

LEGISLATIVE BILL 1105

Approved by the Governor April 11, 1984

Introduced by DeCamp, 40

AN ACT relating to real property; to amend sections 31-735, 76-825, 76-838, 76-849, 76-854, 76-857, 76-860, 76-862, 76-863, 76-866, 76-870, 76-874, 76-878 to 76-881, 76-883, 76-884, 76-887, 76-888, 76-890, 76-891, and 76-902, Revised Statutes Supplement, 1983; to rename an act; to change provisions relating to voting rights, relocation of boundaries, amendments, warranties, deeds, leases, meetings, purchasers, powers, duties, liabilities, contracts, public offering statements, resale of units, and violations as prescribed; to harmonize provisions; to eliminate a provision on warranties; and to repeal the original sections, and also section 76-889, Revised Statutes Supplement, 1983.

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

Section 1. That section 31-735, Revised Statutes Supplement, 1983, be amended to read as follows:

31-735. (1) For any sanitary and improvement district located in a county with a population of one hundred thousand or more, on the first Tuesday after the second Monday in September which is at least fifteen months after the judgment of the district court creating a sanitary and improvement district, and on the first Tuesday after the second Monday in September each two years thereafter, the board of trustees shall cause a special election to be held, at which election a board of trustees of five in number shall be elected. Each member elected to the board of trustees shall be elected to a term of two years and shall hold office until such member's successor is elected and qualified. Any person desiring to file for office of trustee may file for such office with the election commissioner of the county in which the greater proportion in area of the district is located, not later than thirty days before the election. No filing fee shall be required. A person filing for the office of trustee to be elected at the election held four years after the first election of trustees and each election thereafter shall designate whether he or she is a candidate for election by the resident owners of such district or whether he or she is a candidate for election by all of the owners of real estate located in the district. The name of such candidate shall appear on only one ballot. The name of a person may

be written in and voted for as a candidate for the office of trustee, and such write-in candidate may be elected to the office of trustee. Such trustees shall be owners of real estate located in the district. The election shall be conducted at a location or place selected by the election commissioner, but situated within the boundaries of the district unless there is no building within the district or all of the owners in the district shall consent to an election outside the district, except that in any district having ten or less total owners, or in any districts where there are no resident owners, the election shall be held in such place in the county as the election commissioner shall designate. The polling place shall remain open to the voters for not less than four consecutive hours between 8:00 a.m. and 8:00 p.m. on ~~of~~ the date of election. Notice of the time and place of the election shall be mailed by the election commissioner not later than twenty days prior to the election to each person who is entitled to vote at the election for trustees whose property ownership or lease giving a right to vote is of record on the records of the register of deeds as of a date designated by the election commissioner, which shall be not more than sixty-five days prior to the election.

(2) For any sanitary and improvement district located in a county with a population of less than one hundred thousand, on the first Tuesday after the second Monday in September which is at least fifteen months after the judgment of the district court creating a sanitary and improvement district, and on the first Tuesday after the second Monday in September each two years thereafter, the board of trustees shall cause a special election to be held, at which election a board of trustees of five in number shall be elected. Each member elected to the board of trustees shall be elected to a term of two years and shall hold office until such member's successor is elected and qualified. Any person desiring to file for office of trustee may file for such office with the county clerk, or election commissioner in counties having election commissioners, of the county in which the greater proportion in area of the district is located, not later than thirty days before the election. No filing fee shall be required. A person filing for the office of trustee to be elected at the election held four years after the first election of trustees and each election thereafter shall designate whether he or she is a candidate for election by the resident owners of such district or whether he or she is a candidate for election by all of the owners of real estate located in the district. The name of such candidate shall appear on only one ballot. The name of a person may be written in and voted for as a candidate for the office of trustee, and such write-in candidate may be elected to the office of trustee. Such trustees shall be owners of real estate located in the district. The election shall be

conducted at a location or place within the boundaries of the district unless there is no building within the district or all of the owners in the district shall consent to an election outside the district, and the polling place shall remain open to the voters for not less than four consecutive hours between 8:00 a.m. and 8:00 p.m. on ~~of~~ the date of election. Notice of the time and place of the election shall be mailed by the clerk of the district not later than twenty days prior to the election to each person who is entitled to vote at the election for trustees whose property ownership or lease giving a right to vote is of record on the records of the register of deeds as of a date designated by the board of trustees, which shall be not more than sixty-five days prior to the election. Notice of the time and place of the election shall also be mailed by the clerk of the district to the county clerk or election commissioner at least forty-five days prior to the election.

