

pursuant to section 609.1352, and committed to the custody of the commissioner of corrections for a term of imprisonment has not provided a biological specimen for the purpose of DNA analysis, the commissioner of corrections or local corrections authority shall order the person to provide a biological specimen for the purpose of DNA analysis before completion of the person's term of imprisonment. The commissioner of corrections or local corrections authority shall forward the sample to the bureau of criminal apprehension.

Sec. 12. **APPROPRIATION.**

\$314,000 is appropriated to the commissioner of public safety, bureau of criminal apprehension, to implement sections 1 to 9. \$228,000 is for fiscal year 1992 and \$86,000 is for fiscal year 1993. The approved complement of the department of public safety is increased by two positions.

Sec. 13. **EFFECTIVE DATE.**

(a) Section 3 is effective August 1, 1991, and applies to offenders released from imprisonment on or after that date. However, if the application of section 3 to offenders for crimes committed before August 1, 1991, is held unconstitutional under the ex post facto provisions of the Minnesota or United States constitutions, section 3 applies only to offenders who committed crimes listed in section 3 after August 1, 1991.

(b) Sections 1, 2, and 4 to 11 are effective August 1, 1991, and apply to crimes committed and persons reported missing on or after that date.

Presented to the governor May 29, 1991

Signed by the governor June 1, 1991, 4:00 p.m.

CHAPTER 286—S.F.No. 774

An act relating to health; defining "admitted assets"; clarifying licensing requirements for certain residential programs for persons with chemical dependency; establishing procedures for contesting a transfer or discharge from a nursing home; setting a time limit for appeals of civil penalties under the nursing home licensing laws; providing procedures for contesting findings under the vulnerable adults act; appropriating money; amending Minnesota Statutes 1990, sections 62D.044; 62D.045, subdivision 1; 144.50, subdivision 6; 144.653, subdivision 5; 144A.10, subdivisions 4 and 6d; 144A.135; 144A.45, subdivision 2; 144A.46, subdivision 2, and by adding a subdivision; 144A.53, subdivision 1; 144A.61, subdivisions 3, 3a, and 6a; 144A.611, subdivisions 1 and 2; proposing coding for new law in Minnesota Statutes, chapter 144A.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 1990, section 62D.044, is amended to read:

New language is indicated by underline, deletions by ~~strikeout~~.

62D.044 ADMITTED ASSETS.

"Admitted assets" includes the following:

(1) petty cash and other cash funds in the organization's principal or official branch office that are under the organization's control;

(2) immediately withdrawable funds on deposit in demand accounts, in a bank or trust company organized and regularly examined under the laws of the United States or any state, and insured by an agency of the United States government, or like funds actually in the principal or official branch office at statement date, and, in transit to a bank or trust company with authentic deposit credit given before the close of business on the fifth bank working day following the statement date;

(3) the amount fairly estimated as recoverable on cash deposited in a closed bank or trust company, if the assets qualified under this section before the suspension of the bank or trust company;

(4) bills and accounts receivable that are collateralized by securities in which the organization is authorized to invest;

(5) premiums due from groups or individuals that are not more than 90 days past due;

(6) amounts due under reinsurance arrangements from insurance companies authorized to do business in this state;

(7) tax refunds due from the United States or this state;

(8) interest accrued on mortgage loans not exceeding in aggregate one year's total due and accrued interest on an individual loan;

(9) the rents due to the organization on real and personal property, directly or beneficially owned, not exceeding the amount of one year's total due and accrued rent on each individual property;

(10) interest or rents accrued on conditional sales agreements, security interests, chattel mortgages, and real or personal property under lease to other corporations that do not exceed the amount of one year's total due and accrued interest or rent on an individual investment;

(11) the fixed required interest due and accrued on bonds and other evidences of indebtedness that are not in default;

(12) dividends receivable on shares of stock, provided that the market price for valuation purposes does not include the value of the dividend;

(13) the interest on dividends due and payable, but not credited, on deposits in banks and trust companies or on accounts with savings and loan associations;

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(14) interest accrued on secured loans that do not exceed the amount of one year's interest on any loan;

(15) interest accrued on tax anticipation warrants;

