



Patti Goroski

Using a Homestead Declaration to Protect a Home from Creditors

By Marsha A. Goetting, Ph.D., CFP®, CFCS, Professor and Extension Family Economics Specialist, and Keri Hayes, Publications Assistant, Montana State University – Bozeman

By signing a legal document known as a homestead declaration, Montanans can protect up to \$393,702 (2024) 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 records a homestead declaration and then later incurs overwhelming debts such as medical bills, the owner has protection up to \$393,702 (2024) in equity of the home.

Unsecured debt is an obligation or debt without specific property like a house or car, serving as collateral for payment of the debt. Examples of unsecured loans are medical bills, personal loans, student loans, and credit cards. This MontGuide answers frequently asked questions about a Montana homestead declaration.

How is ‘homestead’ defined in Montana?

A homestead is the house a person lives in and the 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 to own the land under which the mobile or manufactured home is set. However, the owner must live in the mobile or manufactured home to qualify for a homestead declaration.

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 of \$393,702 (2024). Home furnishings and appliances are not eligible for the homestead declaration.

How is the annual increase in the Montana homestead declaration computed?

The legal value of the property for figuring the equity held by the owner is the dollar value appearing on the current county assessment at the county treasurer’s office. The 67th Montana Legislature passed a statute requiring the homestead declaration to increase by four percent every calendar year after 2021. In 2024, the homestead exemption is \$393,702, \$409,450 in 2025, \$425,827 in 2026, and \$442,659 in 2027.

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

No. The Montana legislature provided increases in the homestead declaration with the initial protection of \$40,000. Several years later, the amount was increased to \$60,000; then to \$100,000, \$250,000, and \$350,000. Because of the continuing changes in the homestead declaration, one does not need to list the dollar amount on the form. The exemption allowed is the amount allowed in the year one takes advantage of the declaration to protect a home from creditors’ claims.

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

If the value of equity in a home exceeds \$393,702 (2024), 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 \$393,702 (2024) in equity of the sale proceeds. These proceeds are exempt for 18 months from unsecured creditor’s claims.

Example: Joe owns a house with a value of \$300,000 and a \$50,000 mortgage balance. Joe’s homestead declaration protects only the \$250,000 he has in equity (\$300,000 value – \$50,000 mortgage = \$250,000) even though the maximum homestead declaration exemption is \$393,702 (2024).

Example – Ownership: Karen owns a home with a value of \$425,000 with a mortgage balance of \$10,000. Her equity in the home is \$415,000 (\$425,000 – \$10,000 mortgage = \$415,000). Karen’s homestead declaration only protects up to \$393,702 (2024) of her equity in the home. The remaining amount over the equity she has in the home of \$21,298, which is available to unsecured creditor’s claims. Creditors could force the sale of Karen’s home to recover part or all of the debt she owes them.

Does the way property is titled impact the Montana homestead declaration?

Montanans typically own property titled in one of three ways: sole ownership, joint tenancy with right of survivorship or tenants in common. In recent years, some Montanans have placed their property in revocable trusts.

If an owner has the title in sole ownership, the owner has the full \$393,702 (2024) homestead exemption.

If a person is a 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 otherwise. If two people title their home as tenants-in-common, each owns one-half of the undivided interest in the home. Jim has 50 percent ownership and Sally, as the other tenant-in-common, has the other 50 percent ownership.

A deed can show any proportion, such as Jim with 75 percent ownership and Sally with 25 percent or Jim with 60 percent ownership and Sally with 40 percent. When a tenant-in-common files a homestead declaration, the exemption amount is proportional to the undivided interest each owns.

Example – Tenants in Common: Debbie and Mike own a home as tenants-in-common. The value of the home is \$500,000. They have a \$50,000 remaining balance on the mortgage. Their combined equity in the home is \$450,000. Debbie has an undivided interest of half (\$225,000) and Mike has an undivided interest of half (\$225,000). (\$500,000 value – \$50,000 remaining balance on loan = \$450,000 combined equity ÷ 2 = \$225,000) The amount of equity they can protect against creditor claims is their undivided interest of \$225,000. Mike and Debbie can each file a homestead declaration for their respective undivided interest of half.

If the title is in joint tenancy with right of survivorship, then any of the joint owners have the full exemption of \$393,702 (2024). However, all owners must sign the homestead declaration, deeds, and any related property documents such as a mortgage in the same way.

Example – Joint Tenancy with Right of Survivorship: Heather and Noah own a home with a value of \$425,000 as joint tenants with right of survivorship. They signed the deed and title to their home as Heather Ann Mason and Noah Lee Mason. They signed the homestead declaration the same way. They have a \$50,000 remaining balance on the mortgage. Their joint equity in the home is \$375,000 so that is the amount of equity either Heather or Noah can protect against unsecured creditor claims.

