

SENATE BILL NO. 276

INTRODUCED BY R. WEBB

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4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING CONDOMINIUM AND TOWNHOUSE
5 LAWS; PROVIDING REQUIREMENTS FOR AND EFFECTS OF A CONVERSION OF A CONDOMINIUM TO
6 A TOWNHOUSE UNDER THE UNIT OWNERSHIP ACT; REQUIRING THAT NOTICE OF THE CONVERSION
7 AND AN OPPORTUNITY FOR OBJECTION BE GIVEN TO CERTAIN PARTIES; EXEMPTING CERTAIN
8 CONVERSIONS OF A CONDOMINIUM TO A TOWNHOUSE FROM STATE AND LOCAL SUBDIVISION
9 REVIEW; PROVIDING DEFINITIONS; AMENDING SECTIONS 70-23-102, 76-3-203, AND 76-4-111, MCA; AND
10 PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

13
14 NEW SECTION. **Section 1. Conversion of condominium to townhouse.** (1) A condominium may be
15 converted to a townhome or townhouse only if:

- 16 (a) no other structure occupies the vertical air space above or below the unit's converted footprint;
- 17 (b) all condominium units subject to the recorded condominium declaration are simultaneously converted
18 to townhome or townhouse units; and
- 19 (c) all of the unit owners owning units subject to the recorded condominium declaration consent to the
20 conversion by executing and recording an instrument to that effect and adhering to the requirements of this
21 section.

22 (2) If a condominium unit is affected by a lien, the unit owner shall obtain the lienholder's written consent
23 to the conversion. If a lienholder does not provide written consent to the conversion, the unit owner may consent
24 on behalf of the lienholder only according to the following provisions:

- 25 (a) The unit owner shall deliver by certified mail, return receipt requested, to each affected lienholder or
26 its servicer at the address specified in the recorded trust indenture or mortgage, the address specified in the last
27 recorded assignment of the trust indenture or the mortgage, if any, and the address specified in the last mailed
28 request for loan payment the following documents:
- 29 (i) written notification pursuant to [section 2];
- 30 (ii) a litigation guarantee, provided that:

1 (A) the form of the guarantee has been approved by the insurance commissioner and is issued by a
2 licensed title insurance producer;

3 (B) the guarantee was ordered on the unit by the person required to give notice; and

4 (C) the guarantee lists the identities and addresses of the parties of record that have an interest in or
5 a possible claim of an interest in the unit designed to disclose all parties of record that would otherwise be
6 necessary to name in a quiet title action;

7 (iii) the proposed declaration and bylaws for the converted townhomes or townhouses that:

8 (A) provides that the percentage of the undivided interest of each unit owner in the common area is the
9 same as the percentage of undivided interest owned by the owner in the common elements prior to the
10 conversion; and

11 (B) provides for the continuation of the prior condominium association of unit owners as a townhouse
12 association of unit owners;

13 (iv) a site plan that includes the boundaries of the footprint beneath each converted unit and any limited
14 common elements, such as decks, patios, and walkways, that will be included in the conversion;

15 (v) a survey depicting the corners and boundaries of the property underlying each converted townhome
16 or townhouse; and

17 (vi) an appraisal of the fair market value of the unit presuming that the unit had been converted to a
18 townhome or townhouse for the purpose of establishing that the fair market value of the unit as a townhome or
19 townhouse is not less than the fair market value of the existing condominium unit.

20 (b) Within 120 days of the date of the mailing in subsection (2)(a), a lienholder may object only by:

21 (i) recording its objection with the office of the county clerk and recorder of the county in which the unit
22 is situated; and

23 (ii) mailing notification of its objection by certified mail, return receipt requested, to the unit owner at the
24 address specified on the notice of intent received pursuant to [section 2].

25 (c) If a lienholder does not register an objection pursuant to subsection (2)(b), the lienholder is
26 considered to have consented to the conversion after the expiration of the 120-day period.

27 (3) (a) Except as provided in subsection (3)(b), if the unit subject to conversion is not affected by a lien
28 or if each lienholder has consented or is considered to have consented to the conversion pursuant to this section,
29 the conversion is effective upon the recording of all of the following documents pertaining to each of the
30 condominium units on the property with the office of the county clerk and recorder of the county in which the

1 property is situated:

- 2 (i) an affidavit stating that the owner mailed the required notices of intent pursuant to [section 2];
- 3 (ii) the declaration and bylaws, which must be substantially the same as the proposed declaration and
- 4 bylaws specified in subsection (2)(a)(iii);
- 5 (iii) the site plan referenced in subsection (2)(a)(iv);
- 6 (iv) the survey referenced in subsection (2)(a)(v); and
- 7 (v) evidence of the written consent of each affected lienholder. Sufficient evidence of written consent may
- 8 be made through documents including but not limited to deeds, loan modifications, or the instrument reflecting
- 9 a unit owner's consent on behalf of the lienholder as provided in [section 3].

