1. Developer Control Period of Horizontal Property Regimes and Associations.

FACTS: I was asked a question by a client that I found interesting. Developer sets up a Horizontal Property Regime (HPR). Most of the ones I have seen (including ones I do) state that the Developer is in control, and/or can amend the HPR without further approval, until they sell all or substantially all of the units.

QUESTION: While I think in the vast majority of these developments the developer is looking to get built and sold as soon as possible; is there anything stopping the developer from continuing to own 1 unit so they can control the Association/Development? Technically, I do not see anything in the code that would require developer to sell all units and give up control. I have run into a couple of cases where the developer wants to hold on to a unit (especially if it is a storage unit HPR).

Furthermore, if the developer reserves the right to add adjacent property to the HPR/Plat, I assume the developer control period starts again, even if they had sold all units/lots in the original phase?

RESPONSE(S): When I was in charge of the ISBA real estate legislative committee back when (I think Henry VIII had just broken with the church), we had a lively discussion on developer control of HOA and condo associations, and thought it would be a good idea to provide statutorily for a basic "bill of rights" for the resident owners, which presumably would include a statute of limitations on developer control. The problem is that among the bar, this is a sentiment, while among developers, this is an interest; and you can guess which of the two trumps the other in the legislature.

One approach I believe the bar should consider is developing a minimum standard for these agreements and incorporate those into the title standards. Then, when title is being examined there could be a paragraph in the title opinion to the effect that:

The state bar association has developed a set of minimum standards to protect home/condo owners from oppressive treatment arising from developer control of the HOA/condo association. I have reviewed the HOA/condo association documents, and these do not meet these minimum standards. Many buyers will decide to close the transaction, but you should be aware in advance of problems you may face due to extended developer control of the HOA/condo association.

The bar could publish a pamphlet on "What a potential home/condo buyer should know about developer control of HOA/condo boards." A PDF version might be sent to clients as soon as the lawyer is retained.

Now, of course, real estate brokers will whine that putting such a provision in the title opinion will spoil their potential sales, but I feel that we are remiss in our duties to the buyers if we fail to apprise them of the traps they may strolling into. Once a critical mass of buyers start walking away from deals, I suspect that the real estate brokers and the developers may prove more willing to sit down with the bar and write a statute, including a statute of limitation on developer control, which can work for us all.

2. Buyer Also Shown as Seller on Real Estate Contract.

FACTS: I am reviewing a Real Estate Contract that appears to be from several siblings to one of the siblings. The Contract lists all the siblings and spouses as the Sellers and lists one of the same siblings as the Buyer (along with his spouse as JTWFRS) ("A" and "A's Spouse"). The legal description listed is the whole parcel (not any partial undivided interest).

A is now deceased. I don't think the contract from A and A's spouse to A and A's spouse does anything here? Because A is now deceased (A's spouse would get as Contract was to Buyers as joint tenants). My concern is whether the sale from A and A's spouse as Sellers would be considered held as Tenants in Common or simply in A's individual name, requiring an estate be opened for A to execute a deed transferring from A (Contract was done in 2013). The spouses may have been listed to relinquish their spousal interest only; considering this is owned by siblings. An argument could be made that A was listed as a seller to actually create joint tenancy with A's spouse regarding A's interest; but it is a contract, not a deed.

QUESTION: Any advice on whether or not we can avoid probate?

RESPONSE(S): Spouses probably signed only as accommodation parties. "The presence of a spouse's name as grantor in a conveyance of property owned solely by the other spouse is presumed to merely release inchoate rights of dower and nothing more. [Citations.]." *Matter of Estate of Wulf*, 471 N.W.2d 850 (Iowa 1991).

Assuming
1) Mrs. A owned no interest at the time of contract signing, and
2) the property was not A's homestead--
I'd not worry about Mrs. A's signature.

3. Do It Yourself Mobile Home Sale.

FACTS: I have a client that did a Contract for the sale of a mobile home. No Bill of Sale or title change, just a Contract with a down payment and monthly payments to be made. Buyer has failed to make payments. Agreement is silent on breach of agreement and remedies and pretty much any other pertinent terms.

QUESTION: Any advice on how to get possession back of the mobile home? I assume forfeiture will not work as not in the agreement.

RESPONSE(S): If the mobile home is not permanently affixed to real estate outside of a trailer park, it is personal property and the first question I would have is whether the lien is noted electronically or on the certificate of title. See Iowa Code Section 321.50. If there is no such notation, the security interest is at best, attached but not perfected. To be effective, the security agreement, according to Iowa Code Section 554.9203, requires that "the debtor has authenticated a security agreement that provides a description of the collateral."

If that is true, I am guessing that you will have to sue to establish the attachment and perfection of the security agreement as against the debtor.

* * * * *

First of all did the seller file the contract?

* * * * *

I know this is not real property but that may be a factor.

* * * * *

In whose name is the mobile home titled?

* * * * *

Sounds like no security interest for two reasons. First no signed writing and second I believe there is a statute under Iowa Code Chapter 321 that voids any security interest if the seller fails to perfect it within 30 days. I suggest new consideration to support written security agreement and attachment followed by title transfer with timely perfection on title. The debtor can fulfill the deal or default and the seller can realize either way.

4. Memorandum of Real Estate Contract.

FACTS: Iowa Code Sections 558.44 and 558.46 contain mandatory recording requirements for real estate contracts. They also contain provisions allowing for the recording of a memorandum of the contract in lieu of the actual contract. A County Recorder informs me that they don't process the memorandums the same way as the contract in that they don't update ownership to reflect a vendor and vendee. Nor do they update the recipient of the real estate tax bill.

Maybe I'm naïve, but I don't understand why these two documents would be processed differently if the statute says that either suffices for recording.

QUESTION: Is this correct? Is there additional legal authority addressing this topic?

RESPONSE(S): Hard to see how the Recorder can be at fault here.
His duty (per Code section 4.1(30)(a)):
accept and file whatever verified document is properly submitted with fee paid.

331.602 General duties.
The recorder shall:
1. Record all documents or instruments presented to the recorder's office for recordation upon payment of the proper fees and compliance with other recording requirements as provided by law.

IMHO the memorandum of contract is not an "instrument" (that would be the contract itself, per section 558.41) but surely it is a "document." See section 331.601A.2 and 331.606(4), both cited in *Benskin Inc. v. West Bank*, 952 N.W.2d 292, 306 (Iowa 2020).

Recorders don't "update ownership" and identify "vendor and vendee".
So if your Recorder attempts such then he's waaaaay off his reservation.

My guess: resistance to memoranda of contracts comes from either
A. the Auditor, or
B. the Assessor
Why? Anyone's guess. Mine: the objecting officer thinks that a mere memorandum of a contract somehow does not 'formally' identify a vendee under an unfiled contract.
Therefore the county's jealously-guarded and lovingly maintained tax list must continue to identify vendor as taxable owner.
Remember that for public officials "it's all about the money"...

* * * * *

There was discussion on this a couple years ago.
So, I revised my form and procedure.
I no longer use Memorandum of Real Estate Installment Contract.
I use a short form Real Estate Installment Contract, with only necessary information to reflect the necessary terms to establish a contract, then reference there is an additional written contract reflecting additional terms.
Then the Recorder does have the other departments reflect it as a contract, vendor, vendee, tax statement, etc.

5. Real Estate Contract Issue.

FACTS:

- A sells property to B on a recorded installment contract in 1997;
- A does an "Assignment of Seller's Interest in Real Estate Contract for Security Purposes" to C (bank) in 1997 as well;
- A gives a warranty deed to B in fulfillment of the Contract (dated in 1997) filed in 2008 with no mention of Assignment; no subsequent deed or release from C.

I believe that Iowa Code Section 614.17A probably cuts off C (bank) but technically it is not a mortgage; its an assignment of interests.

QUESTION: Would you require an Affidavit of Possession or something else to clear up that C has no interest in the property?

RESPONSE(S): O, the wonderful "assignments" of vendors' interests as "security" for loans.
Have seen more than a few of them over the years.
These silly contract "assignments" tend to go unreleased.
Even after banks taking them satisfy underlying debts and release other security.
In your circumstances I think I would require a 614.17A Affidavit of Possession.

Question: Did C Bank ever take a mortgage from A, on any (other) property?
(To which the assignment relates as a subsidiary security.)
If yes, then did it ever release that mortgage?
If answers to both propositions are yes, then--
I suppose C will never exercise any vendor's contract rights it holds.
Title Standard 1.1...

In modern real estate practice, parties acquiring rights under real estate contracts may "assign" (an absolute transfer, but usually only temporarily) those rights to lenders for collateral security purposes. Assignable rights may be those of either vendor or vendee.
For example of both see *United Central Bank v. Kruse*, 439 N.W.2d 849 (Iowa 1989).

Essentially A transferred to C Bank his contract rights--foremost of which is the right to receive income from B--secured by his lien.

Absent a recorded release of assignment by C Bank I think you must rely upon the statute of limitations to do away with the lien.
FWIW, the vendor's lien is analogous to a mortgage.

3 Patton & Palomar on Land Titles 3d section 568, p. 122 (2003):
"...[T]he vendor's lien that is expressly reserved in a conveyance may be assigned or released in the same manner as a mortgage.13 Furthermore, an assignment of the debt will carry the lien with it as an incident, as in the case of an express mortgage.14
" So far as a title examiner is concerned, a vendor's lien having once attached must be treated as subsisting until it is barred by the statute of limitations or released of record."
FN13 & 14 cites include
State Bank of Iowa Falls v. Brown, 142 Iowa 190, 119 N.W. 81 (1909).
"...[W]e have expressly held that the lien in favor of a vendor for the payment of the purchase price passes to an assignee as an incident to the debt. Paramore v. Nabers, 42 Iowa, 659; Rakestraw v. Hamilton, 14 Iowa, 147; Bills v. Mason, 42 Iowa, 329; Reynolds v. Morse, 52 Iowa, 155, 2 N. W. 1070. And this rule obtains no matter whether the title has passed or not. Blair v. Marsh, 8 Iowa, 144; Bills v. Mason, 42 Iowa, 330."

* * * * *

The writer has a good point. I would like to throw another item in the mix. The contract vendor's interest in real estate, under the doctrine of equitable conversion, is personal property. Generally, security interests in personal property, under Article 9 of the UCC, are perfected by a UCC filing. I don't claim to be an expert on Article 9, but I wonder whether the "assignment of contract" was imperfectly perfected, and thus not good against a *bona fide* purchaser for value.

* * * * *

I think the assignment of an interest in a real estate contract would be automatically perfected under Article 9. A general intangible is any personal property that's not included in another UCC collateral category (Iowa Code § 554.9102(as)). A payment intangible is a specific type of general intangible where the account debtor's principal obligation is a monetary obligation (Iowa Code § 554.9102(bm)). Article 9 specifies several types of security interests that are perfected upon attachment, one of which is the sale of a payment intangible (Iowa Code § 554.9309(3)).

A vendor's interest in a real estate contract looks like a payment intangible, and pledging that interest as collateral sounds like a sale (I think one of another writer's cites even used the term "sale" to refer to this situation). So, assuming "sale" is an appropriate description for granting a security interest in the vendor's interest in the real estate contract, then I think the interest was perfected upon attachment (which occurred after the grantor has an interest in the collateral, the grantor authenticates a security agreement, and the grantee has given value).

* * * * *

I do not think I would require anything at this point. I think the probability of litigation is remote at best and I think your analysis of 614.17A is good.

6. Real Estate Contract Mess.

FACTS: Seller used the internet to create her contract. Needless to say, it is a mess: no names, no interest, few details, etc. I have not seen the "final" signed copy yet. So, if not signed, then maybe can treat as unwritten lease? Then, to top it off it is not recorded (violation of mandatory recording). Now, buyer is in default. Seller has a mortgage on the property and she is now getting delinquency notices. And, the buyer is not in possession – she has it rented out to a tenant!

QUESTION: Now what? I don't think we can forfeit? Don't want seller to get in trouble for not recording.

RESPONSE(S): Nonjudicial foreclosure of unrecorded contract.

* * * * *

I would consider foreclosing the contract. The reason for this is that under Iowa Code Chapter 654, you have the ability to clear title. Presumably all will default, and any allegations you make in the petition regarding the priorities of the parties, which presumably will be confirmed in the decree, will be *res judicata* as against all defendants.

You might want to look at the statute of frauds and cases under it, to determine whether you can produce crucial evidence over the objections of one of the defendants.

* * * * *

In the absence of forfeiture or lien language, the seller still has a common law vendor's lien for the balance due. It can be foreclosed like a mortgage. Had to do one years ago, but I don't have any cases handy.

* * * * *

Note potential complication presented by Iowa Code Section 557.18 (vendor's lien non-enforceable after vendee's conveyance unless same reserved in a recorded instrument).

7. Drafting an Express Easement.

FACTS: Rural parcel being divided into parcel A and parcel B. Plat of Survey done previously. New Septic System will have a discharge pipe and discharge overflow servicing parcel A that will need an easement on parcel B.

QUESTION: Can I use a description using feet from the boundary line on the Plat of Survey provided by the septic installer or do I get a surveyor to give me an exact legal description?
Also - what does the subordination agreement look like that would be given to Parcel B lien holders?

RESPONSE(S): I have been known to use a simple measurement from a surveyed line for such an easement. Ex: A strip of land 20' wide parallel to and East of the West line of Parcel 32551. It is my opinion that this is acceptable.

I do not know about a subordination agreement.

8. Order of Recording.

FACTS: Seller owns 2 tracts of real estate A and B. He is selling Tract A to Buyer. He retains B.

All of the referenced documents were executed and filed on the same day in the following order:

Book 2020, Page 0143 - Warranty deed from Seller to Buyer for Tract A.

Book 2020, Page 0144 - Declaration of Easement by Seller to the Public executed only by Seller referencing that he owns Tracts A and B and that he is granting an easement over Tract B (the part he is not selling) for the benefit of Tract A. Declaration states that it runs with the land and is binding on successors of Seller. It further states that it is binding upon Seller and its successors and assigns who later acquire equity or legal interests in Tract A or B.

QUESTION: Does the fact that the easement was recorded after the deed invalidate it? Or does Title Standard 7.2 address this and resolve that it is valid using the same theory as for a mortgage.

RESPONSE(S): Given that
1) Seller retains ownership of Tract B, and
2) he publicly burdens Tract B with an easement in favor of Tract A,
legal effect seems to be same as if Seller signed a deed of easement to Buyer conveying the easement. Lack of Seller's ownership of Tract A at moment of his Declaration of Easement seems irrelevant, to me.

