

LEGISLATURE OF NEBRASKA
ONE HUNDRED THIRD LEGISLATURE
SECOND SESSION
LEGISLATIVE BILL 819

Introduced by Wightman, 36.

Read first time January 10, 2014

Committee: Banking, Commerce and Insurance

A BILL

1 FOR AN ACT relating to real property; to amend section 76-238.01,
2 Reissue Revised Statutes of Nebraska, and section
3 76-1002, Revised Statutes Cumulative Supplement, 2012; to
4 change provisions relating to future advances on
5 mortgages or trust deeds as prescribed; and to repeal the
6 original sections.

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

1 Section 1. Section 76-238.01, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 76-238.01 (1) Any interest in real property capable of
4 being transferred may be mortgaged to secure (a) existing debts or
5 obligations, to secure (b) debts or obligations created
6 simultaneously with the execution of the mortgage, to secure (c)
7 future advances necessary to protect the security, and to secure even
8 though such future advances cause the total indebtedness to exceed
9 the maximum amount stated in the mortgage, or (d) any future advances
10 to be made at the option of the parties in any amount unless, except
11 as otherwise provided under subsection (2) or (3) of this section, a
12 maximum amount of total indebtedness is stated in the mortgage. At no
13 time shall the secured principal future advances, not including sums
14 advanced to protect the security, exceed a total amount or percentage
15 of a total amount stated in the mortgage. If the mortgage authorizes
16 advances by a percentage of the mortgage amount, such advances shall
17 not exceed that authorized percentage. All such debts, obligations,
18 and future advances shall, from the time the mortgage is filed for
19 record as provided by law, be secured by such mortgage equally with
20 and have the same priority over the rights of all persons who
21 subsequent to the recording of such mortgage acquire any rights in or
22 liens upon the mortgaged real estate as the debts and obligations
23 secured thereby at the time of the filing of the mortgage for record,
24 except that (a) the mortgagor or his or her successor in title is
25 hereby authorized to file for record, and the same shall be recorded,

1 ~~a notice limiting the amount of optional future advances secured by~~
2 ~~such mortgage to not less than the amount advanced actually at the~~
3 ~~time of such filing, and a copy of such filing shall be filed with~~
4 ~~the mortgagee, and (b) if any optional future advance shall be made~~
5 ~~by the mortgagee to the mortgagor or his or her successor in title~~
6 ~~after written notice of any mortgage, lien, or claim against such~~
7 ~~real property, or after written notice of labor commenced or material~~
8 ~~furnished or contracted to be commenced or furnished on such real~~
9 ~~property which is junior to such mortgage, then the amount of such~~
10 ~~advance shall be junior to such mortgage, lien, or claim, including a~~
11 ~~claim for materials delivered or labor performed which is ultimately~~
12 ~~filed as a construction lien and of which such written notice was~~
13 ~~given.~~

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

22 (3)(a) Except as provided in subdivision (b) of this
23 subsection, all items identified in subsection (1) of this section
24 are equally secured by the mortgage from the time of filing the
25 mortgage as provided by law and have the same priority as the

1 mortgage over the rights of all other persons who acquire any rights
2 in or liens upon the mortgaged real property subsequent to the time
3 the mortgage was filed.

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

16 (ii) If any optional future advance is made by the
17 mortgagee to the mortgagor or his or her successor in title after
18 receiving written notice of the filing for record of any trust deed,
19 mortgage, lien, or claim against such mortgaged real property, then
20 the amount of such optional future advance shall be junior to such
21 trust deed, mortgage, lien, or claim.

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

25 (2)-(4) The reduction to zero or elimination of the debt

1 evidenced by the instruments authorized in this section shall not
2 invalidate the operation of this section as to any future advances
3 unless a notice or release to the contrary is filed for record as
4 provided by law.

5 Sec. 2. Section 76-1002, Revised Statutes Cumulative
6 Supplement, 2012, is amended to read:

7 76-1002 (1) Transfers in trust of real property may be
8 made to secure (a) existing debts or obligations, (b) debts or
9 obligations created simultaneously with the execution of the trust
10 deed, ~~(b)-(c)~~ future advances necessary to protect the security, ~~(e)~~
11 even though such future advances cause the total indebtedness to
12 exceed the maximum amount stated in the transfer in trust of real
13 property or in the trust deed, (d) any future advances to be made at
14 the option of the parties, in any amount unless, except as otherwise
15 provided under subsection (2) or (3) of this section, a maximum
16 amount of total indebtedness to be secured is stated in the transfer
17 in trust of real property or in the trust deed, or ~~(d)-(e)~~ the
18 performance of an obligation of any other person named in the trust
19 deed to a beneficiary.

20 (2) Future advances necessary to protect the security
21 shall include, but not be limited to, advances for payment of real
22 property taxes, special assessments, prior liens, hazard insurance
23 premiums, maintenance charges imposed under a condominium declaration
24 or other covenant, and costs of repair, maintenance, or improvements.
25 Future advances necessary to protect the security are secured by the

1 trust deed and shall have the priority specified in subsection (3) of
2 this section.

3 (3)(a) Except as provided in subdivision (b) of this
4 subsection, all items identified in subsection (1) of this section
5 are equally secured by the trust deed from the time of filing the
6 trust deed as provided by law and have the same priority as the trust
7 deed over the rights of all other persons who acquire any rights in
8 or liens upon the trust property subsequent to the time the trust
9 deed was filed.

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

22 (ii) If any optional future advance is made by the
23 beneficiary to the trustor or his or her successor in title after
24 receiving written notice of the filing for record of any trust deed,
25 mortgage, lien, or claim against such trust property, then the amount

1 of such optional future advance shall be junior to such trust deed,
2 mortgage, lien, or claim. ~~The notice under this subdivision shall be~~
3 ~~sent by certified mail to the beneficiary at the address of the~~
4 ~~beneficiary set forth in the trust deed.~~

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

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

18 Sec. 3. Original section 76-238.01, Reissue Revised
19 Statutes of Nebraska, and section 76-1002, Revised Statutes
20 Cumulative Supplement, 2012, are repealed.