

Amendment - 1st Reading/2nd House-blue - Requested by: Steve Fitzpatrick - Conference Committee on SB 247

- 2023

68th Legislature 2023

Drafter: Joe Carroll, 406-444-3804

SB0247.002.001

1 SENATE BILL NO. 247

2 INTRODUCED BY S. FITZPATRICK

3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING COVENANT LAWS; PROVIDING THAT THE 8-YEAR  
5 STATUTE OF LIMITATIONS FOR OBLIGATIONS ON A CONTRACT APPLIES TO COVENANTS; LIMITING  
6 WHO MAY INITIATE LEGAL ACTION TO ENFORCE CERTAIN COVENANTS; ~~REVISING-PROVIDING~~  
7 WHEN A PARCEL OWNER CAN ASSERT A DEFENSE THAT A COVENANT ~~IS-DEEMED HAS BEEN~~  
8 ABANDONED; LIMITING WHEN COVENANTS MAY BE ENFORCED IF A GOVERNING BODY HAS NOT  
9 MET FOR A PERIOD OF TIME; AND AMENDING SECTION 27-2-202, MCA; AND PROVIDING AN  
10 IMMEDIATE EFFECTIVE DATE."

11  
12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

13  
14 NEW SECTION. SECTION 1. COVENANT ENFORCEMENT AND ABANDONMENT. (1) ~~ONLY THE GOVERNING~~  
15 ~~BODY OF A DEVELOPMENT OR A PARCEL OWNER WITHIN A DEVELOPMENT CAN~~ An association or any party to an  
16 ~~interest in land subject to a covenant, condition, or restriction may~~ INITIATE A LEGAL ACTION TO ENFORCE  
17 COVENANTS, CONDITIONS, OR RESTRICTIONS.

18 (2) A parcel owner may assert a defense that a COVENANT, CONDITION, OR RESTRICTION ~~IS-DEEMED~~  
19 ~~has been~~ ABANDONED FOR PURPOSES OF ENFORCEMENT ~~IF-by offering evidence that~~ NO ENFORCEMENT ACTION HAS  
20 BEEN UNDERTAKEN FOR THE PRESCRIBED PERIOD IN 27-2-202. ONCE A COVENANT, CONDITION, OR RESTRICTION IS  
21 ABANDONED ~~PURSUANT TO THIS SECTION, THE GOVERNING BODY IS~~ by a court order or agreed to have been  
22 ~~abandoned by the approval of the appropriate association, by recording a notice of abandonment or~~  
23 ~~amendment in the office of the county clerk and recorder of the county where the development is situated, all~~  
24 ~~persons are~~ PRECLUDED FROM UNDERTAKING A DIFFERENT INTERPRETATION OR ENFORCEMENT ACTION ~~of the~~  
25 ~~abandoned covenant, condition, or restriction~~ AGAINST A SIMILARLY SITUATED PARCEL OWNER IN THE SAME  
26 DEVELOPMENT.

27 (3) ~~(a) WHEN THE GOVERNING BODY FORMED WITHIN COVENANTS, CONDITIONS, OR RESTRICTIONS HAS~~

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1 ~~NOT MET FOR A PERIOD OF 15 YEARS, IT CONSTITUTES SUBSTANTIAL NONCOMPLIANCE, AND THE GOVERNING BODY IS~~  
2 ~~PROHIBITED FROM TAKING ANY ENFORCEMENT ACTION REGARDING THE COVENANTS, CONDITIONS, OR RESTRICTIONS~~  
3 ~~RECORDED AGAINST THE LAND TO THE EXTENT THE COVENANTS, CONDITIONS, OR RESTRICTIONS ARE NOT OTHERWISE~~  
4 ~~NECESSARY TO COMPLY WITH APPLICABLE FEDERAL, STATE, AND LOCAL LAWS, ORDINANCES, AND REGULATIONS~~ Except  
5 as provided in subsection (3)(b), an association that has not met for a period of 15 years is prohibited from  
6 taking an enforcement action against a parcel owner whose use of the parcel is substantially similar to the  
7 nature and scope of the use of other parcels in the development

8 ~~(b) Covenants, conditions, and restrictions are still valid and enforceable under this subsection (3)~~  
9 ~~if they are otherwise necessary:~~

10 ~~(i) to comply with applicable federal, state, and local laws, ordinances, and regulations;~~

11 ~~(ii) for an easement or right-of-way;~~

12 ~~(iii) for the maintenance of infrastructure or improvements in the development;~~

13 ~~(iv) to comply with a court order or the approval provided by a government on the establishment of~~  
14 ~~the covenants, conditions, and restrictions;~~

15 ~~(v) for the installation, maintenance, or removal of utilities; or~~

16 ~~(vi) to abate a nuisance.~~

17  
18 **Section 2.** Section 27-2-202, MCA, is amended to read:

19 **"27-2-202. Actions based on contract or other obligation.** (1) The period prescribed for the  
20 commencement of an action ~~upon~~on any contract, covenant, obligation, or liability founded ~~upon~~on an  
21 instrument in writing is within 8 years.

22 (2) The period prescribed for the commencement of an action ~~upon~~on a contract, account, or  
23 promise not founded on an instrument in writing is within 5 years.

24 (3) The period prescribed for the commencement of an action ~~upon~~on an obligation or liability,  
25 other than a contract, account, or promise, not founded ~~upon~~on an instrument in writing is within 3 years."

26  
27 **NEW SECTION. SECTION 3. CODIFICATION INSTRUCTION.** [SECTION 1] IS INTENDED TO BE CODIFIED AS AN

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1 INTEGRAL PART OF TITLE 70, CHAPTER 17, PART 2, AND THE PROVISIONS OF TITLE 70, CHAPTER 17, PART 2, APPLY TO

2 [SECTION 1].

3

4 NEW SECTION. SECTION 4. EFFECTIVE DATE. [THIS ACT] IS EFFECTIVE ON PASSAGE AND APPROVAL.

5

- END -

AMENDED