

LEGISLATURE OF NEBRASKA  
 ONE HUNDRED THIRD LEGISLATURE  
 SECOND SESSION  
**LEGISLATIVE BILL 788**

Final Reading

Introduced by Schumacher, 22.

Read first time January 10, 2014

Committee: Banking, Commerce and Insurance

A BILL

1 FOR AN ACT relating to law; to amend sections 8-162.02, 8-1401,  
 2 8-1402, 8-1403, 27-803, and 76-238.01, Reissue Revised  
 3 Statutes of Nebraska, and sections 30-2201 and 76-1002,  
 4 Revised Statutes Cumulative Supplement, 2012; to change  
 5 provisions relating to the enforcement and servicing of  
 6 real estate loans, fiduciary accounts controlled by trust  
 7 departments, disclosure of confidential information  
 8 pertaining to property of a decedent, hearsay exception  
 9 for certain business information, and securing future  
 10 advances under a mortgage or trust deed; to provide for  
 11 access to a decedent's safe deposit box as prescribed; to  
 12 provide a duty for the Revisor of Statutes; to harmonize  
 13 provisions; and to repeal the original sections.

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

1           Section 1. (1) The enforcement and servicing of any real  
2 estate loan agreement or any mortgage, deed of trust, or other  
3 security instrument by which the loan is secured shall be pursuant  
4 only to state and federal law. No local ordinance or resolution may  
5 add to, change, interfere with any rights or obligations of, impose  
6 upon, or require payment of fees or taxes of any kind by, a lender,  
7 mortgagee, beneficiary, or trustee in a trust deed or servicer  
8 relating to, or delay or affect the enforcement and servicing of, any  
9 real estate loan agreement or any mortgage, deed of trust, or other  
10 security instrument by which the loan is secured.

11           (2) Subsection (1) of this section shall not apply to any  
12 ordinance or resolution adopted pursuant to the Community Development  
13 Law.

14           Sec. 2. Section 8-162.02, Reissue Revised Statutes of  
15 Nebraska, is amended to read:

16           8-162.02 (1) A state-chartered bank may deposit or have  
17 on deposit funds of a fiduciary account controlled by the bank's  
18 trust department unless prohibited by applicable law.

19           (2) To the extent that the funds are awaiting investment  
20 or distribution and are not insured or guaranteed by the Federal  
21 Deposit Insurance Corporation, a state-chartered bank shall set aside  
22 collateral as security under the control of appropriate fiduciary  
23 officers and bank employees. The bank shall place pledged assets of  
24 fiduciary accounts in the joint custody or control of not fewer than  
25 two of the fiduciary officers or employees of the bank designated for

1 that purpose by the board of directors. The bank may maintain the  
2 investments of a fiduciary account off-premises if consistent with  
3 applicable law and if the bank maintains adequate safeguards and  
4 controls. The market value of the collateral shall at all times equal  
5 or exceed the amount of the uninsured or unguaranteed fiduciary funds  
6 awaiting investment or distribution.

7 (3) A state-chartered bank may satisfy the collateral  
8 requirements of this section with any of the following: (a) Direct  
9 obligations of the United States or other obligations fully  
10 guaranteed by the United States as to principal and interest; (b)  
11 readily marketable securities of the classes in which banks, trust  
12 companies, or other corporations exercising fiduciary powers are  
13 permitted to invest fiduciary funds under applicable state law; and  
14 (c) surety bonds, to the extent the surety bonds provide adequate  
15 security, unless prohibited by applicable law.

16 (4) A state-chartered bank, acting in its fiduciary  
17 capacity, may deposit funds of a fiduciary account that are awaiting  
18 investment or distribution with an affiliated insured depository  
19 institution unless prohibited by applicable law. The bank may set  
20 aside collateral as security for a deposit by or with an affiliate of  
21 fiduciary funds awaiting investment or distribution, as it would if  
22 the deposit was made at the bank, unless such action is prohibited by  
23 applicable law.

24 (5) Public funds deposited in and held by a state-  
25 chartered bank are not subject to this section.

1           (6) This section does not apply to a fiduciary account in  
2 which, pursuant to the terms of the governing instrument, full  
3 investment authority is retained by the grantor or is vested in  
4 persons or entities other than the state-chartered bank and the bank,  
5 acting in its fiduciary capacity, does not have the power to exert  
6 any influence over investment decisions.