For sample of such declaration see
7A Am. Jur. Legal Forms 2d § 94:28 (2022)
Declaration of access easement--By owner of adjacent parcels.

Probably Recorder's filing of the Declaration after the Deed was accidental. If priority is perceived to be a problem, then one might persuade A to sign an Affidavit Explanatory of Title, indicating that he declared existence of the easement before he conveyed Tract A to Buyer.

9. 2nd Foreclosure, Same Property, Different Mortgagee.

FACTS:

- Party A takes title in 1993 with no mortgage.
- Party A gives 1st mortgage to Bank 1 in 1999 (due 2029). Party A gives 2nd mortgage to Bank 2 in 2002.
- In 2019, Bank 2 filed 1st foreclosure and does not name Bank 1 as Defendant. Sheriff's Deed given to Party B in 2019 who is the current owner yet today.
- Party B was not aware of 1st mortgage and did not get abstractor's report or otherwise to discover this in advance of taking Sheriff's Deed.
- Bank 1's mortgage is assigned twice since (once in 2020 and once in 2022).
- Foreclosure by Bank 1 filed in 2022 and sues Party A and Party B, among others.
    - Party A is not active in 2nd foreclosure and is in default.
    - Party B is defending.

QUESTION:

1. What rights does Party B have in the 2nd foreclosure?
2. Was Bank 2 required to sue Bank 1 in the 1st foreclosure?
3. Was Bank 2 required to notify Bank 1 in some way within or concerning the 1st foreclosure?
4. What defenses can Party B raise?
5. What is the likelihood of success in fending off this 2nd foreclosure by Party B?
6. What else could be raised to defend?
7. Can Bank 1 lay and wait for nearly 4 years and then come back and foreclose when Party A was not making payments during that time?
8. The property sold at public auction in 2019 for $30,000. At that time, Bank 1's outstanding balance in the property was $15,000. Today it is about $32,000 being sought. Any issue here with the 4-year delay – Bank 1 arguably profiting from doing nothing for 4 years.
9. Should Bank 1 have had to bid / purchase the property at the time of Sheriff's Sale to retain its interest?

Is there any equitable claim to defend against the fact that Bank 1 sat idle for 4 years making no attempt to contact or collect the outstanding principal balance from Party B (record titleholder since 2019), while Party B rehabilitates and invests in the property, and now allowing them to foreclose and double cost of indebtedness?

RESPONSE(S):

1. What rights does Party B have in the 2nd foreclosure? Party B can pay off the 1st lien.
2. Was Bank 2 required to sue Bank 1 in the 1st foreclosure? No.
3. Was Bank 2 required to notify Bank 1 in some way within or concerning the 1st foreclosure? No.
4. What defenses can Party B raise? There are few defenses. Party B had notice by the recording of Mortgage 1.
5. What is the likelihood of success in fending off this 2nd foreclosure by Party B? Very low.
6. What else could be raised to defend? You would have to get creative, but there are very few ethical defenses in this circumstance. Party B made his bed when he failed to get a title report prior to purchasing the property.
7. Can Bank 1 lay and wait for nearly 4 years and then come back and foreclose when Party A was not making payments during that time? Yes. Statute of limitations is 10 years after maturity.
8. The property sold at public auction in 2019 for $30,000. At that time, Bank 1's outstanding balance in the property was $15,000. Today it is about $32,000 being sought. Any issue here with the 4-year delay – Bank 1 arguably profiting from doing nothing for 4 years. No issue. I don't know how you think the bank profited by not being paid for all that time. The bank would likely have preferred the payments.
9. Should Bank 1 have had to bid / purchase the property at the time of Sheriff's Sale to retain its interest? No.

Is there any equitable claim to defend against the fact that Bank 1 sat idle for 4 years making no attempt to contact or collect the outstanding principal balance from Party B (record titleholder since 2019), while Party B rehabilitates and invests in the property, and now allowing them to foreclose and double cost of indebtedness? The bank can't direct its collection efforts to Party B – Party B does not owe the debt. It would be a violation of multiple federal statutes and regulations to collect from Party B or to even disclose financial information about Party A's debt to Party B. That does not stop the property from securing the debt, and being subject to foreclosure for the debt. Your guy needs to payoff or bid at the foreclosure sale.

I apologize for the brevity of my answers and lack of citations.

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I suggest Party B only has the right to pay off the recorded first mortgage, and perhaps action against whomever advised Party B to acquire without title opinion or title insurance, [or Iowa title guaranty].

* * * * *

1. Party B has the right to pay off the lien on Blackacre and take fee simple title to it.
2. In the first foreclosure Bank 2 was not required to sue Bank 1 because foreclosing Bank 2's junior lien did not affect Bank 1's senior lien.
3. No, but it would have behooved Bank 2 to send Bank 1 a notice of the foreclosure to invoke Iowa Code § 654.12A's protections against future advances after notice of foreclosure of a junior lien.
4. Party B doesn't have many defenses. At the Sheriff's Sale Party B bought the interest in Blackacre that Party A pledged to Bank 2, which was fee simple title to Blackacre but subject to Bank 1's mortgage. *Caveat emptor* reigns at Sheriff's Sales.
5. Party B can raise payment in full, Iowa Code § 558.41 recording statute protection (Sheriff's Sale purchasers are subsequent purchasers for valuable consideration and therefore are eligible for the recording act's protection), or any defenses that would invalidate Bank 1's mortgage (not notarized, forged grantor signature, etc.).
6. Not much I can think of.
7. Yes. Maybe Party A was in bankruptcy. Maybe Party A was negotiating with Bank 1. Maybe Bank 1 was going through tough times and didn't have the bandwidth to foreclose its mortgage.
8. Bank 1 presumably got default interest for those four years (21% would be about right to generate that ratio). Otherwise Bank 1 made future advances to Party A that were secured by the mortgage (which shows the hazard of buying a junior lien at Sheriff's Sale and not immediately paying off the senior liens or at least giving notice under Iowa Code § 654.12A—Party A has no incentive to pay down debt secured by Blackacre, so if Bank 1 is willing to advance funds and the advances are protected by Iowa Code § 654.12A the Sheriff's Sale purchaser gets hosed). I see no issue with the delay.
9. Bank 1 had no (legal) reason to bid. Its interest was not being affected. If a mortgagor sells the mortgaged property that doesn't affect the mortgagee's interest in the property, and the same principle applies here—a junior interest holder sold the property, but that doesn't affect the senior interest holder's interest.

Not that I know of. Party B should have done title work before bidding at the Sheriff's Sale and factored in the cost of paying off Bank 1's mortgage when bidding. If the property was only worth $30,000 four years ago then Party B shouldn't have bid more than $15,000 at Sheriff's Sale because Party B wasn't bidding on Blackacre free and clear, Party B was bidding on Blackacre subject to a $15,000 mortgage.

10. Foreclosure.

FACTS:

QUESTION: After the property is sold at a Sheriff's Sale and there is a 6 month delay of sale, can the property owner sell the property or finance it and pay off the property loan.

RESPONSE(S): *Morris Plan of Iowa v. Bruner*, 458 N.W.2d 853 (Iowa App. 1990):
"The demand for delay of sale referred to in these sections is prescribed by Iowa Code section 654.21, which provides, in part:
At any time *prior* to entry of judgment, the mortgagor may file a demand for delay of sale.
"The record shows that no such demand was filed prior to entry of judgment. The attempted demand for delay of sale was filed after the judgment. Therefore, it was not effective to delay the sale."

If I understand your situation correctly, you inquire about whether a judgment debtor in a mortgage foreclosure with no redemption may (1) demand delay of Sheriff's Sale, and (2) during delay period either (a) sell the property for a price sufficient to pay off the foreclosure judgment or (b) refinance the property with a third party creditor for an amount sufficient to pay off the judgment.

Answer is, I think, Yes. Certainly nothing in Chapter 654 forbids it.
I don't believe that the creditor's election of remedy (foreclosure without redemption) prevents him from changing his mind!
Foreclosing creditor wants cash, not your client's land.
Debtor can give creditor all the $$ creditor desires? Do it.

Such third-party money would be allowed in a standard mortgage redemption situation.
See
Dunn v. Zwilling, 94 Iowa 233, 62 N.W. 746 (1895):
"The amount due Binford was secured by a mortgage on 240 acres of the land, and that to Zwilling Bros. was secured by a mortgage on 80 acres of the land included in the mortgage to Binford and on 160 acres in addition. The indebtedness to Binford had been reduced to judgment, the mortgage securing it had been foreclosed, and a sale of the land covered by the mortgage had been made to Binford in the preceding November, to satisfy the judgment. The plaintiff was entitled to redeem from the sale, and his right to do so did not terminate until the 20th of November, 1887. He was financially embarrassed, however, and unable to pay the indebtedness specified from his own funds. In April, 1887, he

entered into an oral contract with Zwilling Bros., by which they agreed to advance to him sufficient money to pay the debts against the property, including taxes then due and to become due. As a part of the transaction, they were to purchase of Binford, and receive as collateral security his certificate of purchase, and their own mortgage was to be considered a part of the loan. ...
"So far as is shown, all the money which they [Zwilling Brothers] invested in redeeming the land from tax sale, in paying taxes, and in redeeming from the Binford sale belonged to them. ..."

I see no reason why a non-redemption foreclosure would not work similarly.

I recommend you work out the deal with the plaintiff creditor.
If it's hostile--then maybe offer to confess judgment?
Pay the new 'redemption' money into court.
Judge will ask the creditor "What's wrong w/ defendant's $$?"
"Why do you want to take his homestead, when he offers to pay you in full all that you're due?"

* * * * *

To my mind it's a matter of equitable redemption. As I understand it, a foreclosure without redemption refers only to foreclosure without *statutory* redemption. Iowa Code § 628.1A. It seems to me that a mortgagor has a common law equitable right of redemption—the right to pay the mortgagee the judgment amount plus interest and costs—all the way until the gavel falls at the Sheriff's Sale. If the mortgagor does so then the mortgagee's judgment is satisfied, and with no debt left there's no cause to sell the mortgaged property. Unless the mortgagee hopes to receive a windfall by purchasing the property at Sheriff's Sale for less than fair market value, I don't see why any mortgagee would balk at getting paid in full before the Sheriff's Sale. Even if they did, I think this could be forced on them. It seems almost tautological that a judgment creditor always has the right to pay the judgment debt, so if for some reason the creditor doesn't want to take the money it seems you could tender it to the court. I don't have a code cite for this, but it just seems right. The foreclosure remedy only exists to secure payment of the debt. If the debt is paid then there's no need for the foreclosure.

* * * * *

See Iowa Code Section 654.23 ("If the mortgagor at the sale bids an amount equal to the judgment, the property shall be sold to the mortgagor even though other persons may bid an amount which is more than the judgment. If the mortgagor purchases at the sale, the liens of junior lienholders shall not be extinguished.").

* * * * *

Did I read your original question correctly that you're asking about AFTER Sheriff's Sale? Because there is no delay of sale *after* sale. It is after entry of judgment, and delays the Plaintiff from setting the sale during that time. Once the Sheriff's Sale is held, it is final immediately and the borrower no longer has any rights to sell (or do anything else with) the property.

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Decided the text must have inadvertently misstated the timing.
Obviously something that's already happened can't be delayed.

* * * * *

There is a redemption AFTER the Sheriff's Sale on some types of sale. The Sheriff issues a certificate of purchase and no deed is issued until the redemption period expires. I am thinking that redemption period can be up to 1 year.

11. Refinance from Foreclosure.

FACTS: My client has been fighting the USDA for a wrongful foreclosure for several years. They are going for a summary judgment for about $35k on a $155k house in Bondurant. This is very reasonable for my client as it was reduced from $120k. However my client does not have the $35k and needs a lender to loan him the funds.

QUESTION: Does anyone know of a lender who would consider loaning these funds. I'm sure the foreclosure had ruined his credit.

RESPONSE(S):

12. Developer Agreement Lien Language.

FACTS: I prepared a title opinion on real estate that included a Developer's Agreement with language that the developer shall include language in all purchase agreements that in the event the purchaser does not build within one year, purchaser shall bear that lot's proportionate share of all costs of improvements constructed by or for the City. This obligation shall be a lien against the property and shall be released by the City upon construction of a structure within the time frame required herein. This Developer's Agreement was signed in 2005.

QUESTION: How long is this lien valid?

RESPONSE(S):

13. Dissolution and Property Held in One Spouse's Name.

FACTS: W takes title in her name only in 2013 as "a married person", so H and W were married at the time of acquiring the property. H and W get divorced and the decree is silent on the real estate at issue (and is not filed in the abstract as it is in a different county). The Dissolution Order does state that H is required to pay child support and it is clear from the Order that such child support obligations are currently ongoing. W is now looking to sell the property. W's counsel and Buyer's counsel are trying to evaluate what would be needed for clear title. It appears H may be willing to sign a Quit Claim Deed (QCD) to new Buyers but the abstract update does not show any lien search against him and there is nothing about the Child Support (being current or otherwise). Also, this does not appear to be homestead property as there is a business on it. Does H (or H's creditors) have any claim in the property?

QUESTION: Would you require a QCD from H? Anything else?
I assume some sort of showing that they were divorced would be required in the abstract?
Would you require Child Support Recovery to state it is current (Decree does not state anything about payments being made to W or Child Support Recovery)?

RESPONSE(S): Deed from W and any new spouse is all that is needed. If W is now single her stated status on the deed is enough.

H never acquired anything but marital rights in the property, and those rights were ended with the DOM Decree.
If I understand, H pays CS not W, so no CS judgment attaches to the property. No need for anything re CS.

* * * * *

I've always struggled with this when the decree is silent as to the real property because the record makes it seem like the court never knew about that property and so how was an equitable decree of division ever entered. That being said, I agree that the QCD cures your title objections and no lien search against H was necessary because his name was never on title.

* * * * *

To add to this, just as a precaution against future title examination issues in these situations I will often add a notation below the legal saying something to the effect that "this property was not claimed as homestead by the owner pursuant to Iowa Code § 561."

* * * * *

I concur with the writer's comments to the letter. I would add only this is the reason why there is no reason to show the marital status of a single grantee. It makes no difference. Deeds are often drafted this way because of instructions from realtors or lenders who believe that the vesting for a single person has to show the marital status of the grantee. By contrast, we have to show the marital status when giving a mortgage or conveying the real estate, but not with vesting. Thus: title vests in Jane Doe.

