

## Senate Bill 300

### Overview

This past legislative session, the Montana legislature passed Senate Bill 300 (“SB 300”), a bill designed to prevent homeowners’ associations (“HOA”) from imposing new covenants, conditions, and restrictions (“CCRs”) on certain types of use of property. The bill, which became law on May 8, 2019, does not prevent an HOA from passing CCRs to change the acceptable uses of property, but rather prevents an HOA from imposing certain types of new use restrictions against owners who purchased their properties before the restrictions went into effect and do not wish to be bound by them.

The example below demonstrates one scenario where SB 300 would be implicated:

Buyer Z purchases a home in Subdivision A in 2018 as a rental. Under the CCRs in effect at the time Buyer Z purchased the property, Buyer Z is permitted to use the property as a short-term rental (VRBO, Airbnb, etc). Next year, in 2019, the HOA in Subdivision A passes a new CCR prohibiting the use of properties within Subdivision A as short-term rentals. Using SB 300, Buyer Z could choose to be “grandfathered in” and exempt from the new CCR, therefore allowing Buyer Z to keep renting their property as they were able to do when they purchased it and continue doing so for as long as they own the property.

Under the new law, if a HOA passes a new use CCR after an owner has purchased their property, that owner simply needs to notify the HOA that they are choosing to be exempt from the new CCR and personally record a document memorializing their exemption at the county clerk and recorder’s office. Alternatively, they may ask the HOA to do so on their behalf and pay the required filing fee. If the owner follows each step and properly records their election, they will be “grandfathered in” and exempt from that CCR, preventing the HOA from attempting to enforce it against them. The example above demonstrates only one common scenario where SB 300 could be implicated and it is important to note that SB 300’s exemption benefit is available to all owners within a subdivision at the time a new use CCR is passed, not only those who were engaged in the specific use before passage of the CCR.

### Scope of SB 300

As stated above, SB 300 only applies to certain CCRs that attempt to limit or prohibit the use of property in the subdivision. Specifically, the benefit of SB 300 is only available if a new CCR:

1. Limits property use to strictly residential, agricultural, and/or commercial purposes or prohibits an owner from using property for one or all of those purposes;
2. Limits an owner's ability to rent the property for any amount of time or prohibits the owner from doing so completely; and
3. Prevents an owner from developing their property in a manner that otherwise conforms with federal, state, and local law.

Notably, SB 300 in no way affects or limits the ability for HOAs to pass and enforce the most common CCRs (e.g. maintenance, building materials, general appearance, noise, pets, etc.) and a member can never choose to be exempt from a CCR that is unrelated to one of the three categories listed above.

Possibly the most important limitation is that the benefit of SB 300 is available only as long as the owner claiming the exemption owns the property. Therefore, a purchaser of property within a subdivision is subject to all CCRs existing at the time of purchase, even if the seller was previously exempt from them. While the purchaser would be able to exempt themselves from future CCRs related to the types of use set forth above *after* they purchase a property, they will not receive any benefit of an exemption claimed by the seller who owned the property *before* them. The only exceptions to this limitation occur if: 1) the buyer is an entity owned in whole or in part by the seller; 2) the buyer is a co-owner of the property; or 3) the buyer is a lender who forecloses on the home.

MAR members should advise potential buyers to pay special attention to CCRs limiting or prohibiting certain types of property use in existence at the time of purchase. Further, MAR members should be sure to inform potential buyers that the buyer(s) may be bound by all CCRs in existence at the time of purchase, even if the previous owner was not.

### **Recording Requirements**

As noted above, SB 300 requires a member to record their exemptions or have the HOA do so on their behalf at the local clerk and recorder's office. Therefore, a potential purchaser could not only determine what CCR exemptions a seller took advantage of but also theoretically determine what other exemptions have been claimed by other subdivision members. While personally searching property

records is an option, it will be a burdensome task that most buyers would like to avoid.

Therefore, MAR members should advise potential buyers to first consult with the HOA in a prospective subdivision and request any records kept by the HOA related to CCR exemptions throughout the subdivision community. This will hopefully allow a buyer to avoid requesting a title company to conduct a records search.

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