

HOUSE BILL NO. 232

INTRODUCED BY T. FALK

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATED TO HOMEOWNERS' ASSOCIATIONS; REQUIRING ~~A CERTAIN~~ HOMEOWNERS' ~~ASSOCIATION ASSOCIATIONS~~ TO PRODUCE ANNUAL BUDGET AND FINANCIAL REPORTS; ESTABLISHING REQUIREMENTS BEFORE ~~A CERTAIN~~ HOMEOWNERS' ~~ASSOCIATION ASSOCIATIONS~~ MAY INCREASE FEES, DUES, OR OTHER CHARGES; PROVIDING A DEFINITION; AND AMENDING SECTIONS 35-2-114 AND 35-2-525, MCA."

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

- NEW SECTION. Section 1. Homeowners' association -- annual budget and financial report requirements -- exception.** (1) (a) Except as provided in subsection (5), A-a homeowners' association shall produce an annual budget report by the end of the homeowners' association's fiscal year.
- (b) The annual budget report must include an operating budget for the next fiscal year showing estimated revenue and expenses, including the sources of revenue and anticipated itemized expenses.
- (2) (a) A homeowners' association shall produce an annual financial report not less than 30 days after the end of the homeowners' association's fiscal year.
- (b) The annual financial report must include:
- (i) for each category of revenue and expenditure totaling at least \$50 annually, a summary report of revenue and expenditures of the fiscal year ending; ~~and~~
- (ii) the ending balance of each fund; and
- (iii) any unreserved balance remaining at the end of the fiscal year from fees, dues, or other charges collected.
- (3) The annual budget report and the annual financial report required under this section must:
- (a) be sent by mail and electronic mail to the address or last-known address of all members who own property in a homeowners' association; and
- (b) be postmarked or sent no later than ~~30~~ 15 days after the required production date provided in

1 subsection (1)(a) or (2)(a).

2 (4) Nothing in this section prohibits a homeowners' association from adopting more stringent
3 standards than the provisions provided in this section.

4 (5) A homeowners' association that consists of 10 or fewer parcels is exempt from the
5 requirements of this section.

6
7 NEW SECTION. Section 2. Homeowners' association -- allowable fee increases -- exception. (1)
8 Except as provided in subsection (5), A-a homeowners' association may only increase annual or monthly fees,
9 dues, or other charges:

10 (a) except as provided in subsection (2)(b), once annually; and

11 (b) in an amount not to exceed 15% or \$100, whichever is greater, of fees, dues, or other charges
12 assessed in the prior year pursuant to subsection (2)(a) and except as provided in subsection (2)(b).

13 (2) For an increase in annual or monthly fees, dues, or other charges:

14 (a) not to exceed 15% of the amount assessed in the prior year, a majority of the property owners
15 assessed shall approve of the increase in writing; or

16 (b) occurring more than once annually or in excess of 15% of the amount assessed in the prior
17 year, 2/3 3/5 of the property owners assessed shall approve of the increase in writing.

18 (3) The homeowners' association shall include the amount of a proposed increase for the next
19 fiscal year in the annual budget report mailed and sent to all property owners pursuant to [section 1].

20 (4) A property owner may approve an increase allowed under subsection (2) by sending an
21 approval in writing by mail or electronic mail to the homeowners' association, which must:

22 (a) provide the legal name or names of the property owners;

23 (b) provide the legal address of the property that is within the homeowners' association for which
24 the approval is being sent; and

25 (c) clearly indicate that the property owner approves or disapproves of the increase for the next
26 fiscal year.

27 (5) A homeowners' association that consists of 10 or fewer parcels is exempt from the
28 requirements of this section.