When a married couple takes title, the recital that they are a married couple creates a presumption of joint tenancy. Thus, the marital status should be shown in that situation.

14. Divorce/Child Support Matters.

FACTS: Client is looking to close on a real estate sale. Ex-spouse 1 receives Child Support (doesn't go through Child Support Recovery Unit) but is refusing to sign any documents releasing the property and stating Child Support is paid up to date.

Ex-spouse 2: there was a property settlement done in 2021 but it is not being shown as paid. Client is sure that it has been paid, but Ex-Spouse 2 is also refusing to sign anything.

I have seen some posts on this previously, but my recollection is that there is not much else we can do other than file something in the dissolution cases setting for hearing? Both Decrees state that each party will sign documents further facilitating the property as necessary.

QUESTION: Are there any other options?

RESPONSE(S): See Sec 624.37, Iowa Code.

15. Lien and Quiet Title Action.

FACTS: Able and Baker obtain title as tenants in common. Baker conveys her undivided one half interest to Smith. Able has a judgment against him for child support that is still valid. Smith's spouse commences an action to quiet title against Able. Able is not in possession as he is unable to be served and service is done by publication. Judgment is entered by default quieting title in Smith's spouse. The lienholder was not named or served in the quiet title action. Smith and spouse are now going to convey to a third party.

QUESTION: Did the quiet title action eliminate the lien of Able's child support judgment?

RESPONSE(S): Ouch. Not valid, if the QT attorney didn't properly serve the mother/lienholder.
Maybe he did, maybe he didn't.
Does the record show strict compliance w/ Rule 1.310?
If so then Smith & Spouse probably can convey good title to your client.
If not, then IMHO title's not good.

Publication of notice can be allowed, but ONLY WHEN
1) named defendant lives outside Iowa,
2) personal service has failed, AND
3) affidavit filed prior to publication recites that fact.

Mother undoubtedly holds an enforceable interest.
And she is a necessary party.
(Why bring a QT action if one does not serve all lienholders??)
Where does the mother live? In Iowa, or elsewhere? Can this be determined?

If mom's not properly served then her stack of support judgments survives.
Smith's 1/2 interest acquired from Able will be burdened by it.

See, e.g.:
Iowa Rule of Civil Procedure 1.310
Gordon-Van Tine Co. v. Ideal Heating & Const. Co., 233 Iowa 313, 271 N.W. 523 (1937)
Oziah v. Howard, 149 Iowa 199, 128 N.W. 364 (1910)

Other questions jump to mind out of your fact pattern:

1)How old are those child support judgments? Ten years or more?
And when do they stop accruing? (Usually date of child's reaching adulthood.)
As each judgment reaches ten years from date of effect, its lien goes poof.

See Iowa Code section 624.23 and
In *re Marriage of Shepherd*, 429 N.W.2d 145 (Iowa 1988):
"Unless the divorce decree provides otherwise, each alimony or child support installment becomes a final judgment and lien as it became due. *Gray v. Gray*, 238 Iowa 723, 728, 27 N.W.2d 123, 126 (1947)."
Cited and followed in
In re Marriage of Tilkes, 682 N.W.2d 82 (Iowa App. 2004) (Table)
So if any of the judgments are 10+ years old then no liens exist.

2)Why was Able unable to be served? Incompetence? Location unknown?
Was a guardian ad litem appointed for him, to defend his interest?

3)Is this QT judgment more than ten years old?
If it's 10+ then it ought to be enforceable as is. Iowa Code section 614.1(7).

BUT further--
4)What interest does Smith's Spouse have in the property?
POA for Smith? Heir of deceased Smith?
Smith as plaintiff appears to be the real party in interest.
Are Smith and Spouse named together as co-plaintiffs?
Or is Spouse named as sole plaintiff? If so, then why?
Leaves me questioning validity/voidness of the QT from Plaintiff's angle...

* * * * *

There was compliance with Rule 1.310 for Able, but the mother was not named or served. I have no idea where she is. The child support judgment was entered in 2012, for children born in 2005 and 2006, so most of the payments accrued in the past 10 years. The QT action was commenced in 2020. Able was the only party named as a defendant. Smith and spouse hold title as TIC.

* * * * *

Again, ouch. On those additional facts--
I think the QT decree is not helpful to actually quiet title.

* * * * *

That was my first thought, but I appreciate the counsel.

16. Name Variants.

FACTS:

QUESTION: When an abstractor searches for judgments, do they search for all name variants (like Jon, John, Jonathan) or just the name that appears in the abstract? For example, titleholder is listed as "Jon Smith" on the deed, at least according to the abstract. I assume the search is for "Jon Smith," right? In the old days where someone had to go look at court records, maybe idem sonans applied and abstractor was on notice to find variants.

RESPONSE(S): Abstractors in our area search for all reasonable name variations. John, Jon, Jonathan, Johnny etc.

* * * * *

I've been told the title plant software used by some abstractors includes some sort of a built-in idem sonas function.

On a related point, I think the Iowa SOS may have gone with something similar in response to a case where Art. 9 "strictness" was found not controlling in the case of federal tax liens.

* * * * *

One of the things going on in my mind was contrasting real estate searches and UCC searches. I seem to remember that the rule for UCC searches was to use "exact" name as appears on Driver's License, I believe. One final question:

I always thought criminal judgments (for fines, for example) were judgment liens on real estate and should show up in an abstract. Am I wrong?

17. New Trial and Judgment after Execution of Writ of Possession.

FACTS: I'm failing to find caselaw answers to an odd question in a client's case, and I'm hoping someone else who does evictions has seen this before.

Plaintiff obtained an FED judgment by default, got a writ of possession, and had the sheriff execute the writ. Defendant has been removed and their possessions were placed on the curb during the execution. Defendant later moved to have the default set aside, and the court did so before proceeding to a trial on the merits and issuing a new judgment in favor of Defendant, dismissing the FED action with prejudice.

The order says nothing about specific remedies now that the original judgment is set aside but the writ has already been executed on. The unit has already been re-let to another tenant, as the writ issued about a month prior to the new hearing and dismissal.

QUESTION: Does Plaintiff have an obligation in this case to let Defendant back into this unit or a different unit (if one is even available)?

RESPONSE(S): No court that I can find has ever taken up the specific issue you raise. My instinct says: courts would attempt to restore status quo ante. But perhaps in an apartment house situation a different (equal or better) unit would satisfy status quo in place of the original, now-unavailable unit. Situation is analogous to disputed property being bought, *ad interim*, by a good faith purchaser for value without notice. Original owner may be given not the original property but only its fair value.

Relatively few rulings of Iowa's appellate courts address challenges to default FEDs. Quick survey shows none of them aid you much:

Shuver v. Klinkenberg, 67 Iowa 544, 25 N.W. 770 (1885).
Motion to set aside default judgment; judgment upheld.
Followed in--

Arts v. Rocksien, 98 Iowa 536, 67 N.W. 409 (1896).
Motion to set aside default judgment; judgment upheld.
"The motion demanded that a writ issue, placing the defendants back in possession of the farm, and that the action be dismissed."
[implication of claim = restoration of status quo ante]

Agan v. Krambeck, 926 N.W.2d 568 (Iowa App. 2018)(Table).
Default judgment granted; motion to set aside filed; writ of removal stayed; ultimate dismissal of case on appeal.

[implication of writ stay = status quo ante preserved.]

Other states' case outcomes splatter all over the canvas.
None of them directly address your question.

Southern Ry. Co. v. Lima Wood & Coal Co., 156 Va. 829, 159 S.E. 69 (1931)
(from synopsis, not opinion)
"3. FORCIBLE ENTRY AND DETAINER - *Object of the Statute.* - In Virginia since 1789 a statute against unlawful entries has been in effect. The object of the legislation was to prevent breaches of the peace and bloodshed. With the end in view of preventing violence and disturbances, the law has said, even to the owner, that you may not take what is yours by force, and if you do, what you have taken shall be returned to him from whom you took it. The underlying thought of the lawmakers being to discourage unlawful entries by letting it be known that no advantage would accrue therefrom; that ****the *status quo ante* would be restored,**** in order that the rights of the parties might be determined in an orderly manner and according to such means and methods as the law prescribes and provides.

Havana Nat. Bank v. Satorius-Curry, Inc., 167 Ill.App.3d 562, 521 N.E.2d 645, 118 Ill.Dec. 363 (1988)
Default judgment granted; reopening denied due to tenant's admission of liability for rent; equitable claims ignored:
"Where possession is asserted solely by reason of nonpayment of rent, the crucial and decisive issue before the court is whether rent is due and owing. [Citations.] Factors such as the length of time defendants have operated business on the premises and funds expended by defendant in improving the premises are not germane to the issue of possession unless being asserted as a set off. ... The defendant herein clearly admitted that rent was due and owing. Defendant did not claim entitlement to a set off for improvements on the leased premises. Under the express terms of the lease, by failing to pay rent in a timely fashion, the defendant gave up right to possession.
"Although a trial court's equitable powers allow it to prevent a forfeiture of a lease, a balance of equities in the case at hand is not such that forfeiture was inappropriate."

Cady v. Pack, 135 Ark. 445, 205 S.W. 819 (1918)
FED default judgment granted as to specific agricultural real estate; petition to set aside granted. No discussion about possession of the real estate.

Krohn v. Krohn, 84 N.E.2d 249, 2017-Ohio 408 (2017)
Family dispute. FED default judgment granted as to rental real estate; set aside denied.

* * * * *

I can't point you to a case, but I would start by looking at the remedies provided in Iowa Code Chapter 562A.26:

"If the landlord unlawfully removes or excludes the tenant from the premises or willfully diminishes services to the tenant by interrupting or causing the interruption of electric, gas, water, or other essential service to the tenant, the tenant may recover possession pursuant to section 648.1, subsection 1, or terminate the rental agreement and, in either case, recover the actual damages sustained by the tenant, punitive damages not to exceed twice the monthly rental payment, and reasonable attorney fees. If the rental agreement is terminated, the landlord shall return all prepaid rent and security."

The statutory remedies include recovery of possession. If the tenant asks to be restored to possession of the premises, you can argue that it is not possible because the premises were already re-let, and I suspect that a Court would instead grant the tenant the alternative remedy.

18. Old Child Support Lien-No Release or Satisfaction in Full.

FACTS: Titleholder gets divorced from 1st spouse in 2013 and in said Dissolution Decree Titleholder has to pay child support. Titleholder and former spouse enter into settlement agreement in 2018 ending all child support. CSRU files a termination of child support and income withholding order in 2018. Titleholder buys Blackacre in 2019 with second spouse. Titleholder and 2nd spouse both on purchase money mortgage.

Titleholder is selling Blackacre in 2023. No indication in the file from Court records or abstract whether child support was paid in full or not paid in full when CSRU entered into termination of child support pursuant to a settlement agreement by the parties in 2018 for period between 2013-2018. My read on chances of litigation are very small given Titleholder has received 2-3 loans since 2018 including purchase money mortgage for Blackacre and purchase money mortgage for new homestead out of county. Still no specific indication if child support from 2013-2018 was paid in full except implicit in CSRU's termination order that all support is paid in full before termination of Income Withholding Order.

I cannot find any specific indications on this factual scenario in title standards or curative legislation other than provisions about judgments in general. Also, no indication that there is any support in arrears between 2013-2018 for period of time child support was ordered.

QUESTION:

RESPONSE(S): Your situation is very much fact-dependent.
And I think as of now, based upon what you report, we cannot say that title is clear.
(Although issuance of other title opinions and loans based thereon suggests other lawyers think it is!)

A few questions will need answering.

A. Does the record show any written and signed satisfaction of support?
Which to be effective must be both
(1) signed by the obligee/recipient,
(2) notarized, and
(3) approved by order of a District Judge?
All three steps are required for support judgments, by Iowa Code section 598.22A.
If answer to any of these questions is No--

Then you cannot avoid possibility that the 2018 "settlement agreement" did not discharge accrued support judgments.

(Although, practically, I think extremely unlikely the prospect that someone actually tries in equity to claim that a signed but unsworn and non-Judicially-cleared satisfaction is somehow ineffective to clear title. In almost four decades of law practice I have never seen such a move. Maaaayybe a Title Standard 1.1 threshold...)

B. The 2013 divorce decree--
(1) how long was the support to run, and
(2) for how many children?
(3) any step-downs in support payable when some children hit age 18 years?
(4) when did the last child become an adult?
(Guessing this happened prior to 2018.)
(5) how often was child support payable? Monthly? Weekly?

Each support payment coming due acts as a separate judgment, a "stair step". So if a payment goes unmade, a staircase begins to form. Which may climb ever higher, with non payments, for each calendar payment period that comes after the divorce judgment entry.
Each separate "stair step" = separate judgment, with ten-year statute of limitations under Iowa Code section 624.23(1).

C. That 2018 "settlement agreement" purporting "to end all child support"--
(1) was it prospective only? Or
(2) did it also include satisfaction of sums already paid?
(3) was one or more supported children yet minors in 2018?
If answer to any of these questions is Yes--then,
Did a judge sign off on satisfactions of accrued support?
Did a judge approve termination of support for children under 18?
(Which usually is a no-no: parents may not contract to avoid child support.)

Support judgment satisfactions = Only type of judgment satisfaction for which a statute requires judicial signoff.

19. FDCPA Notice with Notice to Cure.

FACTS:

QUESTION: A question for those dealing with residential leases. If you prepare a 3 day notice to cure for non-payment of rent pursuant to Iowa Code Chapter 562A which you sign as attorney for Landlord, do you also send the full Fair Debt Collection Practices Act (FDCPA) notice? If you send the FDCPA notice, do you file FED actions during the pendency of the 30 day verification time period?

RESPONSE(S):

20. Grounds for Forcible Entry and Detainer.

FACTS: Client has a tough situation regarding a home. Client owns home. Client verbally agreed to sell home to A if A pays the taxes, utilities, and mortgage payments. Nothing in writing. A then leases out the property to B even though Client said that there shall be no leasing of the property without permission (again all verbal). B has utilities in B's name and refuses to pay public utilities. City is contacting Client saying Client is on the hook for such utility payments. A has also failed to make several payments on mortgage so Client has made them. A has also trashed the home. Honestly, this is a mess.

Client would like to give notices and get everyone removed from the property. My concern is there really is no lease.

