

## LEGISLATIVE BILL 679

Approved by the Governor April 10, 1984

Introduced by Warner, 25

AN ACT relating to property records; to amend sections 2-3272, 23-1503, 23-1508, 23-1510 to 23-1513, 23-1516, 25-529, 33-131, 76-214, 76-254, 76-257, 76-275, 76-1002, 76-1004, 76-1005, 76-1006, 76-1008, and 76-1011, Reissue Revised Statutes of Nebraska, 1943, and section 23-1506, Revised Statutes Supplement, 1983; to allow registers of deeds to use a computerized system as prescribed; to harmonize provisions; to eliminate certain provisions relating to a tax register of mortgages; to change certain fee provisions; to change a provision relating to transfers in trust of real property; to change provisions relating to the sale of trust property; and to repeal the original sections.

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

Section 1. (1) The register of deeds may use a computerized system of indexing for deeds and conveyances, mortgages, the Construction Lien Record index, the Miscellaneous Record index, the federal tax lien index, the fee book, and all other supplemental indices that may be contained in such office and may combine such indices into one Land Record index. If a computerized system of indexing is used, the register of deeds shall also maintain a printout of all records stored in the computer system. The printout shall consist of a record of fees, a numerical tract index, and a land record index.

(2) In counties which do not use the computerized system provided in subsection (1) of this section, the register of deeds shall use the separate book or microfilm form of recording instruments as required prior to the effective date of this act.

Sec. 2. That section 2-3272, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

2-3272. If after review of the recommendation by the advisory board the commission determines that an application for a grant, loan, acquisition of an interest, or combination thereof pursuant to the provisions of sections 2-3263 to 2-3272 is satisfactory and qualified to be approved, before the final approval of such application may be given and the funds allocated, the commission shall enter into an agreement in the name of the state with the applicant agency or organization and with any other organizations it deems to be involved in the program or

project to which funds shall be applied. The commission shall also enter into such agreements as are appropriate before allocation of any funds for the acquisition of interest in any qualified project when such acquisition is initiated by the commission itself pursuant to the provisions of section 2-3267. All agreements entered into pursuant to this section shall include, but not be limited to, a specification of the amount of funds involved, whether the funds are considered as a grant, loan, or for the acquisition of an interest in the name of the state, and, if a combination of these is involved, the amount of funds allocated to each category, the specific purpose for which the allocation is made, the terms of administration of the allocated funds, and any penalties to be imposed upon the applicant organization should it fail to apply or repay the funds in accordance with the agreement.

If the allocation to be approved is a loan, the commission and the applicant or applicants shall include in the agreement provisions for repayment to the fund of money loaned together with any interest at reasonable rates as established by the commission after recommendation from the advisory board. The agreement shall further provide that repayment of the loan, together with any interest thereon, shall commence no later than one full year after construction of the project is completed, and that repayment shall be completed within the time period specified by the commission. The repayment period shall not exceed fifty years, except that the commission may extend the time for making repayment in the event of extreme emergency or hardship. Such agreement shall also provide for such assurances of, and security for, repayment of the loan as shall be considered necessary by the commission.

With the express approval of the commission, an applicant may convey its interest in a project to a successor. The commission shall contract with the qualified successor in interest of the original obligor for repayment of the loan, together with any interest thereon, and for succession to its rights and obligations in any contract with the commission.

The state shall have a lien upon a project constructed, improved, or renovated with money from the fund for the amount of the loan, together with any interest thereon. This lien shall attach to all project facilities, equipment, easements, real property, and property of any kind or nature in which the loan recipient has an interest and which is associated with the project. The commission shall file a statement of the lien, its amount, terms, and a description of the project with the county register of deeds of each county in which the project or any part thereof is located. The county register of deeds shall record the lien in a book kept for the recording of liens and it shall be indexed as other liens are required by law

to be indexed. The lien shall be valid until paid in full or otherwise discharged. The lien shall be foreclosed in accordance with applicable state law governing foreclosure of mortgages and liens. Any lien provided for by this section may be subordinate to that which secures federal assistance or other secured assistance received on the same project.

Sec. 3. That section 23-1503, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

23-1503. The register of deeds shall keep a book or computerized system, as provided by section 1 of this act, in which every instrument filed for record in his or her office shall be entered at the time of filing the same. Such books or computerized systems shall show the final disposition of such instrument and, if in book form, be as nearly as practicable in the following form:

Grantor .....

Grantee .....

Character of Instrument .....

Where Recorded

    Book .....

    Page .....

Date of Delivery

    Month .....

    Day .....

    Year .....

Receipt of The party to whom delivered .....

