

SENATE BILL NO. 306

INTRODUCED BY R. WEBB

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING CONDOMINIUM AND TOWNHOUSE LAWS; PROVIDING REQUIREMENTS FOR CONVERSION OF A CONDOMINIUM TO A TOWNHOUSE UNDER THE UNIT OWNERSHIP ACT; REQUIRING NOTICE OF THE CONVERSION BE GIVEN TO CERTAIN PARTIES; PROVIDING FOR THE EFFECTS OF A CONVERSION FROM A CONDOMINIUM TO A TOWNHOUSE; EXEMPTING CERTAIN CONVERSIONS OF A CONDOMINIUM TO A TOWNHOUSE FROM STATE AND LOCAL SUBDIVISION REVIEW ~~OF WATER SUPPLY AND SEWAGE DISPOSAL SYSTEMS~~; PROVIDING DEFINITIONS; AMENDING SECTIONS 70-23-102, 76-3-203, AND 76-4-111, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

NEW SECTION. **Section 1. Conversion of condominium to townhouse.** (1) A condominium may be converted to a townhome or townhouse only if:

(a) no other structure occupies the vertical airspace above the unit's converted footprint; and

(b) all condominium units on the property are converted to townhome or townhouse units.

(2) A condominium described in subsection (1) may be converted to a townhome or townhouse only if all the unit owners owning units on the property consent in writing to the conversion.

(3) ~~The~~ EXCEPT AS PROVIDED IN SUBSECTION (5), THE association of unit owners must obtain an appraisal of the fair market value of each unit presuming that each unit had been converted to a townhome or townhouse for the purpose of establishing that the fair market value of the units as townhomes or townhouses is not less than the fair market value of the existing condominium units.

(4) EXCEPT AS PROVIDED IN SUBSECTION (5), THE FOLLOWING PROCEDURE MUST BE FOLLOWED:

(a) Within 10 days following the date of written consent pursuant to subsection (2) and after obtaining the appraisal required by subsection (3), a representative of the unit owners who consented to the conversion shall deliver by certified mail, return receipt requested, to each lender holding a mortgage against a unit subject to the conversion or to the applicable loan servicing company and to each holder of a lien against a unit subject to the conversion, a written notification of the proposed conversion with an opportunity to respond, A COPY OF THE

1 APPRAISAL, AND A PRELIMINARY TITLE COMMITMENT PERTAINING TO THE AFFECTED UNIT.

2 (b) Within ~~90~~ 120 days of the date of the mailing of the written notification, the lender, loan servicing
3 company, or lienholder may object to the conversion by sending a written objection and explanation of the
4 lender's, loan servicing company's, or lienholder's requirements for acceptance of the conversion. The objection
5 and explanation must be sent by certified mail to the representative who prepared the notification.

6 (c) If a lender, loan servicing company, or lienholder does not register an objection within ~~90~~ 120 days
7 after the date of the mailing of the written notification as provided by subsection (4)(b), the lender, loan servicing
8 company, or lienholder is considered to have consented to the conversion, and the unit owners' representative
9 may record the amended declaration.

10 (d) If the representative receives a written objection and explanation from a lender, loan ~~serving~~
11 SERVICING company, or lienholder, the conversion must be deferred for an additional 60 days beyond the ~~90~~ 120
12 days described by subsection (4)(b) to provide the parties an opportunity to resolve the objection. After the
13 expiration of the additional 60-day period, the amended declaration may be recorded.

14 (e) A conversion may be terminated if a consenting unit owner withdraws the owner's consent in writing
15 to the association of unit owners prior to expiration of the ~~90~~ 120 days described by subsection (4)(b) OR, IF THE
16 CONVERSION IS DEFERRED UNDER SUBSECTION (4)(D), PRIOR TO THE EXPIRATION OF THE ADDITIONAL 60 DAYS DESCRIBED
17 IN SUBSECTION (4)(D).

18 (5) IF THE ASSOCIATION OF UNIT OWNERS, THE CONDOMINIUM OWNERS, OR THE REPRESENTATIVES OF THE
19 OWNERS OBTAIN THE WRITTEN CONSENT OF EACH LENDER HOLDING A MORTGAGE AGAINST A UNIT SUBJECT TO THE
20 CONVERSION, EACH APPLICABLE LOAN SERVICING COMPANY, AND EACH HOLDER OF A LIEN AGAINST A UNIT SUBJECT TO
21 THE CONVERSION, THE PROVISIONS OF SUBSECTIONS (3) AND (4) DO NOT APPLY. HOWEVER, THE CONSENT OF ALL
22 LENDERS, LOAN SERVICING COMPANIES, AND LIENHOLDERS MUST BE RECORDED AS PROVIDED IN SUBSECTION (6)(A)(VI).