7           Sec. 3. Section 8-1401, Reissue Revised Statutes of  
8 Nebraska, is amended to read:

9           8-1401 (1) No person organized under the Business  
10 Corporation Act, the Credit Union Act, the Nebraska Banking Act, the  
11 Nebraska Industrial Development Corporation Act, the Nebraska  
12 Nonprofit Corporation Act, the Nebraska Professional Corporation Act,  
13 the Nebraska Trust Company Act, or Chapter 8, article 3, or otherwise  
14 authorized to conduct business in Nebraska or organized under the  
15 laws of the United States, shall be required to disclose any records  
16 or information, financial or otherwise, that it deems confidential  
17 concerning its affairs or the affairs of any person with which it is  
18 doing business to any person, party, agency, or organization, unless:

19           (a) The disclosure relates to a lawyers trust account and  
20 is required to be made to the Counsel for Discipline of the Nebraska  
21 Supreme Court pursuant to a rule adopted by the Nebraska Supreme  
22 Court;

23           (b) The disclosure is governed by rules for discovery  
24 promulgated pursuant to section 25-1273.01;

25           (c) The disclosure is made pursuant to section 5 of this

1 act;

2 ~~(e)~~—(d) The request for disclosure is made by a law  
3 enforcement agency regarding a crime, a fraud, or any other unlawful  
4 activity in which the person to whom the request for disclosure is  
5 made is or may be a victim of such crime, fraud, or unlawful  
6 activity;

7 ~~(d)~~—(e) The request for disclosure is made by a  
8 governmental agency which is a duly constituted supervisory  
9 regulatory agency of the person to whom the request for disclosure is  
10 made and the disclosure relates to examinations, audits,  
11 investigations, or inquiries of such persons;

12 ~~(e)~~—(f) The request for disclosure is made pursuant to  
13 subpoena issued under the laws of this state by a governmental agency  
14 exercising investigatory or adjudicative functions with respect to a  
15 matter within the agency's jurisdiction;

16 ~~(f)~~—(g) The production of records is pursuant to a  
17 written demand of the Tax Commissioner under section 77-375;

18 ~~(g)~~—(h) There is first presented to such person a  
19 subpoena, summons, or warrant issued by a court of competent  
20 jurisdiction;

21 ~~(h)~~—(i) A statute by its terms or rules and regulations  
22 adopted and promulgated thereunder requires the disclosure, other  
23 than by subpoena, summons, warrant, or court order;

24 ~~(i)~~—(j) There is presented to such person an order of a  
25 court of competent jurisdiction setting forth the exact nature and

1 limits of such required disclosure and a showing that all persons to  
2 be affected by such order have had reasonable notice and an  
3 opportunity to be heard upon the merits of such order;

4           ~~(j)~~(k) The request for disclosure relates to information  
5 or records regarding the balance due, monthly payments due, payoff  
6 amounts, payment history, interest rates, due dates, or similar  
7 information for indebtedness owed by a deceased person when the  
8 request is made by a person having an ownership interest in real  
9 estate or personal property which secures such indebtedness owed to  
10 the person to whom the request for disclosure is made; or

11           ~~(k)~~(l) There is first presented to such person the  
12 written permission of the person about whom records or information is  
13 being sought authorizing the release of the requested records or  
14 information.

15           (2) Any person who makes a disclosure of records or  
16 information as required by this section shall not be held civilly or  
17 criminally liable for such disclosure in the absence of malice, bad  
18 faith, intent to deceive, or gross negligence.

19           Sec. 4. Section 8-1402, Reissue Revised Statutes of  
20 Nebraska, is amended to read:

21           8-1402 (1) Any person, party, agency, or organization  
22 requesting disclosure of records or information pursuant to section  
23 8-1401 shall pay the costs of providing such records or information,  
24 unless:

25           (a) The request for disclosure is made pursuant to

1 subdivision (1)(a) of section 8-1401 and a Nebraska Supreme Court  
2 rule provides for the method of payment;

3 (b) The request is made pursuant to subdivision (1)(b) of  
4 section 8-1401 and the rules for discovery provide for the method of  
5 payment;

6 (c) The request for disclosure is made pursuant to  
7 subdivision ~~(1)(c) or (1)(d)~~ (1)(d) or (1)(e) of section 8-1401;

8 (d) Otherwise ordered by a court of competent  
9 jurisdiction; or

10 (e) The person making the disclosure waives any or all of  
11 the costs.

12 (2) The requesting person, party, agency, or organization  
13 shall pay five dollars per hour per person for the time actually  
14 spent on the service or, if such person can show that its actual  
15 expense in providing the records or information was greater than five  
16 dollars per hour per person, it shall be paid the actual cost of  
17 providing the records or information.

