

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

SECOND SESSION

LEGISLATIVE BILL 686

Introduced by Wightman, 36.

Read first time January 06, 2010

Committee: Government, Military and Veterans Affairs

A BILL

1 FOR AN ACT relating to registers of deeds; to amend sections
2 25-529, 25-531, 25-2154, 33-109, 52-1004, and 77-3903,
3 Reissue Revised Statutes of Nebraska, and section 60-169,
4 Revised Statutes Cumulative Supplement, 2008; to change
5 and eliminate fees received by clerks and registers of
6 deeds; to harmonize provisions; to provide an operative
7 date; to repeal the original sections; and to outright
8 repeal section 33-112, Reissue Revised Statutes of
9 Nebraska.
10 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 25-529, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 25-529 The register of deeds of each county shall record
4 such appointment as shall be filed under the provisions of section
5 25-528 and any revocation thereof in the Miscellaneous Record,
6 shall enter such instruments in the numerical index against the
7 lands described therein, and shall be entitled to demand and
8 receive fees as provided in sections 33-109 and 33-112. the fee
9 provided in section 33-109.

10 Sec. 2. Section 25-531, Reissue Revised Statutes of
11 Nebraska, is amended to read:

12 25-531 When the summons has been served or publication
13 made, the action is pending so as to charge third persons with
14 notice of pendency. While the action is pending no interest can
15 be acquired by third persons in the subject matter thereof, as
16 against the plaintiff's title. In all actions brought to affect the
17 title to real property, the plaintiff may either at the time of
18 filing his or her complaint or afterwards, file, or in case any
19 defendant sets up an affirmative cause of action and demands relief
20 which shall affect the title to real estate, he or she may, at the
21 time of filing such answer or at any time afterwards, file with
22 the clerk or register of deeds of each county in which the real
23 estate thus to be affected, or any part thereof, is situated, a
24 notice of the pendency of such action. The notice shall contain the
25 names of the parties, the object of the action, and a description

1 of the property in such county sought to be affected thereby. If
2 the action is for foreclosure of a mortgage, such notice shall
3 contain the date of the mortgage, the parties thereto, and the
4 time and place of recording the same. The clerk or register of
5 deeds of such county shall record the notice thus filed and enter
6 the same upon the numerical index of all lands, any part of which
7 is included in the description in the notice, for which he or
8 she shall be entitled to receive ~~filing fees in accordance with~~
9 ~~sections 33-109 and 33-112,~~ the fee provided in section 33-109, to
10 be paid by the person filing such notice, and which shall be taxed
11 as part of the costs in the action. From the time of filing such
12 notice the pendency of such action shall be constructive notice
13 to any purchaser or encumbrancer to be affected thereby. Every
14 person whose conveyance or encumbrance is subsequently executed or
15 subsequently recorded shall be deemed to be a subsequent purchaser
16 or encumbrancer and shall be bound by all proceedings taken in
17 the action after the filing of such notice to the same extent
18 as if he or she were made a party to the action. The court in
19 which such action was commenced or any judge thereof may at any
20 time thereafter on the application of any person aggrieved, on
21 good cause shown, and on such notice as the court or judge may
22 determine, order the notice to be canceled by the clerk or register
23 of deeds of any county in which the notice may have been filed or
24 recorded by filing a notice of release. In actions in which such
25 notice is filed in a county or counties, other than the county in

1 which the action is pending, the county clerk or the register of
2 deeds of the county in which the action was begun may cancel such
3 notice by executing a written release under his or her hand and
4 seal by reason of the order of the court or judge, and forward
5 such release by mail to the county clerk or register of deeds of
6 the county in which the notice has been filed or recorded, and
7 which certificate such county clerk or register of deeds shall
8 record in the records of his or her office. At any time after
9 such notice of pendency is recorded, the party on whose behalf
10 the same was filed or the party's attorney of record may cause
11 the notice to be canceled in the office of the county clerk or
12 register of deeds of any county in which the notice has been filed
13 or recorded. Such cancellation may be made by written release in
14 the same manner as such cancellations are entered on order of the
15 court. For the service required by this section, the county clerk
16 or register of deeds shall be entitled to charge and receive fees
17 ~~in accordance with sections 33-109 and 33-112,~~ a fee in accordance
18 with section 33-109, to be paid by the party causing the service to
19 be performed.

