



Mike Kadas
Director

Montana Department of Revenue



Steve Bullock
Governor

Public Disclosure of Real Estate Sales Price June 2014

What is “Public Disclosure”?

Public disclosure of real estate sales price means that when realty is transferred, the sales price is disclosed, in some manner, and made available to the public as a matter of public record, enabling citizens or businesses to readily access this information.

Using that definition, 39 states and Washington D.C. allow public disclosure while the following 11 states are currently non-disclosure states: Alaska, Idaho, Kansas, Louisiana, Mississippi, Montana, New Mexico, North Dakota, Texas, Utah and Wyoming (International Association of Assessing Officers, 2011; Berrens & McKee, 2004). Missouri is sometimes considered a non-disclosure state as well, as public disclosure is decided upon at the county level so part of the state requires disclosure and part does not. Including Canada in the analysis, 8 of the 9 Provinces/Territories that responded to the International Association of Assessing Officer’s questionnaire require public disclosure of sales prices, with Nova Scotia the outlier (International Association of Assessing Officers, 2011).

Around the country, states have varying degrees and methods of public disclosure ranging from the sales price being recorded on the deed, to the sales price being printed in the local newspapers, to allowing only government full access to the information (like Montana). In some places, laws vary between the different levels of government, as in the case of Missouri where roughly 70% of its citizens are required, by county ordinance, to submit sales price information which is then made available to the public. Montana does require disclosure of sales prices to local government officials for the purpose of fair valuation for property taxes while some states, like Idaho, do not require even that.

Montana code requires the collection of Realty Transfer Certificates which include the sales price and related information, but the county clerk and recorder and the Department of Revenue (DOR) are required to hold the information confidential, effectively blocking public access to this information.

Current Montana Law

The relevant portion of Montana code is section 15-7-308, MCA, specifically stating the information contained in the Realty Transfer Certificate must be held confidential by the county clerk and recorder and by the DOR.

15-7-308, MCA. Disclosure of information restricted -- exceptions. (1) Except as provided in subsection (2), the certificate required by this part (realty transfer certificate) and the information contained in the certificate **is not a public record and must be held confidential by the county clerk and recorder and the department.** This is because the legislature finds that the demands of individual privacy outweigh the merits of public disclosure. The confidentiality provisions do not apply to compilations from the certificates or to summaries, analyses, and evaluations based upon the compilations.

Who Discloses and Who Doesn't?

As discussed above, thirty-nine states and Washington D.C. allow public disclosure while, eleven states, including Montana, do not allow citizens to access this information. In Canada, eight out of nine Provinces/Territories that responded to the International Association of Assessing Officer's questionnaire require public disclosure. Two declined to respond. A table tabulating real estate public disclosure by state is appended to this memorandum.

Why Disclose?

The most often cited benefit of public disclosure is providing citizens and businesses access to accurate and timely information which, in turn, allows for current property, market information and the property tax basis to be analyzed. This leads to related benefits including:

- Enabling property owners to compare their property tax assessment to actual sales and to better understand their own property valuation;
- Enabling property owners to easily track their properties' appreciation and potentially reducing "sticker shock" when reappraisal occurs;
- Adding confidence in the property valuation system, as assessments can be easily compared to independent sources;
- Enabling property owners to determine whether they should exercise their property valuation appeal rights; and
- Creating public accountability to the property appraisal valuation process as taxpayers have the same information as the government tax appraisers.

Berrens and McKee, in their 2004 study of the effects of non-disclosure on the public sector, found that there is a strong argument for legitimate public concerns attached to real estate sales price non-disclosure, including possible inequities in effective property tax rates and tax revenue leakages possibly connected to sales price non-disclosure (Berrens & McKee, 2004).

Currently in Montana, when a taxpayer receives their assessment and has 30 days to file for a review, their options for analyzing their DOR assessed valuation include:

- Comparing their property and assessment to similar property assessments by looking up tax information on the cadastral system (gis.mt.gov);
- Looking up information on their county's website, if available (itax.csa-inc.net);
- Hiring a professional appraiser, at an estimated cost between \$300 and \$500 per property; and
- Visiting their local DOR office to sign a confidentiality agreement that allows them access to the confidential comparable sales data used to value their property (but the taxpayer only receives the few sales the department has used for the appraisal, as opposed to a larger selection of home sales).

During the 2009 statewide reappraisal process, many Montana taxpayers expressed a concern to legislators and to department staff with, what they considered to be, an overly burdensome process of receiving the comparable sales information used to access the valuation of their property.

