HOPKINS TSCHETTER SULZER, P.C.
Attorneys and Counselors at Law
Pavilion Tower II
2821 S. Parker Road, Suite 228
Aurora, Colorado 80014

Mark N. Tschetter
Victor L. Sulzer
Timothy S. Howell
Wes P. Wollenweber
Peter E. Muccio
Lindsay E. Jasper
Gerritt J. Koser

Philip W. Hopkins 1943-2004

Tel (303) 699-3484
Fax (720) 449-0160

Evictions Department
Tel (303) 766-8004
Fax (303) 766-1181

CARBON MONOXIDE MEMORANDUM

Date: Revised May 21, 2009

To: Firm Clients

From: Hopkins Tschetter Sulzer, P.C.

Re: Colorado Revised Statute, 38-45-101, et seq. – Carbon Monoxide Safety Act.

I. THE NEW CARBON MONOXIDE LAW.

Earlier this year, the Colorado General Assembly passed the Lofgren and Johnson Families Carbon Monoxide Safety Act (the "law"). The Colorado Governor signed the law on March 24, 2009. The new law goes into effect on July 1, 2009. The law in its entirety appears at the end of this memo.

II. OVERVIEW.

The new carbon monoxide law is poorly written. The law is even contradictory in a few instances. As a result, the law is not clear on some critical issues. Because of the law's lack of clarity, the law is not easily understood or applied to many factual situations. Because the law cannot be quickly understood, Hopkins Tschetter Sulzer strongly advises all clients to take the necessary time to carefully review this memo in its entirety, and then follow-up with us regarding specific questions based on individual factual circumstances.

III. CARBON MONOXIDE LEGAL COMPLIANCE.

A. PROPERTIES COVERED BY THE LAW.

Single-family dwellings (Sec. 102).

Defined at Sec. 101(7). "Single-family dwelling" means any improved real property used or intended to be used as a residence and that contains one dwelling unit.

Multi-Family dwellings (Sec. 103).

Defined at Sec. 101(5). "Multi-family dwelling" means any improved real property used or intended to be used as a residence and that contains more than one dwelling unit. Multi-family dwelling includes a condominium or cooperative.

All Rental Properties (Sec. 104).

The term "rental properties" is not defined by the new law. However, common sense dictates that a rental property is any property used or occupied for consideration, e.g. rented property.

B. TRIGGERING FEATURES AND EVENTS.

Carbon monoxide is produced by the incomplete burn of a fossil fuel. The law covers situations where carbon monoxide is produced or can be produced.

1. TRIGGERING APPLIANCES AND STRUCTURES.

a. Fuel-Fired Heaters.
b. Fuel-Fired Appliances.
c. Fireplaces.
d. Attached Garages (automobile exhaust).

Fuel is defined at Sec. 101(3). "Fuel" means coal, kerosene, oil, fuel gases, or other petroleum products or hydrocarbon products, such as wood, that emit carbon monoxide as a by-product of combustion.

2. TRIGGERING EVENTS (Compliance Deadlines).

The law has three (3) compliance deadline triggers. Assuming that the property must comply, compliance must be made by the date determined by one of the three triggering events outlined below (sale of property, property renovations, and change in tenant) that occur anytime on or after July 1, 2009.

The following discussion of deadline triggers assumes that the property must comply. While there are three events that establish a compliance deadline, a change in tenants is the most likely compliance deadline trigger. A change in tenants happens

frequently and predictably. In contrast, the sale deadline compliance trigger will apply if there is no change in tenants on or after July 1, 2009, and the sale date. While this scenario is more likely for single-family rentals, it's not for a multi-family community. Similarly, the property renovation deadline compliance trigger will only apply when there is no change in tenants on or after July 1, 2009 and the date of renovation.

The property must be in compliance every time a tenant changes on or after July 1, 2009. This means that a decision must be made if the community will be one hundred percent compliant by July 1, 2009, or if the community will be made compliant one unit at a time as residents move out and new residents move in. If there is no change in tenants but the property is sold or renovated on or after July 1, 2009, the property must be compliant as of the date of the sale or renovation.

a. SALE OF PROPERTY.

Single-family property. Seller has to assure compliance with the law for any single-family property "that has a fuel-fired heater or appliance, a fireplace, or an attached garage". Sec. 102(1)(a).

Multi-family property. Seller has to assure compliance with the law for any multi-family property "that has a fuel-fired heater or appliance, a fireplace, or an attached garage". Sec. 103(1)(a).

b. PROPERTY RENOVATIONS AND IMPROVEMENTS.

Single-family property. Property must meet legal requirement if renovations or improvements require a building permit on a property "that includes either fuel-fired appliances or an attached garage". Sec. 102(2).

Multi-family property. Property must meet legal requirement if renovations or improvements require a building permit on a property "that includes either fuel-fired appliances or an attached garage". Sec. 103(2).

Rental properties. Property must meet legal requirement if renovations or improvements require a building permit on a property "that includes either fuel-fired appliances or an attached garage". Sec. 104(1).

c. CHANGE IN TENANT.

Single-family and multi-family rental properties are required to comply when there is change in tenant occupancy on or after July 1, 2009. If a resident renews, this would not constitute a change in tenancy requiring compliance. However, the property should plan on addressing repeated renewal scenarios. Specifically, if a resident living on the property prior to July 1, 2009, repeatedly renews, the property at some point

should install any necessary detectors. If there are multiple residents (roommate situation) and new resident is added or substituted at a later date, this would be a change in tenancy requiring compliance.

3. LIMITED COMPLIANCE EXCEPTION FOR MULTI-FAMILY RENTALS.

Multi-family properties can comply by having a centralized alarm system or other mechanism subject to the following requirements: a) the alarm system or mechanism must be monitored at all times (responsible person must be able to hear the alarm at all times); and b) the monitored operational carbon monoxide alarm must be installed within twenty-five feet of any fuel-fired heater or appliance, fireplace, or garage, or in a location required by the applicable building code. C.R.S. §38-45-104(5).

