibling, by blood, marriage, or legal adoption.

(c) "Jointly" means as joint tenants or tenants in common."

NEW SECTION. **Section 2. Effective date.** [This act] is effective on passage and approval.

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