10 (b) If a lienholder is considered to have consented pursuant to subsection (2)(c), the unit owner may
11 record the documents within 45 days after the expiration of the 120-day period provided in subsection (2)(b).

12
13 **NEW SECTION. Section 2. Notice of intent.** (1) In addition to the documents required under [section
14 1(2)(a)], the notice of intent by a unit owner to a lienholder to convert a condominium to a townhome or
15 townhouse must contain:

- 16 (a) the date;
- 17 (b) the name and address of the borrower;
- 18 (c) the name of the lienholder; and
- 19 (d) the name of the loan servicer if loan payments on a trust indenture or mortgage are collected by a
- 20 loan servicer.

21 (2) The notice must be in substantially the following form:

22 "This notice, made the ... day of,, concerns the trust indenture or mortgage attached and
23 described as follows:

24 Name of borrower:

25 Name of lienholder:

26 Name of loan servicer:

27 Recording information concerning the trust indenture or mortgage, including the entry number, book
28 number, and page number:

29 Pursuant to the Unit Ownership Act contained in Title 70, chapter 23, MCA, the undersigned unit owner
30 intends to convert a condominium affected by a mortgage or a trust indenture located at to a townhome

1 or townhouse.

2 Unless the lienholder within 120 days of the date of this notice records its objection pursuant to [section
3 1], MCA, with the office of the county clerk and recorder of the county in which the property is situated and mails
4 notification of its objection by certified mail, return receipt requested, to the unit owner at the address specified
5 on this notice, the unit owner will consent to the conversion on behalf of the lienholder for the mortgage or trust
6 indenture described in this notice.

7 Pursuant to [section 1(2)(a)], MCA, the unit owner has included the following attachments:

- 8 (a) a copy of the recorded trust indenture or mortgage;
- 9 (b) a litigation guarantee;
- 10 (c) the proposed declaration and bylaws for the converted townhome or townhouses;
- 11 (d) a site plan;
- 12 (e) a survey; and
- 13 (f) an appraisal of the fair market value of each unit presuming that each unit had been converted to a
14 townhome or townhouse.

15 (Signature of unit owner)

16 (Address of unit owner)"

17
18 **NEW SECTION. Section 3. Consent by unit owner on behalf of lienholder.** The instrument reflecting
19 a unit owner's consent on behalf of the lienholder to convert a secured property from a condominium to a
20 townhome or townhouse must be in substantially the following form:

21 "(Unit owner) hereby consents on behalf of (name of lienholder), whose lien is evidenced by a trust
22 indenture or mortgage recorded in County on day of,, in book at page as entry number
23 to the following property in County being converted from a condominium described as to a
24 townhome or townhouse described as

25 The undersigned unit owner certifies as follows:

26 (1) In accordance with the requirements of [sections 1 and 2], MCA, the unit owner has delivered to the
27 lienholder a notice of intent by a unit owner to a lienholder to convert a condominium to a townhome or
28 townhouse.

29 (2) The lienholder has not affirmatively consented to the conversion, but the unit owner did not receive
30 a notice of objection to the conversion from the lienholder within 120 days of the date of the notice of intent to

1 convert a condominium to a townhome or townhouse as required to object to the conversion by [section 1], MCA.

2 (Signature of unit owner)

3 (Notarization)"

4
5 **NEW SECTION. Section 4. Effect of conversion.** Regarding a conversion pursuant to [section 1], the
6 following provisions apply:

7 (1) (a) A townhome or townhouse unit, including the structural elements and land beneath the unit as
8 described in the survey in [section 1(2)(a)(v)], must be considered to be owned in fee simple by the unit owner;

9 (b) a portion of the land depicted as common area on the site plan described in [section 1(2)(a)(iv)] must
10 be considered to be owned in common by all of the converted townhome or townhouse unit owners. The
11 percentage of the undivided interest of each unit owner in the common area must be considered to be the same
12 as the percentage of undivided interest owned by the owner in the common elements prior to the conversion.