Sec. 4. That section 23-1506, Revised Statutes Supplement, 1983, be amended to read as follows:

23-1506. The register of deeds shall have the custody of, and safely keep and preserve, all books, records, maps, and papers kept or deposited in his or her office. He or she shall also record, or cause to be recorded, in suitable books, all deeds, mortgages, instruments, and writings presented to him or her for recording, and left with him or her for that purpose. Plats and subdivisions are not authorized to be recorded if such plat or subdivision has not been approved by the city council, the village board of trustees, the agent of a city of the first or second class or of a village designated pursuant to section 19-916, or the governing body of the county, whichever is appropriate. When such deeds, mortgages, instruments, and writings are so recorded, it shall be the duty of the register of deeds to proofread, or cause to be proofread, such records. If an error should occur in recording any of the writings mentioned in this section, thereby necessitating the rerecording of same, the expense thus incurred shall be paid out of the general fund of the county, in the same way as any other claim, and the amount so paid shall be collected from the official responsible for the error or from his or her official bond. The register of deeds shall prepare and file the required

annual inventory statement of county personal property in his or her custody or possession; as provided in sections 23-346 to 23-350.

Sec. 5. That section 23-1508, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

23-1508. The register of deeds shall keep a grantor and a grantee index of deeds in his or her office. If such index is in book form, the pages of each of which shall be divided into eight columns, as follows:

GRANTOR INDEX

- Grantors .....
- Grantees .....
- Date of Filing .....
- Date of Instrument .....
- Character of Instrument .....
- Book .....
- Page .....
- Description of Tract .....

GRANTEE INDEX

- Grantees .....
- Grantors .....
- Date of Filing .....
- Date of Instrument .....
- Character of Instrument .....
- Book .....
- Page .....
- Description of Tract .....

Sec. 6. That section 23-1510, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

23-1510. The register of deeds shall endorse upon every instrument properly filed in his or her office for record the minute, hour, day, month, and year when it was so filed; and shall forthwith enter the same in the proper indices herein provided for. After, and after the same shall have been recorded, the book and page or computer system reference where it may be found shall be endorsed thereon.

Sec. 7. That section 23-1511, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

23-1511. Different In counties where the book form of recording instruments is used, different sets of books shall be provided for the recording of deeds and mortgages. In, ~~in~~ one of the which sets all conveyances absolute in their terms, and not intended as mortgages or as securities in the nature of mortgages, shall be recorded, and in the other set such mortgages and securities shall be recorded.

Sec. 8. That section 23-1512, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

23-1512. The In counties where the book form of recording instruments is used, the register of deeds shall also keep a separate book to be called the Construction Lien Record; in which all instruments provided by law for

securing construction liens shall be recorded. He shall also keep a tax register of mortgages on real estate, in which he shall enter all such mortgages filed for record. Such register shall show the name of the mortgager, the name of the mortgagee, description of the real estate mortgaged, and the time when the debt secured by the mortgage becomes due. It shall also contain a column in which shall be entered a memorandum of the discharge of such mortgage or any part thereof at the time the same is released.

Sec. 9. That section 23-1513, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

23-1513. The register of deeds shall keep a numerical index. If the book form of recording is used, such index shall be as nearly as practicable in the following form:

Numerical Index .....	County, Nebraska. ....
Section .....	Township .....
	Range .....
Grantee .....	
Grantor .....	
Kind of Instrument .....	
N.E. One-quarter .....	
N.W. One-quarter .....	
S.W. One-quarter .....	
S.E. One-quarter .....	
Acres .....	
Book .....	
Page .....	
Remarks .....	

Sec. 10. That section 23-1516, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

23-1516. The register of deeds, if using the book form of recording, shall keep a separate book to be called the Miscellaneous Record, in which all instruments and writings not entitled to be recorded in any of the books herein provided for shall be recorded.

Sec. 11. That section 25-529, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

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 book of miscellaneous records~~ Miscellaneous Record, and shall enter such instruments in the numerical index against the lands described therein, and shall be entitled to demand and receive ~~therefor a fee of seventy-five cents,~~ and ten cents for each folio of one hundred words contained therein ~~fees as provided in sections 33-109 and 33-112.~~

Sec. 12. That section 33-131, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

33-131. The clerks of the district court, sheriffs, county judges, county treasurers, county clerks, and registers of deeds of the several counties of the state shall each keep a book, unless authorized to use a

computerized system, which shall be provided by the county, which shall be known as the fee book, which shall be a part of the records of such office, and in which shall be entered each and every item of fees collected, showing in separate columns the name of the party from whom received, the date ~~time~~ of receiving the same, the amount received, and for what service the same was charged.

