

SENATE BILL NO. 300

INTRODUCED BY K. BOGNER

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING PROPERTY LAWS TO PROTECT PROPERTY RIGHTS; PREVENTING HOMEOWNERS' ASSOCIATIONS FROM IMPOSING MORE ONEROUS RESTRICTIONS ON A PROPERTY OWNER'S BASIC RIGHTS THAN WHEN THE PROPERTY OWNER ACQUIRED THE PROPERTY; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Homeowners' association restrictions -- property rights.** (1) A

homeowners' association may not enter into, amend, or enforce a covenant or condition in such a way that imposes more onerous restrictions on a member's basic rights to use the member's real property than those restrictions that existed when the member acquired the member's interest in the real property, unless the member who owns the affected property expressly agrees to the restriction in writing at the time of the adoption or amendment of the covenant or condition.

(2) A successor-in-interest to a member's real property may not claim the benefit of subsection (1) to the extent that the homeowners' association entered into, amended, or enforced a covenant, condition, or restriction before the successor-in-interest purchased the real property, even if the covenant, condition, or restriction was not enforceable against the previous owner pursuant to subsection (1), unless the successor-in-interest is owned by or shares ownership with the previous member.

(3) Nothing in this section may be construed to prevent the enforcement of a covenant, condition, or restriction limiting a member's basic rights as long as the covenant, condition, or restriction applied to the real property at the time the member acquired the member's interest in the real property.

(4) Nothing in this section invalidates existing covenants of a homeowners' association or creates a private right of action for actions or omissions occurring before [the effective date of this act]. However, after [the effective date of this act], unless the member has consented as provided by subsection (1), a homeowners' association may not enforce a covenant, condition, or restriction in such a way that limits the basic rights of a member that existed when the member acquired the affected property.

(5) As used in this section, the following definitions apply:



- 1 (a) "Basic rights" means the following rights of a member:
- 2 (i) the right to use real property for residential, agricultural, or commercial purposes;
- 3 (ii) the right to rent the real property, including the land and structures on the real property, for any
- 4 amount of time; and
- 5 (iii) the right to otherwise develop the property in accordance with the laws of this state.
- 6 (b) "Homeowners' association" means:
- 7 (i) an association of all the owners of real property within a geographic area defined by physical
- 8 boundaries which:
- 9 (A) is formally governed by a declaration of covenants, bylaws, or both;
- 10 (B) may be authorized to impose assessments that, if unpaid, may become a lien on a member's real
- 11 property; and
- 12 (C) may enact or enforce rules concerning the operation of the community or subdivision; and
- 13 (ii) an association of unit owners as defined by 70-23-102 subject to the Unit Ownership Act.
- 14 (c) "Member" means a person that belongs to a homeowners' association and whose real property is
- 15 subject to the jurisdiction of the homeowners' association.
- 16 (d) "Person" means one or more individuals or a legal or commercial entity.
- 17 (e) "Real property" has the meaning provided in 70-1-106, except that it is limited to real property
- 18 governed by a homeowners' association.

19

20 **NEW SECTION. Section 2. Restriction on covenants by association of unit owners.** An association

21 of unit owners shall abide by the provisions of [section 1].

22

23 **NEW SECTION. Section 3. Codification instruction.** (1) [Section 1] is intended to be codified as an

24 integral part of Title 70, and the provisions of Title 70 apply to [section 1].

25 (2) [Section 2] is intended to be codified as an integral part of Title 70, chapter 23, and the provisions

26 of Title 70, chapter 23, apply to [section 2].

27

28 **NEW SECTION. Section 4. Severability.** If a part of [this act] is invalid, all valid parts that are severable

29 from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part

30 remains in effect in all valid applications that are severable from the invalid applications.