We advise extreme caution in attempting to comply by meeting the requirements of this exception. Many carbon monoxide deaths are caused by leakage or seepage. Before relying on such a system, consultation with experts is imperative to determine if carbon monoxide can leak into rental units from a fuel-fired device despite the location of a detector within twenty-five feet of any carbon monoxide producing device. For example, if the property has a forced air heat system with a gas furnace, can carbon monoxide leak into units via ducts without being detected by the alarm located within twenty-five (25) feet of the furnace? Can a gas fired boiler mechanical system leak carbon monoxide without being detected by a detector located within twenty-five (25) feet of the boiler?

While not specifically defined, central alarm system probably means an alarm system that is monitored at a central location. While we are not intimately familiar with central alarm systems, we have discussed the issue with clients who have raised several potential issues.

While not specifically set forth in the law, the requirement that the alarm must be able to be heard by a responsible person at all times most likely means that the alarm system must be professionally monitored offsite. This interpretation makes sense because if the centralized alarm were monitored onsite by a responsible person the onsite "responsible person" could potentially succumb to the carbon monoxide gas. Obviously, if this happened the responsible person wouldn't be in a position to be responsible.

Ideally, if activated, a centralized alarm would trigger an alert throughout the entire building. However, many communities (especially older ones) do not have an alarm system that would sound building-wide. Thus, either one would need to be installed (may be cost prohibitive), or the community would have to rely on the monitoring company to deploy a response. Any central alarm system that requires a response is not going to be as quick, or as effective as an alarm blaring in a resident's unit. If the community complies by meeting this exception and the complying system

requires a response, the community is still probably much more likely to be sued if someone is injured or dies, even if compliance was met under this exception.

A centralized alarm system in a building may have only a single carbon monoxide detector. Technology is not perfect. A single detector is more likely to fail. If every resident's unit has at least one detector, the chances of multiple detectors (in some cases hundreds) all failing at the same time is about zero. To protect against potential failure, inspection and maintenance costs would still be incurred for a centralized alarm system.

Presumably, the rationale for attempting compliance by meeting the exemption is to achieve cost savings. However, some clients have evaluated anticipated cost savings and were not convinced that these savings would result. Professional monitoring companies charge monthly monitoring fees. Additionally, every monitored alarm system has to have a phone line. Thus, in addition to monthly monitoring fees, the property would incur monthly expenses for a phone line. If the property has multiple buildings, the property would incur multiple monthly phone line charges and monitoring charges. If the property has multiple buildings that need to be monitored, the cost of the phone lines and monitoring fees could quickly exceed the cost of installing monitors in each resident's unit.

4. COMPLIANCE SCENARIO ANALYSIS.

Most property managers and owners are planning to put carbon monoxide detectors in all of their rental units. However, some property managers and owners have taken the position that their property is not covered by the law, and therefore they do not have to install carbon monoxide detectors. Property managers and owners take this position either based on their reading of the law or because the law is not clear. To analyze the "law doesn't apply to my property" argument, we will review and evaluate the law's key language and legislative history. However, first we need to look at the factual scenarios potentially covered by the law. Clients have asked questions about three factual scenarios.

The resident's unit has fuel-fired appliances (meaning fuel-fired appliances, heaters, fireplaces, etc.) located within a resident's unit. Here the law is clear. The manager and owner must install the detectors. This first scenario also covers any rental units with attached garages. If the rental unit has an attached garage, a detector must be installed.

In the second scenario, the fuel-fired appliances aren't located in the unit, but are part of a mechanical system delivering a product of a fuel-fired appliance. For example, a main furnace delivering forced air heat from a gas-fueled furnace through air ducts and vents. This second scenario is not clearly covered by the new law. However, because the same ducts and vents that deliver heat can directly deliver carbon monoxide, detectors should be installed.

The third scenario is similar to the second scenario. The fuel-fired appliances aren't located in the unit, but are part of a mechanical system delivering a product of a fuel-fired appliance. Examples of such systems are gas-fired boilers delivering hot water for fixtures and radiant heat, or an aquatherm system. Unlike the second scenario, the fuel-fired appliance cannot directly deliver carbon monoxide through its mechanical system, and therefore there is no danger of carbon monoxide poisoning. For this reason, some have argued these properties are not subject to the new carbon monoxide law. We couldn't disagree more strongly.

As outlined above, the law has several provisions that require detectors when any fuel-fired appliance, heater, or fireplace is present. Again the applicable language is: ". . . every dwelling unit of an existing multi-family dwelling . . . that has a fuel-fired heater or appliance, a fireplace, or an attached garage . . ." C.R.S., § 38-45-103(1)(a); ". . . every dwelling unit of an existing multi-family dwelling . . . that has a fuel-fired heater or appliance, a fireplace, or an attached garage . . ." C.R.S., § 38-45-103(2); ". . . dwelling unit in a multi-family dwelling used for rental purposes and that includes fuel-fired appliances or an attached garage . . ." C.R.S., § 38-45-104(1).

Some argue that the law does not cover their property because the residents' units "do not have or contain any fuel-fired appliances". In other words, the furnace or boiler is not located in the residents' units. While this may be a correct interpretation of the plain language of the law, statutes are not interpreted in a vacuum. While the plain meaning of a statute is important, the legislative history and purpose is important as well. The legislative history surrounding the adoption of this law is both clear and strong. The law was adopted after several people (including an entire family in one instance) died due to carbon monoxide poisoning. The law was adopted to prevent or lessen such tragedies.

Common sense dictates that this would include preventing carbon monoxide tragedies on rental properties that contain mechanical systems (heat, gas, etc.), which both create carbon monoxide gas and can directly deliver such carbon monoxide gas to a rental unit (scenario two). Given the clear purpose and legislative history of the law, an owner or manager would not prevail in court arguing that because the furnace is not "located" within an apartment unit, the unit does not "use" or "include" a fuel-fired appliance. Include means to "contain within as part of a whole." An apartment unit contains heating vents that are part of the mechanical system as a whole, including the fuel-fired furnace. Under the new law, managers and owners are required to install detectors on scenario two properties.