18 (3) No person authorized to receive payment pursuant to  
19 subsection (1) of this section has an obligation to provide any  
20 records or information pursuant to section 8-1401 until assurances  
21 are received that the costs due under this section will be paid,  
22 except for requests made pursuant to subdivisions ~~(1)(c), (1)(d), (1)~~  
23 ~~(e), and (1)(f)~~ (1)(d), (1)(e), (1)(f), and (1)(g) of section 8-1401.

24 Sec. 5. (1) This section does not apply to:

25 (a) Real property owned by a decedent; or

1           (b) The contents of a safe deposit box rented by a  
2 decedent from a state-chartered or federally chartered bank, savings  
3 bank, building and loan association, savings and loan association, or  
4 credit union.

5           (2) After the death of a decedent, a person (a) indebted  
6 to the decedent or (b) having possession of (i) personal property,  
7 (ii) an instrument evidencing a debt, (iii) an obligation, (iv) a  
8 chose in action, (v) a life insurance policy, (vi) a bank account,  
9 (vii) a certificate of deposit, or (viii) intangible property,  
10 including annuities, fixed income investments, mutual funds, cash,  
11 money market accounts, or stocks, belonging to the decedent, shall  
12 furnish the value of the indebtedness or property on the date of  
13 death and the names of the known or designated beneficiaries of  
14 property described in this subsection to a person who is (A) an heir  
15 at law of the decedent, (B) a devisee of the decedent or a person  
16 nominated as a personal representative in a will of the decedent, or  
17 (C) an agent or attorney authorized in writing by any such person  
18 described in subdivision (A) or (B) of this subdivision, with a copy  
19 of such authorization attached to the affidavit, and who also  
20 presents an affidavit containing the information required by  
21 subsection (3) of this section.

22           (3) An affidavit presented under subsection (2) of this  
23 section shall state:

24           (a) The name, address, social security number if  
25 available, and date of death of the decedent;

1           (b) The name and address of the affiant and that the  
2 affiant is (i) an heir at law of the decedent, (ii) a devisee of the  
3 decedent or a person nominated as a personal representative in a will  
4 of the decedent, or (iii) an agent or attorney authorized in writing  
5 by any such person described in subdivision (i) or (ii) of this  
6 subdivision;

7           (c) That the disclosure of the value on the date of death  
8 is necessary to determine whether the decedent's estate can be  
9 administered under the summary procedures set forth in section  
10 30-24,125, to assist in the determination of the inheritance tax in  
11 an estate that is not subject to probate, or to assist a conservator  
12 or guardian in the preparation of a final accounting subsequent to  
13 the death of the decedent;

14           (d) That the affiant is answerable and accountable for  
15 the information received to the decedent's personal representative,  
16 if any, or to any other person having a superior right to the  
17 property or indebtedness;

18           (e) That the affiant swears or affirms that all  
19 statements in the affidavit are true and material and further  
20 acknowledges that any false statement may subject the person to  
21 penalties relating to perjury under section 28-915; and

22           (f) That no application or petition for the appointment  
23 of a personal representative is pending or has been granted in any  
24 jurisdiction.

25           (4) A person presented with an affidavit under subsection

1 (2) of this section shall provide the requested information within  
2 five business days after being presented with the affidavit.

3 (5) A person who acts in good faith reliance on an  
4 affidavit presented under subsection (2) of this section is immune  
5 from liability for the disclosure of the requested information.

6 Sec. 6. Section 8-1403, Reissue Revised Statutes of  
7 Nebraska, is amended to read:

8 8-1403 For purposes of sections 8-1401 and 8-1402 and  
9 section 5 of this act:

10 (1) Governmental agency means any agency, department, or  
11 commission of this state or any authorized officer, employee, or  
12 agent of such agency, department, or commission;

13 (2) Law enforcement agency means an agency or department  
14 of this state or of any political subdivision of this state that  
15 obtains, serves, and enforces arrest warrants or that conducts or  
16 engages in prosecutions for violations of the law; and

17 (3) Person means any individual, corporation,  
18 partnership, limited liability company, association, joint stock  
19 association, trust, unincorporated organization, and any other legal  
20 entity.

