

Patricio Garcia
Community Development
Director



Gabriel Boyle
Planning and Zoning
Director

EXEMPTION AFFIDAVIT

To claim an exemption from the requirements of the Rio Arriba 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 to the County Planning and Zoning Reviewer, 1122 Industrial Park, Espanola, NM 87532. Be sure to check all exemptions, which apply and attach legible copies of all supporting documents.



I, _____, claim an exemption from the requirements of the New Mexico Subdivision Act and the Rio Arriba County Subdivision Regulations for the following reason(s). I certify that this transaction involves:

_____ **THIRTY-FIVE ACRE EXEMPTION:** 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, for the preceding three (3) years. **Attach existing, recorded plat showing size and location of parcel and remainder property.**

_____ **COURT ORDER EXEMPTION:** The division of land created by court order, where the court order creates no more than one lot/parcel per party. **Attach copy of court order and conveyancing document to said party or parties**

_____ **GRAZING OR FARMING EXEMPTION:** 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 conveyancing documents and documents restricting future use to grazing or farming activities. Such documents must contain a covenant running with the land – revocable only by mutual consent of the Code Administrator and the property owner – that the divided land will be used exclusively for grazing or farming activities. The covenant must be signed by the property owner, the buyers or lessee, and the Code Administrator and must be filed of record with the County Clerk.**

_____ **LOT LINE ADJUSTMENT EXEMPTION:** 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 numbers of parcels are not increased. Lot sizes shall not be reduced below minimum lot size requirements. **Attach existing, recorded plat showing parcels and parcel boundaries and proposed plat showing alterations.**

1122 Industrial Park Espanola, New Mexico 87532
PO Box 127 Tierra Amarilla, New Mexico 87575

Phone (505) 753-7774 Fax (505) 753-4732
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FAMILY TRANSFER EXEMPTION: 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 of “immediate family member” means a husband, wife, father, stepfather, mother, stepmother, brother, stepbrother, sister, stepsister, son, stepson, daughter, stepdaughter, grandson, step grandson, granddaughter, step granddaughter, nephew and niece, whether related by birth or adoption. **Attach a copy of proposed conveyancing document, family transfer affidavit, or birth certificate, adoption certificate or other document demonstrating family relationship claimed. Baptismal certificates are not acceptable documentation. (Family transfers seeking to create lots below the minimum lot size will require additional documentation.)**

SECURITY EXEMPTION: 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 and provided that the parcel given for security is consolidated with the original parcel upon release of the mortgage, lien, or deed of trust. **Attach copies of all financing documents.**

ONE HUNDRED FORTY ACRE EXEMPTION: The sale, lease or other conveyance of land that creates no parcel smaller than one hundred forty (140) acres. **Attach existing, recorded plat showing location and size of parcel(s).**

NON PROFIT/SCHOOL EXEMPTION: The division of land to create a parcel that is donated to any trust or nonprofit corporation granted an exemption from federal income tax, as described in & 501©(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 1) copies of I.R.S. exemption letter and/or other documents demonstrating entitlement to exemption; and 2) existing, recorded plat showing land proposed to be donated.**

FIVE YEAR EXEMPTION: The sale, lease or other conveyance of a single parcel from a tract of land, except from a tract within a previously approved subdivision, within any five (5) year period; provided that a second or subsequent sale, lease or other conveyance from the same tract of land with five (5) years of the first sale, lease or other conveyance shall be subject to the provisions of the New Mexico Subdivision Act and these Regulations; provided further that a survey shall be filed with the county clerk indicating the five (5) year holding period for both the original tract and the newly created tract. **Attach existing, recorded plat showing size and location of the original tract, parcel proposed to be divided, any parcels previously divided from the original parcel and dates of all divisions.**

READ ATTACHMENT “A” REGARDING COMMON PROMOTIONAL PLAN
SEE ATTACHMENT “B” REGARDING AFFIDAVIT FOR CLAIM OF EXEMPITON

TO BE FILLED IN BY LAND USE DEPARTMENT STAFF

_____ 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:

FEE PAID: _____
(Attach Copy of receipt of this application)

PLANNING/ZONING REVIEWER

DATE

ATTACHMENT "A"

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 advertisement 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, is 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" (page 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 exemption to the subdivision laws or 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?
3. Subterfuge- something designed to deceive: a plan, action, or device designed to hid a real objective

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

In order to determine whether division and sales are independent and not part of a common scheme 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 a 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 scale 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 shall 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.

Definitions:

Subterfuge- Subterfuge- something designed to deceive: a plan, action, or device designed to hid a real objective

Tantmount-The same as: equivalent to a particular thing in effect, outcome, or value, especially something unpleasant

