

LEGISLATIVE BILL 788

Approved by the Governor April 22, 2014

Introduced by Schumacher, 22.

FOR AN ACT relating to law; to amend sections 8-162.02, 8-1401, 8-1402, 8-1403, 27-803, and 76-238.01, Reissue Revised Statutes of Nebraska, and sections 30-2201 and 76-1002, Revised Statutes Cumulative Supplement, 2012; to change provisions relating to the enforcement and servicing of real estate loans, fiduciary accounts controlled by trust departments, disclosure of confidential information pertaining to property of a decedent, hearsay exception for certain business information, and securing future advances under a mortgage or trust deed; to provide for access to a decedent's safe deposit box as prescribed; to provide a duty for the Revisor of Statutes; to harmonize provisions; and to repeal the original sections.

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

Section 1. (1) The enforcement and servicing of any real estate loan agreement or any mortgage, deed of trust, or other security instrument by which the loan is secured shall be pursuant only to state and federal law. No local ordinance or resolution may add to, change, interfere with any rights or obligations of, impose upon, or require payment of fees or taxes of any kind by, a lender, mortgagee, beneficiary, or trustee in a trust deed or servicer relating to, or delay or affect the enforcement and servicing of, any real estate loan agreement or any mortgage, deed of trust, or other security instrument by which the loan is secured.

(2) Subsection (1) of this section shall not apply to any ordinance or resolution adopted pursuant to the Community Development Law.

Sec. 2. Section 8-162.02, Reissue Revised Statutes of Nebraska, is amended to read:

8-162.02 (1) A state-chartered bank may deposit or have on deposit funds of a fiduciary account controlled by the bank's trust department unless prohibited by applicable law.

(2) To the extent that the funds are awaiting investment or distribution and are not insured or guaranteed by the Federal Deposit Insurance Corporation, a state-chartered bank shall set aside collateral as security under the control of appropriate fiduciary officers and bank employees. The bank shall place pledged assets of fiduciary accounts in the joint custody or control of not fewer than two of the fiduciary officers or employees of the bank designated for that purpose by the board of directors. The bank may maintain the investments of a fiduciary account off-premises if consistent with applicable law and if the bank maintains adequate safeguards and controls. The market value of the collateral shall at all times equal or exceed the amount of the uninsured or unguaranteed fiduciary funds awaiting investment or distribution.

(3) A state-chartered bank may satisfy the collateral requirements of this section with any of the following: (a) Direct obligations of the United States or other obligations fully guaranteed by the United States as to principal and interest; (b) readily marketable securities of the classes in which banks, trust companies, or other corporations exercising fiduciary powers are permitted to invest fiduciary funds under applicable state law; and (c) surety bonds, to the extent the surety bonds provide adequate security, unless prohibited by applicable law.

(4) A state-chartered bank, acting in its fiduciary capacity, may deposit funds of a fiduciary account that are awaiting investment or distribution with an affiliated insured depository institution unless prohibited by applicable law. The bank may set aside collateral as security for a deposit by or with an affiliate of fiduciary funds awaiting investment or distribution, as it would if the deposit was made at the bank, unless such action is prohibited by applicable law.

(5) Public funds deposited in and held by a state-chartered bank are not subject to this section.

(6) This section does not apply to a fiduciary account in which, pursuant to the terms of the governing instrument, full investment authority is retained by the grantor or is vested in persons or entities other than the state-chartered bank and the bank, acting in its fiduciary capacity, does not have the power to exert any influence over investment decisions.

Sec. 3. Section 8-1401, Reissue Revised Statutes of Nebraska, is amended to read:

8-1401 (1) No person organized under the Business Corporation Act,

the Credit Union Act, the Nebraska Banking Act, the Nebraska Industrial Development Corporation Act, the Nebraska Nonprofit Corporation Act, the Nebraska Professional Corporation Act, the Nebraska Trust Company Act, or Chapter 8, article 3, or otherwise authorized to conduct business in Nebraska or organized under the laws of the United States, shall be required to disclose any records or information, financial or otherwise, that it deems confidential concerning its affairs or the affairs of any person with which it is doing business to any person, party, agency, or organization, unless:

(a) The disclosure relates to a lawyers trust account and is required to be made to the Counsel for Discipline of the Nebraska Supreme Court pursuant to a rule adopted by the Nebraska Supreme Court;

