

AMENDMENTS TO LB810

Introduced by Wightman

1 1. Insert the following new sections:

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

4 76-238.01 (1) Any interest in real property capable
5 of being transferred may be mortgaged to secure (a) existing
6 debts or obligations, to secure (b) debts or obligations created
7 simultaneously with the execution of the mortgage, to secure (c)
8 future advances necessary to protect the security, and to secure
9 even though such future advances cause the total indebtedness to
10 exceed the maximum amount stated in the mortgage, or (d) any future
11 advances to be made at the option of the parties in any amount
12 unless, except as otherwise provided under subsection (2) or (3)
13 of this section, a maximum amount of total indebtedness to be
14 secured is stated in the mortgage. At no time shall the secured
15 principal future advances, not including sums advanced to protect
16 the security, exceed a total amount or percentage of a total
17 amount stated in the mortgage. If the mortgage authorizes advances
18 by a percentage of the mortgage amount, such advances shall not
19 exceed that authorized percentage. All such debts, obligations, and
20 future advances shall, from the time the mortgage is filed for
21 record as provided by law, be secured by such mortgage equally
22 with and have the same priority over the rights of all persons
23 who subsequent to the recording of such mortgage acquire any

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

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

26 (3)(a) Except as provided in subdivision (b) of this
27 subsection, all items identified in subsection (1) of this section

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

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

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

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

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

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

11 76-1002 (1) Transfers in trust of real property may be
12 made to secure (a) existing debts or obligations, (b) debts or
13 obligations created simultaneously with the execution of the trust
14 deed, ~~(b)~~ (c) future advances necessary to protect the security,
15 ~~(e) even though such future advances cause the total indebtedness~~
16 to exceed the maximum amount stated in the trust deed, (d) any
17 future advances to be made at the option of the parties, in any
18 amount unless, except as otherwise provided under subsection (2) or
19 (3) of this section, a maximum amount of total indebtedness to be
20 secured is stated in the trust deed, or ~~(d)~~ (e) the performance
21 of an obligation of any other person named in the trust deed to a
22 beneficiary.

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

1 improvements. Future advances necessary to protect the security are
2 secured by the trust deed and shall have the priority specified in
3 subsection (3) of this section.

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

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

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

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

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

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

19 2. Renumber the remaining sections and correct the
20 repealer accordingly.