

LEGISLATIVE BILL 913

Approved by the Governor April 13, 1974

Introduced by Johnson, 15

AN ACT to amend section 76-238.01, Reissue Revised Statutes of Nebraska, 1943, relating to mortgages; to limit future advances except as prescribed; and to repeal the original section.

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. 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; provided, that at no time shall the secured principal future advances, not including sums advanced to protect the security, exceed up to a total amount, or percentage of a total amount, stated in the mortgage, or if the mortgage authorizes advances by a percentage of the mortgage amount, such advances shall not exceed that authorized percentage. All ~~7--and--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 (1) the mortgagor or his 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) if any optional future advance shall be made by the mortgagee to the mortgagor or his 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 mechanic's lien and of which such written notice was given.

Sec. 2. That original section 76-238.01, Reissue Revised Statutes of Nebraska, 1943, is repealed.