(3) For any sanitary and improvement district, persons whose ownership or right to vote becomes of record or is received after such date may vote upon establishing their right to vote to the satisfaction of the election board. Such notice shall state the time, place, and purpose of the election. At the first election and at the election held two years after the first election, any person may cast one vote for each trustee for each acre of unplatted land or fraction thereof and one vote for each platted lot which he or she may own in the district. At the election held four years after the first election of trustees, two members of the board of trustees shall be elected by the legal property owners resident within such sanitary and improvement district, and three members shall be elected by all of the owners of real estate located in the district pursuant to this section. Every resident property owner may cast one vote for a candidate for each office of trustee to be filled by election of resident property owners only. Such resident property owners may also each cast one vote for each acre of unplatted land, or fraction thereof, and for each platted lot owned within the district for a candidate for each office of trustee to be filled by election of all property owners. For each office of trustee to be filled by election of all property owners of the district, every legal property owner not resident within such sanitary and improvement district may cast one vote for each acre of unplatted land or fraction thereof and one vote for each platted lot which he or she owns in the district. At the election held eight years after the first election of trustees, three members of the board of trustees shall be elected by the legal property owners resident within such sanitary and improvement district, and two members shall be elected by all of the owners of real estate located in the district pursuant to this section, except that, if more than fifty per cent of the

homes in any sanitary and improvement district are used as a second, seasonal, or recreational residence, the owners of such property shall be considered legal property owners resident within such district for purposes of electing trustees, and at the election held six years after the first election of trustees, three members of the board of trustees shall be elected by the legal property owners resident within such sanitary and improvement district, and two members shall be elected by all of the owners of real estate located in the district pursuant to this section. If there are not any legal property owners resident within such district, the five members shall be elected by the legal property owners of all property within such district as provided in this section. Any corporation, whether public, private, or municipal, owning any land or lot in the district, may vote at such election the same as an individual. For purposes of voting for trustees, each condominium apartment under a condominium property regime established prior to January 1, 1984, under the Condominium Property Act or established after January 1, 1984, under the Nebraska Uniform Condominium Act shall be deemed to be a platted lot and the lessee, or the owner of the lessee's interest, under any lease for an initial term of not less than twenty years which requires the lessee to pay taxes and special assessments levied on the leased property, shall be deemed to be the owner of the property so leased and entitled to cast the vote of such property. When ownership of a platted lot or unplatted land is held jointly by two or more persons, whether as joint tenants, tenants in common, limited partners, or any other form of joint ownership, only one person shall be entitled to cast the vote of such property. The executor, administrator, guardian, or trustee of any person or estate interested shall have the right to vote. No corporation, estate, or trust shall be deemed to be a resident owner for purposes of voting for trustees. Should two or more persons or officials claim the right to vote on the same tract, the election board shall determine the party entitled to vote. Such board shall select one of their number chairperson and one of their number clerk. In case of a vacancy on ~~said~~ such board, the remaining trustees shall fill the vacancy on ~~said~~ such board until the next election.

Sec. 2. That section 76-825, Revised Statutes Supplement, 1983, be amended to read as follows:

76-825. Sections 76-825 to 76-894 shall be known and may be cited as the Nebraska Uniform Condominium Act.

Sec. 3. That section 76-838, Revised Statutes Supplement, 1983, be amended to read as follows:

76-838. (a) A condominium may be created pursuant to sections 76-825 to 76-894 only by recording a declaration executed in the same manner as a deed. The

declaration must be recorded in every county in which any portion of the condominium is located.

(b) ~~Any units added by an~~ amendment to a declaration adding units to a condominium that would increase the voting rights of the developer or declarant within the ~~condominium association shall not constitute an additional voting unit within the association unless the foundation for such unit has been completed~~ association shall not be effective for that purpose until the foundation of each building containing additional units has been substantially completed.

Sec. 4. That section 76-849, Revised Statutes Supplement, 1983, be amended to read as follows:

76-849. (a) Subject to the provisions of the declaration and other provisions of law, the boundaries between adjoining units may be relocated by an amendment to the declaration upon application to the association by the owners of those units. If the owners of the adjoining units have specified a ~~in~~ reallocation between their units of their allocated interests, the application must state the proposed reallocations. Unless the executive board determines, within thirty days, that the reallocations are unreasonable, the association shall prepare an amendment that identifies the units involved, states the reallocations, is executed by those unit owners, and contains words of conveyance between them, ~~and upon recordation, is indexed in the name of the grantor and the grantee.~~

(b) The association shall prepare and record plats or plans necessary to show the altered boundaries between adjoining units, and their dimensions and identifying numbers.

Sec. 5. That section 76-854, Revised Statutes Supplement, 1983, be amended to read as follows:

76-854. (a) Except in cases of amendments that may be executed by a declarant under subsection (f) of section 76-846 or under section 76-847; the association under section 76-831 or 76-850, subsection (d) of section 76-843, subsection (c) of section 76-845, or subsection (a) of section 76-849; or certain unit owners under subsection (b) of section 76-845, subsection (a) of section 76-849, subsection (b) of section 76-850, or subsection (b) of section 76-855, and except as limited by subsection (d) of this section, the declaration, including the plats and plans, may be amended only by vote or agreement of unit owners of units to which at least sixty-seven per cent of the votes in the association are allocated; or any larger majority the declaration specifies. The declaration may specify a smaller number only if all of the units are restricted exclusively to nonresidential use.

