

1 shall within 30 days of receipt of the information from the department of revenue notify each party indicated as
 2 a transferee that:

3 (i) the party is required to submit a complete ownership update form and the required fee within 60
 4 days of the notice; and

5 (ii) ownership of the water right will not be changed in the department's records until the complete
 6 ownership update form is provided.

7 ~~(b)(c)~~ The appropriate fee must be paid at closing or upon completion of the transfer of real property
 8 as provided in 85-2-426.

9 ~~(e)(d)~~ The transferee of a water right, after receiving notice as provided in subsection ~~(2)(d)~~ (2)(e), is
 10 responsible for compliance with this section.

11 ~~(d)(e)~~ If the department receives notice from the department of revenue that a property transfer has
 12 occurred and the proper fee was not received by the department, the department shall send a notice to the
 13 transferee requesting payment of the fee. If the transferee does not pay the fee within 60 days, the department
 14 may assess a penalty against the transferee pursuant to 85-2-431.

15 (3) (a) Except as provided in subsection (3)(b), if if the realty transfer certificate discloses the division
 16 of the place of use of a water right among separate parcels, ~~the person dividing each transferee receiving a~~
 17 portion of the water right shall ~~complete and~~ file with the department a complete water right ownership update
 18 form, a map, a copy of recorded deed or deeds or any other instruments confirming the transfer, and the
 19 required fee.

20 (b) If a complete water right ownership update form is not filed by all parties pursuant to subsection
 21 (3)(a), the parties must be reflected as co-owners on the water right.

22 (4) If a person exempts a water right pursuant to 85-2-403, the person shall file with the department ~~,~~
 23 ~~on~~ a complete form provided by the department, ~~information~~ describing the exempting of the water right and the
 24 appropriate fee.

25 (5) If a person severs a water right from appurtenant property without ~~selling~~ conveying the property,
 26 the person shall file with the department, ~~on~~ a complete form provided by the department, ~~information~~
 27 describing the severance and the appropriate fee.

28 (6) If the realty transfer certificate submitted with a deed or other instrument indicates that a water

1 right is being transferred, severed, divided, or exempted (reserved), the clerk and recorder may not record the
2 deed or instrument unless there is submitted with the deed or instrument a certification under penalty of false
3 swearing, on a form provided by the department and signed by the transferor and transferee, that states either:

4 (a) that the documents and fee necessary to comply with this section are held in escrow, in which
5 case the certification must also be signed by the escrow agent; or

6 (b) if there is no escrow, that the transferor and transferee certify that they have prepared-filed or
7 mailed the required documents ~~and will send the required documents~~ and fee with or to the department ~~within~~
8 ~~60 business days of recording, in which case the certification must also require the transferee to acknowledge~~
9 ~~that failure to file the appropriate documents and fee with the department will result in the department assessing~~
10 ~~the penalty in 85-2-431 against the transferee.~~

11 (7) Any written agreement to transfer land that has appurtenant water rights on record with the
12 department must contain the following disclosure or words of a similar nature:

13 "WATER RIGHT OWNERSHIP UPDATE DISCLOSURE:

14 By Montana law, failure of the parties at closing or transfer of real property to pay the required fee to
15 the Montana Department of Natural Resources and Conservation for updating water right ownership may result
16 in the transferee of the property being subject to a penalty. Additionally, in the case of water rights being
17 exempted, severed, or divided, the failure of the parties to comply with section 85-2-424, MCA, could result in a
18 penalty against the transferee and rejection of the deed for recording."

19 (8) Except as provided in subsection (2), the department shall update its records to reflect new
20 ownership without collection of a transfer fee within 30 days of:

21 (a) receiving a withdrawal of a water right, or an interest in a water right, by an owner thereof;

22 (b) receiving an order to the department from the water court or other court of competent jurisdiction
23 that modifies or terminates ownership of a water right; or

24 (c) learning of a clerical error resulting from an error on a water right ownership update.

25 (9) In the event of a dispute over the ownership of a water right, the department shall, within 30 days of
26 being notified of the dispute, certify the matter to the water court or other court of competent jurisdiction for
27 resolution.

28 (10) The department may not delay updating ownership based on non-payment of transfer fees by a

1 transferee. The department's sole remedy in the event of non-payment of transfer fees is to assess a penalty
2 and seek collection from the transferee pursuant to 85-2-431.

3 (11) For the purposes of this section, "complete" means that the information requested in the form has
4 been supplied together with a copy of the executed deed or deeds or any other instruments confirming the
5 transferee's ownership of each water right listed on the form. The department shall notify the transferee of any
6 deficiencies causing the form to be deemed not complete within 60 days of submission."

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8 **Section 2.** Section 85-2-431, MCA, is amended to read:

9 **"85-2-431. Penalty.** (1) A person who fails to comply with the requirements of 85-2-424 is liable for a
10 civil penalty of not more than ~~\$75~~ \$300.

11 (2) An action to recover the penalty ~~must~~ may be brought by the department and filed in the district
12 court for the first judicial district. At the discretion of the department, the judgment may be certified to the district
13 court in the county where the real property is located.

14 (3) The department is entitled to recover its reasonable costs for recovering the penalty, including but
15 not limited to attorney fees or charges assessed by a collection agency.

16 ~~(3)(4)~~ Any penalty fee collected under this section must be deposited in the water right appropriation
17 account provided for in 85-2-318."

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