

Using a Homestead Declaration to Protect Your Home From Creditors



MontGuide 199815

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Protection

- Now up to \$250,000 in value of a home against most creditor claims



Prior Law

- Exempt Property
 - \$40,000
 - \$60,000
 - \$100,000



If previously filed declaration

- Don't have to refile to receive \$250,000 protection



What is a Homestead?

- House, condo, townhouse, manufactured home or mobile home
- Land on which it sits
- Any improvements, fences, etc.



Manufactured Home or Mobile Home

- Owner does not have to own the land the mobile home/manufactured home is sitting on



Homestead

- Must be person's primary residence



Not Eligible

- Doesn't include:
 - Home furnishings
 - Appliances



Legal Value

- Amount appearing on the last completed county assessment roll
- From county treasurer's office



Example:



- Joe's house:
 - Assessed value = \$80,000
 - Mortgage Balance = \$50,000
 - Protection = \$30,000

Example:



- Doug & Laura's house:
 - Assessed value = \$275,000
 - Mortgage Balance = \$10,000
 - Remaining Balance = \$265,000
- *** **BUT**, Maximum Protection is \$250,000

Who Should Sign?

- Both spouses should sign the declaration
- Must be notarized



Who Should Sign?

- A spouse may acquire interest in property at marriage unless there is a premarital agreement



Tenants in Common

- Each own individual interest
- Can only file for portion of undivided interest



Tenants in Common:

- Jack and Jill
 - Each can file for 1/2 of \$250,000 or \$125,000



Standard Form

- MSU Extension:
 - www.montana.edu/extensionecon/financialmgtpublications.html



Homestead Declaration Form



- A document that does not meet the requirements is considered Non-standard
 - Montana Code Annotated
 - ❖ §7-4-2636

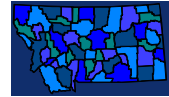
Undo a Declaration

- Declaration of Abandonment form

➤ www.montana.edu/extensionecon/financialmgtpublications.html



Record



- Clerk and Recorder's office
- In the county where the home is located

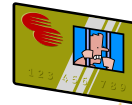
Recording Fees

- Standard form
 - \$7.00 per page
- Non-standard form
 - \$7.00 per page plus \$10.00



No Protection

- Creditor obtains judgment against the homeowner before declaration is filed



No Protection

- Against liens for
 - Services
 - Supplies



No Protection

- Failure to pay the mortgage



No Protection

- Bankruptcy, unless filed before bankruptcy was declared



No Protection

- Medicaid Estate & Recovery Program
 - Lien on home of homeowner in a nursing home whose medical costs were paid by Medicaid



MontGuide on the Web



- www.montana.edu
Search "*Homestead Declaration*"

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