QUESTION: So what grounds would a Notice to Quit state? Iowa Code Section 648.1(1): fraud or stealth possession? Contrary to the Lease? Nonpayment of Rent?

I think it can be argued that it was a lease to buy but what relationship between Client, A, and B was formed is pretty vague. Any thoughts on grounds for an FED?

RESPONSE(S): Iowa Code Section 622.32 (3) – if the contract to sell wasn't in writing, it didn't happen. Then use Iowa Code Section 648.1(1) and argue that the "landlord" had no authority to rent.

Messy, but maybe the buyer will step up and get all of the paperwork done so your client can finish selling it.

* * * * *

Check Bernet v. Rogers, 519 N.W. 2d 808 (Iowa 1994) – No 3 day and no 30 day peaceable possession under its fact. And maybe Crawley v. Price, 692 N.W.2d 44 (Iowa Court of Appeals 2004). Haven't checked these lately, but they are the no lease cases with tenants at will.

[See Attachment]

519 N.W.2d 808
Supreme Court of Iowa.

Harold (Skip) BERNET, Appellee,
v.
Sharon ROGERS, Appellant.

No. 93–654.
July 27, 1994.

Synopsis

Owner filed forcible entry and detainer action against live-in party. The District Court, Linn County, Van D. Zimmer, J., held that live-in party was not entitled to 30–day notice of termination, and live-in party appealed. The Court of Appeals reversed. On grant of further review, the Supreme Court, Lavorato, J., held that: (1) live-in party was not "tenant at will" entitling her to 30–day written notice of termination of tenancy before owner could evict her from his home, and (2) owner properly brought forcible entry and detainer action against live-in party.

Vacated and affirmed.

West Headnotes (12)

1 **Forcible Entry and Detainer** 179k6 Nature and Form of Remedy
Forcible Entry and Detainer 179k43(7) Review, and determination and disposition of cause

Because forcible entry and detainer action is tried in equity, Supreme Court's review is "de novo," requiring court to look at both facts and law and then determine, based on credible evidence, rights anew on those propositions properly presented.

8 Cases that cite this headnote

2 **Appeal and Error** 30k3470 Preponderance or great weight of evidence
Appeal and Error 30k3809(2) On review of verdict, findings, and sufficiency of evidence
Evidence 157k2979 Matters of defense and rebuttal

Defendant has burden of proving by preponderance of evidence any affirmative defenses defendant raises, and, on review, Supreme Court determines if defendant has met burden by considering all evidence, both in support of and contrary to proposition, and then weighing each to determine which is more convincing.

3 Cases that cite this headnote

3 **Landlord and Tenant** 233k703 Creation of Tenancy at Will

Tenancy at will cannot be created without assent, express or implied, of both parties.

2 Cases that cite this headnote

4 **Landlord and Tenant** 233k703 Creation of Tenancy at Will

Live-in party was not tenant at will entitling her to 30-day written notice of termination of tenancy before owner could evict her from his home, where there was no assent, either express or implied, of both parties that tenancy at will was intended. I.C.A. § 562.4.

2 Cases that cite this headnote

5 **Landlord and Tenant** 233k703 Creation of Tenancy at Will

Live-in party was not tenant at will entitled to 30-day written notice of termination of tenancy, but rather, was "licensee," even though she lived in owner's home for number of years, in view of evidence that live-in party was not, as opposed to owner, in exclusive control of premises and that live-in party was in owner's home solely with his permission. I.C.A. § 562.4.

6 **Licenses** 238k51 Nature and extent of rights

Although "licensee" has, with permission of owner, right to use property, licensee has no interest in property.

7 **Landlord and Tenant** 233k501 Nature of the relation

"Tenant" has interest in premises and has exclusive legal possession of it; this exclusive legal possession means tenant, not landlord, is in control of premises.

3 Cases that cite this headnote

8 **Forcible Entry and Detainer** 179k5 Nature and elements of forcible or other unlawful detainer

Only question in forcible entry and detainer action is whether defendant is wrongfully detaining possession of real property at time of trial. I.C.A. § 648.1.

5 Cases that cite this headnote

9 **Forcible Entry and Detainer** 179k5 Nature and elements of forcible or other unlawful detainer

Owner properly brought forcible entry and detainer action against live-in party who refused to leave his home, in view of evidence that live-in party was occupying owner's home against his wishes. I.C.A. § 648.1.

1 Case that cites this headnote

10 **Forcible Entry and Detainer** 179k11(1) Necessity

Owner was not required to give live-in party three-day notice to quit, where live-in party had no interest in house. I.C.A. §§ 648.1, subds. 2–6, 648.3.

3 Cases that cite this headnote

11 **Forcible Entry and Detainer** 179k12(2) Title or possession of defendant

Thirty-day peaceful possession bar did not apply to owner's forcible entry and detainer action against live-in party, where live-in party had no interest in house. I.C.A. § 648.18.

3 Cases that cite this headnote

12 **Forcible Entry and Detainer** 179k17 Time to sue and limitations

Owner was entitled to bring his action for forcible entry and detainer against live-in party as soon as he announced his wish for live-in party to move, and thereafter, her continued presence amounted to trespass and wrongful detention of property. I.C.A. § 648.1.

2 Cases that cite this headnote

Attorneys and Law Firms

*809 James C. Larew of the Larew Law Office, Iowa City, for appellant.

Sara Riley Brown and T. Todd Becker of the Tom Riley Law Firm, P.C., Cedar Rapids, for appellee.

Considered by McGIVERIN, C.J., and CARTER, LAVORATO, NEUMAN, and ANDREASEN, JJ.

Opinion

LAVORATO, Justice.

The main issue in this appeal is whether a live-in party is a tenant at will entitling that party to a thirty-day written notice of termination of tenancy before the property owner can evict. The district court thought not, but the court of appeals disagreed. On further review we agree with the district court. We vacate the court of appeals decision and affirm the district court order of eviction.

Harold (Skip) Bernet and Sharon Rogers met in November 1985. Soon their relationship became serious. In the fall of 1986, Skip lived part-time in Sharon's Cedar Rapids' home, which Sharon also shared with her teen-age daughter. He spent the rest of his time in his home at Anamosa.

In 1987 Skip and Sharon looked at several larger homes. Eventually, Skip purchased one of these homes, a Marion acreage, for $165,000. Skip, Sharon, and Sharon's

daughter moved into the house in July. Sharon did not sign a lease nor pay Skip any rent. She began renting her Cedar Rapids home to Skip's adult daughter, Connie.

Over time, Skip made about $65,000 worth of improvements to the acreage. This included interior remodeling and exterior landscaping. In addition, Skip paid all of the taxes on the acreage.

During the approximately five years that Sharon and Skip lived together, she worked part-time in a beauty shop she owned. But her primary source of income was the $280 per week Skip's construction company paid her to answer business calls. From these funds, Sharon paid (1) the long-distance phone bills, (2) for groceries, (3) for cleaning supplies, and (4) for household linens. Sharon also received $425 per month rent from Connie on Sharon's Cedar Rapids home.

In the fall of 1992, Skip left to care for his ailing mother in Anamosa. While there he called Sharon and told her that he wanted to end their relationship. Over the course of several weeks, Skip repeatedly asked Sharon to move out. She refused.

Finally, Sharon asked Skip if she could stay in the house through the Christmas season. Skip agreed.

In early January 1993, Sharon's lawyer sent Skip a registered letter. In the letter Sharon (1) asserted a property interest in the home, and (2) demanded a cash settlement.

Skip's lawyer immediately denied the viability of Sharon's claim and asked for a list of possessions that Sharon claimed were hers. Skip then told Connie to change the locks on the home after he left for a vacation. Connie did so.

Sharon reentered the house via a secret entrance she alone knew about and changed the locks again. She left a key for Skip at his business.

Skip served Sharon with a three-day notice to quit in late February. In early March he filed a forcible entry and detainer action.

Sharon raised several affirmative defenses. She asserted, among other things, that she *810 was a tenant at will and as such was entitled to a thirty-day written notice of termination pursuant to Iowa Code section 562A.34(2) (1993). She also asserted that Skip permitted her to remain in peaceful possession for thirty days, which constituted a bar under Iowa Code section 648.18 to an action for forcible entry and detainer.

Following a bench trial, the district court found that Sharon was simply a guest in Skip's home and not a tenant. For that reason, the court concluded, she was not entitled to a thirty-day notice of termination.

Sharon appealed and we transferred the case to the court of appeals. In reversing, the court of appeals found that Sharon was indeed a tenant at will who had been in thirty days peaceful possession when Skip filed his action. The court of appeals

concluded that these facts statutorily divested the district court of jurisdiction over Skip's forcible entry and detainer action and dismissed his petition.

Skip applied to us for further review, which we granted.

[1] [2] Because a forcible entry and detainer action is tried in equity, our review is de novo. Iowa R.App.P. 4; *Hillview Assocs. v. Bloomquist,* 440 N.W.2d 867, 869 (Iowa 1989). In such a review, we look at both the facts and the law and then determine—based on the credible evidence—rights anew on those propositions properly presented. *Id.* Although we are not bound by the district court's findings of fact, we give them weight, especially when considering the credibility of witnesses. Iowa R.App.P. 14(f)(7); *Hillview,* 440 N.W.2d at 869. The defendant has the burden of proving by a preponderance of evidence any affirmative defenses the defendant raises. On review, we determine if the defendant has met that burden by considering all the evidence, both in support of and contrary to the proposition, and then weighing each to determine which is more convincing. *Id.*

[3] I. Whether Sharon was a tenant at will turns on our interpretation of Iowa Code section 562.4, which provides:

> A person in the possession of real estate, with the assent of the owner, is presumed to be a tenant at will until the contrary is shown, and thirty days' notice in writing must be served upon either party or a successor of the party before termination of the tenancy.

Simply put, "a tenancy at will cannot be created without the assent, express or implied, of both parties." *Martin v. Knapp,* 57 Iowa 336, 343, 10 N.W. 721, 724 (1881). And "[p]ossession with the assent of the owner raises merely a presumption of a tenancy at will, which may be rebutted." *Id.* at 343, 10 N.W. at 724.

[4] Here the district court found from the testimony of both parties that

> neither [Skip] nor [Sharon] ever believed that a landlord-tenant relationship existed between them during the time they were living together in [Skip's] Marion residence. No written or oral lease was ever entered into between the parties, and no rent was ever demanded by [Skip] or paid by [Sharon]. It appears to the court that [Sharon] was simply a guest in [Skip's] home when the parties lived together in Marion and [Skip] was a guest in [Sharon's] home when the parties lived together at [Sharon's] home on Oakland Road in Cedar Rapids. The evidence establishes nothing more than an agreement to cohabitate together without marriage.

We adopt these findings which clearly establish that there was no assent, either express or implied, of *both* parties that a tenancy at will was intended.

5 6 Although the district court characterized Sharon's status as a guest, we think that she was, in a legal sense, a licensee. A licensee is

> a person who enters upon the property of another for his own convenience, pleasure, or benefit, only for purposes of his own and not in response to an implied invitation to the public generally to make use of the premises, but solely as a matter of permission or sufferance.

62 Am.Jur.2d *Premises Liability* § 108, at 464–65 (1990). A licensee has—with the permission of the owner—the right to use the property. *See* *811 *Robert's River Rides, Inc. v. Steamboat Devel. Corp.*, 520 N.W.2d 294, 300 (Iowa 1994) (license grants permission to use land of another). The licensee, however, has no interest in the property. 49 Am.Jur.2d *Landlord and Tenant* § 5, at 45–46 (1970).

7 In contrast, a tenant has an interest in the premises and has exclusive legal possession of it. This exclusive legal possession means the tenant, and not the landlord, is in control of the premises. *Layton v. A.I. Namm & Sons,* 275 A.D. 246, ----, 89 N.Y.S.2d 72, 74–75 (1949); 49 Am.Jur.2d *Landlord and Tenant* § 6, at 47–48 (1970).

This important distinction between a licensee and tenant is made clear in *Colbert v. Ricker,* 314 Mass. 138, 49 N.E.2d 459 (1943). There, a wife allowed her husband to use her house for his personal business as a general contractor. The court determined that the husband was occupying the premises not as a tenant but as a licensee. *Id.* at 139, 49 N.E.2d at 460. The court reasoned that the wife

> was the owner and could at any time have taken exclusive possession herself. She was not bound to furnish her husband with a home, and she was not required to permit him to use her premises for his own personal business. That she allowed him to do so did not give him any interest in her property or make him a tenant. We think that he was occupying the property as a licensee.

Id. at 139, 49 N.E.2d at 460.

Sharon was not—as opposed to Skip—in exclusive control of the premises. Skip was. Sharon was in Skip's home solely with his permission. The fact that she lived on the premises for a number of years did not give her an interest in the property nor make her a tenant. She was merely occupying the premises as a licensee.

II. The grounds for a forcible entry and detainer action are set out in Iowa Code section 648.1. The facts here do not fit any of those grounds. Nevertheless, we think Skip used the right remedy. In similar circumstances, this court said:

> In interpreting the statute in question (forcible entry and detainer) ... we must give it a liberal construction with a view to promote its object.

> The object ... is to enable a person entitled to possession of real estate to obtain such possession from *any one* illegally in the possession of same.

Rudolph v. Davis, 239 Iowa 372, 375, 30 N.W.2d 484, 486 (1948) (citation omitted).

8 9 The only question in a forcible entry and detainer action is whether the defendant is wrongfully detaining possession of the real property at the time of the trial. *Id.* at 375, 30 N.W.2d at 486. This is precisely the case here. Sharon was occupying Skip's home against his wishes. In these circumstances she was nothing more than a trespasser, wrongfully detaining the property. She was holding his house hostage and, in her words, would move "when she was good and ready."

10 11 III. Moreover, we think Skip was not required to give Sharon a three-day notice to quit because this notice provision applies only where the defendant has had some kind of interest in the property. *See* Iowa Code §§ 648.1(2), (3), (4), (5), (6), 648.3. Because Sharon had no such interest, she was not entitled to the notice. For the same reason, we think the thirty-day peaceful possession bar does not apply. *See* Iowa Code § 648.18 ("Thirty days' peaceable possession with the knowledge of the plaintiff after the cause of action accrues is a bar to a [forcible entry and detainer] proceeding.").