13 (c) a lien affecting a townhome or townhouse unit is a lien against the fee simple interest of the unit
14 owner in subsection (1)(a) and the undivided interest in the common area described in subsection (1)(b). The
15 conversion, by itself, may not be considered to have an effect on the existing priorities of any liens concerning
16 the converted townhome or townhouse units.

17 (2) The owners, lienholders, and title insurers may rely on the amended declaration's legal description
18 of the unit provided by the survey in [section 1(2)(a)(v)] with regard to the future conveyance of individual
19 townhome or townhouse units.

20 (3) Section 71-1-108 applies to the fee simple title to the land beneath a townhome or townhouse unit
21 acquired by the mortgagor pursuant to the conversion.

22 (4) Because the amended declaration must provide for the continuation of the association of unit owners
23 pursuant to [section 1(2)(a)(iii)(B)], the unit owners may not be required to form a new association of unit owners.

24 (5) The townhome or townhouse may not be considered removed from the provisions of Title 70, chapter
25 23, solely by virtue of the conversion.

26 (6) If the conversion procedures in [section 1] are followed, a unit owner or lienholder may not bring an
27 action concerning the conversion, including a foreclosure based solely on the conversion, against any party
28 associated with the conversion, including but not limited to the association of unit owners, title insurers, escrow
29 providers, or lienholders. A person who brings an action concerning the conversion is liable for damages and
30 attorney fees and costs to defend the action.

1 (7) If a foreclosure of a unit is conducted using the original condominium legal description in the trust
2 indenture or mortgage, it will result in the foreclosure of the converted townhome or townhouse.

3 (8) A conversion does not constitute a removal pursuant to this chapter.
4

5 **Section 5.** Section 70-23-102, MCA, is amended to read:

6 **"70-23-102. Definitions.** In this chapter, unless the context requires otherwise, the following definitions
7 apply:

8 (1) "Association of unit owners" means all the unit owners acting as a group in accordance with the
9 declaration and bylaws.

10 (2) "Borrower" means a mortgagor, grantor as defined in 71-1-303, or other debtor.

11 ~~(2)~~(3) "Building" means a multiple-unit building or buildings comprising a part of the property.

12 ~~(3)~~(4) "Common elements" means the general common elements and the limited common elements.

13 ~~(4)~~(5) "Common expenses" means:

14 (a) expenses of administration, maintenance, repair, or replacement of the common elements;

15 (b) expenses agreed upon as common by all the unit owners; and

16 (c) expenses declared common by 70-23-610 and 70-23-612 or by the declaration or the bylaws of the
17 particular condominium.

18 ~~(5)~~(6) "Community land trust" means a nonprofit organization exempt from taxation under section
19 501(c)(3) of the Internal Revenue Code that holds title to land beneath individually owned housing units for the
20 purpose of preserving affordable housing.

21 ~~(6)~~(7) "Condominium" means the ownership of single units with common elements located on property
22 submitted to the provisions of this chapter. The term does not include a townhome, a townhouse, a community
23 land trust, or a housing unit located on land belonging to a community land trust.

24 (8) "Conversion" means a change in the character of residential real property from one or more parcels
25 of land with attached condominium units to one or more parcels of land with attached townhome or townhouse
26 units without a change to the undivided interest of the unit owners.

27 ~~(7)~~(9) "Declaration" means the instrument by which the property is submitted to the provisions of this
28 chapter.

29 ~~(8)~~(10) "General common elements", unless otherwise provided in a declaration or by consent of all the
30 unit owners, means:

1 (a) the land on which the building is located, except any portion of the land included in a unit or made
2 a limited common element by the declaration;

3 (b) the foundations, columns, girders, beams, supports, mainwalls, roofs, halls, corridors, lobbies, stairs,
4 fire escapes, entrances, and exits of the building;

5 (c) the basements, yards, gardens, parking areas, and outside storage spaces, private pathways,
6 sidewalks, and private roads;

7 (d) installations of central services such as power, light, gas, hot and cold water, heating, refrigeration,
8 air conditioning, waste disposal, and incinerating;

9 (e) the elevators, tanks, pumps, motors, fans, compressors, ducts, and in general all apparatus and
10 installations existing for common use;

11 (f) the premises for the lodging of janitors or caretakers of the property; and

12 (g) all other elements of the building necessary or convenient to its existence, maintenance, and safety
13 or normally in common use.

