

AMENDMENTS TO LB72

Introduced by Judiciary.

1 1. Strike original section 5 and insert the following new sections:

2 Sec. 4. Section 33-109, Revised Statutes Cumulative Supplement,
3 2014, is amended to read:

4 33-109 (1)(a) This subdivision applies until January 1, 2018. The
5 register of deeds and the county clerk shall receive for recording a
6 deed, mortgage, or release, recording and indexing of a will, recording
7 and indexing of a decree in a testate estate, recording proof of
8 publication, or recording any other instrument, a fee of ten dollars for
9 the first page and six dollars for each additional page. Two dollars and
10 fifty cents of the ten-dollar fee for recording the first page and fifty
11 cents of the six-dollar fee for recording each additional page shall be
12 used exclusively for the purposes of preserving and maintaining public
13 records of the office of the register of deeds and for modernization and
14 technology needs relating to such records. The funds allocated under this
15 subdivision shall not be substituted for other allocations of county
16 general funds to the register of deeds for the purposes enumerated in
17 this subdivision.

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

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

4 (3) No fees shall be received for recording instruments for the
5 Department of Health and Human Services pursuant to section 6 of this
6 act.

7 Sec. 6. (1) When an interest in real estate is transferred for less
8 than full consideration or the real estate transferred is subject to
9 rights, possession, or powers retained by the transferor in a deed or
10 other instrument, the transferee's interest in the real estate acquired
11 at the time of the transfer is immediately upon acquisition by the
12 transferee subject to a lien in favor of the State of Nebraska for
13 medicaid reimbursement pursuant to section 68-919 to the extent necessary
14 to secure payment in full of any such claim remaining unpaid after
15 application of the assets of the transferor's probate estate. The lien
16 shall not attach to the interest of the transferor in the real estate
17 retained by the transferor. Except as provided in this section, the lien
18 applies to medical assistance provided before, at the same time as, or
19 after the transfer. This section does not apply to transfers in which the
20 transferor is the trustor of a revocable trust. This section applies to
21 transfers made on or after the effective date of this act.

22 (2) Within ten days after a transfer subject to subsection (1) of
23 this section, the transferor shall mail by certified mail, return receipt
24 requested, to the Department of Health and Human Services a copy of the
25 deed or other instrument transferring the interest together with notice
26 of the name and addresses of the transferor and transferee and the
27 relationship between the parties. Within fifteen days after a transfer
28 subject to subsection (1) of this section, the transferor shall file a
29 copy of such notice with the register of deeds of the county or counties
30 in which the real estate is situated to be recorded and indexed on the
31 transferred real estate together with a certificate of such service on

1 the department. Failure to do so shall not affect the validity of the
2 lien imposed by subsection (1) of this section, but shall subject the
3 transferor to such costs as the department may incur to discover the
4 transfer.

5 (3) The lien imposed by subsection (1) of this section shall be
6 effective upon the filing of a notice of lien in accordance with
7 subsection (4) of this section.

8 (4) A lien imposed by subsection (1) of this section shall be valid
9 against any subsequent creditor only when notice of such lien has been
10 filed by the department in the office of the register of deeds of the
11 county or counties in which the real estate subject to the lien is
12 situated as designated in the notice of lien. Such notice shall specify
13 the amount then secured by the lien and state that the lien covers
14 subsequent advances in addition to any such amount. The department shall
15 not be charged a fee by the register of deeds for filing of the notice of
16 lien. The department shall provide the register of deeds with a self-
17 addressed return envelope bearing sufficient postage for purposes of
18 returning to the department the documents filed pursuant to this
19 subsection.

20 (5) In the case of any prior mortgage or trust deed on real property
21 so written as to secure a present debt and future advances, a lien
22 imposed by subsection (1) of this section, when notice thereof has been
23 filed in accordance with subsection (4) of this section, shall be subject
24 to such prior lien unless the department has notified the lienholder in
25 writing of such lien, in which case the lien of any indebtedness
26 thereafter created under such mortgage or trust deed shall be junior to
27 the lien of the department.

28 (6) The lien shall be limited to the amount necessary to discharge
29 any such claim remaining unpaid after application of any assets from the
30 transferor's probate estate less any consideration paid to the transferor
31 at the time of the transfer adjusted to the current value of such

1 consideration as reflected by the Consumer Price Index for Urban Wage
2 Earners and Clerical Workers. The burden of proof of consideration paid
3 rests with the transferee or the transferee's successor in interest.

4 (7) Real estate for which the deed or instrument creating such
5 interest contains a recital made under the oath of the grantor that the
6 grantee is not a transferee within the meaning of this section or for
7 which an affidavit of the grantor containing such recital is recorded
8 contemporaneously with the deed or instrument shall not become subject to
9 the lien imposed in subsection (1) of this section. A grantee who is a
10 transferee who takes possession or otherwise enjoys the benefits of the
11 transfer knowing the recital is false becomes personally liable for
12 medicaid reimbursement pursuant to section 68-919 to the extent necessary
13 to discharge any such claim remaining unpaid after application of the
14 assets of the transferor's probate estate.

15 (8) The department may discharge the lien upon application by the
16 transferee in which the transferee agrees to indemnify the department for
17 Medicaid reimbursement pursuant to section 68-919 to the extent necessary
18 to discharge any such claim remaining unpaid after application of the
19 assets of the transferor's probate estate, but not to exceed the amount
20 of the lien as determined pursuant to subsection (6) of this section. The
21 department may require the application to be accompanied by good and
22 sufficient sureties or other evidence determined by the department to be
23 sufficient to secure the liability agreed to by the transferee.

24 (9) Any indemnity shall be released and any lien shall be discharged
25 upon (a) notice delivered to the department, by certified mail with a
26 return receipt, of (i) the death and identification of the transferor,
27 (ii) the legal description of the real estate subject to the indemnity or
28 lien, and (iii) the names and addresses of the owners of record of the
29 real estate, and (b) the department either (i) filing a release in the
30 real estate records of the county in which the real estate is located or
31 (ii) failing to file an action to foreclose the lien or collect on the

1 indemnity within one year after delivery of the notice. Proof of delivery
2 of such notice may be made by filing a copy thereof together with a copy
3 of the certified mail return receipt with the register of deeds of the
4 county or counties in which the real estate is situated and indexing the
5 same on the affected real estate.

6 (10) For purposes of this section, transferee means:

7 (a) An individual listed in section 77-2004 or 77-2005 in relation
8 to the transferor;

9 (b) A business organization controlled by one or more individuals
10 listed in subdivision (10)(a) of this section. Control means individuals
11 listed in subdivision (10)(a) of this section together own or have the
12 option to acquire fifty percent or more of the business organization; or

13 (c) A nonrevocable trust in which an individual listed in
14 subdivision (10)(a) of this section is a beneficiary.

15 2. On page 11, line 13, after the period insert "Notice to the
16 department shall not be dispensed with pursuant to subsection (4) or (5)
17 of this section.".

18 3. Renumber the remaining sections and correct internal references
19 and the repealer accordingly.