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OTHER STATUTORY REFERENCES

Sanitary and Improvement Districts

31-727.03. District; statements; filed; contents; late filing; fees; duties of real estate broker, salesperson, or owner; remedy.

(1) On or before December 31 of each year, the clerk of each sanitary and improvement district shall file with the register of deeds or, if none, the county clerk of the county or counties in which the sanitary and improvement district is located a statement updated each December 31 containing the following information:

- (a) The names of the members of the current board of trustees of the district;
- (b) The names of the current attorney, accountant, and fiscal agent of the district;
- (c) The warrant and the bond principal indebtedness of the district as of the preceding June 30. Such statement shall contain an acknowledgment that the warrant and indebtedness are reflective of such date; and
- (d) The current tax levy of the district as of December 31.

For any late filing of the statement, the sanitary and improvement district shall be assessed a late fee of ten dollars per day, not to exceed a total of three hundred dollars for each late filing.

(2) The real estate broker or salesperson or, if none, the owner shall distribute the most recent statement filed in accordance with this section to any prospective purchaser of any real estate located within a sanitary and improvement district.

(3) The real estate broker or salesperson or, if none, the owner shall obtain an acknowledgment from any purchaser of any real estate located within a sanitary and improvement district that the purchaser understands: (a) The property is located within a sanitary and improvement district; (b) sanitary and improvement districts are located outside the corporate limits of any municipality; (c) residents of sanitary and improvement districts are not eligible to vote in municipal elections; and (d) owners of property located within sanitary and improvement districts have limited access to services provided by nearby municipalities until and unless the property is annexed by the municipality. Such acknowledgment may be obtained separately from the disclosure required under section 76-2,120.

(4) The statement shall be distributed and the acknowledgment obtained on or before the date on which the purchaser becomes obligated to purchase such real estate. The exclusive remedy for failure to provide such statements and obtain such acknowledgments shall be an action for damages, and any such failure shall not affect title to the real estate or the validity of the conveyance.

Statute of Frauds Provisions

36-105. Contracts for lease or sale of lands; when void. Every contract for the leasing for a longer period than one year, or for the sale of any lands, shall be void unless the contract or some note or memorandum thereof be in writing and signed by the party by whom the lease or sale is to be made.

36-107. Sale of lands; owner's contract with agent or broker; when void. Every contract for the sale of lands between the owner thereof and any broker or agent employed to sell the same, shall be void, unless the contract is in writing and subscribed by the owner of the land and the broker or agent. Such contract shall describe the land to be sold, and set forth the compensation to be allowed by the owner in case of sale by the broker or agent.

Homesteads

40-104. Homestead; how conveyed or encumbered; assertion of claim of invalidity of conveyance. Except as otherwise proved in this section, the homestead of a married person cannot be conveyed or encumbered unless the instrument by which it is conveyed or encumbered is executed and acknowledged by both spouses. The interest of either or both spouses may be conveyed or encumbered by a conservator acting in accordance with the provisions of the Nebraska Probate Code and may also be conveyed or encumbered by an attorney in fact appointed by and acting on behalf of either spouse under any power of attorney which grants the power to sell and convey real property. Any claim of invalidity of a deed of conveyance of homestead property because of failure to comply with the provisions of this section must be asserted within the time provided in section 76-288 to 76-298.

A purchase agreement or contract for sale of homestead property signed by both spouses does not require acknowledgment to be enforceable.

Sales of Trailers

60-1403.01. License required; restriction on issuance; exception. No person shall engage in the business as or serve in the capacity of, or act as a motor vehicle, trailer, or motorcycle dealer, wrecker or salvage dealer, salesperson, auction dealer, manufacturer, factory branch, factory representative, distributor, distributor branch, or distributor representative in this state without being licensed by the board under the provisions of Chapter 60, Article 14. No salesperson's license shall be issued to any person under the age of sixteen, and no dealer's license shall be issued to any minor. No wrecker or salvage dealer's license shall be issued or renewed unless the applicant has a permanent place of business at which the activity requiring licensing is performed and which conforms to all local laws. A license issued under Chapter 60, Article 14, shall authorize the holder thereof to engage in the business or activities permitted by the license. The provisions of this section shall not apply to a licensed real estate salesperson or broker who negotiates for sale, or sells a trailer for any individual who is the owner of not more than two trailers.