23 ~~(5)(6)~~ (a) Except as otherwise provided by this section, after written consent for a conversion is granted
24 as provided by subsection (2) AND THE PROVISIONS OF SUBSECTIONS (3) AND (4) HAVE BEEN FULFILLED, an amended
25 declaration executed in accordance with 70-23-305 must be recorded with the office of the county clerk and
26 recorder of the county in which the property is situated. The amended declaration must contain the following
27 provisions or have the following contemporaneous recordings attached to it:

28 (i) the bylaws of the association of unit owners with any amendments recorded pursuant to 70-23-307;

29 (ii) a provision providing for the continuation of the prior condominium association of unit owners as a
30 townhouse association of unit owners;

(iii) an exhibit containing certification by all the unit owners as provided in subsection (2) certifying that they have consented in writing to the conversion;

(iv) a site plan that includes the boundaries of the footprint beneath each unit and any limited common elements such as decks, patios, and walkways that will be included in the conversion; ~~and~~

(v) a survey depicting the corners and boundaries of the land underlying each townhome or townhouse;

AND

(VI) IF APPLICABLE, AN EXHIBIT CONTAINING PROOF THAT EACH LENDER, LOAN SERVICING COMPANY, AND LIENHOLDER DESCRIBED IN SUBSECTION (5) HAS GRANTED ITS CONSENT TO THE CONVERSION.

(b) An amended declaration must be accepted for recording by the clerk and recorder if the amended declaration contains the information required by 70-23-301 and this section.

~~(6)(7)~~ The conversion of a condominium to a townhome or townhouse is effective upon recording the amended declaration and contemporaneous recordings pursuant to subsection ~~(5)~~ (6).

NEW SECTION. Section 2. Effect of conversion. Following a conversion pursuant to [section 1]:

(1) (a) a townhome or townhouse unit, including the structural elements and land beneath the unit as described in the survey in [section ~~1(5)(a)(v)~~ 1(6)(A)(V)], must be considered to be owned in fee simple by the unit owner;

(b) a portion of the property depicted as common area on the site plan described in [section ~~1(5)(a)(iv)~~ 1(6)(A)(IV)] must be considered to be owned in common by all of the converted townhome or townhouse unit owners. The percentage of the undivided interest of each unit owner in the common area must be considered to be the same as the percentage of undivided interest owned by the owner in the common elements prior to the conversion.

(c) a lien affecting a townhome or townhouse unit is a lien against the fee simple interest of the unit owner in subsection (1)(a) and the undivided interest in the common area described in subsection (1)(b). The conversion, by itself, may not be considered to have an effect on the existing priorities of any liens concerning the converted townhome or townhouse units.

(2) the owners, lenders, and title insurers may rely on the amended declaration's legal description of the property subject to the adjustment of boundaries provided by the survey in [section ~~1(5)(a)(v)~~ 1(6)(A)(V)] with regard to the future conveyance of individual townhome or townhouse units;

(3) section 71-1-108 applies to the fee simple title to the land beneath a townhome or townhouse unit

1 acquired by the mortgagor pursuant to the conversion;

2 (4) because the amended declaration must provide for the continuation of the association of unit owners
3 pursuant to [section ~~1(5)(a)(ii)~~ 1(6)(A)(II)], the unit owners may not be required to form a new association of unit
4 owners;

5 (5) the townhome or townhouse may not be considered removed from the provisions of Title 70, chapter
6 23, solely by virtue of the conversion; and

7 (6) ~~IF THE CONVERSION PROCEDURES IN [SECTION 1] ARE FOLLOWED,~~ a unit owner, lender, or lienholder may
8 not bring an action concerning the conversion against any party associated with the conversion, including but not
9 limited to the association of unit owners, title insurers, escrow providers, or lenders. ~~★ IF THE CONVERSION~~
10 PROCEDURES IN [SECTION 1] WERE FOLLOWED, a person who brings an action concerning the conversion is liable
11 for damages and attorney fees and costs to defend the action.

12
13 **Section 3.** Section 70-23-102, MCA, is amended to read:

14 **"70-23-102. Definitions.** In this chapter, unless the context requires otherwise, the following definitions
15 apply:

16 (1) "Association of unit owners" means all the unit owners acting as a group in accordance with the
17 declaration and bylaws.

18 (2) "Building" means a multiple-unit building or buildings comprising a part of the property.

19 (3) "Common elements" means the general common elements and the limited common elements.

20 (4) "Common expenses" means:

21 (a) expenses of administration, maintenance, repair, or replacement of the common elements;

22 (b) expenses agreed upon as common by all the unit owners; and

23 (c) expenses declared common by 70-23-610 and 70-23-612 or by the declaration or the bylaws of the
24 particular condominium.

25 (5) "Condominium" means the ownership of single units with common elements located on property
26 submitted to the provisions of this chapter. The term does not include a townhome or townhouse.

27 (6) "Conversion" means a change in the character of residential real property from one or more parcels
28 of land with attached condominium units to one or more parcels of land with attached townhome or townhouse
29 units.

30 ~~(6)(7)~~ "Declaration" means the instrument by which the property is submitted to the provisions of this

1 chapter.