(b) No action to challenge the validity of an amendment adopted by the association pursuant to this

section may be brought more than one year after the amendment is recorded.

(c) Every amendment to the declaration must be recorded in every county in which any portion of the condominium is located, and is effective only upon recordation.

(d) Except to the extent expressly permitted or required by other provisions of sections 76-825 to 76-894, no amendment may create or increase special declarant rights, increase the number of units, or change the boundaries of any unit, the allocated interests of a unit, or the uses to which any unit is restricted, in the absence of the consent of ~~two-thirds~~ sixty-seven per cent of the unit owners.

(e) Amendments to the declaration required by sections 76-825 to 76-894 to be recorded by the association shall be prepared, executed, recorded, and certified on behalf of the association by any officer of the association designated for that purpose or, in the absence of designation, by the president of the association.

Sec. 6. That section 76-857, Revised Statutes Supplement, 1983, be amended to read as follows:

76-857. (a) If the declaration for a condominium provides that any of the powers described in section 76-860 are to be exercised by or may be delegated to a profit or nonprofit corporation, or unincorporated association, which exercises those or other powers on behalf of one or more condominiums or for the benefit of the unit owners of one or more condominiums, all provisions of sections 76-825 to 76-894 applicable to unit owners' associations apply to any such corporation or unincorporated association, except as modified by this section.

(b) Unless a master association is acting in the capacity of an association described in section 76-859, it may exercise the powers set forth in subdivision (a)(2) of section 76-860 only to the extent expressly permitted in the declarations of condominiums which are part of the master association or expressly described in the delegations of power from those condominiums to the master association.

(c) If the declaration of any condominium provides that the executive board may delegate certain powers to a master association, the members of the executive board have no liability for the acts or omissions of the master association with respect to those powers following delegation.

(d) The rights and responsibilities of unit owners with respect to the unit owners' association set forth in sections 76-861, 76-866 to 76-868, and 76-870 apply in the conduct of the affairs of a master association only to those persons who elect the board of a master association, whether or not those persons are otherwise

unit owners within the meaning of sections 76-825 to 76-894.

(e) Notwithstanding the provisions of subsection (f) of section 76-861 with respect to the election of the executive board of an association, by all unit owners after the period of declarant control ends, and even if a master association is also an association described in section 76-859, the articles ~~certificate~~ of incorporation or other instrument creating the master association and the declaration of each condominium the powers of which are assigned by the declaration or delegated to the master association, may provide that the executive board of the master association must be elected after the period of declarant control in any of the following ways:

(1) All unit owners of all condominiums subject to the master association may elect all members of that executive board.

(2) All members of the executive boards of all condominiums subject to the master association may elect all members of that executive board.

(3) All unit owners of each condominium subject to the master association may elect specified members of that executive board.

(4) All members of the executive board of each condominium subject to the master association may elect specified members of that executive board.

Sec. 7. That section 76-860, Revised Statutes Supplement, 1983, be amended to read as follows:

76-860. (a) Except as provided in subsection (b) of this section, and subject to the provisions of the declaration, the association, even if unincorporated, may:

(1) Adopt and amend bylaws and rules and regulations;

(2) Adopt and amend budgets for revenues, expenditures, and reserves and collect assessments for common expenses from unit owners;

(3) Hire and discharge managing agents and other employees, agents, and independent contractors;

(4) Institute, defend, or intervene in litigation or administrative proceedings in its own name on behalf of itself or two or more unit owners on matters affecting the condominium;

(5) Make contracts and incur liabilities;

(6) Regulate the use, maintenance, repair, replacement, and modification of common elements;

(7) Cause additional improvements to be made as a part of the common elements;

(8) Acquire, hold, encumber, and convey in its own name any right, title, or interest to real or personal property, but common elements may be conveyed or subjected to a security interest only pursuant to section 76-870;

(9) Grant easements, leases, licenses, and

concessions through or over the common elements;

(10) Impose and receive any payments, fees, or charges for the use, rental, or operation of the common elements, other than limited common elements described in subdivisions (2) and (4) of section 76-839, and for services provided to unit owners;

(11) Impose charges for late payment of assessments and, after notice and opportunity to be heard, levy reasonable fines for violations of the declaration, bylaws, and rules and regulations for the association;

(12) Impose reasonable charges for the preparation and recordation of amendments to the declaration, resale statements ~~certificates~~ required by section 76-884, or statements of unpaid assessments;

(13) Provide for the indemnification of its officers and executive board and maintain directors' and officers' liability insurance;

(14) Assign its right to future income, including the right to receive common expense assessments, but only to the extent the declaration expressly so provides;

(15) Exercise any other powers conferred by the declaration ~~of~~ or bylaws;

(16) Exercise all other powers that may be exercised in this state by legal entities of the same type as the association; and

(17) Exercise any other powers necessary and proper for the governance and operation of the association.