Recognition of Acknowledgments

64-205. Acknowledgment, defined. The words acknowledged before me means:

- (1) That the person acknowledging appeared before the person taking the acknowledgment;
- (2) That he or she acknowledged he or she executed the instrument;
- (3) That, in the case of:
 - (i) A natural person, he or she executed the instrument for the purposes therein stated;
 - (ii) A corporation, the officer or agent acknowledged he or she held the position or title set forth in the instrument and certificate, he or she signed the instrument on behalf of the corporation by proper authority and the instrument was the act of the corporation for the purpose therein stated;
 - (iii) A partnership, the partner or agent acknowledged he or she signed the instrument on behalf of the partnership by proper authority and he or she executed the instrument as the act of the partnership for the purposes therein stated;
 - (iv) A limited liability company, the member or agent acknowledged he or she signed the instrument on behalf of the limited liability company by proper

- authority and he or she executed the instrument as the act of the limited liability company for the purposes therein stated;
- (v) A person acknowledging as principal by an attorney in fact, he or she executed the instrument by proper authority as the act of the principal for the purposes therein stated;
 - (vi) A person acknowledging as a public officer, trustee, administrator, guardian, or other representative, he or she signed the instrument by proper authority and he or she executed the instrument in the capacity and for the purposes therein stated; and
- (4) That the person taking the acknowledgment either knew or had satisfactory evidence that the person acknowledging was the person named in the instrument or certificate.

Short Forms of Acknowledgment

64-206. Statutory short forms of acknowledgment; use of other forms. The forms of acknowledgment set forth in this section may be used and are sufficient for their respective purposes under any law of this state. The forms shall be known as Statutory Short Forms of Acknowledgment and may be referred to by that name. The authorization of the forms in this section does not preclude the use of other forms.

- (1) For an individual acting in his or her own right:
State of _____
County of _____
The foregoing instrument was acknowledged before me this (date) by (name of person acknowledged).
(Signature of Person Taking Acknowledgment)
(Title or Rank)
(Serial Number, if any)
- (2) For a corporation:
State of _____
County of _____
The foregoing instrument was acknowledged before me this (date) by (name of officer or agent, title of officer or agent) of (name of corporation acknowledging) a (state or place of incorporation) corporation, on behalf of the corporation.
(Signature of Person Taking Acknowledgment)
(Title or Rank)
(Serial Number, if any)
- (3) For a partnership:
State of _____
County of _____
The foregoing instrument was acknowledged before me this (date) by (name of acknowledging partner or agent), partner (or agent) on behalf of (name of partnership), a partnership.
(Signature of Person Taking Acknowledgment)
(Title or Rank)
(Serial Number, if any)
- (4) For a limited liability company:
State of _____
County of _____
The foregoing instrument was acknowledged before me this (date) by (name of acknowledging member or agent), member (or agent) on behalf of (name of limited liability company), a limited liability company.

- (Signature of Person Taking Acknowledgment)
(Title or Rank)
(Serial Number, if any)
- (5) For an individual acting as principal by an attorney in fact:
State of _____
County of _____
The foregoing instrument was acknowledged before me this (date) by (name of attorney in fact) as attorney in fact on behalf of (name of principal).
(Signature of Person Taking Acknowledgment)
(Title or Rank)
(Serial Number, if any)
- (6) By any Public Officer, trustee, or personal representative:
State of _____
County of _____
The foregoing instrument was acknowledged before me this (date) by (name and title of position).
(Signature of Person Taking Acknowledgement)
(Title or Rank)
(Serial Number, if any)

Recording of Instruments

76-218. Acknowledgment and recording of instruments; violations; penalty. Every officer within this state authorized to take the acknowledgment or proof of any conveyance, and every county clerk, who shall be guilty of knowingly stating an untruth, or guilty of any malfeasance or fraudulent practice in the execution of the duties prescribed for them by law, in relation to the taking or the certifying of the proof or acknowledgment, or the recording or certifying of any record of any such conveyance, mortgage or instrument in writing, or in relation to the canceling of any mortgage, shall upon conviction be adjudged guilty of a misdemeanor, and be subject to punishment by fine not exceeding five hundred dollars, and imprisonment not exceeding one year, and shall also be liable in damages to the party injured.