(16) the amortized value of electronic computer or data processing machines or systems purchased for use in the business of the organization, including software purchased and developed specifically for the organization's use;

(17) the cost of furniture, equipment, and medical equipment, less accumulated depreciation thereon, and medical and pharmaceutical supplies that are used to deliver health care and are under the organization's control, provided ~~the~~ such assets do not exceed 30 percent of admitted assets;

(18) amounts currently due from an affiliate that has liquid assets with which to pay the balance and maintain its accounts on a current basis. Any amount outstanding more than three months is not current;

(19) amounts on deposit under section 62D.041;

(20) accounts receivable from participating health care providers that are not more than 60 days past due; and

(21) investments allowed by section 62D.045, except for investments in securities and properties described under section 61A.284.

Sec. 2. Minnesota Statutes 1990, section 62D.045, subdivision 1, is amended to read:

Subdivision 1. **RESTRICTIONS.** Funds of a health maintenance organization shall be invested only in securities and property designated by law for investment by domestic life insurance companies, except that money may be used to purchase real estate, including leasehold estates and leasehold improvements, for the convenient accommodation of the organization's business operations, including the home office, branch offices, medical facilities, and field office operations, on the following conditions:

(1) a parcel of real estate acquired under this subdivision may include excess space for rent to others if it is reasonably anticipated that the excess will be required by the organization for expansion or if the excess is reasonably required in order to have one or more buildings that will function as an economic unit;

(2) the real estate may be subject to a mortgage; and

(3) the purchase price of the asset, including capitalized permanent improvements, less depreciation spread evenly over the life of the property or less depreciation computed on any basis permitted under the Internal Revenue Code and its regulations, or the organization's equity, plus all encumbrances on

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the real estate owned by a company under this subdivision, whichever is greater, does not exceed 20 percent of its admitted assets, except if, when calculated in combination with the assets described in section 62D.044, clause (17), the total of said assets and the real estate assets described hereunder do not exceed the total combined percent limitations allowable under this section and section 62D.044, clause (17), or, if permitted by the commissioner upon a finding that the percentage of the health maintenance organization's admitted assets is insufficient to provide convenient accommodation for the organization's business. However, a health maintenance organization that ~~directly provides medical services~~ owns real estate used in the delivery of medical services for its enrollees may invest an additional 20 percent of its admitted assets in real estate, not requiring the permission of the commissioner.

Sec. 3. Minnesota Statutes 1990, section 144.50, subdivision 6, is amended to read:

Subd. 6. **SUPERVISED LIVING FACILITY LICENSES.** (a) The commissioner may license as a supervised living facility a facility seeking medical assistance certification as an intermediate care facility for persons with mental retardation or related conditions for four or more persons as authorized under section 252.291.

(b) Class B supervised living facilities seeking medical assistance certification as an intermediate care facility for persons with mental retardation or related conditions shall be classified as follows for purposes of the state building code:

(1) Class B supervised living facilities for six or less persons must meet Group R, Division 3, occupancy requirements; and

(2) Class B supervised living facilities for seven to 16 persons must meet Group R, Division 1, occupancy requirements.

(c) Class B facilities classified under paragraph (b), clauses (1) and (2), must meet the fire protection provisions of chapter 21 of the 1985 life safety code, NFPA 101, for facilities housing persons with impractical evacuation capabilities, except that Class B facilities licensed prior to July 1, 1990, need only continue to meet institutional fire safety provisions. Class B supervised living facilities shall provide the necessary physical plant accommodations to meet the needs and functional disabilities of the residents. For Class B supervised living facilities licensed after July 1, 1990, and housing nonambulatory or nonmobile persons, the corridor access to bedrooms, common spaces, and other resident use spaces must be at least five feet in clear width, except that a waiver may be requested in accordance with Minnesota Rules, part 4665.0600.

(d) The commissioner may license as a Class A supervised living facility a residential program for chemically dependent individuals that allows children to reside with the parent receiving treatment in the facility. The licensee of the program shall be responsible for the health, safety, and welfare of the children resid-

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ing in the facility. The facility in which the program is located must be provided with a sprinkler system approved by the state fire marshal. The licensee shall also provide additional space and physical plant accommodations appropriate for the number and age of children residing in the facility. For purposes of license capacity, each child residing in the facility shall be considered to be a resident.

