

## Attachment B

### RTC - Administrative Rule and Montana Code Annotated definitions

#### Administrative Rule **42.20.201 INTENT**

- (1) The Realty Transfer Act serves two purposes. First, it is intended to identify all transfers of real property in order that the property tax record in each county may be updated in a timely and accurate manner, reflecting the names and addresses of the people to whom property taxes are to be assessed. Second, the Realty Transfer Act provides market information on the current selling price or real estate and improvements.

15-7-303, MCA Definitions. As used in this part, the following definitions apply:

- (3) "**Transfer**" means an act of the parties or of the law by which the title to real property is conveyed from one person to another.

15-7-304, MCA, **Report of transfers -- change of ownership records**, governs transfers that do not involve a recorded instrument.

"(1) All transfers of real property that are not evidenced by a recorded document [often called transfers by operation of law], except those transfers otherwise provided for in this part, must be reported to the department on the form prescribed."

15-7-305, MCA, **Realty transfer certificate required**, governs transfers that do involve a recorded instrument.

"(1) The county clerk and recorder shall require the parties to the transaction or their agents or representatives to complete a certificate declaring the consideration paid or to be paid for the real estate transferred."

15-7-307, MCA, **Certificate exceptions (effective in July 2012)**

**"The certificate required by this part applies to all transfers.** However, the certificate filed for the following transfers need not disclose the consideration paid or to be paid for the real estate transferred:

- (1) an instrument recorded prior to July 1, 1975;
- (2) the sale of agricultural land when the land is used for agricultural purposes;
- (3) the sale of timberland when the land is used for producing timber;
- (4) a transfer by the United States, this state, or any instrumentality, agency, or subdivision of the United States or this state;
- (5) an instrument that (without added consideration) confirms, corrects, modifies, or supplements a previously recorded instrument;
- (6) a transfer pursuant to a court decree;
- (7) a transfer pursuant to mergers, consolidations, or reorganizations of corporations, partnerships, or other business entities;
- (8) a transfer by a subsidiary corporation to its parent corporation without actual consideration or in sole consideration of the cancellation or surrender of subsidiary stock;
- (9) a transfer of decedents' estates;
- (10) a transfer of a gift;

- (11) a transfer between husband and wife or parent and only nominal actual consideration for the transfer;
- (12) an instrument the effect of which is to transfer the property to the same party or parties;
- (13) a sale for delinquent taxes or assessments, a sheriff's sale, or a sale pursuant to a bankruptcy court order;
- (14) a transfer made in contemplation of death.

## **Transfer Type Documents**

A **Beneficiary Deed**, which the Montana legislature first authorized in 2007, conveys title to one or more beneficiaries on the death of the owner unless the owner revokes the deed before their death. The law provides for both the Beneficiary Deed and the Revocation of Beneficiary Deed to be recorded. An RTC is required before a beneficiary deed may be recorded. The beneficiary or beneficiaries will be added as additional names on the property tax record. Often no consideration will be paid by the beneficiary, in which case one of the sale price disclosure exemption boxes will be checked.

A **Revocation of Beneficiary Deed** also requires an RTC before it may be recorded. It supplements a previously recorded document (the beneficiary deed). The beneficiary or beneficiaries under the beneficiary deed would be removed as additional names on the property tax record.

A **Life Estate Deed**, which conveys title from the owner to the owner for their lifetime and then to one or more grantees, requires an RTC before it can be recorded. No particular form is required for deeds that create a life estate. The person(s) who have the right to possession after the life-estate is terminated by death are added as additional names on the property tax record when the deed creating the life estate is recorded.

**Quiet Title** - If a judicial decree or judgment quieting title establishes that the person we show in our property tax records as the only owner of the property is the only owner, no RTC is required because the judgment is just confirming that no other persons have interests and there is no "transfer" of any interest in the real estate. However, if the decree or judgment establishes that all or part of the ownership is actually in a different person, an RTC would be required to show a transfer by operation of law, so we could change our records to show the true owner(s)(no sales information under 15-7-307(6) in either case (pursuant to court decree).

**Judgment or Court Order** - is a transfer by operation of law, rather than a deed, and if the judgment or order transfers title, it would require an RTC, again no sales info required under 15-7-307(6)

**Personal Representative or Executor's Deed of Distribution** – An RTC is required for the personal representative's deed of distribution of real property to the heirs, but no sales info required under 15-7-307(9) (transfer of decedent's estate). In many states mineral interests are considered to be an interest in real property (that is separately taxed) and in those states a deed of distribution of a mineral interest is treated the same way as a deed of distribution of the surface ownership of land. Montana is different and the RTC statute (15-7-303, MCA) defines "real estate" to include only "land" and not severed mineral interests. So when the deed of distribution of the personal representative is the deed of a

mineral interest, an RTC is not required before the deed of distribution of the mineral interest can be recorded.

