

1 SENATE BILL NO. 479

2 INTRODUCED BY K. BOGNER

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING HOMEOWNERS' ASSOCIATION LAWS;
5 PROVIDING FOR RIGHTS OF OWNERSHIP OF RESIDENTIAL PROPERTY; PROVIDING LIMITATIONS ON
6 NEW COVENANTS, CONDITIONS, AND RESTRICTIONS; PROVIDING LIMITATIONS ON DUES AND
7 SPECIAL ASSESSMENTS; ~~PROVIDING FOR THE CONTINUATION OF NONCONFORMING USES TO~~
8 ~~MUNICIPAL ZONING~~; PROVIDING DEFINITIONS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE,
9 APPLICABILITY DATES, AND A RETROACTIVE APPLICABILITY DATE."

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

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13 NEW SECTION. Section 1. Definitions. As used in this part:

14 (1) "Homeowners' association" ~~means:~~
15 ~~(a) — an association of all the owners of real property within a geographic area defined by physical~~
16 ~~boundaries that:~~

17 ~~(i) — is formally governed by a declaration of covenants, bylaws, or both;~~
18 ~~(ii) — may be authorized to impose assessments that, if unpaid, may become a lien on a member's~~
19 ~~real property; and~~

20 ~~(iii) — may enact or enforce rules concerning the operation of the community or subdivision; or~~

21 ~~(b) — an association of unit owners as defined in 70-23-102 subject to the Unit Ownership Act has~~
22 ~~the meaning provided in 70-17-901.~~

23 (2) "Member" ~~means a person that belongs to a homeowners' association and whose real property~~
24 ~~is subject to the jurisdiction of the homeowners' association~~ has the meaning provided in 70-17-901.

25 (3) "Opportunity to vote" means providing at least 30 days' written notice prior to an in-person vote
26 at which written proxies must be allowed, or a period of at least 30 days to vote by e-mail or mail.

27 (4) "Person" ~~means one or more individuals or a legal or commercial entity~~ has the meaning
28 provided in 70-17-901.

1 (5) "Real property" has the meaning provided in 70-1-106.

2 (6) "Residential covenant, condition, or restriction" means each unique covenant, condition, or
3 restriction that is part of a set of covenants, conditions, or restrictions, including but not limited to a declaration
4 of covenants or a set of bylaws.

5 (7) "Types of use" ~~means the following lawful types of use of the real property:~~

6 ~~(a) use for residential, agricultural, or commercial purposes, unless the use was impermissible~~
7 ~~according to the written or recorded restrictions;~~

8 ~~(b) the ability to rent the real property, including the land and structures on the real property, for~~
9 ~~any amount of time; and~~

10 ~~(c) the ability to otherwise develop the real property in accordance with applicable federal, state,~~
11 ~~and local laws, ordinances, and regulations, unless the ability was impermissible according to the written or~~
12 ~~recorded restrictions~~ has the meaning provided in 70-17-901.

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14 **NEW SECTION. Section 2. Rights of ownership for residential property -- limitations on**

15 **enforcement.** (1) No covenant, condition, or restriction is enforceable against an owner by an association or by
16 any other person if the owner's use of the property or a similar use of another property in the area has been in
17 violation of the same covenant, condition, or restriction for longer than 3 years without anyone seeking relief
18 from the violation.

19 (2) No covenant, condition, or restriction is enforceable against an owner by an association or by
20 any other person to prohibit the owner from keeping, erecting, or maintaining a structure, vehicle, addition, or
21 improvement on the owner's property if the structure, vehicle, addition, or improvement is not in plain view from
22 neighboring rights-of-way or neighboring properties, does not interfere with the view from neighboring rights-of-
23 way or neighboring properties, and does not diminish the value or enjoyment of neighboring properties. For the
24 purposes of this subsection, any structure, vehicle, addition, or improvement must include but may not be
25 limited to accessory dwelling units, accessory structures, vehicles, recreational vehicles, campers, mobile
26 homes, or any apparatus, hardscapes, or landscapes.

27 (3) No covenant, condition, or restriction or amendment to a covenant, condition, or restriction is
28 enforceable against an owner if it exceeds the scope of or is unrelated to the covenants, conditions, and

1 restrictions that existed when the owner acquired the property, unless the owner consents in writing at the time
2 of the new covenant, condition, restriction, or amendment.

3 (4) No covenant, condition, or restriction is enforceable against an owner by any other person in
4 such a way that imposes more onerous restrictions on the types of use of an owner's real property than those
5 restrictions that existed when the owner acquired the owner's interest in the real property, unless the owner of
6 the affected real property agreed in writing at the time of the adoption or amendment of the covenant, condition,
7 or restriction that is the subject of the attempted enforcement.

