

Attachment A

Below is a list of the new transfer types in part 4 of the RTC form. A definition is given along with what instrument needs to be recorded for that specific transfer type.

- **Sheriff's Sale - mortgage** - A mortgage involves two parties—the property owner who borrowed the money and the bank or lender—and is a written agreement executed by the property owner to secure the payment of a loan that is evidenced by a promissory note. If the property owner misses scheduled payment(s) and the lender sends a notice of default, the foreclosure process is initiated. The lender “accelerates” the time for all payment under the loan so that the full amount is due. The borrower cannot stop the foreclosure proceedings by paying only the late payments; the entire loan must be paid off. For one year after the foreclosure sale, the borrower has the right to redeem the property back by paying the amount of the loan, any taxes or repair cost the buyer paid, and interest. Also, during this one year period of “redemption”, the borrower is entitled to retain possession if they and their family occupied the property as a home. Publicly advertising mortgage sales in the foreclosure process is required. The notice of sale must be physically posted on the property and legal notification to all parties claiming an interest in the property is required. **The instrument that will be recorded is the sheriff's certificate of sale.**
- **Sheriff's Sale - trust indenture** - A trust indenture involves three parties—the borrower (also known as the grantor) , the trustee (often an attorney), and the name of the bank or other lender set out as a beneficiary—and is a written agreement executed by a borrower to give bare legal title to a trustee to secure payment of a loan. When a trust indenture foreclosure begins, the borrower can stop it by paying only the delinquent loan installment(s), interest, late fees, and foreclosure costs. The whole loan does not have to be paid to stop the foreclosure process. There is not a post-sale period of redemption with trust indentures. The foreclosure sale is final and the borrower loses all rights to possession of the property. The trust indenture also gives the trustee the power to sell the property if the borrower defaults. Publicly advertising trust indenture sales in the foreclosure process is required. Legal notification to all parties claiming an interest in the property is required. Montana law recognizes the borrower (the grantor) under the trust indenture as the “true owner” and treats the trust indenture as only a financing device. **The instrument that will be recorded is the trustee's deed to the purchaser.**
- **Sheriff's Sale - other** – This is a sale of a property to satisfy a judgment that does not arise from default of a mortgage or trust indenture. (i.e., a divorce in which the couple cannot agree to a property split, requiring the judge to order the property sold and the proceeds, after payment of any mortgage, is split). **The instrument that will be recorded is the court's judgment decreeing transfer of title (the court may order the parties to execute a deed carrying out the judgment; in that case the deed rather than the judgment would be recorded.**

- **Deed in lieu of foreclosure** – A deed in lieu of foreclosure is when a borrower who cannot make the payments proposes that the lender accept a deed to the property in “lieu of foreclosure.” Simply stated, the borrower walks away from the property and deeds the property back to the lender. This circumstance can occur in a mortgage or a trust indenture. Contract for deed terminations and deeds in lieu of foreclosure are similar transactions. In the contract for deed terminations, a quit claim deed will be offered for recording. **The instrument that will be recorded is a deed to the lender.**
- **Short sale** – A short sale is when the borrower cannot make the loan payments and the market value of the property is less than the loan. In this case, a borrower may ask the lender to agree to allow the borrower to sell the property in a voluntary sale to a third-party on the open market, rather than proceeding with the foreclosure action. The sale price, which is agreed upon with the lender, is less than the outstanding balance of the note and the lender typically forgives the unpaid balance. **The instrument that will be recorded is a deed to the new buyer.**
- **Auction/Sealed bid** – An auction or sealed bid is a sale of distressed property (pre- or post-foreclosure) in a live auction or by sealed bid and is used by the financial institution or bank to liquidate other real estate owned (OREO) properties. **The instrument that will be recorded is a deed to the new buyer.**

When filling out Part 4 – Type of Transfer of the Realty Transfer Certificate, check the box(es) that apply to the type of transfer for which an instrument has been recorded with the County Clerk and Recorder. A copy of the recorded instrument **must be attached** to the Realty Transfer Certificate.