

LEGISLATIVE BILL 152

Approved by the Governor March 5, 2024

Introduced by Dover, 19; Wayne, 13.

A BILL FOR AN ACT relating to the Membership Campground Act; to amend sections 76-2102, 76-2104, 76-2106, 76-2110, and 76-2117, Reissue Revised Statutes of Nebraska; to eliminate registration requirements and a penalty under the Membership Campground Act; to harmonize provisions; to repeal the original sections; and to outright repeal sections 76-2103, 76-2105, 76-2107, 76-2108, 76-2109, 76-2114, 76-2115, and 76-2116, Reissue Revised Statutes of Nebraska.

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

Section 1. Section 76-2102, Reissue Revised Statutes of Nebraska, is amended to read:

76-2102 For purposes of the Membership Campground Act:

(1) Advertisement means ~~shall mean~~ an attempt by publication, dissemination, solicitation, or circulation to induce, directly or indirectly, any person to enter into an obligation or acquire a title or interest in a membership camping contract;

(2) Affiliate means ~~shall mean~~ any person who, directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with the person specified;

~~(3) Blanket encumbrance shall mean any mortgage, deed of trust, option to purchase, vendor's lien or interest under a contract or agreement of sale, judgment lien, federal or state tax lien, or other material lien or encumbrance which secures or evidences the obligation to pay money or to sell or convey all or part of a campground located in this state, made available to purchasers by the membership camping operator, and which authorizes, permits, or requires the foreclosure or other disposition of the campground. Blanket encumbrance shall include the lessor's interest in a lease of all or part of a campground which is located in this state and which is made available to purchasers by a membership camping operator. Blanket encumbrance shall not include a lien for taxes or assessments levied by a public body which are not yet due and payable;~~

(3) (4) Business day means ~~shall mean~~ any day except Saturday, Sunday, or a legal holiday;

(4) (5) Campground means ~~shall mean~~ real property made available to persons for camping, whether by tent, trailer, camper, cabin, recreational vehicle, or similar device, and includes ~~shall include~~ the outdoor recreational facilities located on the real property. Campground does ~~shall~~ not include a mobile home park as defined in section 76-1464;

(5) (6) Campsite means ~~shall mean~~ a space:

(a) Designed and promoted for the purpose of locating a trailer, tent, tent trailer, recreational vehicle, pickup camper, or other similar device used for camping; and

(b) With no permanent dwelling on it;

(6) (7) Commission means ~~shall mean~~ the State Real Estate Commission;

(7) (8) Controlling persons of a membership camping operator means ~~shall mean~~ each director and officer and each owner of twenty-five percent or more of the stock of the operator, if the operator is a corporation, each general partner and each owner of twenty-five percent or more of the partnership or other interests, if the operator is a general or limited partnership or other person doing business as a membership camping operator, and each member owning twenty-five percent or more of the limited liability company, if the operator is a limited liability company;

(8) (9) Facilities means ~~shall mean~~ any of the following amenities provided and located on the campground: Campsites; rental trailers; swimming pools; sport courts; recreation buildings and trading posts; or grocery stores;

(9) (10) Membership camping contract means ~~shall mean~~ an agreement offered or sold within this state evidencing a purchaser's right to use a campground of a membership camping operator for more than thirty days during the term of the agreement;

(10) (11) Membership camping operator or operator means ~~shall mean~~ any person, other than one who is tax exempt under section 501(c)(3) of the Internal Revenue Code, who owns or operates a campground and offers or sells membership camping contracts paid for by a fee or periodic payments. Membership camping operator does ~~shall~~ not include the operator of a mobile home park as defined in section 76-1464;

(11) (12) Offer means ~~shall mean~~ an inducement, solicitation, or attempt to encourage a person to acquire a membership camping contract;

(12) (13) Person means ~~shall mean~~ any individual, partnership, limited liability company, firm, corporation, or association;

(13) (14) Purchaser means ~~shall mean~~ a person who enters into a membership camping contract with a membership camping operator and obtains the right to use the campground owned or operated by the membership camping operator;

(14) (15) Sale or sell means ~~shall mean~~ entering into or other disposition of a membership camping contract for value. For purposes of this subdivision,

value ~~does shall~~ not include a fee to offset the reasonable costs of a transfer of a membership camping contract; and

(15) ~~(16)~~ Salesperson means shall mean any individual, other than a membership camping operator, who is engaged in obtaining commitments of persons to enter into membership camping contracts by making a direct sales presentation to the person but does shall not include any individual engaged in the referral of persons without making any representations about the camping program or a direct sales presentation to such persons.

