

LEGISLATIVE BILL 34

Approved by the Governor March 18, 2015

Introduced by Howard, 9.

A BILL FOR AN ACT relating to real estate; to amend section 76-2,120, Revised Statutes Cumulative Supplement, 2014; to adopt the Carbon Monoxide Safety Act; to require information relating to compliance with the act on disclosure statements for sales of real estate; to provide a duty for the State Real Estate Commission; and to repeal the original section.
Be it enacted by the people of the State of Nebraska,

Section 1. Sections 1 to 7 of this act shall be known and may be cited as the Carbon Monoxide Safety Act.

Sec. 2. For purposes of the Carbon Monoxide Safety Act:

(1) Carbon monoxide alarm means a device that detects carbon monoxide and that:

(a) Produces a distinct, audible alarm;

(b) Is listed by a nationally recognized, independent product-safety testing and certification laboratory to conform to the standards for carbon monoxide alarms issued by such laboratory as determined by the State Fire Marshal;

(c)(i) Is battery-powered;

(ii) Plugs into a dwelling's electrical outlet and has a battery backup;

(iii) Is wired into a dwelling's electrical system and has a battery backup; or

(iv) Is connected to an electrical system via an electrical panel; and

(d) May be combined with a smoke detecting device if the combined device complies with applicable law regarding both smoke detecting devices and carbon monoxide alarms and if the carbon monoxide alarm is distinct and descriptively annunciated from a smoke detecting alarm;

(2) Dwelling unit means a single unit providing complete independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking, and sanitation;

(3) Fuel means coal, kerosene, oil, fuel gases, or other petroleum products or hydrocarbon products such as wood that emit carbon monoxide as a byproduct of combustion;

(4) Installed means that a carbon monoxide alarm is installed in a dwelling unit in accordance with the National Fire Protection Association Standard 720 as such standard existed on January 1, 2015, and in accordance with the instructions for installation from the manufacturer, in one of the following ways:

(a) If the alarm is battery-powered, attached to the wall or ceiling of the dwelling unit;

(b) Directly plugged into an electrical outlet without a switch other than a circuit breaker; or

(c) Wired directly into the dwelling's electrical system;

(5) Multifamily dwelling means any improved real property used or intended to be used as a residence and that contains more than one dwelling unit. Multifamily dwelling includes a condominium or cooperative;

(6) Operational means working and in service in accordance with the manufacturer's instructions; and

(7) Single-family dwelling means any improved real property used or intended to be used as a residence and that contains one dwelling unit.

Sec. 3. Any multifamily dwelling or single-family dwelling constructed on or after January 1, 2017, that has a fuel-fired heater or appliance, a fireplace, or an attached garage shall have a carbon monoxide alarm installed (1) on each habitable floor of each dwelling unit in a multifamily dwelling and on each habitable floor in a single-family dwelling or (2) in a location specified in any building code adopted by the state or by the political subdivision in which the dwelling is located.

Sec. 4. (1) The seller of a single-family dwelling that is offered for sale or transfer on or after January 1, 2017, and that has a fuel-fired heater or appliance, a fireplace, or an attached garage shall ensure that an operational carbon monoxide alarm is installed on each habitable floor of the dwelling or in a location specified in any building code adopted by the state or by the political subdivision in which the dwelling is located.

(2) If the owner of a single-family dwelling that has a fuel-fired heater or appliance, a fireplace, or an attached garage makes any interior alteration, repair, fuel-fired appliance replacement, or addition on or after January 1, 2017, where a permit is required, the owner shall ensure that an operational carbon monoxide alarm is installed on each habitable floor of the dwelling where the alteration, repair, replacement, or addition occurs or in a location specified in any building code adopted by the state or by the political subdivision in which the dwelling is located. This subsection applies only to interior alterations. This subsection does not apply to exterior alterations which require a building permit.

(3) No person shall remove batteries from, or in any way render

inoperable, a carbon monoxide alarm except as part of a process to inspect, maintain, repair, or replace the alarm or replace the batteries in the alarm.

Sec. 5. (1) The seller of a dwelling unit of an existing multifamily dwelling shall ensure that an operational carbon monoxide alarm is installed on each habitable floor of the dwelling unit or in a location specified in any building code adopted by the state or by the political subdivision in which the dwelling unit is located when the dwelling unit is offered for sale or transfer on or after January 1, 2017, if the dwelling unit has a fuel-fired heater or appliance, a fireplace, or an attached garage.

(2) The owner of a dwelling unit of a multifamily dwelling shall ensure that an operational carbon monoxide alarm is installed on each habitable floor of the dwelling unit or in a location specified in any building code adopted by the state or by the political subdivision in which the dwelling unit is located if the dwelling unit has a fuel-fired heater or appliance, a fireplace, or an attached garage and if the owner, on or after January 1, 2017, makes any of the following where a permit is required: Any interior alteration, repair, fuel-fired appliance replacement, or addition.

(3) No person shall remove batteries from, or in any way render inoperable, a carbon monoxide alarm except as part of a process to inspect, maintain, repair, or replace the alarm or replace the batteries in the alarm.