21 Sec. 7. Section 27-803, Reissue Revised Statutes of  
22 Nebraska, is amended to read:

23 27-803 Subject to the provisions of section 27-403, the  
24 following are not excluded by the hearsay rule, even though the  
25 declarant is available as a witness:

1           (1) A statement relating to a startling event or  
2 condition made while the declarant was under the stress of excitement  
3 caused by the event or condition;

4           (2) A statement of the declarant's then existing state of  
5 mind, emotion, sensation, or physical condition (such as intent,  
6 plan, motive, design, mental feeling, pain, and bodily health), but  
7 not including a statement of memory or belief to prove the fact  
8 remembered or believed unless it relates to the execution,  
9 revocation, identification, or terms of declarant's will;

10           (3) Statements made for purposes of medical diagnosis or  
11 treatment and describing medical history, or past or present  
12 symptoms, pain, or sensations, or the inception or general character  
13 of the cause or external source thereof insofar as reasonably  
14 pertinent to diagnosis or treatment;

15           (4) A memorandum or record concerning a matter about  
16 which a witness once had knowledge but now has insufficient  
17 recollection to enable him or her to testify fully and accurately,  
18 shown to have been made or adopted by the witness when the matter was  
19 fresh in his or her memory and to reflect that knowledge correctly.  
20 If admitted, the memorandum or record may be read into evidence but  
21 may not itself be received as an exhibit unless offered by an adverse  
22 party;

23           (5)(a) A memorandum, report, record, or data compilation,  
24 in any form, of acts, events, or conditions, other than opinions or  
25 diagnoses, made at or near the time of such acts, events, or

1 conditions, in the course of a regularly conducted activity, if it  
2 was the regular course of such activity to make such memorandum,  
3 report, record, or data compilation at the time of such act, event,  
4 or condition, or within a reasonable time thereafter, as shown by the  
5 testimony of the custodian or other qualified witness unless the  
6 source of information or method or circumstances of preparation  
7 indicate lack of trustworthiness. The circumstances of the making of  
8 such memorandum, report, record, or data compilation, including lack  
9 of personal knowledge by the entrant or maker, may be shown to affect  
10 its weight. †

11 (b) A memorandum, report, record, or data compilation, in  
12 any form, of acts, events, or conditions, other than opinions or  
13 diagnoses, that was received or acquired in the regular course of  
14 business by an entity from another entity and has been incorporated  
15 into and kept in the regular course of business of the receiving or  
16 acquiring entity; that the receiving or acquiring entity typically  
17 relies upon the accuracy of the contents of the memorandum, report,  
18 record, or data compilation; and that the circumstances otherwise  
19 indicate the trustworthiness of the memorandum, report, record, or  
20 data compilation, as shown by the testimony of the custodian or other  
21 qualified witness. Subdivision (5)(b) of this section shall not apply  
22 in any criminal proceeding;

23 (6) Evidence that a matter is not included in the  
24 memoranda, reports, records, or data compilations, in any form, kept  
25 in accordance with the provisions of subdivision (5) of this section

1 to prove the nonoccurrence or nonexistence of the matter, if the  
2 matter was of a kind of which a memorandum, report, record, or data  
3 compilation was regularly made and preserved, unless the sources of  
4 information or other circumstances indicate a lack of  
5 trustworthiness;

6 (7) Upon reasonable notice to the opposing party prior to  
7 trial, records, reports, statements, or data compilations made by a  
8 public official or agency of facts required to be observed and  
9 recorded pursuant to a duty imposed by law, unless the sources of  
10 information or the method or circumstances of the investigation are  
11 shown by the opposing party to indicate a lack of trustworthiness;

12 (8) Records or data compilations, in any form, of births,  
13 fetal deaths, deaths, or marriages, if the report thereof was made to  
14 a public office pursuant to requirements of law;

15 (9) To prove the absence of a record, report, statement,  
16 or data compilation, in any form, or the nonoccurrence or  
17 nonexistence of a matter of which a record, report, statement, or  
18 data compilation, in any form, was regularly made and preserved by a  
19 public office or agency, evidence in the form of a certification in  
20 accordance with section 27-902, or testimony, that diligent search  
21 failed to disclose the record, report, statement, or data compilation  
22 or entry;

23 (10) Statements of births, marriages, divorces, deaths,  
24 legitimacy, ancestry, relationship by blood or marriage, or other  
25 similar facts of personal or family history, contained in a regularly

1 kept record of a religious organization;

2 (11) Statements of fact contained in a certificate that  
3 the maker performed a marriage or other ceremony or administered a  
4 sacrament, made by a member of the clergy, public official, or other  
5 person authorized by the rules or practices of a religious  
6 organization or by law to perform the act certified, and purporting  
7 to have been issued at the time of the act or within a reasonable  
8 time thereafter;

9 (12) Statements of births, marriages, divorces, deaths,  
10 legitimacy, ancestry, relationship by blood or marriage, or other  
11 similar facts of personal or family history contained in family  
12 Bibles, genealogies, charts, engravings on rings, inscriptions on  
13 family portraits, engravings on urns, crypts, or tombstones or the  
14 like;

