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MONTANA STATE UNIVERSITY EXTENSION

MontGuide

Using a Homestead Declaration to Protect Your Home from Creditors

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By signing a legal document known as a homestead declaration, you can protect up to $250,000 in value of your home against creditors' claims.

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BY SIGNING A LEGAL DOCUMENT KNOWN AS A homestead declaration, Montanans can protect up to $250,000 in value of a home against most creditors' claims. For example, if a person incurs an overwhelming gambling debt, up to $250,000 in value of his/her home would still be sheltered.

The purpose of this MontGuide is to provide Montanans with information about establishing a homestead declaration.

What is a homestead?

A homestead is the house or mobile home that a person lives in and land on which it sits. The property must be a person's primary residence for it to be eligible for a homestead declaration. This may include a mobile home or manufactured home where the owner does not own the land the mobile home is situated on.

The term homestead also includes any improvements legally defined as "appurtenances" to the land, such as a fence. However, home furnishings and appliances are not eligible for the homestead declaration.

Limit on dollar value.

The maximum value of exempt property for a homestead declaration is $250,000. The legal value of the property is the amount appearing on the last completed county assessment roll at the county treasurer's office. The previous value of exempt property was $100,000. If a person filed a homestead declaration under the prior value, he or she does not need to refile to receive the $250,000 exemption

If the value of the property exceeds $250,000, creditors may request the district court judge to partition the land and sell part of it or all of it. If property is sold, the person who filed the homestead declaration has protection for the first $250,000 of proceeds. Sale proceeds up to $250,000 are exempt from creditors' claims for 18 months.

Example 1: Joe owns a house that has an assessed value of $80,000 with a $50,000 mortgage balance. Joe's homestead declaration protects only the $30,000 equity Joe has in the house, even though the maximum exemption is $250,000 ($80,000-$50,000 =$30,000).

Example 2: Doug owns a home that has an assessed value of $275,000 with a mortgage balance of $10,000; thus, his equity is $265,000 ($275,000 - $10,000 = $265,000). Doug's homestead declaration protects up to $250,000 in value of the home, but the remaining $15,000 in equity is available to creditors. And, creditors could force sale of the home to recover part or all of the debt they are owed.

If a person is co-owner of real property titled as a tenancy-in-common, this means he/she has an undivided interest in the property. If a tenant-in-common claims a homestead exemption, he/she is limited to an exemption amount proportional to his/her undivided interest.

Example 3: Debbie and Mike own a house with an assessed value of $90,000 as tenants-in-common with $50,000 as the remaining balance on the mortgage. Their combined equity in the home is $40,000. Debbie has an undivided interest of ½ ($20,000) and Mike has an undivided interest of ½ ($20,000) ($90,000 - $50,000 = $40,000 ÷ 2 = $20,000). The amount of equity that Mike and Debbie can protect against creditor claims is limited to their undivided interest of $20,000, each for a total of $40,000.

Who should sign?

Under Montana property law, a spouse may acquire an interest in property at marriage unless there is a premarital agreement to the contrary. Even though a spouse is not listed on the deed or other documents of title or may not have directly contributed money to pay for the property, the spouse has a "legal interest" in the property because of the marriage.

Therefore, both spouses should sign the homestead declaration. If one spouse does not sign, his or her interest in the property is not exempt.

Homestead declaration form

The State of Montana Law Library has forms available for download at http://www.courts.mt.gov/library/topic/end_life.mcpx. An attorney can also help a person execute a homestead declaration.

The recording fee for a document is $7 per page. If a document does not meet the requirements it is referred to as "non-standard" and the cost is $7 per page plus $10. Details about the standard format are provided in the Montana Code Annotated, http://data.opi.mt.gov/bills/mca/7/4/7-4-2636.htm. As an example, the name and mailing address of the person to whom the document is to be return is to be included in the margin in the upper left-hand corner of the first page of each document. The document is non-standard if no return address in included in the upper left hand corner. There are many more requirements regarding the margins, color of ink, and size of paper.

A complete **legal** description of the homestead should be used on the form. The legal description can be found on a deed or abstract to the real estate. If the property is not accurately described, the declaration may not be valid.

When does the homestead declaration not provide protection from creditors?

There are specific instances in which the Montana Legislature decided that it would be unjust to provide a homestead exemption. For example, if a creditor obtains a judgment against a homeowner before a homestead declaration is filed, the declaration may not protect the $250,000 in value.

A person who performs repairs or other work on a home or who supplies materials for such work is allowed by law to place a "lien" against the home if payment is not received for services rendered or supplies provided. A homestead declaration provides no protection in such cases.

A financial institution holding a mortgage on the property also has a lien against the property for any unpaid balance on the house. A homestead declaration provides no protection for failure to pay the mortgage.

The declaration may not provide protection in case of bankruptcy unless it was filed before bankruptcy was declared.

As a part of the Medicaid Estate and Recovery Program, the State of Montana, under certain circumstances, could file a lien on the property of a homeowner who is in a nursing home and whose medical costs were paid by Medicaid. The lien is the amount of Medicaid payments made on behalf of the person receiving care. If a lien exists, the lien amount must be paid before the title to the property can be sold or transferred.

For information on the Medicaid Lien and Estate Recovery Program, contact the address below and ask for the following publication:

Montana Lien & Estate Recovery Program (SLTC-011)

DPHHS – QAD TPL Unit
2401 Colonial Drive, 2nd Floor
PO Box 202953
Helena, MT 59620-2953
1-800-694-3084
http://dphhs.mt.gov/sltc/moreinformation/brochures/index.shtml, then click on Montana Lien and Recovery Program

How can I undo a homestead declaration?

In the case of a divorce, a couple may wish to undo the declaration. Or, an individual may decide to sell one home, invest the proceeds in another, and then file a homestead declaration on the new home.

A homestead can be "undone" by a declaration of abandonment. If married, both husband and wife must acknowledge "abandonment." A declaration of abandonment is effective only from the time it is filed in the clerk and recorder's office in which the homestead declaration was originally recorded.

Summary

In Montana, up to $250,000 in assessed value of a home or mobile home can be protected against most creditors' claims if the owner files a homestead declaration. After the homestead declaration form is completed, signed and notarized, it should be filed in the office of the clerk and recorder in the county in which the home or mobile home is located. If married, both spouses should sign the declaration.

Acknowledgment

This MontGuide has been reviewed by professionals from the:

- Office on Aging, Department of Public Health and Human Services
- Business, Estates, Trusts, Tax and Real Property Section, State Bar of Montana

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References

Montana Code Annotated, §70-32-101 through §70-32-303; §7-4-2636 and §7-4-2637

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