By far, the strongest resistance to installation has come in connection with scenario three communities (fuel-fired boiler for radiant heat and fixture hot water, or aquatherm systems, also boiler driven). The resistance is based on the argument that a scenario three mechanical system cannot "directly deliver" carbon monoxide to the rental unit. This may be correct. However, it is incorrect to assume that carbon monoxide can't

be indirectly delivered to a community's units through leakage or seepage. Many carbon monoxide deaths document that carbon monoxide leaks into living spaces in lethal doses even when the mechanical system cannot directly deliver the deadly gas. The recent tragic death of the twenty-three year old DU student (a death that was a major impetus for the law being adopted) was a scenario three case. Carbon monoxide from a gas-fired boiler leaked throughout the building. The law covers scenario three properties if there is any possibility of carbon monoxide leakage.

On scenario three multi-family properties, the owner or manager could comply with the law by complying with the limited exception for multi-family properties discussed above. C.R.S., § 38-45-104(5). However, for the reasons discussed, we advise extreme caution in attempting to comply under this exception. While such a single alarm may meet compliance requirements, a single alarm located in a boiler room is not as effective as multiple alarms throughout a community. Further, the presence of the limited multi-family exception in the law implies that detectors are required in every case on a multi-family property regardless of where the fuel-fired appliance is located. Specifically, if there wasn't a need to install detectors where there is a fuel-fired boiler that is not located in a resident's unit, then there would be no need for a specific exception stating that one could comply with the law by installing a detector within twenty-five (25) feet of the boiler.

Risk analysis also dictates that detectors be installed in any community when there is any possibility of carbon monoxide leaking or poisoning regardless of the lack of clarity in the law. Since the law is unclear, if someone dies and the community took the position that the detectors weren't required, the community will only find out if a jury agrees with the community when the jury gives their verdict. If the community takes the position that detectors weren't required, but a court concludes that the law did require them, this probably would result in a strict liability situation. Strict liability is when the law requires a party to take action, the party fails to take action, and persons are injured as a result of the inaction. Ample case law supports the conclusion that the party who failed to comply is automatically negligent. At that point, the only issue for the jury would be the amount of damages to award. A person or company never wants to be in this position.

The law may not be clear on whether property owners/managers are required to install detectors. But what is clear is that property owners/managers are immune from being sued for violating the law if carbon monoxide detectors are installed in accordance with the manufacturer's recommended installation instructions. The industry in general, and the Colorado Apartment Association specifically fought hard to get this language. To protect our clients and the industry, we drafted the immunity language that was the basis for the final immunity language in the law.

While compliance with the law doesn't make property owners/managers immune from a lawsuit based on other legal theories (it only provides immunity from liability for

violating the Carbon Monoxide Law), compliance with the law logically will significantly reduce potential exposure under any legal theories. Specifically, the alarms will prevent injury or deaths and thus prevent potential lawsuits.

Finally, third party fee management companies should be aware of their potential liability for failing to comply with the law and install carbon monoxide detectors. Whether by actual knowledge or constructive knowledge, legal precedent supports the conclusion that a property manager is a landowner under the Colorado Premises Liability Act (CPLA) and can be held liable to a tenant as an invitee under the CPLA for the property management company's failure to ensure that the obligations of an owner to a tenant under the Carbon Monoxide Law are fulfilled. This is true whether or not the property manager has actual knowledge of either the Carbon Monoxide Law or the obligations imposed on a rental property owner for the benefit of a tenant under the law. A third party fee management company's liability is not a foregone conclusion. However, Colorado case law indicates that under the CPLA a property management company may be liable for failure to comply with statutory obligations and duties of an owner owed to a tenant. If the property management company were found liable, liability would be for all damages that include injury and/or death.

5. LOCAL LAWS AND ORDINANCES.

Owners must verify that local laws or ordinances do not contain more stringent legal requirements for the installation and maintenance of carbon monoxide detectors. We are not aware of any more stringent requirements. However, the law specifically allows any municipality, city, home rule city, city and county, or county to adopt more stringent requirements. If more stringent requirements are adopted in the property's jurisdiction, owners must comply with the more stringent requirements.

IV. ALARMS, INSTALLATION, AND MAINTENANCE.

A. COMPLYING ALARMS.

The law defines carbon monoxide alarm as a device that detects carbon monoxide and that meets the following four requirements. Any carbon monoxide alarm that meets NFPA (National Fire Protection Association) Standard 720 should meet these four requirements.

1. Produces a distinct audible alarm.

2. Certification and Operation.

An operational (working and in service in accordance with the manufacturer's instructions) carbon monoxide alarm that 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 or any successor standards.

3. Power Source Requirements.

Is battery powered, plugs into a dwelling's electrical outlet and has a battery backup, or is wired into a dwelling's electrical system and has a battery back-up, or is connected to an electrical system via an electrical panel.

4. Combination Detectors.

Combination smoke detectors / carbon monoxide detectors may be installed if the combined device complies with applicable law regarding both smoke detecting devices and carbon monoxide alarms and that the combined unit produces an alarm, or an alarm and voice signal, in a manner that clearly differentiates between the two hazards.

B. INSTALLATION METHODS.

"Installed" means that a carbon monoxide alarm is installed in a dwelling unit in one of the following ways:

1. Direct Wire.

Wired directly into the dwelling's electrical system; or

2. Outlet.

Directly plugged into an electrical outlet without a switch other than a circuit breaker; or

3. Battery Powered.

If the alarm is battery-powered, attached to the wall or ceiling of the dwelling unit in accordance with the National Fire Protection Association's standard 720 (NFPA), (*See Vertical Placement below)*, or any successor standard, for the operation and installation of carbon monoxide detection and warning equipment in dwelling units.

C. INSTALLATION LOCATION AND NUMBER.

1. 15 Feet of Bedrooms or Location Required by Code.

The general rule is that detectors must be installed within fifteen feet of the entrance to each room lawfully used for sleeping purposes, or in a location as specified in any building code adopted by the state or any local government entity. This requirement determines the number of alarms to be installed, unless the property meets the limited multi-family exception. Specifically, a sufficient number of alarms have to be installed so that an alarm is within at least fifteen feet of each bedroom or area used for sleeping.

2. 25 Feet of Fuel-Fired Appliance or Code.

Under the limited multi-family exception, the detector must be installed within twenty-five (25) feet of any fuel-fired heater or appliance, fireplace, or garage, or in a location as specified in any building code adopted by the state or any local government entity. Similar to fifteen foot requirement, if installation is done in accordance with this

exception, it will determine the number of detectors.

