

LEGISLATIVE BILL 14

Approved by the Governor April 17, 2012

Introduced by Wightman, 36; Krist, 10.

FOR AN ACT relating to registers of deeds; to amend sections 25-529, 25-531, 25-2154, 33-109, 52-1004, 60-169, and 77-3903, Reissue Revised Statutes of Nebraska; to change fees received by registers of deeds, county clerks, clerks of the district court, and the Secretary of State; to harmonize provisions; to provide an operative date; to repeal the original sections; and to outright repeal section 33-112, Reissue Revised Statutes of Nebraska.

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

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

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

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

25-531 When the summons has been served or publication made, the action is pending so as to charge third persons with notice of pendency. While the action is pending no interest can be acquired by third persons in the subject matter thereof, as against the plaintiff's title. In all actions brought to affect the title to real property, the plaintiff may either at the time of filing his or her complaint or afterwards, file, or in case any defendant sets up an affirmative cause of action and demands relief which shall affect the title to real estate, he or she may, at the time of filing such answer or at any time afterwards, file with the clerk or register of deeds of each county in which the real estate thus to be affected, or any part thereof, is situated, a notice of the pendency of such action. The notice shall contain the names of the parties, the object of the action, and a description of the property in such county sought to be affected thereby. If the action is for foreclosure of a mortgage, such notice shall contain the date of the mortgage, the parties thereto, and the time and place of recording the same. The clerk or register of deeds of such county shall record the notice thus filed and enter the same upon the numerical index of all lands, any part of which is included in the description in the notice, for which he or she shall be entitled to receive filing fees in accordance with ~~sections~~ section 33-109 and ~~33-112~~, to be paid by the person filing such notice, and which shall be taxed as part of the costs in the action. From the time of filing such notice the pendency of such action shall be constructive notice to any purchaser or encumbrancer to be affected thereby. Every person whose conveyance or encumbrance is subsequently executed or subsequently recorded shall be deemed to be a subsequent purchaser or encumbrancer and shall be bound by all proceedings taken in the action after the filing of such notice to the same extent as if he or she were made a party to the action. The court in which such action was commenced or any judge thereof may at any time thereafter on the application of any person aggrieved, on good cause shown, and on such notice as the court or judge may determine, order the notice to be canceled by the clerk or register of deeds of any county in which the notice may have been filed or recorded by filing a notice of release. In actions in which such notice is filed in a county or counties, other than the county in which the action is pending, the county clerk or the register of deeds of the county in which the action was begun may cancel such notice by executing a written release under his or her hand and seal by reason of the order of the court or judge, and forward such release by mail to the county clerk or register of deeds of the county in which the notice has been filed or recorded, and which certificate such county clerk or register of deeds shall record in the records of his or her office. At any time after such notice of pendency is recorded, the party on whose behalf the same was filed or the party's attorney of record may cause the notice to be canceled in the office of the county clerk or register of deeds of any county in which the notice has been filed or recorded. Such cancellation may be made by written release in the same manner as such cancellations are entered on order of the court. For the service required by this section, the county clerk or register of deeds shall be entitled to charge and receive fees in accordance with ~~sections~~

section 33-109, and 33-112, to be paid by the party causing the service to be performed.

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

25-2154 In all cases of foreclosure of mortgages in the several counties in the state, it shall be the duty of the clerk of the district court, on the satisfaction or payment of the amount of the decree, to forward to the register of deeds a certificate setting forth the names of parties, plaintiff and defendant, descriptions of the premises mentioned in the decree, and the book and page where the mortgage foreclosed is recorded. For such ~~for which~~ certificate such the clerk of the district court shall collect, until January 1, 2018, the fee required pursuant to section 33-109 for recording the certificate or, on and after January 1, 2018, a fee of three dollars. Such ~~which~~ amount shall be taxed as part of the costs in the case, and said such sum shall be paid to the register of deeds as his the fee for recording the certificate.

