

LEGISLATIVE BILL 61

Approved by the Governor March 20, 2003

Introduced by Byars, 30

AN ACT relating to retirement subdivisions and communities; to amend sections 76-1301, 76-1302, 76-1305 to 76-1310, and 76-1313 to 76-1315, Reissue Revised Statutes of Nebraska, and section 76-1304, Revised Statutes Supplement, 2002; to define and redefine terms; to change filing requirements; to change regulatory provisions; to change and provide penalties; to provide for use of advisory committees; to harmonize provisions; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,

Section 1. Section 76-1301, Reissue Revised Statutes of Nebraska, is amended to read:

76-1301. The Legislature finds that in order to insure the economic security of Nebraskans of retirement age it is necessary to require those persons who develop retirement subdivisions and communities to make a full and periodic disclosure of their fiscal condition.

The Legislature also finds it to be in the best interest of the tenants of a retirement subdivision or community, as well as in the best tradition of participatory democracy, that such tenants have a voice in the affairs of the subdivision or community through representation on the board of directors or an advisory committee to the board, when the retirement subdivision or community is owned and managed by a nonprofit entity.

Sec. 2. Section 76-1302, Reissue Revised Statutes of Nebraska, is amended to read:

76-1302. For the purposes of sections 76-1301 to 76-1315, unless the context otherwise requires:

(1) Retirement subdivision ~~or subdivision~~ shall mean any land which is divided or proposed to be divided into ten or more lots, whether contiguous or not, for the purpose of sale or lease as part of a common promotional plan when such subdivision is advertised or represented as a retirement subdivision or as a subdivision primarily for retirees or elderly persons, or when there is a minimum age limit tending to attract persons who are nearing retirement age;

(2) Retirement community ~~or community~~ shall mean any complex or proposed complex of more than ten units, whether contained in one or more buildings or whether constructed on separate lots, offered for sale or lease as part of a common promotional plan when such community is advertised or represented as a retirement community or as a community primarily for retirees or elderly persons, or when there is a minimum age limit tending to attract persons who are nearing retirement age;

(3) Unit shall mean any apartment or structure intended primarily as a residence and consisting of one or more rooms occupying all or part of a floor or floors in a building of one or more floors or stories, including a single residence dwelling;

(4) Common promotional plan shall include an offer for sale or lease of lots or units in a retirement subdivision or community by a single developer, or a group of developers acting in concert when such lots or units are contiguous, or are known, designated, or advertised as a common entity or by a common name;

(5) Person shall mean an individual, unincorporated organization, partnership, limited liability company, association, corporation, trust, or estate;

(6) Developer shall mean any person who, directly or indirectly, sells or leases, or offers to sell or lease, or advertises for sale or lease any lots in a retirement subdivision or any units in a retirement community;

(7) Agent shall mean any person who represents or acts for or on behalf of a developer in selling or leasing or offering to sell or lease any lot or lots in a retirement subdivision or any units in a retirement community, but shall not include an attorney at law whose representation of ~~another person~~ a developer consists solely of rendering legal services;

(8) State shall mean the State of Nebraska;

(9) Purchaser shall mean an actual or prospective purchaser or lessee a person who acquires by deed, lease, or other contract the use and occupancy of any lot or unit in a retirement subdivision or community;

(10) Offer shall include any inducement, solicitation, or attempt to encourage a person to acquire a lot or unit in a retirement subdivision or

community;

(11) Disposition shall include sale, lease, assignment, award by lottery, or any other transaction concerning a subdivision or community by which a person acquires the use or occupancy of a lot or unit in a retirement subdivision or community;

(12) Agency shall mean the State Real Estate Commission; and

(13) Lease shall mean a contract for the use and occupancy of real estate primarily as a residence when the contract term is for more than one year or is for life and when the lessee is required to pay an initial fee which is more than reasonably necessary to cover a deposit for damages and restoration of the premises, the last month's rent and the first month's rent in advance entrance fee;