12 In short, Skip was entitled to bring his action for forcible entry and detainer as soon as Skip announced his wish for Sharon to move. Thereafter, her continued presence amounted to a trespass and a wrongful detention of the property. *See Robert's River Rides, Inc.,* 520 N.W.2d at 301 (wrongful interference with possessory rights in property is trespass). In such a case it would be illogical to require either a three-day notice to quit or enforcement of the bar of section 648.18. *See Roberts v. Casey,* 36 Cal.App.2d Supp. 767, 774–75, 93 P.2d 654, 659 (1939) (applying same reasoning to forcible entry and detainer statute similar to Iowa's).

Significantly, the legislature has apparently recognized the absurdity of requiring a three-day notice to quit in cases of trespass. For example, the only case in which the *812 legislature has not statutorily required such a notice is where "the defendant has by force, intimidation, fraud, or stealth entered upon the prior actual possession of another in real property, and detains the same." Iowa Code § 648.1(1). Obviously, a defendant in any one of these circumstances is a trespasser.

IV. Sharon raises several other issues. We have considered them and find they lack merit.

For all of the foregoing reasons, we vacate the decision of the court of appeals and affirm the district court's order of removal.

COURT OF APPEALS DECISION VACATED; DISTRICT COURT JUDGMENT AFFIRMED.

692 N.W.2d 44
Court of Appeals of Iowa.

Ramona CRAWLEY, Plaintiff–Appellant,
v.
Patrick PRICE and Cory Tomlyanovich, Defendants–Appellees.

No. 03–2098.
Oct. 14, 2004.

Synopsis

Background: House's former occupant filed unlawful ouster, abuse of access, trespass, conversion, and constructive bailment claims against house's new and former owners. The District Court, Black Hawk County, Robert J. Curnan, J., entered judgment for owners. Former occupant appealed.

Holdings: The Court of Appeals, Sackett, C.J., held that:
1 no tenancy at will existed between owners and occupant;
2 it was not trespass or abuse of access for new owner to enter the property;
3 occupant had no cause of action for unlawful ouster against owners; and
4 removal of occupant's property from the house and permanent disposal of it did not constitute conversion.

Affirmed.

Procedural Posture(s): On Appeal.

West Headnotes (19)

1 **Appeal and Error** 30k3149 Nature and Manner of Proceeding Below, Effect of

The appellate court's scope of review is determined by the nature of the trial proceedings.

2 Cases that cite this headnote

2 **Appeal and Error** 30k3411 Same effect as those of jury
Appeal and Error 30k3459 Substantial Evidence

The trial court's findings of fact carry the force of a special verdict and are binding on the appellate court if supported by substantial evidence.

3 **Appeal and Error** 30k3935 Verdict, Findings, and Sufficiency of Evidence

Evidence viewed for its substantiality is to be viewed in the light most favorable to the judgment.

4 **Appeal and Error** 30k3165 Plenary, free, or independent review

Appeal and Error 30k3169 Construction, Interpretation, or Application of Law

The appellate court is not bound by the trial court's application of legal principles or its conclusions of law.

5 **Appeal and Error** 30XVII(B)14 Conclusions of Law

When the trial court has applied erroneous rules of law which materially affected its decision, the appellate court will reverse.

6 **Appeal and Error** 30k169 Necessity of presentation in general

The issues to be reviewed must ordinarily be both raised and decided by the district court before the appellate court will decide them on appeal.

7 **Landlord and Tenant** 233k703 Creation of Tenancy at Will

A tenancy at will cannot be created without the assent, express or implied, of both parties. I.C.A. § 562.4.

8 **Landlord and Tenant** 233k703 Creation of Tenancy at Will

No tenancy at will existed between house's former or new owners and the house's former occupant; even though the owners knew of occupant's presence, they did not assent to occupant being there. I.C.A. § 562.4.

9 **Forcible Entry and Detainer** 179k4 Nature and elements of forcible entry

Trespass 386k20 Possession or Right of Possession of Plaintiff

It was not trespass or abuse of access for house's new owner to enter the property in which former occupant had been living, as the house's occupant had no tenancy in the property.

10 **Forcible Entry and Detainer** 179k6 Nature and Form of Remedy

The intent of the forcible entry and detainer statute is to prevent people from resorting to self-help and violence and, instead, provide legal process for regaining possession of real property.

1 Case that cites this headnote

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11 **Forcible Entry and Detainer** 179k6 Nature and Form of Remedy

Statutes providing a cause of action for forcible entry and detainer are enacted to enable parties to obtain speedy determination of the right to the possession of property without having to resort to violence, to preserve the peace, and require the use of judicial process to gain possession.

2 Cases that cite this headnote

12 **Forcible Entry and Detainer** 179k3 Right of entry to take possession without action

An actor who without tortious conduct has regained possession of land of which he was dispossessed by another is privileged to use reasonable force to exclude or expel the other as if there had been no dispossession. Restatement (Second) of Torts §§ 88-94.

13 **Forcible Entry and Detainer** 179k3 Right of entry to take possession without action

House's former occupant had no cause of action for unlawful ouster against house's new or former owners; possession of the property was regained without resort to tortious conduct, and the changing of the house locks was the privileged use of reasonable force to exclude or expel.

14 **Conversion and Civil Theft** 97Ck108 Assertion of ownership or control in general

"Conversion" is the wrongful control or dominion over another's property contrary to that person's possessory right to the property.

3 Cases that cite this headnote

15 **Conversion and Civil Theft** 97Ck108 Assertion of ownership or control in general

To constitute conversion, the wrongful control must amount to a serious interference with the other person's right to control the property.

3 Cases that cite this headnote

16 **Conversion and Civil Theft** 97Ck117 Destruction of or injury to property

Removal by house's new owner of former occupant's property from the house and permanent disposal of it did not constitute conversion; owner did not dispose of anything of value, and the owner's intent was to remove valueless property in the house he had just purchased, for which occupant had no rental agreement.

17 **Damages** 115k91.5 Grounds for Exemplary Damages

Punitive damages are justified when the acts of the defendant are malicious; the malice may be actual (expressed) or it may be legal (implied), as where the defendant acts illegally or improperly with reckless disregard for another's rights. I.C.A. § 668A.1, subd. 1, par. a.

3 Cases that cite this headnote

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18 **Conversion and Civil Theft** 97Ck221 Exemplary damages

House's new owner did not act with the requisite malice in the removal of former occupant's personal property for punitive damages to be awarded; owner's intent was to remove valueless property found in the house he had just purchased, and in which occupant had no rental agreement. I.C.A. § 668A.1, subd. 1, par. a.

1 Case that cites this headnote

19 **Bailment** 50k2 Particular forms of bailment

No constructive bailment was created when house's new owner removed former occupant's personal property from the house; owner peaceably regained possession of the house, for which occupant had no rental agreement, and owner was privileged to use force to expel others from the house and in removing occupant's personal property from the house.

Attorneys and Law Firms

*46 Cynthia Rybolt, Waterloo, for appellant.

D. Raymond Walton of Beecher, Field, Walker, Morris, Hoffman & Johnson, P.C., Waterloo, for appellee.

Considered by SACKETT, C.J., and VOGEL and ZIMMER, JJ.

Opinion

SACKETT, C.J.

Plaintiff-appellant Ramona Crawley appeals from the district court's dismissal of her petition, in which she claimed unlawful ouster and abuse of access under Iowa Code chapter 562A (1999) and made tort claims of trespass and conversion against the defendants. Crawley claims she was a tenant at will, under Iowa Code section 562.4, in a house owned in succession by the defendants, which entitled her to the protections of Iowa Code chapters 562 and 562A. She claims the defendants violated the statutory protections. Even if Crawley was not a tenant at will, she claims violation of her rights under Iowa Code chapter 648, regarding forcible entry and detention of real property. She further seeks statutory damages under Iowa Code chapter 562A for the defendants' alleged wrongful access to the property and also claims these alleged entries by defendants were trespass. Finally, Crawley claims her property was illegally converted when it was removed from the house by one of the defendants. She seeks actual and punitive damages for the conversion.

We affirm.

I. BACKGROUND FACTS AND PROCEEDINGS.

This case involves the purported rental of a house and an alleged wrongful ouster. Ramona Crawley filed a petition claiming she was illegally evicted. Specifically she claimed (1) unlawful ouster, (2) abuse of access, (3) trespass, and (4) conversion by the defendants. The district court found for the defendants on all claims and dismissed Crawley's petition. The district court held that Crawley had no cause of action against the defendants, the actual titleholders of the property, because she had no rental relationship with them.

The house in question came to be owned by Cory Tomlyanovich, the co-defendant-appellee, after she inherited it in 1995 from her mother. The property had apparently been used as a rental property for a period prior to Tomlyanovich's ownership. Not long after she inherited the house, Tomlyanovich sold it on contract to Len Sbiral. Sbiral defaulted on the contract, the contract was forfeited in late 1999 or early 2000, and Tomlyanovich regained the title. Prior to the forfeiture Sbiral talked to Tomlyanovich about the possibility of giving another party, Cory Bradley (a male), an interest in the property. There is no evidence showing Cory Bradley ever obtained any interest in the property.

Subsequent to the forfeiture, Tomlyanovich, apparently along with her friend Patrick Price—the other co-defendant-appellee, made an inspection of the property and found that Luvinia Stokes was renting *47 it. Tomlyanovich continued to rent to Stokes for a period and then allowed Stokes to live there rent-free for approximately nine months. It is not clear when Stokes moved out of the house, but Crawley moved in right after Stokes. Crawley presented some documentation that she was living in the house in December 2000 and testified that she lived in the house as early as Thanksgiving 2000.

Some time in January of 2001 Tomlyanovich and Price began discussing Price buying the house. Tomlyanovich informed Price that she thought someone was living in the house, so Price made an inspection and found Ramona Crawley, her children, and a roommate living in the house. At that time Crawley told Price she was renting the house from Cory Bradley (a female). Price notified her that Cory Bradley did not own the house and that Tomlyanovich was the actual owner of the house. Crawley asserted that after Price's visit she began to pay weekly rent to Price. Price testified he never collected rent from Crawley. The district court found no rent was paid to Price. However, the district court did find that Crawley and her roommate paid substantial rent to someone claiming to be Cory Bradley (a female who appears to fit the description of the wife of the male Cory Bradley), but that the person claiming to be Bradley was not the true owner and was not operating as an agent of Tomlyanovich or Price.

Crawley was apparently allowed to continue to reside in the home without disturbance after Price's January visit. Then in mid-February Crawley lodged a complaint with the fire marshal. The fire marshal made an inspection on February 16, 2001 and found sanitary, electrical, fire warning, and structural violations of the housing code. The fire marshal sent a letter, dated February 23, to Tomlyanovich

requiring that a smoke detector be installed within forty-eight hours of the notice and that the other items be corrected within twenty days of the notice. The fire marshal also referred the property to the city's chief electrical inspector, who inspected the house and then sent a certified letter to Tomlyanovich, dated February 20, stating that the condition of the house constituted a fire hazard and electrical shock hazard. The inspector ordered correction by February 23, or electrical power would be turned off at the house. Notice was also posted at the house.

Price admitted that he visited and entered the house a couple of times after discovering Crawley was living in the house, and he had seen the issues that were of concern to the fire marshal and electrical inspector. However, Price stated he never received notice from the city about the conditions. The notices were mailed to Tomlyanovich. Correction was not made and the electrical power was turned off on February 23. Crawley, her children, and roommate were forced to vacate the premises but testified that they did not have the ability to move their possessions out of the house at the time. About this time, Crawley was picked up on an outstanding warrant and went to jail for several weeks. After getting out of jail, Crawley returned to the house to find the locks changed and all the possessions she left in the house were gone.

Price finalized the purchase of the house from Tomlyanovich on March 1, 2001. Price admits he entered the house after that time, found no one was living in the house, and found the utilities had been turned off. He spoke to the utility companies and learned that they would not turn the utilities back on because the notices issued by the city had not been corrected. Price admitted that in March or April he loaded all of the items left in the house *48 into a truck and took them to the dump. Price also admitted he knew Crawley was in jail at the time, having read it in the newspaper. He stated he felt he had no reason to contact Crawley before removing the items because he owned the property and Crawley did not rent the property from him.

On September 16, 2002 Crawley filed a petition with the district court, claiming unlawful ouster in violation of IowaCode section 562A.26, abuse of access in violation of section 562A.19, trespass, and conversion. A trial to the court was held and the district court found Crawley rented the house from Cory Bradley, who had no actual connection to the property and that neither Tomlyanovich nor Price collected any rent from Crawley. The district court held that, because Crawley rented the house from a non-owner with no connection to the actual owners, Crawley had no cause of action against the defendants, and thus dismissed the petition. On December 17, 2003 Crawley filed a notice of appeal from each and every adverse ruling of the district court.

II. SCOPE OF REVIEW.

1 2 3 4 5 Our scope of review is determined by the nature of the trial proceedings. *Meyers v. Delaney,* 529 N.W.2d 288, 289 (Iowa 1995). This case was tried to the district court as a law action. Therefore, our review is limited to correction of

legal error. Iowa R.App. P. 6.4. The trial court's findings of fact carry the force of a special verdict and are binding on us if supported by substantial evidence. *Meyers,* 529 N.W.2d at 289–90. Evidence viewed for its substantiality is to be viewed in the light most favorable to the judgment. *Falczynski v. Amoco Oil Co.,* 533 N.W.2d 226, 230 (Iowa 1995). We are not bound, however, by the trial court's application of legal principles or its conclusions of law. *Id.* "When the trial court has applied erroneous rules of law which materially affected its decision, we will reverse." *Id.*

III. ANALYSIS.

A. Preservation of Error.

6 The issues to be reviewed "must ordinarily be both raised and decided by the district court before we will decide them on appeal." *Meier v. Senecaut,* 641 N.W.2d 532, 537 (Iowa 2002). Error was preserved in the present case as to all issues presented on appeal. Crawley raised issues of unlawful ouster, abuse of access, trespass, and conversion in her petition to the district court. The district court found Crawley had no cause of action and dismissed the entirety of her petition.

