SENATE BILL NO. 400

INTRODUCED BY K. BOGNER

A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING OWNERS TO VOTE TO ADD, REMOVE, OR AMEND EASEMENTS AND COVENANTS; PROVIDING A PROCESS TO AMEND EASEMENTS AND COVENANTS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

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

NEW SECTION. **Section 1. Opportunity to vote on easements, covenants, conditions, and restrictions -- ownership rights -- alternative amendment procedures.** (1) An easement, covenant, condition, or restriction on residential property pursuant to a recorded document such as a declaration of covenants or similar document that applies to multiple properties may not be adopted, removed, or amended unless all owners of property subject to the easement, covenant, condition, or restriction have the opportunity to vote on the adoption, removal, or amendment and at least a majority of LOT owners voting vote to adopt, remove, or amend the easement, covenant, condition, or restriction, EXCEPT THAT IF ALL OWNERS OF LOTS SUBJECT TO THE EASEMENT, COVENANT, CONDITION, OR RESTRICTION CONSENT IN WRITING TO ADOPT, REMOVE, OR AMEND THE EASEMENT, COVENANT, CONDITION, OR RESTRICTION AFTER NOTICE IS PROVIDED, THEN THE NEED FOR A VOTE MAY BE WAIVED.

(2) ~~A~~ EXCEPT AS PROVIDED IN SUBSECTION (1), A person OR ENTITY ~~who~~ THAT owns property subject to easements, covenants, conditions, or restrictions may not be deprived for any reason while the person OR ENTITY continues to own the property of the opportunity to:

(a) vote on easements, covenants, conditions, or restrictions, or amendments to easements, covenants, conditions, or restrictions, and to view the results of the vote;

(b) vote for officers or leaders of a homeowners' association or other governing owners' association;

(c) speak for a reasonable amount of time at meetings of a homeowners' association or other governing owners' association;

(d) vote on a matter raised at a meeting of a homeowners' association or other governing owners' association and to view the result of a vote;

(e) run for or, if duly elected by a majority of owners, serve on a board or committee of a homeowners' association or other governing owners' association, AS LONG AS THE OWNER IS IN GOOD STANDING;

(f) vote on an increase in dues or assessments, EXCEPT THE 30-DAY PERIOD MAY BE SHORTENED IF THERE IS AN EMERGENCY; and

(g) vote on whether a homeowners' association or other governing owners' association may initiate litigation if the owner may be required to contribute financial support for the litigation, EXCEPT THE 30-DAY PERIOD MAY BE SHORTENED IF THERE IS AN EMERGENCY.

(3) SUBSECTIONS (1) AND (2) DO NOT PREVENT OWNERS OF PROPERTY SUBJECT TO AN EASEMENT, COVENANT, CONDITION, OR RESTRICTION FROM REQUIRING HIGHER THRESHOLDS TO ADOPT, REMOVE, OR AMEND A RESIDENTIAL EASEMENT, COVENANT, CONDITION, OR RESTRICTION OR FROM REQUIRING A LONGER PERIOD OF NOTICE AND OPPORTUNITY TO VOTE THAN THOSE PROVIDED.

~~(3)~~(4) (a) If ~~the~~ A document creating an easement, covenant, condition, or restriction requires unanimous consent to adopt, remove, or amend, or if the document creating the easement, covenant, condition, or restriction does not contain a procedure for adopting, removing, or amending, the owners of property subject to the easement, covenant, condition, or restriction may adopt, remove, or amend the easement, covenant, condition, or restriction through the following process:

(i) providing notice by certified mail of the proposed adoption, removal, or amendment to every owner of property subject to the easement, covenant, condition, or restriction;

(ii) providing an opportunity to vote on the change for at least a 30-day period set forth in subsection ~~(4)~~ (5);

(iii) ensuring that no owner of property subject to the easement, covenant, condition, or restriction objects or requests additional information within the 30-day period; and

(iv) recording with the office of the county clerk and recorder of the county where the real property is situated the adopted, removed, or amended easement, covenant, condition, or restriction, together with an affidavit or declaration stating that no owner of property subject to the adopted, removed, or amended easement, covenant, condition, or restriction has objected to the adoption, removal, or amendment.

(b) Nothing in this subsection ~~(3)~~ (4) prevents owners of property subject to an easement, covenant, condition, or restriction from requiring a longer period of notice and opportunity to vote than that provided by this section.

(c) If any owner objects to the proposed adoption, removal, or amendment or requests additional information during the 30-day period, or any longer period provided, then the easement, covenant, condition, or restriction may not be adopted, removed, or amended unless the owner who objected or requested additional information confirms in writing that the owner does not object to the adoption, removal, or amendment.

~~(4)~~(5) As used in this section, the "opportunity to vote" means:

(a) the provision of at least 30 days' written notice prior to an in-person vote or a period of at least 30 days to vote by mail or other allowable written means; and

(b) the allowance of voting by written proxy.

NEW SECTION. **Section 2. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 70, chapter 17, part 2, and the provisions of Title 70, chapter 17, part 2, apply to [section 1].

NEW SECTION. **Section 3. Effective date.** [This act] is effective on passage and approval.

NEW SECTION. **Section 4. Applicability.** [This act] applies to the adoption, amendment, or removal on or after [the effective date of this act] of easements, covenants, conditions, and restrictions that were in existence on or after [the effective date of this act].

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