Dual Contracts

76-2,106. Terms, defined. As used in sections 76-2,106 to 76-2,108, unless the context otherwise requires:

- (1) Dual contracts shall mean two written contracts entered into between identical contracting persons in identical capacities concerning the same parcel of real property, one of which states the true and actual purchase price and one of which states a purchase price in excess of the true and actual purchase price and is used as an inducement to make a loan commitment on such real property in reliance upon the stated inflated value; and
- (2) Fraudulent instrument shall mean any paper, document, or other form in writing that is intentionally used as subterfuge or device to induce the making of a loan or the extension of credit as a part of a transaction whereby either the title to real property is transferred or valuable improvements are placed on real property in this state, whether for the benefit of the inducer or another.

76-2,107. Dual contracts; substituting one instrument for another; fraudulent instrument; unlawful. No person, firm or corporation, or any agent or employee of any such firm or corporation shall, with intent to defraud (1) make or issue a dual contract for the purchase of

real property, (2) substitute one instrument in writing for another and by such means cause the making of a loan or the extension of credit, with respect to transactions whereby either the title to real property is transferred or valuable improvements are placed on real property in this state, whether for the benefit of the inducer or another, or (3) induce by any fraudulent instrument in writing the making of a loan or the extension of credit as a part of a transaction whereby either the title to real property is transferred or valuable improvements are placed on real property in this state, whether for the benefit of the inducer or another.

76-2,108. Violations; penalty. Any person violating the provisions of section 76-2,107 shall be guilty of a misdemeanor and shall, upon conviction thereof, be punished by a fine of not less than one hundred dollars nor more than five hundred dollars, or by imprisonment in the county jail for not less than five days nor more than thirty days, or by both such a fine and imprisonment.

Real Estate Closing Agents

76-2,121. Real estate closing agents; terms, defined.

For purposes of sections 76-2,121 to 76-2,123:

- (1) Federally insured financial institution means an institution in which the monetary deposits are insured by the Federal Deposit Insurance Corporation or National Credit Union Administration;
- (2) Good funds means: (a) Lawful money of the United States; (b) wired funds when unconditionally held by the real estate closing agent or employee; (c) cashier's checks, certified checks, bank money orders, or teller's checks issued by a federally insured financial institution and unconditionally held by the real estate closing agent or employee; (d) United States treasury checks, federal reserve bank checks, federal home loan bank checks, State of Nebraska warrants, and warrants of a city of the metropolitan or primary class; or (e) real-time or instant payments through the FedNow® Service of the United States Federal Reserve System or through the RTP® network of The Clearing House Payments Company L.L.C.;
- (3) Real estate closing agent means a person who collects and disburses funds on behalf of another in closing a real estate transaction but does not include a seller or buyer closing a real estate transaction on his or her own behalf or a lender closing a real estate loan transaction; and
- (4) Regulating entity means the:
 - (a) Department of Insurance;
 - (b) Supreme Court;
 - (c) State Real Estate Commission;
 - (d) Department of Banking and Finance;
 - (e) Federal Deposit Insurance Corporation;
 - (f) Office of the Comptroller of the Currency;
 - (g) Consumer Financial Protection Bureau;
 - (h) Federal Farm Credit Administration; or
 - (i) National Credit Union Administration.

76-2,122. Real estate closing agents; requirements; enforcement; violation; penalty.

- (1) To act as a real estate closing agent, a person shall be (a) licensed or regulated by one or more regulating entities or (b) employed by a person or entity regulated by one or more regulating entities, unless employing such person to act as a real estate closing agent is otherwise prohibited by statute, rule, or regulation.
- (2) A person acting as a real estate closing agent shall:

