

Speer, Sally

From: Aldrich, Ginger
Sent: Wednesday, February 20, 2013 4:32 PM
To: Speer, Sally
Subject: FW: HB 426
Attachments: HB 426 comments.doc

Forgot to add you!

From: Aldrich, Ginger
Sent: Wednesday, February 20, 2013 4:31 PM
To: 'lizb4house@gmail.com'; 'fitzpatricksbresnan.net'; 'kswansonhd86@gmail.com'; 'tom@tomberrymt.com'; 'clarenabrockie@hotmail.com'; 'amanda@curtisforbutte.com'; 'rahagan@msn.com'; 'pathd13@blackfoot.net'; 'stevlavin4hd8@gmail.com'; 'mcnallyhd49@gmail.com'; 'jonathanmcniven@gmail.com'; 'mooreformontana@gmail.com'; O'Neil, Jerry; 'rep.cschreiner@legmt.gov'; 'nick.schwadererhd14@gmail.com'; 'mtsteenbergbresnan.net'; 'nwilsonhd97@gmail.com'; 'daniel.zolnikov@gmail.com'
Subject: FW: HB 426

And early, by Mr. Llewelyn, I meant Mr Lovec . . . please find his comments attached pursuant to his email, below.

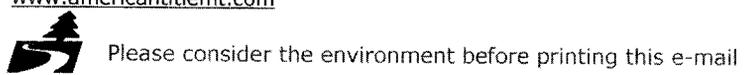
From: Lovec, Ted [<mailto:tlovec@amttitlemontana.com>]
Sent: Wednesday, February 20, 2013 4:18 PM
To: Aldrich, Ginger
Subject: HB 426

Ginger:
Attached are the additional comments I would like to submit to supplement my testimony given at the hearing for HB 426 on Tuesday February 19 before the Local Government Committee. I apologize for the delayed response but I was unable to access a computer before I departed Helena and I was unable to accomplish this on my Smartphone. Thank you for your assistance.
Ted Lovec

Ted Lovec
President



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Thank you.

- 1) The issue of the need for conveyances amongst the unit owners relative to the land below the newly converted townhouse is unresolved. Theoretically it might be able to work without deeds in some instances, but that would probably not apply to all condo/townhomes. This is "might" as this is new ground and would require additional underwriting consideration. Clearly boundaries of the fee simple ownership of the units are being expanded from the original box of space above the ground to a column of ownership that includes the ground below the original unit as well as the air above. In almost all instances the boundaries will expand laterally to add portions of the building structure that were previously common elements. Most condominium units are the interior space of the structure without the exterior structure which is a common or limited common element.
- 2) Section 2 (b) does not address the impact of a lender objecting to a proposed amendment. Many unit declarations have existing provisions requiring a certain percentage of approvals by lenders before an amendment can be effective. This bill would contradict an existing contractual right of the lender who relied on the language in the declaration when making the loan. The same issue exists as to an owner of a unit who relied upon the existing declaration when they purchased their units.
- 3) Lenders continue to use the original legal description upon which they collateralized their loan when they foreclose unless they have entered into a formal loan agreement with the borrower modifying the legal description. This will result in uncertainty about the impact of foreclosure, particularly since the foreclosure of one unit with its undivided interest in the original common elements will end up appearing to foreclose undivided interests in the land below all of the other units that has been incorporated into the new townhouse boundaries of those other units. This could potentially make title for the entire townhouse/condominium project unmarketable.
- 4) Will this have an unanticipated impact on property insurance? The building structures in most instances would be changing from common elements to being incorporated into individual units. If there are any policies that only insure common elements then the insurance coverage may come into questions or cease to exist if the structures are no longer common elements, unless the policies are changed.
- 5) A conversion will in virtually all instances involve a change in the location of the unit boundaries, therefore resulting in a change in the legal description.
- 6) The title insurance industry always evaluates risks, the unit ownership documentation and statutes on a case by case basis for existing condominiums before determining the insurability of the transaction. We evaluate amendments based on statute and provisions contained in the amendment and the original declaration and reserve the right to come to our own conclusions. It is not appropriate to legislate a requirement for a company to transact business and give grounds for litigation if a title company does not agree as to the sufficiency of an amendment to a declaration,