3. Vertical Placement.

Another question about placement is where to place the carbon monoxide detector vertically in a room. The new law doesn't specifically answer this question. Much discussion centers on whether carbon monoxide rises (ceiling placement ideal) or falls (ground level placement ideal). Carbon monoxide is roughly the same weight as air (carbon monoxide's specific gravity is 0.9657). The specific gravity of air is one (1). This means carbon monoxide is pretty close to being neutrally buoyant in air. Carbon monoxide doesn't tend to rise or fall if it's at the same temperature of room air. However, as stated by the EPA, carbon monoxide is a product of combustion and may be contained in warm air coming from combustion appliances. If this is the case, carbon monoxide will rise with the warmer air.

Regardless of a clear standard in the law and the debate, each "**each alarm or detector shall be located on the wall, ceiling, or other location as specified in the manufacturer's published instructions that accompany the unit**". This is the standard set forth in the 2009 NFPA Standard 720 (National Fire Protection Association's Standard 720). NFPA Standard 720 is entitled "Standard for the Installation of Carbon Monoxide (CO) Detection and Warning Equipment". NFPA Standard 720 is not available for free. It must be purchased.

Installation in accordance with the manufacturer's published instructions is also mandatory and critical to preserve immunity from lawsuits as discussed below.

Be aware that installation locations vary by manufacturer and detector type. Manufacturers' recommendations differ to a certain degree based on research conducted with each one's specific detector. Therefore, be sure to read the provided installation manual for each detector before installing.

D. MAINTENANCE RESPONSIBILITIES.

1. LANDLORDS.

Landlord's maintenance responsibilities are set forth in Sections 104(3) and 104(6).

a. Prior to commencement of new tenancy, replace alarms that are missing and/or not operational.
b. At commencement of new tenancy, provide batteries to Tenant.
c. Replace and/or repair alarm after written notification by Tenant that alarm is missing and/or not operational.
d. Remove batteries from alarm only when necessary to inspect, maintain, or repair.

2. TENANTS.

Tenant's maintenance responsibilities are set forth in Sections 104(4) and 104(6).

a. Keep, test, and maintain alarms in good repair.
b. Notify Landlord, in writing, that batteries in alarm need to be replaced.
c. Notify Landlord, in writing, that alarm is missing or not operational and the defect cannot be corrected.
d. Remove batteries from alarm only when necessary to inspect, maintain, or repair.

3. CONFLICTING BATTERY RESPONSIBILITIES.

Owners have to provide batteries at the start of any tenancy. After that, the law has conflicting provisions.

One provision of the law states that the owner of a rental is not responsible for the replacement of batteries for such an alarm. Sec. 104(3)(b).

However, another provision states that the tenant must notify the owner of a rental if the batteries of any carbon monoxide alarm need to be replaced.

These two contradictory provisions can be resolved if it is assumed that the tenant's duty to notify the owner in writing only applies to notifying the owner as to non-working batteries at the commencement of a tenancy. Owner has the responsibility for working batteries at the commencement of a tenancy. Otherwise, the provisions are irreconcilable. Regardless, the safest course of action would be to replace the batteries upon any written request of a tenant. Many communities plan to replace batteries on a regular maintenance schedule.

V. Limits On Liability (Section 106).

A. Generally.

Under Section 106, an owner cannot be sued for the operation, maintenance, or effectiveness of a carbon monoxide detector if the carbon monoxide detector was installed in accordance with the manufacturer's published instructions and in accordance with the provisions of this article. Specifically, Section 106(1) provides.

"(1) no person shall have a claim for relief against a property owner, an authorized agent of a property owner, a person in possession of real property, or an installer for any damages resulting from the operation, maintenance, or effectiveness of a carbon monoxide alarm if the property owner, authorized agent, person in possession of real

property, or installer installs a carbon monoxide alarm in accordance with the manufacturer's published instructions and the provisions of this article."

Again, compliance with the law doesn't provide immunity from a lawsuit based on other legal theories (it only provides immunity from liability for violating the Carbon Monoxide Law), logically compliance with the law will significantly reduce potential exposure under any legal theories. Specifically, the alarms will prevent injury or deaths and thus prevent lawsuits.

B. Real Estate Brokers.

The law requires the Real Estate Commission to adopt rules prior to July 1, 2009, requiring all listing requirements to disclose the compliance requirements when selling real estate (both single-family and multi-family properties).

If a listing broker complies with the rules promulgated by the Real Estate Commission for carbon monoxide disclosures in listing contracts, the purchaser of any property shall not have any claims against the complying real estate broker.

VI. Best Practices.

A. Installation, Operation, and Maintenance.

Under Section 106, an owner or manager cannot be sued for the operation, maintenance, or effectiveness of a carbon monoxide detector if the carbon monoxide detector was installed in accordance with the manufacturer's published instructions and in accordance with the provisions of this article.

Given the legal requirements, every property should keep written records documenting the following:

- Types of detectors installed including documentation that installed detectors meet NFPA Standard 720.

- Documentation that detectors were installed in accordance with the law, the manufacturer's published installation instructions, and NFPA Standard 720. The property should be familiar with the manufacturer's installation instructions to verify correct installation, and require all installer's to sign documentation that the detectors were installed with those instructions. Since manufacturer's recommended installation instructions can vary depending on type of detector installed, the instructions should be attached to a form to be signed by the installer. The form should also include a statement that the installer represents that the detectors were installed in accordance with the manufacturer's instructions, the provisions of the law, and in accordance with NFPA Standard 720. If necessary, explain to the installer that the procedure also protects the installer from liability. *Sample Form attached.*

- Records or log evidencing that detectors were checked, batteries were replaced, and that the detectors were fully functioning and operational at the commencement of each new tenancy.

- Written acknowledgement from resident after move-in that the detector was verified as operational in the resident's presence.

- All written communication from residents regarding detectors (both in resident's file and a master carbon monoxide file).

- Written documentation regarding any maintenance or replacement issue during the course of a resident's tenancy.