- (a) Have received good funds which are available for disbursement at the time of closing a real estate transaction except that up to five hundred dollars need not be available for disbursement from good funds;
 - (b) Except as provided in Section 81-885.21, deposit all funds received on behalf of another person in a trust account controlled by the real estate closing agent in a federally insured financial institution, except that up to five hundred dollars may be paid by one party directly to another party without first being deposited in a trust account controlled by the real estate closing agent; and
 - (c) Except as provided in Section 81-885.21, disburse closing funds only from the real estate closing agent's trust account in a federally insured financial institution in the form of good funds or in the form of a check drawn from the real estate closing agent's trust account.
- (3) The following real estate transactions are exempt from this section:
- (a) Transactions with a political subdivision which is exercising its power of condemnation or eminent domain;
 - (b) Lease or rental transactions; and
 - (c) Real estate transactions in which the closing occurs within one business day following another real estate closing and in which one party is a principal to both transactions, but only to the extent that the funds disbursed in the subsequent transaction are drawn upon funds properly received by a real estate closing agent in the prior transaction which were deposited in that real estate closing agent's trust account in a federally insured financial institution or as otherwise provided in Section 81-885.21.
- (4) The Attorney General or any county attorney may act to enjoin the performance of real estate closings which violate this section.
- (5) A person acting as a real estate closing agent in violation of this section shall be guilty of a Class V misdemeanor.

76-2,123. Real estate closing agents; regulating entities; rules and regulations. Each state regulating entity shall adopt and promulgate rules and regulations and issue such orders as are necessary or desirable to carry out section 76-2,122. Each regulating entity may inspect, examine, and audit the books and records of real estate closing agents under its jurisdiction who conduct real estate closings. The regulating entity may require reimbursement from the real estate closing agent for the expenses of such inspection, examination, or audit.

Alien Ownership of Land

Const., I-25 Rights of property; no discrimination; aliens. There shall be no discrimination between citizens of the United States in respect to the acquisition, ownership, possession, enjoyment or descent of property. The right of aliens in respect to the acquisition, enjoyment and descent of property may be regulated by law.

76-402 Aliens and foreign corporations; real estate; ownership prohibited. Aliens and corporations not incorporated under the laws of the State of Nebraska are prohibited from acquiring title to or taking or holding any land, or real estate, or any leasehold interest extending for a period for more than five years or any other greater interest less than fee in any land, or real estate in this state by descent, devise, purchase or otherwise, except as provided in sections 76-403 to 76-405.

76-403 Widow or heirs of aliens; right to land. The widow and heirs of aliens, who have prior to March 16, 1889, acquired lands in this state under the laws thereof, may hold such lands by devise or descent for a period of ten years and no longer, and if at the end of such time such lands, so acquired, have not been sold to a bona fide purchaser for value, such lands or other

interest therein shall revert and escheat to the State of Nebraska. It shall be the duty of the county attorney in the counties where such lands are situated to enforce forfeitures of all such lands or other interests therein as provided by section 76-408.

76-404 Oil and gas leases permitted. Corporations incorporated under the laws of the United States of America, or under the laws of any state of the United States of America, or any foreign corporation or any alien, doing business in this state, may acquire, own, hold, or operate leases for oil, gas, or other hydrocarbon substances, for a period as long as ten years and as long thereafter as oil, gas, or other hydrocarbon substances shall or can be produced in commercial quantities.

76-405 Land acquired by devise or descent; sale within five years required. Any resident alien may acquire title to lands in this state by devise or descent only, provided such alien shall be required to sell and convey said real property within five years from the date of acquiring it, and if he shall fail to dispose of it to a bona fide purchaser for value within that time, it shall revert and escheat to the State of Nebraska.

76-414. Sections; not applicable to real estate within cities and villages or within three miles of cities and villages; not applicable to manufacturing or industrial establishments. The provisions of sections 76-402 to 76-413 shall not apply to any real estate lying within the corporate limits of cities and villages, or within three miles thereof, nor to any manufacturing or industrial establishment referred to in section 76-413.

Private Transfer Fee Obligation Act

76-3101. Act, how cited. Sections 76-3101 to 76-3112 shall be known and may be cited as the Private Transfer Fee Obligation Act.

76-3102. Legislative findings and declarations. The Legislature finds and declares that the public policy of this state favors the marketability of real property and the transferability of interests in real property free of title defects or unreasonable restraints on alienation. The Legislature further finds and declares that private transfer fee obligations violate this public policy by impairing the marketability and transferability of real property and by constituting an unreasonable restraint on alienation regardless of the duration of the obligation to pay a private transfer fee, the amount of a private transfer fee, or the method by which any private transfer fee is created or imposed. The Legislature finds and declares that a private transfer fee obligation should not run with the title to property or otherwise bind subsequent owners of property under any common-law or equitable principle.

76-3103. Definitions, where found. For purposes of the Private Transfer Fee Obligation Act, the definitions in sections 76-3104 to 76-3108 shall be used.

