

Real Estate Finance: Nebraska

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A Q&A guide to real estate finance law for borrowers and lenders in Nebraska. This Q&A addresses state laws relating to security instruments, usury laws, limitations on personal liability, recording requirements and taxes, priority issues, mechanics' liens, landlord liens, title insurance matters, and foreclosure procedures primarily impacting lending transactions in a commercial context. Federal, local, or municipal law may impose additional or different requirements. Answers to questions can be compared across a number of jurisdictions (see Real Estate Finance: State Q&A Tool).

Real estate and construction transactions are currently being impacted by emergency measures enacted in response to the 2019 novel coronavirus disease (COVID-19). For current updates on certain state and local laws impacted by COVID-19, including eviction and foreclosure moratoriums, business closures, electronic signatures, recordings and notarization laws, and general crisis management guidance in handling real estate and construction matters, see [Real Estate Global Coronavirus Toolkit](#).

Instrument and Execution

1. When real estate is part of the lender's collateral, is a mortgage commonly used in your jurisdiction or is a trustee appointed to hold a deed of trust (or a deed to secure debt) as security for the loan? If a deed of trust is more commonly used, who is typically designated as the trustee?

To secure a lien on real property, Nebraska law allows for the use of either:

- A mortgage.
- A deed of trust.

Deeds of trust are used far more frequently. They can allow for a non-judicial (power of sale) foreclosure proceeding, which is quicker than a judicial foreclosure (see Question 14).

Any party listed in Neb. Rev. Stat. § 76-1003 may act as a trustee under a deed of trust.

In commercial transactions in Nebraska, the trustee under the deed of trust is typically either:

- The lender.
- The lender's counsel.
- The title underwriter involved in the transaction.

2. Describe any laws that would limit a borrower's or guarantor's personal liability for debt secured by real property.

When property secured by a deed of trust is sold through non-judicial foreclosure and a deficiency remains, Neb. Rev. Stat. § 76-1013 limits a borrower's personal liability by:

- Requiring the lender to bring an action against the borrower for any deficiency within three months after the sale of the property.
- Limiting the deficiency judgment amount to the difference between:
 - the amount of the indebtedness (including the costs and expenses of the sale and trustee's fees); and
 - the greater of the property's foreclosure sale price and the fair market value on the date the property was sold.

(Neb. Rev. Stat. § 76-1013; *Patano v. Maryland Plaza P'ship*, 507 N.W.2d 484, 487-88 (Neb. 1993).)



The statute's protections do not apply to an underlying guaranty that is:

- Provided as additional security for loans to the borrower.
- A separate and distinct obligation from the underlying promissory note.
- Not secured by the applicable deed of trust.

(*Mut. of Omaha Bank v. Murante*, 829 N.W.2d 676, 683-84 (Neb. 2013).)

In those circumstances, a guaranty is considered an independent contract that imposes responsibilities separate from those imposed in an agreement to which it is collateral (*Murante*, 829 N.W.2d at 681-82).

3. Are there restrictions on interest rates charged for loans secured by real property?

Under Nebraska law, the interest rate charged for a loan secured by real property must not exceed 16% per annum on the unpaid principal balance (Neb. Rev. Stat. § 45-101.03(1)).

There are many exceptions to this prohibition, including when:

- The loan is made to or guaranteed by:
 - a corporation;
 - a partnership;
 - a limited liability company; or
 - a trust.
- The borrower's aggregate principal amount of indebtedness to any one financial institution, licensee, or permittee is equal to or greater than \$25,000.

(Neb. Rev. Stat. § 45-101.04(2) to (4).)

4. Are there any requirements for the execution of a mortgage or deed of trust? In particular, please consider if:

- Witnesses are required.
- Specified officers of a corporation (or members of a limited liability company) must execute the security instrument.
- The signatory's name and title must be specified on the signature page.
- A corporate seal is required.
- Signed resolutions must be presented with the security instrument for purposes of recording.
- There are any other important requirements in your state.

For information on Nebraska's adoption of e-signatures/e-recording and remote online notarization, see Question 17.

