

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the adoption of New Rule I pertaining to requests for nondisclosure of property owner record information) NOTICE OF ADOPTION
)
)
)

TO: All Concerned Persons

1. On August 19, 2016, the Department of Revenue published MAR Notice No. 42-2-958 pertaining to the public hearing on the proposed adoption of the above-stated rule at page 1429 of the 2016 Montana Administrative Register, Issue Number 16.

2. On September 13, 2016, a public hearing was held to consider the proposed adoption. Jennie Stapp, of the Montana State Library, appeared and testified at the hearing and also provided written comments. Other members of the public attended the hearing but did not testify. No additional written comments were received.

3. Based upon the comments received, the department adopts New Rule I (42.2.328) as proposed but with the following changes, new matter underlined, deleted matter interlined:

NEW RULE I (42.2.328) NONDISCLOSURE OF PROPERTY RECORD INFORMATION (1) Information obtained and records prepared in the course of property tax administration in Montana are available to the public, including the property owner's name. An individual who is at risk of physical harm or to their personal safety may have a reasonable expectation of privacy. A qualified property owner, as defined in (2), may request that the department ~~withhold~~ not display the name of the owner ~~from~~ on the department's web ~~sites~~ applications upon demonstrating that the right of the individual's privacy clearly exceeds the public's right to access property records.

(2) A "qualified property owner," for the purposes of this rule, means an individual who:

(a) owns real property that is ~~listed~~ displayed on the department's online web application applications ~~located at svc.mt.gov/dor/property~~; and

(b) remains as proposed.

(3) A qualified property owner must apply for nondisclosure of their name on the department's web ~~sites~~ applications using an application form provided by the department. In addition to the application, the applicant shall submit:

(a) through (4) remain as proposed.

(5) If approved for nondisclosure status, the individual's name will ~~be withheld from~~ not be displayed on the department's online web application applications ~~located at svc.mt.gov/dor/property~~. ~~The Montana State Library, which obtains property record data from the department, will also withhold the individual's name~~

from the ~~Montana Cadastral online web application located at svc.mt.gov/msl/mtcadastral~~. However, property record data, including the property owner's name, may remain available on other state or county web applications or web sites or any other media outside the department's ~~or the Montana State Library's control~~.

(6) and (7) remain as proposed.

(8) If the renewal application required in (7) is not timely received or is not approved by the department, the individual's name will appear on the department's online web ~~applications application located at svc.mt.gov/dor/property and the Montana Cadastral online web site located at svc.mt.gov/msl/mtcadastral~~ by June 1.

(9) remains as proposed.

4. The department has thoroughly considered the comments and testimony received. A summary of the comments received and the department's responses are as follows:

COMMENT 1: Jennie Stapp, of the Montana State Library, testified that in consultation with the agency legal staff for the library, their contention is that it is inappropriate for another state agency to be named within the administrative rules of the Department of Revenue. The language of the new rule could be amended to remove any direct mention of the Montana State Library or its web address and still accomplish the same mission of the proposed new rule.

Ms. Stapp stated that she was also submitting written recommendations for technical changes to the new rule language that would make it more broadly applicable and that will serve the department further in the future by not referencing specific applications and by also removing any specific reference to the Montana State Library. The changes submitted by Ms. Stapp are as follows:

In (1), sentence one, change the words "withhold" to "not display," "from" to "on," and "sites" to "applications."

In (2)(a), change the word "listed" to "displayed," pluralize the word "application," and strike the web site address reference.

In (3), sentence one, change the word "sites" to "applications."

In (5), sentence one, change the phrase "be withheld from" to "not displayed on," pluralize the word "application," and strike the web site address reference; strike sentence two altogether; and strike the words "or the Montana State Library's" from the last sentence.

In (8), strike both web site address references.

RESPONSE 1: The department appreciates Ms. Stapp's and the Montana State Library's interest and assistance in this rulemaking process. The department agrees with their recommended changes to the rule language and agrees that the changes will meet the needs of both agencies. Therefore, the department has adopted the new rule with the language changes exactly as proposed by Ms. Stapp.

COMMENT 2: Ms. Stapp also commented that a second concern is that the Montana State Library has a statutory obligation to provide permanent public access to state government information and, by statute, the definition of government

information is anything that is deemed intended for public display. Therefore, any information that comes to the library comes with a statutory obligation to provide that information to the public. She stated that the submitted recommendation for changes to the proposed new rule will prevent the library from ever receiving that information in the first place. If the information does not come to the library, the library is under no obligation to make the information accessible to the public.

RESPONSE 2: The department understands the concerns raised by Ms. Stapp and the library and has adopted the new rule with the changes they recommend.

/s/ Laurie Logan
Laurie Logan
Rule Reviewer

/s/ Mike Kadas
Mike Kadas
Director of Revenue

Certified to the Secretary of State October 17, 2016