76-3104. Environmental covenant, defined. Environmental covenant means a servitude that imposes activity and use limitations on real property and meets the requirements of section 76-2604.

76-3105. Payee, defined. Payee means the person who claims the right to receive or collect a private transfer fee payable under a private transfer fee obligation, whether or not the person has a pecuniary interest in the private transfer fee obligation.

76-3106. Private transfer fee, defined. Private transfer fee means a fee or charge payable upon the transfer of an interest in real property, or payable for the right to make or accept such

transfer, regardless of whether the fee or charge is a fixed amount or is determined as a percentage of the value of the property, the purchase price, or other consideration given for the transfer. Private transfer fee does not include:

(1) Any consideration payable by the grantee to the grantor for the interest in real property being transferred, including any subsequent additional consideration for the property payable by the grantee based upon any subsequent appreciation, development, or sale of the property, if the additional consideration is payable on a one-time basis only and the obligation to make such payment does not bind successors in title to the property. For purposes of this subdivision, an interest in real property may include a separate mineral estate and its appurtenant surface access rights;

(2) Any commission payable to a licensed real estate broker or salesperson for the transfer of real property pursuant to an agreement between the broker or salesperson and the grantor or the grantee, including any subsequent additional commission for that transfer payable by the grantor or the grantee based upon any subsequent appreciation, development, or sale of the property;

(3) Any interest, charges, fees, or other amounts payable by a borrower to a lender pursuant to a loan secured by a mortgage or trust deed against real property, including any fee payable to the lender for consenting to an assumption of the loan or a transfer of the real property subject to the mortgage or trust deed, any fees or charges payable to the lender for estoppel letters or certificates, and any shared appreciation interest or profit participation or other consideration payable to the lender in connection with the loan;

(4) Any rent, reimbursement, charge, fee, or other amount payable by a lessee to a lessor under a lease, including any fee payable to the lessor for consenting to an assignment, subletting, encumbrance, or transfer of the lease;

(5) Any consideration payable to the holder of an option to purchase an interest in real property or the holder of a right of first refusal or first offer to purchase an interest in real property for waiving, releasing, or not exercising the option or right upon the transfer of the real property to another person;

(6) Any tax, fee, charge, assessment, fine, or other amount payable to or imposed by a governmental authority;

(7) Any fee, charge, assessment, dues, fine, contribution, or other amount payable to a homeowners, condominium, cooperative, mobile home, or property owners association pursuant to a declaration or covenant or bylaw applicable to such association, including fees or charges payable for estoppel letters or certificates issued by the association or its authorized agent;

(8) Any fee, charge, assessment, dues, contribution, or other amount pertaining solely to the purchase or transfer of a club membership relating to real property owned by the member, including any amount determined by reference to the value, purchase price, or other consideration given for the transfer of the real property; or

(9) Any payment required pursuant to an environmental covenant.

76-3107. Private transfer fee obligation, defined. Private transfer fee obligation means an obligation arising under a declaration or covenant recorded against the title to real property, or under any other contractual agreement or promise, whether or not recorded, that requires or purports to require the payment of a private transfer fee upon a subsequent transfer of an interest in the real property.

76-3108. Transfer, defined. Transfer means sale, gift, conveyance, assignment, inheritance, or other transfer of an ownership interest in real property located in this state.

76-3109. Private transfer fee obligation; how treated. A private transfer fee obligation recorded or entered into in this state on or after March 11, 2011, does not run with the title to real property and is not binding on or enforceable at law or in equity against any subsequent owner, purchaser, mortgagee, or trustee of any interest in real property as an equitable servitude or otherwise. Any private transfer fee obligation that is recorded or entered into in this state on or after March 11, 2011, is void and unenforceable. This section shall not be construed to mean that a private transfer fee obligation recorded or entered into in this state before March 11, 2011, is presumed valid and enforceable.

76-3110. Recordation of or agreement imposing a private transfer fee obligation; liability. Any person who records or enters into an agreement imposing a private transfer fee obligation in his or her favor after March 11, 2011, shall be liable for (1) any and all damages resulting from the imposition of the private transfer fee obligation on the transfer of an interest in the real property, including the amount of any transfer fee paid by a party to the transfer, and (2) all attorney's fees, expenses, and costs incurred by a party to the transfer or mortgagee of the real property to recover any private transfer fee paid or in connection with an action to quiet title. If an agent acts on behalf of a principal to record or secure a private transfer fee obligation, liability shall be assessed to the principal rather than the agent.