20 Sec. 3. Section 25-2154, Reissue Revised Statutes of
21 Nebraska, is amended to read:

22 25-2154 In all cases of foreclosure of mortgages in
23 the several counties in the state, it shall be the duty of the
24 clerk of the district court, on the satisfaction or payment of
25 the amount of the decree, to forward to the register of deeds

1 a certificate setting forth the names of parties, plaintiff and
2 defendant, descriptions of the premises mentioned in the decree,
3 and the book and page where the mortgage foreclosed is recorded,
4 for which certificate such clerk shall collect a fee of three
5 ~~dollars,~~ the fee required pursuant to section 33-109 for recording
6 the certificate, which amount shall be taxed as part of the costs
7 in the case, and ~~said~~ such sum shall be paid to the register of
8 deeds as ~~his~~ the fee for recording the certificate.

9 Sec. 4. Section 33-109, Reissue Revised Statutes of
10 Nebraska, is amended to read:

11 33-109 The register of deeds and the county clerk shall
12 receive for recording a deed, mortgage, or release, recording and
13 indexing of a will, recording and indexing of a decree in a testate
14 estate, recording proof of publication, or recording any other
15 instrument, a fee of ~~five dollars per page.~~ ten dollars for the
16 first page and six dollars for each additional page. The cost for
17 a certified copy of any instrument filed or recorded in the office
18 of county clerk or register of deeds shall be one dollar and fifty
19 cents per page.

20 Sec. 5. Section 52-1004, Reissue Revised Statutes of
21 Nebraska, is amended to read:

22 52-1004 (1) ~~Beginning July 1, 1999,~~ The uniform
23 fee, payable to the Secretary of State, for presenting for filing
24 and indexing and for filing and indexing each notice of lien or
25 certificate or notice affecting the lien pursuant to the Uniform

1 Federal Lien Registration Act shall be ~~six dollars~~, two times the
2 fee required for recording instruments with the register of deeds
3 as provided in section 33-109. There shall be no fee for the filing
4 of a termination statement. The uniform fee for each county more
5 than one designated pursuant to subsection (1) of section 52-1001
6 shall be ~~three dollars~~, the fee required for recording instruments
7 with the register of deeds as provided in section 33-109. The
8 Secretary of State shall deposit each fee received pursuant to
9 this section in the Uniform Commercial Code Cash Fund. Of the fees
10 received and deposited pursuant to this section, the Secretary of
11 State shall remit ~~three dollars~~ the fee required for recording
12 instruments with the register of deeds as provided in section
13 33-109 to the register of deeds of a county for each designation
14 of such county in a filing pursuant to subsection (1) of section
15 52-1001.

16 (2) The Secretary of State shall bill the district
17 directors of internal revenue or other appropriate federal
18 officials on a monthly basis for fees for documents presented or
19 filed by them.

20 Sec. 6. Section 60-169, Revised Statutes Cumulative
21 Supplement, 2008, is amended to read:

22 60-169 (1) (a) Except as otherwise provided in subdivision
23 (b) of this subsection, each owner of a vehicle and each person
24 mentioned as owner in the last certificate of title, when the
25 vehicle is dismantled, destroyed, or changed in such a manner

1 that it loses its character as a vehicle or changed in such a
2 manner that it is not the vehicle described in the certificate
3 of title, shall surrender his or her certificate of title to the
4 county clerk or designated county official of the county where such
5 certificate of title was issued or, if issued by the department,
6 to the department. If the certificate of title is surrendered
7 to the county clerk or designated county official, he or she
8 shall, with the consent of any holders of any liens noted thereon,
9 enter a cancellation upon his or her records and shall notify the
10 department of such cancellation. If the certificate is surrendered
11 to the department, it shall, with the consent of any holder of any
12 lien noted thereon, enter a cancellation upon its records.

13 (b)(i) In the case of a mobile home or manufactured
14 home for which a certificate of title has been issued, if such
15 mobile home or manufactured home is affixed to real property in
16 which each owner of the mobile home or manufactured home has any
17 ownership interest, the certificate of title may be surrendered
18 for cancellation to the county clerk or designated county official
19 of the county where such certificate of title is issued or, if
20 issued by the department, to the department, if at the time of
21 surrender the owner submits to the county clerk, the designated
22 county official, or the department an affidavit of affixture on a
23 form provided by the department that contains all of the following,
24 as applicable:

25 (A) The names and addresses of all of the owners of

1 record of the mobile home or manufactured home;

2 (B) A description of the mobile home or manufactured
3 home that includes the name of the manufacturer, the year of
4 manufacture, the model, and the manufacturer's serial number;

5 (C) The legal description of the real property upon which
6 the mobile home or manufactured home is affixed and the names of
7 all of the owners of record of the real property;

8 (D) A statement that the mobile home or manufactured home
9 is affixed to the real property;

10 (E) The written consent of each holder of a lien duly
11 noted on the certificate of title to the release of such lien and
12 the cancellation of the certificate of title;

13 (F) A copy of the certificate of title surrendered for
14 cancellation; and

15 (G) The name and address of an owner, a financial
16 institution, or another entity to which notice of cancellation of
17 the certificate of title may be delivered.