- 1
- 2 **Section 3.** Section 35-2-114, MCA, is amended to read:
- 3 **"35-2-114. Definitions.** As used in this chapter, the following definitions apply:
- 4 (1) "Approved by the members" means approved and ratified by the affirmative vote:
- 5 (a) of a majority of the votes represented and voting:
- 6 (i) at a meeting at which a quorum is present and the affirmative votes constitute a majority of the
- 7 required quorum;
- 8 (ii) by a written ballot or written consent in conformity with this chapter; or
- 9 (iii) by the affirmative vote, written ballot, or written consent of the majority; and
- 10 (b) that includes the votes of all the members of any class, unit, or grouping that may be required
- 11 by the articles, bylaws, or this chapter for any specified member action.
- 12 (2) "Articles of incorporation" or "articles" include amended and restated articles of incorporation
- 13 and articles of merger.
- 14 (3) "Authenticated electronic identification" includes any e-mail address or other electronic
- 15 identification designated by a user, including a corporation, for electronic communications.
- 16 (4) "Board" or "board of directors" means the board of directors except that a person or group of
- 17 persons is not the board of directors because of powers delegated to that person or group pursuant to 35-2-
- 18 414.
- 19 (5) "Bylaws" means the code, codes, or rules, other than the articles, adopted pursuant to this
- 20 chapter for the regulation or management of the affairs of the corporation, regardless of the name or names by
- 21 which the code, codes, or rules are designated.
- 22 (6) "Class" refers to a group of memberships that have the same rights with respect to voting,
- 23 dissolution, redemption, and transfer. For the purpose of this section, rights must be considered the same if
- 24 they are determined by a formula applied uniformly.
- 25 (7) "Corporation" means a public benefit corporation, mutual benefit corporation, or religious
- 26 corporation.
- 27 (8) "Delegates" means those persons elected or appointed to vote in a representative assembly for
- 28 the election of a director or directors or on other matters.

(9) "Deliver" or "delivery" means any method of delivery used in conventional commercial practice, including delivery by hand, mail, commercial delivery, and electronic transmission, except that delivery to the secretary of state means actual receipt in a manner authorized by the secretary of state.

(10) "Directors" means individuals:

(a) designated in the articles or bylaws or elected by the incorporators and their successors; and

(b) elected or appointed by any other name or title to act as members of the board.

(11) "Distribution" means the payment of a dividend or any part of the income or profit of a corporation to its members, directors, or officers.

(12) "Domestic corporation" means a corporation.

(13) "Effective date of notice" has the meaning provided in 35-2-115(5).

(14) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(15) "Employee" does not include an officer or director who is not otherwise employed by the corporation.

(16) "Entity" includes:

(a) a corporation and foreign corporation;

(b) a business corporation and foreign business corporation;

(c) a profit and nonprofit unincorporated association;

(d) a corporation sole;

(e) a business trust, an estate, a partnership, a trust, and two or more persons having a joint or common economic interest; and

(f) a state, the United States, and a foreign government.

(17) "External communications" includes any communication with the secretary of state, the attorney general, a state, or the United States.

(18) "File", "filed", or "filing" means filed in the office of the secretary of state.

(19) "Foreign corporation" means a corporation that is organized under a law other than the law of this state, including the laws of a federally recognized Indian tribe, and that would be a nonprofit corporation if formed under the laws of this state.

(20) "Governmental subdivision" includes an authority, county, district, and municipality.

(21) "Homeowners' association" means ~~a corporation organized an organization established~~ under the provisions of this chapter that is responsible for the operation of a community or a mobile home subdivision in which:

(a) the voting membership is made up of parcel owners or their agents or a combination of parcel owners and their agents;

(ii) membership is a mandatory condition of parcel ownership; and

(iii) the ~~corporation-organization~~ is authorized to impose assessments that, if unpaid, may become a lien on the parcel.

~~(24)(22)~~ "Includes" denotes a partial definition.

~~(22)(23)~~ "Individual" includes the estate of an incompetent individual.

~~(23)(24)~~ "Internal communications" includes any notice, vote, written consent, written ballot, demand, record, member list, corporate record, or any other communication between members, directors, delegates, proxies, third persons under 35-2-232, or the corporate secretary.

~~(24)(25)~~ "Means" denotes a complete definition.

~~(25)(26)~~ (a) "Member" means, without regard to what a person is called in the articles or bylaws, a person or persons who, on more than one occasion and pursuant to a provision of a corporation's articles or bylaws, have the right to vote for the election of a director or directors.

(b) A person is not a member by virtue of any of the following:

(i) any rights the person has as a delegate;

(ii) any rights the person has to designate a director or directors; or

(iii) any rights the person has as a director.