15 (13) The record of a document purporting to establish or  
16 affect an interest in property, as proof of the content of the  
17 original recorded document and its execution and delivery by each  
18 person by whom it purports to have been executed, if the record is a  
19 record of a public office and an applicable statute authorized the  
20 recording of documents of that kind in that office;

21 (14) A statement contained in a document purporting to  
22 establish or affect an interest in property if the matter stated was  
23 relevant to the purpose of the document, unless dealings with the  
24 property since the document was made have been inconsistent with the  
25 truth of the statement or the purport of the document;

1           (15) Statements in a document in existence thirty years  
2 or more whose authenticity is established;

3           (16) Market quotations, tabulations, lists, directories,  
4 or other published compilations, generally used and relied upon by  
5 the public or by persons in particular occupations;

6           (17) Statements contained in published treatises,  
7 periodicals, or pamphlets on a subject of history, medicine, or other  
8 science or art, established as a reliable authority by the testimony  
9 or admission of the witness or by other expert testimony or by  
10 judicial notice, to the extent called to the attention of an expert  
11 witness upon cross-examination or relied upon by the expert witness  
12 in direct examination. If admitted, the statements may be read into  
13 evidence but may not be received as exhibits;

14           (18) Reputation among members of his or her family by  
15 blood, adoption, or marriage, or among his or her associates, or in  
16 the community, concerning a person's birth, adoption, marriage,  
17 divorce, death, legitimacy, relationship by blood, adoption, or  
18 marriage, ancestry, or other similar fact of his or her personal or  
19 family history;

20           (19) Reputation in a community, arising before the  
21 controversy, as to boundaries of or customs affecting lands in the  
22 community, and reputation as to events of general history important  
23 to the community or state or nation in which located;

24           (20) Reputation of a person's character among his or her  
25 associates or in the community;

1           (21) Evidence of a final judgment, entered after a trial  
2 or upon a plea of guilty (but not upon a plea of nolo contendere),  
3 adjudging a person guilty of a crime punishable by death or  
4 imprisonment in excess of one year, to prove any fact essential to  
5 sustain the judgment, but not including, when offered by the  
6 government in a criminal prosecution for purposes other than  
7 impeachment, judgments against a person other than the accused. The  
8 pendency of an appeal may be shown but does not affect admissibility;

9           (22) Judgments as proof of matters of personal, family,  
10 or general history, or boundaries, essential to the judgment, if the  
11 same would be provable by evidence of reputation; and

12           (23) A statement not specifically covered by any of the  
13 foregoing exceptions but having equivalent circumstantial guarantees  
14 of trustworthiness, if the court determines that (a) the statement is  
15 offered as evidence of a material fact, (b) the statement is more  
16 probative on the point for which it is offered than any other  
17 evidence which the proponent can procure through reasonable efforts,  
18 and (c) the general purposes of these rules and the interests of  
19 justice will best be served by admission of the statement into  
20 evidence. A statement may not be admitted under this exception unless  
21 the proponent of it makes known to the adverse party, sufficiently in  
22 advance of the trial or hearing to provide the adverse party with a  
23 fair opportunity to prepare to meet it, his or her intention to offer  
24 the statement and the particulars of it, including the name and  
25 address of the declarant.

1           Sec. 8. Section 30-2201, Revised Statutes Cumulative  
2 Supplement, 2012, is amended to read:

3           30-2201 Sections 30-2201 to 30-2902, 30-3901 to 30-3923,  
4 and 30-4001 to 30-4045 and section 9 of this act shall be known and  
5 may be cited as the Nebraska Probate Code.

6           Sec. 9. (1) For purposes of this section:

7           (a) Custodian means a bank, savings and loan association,  
8 credit union, or other institution acting as a lessor of a safe  
9 deposit box; and

10          (b) Representative of a custodian means an authorized  
11 officer or employee of a custodian.

12          (2)(a) If a decedent at the time of his or her death was  
13 a sole or last surviving joint lessee of a safe deposit box, the  
14 custodian shall, prior to notice that a personal representative or  
15 special administrator has been appointed for such decedent's estate,  
16 allow access to the safe deposit box to determine whether the safe  
17 deposit box contains an instrument that appears to be an original  
18 will of the decedent, a deed to a burial plot, or burial  
19 instructions. The following persons may have such access:

20          (i) A person who presents an affidavit described in  
21 subsection (4) of this section that affiant reasonably believes that  
22 he or she is either (A) an heir at law of the decedent, (B) a devisee  
23 of the decedent or a person nominated as a personal representative as  
24 shown in a photocopy of a will which is attached to such affidavit,  
25 or (C) the agent or attorney specifically authorized in writing by a

1 person described in subdivision (2)(a)(i)(A) or (B) of this section;

2 or

3 (ii) A person who, under the terms of the safe deposit  
4 box lease or a power of attorney at the time of the decedent's death,  
5 was legally permitted to enter the safe deposit box, unless otherwise  
6 provided by the lease or the power of attorney.