76-3111. Contract for sale of real property subject to private transfer fee obligation; requirements; failure to disclose; rights of buyer.

(1) Any contract for the sale of real property subject to a private transfer fee obligation shall include a provision disclosing the existence of that obligation, a description of the obligation, and a statement that private transfer fee obligations are subject to certain prohibitions under the Private Transfer Fee Obligation Act. A contract for sale of real property which does not conform to the requirements of this section shall not be enforceable by the seller against the buyer, nor shall the buyer be liable to the seller for damages under such a contract, and the buyer under such a contract shall be entitled to the return of all deposits made in connection with the sale of the real property.

(2) If a private transfer fee obligation is not disclosed under subsection (1) of this section and a buyer subsequently discovers the existence of such private transfer fee obligation after title to the property has passed to the buyer, the buyer shall have the right to recover (a) any and all damages resulting from the failure to disclose the private transfer fee obligation, including the amount of any private transfer fee paid by the buyer, or the difference between (i) the market value of the real property if it were not subject to a private transfer fee obligation and (ii) the market value of the real property as subject to a private transfer fee obligation, and (b) all attorney's fees, expenses, and costs incurred by the buyer in seeking the buyer's remedies under this subsection.

(3) Any provision in a contract for sale of real property that purports to waive the rights of a

buyer under this section shall be void.

76-3112. Receiver of fee; record document; contents; amendment; payee failure to comply; effect; affidavit; recording; effect.

(1) For a private transfer fee obligation in existence prior to March 11, 2011, the receiver of the fee shall, within thirty days after March 11, 2011, or before any transfer of real property subject to the private transfer fee, whichever period is shorter, record against the real property subject to the private transfer fee obligation a separate document in the register of deeds office of the county in which the real property is located that meets all of the following requirements:

(a) The title of the document shall be "Notice of Private Transfer Fee Obligation" in at least fourteen-point, boldface type;

(b) The amount, if the private transfer fee is a flat amount, or the percentage of the sales price constituting the cost of the private transfer fee, or such other basis by which the private transfer fee is to be calculated;

(c) The date or circumstances under which the private transfer fee obligation expires, if any;

(d) The purpose for which the funds from the private transfer fee obligation will be used;

(e) The name of the person to whom funds are to be paid and specific contact information regarding where the funds are to be sent;

(f) The acknowledged signature of the payee; and

(g) The legal description of the real property purportedly burdened by the private transfer fee obligation.

(2) The person to whom the private transfer fee is to be paid may file an amendment to the notice of private transfer fee obligation containing new contact information, but such amendment must contain the recording information of the notice of private transfer fee obligation which it amends and the legal description of the property burdened by the private transfer fee obligation.

(3) If the payee fails to comply fully with subsection (1) of this section, the grantor of any real property burdened by the private transfer fee obligation may proceed with the transfer of any interest in the real property to any grantee and in so doing shall be deemed to have acted in good faith and shall not be subject to any obligations under the private transfer fee obligation. In such event, any transfer of the real property thereafter shall be free and clear of the private transfer fee and private transfer fee obligation.

(4) If the payee fails to provide a written statement of the private transfer fee payable within thirty days after the date of a written request for the same sent to the address shown in the notice of private transfer fee obligation, then the grantor, on recording of the affidavit required under subsection (5) of this section, may transfer any interest in the real property to any grantee without payment of the private transfer fee and shall not be subject to any further obligations under the private transfer fee obligation. In such event, any transfer of the

real property shall be free and clear of the private transfer fee and private transfer fee obligation.

(5) An affidavit stating the facts enumerated under subsection (6) of this section shall be recorded in the office of the register of deeds in the county in which the real property is situated prior to or simultaneously with a transfer pursuant to subsection (4) of this section of real property unburdened by a private transfer fee obligation. An affidavit filed under this subsection shall state that the affiant has actual knowledge of, and is competent to testify to, the facts in the affidavit and shall include the legal description of the real property burdened by the private transfer fee obligation, the name of the owner of such real property at the time of the signing of such affidavit, a reference by recording information to the instrument of record containing the private transfer fee obligation, and an acknowledgment that the affiant is testifying under penalty of perjury.

