



# APPENDIX I

FILE No. \_\_\_\_\_

## CLAIM OF EXEMPTION

To claim an exemption from the requirements of the Taos 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 Taos County Planning Director, 105 Albright Street, Suite C, Taos, New Mexico 87571. Be sure to check all exemptions which apply and **attach legible copies to all supporting documents.**

The Taos County Planning Department will notify you in writing within thirty (30) days as to whether your claim of exemption has been granted. If the claim of exemption is granted, or if you do not hear from the County Planning Department within thirty (30) 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 Taos 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.

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I, \_\_\_\_\_, claim an exemption from the requirements of the New Mexico Subdivision Act and the Taos County Subdivision Regulations 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, for the preceding three (3) years. **Attach Certified Survey showing size and location of parcel and any retained parcel and copies of the proposed documents of conveyance.**
  
- 2. The sale or lease of apartments, offices, stores or similar space within a building. **Attach copies of proposed lease documents of conveyance.**
  
- 3. The division of land within the boundaries of a municipality. **Attach certified survey showing size and location of parcel and any retained parcel and copies of the documents of conveyance.**



- 4. 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 documents of conveyance, including lease(s).**
  
- 5. 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.**
  
- 6. 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.**
  
- 7. 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. **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.**
  
- 8. The division of land to create burial plots in a cemetery. **Attach copy of certified survey showing the boundaries of the property and the location of the cemetery. Also, provide documentation that the cemetery site is not within a flood plain.**
  
- 9. 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. **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").**



- 10. 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.**
  
- 11. 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.**
  
- 12. 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.**
  
- 13. 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 within 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 which holding period shall preclude the use of the exemption to further divide either the original or the newly created tract . **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: One Hundred Fifty Dollars (\$150.00) 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)

\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(City), (State) (Zip)

\_\_\_\_\_  
(Home Phone Numbers) (Cell Phone Number)

Subscribed and Sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_.

SEAL \_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

**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: \$ \_\_\_\_\_ (Attach Copy of Taos County Treasurer Receipt to this Application)



## 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 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 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 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.



**ATTACHMENT "2"**

STATE OF NEW MEXICO            )  
  ) **ss.**  
COUNTY OF TAOS                 )

**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 Taos 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 Taos 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 for Claim of Exemption)

**VERIFICATION**

**SUBSCRIBED AND SWORN TO** before me on the \_\_\_\_\_ day of \_\_\_\_\_ 200\_\_\_\_,  
**by** \_\_\_\_\_, **Applicant for Claim of Exemption.**

\_\_\_\_\_  
**NOTARY PUBLIC**

**(SEAL)**

My Commission Expires: \_\_\_\_\_