7 (b) If a person described in subdivision (2)(a) of this  
8 section desires access to a safe deposit box but does not possess a  
9 key to the box, the custodian may open the safe deposit box by any  
10 means necessary at the person's request and expense or the custodian  
11 may require the person to obtain a court order for the custodian to  
12 open the safe deposit box at the requesting person's expense. The  
13 custodian shall retain, in a secure location at such person's  
14 expense, the contents of the box other than a purported will, deed to  
15 a burial plot, and burial instructions. A custodian shall deliver a  
16 purported will as described in subdivision (5)(b) of this section. A  
17 person described in subdivision (2)(a)(i) of this section may remove  
18 a deed to a burial plot and burial instructions that are not part of  
19 a purported will pursuant to subdivision (5)(d) of this section, and  
20 the custodian shall not prevent the removal. Expenses incurred by a  
21 custodian or by the person seeking the documents pursuant to this  
22 section shall be considered an estate administration expense.

23 (3) A representative of the custodian shall be present  
24 during the entry of a safe deposit box pursuant to this section.

25 (4) The affidavit referred to in subdivision (2)(a)(i) of

1 this section shall state:

2 (a) That the sole or last surviving lessor of a safe  
3 deposit box has died and the date of his or her death, and a copy of  
4 the death certificate shall be attached;

5 (b) If the person submitting the affidavit is an attorney  
6 or agent of the affiant, that such appointment is for the purpose of  
7 accompanying the opening of the safe deposit box. In lieu of this  
8 statement, the appointment shall accompany the affidavit; and

9 (c) That the affiant:

10 (i)(A) Is an heir at law of the deceased lessor and a  
11 description of such person's relationship to the deceased lessor;

12 (B) Is reasonably thought to be a devisee of the decedent  
13 based on the provisions of a will, a photocopy of which is submitted  
14 with the affidavit; or

15 (C) Is reasonably thought to be nominated as personal  
16 representative pursuant to the terms of a will, a photocopy of which  
17 is submitted with the affidavit;

18 (ii) Swears or affirms that all statements in the  
19 affidavit are true and material and further acknowledges that any  
20 false statement may subject the person to penalties relating to  
21 perjury under section 28-915; and

22 (iii) Has no knowledge of an application or petition for  
23 the appointment of a personal representative pending or granted in  
24 any jurisdiction.

25 (5)(a) If an instrument purporting to be a will is found

1 in a safe deposit box as the result of an entry pursuant to  
2 subsection (2) of this section, the representative of the custodian  
3 shall remove the purported will.

4 (b) The custodian shall mail the purported will by  
5 registered or certified mail or deliver the purported will in person  
6 to the clerk of the county court of the county in which the decedent  
7 was a resident. If the custodian is unable to determine the county of  
8 residence of the decedent, the custodian shall mail the purported  
9 will by registered or certified mail or deliver the purported will in  
10 person to the office of the clerk of the county court of the county  
11 in which the safe deposit box is located.

12 (c) At the request of the person or persons authorized to  
13 have access to the safe deposit box under subsection (2) of this  
14 section, the representative of the custodian shall copy each  
15 purported will of the decedent, at the expense of the requesting  
16 person, and shall deliver the copy of each purported will to the  
17 person, or if directed by the person, to the person's agent or  
18 attorney. In copying any purported will, the representative of the  
19 custodian shall not remove any staples or other fastening devices or  
20 disassemble the purported will in any way.

21 (d) If the safe deposit box contains a deed to a burial  
22 plot or burial instructions that are not a part of a purported will,  
23 the person or persons authorized to have access to the safe deposit  
24 box under subsection (2) of this section may remove these instruments  
25 or request that the representative of the custodian copy the deed to

1 the burial plot or burial instructions at the expense of the  
2 requesting person.

3 (6) This section does not limit the right of a personal  
4 representative or a special administrator for the decedent, or a  
5 successor of the decedent pursuant to section 30-24,125, to have  
6 access to the safe deposit box as otherwise provided by law.

7 (7) Unless limited by the safe deposit box lease, a  
8 surviving co-lessee of the safe deposit box may continue to enter the  
9 safe deposit box notwithstanding the death of the decedent.

10 (8) A custodian shall not be liable to a person for an  
11 action taken pursuant to this section or for a failure to act in  
12 accordance with the requirements of this section unless the action or  
13 failure to act is shown to have resulted from the custodian's bad  
14 faith, gross negligence, or intentional misconduct.