B. Unlawful Ouster.

7 8 Crawley first argues that a tenancy at will was created because the defendants allowed her to remain in the house after discovering her presence. Iowa Code section 562.4 provides that a tenancy at will is presumed where a person is in *possession* of real estate with the *assent* of the owner. Thus, the two necessary elements for a tenancy at will are (1) possession by the supposed tenant; and (2) assent by the actual owner. We do not reach the issue of possession because we find that the assent between the owner and the supposed tenant, required by section 562.4, did not exist between Crawley and either Tomlyanovich or Price. "Simply put, 'a tenancy at will cannot be created without the assent, express or implied, of both parties.' " *Bernet v. Rogers,* 519 N.W.2d 808, 810 (Iowa 1994) (citing *Martin v. Knapp,* 57 Iowa 336, 343, 10 N.W. 721, 724 (1881)). Assent is not defined by statute, but the dictionary definition provides that assent is "[a]greement, approval, or permission; esp., verbal or nonverbal *49 conduct reasonably interpreted as willingness." Black's Law Dictionary 124 (8th ed. 2004). In the present case it was not legal error for the trial court to decide that Crawley did not have a tenancy at will in the property due to lack of mutual assent between Crawley and either of the defendants. There is substantial evidence in the record to support the trial court finding that there was no assent, and thus no landlord-tenant relationship between the parties. Since Crawley was not a tenant, she has no right to the notice protections of chapters 562 and 562A. On this issue, we affirm.

9 Further, since Crawley was not a tenant we find no merit in the claim that Crawley is entitled to statutory damages, as provided by chapter 562A. We also find no merit in the claims that it was abuse of access and trespass for Price to enter the property, as Crawley had no tenancy in the property.

10 11 Crawley next argues that, even if there was no tenancy, a cause of action against the defendants exists through the forcible entry and detainer statute, Iowa

Code chapter 648. The intent of the forcible entry and detainer statute is to prevent people from resorting to self-help and violence and, instead, provide legal process for regaining possession of real property. *Capital Fund 85 Ltd. P'ship v. Priority Sys., LLC.*, 670 N.W.2d 154, 159 (2003) (citing *Lindsey v. Normet,* 405 U.S. 56, 71, 92 S.Ct. 862, 873, 31 L.Ed.2d 36, 49 (1972)). "Statutes providing a cause of action for forcible entry and detainer are enacted to enable parties to obtain speedy determination of the right to the possession of property without having to resort to violence, to preserve the peace, and require the use of judicial process to gain possession." *Id.* (quoting 35A Am. Jur. 2d *Forcible Entry and Detainer* § 7, at 1041 (2001)).

12 13 Nevertheless, the forcible entry and detainer law, unlike landlord-tenant law, does not provide a cause of action to a party who claims to have been wrongfully ousted in contravention of the statutory procedures. However, the Restatement (Second) of Torts addresses the issue, providing that using force for the purpose of gaining entry upon land is not privileged unless certain conditions are met. Restatement (Second) of Torts §§ 88–94, at 160–69 (1965). Furthermore, the Restatement explicitly addresses the use of force *after regaining possession peaceably. Id.* § 97, at 171. The provision states: "An actor who *without tortious* conduct has regained possession of land of which he was dispossessed by another is privileged to use reasonable force to exclude or expel the other as if there had been no dispossession." *Id.* (emphasis added). Price did regain possession of the property without resort to tortious conduct. The district court found, and it is supported by substantial evidence, that all occupants were absent from the property by order of the city at the time Price regained possession. Furthermore, we agree with the district court that Crawley had no tenancy, so it was not a tortious trespass for Price to enter and retake possession. Thus, Price's changing the house locks was the privileged use of reasonable force to exclude or expel. We affirm the district court's holding that Crawley had no cause of action for unlawful ouster.

C. Removal of Crawley's Personal Property.

14 15 Next, we must determine whether the district court erred in dismissing Crawley's cause of action for conversion. The district court did err in its assertion that Crawley could not maintain a cause of action for conversion because *50 she had no rental relationship with appellees. Such a relationship is not a prerequisite to conversion. Conversion is simply "the wrongful control or dominion over another's property contrary to that person's possessory right to the property. The wrongful control must amount to a serious interference with the other person's right to control the property." *Condon Auto Sales & Service, Inc. v. Crick,* 604 N.W.2d 587, 594 (Iowa 2000). Crawley made out a prima facie case for conversion. It is uncontroverted that Price removed Crawley's property from the house and permanently disposed of it.

However, our inquiry does not end there. The Restatement (Second) offers:

> [O]ne is privileged to commit an act which would otherwise be a trespass to chattel or a conversion if the act is, or is reasonably believed

> to be, necessary to protect the actor's land ... or his possession of [land], and the harm inflicted [to the chattel] is not unreasonable as compared with the harm threatened [to the actor].

Restatement (Second) of Torts § 260, at 490 (1965). Thus, it may have been appropriate for Price to remove Crawley's personal property, but the removal must have been *reasonable,* based on the harm inflicted to Crawley's personal property weighed against the harm threatened to Price by the presence of Crawley's personal property on his premises. The Restatement points out that there may be instances where it is appropriate for an actor to intermeddle with another's personal property, but it may be unreasonable for the actor to completely dispossess another of property because that is a much more serious invasion. *Id.* cmt. c, at 491. That determination must be made based on the totality of circumstances. *Id.*

16 The district court gave consideration to conflicting testimony regarding the value of the property left in the house. The district court concluded that Price would not have thrown away anything of value. We find substantial evidence in the record to support this finding. We conclude it was reasonable for Price to dispose of valueless property found in the house. Thus, Price's conduct was privileged and did not constitute conversion.

17 18 Crawley also argues that punitive damages should be assessed against Price. To award punitive damages the evidence must be clear, convincing, and satisfactory. *See* Iowa Code § 668A.1(1)(a).

> There must also be evidence of willful or wanton disregard for the rights of another.
>
> Punitive damages are justified when the acts of the defendant are malicious. The malice may be actual (expressed) ... or it may be legal (implied), as where the defendant acts illegally or improperly with reckless disregard for another's rights.

Condon Auto Sales & Service, 604 N.W.2d at 594 (internal quotation marks and citations omitted). We determine Price did not act with the requisite malice for punitive damages to be awarded. Crawley did not provide clear, convincing, and satisfactory evidence to demonstrate the presence of malice. The trial court found that Price's intent was to remove valueless property found in the house he had just purchased, a house where there was no known rental agreement. These findings are supported by substantial evidence and show that Price did not act in reckless disregard for Crawley's rights. Thus, he did not act with malice, making this case inappropriate for punitive damages.

19 Finally, Crawley argues that Price's taking possession of her property created a constructive bailment, and that, *51 rather than fulfilling his responsibilities under the bailment, Price wrongfully converted Crawley's personal property. We do not find that such a bailment was created. We find that because Price regained possession peaceably, he was privileged to use force, in this case to change the locks

to exclude or expel others. Then after regaining possession, Price was also privileged to use reasonable force in removing Crawley's personal property from the house. We find no merit in Crawley's claim that a bailment was created.

AFFIRMED.

All Citations

692 N.W.2d 44

End of Document

Related documents

Selected topics | Secondary Sources | Briefs | Trial Court Documents

Forcible Entry and Detainer
Civil Liability
Two Detainer Actions

Assault and Battery
Civil Liability
Use of Unlawful Deadly Physical Force

Trover and Conversion
Acts Constituting Conversion and Liability Therefor
Actual Conversion of Property or Refusal to Return Property

21. Inconsistency of Transfers for Building on Leased Land.

FACTS: Client is looking at transferring out a Building on Leased Land through trust administration. Originally transferred to A in 1991 as a Bill of Sale. Iowa Assessor shows a Warranty Deed recorded in 1993 from A (alive at that time obviously) to A's Revocable Trust as Building on Leased Land so it has a parcel number.

A has passed away (Nebraska resident) and we are looking to transfer out. I think to clear the records we just need a Trustee Warranty Deed for Building on Leased Land to clear title and have it show up on Assessor's page. I am also thinking of doing an Affidavit that there are no Inheritance or Federal Estate taxes for A.

QUESTION: Would that be necessary for a Building on Leased Land? I don't think we actually need to do a Bill of Sale as there is no sale but just do Receipt and Waiver for the beneficiary under the Trust. Any thoughts on whether the affidavit is needed for Building on Leased Land? Any additional documentation?

RESPONSE(S):

22. Landlord Liability for Criminal Tenant.

FACTS: I am looking for some insight regarding a Landlord/Tenant situation. The key facts are as follows:

- Landlord lives out of state and rents to sister who struggles with mental health challenges.
- Sister has invited a convicted drug dealer to move in the house.
- Drug dealer has been dealing, off and on, while in and out of jail from the house for many years.
- Neighbors are disturbed by ongoing drug activity, verbal altercations, and traffic from customers to drug house which cuts through neighbors' back yard.
- Landlord has been notified by neighbors of the drug activity, requesting that landlord evict her sister if her sister continues to invite drug dealer to live in the house.

QUESTION: 1) What obligation does the landlord have, if any, to evict sister if sister continues to invite criminal activity into the house/neighborhood?

2) What rights do the neighbors have to take action against the landlord if, in fact, the landlord is negligent or possibly negligent under the circumstances?

RESPONSE(S): Relevant statutes to review and apply:

Iowa Code Section 562A.15 Landlord to maintain fit premises.
1. a. The landlord shall: ...
[Statutory recognition of implied warranty of habitability.]
(3) Keep all common areas of the premises in a clean and safe condition. ...

Iowa Code Section 562A.17 Tenant to maintain dwelling unit.
The tenant shall: ...
7. Act in a manner that will not disturb a neighbor's peaceful enjoyment of the premises.

Iowa Code Section 562A.27A Termination for creating a clear and present danger to others.
1. Notwithstanding section 562A.27 or 648.3, if a tenant has created or maintained a threat constituting a clear and present danger to the health or safety of other tenants, the landlord...or other persons on or within one thousand feet of the landlord's property, the landlord, after the service of a single three days' written notice of termination and notice to quit stating the specific activity causing the clear and present danger...

2. A clear and present danger...includes, but is not limited to, any of the following activities of the tenant or of any person on the premises with the consent of the tenant: ...
c. Possession of a controlled substance unless the controlled substance was obtained directly from or pursuant to a valid prescription or order by a licensed medical practitioner....This paragraph applies to any other person on the premises with the consent of the tenant, but only if the tenant knew of the possession by the other person of a controlled substance.
3. [Exceptions, requiring tenant action]

Iowa Code Section 657.1 Nuisance -- what constitutes -- action to abate -- electric utility defense.
1. Whatever is injurious to health, indecent, or unreasonably offensive to the senses, or an obstruction to the free use of property, so as essentially to interfere unreasonably with the comfortable enjoyment of life or property, is a nuisance, and a civil action by ordinary proceedings may be brought to enjoin and abate the nuisance and to recover damages sustained on account of the nuisance. ...

Iowa Code Section 657.2 What deemed nuisances.
The following are nuisances:
...
6. Houses of ill fame, ...places resorted to by persons using controlled substances, as defined in section 124.101, subsection 5, in violation of law...

Q1) What obligation does the landlord have, if any, to evict sister if sister continues to invite criminal activity into the house/neighborhood?

A1. No obligation directly to anyone except actual tenant.
The landlord has the statutory *power* to act against the dealer.
But she has no direct *duty* to act--only an implicit duty.

FWIW: see *Auburn Leasing Corp. v. Burgos*, 160 Misc.2d 374, 609 N.Y.S.2d 549 (1994), cited in 43 A.L.R.5th 207.
Residential landlord found to have legal "duty to protect tenants against the depredations of known resident drug dealers and other criminals based on the statutory implied warranty of habitability." Tenant deemed deprived of express right of quiet enjoyment and implied warranty of habitability.
cf. sections 562A.15(1)(3) and 562A.17(7).

Q2) What rights do the neighbors have to take action against the landlord if, in fact, the landlord is negligent or possibly negligent under the circumstances?

A2. The neighbors may well report Landlord to the authorities for allowing a nuisance (the drug dealer and his trade). Or sue her themselves, if they can show damages to themselves caused by the druggies.

Query: Did the lease specify (as most do) that the tenant may not sublease to a third party? There's a contractual violation, perhaps.

If you represent one of the neighbors, then your client likely has no privity of contract to challenge the tenant's lease. Third party beneficiary status must be established. But perhaps application of the Code sections cited above can lead your magistrate to find third party beneficiary status. Never seen it done. But I would entertain the argument...

23. Landlord/Tenant Matter – CARES ACT 30 Day to Vacate.

FACTS: During several of my most recent representations of landlords in FED hearings, Tenants' counsel raised several legal issues that I have not had to address before. I am looking for insight on whether anyone has been successful in addressing these issues and case information, so I can successfully navigate these issues.
CARES ACT - 15 U.S.C. 9058 Issues:
1. Tenants' counsel have raised that (c) Notice requires Landlords to provide Tenants 30 days to vacate the premises. Does anyone have a case to cite that this requirement is no longer in effect?
2. Tenants' counsel are asserting that the 30 days to vacate applies to any notice to vacate and not just related to payment, i.e. a clear and present danger notice would require 30 days notice to vacate if the property is a "covered property". Does anyone have a case to cite that if the 30 day requirement is in effect, that it only applies to FEDs pertaining to nonpayment of rent?
3. Tenants' counsel have claimed that a Notice of Violations of Rental Agreement is void and the Court does not have jurisdiction to hear the FED, if the 30 Days notice to vacate is not complied with, even if Landlord is proceeding with a lease violation unrelated to payment of rent/monies. The assertion is that if there is reference to payment, then that 30 days to vacate must be contained, even if that is not the basis for the FED.
4. The Iowa Supreme Court Forms for Instructions and the instructions contained on the top of the CARES ACT Landlord Verification form both note that the Verification is required "on certain eviction actions for nonpayment of rent" - not other evictions. It further states that the verification must be completed until further order of the Iowa Supreme Court.

QUESTION: Could someone please direct me to any order rescinding such requirements?