8 (a) A successor-in-interest to an owner's real property may not claim the benefit of subsection (4)
9 to the extent that the covenant, condition, or restriction was adopted or amended before the successor-in-
10 interest purchased the real property, even if the covenant, condition, or restriction was not enforceable against
11 the previous owner pursuant to subsection (4) or 70-17-901, unless the successor-in-interest is owned by or
12 shares ownership with the previous owner, is a family member who acquires the property through inheritance
13 from the previous owner, or ~~unless the successor-in-interest~~ is a lender that acquired the real property through
14 foreclosure.

15 (b) Subsection (4) does not apply to a covenant, condition, or restriction that is required in order to
16 comply with applicable federal, state, or local laws, ordinances, or regulations.

17 (5) If an owner claims a benefit provided in subsections (1) through (3), the owner shall pay the
18 recording fees and record an exception to the covenant, condition, or restriction with the office of the county
19 clerk and recorder of the county in which the real property is located. The filing must include the date the real
20 property was conveyed to the owner and must identify the covenant, condition, or restriction that is subject to
21 the exception, and the owner shall provide a copy of the recorded exception to any applicable homeowners'
22 association and to any other person attempting to enforce the covenant, condition, or restriction.

23 ~~(5)(6)~~ A homeowners' association, ~~association of unit owners, owners' association,~~ or other owners or
24 any of their representatives may not enter onto a privately owned lot to enforce applicable covenants,
25 conditions, or restrictions without consent of the lot owner unless authorized by a court order or if necessary in
26 an emergency.

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28 **NEW SECTION. Section 3. Rights of ownership for residential property -- limitations on new**

1 **covenants, conditions, or restrictions.** (1) A residential covenant, condition, or restriction may not be
2 adopted or amended unless all owners have the opportunity to vote on the covenant, condition, or restriction,
3 and unless at least a majority of those voting vote to approve the covenant, condition, restriction, or
4 amendment.

5 (2) Owners may not be deprived for any reason during their ownership of residential property of
6 the right to:

7 (a) vote on covenants, conditions, or restrictions or amendments to covenants, conditions or
8 restrictions;

9 (b) vote for officers or leaders of any governing homeowners' association, association of unit
10 owners, or owners' association;

11 (c) speak at meetings of any governing homeowners' association, association of unit owners, or
12 owners' association;

13 (d) vote on any matter raised at any meeting of any governing homeowners' association,
14 association of unit owners, or owners' association; or

15 (e) run for or serve on any board or committee of any governing homeowners' associations,
16 association of unit owners, or owners' association if duly elected by at least a majority of owners.

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18 **NEW SECTION. Section 4. Limitations on dues and special assessments.** (1) Except as provided
19 in subsection (3), homeowners' associations may not raise dues or collect any special assessments unless all
20 owners have the opportunity to vote on raising dues or collecting a special assessment and unless at least a
21 majority of those voting vote to raise dues or collect a special assessment.

22 (2) Except as provided in subsection (3), homeowners' associations may not raise dues annually
23 by more than 10% unless all owners have the opportunity to vote on raising dues and unless all owners vote in
24 favor of an increase greater than 10%.

25 (3) If the requisite thresholds of owners provided in subsections (1) and (2) do not vote to increase
26 dues or collect a special assessment, homeowners' associations may collect special assessments that are
27 necessary to pay taxes, comply with a court order, fulfill any other preexisting legal obligation, take actions in an
28 emergency, or maintain roads or other shared infrastructure.

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~~NEW SECTION. Section 5.—Continuation of nonconforming use. Any lawful use that is made of land or buildings at the time any zoning resolution is adopted by a municipality may be continued although the use does not conform to the provisions of the resolution.~~

NEW SECTION. Section 5. Codification instruction. (1) [Sections 1 through 4] are intended to be codified as a new part in Title 70, chapter 17, and the provisions of Title 70, chapter 17, apply to [sections 1 through 4].

~~(2) [Section 5] is intended to be codified as an integral part of Title 76, chapter 2, part 3, and the provisions of Title 76, chapter 2, part 3, apply to [section 5].~~

NEW SECTION. Section 6. Effective date. [This act] is effective on passage and approval.

NEW SECTION. Section 7. Applicability -- retroactive applicability. (1) Nothing in [section 2] invalidates any existing covenant, condition, restriction, or amendment to a covenant, condition, or restriction or creates a private right of action based on a covenant, condition, or restriction adopted or amended before [the effective date of this act].

(2) [Section 2] applies retroactively, within the meaning of 1-2-109, to prevent the enforcement of any covenant, condition, or restriction, whether adopted before, on, or after [the effective date of this act].

(3) [Sections 3 ~~through 5 and 4~~] are intended to apply to any vote on adoption or amendment of covenants, conditions, or restrictions, ~~or zoning resolutions~~ conducted after [the effective date of this act].

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