

1 HOUSE BILL NO. 196

2 INTRODUCED BY E. BUTTREY

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING HOMEOWNERS' ASSOCIATION LAWS; REQUIRING
5 A LANDOWNER TO FILE AN EXCEPTION TO CERTAIN COVENANTS; ALLOWING CHALLENGES TO
6 VALIDITY; AMENDING SECTION 70-17-901, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE
7 AND A RETROACTIVE APPLICABILITY DATE."

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

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

12 **"70-17-901. Homeowners' association restrictions -- real property rights.** (1) (a) A homeowners'
13 association may ~~not~~ enter into, amend, or enforce a covenant, condition, or restriction in such a way that
14 imposes more onerous restrictions on the types of use of a member's real property than those restrictions that
15 existed when the member acquired the member's interest in the real property, unless the member who owns
16 the affected real property ~~expressly agrees in writing at the time of the adoption or amendment of the covenant,~~
17 condition, or restriction, files an exception with the office of the county clerk and recorder of the county where
18 the real property is situated within 120 days of the execution of the covenant, condition, or restriction.

19 (b) When a member claims the benefit of this subsection (1), ~~the member shall request that the~~
20 ~~homeowners' association record, or allow recording of, the exception applicable to the member. Upon request~~
21 ~~by the member, the homeowners' association, the member, or a designee shall record the member's exception~~
22 with the office of the county clerk and recorder of the county where the real property is situated. The member
23 shall provide the homeowners' association with the date the real property was conveyed to the member and
24 shall pay the recording fees for the document setting forth the exception.

25 (c) A homeowners' association may challenge the validity of an exception at any time.

26 (d) A member may not claim the benefit of this subsection (1) for actions of a homeowners'
27 association that do not restrict a use of property.

28 (2) A successor-in-interest to a member's real property may not claim the benefit of subsection (1) to

1 the extent that the homeowners' association entered into, amended, or enforced a covenant, condition, or
 2 restriction before the successor-in-interest purchased the real property, even if the covenant, condition, or
 3 restriction was not enforceable against the previous owner pursuant to subsection (1), unless the successor-in-
 4 interest is owned by or shares ownership with the previous member or unless the successor-in-interest is a
 5 lender that acquired the real property through foreclosure.

6 (3) A declaration may contain a provision that waives a member's rights under subsection (1). A
 7 successor-in-interest to a member's real property subject to a covenant, condition, or restriction that waives a
 8 member's rights may not claim the benefit of subsection (1).

9 ~~(3)~~(4) This section does not apply to a covenant, condition, or restriction:

- 10 (a) that is not subject to enforcement by a homeowners' association; or
 11 (b) that is required in order to comply with applicable federal, state, and local laws, ordinances, and
 12 regulations.

13 ~~(4)~~(5) Nothing in this section may be construed to prevent the enforcement of a covenant, condition,
 14 or restriction limiting the types of use of a member's real property as long as the covenant, condition, or
 15 restriction applied to the real property at the time the member acquired the member's interest in the real
 16 property.

17 ~~(5)~~(6) Nothing in this section invalidates existing covenants of a homeowners' association or creates a
 18 private right of action for actions or omissions occurring before May 9, 2019. However, after May 9, 2019,
 19 unless the member has consented as provided by subsection (1), a homeowners' association may not enforce
 20 a covenant, condition, or restriction in such a way that limits the types of use of a member's real property that
 21 were allowed when the member acquired the affected real property.

22 ~~(6)~~(7) As used in this section, the following definitions apply:

23 (a) "Homeowners' association" means:

24 (i) an association of all the owners of real property within a geographic area defined by physical
 25 boundaries which:

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

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

- 1 (C) may enact or enforce rules concerning the operation of the community or subdivision; or
2 (ii) an association of unit owners as defined by 70-23-102 subject to the Unit Ownership Act.
3 (b) "Member" means a person that belongs to a homeowners' association and whose real property is
4 subject to the jurisdiction of the homeowners' association.
5 (c) "Person" means one or more individuals or a legal or commercial entity.
6 (d) "Real property" has the meaning provided in 70-1-106, except that it is limited to real property
7 governed by a homeowners' association.
8 (e) "Types of use" means the following lawful types of use of the real property:
9 (i) use for residential, agricultural, or commercial purposes, unless the use was impermissible
10 according to the written or recorded restrictions;
11 (ii) the ability to rent the real property, including the land and structures on the real property, for any
12 amount of time; and
13 (iii) the ability to otherwise develop the real property in accordance with applicable federal, state, and
14 local laws, ordinances, and regulations, unless the ability was impermissible according to the written or
15 recorded restrictions."

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17 **NEW SECTION. Section 2. Effective date.** [This act] is effective on passage and approval.

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19 **NEW SECTION. Section 3. Retroactive applicability.** [This act] applies retroactively, within the
20 meaning of 1-2-109, to covenants, conditions, and restrictions executed on or after May 8, 2019.

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