~~(26)(27)~~ "Membership" refers to the rights and obligations a member or members have pursuant to a corporation's articles, bylaws, and this chapter.

~~(27)(28)~~ "Mutual benefit corporation" means a domestic corporation designated as a mutual benefit corporation.

~~(28)(29)~~ "Notice" means that term as described in 35-2-115.

~~(29)(30)~~ "Person" includes any individual or entity.

~~(30)~~(31)"Principal office" means the office, in the state or out of the state, that is designated in the annual report filed pursuant to 35-2-904 as the place where the principal office of a domestic or foreign corporation is located.

~~(34)~~(32)"Present" or "presence" includes any form of electronic, virtual, or digital presence authorized by a corporation's articles or bylaws.

~~(32)~~(33)"Proceeding" includes a civil suit and a criminal, administrative, and investigatory action.

~~(33)~~(34)"Public benefit corporation" means a domestic corporation designated as a public benefit corporation.

~~(34)~~(35)"Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

~~(35)~~(36)"Record date" means the date established under part 5 on which a corporation determines the identity of its members for the purposes of this chapter.

~~(36)~~(37)"Religious corporation" means a domestic corporation designated as a religious corporation.

~~(37)~~(38)"Remote communication" includes communication made by conference telephone call, internet, electronic, remote technology, or similar communication through which all participants in the meeting have the opportunity to read or hear the proceedings substantially concurrently with their occurrence, vote on matters submitted to the members, pose questions, and make comments.

~~(38)~~(39)"Secretary" means the corporate officer to whom the board of directors has delegated responsibility under 35-2-439(2) for custody of the minutes of the directors' and members' meetings and for authenticating the records of the corporation.

~~(39)~~(40)"Sign" or "signed" means, with present intent to authenticate or adopt a record:

(a) to execute or adopt a tangible symbol; or

(b) to attach to or logically associate with the record an electronic sound, symbol, or process.

~~(40)~~(41)"State", when referring to a part of the United States, includes:

(a) a state and commonwealth and their agencies and governmental subdivisions; and

(b) a territory and insular possession, their agencies, and governmental subdivisions of the United States.

~~(44)~~(42)"United States" includes a district, an authority, a bureau, a commission, a department, and any

1 other agency of the United States.

2 ~~(42)(43)~~"Vote" or "voting" includes but is not limited to the giving of consent in the form of a record
3 provided electronically or by written ballot and written consent.

4 ~~(43)(44)~~(a) "Voting power" means the total number of votes entitled to be cast for the election of
5 directors at the time the determination of voting power is made.

6 (b) The term excludes a vote that is contingent upon the happening of a condition or event that has
7 not occurred at the time.

8 (c) When a class is entitled to vote as a class for directors, the determination of voting power of the
9 class must be based on the percentage of the number of directors the class is entitled to elect out of the total
10 number of authorized directors.

11 ~~(44)(45)~~"Written" or "in writing" means:

12 (a) with respect to internal communications, any record in tangible or electronic form or any form
13 allowed under Title 30, chapter 18, part 1; and

14 (b) with respect to external communications, tangible records or any form authorized by the
15 external party."

16

17 **Section 4.** Section 35-2-525, MCA, is amended to read:

18 **"35-2-525. Homeowners' association -- remote meetings.** (1) Unless the terms of
19 the articles of incorporation or bylaws provide otherwise, a homeowners' association or an association of unit
20 owners may hold a meeting by remote means.

21 (2) For the purposes of this section, the following definitions apply:

22 (a) "Association of unit owners" has the meaning provided in 70-23-102, except that the unit
23 owners do not have to have submitted their property to the provisions of Title 70, chapter 23, and the
24 association is organized under the provisions of Title 35, chapter 2.

25 (b) "Homeowners' association" ~~means a corporation organized under the provisions of Title 35,~~
26 ~~chapter 2, that is responsible for the operation of a community or a mobile home subdivision in which:~~

27 ~~(i) the voting membership is made up of parcel owners or their agents, or a combination of parcel~~
28 ~~owners and their agents;~~