

LEGISLATIVE BILL 409

Approved by the Governor March 13, 2006

Introduced by Flood, 19

AN ACT relating to homesteads; to amend section 40-104, Reissue Revised Statutes of Nebraska; to change provisions relating to conveyances and encumbrances; and to repeal the original section.
Be it enacted by the people of the State of Nebraska,

Section 1. Section 40-104, Reissue Revised Statutes of Nebraska, is amended to read:

40-104 The homestead of a married person cannot be conveyed or encumbered unless the instrument by which it is conveyed or encumbered is executed and acknowledged by both husband and wife, except as otherwise hereinafter provided in this section. The interest of either or both spouses may be conveyed or encumbered by a conservator acting in accordance with the provisions of the Nebraska Probate Code and may also be conveyed or encumbered by an attorney in fact appointed by and acting on behalf of either spouse under any power of attorney which grants the power to sell and convey real property. If either the husband or wife is incompetent the homestead may be encumbered for the purpose of paying or refinancing any valid existing lien for which the homestead might be sold upon order of sale or execution, or for the purpose of paying taxes, provided the instrument by which it is to be encumbered is executed and acknowledged by the competent spouse and the interest of the incompetent person is encumbered in the manner and form provided for encumbering the interest of an incompetent person in other real property. Any claim of invalidity of a deed of conveyance of homestead property because of failure to comply with the provisions of this section must be asserted within the time provided in sections 76-288 to 76-298.

Sec. 2. Original section 40-104, Reissue Revised Statutes of Nebraska, is repealed.