(14) Managing agent shall mean a person who undertakes for any compensation the duties, responsibilities, or obligations of the management of a retirement subdivision or community;

(15) Audited financial statements shall mean balance sheet, income statement, retained earnings statement, cash-flow statement, and related notes, audited by an independent certified public accountant in accordance with generally accepted auditing standards;

(16) Prospective financial statements shall mean a financial forecast as defined by the American Institute of Certified Public Accountants of the revenue, expenses, working capital needs, and other financial requirements for the retirement subdivision or community for the development period and three fiscal years after the date of initial occupancy;

(17) Actuarial forecast shall mean an analysis which is performed by a qualified actuary in accordance with generally accepted actuarial principles and practices and which includes a statement of actuarial opinion, a pricing analysis, a cash-flow projection, and a statement of applicable actuarial methodology, formulas, and assumptions;

(18) Entrance fee shall mean an initial or deferred transfer to the developer of a sum of money or other property made or promised to be made as full or partial consideration for acceptance of a specified individual as a purchaser or resident of a retirement subdivision or community if the amount is more than reasonably necessary to cover a damage deposit and an advance of the first and last month's rent; and

(19) Association shall mean the person responsible to a purchaser, either directly or indirectly or through a managing agent, for the management of a retirement subdivision or community, including collecting from purchasers any periodic payments for maintenance of common areas or debt payments. A developer may be an association.

Sec. 3. Section 76-1304, Revised Statutes Supplement, 2002, is amended to read:

76-1304. Unless the method of disposition is adopted for the purpose of evasion of the provisions of sections 76-1301 to 76-1315, such provisions shall not apply to offers or dispositions of ~~an interest in land~~ any lot or unit in a retirement subdivision or community by a purchaser of subdivided lands for his or her own account in a single or isolated transaction, nor shall such provisions apply to the following:

(1) Offers or dispositions of evidences of indebtedness secured by a mortgage or deed of trust of real estate;

(2) Offers or dispositions of securities or units of interest issued by a real estate investment trust regulated under any state or federal statute;

(3) The sale or lease of real estate under or pursuant to court order;

(4) The disposition in any manner whatsoever of any unit of public housing under the administrative jurisdiction of a local public housing authority;

(5) Offers or dispositions of securities currently registered with the Director of Banking and Finance and under the provisions of the Securities Act of Nebraska; and

(6) ~~Homes for the aged or infirm or nursing homes licensed as nursing facilities~~ Health care facilities licensed by the Department of Health and Human Services Regulation and Licensure under the Health Care Facility Licensure Act.

Sec. 4. Section 76-1305, Reissue Revised Statutes of Nebraska, is amended to read:

76-1305. Unless the retirement ~~subdivisions~~ subdivision or community lands or the transaction is exempt by section 76-1304:

(1) No person may offer or dispose of any lot or unit in any retirement subdivision or community located in this state, nor offer or dispose in this state of any lot or unit in any retirement subdivision or

community located ~~without~~ outside this state prior to the time such subdivision or community is registered in the manner prescribed by sections 76-1301 to 76-1315; ~~ex~~

(2) No person may dispose of any lot or unit in any retirement subdivision or community unless a current public-offering statement is delivered to the prospective purchaser and the prospective purchaser is afforded a reasonable opportunity, under no circumstances less than forty-eight hours, to examine the public-offering statement prior to the disposition;

(3) A purchaser shall have the right to cancel a contract for disposition within three business days after the date the contract is executed or within three business days after the delivery to the purchaser of the public-offering statement, whichever is later. The right to cancel may not be waived and any attempt to obtain such a waiver is unlawful and shall be considered a violation of sections 76-1301 to 76-1315. A purchaser may cancel the contract by hand delivering or mailing, postage prepaid, a written statement of cancellation to the developer. The cancellation shall be deemed effective upon mailing. Upon cancellation, the developer shall refund to the purchaser within thirty days after receipt of the cancellation notice all payments and other consideration given by the purchaser reduced by the proportion of any benefits the purchaser has actually received by agreement with the developer prior to the effective date of the cancellation. A developer and purchaser shall agree in writing on a specific value for each benefit received by the purchaser for purposes of this section; and

