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March 22, 2019

Montana House Judiciary Committee

Helena, Montana, via email only

Re: SB 300/ Comment and Constitutionality

Dear Representatives;

I am an attorney in private practice in Bigfork, Montana of 38 years. I represent homeowner associations and individual homeowners in legal matters. I reviewed SB 300. Its intent, aside from its misleading title is clear: exempt owners from any amendments the homeowners association might make. It does not protect property rights; it will result in the opposite: anarchy and chaos within Associations and the inability to modify OR ENFORCE covenants for violations. So instead of protecting the community's standards of construction or use, it will render them unenforceable, resulting in hodge-podge violations and unregulated construction and commercial use. (Would you like a 3-bedroom bed and breakfast next to your home? I just settled such a case.) Property values will plummet as every owner will acquire a defense (legitimate or not) against enforcement of existing or amended covenants.

Homeowner association covenants are the fabric of private development. Cities and counties require and rely on them for supervision when they cannot. Let's assume your bill passes and withstands constitutional muster (which I doubt, see below). Then every association will have to create and maintain a spreadsheet of when everyone purchased, so that they can know what covenants to enforce against which owners. New or amended covenants cannot be enforced against new owners or those voting against an amendment. Please understand, amended covenants are usually just updates, clarifications and elimination of vague provisions. They seldom make material changes to use standards. Regardless, your SB300 will characterize all such changes as affecting your loose definition of property use. No association can function in this environment. Any new or negative vote owner can avoid any amendment they choose.

SB 300 will also run afoul of both Montana Supreme Court rulings and our 1972 Constitution. In *Windemere HOA vs. McCue*, 1999 MT 292 our court upheld the homeowner association's authority to amend and to enforce amended covenants. It had to for the reasons I've summarized. To have ruled otherwise would have crippled HOA's whenever a new owner protested an existing or amended covenant – exactly what SB 300 seeks to do. SB 300 flies in the face of the Court's ruling and will create litigation and conflict – hardly the desired result of legislation.

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Worse, SB 300 is unconstitutional. The Montana Supreme Court in numerous rulings has declared that **covenants are a contract between the association and the owners**. Contract rules govern the interpretation of covenants. Section 31 of the 1972 Montana Constitution provides:

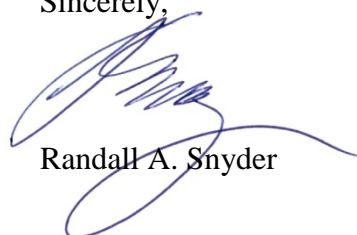
EX POST FACTO, OBLIGATION OF CONTRACTS, AND IRREVOCABLE PRIVILEGES. NO ex post facto law nor any law impairing the obligation of contracts, making any irrevocable grant of special privileges, franchises, or immunities, shall be passed by the legislature.

SB 300 proposes to change existing contracts across Montana. It could not be more transparent in creating “an irrevocable grant of special privileges and immunities” to a select group of people. At best, is patently unconstitutional on its face. And at its worse, it will create expensive litigation for owners and associations across Montana until it’s resolved. I do not know an association that has extra funds for needless and senseless litigation – they can barely afford to provide the services they do. The very “minority members” SB 300 seeks to protect will pay twice: for their own litigation to avoid a covenant and again in specially assessed dues to pay for the HOA’s litigation to enforce it. SB 300 will only cause litigation and conflict. Associations depend upon volunteers for leadership. Who will want such a role, so they can enter the chaos and quagmire SB 300 will create?

This bill is a disservice and insult to Montana communities which have preserved and protected property for many years. It is a poor, conflict ridden attempt to allow minorities and individual owners to hold their association hostage while they deliberately violate standards under a fictional title of “property rights.” Even if passed, it will not achieve the stated goals, but will cause conflict and litigation until it reaches a court that has clearly spoken against it.

Please do not create a new owner versus association conflict. There are too many already. Please discard this very, very bad bill.

Sincerely,



Randall A. Snyder

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