

HOUSE BILL NO. 761

INTRODUCED BY G. OVERSTREET

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING RESIDENTIAL COVENANT LAWS TO PROTECT REAL PROPERTY RIGHTS; PREVENTING ANY PERSON FROM IMPOSING MORE ONEROUS RESTRICTIONS ON A PROPERTY OWNER THAN THOSE RESTRICTIONS THAT EXISTED WHEN THE PROPERTY OWNER ACQUIRED THE REAL PROPERTY; AMENDING SECTION 70-17-901, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

NEW SECTION. Section 1. Rights of ownership for residential property -- limitations on enforcement. (1) (a) A covenant, condition, or restriction is not enforceable against an owner of residential real property by any other person in a way that imposes more onerous restrictions on the types of use of an owner's real property than those restrictions that existed when the owner acquired the owner's interest in the real property, unless the owner of the affected real property expressly agrees in writing at the time of the adoption or amendment of the covenant, condition, or restriction that is the subject of the attempted enforcement.

(b) When an owner claims the benefit of an exception under this subsection (1), the owner shall record the exception applicable to the owner with the office of the county clerk and recorder of the county where the real property is situated and shall pay the recording fees for the document setting forth the exception. The owner claiming the exception shall notify all other owners who may be subject to the covenant, condition, or restriction that the owner is claiming the benefit of the exception and provide them with the date the real property was conveyed to the owner.

(2) A successor-in-interest to an owner's real property may not claim the benefit of subsection (1) to the extent that the covenant, condition, or restriction was adopted or amended before the successor-in-interest purchased the real property, even if the covenant, condition, or restriction was not enforceable against the previous owner pursuant to subsection (1) or pursuant to 70-17-901, unless the successor-in-interest is owned by or shares ownership with the previous owner, is a family member who acquires the property through

1 inheritance or transfer from the previous owner, or unless the successor-in-interest is a lender that acquired the
2 real property through foreclosure.

3 (3) Subsection (1) does not apply to a covenant, condition, or restriction or amendment to a
4 covenant, condition, or restriction that is required in order to comply with applicable federal, state, or local laws,
5 ordinances, or regulations.

6 (4) Nothing in this section may be construed to prevent the enforcement of a covenant, condition,
7 or restriction limiting the types of use of an owner's real property as long as the covenant, condition, or
8 restriction applied to the real property at the time the owner acquired the owner's interest in the real property
9 and is otherwise enforceable.

10 (5) Nothing in this section invalidates existing covenants or creates a private right of action for the
11 actions or omissions occurring before [the effective date of this act]. However, after [the effective date of this
12 act], unless the owner has consented as provided by subsection (1), a person may not enforce a covenant,
13 condition, or restriction in such a way that limits the types of use of an owner's real property that were allowed
14 when the owner acquired the affected real property.

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16 **Section 2.** Section 70-17-901, MCA, is amended to read:

17 **"70-17-901. Homeowners' association restrictions -- real property rights.** (1) (a) A homeowners'
18 association may not enter into, amend, or enforce a covenant, condition, or restriction in such a way that
19 imposes more onerous restrictions on the types of use of a member's real property than those restrictions that
20 existed when the member acquired the member's interest in the real property, unless the member who owns
21 the affected real property expressly agrees in writing at the time of the adoption or amendment of the covenant,
22 condition, or restriction.

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

(2) A successor-in-interest to a member's real property may not claim the benefit of subsection (1) to the extent that the homeowners' association entered into, amended, or enforced a covenant, condition, or restriction before the successor-in-interest purchased the real property, even if the covenant, condition, or restriction was not enforceable against the previous owner pursuant to subsection (1), unless the successor-in-interest is owned by or shares ownership with the previous member, is a family member who acquires the property through inheritance or transfer from the previous owner, or unless the successor-in-interest is a lender that acquired the real property through foreclosure.

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

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

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

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

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

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

(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

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

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16 NEW SECTION. Section 3. Codification instruction. [Section 1] is intended to be codified as an

17 integral part of Title 70, chapter 17, part 2, and the provisions of Title 70, chapter 17, part 2, apply to [section 1].

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19 NEW SECTION. Section 4. Effective date. [This act] is effective on passage and approval.

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