2 ~~(7)~~(8) "General common elements", unless otherwise provided in a declaration or by consent of all the
3 unit owners, means:

4 (a) the land on which the building is located, except any portion of the land included in a unit or made
5 a limited common element by the declaration;

6 (b) the foundations, columns, girders, beams, supports, mainwalls, roofs, halls, corridors, lobbies, stairs,
7 fire escapes, entrances, and exits of the building;

8 (c) the basements, yards, gardens, parking areas, and outside storage spaces, private pathways,
9 sidewalks, and private roads;

10 (d) installations of central services such as power, light, gas, hot and cold water, heating, refrigeration,
11 air conditioning, waste disposal, and incinerating;

12 (e) the elevators, tanks, pumps, motors, fans, compressors, ducts, and in general all apparatus and
13 installations existing for common use;

14 (f) the premises for the lodging of janitors or caretakers of the property; and

15 (g) all other elements of the building necessary or convenient to its existence, maintenance, and safety
16 or normally in common use.

17 ~~(8)~~(9) "Limited common elements" means those common elements designated in the declaration or by
18 agreement of all the unit owners as reserved for the use of a certain unit or number of units to the exclusion of
19 the other units.

20 ~~(9)~~(10) "Majority" or "majority of the unit owners", unless otherwise provided in the declaration, means
21 the owners of more than 50% in the aggregate of the undivided ownership interests in the general common
22 elements as the percentage of interest in the element appertaining to each unit is expressed in the declaration.
23 Whenever a percentage of the unit owners is specified, percentage means the percentage in the aggregate of
24 undivided ownership.

25 ~~(10)~~(11) "Manager" means the manager, board of managers, or other person in charge of the
26 administration of or managing the property.

27 ~~(11)~~(12) "Project" means a real estate condominium project whereby a condominium of two or more units
28 located on property submitted to the provisions of this chapter ~~are~~ is offered or proposed to be offered for sale.

29 ~~(12)~~(13) "Property" means the land, all buildings, improvements, and structures on the land, and all
30 easements, rights, and appurtenances belonging to the land that are submitted to the provisions of this chapter.

(13)(14) "Recording officer" means the county officer charged with the duty of filing and recording deeds and mortgages or other instruments or documents affecting the title to real property.

(14)(15) "Townhome" or "townhouse" means property that is owned subject to an arrangement under which persons own their own units and hold separate title to the land beneath their units, but under which they may jointly own the common areas and facilities.

(15)(16) "Unit" means a part of the property including one or more rooms occupying one or more floors or a part or parts of the property intended for any type of independent use and with a direct exit to a public street or highway or to a common area or area leading to a public street or highway.

(16)(17) "Unit designation" means the number, letter, or combination of numbers and letters designating a unit in the declaration.

(17)(18) "Unit owner" means the person owning a unit in fee simple absolute individually or as co-owner in any real estate tenancy relationship recognized under the laws of this state. However, for all purposes, including the exercise of voting rights, provided by lease filed with the presiding officer of the association of unit owners, a lessee of a unit must be considered a unit owner."

SECTION 4. SECTION 76-3-203, MCA, IS AMENDED TO READ:

"76-3-203. Exemption for certain condominiums and townhouses. Condominiums, townhomes, or townhouses, or conversions from condominiums to townhomes or townhouses, as those terms are defined in 70-23-102, constructed on land subdivided in compliance with parts 5 and 6 of this chapter or on lots within incorporated cities and towns are exempt from the provisions of this chapter if:

(1) the approval of the original subdivision of land expressly contemplated the construction of the condominiums, townhomes, or townhouses and any applicable park dedication requirements in 76-3-621 are complied with; or

(2) the condominium, townhome, or townhouse proposal is in conformance with applicable local zoning regulations when local zoning regulations are in effect."

Section 5. Section 76-4-111, MCA, is amended to read:

"76-4-111. Exemption for certain condominiums. (1) Condominiums constructed on land divided in compliance with the Montana Subdivision and Platting Act and this part are exempt from provisions of this part.

(2) Whenever a parcel of land has previously been reviewed under either department requirements or

1 local health requirements and has received approval for a given number of living units for rental or lease, the
2 construction OR CONVERSION of the same or a fewer number of condominium units, TOWNHOMES, OR TOWNHOUSES
3 on that parcel is not subject to the provisions of this part, provided that no new extension of a public water supply
4 system or extension of a public sewage system is required.

5 ~~(3) The conversion of a condominium to a townhouse or townhome pursuant to [section 1] is exempt~~
6 ~~from this part if the condominium was approved following review under Title 76, chapter 3, parts 5 and 6."~~

7
8 NEW SECTION. Section 6. Codification instruction. [Sections 1 and 2] are intended to be codified
9 as an integral part of Title 70, chapter 23, and the provisions of Title 70, chapter 23, apply to [sections 1 and 2].

10
11 NEW SECTION. Section 7. Effective date. [This act] is effective on passage and approval.

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