(b) The disclosure is governed by rules for discovery promulgated pursuant to section 25-1273.01;

(c) The disclosure is made pursuant to section 5 of this act;

~~(e)~~ (d) The request for disclosure is made by a law enforcement agency regarding a crime, a fraud, or any other unlawful activity in which the person to whom the request for disclosure is made is or may be a victim of such crime, fraud, or unlawful activity;

~~(d)~~ (e) The request for disclosure is made by a governmental agency which is a duly constituted supervisory regulatory agency of the person to whom the request for disclosure is made and the disclosure relates to examinations, audits, investigations, or inquiries of such persons;

~~(e)~~ (f) The request for disclosure is made pursuant to subpoena issued under the laws of this state by a governmental agency exercising investigatory or adjudicative functions with respect to a matter within the agency's jurisdiction;

~~(f)~~ (g) The production of records is pursuant to a written demand of the Tax Commissioner under section 77-375;

~~(g)~~ (h) There is first presented to such person a subpoena, summons, or warrant issued by a court of competent jurisdiction;

~~(h)~~ (i) A statute by its terms or rules and regulations adopted and promulgated thereunder requires the disclosure, other than by subpoena, summons, warrant, or court order;

~~(i)~~ (j) There is presented to such person an order of a court of competent jurisdiction setting forth the exact nature and limits of such required disclosure and a showing that all persons to be affected by such order have had reasonable notice and an opportunity to be heard upon the merits of such order;

~~(j)~~ (k) The request for disclosure relates to information or records regarding the balance due, monthly payments due, payoff amounts, payment history, interest rates, due dates, or similar information for indebtedness owed by a deceased person when the request is made by a person having an ownership interest in real estate or personal property which secures such indebtedness owed to the person to whom the request for disclosure is made; or

~~(k)~~ (l) There is first presented to such person the written permission of the person about whom records or information is being sought authorizing the release of the requested records or information.

(2) Any person who makes a disclosure of records or information as required by this section shall not be held civilly or criminally liable for such disclosure in the absence of malice, bad faith, intent to deceive, or gross negligence.

Sec. 4. Section 8-1402, Reissue Revised Statutes of Nebraska, is amended to read:

8-1402 (1) Any person, party, agency, or organization requesting disclosure of records or information pursuant to section 8-1401 shall pay the costs of providing such records or information, unless:

(a) The request for disclosure is made pursuant to subdivision (1)(a) of section 8-1401 and a Nebraska Supreme Court rule provides for the method of payment;

(b) The request is made pursuant to subdivision (1)(b) of section 8-1401 and the rules for discovery provide for the method of payment;

~~(1)(e)~~ ~~or~~ ~~(1)(d)~~ (1)(d) or (1)(e) of section 8-1401;

(d) Otherwise ordered by a court of competent jurisdiction; or

(e) The person making the disclosure waives any or all of the costs.

(2) The requesting person, party, agency, or organization shall pay five dollars per hour per person for the time actually spent on the service or, if such person can show that its actual expense in providing the records or information was greater than five dollars per hour per person, it shall be paid the actual cost of providing the records or information.

(3) No person authorized to receive payment pursuant to subsection (1) of this section has an obligation to provide any records or information

pursuant to section 8-1401 until assurances are received that the costs due under this section will be paid, except for requests made pursuant to subdivisions ~~(1)(e)~~, ~~(1)(d)~~, ~~(1)(e)~~, and ~~(1)(f)~~ (1)(d), (1)(e), (1)(f), and (1)(g) of section 8-1401.

Sec. 5. (1) This section does not apply to:

(a) Real property owned by a decedent; or

(b) The contents of a safe deposit box rented by a decedent from a state-chartered or federally chartered bank, savings bank, building and loan association, savings and loan association, or credit union.

(2) After the death of a decedent, a person (a) indebted to the decedent or (b) having possession of (i) personal property, (ii) an instrument evidencing a debt, (iii) an obligation, (iv) a chose in action, (v) a life insurance policy, (vi) a bank account, (vii) a certificate of deposit, or (viii) intangible property, including annuities, fixed income investments, mutual funds, cash, money market accounts, or stocks, belonging to the decedent, shall furnish the value of the indebtedness or property on the date of death and the names of the known or designated beneficiaries of property described in this subsection to a person who is (A) an heir at law of the decedent, (B) a devisee of the decedent or a person nominated as a personal representative in a will of the decedent, or (C) an agent or attorney authorized in writing by any such person described in subdivision (A) or (B) of this subdivision, with a copy of such authorization attached to the affidavit, and who also presents an affidavit containing the information required by subsection (3) of this section.