**Condemnation** – When the transfer of condemned property is by court decree, an RTC is required. No sales information is required under 15-7-307 (transfer pursuant to court decree). If the owner gives a deed under the threat of condemnation but no court action is actually brought to condemn the property, an RTC is of course also required. Although DOR would not use the sales price in our modeling because sale under the threat of condemnation is not a “fair market value sale,” there is no category that allows the sales price not to be included. The sales price, however, is also not one of the types of “distressed sale” we are required to track under the new law.

**Deed in Lieu of Foreclosure** – An RTC is required for transferring the property back to the lender. The amount of the debt that was cancelled when the deed was given to the lender in lieu of foreclosure does not have to be disclosed in the RTC as consideration paid for the transfer.

**Sheriff’s Certificate/ Certificate of Redemption /Sheriff’s Deed/** When real property is sold to satisfy a court judgment, the sheriff issues a “sheriff’s certificate” under 25-13-711 that describes the property sold, the price paid and the right of the debtor, the debtor’s spouse, or junior lien holders to redeem the property. An RTC is required when the sheriff’s certificate is filed with the county clerk and recorder. If there is no right to redemption, the purchaser should be entered as the new owner. If there is a right of redemption, the purchaser should be included as an additional name on the property tax record. No sales information is required under 15-7-307(13), MCA unless the underlying court action is a mortgage foreclosure.

If the debtor or the debtor’s spouse redeems, a certificate of redemption is issued and the certificate of redemption is recorded. Another RTC is not required to be filed when the certificate of redemption is recorded. After the period of redemption expires, the Sheriff then issues a sheriff’s deed. Another RTC is required before the sheriff’s Deed may be recorded. When the sheriff’s deed is issued to the purchaser because there was no redemption, the former owner would be removed from the property tax record. If the owner/debtor redeems, the purchaser is removed from the property tax record. When a junior credit redeems and the Sheriff’s Deed is issued to them, the former owner would be removed from the property tax record. There is one twist that may not seem logical -- if the spouse of the owner/debtor redeems, the owner’s interest is transferred to the spouse and the spouse should be shown as the sole owner on the property tax record and the former owner would be removed. No sales information is required under 15-7-307(13), MCA.

**Transfer of Real Property Improvement separate from land.** The term “real estate” as used by the RTC law includes improvements and fixtures and an RTC is required when there is a transfer separate from the underlying land. The transfer may be evidenced by a bill of sale or by a deed and can also happen by operation of law. Disclosure of the sale price is required.

**Tax Deed** – an RTC would be required; no sales information requirement

**Trustee’s Deed** (and Deed of Trust) – An RTC would be required for a trustee’s deed issued on foreclosure of a trust indenture under 71-1-318; sales information is temporarily required under the amendment effective 7-1-2012. A deed of trust, as referred to in 71-1-321, is the equivalent of a trustee indenture under the small tract financing act and would also require an RTC when they are recorded. The only difference between a “Trustee’s Deed” and a “Deed of Trust” is the qualifications to

use a trust indenture under the small tract financing act are not met. The underlying transaction is exactly the same – bare legal title is transferred to secure payment of the debt. In the case of filing a trust indenture or a deed of trust, no sales information would be required because they are both financing documents.

**Assignment of a Purchaser's Interest in a Contract for Deed** may or may not require an RTC, depending on what is being transferred. A contract for deed is treated as a mortgage for most purposes – the purchaser is treated as the true owner, the seller is treated as if they were a lender, the contract is treated like a mortgage. If the purchaser assigns all of their interest in the contract for deed, an RTC would be required because the transaction is the equivalent of a deed. If the purchaser assigns part of their interest in the property, for instance if they transfer half of their interest to a spouse, an RTC would be required because the transaction is the equivalent of a deed from the purchaser to the purchaser and their spouse. If the seller assigns their interest to the purchase payments, an RTC is not required because they are not selling “real estate” (they are selling a contractual right to a stream of income). If the purchaser has rented the property and assigns the purchaser's right to those rental payments, an RTC is not required because they are not selling “real estate” (they are selling a contractual right to a stream of income).

**Severed Minerals Estates** are not taxed as a separate parcel of real estate in Montana so an RTC is not required to be filed. For purposes other than Montana's property taxes, however, severance of a mineral estate from the surface ownership and transfers of severed mineral estates are considered transfers of real estate.

**Cemetery plots** are also not taxed as separate parcels of real estate so an RTC is not required to be filed. The actual **cemeteries** are taxable and an RTC is required unless they apply for an exemption.