

LEGISLATURE OF NEBRASKA  
ONE HUNDRED FOURTH LEGISLATURE  
FIRST SESSION

**LEGISLATIVE BILL 34**

FINAL READING

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 2017, 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.