RESPONSE(S): Original order:
https://www.iowacourts.gov/static/media/cms/file_stamped_Resumption_and_Priorit_038200E17241F.pdf

Page 12, "CARES Act verification. Any plaintiff bringing an FED action under chapter 648 **for nonpayment of rent** after the date of this order shall submit a CARES Act verification in a form approved by this court. This requirement shall continue in effect until further order of this court. The information provided in the CARES Act verification shall be for the purpose of assisting the court in regard to whether the CARES Act applies to the matter before the court; **however, the CARES Act verification is not a jurisdictional requirement and any defect with such verification shall not divest the court of subject matter**

jurisdiction over the matter." (emphasis added)

This seems to suggest that you are not required to give notice for any other type of FED (7 day notice for lease violations, Clear and present danger, holdover past end of lease) and HUD agrees: https://www.hud.gov/sites/dfiles/CPD/documents/CDBG_Eviction_Moratorium_QAs_2020_05_18_FINAL.pdf (bottom of page 2)

The National Housing Law Project singled out Iowa and a couple other states as not having gotten rid of the CARES form requirement for the landlord to prove there was no violation. They have a long article worth reading as it summarizes all the exceptions for the CARES act to apply to a property. It also cites some court rulings in other jurisdictions where the 30 day notice was held to apply to the time for the tenant to cure the rent defect in WA and CO, despite lesser statutory cure periods.

https://www.nhlp.org/wp-content/uploads/2023.02.03-Enforcing-the-CARES-Act-30-Notice-.pdf

There are no cases currently decided in Iowa about the meaning of the CARES act notice provision in an FED. There is a provision in the 2020 IA SCT order stating that where there is a state/federal moratorium that prohibits bringing an action, 30 days peaceable possession does not apply. Para 40.

24. Proposed Amendment to Create a Landlord-Tenant Relationship After a Contract Forfeiture – Input Needed.

FACTS: The ISBA Real Estate Section Council met recently to further discuss the proposal to amend Iowa Code §§ 631.1 (small claims jurisdiction) and 648.1 (grounds for a forcible entry and detainer). Concerns have been raised that we have not fully considered the impacts for contract vendees where the Bar language creating a landlord-tenant relationship upon forfeiture is not included in the installment contract. The Council has asked me to invite you to weigh in further as to whether the proposal should go forward. We will take our time and get this right. We need your response in advance of our next meeting on December 14, 2023.

First, here is the proposal in its current form:

Proposed changes

631.1. Small claims -- jurisdiction

2. The district court sitting in small claims shall have concurrent jurisdiction of an action for forcible entry and detainer which is based on those grounds set forth in section 648.1, subsections 1, 2, 3, and 5, and 7. When commenced under this chapter, the action shall be a small claim for the purposes of this chapter.

648.1. Grounds
A summary remedy for forcible entry and detainer is allowable:
1. Where the defendant has by force, intimidation, fraud, or stealth entered upon the prior actual possession of another in real property, and detains the same.
2. Where the lessee holds over after the termination of the lease.
3. Where the lessee holds contrary to the terms of the lease.
4. Where the defendant continues in possession after a sale by foreclosure of a mortgage, or on execution, unless the defendant claims by a title paramount to the lien by virtue of which the sale was made, or by title derived from the purchaser at the sale; in either of which cases such title shall be clearly and concisely set forth in the defendant's pleading.
5. For the nonpayment of rent, when due.
6. When the defendant or defendants remain in possession after the issuance of a valid tax deed.
7. When a vendee in a contract for the sale of real estate remains in possession after the vendor completes the forfeiture of the contract in accordance with Chapter 656, including the filing of the notice of forfeiture and proof of service or a personal affidavit that service could not be made under Iowa Code § 656.5.

Explanation
This would clarify that a contract vendor who forfeits an installment contract for real estate may treat the contract vendees as tenants holding over after the

termination of a lease upon the filing of the notice of forfeiture and proof of service or a personal affidavit that service could not be made under Iowa Code § 656.5.

Second, a few thoughts -

1. The Iowa State Bar Association installment contract form creates a landlord-tenant relationship upon forfeiture. If the Bar form (or an attorney's form with similar language) is used, the contractor vendor may pursue eviction through a small claims FED. If the contract vendee contends that the forfeiture was defective, the vendee may still seek removal to district court as the appropriate forum for hearing matters of title.

2. If the installment contract is silent on creating a landlord-tenant relationship upon forfeiture, the contract vendor is currently required to pursue removal of the vendee under Iowa Code Ch. 646 (Recovery of Real Property). A motion for summary judgment could be filed to expedite the matter.

3. The concern articulated is that, given the summary and accelerated nature of the FED process, the FED-in-small-claims approach should not be the default in the event of forfeiture. Rather, the FED procedure should only be available where it is included in the contract, thereby placing the contract vendee on notice of the change in status to landlord and tenant upon forfeiture.

QUESTION: Three questions:
1. Should the ISBA pursue the proposed change? Why or why not?

2. What are your experiences when forfeiting installment contracts where the Bar language providing for FED was not present?

3. Any other comments?

RESPONSE(S): This proposal has the potential to facilitate the enforcement of abusive land contracts prepared by non-lawyers through small claims proceedings where individual vendors are allowed to represent themselves. Moreover, muddy case law conceivably might extend claim or issue preclusive effects to questionable outcomes in such proceedings.

Existing Iowa law already allows knowledgeable lawyers to qualify land contracts for FED enforcement through means recognized in Robinson v. Black, 607 N.W.2d 676 (2000). As a matter of good policy, however, the propriety of allowing contract forfeitures to be enforced through such means is hardly self-evident.

Some contract forfeitures may clearly be valid, but in other instances the validity of a forfeiture legitimately could be challenged on grounds involving potentially complicated legal and factual issues. See, e.g., Iowa Code §§ 558.46(3) & 558.70-.71; Sheeder v. Lemke, 564 N.W.2d 1 (Iowa 1997); Lett v. Grummer, 300 N.W.2d 147 (Iowa 1981); Keokuk State Bank v. Eckley, 354 N.W.2d 785 (Iowa Ct. App. 1984) .

Although Iowa law clearly prohibits small claims adjudication of FEDs in which the validity of a forfeiture is being so contested, magistrate judges have been known to disregard that prohibition and district associate judges sometimes have failed to reverse such improper action. See Jenkins v. Clark, No. 21-1646 (Iowa Ct. App. Oct. 19, 2022) < https://www.iowacourts.gov/courtcases/16791/embed/CourtAppealsOpinion >.

The supposed need for and possible value of the changes this proposal would make should be weighed against its potential for unintended adverse consequences, and it should not be pursued until careful determinations of those considerations have occurred.

* * * * *

(1) I think it is worth pursuing the change.
(2) I think it makes no sense to only have the FED remedy if it is referred to in a contract. That only rewards people who use lawyers who use the bar form or who carefully know the intricacies of forfeiture and FED laws. Why is that an important goal? If the parties wanted to opt out of summary remedies, then they should not include forfeiture in the contract in the first place. The chapter 656 forfeiture remedy is supposed to be a summary remedy, and it should have a summary possession remedy that goes along with it. Remaining in possession or possession being ambiguous after a forfeiture is as deserving of a summary remedy under chapter 648 as a defendant in possession after sale by foreclosure (648.1(4)) or a defendant in possession after issuance of a tax deed (648.1(6)). Chapter 648 is not limited to lessees, so why do we have to invent this contractual fiction that the relationship in converted after a forfeiture? We should just fix the statute to omit the fiction.
(3) Additional thoughts and solutions –
    (a) Chapter 646 needs an overhaul. Nobody wants to use Chapter 646 because it is woefully out of date and subject to regular docketing. There are evidentiary requirements in there that that have been in the code since 1851 and 1873 that are outdated or just plain stupid. We have to attach an abstract to the petition! Sections 646.7, .8, and .9 should be stricken for starters.
    (b) Chapter 648 can have prompts and protections in it if title is in issue. The proposal might be improved if the section 648.1 amendment were limited to describing the grounds of possession after completed

forfeiture, then updating 648.15 (or perhaps adding another section) that says that a court must find by a preponderance of evidence that the requirements of chapter 654 or 656 or {tax deed chapter} have been proven. Maybe add to 648.15 that the matter will be transferred to district court.

* * * * *

Notably Iowa law presently does not allow 648.1(4) & (6) FEDs to be brought as small claims.

* * * * *

The banks do not want contract sales with interest rates going up and Legal Aid facilitated this in M. Jenkins v. Clark 21-1646.

[See Attachment]

IN THE COURT OF APPEALS OF IOWA

No. 21-1646
Filed October 19, 2022

M. JENKINS AS TRUSTEE OF THE 2216 LAY STREET TRUST,
Plaintiff-Appellee,

vs.

LEONOR CLARK and JASON CLARK,
Defendants-Appellants.

Appeal from the Iowa District Court for Polk County, Jesse Ramirez, District Associate Judge.

Occupants appeal from the district court's order affirming the small claims court's grant of a forcible-entry-and-detainer petition. **REVERSED AND REMANDED WITH INSTRUCTIONS.**

Frank Cal Tenuta of Iowa Legal Aid, Sioux City, and Alexander Vincent Kornya of Iowa Legal Aid, Des Moines, for appellants.

Valerie Cramer of Cramer Law PLC, Clive, for appellee.

Heard by Schumacher, P.J., Chicchelly, J., and Gamble, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2022).

CHICCHELLY, Judge.

Leonor and Jason Clark appeal from the district court's order affirming the small claims court's grant of a forcible-entry-and-detainer (FED) petition. The Clarks contend: (1) they should have been able to challenge the validity of the forfeiture giving rise to the FED petition during the FED action, and (2) the small claims court should have transferred the case to district court because it does not have jurisdiction to consider issues of title, which are inherent in determining the validity of forfeiture of a real estate contract. Finding the small claims court was indeed without jurisdiction, we reverse and remand with instructions to transfer the case to district court for consideration of the Clarks' forfeiture challenge.

I. Background Facts and Proceedings.

On September 9, 2019, the Clarks executed a real estate contract to purchase a home from the 2216 Lay Street Trust (the "Trust") for $89,900. The Clarks paid a down payment of $10,000 and agreed to make monthly payments of $750. Section 16 of the contract provided that failure to make the payments as they became due or failure to keep the property insured, among other events, would be grounds for the Trust to forfeit and cancel the contract, and upon completion of such forfeiture, the Clarks would need to peacefully remove at once or be treated as tenants holding over unlawfully after the expiration of a lease.

On April 22, 2021, the Trust served the Clarks with a thirty-day notice of forfeiture for failure to make contract payments. The parties reached a payment agreement, and no affidavit of forfeiture was filed on this notice. On July 16, the Trust served the Clarks with a new thirty-day notice of forfeiture, which set forth a new amount owed based on monthly payments and allegedly unpaid insurance

premiums. The Clarks dispute the propriety of this notice and its accounting. After thirty days passed, the Trust filed an affidavit of forfeiture. On August 30, the Trust served a three-day notice to quit via certified and regular mail plus posting. On September 8, the Trust filed an FED action in small claims court.

The Clarks filed a motion to transfer the action to district court, arguing that a court sitting in small claims does not have jurisdiction to determine issues of title. At the small claims hearing on September 20, the court declined to transfer the case, finding the Trust "properly forfeited the contract" and granting its FED petition. The Clarks filed a timely appeal and obtained a stay of execution of the writ of removal. On October 26, the district associate court affirmed the ruling and issued a writ of possession to the Trust, finding that "[b]y leaving the contract forfeiture unchallenged, the small claims court is left with a validly forfeited contract and title is no longer at issue." The Clarks filed an application for discretionary review, which our supreme court granted. The Iowa Supreme Court also granted the Clarks' request for a stay of the writ of possession. Ultimately, the supreme court transferred the case to this court for resolution.

II. Review.

"Forcible entry and detainer actions are equitable actions, and therefore our scope of review is de novo." *ACC Holdings, LLC v. Rooney*, 973 N.W.2d 851, 853 (Iowa 2022) (citation omitted). "[E]ven in cases tried in equity, our review of the construction of statutes is at law." *State ex rel. Lankford v. Allbee*, 544 N.W.2d 639, 640 (Iowa 1996).

III. Discussion.

There appears to be a great deal of confusion surrounding our small claims courts' jurisdiction to hear issues of title in FED actions and the ramifications arising therefrom. The Trust contends[1] that a 1972 legislative amendment abolished the requirement that issues of title be heard in district court.[2] The Clarks maintain that this principle survived and continues to deprive small claims courts of such jurisdiction.[3] They argue that once title was raised, the proper remedy was to transfer the case to the district court. The small claims court agreed that it does not have jurisdiction to consider title but found that it did not need to do so. It held, and the district associate court affirmed, that the Clarks' remedy was to challenge the validity of the forfeiture in an original district court action during the thirty days after notice was issued. Because they failed to do so, the court found forfeiture was complete and its validity was not at issue.

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[1] We acknowledge the Trust, as appellee, was not required to submit a brief on appeal. The Trust chose to file a brief but inexplicably failed to develop any arguments beyond the headings in the table of contents.

[2] Prior to amendment, Iowa Code sections 648.13 and 648.14 explicitly provided that "[t]he question of title can only be investigated in the district court," and when put at issue in a municipal or justice court, the court must transfer the case to the district court "where the same shall be tried on the merits, as an equitable action." The 1972 legislation repealed sections 648.11 through 648.14. 1972 Iowa Acts ch. 1124.

[3] The Clarks point out that the 1972 legislation created Iowa's uniformed court system and eliminated the municipal and justice courts referenced in the repealed sections of chapter 648. Therefore, they argue the intent was likely to remove those references and not to abolish the principle. Consistent therewith, it appears that the legislature may have intended to include a modification of Iowa Code section 648.13, which was not codified due to the subsequent language in the bill stating sections 648.11 through 648.14 were to be repealed, but would have provided, "The question of title can only be investigated by a district judge." Section 648.15 was retained, which provides, "When title is put in issue, the cause shall be tried by equitable proceedings."

We first address whether the forfeiture must be separately challenged in district court within thirty days from notice thereof, for the jurisdictional issue would be moot if this was the case. It is true that "nothing is required to complete a forfeiture except the passage of the thirty days after notice." *Gottschalk v. Simpson*, 422 N.W.2d 181, 183 (Iowa 1988); *accord* Iowa Code § 656.5 (2021) (providing that the party serving notice may file record of forfeiture of the real estate contract if default is not cured within thirty days). However, completion is not dispositive as to when the forfeiture may be challenged. *See Skubal v. Meeker*, 279 N.W.2d 23, 26 (Iowa 1979) ("The fact that a contract has been forfeited would not appear to be a bar to the cancellation of a forfeiture; indeed it would necessarily seem to be a prerequisite thereto."). Limiting the opportunity to challenge the validity of a forfeiture to the thirty-day window in which buyers have an opportunity to cure would not make practical sense. Not only would the forfeiture be incomplete, but the timeline to file an original district court action and obtain injunctive relief may prove futile in saving the home.

