



Montana Association of Counties

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COUNTY DISPOSAL OF REAL AND PERSONAL PROPERTY

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PURPOSE

To give county elected officials general guidance on the process for disposing of real and personal property.

REAL PROPERTY:

Real property is defined as real or immovable property and consists of land, that which is affixed to land, that which is incidental or appurtenant to land, and that which is immovable by law.

HB 373 in the 2017 legislature changed the law related to county management of property. First, the statutory guidance for acquiring and disposing of personal and real property was split into separate sections of law. While the laws pertaining to disposal of personal property are largely unchanged, counties are now required to hold a **public hearing** and adopt a **resolution providing for the sale and disposition of county real property**.

Authorization to sell real property is found in [7-8-2521](#):

7-8-2521. Authorization to sell real property -- resolution required -- contents of resolution -- hearing required.

(1) The board shall, after holding a public hearing noticed as provided in **7-1-2121**, adopt a resolution providing for sale and disposition of county real property. The resolution must include:

- a) approved locations for sales, including whether sales may be conducted by use of an internet website or other online location;
- b) a requirement that all sale locations be accessible to the public;
- c) types of sales for which public auction is required;
- d) who may conduct a sale or auction;
- e) procedures for issuing permits, leases, or licenses, including:
 - i. the terms, conditions, and processes for issuance of permits, leases, and licenses;
 - ii. authorization to enter into agreements with entities to which permits, leases, or licenses may be issued;

- iii. a prohibition on a lease being made for an amount less than the amount that would have been collected if taxes on the real property had been levied; and
- iv. the process for authorizing a lessee to place improvements on the property;
- f) how sales will be noticed if the board intends to provide notice in addition to notice by publication as required in **7-1-2121**;
- g) how property retained by the county will be administered and maintained; and
- h) any other provision that the board considers to be necessary for the disposition of property in a manner that is in the best interests of the county and its citizens.
- i) In adopting the resolution, consideration must be given to multiple-use management.
- j) Provisions in the resolution regarding exchanges or donations of real property must be in compliance with **7-8-2522**.

The resolution must address approved locations for sales; a requirement that all sale locations be accessible to the public; types of sales for which a public auction is required; and how property retained by the county will be administered and maintained. With few exceptions, real property may not be sold, exchanged, or leased for less than the appraised value. The appraisal requirement for real property is found in 7-8-2513:

7-8-2513. Appraisal of land required -- exception -- challenge -- restrictions.

- (1) The county commissioners shall, before they sell, exchange, or lease lands with an estimated value of more than \$20,000 under the provisions of this part, have the lands appraised by a disinterested certified general real estate appraiser to determine the value of the lands for the purpose of the sale, exchange, or lease.
- (2) For the purposes of this section, a renewal of the lease is considered an initial lease if the renewal is for a term exceeding 5 years.
- (3) The board of county commissioners may lease mineral interests in land, whether the interests are severed or not, without an appraisal as required by subsection (1).
- (4) A taxpayer who believes that the appraised value under this section is less than the actual value of the property may challenge the appraised value. The procedure provided in **7-8-2215** must be followed when a challenge of the appraised value of real property under this part is filed.
- (5) Except as otherwise provided by law, the board of county commissioners may not under the provisions of this part sell, exchange, or lease lands appraised pursuant to subsection (1) for less than the appraised value.
- (6) This section does not apply to land acquired by tax deed that failed to sell for appraised value as provided in 7-8-2301 (5)(b).

PERSONAL PROPERTY:

Personal property is defined as every kind of property that is not real and includes digital assets.

Authorization to sell and exchange personal property is found in 7-8-2211:

7-8-2211. Authorization to sell and exchange county property.

(1) Boards of county commissioners of this state may, subject to the provisions of this part, sell, trade, or exchange any personal property, however acquired, belonging to the county that is not necessary to the conduct of county business or the preservation of its property.

(2) Whenever a county purchases equipment, as provided in **7-5-2301** and **7-5-2303** through **7-5-2308**, county equipment that is not necessary to the conduct of the county business may be traded in as part of the purchase price after appraisal, as provided in **7-8-2214**, or may be sold at public auction, as provided in **7-8-2212**, in the discretion of the board.

(3) Any sale, trade, or exchange of personal property must be accomplished under the provisions of this title.

We recommend the adoption of a Resolution declaring county personal property to be surplus property and listing the details of the property to be disposed of prior to trade in, auction, sale, or exchange. This helps keep your asset lists updated and tracks personal property out of your inventory. MACo will provide examples of such a resolution upon request.

If the personal property to be disposed of has a value greater than \$2500, there must be a current appraisal according to 7-8-2214.

7-8-2214. Appraisal required for certain sales. Unless otherwise provided:

(1) in all sales of property of a value in excess of \$2,500, there must, before any sale, be an appraisal thereof by the board and at a price representing a fair market value of such property. Such appraised value shall be stated in the notice of sale.

(2) no sale shall be made at public auction or to any school district without public auction of any property unless it has been appraised within 3 months prior to the date of the sale.

Regardless of the appraised value of the personal property, the public auction disposal process can be used for all property declared surplus property. 7-8-2212 provides guidance for notice of sale and requires publication according to 7-1-2121.

