



Patti Goroski

Using a Homestead Declaration to Protect Your Home from Creditors

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BY SIGNING A LEGAL DOCUMENT KNOWN as a homestead declaration, Montanans can protect up to **\$350,000** in **equity** of their home against most unsecured debts. **Equity** is the difference between what an owner owes on a mortgage and the current value of the home. For example, if a homeowner had recorded a homestead declaration and then later incurred an overwhelming debt from medical bills, the owner has protection up to \$350,000 in equity of the home. This MontGuide answers questions residents have asked about the Montana homestead declaration.

How is “homestead” defined in Montana?

A homestead is the house a person lives in and land on which it stands. The home must be a person’s primary residence to be eligible for a homestead declaration. A mobile home or manufactured home is also eligible for a homestead declaration. The owner does not have own the land under which the mobile or manufactured home sets. However, the owner must reside on the premises.

The term homestead also includes any improvements legally defined as “appurtenances” to the land, such as a fence, separate garage, and wells used for domestic water use. However, the improvements cannot exceed the amount of the homestead declaration exemption--\$350,000. Home furnishings and appliances are not eligible for the homestead declaration.

When did the increase in the Montana homestead declaration become effective?

The maximum value of a Montana homestead declaration is \$350,000 as of May 10, 2021. The legal value of the property for figuring the equity held by the owner is the dollar value appearing on the current county assessment roll at the county treasurer’s office.

The 67th Montana Legislature also passed a statute requiring the homestead declaration to increase by four percent every calendar year after 2021. In 2022 the homestead exemption will be \$364,000; \$378,560 in 2023; and \$393,702 in 2024 and so on.

Do I have to refile my Montana homestead declaration if I filed one before May 10, 2021?

Not necessarily. Past Montana legislatures have provided increased values for the homestead declaration starting with \$40,000; then \$60,000; \$100,000; and \$250,000. If a person filed a homestead declaration under any of the prior exemptions and listed the actual amount, the person may be more comfortable filing a new homestead declaration for \$350,000. Because of the continuing changes in the amount of the homestead declaration, most homestead declarations no longer list the dollar amount.

What if the equity in my home exceeds the Montana homestead exemption?

If the value of equity in the home exceeds \$350,000 for 2021, creditors may request the district court judge to divide (partition) the land and sell part or all of it. The person who filed the homestead declaration has protection for the first \$350,000 in equity of the sale proceeds. These proceeds are exempt from unsecured creditor’s claims for 18 months.

Example 1: Joe owns a house with a 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 \$350,000 (\$80,000 value - \$50,000 mortgage equity).

Example 2: Doug owns a home with a value of \$425,000 with a mortgage balance of \$10,000. His equity in the home is \$415,000 (\$425,000 - \$10,000 mortgage). Doug’s homestead declaration only protects up to \$350,000 of his equity in the home. The remaining \$65,000 is available to unsecured creditor’s claims (\$415,000 equity - \$350,000 exemption). Creditors could force the sale of Doug’s home to recover part or all the debt he owes them.

Does the property title have an impact on the amount an individual has under the exemption for the Montana homestead declaration?

Yes. Montanans typically own property titled in one of three ways, as sole ownership, joint tenancy with right of survivorship and tenants in common. For more information see MSU Extension MontGuide: <http://store.msueextension.org/publications/FamilyFinancialManagement/MT198907HR.pdf>

If an owner has the title in **sole ownership**, the owner has the full \$350,000 homestead exemption.

If a person is co-owner of real property titled as a **tenant-in-common**, each has an undivided interest in the property as written on the deed or otherwise proportional if not specifically written. For example, if two people title their home as a tenant-in-common, each owns one-half undivided interest unless the deed shows a different proportion, such as Jim owns 75% and Sally owns 25%. If a tenant-in-common files a homestead declaration, the exemption amount is proportional to the undivided interest each owns.

Example 3: Debbie and Mike own a home as tenants-in-common. The value of the home is \$90,000. They have \$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 value - \$50,000 remaining balance on loan = \$40,000 combined equity ÷ 2 = \$20,000). The amount of equity they can protect against creditor claims is their undivided interest of \$20,000 each. Mike and Debbie each would need to file a homestead declaration.

If the title is in **joint tenancy with right of survivorship**, then any of the joint owners have the full exemption of \$350,000. However, all owners must sign the homestead declaration, the deeds, and any related property documents such as a mortgage, in the same way.

Example 4: Heather and Noah own a home with a value of \$150,000 as joint tenants with right of survivorship. They live in the home. They signed the deed and title to their home as Heather Ann Mason and Noah Lee Mason, so they signed the homestead declaration the same way.

They have \$50,000 as the remaining balance on the mortgage. Their joint equity in the home is \$100,000 (\$150,000 value of home - \$50,000 balance on loan). The amount of equity either Heather or Noah can protect against unsecured creditor claims is \$100,000.

If a couple is married, should both sign the Montana homestead declaration?

Yes. Under Montana property law, a spouse acquires an interest in property at marriage unless there is a premarital agreement to the contrary. Even though a spouse's name may not appear on the deed or other documents of title, the spouse has a "legal interest" in the property because of the marriage. For this reason, both spouses should sign the homestead declaration. If one spouse does not sign, that spouse's interest in the property is not exempt from unsecured creditor's claims.

Does my Montana homestead declaration need to be refiled if a joint tenant passes away?

Not necessarily. When owners title real property in joint tenancy with right of survivorship, the property passes automatically to the surviving joint tenant or tenants upon death of one of the joint tenants. Even if the deceased person had written a will naming someone other than the surviving joint tenant to receive the real property, the property automatically transfers by Montana law to the surviving joint tenant.