(4) If in any retirement subdivision or community a purchaser's lot or unit remains subject to any debts or liabilities of the developer or association in connection with the initial construction of the improvements to the retirement subdivision or community, the developer shall hold all payments from purchasers in escrow at a state or federally regulated financial institution located in this state until such time, not to exceed twenty-four months, that the public improvements serving the retirement subdivision or community are substantially completed and secured financing has been obtained by the developer or association (a) in an amount adequate to complete the improvements to the retirement subdivision or community as represented in the statement of record and (b) under such terms as are consistent with the budget stated in the public-offering statement.

Sec. 5. Section 76-1306, Reissue Revised Statutes of Nebraska, is amended to read:

76-1306. (1) A retirement subdivision or community may be registered by filing with the agency a statement of record containing the following documents and information:

(a) An acknowledgment that the developer shall be amenable to process issued by any court of this state in any noncriminal proceeding arising under the provisions of sections 76-1301 to 76-1315 against the developer;

(b) A legal description of the lands offered for registration as a retirement subdivision or community, together with a map showing the subdivision proposed or made, and the dimensions of the lots, parcels, units, or interests and the relation of such lands to existing streets, roads, and other improvements;

(c) The states or jurisdictions, including the federal government, in which an application for registration or similar document has been filed, and any adverse order, judgment, or decree entered in connection with the retirement subdivision or community lands by the regulatory authorities in each jurisdiction or by any court;

(d) The ~~applicant's~~ developer's name, address, and the form, date, and jurisdiction of organization; and the address of each of its offices in this state;

(e) The name, address, and principal occupation for the last five years of every director and officer of the ~~applicant~~ developer or person occupying a similar status, performing similar functions, or having an interest in the retirement subdivision or community lands, ~~ex~~ and the extent and nature of his or her interest in the ~~applicant~~ developer or the retirement subdivision or community lands as of a specified date within thirty days of the filing of the application;

(f) A statement, in a form acceptable to the agency, of the condition of the title to the retirement subdivision or community lands including encumbrances as of a specified date within thirty days of the date of application by a title opinion of a licensed attorney, not a salaried employee, officer, or director of the ~~applicant~~ ~~ex owner~~ developer, or by other evidence of title acceptable to the agency;

(g) Copies of the instruments which will be delivered to a purchaser

to evidence his or her interest in the retirement subdivision or community lands and of the contracts and other agreements which a purchaser will be required to agree to or sign;

(h) Copies of the instruments by which the interest in the retirement subdivision or community lands was acquired and a statement of any lien or encumbrance upon the title and copies of the instruments creating the lien or encumbrance, if any, with data as to recording;

(i) If there is a lien or encumbrance affecting more than one lot, parcel, unit, or interest, a statement of the consequences for a purchaser of failure to discharge the lien or encumbrance and the steps, if any, taken to protect the purchaser in case of this eventuality;

(j) Copies of instruments creating easements, restrictions, or other encumbrances affecting the retirement subdivision or community lands;

(k) A statement of the zoning and other governmental regulations affecting the use of the retirement subdivision or community lands and also of any existing taxes and existing or proposed special taxes or assessments which affect such lands;

(l) The proposed public-offering statement;

(m) Current audited financial statements of the developer and, if different, of any association. If the developer or association has been in existence for less than one year at the date of application it may provide prospective financial statements, compiled by a certified public accountant under generally accepted accounting standards, unless an examined statement is required under subdivision (1)(n) of this section;