Sec. 6. (1) The owner of a single-family dwelling or a dwelling unit in a multifamily dwelling that is used for rental purposes shall ensure that an operational carbon monoxide alarm is installed on each habitable floor of the dwelling or dwelling unit or in a location specified in any building code adopted by the state or by the political subdivision in which the dwelling or dwelling unit is located if the dwelling or dwelling unit has a fuel-fired heater or appliance, a fireplace, or an attached garage and if the owner, on or after January 1, 2017, makes any of the following where a permit is required: Any interior alteration, repair, fuel-fired appliance replacement, or addition.

(2) The owner of an existing single-family dwelling or existing dwelling unit in a multifamily dwelling that is used for rental purposes and that has a change in tenant occupancy on or after January 1, 2017, shall ensure that an operational carbon monoxide alarm is installed on each habitable floor of the dwelling or dwelling unit or in a location specified in any building code adopted by the state or by the political subdivision in which the dwelling or dwelling unit is located.

(3)(a) The owner of any rental property specified in subsection (1) or (2) of this section shall:

(i) Prior to the commencement of a new tenant occupancy, replace any carbon monoxide alarm that was stolen, removed, found missing, or found not operational after the previous occupancy;

(ii) Ensure that any batteries necessary to make the carbon monoxide alarm operational are provided to the tenant at the time the tenant takes residence in the dwelling unit;

(iii) Replace any carbon monoxide alarm if notified by a tenant as specified in subdivision (4)(b) of this section that any carbon monoxide alarm was stolen, removed, found missing, or found not operational during the tenant's occupancy; and

(iv) Fix any deficiency in a carbon monoxide alarm if notified by a tenant as specified in subdivision (4)(c) of this section.

(b) Except as provided in subdivision (a) of this subsection, the owner of a single-family dwelling or dwelling unit in a multifamily dwelling that is used for rental purposes is not responsible for the maintenance, repair, or replacement of a carbon monoxide alarm or the care and replacement of batteries for the carbon monoxide alarm.

(4) The tenant of any rental property specified in subsection (1) or (2) of this section shall:

(a) Keep, test, and maintain all carbon monoxide alarms in good repair;

(b) Notify the owner of the single-family dwelling or dwelling unit of a multifamily dwelling, or the owner's authorized agent, if any carbon monoxide alarm is stolen, removed, found missing, or found not operational during the tenant's occupancy of the single-family dwelling or dwelling unit in the multifamily dwelling; and

(c) Notify the owner of the single-family dwelling or dwelling unit of a multifamily dwelling, or the owner's authorized agent, of any deficiency in any carbon monoxide alarm that the tenant cannot correct.

(5) No person shall remove batteries from, or in any way render inoperable, a carbon monoxide alarm except as part of a process to inspect, maintain, repair, or replace the alarm or replace the batteries in the alarm.

Sec. 7. Nothing in the Carbon Monoxide Safety Act shall be construed to limit a city, village, or county from adopting or enforcing any requirements for the installation and maintenance of carbon monoxide alarms that are more stringent than the requirements set forth in the act.

Sec. 8. Section 76-2,120, Revised Statutes Cumulative Supplement, 2014, is amended to read:

76-2,120 (1) For purposes of this section:

(a) Ground lease coupled with improvements shall mean a lease for a parcel of land on which one to four residential dwelling units have been constructed;

(b) Purchaser shall mean a person who acquires, attempts to acquire, or succeeds to an interest in land;

(c) Residential real property shall mean real property which is being used primarily for residential purposes on which no fewer than one or more than four dwelling units are located; and

(d) Seller shall mean an owner of real property who sells or attempts to sell, including lease with option to purchase, residential real property, whether an individual, partnership, limited liability company, corporation, or trust. A sale of a residential dwelling which is subject to a ground lease coupled with improvements shall be a sale of residential real property for purposes of this subdivision.

(2) Each seller of residential real property located in Nebraska shall provide the purchaser with a written disclosure statement of the real property's condition. The disclosure statement shall be executed by the seller. The requirements of this section shall also apply to a sale of improvements which contain residential real property when the improvements are sold coupled with a ground lease and to any lease with the option to purchase residential real property.

(3) The disclosure statement shall include language at the beginning which states:

(a) That the statement is being completed and delivered in accordance with Nebraska law;

(b) That Nebraska law requires the seller to complete the statement;

(c) The real property's address and legal description;

(d) That the statement is a disclosure of the real property's condition as known by the seller on the date of disclosure;

(e) That the statement is not a warranty of any kind by the seller or any agent representing a principal in the transaction;

(f) That the statement should not be accepted as a substitute for any inspection or warranty that the purchaser may wish to obtain;

(g) That even though the information provided in the statement is not a warranty, the purchaser may rely on the information in deciding whether and on what terms to purchase the real property;

(h) That any agent representing a principal in the transaction may provide a copy of the statement to any other person in connection with any actual or possible sale of the real property; and

(i) That the information provided in the statement is the representation of the seller and not the representation of any agent and that the information is not intended to be part of any contract between the seller and purchaser.