Sec. 13. That section 76-214, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

76-214. Every grantee who has a deed to real estate recorded, which deed was executed after July 21, 1965, shall at the time such deed is presented for recording file with the register of deeds a completed statement as prescribed by the Tax Commissioner. This statement may require the recitation of any information contained in the deed, the total consideration paid, the amount of the total consideration attributable to factors other than the purchase of the real estate itself, and other factors which may influence the transaction. This statement shall be signed and filed by the grantee or his or her authorized agent. If the grantee fails to furnish such statement, the register of deeds shall not record the deed. The register of deeds shall indicate on the statement the book and page or computer system reference where on which the deed is recorded, and shall immediately forward the statement to the county assessor. The county assessor shall process the statement according to the instructions of the Tax Commissioner, and shall, when directed, forward the statement to the Tax Commissioner. This statement and the information contained therein shall be confidential and available to tax officials only.

Sec. 14. That section 76-254, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

76-254. Every such certificate, and the proof or the acknowledgment thereof, shall be indexed in the order of mortgages, and recorded at full length. In ~~and in~~ the record of discharge the register of deeds shall make a reference to the book and page or computer system reference where the mortgage is recorded.

Sec. 15. That section 76-257, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

76-257. The register of deeds shall mark upon the deed or instrument, after recording the same, the book and page or computer system reference where in which the same is recorded.

Sec. 16. That section 76-275, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

76-275. After one year from April 13, 1935, in all cases where before ~~said~~ such date an interest in the fee title to any real estate in this state and an interest in a mortgage or other lien affecting the same interest have become vested in the same person, and such person subsequently conveyed such fee title by deed, unless a

contrary intent is expressed by the terms of such deed, it shall be presumed in favor of subsequent purchasers for value and without notice; that such lien interest was merged with the fee and conveyed by such deed and that such lien was thereby released from the fee interest so conveyed. After April 13, 1936, no action shall be brought whereby to enforce such lien against subsequent purchasers and encumbrancers for value, unless the claimant of such lien shall before that date file with the register of deeds of the county where the land is located, an affidavit reciting the book and page or computer system reference where the deed of conveyance is recorded and that the claimant did not intend to merge or convey such lien interest by such deed.

Sec. 17. That section 76-1002, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

76-1002. Transfers in trust of real property may be made to secure (1) existing debts or obligations created simultaneously with the execution of the trust deed, (2) future advances necessary to protect the security, (3) any future advances to be made at the option of the parties, or (4) the performance of an obligation of the performance of an obligation of the trustor or any other person named in the trust deed to a beneficiary. 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. 18. That section 76-1004, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

76-1004. (1) The beneficiary may appoint a successor trustee at any time by filing 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 substitution of trustee. From the time the substitution is filed for record, the new trustee shall succeed to all the power, duties, authority, and title of the trustee named in the deed of trust and of any successor trustee.

(2) The substitution shall identify the trust deed by stating the names of the original parties thereto and the date of recordation and the book and page or computer system reference where the same is recorded, shall state the name of the new trustee, and shall be executed and acknowledged by all of the beneficiaries under the trust deed, or their successors in interest.

(3) Prior to recording of the substitution, a copy thereof shall be sent in the manner provided in section 76-1008, to all persons to whom a copy of the notice of default would be required to be mailed by section 76-1008, and the recorded substitution shall contain or

have attached to it an affidavit that copies have been sent to such persons.

(4) The recorded substitution shall also contain or have attached to it an acknowledgment signed and acknowledged by the trustee being replaced of receipt of a copy of the substitution, or an affidavit of personal service of a copy thereof or of publication of notice thereof in a newspaper having general circulation in any county in which the trust property or some part thereof is situated, and where notice is published the affidavit shall also show that a copy of the substitution has been mailed to the trustee being replaced at his or her last-known address.

(5) Any affidavit contained in or attached to the substitution shall constitute prima facie evidence of the facts required to be stated and conclusive evidence of such facts as to bona fide purchasers and encumbrancers for value of the trust property or of any beneficial interest in the trust deed.

(6) A substitution of trustee shall be sufficient if made in substantially the following form:

Substitution of Trustee

(insert name and address of new trustee)

is hereby appointed successor trustee under the trust deed executed by ..... as trustor, in which ..... is named beneficiary and ..... as trustee, and filed for record ....., 19....., and recorded in book ....., page ..... (or computer system reference .....), records of ..... County, Nebraska.

Signature .....

Sec. 19. That section 76-1005, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

76-1005. (1) A power of sale may be conferred upon the trustee which the trustee may exercise and under which the trust property may be sold in the manner provided in sections 76-1001 to 76-1018 after a breach of an obligation for which the trust property is conveyed as security; or, at the option of the beneficiary, a trust deed may be foreclosed in the manner provided by law for the foreclosure of mortgages on real property. The power of sale must be expressly provided for in the trust deed.

