

SENATE BILL NO. 300

INTRODUCED BY K. BOGNER, J. ELLSWORTH, J. FIELDER, S. HINEBAUCH, C. KEOGH,  
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A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING REAL PROPERTY LAWS TO PROTECT  
REAL PROPERTY RIGHTS; PREVENTING HOMEOWNERS' ASSOCIATIONS FROM IMPOSING MORE  
ONEROUS RESTRICTIONS ON A PROPERTY OWNER'S ~~BASIC RIGHTS~~ OWNER THAN THOSE  
RESTRICTIONS THAT EXISTED WHEN THE PROPERTY OWNER ACQUIRED THE REAL 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 -- REAL property rights.** (1) (A)

A homeowners' association may not enter into, amend, or enforce a covenant ~~or~~ condition, OR RESTRICTION in  
such a way that imposes more onerous restrictions on ~~a member's basic rights to use~~ the TYPES OF USE OF A  
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 REAL property expressly agrees ~~to the restriction~~ in  
writing at the time of the adoption or amendment of the covenant ~~or~~ condition, OR RESTRICTION.

(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.

(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 OR UNLESS THE SUCCESSOR-IN-INTEREST IS A LENDER THAT  
ACQUIRED THE REAL PROPERTY THROUGH FORECLOSURE.

1           ~~(3)~~ THIS SECTION DOES NOT APPLY TO A COVENANT, CONDITION, OR RESTRICTION:  
 2           ~~(A) THAT IS NOT SUBJECT TO ENFORCEMENT BY A HOMEOWNERS' ASSOCIATION; OR~~  
 3           ~~(B) THAT IS REQUIRED IN ORDER TO COMPLY WITH APPLICABLE FEDERAL, STATE, AND LOCAL LAWS, ORDINANCES,~~  
 4 AND REGULATIONS.

5           ~~(3)~~(4) Nothing in this section may be construed to prevent the enforcement of a covenant, condition, or  
 6 restriction limiting THE TYPES OF USE OF a member's ~~basic rights~~ REAL PROPERTY as long as the covenant,  
 7 condition, or restriction applied to the real property at the time the member acquired the member's interest in the  
 8 real property.

9           ~~(4)~~(5) Nothing in this section invalidates existing covenants of a homeowners' association or creates a  
 10 private right of action for actions or omissions occurring before [the effective date of this act]. However, after [the  
 11 effective date of this act], unless the member has consented as provided by subsection (1), a homeowners'  
 12 association may not enforce a covenant, condition, or restriction in such a way that limits the ~~basic rights~~ TYPES  
 13 OF USE of a ~~member that existed~~ MEMBER'S REAL PROPERTY THAT WERE ALLOWED when the member acquired the  
 14 affected REAL property.

15           ~~(5)~~(6) As used in this section, the following definitions apply:

- 16 ~~—— (a) "Basic rights" means the following rights of a member:~~
- 17 ~~—— (i) the right to use real property for residential, agricultural, or commercial purposes;~~
- 18 ~~—— (ii) the right to rent the real property, including the land and structures on the real property, for any~~  
 19 ~~amount of time; and~~
- 20 ~~—— (iii) the right to otherwise develop the property in accordance with the laws of this state.~~

21           ~~(b)~~(A) "Homeowners' association" means:

- 22           (i) an association of all the owners of real property within a geographic area defined by physical  
 23 boundaries which:
- 24           (A) is formally governed by a declaration of covenants, bylaws, or both;
- 25           (B) may be authorized to impose assessments that, if unpaid, may become a lien on a member's real  
 26 property; and
- 27           (C) may enact or enforce rules concerning the operation of the community or subdivision; ~~and~~ OR
- 28           (ii) an association of unit owners as defined by 70-23-102 subject to the Unit Ownership Act.

29           ~~(e)~~(B) "Member" means a person that belongs to a homeowners' association and whose real property  
 30 is subject to the jurisdiction of the homeowners' association.