B. CARBON MONOXIDE ADDENDUM.

Many clients have asked if they need a carbon monoxide addendum or other lease language.

Most leases already state that landlord will provide smoke detectors as required by law. If the lease contains this language, we recommend just changing this to read:

Landlord will provide smoke and carbon monoxide detectors as required by law.

Overall, owners and landlords don't need a carbon monoxide addendum because the law spells out the legal requirements. In most cases, from a lease drafting perspective, we don't recommend putting into a lease items that are addressed by statute. While the carbon monoxide statute is not as clear as it could be in some respects, the statute is clear on any items that would go into an addendum. For example, one lease provision could read, "pursuant to Colorado statute, resident is prohibited from tampering with a carbon monoxide detector."

Because almost all leases require that the resident comply with all laws, if a resident does tamper with a carbon monoxide detector, the resident would be breaking the law, and thus the lease. Lease compliance could be enforced with the lease documents the same way any other lease requirement would be enforced. Specifically, the resident could be served with a three-day Demand for Compliance or Possession.

As an alternative to lease language or an addendum, provide residents with a carbon monoxide handout with their lease package setting forth the legal requirements, i.e. no tampering or disabling, etc. Again, it doesn't need to be in the lease or addendum, as

long as the lease requires all residents to comply with all laws.

VII. ENFORCEMENT.

The carbon monoxide law has no enforcement mechanism. No funds have been allocated for enforcement, and no Colorado agency has been made responsible for its enforcement. Despite this fact, the rental industry would be mistaken in assuming that the carbon monoxide requirements won't or can't be enforced. Existing laws can and will be used to enforce the law.

Private lawsuits are an enforcement mechanism. Lawsuits will be filed against property owners and management companies to obtain compliance. Tenants have many viable legal theories to chose from, e.g. negligence, or violation of the Colorado Premises Liability Act. In addition to seeking large damage awards, private lawsuits will also seek to force compliance when a resident is seriously injured or killed because of a carbon monoxide leak.

Colorado's Warranty of Habitability Act (CWHA) adopted in 2008 will also be used to enforce compliance. Tenants have rights under the CWHA whenever a materially dangerous or hazardous condition exists on the property that materially affects life, health, or safety. Tenants would have no difficulty in convincing a court that the absence of carbon monoxide detectors is materially dangerous or hazardous to their life, health, or safety.

Remember, the CWHA provides for rent abatement as a remedy. In other words, the tenant could withhold rent, and then argue in court that the rent is not due under a diminution in value theory. Diminution in value damages are based upon the difference between the fair market rental value of the unit and the rental value of the unit when the warranty of habitability is breached. Tenants would argue that a unit where a person could possibly die is worth zero. If the entire building required detectors, theoretically all tenants at the community could assert the same CWHA claim simultaneously. Thus, if detectors are required and the community didn't install them, it is possible for the community's units to be generating zero in rents. Obviously in such a doomsday scenario, the property would have been financially better off by installing the detectors in the first place.

This memo addresses carbon monoxide, and does not comprehensively address the CWHA. For more detailed information on the CWHA go to http://htspc.com/newsletter.php, and download the July 2008 newsletter (Residents' Ability To Withhold Rent Under The New Warranty Of Habitability Bill), and the August 2008 newsletter (When Do You Breach Warranty of Habitability?).

Tenants and others, including competitors, may report alleged violations to local code enforcement officials. Remember, if a local code requires carbon monoxide detectors and those requirements are more stringent than the Colorado state law, the property must comply with the more stringent local building code. Further, some jurisdictions, such as Aurora, have systematic inspections of rental properties through rental inspection programs. The Aurora rental property inspection ordinance and accompanying rules are written very broadly, and provide inspectors with broad discretion to determine violations. Each violation requires mandatory correction, and reinspection. The property pays a twenty-seven dollar ($27) reinspection fee for each unit cited for a violation. If a 400 unit Aurora property were cited for failing to have carbon monoxide detectors, the resulting cost to the property would be $10,800 in reinspection fees.

VIII. ATTACHMENTS.

A. Sample Verification of Carbon Monoxide Detection Installation

B. Smoke and Carbon Monoxide Detector Addendum

C. Sample Lease Paragraph for Smoke Detector and Carbon Monoxide Alarm.

D. C.R.S., §38-45-101, et. seq. – Carbon Monoxide Law

SMOKE AND CARBON MONOXIDE DETECTOR ADDENDUM

This SMOKE AND CARBON MONOXIDE DETECTOR ADDENDUM ("Addendum") dated _____ (date) is an Addendum to the Lease dated _____ _____ (Lease Date) (the "Lease"), by and between _____, Owner (hereinafter "Landlord") of the Apartment Community known as _____ _____, and «Resident1», «Resident2», «Resident3», and «Resident4» (collectively hereinafter "Resident"), for the premises known as _____ _____, (Street Address), ____ (Apt Number), _____ (City), _____ (Zip), County of _____, (County), State of Colorado ("Premises").

1. **Detectors.** Owner agrees to furnish and install smoke and carbon monoxide detectors (collectively "detectors") in accordance with law and the manufacturer's published instructions. As of this date, Resident acknowledges the existence of operating detector(s) in Resident's Dwelling Unit. Resident has inspected the detector(s), and found the detector(s) to be in good working order. Resident also acknowledges that Owner has provided any necessary batteries for the detector(s) to properly operate and function in accordance with law. Resident understands that any detector(s) have been provided to help insure the Resident's safety, but are not and must not be considered a guaranty of safety.

2. Maintenance, Repair or Replacement. Resident agrees to regularly test, keep, and maintain any detector(s) in good repair. Resident shall give Owner immediate written notification if any detector(s) is missing, damaged, defective, malfunctioning failing, or otherwise non-operational. Owner shall promptly repair or replace any detector(s) that is missing, damaged, defective, malfunctioning failing, or otherwise non-operational subject to the provisions of this addendum and the Lease. Specifically, Resident shall reimburse Owner for all costs and damages associated with repairing or replacing any detector(s) if any repair or replacement is caused by or due to Resident, Resident's occupants, guest or invitees, including but not limited to if a repair or replacement is due to Resident's violation of this Addendum. Resident agrees to not remove batteries from any detector(s) unless and only when necessary to inspect, maintain, or repair any detector(s).

