

ORDINANCE NO. 14,146

AN ORDINANCE to amend the Municipal Code of the City of Des Moines, Iowa, 2000, adopted by Ordinance No. 13,827, passed June 5, 2000, by adding a new Division 7 to Article II, Building Code, to Chapter 26, Buildings and Building Regulations, relating to real estate installment contract sales inspection.

Be It Ordained by the City Council of the City of Des Moines, Iowa:

Section 1. That the Municipal Code of the City of Des Moines, Iowa, 2000, adopted by Ordinance No. 13,827, passed June 5, 2000, is hereby amended by adding a new Division 7 to Article II, Building Code, to Chapter 26, Buildings and Building Regulations, relating to real estate installment contract sales inspection, as follows:

Division 7. Real Estate Installment

Contract Sales Inspection

Sec. 26-240. Definitions.

For the purpose of this section, the following definitions shall apply:

City shall mean the City of Des Moines, Iowa.

Contract shall mean a real estate installment purchase agreement for the intended transfer of real estate between a buyer and seller.

Contract buyer shall mean the person or entity purchasing or acquiring the real property.

Contract seller shall mean the person or entity offering or transferring the real property for sale, or anyone acting on behalf of the contract seller.

Director shall mean the community development director of the city or his/her designee.

Inspection shall mean a physical examination of the real estate, which shall include, but not be limited to, a review of the structural components, exterior, roofing, plumbing, heating, cooling, electrical, insulation and ventilation, interior, fireplace and solid fuel burning appliances of the real estate.

Inspection report shall mean a report in a form approved by the neighborhood inspection division of the city and prepared by an inspector to describe an inspection.

Inspector shall mean the individual who performs the examination of the real estate.

Person shall mean an individual, a corporation, a limited liability company, a government or governmental subdivision or agency, a business trust, an estate, a trust, a partnership or an association, or any other legal entity, as defined in section 1-2 of this Code.

Transfer shall mean the conveyance by sale, exchange, contract or by any other method by which real property is purchased. For the purpose of this ordinance, transfer shall not mean the conveyance of real estate interests as detailed under Iowa Code Section 558A.1 (4) (a, b, c, d, e, f, g and h).

Sec. 26-241. Inspector certification and disqualification.

1. All inspectors who perform the inspections of real estate pursuant to a contract shall be a full or regular member in good standing of an eligible professional association for home inspectors. An eligible

professional association must have the following attributes:

- a. Not-for-profit status;
- b. Standards for Practice for its members;
- c. Code of Ethics for its members;
- d. Requires examinations for membership;
- e. Requires annual continuing education.

No real estate inspector shall be employed by an entity that is owned by a contract seller or its affiliate. The term affiliate means a parent, brother or sister entity (meaning its parent entity has an ownership interest in each entity or shares a common manager), or a subsidiary entity or any other entity in which the contract seller, its parent, brother, sister or subsidiary entity owns five percent (5%) or more of such entity.

2. Members of professional associations who are eligible to perform inspections under this ordinance shall first obtain approval under the above standards. The community development director of the city or his/her designee shall have sole discretion to approve or deny and shall maintain a current list of inspectors in good standing.

3. The director shall have sole discretion to suspend or revoke an inspector's certification based upon any of the following:

- a. Malfeasance;

b. Neglect of duty;

c. Incapacity;

d. Disqualification, suspension, or debarment from any activity related to the construction or real estate industry by an agency of any government.

e. Offering or giving gifts or gratuities to employees of the city in violation of state law; or

f. Failure to comply with the requirements of this division.

4. If the director determines that cause exists to disqualify an inspector from performing inspections pursuant to this division for any of the reasons set forth in the previous subsection, the director shall notify the affected inspector. The notice shall set forth the reasons supporting disqualification and the proposed period for disqualification, and shall be sent to inspector by certified mail, return receipt requested.

Upon written request of the inspector filed within ten days of mailing of the notice of disqualification, the director shall schedule a hearing at which the inspector may present evidence or argument why he or she should not be disqualified. Such hearing shall be scheduled and held within ten (10) days of receipt of the written request. The director's recommendation shall be issued with thirty (30) days of the conclusion of the hearing and shall be mailed to all parties participating in the hearing. If the director's recommendation is to disqualify the inspector, the director shall set out the recommended period of disqualification, not to exceed three (3) years, and shall forward a copy thereof to the city council.

If the city council does not act upon the director's recommendation to disqualify an inspector within thirty (30) days of its receipt, the recommendation shall be considered accepted. Disqualification shall commence upon the earlier of the expiration of the thirty (30) day period or council action accepting the director's recommendation to disqualify.

Sec. 26-242. Procedures; Fee.

1. A person seeking to transfer real property by contract, or a broker, salesperson or agent acting on behalf of such person, shall obtain or update an inspection of the subject real estate not more than sixty (60) days prior to the execution of the contract.
2. The inspector shall prepare an inspection report of the physical examination of the real estate. The inspection report shall also include written certification that the inspector is a member of good standing in an eligible professional association, as detailed under section 26-241.
3. The inspection report shall be delivered to and received by the contract buyer and Neighborhood Inspection Division of the city at least fourteen (14) days prior to the execution of the contract. The inspection report may be delivered to the contract buyer by personal delivery, certified mail or by registered mail.
4. Within seven (7) days following execution of the contract, the contract seller shall file with the Neighborhood Inspection Division of the city copies of instruments transferring the real estate along with a filing fee of \$75.00.

5. The city shall have the right to inspect and reinspect any property for which an inspection is required under this division. All persons with ownership or management interests in the property shall allow inspection or reinspection upon reasonable notice by the city.

6. Any person who fails to perform an act required by this division or who commits an act prohibited by this division shall be guilty of a municipal infraction punishable by civil penalty as provided by section 1-15 of this Code.

Sec. 26-243. Ordinance not Limiting.

The responsibilities imposed under this ordinance shall not limit or abridge any duty, requirement, obligation or liability for disclosure created by another provision of law, or under contract between parties

Sec. 2. This ordinance shall be in full force and effect on January 1, 2003, from and after its passage and publication as provided by law.

FORM APPROVED:

Bruce E. Bergman, City Attorney

Preston A. Daniels, Mayor

Attest:

I, Donna V. Boetel-Baker, City Clerk of the City of Des Moines, Iowa, hereby certify that the above and foregoing is a true copy of an ordinance (Roll Call No. 02-2441), passed by the City Council of said City at a meeting held October 7, 2002 signed by the Mayor on October 7, 2002 and published as provided by law in the Business Record on October 21, 2002 Authorized by Publication Order No. 3434.

Donna V. Boetel-Baker, City Clerk