18 (ii) The person submitting an affidavit of affixture
19 pursuant to subdivision (b)(i) of this subsection shall swear or
20 affirm that all statements in the affidavit are true and material
21 and further acknowledge that any false statement in the affidavit
22 may subject the person to penalties relating to perjury under
23 section 28-915.

24 (2) If a certificate of title of a mobile home or
25 manufactured home is surrendered to the county clerk or designated

1 county official, along with the affidavit required by subdivision
2 (1) (b) of this section, he or she shall enter a cancellation upon
3 his or her records, notify the department of such cancellation,
4 forward a duplicate original of the affidavit to the department,
5 and deliver a duplicate original of the executed affidavit under
6 subdivision (1) (b) of this section to the register of deeds for the
7 county in which the real property is located to be filed by the
8 register of deeds. The county clerk or designated county official
9 shall be entitled to collect fees a fee from the person submitting
10 the affidavit in accordance with ~~sections~~ section 33-109 and 33-112
11 to cover the costs of filing such affidavit. If the certificate of
12 title is surrendered to the department, along with the affidavit
13 required by subdivision (1) (b) of this section, the department
14 shall enter a cancellation upon its records and deliver a duplicate
15 original of the executed affidavit under subdivision (1) (b) of this
16 section to the register of deeds for the county in which the real
17 property is located to be filed by the register of deeds. The
18 department shall be entitled to collect fees a fee from the person
19 submitting the affidavit in accordance with ~~sections~~ section 33-109
20 ~~and 33-112~~ to cover the costs of filing such affidavit. Following
21 the cancellation of a certificate of title for a mobile home or
22 manufactured home, neither the county clerk, the designated county
23 official, nor the department shall issue a certificate of title
24 for such mobile home or manufactured home, except as provided in
25 subsection (5) of this section.

1 (3) If a mobile home or manufactured home is affixed to
2 real estate before June 1, 2006, a person who is the holder of a
3 lien or security interest in both the mobile home or manufactured
4 home and the real estate to which it is affixed on such date may
5 enforce its liens or security interests by accepting a deed in lieu
6 of foreclosure or in the manner provided by law for enforcing liens
7 on the real estate.

8 (4) A mobile home or manufactured home for which the
9 certificate of title has been canceled and for which an affidavit
10 of affixture has been duly recorded pursuant to subsection (2) of
11 this section shall be treated as part of the real estate upon which
12 such mobile home or manufactured home is located. Any lien thereon
13 shall be perfected and enforced in the same manner as a lien on
14 real estate. The owner of such mobile home or manufactured home may
15 convey ownership of the mobile home or manufactured home only as a
16 part of the real estate to which it is affixed.

17 (5) (a) If each owner of both the mobile home or
18 manufactured home and the real estate described in subdivision
19 (1) (b) of this section intends to detach the mobile home or
20 manufactured home from the real estate, the owner shall do both of
21 the following: (i) Before detaching the mobile home or manufactured
22 home, record an affidavit of detachment in the office of the
23 register of deeds in the county in which the affidavit is recorded
24 under subdivision (1) (b) of this section; and (ii) apply for a
25 certificate of title for the mobile home or manufactured home

1 pursuant to section 60-147.

2 (b) The affidavit of detachment shall contain all of the
3 following:

4 (i) The names and addresses of all of the owners of
5 record of the mobile home or manufactured home;

6 (ii) A description of the mobile home or manufactured
7 home that includes the name of the manufacturer, the year of
8 manufacture, the model, and the manufacturer's serial number;

9 (iii) The legal description of the real estate from which
10 the mobile home or manufactured home is to be detached and the
11 names of all of the owners of record of the real estate;

12 (iv) A statement that the mobile home or manufactured
13 home is to be detached from the real property;

14 (v) A statement that the certificate of title of the
15 mobile home or manufactured home has previously been canceled;

16 (vi) The name of each holder of a lien of record against
17 the real estate from which the mobile home or manufactured home
18 is to be detached, with the written consent of each holder to the
19 detachment; and

20 (vii) The name and address of an owner, a financial
21 institution, or another entity to which the certificate of title
22 may be delivered.

23 (6) An owner of an affixed mobile home or manufactured
24 home for which the certificate of title has previously been
25 canceled pursuant to subsection (2) of this section shall not

1 detach the mobile home or manufactured home from the real estate
2 before a certificate of title for the mobile home or manufactured
3 home is issued by the county clerk, designated county official,
4 or department. If a certificate of title is issued by the county
5 clerk, designated county official, or department, the mobile home
6 or manufactured home is no longer considered part of the real
7 property. Any lien thereon shall be perfected pursuant to section
8 60-164. The owner of such mobile home or manufactured home may
9 convey ownership of the mobile home or manufactured home only by
10 way of a certificate of title.