(n) Upon initial registration or an amendment expanding a retirement subdivision or community, prospective financial statements examined by a certified public accountant in accordance with generally accepted standards for an examination of a forecast. Examined prospective financial statements shall not be required of a developer of a retirement subdivision or community if (i) all payments by purchasers are held in escrow at a state or federally regulated financial institution located within this state until closing of the disposition, (ii) all public improvements serving the units or lots are completed prior to disposition, and (iii) the interests in a unit or lot of a purchaser who is not in default on the contract for disposition will upon disposition be free of or not subject to disturbance by any encumbrances incurred by the developer or association for purchase or improvement of the retirement subdivision or community;

(o) Upon initial registration or an amendment expanding a retirement subdivision or community which offers a promise to provide nursing or health-related services to purchasers in the future pursuant to contracts effective for the life of the purchaser or a period in excess of one year in consideration for an entrance fee, an actuarial forecast in a form satisfactory to the agency, which identifies the qualifications of the actuary or actuaries preparing the forecast;

(p) Information concerning any adjudication of bankruptcy against the developer, the association, the managing agent, or any principal owning more than ten percent of the interests in the retirement subdivision or community, developer, association, or managing agent at the time of filing; and A current financial statement, which shall include such information concerning the developer as the agency deems to be pertinent, including, but not restricted to, a profit and loss statement certified by an independent public accountant and information concerning any adjudication of bankruptcy against the developer or any principal owning more than ten percent of the interests in the subdivision or community at the time of filing; and

~~(n)~~ (q) Any other information which the agency by its rules requires for the protection of purchasers.

(2) At the time of filing a statement of record, or any amendment thereto, the developer shall pay to the agency a fee, not in excess of ~~one~~ two hundred dollars, in accordance with a schedule to be fixed by the regulations of the agency, which fees may be used by the agency to defray part of the cost of rendering services under sections 76-1301 to 76-1315.

(3) The filing with the agency of a statement of record, or of an amendment thereto, shall be deemed to have taken place upon the receipt thereof, accompanied by payment of the fee required by subsection (2) of this section.

(4) The information contained in or filed with any statement of record shall be made available to the public under such regulations as the agency may prescribe and copies thereof shall be furnished to ~~every applicant~~ anyone requesting them at such reasonable charge as the agency may prescribe.

(5) If the developer registers additional retirement subdivision or community lands, he or she may consolidate the subsequent registration with any earlier registration offering such lands for disposition under the same

promotional plan.

(6) The developer, association, and managing agent shall immediately report to the agency any additional liens, adjudication of bankruptcy against the developer, the association, the managing agent, or any principal owning more than ten percent of the interests in the retirement subdivision or community, developer, association, or managing agent, and ~~or any of its principal officers,~~ or any action or development which materially changes the condition of the title to the retirement subdivision subdivisions or community lands or to the disclosures in the statement of record, including the public-offering statement.

(7) Nothing in sections 76-1301 to 76-1315 shall require retirement subdivisions or community lands in existence on July 6, 1972 the effective date of this act, to prepare certified audited financial statements from the date of their inception, but such certified audited financial statements for the most recent fiscal year ending before July 6, 1972 the effective date of this act, shall be filed as otherwise required by the terms of sections 76-1301 to 76-1315.

Sec. 6. Section 76-1307, Reissue Revised Statutes of Nebraska, is amended to read:

76-1307. (1) A public-offering statement shall disclose fully and accurately the physical characteristics of the retirement subdivision or community. The proposed public-offering statement submitted to the agency shall be in a form prescribed by its rules and shall as a minimum include the following:

