

AMENDMENTS TO LB788

Introduced by Schumacher

1 1. Strike the original sections and insert the following
2 new sections:

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

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

1 who subsequent to the recording of such mortgage acquire any
2 rights in or liens upon the mortgaged real estate as the debts
3 and obligations secured thereby at the time of the filing of the
4 mortgage for record, except that (a) the mortgagor or his or her
5 successor in title is hereby authorized to file for record, and the
6 same shall be recorded, a notice limiting the amount of optional
7 future advances secured by such mortgage to not less than the
8 amount advanced actually at the time of such filing, and a copy
9 of such filing shall be filed with the mortgagee, and (b) if any
10 optional future advance shall be made by the mortgagee to the
11 mortgagor or his or her successor in title after written notice
12 of any mortgage, lien, or claim against such real property, or
13 after written notice of labor commenced or material furnished or
14 contracted to be commenced or furnished on such real property which
15 is junior to such mortgage, then the amount of such advance shall
16 be junior to such mortgage, lien, or claim, including a claim for
17 materials delivered or labor performed which is ultimately filed as
18 a construction lien and of which such written notice was given.

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

27 (3)(a) Except as provided in subdivision (b) of this

1 subsection, all items identified in subsection (1) of this section
2 are equally secured by the mortgage from the time of filing the
3 mortgage as provided by law and have the same priority as the
4 mortgage over the rights of all other persons who acquire any
5 rights in or liens upon the mortgaged real property subsequent to
6 the time the mortgage was filed.

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

19 (ii) If any optional future advance is made by the
20 mortgagee to the mortgagor or his or her successor in title
21 after receiving written notice of the filing for record of any
22 trust deed, mortgage, lien, or claim against such mortgaged real
23 property, then the amount of such optional future advance shall be
24 junior to such trust deed, mortgage, lien, or claim. The notice
25 under this subdivision shall be sent by certified mail to the
26 mortgagee at the address of the mortgagee set forth in the mortgage
27 or, if the mortgage has been assigned, to the address of the most

1 recent assignee reflected in a recorded assignment of the mortgage.

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

5 ~~(2)~~ (4) The reduction to zero or elimination of the debt
6 evidenced by the instruments authorized in this section shall not
7 invalidate the operation of this section as to any future advances
8 unless a notice or release to the contrary is filed for record as
9 provided by law.

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

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

24 (2) Future advances necessary to protect the security
25 shall include, but not be limited to, advances for payment of
26 real property taxes, special assessments, prior liens, hazard
27 insurance premiums, maintenance charges imposed under a condominium

1 declaration or other covenant, and costs of repair, maintenance, or
2 improvements. Future advances necessary to protect the security are
3 secured by the trust deed and shall have the priority specified in
4 subsection (3) of this section.

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

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

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

1 the amount of such optional future advance shall be junior to
2 such trust deed, mortgage, lien, or claim. The notice under this
3 subdivision shall be sent by certified mail to the beneficiary at
4 the address of the beneficiary set forth in the trust deed or, if
5 the trust deed has been assigned, to the address of the most recent
6 assignee reflected in a recorded assignment of the trust deed.

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

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

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