



**COUNTY OF SIERRA
ORDINANCE № 24-001**

AMENDING SUBDIVISION CLAIM OF EXEMPTION

WHEREAS, the New Mexico Subdivision Act, NMSA 1978, Section 4-6-1 *et seq.* and the Land Subdivision Regulations of Sierra County New Mexico, Ordinance 24-001 provide that certain divisions of land do not constitute subdivisions; and,

WHEREAS, the Board of County Commissioners of Sierra County wish to provide for a process whereby Sierra County landowners that intend to divide their real property under an exemption to the New Mexico Subdivision Act and the Sierra County Subdivision Regulations must first obtain a determination from Sierra County concerning whether a proposed division of land within Sierra County is not a subdivision pursuant to the Land Subdivision Regulations of Sierra County, New Mexico, as the same may be amended from time to time.

NOW, THEREFORE, BE IT ORDAINED, by the Sierra County Board of County Commissioners that the following procedures are established:

1. *Claim of Exemption*

Any owner wishing to divide a surface area of land for the purpose of sale, lease or other conveyance or for building development, whether immediate or future, who claims that the proposed division does not constitute a subdivision pursuant to the Land Subdivision Regulations of Sierra County, New Mexico, and the New Mexico Subdivision Act shall file a written claim of exemption on the prescribed form with the Sierra County Manager or his or her designee before making the land division for which the claim of exemption is made. The form to be used for claiming an exemption is attached as Appendix 1 to this Ordinance. Together with the claim of exemption form and supporting documents, the claimant shall submit a filing and review fee, if any, in the amount set by the Board of County Commissioners by resolution.

2. *Review of Claim of Exemption*

The Sierra County Manager or his or her designee, shall, within thirty (30) days after receipt of the complete claim of exemption form and supporting documents, review the claim of exemption and supporting documents and shall mail or email written notice to the claimant of whether the exemption has been approved or denied; provided, however, that the thirty (30) day period shall not begin to run until the claimant has delivered a completed Claim of Exemption form, the applicable fee and all supporting documents to the County Manager or his or her designee.

3. *Approval of Claim of Exemption*

If the claim of exemption is approved, or if the County Manager or his or her designee fails to mail or email written notice of the approval denial of the claim of exemption to the claimant within thirty (30) days after receipt by the County Manager or his or her designee, of the completed claim of exemption and all supporting documents, the claimant may divide the land in the manner proposed in the claim of exemption without complying with the provisions of the Land Subdivision Regulations of Sierra County, New Mexico. The land division plats approved pursuant to this Ordinance shall contain a certification of a surveyor licensed by the State of New Mexico which includes a statement that Sierra County has approved the claim of exemption or failed to act upon the claim of exemption within the time allowed. Fraud or intentional misrepresentation shall be grounds for revocation of the claim of exemption.

4. *Denial of Claim of Exemption*

If the claim of exemption is denied, claimant may appeal the denial to the Board of County Commissioners of Sierra County within thirty days after the date of receipt by the claimant of the notice of denial of the claim of exemption. If the appeal of the claim of exemption is denied by the Board of County Commissioners, the claimant may appeal the denial to the New Mexico District Court within thirty days after the decision of the Board of County Commissioners. Review of the claim of exemption by the District Court shall be *de novo*. In the event the claim of exemption is denied, or in the event any appeal of denial of claim of exemption is affirmed by the reviewing entity, the claimant may submit an application for a subdivision pursuant to the Land Subdivision Regulations of Sierra County, New Mexico.

5. *Payment of Property Taxes Prior to Filing a Plat.*

NMSA 1978, Section 7-38-44.1 (B) (2013) provides that “[a] taxpayer shall pay the taxes, penalties, interest and fees due on real property divided or combined through the taxable year in which the property is divided or combined prior to filing a plat.” Accordingly, the land plat(s) approved pursuant to this Ordinance shall contain a certification for the County Treasurer to confirm that all taxes, penalties, interest and fees due on the real property have been paid through the taxable year. The County Clerk shall not file the plat(s) unless the County Treasurer has signed the certification.

6. *Repeal of Conflicting Ordinances and Laws*

All Sierra County Ordinances or Resolutions, relating to a claim of exemption to Sierra County Subdivision Regulations which are in conflict with the above provisions are hereby repealed by the adoption of this Ordinance.

