



April 3, 2019

To: Honorable Members of the Montana House of Representatives  
From: Town Center Owners' Association, Inc. & Simkins Holdings, LLC

**RE: Opposition to SB 300, As Amended**

Honorable House Members:

We, Simkins Holdings, LLC, developer of the Big Sky Town Center, and manager of the Town Center Owners' Association, Inc., an owner' association comprised of 150 members including fifteen (15) home or condo owners associations, in Big Sky, Montana, strongly oppose SB 300 and its misguided attempt to limit community associations' ability to govern. Big Sky, with a population of almost 3,000<sup>1</sup> has over a hundred owners' associations that would be adversely impacted by the SB 300.

While we appreciate the House Judiciary Committee's time and attempt to amend SB 300 to address the numerous issues that have been raised, the issues and concerns explained remain with respect to the amended version of this bill. In addition, we call your attention to the Legal Review Note, dated February 19, 2019, prepared by Attorney Reviewer: Todd Everts/K.V. Aldrich, which indicates "SB 300, as drafted, may raise potential constitutional issues associated with Article II, section 31, of the Montana Constitution and Article I, section 10, of the United States Constitution."<sup>2</sup> Those constitutional issues were not resolved by the most recent amendments and litigation will inevitably result if SB 300 is approved and becomes law. As the Legal Review Note makes clear, "*In Windemere Homeowners Assn. v. McCue*, 1999 MT 292, 297 Mont. 77, 990 P.2d 769, the Montana Supreme Court found that restrictive covenants, depending on the language of the covenants, could be amended to bind a nonconsenting landowner to a new or different use." SB 300 poses a substantial impairment to our contractual relationships with our current 150 members as well as future members, the issues sought to be addressed by the bill are local by nature and not of significant state interest, and the limitations imposed on owners' associations are not reasonable, rather are contrary to the public interest.

**We urge you to oppose SB 300.**

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<sup>1</sup> <https://montana.hometownlocator.com/mt/gallatin/big-sky.cfm> (last accessed April 2, 2019).

<sup>2</sup> Mont. Const. art. II, § 31. Ex post facto, obligation of contracts, and irrevocable privileges. No ex post facto law nor any law impairing the obligation of contracts, or making any irrevocable grant of special privileges, franchises, or immunities, shall be passed by the legislature.

U.S. Const. art I, § 10, in pertinent part, provides that no State shall pass any law impairing the obligation of contracts, without the consent of Congress.

As written, the proposed legislation is too broad and poses a breadth of consequences, not the least of which is to effectively preclude associations' ability to amend governing documents - the declarations of covenants, conditions and restrictions. As you may know, it is virtually impossible to obtain 100% approval of amendments to covenants, conditions and restrictions. This is, in part, due to lack of participation, in particular in parts of the State such as Big Sky and many others, where owners may be part-time. At its core, this legislation interferes with community associations' right to self-govern.

We understand the legislation is aimed at short-term rentals, however as written, the bill hamstrings associations from regulating uses within the communities they govern. We do not have a position with respect to short-term rentals, however, we do have grave concerns regarding the breath of adverse consequences that would result from approval of SB 300.

As a real estate developer and as a community association, SB 300 violates our ability to contract with our current members and future purchasers and prevents the association from ensuring consistency in the regulation and enforcement of Big Sky Town Center and its planned community.<sup>3</sup>

SB 300 is bad for buyers who choose to invest their hard-earned dollars in a home or other type development within a planned community relying on the governing documents - the declarations of covenants, conditions and restrictions, among them, which are disclosed at the time of purchase. Buyers and owners rely on the covenants, conditions and restrictions to protect their investments in their homes and real property, by regulating uses in the planned community. Those covenants, conditions and restrictions routinely include amendment provisions which allow the association to respond to changes in the community over time and issues that may arise after the initial covenants, conditions and restrictions are adopted. This is a democratic process.

Restricting the association's ability to amend its covenants, conditions and restrictions undermines the association's ability to effectively govern and protect the investments of real property owners.

Good associations preserve the character of their communities, protect property values and meet the established expectations of homeowners. Great associations also cultivate a true sense of community, promote active homeowner involvement and create a culture of informed consensus.<sup>4</sup>

One bad home or property owner should not be allowed to destroy the investment of other owners.

Confusion would inevitably result from SB 300. Community associations could end up with many versions of its covenants, conditions and restrictions as amended when certain owners do not agree to the amendments. In addition to gutting the authority of community associations, this poses a management and administration burden (nightmare) on non-profit community associations, many of which are volunteer

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<sup>3</sup> See supra note 2.

<sup>4</sup>Montana State Summary: Community Association Fact Book 2017, <https://foundation.caionline.org/wp-content/uploads/2018/08/MT2017.pdf>, page 15, Section 4.2 (last accessed March 27, 2019).

managed. Even for those professionally managed by property management companies or internally, the management and administration burden of attempting to keep up with and enforce varying sets of documents for owners, depending on whether or not they have agreed to an amendment, would significantly increase costs, which then get passed on to the owners. As a result, communities may give up on the governing documents entirely.

SB 300 also has the potential to adversely impact financing in communities with covenants, conditions and restrictions, when complications arise that may need to be addressed by an amendment to those governing documents.

In addition to these consequences, SB 300 has the potential to pit neighbors against neighbors and adversely impact property values. With varying covenants, conditions and restrictions and enforcement, the consistency in these planned communities is eroded, and uses that devalue property may be allowed to dominate. As aptly described by other opponents to SB 300, this legislation “is the state telling local communities they do not have the right to choose rules for what they believe is best for their community.”

We understand SB 300 is not part of either the Uniform Common Interest Ownership Act or the Uniform Condominium Act. These uniform acts could be a starting point for the legislature, should it choose to provide a legal framework in Montana for owners’ associations.

We respectfully request that you oppose SB 300.

Sincerely,

SIMKINS HOLDINGS, LLC

TOWN CENTER OWNERS’ ASSOCIATION, INC.

William G. Simkins

William G. Simkins

William G. Simkins, Manager

William G. Simkins, President, Board of Directors