

LEGISLATURE OF NEBRASKA

ONE HUNDRED SECOND LEGISLATURE

FIRST SESSION

LEGISLATIVE BILL 43

Introduced by McCoy, 39.

Read first time January 06, 2011

Committee: Banking, Commerce and Insurance

A BILL

1 FOR AN ACT relating to trust deeds; to amend section 76-1002, Reissue
2 Revised Statutes of Nebraska; to change provisions
3 relating to the limiting of optional future advances; to
4 correct an internal reference; and to repeal the original
5 section.
6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 76-1002, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 76-1002 (1) Transfers in trust of real property may be
4 made to secure (a) existing debts or obligations created
5 simultaneously with the execution of the trust deed, (b) future
6 advances necessary to protect the security, (c) any future advances
7 to be made at the option of the parties, or (d) the performance of an
8 obligation of any other person named in the trust deed to a
9 beneficiary.

10 (2) Future advances necessary to protect the security
11 shall include, but not be limited to, advances for payment of real
12 property taxes, special assessments, prior liens, hazard insurance
13 premiums, maintenance charges imposed under a condominium declaration
14 or other covenant, and costs of repair, maintenance, or improvements.

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

22 (b)(i) The trustor or his or her successor in title may
23 limit the amount of optional future advances secured by the trust
24 deed under subdivision ~~(a) of this subsection~~ (1)(c) of this section
25 by filing a notice for record in the office of the register of deeds

1 of each county in which the trust property or some part thereof is
2 situated. A copy of such notice shall be sent by certified mail to
3 the beneficiary at the address of the beneficiary set forth in the
4 trust deed. The amount of such secured optional future advances shall
5 be limited to not less than the amount actually advanced at the time
6 of receipt of such notice by the beneficiary.

7 (ii) If any optional future advance is made by the
8 beneficiary to the trustor or his or her successor in title after
9 receiving written notice of the filing for record of any trust deed,
10 mortgage, lien, or claim against such trust property, then the amount
11 of such optional future advance shall be junior to such trust deed,
12 mortgage, lien, or claim. The notice under this subdivision shall be
13 sent by certified mail to the beneficiary at the address of the
14 beneficiary set forth in the trust deed.

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

18 (4) The reduction to zero or elimination of the
19 obligation evidenced by any of the transfers in trust authorized by
20 this section shall not invalidate the operation of this section as to
21 any future advances unless a notice or release to the contrary is
22 filed for record as provided by law. All right, title, interest, and
23 claim in and to the trust property acquired by the trustor or his or
24 her successors in interest subsequent to the execution of the trust
25 deed shall inure to the trustee as security for the obligation or

1 obligations for which the trust property is conveyed in like manner
2 as if acquired before execution of the trust deed.

3 Sec. 2. Original section 76-1002, Reissue Revised
4 Statutes of Nebraska, is repealed.