7. *Penalties*

A. Any violation of this Ordinance shall be deemed a misdemeanor and punishable by a fine of not more than three hundred dollars (\$300) and/or up to 90 days in jail.

B. If a violation of this Ordinance constitutes a violation of the New Mexico Subdivision Act the person violating the Ordinance shall be subject to the criminal penalties provided for by

NMSA 1978, Section 47-6-27 (1996) and the Board of County Commissioners or the District Attorney will be entitled to injunctive relief as provided for by NMSA 1978, Section 47-6-26 (1996).

PASSED, AND APPROVED AND ORDAINED THIS 14th DAY OF November 2024.

**BOARD OF COUNTY COMMISSIONERS
OF SIERRA COUNTY**

Travis Day
Travis Day, Chair

James E Paxon
James Paxon, Vice-Chair

Hank Hopkins
Hank Hopkins, Commissioner

Attest:
Shelly K Trujillo
Shelly K. Trujillo
Sierra County Clerk



APPENDIX 1

Sierra County Case No. _____

SIERRA COUNTY
CLAIM OF EXEMPTION

Claim of exemptions must be submitted on the form provided in this appendix to the Sierra County Subdivision Regulations. The language of this form shall not be altered in any way.

CLAIM OF EXEMPTION INSTRUCTIONS

To claim an exemption from the requirements of the Sierra County Subdivision Ordinance, **you must complete this form, sign it before a notary public and submit it together with legible copies of all required documents and the non-refundable \$50.00 fee** to the Sierra County Development Coordinator, 1712 N. Date St., Ste. D, Truth or Consequences, New Mexico 87901. Be sure to check all exemptions which apply and **attach legible copies to all supporting documents. Failure to include all requested documentation will delay approval.**

The Development Coordinator will notify you in writing within forty-five (45) days as to whether your claim of exemption has been granted, denied or more information is needed. If the claim of exemption is granted, you will be notified that the original documentation is available at the Sierra County Administration. Property taxes for the prior year and current year must be paid prior to the documents being released to you for filing with the Sierra County Clerk. The original must be filed. If you wish to have the documents returned to an agent (surveyor, real estate agent, etc.) upon being granted please state the agent's name, telephone number, and mailing address in the appropriate space on this form. If you do not hear from the Development Coordinator within forty-five (45) days (DEEMED APPROVED FOR FAILURE TO ACT), you may proceed with the land division you propose without needing to comply with the requirements of the Sierra County Regulations. If your claim of exemption is denied, you may either seek approval of a subdivision or appeal the denial as provided in these Regulations.

I/We, _____, claim an exemption from the requirements of the New Mexico Subdivision Act as amended and the Sierra County Subdivision Regulations as amended for the following reason(s) which I certify that this transaction involves:

- 1. The sale, lease or other conveyance of any parcel that is thirty-five (35) acres or larger in size within any twelve (12) month period, provided that the land has been used primarily and continuously for agricultural purposes, in accordance with § 7-36-20 NMSA 1978 as amended, for the preceding three (3) years. **ATTACH CERTIFIED SURVEY SHOWING SIZE AND LOCATION OF PARCEL AND A NOTARIZED STATEMENT FROM THE COUNTY ASSESSOR OR THE CHIEF DEPUTY ASSESSOR THAT THE PARCEL TO BE DIVIDED, "HAS BEEN USED PRIMARILY AND CONTINUOUSLY FOR AGRICULTURAL PURPOSES," IN ACCORDANCE WITH NMSA 1978 § 7-36-20 (2015). EACH OF THE NEW LOTS**

MUST BE THIRTY-FIVE (35) ACRES OR LARGER IN SIZE. ONLY ONE LAND DIVISION PER YEAR MAY BE MADE PER THIS EXEMPTION.

