

OFFICE OF THE GOVERNOR
STATE OF MONTANA

GREG GIANFORTE
GOVERNOR



KRISTEN JURAS
LT. GOVERNOR

May 17, 2023

The Honorable Jason Ellsworth
President of the Senate
State Capitol
Helena, MT 59620

The Honorable Matt Regier
Speaker of the House
State Capitol
Helena, MT 59620

Dear President Ellsworth and Speaker Regier:

Ownership of property is an inalienable right protected by Article II, Section 3 of the Montana Constitution. It is the responsibility of government to protect, rather than diminish, this fundamental right cherished by our citizens.

Montana law recognizes that in rare circumstances a landowner may lose title to land under the doctrine of adverse possession. Adverse possession is most commonly used as a tool to cure defects in title arising from conveyancing errors and mistakes in legal descriptions. For more than 100 years, the standards to acquire title through adverse possession in Montana have been rigorous, requiring a claimant to openly and continuously possess and use the land without the owner's permission for a period of at least five years, during which time the occupant must also pay all property taxes. Due to these stringent requirements, very few adverse possession claims succeed, and rightfully so, since a successful claim results in depriving the lawful owner of his or her property.

Senate Bill 499 introduces significant changes to Montana's long-standing adverse possession laws and dangerously weakens a landowner's constitutionally-protected property rights by lessening, for a select group of claimants, the stringent adverse possession requirements described above. For example, under current law a tenant occupying a home with the landowner's permission will not prevail in an adverse possession suit against the landlord, because permissive use is not an "adverse" use. Senate Bill 499 abruptly changes course and would allow a tenant residing on

property with the landowner's permission to successfully assert an adverse possession claim against the landlord if the tenant makes certain improvements to the property.

Furthermore, Senate Bill 499 unfairly and irrationally targets a single set of landowners – corporations organized in states other than Montana – arbitrarily denying them the same level of protection enjoyed by all other classes of landowners. If enacted, Senate Bill 499 will serve as a disincentive for out-of-state corporations to establish or expand operations in Montana.

Finally, Senate Bill 499 applies retroactively. If a rental or other property use agreement was consented to by the parties in reliance on the rules in existence at the time the agreement was made, Mont. Const. Art. II, Sec. 31 prohibits the State from impairing the enforcement or performance of those agreements. Retroactive application of Senate Bill 499 may also give rise to claims for the taking of property without just compensation under Mont. Const., Art. II, Sec. 29.

For these reasons, in accordance with the power vested in me as Governor by the Constitution and the laws of the State of Montana, I hereby veto Senate Bill 499: "AN ACT REVISING LAWS RELATED TO ADVERSE POSSESSION OF LAND, FIXTURES, AND OTHER IMPROVEMENTS ON LAND OWNED BY FOREIGN FOR-PROFIT CORPORATIONS BY A MONTANA RESIDENT; EXEMPTING REAL PROPERTY OWNED BY A TRIBAL MEMBER, A TRIBE, OR TRIBAL LAND WITHIN THE BOUNDARIES OF A RESERVATION; PROVIDING REQUIREMENTS; PROVIDING A DEFINITION; AMENDING SECTION 70-18-101, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

Sincerely,



Greg Gianforte
Governor

Enclosure

cc: Legislative Services Division
Christi Jacobsen, Secretary of State