3. Battery Replacement. Subject to Owner's responsibility to provide batteries at the commencement of Resident's lease in paragraph one above, Resident shall replace at Resident's cost all detector(s) batteries during Resident's tenancy, if any, anytime any detector(s) battery needs to be replaced for any detector(s) to operate and function as intended and in accordance with law.

4. Disclaimer. Resident acknowledges and agrees that Owner is not the operator, manufacturer, distributor, retailer or supplier of any detector(s). Subject to Owner's responsibilities set forth in this Addendum, Resident assumes full and complete responsibility for all risk and hazards attributable to, connected with or in any way related to the operation, malfunction, or failure of any detector(s), regardless of whether such malfunction or failure is attributable to, connected with, or in any way related to the use, operation, manufacture, distribution, repair, servicing, or installation of said smoke detector(s). Owner, its employees, and agents have made no representations, warranties, undertakings or promises, whether oral or implied, or otherwise to Resident regarding

any detector(s), or the alleged performance of the same. Owner neither makes nor adopts any warranty of any person or company of any nature regarding any detector(s), and expressly disclaims all warranties or fitness for a particular purpose, of habitability, or any and all other expressed or implied warranties. Owner shall not be liable for damages or losses to person or property caused by (1) Resident's failure to regularly test any detector(s); (2) Resident's failure to notify Owner in writing of any problem, defect, malfunction, or failure of any detector(s); and (3) False alarms produced by any detector(s).

[EXAMPLE SIGNATURE BLOCK FOLLOWS – IF YOU HAVE A STANDARD SIGNATURE BLOCK FOR YOUR LEASE DOCUMENTS, INSERT]

_____
Community Manager

_____
Solely As Agent for Owner

OR

_____
Owner

_____
Resident - «Resident1»

_____
Resident - «Resident2»

_____
Resident - «Resident3»

_____
Resident - «Resident4»

VERIFICATION OF CARBON MONOXIDE DETECTOR INSTALLATION

Date of Installation: _____

Address of Property: _____

Name of Installer/Technician:_____

Make/Model of Detectors: _____

The undersigned installer/technician represents and warrants that the carbon monoxide detector(s) specified above, have been installed in accordance with the manufacturer's published instructions, the provision of applicable state law, and in accordance with NFPA Standard 720. A copy of the manufacturer's published instructions is attached.

_____
Signature Installer/Technician

_____
Date

SAMPLE LEASE PARAGRAPH FOR SMOKE DETECTOR AND CARBON MONOXIDE ALARM

Resident acknowledges the existence of an operating smoke detector and carbon monoxide alarm in the rental unit. These safety devices have been installed in accordance with the manufacturer's published instructions and Resident understands that these devices have been provided to help insure the Resident's safety, but must not be considered a guaranty of safety. Resident agrees to keep, test, and maintain both safety devices in good repair. Batteries may not be removed from the smoke detector or carbon monoxide alarms, unless inspection and/or maintenance of the devices make it necessary to do so. Resident further agrees to give immediate written notification to Landlord in the event that the safety devices malfunction or turn up missing. These responsibilities are in effect throughout Resident's occupancy.

Resident must initial _____.

NOTE: This bill has been prepared for the signature of the appropriate legislative officers and the Governor. To determine whether the Governor has signed the bill or taken other action on it, please consult the legislative status sheet, the legislative history, or the Session Laws.

HOUSE BILL 09-1091

BY REPRESENTATIVE(S) Soper and Court, Merrifield, Todd, McGihon, Apuan, Carroll T., Casso, Fischer, Frangas, Gagliardi, Green, Kefalas, Kerr A., Labuda, Levy, McCann, Middleton, Pace, Peniston, Primavera, Priola, Rice, Ryden, Scanlan, Curry, Hullinghorst, Miklosi, Schafer S., Solano;
also SENATOR(S) Romer, Schwartz, Bacon, Boyd, Cadman, Carroll M., Foster, Gibbs, Groff, Hodge, Isgar, Keller, Kester, King K., Mitchell, Morse, Newell, Sandoval, Shaffer B., Spence, Tochtrop, White, Williams.

CONCERNING A REQUIREMENT THAT CARBON MONOXIDE ALARMS BE INSTALLED IN RESIDENTIAL PROPERTIES.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. Short title. This act shall be known and may be cited as the "Lofgren and Johnson Families Carbon Monoxide Safety Act".

SECTION 2. Title 38, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW ARTICLE to read:

ARTICLE 45
Safety of Real Property

38-45-101. Definitions. AS USED IN THIS ARTICLE, UNLESS THE

_____
Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

CONTEXT OTHERWISE REQUIRES:

(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 OR ANY SUCCESSOR STANDARDS;

(c) IS BATTERY POWERED, PLUGS INTO A DWELLING'S ELECTRICAL OUTLET AND HAS A BATTERY BACKUP, IS WIRED INTO A DWELLING'S ELECTRICAL SYSTEM AND HAS A BATTERY BACK-UP, OR 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 THAT THE COMBINED UNIT PRODUCES AN ALARM, OR AN ALARM AND VOICE SIGNAL, IN A MANNER THAT CLEARLY DIFFERENTIATES BETWEEN THE TWO HAZARDS.

(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 BY-PRODUCT OF COMBUSTION.

(4) "INSTALLED" MEANS THAT A CARBON MONOXIDE ALARM IS INSTALLED IN A DWELLING UNIT IN ONE OF THE FOLLOWING WAYS:

(a) WIRED DIRECTLY INTO THE DWELLING'S ELECTRICAL SYSTEM;

(b) DIRECTLY PLUGGED INTO AN ELECTRICAL OUTLET WITHOUT A SWITCH OTHER THAN A CIRCUIT BREAKER; OR

(c) IF THE ALARM IS BATTERY-POWERED, ATTACHED TO THE WALL OR CEILING OF THE DWELLING UNIT IN ACCORDANCE WITH THE NATIONAL FIRE PROTECTION ASSOCIATION'S STANDARD 720, OR ANY SUCCESSOR STANDARD, FOR THE OPERATION AND INSTALLATION OF CARBON MONOXIDE DETECTION AND WARNING EQUIPMENT IN DWELLING UNITS.