Sec. 4. Minnesota Statutes 1990, section 144.653, subdivision 5, is amended to read:

Subd. 5. **CORRECTION ORDERS.** Whenever a duly authorized representative of the state commissioner of health finds upon inspection of a facility required to be licensed under the provisions of sections 144.50 to 144.58 that the licensee of such facility is not in compliance with ~~an~~ sections 144.411 to 144.417, 144.50 to 144.58, 144.651, or 626.557, or the applicable rule rules promulgated under the administrative procedure act by the state commissioner of health pursuant to section 144.56 under those sections, a correction order shall be issued to the licensee. The correction order shall state the deficiency, cite the specific rule violated, and specify the time allowed for correction.

Sec. 5. Minnesota Statutes 1990, section 144A.10, subdivision 4, is amended to read:

Subd. 4. **CORRECTION ORDERS.** Whenever a duly authorized representative of the commissioner of health finds upon inspection of a nursing home, that the facility or a controlling person or an employee of the facility is not in compliance with sections 144.411 to 144.417, 144.651, 144A.01 to 144A.16, or 626.557 or the rules promulgated thereunder, a correction order shall be issued to the facility. The correction order shall state the deficiency, cite the specific rule or statute violated, state the suggested method of correction, and specify the time allowed for correction. If the commissioner finds that the nursing home had uncorrected or repeated violations which create a risk to resident care, safety, or rights, the commissioner shall notify the commissioner of human services who shall (1) review reimbursement to the nursing home to determine the extent to which the state has paid for substandard care and, (2) furnish the findings and disposition to the commissioner of health within 30 days of notification.

Sec. 6. Minnesota Statutes 1990, section 144A.10, subdivision 6d, is amended to read:

Subd. 6d. **SCHEDULE OF FINES.** (a) The schedule of fines for noncompliance with correction orders issued to nursing homes that was adopted under the provisions of section 144A.10, subdivision 6, and in effect on May 1, 1989, is effective until repealed, modified, or superseded by rule.

(b) By September 1, 1990, the commissioner shall amend the schedule of fines to increase to \$250 the fines for violations of section ~~144.561~~ 144.651, subdivisions 18, 20, 21, 22, 27, and 30, and for repeated violations.

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(c) The commissioner shall adopt rules establishing the schedule of fines for deficiencies in the requirements of section 1919(b), (c), and (d), of the Social Security Act, or regulations adopted under that section of the Social Security Act.

Sec. 7. Minnesota Statutes 1990, section 144A.135, is amended to read:

144A.135 TRANSFER AND DISCHARGE APPEALS.

(a) The commissioner shall establish a mechanism for hearing appeals on transfers and discharges of residents by nursing homes or boarding care homes licensed by the commissioner. The commissioner may adopt permanent rules to implement this section.

(b) Until federal regulations are adopted under sections 1819(f)(3) and 1919(f)(3) of the Social Security Act that govern appeals of the discharges or transfers of residents from nursing homes and boarding care homes certified for participation in Medicare or medical assistance, the commissioner shall provide hearings under sections 14.57 to 14.62 and the rules adopted by the office of administrative hearings governing contested cases. To appeal the discharge or transfer, or notification of an intended discharge or transfer, a resident or the resident's representative must request a hearing in writing no later than 30 days after receiving written notice, which conforms to state and federal law, of the intended discharge or transfer.

(c) Hearings under this section shall be held no later than 14 days after receipt of the request for hearing, unless impractical to do so or unless the parties agree otherwise. Hearings shall be held in the facility in which the resident resides, unless impractical to do so or unless the parties agree otherwise.

(d) A resident who timely appeals a notice of discharge or transfer, and who resides in a certified nursing home or boarding care home, may not be discharged or transferred by the nursing home or boarding care home until resolution of the appeal. The commissioner can order the facility to readmit the resident if the discharge or transfer was in violation of state or federal law. If the resident is required to be hospitalized for medical necessity before resolution of the appeal, the facility shall readmit the resident unless the resident's attending physician documents, in writing, why the resident's specific health care needs cannot be met in the facility.

(e) The commissioner and office of administrative hearings shall conduct the hearings in compliance with the federal regulations described in paragraph (b), when adopted.