15 Sec. 10. Section 76-238.01, Reissue Revised Statutes of  
16 Nebraska, is amended to read:

17 76-238.01 (1) Any interest in real property capable of  
18 being transferred may be mortgaged to secure (a) existing debts or  
19 obligations, ~~to secure~~ (b) debts or obligations created  
20 simultaneously with the execution of the mortgage, ~~to secure~~ (c)  
21 future advances necessary to protect the security, ~~and to secure even~~  
22 though such future advances cause the total indebtedness to exceed  
23 the maximum amount stated in the mortgage, or (d) any future advances  
24 to be made at the option of the parties in any amount unless, except  
25 as otherwise provided under subsection (2) or (3) of this section, a

1 maximum amount of total indebtedness to be secured is stated in the  
2 mortgage. At no time shall the secured principal future advances, not  
3 ~~including sums advanced to protect the security, exceed a total~~  
4 ~~amount or percentage of a total amount stated in the mortgage.~~ If the  
5 ~~mortgage authorizes advances by a percentage of the mortgage amount,~~  
6 ~~such advances shall not exceed that authorized percentage.~~ All such  
7 ~~debts, obligations, and future advances shall, from the time the~~  
8 ~~mortgage is filed for record as provided by law, be secured by such~~  
9 ~~mortgage equally with and have the same priority over the rights of~~  
10 ~~all persons who subsequent to the recording of such mortgage acquire~~  
11 ~~any rights in or liens upon the mortgaged real estate as the debts~~  
12 ~~and obligations secured thereby at the time of the filing of the~~  
13 ~~mortgage for record, except that (a) the mortgagor or his or her~~  
14 ~~successor in title is hereby authorized to file for record, and the~~  
15 ~~same shall be recorded, a notice limiting the amount of optional~~  
16 ~~future advances secured by such mortgage to not less than the amount~~  
17 ~~advanced actually at the time of such filing, and a copy of such~~  
18 ~~filing shall be filed with the mortgagee, and (b) if any optional~~  
19 ~~future advance shall be made by the mortgagee to the mortgagor or his~~  
20 ~~or her successor in title after written notice of any mortgage, lien,~~  
21 ~~or claim against such real property, or after written notice of labor~~  
22 ~~commenced or material furnished or contracted to be commenced or~~  
23 ~~furnished on such real property which is junior to such mortgage,~~  
24 ~~then the amount of such advance shall be junior to such mortgage,~~  
25 ~~lien, or claim, including a claim for materials delivered or labor~~

1 ~~performed which is ultimately filed as a construction lien and of~~  
2 ~~which such written notice was given.~~

3 (2) Future advances necessary to protect the security  
4 shall include, but not be limited to, advances for payment of real  
5 property taxes, special assessments, prior liens, hazard insurance  
6 premiums, maintenance charges imposed under a condominium declaration  
7 or other covenant, and costs of repair, maintenance, or improvements.  
8 Future advances necessary to protect the security are secured by the  
9 mortgage and have the priority specified in subsection (3) of this  
10 section.

11 (3)(a) Except as provided in subdivision (b) of this  
12 subsection, all items identified in subsection (1) of this section  
13 are equally secured by the mortgage from the time of filing the  
14 mortgage as provided by law and have the same priority as the  
15 mortgage over the rights of all other persons who acquire any rights  
16 in or liens upon the mortgaged real property subsequent to the time  
17 the mortgage was filed.

18 (b)(i) The mortgagor or his or her successor in title may  
19 limit the amount of optional future advances secured by the mortgage  
20 under subdivision (1)(d) of this section by filing a notice for  
21 record in the office of the register of deeds of each county in which  
22 the mortgaged real property or some part thereof is situated. A copy  
23 of such notice shall be sent by certified mail to the mortgagee at  
24 the address of the mortgagee set forth in the mortgage or, if the  
25 mortgage has been assigned, to the address of the most recent

1 assignee reflected in a recorded assignment of the mortgage. The  
2 amount of such secured optional future advances shall be limited to  
3 not less than the amount actually advanced at the time of receipt of  
4 such notice by the mortgagee.

5 (ii) If any optional future advance is made by the  
6 mortgagee to the mortgagor or his or her successor in title after  
7 receiving written notice of the filing for record of any trust deed,  
8 mortgage, lien, or claim against such mortgaged real property, then  
9 the amount of such optional future advance shall be junior to such  
10 trust deed, mortgage, lien, or claim. The notice under this  
11 subdivision shall be sent by certified mail to the mortgagee at the  
12 address of the mortgagee set forth in the mortgage or, if the  
13 mortgage has been assigned, to the address of the most recent  
14 assignee reflected in a recorded assignment of the mortgage.