1

2 NEW SECTION. **Section 5. Effective date.** [This act] is effective on passage and approval.

3

- END -

Amendments to Senate Bill No. 300
3rd Reading Copy

Requested by Representative Casey Knudsen

For the House Judiciary Committee

Prepared by Rachel Weiss
March 21, 2019 (1:28pm)

1. Title, page 1, line 5.

Following: "REVISING"

Insert: "REAL"

2. Title, page 1, line 6.

Following: line 5

Insert: "REAL"

3. Title, page 1, line 8.

Following: "ACQUIRED THE"

Insert: "REAL"

4. Page 1, line 12.

Following: "restrictions --"

Insert: "real"

5. Page 1, line 13.

Following: "covenant"

Strike: "or"

Insert: ", "

Following: "condition"

Insert: ", or restriction"

6. Page 1, line 16.

Following: "affected"

Insert: "real"

Following: "agrees"

Strike: "to the restriction"

7. Page 1, line 17.

Following: "covenant"

Strike: "or"

Insert: ", "

Following: "condition"

Insert: ", or restriction"

8. Page 1, line 30.

Following: "affected"

Insert: "real"

9. Page 2, line 6.

Following: "develop the"

Insert: "real"

10. Page 2, line 13.

Following: "subdivision;"

Strike: "and"

Insert: "or"

- END -

Explanation - The amendment set:

1. standardizes the use of the term "real property";
2. standardizes the use of the phrase "covenant, condition, or restriction"; and
3. revises the definition of "homeowner's association".

Amendments to Senate Bill No. 300
3rd Reading Copy

Requested by Representative Seth Berglee

For the House Judiciary Committee

Prepared by Rachel Weiss
March 21, 2019 (6:53pm)

1. Page 1, line 12.

Following: "(1)"

Insert: "(a)"

2. Page 1, following line 17.

Insert: "(b) When a member claims the benefit of this subsection (1), the member shall request that the homeowners' association record, or allow recording of, the exception applicable to the member. Upon request by the member, the homeowners' association, the member, or a designee shall record the member's exception with the office of the county clerk and recorder of the county where the real property is situated. The member shall provide the homeowners' association with the date the real property was conveyed to the member and shall pay the recording fees for the document setting forth the exception."

- END -

Amendments to Senate Bill No. 300
3rd Reading Copy

Requested by Representative Shane Morigeau

For the House Judiciary Committee

Prepared by Rachel Weiss
March 21, 2019 (6:52pm)

1. Title, page 1, line 5.

Following: "REVISING"

Insert: "REAL"

2. Title, page 1, line 6.

Following: line 5

Insert: "REAL"

3. Title, page 1, line 8.

Following: "ACQUIRED THE"

Insert: "REAL"

4. Page 1, line 12.

Following: "restrictions --"

Insert: "real"

Following: "(1)"

Insert: "(a)"

5. Page 1, line 13.

Following: "covenant"

Strike: "or"

Insert: ", "

Following: "condition"

Insert: ", or restriction"

6. Page 1, line 16.

Following: "affected"

Insert: "real"

Following: "agrees"

Strike: "to the restriction"

7. Page 1, line 17.

Following: "covenant"

Strike: "or"

Insert: ", "

Following: "condition"

Insert: ", or restriction"

8. Page 1, following line 17.

Insert: "(b) When a member claims the benefit of this subsection (1), the member shall request that the homeowners' association record, or allow recording of, the exception applicable to the member. Upon request by the member, the homeowners' association, the member, or a designee shall record the member's exception with the office of the county clerk and recorder of the county where the real property is situated. The member shall provide the homeowners' association with the date the real property was conveyed to the member and shall pay the recording fees for the document setting forth the exception."

9. Page 1, line 30.

Following: "affected"

Insert: "real"

10. Page 2, line 6.

Following: "develop the"

Insert: "real"

11. Page 2, line 13.

Following: "subdivision;"

Strike: "and"

Insert: "or"

- END -

Explanation - The amendment set:

1. standardizes the use of the term "real property";
2. standardizes the use of the phrase "covenant, condition, or restriction";
3. revises the definition of "homeowner's association";
4. adds a subsection (1)(b) that provides for the recording of a member's exception with the office of the county clerk and recorder.