(3) An affidavit presented under subsection (2) of this section shall state:

(a) The name, address, social security number if available, and date of death of the decedent;

(b) The name and address of the affiant and that the affiant is (i) an heir at law of the decedent, (ii) a devisee of the decedent or a person nominated as a personal representative in a will of the decedent, or (iii) an agent or attorney authorized in writing by any such person described in subdivision (i) or (ii) of this subdivision;

(c) That the disclosure of the value on the date of death is necessary to determine whether the decedent's estate can be administered under the summary procedures set forth in section 30-24,125, to assist in the determination of the inheritance tax in an estate that is not subject to probate, or to assist a conservator or guardian in the preparation of a final accounting subsequent to the death of the decedent;

(d) That the affiant is answerable and accountable for the information received to the decedent's personal representative, if any, or to any other person having a superior right to the property or indebtedness;

(e) That the affiant swears or affirms that all statements in the affidavit are true and material and further acknowledges that any false statement may subject the person to penalties relating to perjury under section 28-915; and

(f) That no application or petition for the appointment of a personal representative is pending or has been granted in any jurisdiction.

(4) A person presented with an affidavit under subsection (2) of this section shall provide the requested information within five business days after being presented with the affidavit.

(5) A person who acts in good faith reliance on an affidavit presented under subsection (2) of this section is immune from liability for the disclosure of the requested information.

Sec. 6. Section 8-1403, Reissue Revised Statutes of Nebraska, is amended to read:

8-1403 For purposes of sections 8-1401 and 8-1402 and section 5 of this act:

(1) Governmental agency means any agency, department, or commission of this state or any authorized officer, employee, or agent of such agency, department, or commission;

(2) Law enforcement agency means an agency or department of this state or of any political subdivision of this state that obtains, serves, and enforces arrest warrants or that conducts or engages in prosecutions for violations of the law; and

(3) Person means any individual, corporation, partnership, limited liability company, association, joint stock association, trust, unincorporated organization, and any other legal entity.

Sec. 7. Section 27-803, Reissue Revised Statutes of Nebraska, is amended to read:

27-803 Subject to the provisions of section 27-403, the following are not excluded by the hearsay rule, even though the declarant is available

as a witness:

(1) A statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition;

(2) A statement of the declarant's then existing state of mind, emotion, sensation, or physical condition (such as intent, plan, motive, design, mental feeling, pain, and bodily health), but not including a statement of memory or belief to prove the fact remembered or believed unless it relates to the execution, revocation, identification, or terms of declarant's will;

(3) Statements made for purposes of medical diagnosis or treatment and describing medical history, or past or present symptoms, pain, or sensations, or the inception or general character of the cause or external source thereof insofar as reasonably pertinent to diagnosis or treatment;

(4) A memorandum or record concerning a matter about which a witness once had knowledge but now has insufficient recollection to enable him or her to testify fully and accurately, shown to have been made or adopted by the witness when the matter was fresh in his or her memory and to reflect that knowledge correctly. If admitted, the memorandum or record may be read into evidence but may not itself be received as an exhibit unless offered by an adverse party;

(5) (a) A memorandum, report, record, or data compilation, in any form, of acts, events, or conditions, other than opinions or diagnoses, made at or near the time of such acts, events, or conditions, in the course of a regularly conducted activity, if it was the regular course of such activity to make such memorandum, report, record, or data compilation at the time of such act, event, or condition, or within a reasonable time thereafter, as shown by the testimony of the custodian or other qualified witness unless the source of information or method or circumstances of preparation indicate lack of trustworthiness. The circumstances of the making of such memorandum, report, record, or data compilation, including lack of personal knowledge by the entrant or maker, may be shown to affect its weight.