15 (iii) Subdivisions (b)(i) and (ii) of this subsection  
16 shall not limit or determine the priority of optional future advances  
17 as against construction liens governed by section 52-139.

18 ~~(2)-(4)~~ The reduction to zero or elimination of the debt  
19 evidenced by the instruments authorized in this section shall not  
20 invalidate the operation of this section as to any future advances  
21 unless a notice or release to the contrary is filed for record as  
22 provided by law.

23 Sec. 11. Section 76-1002, Revised Statutes Cumulative  
24 Supplement, 2012, is amended to read:

25 76-1002 (1) Transfers in trust of real property may be

1 made to secure (a) existing debts or obligations, (b) debts or  
2 obligations created simultaneously with the execution of the trust  
3 deed, ~~(b)-(c)~~ future advances necessary to protect the security, ~~(e)~~  
4 even though such future advances cause the total indebtedness to  
5 exceed the maximum amount stated in the trust deed, (d) any future  
6 advances to be made at the option of the parties, in any amount  
7 unless, except as otherwise provided under subsection (2) or (3) of  
8 this section, a maximum amount of total indebtedness to be secured is  
9 stated in the trust deed, or ~~(d)-(e)~~ the performance of an obligation  
10 of any other person named in the trust deed to a beneficiary.

11 (2) Future advances necessary to protect the security  
12 shall include, but not be limited to, advances for payment of real  
13 property taxes, special assessments, prior liens, hazard insurance  
14 premiums, maintenance charges imposed under a condominium declaration  
15 or other covenant, and costs of repair, maintenance, or improvements.  
16 Future advances necessary to protect the security are secured by the  
17 trust deed and shall have the priority specified in subsection (3) of  
18 this section.

19 (3)(a) Except as provided in subdivision (b) of this  
20 subsection, all items identified in subsection (1) of this section  
21 are equally secured by the trust deed from the time of filing the  
22 trust deed as provided by law and have the same priority as the trust  
23 deed over the rights of all other persons who acquire any rights in  
24 or liens upon the trust property subsequent to the time the trust  
25 deed was filed.

1           (b)(i) The trustor or his or her successor in title may  
2 limit the amount of optional future advances secured by the trust  
3 deed under subdivision ~~(1)(e)~~ (1)(d) of this section by filing a  
4 notice for record in the office of the register of deeds of each  
5 county in which the trust property or some part thereof is situated.  
6 A copy of such notice shall be sent by certified mail to the  
7 beneficiary at the address of the beneficiary set forth in the trust  
8 deed or, if the trust deed has been assigned, to the address of the  
9 most recent assignee reflected in a recorded assignment of the trust  
10 deed. The amount of such secured optional future advances shall be  
11 limited to not less than the amount actually advanced at the time of  
12 receipt of such notice by the beneficiary.

13           (ii) If any optional future advance is made by the  
14 beneficiary to the trustor or his or her successor in title after  
15 receiving written notice of the filing for record of any trust deed,  
16 mortgage, lien, or claim against such trust property, then the amount  
17 of such optional future advance shall be junior to such trust deed,  
18 mortgage, lien, or claim. The notice under this subdivision shall be  
19 sent by certified mail to the beneficiary at the address of the  
20 beneficiary set forth in the trust deed or, if the trust deed has  
21 been assigned, to the address of the most recent assignee reflected  
22 in a recorded assignment of the trust deed.

23           (iii) Subdivisions (b)(i) and (ii) of this subsection  
24 shall not limit or determine the priority of optional future advances  
25 as against construction liens governed by section 52-139.

1                   (4) The reduction to zero or elimination of the  
2 obligation evidenced by any of the transfers in trust authorized by  
3 this section shall not invalidate the operation of this section as to  
4 any future advances unless a notice or release to the contrary is  
5 filed for record as provided by law. All right, title, interest, and  
6 claim in and to the trust property acquired by the trustor or his or  
7 her successors in interest subsequent to the execution of the trust  
8 deed shall inure to the trustee as security for the obligation or  
9 obligations for which the trust property is conveyed in like manner  
10 as if acquired before execution of the trust deed.

11                   Sec. 12. The Revisor of Statutes shall assign section 9  
12 of this act within Chapter 30, article 24, part 1.

13                   Sec. 13. Original sections 8-162.02, 8-1401, 8-1402,  
14 8-1403, 27-803, and 76-238.01, Reissue Revised Statutes of Nebraska,  
15 and sections 30-2201 and 76-1002, Revised Statutes Cumulative  
16 Supplement, 2012, are repealed.