(b) The declaration may not impose limitations on the power of the association to deal with the declarant which are more restrictive than the limitations imposed on the power of the association to deal with other persons.

Sec. 8. That section 76-862, Revised Statutes Supplement, 1983, be amended to read as follows:

76-862. (a) No special declarant right as defined in subsection (23) of section 76-827 created or reserved under sections 76-825 to 76-894 may be transferred except by an instrument evidencing the transfer recorded in every county in which any portion of the condominium is located. The instrument is not effective unless executed by the transferee.

(b) Upon transfer of any special declarant right, the liability of a transferor declarant is as follows:

(1) A transferor is not relieved of any obligation or liability arising before the transfer and remains liable for warranty obligations imposed upon him or her by sections 76-825 to 76-894. Lack of privity does not deprive any unit owner of standing to maintain an action to enforce any obligation of the transferor.

(2) If a successor to any special declarant right is an affiliate of a declarant defined in subsection

(1) of section 76-827, the transferor is jointly and severally liable with the successor for any obligations or liabilities of the successor relating to the condominium.

(3) If a transferor retains any special declarant right, but transfers other special declarant rights to a successor who is not an affiliate of the declarant, the transferor is liable for any obligations or liabilities imposed on a declarant by sections 76-825 to 76-894 or by the declaration relating to the retained special declarant rights and arising after the transfer.

(4) A transferor has no liability for any act or omission or any breach of a contractual or warranty obligation arising from the exercise of a special declarant right by a successor declarant who is not an affiliate of the transferor.

(c) Unless otherwise provided in a mortgage instrument or deed of trust, in case of foreclosure of a mortgage, tax sale, judicial sale, sale by a trustee under a deed of trust, or sale under bankruptcy code or receivership proceedings, ~~or~~ of any units owned by a declarant or real estate in a condominium subject to development rights, a person acquiring title to all the real estate being foreclosed or sold, but only upon his or her request, succeeds to all special declarant rights related to that real estate held by that declarant, or only to any rights reserved in the declaration pursuant to section 76-852 and held by that declarant to maintain models, sales offices, and signs. The judgment or instrument conveying title shall provide for transfer of only the special declarant rights requested.

(d) Upon foreclosure, sale, tax sale, sale by a trustee under a deed of trust, or sale under bankruptcy code or receivership proceedings, of all units and other real estate in a condominium owned by a declarant:

(1) The declarant ceases to have any special declarant rights, and

(2) The period of declarant control as provided in subsection (d) of section 76-861 terminates unless the judgment or instrument conveying title provides for transfer of all special declarant rights held by that declarant to a successor declarant.

(e) The liabilities and obligations of a person who succeeds to special declarant rights are as follows:

(1) A successor to any special declarant right who is an affiliate of a declarant is subject to all obligations and liabilities imposed on the transferor by sections 76-825 to 76-894 or by the declaration.

(2) A successor to any special declarant right, other than a successor described in paragraphs (3) or (4) of this subsection who is not an affiliate of a declarant, is subject to all obligations and liabilities imposed by sections 76-825 to 76-894 or the declaration:

(i) On a declarant which relates to his or her

exercise or nonexercise of special declarant rights; or

(ii) On his or her transferor, other than:

(A) Misrepresentations by any previous declarant;

(B) Warranty obligations on improvements made by any previous declarant; or made before the condominium was created; or

(C) Breach of any obligation by any previous declarant or his or her appointees to the executive board; or

(D) Any liability or obligation imposed on the transferor as a result of the transferor's acts or omissions after the transfer.

(3) A successor to only a right reserved in the declaration to maintain models, sales offices, and signs pursuant to section 76-852, if he or she is not an affiliate of a declarant, may not exercise any other special declarant rights; and is not subject to any liability or obligation as a declarant, except the obligation to provide a public offering statement; and any liability arising as a result thereof.

(4) A successor to all special declarant rights held by his or her transferor who is not an affiliate of that declarant and who succeeded to those rights pursuant to a deed in lieu of foreclosure or a judgment or instrument conveying title to units under subsection (c) of this section; may declare his or her intention in a recorded instrument to hold those rights solely for transfer to another person. Thereafter, until transferring all special declarant rights to any person acquiring title to any unit owned by the successor; or until recording an instrument permitting exercise of all those rights, such successor may not exercise any of those rights other than a right held by his or her transferor to control the executive board in accordance with the provisions of subsection (d) of section 76-861 for the duration of any period of declarant control, and any attempted exercise of those rights is void. So long as a successor declarant may not exercise special declarant rights under this subsection, he or she is not subject to any liability or obligation as a declarant other than liability for his or her acts and omissions under subsection (d) of section 76-861.