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

33-109 (1)(a) This subdivision applies until January 1, 2018. The register of deeds and the county clerk shall receive for recording a deed, mortgage, or release, recording and indexing of a will, recording and indexing of a decree in a testate estate, recording proof of publication, or recording any other instrument, a fee of five dollars per page. ten dollars for the first page and six dollars for each additional page. Two dollars and fifty cents of the ten-dollar fee for recording the first page and fifty cents of the six-dollar fee for recording each additional page shall be used exclusively for the purposes of preserving and maintaining public records of the office of the register of deeds and for modernization and technology needs relating to such records. The funds allocated under this subdivision shall not be substituted for other allocations of county general funds to the register of deeds for the purposes enumerated in this subdivision.

(b) This subdivision applies on and after January 1, 2018. The register of deeds and the county clerk shall receive for recording a deed, mortgage, or release, recording and indexing of a will, recording and indexing of a decree in a testate estate, recording proof of publication, or recording any other instrument, a fee of five dollars per page. For entering each instrument presented for record in the numerical index, the clerk or register of deeds shall receive the sum of fifty cents for each lot and each single block without lots in platted areas and fifty cents for each section in unplatted areas to be paid in advance by the person offering the instrument for record.

(2) The cost for a certified copy of any instrument filed or recorded in the office of county clerk or register of deeds shall be one dollar and fifty cents per page.

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

52-1004 (1)(a) This subdivision applies until January 1, 2018. The Beginning July 1, 1999, the uniform fee, payable to the Secretary of State, for presenting for filing and indexing and for filing and indexing each notice of lien or certificate or notice affecting the lien pursuant to the Uniform Federal Lien Registration Act shall be six dollars. two times the fee required for recording instruments with the register of deeds as provided in section 33-109. There shall be no fee for the filing of a termination statement. The uniform fee for each county more than one designated pursuant to subsection (1) of section 52-1001 shall be three dollars. the fee required for recording instruments with the register of deeds as provided in section 33-109. The Secretary of State shall deposit each fee received pursuant to this section subdivision in the Uniform Commercial Code Cash Fund. Of the fees received and deposited pursuant to this section, subdivision, the Secretary of State shall remit three dollars the fee required for recording instruments with the register of deeds as provided in section 33-109 to the register of deeds of a county for each designation of such county in a filing pursuant to subsection (1) of section 52-1001.

(b) This subdivision applies on and after January 1, 2018. The uniform fee, payable to the Secretary of State, for presenting for filing and indexing and for filing and indexing each notice of lien or certificate or notice affecting the lien pursuant to the Uniform Federal Lien Registration Act shall be six dollars. There shall be no fee for the filing of a termination statement. The uniform fee for each county more than one designated pursuant to subsection (1) of section 52-1001 shall be three dollars. The Secretary of State shall deposit each fee received pursuant to this subdivision in the Uniform Commercial Code Cash Fund. Of the fees

received and deposited pursuant to this subdivision, the Secretary of State shall remit three dollars to the register of deeds of a county for each designation of such county in a filing pursuant to subsection (1) of section 52-1001.

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

Sec. 6. Section 60-169, Reissue Revised Statutes of Nebraska, is amended to read:

60-169 (1)(a) Except as otherwise provided in subdivision (b) of this subsection, each owner of a vehicle and each person mentioned as owner in the last certificate of title, when the vehicle is dismantled, destroyed, or changed in such a manner that it loses its character as a vehicle or changed in such a manner that it is not the vehicle described in the certificate of title, shall surrender his or her certificate of title to the county clerk or designated county official of the county where such certificate of title was issued or, if issued by the department, to the department. If the certificate of title is surrendered to the county clerk or designated county official, he or she shall, with the consent of any holders of any liens noted thereon, enter a cancellation upon his or her records and shall notify the department of such cancellation. If the certificate is surrendered to the department, it shall, with the consent of any holder of any lien noted thereon, enter a cancellation upon its records.