Amendments to Senate Bill No. 300
3rd Reading Copy

Requested by Representative Kathy Kelker

For the House Judiciary Committee

Prepared by Rachel Weiss
April 1, 2019 (4:18pm)

1. Title, page 1, line 7.

Strike: "OWNER'S BASIC RIGHTS"

Insert: "OWNER"

Following: "THAN"

Insert: "THOSE RESTRICTIONS THAT EXISTED"

2. Page 1, line 14.

Strike: "a member's basic rights to use"

Following: "the"

Insert: "types of use of a"

3. Page 1, line 24.

Following: "limiting"

Insert: "the types of use of"

Following: "member's"

Strike: "basic rights"

Insert: "real property"

4. Page 1, line 29.

Strike: "basic rights"

Insert: "types of use"

5. Page 1, line 30.

Strike: "member that existed"

Insert: "member's real property that were allowed"

6. Page 2, line 2 through line 6.

Strike: subsection (a) in its entirety

ReNUMBER: subsequent subsections

7. Page 2, following line 19.

Insert: "(e) "Types of use" means the following lawful types of use of the real property:

(i) use for residential, agricultural, or commercial purposes, unless the use was referenced as impermissible in the written or recorded restrictions;

(ii) the ability to rent the real property, including the land and structures on the real property, for any amount of time; and

(iii) the ability to otherwise develop the real property in

accordance with applicable federal, state, and local laws, ordinances, and regulations, unless the ability was referenced as impermissible in the written or recorded restrictions."

- END -

Explanation -

Amendments to Senate Bill No. 300
3rd Reading Copy

Requested by Representative Seth Berglee

For the House Judiciary Committee

Prepared by Rachel Weiss
April 1, 2019 (3:07pm)

1. Page 2, line 3.

Following: "purposes"

Insert: ", unless the use was impermissible according to the
written or recorded restrictions"

2. Page 2, line 6.

Strike: "the laws of this state"

Insert: "applicable federal, state, and local laws, ordinances,
and regulations, unless the type of development was
impermissible according to the written or recorded
restrictions"

- END -

Amendments to Senate Bill No. 300
3rd Reading Copy

Requested by Representative Kathy Kelker

For the House Judiciary Committee

Prepared by Rachel Weiss
April 1, 2019 (2:05pm)

1. Title, page 1, line 7.

Strike: "OWNER'S BASIC RIGHTS"

Insert: "OWNER"

Following: "THAN"

Insert: "THOSE RESTRICTIONS THAT EXISTED"

2. Page 1, line 14.

Strike: "a member's basic rights to use"

Following: "the"

Insert: "types of use of a"

3. Page 1, line 24.

Following: "limiting"

Insert: "the types of use of"

Following: "member's"

Strike: "basic rights"

Insert: "real property"

4. Page 1, line 29.

Strike: "basic rights"

Insert: "types of use"

5. Page 1, line 30.

Strike: "member that existed"

Insert: "member's real property that were allowed"

6. Page 2, line 2 through line 6.

Strike: subsection (a) in its entirety

ReNUMBER: subsequent subsections

7. Page 2, following line 19.

Insert: "(e) "Types of use" means the following lawful types of
use of the real property:

(i) use for residential, agricultural, or commercial
purposes;

(ii) the ability to rent the real property, including the
land and structures on the real property, for any amount of time;
and

(iii) the ability to otherwise develop the real property in
accordance with applicable federal, state, and local laws,

ordinances, and regulations."

- END -

Language House Judiciary added to SB 300 on March 21 during Executive Action. It remains on the bill unless the committee votes to reconsider the amendment.

Page 1, line 22.

Following: "member"

Insert: "or unless the successor-in-interest is a lender that acquired the real property through foreclosure"

Following: line 21

Insert: "(3) This section does not apply to a covenant, condition, or restriction:

(a) that is not subject to enforcement by a homeowners' association; or

(b) that is required in order to comply with applicable federal, state, and local laws, ordinances, and regulations."

ReNUMBER: subsequent subsections