

# Is Montana A Non-Disclosure State?

Real estate licensees often hear the comment “Montana is a non-disclosure state”. While the statement is true, licensees and members of the public frequently do not fully understand what the term means. In many states, the documents used to complete a sale require the parties to publicly disclose the sales and purchase price. This type of reporting system allows the taxing authorities to easily adjust values for tax purposes based upon the forced disclosure of the sales price. Many years ago, the Montana legislature looked at this issue and passed laws preventing the taxing authorities from using the sales price of properties as the basis for establishing taxable values. As a result, Montana became one of the “non-disclosure” states in the U.S.

While real estate licensees should be mindful of Montana’s position regarding forced disclosure of sales prices, they should also be aware of the limited applicability of these laws and other issues that pertain to disclosure of sales price information.

Following are several situations agents frequently encounter:

- a. **If one of the parties to a transaction asks or directs the agent to disclose the sales price, can the agent do so?** Yes. It is not necessary that the listing agent have the consent of both the buyer and seller in order to disclose the sales price (unless the agent is representing both parties as a dual agent). In instances where there is a listing agent and a buyer agent, the buyer agent could disclose the purchase price with the consent of, or at the direction of, the buyer without the seller’s consent. Likewise, the listing agent (again assuming no dual agency) could disclose the sales price with the consent of the seller even though the buyer has not consented. Bottom line – if the party you represent gives permission or directs you to disclose, that is sufficient authorization.
- b. **How would a seller or buyer give consent to disclose?** The standard residential listing form from the Montana Association of Realtors contains a blanket authorization permitting the listing agent to disclose sold data. Note, however, that there is no corresponding authorization language in the buyer broker form.
- c. **What is the penalty if I improperly disclose sold data?** The penalties vary depending on how the disclosure was done. For example, if an agent discloses the sales price of a property without consent or authorization from the client, they would be liable to the client for any actual damages the client suffers. In addition, the client might elect to file an ethics complaint with the local Association and may also file a complaint with the licensing entity – the Montana Board of Realty Regulation. If the agent disclosed sold data from the MLS database without authorization, they would be subject to a fine or other sanctions from the MLS Committee. The sanctions may include, in addition to monetary penalties, suspension or termination of membership in the MLS.
- d. **Are listing agents required to report the sales price to the Multiple Listing Service?** Yes. By joining the MLS, the agent has agreed to provide information to establish and maintain the sold database of the MLS. As a result, listing agents are required to report sales data to the MLS. There are limited circumstances when reporting is not required. Please check the rules of the MLS to verify what is required.
- e. **If my seller (or buyer) tells me they want to keep the purchase and sales price confidential, do I need to report sold data to the MLS?** While it is generally true that agents are to obey the lawful directives of their clients, the obligation to report sold data to the MLS is a condition of belonging to the MLS. As a result,

failing to report sold data at the direction of the client may keep you in good graces with the client, but can result in fines and penalties from the MLS.

- f. **Can an agent set forth on their website, Facebook or other social media, the sales price of properties they have sold?** Yes, if they have the consent of their client. As noted above, the current version of the Montana Association of Realtors residential listing agreement contains an authorization for the agent to disseminate the sold data relative to the client's transaction.
- g. **Can an agent set forth on their website Facebook or other media the sales price of other properties that have sold in the area, even though the agent was not involved in those transactions?** No. If the agent was not involved in the transaction as a listing agent or a buyer agent the agent has no authority to disclose this information.
- h. **A national marketing entity has offered a substantial fee if I will send them the sold data base from our MLS. Can I do that?** No. The database is the copyrighted property of the Multiple Listing Service and is not to be disseminated to their parties without the specific authorization of the MLS. Any agent who sells or provides copies of the database to third parties without authorization may be fined, or sanctioned by the MLS. The sanctions may include suspension or termination of MLS membership.
- i. **When can I use the content to the MLS database?** If you are listing a property or working with a buyer who is interested in knowing the sales prices of similar properties, you are authorized to use the information in the MLS database for this purpose. A Comparative Market Analysis is a good example of an appropriate use of the MLS database.
- j. **I would like to produce a flyer for my clients advising them of how many properties were sold in the area during the last year, what the market trends are, and similar information, can I use the statistical data from the MLS for this purpose?** Yes. So long as the statistical data is accurately reproduced and a statement accompanies the information to the effect "the foregoing information was obtained from the Southwest Montana Multiple Listing Service", the information can be used for this purpose.

Source: Southwest Montana Multiple Listing Service  
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