Witnesses

Witnesses to a deed of trust or mortgage are not required in Nebraska. However, the mortgagor's or trustor's signature must be notarized (Neb. Rev. Stat. § 76-216).

Specified Officers

Nebraska law does not require specific officers to sign for a corporation or other entity. However, the officer who does sign must be authorized by:

- The corporation's or other entity's organizational documents.
- Minutes of the governing body, if applicable (for example, board of directors, managers, or members).

Most title companies require evidence of authority (for example, resolutions or consent minutes) for the individual executing the deed to issue a title insurance policy.

An instrument transferring any interest in real property signed by the president, vice president, or presiding officer of the board of directors of a corporation is presumed valid (Neb. Rev. Stat. § 21-227(5)).

Signatory's Name and Title

The signature block must include either the typed, printed, or stamped name of each party signing below the signature. The signature itself must be:

- In black or dark blue ink.
- Of sufficient color and clarity to ensure that it is readable when the instrument is reproduced.

(Neb. Rev. Stat. § 23-1503.01(3).)

Corporate Seal

Nebraska law does not require corporate seals on the signature page (Neb. Rev. Stat. § 76-213).

Signed Resolutions

Signed resolutions are not required to be attached to a security instrument for recording.

Other Requirements

Nebraska law requires the following margins for recording documents:

- The top half of the first page must have a blank header measuring at least three inches by eight and one-half inches.
- A one-inch margin on all remaining sides of the first page.
- A one-inch margin on the vertical sides and the bottom of all other pages of the document.

(Neb. Rev. Stat. § 23-1503.01.)

In Nebraska, other recording requirements include that:

- Documents must be printed, typewritten, or computer-generated in black ink on white paper that is:
 - at least 8.5 inches by 11 inches and not more than 8.5 inches by 14 inches;
 - at least 20-pound weight; and
 - without watermarks or other visible inclusions.
- The font size must be 8-point or larger.
- Documents must be sufficiently legible to produce clear copies.
- Documents must be free of an embossed or inked stamp that covers or materially interferes with any part of the instrument.

(Neb. Rev. Stat. § 23-1503.01(3).)

To avoid potential clouds of title, if the grantor is an individual, the grantor's marital status should also be listed and, if married, the spouse should sign to disclaim any marital interest in the property. The grantor's name should also match the name used in the chain of title or any previously used names should be added after the name of the grantor. For example:

- John Smith, also known as John J. Smith.
- Jane Smith, formerly known as Jane Doe.

If the grantor is an entity, the entity's exact name should be used and, if this differs from the name previously used, the previously used name should be added after the name of the grantor with an explanation of the difference between the two names (whether there was a name change, reorganization, or other change).

Construction loans have the following additional requirements:

- The title of the mortgage or deed of trust must include the phrase "Construction Security Agreement."
- The first page of the mortgage or deed of trust must clearly state that the mortgage or deed of trust "is

a Construction Security Agreement that secures an obligation the debtor incurred for the purpose of making an improvement of the real estate in which the security interest is given," if the instrument recorded to perfect the interest states that it is a construction security interest.

(Neb. Rev. Stat. § 52-127(10).)

5. Provide the statutory form of acknowledgment for:

- An individual.
- A corporation.
- A limited liability company.
- A partnership.
- A trustee.

Section 64-206 of the Nebraska Revised Statutes provides the following short forms of acknowledgment. However, they do not preclude the use of other forms meeting the requirements of the Uniform Recognition of Acknowledgments Act (Neb. Rev. Stat. §§ 64-201 to 64-210).

For Nebraska notarizations performed using remote online notarization (RON) (see Question 17), the online notarial certificate must contain a notation that the notarial act is an online notarial act and otherwise satisfy standard notarial certificate requirements (Neb. Rev. Stat. §§ 64-402(8), 64-411(5), and 64-415(2)).

There are other detailed requirements for performing RON in Nebraska. Reference should be made to the statute, any applicable emergency orders, and any rules promulgated by the applicable state authority to understand all RON requirements and conditions (see Question 17).

