

HOUSE BILL NO. 232

INTRODUCED BY T. FALK

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATED TO HOMEOWNERS' ASSOCIATIONS; REQUIRING A HOMEOWNERS' ASSOCIATION TO PRODUCE ANNUAL BUDGET AND FINANCIAL REPORTS; ESTABLISHING REQUIREMENTS BEFORE A HOMEOWNERS' ASSOCIATION 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. (1) (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) a summary of revenue and expenditures of the fiscal year ending; and

(ii) 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 days after the required production date provided in subsection (1)(a) or (2)(a).

(4) Nothing in this section prohibits a homeowners' association from adopting more stringent

1 standards than the provisions provided in this section.

2

3 **NEW SECTION. Section 2. Homeowners' association -- allowable fee increases.** (1) A

4 homeowners' association may only increase annual or monthly fees, dues, or other charges:

5 (a) once annually; and

6 (b) in an amount not to exceed 15% of fees, dues, or other charges assessed in the prior year

7 pursuant to subsection (2)(a) and except as provided in subsection (2)(b).

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

9 (a) not to exceed 15% of the amount assessed in the prior year, a majority of the property owners

10 assessed shall approve of the increase in writing; or

11 (b) in excess of 15% of the amount assessed in the prior year, 2/3 of the property owners

12 assessed shall approve of the increase in writing.

13 (3) The homeowners' association shall include the amount of a proposed increase for the next

14 fiscal year in the annual budget report mailed and sent to all property owners pursuant to [section 1].

15 (4) A property owner may approve an increase allowed under subsection (2) by sending an

16 approval in writing by mail or electronic mail to the homeowners' association, which must:

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

18 (b) provide the legal address of the property that is within the homeowners' association for which

19 the approval is being sent; and

20 (c) clearly indicate that the property owner approves or disapproves of the increase for the next

21 fiscal year.

22

23 **Section 3.** Section 35-2-114, MCA, is amended to read:

24 **"35-2-114. Definitions.** As used in this chapter, the following definitions apply:

25 (1) "Approved by the members" means approved and ratified by the affirmative vote:

26 (a) of a majority of the votes represented and voting:

27 (i) at a meeting at which a quorum is present and the affirmative votes constitute a majority of the

28 required quorum;

- 1 (ii) by a written ballot or written consent in conformity with this chapter; or
- 2 (iii) by the affirmative vote, written ballot, or written consent of the majority; and
- 3 (b) that includes the votes of all the members of any class, unit, or grouping that may be required
- 4 by the articles, bylaws, or this chapter for any specified member action.
- 5 (2) "Articles of incorporation" or "articles" include amended and restated articles of incorporation
- 6 and articles of merger.
- 7 (3) "Authenticated electronic identification" includes any e-mail address or other electronic
- 8 identification designated by a user, including a corporation, for electronic communications.
- 9 (4) "Board" or "board of directors" means the board of directors except that a person or group of
- 10 persons is not the board of directors because of powers delegated to that person or group pursuant to 35-2-
- 11 414.
- 12 (5) "Bylaws" means the code, codes, or rules, other than the articles, adopted pursuant to this
- 13 chapter for the regulation or management of the affairs of the corporation, regardless of the name or names by
- 14 which the code, codes, or rules are designated.
- 15 (6) "Class" refers to a group of memberships that have the same rights with respect to voting,
- 16 dissolution, redemption, and transfer. For the purpose of this section, rights must be considered the same if
- 17 they are determined by a formula applied uniformly.
- 18 (7) "Corporation" means a public benefit corporation, mutual benefit corporation, or religious
- 19 corporation.
- 20 (8) "Delegates" means those persons elected or appointed to vote in a representative assembly for
- 21 the election of a director or directors or on other matters.
- 22 (9) "Deliver" or "delivery" means any method of delivery used in conventional commercial practice,
- 23 including delivery by hand, mail, commercial delivery, and electronic transmission, except that delivery to the
- 24 secretary of state means actual receipt in a manner authorized by the secretary of state.
- 25 (10) "Directors" means individuals:
- 26 (a) designated in the articles or bylaws or elected by the incorporators and their successors; and
- 27 (b) elected or appointed by any other name or title to act as members of the board.
- 28 (11) "Distribution" means the payment of a dividend or any part of the income or profit of a

1 corporation to its members, directors, or officers.

2 (12) "Domestic corporation" means a corporation.

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

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

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

8 (16) "Entity" includes:

9 (a) a corporation and foreign corporation;

10 (b) a business corporation and foreign business corporation;

11 (c) a profit and nonprofit unincorporated association;

12 (d) a corporation sole;

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

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

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

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

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

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

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

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

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

28 (iii) the corporation is authorized to impose assessments that, if unpaid, may become a lien on the

1 parcel.

