

**Tom Llewellyn**

**From:** Ellen McEwen <emcewen@dmlaw.com>  
**Sent:** Tuesday, January 27, 2015 3:24 PM  
**To:** tom@llewellynrealestate.com  
**Cc:** Bill VanCanagan; Jill Johnson; Sara Smith  
**Subject:** Final amendments to SB 23, 24 and 25  
**Attachments:** 2015.01.27 WKV redline - SB 23.docx; 2015.01.27 WKV redline - SB 24.docx; 2015.01.27 WKV redline - SB 25.docx

FROM WILLIAM K. VANCANAGAN, ESQ.

Hi, Tom,

As a follow up to our recent discussions regarding the above referenced matter and meeting with Bob Sewell of the Land Title Association, I have prepared for your review and comment redline drafts of Senate Bill numbers 23, 24 and 25 which contain the final amendments we discussed. A summary of the amendments set forth in each bill is as follows:

1. Senate Bill 23. I modified new section 1 of SB 23 by removing all of the provisions pertaining to limitations on the title insurers liability for the reason that Bob Sewell has repeatedly indicated that the title insurers see no benefit to these provisions. However, if the amendments to the conversion process provide adequate specificity, the liability to the title insurers should be negligible anyway.
2. Senate Bill 24. I revised the language of subsection (5)(d) to make it consistent with the same provisions set forth in SB 23 and SB 25. In addition, I expanded the phrase "recorded declaration" to include "recorded declaration or amendment". I also modified 70-23-301(9) located under section 2 to make it consistent with the same provisions of SB 23 and SB 25.
3. Senate Bill 25. I amended section 1 as follows:
  - a. I made the 75% provision consistent with the same provisions incorporated into SB 23 and SB 24;
  - b. I added language that the conversion can only occur if the declaration or amended declaration contains a site plan which includes a description of the dimensions of the exterior boundaries of the footprint of the land beneath each unit and other limited common elements including decks, patios and walkways;
  - c. I added to Section 1 new subparagraph (2) which confirms that a condominium unit may only be converted if it is situated on the land beneath it. in other words, "stacked" condominiums would not qualify for conversion. However, row houses as we discussed with Bob Sewell would qualify for conversions;
  - d. I increased the lender notification period from 45 days to 60 days as we discussed;
  - e. I added language per my discussions with Bob Sewell that prior to the recording of an amended declaration which provides for the conversion of a condominium to a town home, the original declaration or any amendment must describe the land beneath the unit as a limited common element. This should do away with the "takings" concerns which accompanied the prior designation of the land beneath the unit as a "general common element" in which each owner in the subdivision by statute has undivided ownership interest;

- f. I modified section 2, 70-23-102(7) by removing from the definition of "general common elements" the land beneath the unit and then reincorporated "the land beneath the unit" into sub paragraph (a) which defines "limited common elements";
- g. I substantially overhauled subsection (14) by better defining the phrase "land beneath the unit" to provide that it must be described on a site plan attached to the original declaration or any subsequent amendments which includes a description of the dimensions of the exterior boundaries of the footprint of the land beneath the unit and other limited common elements including decks, patios and walkways to be converted;
- h. I amended Section 3, 70-23-301(5) to reference the land beneath the unit as a limited common element and to further reference other amenities such as decks, patios, and walkways appurtenant to the unit to be described as limited common elements in the declaration;
- i. I modified 70-23-301(9) to make the 75% voting provision consistent with the same provision in SB 23 and SB 24; and,
- j. Finally, I added new section 4 which contains the language provided by the Montana Department of Environmental Quality pertaining to the exemption from certain condominiums, townhouses and townhomes.

Please review the redline revisions to the various bill drafts, Tom and let me know if you have any final comments or suggested modifications. Or, if the amendments meet with your approval feel free to move forward with delivering them to Senator Webb for distribution to the Committee.

It may also be useful to prepare a brief bill memorandum describing the amendments and if you would like me to do so let me know.

I hope all is well and I look forward to hearing from you.

Best regards –Bill

**Ellen McEwen, Legal Assistant**

**DM&L**

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To Whom It May Concern:

My name is Yvonne Kelly, I am a Mortgage Loan Officer and have been for the past 10 years. In regards to the changes in statutes to change condo projects into townhomes for financing purposes, I believe would be beneficial.

Financing Condominiums can be very timely with all the additional requirements by the secondary markets. It can limit not only buyers but sellers as well, depending on the loan programs, down payment, HOAs, etc. The interest rates can be higher and the occupancy, such as primary residence or investment property, can be a deciding factor as whether or not the secondary market will approve the financing.

If you have any questions or need additional information, I can be contacted at the below phone number and/or email.

Sincerely,

A handwritten signature in cursive script that reads 'Yvonne Kelly'.

Yvonne Kelly  
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