

LEGISLATIVE BILL 136

Approved by the Governor February 17, 1987

Introduced by Haberman, 44

AN ACT relating to real property; to amend section 76-238.01, Reissue Revised Statutes of Nebraska, 1943; to provide for the applicability of certain provisions to future advances as prescribed; to repeal the original section; and to declare an emergency.

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

Section 1. That section 76-238.01, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

76-238.01. (1) Any interest in real property capable of being transferred may be mortgaged to secure existing debts or obligations, to secure debts or obligations created simultaneously with the execution of the mortgage, to secure future advances necessary to protect the security, and to secure any future advances to be made at the option of the parties. ~~At~~ ~~7~~ ~~PROVIDED,~~ ~~that~~ ~~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,~~ ~~or~~ ~~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,~~ ~~7~~ ~~except~~ ~~that~~ ~~(1)~~ ~~(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~~ ~~(2)~~ ~~(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) 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. 2. That original section 76-238.01, Reissue Revised Statutes of Nebraska, 1943, is repealed.

Sec. 3. Since an emergency exists, this act shall be in full force and take effect, from and after its passage and approval, according to law.