In places allowing public disclosure, it is relatively easy for both professionals and non-professionals alike to directly access actual sales information. For example, Zillow.com - an industry leader in collecting, analyzing, and disseminating real estate valuation information - produces a web-based tool providing free access to recent real estate sales, current valuation estimates, historical trends, and a variety of other related information.

Businesses like Zillow collect information on real estate location, characteristics, and sales price and then analyze this information in a fashion similar to how the DOR conducts assessments. Access to better data (timely and accurate) assists Zillow and other businesses in producing better (more accurate) products.

Similarly, if Montana taxpayers have access to real estate sales information, they too would be able to conduct their own property valuation analysis and potentially be better informed of market trends and changes in their taxes due to property appreciation and depreciation.

Why Not Disclose?

Among the reasons often cited for restricting public disclosure include an individual's right to privacy and maintaining proprietary information collected by the Multiple Listing Service.

As indicated by the second sentence in 15-7-308, MCA, public disclosure of real estate sales information in Montana appears to be seen as a balance of the demands of individual's privacy versus the merits of public disclosure and historically, the state legislature has determined an individual's right to privacy to dictate.

Another, often cited, concern of public disclosure is the reduction of the value of information held by the Multiple Listing Service and real estate sales and assessment

professionals. In this case, Montana's nondisclosure statute creates an artificial legislatively sanctioned monopoly on this information (realty sales prices). Although there are existing examples where government typically allows artificial monopolies, for instance patents and copyrights, the general argument in favor of creating these monopolies is the artificial monopoly provides an incentive to develop new information.

How Could Montana's Restriction of Disclosure be Changed?

If the legislature wishes to publically disclose Realty Transfer Certificate information, it could amend the current statute, 15-7-308, MCA, to read:

15-7-308, MCA. Disclosure of information. (1) The certificate required by this part (realty transfer certificate) and the information contained in the certificate, with the exception of social security and federal employer identification numbers **is a public record.**

Summary

Montana is one of just eleven states prohibiting public disclosure of real estate sales prices (please see the attached chart, Real Estate Price Disclosure by State). The applicable statute, 15-7-308, MCA, specifically states, the information contained in the realty transfer certificate must be held confidential by the county clerk and recorder and by the Department of Revenue.

Among the reasons often cited for restricting disclosure include the demands of individual privacy and the ability of real estate professionals to maintain proprietary information.

An unintended consequence of restricting public disclosure is the creation of an artificial monopoly on real estate and market information.

Reasons often cited for public disclosure include public access to free information about the basis of their property tax, reduction of reappraisal "sticker shock", increased ability to understand and plan for property appreciation and depreciation, increased confidence in the property valuation system, additional transparency and public accountability of the state's property assessment practice, and empowering property owners with the information to determine whether they should exercise their right to appeal DOR's property valuation.

Real Estate Public Disclosure by State, Province, or Territory

	<u>Public Disclosure</u>	<u>Non Disclosure</u>
1	Alabama	Alaska
2	Arizona	Idaho
3	Arkansas	Kansas
4	California	Louisiana
5	Colorado	Mississippi
6	Connecticut	Montana
7	Delaware	New Mexico
8	Florida	North Dakota
9	Georgia	Texas
10	Hawaii	Utah
11	Illinois	Wyoming
12	Indiana	Nova Scotia, Canada
13	Iowa	
14	Kentucky	
15	Maine	
16	Maryland	
17	Massachusetts	
18	Michigan	
19	Minnesota	
20	Missouri	
21	Nebraska	
22	Nevada	
23	New Hampshire	
24	New Jersey	
25	New York	
26	North Carolina	
27	Ohio	
28	Oklahoma	
29	Oregon	
30	Pennsylvania	
31	Rhode Island	
32	South Carolina	
33	South Dakota	
34	Tennessee	
35	Vermont	
36	Virginia	
37	Washington	
38	West Virginia	
39	Wisconsin	
40	District of Columbia	
41	Alberta, Canada	
42	British Columbia, Canada	
43	New Brunswick, Canada	
44	Newfoundland, Canada	
45	Ontario, Canada	
46	Prince Edward Island, Canada	
47	Quebec, Canada	
48	Saskatchewan, Canada	

Works Cited

- Berrens, R. P., & McKee, M. (2004, June). What Price Nondisclosure? The Effects of Nondisclosure of Real Estate Sales Prices. *Social Science Quarterly*, 85(2).
- International Association of Assessing Officers, T. (2011). Ratio Study Practices in the United States and Canada: Results of 2011 Survey. *Journal of Property Tax Assessment & Administration*, 9(1).
- National Association of Realtors. (2014, June 3). *Non-Disclosure States FAQ*. Retrieved from realtor.com: <http://www.realtor.com/home-values/faq.aspx?source=web>