(5) "MULTI-FAMILY DWELLING" MEANS ANY IMPROVED REAL PROPERTY USED OR INTENDED TO BE USED AS A RESIDENCE AND THAT CONTAINS MORE THAN ONE DWELLING UNIT. MULTI-FAMILY DWELLING INCLUDES A CONDOMINIUM OR COOPERATIVE.

(6) "OPERATIONAL" MEANS WORKING AND IN SERVICE IN ACCORDANCE WITH MANUFACTURER INSTRUCTIONS.

(7) "SINGLE-FAMILY DWELLING" MEANS ANY IMPROVED REAL PROPERTY USED OR INTENDED TO BE USED AS A RESIDENCE AND THAT CONTAINS ONE DWELLING UNIT.

38-45-102. Carbon monoxide alarms in single-family dwellings - rules. (1) (a) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, THE SELLER OF EACH EXISTING SINGLE-FAMILY DWELLING OFFERED FOR SALE OR TRANSFER ON OR AFTER JULY 1, 2009, THAT HAS A FUEL-FIRED HEATER OR APPLIANCE, A FIREPLACE, OR AN ATTACHED GARAGE SHALL ASSURE THAT AN OPERATIONAL CARBON MONOXIDE ALARM IS INSTALLED WITHIN FIFTEEN FEET OF THE ENTRANCE TO EACH ROOM LAWFULLY USED FOR SLEEPING PURPOSES OR IN A LOCATION AS SPECIFIED IN ANY BUILDING CODE ADOPTED BY THE STATE OR ANY LOCAL GOVERNMENT ENTITY.

(b) BY JULY 1, 2009, THE REAL ESTATE COMMISSION CREATED IN SECTION 12-61-105, C.R.S., SHALL BY RULE REQUIRE EACH LISTING CONTRACT FOR RESIDENTIAL REAL PROPERTY THAT IS SUBJECT TO THE COMMISSION'S JURISDICTION PURSUANT TO ARTICLE 61 OF TITLE 12, C.R.S., TO DISCLOSE THE REQUIREMENTS SPECIFIED IN PARAGRAPH (a) OF THIS SUBSECTION (1).

(2) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, EVERY SINGLE-FAMILY DWELLING THAT INCLUDES EITHER FUEL-FIRED APPLIANCES OR AN ATTACHED GARAGE WHERE, ON OR AFTER JULY 1, 2009, INTERIOR ALTERATIONS, REPAIRS, FUEL-FIRED APPLIANCE REPLACEMENTS, OR ADDITIONS, ANY OF WHICH REQUIRE A BUILDING PERMIT, OCCURS OR WHERE

ONE OR MORE ROOMS LAWFULLY USED FOR SLEEPING PURPOSES ARE ADDED SHALL HAVE AN OPERATIONAL CARBON MONOXIDE ALARM INSTALLED WITHIN FIFTEEN FEET OF THE ENTRANCE TO EACH ROOM LAWFULLY USED FOR SLEEPING PURPOSES OR IN A LOCATION AS SPECIFIED IN ANY BUILDING CODE ADOPTED BY THE STATE OR ANY LOCAL GOVERNMENT ENTITY.

(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.

38-45-103. Carbon monoxide alarms in multi-family dwellings - rules. (1) (a) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, THE SELLER OF EVERY DWELLING UNIT OF AN EXISTING MULTI-FAMILY DWELLING OFFERED FOR SALE OR TRANSFER ON OR AFTER JULY 1, 2009, THAT HAS A FUEL-FIRED HEATER OR APPLIANCE, A FIREPLACE, OR AN ATTACHED GARAGE SHALL ASSURE THAT AN OPERATIONAL CARBON MONOXIDE ALARM IS INSTALLED WITHIN FIFTEEN FEET OF THE ENTRANCE TO EACH ROOM LAWFULLY USED FOR SLEEPING PURPOSES OR IN A LOCATION AS SPECIFIED IN ANY BUILDING CODE ADOPTED BY THE STATE OR ANY LOCAL GOVERNMENT ENTITY.

(b) BY JULY 1, 2009, THE REAL ESTATE COMMISSION CREATED IN SECTION 12-61-105, C.R.S., SHALL BY RULE REQUIRE EACH LISTING CONTRACT FOR RESIDENTIAL REAL PROPERTY THAT IS SUBJECT TO THE COMMISSION'S JURISDICTION PURSUANT TO ARTICLE 61 OF TITLE 12, C.R.S., TO DISCLOSE THE REQUIREMENTS SPECIFIED IN PARAGRAPH (a) OF THIS SUBSECTION (1).

(2) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, EVERY DWELLING UNIT OF A MULTI-FAMILY DWELLING THAT INCLUDES FUEL-FIRED APPLIANCES OR AN ATTACHED GARAGE WHERE , ON OR AFTER JULY 1, 2009, INTERIOR ALTERATIONS, REPAIRS, FUEL-FIRED APPLIANCE REPLACEMENTS, OR ADDITIONS, ANY OF WHICH REQUIRE A BUILDING PERMIT, OCCURS OR WHERE ONE OR MORE ROOMS LAWFULLY USED FOR SLEEPING PURPOSES ARE ADDED SHALL HAVE AN OPERATIONAL CARBON MONOXIDE ALARM INSTALLED WITHIN FIFTEEN FEET OF THE ENTRANCE TO EACH ROOM LAWFULLY USED FOR SLEEPING PURPOSES OR IN A LOCATION AS SPECIFIED IN ANY BUILDING CODE ADOPTED BY THE STATE OR ANY LOCAL GOVERNMENT ENTITY/

(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.

38-45-104. Carbon monoxide alarms in rental properties. (1) EXCEPT AS PROVIDED IN SUBSECTION (5) OF THIS SECTION, ANY SINGLE-FAMILY DWELLING OR DWELLING UNIT IN A MULTI-FAMILY DWELLING USED FOR RENTAL PURPOSES AND THAT INCLUDES FUEL-FIRED APPLIANCES OR AN ATTACHED GARAGE WHERE, ON OR AFTER JULY 1, 2009, INTERIOR ALTERATIONS, REPAIRS, FUEL-FIRED APPLIANCE REPLACEMENTS, OR ADDITIONS, ANY OF WHICH REQUIRES A BUILDING PERMIT, OCCURS OR WHERE ONE OR MORE ROOMS LAWFULLY USED FOR SLEEPING PURPOSES ARE ADDED SHALL BE SUBJECT TO THE REQUIREMENTS SPECIFIED IN SECTIONS 38-45-102 AND 38-45-103.

