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SENATE BILL NO. 376

INTRODUCED BY K. BOGNER

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

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

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

- (1) prohibit the occupancy, ~~or rental, or construction~~ of accessory dwelling units; ~~or~~
- (2) prohibit the provision of child care in a family day-care home or a group day-care home as those terms are defined in 52-2-703.

NEW SECTION. Section 2. Affirmation, AMENDMENT, OR REMOVAL of covenants on residential property -- RECORDING REQUIRED TO SUSTAIN COVENANTS. (1) EXCEPT AS PROVIDED IN SUBSECTION (4), A A covenant on residential property may not last longer than 5 years unless ALL OWNERS OF PROPERTY SUBJECT TO THE COVENANT HAVE THE OPPORTUNITY TO VOTE ON THE COVENANT AND:

- (a) ~~AT LEAST a majority of owners of property subject to a covenant vote~~ THE OWNERS VOTE TO sustain OR AMEND the covenant pursuant to subsection (2);
- (b) ~~the covenant provides for a right to reenter or repossess land on account of a breach of the~~ covenant; or
- (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 (5) AS USED IN THIS SECTION, "OPPORTUNITY TO VOTE" MEANS:

16 (A) THE PROVISION OF AT LEAST 30 DAYS' WRITTEN NOTICE PRIOR TO AN IN-PERSON VOTE OR A PERIOD OF
17 AT LEAST 30 DAYS TO VOTE BY MAIL OR BY OTHER ALLOWABLE WRITTEN MEANS; AND

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

19
20 NEW SECTION. Section 3. Codification instruction. [Sections 1 and 2] are intended to be codified
21 as an integral part of Title 70, chapter 17, part 2, and the provisions of Title 70, chapter 17, part 2, apply to
22 [sections 1 and 2].

23
24 NEW SECTION. SECTION 4. EFFECTIVE DATE. [THIS ACT] IS EFFECTIVE ON PASSAGE AND APPROVAL.

25
26 NEW SECTION. Section 5. Applicability. (1) [This act SECTION 1] applies to THE ENFORCEMENT OF
27 covenants on residential property filed ADOPTED OR AMENDED on or after [the effective date of the act].

28 (2) FOR A COVENANT ADOPTED OR AMENDED AFTER [THE EFFECTIVE DATE OF THIS ACT], THE 5-YEAR

Amendment - 1st Reading/2nd House-blue - Requested by: Casey Knudsen - (H) Judiciary

- 2023

68th Legislature 2023

Drafter: Joe Carroll, 406-444-3804

SB0376.002.004

1 PERIOD PROVIDED IN [SECTION 2(2)] BEGINS TO RUN ON THE DATE THE COVENANT IS ADOPTED OR AMENDED.

2 - END -

AMENDED