

HOUSE BILL NO. 357

INTRODUCED BY J. DOOLING, M. BERTOGLIO, M. NOLAND

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING HOMEOWNERS' ASSOCIATION RESTRICTIONS; REVISING THE CONSENT REQUIREMENT FOR NEW RESTRICTIONS TO APPLY TO COVENANTS ENTERED INTO ON OR AFTER MAY 9, 2019; AMENDING SECTION 70-17-901, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 70-17-901, MCA, is amended to read:

"70-17-901. Homeowners' association restrictions -- real property rights. (1) (a) A homeowners' association may not enter into, amend, or enforce a covenant, condition, or restriction in such a way that imposes more onerous restrictions on 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 in writing at the time of the adoption or amendment of the covenant, 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

1 lender that acquired the real property through foreclosure.

2 (3) This section does not apply to a covenant, condition, or restriction:

3 (a) that is not subject to enforcement by a homeowners' association; or

4 (b) that is required in order to comply with applicable federal, state, and local laws, ordinances,
5 and regulations.

6 (4) Nothing in this section may be construed to prevent the enforcement of a covenant, condition,
7 or restriction limiting the types of use of a member's real property as long as the covenant, condition, or
8 restriction applied to the real property at the time the member acquired the member's interest in the real
9 property.

10 (5) Nothing in this section invalidates existing covenants of a homeowners' association or creates
11 a private right of action for actions or omissions occurring before May 9, 2019. ~~However,~~ For covenants entered
12 into on or after May 9, 2019, unless the member ~~has consented~~ consents as provided by subsection (1), a
13 homeowners' association may not enforce a covenant, condition, or restriction in such a way that limits the
14 types of use of a member's real property that were allowed when the member acquired the affected real
15 property.

16 (6) As used in this section, the following definitions apply:

17 (a) "Homeowners' association" means:

18 (i) an association of all the owners of real property within a geographic area defined by physical
19 boundaries which:

20 (A) is formally governed by a declaration of covenants, bylaws, or both;

21 (B) may be authorized to impose assessments that, if unpaid, may become a lien on a member's
22 real property; and

23 (C) may enact or enforce rules concerning the operation of the community or subdivision; or

24 (ii) an association of unit owners as defined by 70-23-102 subject to the Unit Ownership Act.

25 (b) "Member" means a person that belongs to a homeowners' association and whose real property
26 is subject to the jurisdiction of the homeowners' association.

27 (c) "Person" means one or more individuals or a legal or commercial entity.

28 (d) "Real property" has the meaning provided in 70-1-106, except that it is limited to real property

1 governed by a homeowners' association.

2 (e) "Types of use" means the following lawful types of use of the real property:

3 (i) use for residential, agricultural, or commercial purposes, unless the use was impermissible

4 according to the written or recorded restrictions;

5 (ii) the ability to rent the real property, including the land and structures on the real property, for
6 any amount of time; and

7 (iii) the ability to otherwise develop the real property in accordance with applicable federal, state,
8 and local laws, ordinances, and regulations, unless the ability was impermissible according to the written or
9 recorded restrictions."

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11 NEW SECTION. Section 2. Effective date. [This act] is effective on passage and approval.

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13 NEW SECTION. Section 3. Retroactive applicability. [This act] applies retroactively, within the
14 meaning of 1-2-109, to covenants entered into on or after May 9, 2019.

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