(b) A memorandum, report, record, or data compilation, in any form, of acts, events, or conditions, other than opinions or diagnoses, that was received or acquired in the regular course of business by an entity from another entity and has been incorporated into and kept in the regular course of business of the receiving or acquiring entity; that the receiving or acquiring entity typically relies upon the accuracy of the contents of the memorandum, report, record, or data compilation; and that the circumstances otherwise indicate the trustworthiness of the memorandum, report, record, or data compilation, as shown by the testimony of the custodian or other qualified witness. Subdivision (5) (b) of this section shall not apply in any criminal proceeding;

(6) Evidence that a matter is not included in the memoranda, reports, records, or data compilations, in any form, kept in accordance with the provisions of subdivision (5) of this section to prove the nonoccurrence or nonexistence of the matter, if the matter was of a kind of which a memorandum, report, record, or data compilation was regularly made and preserved, unless the sources of information or other circumstances indicate a lack of trustworthiness;

(7) Upon reasonable notice to the opposing party prior to trial, records, reports, statements, or data compilations made by a public official or agency of facts required to be observed and recorded pursuant to a duty imposed by law, unless the sources of information or the method or circumstances of the investigation are shown by the opposing party to indicate a lack of trustworthiness;

(8) Records or data compilations, in any form, of births, fetal deaths, deaths, or marriages, if the report thereof was made to a public office pursuant to requirements of law;

(9) To prove the absence of a record, report, statement, or data compilation, in any form, or the nonoccurrence or nonexistence of a matter of which a record, report, statement, or data compilation, in any form, was regularly made and preserved by a public office or agency, evidence in the form of a certification in accordance with section 27-902, or testimony, that diligent search failed to disclose the record, report, statement, or data compilation or entry;

(10) Statements of births, marriages, divorces, deaths, legitimacy, ancestry, relationship by blood or marriage, or other similar facts of personal or family history, contained in a regularly kept record of a religious organization;

(11) Statements of fact contained in a certificate that the maker performed a marriage or other ceremony or administered a sacrament, made by

a member of the clergy, public official, or other person authorized by the rules or practices of a religious organization or by law to perform the act certified, and purporting to have been issued at the time of the act or within a reasonable time thereafter;

(12) Statements of births, marriages, divorces, deaths, legitimacy, ancestry, relationship by blood or marriage, or other similar facts of personal or family history contained in family Bibles, genealogies, charts, engravings on rings, inscriptions on family portraits, engravings on urns, crypts, or tombstones or the like;

(13) The record of a document purporting to establish or affect an interest in property, as proof of the content of the original recorded document and its execution and delivery by each person by whom it purports to have been executed, if the record is a record of a public office and an applicable statute authorized the recording of documents of that kind in that office;

(14) A statement contained in a document purporting to establish or affect an interest in property if the matter stated was relevant to the purpose of the document, unless dealings with the property since the document was made have been inconsistent with the truth of the statement or the purport of the document;

(15) Statements in a document in existence thirty years or more whose authenticity is established;

(16) Market quotations, tabulations, lists, directories, or other published compilations, generally used and relied upon by the public or by persons in particular occupations;

(17) Statements contained in published treatises, periodicals, or pamphlets on a subject of history, medicine, or other science or art, established as a reliable authority by the testimony or admission of the witness or by other expert testimony or by judicial notice, to the extent called to the attention of an expert witness upon cross-examination or relied upon by the expert witness in direct examination. If admitted, the statements may be read into evidence but may not be received as exhibits;

(18) Reputation among members of his or her family by blood, adoption, or marriage, or among his or her associates, or in the community, concerning a person's birth, adoption, marriage, divorce, death, legitimacy, relationship by blood, adoption, or marriage, ancestry, or other similar fact of his or her personal or family history;

(19) Reputation in a community, arising before the controversy, as to boundaries of or customs affecting lands in the community, and reputation as to events of general history important to the community or state or nation in which located;

(20) Reputation of a person's character among his or her associates or in the community;

(21) Evidence of a final judgment, entered after a trial or upon a plea of guilty (but not upon a plea of nolo contendere), adjudging a person guilty of a crime punishable by death or imprisonment in excess of one year, to prove any fact essential to sustain the judgment, but not including, when offered by the government in a criminal prosecution for purposes other than impeachment, judgments against a person other than the accused. The pendency of an appeal may be shown but does not affect admissibility;

(22) Judgments as proof of matters of personal, family, or general history, or boundaries, essential to the judgment, if the same would be provable by evidence of reputation; and

(23) A statement not specifically covered by any of the foregoing exceptions but having equivalent circumstantial guarantees of trustworthiness, if the court determines that (a) the statement is offered as evidence of a material fact, (b) the statement is more probative on the point for which it is offered than any other evidence which the proponent can procure through reasonable efforts, and (c) the general purposes of these rules and the interests of justice will best be served by admission of the statement into evidence. A statement may not be admitted under this exception unless the proponent of it makes known to the adverse party, sufficiently in advance of the trial or hearing to provide the adverse party with a fair opportunity to prepare to meet it, his or her intention to offer the statement and the particulars of it, including the name and address of the declarant.