Sec. 2. Section 76-2104, Reissue Revised Statutes of Nebraska, is amended to read:

76-2104 No person shall, in connection with the offering, sale, or lease of an interest in a membership campground:

(1) Employ any device, scheme, or artifice to defraud;
(2) Make any untrue statement of a material fact;
(3) Fail to state a material fact necessary to make a statement clear;
(4) Issue, circulate, or publish any prospectus, circular, advertisement, printed matter, document, pamphlet, leaflet, or other literature containing an untrue statement of a material fact or that fails to state a material fact necessary to make the statements on the literature clear; or

(5) Issue, circulate, or publish any advertising matter or make any written representation unless the name of the person issuing, circulating, or publishing the matter or making the representation is clearly indicated; or

~~(6) Make any statement or representation or issue, circulate, or publish any advertising matter containing any statement that the membership campground has been in any way approved by the commission except in conjunction with a public report issued by the commission.~~

Sec. 3. Section 76-2106, Reissue Revised Statutes of Nebraska, is amended to read:

76-2106 The Membership Campground Act shall not apply to the following transactions shall be exempt from registration:

(1) The offer, sale, or transfer by any one person of not more than one membership camping contract in any twelve-month period;

(2) The offer or sale by a government, government agency, or other subdivision of government;

(3) The bona fide pledge of a membership camping contract; and

(4) Transactions subject to regulation pursuant to the Nebraska Time-Share Act.

Sec. 4. Section 76-2110, Reissue Revised Statutes of Nebraska, is amended to read:

76-2110 ~~(1) A membership camping operator subject to the registration requirements of sections 76-2103 and 76-2105 shall provide a disclosure statement to a purchaser or prospective purchaser before the person signs a membership camping contract or gives any money or thing of value for the purchase of a membership camping contract.~~

~~(2) The front cover or first page of the disclosure statement shall contain only the following in the order stated:~~

~~(a) Membership camping operator's disclosure statement printed at the top in boldface type of a minimum size of ten points;~~

~~(b) The name and principal business address of the membership camping operator and any material affiliate of the membership camping operator;~~

~~(c) A statement that the membership camping operator is in the business of offering for sale membership camping contracts;~~

~~(d) A statement printed in double-spaced, boldface type of a minimum size of ten points which reads as follows:~~

~~THIS DISCLOSURE STATEMENT CONTAINS IMPORTANT MATTERS TO BE CONSIDERED IN THE EXECUTION OF A MEMBERSHIP CAMPING CONTRACT. THE MEMBERSHIP CAMPING OPERATOR IS REQUIRED BY LAW TO DELIVER TO YOU A COPY OF THIS DISCLOSURE STATEMENT BEFORE YOU EXECUTE A MEMBERSHIP CAMPING CONTRACT. THE STATEMENTS CONTAINED IN THIS DOCUMENT ARE ONLY SUMMARY IN NATURE. YOU, AS A PROSPECTIVE PURCHASER, SHOULD REVIEW ALL REFERENCES, EXHIBITS, CONTRACT DOCUMENTS, AND SALES MATERIALS. YOU SHOULD NOT RELY UPON ANY ORAL REPRESENTATIONS AS BEING CORRECT. ANY ORAL MISREPRESENTATION SHALL BE A VIOLATION OF THE MEMBERSHIP CAMPGROUND ACT. REFER TO THIS DOCUMENT AND TO THE ACCOMPANYING EXHIBITS FOR CORRECT REPRESENTATIONS. THE MEMBERSHIP CAMPING OPERATOR IS PROHIBITED FROM MAKING ANY REPRESENTATIONS WHICH CONFLICT WITH THOSE CONTAINED IN THE CONTRACT AND THIS DISCLOSURE STATEMENT; and~~

~~(e) A statement printed in double-spaced, boldface type of a minimum size of ten points which reads as follows:~~

~~IF YOU EXECUTE A MEMBERSHIP CAMPING CONTRACT, YOU HAVE THE UNQUALIFIED RIGHT TO CANCEL THE CONTRACT. THIS RIGHT OF CANCELLATION CANNOT BE WAIVED. THE RIGHT TO CANCEL EXPIRES AT MIDNIGHT ON THE THIRD BUSINESS DAY FOLLOWING THE DATE ON WHICH THE CONTRACT WAS EXECUTED OR THE DATE OF RECEIPT OF THIS DISCLOSURE STATEMENT, WHICHEVER EVENT OCCURS LATER. TO CANCEL THE MEMBERSHIP CAMPING CONTRACT, YOU, AS THE PURCHASER, MUST HAND DELIVER OR MAIL NOTICE OF YOUR INTENT TO CANCEL TO THE MEMBERSHIP CAMPING OPERATOR AT THE ADDRESS SHOWN IN THE MEMBERSHIP CAMPING CONTRACT, POSTAGE PREPAID. THE MEMBERSHIP CAMPING OPERATOR IS REQUIRED BY LAW TO RETURN ALL MONEY PAID BY YOU IN CONNECTION WITH THE EXECUTION OF THE MEMBERSHIP CAMPING CONTRACT UPON YOUR PROPER AND TIMELY CANCELLATION OF THE CONTRACT AND RETURN OF ALL MEMBERSHIP AND RECIPROCAL-USE PROGRAM MATERIALS FURNISHED AT THE TIME OF PURCHASE.~~