(f) Nothing in this section subjects any successor to a special declarant right to any claims against or other obligations of a transferor declarant, other than claims and obligations arising under sections 76-825 to 76-894 or the declaration.

Sec. 9. That section 76-863, Revised Statutes Supplement, 1983, be amended to read as follows:

76-863. If entered into before the executive board elected by the unit owners pursuant to subsection (f) of section 76-861 takes office, (i) any management

contract, service contract, employment contract, or lease of recreational or parking areas ~~of~~ or facilities or (ii) any other contract or lease between the association and a declarant or an affiliate of a declarant may be terminated without penalty at any time after the executive board elected by the unit owners pursuant to subsection (f) of section 76-861 takes office upon not less than one hundred eighty days' notice to the other party. This section does not apply to any lease the termination of which would terminate the condominium or reduce its size, unless the real estate subject to that lease was included in the condominium for the purpose of avoiding the right of the association to terminate a lease under this section. This section shall not apply to any lease of a roadway or amenity for the mutual benefit of any phase or condominium regime easements or licenses for the benefit of other property.

Sec. 10. That section 76-866, Revised Statutes Supplement, 1983, be amended to read as follows:

76-866. A meeting of the association must be held at least once each year. Special meetings of the association may be called by the president, a majority of the executive board, or by unit owners having twenty per cent, or any lower percentage specified in the bylaws, of the votes in the association. Not less than ten nor more than ~~sixty~~ fifty days in advance of any meeting, the secretary or other officer specified in the bylaws shall cause notice to be hand-delivered or sent postage prepaid by United States mail to the mailing address of each unit or to any other mailing address designated in writing by the unit owner. The notice of any meeting must state the time and place of the meeting and the items on the agenda, including the general nature of any proposed amendment to the declaration or bylaws, any budget changes, and any proposal to remove a director or officer.

Sec. 11. That section 76-870, Revised Statutes Supplement, 1983, be amended to read as follows:

76-870. (a) Portions of the common elements may be conveyed or subjected to a security interest by the association if persons entitled to cast at least eighty per cent of the votes in the association, including eighty per cent of the votes allocated to units not owned by a declarant, or any larger percentage the declaration specifies, agree to that action; but all the owners of units to which any limited common element is allocated must agree in order to convey that limited common element or subject it to a security interest. The declaration may specify a smaller percentage only if all of the units are restricted exclusively to nonresidential uses. Proceeds of the sale are an asset of the association.

(b) An agreement to convey common elements or subject them to a security interest must be evidenced by the execution of an agreement, or ratifications thereof,

in the same manner as a deed, by the requisite number of unit owners. The agreement must specify a date after which the agreement will be void unless recorded before that date. The agreement and all ratifications thereof must be recorded in every county in which a portion of the condominium is situated, and is effective only upon recordation.

(c) The association, on behalf of the unit owners, may contract to convey common elements, or subject them to a security interest, but the contract is not enforceable against the association until approved pursuant to subsections (a) and (b) of this section. Thereafter, the association has all powers necessary and appropriate to effect the conveyance or encumbrance, including the power to execute deeds or other instruments.

(d) Any purported conveyance, encumbrance, judicial sale, or other voluntary transfer of common elements, unless made pursuant to this section, is void.

(e) A conveyance or encumbrance of common elements pursuant to this section does not deprive any unit of its rights of access and support.

(f) Unless the declaration otherwise provides, a conveyance or encumbrance of common elements pursuant to this section does not affect the priority or of validity of preexisting encumbrances.

Sec. 12. That section 76-874, Revised Statutes Supplement, 1983, be amended to read as follows:

76-874. (a) The association has a lien on a unit for any assessment levied against that unit or fines imposed against its unit owner from the time the assessment or fine becomes due and a notice containing the dollar amount of such lien is recorded in the office where mortgages are recorded. The association's lien may be foreclosed in like manner as a mortgage on real estate but the association shall give reasonable notice of its action to all lienholders of the unit whose interest would be affected. Unless the declaration otherwise provides, fees, charges, late charges, fines, and interest charged pursuant to subdivisions (a)(10), (a)(11), and (a)(12) of section 76-860 are enforceable as assessments under this section. If an assessment is payable in installments, the full amount of the assessment may be ~~is~~ a lien from the time the first installment thereof becomes due.

(b) A lien under this section is prior to all other liens and encumbrances on a unit except (i) liens and encumbrances recorded before the recordation of the declaration, (ii) a first mortgage or deed of trust on the unit recorded before the date on which the assessment sought to be enforced became delinquent, and (iii) liens for real estate taxes and other governmental assessments or charges against the unit. The lien under this section is not subject to the homestead exemption pursuant to section 40-101.