Individual

STATE OF [STATE])

COUNTY OF [COUNTY])

The foregoing instrument was acknowledged before me this [DATE] by [NAME OF ACKNOWLEDGING PERSON].

(Signature of Person Taking Acknowledgment)

(Title or Rank)

(Serial Number, if any)

Corporation

STATE OF [STATE])
COUNTY OF [COUNTY])

The foregoing instrument was acknowledged before me this [DATE] by [NAME OF OFFICER/AGENT],[TITLE OF OFFICER/AGENT] of [NAME OF CORPORATION ACKNOWLEDGING], a [STATE OF ORGANIZATION] corporation, on behalf of the corporation.

(Signature of Person Taking Acknowledgment)
(Title or Rank)
(Serial Number, if any)

Limited Liability Company

STATE OF [STATE])
COUNTY OF [COUNTY])

The foregoing instrument was acknowledged before me this [DATE] by [NAME OF ACKNOWLEDGING [MEMBER/ AGENT]], [member /agent] on behalf of [NAME OF LIMITED LIABILITY COMPANY], a limited liability company.

(Signature of Person Taking Acknowledgment)
(Title or Rank)
(Serial Number, if any)

Limited Partnership

The form below is acceptable for all forms of partnerships:

STATE OF [STATE])
COUNTY OF [COUNTY])

The foregoing instrument was acknowledged before me this [DATE] by [NAME OF ACKNOWLEDGING [PARTNER/ AGENT]], [[partner/agent/ on behalf of] [NAME OF PARTNERSHIP], a partnership.

(Signature of Person Taking Acknowledgment)
(Title or Rank)
(Serial Number, if any)

Trustee

The form below is acceptable for any public officer, trustee, or personal representative.

STATE OF [STATE])
COUNTY OF [COUNTY])

The foregoing instrument was acknowledged before me this [DATE] by [NAME OF TRUSTEE], [TITLE OF POSITION].

(Signature of Person Taking Acknowledgment)
(Title or Rank)
(Serial Number, if any)

Individual Acting as Principal by an Attorney-in-Fact

STATE OF [STATE])
COUNTY OF [COUNTY])

The foregoing instrument was acknowledged before me this [DATE] by [NAME OF ATTORNEY-IN-FACT], as attorney in fact on behalf of [NAME OF PRINCIPAL].

(Signature of Person Taking Acknowledgment)
(Title or Rank)
(Serial Number, if any)

Priority

6. Describe the relevant statutes granting priority to mechanics' liens.

The Nebraska Construction Lien Act governs mechanic's liens (known as "construction liens" in Nebraska) (Neb. Rev. Stat. §§ 52-125 to 52-159).

In Nebraska, the date a construction lien is attached generally governs its priority relative to other liens on the same property. A construction lien does not attach under Nebraska law unless the lien is recorded both:

- After the parties have entered into the contract under which the lien arises.
- Within 120 days of the last day labor or materials were provided.

(Neb. Rev. Stat. § 52-137(1).)

The construction lien attaches as of the date the Notice of Commencement was recorded (Neb. Rev. Stat. § 52-137(2)). If a Notice of Commencement was not recorded, the construction lien attaches as of the earlier of either:

- The visible commencement of construction of the improvement.
- The recording of the lien.

(Neb. Rev. Stat. § 52-137(3).)

Construction liens have the same priority as other construction liens on the same property. Construction liens that attach at different times have priority based on the order of attachment. (Neb. Rev. Stat. § 52-138.)

Construction liens generally have priority over:

- Adverse claims against the real estate (Neb. Rev. Stat. § 52-139(1)).
- Subsequent advances made under a prior-recorded security interest if the advances were made with knowledge that a construction lien is attached unless the subsequent advance is:
 - made under a construction security agreement to pay for the agreed improvements;
 - made to protect the security interest in the real estate (for example, paying real estate taxes, hazard insurance premiums, or maintenance charges under a condominium agreement); or
 - applied to the payment of any lien or encumbrance which was prior to the construction lien.

(Neb. Rev. Stat. § 52-139(2), (3).)

