

HOUSE BILL NO. 147

INTRODUCED BY J. HINKLE, C. SCHOMER, E. BUTTREY, K. ZOLNIKOV, J. GILLETTE, J. FITZPATRICK

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING A DEFINITION OF "ENFORCEMENT ACTION" TO INCLUDE A TIME PERIOD AND OTHER REQUIREMENTS; AMENDING SECTION 70-17-210, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

Section 1. Section 70-17-210, MCA, is amended to read:

"70-17-210. Covenant enforcement and abandonment. (1) An association or any party to an interest in land subject to a covenant, condition, or restriction may initiate a legal action to enforce covenants, conditions, or restrictions.

(2) A parcel owner may assert a defense that a covenant, condition, or restriction has been abandoned for purposes of enforcement by offering evidence that no enforcement action has been undertaken for the prescribed period in 27-2-202. Once a covenant, condition, or restriction is abandoned by a court order or agreed to have been abandoned by the approval of the appropriate association, by recording a notice of abandonment or amendment in the office of the county clerk and recorder of the county where the development is situated, all persons are precluded from undertaking a different interpretation or enforcement action of the abandoned covenant, condition, or restriction against a similarly situated parcel owner in the same development.

(3) (a) Except as provided in subsection (3)(b), an association that has not met for a period of 15 years is prohibited from taking an enforcement action against a parcel owner whose use of the parcel is substantially similar to the nature and scope of the use of other parcels in the development.

(b) Covenants, conditions, and restrictions are still valid and enforceable under this subsection (3) if they are otherwise necessary:

- (i) to comply with applicable federal, state, and local laws, ordinances, and regulations;
- (ii) for an easement or right-of-way;

- 1 (iii) for the maintenance of infrastructure or improvements in the development;
- 2 (iv) to comply with a court order or the approval provided by a government on the establishment of
- 3 the covenants, conditions, and restrictions;
- 4 (v) for the installation, maintenance, or removal of utilities; or
- 5 (vi) to abate a nuisance.
- 6 (4) For the purposes of this section, "enforcement action" related to a covenant means that the
- 7 covenant was equally and consistently enforced on all properties subject to the covenant over at least a 2-year
- 8 period."
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10 NEW SECTION. **Section 2. Effective date.** [This act] is effective on passage and approval.

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