

LEGISLATURE OF NEBRASKA
ONE HUNDRED FOURTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 34

Introduced by Howard, 9.

Read first time January 08, 2015

Committee: Health and Human Services

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

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

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

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

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

6 (a) Produces a distinct, audible alarm;

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

11 (c)(i) Is battery powered;

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

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

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

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

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

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

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

1 in one of the following ways:

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

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

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

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

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

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

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

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

30 (2) If the owner of a single-family dwelling that has a fuel-fired
31 heater or appliance, a fireplace, or an attached garage makes any

1 interior alteration, repair, fuel-fired appliance replacement, or
2 addition on or after January 1, 2017, where a permit is required, the
3 owner shall ensure that an operational carbon monoxide alarm is installed
4 on each habitable floor of the dwelling where the alteration, repair,
5 replacement, or addition occurs or in a location specified in any
6 building code adopted by the state or by the political subdivision in
7 which the dwelling is located. This subsection applies only to interior
8 alterations. This subsection does not apply to exterior alterations which
9 require a building permit.

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

14 Sec. 5. (1) The seller of a dwelling unit of an existing
15 multifamily dwelling shall ensure that an operational carbon monoxide
16 alarm is installed on each habitable floor of the dwelling unit or in a
17 location specified in any building code adopted by the state or by the
18 political subdivision in which the dwelling unit is located when the
19 dwelling unit is offered for sale or transfer on or after January 1,
20 2016, if the dwelling unit has a fuel-fired heater or appliance, a
21 fireplace, or an attached garage.

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

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

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

4 Sec. 6. (1) The owner of a single-family dwelling or a dwelling
5 unit in a multifamily dwelling that is used for rental purposes shall
6 ensure that an operational carbon monoxide alarm is installed on each
7 habitable floor of the dwelling or dwelling unit or in a location
8 specified in any building code adopted by the state or by the political
9 subdivision in which the dwelling or dwelling unit is located if the
10 dwelling or dwelling unit has a fuel-fired heater or appliance, a
11 fireplace, or an attached garage and if the owner, on or after January 1,
12 2017, makes any of the following where a permit is required: Any interior
13 alteration, repair, fuel-fired appliance replacement, or addition.

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

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

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

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

29 (iii) Replace any carbon monoxide alarm if notified by a tenant as
30 specified in subdivision (4)(b) of this section that any carbon monoxide
31 alarm was stolen, removed, found missing, or found not operational during

1 the tenant's occupancy; and

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

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

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

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

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

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

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

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

30 Sec. 8. Section 76-2,120, Revised Statutes Cumulative Supplement,
31 2014, is amended to read:

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

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

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

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

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

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

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

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

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

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

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

31 (e) That the statement is not a warranty of any kind by the seller

1 or any agent representing a principal in the transaction;

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

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

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

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

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

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

19 (b) The condition of the electrical system;

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

21 (d) The condition of the water system;

22 (e) The condition of the sewer system;

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

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

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

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

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

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

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

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

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

18 (b) By a trustee in bankruptcy;

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

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

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

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

31 (g) Made to a spouse or to a person or persons in the lineal line of

1 consanguinity of one or more of the transferors;

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

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

8 (j) To or from any governmental entity;

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

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

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

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

30 (9) A person representing a principal in the transaction shall not
31 be liable under this section for any error, inaccuracy, or omission of

1 any information in a disclosure statement unless that person has
2 knowledge of the error, inaccuracy, or omission on the part of the
3 seller.

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

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

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

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

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