

# HOA GOVERNANCE IN MONTANA

LOCAL GOVERNMENT INTERIM COMMITTEE  
TONI HENNEMAN - JANUARY 2024 (UPDATED 2/16/24)

## CURRENT STATUTORY GUIDANCE

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The Montana Code Annotated has, historically, been largely silent on the governance of homeowners' associations (HOAs). In 1965 the Legislature passed the "Unit Ownership Act"<sup>1</sup> governing condominium-style housing. The act includes a definition of an "association of unit owners" which has similarities to what is often referred to as a "homeowners' association". However, for this analysis, the Unit Ownership Act is not considered since a homeowners' association may have a more broadly defined membership than an "association of unit owners" as defined in [70-23-102, MCA](#).

Lacking a specific definition or direct guidance, most homeowners' associations organize as nonprofit corporations under [Title 35, Chapter 2, MCA](#), which provides a framework for the formation and operation of a nonprofit corporation. It may be argued that the chapter is just that: a framework. Many statutes begin with the phrase, "unless its articles of incorporation provide otherwise, a corporation may...", signaling that a corporation has a fair amount of discretion to organize and operate as it sees fit, if those requirements or actions don't violate state law. Without more strict guidance or governance, the best method to determine the actual functions and operations of a homeowners' association is to consult each associations' individual bylaws.

The following summarizes bills related to homeowners' associations passed since 2009 and those introduced during the 2023 session.

### 2009: HOUSE BILL 546<sup>2</sup>

[House Bill 546](#) passed the 2009 Legislature and, while the bill does not include a definition of "homeowners' association", it provides restrictions on certain types of covenants.

**70-1-522. Certain restrictions on political free speech contrary to public policy — enforcement prohibited — definitions.** (1) A person, homeowners' association, property owners' association, corporation, or other private entity may not, as a condition of property ownership within the jurisdiction of the private entity or by other means, prohibit the placement of a sign advocating the election, appointment, or defeat of a candidate for public office or the passage or defeat of a ballot issue on:

- (a) property belonging to individual or joint property owners who authorize the placement of the sign; or
- (b) common areas in which an owner owns an undivided interest.

(2) A person, homeowners' association, property owners' association, corporation, or other private entity may impose limits on the size of signs allowed to be displayed within the jurisdiction of the private entity and may regulate the location of sign placement and the time period during which signs may be displayed.

(3) An ordinance, covenant, contract term, or other provision, whether agreed to or not between the homeowners' association, property owners' association, corporation, or other private entity and the owner or

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<sup>1</sup> [Title 70, Chapter 23: Unit Ownership Act - Condominiums](#)

<sup>2</sup> The original version of this document did not include HB 546, but staff was alerted of the omission at the Local Government Interim Committee meeting on January 24, 2024, and the document is corrected.

tenant, is contrary to the public policy of this state. A court may not enforce the terms of an ordinance, covenant, contract term, or other provision that is contrary to public policy under this section.

(4) As used in this section, "ballot issue" and "candidate" have the meanings provided in 13-1-101.

### 2019: SENATE BILL 300

The 66<sup>th</sup> Legislature marked the first time a definition of "homeowners' association" was added in statute. [Senate Bill 300](#) is codified as [70-17-901, MCA](#) and provides that:

- (a) "Homeowners' association" means:
- (i) an association of all the owners of real property within a geographic area defined by physical boundaries which:
    - (A) is formally governed by a declaration of covenants, bylaws, or both;
    - (B) may be authorized to impose assessments that, if unpaid, may become a lien on a member's real property; and
    - (C) may enact or enforce rules concerning the operation of the community or subdivision; or
  - (ii) an association of unit owners as defined by 70-23-102 subject to the Unit Ownership Act.

In addition to providing a definition, Senate Bill 300 also provided guidance related to the types of covenants, conditions, or restrictions a homeowners' association may enter into regarding the types of use allowed on a member's real property. The scope of Senate Bill 300 is fairly narrow, so while it offers some state governance of homeowners' associations, the guidance may be considered minimal in relation to the day-to-day operations of a homeowners' association.

### 2021: SENATE BILL 145

[Senate Bill 145](#) provides additional language regarding a homeowners' association's right to allow remote meetings. Senate Bill 145 added new sections codified as [35-2-525](#) and [35-2-550, MCA](#) which provide additional definitions:

#### [35-2-525](#). Homeowners' association – remote meetings.

(2)(b) "Homeowners' association" means a corporation organized under the provisions of Title 35, chapter 2, that is responsible for the operation of a community or a mobile home subdivision in which:

- (i) the voting membership is made up of parcel owners or their agents, or a combination of parcel owners and their agents;
- (ii) membership is a mandatory condition of parcel ownership; and
- (iii) the corporation is authorized to impose assessments that, if unpaid, may become a lien on the parcel.

#### [35-2-550](#). Unincorporated homeowners' association – remote meetings.

(b) "Unincorporated homeowners' association" means an unincorporated entity that is responsible for the operation of a community or a mobile home subdivision in which:

- (i) the voting membership is made up of parcel owners or their agents or a combination of parcel owners and their agents;
- (ii) membership is a mandatory condition of parcel ownership; and
- (iii) the entity is authorized to impose assessments that, if unpaid, may become a lien on the parcel.

Beyond adding the additional definitions, Senate Bill 145 provided little guidance other than to clarify that a homeowners' association is allowed to hold meetings by remote means.

## 2023: INTRODUCED LEGISLATION

Multiple bills were introduced during the 2023 session, but none passed.

HB 357 – Revise homeowners' association restrictions; *Died in Standing Committee*

- Revised the ability of a homeowner to consent to new restrictions that apply to covenants entered into on or after May 9, 2019.

HB 683 – Revise laws relating to homeowners' associations; *Died in Standing Committee*

- Imposed uniform restrictions on the operation of homeowners' associations, providing governing member requirements, a process to fill vacancies, litigation requirements, and covenant, condition, or restriction requirements.

SB 479 – Generally revise homeowner association laws; *Died in process*

- Provided rights of residential property ownership, limitations on new covenants, conditions, and restrictions, limitations on dues and special assessments, and the continuation of nonconforming uses to municipal zoning.

## CONCLUSION

While the number of bills introduced during the past three sessions may demonstrate an increased interest in homeowners' associations, the entities continue to operate primarily independent from the state. Other than providing that homeowners' associations organize under the broad requirements of [Title 35, Chapter 2, MCA](#) for nonprofit corporations, allow for remote meetings, and restrict specific types of covenants and conditions, the code remains silent.