- (a) The name and principal address of the developer;
 - (b) A general description of the retirement subdivision or community stating the total number of lots, parcels, units, or interests in the offering;
 - (c) The significant terms of any encumbrances, easements, liens, and restrictions, including zoning and other regulations affecting such lands and each unit or lot, and a statement of all existing taxes and existing or proposed special taxes or assessments which affect such lands;
 - (d) A statement of the use for which the property is offered;
 - (e) Information concerning improvements, including hospitals, health and recreational facilities of any kind, streets, water supply, levees, drainage control systems, irrigation systems, sewage disposal facilities and customary utilities, and the estimated cost, date of completion, and responsibility for construction and maintenance of existing and proposed improvements which are referred to in connection with the offering or disposition of any interest in the retirement subdivision or community;
 - (f) A statement that audited financial statements or prospective financial statements, or both if applicable, for the developer and any association are on file with the agency;
 - (g) A statement, if applicable, of the association's ability to incur debt secured by a lot or unit after it has been disposed of to a purchaser;
 - (h) A statement, if applicable, of any affiliation of the association or developer with a for-profit or nonprofit organization and the nature of the affiliation and the extent to which the affiliate organization is responsible for the financial and contractual obligations of the association;
 - (i) A statement, if applicable, of the policy of the association with regard to any health or financial conditions upon which the association may require a purchaser to relinquish occupancy of a lot or unit;
 - (j) If a purchaser will be required to pay a periodic payment that is subject to change by the association for the purpose of expenses and liabilities of the association, a detailed current budget or projected budget of the expenses and liabilities of the association, the assumptions upon which the budget or expected budget is based, including the number of units or lots assumed under the budget to be paying such periodic payments, and if any secured debt, the effect on monthly payments if less than the assumed number of units or lots are disposed of to purchasers;
 - (k) A description of the insurance coverage or a statement that there is no insurance coverage provided for the benefit of the retirement subdivision or community;
 - (l) A statement describing the purchaser's cancellation rights; and a certified financial statement for the community is on file with the State Real Estate Commission; and
 - ~~(g)~~ (m) Additional information required by the agency to assure full and fair disclosure to prospective purchasers.
- (2) The public-offering statement shall not be used for any promotional purposes before registration of the retirement subdivision or

community and afterwards only if it is used in its entirety. No person may advertise or represent that the agency approves or recommends the retirement subdivision or community lands or disposition thereof. No portion of the public-offering statement may be underscored, italicized, or printed in larger or heavier or different color type than the remainder of the statement unless the agency requires or permits it.

(3) The agency may require the developer to alter or amend the proposed public-offering statement in order to assure full and fair disclosure to prospective purchasers, and no change in the plan of disposition or development of the retirement subdivision or community may be made after registration without notifying the agency and without making an appropriate amendment to the public-offering statement. A public-offering statement is not current unless all amendments are incorporated.

Sec. 7. Section 76-1308, Reissue Revised Statutes of Nebraska, is amended to read:

76-1308. Upon receipt of a statement of record in proper form, the agency shall forthwith initiate an examination to determine that:

(1) The developer can convey or cause to be conveyed the interest in subdivided lands a retirement subdivision or community offered for disposition if the purchaser complies with the terms of the offer, and when appropriate, that release clauses, conveyances in trust, or other safeguards have been provided;

(2) There is reasonable assurance that all proposed improvements will be completed as represented;

(3) Such developer and managing agent have ~~has~~ not, or if a ~~corporation~~ not an individual, its officers, directors, and principals have not, been convicted of a crime involving land dispositions or any aspect of the land sales business in this state, the United States, or any other state or foreign country and ~~has~~ have not been subject to any injunction or administrative order restraining a false or misleading promotional plan involving land dispositions; and

(4) The public-offering statement and other requirements of sections 76-1301 to 76-1315 have been satisfied.

Sec. 8. Section 76-1309, Reissue Revised Statutes of Nebraska, is amended to read:

76-1309. (1) Except as provided in subsection (3) of this section, the effective date of the registration of the retirement subdivision or community shall be the sixtieth day after the filing of the statement of record or such earlier date as the agency may determine, having due regard to the public interest and the protection of purchasers. If any amendment is filed prior to the effective date, the statement of record shall be deemed to have been filed when such amendment was filed.

