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Quitclaim Deeds in Montana

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Quitclaim Deeds. What are they? When are they used? What are the risks? What could be some of the unintended tax consequences?

A MONTANA QUITCLAIM DEED IS A LEGAL FORM THAT allows for the transfer of real property (land and buildings) from a person typically called the **grantor**, to another person, usually called the **grantee**. The word “person” also includes an entity such as a trust or limited liability company (LLC). After the transfer, the grantee then holds title to the property. This MontGuide answers questions commonly asked about quitclaim deeds filed in Montana.

Does a quitclaim deed have the same features as a warranty deed?

No. A quitclaim deed is different from a warranty deed for real property. As its name suggests, a **warranty deed** usually includes several warranties. Warranties are a guarantee or promise. The grantor of a warranty deed makes promises or guarantees to the grantee about the title of the real property and its transfer to the grantee.

A **quitclaim deed** does not include any promises or guarantees to the grantee. Whatever interest the grantor has in the real property – even if the interest is nothing – that is what the grantee receives.

The grantee of a quitclaim deed accepts the risk of any known or unknown problems with the real property. The real property the grantee receives from a quitclaim deed can present problems. Unknown claims against the property could include a defect in a title, collection liens, missing heirs, unknown easements, survey disputes or a previous mortgage.

The previous owners of the property may create other problems for a grantee. An owner may have placed restrictions on the use of the property, commonly called covenants. A former owner may have established rules against parking a recreational vehicle in a driveway or having a car on blocks for a repair job on the lawn.

When is a quitclaim deed used?

Quitclaim deeds are rarely used for traditional real estate transfers by land title companies in Montana. A **title company** researches property records in a title search to verify the valid owner of real property. A title company also issues title insurance to protect the lender and/or owners against lawsuits or claims against the property that result from issues with quitclaim deeds discussed previously. Before issuing title insurance, some title companies may use a quitclaim deed to clear up some of these problems.

Quitclaim deeds are sometimes used between spouses to ensure both spouses names appear on the property. A quitclaim deed transfers any interest the person may have in the real property to the borrower-spouse. Lenders may require a quitclaim deed so that names on loans and property match. Other common reasons Montanans file a quitclaim deed include:

- Clear up questions or correct problems with the title;
- Sell or transfer property to family members;
- Add a new spouse to the title;
- Transfer of ownership between divorcing spouses;
- Remove a name from the title;
- Correct a spelling mistake of owners on the title;
- Correct an owner’s name in the case of a name change or a gender reassignment;
- Transfer legal ownership of real property to an ex-spouse or a business organization;
- Remove a deceased person’s name
- Transfer ownership of land to a trust.

Are there any taxes due when a quitclaim deed is filed?

Quitclaim deed transfers to a spouse or to a qualifying charity are not taxed. However, if the grantor owes property taxes or has a federal or state income tax lien, the grantor must pay the taxes.

While no money typically changes hands with a quitclaim deed, the Internal Revenue Service applies federal gift tax rules to the transfer if a gift is involved. Suppose a parent files

a quitclaim deed for a house to a child. Individuals have an annual gift tax exclusion of \$15,000. Married couples who share ownership of gifted property have an annual exclusion of \$30,000. Under IRS rules, only the money above the annual exclusion amount is taxed. In most cases the federal gift tax is not a concern. Individuals can gift \$11,580,000 beyond the annual exclusion over their lifetimes without owing a federal gift tax. Married couples can gift a total of \$23,160,000 without owing a federal gift tax.

Using a quitclaim deed for the sale of real property is treated differently. In that case, a grantee may owe state and federal income tax on any profit from the sale.

Example 1. Carry-over basis with gifting while

alive: Bertha gifted her home to her granddaughter, Kala, using a quitclaim deed. Bertha paid \$40,000 for the home 30 years ago and that amount is her basis. Kala assumed Bertha's basis of \$40,000 in the home. This is known as the **carry-over basis**. Kala sold the home for \$500,000. Kala now has a taxable capital gain of \$460,000 on the sale (\$500,000 - \$40,000 = \$460,000). Kala could owe about \$91,400 (assuming an effective state rate of 4.9%; federal rate of 15%) in state and federal income taxes because of the capital gain of \$460,000 on the sale.

Example 2. Stepped-up basis: Grandma Bertha died and left her home to Kala in a will. At the time of Bertha's death, her home was valued at \$500,000. Several months later, Kala sold the home for \$500,000. Kala does not pay any federal or state income tax on the sale. Why? Because Kala received a **stepped-up basis** in the home when Bertha died. Upon Bertha's death, the basis she had in the home (\$40,000) was stepped up to its current fair market value, or \$500,000.