11 (7) For purposes of this section:

12 (a) A mobile home or manufactured home is affixed to real
13 estate if the wheels, towing hitches, and running gear are removed
14 and it is permanently attached to a foundation or other support
15 system; and

16 (b) Ownership interest means the fee simple interest in
17 real estate or an interest as the lessee under a lease of the real
18 property that has a term that continues for at least twenty years
19 after the recording of the affidavit under subsection (2) of this
20 section.

21 (8) Upon cancellation of a certificate of title in the
22 manner prescribed by this section, the county clerk or designated
23 county official and the department may cancel and destroy all
24 certificates and all memorandum certificates in that chain of
25 title.

1 Sec. 7. Section 77-3903, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 77-3903 (1)(a) A notice of lien provided for in the
4 Uniform State Tax Lien Registration and Enforcement Act upon real
5 property shall be presented in the office of the Secretary of
6 State. Such notice of lien shall be transmitted by the Secretary
7 of State to and filed in the office of the register of deeds
8 by the register of deeds of the county or counties in which the
9 real property subject to the lien is situated as designated in
10 the notice of lien. The register of deeds shall enter the notice
11 in the alphabetical state tax lien index, showing on one line
12 the name and residence of the person liable named in such notice,
13 the last four digits of the social security number or the federal
14 tax identification number of such person, the Tax Commissioner's
15 or Commissioner of Labor's serial number of such notice, the date
16 and hour of filing, and the amount due. Such presentments to the
17 Secretary of State may be made by direct input to the Secretary of
18 State's data base or by other electronic means. All such notices
19 of lien shall be retained in numerical order in a file designated
20 state tax lien notices, except that in offices filing by the roll
21 form of microfilm pursuant to section 23-1517.01, the original
22 notices need not be retained. A lien subject to this subsection
23 shall be effective upon real property when filed by the register of
24 deeds as provided in this subsection.

25 (b) A notice of lien provided for in the Uniform State

1 Tax Lien Registration and Enforcement Act upon personal property
2 shall be filed in the office of the Secretary of State. The
3 Secretary of State shall enter the notice in the state's central
4 tax lien index, showing on one line the name and residence of the
5 person liable named in such notice, the last four digits of the
6 social security number or the federal tax identification number
7 of such person, the Tax Commissioner's or Commissioner of Labor's
8 serial number of such notice, the date and hour of filing, and the
9 amount due. Such filings with the Secretary of State may be filed
10 by direct input to the Secretary of State's data base or by other
11 electronic means. All such notices of lien shall be retained in
12 numerical order in a file designated state tax lien notices.

13 (2) ~~Beginning July 1, 1999, the~~ The uniform fee, payable
14 to the Secretary of State, for presenting for filing, releasing,
15 continuing, or subordinating or for filing, releasing, continuing,
16 or subordinating each tax lien pursuant to the Uniform State Tax
17 Lien Registration and Enforcement Act shall be ~~six dollars.~~ two
18 times the fee required for recording instruments with the register
19 of deeds as provided in section 33-109. There shall be no fee for
20 the filing of a termination statement. The uniform fee for each
21 county more than one designated pursuant to subdivision (1)(a) of
22 this section shall be ~~three dollars.~~ the fee required for recording
23 instruments with the register of deeds as provided in section
24 33-109. The Secretary of State shall deposit each fee received
25 pursuant to this section in the Uniform Commercial Code Cash Fund.

1 Of the fees received and deposited pursuant to this section, the
2 Secretary of State shall remit ~~three dollars~~ the fee required for
3 recording instruments with the register of deeds as provided in
4 section 33-109 to the register of deeds of a county for each
5 designation of such county in a filing pursuant to subdivision
6 (1) (a) of this section.

7 (3) The Secretary of State shall bill the Tax
8 Commissioner or Commissioner of Labor on a monthly basis for fees
9 for documents presented to or filed with the Secretary of State.
10 No payment of any fee shall be required at the time of presenting
11 or filing any such lien document.

12 Sec. 8. This act becomes operative on January 1, 2011.

13 Sec. 9. Original sections 25-529, 25-531, 25-2154,
14 33-109, 52-1004, and 77-3903, Reissue Revised Statutes of Nebraska,
15 and section 60-169, Revised Statutes Cumulative Supplement, 2008,
16 are repealed.

17 Sec. 10. The following section is outright repealed:
18 Section 33-112, Reissue Revised Statutes of Nebraska.