

FREQUENTLY ASKED QUESTIONS

Land Banking Sales



Basics

1. **Why is the DNRC selling state land?**

During the 2003 Regular Legislative Session, House Bill 223 (HB223) was passed. The bill enacted a Land Banking program whereby the proceeds of trust land sales would be placed in a special land banking account which could only be used to acquire other real property interests such as land, easements, or improvements.

2. **Will my lease be sold out from under me?**

No. The Land Banking sale program is voluntary. You will not be required to nominate your lease for sale if you wish to continue leasing.

3. **How long does the sale process take?**

The estimated timeline for a Land Banking sale takes approximately 8-10 months.

4. **Why does the land have to be sold at a public auction?**

The sale of all state lands must be sold by public auction as required by state statute and the Enabling Act of 1889. <http://courts.mt.gov/content/library/docs/enablingact.pdf>.

5. **What happens to the money that DNRC collects from the sales?**

The money received from the sale of state trust land is used to purchase replacement land for the trust beneficiaries. When purchasing replacement land the Department looks for parcels that:

- *Provide a higher rate of return for the trust beneficiaries than the parcels sold;*
- *Have legal public access; and*
- *Have the potential for multiple uses.*

Getting Started

6. **How do I request to purchase the land that I lease?**

Contact the local DNRC Land office that manages your lease. The Land Office personnel can help you with filling out the Nomination Form and answer additional questions concerning the sale process. There is a non-refundable \$100 nomination fee for each parcel nominated for sale.

7. Who can nominate a parcel of state land for sale?

Land parcels can be nominated for sale by the current lessee, DNRC or the Land Board.

8. For what reasons would the DNRC not allow me to purchase a parcel of land I lease through the Land Banking program?

The goals of the Land Banking program are:

- *Diversify land holdings in order to minimize the risk of loss;*
- *Maximize the sustained rate of return to the trusts;*
- *Improve public access to state trust land;*
- *Consolidate land ownership.*

If a parcel of land produces greater than average revenue, or provides public access to state or other public land for recreational activities, or access to navigable rivers or lakes, it would be likely the Department would not want to sell the parcel.

9. What if I don't agree with the Department's decision not to sell the parcel of land I lease through the Land Banking program?

You may appeal the Department's decision to the Land Board.

Risks/Cost

10. Can someone outbid me if I own improvements on the lease?

Yes, but if you are the current lessee you have the preference right to match the high bid in accordance with 77-2-324, MCA.

11. What happens to my improvements if someone outbids me?

You must sell the improvements to the winning bidder. This is a separate transaction from the purchase of the property, and must be worked out between the successful bidder and the lessee. It is advisable to conclude your transaction prior to closing on the sale of the state land.

12. What if I feel that the lessee is asking too much for the improvements?

There is an arbitration process that must be adhered to in these situations. Please refer to ARM 36.25.125.

13. What are the costs involved?

The lessee is responsible for Processing Costs associated with preparing a parcel of land for sale. These costs are non-refundable and must be paid up front. They include but are not limited to:

- *A one-time non-refundable \$100 nomination fee that must be paid for each parcel of land nominated for sale;*
- *Cost of the appraisal;*
- *Land Survey (if necessary);*
- *Legal advertisement of sale;*
- *Environmental & Cultural/Archeological review;*

- Document recording fees; and
- Water rights transfers

During the Process

14. How is the sale price determined for the land?

A Montana Certified General Appraiser will complete a market value appraisal of land. The Department then takes the appraiser's determination of values to the Land Board for their approval. The Land Board sets the minimum bid for sale of the land.

15. Who does the appraisal?

The Department will contract with a Montana Certified General Appraiser to appraise the land. The appraisal must comply with Uniform Standards of Professional Appraisal Practices (USPAP) as adopted by the state Board of Real Estate Appraisers in ARM 24.207.402. The Department will review or contract the review of the appraisal conducted by the contract appraiser.

16. What if I don't agree with the appraised value?

At your own expense, you may commission another appraisal, within 15 days of being notified of the appraised value by the Department. The appraiser conducting the subsequent appraisal must be selected from a list of Department approved appraisers, and the subsequent appraisal must be completed within 60 days of notifying the Department of the intention to commission an additional appraisal. The Department will present both appraisals to the Land Board; the Board will set the minimum bid for sale.

17. Do I still need to pay my lease fee while my leased land is going through the sale process?

Yes. All lease fees must be paid as the sale goes through the sale process.

18. Can I withdraw my leased land from sale?

Yes, if you are the current lessee. The lessee must send written notice by certified mail to the department, postmarked no later than 10 days before the date of the auction.

19. Will I know if there are any other people interested in bidding on my lot?

Each bidder wishing to participate in the auction as a qualified bidder must submit an Offer to Purchase Agreement along with a bid deposit equal to 20% of the minimum bid amount for the land parcel, no later than 20 days before the date of the auction. You may contact the department after the date that the bids are due and inquire whether or not there are any qualified bidders for the sale.

20. Where will the auctions take place?

Auctions must take place in the county seat for the county where the parcel is located. Typically this is at the county courthouse; or in some instances, the local DNRC office, if one is located in the county seat.

21. Do I have to be present for the auction?

Yes. All qualified bidders wishing to participate in the auction must appear in person or be represented by a legal representative at the auction.

22. What is the process for bidding on auction day?

DNRC staff will hold a public oral auction for the sale of the land. All qualified bidders wishing to participate in the auction must appear in person or be represented by a legal representative at the auction to present an oral bid. All bidding will be for the land only. Only qualified bidders will be allowed to bid. The minimum bid amount will be set by the Land Board based on the appraised value of the land. Bids for less than the minimum amount will not be accepted. If there are multiple qualified bidders, the bidding will continue until no one wishes to offer a higher bid. If one of the qualified bidders is a current lessee, they will be allowed to match the highest bid until such time that there is no longer a higher bid, or the current lessee does not wish to match the highest bid. The land will be sold to the highest bidder who consummates the terms of the sale. The successful bidder will sign a Real Estate Buy-Sell Agreement for the Sale and Purchase of State of Montana Land Banking Sale Form at the close of the auction

Closing

23. What happens after the auction?

The sale of the land must be taken to the Land Board for Final Approval. Upon approval, the department will prepare closing documents, including settlement statements and drafting of deeds.

24. How is title transferred?

The department conveys title to the land by Patent, Grant Deed or Quitclaim Deed. The state does not warrant title, but you have the option to purchase title insurance at your own expense. Transfer of any improvements happens between the seller and the purchaser.

25. How long will the winning bidder have to close on the sale of land and improvements?

The department will allow 30 days from the sale's Final Approval from the Land Board for closing. An extension of time may be granted on a case by case basis for good cause.

26. How will closing occur on the sale of the land?

Closings may occur by mail or with a Title Company, Closing of the improvements happens between the seller and the purchaser and must be completed prior to with the closing of the land.

27. What are my financing options?

Sales of state land are on a cash only basis. Purchasers will need to seek financing from a lending agency if necessary.