(6) When recorded, an affidavit as described in subsection (5) of this section shall constitute prima facie evidence that:

(a) A request for the written statement of the private transfer fee payable in order to obtain a release of the fee imposed by the private transfer fee obligation was sent to the address shown in the notification; and

(b) The entity listed on the notice of private transfer fee obligation failed to provide the written statement of the private transfer fee payable within thirty days after the date of the notice sent to the address shown in the notification.

Smoke Detectors

81-5,142. Smoke detectors; installation required; when.

- (1) Every dwelling unit within a dwelling or apartment house constructed or remodeled on or after January 1, 1982, every guest room in a lodging house or hotel constructed or remodeled on or after January 1, 1982, and every dormitory constructed or remodeled on or after January 1, 1982, shall be provided with one or more operating smoke detectors meeting the requirements of the State Fire Marshal's rules and regulations.
- (2) Every guest room in a lodging house or hotel constructed prior to January 1, 1982, and every dormitory constructed prior to January 1, 1982, shall be provided with one or more operating smoke detectors meeting the requirements of the State Fire Marshal's rules and regulations on or before January 1, 1984.
- (3) Every (a) dwelling unit within a dwelling or apartment house constructed prior to January 1, 1982, (b) mobile home, and (c) modular housing unit constructed pursuant to sections 71-1555 to 71-1567 shall be provided with one or more operating smoke detectors meeting the requirements of the State Fire Marshal's rules and regulations at the time of their remodeling or sale. In the event of a sale, the provision of smoke detectors shall be the sole responsibility of the seller, which responsibility shall not be assigned or imputed to any other party or the agent of any party to the sale.

Appealing Commission Decisions

84-917. Contested case; appeal; procedure.

- (1) Any person aggrieved by a final decision in a contested case, whether such decision is affirmative or negative in form, shall be entitled to judicial review under the Administrative Procedure Act. Nothing in this section shall be deemed to prevent resort to other means of review, redress, or relief provided by law.

- (2) (a) Proceedings for review shall be instituted by filing a petition in the district court of the county where the action is taken within thirty days after the service of the final decision by the agency. All parties of record shall be made parties to the proceedings for review. If an agency's only role in a contested case is to act as a neutral factfinding body, the agency shall not be a party of record. In all other cases, the agency shall be a party of record. Summons shall be served within thirty days of the filing of the petition in the manner provided for service of a summons in a civil action. If the agency whose decision is appealed from is not a party of record, the petitioner shall serve a copy of the petition and a request for preparation of the official record upon the agency within thirty days of the filing of the petition. The court, in its discretion, may permit other interested persons to intervene.
- (b) A petition for review shall set forth:
- (i) The name and mailing address of the petitioner;
 - (ii) The name and mailing address of the agency whose action is at issue;
 - (iii) Identification of the final decision at issue together with a duplicate copy of the final decision;
 - (iv) Identification of the parties in the contested case that led to the final decision;
 - (v) Facts to demonstrate proper venue;
 - (vi) The petitioner's reasons for believing that relief should be granted; and
 - (vii) a request for relief, specifying the type and extent of the relief requested.
- (3) The filing of the petition or the service of summons upon such agency shall not stay enforcement of a decision. The agency may order a stay. The court may order a stay after notice of the application therefor to such agency and to all parties of record. If the agency has found that its action on an application for stay or other temporary remedies is justified to protect against a substantial threat to the public health, safety, or welfare, the court may not grant relief unless the court finds that:
- (a) The applicant is likely to prevail when the court finally disposes of the matter;
 - (b) Without relief, the applicant will suffer irreparable injuries;
 - (c) The grant of relief to the applicant will not substantially harm other parties to the proceedings; and
 - (d) the threat to the public health, safety, or welfare relied on by the agency is not sufficiently serious to justify the agency's action in the circumstances. The court may require the party requesting such stay to give bond in such amount and conditioned as the court may direct.
- (4) Within thirty days after service of the petition or within such further time as the court for good cause shown may allow, the agency shall prepare and transmit to the court a certified copy of the official record of the proceedings had before the agency. Such official record shall include:
- (a) Notice of all proceedings;
 - (b) Any pleadings, motions, requests, preliminary or intermediate rulings and orders, and similar correspondence to or from the agency pertaining to the contested case;
 - (c) The transcribed record of the hearing before the agency, including all exhibits and evidence introduced during such hearing, a statement of matters officially noticed by the agency during the proceeding, and all proffers of proof and objections and rulings thereon; and
 - (d) The final order appealed from.