(f) Nothing in this section limits the right of a resident or the resident's representative to request or receive assistance from the office of ombudsman for older Minnesotans or the office of health facility complaints with respect to an intended discharge or transfer.

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Sec. 8. Minnesota Statutes 1990, section 144A.45, subdivision 2, is amended to read:

Subd. 2. **REGULATORY FUNCTIONS.** (a) The commissioner shall:

(1) evaluate, monitor, and license home care providers in accordance with sections 144A.45 to 144A.49;

(2) inspect the office and records of a provider during regular business hours without advance notice to the home care provider;

(3) with the consent of the consumer, visit the home where services are being provided;

(4) issue correction orders and assess civil penalties in accordance with section 144.653, subdivisions 5 to 8, for violations of sections 144A.43 to 144A.48 or the rules adopted under those sections; and

(5) take other action reasonably required to accomplish the purposes of sections 144A.43 to 144A.49.

(b) In the exercise of the authority granted in sections 144A.43 to 144A.49, the commissioner shall comply with the applicable requirements of section 144.122, the government data practices act, and the administrative procedure act.

Sec. 9. Minnesota Statutes 1990, section 144A.46, subdivision 2, is amended to read:

Subd. 2. **EXEMPTIONS.** The following individuals or organizations are exempt from the requirement to obtain a home care provider license:

(1) a person who is licensed as a registered nurse under sections 148.171 to 148.285 and who independently provides nursing services in the home without any contractual or employment relationship to a home care provider or other organization;

(2) a personal care assistant who provides services under the medical assistance program as authorized under sections 256B.0625, subdivision 19, and 256B.04, subdivision 16;

(3) a person or organization that exclusively offers, provides, or arranges for personal care assistant services under the medical assistance program as authorized under sections 256B.0625, subdivision 19, and 256B.04, subdivision 16;

(4) a person who is registered under sections 148.65 to 148.78 and who independently provides physical therapy services in the home without any contractual or employment relationship to a home care provider or other organization;

(5) a person who provides services to a person with mental retardation

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under a program of semi-independent living services regulated by Minnesota Rules, parts 9525.0500 to 9525.0660; or

(6) a person who provides services to a person with mental retardation under contract with a county to provide home and community-based services that are reimbursed under the medical assistance program, chapter 256B, and regulated by Minnesota Rules, parts 9525.1800 to 9525.1930.

An exemption under this subdivision does not excuse the individual from complying with applicable provisions of the home care bill of rights.

Sec. 10. Minnesota Statutes 1990, section 144A.46, is amended by adding a subdivision to read:

Subd. 3c. TIME LIMITS FOR APPEALS. To appeal the assessment of civil penalties under section 144A.45, subdivision 2, clause (4), a denial of a waiver or variance, and an action against a license under subdivision 3, a provider must request a hearing no later than 15 days after the provider receives notice of the action.

Sec. 11. Minnesota Statutes 1990, section 144A.53, subdivision 1, is amended to read:

Subdivision 1. **POWERS.** The director may:

(a) Promulgate by rule, pursuant to chapter 14, and within the limits set forth in subdivision 2, the methods by which complaints against health facilities, health care providers, home care providers, or administrative agencies are to be made, reviewed, investigated, and acted upon; provided, however, that a fee may not be charged for filing a complaint.

(b) Recommend legislation and changes in rules to the state commissioner of health, legislature, governor, administrative agencies or the federal government.

(c) Investigate, upon a complaint or upon initiative of the director, any action or failure to act by a health care provider, home care provider, or a health facility.

(d) Request and receive access to relevant information, records, incident reports, or documents in the possession of an administrative agency, a health care provider, a home care provider, or a health facility, and issue investigative subpoenas to individuals and facilities for oral information and written information, including privileged information which the director deems necessary for the discharge of responsibilities. For purposes of investigation and securing information to determine violations, the director need not present a release, waiver, or consent of an individual. The identities of patients or residents must be kept private as defined by section 13.02, subdivision 12.

(e) Enter and inspect, at any time, a health facility and be permitted to

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interview staff; provided that the director shall not unduly interfere with or disturb the provision of care and services within the facility or the activities of a patient or resident unless the patient or resident consents.

