

HOUSE BILL NO. 683

INTRODUCED BY S. GUNDERSON

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A BILL FOR AN ACT ENTITLED: "AN ACT REVISING HOMEOWNERS' ASSOCIATION REQUIREMENTS; PROVIDING REQUIREMENTS RELATING TO HOMEOWNERS' ASSOCIATION BOARDS; PROVIDING FOR ENFORCEMENT OF HOMEOWNERS' ASSOCIATION REQUIREMENTS; PROVIDING THAT COVENANTS, CONDITIONS, OR RESTRICTIONS ON LAND EXPIRE AFTER 5 YEARS UNLESS VOTED ON; AMENDING SECTION 70-17-901, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

WHEREAS, a homeowners' association may unilaterally impose burdensome restrictions on individuals holding property within this state; and

WHEREAS, the governance and composition of a homeowners' association must be governed to prohibit unreasonable restriction on the enjoyment of property in Montana.

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

Section 1. Section 70-17-901, MCA, is amended to read:

"70-17-901. Homeowners' association requirements -- restrictions -- real property rights. (1) To prohibit unreasonable restriction on the free enjoyment of property ownership in the state, this section imposes uniform restrictions on how a homeowners' association governs property owners.

(2) All homeowners' associations must be governed by a board of at least three individuals who are not related by consanguinity within the fourth degree. Individuals on the board must be elected by all property owners subject to the homeowners' association. A vacancy on the homeowners' association must be filled within 60 days of the vacancy. All board members must be individuals who are subject to the homeowners' association restrictions and covenants.

(3) (a) Any litigation seeking to enforce homeowners' association requirements against a homeowner must be made through the applicable homeowners' association board, on a majority vote of the board.

1 **(b)** This subsection (3) prohibits individuals from initiating legal actions to enforce homeowners'
2 association requirements without the vote of the homeowners' association board.

3 **(4)** (a) A homeowners' association may not enter into, amend, or enforce a covenant, condition, or
4 restriction in ~~such~~ a way that imposes more onerous restrictions on the types of use of a member's real property
5 than those restrictions that existed when the member acquired the member's interest in the real property,
6 unless the member who owns the affected real property expressly agrees in writing at the time of the adoption
7 or amendment of the covenant, condition, or restriction.

8 **(b)** A covenant, condition, or restriction:

9 **(i)** expires after 5 years;

10 **(ii)** must be renewed or renewed with amendments on a majority vote by the members subject to
11 the covenant, condition, or restriction;

12 **(iii)** may not serve as the basis for a person acting to enforce the covenant, condition, or restriction
13 who is purportedly acting on behalf of a homeowners' association when a homeowners' association does not
14 exist; and

15 **(iv)** may not be enforced or noticed anonymously.

16 ~~(b)~~**(c)** When a member claims the benefit of this subsection ~~(4)~~ **(4)**, the member shall request that the
17 homeowners' association record, or allow recording of, the exception applicable to the member. ~~Upon~~On
18 request by the member, the homeowners' association, the member, or a designee shall record the member's
19 exception with the office of the county clerk and recorder of the county where the real property is situated. The
20 member shall provide the homeowners' association with the date the real property was conveyed to the
21 member and shall pay the recording fees for the document setting forth the exception.

22 ~~(2)~~**(5)** A successor-in-interest to a member's real property may not claim the benefit of subsection ~~(4)~~
23 **(4)** to the extent that the homeowners' association entered into, amended, or enforced a covenant, condition, or
24 restriction before the successor-in-interest purchased the real property, even if the covenant, condition, or
25 restriction was not enforceable against the previous owner pursuant to subsection ~~(4)~~ **(4)**, unless the successor-
26 in-interest is owned by or shares ownership with the previous member or unless the successor-in-interest is a
27 lender that acquired the real property through foreclosure.

28 ~~(3)~~**(6)** This section does not apply to a covenant, condition, or restriction:

1 (a) that is not subject to enforcement by a homeowners' association; or

2 (b) that is required in order to comply with applicable federal, state, and local laws, ordinances,
3 and regulations.

4 ~~(4)(7)~~ Nothing in this section may be construed to prevent the enforcement of a covenant, condition,
5 or restriction limiting the types of use of a member's real property as long as the covenant, condition, or
6 restriction applied to the real property at the time the member acquired the member's interest in the real
7 property.

8 ~~(5)(8)~~ Nothing in this section invalidates existing covenants of a homeowners' association or creates
9 a private right of action for actions or omissions occurring before May 9, 2019. However, after May 9, 2019,
10 unless the member has consented as provided by subsection ~~(4)~~ (4), a homeowners' association may not
11 enforce a covenant, condition, or restriction in such a way that limits the types of use of a member's real
12 property that were allowed when the member acquired the affected real property.

13 ~~(6)(9)~~ As used in this section, the following definitions apply:

14 (a) "Homeowners' association" means:

15 (i) an association of all the owners of real property within a geographic area defined by physical
16 boundaries ~~which~~ that:

17 (A) is formally governed by a declaration of covenants, bylaws, or both;

18 (B) may be authorized to impose assessments that, if unpaid, may become a lien on a member's
19 real property; and

20 (C) may enact or enforce rules concerning the operation of the community or subdivision; or

21 (ii) an association of unit owners as defined ~~by~~ in 70-23-102 subject to the Unit Ownership Act.

22 (b) "Member" means a person that belongs to a homeowners' association and whose real property
23 is subject to the jurisdiction of the homeowners' association.

24 (c) "Person" means one or more individuals or a legal or commercial entity.

25 (d) "Real property" has the meaning provided in 70-1-106, except that it is limited to real property
26 governed by a homeowners' association.

27 (e) "Types of use" means the following lawful types of use of the real property:

28 (i) use for residential, agricultural, or commercial purposes, unless the use was impermissible

1 according to the written or recorded restrictions;

2 (ii) the ability to rent the real property, including the land and structures on the real property, for
3 any amount of time; and

4 (iii) the ability to otherwise develop the real property in accordance with applicable federal, state,
5 and local laws, ordinances, and regulations, unless the ability was impermissible according to the written or
6 recorded restrictions."

7
8 **NEW SECTION. Section 2. Transition.** For covenants, conditions, or restrictions in effect before [the
9 effective date of this act] that were effective more than 5 years prior to [the effective date of this act], a
10 homeowners association board must review and vote to renew the covenant, condition, or restriction before
11 July 1, 2023.

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13 **NEW SECTION. Section 3. Effective date.** [This act] is effective on passage and approval.

14 - END -