(2) Prior to the execution of any trust deed which confers a power of sale to the trustee, the beneficiary shall obtain a written acknowledgement from the trustor stating that the trustor understands that (a) the document to be executed is a trust deed and not a mortgage and (b) the power of sale provided for in the trust deed provides substantially different rights and obligations to the trustor than a mortgage in the event of a default or breach of obligation. Failure to obtain such written acknowledgement shall nullify the conferring of or exercising of such power of sale.



Sec. 20. That section 76-1006, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows: 76-1006. The power of sale herein conferred upon the trustee shall not be exercised until:

(1) The trustee shall first file for record, in the office of the register of deeds of each county wherein the trust property or some part or parcel thereof is situated, a notice of default, identifying the trust deed by stating the name of the trustor named therein and giving the book and page or computer system reference where the same is recorded, and a description of the trust property, and containing a statement that a breach of an obligation for which the trust property was conveyed as security has occurred, and setting forth the nature of such breach and of his or her election to sell or cause to be sold such property to satisfy the obligation; and

(2) After the lapse of not less than one month the trustee shall give notice of sale as provided in section 76-1007.

Sec. 21. That section 76-1008, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

76-1008. Any person desiring a copy of any notice of default and of any notice of sale under any trust deed may, at any time subsequent to the filing for record of the trust deed and prior to the filing for record of a notice of default thereunder, file for record in the office of the register of deeds of any county in which any part or parcel of the trust property is situated, a duly acknowledged request for a copy of any such notice of default and notice of sale. The request shall set forth the name and address of the person or persons requesting copies of such notices and shall identify the trust deed by stating the names of the original parties thereto, the date of filing for record thereof, and the book and page or computer system reference where the same is recorded and shall be in substantially the following form:

Request is hereby made that a copy of any notice of default and a copy of notice of sale under the trust deed filed for record ....., 19....., and recorded in book ....., page ..... (or computer system reference .....), Records of ..... County, Nebraska, executed by ..... as trustor, in which ..... is named as beneficiary and ..... as trustee, be mailed to ..... (insert name) ..... at ..... (insert address) .....

Signature .....

Not later than ten days after recordation of such notice of default, the trustee or beneficiary shall mail, by registered or certified mail, with postage prepaid, a copy of such notice with the recording date shown thereon, addressed to each person whose name and address is set forth in a request therefor which has been recorded prior to the filing for record of the notice of

default, directed to the address designated in said such request. At 7 and at least twenty days before the date of sale, the trustee shall mail, by registered or certified mail, with postage prepaid, a copy of the notice of the time and place of sale, addressed to each person whose name and address is set forth in a request therefor which has been recorded prior to the filing for record of the notice of default, directed to the address designated in said such request.

Any Each trust deed may shall contain a request that a copy of any notice of default and a copy of any notice of sale thereunder shall be mailed to any each person who is a party thereto at the address of such person set forth therein, and a copy of any notice of default and of any notice of sale shall be mailed to each such person at the same time and in the same manner required as though a separate request therefor had been filed by each of such persons as provided in this section.

If no address of the trustor is set forth in the trust deed and if no request for notice by such trustor has been recorded as provided in this section, a copy of the notice of default shall be published at least three times, once a week for three consecutive weeks, in a newspaper of general circulation in each county in which the trust property, or some part thereof is situated, such publication to commence not later than ten days after the filing for record of the notice of default.

No request for a copy of any notice filed for record pursuant to this section, nor any statement or allegation in any such request, nor any record thereof, shall affect the title to trust property or be deemed notice to any person that any person requesting copies of notice of default or of notice of sale has or claims any right, title, or interest in, or lien or claim upon, the trust property.

Sec. 22. That section 76-1011, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

76-1011. The trustee shall apply the proceeds of the trustee's sale, first, to the costs and expenses of exercising the power of sale and of the sale, including the payment of the trustee's fees actually incurred not to exceed the amount which may be provided for in the trust deed, second, to payment of the obligation secured by the trust deed, third, to the payment of junior trust deeds, mortgages, or other lienholders, and the balance, if any, to the person or persons legally entitled thereto.

Sec. 23. That original sections 2-3272, 23-1503, 23-1508, 23-1510 to 23-1513, 23-1516, 25-529, 33-131, 76-214, 76-254, 76-257, 76-275, 76-1002, 76-1004, 76-1005, 76-1006, 76-1008, and 76-1011, Reissue Revised Statutes of Nebraska, 1943, and section 23-1506, Revised Statutes Supplement, 1983, are repealed.