7-8-2212. Notice of sale and public auction required for certain sales.

Unless otherwise provided, if personal property to be sold is reasonably of a value in excess of \$2,500, the sale must be at public auction at a site determined by the board of county commissioners after notice by publication as provided in 7-1-2121.

If you have personal property valued at **less than** \$2500, you can sell it at auction after giving notice per 7-1-2121 OR hold a hearing and adopt a policy for the sale of personal property valued at less than \$2500 per 7-8-

2217. We would still recommend adopting a resolution naming the equipment and declaring the equipment as surplus property.

TRANSFER OF PROPERTY BETWEEN GOVERNMENTAL ENTITIES:

7-8-101. Authorization to transfer property between certain governmental entities.

(1) A county, upon first passing a resolution of intent to do so and upon giving notice of intent by publication as provided in **7-1-2121**, may sell or trade to any city, town, or political subdivision, as the interests of its inhabitants require, any property, however held or acquired, that is not necessary for the conduct of the county business without an ordinance, public notice, public auction, bids, or appraisal. Proceeds, if any, must be distributed according to law. The transactions must be made by resolution of the county commissioners involved and entered in the minutes of the regular or special meetings.

(2) A city or town, upon first passing a resolution of intent to do so and upon giving notice of the intent by publication as provided in **7-1-4127**, may sell or trade to any county or political subdivision, as the interests of its inhabitants require, any property, however held or acquired, that is not necessary for the conduct of the city or town business without an ordinance, public notice, public auction, bids, or appraisal. Proceeds, if any, must be distributed according to law. The transactions must be made by resolution of the councils or commissions involved and entered in the minutes of the regular or special meetings.

(3) (a) A county may trade with or purchase from any city, town, or political subdivision any property without an appraisal of the property traded or purchased.

(b) A city or town may trade with or purchase from any county or political subdivision any property without an appraisal of the property traded or purchased.

COUNTY TAX-DEED LAND:

Sale of county tax-deed land as dictated in 7-8-2301 was amended during the 2021 session with SB 193 to include some latitude for accepting an amount less than the appraised value of the property (7-8-2301(5)(b)).

7-8-2301. Disposal of county tax-deed land.

(1) Whenever the county acquires land by tax deed, it is the duty of the board of county commissioners, within 6 months after acquiring title, to enter an order to:

- a) sell the land at public auction;
- b) donate the land to a municipality, as provided in subsection (3), if the land is within the incorporated boundaries of the municipality;
- c) donate the land or sell the land at a reduced price to a corporation as provided in subsection (3); or
- d) retain the land for the county as provided in subsection (3).

(2) When tax-deed land is to be sold, the sale may not be made for a price less than the sales price determined and fixed by the board prior to making the order of sale. The sales price may be set in an amount sufficient to recover the full amount of taxes, assessments, penalties, and interest due at the

time the tax deed was issued to the county plus the county's costs in taking the tax deed and in conducting the sale and additional taxes due, if any, at the time of the sale.

(3) A board of county commissioners may, upon expiration of the repurchase period provided for in 7- 8-2303:

- a) sell the land as provided in subsections (2), and (4), and (5);
- b) donate the land to a municipality with the consent of the municipality;
- c) donate the land or sell the land at a reduced price to a corporation for the purpose of constructing:
 - i. a multifamily housing development operated by the corporation for low-income housing;
 - ii. single-family houses. Upon completion of a house, the corporation shall sell the property to a low-income person who meets the eligibility requirements of the corporation. Once the sale is completed, the property becomes subject to taxation.
 - iii. improvements to real property or modifying, altering, or repairing improvements to real property that will enable the corporation, subject to the restrictions of Article X, section 6, of the Montana constitution, to pursue purposes specified in the articles of incorporation of the corporation, including the sale, lease, rental, or other use of the donated land and improvements;
- d) retain the land for the county.

(4) If bids are not received at a sale of tax-deed land, the board shall order another auction sale of the land under this part within 6 months and may, if required by the circumstances, redetermine the sales price of the land determined under subsection (2). In the period of time between the auction conducted under subsection (1), in which there were not any qualifying bids for the land, and an auction held pursuant to this subsection, the land is retained by the county and is subject to the provisions of part 25.

(5) If a bid is not received at the sale conducted under subsection (4), the board may:

- a) dispose of the land as provided in part 25; or
- b) at any time after the auction, sell the property by auction and accept as the purchase price an amount less than the appraised value of the property.

(6) Notwithstanding the amount of the sales price fixed by the board prior to the auction conducted under subsection (1)(a), if the successful sale bidder is the delinquent taxpayer or the taxpayer's successor in interest, the taxpayer's agent, or a member of the taxpayer's immediate family, the purchase price may not be less than the amount necessary to pay, in full, the taxes, assessments, penalties, and interest due on the land at the time of taking the tax deed plus interest on the full amount at the rate provided for in 15-16-102 from the date of the tax deed to the date of the repurchase as well as the costs of the county in taking the tax deed and additional taxes or assessments due, if any, at the time of repurchase.

(7) Land that is transferred pursuant to subsection (3)(c) must be used to permanently provide low-income housing. The transfer of the property may contain a reversionary clause to reflect this condition.