Sec. 8. Section 30-2201, Revised Statutes Cumulative Supplement, 2012, is amended to read:

30-2201 Sections 30-2201 to 30-2902, 30-3901 to 30-3923, and 30-4001 to 30-4045 and section 9 of this act shall be known and may be cited as the Nebraska Probate Code.

Sec. 9. (1) For purposes of this section:

(a) Custodian means a bank, savings and loan association, credit

union, or other institution acting as a lessor of a safe deposit box; and

(b) Representative of a custodian means an authorized officer or employee of a custodian.

(2) (a) If a decedent at the time of his or her death was a sole or last surviving joint lessee of a safe deposit box, the custodian shall, prior to notice that a personal representative or special administrator has been appointed for such decedent's estate, allow access to the safe deposit box to determine whether the safe deposit box contains an instrument that appears to be an original will of the decedent, a deed to a burial plot, or burial instructions. The following persons may have such access:

(i) A person who presents an affidavit described in subsection (4) of this section that affiant reasonably believes that he or she is either (A) an heir at law of the decedent, (B) a devisee of the decedent or a person nominated as a personal representative as shown in a photocopy of a will which is attached to such affidavit, or (C) the agent or attorney specifically authorized in writing by a person described in subdivision (2) (a) (i) (A) or (B) of this section; or

(ii) A person who, under the terms of the safe deposit box lease or a power of attorney at the time of the decedent's death, was legally permitted to enter the safe deposit box, unless otherwise provided by the lease or the power of attorney.

(b) If a person described in subdivision (2) (a) of this section desires access to a safe deposit box but does not possess a key to the box, the custodian may open the safe deposit box by any means necessary at the person's request and expense or the custodian may require the person to obtain a court order for the custodian to open the safe deposit box at the requesting person's expense. The custodian shall retain, in a secure location at such person's expense, the contents of the box other than a purported will, deed to a burial plot, and burial instructions. A custodian shall deliver a purported will as described in subdivision (5) (b) of this section. A person described in subdivision (2) (a) (i) of this section may remove a deed to a burial plot and burial instructions that are not part of a purported will pursuant to subdivision (5) (d) of this section, and the custodian shall not prevent the removal. Expenses incurred by a custodian or by the person seeking the documents pursuant to this section shall be considered an estate administration expense.

(3) A representative of the custodian shall be present during the entry of a safe deposit box pursuant to this section.

(4) The affidavit referred to in subdivision (2) (a) (i) of this section shall state:

(a) That the sole or last surviving lessor of a safe deposit box has died and the date of his or her death, and a copy of the death certificate shall be attached;

(b) If the person submitting the affidavit is an attorney or agent of the affiant, that such appointment is for the purpose of accompanying the opening of the safe deposit box. In lieu of this statement, the appointment shall accompany the affidavit; and

(c) That the affiant:

(i) (A) Is an heir at law of the deceased lessor and a description of such person's relationship to the deceased lessor;

(B) Is reasonably thought to be a devisee of the decedent based on the provisions of a will, a photocopy of which is submitted with the affidavit; or

(C) Is reasonably thought to be nominated as personal representative pursuant to the terms of a will, a photocopy of which is submitted with the affidavit;

(ii) Swears or affirms that all statements in the affidavit are true and material and further acknowledges that any false statement may subject the person to penalties relating to perjury under section 28-915; and

(iii) Has no knowledge of an application or petition for the appointment of a personal representative pending or granted in any jurisdiction.

(5) (a) If an instrument purporting to be a will is found in a safe deposit box as the result of an entry pursuant to subsection (2) of this section, the representative of the custodian shall remove the purported will.