(c) Unless the declaration otherwise provides, if two or more associations have liens for assessments created at any time on the same real estate, those liens have equal priority.

(d) A lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within three years after the full amount of the assessments becomes due.

(e) This section does not prohibit actions to recover sums for which subsection (a) of this section creates a lien or prohibit an association from taking a deed in lieu of foreclosure.

(f) A judgment or decree in any action brought under this section must include costs and reasonable attorney's fees for the prevailing party.

(g) The association upon written request shall furnish to a unit owner a recordable statement setting forth the amount of unpaid assessments against his or her unit. The statement must be furnished within ten business days after receipt of the request and is binding on the association, the executive board, and every unit owner.

Sec. 13. That section 76-878, Revised Statutes Supplement, 1983, be amended to read as follows:

76-878. (a) Sections 76-878 to 76-894 apply to all units subject to sections 76-825 to 76-894, except as provided in subsection (b) of this section or as modified or waived by agreement of purchasers of units in a condominium in which all units are restricted to nonresidential use.

(b) Neither a public offering statement nor a resale ~~statement certificate~~ need be prepared or delivered in the case of:

(1) a gratuitous or testamentary disposition of a unit;

(2) a disposition pursuant to court order;

(3) a disposition by a government or governmental agency;

(4) a disposition by foreclosure or deed in lieu of foreclosure;

(5) a disposition to a person in the business of selling real estate who intends to offer those units to a purchaser;

(6) a disposition that may be canceled at any time and for any reason by the purchaser without penalty;

(7) a condominium composed of not more than twenty-five units which is not subject to any development rights to add units, and no power is reserved to a declarant to make the condominium part of a larger condominium, group of condominiums, or other real estate; or

(8) any condominium composed of units not intended for residential use.

Sec. 14. That section 76-879, Revised Statutes

Supplement, 1983, be amended to read as follows:

76-879. (a) Except as provided in section 76-878 or subsection (b) of this section, a declarant, prior to the offering of any interest in a unit to the public, shall prepare a public offering statement conforming to the requirements of sections 76-825 to 76-894.

(b) A declarant may transfer responsibility for preparation of all or a part of the public offering statement to a successor declarant pursuant to section 76-862 or to a person in the business of selling real estate who intends to offer units in the condominium. In the event of any such transfer, the transferor shall provide the transferee with any information necessary to enable the transferee to fulfill the requirements of subsection (a) of this section.

(c) Any declarant or other person in the business of selling real estate who offers a unit to a purchaser shall deliver a public offering statement in the manner prescribed in subsection (a) of section 76-883. The person responsible for preparing all or a part of the public offering statement is liable for any false or any material, intentional, or materially false or intentionally misleading statement set forth therein or any failure to make disclosures required by sections 76-825 to 76-894 with respect to that portion of the public offering statement which he or she prepared. If a declarant did not prepare any part of a public offering statement that he or she delivers, he or she is not liable for its contents unless he or she had actual knowledge of the statement or omission or, in the exercise of reasonable care, should have known of the statement or omission. Nothing in sections 76-825 to 76-894 this subsection shall prohibit a condominium purchaser from waiving the preparation and delivery of a public offering statement, with respect to the unit being resold.

(d) If a unit is part of a condominium and is part of any other real estate regime in connection with the sale of which the delivery of a public offering statement is required under the laws of this state, a single public offering statement conforming to the requirements of sections 76-825 to 76-894 as those requirements relate to all real estate regimes in which the unit is located may be prepared and delivered in lieu of providing two or more public offering statements.

Sec. 15. That section 76-880, Revised Statutes Supplement, 1983, be amended to read as follows:

76-880. (a) Except as provided in subsection (b) of this section a A public offering statement must contain or fully and accurately disclose:

- (1) the name and principal address of the declarant and of the condominium;
- (2) a general description of the condominium and

the amenities the declarant anticipates including, to the extent possible, the types, and number, and the declarant's anticipated planned schedule of commencement and the anticipated completion, date;

(3) the anticipated number of units in the condominium;

(4) a statement that copies of the declaration other than the plats and plans and any other recorded covenants, conditions, restrictions and reservations affecting the condominium, the bylaws, and any rules or regulations of the association, and copies of any contracts or leases that will or may be subject to cancellation by the association under section 76-863 that are available for inspection at the principal office of the declarant or association;

(5) the amount of the current monthly assessment and the current operating budget, if any;

(6) a statement that the declarant may be paying expenses that may later be paid by the association;

(7) any initial or special fee due from the purchaser at closing;

(8) a statement that a copy of any insurance policy provided for the benefit of the unit owners is available from the association upon request; and

(9) any current fees or charges to be paid by unit owners for the use of the common elements and other facilities related to the condominium.

(b) If a declarant fails to provide a public offering statement to a purchaser before conveying a unit, such purchaser may recover any actual damages sustained.

