

MOULTONBELLINGHAM PC

EXHIBIT 7
DATE 3/12/2015
SB 280-281

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March 11, 2015

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Representative Tom Berry
Chairman
House Business and Labor Committee
State Capitol
Helena, Montana 59624

Re: SB 280 and SB 281

Dear Chairman Berry:

I am writing to you in order to encourage you and your Committee to support SB 280 and SB 281.

Senate Bill 280 amends the Statute of Frauds to address issues that were raised by *Morrow v. Bank of America*. The Statute of Frauds requires certain contracts to be in writing. This is elementary law that dates back hundreds of years. Real estate transactions have evolved so they must not only be in writing, but they must also be signed, notarized, and recorded. These formalities have created certainty – where both the borrower and lender know exactly what their obligations are. This certainty is critical. Lenders need certainty in order to correctly evaluate credit risk. Without certainty, neither borrowers nor lenders know the benefits and obligations that derive from their agreement. Additionally, third parties (other lenders or creditors) rely upon the certainty of written and recorded agreements as well. If written agreements are subject to oral modification, then no one will be able to determine if a recorded mortgage accurately reflects the current terms and conditions. As a result lenders will be hesitant to advance credit or loan funds to borrowers in general.

Morrow created uncertainty by allowing communications between a borrower and lender, after the loan closing, to be grounds for filing a lawsuit. In *Morrow*, the Plaintiff alleged an oral modification of a real estate contract that was in writing and had been signed, notarized, and recorded. The alleged oral modification was unenforceable, but the Supreme Court held that it could still be the basis for litigation. The Supreme Court ruling was contrary to the traditional interpretation of the Statute of Frauds and the express terms of the written agreement between the parties.

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Please respect the formalities of real estate transactions. It is important that these agreements be in writing and that they be signed, notarized, and recorded. The very purpose of these requirements is to avoid confusion by memorializing the agreement between parties.

Attorneys often ask bankers if lenders have an obligation to deal fairly with their borrowers. It is a trick question. Lenders have an obligation to follow the terms and conditions of the written contract. The terms of the contract agreed to by the borrower and the lender define what is "fair" because it sets forth in writing the agreement and obligations of the parties. Like the lender, the borrower has an obligation to follow the terms of the written contract.

As an attorney, I have represented numerous lenders in originating, documenting, restructuring, and foreclosing loans in Montana. It is unfortunate that, at times, a few borrowers default on their financial obligations. When that happens, the preferred course is for the borrower and lender to talk to each other in order to try to resolve the default status. In my experience, the parties are usually able to resolve matters by modifying the loan terms, and entering into a written modification agreement or a forbearance agreement. Foreclosure is not the preferred option. It is, in my opinion, the last option.

Foreclosure is a big deal. It involves a legal process that can significantly impact people's lives. It is not something to be initiated lightly. It is always my last alternative. If there is a way to avoid foreclosure, that makes business sense, I will advocate for that option.

Today, my preference to avoid foreclosure is challenged by *Morrow v. Bank of America*. Since post-closing conversations regarding alternative repayment terms are now actionable, such conversations inherently create additional risk and, as such, will be discouraged or precluded.

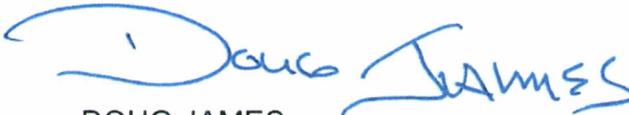
Since a lender's conversations and discussions with a borrower are actionable, lenders are well advised to avoid those discussions and proceed directly to foreclosure. This will result in more foreclosures. I hope that you will support Senate Bill 280 because it restores certainty to the lending environment and it encourages borrowers and lenders to have conversations that make it possible to avoid foreclosure, most of the time. Montana doesn't need more foreclosures. We do need more conversation between borrowers and lenders. Senate Bill 280 provides the legal protection necessary in order for those conversations to continue.

I am writing to you in order to express my personal support for these bills. I am not writing to you on behalf of my law firm or on behalf of any of our clients. I do want to disclose to you, however, that I represented the Montana Bankers Association in the

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Morrow case. At the present time, I am not representing the Montana Bankers Association. The opinions that I have expressed in this letter are my own.

Sincerely,

A handwritten signature in blue ink that reads "Doug James". The signature is stylized, with a large, looped "D" and "James" written in a cursive-like font.

DOUG JAMES

DJ:jlh

4812-3703-7090, v. 3