Because the sale price was not more than the stepped-up basis of \$500,000, there was no capital gain for Kala to report. Bertha's estate will not owe a federal estate tax because of the exclusion amount (\$11,580,000 in 2020). Because Montana no longer has an inheritance tax, Kala did not owe any taxes to the state either.

Filers of quitclaim deeds should be aware of any potential income tax consequences before filing a quitclaim deed.

Where can I get a quitclaim deed form?

MSU Extension does not provide a quitclaim deed form because the legislature has not passed a provision for a statutory form. A local attorney can draft a quitclaim deed and inform about the specific problems that may happen by using a quitclaim deed.

Some Montana County Clerk and Recorders offices have a quitclaim deed form on their websites. The office of

the Clerk and Recorder in Jefferson County provides one: http://www.jeffersoncounty-mt.gov/clerk_recorder.html. There are also many forms available on the internet offering a "do-it-yourself" quitclaim deed form with costs ranging from \$0 to \$50.

What information does a quitclaim deed contain?

A quitclaim deed includes the legal name and mailing address of each grantor and each grantee. The grantor must also provide a complete legal description of the property. A grantor should use the legal description from a previously recorded deed.

A complete legal description is available from the Office of the Clerk and Recorder in the county where the real property is located. The description appearing on the property tax bill sent annually by the county treasurer **does not** provide the complete legal description for real property because of a lack of space on the form. Montana Cadastral, an online mapping and land ownership database, can be another source for the legal land description.

When there is more than one grantee, how is property titled on a quitclaim deed?

All documents resulting in a change in property ownership must provide names of all grantees. The most common ways to hold title to real property with **multiple owners** in Montana are **tenants in common** or **joint tenancy with right of survivorship**. A grant of real property in a quitclaim deed to more than one grantee is assumed to be as "tenants in common" *unless* otherwise clearly stated on the quitclaim deed.

What is the meaning of tenants in common on a quitclaim deed?

A real property interest as *tenants in common* means that two or more persons hold undivided interests in the same real property with no right of survivorship for the surviving tenant in common. An **undivided interest** means each grantee owns a portion of the total value of the real property. If there are two grantees on the quitclaim deed, their undivided interest is 50 percent each; if there are four grantees, 25 percent each; and so on.

One tenant in common cannot simply draw a line on a map and say the property on the left side of the line is theirs and the property on the right side is the other owners. Nor, can one tenant in common claim to own the valuable portion of the real property with an oil well and say the other tenant in common only owns the portion with noxious weeds. All tenants in common own an undivided interest in all the real property containing both the oil well and the section with noxious weeds.

When title to real property is held by tenants in common, all the co-tenants have equal rights to manage and live on the property. Each tenant in common has the right to transfer their proportional share of the real property by sale or gift. When a tenant in common dies, the deceased's interest in the real property passes to the deceased's heirs. This assumes the deceased died without a will. If the deceased had a written will, the property passes to their devisees (beneficiaries).

Upon death of a tenant in common the deceased's interests must pass through probate unless the tenant used a transfer on death deed (previously called a beneficiary deed) to avoid probate. <https://store.msuextension.org/publications/FamilyFinancialManagement/MT202010HR.pdf>

The grantee can request the grantor to create a tenancy in common on a quitclaim deed by using the words "to Laila Smith and Kim Smith." While the grantor does not need to provide additional wording, adding the words "as tenants in common" clarifies ownership. This wording makes it clear the owners do not own the property as joint tenants with right of survivorship.

Example 3: Michael and Jennifer are siblings. Both are married and have children. They own land they inherited from their parents as tenants in common. If Michael dies, his interest of 50% of the tenant in common property passes to his spouse. Then Michael's spouse and his sister, Jennifer, equally own the property as tenants in common—each owning 50% interest.

What is the meaning of joint tenancy with right of survivorship on a quitclaim deed?

Instead of holding property as a tenant in common, **multiple** grantees may specify to the grantor they want the title to appear as a **joint tenancy with right of survivorship (JTWROS)**. That means if one of the joint tenants dies, the surviving joint tenant(s) becomes owner(s) of the real property. For example, if there were three joint tenants and one joint tenant died, the survivors own 50 percent each. A joint tenancy with right of survivorship also avoids probate, unlike holding the property as a tenant in common.