~~(3) The following pages of the disclosure statement shall contain all of the following in the order stated:~~

~~(a) The name, principal occupation, and address of every director,~~

partner, limited liability company member, or controlling person of the membership camping operator;

(b) A description of the nature of the purchaser's right or license to use the campground and the facilities which are to be available for use by purchasers;

(c) A description of the membership camping operator's experience in the membership camping business, including the length of time the operator has been in the membership camping business;

(d) The location of each of the campgrounds which is to be available for use by purchasers and a description of the facilities at each campground which are currently available for use by purchasers. Facilities which are planned, incomplete, or not yet available for use shall be clearly identified as incomplete or unavailable. A description of any facilities that are or will be available to nonpurchasers and a projected date of completion shall also be provided. The description shall include, but not be limited to, the number of campsites in each campground and campsites in each campground with full or partial hookups, swimming pools, tennis courts, recreation buildings, restrooms and showers, laundry rooms, trading posts, and grocery stores;

(e) The fees and charges that purchasers are or may be required to pay for the use of the campground or any facilities;

(f) Any initial, additional, or special fee due from the purchaser, together with a description of the purpose and method of calculating the fee;

(g) The extent to which financial arrangements, if any, have been provided for the completion of facilities, together with a statement of the membership camping operator's obligation to complete planned facilities. The statement shall include a description of any restrictions or limitations on the membership camping operator's obligation to begin or to complete the facilities;

(h) The names of the managing entity, if any, and the significant terms of any management contract, including, but not limited to, the circumstances under which the membership camping operator may terminate the management contract;

(i) A statement, whether by way of supplement or otherwise, of the rules, regulations, restrictions, or covenants regulating the purchaser's use of the campground and the facilities which are to be available for use by the purchaser, including a statement of whether and how the rules, regulations, restrictions, or covenants may be changed;

(j) A statement of the policies covering the availability of campsites, the availability of reservations, and the conditions under which they are made;

(k) A statement of any grounds for forfeiture of a purchaser's membership camping contract;

(l) A statement of whether the membership camping operator has the right to withdraw permanently from use all or any portion of any campground devoted to membership camping and, if so, the conditions under which the withdrawal shall be permitted;

(m) A statement describing the material terms and conditions of any reciprocal program to be available to the purchaser, including a statement concerning whether the purchaser's participation in any reciprocal program is dependent on the continued affiliation of the membership camping operator with that reciprocal program, whether additional costs may be required to use reciprocal facilities, and whether the membership camping operator reserves the right to terminate such affiliation;

(n) As to all memberships offered by the membership camping operator at each campground, all of the following:

(i) The form of membership offered;

(ii) The types of duration of membership along with a summary of the major privileges, restrictions, and limitations applicable to each type;

(iii) Provisions that have been made for public utilities at each campsite, including water, electricity, telephone, and sewage facilities; and

(iv) The number of memberships to be sold to that campground; and

(o) A statement of the assistance, if any, that the membership camping operator will provide to the purchaser in the resale of membership camping contracts and a detailed description of how any such resale program is operated; and

~~(p) The following statement printed in double-spaced, boldface type of a minimum size of ten points:~~

~~REGISTRATION OF THE MEMBERSHIP CAMPING OPERATOR WITH THE STATE REAL ESTATE COMMISSION SHALL NOT CONSTITUTE AN APPROVAL OR ENDORSEMENT BY THE COMMISSION OF THE MEMBERSHIP CAMPING OPERATOR, THE MEMBERSHIP CAMPING CONTRACT, OR THE CAMPGROUND.~~

~~The membership camping operator shall promptly amend the disclosure statement to reflect any material change and shall promptly file any such amendments with the commission.~~

Sec. 5. Section 76-2117, Reissue Revised Statutes of Nebraska, is amended to read:

76-2117 (1) Any advertisement, communication, or sales literature relating to membership camping contracts, including oral statements by a salesperson or any other person, shall not contain:

(a) Any untrue statement of material fact or any omission of material fact which would make the statements misleading in light of the circumstances under which the statements were made;

(b) Any statement or representation that the membership camping contracts are offered without risk or that loss is impossible; or

(c) Any statement or representation or pictorial presentation of proposed

improvements or nonexistent scenes without clearly indicating that the improvements are proposed and the scenes do not exist.

