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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 $100,000 in value of your home against creditors' claims. Includes sample forms.

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BY SIGNING A LEGAL DOCUMENT KNOWN AS A homestead declaration, Montanans can protect up to $100,000 in value of a home against most creditors' claims. For example, if a person incurs an overwhelming gambling debt, up to $100,000 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. Also included are homestead declaration and declaration of homestead abandonment forms.

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. 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 $100,000. The legal value of the property is the amount appearing on the last completed county assessment roll at the county treasurer's office.

If the value of the property exceeds $100,000, 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 $100,000 of proceeds. Sale proceeds up to $100,000 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 $100,000 ($80,000-$50,000 =$30,000).

Example 2: Doug owns a home that has an assessed value of $150,000 with a mortgage balance of $20,000; thus, his equity is $130,000 ($150,000 - $20,000 = $130,000). Doug's homestead declaration protects up to $100,000 in value of the home, but the remaining $30,000 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 $20,000 and Mike has an undivided interest of $20,000 ($90,000 - $50,000 = $40,000 ÷ 2 = $20,000). The amount that Mike and Debbie can each claim as a homestead is limited to their undivided interest of $20,000.

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.

Recording the homestead declaration

After the homestead exemption declaration form is completed, signed and notarized, it should be recorded in the clerk and recorder's office in the county in which the home or mobile home is located. In 2006 the recording fee is $7.00.

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 $100,000 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 off 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)

The Recovery Unit
Attn: Estate Division
201 East Lyndale Avenue #50-503
Helena, MT 59601
1 (800) 694-3084

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 the 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.

An example of the abandonment form is on the back page.

Homestead declaration form

Montana does not have a standard homestead declaration form. The Montana Department of Public Health and Human Services has granted the MSU Extension Service permission to reprint a form from the booklet Montana Legal Guide to Long-Term Care Planning. The form is on the next page. An attorney can also help a person execute a homestead declaration.

Note that the form provides a place for a complete **legal** description of the homestead. If the property is not accurately described, the declaration may not be valid. A legal description of your property can be found on your deed, title or mortgage.

Summary

In Montana, up to $100,000 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 Legal Guide to Long-Term Care Planning, Montana Department of Public Health and Human Services.

Montana Codes Annotated, 70-32-101 through 70-32-303.