~~(c) If a condominium composed of not more than twenty-five units is not subject to any development rights or if such units are not intended for residential use, and no power is reserved to a declarant to make the condominium part of a larger condominium, group of condominiums, or other real estate, no public offering statement need be prepared.~~

~~(c) (d)~~ A declarant shall amend the public offering statement by an addendum not later than each January 1 it is in use, to report any material change in the information required by this section.

Sec. 16. That section 76-881, Revised Statutes Supplement, 1983, be amended to read as follows:

76-881. (a) The public offering statement of a condominium containing any conversion building must contain, in addition to the information required by section 76-880:

(1) a brief statement by an independent a registered architect or engineer, describing the apparent condition of the structural components and mechanical and electrical installations material to the use and enjoyment of the building;

(2) a statement by the declarant of the age of

each item reported on in paragraph (1) of this subsection or a statement that no representations are made in that regard; and

(3) a list of any outstanding notices of uncured violations of building codes ~~code~~ or other municipal regulations of which the declarant is actually aware.

(b) This section applies only to buildings containing units that may be occupied for residential use.

Sec. 17. That section 76-883, Revised Statutes Supplement, 1983, be amended to read as follows:

76-883. ~~(a)~~ A person required to deliver a public offering statement pursuant to subsection (c) of section 76-879 shall provide a purchaser of a unit with a copy of the public offering statement and all amendments thereto before conveyance of that unit. If a declarant fails to provide a public offering statement to a purchaser before conveying a unit, such purchaser may recover from the declarant any actual damages.

~~(b) If a purchaser elects to cancel a contract pursuant to subsection (a) of this section, he or she may do so by hand-delivering notice thereof to the offeror or by mailing notice thereof by prepaid United States mail.~~

Sec. 18. That section 76-884, Revised Statutes Supplement, 1983, be amended to read as follows:

76-884. (a) Except in the case of a sale where delivery of a public offering statement is required, or unless exempt under subsection (b) of section 76-878, the unit owner and any other person in the business of selling real estate who offers a unit to a purchaser any real estate broker or agent shall furnish to a purchaser before conveyance, a copy of the declaration other than the plats and plans, the bylaws, the rules or regulations of the association, and the following information:

(1) a statement setting forth the amount of the monthly common expense assessment and any unpaid common expense or special assessment currently due and payable from the selling unit owner;

(2) any other fees payable by unit owners;

(3) the most recent regularly prepared balance sheet and income and expense statement, if any, of the association;

(4) the current operating budget of the association, if any;

(5) a statement that a copy of any insurance policy provided for the benefit of unit owners is available from the association upon request; and

(6) a statement of the remaining term of any leasehold estate affecting the condominium and the provisions governing any extension or renewal thereof.

(b) The association, within ten days after a request by a unit owner, shall furnish in writing the information necessary to enable the unit owner to comply with this section. A unit owner providing information

pursuant to subsection (a) of this section is not liable to the purchaser for any erroneous information provided by the association and included in the certificate.

(c) A purchaser is not liable for any unpaid assessment or fee greater than the amount set forth in the information prepared by the association. A The unit owner or any other person in the business of selling real estate who offers a unit to a purchaser is not liable to a purchaser for the failure or delay of the association to provide such information in a timely manner. 7 but the purchaser contract is voidable by the purchaser until such information has been provided and for five days thereafter or until conveyance, whichever first occurs-

Sec. 19. That section 76-887, Revised Statutes Supplement, 1983, be amended to read as follows:

76-887. Express warranties made by any seller to a purchaser of a unit, if relied upon by the purchaser, are created as follows:

(a) any written affirmation of fact or written promise which relates to the unit, its use, or rights appurtenant thereto, area improvements to the condominium that would directly benefit the unit, or the right to use or have the benefit of facilities not located in the condominium, creates an express warranty that the unit and related rights and uses will conform to the affirmation or promise;

(b) any written description of the physical characteristics of the condominium or model of amenities, including plans and specifications of or for improvements, creates an express warranty that the condominium will conform to the model or description;

(c) any written description of the quantity or extent of the real estate comprising the condominium, included in the plats or surveys, creates an express warranty that the condominium will conform to the description, subject to customary tolerances; and

(d) a provision that a buyer may put a unit only to a specified use is an express warranty that the specified use is lawful at the time of ~~contracting~~ conveyance.

A statement purporting to be merely an opinion or commendation of the real estate or its value does not create a warranty.

Sec. 20. That section 76-888, Revised Statutes Supplement, 1983, be amended to read as follows:

76-888. (a) A declarant and any person in the business of selling real estate for his or her own account warrants that a unit will be in at least as good condition at the earlier of the time of the conveyance or delivery of possession as it was at the time of contracting, reasonable wear and tear excepted.

(b) Warranties imposed by this section may be excluded or modified as specified in section 76-889.