(f) Issue ~~a correction order~~ orders and assess civil fines pursuant to section 144.653 or any other law which provides for the issuance of correction orders to health care facilities or home care provider, or under section 144A.45. A facility's refusal to cooperate in providing lawfully requested information may also be grounds for a correction order.

(g) Recommend the certification or decertification of health facilities pursuant to Title XVIII or XIX of the United States Social Security Act.

(h) Assist patients or residents of health facilities in the enforcement of their rights under Minnesota law.

(i) Work with administrative agencies, health facilities, home care providers, and health care providers and organizations representing consumers on programs designed to provide information about health facilities to the public and to health facility residents.

Sec. 12. Minnesota Statutes 1990, section 144A.61, subdivision 3, is amended to read:

Subd. 3. **CURRICULA.** The chancellor of vocational technical education shall develop curricula to be used for nursing assistant training programs for employees of nursing homes and boarding care homes. ~~The curricula, as reviewed, approved, and evaluated by the board of nursing, shall be utilized by all facilities, institutions, or programs offering nursing assistant training programs.~~

Sec. 13. Minnesota Statutes 1990, section 144A.61, subdivision 3a, is amended to read:

Subd. 3a. **COMPETENCY EVALUATION PROGRAM.** The commissioner of health shall approve the competency evaluation program. A ~~test competency evaluation~~ must be administered to nursing assistants who complete an approved training program and desire to be listed in the nursing assistant registry. The tests may only be administered by technical colleges ~~and~~ community colleges, or other organizations approved by the department of health. After January 1, 1992, a competency evaluation for a person, other than an individual enrolled in a licensed nurse education program, who has not completed an approved nursing assistant training program, must include an evaluation of all clinical skills.

Sec. 14. Minnesota Statutes 1990, section 144A.61, subdivision 6a, is amended to read:

Subd. 6a. **NURSING ASSISTANTS HIRED IN 1990 AND AFTER.** Each nursing assistant hired to work in a nursing home or in a certified boarding care

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home on or after January 1, 1990, must have successfully completed an approved competency evaluation or an approved nursing assistant training program and competency evaluation within four months from the date of employment.

Sec. 15. Minnesota Statutes 1990, section 144A.611, subdivision 1, is amended to read:

Subdivision 1. **NURSING HOMES AND CERTIFIED BOARDING CARE HOMES.** The actual costs of tuition and reasonable expenses for the competency evaluation or the nursing assistant training program and competency evaluation approved under section 144A.61, which are paid to nursing assistants pursuant to subdivision 2, are a reimbursable expense for nursing homes and certified boarding care homes under the provisions of chapter 256B and the rules promulgated thereunder.

Sec. 16. Minnesota Statutes 1990, section 144A.611, subdivision 2, is amended to read:

Subd. 2. **NURSING ASSISTANTS.** A nursing assistant who has completed an approved competency evaluation or an approved training program and competency evaluation shall be reimbursed by the nursing home or certified boarding care home for actual costs of tuition and reasonable expenses for the competency evaluation or the training program and competency evaluation 90 days after the date of employment, or upon completion of the approved training program, whichever is later.

Sec. 17. **[144A.612] APPEALS FROM FINDINGS OF ABUSE, NEGLIGENCE, OR MISAPPROPRIATION OF PROPERTY.**

(a) Until federal regulations are adopted under sections 1819(g)(1)(C) and 1919(g)(1)(C) of the Social Security Act that govern appeals from the state's findings of abuse, neglect, or misappropriation of property by nursing assistants employed by or working in a nursing home or boarding care home, the commissioner of health shall provide hearings under sections 14.57 to 14.62 and the rules adopted by the office of administrative hearings governing contested cases.

(b) The commissioner of health shall notify the nursing assistant of findings by sending written notice, by certified mail, to the last known address available from the facility or employer. The notice must contain a statement of the nature of the allegation and the time and date of the occurrence; the individual's right to a hearing; and the commissioner's intent to report the findings to the nurse aide registry, pending the individual's appeal.

(c) To contest the finding, the nursing assistant must request a hearing in writing no later than 30 days after receiving written notice of the finding, unless federal regulations provide otherwise.