Typical wording on a quitclaim deed to create joint tenancy between two grantees would be "to Christopher James and Becky James as joint tenants with right of survivorship and not as tenants in common." If Becky dies, Christopher becomes the sole owner of the property. If Christopher dies, Becky becomes the sole owner. Christopher and Becky should seriously consider whether this result is what they intended.

If Christopher and Becky are married, then having the joint tenant inherit the property is probably what they wanted. However, if Christopher and Becky are siblings, having the property in joint tenancy means upon Christopher's death his heirs would not inherit his share in the joint tenancy. The

property automatically passes to his sister because of the joint tenancy. Christopher's spouse has no right to the property because of the joint tenancy with right of survivorship with Becky, his sister.

Who signs a quitclaim deed?

The grantor must sign a quitclaim deed and acknowledge it before a notary public. The grantor then records the deed with the Clerk and Recorder in the county where the real property is located. Recording a quitclaim deed provides notice to all subsequent mortgagees and purchasers there is a new owner of the property.

If I have a mortgage on my property, may I file a quitclaim deed?

A quitclaim deed only transfers ownership of the property. The deed does not mean the grantee has any responsibility for the underlying mortgage or outstanding liens against the property. While the new owner (grantee) has title to the property, the grantor is still liable for paying the outstanding mortgage.

How is a new owner of property notified about the property tax?

Any person transferring real property with a quitclaim deed in Montana must file a **Realty Transfer Certificate (Form 448)** that is available from the Montana Department of Revenue at <https://app.mt.gov/myrevenue/Endpoint/DownloadPdf?yearId=857>. The Department uses this form to change the name on ownership records used for the assessment and taxation of real property. This form must accompany the quitclaim deed when it is filed with the County Clerk and Recorder in the county where the land is located.

The Realty Transfer Certificate form also provides for a **Water Right Disclosure** for the grantor to sign. The Montana Legislature requires both the buyer and seller of property to know the water right situation for the property. Do any water rights exist? And, are the water rights transferred with or withheld from the property? For information about property water rights, contact the Water Rights Bureau at <http://dnrc.mt.gov/divisions/water/water-rights>.

What is the cost of recording a quitclaim deed in Montana?

The recording fee in 2020 for a quitclaim deed is \$7 per page, assuming the deed meets the **statutory standards** for recorded documents. The standards contain requirements about margins, color of ink, and size of paper used for recorded documents. Details about the standard format are available at any Montana County Clerk and Recorder's

office or the Montana Code Annotated 2019 https://leg.mt.gov/bills/mca/title_0070/chapter_0040/part_0260/section_0360/0070-0040-0260-0360.html

If the deed does not meet the standard format requirements, there is an additional fee of \$10 per document. Generally, information required on a quitclaim deed appears on one or two pages. (See **Table 1** for the recording fees during 2020 for documents in Montana).

Table 1. Recording Fees for Documents in Montana in 2020

Pages	Standard Fee	Non-Standard Fee
1	\$7.00	\$17.00
2	\$14.00	\$24.00
3	\$21.00	\$31.00
4	\$28.00	\$38.00
5	\$35.00	\$45.00
6	\$42.00	\$52.00
7	\$49.00	\$59.00

May I change my mind about a quitclaim deed after it is filed?

Generally, the answer is no. After the grantor files the quitclaim deed with the County Clerk and Recorder's Office, the title legally passes from the grantor to the grantee. Unless the new owner willingly files a quitclaim deed to reverse ownership back to the grantee, there are not many options. One possible way to reverse a quitclaim deed is to file a petition with the district court and submit proof the grantor was experiencing undue pressure when signing the deed.

Summary

A Montana quitclaim deed is a legal form that transfers real property (land and buildings) without warranties or promises about the validity of title. The grantor(s) must sign a quitclaim deed and acknowledge it before a notary public. The grantee(s) submits the deed for recording in the Clerk and Recorder's office in the county where the property is located.

References

Montana Codes Annotated, 2019. Title 70. Property. Chapters 20 and 21.

Nupp Legal. Quitclaim Deed, downloaded October 1, 2020. <https://www.nupplegal.com/quitclaimdeed.html>

Acknowledgement

Representatives from the Business, Estates, Trusts, Tax and Real Property Section (BETTR) of the State Bar of Montana have reviewed this MontGuide and recommend its reading by Montanans interested in learning about quitclaim deeds.

Disclaimer

This publication is not a substitute for legal advice. Rather, it helps families become better informed about quitclaim deeds. Future changes in laws are not predictable, and statements within this fact sheet are based solely upon those laws in force on the date of the publication.



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