If the title is in the name of a revocable trust the settlors (those who establish the trust) have the full exemption of \$393,702 (2024). Settlers are the ones who place assets in the name of the trust. The settlors could include a statement in their declaration wording to the following effect: We are settlors of a revocable trust, and we transferred the described property to that trust.

Example – Revocable Trust: As part of their estate plan, Cindy and Tom have placed their home in the name of their revocable living trust. The name they chose for the trust is: The Cindy Brown and Tom Brown Revocable trust established June 17, 2024. The value of the home in the name of the trust is \$500,000. Because they have no mortgage, their equity in the home is \$500,000. The amount of equity protection they have is the maximum exemption of \$393,702 (2024).

For more information see MSU Extension MontGuide *Property Ownership: Estate Planning*, store.msuextension.org/Products/Property-Ownership-Estate-Planning-MT198907HR__MT198907HR.aspx and *Revocable Living Trusts*, store.msuextension.org/Products/Revocable-Living-Trusts-MT199612HR__MT199612HR.aspx or ask for copies from a local MSU Extension office.

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

Yes. Under Montana property law, a spouse gets an interest in property at marriage unless a signed premarital agreement contract exists. For more information, see MSU Extension MontGuide, *Premarital Agreement Contracts in Montana: Financial and Legal Aspects*, store.msuextension.org/Products/Premarital-Agreement-Contracts-in-Montana-Financial-and-Legal-Aspects-MT201212HR__MT201212HR.aspx, or request a copy from a local MSU Extension office.

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 a Montana homestead declaration need to be refiled when a joint tenant passes away?

Not necessarily. When owners title real property in joint tenancy with the right of survivorship, the property passes automatically to the surviving joint tenant or tenants upon the 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 a document with the county clerk and recorder. The *Affidavit of Surviving Joint Tenant to Terminate Joint Tenancy Interest of Decedent* can reflect this change in title in the property records, montana.edu/estateplanning/affadavittoterminejointtenancyform.pdf.

The surviving joint tenant may also wish to file an affidavit to make future transfers easier for heirs (persons who inherit real and personal property under intestate succession statutes from 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.

Where can a homeowner find a Montana homestead declaration form?

The Montana Legal Developer Program with Aging Services, Department of Public Health and Human Services has provided MSU Extension a form at this website: montana.edu/extensionecon/familyeconomics/homsteaddeclaration-fillableform.pdf. An attorney can also give legal advice about a Montana homestead declaration and provide proper documents.

Where is the 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 found.

What is the cost of filing a Montana homestead declaration?

The recording fee for a homestead declaration (using the sample form meeting the Montana documents standards) is

\$8 per page in 2024. Check with the clerk and recorder in the county where the property is to verify the recording fees since the Montana legislature changes fees from time to time.

The declaration must include a complete legal description of the property. The legal description is on the deed or abstract of the real estate. If you do not have the deed or abstract, contact the clerk and recorder in the county where the home is found.

If a person does not accurately describe the property in the homestead declaration, then it may be invalid. For example, listing a street address, using abbreviations, or a description from the tax bill are not considered legal descriptions. The full metes and bounds description; subdivision with lot number or certificate of survey number must be included in the description.

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

There are specific instances in which the Montana Legislature decided it is 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 \$393,702 (2024) in equity. Or, if an owner uses the property as collateral for a loan, the homestead declaration will not apply.

If a homeowner did not pay for services performed or supplies provided, a contractor or other person who repairs or performs 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 this case.

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 do not 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 before a bankruptcy court procedure begins.

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 a 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 59620-2953
1-800-694-3084

Download the publication at:

www.dphhs.mt.gov/assets/sltc/ADRC/sltc011mtmedicaidlienestaterecoveryprog.pdf

How do I cancel a Montana homestead declaration?

In the case of a divorce, a couple may wish to undo the homestead 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 declaration can be undone with 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 found here: montana.edu/extensionecon/familyeconomics/homesteaddeclarationabandonmentform.pdf. An attorney can also give legal advice about a Montana homestead declaration abandonment form.

Summary

If a Montana homeowner files a homestead declaration, up to \$393,702 (2024) of the homeowner's equity in the home, mobile home or manufactured home can be protected against most unsecured creditor's claims. 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 found. If married, both spouses must sign the declaration and physically live in the home.

Acknowledgment

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

- Business, Estates, Trusts, Tax and Real Property Section, State Bar of Montana
- Montana County Clerk and Recordors Association

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, leg.mt.gov/bills/2021/sesslaws/ch0442.pdf

Disclaimer

This MontGuide is based on Montana homestead declaration statutes effective at the date of printing 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.



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