- 2. The sale or lease of apartments, offices, stores or similar space within a building. **ATTACH COPIES OF ALL PROPOSED SALE OR LEASE DOCUMENTS.**
- 3. The division of land in which only gas, oil, mineral or water rights are severed from the surface ownership of the land. **ATTACH COPIES OF ALL PROPOSED CONVEYANCING DOCUMENTS.**
- 4. The division of land created by court order where the order creates no more than one parcel per party. **ATTACH CERTIFIED COPY OF COURT ORDER. ALSO ATTACH COPIES OF THE PROPOSED DOCUMENTS OF CONVEYANCE AND CERTIFIED SURVEY SHOWING SIZE AND LOCATION OF PARCELS.**
- 5. The division of land for grazing or farming activities provided that the land continues to be used for grazing or farming activities. **ATTACH COPY OF PROPOSED DOCUMENTS OF CONVEYANCE THAT RESTRICTS FUTURE USE TO GRAZING OR FARMING ACTIVITIES.**
- 6. The division of land resulting only in the alteration of parcel boundaries where parcels are altered for the purpose of increasing or reducing the size of contiguous parcels and where the number of parcels is not increased; or, the alteration results in a decrease in the number of parcels, so long as the newly created parcels do not exceed two (2) parcels. Approval of a merger/consolidation will be contingent upon compliance with building codes, land use regulations and other applicable ordinances or regulations in place or as amended. **ATTACH CERTIFIED SURVEYS SHOWING ALL PARCELS AND PARCEL BOUNDARIES BEFORE AND AFTER PROPOSED ALTERATION. ALSO ATTACH DOCUMENTS OF CONVEYANCE EFFECTING THE LOT LINE ADJUSTMENT(S) DEMONSTRATED ON THE SURVEYS.**
- 7. The division of land to create a parcel that is sold or donated as a gift to an immediate family member; however, this exception shall be limited to allow the seller or donor to sell or give no more than one parcel per tract of land per immediate family member. As used herein the term immediate family member means a husband, wife, father, stepfather, mother, stepmother, brother, stepbrother, sister, stepsister, son, stepson, daughter, stepdaughter, grandparents, grandson, step grandson, granddaughter, step granddaughter, nephew and niece, whether related by birth or adoption
 - (a) Property transferred between spouses must be sole and separate property at the time of its acquisition by the grantor spouse as sole and separate is defined by the New Mexico Statutes and New Mexico case law regarding community property. If a spouse claims that a parcel is his/her sole and separate property, the applicant must submit sufficient documentation to the Development Coordinator to show that the real estate in question was acquired with separate assets.

- (b) No gifts of real property to minor children will be permitted without full compliance with Uniform Transfers to Minors Act 46-7-11 NMSA 1978 et. seq.
- (c) Any parcel of real property that is transferred pursuant to this provision may not be transferred within twelve (12) months of the date of recording of the plat creating said parcel to any individual who is not an "immediate family member" of the grantor as defined by this Ordinance, except by probate proceedings, an order from the District Court, or a transfer on death deed executed pursuant to applicable New Mexico statutes.

This exemption may not be used to further divide a lot created under this exemption within five years of the date of the division of the original tract of land. Moreover exemption #11 may not be used to further divide a lot created under this exemption within five years of the date of the division of the original tract of land. **ATTACH COPY OF PROPOSED DOCUMENTS CONVEYANCE AND BIRTH CERTIFICATE, ADOPTION CERTIFICATE OR OTHER DOCUMENT DEMONSTRATING FAMILY RELATIONSHIP CLAIMED. (BAPTISMAL CERTIFICATES ARE NOT ACCEPTABLE.) ALSO ATTACH A CERTIFIED SURVEY PLAT SHOWING THE BOUNDARIES AND SIZE AND LOCATION OF THE ORIGINAL TRACT OR PARCEL AND THE SIZE AND LOCATION OF THE PARCEL PROPOSED TO BE CONVEYED TO THE FAMILY MEMBER. INCLUDE THE NAME OF THE FAMILY MEMBER ON THE PARCEL THAT IS TO BE CONVEYED. ATTACHED EVIDENCE OF FAIR MARKET VALUE OF THE PROPERTY. ALSO ATTACH A COPY OF ANY PURCHASE CONTRACT AND MORTGAGE, IF APPLICABLE; AND IF THE FAMILY MEMBER IS A SPOUSE, SUBMIT A SEPARATE PROPERTY AGREEMENT OR EVIDENCE OF SEPARATE OWNERSHIP OF THE PARCEL. ATTACH EVIDENCE THAT THE TRANSFER IS, IN WHOLE OR PART, A *BONA FIDE* GIFT (SEE ATTACHMENT "2").**