14 (11) "Lienholder" means a person holding a security interest, including a mortgagee, beneficiary of a trust
15 indenture, or other creditor who holds a mortgage, trust indenture, or other instrument that encumbers real
16 property.

17 ~~(9)~~(12) "Limited common elements" means those common elements designated in the declaration or by
18 agreement of all the unit owners as reserved for the use of a certain unit or number of units to the exclusion of
19 the other units.

20 ~~(10)~~(13) "Majority" or "majority of the unit owners", unless otherwise provided in the declaration, means
21 the owners of more than 50% in the aggregate of the undivided ownership interests in the general common
22 elements as the percentage of interest in the element appertaining to each unit is expressed in the declaration.
23 Whenever a percentage of the unit owners is specified, percentage means the percentage in the aggregate of
24 undivided ownership.

25 ~~(11)~~(14) "Manager" means the manager, board of managers, or other person in charge of the
26 administration of or managing the property.

27 ~~(12)~~(15) "Project" means a real estate condominium project whereby a condominium of two or more units
28 located on property submitted to the provisions of this chapter ~~are~~ is offered or proposed to be offered for sale.

29 ~~(13)~~(16) "Property" means the land, all buildings, improvements, and structures on the land, and all
30 easements, rights, and appurtenances belonging to the land that are submitted to the provisions of this chapter.

1 ~~(14)~~(17) "Recording officer" means the county officer charged with the duty of filing and recording deeds
2 and mortgages or other instruments or documents affecting the title to real property.

3 ~~(15)~~(18) "Townhome" or "townhouse" means property that is owned subject to an arrangement under
4 which persons own their own units and hold separate title to the land beneath their units, but under which they
5 may jointly own the common areas and facilities.

6 ~~(16)~~(19) "Unit" means a part of the property including one or more rooms occupying one or more floors
7 or a part or parts of the property intended for any type of independent use and with a direct exit to a public street
8 or highway or to a common area or area leading to a public street or highway.

9 ~~(17)~~(20) "Unit designation" means the number, letter, or combination of numbers and letters designating
10 a unit in the declaration.

11 ~~(18)~~(21) "Unit owner" means the person owning a unit in fee simple absolute individually or as co-owner
12 in any real estate tenancy relationship recognized under the laws of this state. However, for all purposes,
13 including the exercise of voting rights, provided by lease filed with the presiding officer of the association of unit
14 owners, a lessee of a unit must be considered a unit owner."

15

16 **Section 6.** Section 76-3-203, MCA, is amended to read:

17 **"76-3-203. Exemption for certain condominiums and townhouses.** Condominiums, townhomes, or
18 townhouses, or conversions, as those terms are defined in 70-23-102, constructed on land subdivided in
19 compliance with parts 5 and 6 of this chapter or on lots within incorporated cities and towns are exempt from the
20 provisions of this chapter if:

21 (1) the approval of the original subdivision of land expressly contemplated the construction of the
22 condominiums, townhomes, or townhouses and any applicable park dedication requirements in 76-3-621 are
23 complied with; or

24 (2) the condominium, townhome, or townhouse proposal is in conformance with applicable local zoning
25 regulations when local zoning regulations are in effect."

26

27 **Section 7.** Section 76-4-111, MCA, is amended to read:

28 **"76-4-111. Exemption for certain condominiums, townhomes, and townhouses.** (1) Condominiums,
29 townhomes, or townhouses, as those terms are defined in 70-23-102, constructed on land divided in compliance
30 with the Montana Subdivision and Platting Act and this part are exempt from the provisions of this part.

1 (2) Whenever a parcel of land has previously been reviewed under either department requirements or
2 local health requirements and has received approval for a given number of living units, the construction or
3 conversion of the same or a fewer number of condominium units, townhomes, or townhouses on that parcel is
4 not subject to the provisions of this part, provided that no new extension of a public water supply system or
5 extension of a public sewage system is required."
6

7 NEW SECTION. Section 8. Codification instruction. [Sections 1 through 4] are intended to be codified
8 as an integral part of Title 70, chapter 23, and the provisions of Title 70, chapter 23, apply to [sections 1 through
9 4].
10

11 NEW SECTION. Section 9. Effective date. [This act] is effective on passage and approval.
12

13 NEW SECTION. Section 10. Nonapplicability. Nothing in [this act] may be interpreted to modify or
14 expand existing insurance coverage on a condominium unit, townhome, or townhouse.
15

- END -