The agency shall charge the petitioner with the reasonable direct cost or require the

petitioner to pay the cost for preparing the official record for transmittal to the court in all cases except when the petitioner is not required to pay a filing fee. The agency may require payment or bond prior to the transmittal of the record.

- (5) (a) When the petition instituting proceedings for review was filed in the district court before July 1, 1989, the review shall be conducted by the court without a jury on the record of the agency, and review may not be obtained of any issue that was not raised before the agency unless such issue involves one of the grounds for reversal or modification enumerated in subdivision (6)(a) of this section. When the petition instituting proceedings for review is filed in the district court on or after July 1, 1989, the review shall be conducted by the court without a jury de novo on the record of the agency.
- (b) (i) If the court determines that the interest of justice would be served by the resolution of any other issue not raised before the agency, the court may remand the case to the agency for further proceedings.
(ii) The agency shall affirm, modify, or reverse its findings and decision in the case by reason of the additional proceedings and shall file the decision following remand with the reviewing court. The agency shall serve a copy of the decision following remand upon all parties to the district court proceedings. The agency decision following remand shall become final unless a petition for further review is filed with the reviewing court within thirty days after the decision following remand being filed with the district court. The party filing the petition for further review shall serve a copy of the petition for further review upon all parties to the district court proceeding in accordance with the rules of pleading in civil actions promulgated by the Supreme Court pursuant to section 25-801.01 within thirty days after the petition for further review is filed. Within thirty days after service of the petition for further review or within such further time as the court for good cause shown may allow, the agency shall prepare and transmit to the court a certified copy of the official record of the additional proceedings had before the agency following remand.
- (6) (a) When the petition instituting proceedings for review was filed in the district court before July 1, 1989, the court may affirm the decision of the agency or remand the case for further proceedings, or it may reverse or modify the decision if the substantial rights of the petitioner may have been prejudiced because the agency decision is:
 - (i) In violation of constitutional provisions;
 - (ii) In excess of the statutory authority or jurisdiction of the agency;
 - (iii) Made upon unlawful procedure;
 - (iv) Affected by other error of law;
 - (v) Unsupported by competent, material, and substantial evidence in view of the entire record as made on review; or
 - (vi) Arbitrary or capricious.
- (b) When the petition instituting proceedings for review is filed in the district court on or after July 1, 1989, the court may affirm, reverse, or modify the decision of the agency or remand the case for further proceedings.
- (7) The review provided by this section shall not be available in any case where other provisions of law prescribe the method of appeal.

84-918. District court decision; appeal.

- (1) An aggrieved party may secure a review of any judgment rendered or final order made by the district court under the Administrative Procedure Act by appeal to the Court of Appeals.
- (2) When the petition instituting proceedings for review was filed in the district court before

July 1, 1989, the appeal shall be taken in the manner provided by law for appeals in civil cases and shall be heard de novo on the record.

- (3) When the petition instituting proceedings for review is filed in the district court on or after July 1, 1989, the appeal shall be taken in the manner provided by law for appeals in civil cases. The judgment rendered or final order made by the district court may be reversed, vacated, or modified for errors appearing on the record.

84-919. Act; exclusive means of judicial review. Except as otherwise provided by law, the Administrative Procedure Act establishes the exclusive means of judicial review of a final decision of any agency in a contested case.

Carbon Monoxide Safety Act

76-601. Act, how cited.

Sections 76-601 to 76-607 shall be known and may be cited as the Carbon Monoxide Safety Act.

76-602. Terms, defined.

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.

76-603. Carbon monoxide alarm; installation required.

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.

76-604. Seller of single-family dwelling; duties; interior alterations requiring permit; owner; duties.

(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.

76-605. Seller of multifamily dwelling; duties; interior alterations requiring permit; owner; duties; prohibited acts.

(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.

76-606. Owner of certain rental property; duties; tenant; duties; prohibited acts.

(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.

76-607. Act; how construed.

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.