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

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

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

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

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

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

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

and

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

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

(2) If a certificate of title of a mobile home or manufactured home is surrendered to the county clerk or designated county official, along with the affidavit required by subdivision (1)(b) of this section, he or she shall enter a cancellation upon his or her records, notify the department of such cancellation, forward a duplicate original of the affidavit to the department, and deliver a duplicate original of the executed affidavit under subdivision (1)(b) of this section to the register of deeds for the county in which the real property is located to be filed by the register of deeds. The county clerk or designated county official shall be entitled to collect fees from the person submitting the affidavit in accordance with ~~sections~~ section 33-109 and 33-112 to cover the costs of filing such affidavit. If the certificate of title is surrendered to the department, along with the affidavit required by subdivision (1)(b) of this section, the department shall enter a cancellation upon its records and deliver a duplicate original of the executed affidavit under subdivision (1)(b) of this section to the register of deeds for the county in which the real property is located to be filed by the register

of deeds. The department shall be entitled to collect fees from the person submitting the affidavit in accordance with ~~sections~~ section 33-109 and ~~33-112~~ to cover the costs of filing such affidavit. Following the cancellation of a certificate of title for a mobile home or manufactured home, neither the county clerk, the designated county official, nor the department shall issue a certificate of title for such mobile home or manufactured home, except as provided in subsection (5) of this section.

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

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

(5) (a) If each owner of both the mobile home or manufactured home and the real estate described in subdivision (1)(b) of this section intends to detach the mobile home or manufactured home from the real estate, the owner shall do both of the following: (i) Before detaching the mobile home or manufactured home, record an affidavit of detachment in the office of the register of deeds in the county in which the affidavit is recorded under subdivision (1)(b) of this section; and (ii) apply for a certificate of title for the mobile home or manufactured home pursuant to section 60-147.

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

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

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

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

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

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

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

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

(6) An owner of an affixed mobile home or manufactured home for which the certificate of title has previously been canceled pursuant to subsection (2) of this section shall not detach the mobile home or manufactured home from the real estate before a certificate of title for the mobile home or manufactured home is issued by the county clerk, designated county official, or department. If a certificate of title is issued by the county clerk, designated county official, or department, the mobile home or manufactured home is no longer considered part of the real property. Any lien thereon shall be perfected pursuant to section 60-164. The owner of such mobile home or manufactured home may convey ownership of the mobile home or manufactured home only by way of a certificate of title.

(7) For purposes of this section:

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

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

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

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

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

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

(2)(a) This subdivision applies until January 1, 2018. The Beginning July 1, 1999, the uniform fee, payable to the Secretary of State, for presenting for filing, releasing, continuing, or subordinating or for filing, releasing, continuing, or subordinating each tax lien pursuant to the Uniform State Tax Lien Registration and Enforcement Act shall be ~~six dollars~~, two times the fee required for recording instruments with the register of deeds as provided in section 33-109. There shall be no fee for the filing of a termination statement. The uniform fee for each county more than one designated pursuant to subdivision (1)(a) of this section shall be ~~three dollars~~, the fee required for recording instruments with the register of deeds as provided in section 33-109. The Secretary of State shall deposit each fee received pursuant to this ~~section~~ subdivision in the Uniform Commercial Code Cash Fund. Of the fees received and deposited pursuant to this ~~section~~, subdivision, the Secretary of State shall remit ~~three dollars~~ the fee required for recording instruments with the register of deeds as provided in section 33-109 to the register of deeds of a county for each designation of such county in a filing pursuant to subdivision (1)(a) of this section.

(b) This subdivision applies on and after January 1, 2018. The uniform fee, payable to the Secretary of State, for presenting for filing, releasing, continuing, or subordinating or for filing, releasing, continuing, or subordinating each tax lien pursuant to the Uniform State Tax Lien Registration and Enforcement Act shall be six dollars. There shall be no fee for the filing of a termination statement. The uniform fee for each county more than one designated pursuant to subdivision (1)(a) of this section shall be three dollars. The Secretary of State shall deposit each fee received pursuant to this subdivision in the Uniform Commercial Code Cash Fund. Of the fees received and deposited pursuant to this subdivision, the Secretary of State shall remit three dollars to the register of deeds of a county for each designation of such county in a filing pursuant to subdivision (1)(a) of this section.

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

Sec. 8. This act becomes operative on January 1, 2013.

Sec. 9. Original sections 25-529, 25-531, 25-2154, 33-109, 52-1004, 60-169, and 77-3903, Reissue Revised Statutes of Nebraska, are repealed.

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