7. Are there liens which can supersede the priority of a lender's recorded lien?

Certain liens in Nebraska have statutory priority over a lender's recorded lien regardless of recording priority, including liens for:

- Property taxes.
- Special assessments.

(Neb. Rev. Stat. §§ 77-203, 77-208, and 77-209.)

Construction liens can also take priority over a lender's prior recorded lien (Neb. Rev. Stat. § 52-139; see Question 6). A lender can take certain steps to protect itself against construction liens (see Question 8).

8. How do lenders maintain the priority of their real property liens over superseding liens, such as real property tax liens and mechanics' liens? In particular, please consider:

- Permanent loans.
- Construction loans with future advances.
- Credit facilities with future advances under revolving lines of credit.

Property taxes and special assessments in Nebraska are statutorily a first lien on the property taxed that take priority over all other encumbrances and liens until they are paid or extinguished (Neb. Rev. Stat. §§ 77-203, 77-208, and 77-209; see Question 7).

A construction lien has priority over future advances secured by a previously recorded deed of trust or mortgage that are made with knowledge of the construction lien (Neb. Rev. Stat. § 52-139; see Question 6).

Permanent Loans

To prevent subsequent construction liens from attaching and taking priority over a permanent loan, a lender should require that any contractor or subcontractor providing materials or labor for the construction of improvements at the property give lien waivers before the lender makes advances intended to be secured by a deed of trust or mortgage. Most title insurers also provide construction lien coverage if either:

- The lender obtains lien waivers.
- The borrower signs an owner's affidavit.

Construction Loans

To maintain the priority of construction loans with future advances over superseding liens, a lender should:

- Clearly state on the first page of a mortgage or deed of trust securing a construction loan that it is a Construction Security Agreement that secures an obligation the debtor incurred to make improvements on the real estate in which the security interest is given (Neb. Rev. Stat. §§ 52-127(10) and 52-139(3); see Question 6).

- Record a Notice of Commencement immediately after the mortgage or deed of trust is recorded. This ensures that construction liens filed after the Notice of Commencement is recorded have priority dating back to the date of that filing rather than the date construction started (Neb. Rev. Stat. § 52-145).

Future advances on a construction loan also may be protected by date down endorsements issued by the title insurer. Title insurers generally require lien waivers from all contractors providing labor and materials to the property to provide this endorsement.

Credit Facilities

Property taxes and special assessments are statutorily a first lien on the property taxed and take priority over all other encumbrances and liens until they are paid or extinguished (Neb. Rev. Stat. §§ 77-203, 77-208, and 77-209; see Question 7).

A lender can specify in the deed of trust or mortgage that the instrument secures future advances. However, a construction lien generally has priority over future advances secured by a previously recorded deed of trust or mortgage if those advances are made with knowledge of the construction lien (for example, if the construction lien has been recorded) regardless of the existence of the future advances clause in the deed of trust or mortgage (Neb. Rev. Stat. § 52-139). Exceptions to this rule include subsequent advances that are:

- Made under a construction security agreement and in payment of the price of the agreed improvements.
- Made or incurred for the reasonable protection of the security interest in the real estate, including payments for:
 - real property taxes;
 - hazard insurance premiums; or
 - maintenance charges imposed under a condominium declaration or other covenant.
- Applied to the payment of any lien or encumbrance which was before the construction lien.

(Neb. Rev. Stat. § 52-139(3).)

9. What are a landlord's legal rights to a tenant's personal property located in the leased premises? Are these rights governed by statute, common law, or contract?

Nebraska does not have a statute granting a landlord a lien on its tenant's personal property.

The landlord and tenant can only create a landlord lien contractually (typically in the underlying lease), which is created and enforced under Article 9 of the **Uniform Commercial Code (UCC)** (*Ag Servs. of Am., Inc. v. Empfield*, 587 N.W.2d 871, 874 (Neb. 1999)). A lender should require a landlord to subordinate any security interest to the lender and permit the lender to gain access to the premises to collect any property secured by the lender.