(2) If it appears to the agency that the statement of record, or any amendment thereto, is on its face incomplete or inaccurate in any material aspect, the agency shall notify the developer prior to the date the registration would otherwise be effective. Such notification shall serve to suspend the effective date of the filing until the sixtieth day after the developer files such additional information as the agency shall require. If the developer fails to provide additional information as required by the agency within ninety days after receiving notice, the agency may deny the registration.

(3) Any developer, upon notice of suspension as identified in subsection (2) of this section or denial of registration, may within twenty days after the date of such notice file a request for hearing, and such hearing shall be held within forty-five days after the receipt of such request and in accordance with the rules and regulations promulgated by the agency. Upon filing of the statement of record in proper form, the agency shall issue a notice of filing to the applicant. Within ten days from the date of the notice of filing, the agency shall enter an order registering the subdivision or community or rejecting the registration. If no order of rejection is entered within ninety days from the date of notice of filing, the land shall be deemed registered unless the applicant has consented in writing to a delay.

(2) If the agency affirmatively determines, upon inquiry and examination, that the requirements of section 76-1308 have been met, it shall enter an order registering the retirement subdivision or community.

(3) If the agency determines upon inquiry and examination that any of the requirements of section 76-1308 have not been met, the agency shall notify the applicant that the statement of record must be corrected in the particulars specified within twenty days. If the requirements are not met within the time allowed, the agency shall enter an order rejecting the registration containing the findings of fact upon which the order is based. The order rejecting the registration shall not become effective for twenty

days during which time the applicant may petition for reconsideration and shall be entitled to a hearing upon request.

Sec. 9. Section 76-1310, Reissue Revised Statutes of Nebraska, is amended to read:

76-1310. Within thirty days after each annual anniversary date of an order registering a retirement subdivision or community, the developer or managing agent of such lands shall file a report in the form prescribed by the rules of the agency. The report shall include current audited financial statements, a current public offering statement, any amendments to the statement of record, reflect a current financial statement including, but not restricted to, a profit and loss statement certified by an independent public accountant and information concerning any adjudication of bankruptcy against the developer, the association, the managing agent, or any principal owning more than ten percent of the interest in the retirement subdivision or community, developer, association, or managing agent at the time of filing.

Sec. 10. Section 76-1313, Reissue Revised Statutes of Nebraska, is amended to read:

76-1313. (1) When the developer or association of a Nebraska retirement subdivision or community is incorporated or has a certificate of authority to transact business under Nebraska statutes as a nonprofit corporation and when such corporation governs the management of the only one retirement subdivision or community, then:

~~(1)~~ (a) The residents, purchasers, or lessees of lands or units in the retirement subdivision or community shall annually have the opportunity to democratically select and designate one or more individuals, not to exceed one-third of the number of other members of the governing body, at least one individual to represent the residents, purchasers, and lessees and to act as members a member of the governing body of the corporation. The representatives A representative shall have the right to be present at all meetings, including committee meetings and executive sessions, of the governing body, to speak and to express opinions, and to vote on any of the business to come before the governing body. The representatives A representative shall be deemed to have been duly installed and to have their terms his or her term commence upon their election;

~~(2)~~ (b) The election shall be conducted in total by the residents, purchasers, and lessees described in subdivision (1)(a) of this section pursuant to rules adopted by them in open session; and

~~(3)~~ (c) The developer and association shall in no way attempt to interfere with, influence, or abridge the right of the residents, lessees, and purchasers to organize and conduct the election or the results of the election.

(2) When the developer or association of a Nebraska retirement subdivision or community is incorporated or has a certificate of authority to transact business under Nebraska statutes as a nonprofit corporation and such corporation governs the management of more than one retirement subdivision or community, then it may comply with subsection (1) of this section or comply with the following requirements:

(a) The corporation shall establish for each of its retirement subdivisions and communities a separate advisory committee composed of at least two purchasers of lands or units in that retirement subdivision or community;

(b) The purchasers in each retirement subdivision and community shall annually have the opportunity to democratically select and designate at least two individuals to represent the purchasers on that retirement subdivision's or community's advisory committee;