- 8. The division of land created to provide security for mortgages, liens or deeds of trust; provided that the division is not the result of a seller-financed transaction. **ATTACH COPIES OF ALL FINANCING DOCUMENTS. ALSO, ATTACH COPY OF A CERTIFIED SURVEY SHOWING THE SIZE AND LOCATION OF THE ORIGINAL TRACT AND THE PARCEL THAT IS BEING DIVIDED. THAT PLAT SHALL INCLUDE AN AFFIDAVIT BY THE PROPERTY OWNER DECLARING THAT ANY PARCEL CREATED FOR SECURITY FOR MORTGAGES, LIENS OR DEEDS OF TRUST, WILL BE PROPERLY MERGED WITH THE ORIGINAL PARCEL ONCE THE MORTGAGE, LIENS OR DEEDS OF TRUST HAVE BEEN EXONERATED.**
- 9. The sale, lease or other conveyance of land that creates no parcel smaller than one hundred forty (140) acres; **ATTACH CERTIFIED SURVEY SHOWING LOCATION AND SIZE OF PARCEL(S) TO BE CONVEYED AND RETAINED. ALSO ATTACH COPIES OF THE DOCUMENTS OF CONVEYANCE.**

- ❑ 10. The division of land to create a parcel that is donated to any trust or non-profit corporation granted an exemption from federal income tax, as described in § 501 (C) (3) of the United States Internal Revenue Code of 1986, as amended; school, college or other institution with a defined curriculum and a student body and faculty that conducts classes on a regular basis; or to any church or group organized for the purpose of divine worship, religious teaching or other specifically religious activity. **ATTACH COPIES OF IRS EXEMPTION LETTER, AND/OR DOCUMENTS DEMONSTRATING ENTITLEMENT TO EXEMPTION AND CERTIFIED SURVEY SHOWING LAND PROPOSED TO BE DONATED. ALSO ATTACH COPIES OF THE PROPOSED DOCUMENTS OF CONVEYANCE.**

- ❑ 11. Division of a tract of land into two parcels that conform with applicable zoning ordinances; provided that a second or subsequent division of either of the two parcels within five years of the date of the division of the original tract of land shall be subject to the provisions of the New Mexico Subdivision Act; provided further that a survey, and a deed in a parcel is subsequently conveyed shall be filed with the County Clerk indicating that the parcel shall be subject to the provision of the New Mexico Subdivision Act if the parcel is further divided within five years of the date of the division of the original tract of land. **ATTACH CERTIFIED SURVEY SHOWING SIZE AND LOCATION OF ORIGINAL TRACT, PARCEL PROPOSED TO BE DIVIDED, ANY PARCELS PREVIOUSLY DIVIDED FROM THE ORIGINAL PARCEL AND DATES OF ALL DIVISIONS. ALSO ATTACH COPIES OF THE PROPOSED DOCUMENTS OF CONVEYANCE.**

READ ATTACHMENT "1" HERETO REGARDING COMMON PROMOTIONAL PLAN

►FEE: Fifty Dollars (\$50.00) per each Claim of Exemption

I further certify that the information provided by me in this Claim of Exemption is true and correct and that all documents attached to or enclosed with this Claim of Exemption are originals or true, complete and correct copies of the originals.

_____ Signature of Applicant/Owner(s)			_____ Signature of Person(s) Receiving Property		
_____ Print Name			_____ Print Name		
_____ Address			_____ Address		
City,	State	Zip	City,	State	Zip
_____ Telephone Number(s)			_____ Telephone Number(s)		

SUBSCRIBED AND SWORN to before me this _____ day of _____, 20____, by _____, Applicant for Claim of Exemption.

(SEAL)

Notary Public

My Commission Expires: _____

If a copy of a certified survey is not required and does not accompany the Claim of Exemption, the exact legal description of the property involved must be included in the space below.

Legal Description: _____

Return original documents to:

Name: _____

Mailing Address: _____

Phone Number: _____

FOR OFFICIAL USE ONLY

The foregoing Claim of Exemption has been approved.