(2) A person shall not by any means, as part of an advertising program, offer any item of value as an inducement to the recipient to visit a location, attend a sales presentation, or contact a salesperson unless the person clearly and conspicuously discloses in writing in the offer in readily understandable language each of the following:

(a) The name and street address of the owner of the real or personal property or the provider of the services which are the subject of such visit, sales presentation, or contact with a salesperson;

(b) A general description of the business of the owner or provider identified and the purpose of any requested visit, sales presentation, or contact with a salesperson, including a general description of the facilities or proposed facilities or services which are the subject of the sales presentation;

(c) A statement of the odds, in arabic numerals, of receiving each item offered;

(d) All restrictions, qualifications, and other conditions that shall be satisfied before the recipient is entitled to receive the item, including all of the following:

(i) Any deadline by which the recipient shall visit the location, attend the sales presentation, or contact the salesperson in order to receive the item;

(ii) The approximate duration of any visit and sales presentation; and

(iii) Any other conditions, such as a minimum age qualification, a financial qualification, or a requirement that if the recipient is married both ~~spouses husband and wife~~ be present in order to receive the item;

(e) A statement that the owner or provider reserves the right to provide a rain check or a substitute or like item if these rights are reserved;

(f) A statement that a recipient who receives an offered item may request and will receive evidence showing that the item provided matches the item randomly or otherwise selected for distribution to that recipient; and

(g) All other rules, terms, and conditions of the offer, plan, or program.

(3) A person, ~~a making an offer subject to registration under sections 76-2103 and 76-2105~~ or the person's employee, or an agent of the person shall not offer any item relating to a membership campground contract if the person, employee, or agent knows or has reason to know that the offered item will not be available in a sufficient quantity based on the reasonably anticipated response to the offer.

(4) A person, ~~a making an offer subject to registration under sections 76-2103 and 76-2105~~ or the person's employee, or an agent of the person shall not fail to provide any offered item relating to a membership campground contract which a recipient is entitled to receive, unless the failure to provide the item is due to a higher than reasonably anticipated response to the offer which caused the item to be unavailable and the offer discloses the reservation of a right to provide a rain check or a like or substitute item if the offered item is unavailable.

(5) If the person, person's employee, or agent of the person making an offer ~~subject to registration under sections 76-2103 and 76-2105~~ is unable to provide an offered item relating to a membership campground contract because of limitations of supply not reasonably foreseeable or controllable by the person, employee, or agent making the offer, the person, employee, or agent making the offer shall inform the recipient of the recipient's right to receive a rain check for the item offered or receive a like or substitute item of equal or greater value at no additional cost or obligation to the recipient.

(6) If a rain check is provided, the person, employee, or agent making an offer relating to a membership campground contract ~~subject to registration under sections 76-2103 and 76-2105~~, within a reasonable time, and in any event not later than thirty calendar days after the rain check is issued, shall deliver the agreed item to the recipient's address without additional cost or obligation to the recipient unless the item for which the rain check is provided remains unavailable because of limitations of supply not reasonably foreseeable or controllable by the person, employee, or agent making the offer. If the item is unavailable for such reasons, the person, employee, or agent, not later than thirty days after the expiration of the thirty-day period, shall deliver a like or substitute item of equal or greater retail value to the recipient.

(7) On the request of a recipient who has received or claims a right to receive any offered item, the person, person's employee, or agent of the person making an offer relating to a membership campground contract ~~subject to registration under sections 76-2103 and 76-2105~~ shall furnish to the recipient sufficient evidence showing that the item provided matches the item randomly or otherwise selected for distribution to that recipient.

(8) A person, person's employee, or agent of the person making an offer relating to a membership campground contract ~~subject to registration under sections 76-2103 and 76-2105~~ or the person's employee or agent shall not do any of the following:

(a) Misrepresent the size, quantity, identity, or quality of any prize, gift, money, or other item of value offered;

(b) Misrepresent in any manner the odds of receiving a particular gift, prize, amount of money, or other item of value;

(c) Represent directly or by implication that the number of participants has been significantly limited or that any person has been selected to receive

a particular prize, gift, money, or other item of value, unless the representation is true;

(d) Label any offer a notice of termination or notice of cancellation; and

(e) Misrepresent in any manner the offer, plan, or program.

Sec. 6. Original sections 76-2102, 76-2104, 76-2106, 76-2110, and 76-2117, Reissue Revised Statutes of Nebraska, are repealed.

Sec. 7. The following sections are outright repealed: Sections 76-2103, 76-2105, 76-2107, 76-2108, 76-2109, 76-2114, 76-2115, and 76-2116, Reissue Revised Statutes of Nebraska.