

1 SENATE BILL NO. 376

2 INTRODUCED BY K. BOGNER

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING COVENANT LAW; PROVIDING THAT COVENANTS
5 ON RESIDENTIAL PROPERTY MAY NOT PROHIBIT THE OCCUPANCY OR RENTAL OF ACCESSORY
6 DWELLING UNITS OR PROHIBIT THE PROVISION OF CHILD CARE; PROVIDING THAT COVENANTS ON
7 RESIDENTIAL PROPERTY MAY NOT LAST LONGER THAN 5 YEARS UNLESS RERATIFIED BY A
8 MAJORITY OF OWNERS OF PROPERTY SUBJECT TO THE COVENANT; ALLOWING OWNERS TO VOTE
9 TO SUSTAIN OR AMEND A COVENANT; PROTECTING OWNERSHIP RIGHTS; REQUIRING RECORDING
10 OF COVENANTS; AND PROVIDING AN APPLICABILITY DATE AND AN IMMEDIATE EFFECTIVE DATE."

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

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14 NEW SECTION. Section 1. Prohibitions on covenants on residential property. A covenant on
15 residential property may not:

- 16 (1) prohibit the occupancy or rental of accessory dwelling units;
- 17 (2) prohibit the provision of child care.

18
19 NEW SECTION. Section 2. ~~Affirmation, AMENDMENT, OR REMOVAL~~ of covenants on residential
20 property -- RECORDING REQUIRED TO SUSTAIN COVENANTS Opportunity to vote on covenants, conditions, and
21 restrictions -- ownership rights. (1) EXCEPT AS PROVIDED IN SUBSECTION (4), A A covenant on residential
22 property may not last longer than 5 years unless ALL OWNERS OF PROPERTY SUBJECT TO THE COVENANT HAVE THE
23 OPPORTUNITY TO VOTE ON THE COVENANT AND:

24 (a) ~~AT LEAST a majority of owners of property subject to a covenant vote~~ THE OWNERS VOTE TO
25 sustain OR AMEND the covenant pursuant to subsection (2);

26 (b) ~~the covenant provides for a right to reenter or repossess land on account of a breach of the~~
27 covenant; or

28 (c) ~~the covenant is necessary to the maintenance of shared infrastructure or was required by an~~

1 approving government entity on establishment of the covenant.

2 ~~(2) — A vote to sustain OR AMEND a covenant must extend the covenant FOR NO MORE THAN 5 years AT~~
3 ~~A TIME and must be made or recorded DOCUMENTED in writing, whether on one or more documents.~~

4 ~~(3) — IF A COVENANT IS SUSTAINED OR AMENDED PURSUANT TO SUBSECTIONS (1) AND (2), THE AFFIRMATION~~
5 ~~OR AMENDMENT MUST BE RECORDED WITH THE OFFICE OF THE COUNTY CLERK AND RECORDER OF THE COUNTY WHERE~~
6 ~~THE REAL PROPERTY IS SITUATED WITHIN 5 YEARS OF THE PREVIOUS RECORDING DATE AND MUST INCLUDE EVIDENCE OF~~
7 ~~THE OWNERS VOTING FOR OR AGAINST SUSTAINING OR AMENDING THE COVENANT. ANY OWNER OF PROPERTY SUBJECT~~
8 ~~TO THE COVENANT OR ANY GOVERNING OWNERS' ASSOCIATION MAY ACCOMPLISH THE RECORDING.~~

9 ~~(4) — (A) NOTHING IN THIS SECTION PREVENTS AN OWNER FROM CLAIMING THE BENEFIT OF THE~~
10 ~~PROTECTIONS PROVIDED IN 70-17-901 BASED ON EXPIRED COVENANTS.~~

11 ~~(B) — THIS SECTION DOES NOT APPLY TO A COVENANT THAT ALLOWS FOR AN EASEMENT OR RIGHT-OF-WAY,~~
12 ~~IS NECESSARY FOR THE MAINTENANCE OF SHARED INFRASTRUCTURE, WAS REQUIRED BY AN APPROVING GOVERNMENT~~
13 ~~ENTITY ON THE ESTABLISHMENT OF THE COVENANT, IS REQUIRED BY A COURT ORDER, OR IS REQUIRED BY FEDERAL,~~
14 ~~STATE, OR LOCAL LAW OR REGULATION.~~

15 (1) A residential covenant, condition, or restriction may not be adopted or amended unless all
16 owners of property subject to the covenant, condition, or restriction have the opportunity to vote on the
17 covenant, condition, or restriction and at least a majority of owners voting agree to adopt or amend the
18 covenant.

19 (2) Owners who are subject to covenants, conditions, or restrictions may not be deprived for any
20 reason during their ownership of residential property of the following rights:

21 (a) the opportunity to vote on covenants, conditions, or restrictions, or amendments to covenants,
22 conditions, or restrictions, and to view the results of any of the votes;

23 (b) the opportunity to vote for officers or leaders of any governing owners' association;

24 (c) the opportunity to speak for a reasonable amount of time at meetings of any governing owners'
25 association;

26 (d) the opportunity to vote on any matter raised at any meeting of any governing owners'
27 association and to view the results of any of the votes;

28 (e) the opportunity to run for or, if duly elected by a majority of owners, serve on any board or

1 committee of any governing owners' association; and

2 (f) the opportunity to vote on any governing owners' association's initiating litigation for which the
3 owner may be required to contribute financial support.

4 ~~(5)(3)~~ AS USED IN THIS SECTION, "OPPORTUNITY TO VOTE" MEANS:

5 (A) THE PROVISION OF AT LEAST 30 DAYS' WRITTEN NOTICE PRIOR TO AN IN-PERSON VOTE OR A PERIOD OF
6 AT LEAST 30 DAYS TO VOTE BY MAIL OR BY OTHER ALLOWABLE WRITTEN MEANS, unless there is an emergency
7 necessitating a shorter period of time; AND

8 (B) THE ALLOWANCE OF VOTING BY WRITTEN PROXY.

9
10 NEW SECTION. Section 3. Codification instruction. [Sections 1 and 2] are intended to be codified
11 as an integral part of Title 70, chapter 17, part 2, and the provisions of Title 70, chapter 17, part 2, apply to
12 [sections 1 and 2].

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

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16 NEW SECTION. Section 5. Applicability. (1) [This act SECTION 1] applies to THE ENFORCEMENT OF
17 covenants on residential property filed ADOPTED OR AMENDED on or after [the effective date of the act].

18 (2) FOR A COVENANT ADOPTED OR AMENDED AFTER [THE EFFECTIVE DATE OF THIS ACT], THE 5-YEAR
19 PERIOD PROVIDED IN [SECTION 2(2)] BEGINS TO RUN ON THE DATE THE COVENANT IS ADOPTED OR AMENDED. [This act]
20 applies to covenants on residential property adopted or amended on or after [the effective date of this act] and
21 to votes, meetings, and actions occurring on or after [the effective date of this act].

22 - END -