(e) For purposes of this section, improvements made or contracted for by an affiliate of a declarant as defined in subsection (i) of section 76-827 are made or contracted for by the declarant.

Sec. 21. That section 76-890, Revised Statutes Supplement, 1983, be amended to read as follows:

76-890. (a) A judicial proceeding for breach of any obligation arising under section 76-887 or 76-888 must be commenced within four years after the cause of action accrues, but the parties may agree to reduce the period of limitation to not less than two years. With respect to a unit that may be occupied for residential use, an agreement to reduce the period of limitation must be evidenced by an instrument executed by the purchaser.

(b) Subject to subsection (c) of this section, a cause of action for breach of warranty of quality, regardless of the purchaser's lack of knowledge of the breach, accrues:

(1) as to a unit, at the time the purchaser to whom the warranty is first made enters into possession if a possessory interest was conveyed or at the time of acceptance of the instrument of conveyance if a nonpossessory interest was conveyed; and

(2) as to each common element, at the time the common element is completed or, if later, (i) as to a common element that may be added to the condominium or portion thereof, at the time the first unit therein is conveyed to a bona fide purchaser, or (ii) as to a common element within any other portion of the condominium, at the time the first unit in the condominium is conveyed to a bona fide purchaser.

(c) If a warranty of quality explicitly extends to future performance or duration of any improvement or component of the condominium, the cause of action accrues at the time the breach is discovered or at the end of the period for which the warranty explicitly extends, whichever is earlier.

Sec. 22. That section 76-891, Revised Statutes Supplement, 1983, be amended to read as follows:

76-891. If a declarant or any other person subject to sections 76-825 to 76-894 fails in ~~all~~ a material ~~respects~~ respect to comply with any provision hereof or any provision of the declaration or bylaws, any person adversely affected by the failure to comply has a claim for ~~appropriate relief~~ actual damages.

Sec. 23. That section 76-902, Revised Statutes Supplement, 1983, be amended to read as follows:

76-902. The tax imposed by section 76-901 shall not apply to:

(1) Deeds recorded prior to November 18, 1965;

(2) Deeds to property transferred by or to the United States of America, the State of Nebraska, or any of their instrumentalities, agencies, or subdivisions;

(3) Deeds which secure or release a debt or other obligation; ~~Deeds given as consideration for the satisfaction of a debt or other obligation are not entitled to this exemption;~~

(4) Deeds which, without additional consideration, confirm, correct, modify, or supplement a deed previously recorded but which do not extend or limit existing title or interest;

(5) Deeds between husband and wife, or parent and child, without actual consideration therefor, and deeds to or from a family corporation or partnership where when all the shares of stock of the corporation or interest in the partnership are owned by members of a family, or a trust created for the benefit of a member of that family, related to one another within the fourth degree of kindred according to the rules of civil law, and their spouses, for no consideration other than the issuance of stock of the corporation or interest in the partnership to such family members or the return of the stock to the corporation in partial or complete liquidation of the corporation or deeds in dissolution of the interest in the partnership. In order to qualify for the exemption for family corporations or partnerships, the property must be transferred in the name of the corporation or partnership and not in the name of the individual shareholders or partners;

(6) Tax deeds;

(7) Deeds of partition;

(8) Deeds made pursuant to mergers, consolidations, sales, or transfers of the assets of corporations pursuant to plans of merger or consolidation filed with the office of Secretary of State. A copy of such plan filed with the Secretary of State shall be presented to the register of deeds before such exemption shall be granted;

(9) Deeds made by a subsidiary corporation to its parent corporation for no consideration other than the cancellation or surrender of the subsidiary's stock;

(10) Cemetery deeds;

(11) Mineral deeds;

(12) Deeds executed pursuant to court decrees;

(13) Land contracts;

(14) Deeds which release a reversionary interest, a condition subsequent or precedent, a restriction, or any other contingent interest;

(15) Deeds of distribution executed by a personal representative conveying to devisees or heirs property passing by testate or intestate succession;

(16) Deeds transferring property located within the boundaries of an Indian reservation where the grantor or grantee is a reservation Indian;

(17) Deeds transferring property into a trust where the transfer of the same property would be exempt if

the transfer was made directly from the grantor to all of the possible beneficiaries, whether or not such beneficiaries are contingent or specifically named. No such exemption shall be granted unless the register of deeds is presented with a copy of the trust instrument that clearly indicates the grantor and all possible beneficiaries;

(18) Deeds transferring property from a trustee to a beneficiary of a trust; or

(19) Leases.

Sec. 24. That original sections 31-735, 76-825, 76-838, 76-849, 76-854, 76-857, 76-860, 76-862, 76-863, 76-866, 76-870, 76-874, 76-878 to 76-881, 76-883, 76-884, 76-887, 76-888, 76-890, 76-891, and 76-902, Revised Statutes Supplement, 1983, and also section 76-889, Revised Statutes Supplement, 1983, are repealed.