The surviving joint tenant can file with the county clerk and recorder a document, *Affidavit of Surviving Joint Tenant to Terminate Joint Tenancy Interest of Decedent* to reflect this change in title in the property records.

<https://www.montana.edu/estateplanning/affdavittoterminejointtenancyform.pdf>

The surviving joint tenant may also wish to file the affidavit to make future transfers easier for **heirs** (persons who inherit real and personal property under intestate succession statutes to the property of a person who died) or **devisees** (persons listed in a will to receive real or personal property).

This procedure allows the surviving joint tenant to own the property in sole ownership. If the joint tenancy owners originally filed a homestead declaration under any of the prior exemptions and listed the dollar amount, the person may be more comfortable filing a new homestead declaration for the \$350,000.

Where can a homeowner find a Montana homestead declaration form?

The Montana Legal Developer program with Aging Services has granted MSU Extension permission to provide a form here. <https://www.montana.edu/extensionecon/famileconomics/homsteaddeclaration-fillableform.pdf>. An attorney can also give legal advice about a Montana homestead declaration and supply proper documents.

Where is a Montana homestead declaration filed?

A property owner files the homestead declaration form with the clerk and recorder's office in the county where the home, mobile, or manufactured home is located.

What is the cost of filing a Montana homestead declaration?

The recording fee for a homestead declaration is \$8 per page in 2021. Check with the Clerk and Recorder in the county where the property is to verify the recording fees, since the Montana legislature changes them from time to time.

If the homestead declaration does not meet the requirements of the office of the clerk and recorder, it is "non-standard." The cost is \$8 per page plus \$10 per document during 2021.

As an example of requirements, in the upper left-hand corner of the first page, the owner should list the name and mailing address of the person to whom the clerk and recorder should return the homestead declaration. If no return address appears in the upper left-hand corner, then the document is non-standard and the extra fee applies.

The declaration must also have a statement that the person signing it resides on the premises and claims it as a homestead. There are other requirements about the margin, color of ink, and size of paper. Additional details about the standard format are available in the Montana Codes Annotated https://leg.mt.gov/bills/mca/title_0070/chapter_0040/part_0260/section_0360/0070-0040-0260-0360.html

The declaration must include a complete legal description of the property. The legal description is on the deed or abstract to the real estate. If a person does not accurately describe the property in the homestead declaration, then it may not be valid. For example, a street address, using abbreviations, or a description from the tax bill are not legal descriptions.

What are the circumstances when a Montana homestead declaration does not protect equity in a home from creditors?

There are specific instances in which the Montana Legislature decided it would be unjust to allow a homestead exemption. For example, if a creditor obtains a judgment against a homeowner before the filing of a homestead declaration, then the declaration does not protect up to \$350,000 in equity. If an owner uses the property as collateral for a loan, the homestead declaration does not apply.

If a homeowner does not pay for services performed or supplies provided, the person who repairs or performs other work on a home or who supplies materials can legally place a "lien" against

a home with the county clerk and recorder. The homestead declaration does not provide protection in such cases.

A financial institution holding a mortgage on the home also has a lien against the home for any unpaid balance. A homestead declaration does not protect owners who fail to make payments on their mortgages. Nor does the homestead declaration provide protection if an owner does not pay property taxes or special or rural assessments (SIDs or RIDs).

A person considering bankruptcy should seek legal counsel for when and how to claim a homestead exemption filed before a bankruptcy proceeding began.

As a part of the Medicaid Estate and Recovery Program, the State of Montana could also file a lien on the property of a homeowner for whom Medicaid paid medical costs. The lien is for Medicaid payments made on behalf of the person receiving care in the nursing home. If a lien exists, the owner or the heirs must pay the amount of the lien before the owner can sell or transfer the property.

For information about 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 59620-2953z

1-800-694-3084

Download publication at: <https://medicaidprovider.mt.gov/docs/nursingfacility/SLTC-011MTMedicaidLienEstateRecoveryProg.pdf>

How can I undo a Montana 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 a new home, and then file a homestead declaration on the new home. A couple may also decide to move to a new residence and keep their former home as a rental unit.

A homestead can be "undone" by a declaration of abandonment. If married, both husband and wife must acknowledge the "abandonment." A declaration of abandonment is effective only if the owners record it in the county clerk and recorder's office in which they recorded the original homestead declaration. A form for declaration of abandonment of a homestead declaration is here: (<https://www.montana.edu/extensionecon/famileconomics/homesteaddeclarationabandonmentform.pdf>)

If a Montana homeowner files a homestead declaration, up to \$350,000 of the homeowner's equity in the home, mobile home or manufactured home can be protected against most unsecured creditor's claims as of May 10, 2021. The owner completes, signs, and has the Montana homestead declaration notarized. The owner

then files the document in the office of the clerk and recorder in the county in which the home is located. If married, both spouses should sign the declaration and live on the property.

Acknowledgment

Representatives of the following reviewed this MontGuide. They recommend its reading by individuals interested in learning about a Montana homestead declaration.

- Legal Developer, Aging Services, Senior and Long-Term Care, Department of Public Health and Human Services
- Business, Estates, Trusts, Tax and Real Property Section, State Bar of Montana
- Montana County Clerk and Recorders

References

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

Senate Bill Number 114, 67th Montana Legislature, <https://leg.mt.gov/bills/2021/sesslaws/ch0442.pdf>

Disclaimer

This MontGuide is based on current homestead declaration statutes and examples are for illustration purposes only. The reader should not interpret information provided in this MontGuide as legal or accounting advice, which may vary based upon the reader's specific circumstances.



MT199815HR, CURRENT AS OF 12/21
FAMILY FINANCIAL MANAGEMENT
(CREDIT AND MONEY MANAGEMENT)

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