Mortgage Recording Taxes

10. Is there a mortgage recording tax (or similar tax)? If so:

- What is the rate and how is the tax calculated?
- Can a loan or refinance be structured to reduce the tax?
- Is the tax payable on making a loan secured by real property or perfecting a lien on real property?
- Is there any type of real property or transaction that is exempt from a mortgage recording tax (or similar tax)?
- Are there any other state or local taxes or fees imposed on the grant, perfection, or enforcement of a security interest in real property? Are there any exceptions?

There is no mortgage recording tax in Nebraska. Mortgages and deeds of trust are exempt from the general documentary stamp tax. (Neb. Rev. Stat. § 76-902(3).)

Nebraska counties impose uniform, nominal fees to cover the costs of recording and filing the documents.

Title Insurance

11. Are title insurance premiums or service charges for lenders' title insurance policies regulated? Are the costs of title insurance negotiable within a specified range of rates? Are there any discounts available for reissued policies?

Nebraska is a filed-rate state, so premiums must be filed with the [Nebraska Department of Insurance](#). Agents are not allowed to deviate from those rates (Neb. Rev. Stat. § 44-1997(1)).

12. Provide a list and brief description of the title insurance endorsements available to lenders.

Title companies in Nebraska issue American Land Title Association (ALTA) owner's and lender's policies of title insurance.

The title company may charge additional fees for the removal of standard exceptions and will charge additional fees for the issuance of endorsements.

The following title endorsements, among others, are commonly available for an owner's title insurance policy for non-residential property:

- ALTA 3, 3.1, and 3.2 (Zoning), although most title companies do not issue a zoning endorsement without a letter from the applicable zoning authority.
- ALTA 8.1 and 8.2 (Environmental Protection Lien).
- ALTA 9 (Restrictions, Encroachments, Minerals).
- ALTA 17 (Access and Entry).
- ALTA 18 and 18.1 (Tax Parcel).
- ALTA 19 and 19.1 (Contiguity).
- ALTA 25 (Survey).

Many other ALTA endorsements are available for specific situations. ALTA endorsement forms are available on ALTA's [website](#) (subscription required).

13. How is gap coverage (the time between closing the loan and actually recording the lien) typically handled by the title insurance companies?

In Nebraska, if the title company is closing the transaction and recording the underlying real estate security instrument, it typically assumes the gap risk and requires the borrower to provide an affidavit and indemnity against intervening risks.

If the title company is not closing the transaction, the title company usually performs a search up to the date of recording and includes any intervening liens as exceptions to coverage.

Foreclosure

14. Describe the foreclosure process available and the typical timing for the process. Do borrowers have a right of redemption? If so, what is the redemption period? Can lenders limit a borrower's right of redemption?

Nebraska law permits:

- Both mortgages and deeds of trust to be foreclosed by judicial foreclosure (Neb. Rev. Stat. § 25-202).
- Deeds of trust to be foreclosed by non-judicial foreclosure (Neb. Rev. Stat. §§ 76-1001 to 76-1018).

The key steps and timing in the judicial foreclosure process in Nebraska are:

- A lender files a complaint in the district court of the county in which the property is located.
- The borrower has 30 days after the complaint is served to respond.
- Once the judge enters a decree of foreclosure, the borrower has 20 days to request a stay, which can last between three to nine months, depending on the type of property involved and the date of maturity (Neb. Rev. Stat. § 25-1506).
- Once the time to request a stay or the stay has expired, the lender files a request for an order of sale with the clerk of the court.
- The county sheriff publishes a notice of sale once a week for four consecutive weeks (Neb. Rev. Stat. § 25-1529).
- The county sheriff sells the property.
- The lender must file a motion with the district court to confirm the sale.
- Once the judge has determined the sale was fair and reasonable and that resale would not likely produce a higher price, the judge issues an order confirming the sale (Neb. Rev. Stat. § 25-1531).

The borrower has a statutory right to redeem by paying the amount in the decree of foreclosure plus court costs at any point in the process, up until the time the judge confirms the sale (Neb. Rev. Stat. § 25-1530).

