

Amendments to Senate Bill No. 23  
1st Reading Copy

Requested by Senator Roger Webb

For the Senate Business, Labor, and Economic Affairs Committee

Prepared by K.V. Aldrich  
February 2, 2015 (7:05pm)

1. Title, page 1, line 5 through line 11.  
**Strike:** "PROVIDING" on line 5 through "CIRCUMSTANCES;" on line 8  
**Following:** "PROVIDING THAT" on line 8  
**Strike:** "A TITLE" on line 8 through "ASSERTED BY" on line 9  
**Following:** "TOWNHOUSE" on line 10  
**Insert:** "IS CONSIDERED TO HAVE CONSENTED TO THE CONVERSION"  
**Strike:** "IF LESS THAN 100%" on line 11
  
2. Page 1, line 17 through line 23.  
**Strike:** "Limitation on title insurer's liability" on line 17  
**Insert:** "Lender's failure to object"  
**Strike:** "A title insurer providing" on line 17 through "(2) a"  
on line 23  
**Insert:** "A"
  
3. Page 1, line 24.  
**Strike:** "45"  
**Insert:** "60"  
**Following:** "conversion"  
**Insert:** "is considered to have consented to the conversion"
  
4. Page 2, line 16.  
**Strike:** "if less than 100%,"

- END -

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January 26, 2015

Sen. Ed Buttrey, Chairman  
Business and Industry Committee  
Montana State Capital  
Helena, MT 59604

Re: SB-23

Dear Senator Buttrey,

I am writing today to hopefully provide additional information and background on the need for this consumer legislation. This is my thirty-first year of practice in the state of Montana with the last fifteen years having a particular emphasis in real-estate law. I wanted to focus my comments on the provision that requires lenders to be proactive in objecting to amendments to condominium Declaration and Covenants.

By way of background, back in the 1970's when residential subdivisions were created, they were typically created by builders who would be building all of the homes within the subdivision. Those builders typically had one lender financing the purchase of the land and subdivision process, as well as construction of the individual homes. Sometimes there might be two lenders involved. It is these lenders that required builders to include in their Declarations and Covenants a provision that any amendments to the subdivision's Declaration's and Covenants (and sometimes Bylaws) would require one hundred percent lender approval.

There were subdivisions which were created at this time by "developers" where individuals and builders could by lots and construction might be financed by several lenders. In the 70's, getting lender approval for amending Declarations and Covenants was not difficult as the lenders were typically local to the community.

Fast forward to the real-estate meltdown, including the sub-prime mortgage mess, of late 2007 early 2008. Government mortgage programs found that foreclosing on mortgages involving condominiums was difficult, because the ground under the individual condominiums was not independently owned. Giving the notices required to all subdivision owners with a partial interest in the property in

foreclosure was onerous, and as a result these Federal programs concluded that they were no longer going to provide mortgage assistance on sales of condominiums.

The 2011 Montana legislature addressed this problem by enacting legislation in HB460, which allowed for the conversion of condominiums to townhomes. In townhomes the land under each unit is owned by the unit owner, and the only shared ownership is in the common elements. This legislation was desperately needed as the sale of residential condominiums slowed to a trickle, due to the inability of borrowers to use the federal programs.

From late 2011 through 2012, I assisted in the conversion of dozens of condominiums to townhomes. While many subdivisions created in the late 1990's and early 2000's do not include in their Declarations and Covenants a requirement of notice and acquiescence by lenders to proposed amendments, most if not all of the subdivisions created in the 70's and 80's do contain that restriction in their organic documents.

That restriction proves to be a significant impediment to amendment today due to changes in the residential property financing market. Whereas most residential homes in the 70's were financed by local banks or savings and loans, in the early 2000's there were numerous nationwide lending companies, and the bundling and resale of mortgages, even by local banks, was common. Often times an individual's home mortgage was sold and resold several times in the first couple of years. Most homeowners in this situation deal with a mortgage servicing company, not the actual holder of the mortgage. As a result, on many conversions from condominiums to townhomes it was difficult to learn who the lender was, let alone notify them of the proposed amendment and obtain the written approval.

This problem was compounded by the title companies in the Billings' market which would not provide title insurance on the sale of any townhome created through a conversion from condominium to townhome, if 100% of the lender approvals were not obtained. The reasoning was that the conversion may negatively affect the security of the lender, a position which had absolutely no merit under Montana law. Section 71-1-108 MCA, entitled "subsequently acquired title", provides that if a mortgagee obtains additional interest in the property which is the subject of the mortgage, the lien of the mortgage attaches to that additional interest.

By this statute, when a condominium is converted to a townhome, the mortgage which previously did not attach to any land in the subdivision, now

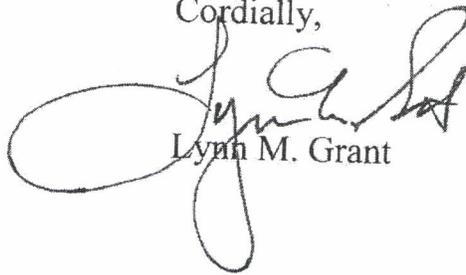
attaches to the land underneath the individual unit. In spite of this additional security, the title companies in Billings refused to insure title and thereby almost single handedly thwarted the Legislature's attempt to assist the sale of residential condominiums embodied in the 2011 legislation.

SB23 addresses this issue by taking the burden off the condominium owners to track down multiple mortgage holders, through multiple service providers who rarely if ever even respond to a notice and request for written approval, and puts it upon the service providers and mortgage holders to affirmatively voice an objection to the amendment within a reasonable time period after the loan server is provided written notice by the mortgagee. The legislation also addresses the reluctance of title insurers to insure title by requiring them to provide title insurance on conversions from condominiums to townhomes, in situations where the organic documents require approval of the amendments by the mortgage holders, where they have been given notice and do not timely object.

It is unfortunate that a small part of a particular industry has thwarted the legislature's efforts in 2011 to bring relief to condominium owners whose properties were rendered virtually unmarketable by Fannie Mae and Freddie Mac's decision to exclude residential condominiums from their programs.

The legislation before you on this subject does have its supporters within the Montana title insurance industry. Indeed, I understand Bob Sewell of Missoula, was instrumental in formulating ideas which are embodied in SB23 to address this situation. SB23 will compliment the Legislature's 2011 efforts to bring relief to Montana condominium owners, help restore value to condominiums, qualify the properties for federal mortgage programs, and make them more marketable to prospective buyers once converted to townhomes.

Cordially,



Lynn M. Grant