2 ~~(21)~~~~(22)~~"Includes" denotes a partial definition.

3 ~~(22)~~~~(23)~~"Individual" includes the estate of an incompetent individual.

4 ~~(23)~~~~(24)~~"Internal communications" includes any notice, vote, written consent, written ballot, demand,
5 record, member list, corporate record, or any other communication between members, directors, delegates,
6 proxies, third persons under 35-2-232, or the corporate secretary.

7 ~~(24)~~~~(25)~~"Means" denotes a complete definition.

8 ~~(25)~~~~(26)~~(a) "Member" means, without regard to what a person is called in the articles or bylaws, a
9 person or persons who, on more than one occasion and pursuant to a provision of a corporation's articles or
10 bylaws, have the right to vote for the election of a director or directors.

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

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

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

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

15 ~~(26)~~~~(27)~~"Membership" refers to the rights and obligations a member or members have pursuant to a
16 corporation's articles, bylaws, and this chapter.

17 ~~(27)~~~~(28)~~"Mutual benefit corporation" means a domestic corporation designated as a mutual benefit
18 corporation.

19 ~~(28)~~~~(29)~~"Notice" means that term as described in 35-2-115.

20 ~~(29)~~~~(30)~~"Person" includes any individual or entity.

21 ~~(30)~~~~(31)~~"Principal office" means the office, in the state or out of the state, that is designated in the
22 annual report filed pursuant to 35-2-904 as the place where the principal office of a domestic or foreign
23 corporation is located.

24 ~~(31)~~~~(32)~~"Present" or "presence" includes any form of electronic, virtual, or digital presence authorized
25 by a corporation's articles or bylaws.

26 ~~(32)~~~~(33)~~"Proceeding" includes a civil suit and a criminal, administrative, and investigatory action.

27 ~~(33)~~~~(34)~~"Public benefit corporation" means a domestic corporation designated as a public benefit
28 corporation.

1 ~~(34)~~(35)"Record" means information that is inscribed on a tangible medium or that is stored in an
2 electronic or other medium and is retrievable in perceivable form.

3 ~~(35)~~(36)"Record date" means the date established under part 5 on which a corporation determines the
4 identity of its members for the purposes of this chapter.

5 ~~(36)~~(37)"Religious corporation" means a domestic corporation designated as a religious corporation.

6 ~~(37)~~(38)"Remote communication" includes communication made by conference telephone call, internet,
7 electronic, remote technology, or similar communication through which all participants in the meeting have the
8 opportunity to read or hear the proceedings substantially concurrently with their occurrence, vote on matters
9 submitted to the members, pose questions, and make comments.

10 ~~(38)~~(39)"Secretary" means the corporate officer to whom the board of directors has delegated
11 responsibility under 35-2-439(2) for custody of the minutes of the directors' and members' meetings and for
12 authenticating the records of the corporation.

13 ~~(39)~~(40)"Sign" or "signed" means, with present intent to authenticate or adopt a record:

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

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

16 ~~(40)~~(41)"State", when referring to a part of the United States, includes:

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

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

20 ~~(41)~~(42)"United States" includes a district, an authority, a bureau, a commission, a department, and any
21 other agency of the United States.

22 ~~(42)~~(43)"Vote" or "voting" includes but is not limited to the giving of consent in the form of a record
23 provided electronically or by written ballot and written consent.

24 ~~(43)~~(44)(a) "Voting power" means the total number of votes entitled to be cast for the election of
25 directors at the time the determination of voting power is made.

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

28 (c) When a class is entitled to vote as a class for directors, the determination of voting power of the

1 class must be based on the percentage of the number of directors the class is entitled to elect out of the total
2 number of authorized directors.

3 ~~(44)~~(45)"Written" or "in writing" means:

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

6 (b) with respect to external communications, tangible records or any form authorized by the
7 external party."
8

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

10 **"35-2-525. Homeowners' association -- remote meetings.** (1) Unless the terms of
11 the articles of incorporation or bylaws provide otherwise, a homeowners' association or an association of unit
12 owners may hold a meeting by remote means.

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

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

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

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

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

22 ~~(iii) the corporation is authorized to impose assessments that, if unpaid, may become a lien on the~~
23 ~~parcel has the meaning provided in 35-2-114.~~

24 (c) "Remote means" includes telephone audio, teleconference, or videoconference."
25

26 **NEW SECTION. Section 5. Codification instruction.** [Sections 1 and 2] are intended to be codified
27 as an integral part of Title 32, chapter 2, and the provisions of Title 32, chapter 2, apply to [sections 1 and 2].
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