(2) EXCEPT AS PROVIDED IN SUBSECTION (5) OF THIS SECTION, EACH EXISTING SINGLE-FAMILY DWELLING OR EXISTING DWELLING UNIT IN A MULTI-FAMILY DWELLING THAT IS USED FOR RENTAL PURPOSES THAT HAS A CHANGE IN TENANT OCCUPANCY ON OR AFTER JULY 1, 2009, SHALL BE SUBJECT TO THE REQUIREMENTS SPECIFIED IN SECTIONS 38-45-102 AND 38-45-103.

(3) (a) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, THE OWNER OF ANY RENTAL PROPERTY SPECIFIED IN SUBSECTIONS (1) AND (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 PARAGRAPH (c) OF SUBSECTION (4) 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 PARAGRAPH (d) OF SUBSECTION (4) OF THIS SECTION.

(b) EXCEPT AS PROVIDED IN PARAGRAPH (a) OF THIS SUBSECTION (3), THE OWNER OF A SINGLE-FAMILY DWELLING OR DWELLING UNIT IN A MULTI-FAMILY 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 SUCH AN ALARM.

(4) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, THE TENANT OF ANY RENTAL PROPERTY SPECIFIED IN SUBSECTIONS (1) AND (2) OF THIS SECTION SHALL:

(a) KEEP, TEST, AND MAINTAIN ALL CARBON MONOXIDE ALARMS IN GOOD REPAIR;

(b) NOTIFY, IN WRITING, THE OWNER OF THE SINGLE-FAMILY DWELLING OR DWELLING UNIT OF A MULTI-FAMILY DWELLING, OR THE OWNER'S AUTHORIZED AGENT, IF THE BATTERIES OF ANY CARBON MONOXIDE ALARM NEED TO BE REPLACED;

(c) NOTIFY, IN WRITING, THE OWNER OF THE SINGLE-FAMILY DWELLING OR DWELLING UNIT OF A MULTI-FAMILY 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 MULTI-FAMILY DWELLING; AND

(d) NOTIFY, IN WRITING, THE OWNER OF THE SINGLE-FAMILY DWELLING OR DWELLING UNIT OF A MULTI-FAMILY DWELLING, OR THE OWNER'S AUTHORIZED AGENT, OF ANY DEFICIENCY IN ANY CARBON MONOXIDE ALARM THAT THE TENANT CANNOT CORRECT.

(5) NOTWITHSTANDING THE REQUIREMENTS OF SECTION 38-45-103 (1) AND (2), SO LONG AS THERE IS A CENTRALIZED ALARM SYSTEM OR OTHER MECHANISM FOR A RESPONSIBLE PERSON TO HEAR THE ALARM AT ALL TIMES

IN A MULTI-FAMILY DWELLING USED FOR RENTAL PURPOSES, SUCH MULTI-FAMILY DWELLING MAY HAVE AN OPERATIONAL CARBON MONOXIDE ALARM INSTALLED WITHIN TWENTY-FIVE FEET OF ANY FUEL-FIRED HEATER OR APPLIANCE, FIREPLACE, OR GARAGE OR IN A LOCATION AS SPECIFIED IN ANY BUILDING CODE ADOPTED BY THE STATE OR ANY LOCAL GOVERNMENT ENTITY.

(6) 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.

38-45-105. Municipal or county ordinances regarding carbon monoxide alarms. NOTHING IN THIS ARTICLE SHALL BE CONSTRUED TO LIMIT A MUNICIPALITY, CITY, HOME RULE CITY, CITY AND COUNTY, COUNTY, OR OTHER LOCAL GOVERNMENTAL ENTITY 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 THIS ARTICLE.

38-45-106. Limitation of liability. (1) NO PERSON SHALL HAVE A CLAIM FOR RELIEF AGAINST A PROPERTY OWNER, AN AUTHORIZED AGENT OF A PROPERTY OWNER, A PERSON IN POSSESSION OF REAL PROPERTY, OR AN INSTALLER FOR ANY DAMAGES RESULTING FROM THE OPERATION, MAINTENANCE, OR EFFECTIVENESS OF A CARBON MONOXIDE ALARM IF THE PROPERTY OWNER, AUTHORIZED AGENT, PERSON IN POSSESSION OF REAL PROPERTY, OR INSTALLER INSTALLS A CARBON MONOXIDE ALARM IN ACCORDANCE WITH THE MANUFACTURER'S PUBLISHED INSTRUCTIONS AND THE PROVISIONS OF THIS ARTICLE.

(2) A PURCHASER SHALL HAVE NO CLAIM FOR RELIEF AGAINST ANY PERSON LICENSED PURSUANT TO ARTICLE 61 OF TITLE 12, C.R.S., FOR ANY DAMAGES RESULTING FROM THE OPERATION, MAINTENANCE, OR EFFECTIVENESS OF A CARBON MONOXIDE ALARM IF SUCH LICENSED PERSON COMPLIES WITH RULES PROMULGATED PURSUANT TO SECTIONS 38-45-102 (1) (b) AND 38-45-103 (1) (b). NOTHING IN THIS SUBSECTION (2) SHALL AFFECT ANY REMEDY THAT A PURCHASER MAY OTHERWISE HAVE AGAINST A SELLER.

SECTION 3. Safety clause. The general assembly hereby finds,

determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Terrance D. Carroll SPEAKER OF THE HOUSE OF REPRESENTATIVES	Peter C. Groff PRESIDENT OF THE SENATE
Marilyn Eddins CHIEF CLERK OF THE HOUSE OF REPRESENTATIVES	Karen Goldman SECRETARY OF THE SENATE

APPROVED_____

Bill Ritter, Jr.
GOVERNOR OF THE STATE OF COLORADO