The foregoing Claim of Exemption is incomplete. Please provide us with the following information and/or documents so that we can process your claim:

The foregoing Claim of Exemption is hereby denied for the following reasons: _____

(DATE)

(NAME AND TITLE)

FEE PAID: \$ _____

Application)

DATE: _____

REC'D BY: _____

(Attach Copy of Sierra County Treasurer Receipt to this

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ATTACHMENT "1"

COMMON PROMOTIONAL PLAN

Special care must be taken by the subdivider to avoid a common promotional plan.

"Common Promotional Plan" is defined In the New Mexico Subdivision Act, 1978 NMSA §47-6-2 (M), as "any plan or scheme of operation, undertaken by a single subdivider or a group of subdividers acting in concert, to offer for sale or lease parcels of land where such land is either contiguous or part of the same area of land or is known, designated or advertised as a common unit or by common name." Any such plan is unlawful, and it is the responsibility of the subdivider to be aware of the law so as to avoid such a plan.

Subdividing Land in New Mexico, Second Edition, issued by the Office of the Attorney General of New Mexico, contains sections on "Illegal Subterfuges Design to Avoid the Subdivision Laws" and "Common Promotional Schemes" (pages 47-55). The following brief overview was adapted from those sections:

There are two basic tests the courts and the Attorney General have applied in determining whether a subdivider has legitimately taken advantage of an exception to the subdivision laws or as has engaged in an illegal subterfuge designed to circumvent the laws:

1. Is the division of the land in substance rather than in appearance a subdivision of land as defined by the applicable statutes?

2. Are the transactions involved in the subdivision of the land (i.e., transfers, gifts, partitions, incorporations, sales, leases, etc.) *bona fide* and arms length transactions?

Further in order not to be considered a subdivision each land division and sale must be independent and the result of arms length negotiations without further tie-ins between the parties that would render the purchaser or donee of the land an agent partner or business associate of the seller.

In order to determine whether division and sales are independent and not part of a commonscheme or business venture the following factual considerations are significant although each factor alone may not be conclusive:

(a) whether the transfer and sale of the parcel of land were made for adequate consideration in an arm length manner;

(b) whether the property was transferred between close relatives, business associates or partners;

(c) the extent of legal or practical control which is retained by the seller or grantor over the further division and sale of the parcels;

(d) the "sharing" of the profits and losses made or incurred by subsequent purchasers or grantee by their later sale and division of the property with the original grantor or seller;

(e) whether the land area is actually sold through common promotional scheme with common real estate brokers or agents, common advertising, financing, or bank escrowing, etc.;

(f) whether the actual legal status of subsequent purchasers is not, for all practical purposes tantamount to a straw man or shell corporation and thus part of a common scheme or conspiracy to evade the laws;

(g) whether there are any other factual considerations to indicate that there is intent to evade the provisions of the subdivision statutes, and that, in fact, a subdivision has been created.

ATTACHMENT "2"

STATE OF NEW MEXICO)
) ss.
COUNTY OF SIERRA)

AFFIDAVIT
(Limited to Claim of FAMILY Exemption)

I, _____ being first duly sworn, upon my oath, do state:

- 1. I have claimed a family exemption, pursuant to NMSA 1978, 47-6-2(J)(9) and the Sierra County Subdivision Regulations.
2. The division of land that I propose is a gift and/or sale to a family member as defined by the Act and the regulations cited above and a bona fide and legitimate transaction for which I will (A) report and pay any gift and/or income tax liability resulting therefrom and (B) file a property transfer (price) affidavit with the Sierra County Assessor, if so required by NMSA 1978, § 7-38-12.1, of the New Mexico Property Tax Code.
3. I will retain no personal financial interest or control over the parcel to be divided and conveyed to my family member, other than as real estate contract seller or mortgagee. The family-member grantee shall be granted all control over the development, sale or lease of the property. I will receive no proceeds, monetary or otherwise, other than as real estate contract seller or mortgagee from such development, sale or lease of the property by the family-member grantee.

Applicant of Claim of Exemption

VERIFICATION

SUBSCRIBED AND SWORN to before me this _____ day of _____, 20____, by _____, Applicant for Claim of Exemption.

(SEAL)

Notary Public

My Commission Expires: _____

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