(d) The hearing must be held within 60 days from the date of receipt of the

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request for a hearing. The individual must be served written notice by certified mail of the time, place, and date of the hearing at least 15 days in advance. The hearing must be held in a place and time that is convenient for the individual to attend.

(e) The hearing must provide an opportunity for the individual to present evidence, either in person, in writing, or through witnesses, and to refute the allegations. The individual is entitled to have an attorney or other representative present at the hearing. The commissioner must issue a decision within 30 days after the hearing record is complete and the parties have had an opportunity to file exceptions under section 14.61. A copy of the decision shall be mailed to the individual.

(f) If a hearing is requested and held, and if the department's findings of abuse, neglect, or misappropriation of property are upheld by a preponderance of the evidence, the commissioner's decision and findings will be sent to the registry established under section 144A.61, subdivision 1. If a hearing is not requested or if the notice to the nursing assistant is returned to the department, the commissioner has no jurisdiction to hear an appeal at a later date, and the department's findings shall be sent to the registry at the end of the 30-day period with a notation that a hearing was not requested or held. The registry must include any brief statement by the individual disputing the findings.

(g) If it is determined that the individual did not neglect, abuse, or misappropriate resident property, all records and investigative reports shall be classified as private data under section 13.39.

(h) The identity of the nursing assistant and the findings of abuse, neglect, or misappropriation of property are public when sent to the registry, notwithstanding the provisions of section 626.557, subdivision 12. The identity of the reporter, the vulnerable adult, and persons interviewed are governed by section 626.557, subdivision 12.

Sec. 18. APPROPRIATION.

\$300,000 is appropriated from the general fund for fiscal year 1992 to the commissioner of health for the biennium ending June 30, 1993, for the WIC program to expand services to all eligible Minnesotans by January 1, 1994.

Sec. 19. APPROPRIATION, HEALTH SCREENING.

\$130,000 is appropriated from the general fund for the biennium ending June 30, 1993, to the commissioner of health to provide funding to the environmental pathology program of the University of Minnesota's department of laboratory medicine and pathology and department of family practice and community health to continue a health screening and intervention program for herbicide and fumigant applicators in the state. This appropriation is nonrecurring and shall not be included in the base for the 1993-1995 biennial budget request.
* (This section was vetoed by the governor.)

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Sec. 20. **EFFECTIVE DATE.**

Sections 1 to 17 are effective the day following final enactment.

Presented to the governor May 29, 1991

Signed by the governor June 1, 1991, 5:12 p.m.

CHAPTER 287—S.F.No. 652

An act relating to housing; providing for the payment of fees for certain publicly owned facilities; providing for use of neighborhood land trusts; amending Minnesota Statutes 1990, sections 327.23, subdivision 3; and 462A.02, by adding a subdivision; proposing coding for new law in Minnesota Statutes, chapter 462A.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 1990, section 327.23, subdivision 3, is amended to read:

Subd. 3. **MUNICIPAL PARKS.** Any manufactured home park or recreational camping area owned or operated by any municipality or political subdivision of this state shall meet all sanitary and safety provisions of sections 327.10, 327.11, 327.14 to 327.28, shall be inspected as herein provided, pay all fees, and make all reports, as herein required of a licensee.

Sec. 2. **[462A.30] DEFINITIONS.**

Subdivision 1. APPLICABILITY. The definitions in this section apply to sections 2 to 4.

Subd. 2. AGENCY. "Agency" means the Minnesota housing finance agency.

Subd. 3. FIRST OPTION TO PURCHASE. "First option to purchase" means a right of a neighborhood land trust or the agency to purchase all or any portion of the improvements and leasehold interest of a lessee, sublessee, or other resident of property subject to a ground lease, prior to the rights of any other party and at a limited equity price.

Subd. 4. GROUND LEASE. "Ground lease" means a lease of real property in which the lease does not include buildings or other improvements.

Subd. 5. LEASEHOLD INTEREST. "Leasehold interest" means the real property interest of a lessee in a ground lease in which the neighborhood land trust is the lessor.

Subd. 6. LIMITED EQUITY FORMULA. "Limited equity formula" means a method, to be determined by rule adopted by the agency, for calculation of the limited equity price, designed to maintain the affordability of the housing and the public subsidy.

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