

House Bill 744

In The House

February 13, 1981

Introduced and referred
to Committee on Judiciary.

February 24, 1981

Committee recommend bill
do not pass.

1 HOUSE BILL NO. 744
 2 INTRODUCED BY Hannold cc P. O'Hara
 3 Meyer

4 A BILL FOR AN ACT ENTITLED: "AN ACT PROHIBITING THE USE OF
 5 PROVISIONS IN MORTGAGES, DEEDS OF TRUST, OR CONTRACTS
 6 RELATING TO REAL PROPERTY THAT ALLOW AN ACCELERATION OF
 7 PAYMENTS OR AN INCREASE IN INTEREST UPON A TRANSFER OF THE
 8 PROPERTY; AND PROVIDING A PROTECTIVE MEASURE FOR THE
 9 SECURITY INTEREST OF THE LENDER."

10
 11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

12 Section 1. Definitions. As used in [this act], unless
 13 the context requires otherwise, the following definitions
 14 apply:

- 15 (1) "Borrower" means:
- 16 (a) a person who has secured an indebtedness with a
 17 security interest in real property; or
- 18 (b) a person who has taken an interest in real
 19 property that is subject to an outstanding security interest
 20 in real property and has notified the holder of the security
 21 interest that he has taken the real property and assumed the
 22 indebtedness secured by the real property;
- 23 (2) "Lender" means a person who has a security
 24 interest in real property, evidenced by his security deed,
 25 mortgage, trust deed, or other security document granting a

1 security interest in real property to secure an indebtedness
 2 owed to lender;

3 (3) "Person" means any individual, firm, partnership,
 4 corporation, joint venture, association, company, agency,
 5 syndicate, estate, trust, business trust, receiver,
 6 fiduciary, or other group or combination or any other
 7 entity.

8 Section 2. Unreasonable restraint on the alienation of
 9 property -- prohibited practices. Subject to the limitations
 10 and exceptions provided in this section, a lender with a
 11 security interest in real property may not, directly or
 12 indirectly:

- 13 (1) increase the interest rate contained in a
 14 mortgage, deed of trust, or contract relating to real
 15 property above the existing interest rate of the
 16 indebtedness unless:
- 17 (a) the borrower who is primarily liable for repayment
 18 of the indebtedness requests in writing to the lender, at
 19 the time of making application to the lender for approval of
 20 a transfer or at any time prior to the granting or denying
 21 of approval of the transfer by the lender that the borrower
 22 desires to be relieved of liability under the terms of the
 23 security instrument and any note secured thereby; and
- 24 (b) the lender furnishes written evidence to the
 25 borrower that the borrower has been relieved of liability

→ INTRODUCED BILL
 HB 744

1 under the terms of the security instrument and the note
2 secured thereby;

3 (2) charge, collect, or attempt to collect any fee on
4 account of the sale or transfer of the real property or on
5 account of the assumption of the indebtedness in excess of
6 the lesser of:

7 (a) one-half of one percent of the principal amount of
8 the indebtedness outstanding on the date of the transfer; or

9 (b) the actual fee arising out of that transaction as
10 set by any federal lending agency as a condition of
11 transfer, not including fees for title insurance,
12 abstracting, credit reports, survey, or other charges
13 relating to the sale;

14 (3) withhold approval or disapproval of the sale of
15 the real property, transfer of the real property, or the
16 assumption of the indebtedness beyond 45 days after receipt
17 of the written application for the sale, transfer, or
18 assumption; if the approval or disapproval is withheld
19 beyond the period the sale, transfer, or assumption is
20 considered approved;

21 (4) disapprove the sale or transfer of the real
22 property or the assumption of the indebtedness for any
23 reason other than the credit worthiness of the person to
24 whom the real property would be sold or transferred. The
25 decision shall be based upon standards normally used by

1 persons in the business of making loans on real property in
2 the same or similar circumstances and may not withhold
3 approval or disapproval beyond 45 days as provided in
4 subsection (3).

5 Section 3. Recording of relief from liability and
6 transfer of secured obligation. Upon submission of proper
7 proof by the lender, the county clerk and recorder in the
8 county where the security instrument is recorded shall enter
9 a notation on the recorded security instrument to the effect
10 that the borrower has been relieved of liability under the
11 terms of the security interest and the note secured thereby.

12 Section 4. Liens or encumbrances -- security
13 agreements. For purposes of [this act], Title 71, chapter 1,
14 part 1, and Title 71, chapter 1, part 3, the creation,
15 obligation, or transfer of an interest in which the original
16 borrower is not relieved of liability shall be considered as
17 a lien or encumbrance subordinate to the original security
18 agreement.

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