A non-judicial foreclosure is typically a much quicker process in which:

- The lender records a notice of default in each county where the property (or part of the property) is located (Neb. Rev. Stat. § 76-1006(1)(a)).
- The lender, within ten days of recordation, sends the notice of recording and a copy of the notice of default to the borrower, and those who have requested a copy of any notice of default (Neb. Rev. Stat. § 76-1008).
- The borrower can cure the default within one month of the recording of the notice of default (Neb. Rev. Stat. § 76-1012).

- If the borrower does not cure the default, the lender directs the trustee to publish a notice of the sale:
 - once a week for five consecutive weeks in a newspaper with general circulation;
 - in each county in which the property or part of the property is located; and
 - with the last publication within ten to 30 days before the sale.

(Neb. Rev. Stat. § 76-1007(1).)

- The trustee auctions off the property to the highest bidder at a sale that must take place:
 - between 9 a.m. and 5 p.m.; and
 - either at the property or at the county courthouse.

(Neb. Rev. Stat. §§ 76-1007(2) and 76-1009.)

- A trustee's deed is issued to the highest bidder (Neb. Rev. Stat. § 76-1010(1)).

While these are the general steps for judicial and non-judicial foreclosures in Nebraska, there may be additional or different requirements in certain situations, for example when:

- The property is used in farming operations (Neb. Rev. Stat. § 76-1006(b)).
- A junior lender wants to cure the default.

15. Describe any significant costs of or impediments to foreclosing a lien on real property.

The main costs associated with judicial and non-judicial foreclosures in Nebraska include costs for:

- Publication.
- Recording.
- Court costs.
- Attorneys' fees.

These costs are typically nominal in uncontested foreclosures and generally do not differ significantly between judicial and non-judicial foreclosures.

Foreign Entities

16. Are there any permissions, approvals, or licenses specifically required for foreign banks (or other foreign lenders) to make loans secured by real property?

While a foreign bank or other foreign lender must obtain a certificate of authority from the [Nebraska secretary of state](#) to transact business in the state, Nebraska does not consider the following activities to be transacting business:

- Creating or acquiring indebtedness, mortgages, and security interests in real or personal property.
- Securing or collecting debts or enforcing mortgages and security interests in property securing the debts.
- Owning, without more, real or personal property.

(Neb. Rev. Stat. § 21-2,203.)

Electronic Signatures, Recording, and Notarization Laws

17. Has your state adopted laws permitting electronic signatures, electronic recording, and remote notarization? In particular, include information on whether:

- The Uniform Electronic Transactions Act (UETA) or another law giving electronic signatures legal effect has been adopted.
- The Uniform Real Property Electronic Recording Act (URPERA) or another law permitting the recording of electronic signatures has been adopted.
- The Revised Uniform Law on Notarial Acts (RULONA) or another law permitting remote online notarization (RON) has been permanently adopted and/or temporary remote online notarization is permitted on an emergency basis due to the coronavirus pandemic.

Note that despite adoption of the applicable electronic laws referred to below, the transaction parties or recording offices may not be required to accept documents executed or notarized electronically. Before relying on any of the below electronic laws for a particular transaction, counsel should confirm (as applicable) that:

- All parties to the transaction agree to accept electronic signatures and/or remotely notarized documents and intend to be bound by them.
- The applicable recording office accepts electronic signatures and remotely notarized documents for recording.

Electronic Signatures

Nebraska has adopted the UETA (Neb. Rev. St. §§ 86-612 to 86-643).

Electronic Recording

Nebraska has not adopted the URPERA. However, the register of deeds or county clerk must provide electronic recording services to accept electronically submitted real estate documents for recording (Neb. Rev. Stat. § 86-611(8)).

Remote Online Notarization

Nebraska has adopted RON (Neb Rev. Stat. §§ 64-401 to 64-418).

There are detailed requirements for performing RON (for example, see Question 5). Reference should be made to the statute, any applicable emergency orders, and any rules promulgated by the secretary of state or other state authority to understand all RON requirements and conditions.

For a state-by-state chart covering key provisions of RON laws, emergency orders permitting RON during the COVID-19 pandemic, and pending electronic recording and RON laws, see [Electronic Signatures, Recording, and Notarization Laws for Real Estate Transactions: State Comparison Chart](#).

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