(b) The custodian shall mail the purported will by registered or certified mail or deliver the purported will in person to the clerk of the county court of the county in which the decedent was a resident. If the custodian is unable to determine the county of residence of the decedent, the custodian shall mail the purported will by registered or certified mail or deliver the purported will in person to the office of the clerk of the county court of the county in which the safe deposit box is located.

(c) At the request of the person or persons authorized to have access to the safe deposit box under subsection (2) of this section, the representative of the custodian shall copy each purported will of the decedent, at the expense of the requesting person, and shall deliver the copy of each purported will to the person, or if directed by the person, to the person's agent or attorney. In copying any purported will, the representative of the custodian shall not remove any staples or other fastening devices or disassemble the purported will in any way.

(d) If the safe deposit box contains a deed to a burial plot or burial instructions that are not a part of a purported will, the person or persons authorized to have access to the safe deposit box under subsection (2) of this section may remove these instruments or request that the representative of the custodian copy the deed to the burial plot or burial instructions at the expense of the requesting person.

(6) This section does not limit the right of a personal representative or a special administrator for the decedent, or a successor of the decedent pursuant to section 30-24,125, to have access to the safe deposit box as otherwise provided by law.

(7) Unless limited by the safe deposit box lease, a surviving co-lessee of the safe deposit box may continue to enter the safe deposit box notwithstanding the death of the decedent.

(8) A custodian shall not be liable to a person for an action taken pursuant to this section or for a failure to act in accordance with the requirements of this section unless the action or failure to act is shown to have resulted from the custodian's bad faith, gross negligence, or intentional misconduct.

Sec. 10. Section 76-238.01, Reissue Revised Statutes of Nebraska, is amended to read:

76-238.01 (1) Any interest in real property capable of being transferred may be mortgaged to secure (a) existing debts or obligations, to secure (b) debts or obligations created simultaneously with the execution of the mortgage, to secure (c) future advances necessary to protect the security, and to secure even though such future advances cause the total indebtedness to exceed the maximum amount stated in the mortgage, or (d) any future advances to be made at the option of the parties in any amount unless, except as otherwise provided under subsection (2) or (3) of this section, a maximum amount of total indebtedness to be secured is stated in the mortgage. At no time shall the secured principal future advances, not including sums advanced to protect the security, exceed a total amount or percentage of a total amount stated in the mortgage. If the mortgage authorizes advances by a percentage of the mortgage amount, such advances shall not exceed that authorized percentage. All such debts, obligations, and future advances shall, from the time the mortgage is filed for record as provided by law, be secured by such mortgage equally with and have the same priority over the rights of all persons who subsequent to the recording of such mortgage acquire any rights in or liens upon the mortgaged real estate as the debts and obligations secured thereby at the time of the filing of the mortgage for record, except that (a) the mortgagor or his or her successor in title is hereby authorized to file for record, and the same shall be recorded, a notice limiting the amount of optional future advances secured by such mortgage to not less than the amount advanced actually at the time of such filing, and a copy of such filing shall be filed with the mortgagee, and (b) if any optional future advance shall be made by the mortgagee to the mortgagor or his or her successor in title after written notice of any mortgage, lien, or claim against such real property, or after written notice of labor commenced or material furnished or contracted to be commenced or furnished on such real property which is junior to such mortgage, then the amount of such advance shall be junior to such mortgage, lien, or claim, including a claim for materials delivered or labor performed which is ultimately filed as a construction lien and of which such written notice was given.

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

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

the mortgage was filed.

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

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

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

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

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

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

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

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

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

(ii) If any optional future advance is made by the beneficiary to the trustor or his or her successor in title after receiving written notice of the filing for record of any trust deed, mortgage, lien, or claim against such trust property, then the amount of such optional future advance shall be junior to such trust deed, mortgage, lien, or claim. The notice under this subdivision shall be sent by certified mail to the beneficiary at the address of the beneficiary set forth in the trust deed or, if the trust deed has been assigned, to the address of the most recent assignee reflected in a recorded

assignment of the trust deed.

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

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

Sec. 12. The Revisor of Statutes shall assign section 9 of this act within Chapter 30, article 24, part 1.

Sec. 13. Original sections 8-162.02, 8-1401, 8-1402, 8-1403, 27-803, and 76-238.01, Reissue Revised Statutes of Nebraska, and sections 30-2201 and 76-1002, Revised Statutes Cumulative Supplement, 2012, are repealed.