(4) In addition to the requirements of subsection (3) of this section, the disclosure statement shall disclose the condition of the real property and any improvements on the real property, including:

(a) The condition of all appliances that are included in the sale and whether the appliances are in working condition;

(b) The condition of the electrical system;

(c) The condition of the heating and cooling systems;

(d) The condition of the water system;

(e) The condition of the sewer system;

(f) The condition of all improvements on the real property and any defects that materially affect the value of the real property or improvements;

(g) Any hazardous conditions, including substances, materials, and products on the real property which may be an environmental hazard;

(h) Any title conditions which affect the real property, including encroachments, easements, and zoning restrictions;

(i) The utility connections and whether they are public, private, or community; ~~and~~

(j) The existence of any private transfer fee obligation as defined in section 76-3107; ~~and -~~

(k) Information relating to compliance with the requirements for a carbon monoxide alarm as provided in sections 4 and 5 of this act.

(5) The disclosure statement shall be completed to the best of the seller's belief and knowledge as of the date the disclosure statement is completed and signed by the seller. If any information required by the disclosure statement is unknown to the seller, the seller may indicate that fact on the disclosure statement and the seller shall be in compliance with this section. On or before the effective date of any contract which binds the purchaser to purchase the real property, the seller shall update the information on the disclosure statement whenever the seller has knowledge that information on the disclosure statement is no longer accurate.

(6) This section shall not apply to a transfer:

(a) Pursuant to a court order, a foreclosure sale, or a sale by a trustee under a power of sale in a deed of trust;

(b) By a trustee in bankruptcy;

(c) To a mortgagee by a mortgagor or successor in interest or to a beneficiary of a deed of trust by a trustor or successor in interest;

(d) By a mortgagee, a beneficiary under a deed of trust, or a seller under a land contract who has acquired the real property at a sale conducted pursuant to a power of sale under a deed of trust, at a sale pursuant to a court-ordered foreclosure, or by a deed in lieu of foreclosure;

(e) By a fiduciary in the course of the administration of a decedent's estate, guardianship, conservatorship, or trust except when the fiduciary is also the occupant or was an occupant of one of the dwelling units being sold;

(f) From one or more co-owners to one or more other co-owners;

(g) Made to a spouse or to a person or persons in the lineal line of consanguinity of one or more of the transferors;

(h) Between spouses resulting from a decree of dissolution of marriage or a decree of legal separation or from a property settlement agreement incidental to such a decree;

(i) Pursuant to a merger, consolidation, sale, or transfer of assets of a corporation pursuant to a plan of merger or consolidation filed with the Secretary of State;

(j) To or from any governmental entity;

(k) Of newly constructed residential real property which has never been occupied; or

(l) From a third-party relocation company if the third-party relocation company has provided the prospective purchaser a disclosure statement from the most immediate seller unless the most immediate seller meets one of the exceptions in this section. If a disclosure statement is required, and if a third-party relocation company fails to supply a disclosure statement from its most immediate seller on or before the effective date of any contract which binds the purchaser to purchase the real property, the third-party relocation company shall be liable to the prospective purchaser to the same extent as a seller under this section.

(7) The disclosure statement and any update to the statement shall be delivered by the seller or the agent of the seller to the purchaser or the agent of the purchaser on or before the effective date of any contract which binds the purchaser to purchase the real property, and the purchaser shall acknowledge in writing receipt of the disclosure statement or update.

(8) The seller shall not be liable under this section for any error, inaccuracy, or omission of any information in a disclosure statement if the error, inaccuracy, or omission was not within the personal knowledge of the seller.

(9) A person representing a principal in the transaction shall not be liable under this section for any error, inaccuracy, or omission of any information in a disclosure statement unless that person has knowledge of the error, inaccuracy, or omission on the part of the seller.

(10) A person licensed as a salesperson or broker pursuant to the Nebraska Real Estate License Act shall not be required to verify the accuracy or completeness of any disclosure statement prepared pursuant to this section, and the only obligation of a buyer's agent pursuant to this section is to assure that a copy of the statement is delivered to the buyer on or before the effective date of any purchase agreement which binds the buyer to purchase the property subject to the disclosure statement. This subsection does not limit the duties and obligations provided in section 76-2418 or in subsection (9) of this section with respect to a buyer's agent.

(11) A transfer of an interest in real property subject to this section may not be invalidated solely because of the failure of any person to comply with this section.

(12) If a conveyance of real property is not made in compliance with this section, the purchaser shall have a cause of action against the seller and may recover the actual damages, court costs, and reasonable attorney's fees. The cause of action created by this section shall be in addition to any other cause of action that the purchaser may have. Any action to recover damages under the cause of action shall be commenced within one year after the purchaser takes possession or the conveyance of the real property, whichever occurs first.

(13) The State Real Estate Commission shall adopt and promulgate rules and regulations to carry out this section. By January 1, 2017, the commission shall adopt and promulgate rules and regulations to amend the disclosure statement prepared pursuant to this section to be in compliance with the requirements of subdivision (4)(k) of this section.

Sec. 9. Original section 76-2,120, Revised Statutes Cumulative Supplement, 2014, is repealed.