(c) The election for each retirement subdivision and community shall be conducted entirely by the purchasers in that particular retirement subdivision or community pursuant to rules adopted by them in an open meeting;

(d) The developer and any association shall in no way attempt to interfere with, influence, or abridge the right of the purchasers to organize and conduct the election or the results of the election;

(e) The corporation's governing body shall meet formally with each advisory committee at least once annually to provide the advisory committee an opportunity to speak and express opinions and obtain information relating to the financial condition and operation of the retirement community or subdivision; and

(f) An advisory committee shall be provided upon written request minutes of the governing body's meetings and of any financial statements of the corporation.

Sec. 11. Section 76-1314, Reissue Revised Statutes of Nebraska, is amended to read:

76-1314. An order of the agency which has become final may be

~~appealed in accordance with the Administrative Procedure Act. Any person or corporation wishing to contest any ruling or action of the agency may request and shall be granted a public hearing before the State Real Estate Commission. If the results of such hearing are unsatisfactory to the person or corporation, a civil action may be filed in the district court of appropriate jurisdiction.~~

Sec. 12. Section 76-1315, Reissue Revised Statutes of Nebraska, is amended to read:

76-1315. (1) A developer, agent, managing agent, or association, or any other person subject to sections 76-1301 to 76-1315, shall not make, publish, disseminate, circulate, or place before the public, or cause, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in a newspaper or other publication, or in the form of a notice, circular, pamphlet, or letter, or over any radio or television station, or in any other way, an advertisement, announcement, or statement of any sort containing any assertion, representation, or statement which is untrue, deceptive, or misleading. A developer, agent, managing agent, or association shall not file with the agency or make, publish, disseminate, circulate, or deliver to any person or place before the public, or cause, directly or indirectly, to be made, published, disseminated, circulated, or delivered to any person or placed before the public, a financial statement which contains representations which are untrue, deceptive, or misleading.

(2) If the developer, agent, managing agent, association, or other person subject to section 76-1301 to 76-1315 violates any provision thereof, any person or class of persons damaged or otherwise adversely affected by the violation shall have a claim for appropriate relief, which may be brought in the county where the cause of action or part of the cause of action arose. The court may render any contract entered into in this state in violation of section 76-1301 to 76-1315 void and unenforceable and any money paid under such contract, together with interest at the legal rate for judgments, may be recovered from the date of such payment or such violation, whichever is later. The court may also award such person or class of persons reasonable attorney's fees.

(3) Any developer, agent, or managing agent subject to sections 76-1301 to 76-1315 who offers or disposes of a unit or lot in a retirement subdivision or community without having complied with such sections or who violates any provision of such sections shall be guilty of a Class I misdemeanor.

(4) Whenever, in the judgment of the agency, any person has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of sections 76-1301 to 76-1315, the Attorney General may maintain an action in the name of the State of Nebraska in the district court of Lancaster County to abate and temporarily and permanently enjoin such acts and practices, to enforce compliance with the provisions of sections 76-1301 to 76-1315, or to seek a civil penalty of not more than ten thousand dollars for each violation, with each day of continued violation to constitute a separate offense. The plaintiff shall not be required to give any bond and court costs shall not be adjudged against the plaintiff.

(5) The director of the agency, with the consent of the agency, shall have the power to issue a cease and desist order upon determination that sections 76-1301 to 76-1315 have been or are about to be violated. Any person who willfully violates any provision of sections 76-1301 to 76-1315 or of a rule adopted under it or any person who willfully, in a statement of record filed for registration, makes any untrue statement of a material fact or omits to state a material fact shall be guilty of a Class I misdemeanor or fined double the amount of the gain from the transaction, whichever is the greater, but not more than ten thousand dollars.

Sec. 13. Original sections 76-1301, 76-1302, 76-1305 to 76-1310, and 76-1313 to 76-1315, Reissue Revised Statutes of Nebraska, and section 76-1304, Revised Statutes Supplement, 2002, are repealed.