Moreover, the validity of the forfeiture requires resolution during an FED action, as the court in *Lowery Investments Corp. v. Stephens Industries, Inc.*, 395 N.W.2d 850, 853 (Iowa 1986), acknowledged when the purchasers attempted to challenge the forfeiture after the FED action was concluded:

> [T]he validity of the vendor corporation's action in forfeiting the interest of the vendee corporation under the contract was necessarily resolved adversely to the vendee corporation in the forcible entry action. The allegations of the petition in the forcible entry action make it clear that the vendor corporation's asserted right of possession was dependent upon the validity of the forefeiture under Iowa Code chapter 656. Accordingly, the present claim is barred by a traditional application of the claim preclusion doctrine . . . .

Finally, and most importantly, for courts to summarily prevent purchasers from challenging a real estate forfeiture merely because thirty days have passed from a private actor's notice thereof would raise significant concerns for their constitutional rights to due process. *See Jensen v. Shreck*, 275 N.W.2d 374, 384–86 (Iowa 1979) (upholding constitutionality of forfeiture due to lack of state action). Because the validity of a forfeiture may be raised during an FED action, we find such challenges are not limited to separate filings in district court during the thirty days following notice of forfeiture.

Therefore, we turn to whether the small claims court had jurisdiction to determine title when the Clarks challenged the validity of the forfeiture. Despite the aforementioned statutory amendment, our supreme court recently cited a pre-amendment case approvingly: "It is true that in Iowa, 'title is a justiciable issue in a forcible entry and detainer action when the action has been originally commenced in district court.'" *ACC Holdings*, 973 N.W.2d at 856 (quoting *Steele v. Northrup*, 168 N.W.2d 785, 788 (Iowa 1969)). The court went on to provide further implicit support that magistrate courts still lack jurisdiction to address the issue of title, stating, "But here, only one of the two voluntary dismissals involved a proceeding filed in district court, where title could have been adjudicated." *See id.* Even when jurisdiction was not at issue on appeal, the court has referenced the continued practice of transferring FED actions to district court when title is raised:

> The Fetters filed a motion to remove the case from the small claims docket, to be heard by a district court judge, on the ground they were challenging the plaintiff's title. *See* Iowa Code § 648.15 ("When title is put in issue, the [forcible entry and detainer] cause shall be tried in equity."). On this motion, the court ordered the matter heard by a district court judge.

Garrison v. Fetters, 383 N.W.2d 550, 552 (Iowa 1986).

There is practical support for this approach as well, given that title issues generally involve property interests significantly beyond the small claims court's jurisdictional limit of $6500, or the district associate court's jurisdictional limit of $10,000. *See* Iowa Code §§ 602.6306, 631.1(b). Given these limitations and the historical context around the 1972 legislative overhaul, we hold a small claims court lacks jurisdiction to hear the underlying defenses to forfeiture of a real estate contract, which involve issues of title.[4]

IV. Disposition.

We reverse and remand for a new trial before a district court judge with instructions to allow the full presentation of equitable defenses to the underlying forfeiture.

REVERSED AND REMANDED WITH INSTRUCTIONS.

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[4] We emphasize the distinction between traditional landlord-tenant relationships and the contested forfeiture of a residential land contract. The small claims court expressed concern that tenants would only need to avow having made payment to facilitate transfer of FED actions to district court. Such a scenario is limited to determining the validity of forfeiture, which is necessary to properly trigger the holdover tenancy provided for in the real estate contract and give rise to an FED action in the first place. *See Robinson v. Black*, 607 N.W.2d 676, 678 (Iowa 2000).

25. Termination of Tenancy at Will.

FACTS: I've always understood that the notice of termination of a month-to-month tenancy at will when rent is ordinarily due on the first of the month is that the effective date of the notice is 30 days from when the next payment would be due (i.e., a notice must be served on 11/30 to terminate a tenancy as of 12/31 when rent would be paid on 12/1). Upon researching what I thought would be a clear, simple legal concept, I came across this in the Iowa Practice Series:

"Iowa law does not appear to be settled as to whether the date for vacating the premises prescribed in a 30-day notice must be the last day of the rent paying period. In other jurisdictions it is normally required that the date for vacation be as of midnight of the last day of the rent period. Thus, if rent is paid on the 1st day of each month, the tenancy would be terminated as of midnight of the last day of the month." Iowa Practice Series, METHODS OF PRACTICE, Section 16:9, Form and Notice of Service.

QUESTION: Does anyone know of any better or further legal authority on this issue? This is a commercial property not a residential one.

RESPONSE(S): Commercial property leases are a creature of contract between landlord and tenant. Iowa Residential Landlord Tenant Act does not apply. The code has next to nothing on commercial leases.

But, if appropriate, if you follow the Act in such things as how to serve notice etc, you have good argument to a court you were following accepted practice. Unless the contract contains specific provisions on the issue at hand.

So, first off read the contract.
Then there is the aspect of what is "commercially reasonable".
If you build that into your endeavors, you again have good argument to the court that you went beyond what was required of you, and treated the tenant in a reasonable and fair manner given the circumstances.

Now as to your question – 30 days or end of the month.
February would leave you short using month.
December would leave you more than 30 days using month.
How often have you seen the appellate ruling say words to this effect, "The legislature knew how to use the term month when it meant month, and knew how to use the term 30 days when it meant 30 days. If it meant a "month" it would have said a "month"."

So, I have always taken the statute at its word. But, I make sure I have at least 30 days (for February month), and use the 31st, for December.

* * * * *

FWIW

"562A.34(2) The landlord or the tenant may terminate a month-to-month tenancy by a written notice given to the other at least thirty days prior to the periodic rental date specified in the notice.

I have interpreted the periodic rental date to mean the entire month ending on the last day of the rental period.
Therefore if you want to terminate at the end of any month other than February, the Notice must be given no later than the last day of the preceding month.

This works well with tenancies that run from 5th or any other date as well, effectively the day before the start date of a rental period.

For February to back up the notice date to the 29th of January or every 4 years the 30th of January. When it comes to the term start date being in February same backup process to end it in March on time. (I've never really had any terminations with a February lease start date.)

26. Timing of Posting Notice to Quit with Mailing.

FACTS: For those who handle Notice to Quit and FEDs, Iowa Code Section 562A.29A does not specify if personal service cannot be achieved due to tenants' actions, must posting the Notice on primary door be done on the same date mailing the Notice to Quit by certified and regular mail. I do not see caselaw after War Eagle that addresses this specific question.

QUESTION:

RESPONSE(S): We try to do it on the same day, but sometimes that is not possible. So, we count the four days from our date of mailing. So far, our Court has accepted that. But we are getting two new magistrates, so we shall see.

27. Foreclosure of Mechanic's Lien Against Condo, Pending Litigation Affect on Individual Unit.

FACTS: I would welcome any input on the following fact pattern for a foreclosure of mechanic's lien with pending litigation:

-Mechanic's Lien posted June 6, 2023 against all plats managed by West Park Ltd. Owners Protective Association (legal: West Park Plats No. 2 through 6.)
-Foreclosure of Mechanic's Lien petition filed August 2, 2023 by R3 Construction, PLLC, d/b/a R3 Roofing and Exteriors v. West Park Ltd. Owners Protective Association of West Des Moines d/b/a West Park Condominiums Homeowners Association Inc and West Park Homeowners Association, Inc.
-Affidavit of Service of HOA/Defendants filed August 9, 2023.
-Bond for Discharge of Lien filed August 10, 2023 on MLNR by Merchant's Bonding for 2x the amount of lien per Iowa Code 572.15.
-***Foreclosure of Mechanic's Lien remains active and is not dismissed. Our title holder is selling an individual unit in the Condominium complex on West Park Plats No. 2 through 6, and the abstract shows all related filings. We require a Dismissal of the Foreclosure. Seller is HUD, so far there is no local counsel on the seller side to bounce this off of.

I believe the intent of the bond filing is to allow for the continued sale/transfer of the individual units, BUT I am uncertain about possible outcomes of the pending foreclosure action. As the litigation is filed against all plats, it affects the undivided interest of each unit owner, which I presume is why it shows in the abstract.

QUESTION: Are possible outcomes only money judgments, for which the bond is sufficient?

RESPONSE(S): I think the sale may go through without further title clearance action by seller. (Although such would help assuage the jitters of banks lending purchase money to your client. You're asking "Dismissal of the Foreclosure". As to your client, only? What reaction from the mechanic's lien counsel?)

572.15 Discharge of mechanic's lien -- bond.
A mechanic's lien may be discharged at any time by submitting a bond to the administrator in twice the amount of the sum for which the claim for the lien is posted, with surety or sureties, to be approved by the administrator, conditioned for the payment of any sum for which the claimant may obtain judgment on the claim.

Very unfortunately, the legislature used passive voice in drafting this statute, and didn't name who the bond poster would be (who but the land owner would want to). So the law's not so clear as we wish it to be.

Legislative intention appears to be: posting of bond works automatic discharge of the lien (that modifying phrase "at any time" makes no sense otherwise). Once DBPB (Discharge By Posting Bond) occurs, the claimant mechanic must thereafter look only to the bond money for satisfaction.
His lien is gone; release unnecessary (though it would surely help!).

The Iowa Supreme Court has so held. See
Schaffer v. Frank Moyer Const., Inc., 628 N.W.2d 11, 19 (Iowa 2001):
"...[T]he bond discharged the lien, leaving the property free of any encumbrance. *See* Iowa Code § 572.15 (providing that an owner, principal contractor, or intermediate subcontractor may discharge a mechanic's lien by filing a bond in twice the amount of the sum for which the claim for the lien is filed)."

A similar conclusion about lien DBPB (under section 654.9A) is reached by the Court of Appeals in *Quad City Bank & Trust Co. v. JDHP Development, LLC*, 808 N.W.2d 756 (Iowa App. 2011) (Table)
(See footnote 5, citing *Schaffer* and reinforcing its holding that lien DBPB is automatic):
"In 2006, the Iowa legislature enacted Iowa Code section 654.17A, which provides a mechanism by which a plaintiff may apply to the court to conduct a commercially reasonable sale of foreclosed property, free from any other claims on the property. 2006 Iowa Acts ch. 1132, § 11 (codified at Iowa Code § 654.17A) (2006)). That same year it also enacted Iowa Code section 654.9A, which provides for the release of superior liens by bond.3 2006 Iowa Acts ch. 1132, § 7 (codified at Iowa Code § 654.9A (2006)). A bond is required to be "in an amount not less than twice the amount of the claim." *Id.* at § 654.9A.4 The district court approved the Bank's application to post bonds under Iowa Code section 654.9A, and stated that upon the Bank's posting of the bonds, the mechanics' liens held by Maxwell and Streb "shall be released." Following the Bank's release of the liens, the court discharged the liens as to the subject real estate.5
FN5:
"We view the release bond as a mechanism that substitutes a bond for the property. *See Schaffer v. Frank Moyer Constr., Inc.*, 628 N.W.2d 11, 19 (Iowa 2001) (stating that where a bond is filed to discharge a mechanic's lien, the property is free of any encumbrance); *see also Hunzinger Constr. Co. v. SCS of Wis., Inc.*, 694 N.W.2d 487, 491 (Wis.Ct.App.2005) (stating the release bond procedure for construction liens "substitutes a bond for the property"); *Mountain*

Ranch Corp. v. Amalgam Enters., Inc., 143 P.3d 1065, 1068 (Colo.App.2005) (stating that a release bond serves to substitute for the land as the security for the debt)."

"Discharge" in context of liens or claims generally equates to exemption, and is similar to release, waiver, or relief from a liability. See *South Iowa Methodist Homes, Inc. v. Board of Review of Cass County*, 393 N.W.2d 804, 807 (Iowa 1986)(tax exemption).

Were the seller a private party I'd recommend that he
1) intervene in the mechanic's lien foreclosure litigation and
2) ask the court to rule that the lien placed upon his property was automatically lifted by the bond posting.

But you say the "Seller is HUD."
Did HUD take this condo on a foreclosure of its own?
Who knows what HUD will do. Or when it will act, if ever.

28. Mechanic's Lien – Does a Contractor Who Will Not Hire Subs Need to Provide Owner Notice, Commencement of Work Notice?

FACTS #1: I might not understand all of the issues here, but I advise my contractor clients (mostly GC) to file notice of commencement to preserve their right to file a lien. The Secretary of State sends out the owner notices. You can track it right on the MNLR website.

FACTS #2: Trim carpenter is being hired to retrim a home. The trim carpenter's contract is directly with the owner of the real estate. The contract provides it is for labor only. Owner has to provide all materials. Trim carpenter will not be hiring any sub contractors.

Iowa Code Section 572.13 provides in pertinent part:
1. "A general contractor who has contracted or will contract with a subcontractor to provide labor or furnish material for the property ..."

3. "A general contractor who fails to provide notice pursuant to this section is not entitled to a lien and remedy provided by this chapter."

Iowa Code Section 572.1(3) defines general contractor as follows: General Contractor includes every person who does work or furnishes materials by contract, express or implied with an owner.

It appears that trim carpenter is a general contractor. Iowa Code Section 572.13 provides the owner notice is required if the general contractor has contracted or will contract with a subcontractor. In the fact pattern above the general contractor has not and will not contract with a subcontractor so it appears that the owner notice is not required. Iowa Code Section 572.13(3) however states that a General Contractor who fails to provide the notice is not entitled to a lien.

Although it appears that trim carpenter does not have to provide the notice pursuant to Iowa Code Section 572.13(1) (because he has not and will not contract with a subcontractor) I am worried that he might not be entitled to a lien and remedy if he does not provide the notice even though he has not and will not hire any subcontractors to provide labor or services.

QUESTION: Do you believe trim carpenter is still required to provide the owner notice (because he is a general contractor) even though he has not and will not contract with any subcontractors to provide labor or materials on the property?

RESPONSE(S): For the good of the order, I would encourage you to look at this case in Iowa. (I'll leave the editorial comments behind). Slip opinion is attached.

Standard Water v. Jones, 888 N.W.2d 673 (Iowa Ct. App. 2016). Court of Appeals says no need for the general contractor to post the notice because the homeowner was in direct privity and thus no need for notice. The Court did not reach the "could have hired subcontractors" argument. You should, however, double check, that there was no subsequent clarifying legislation (and as I recall there wasn't any).

* * * * *

I'll follow up on the writer's comments regarding the Standard Water case. We had many fun years of debating lien law on that case, only for the statute to be amended a year after that decision at issue.

- In the 2016 Standard Water case, the Court of Appeals was focused on the interpretation of section 572.13A (pertaining to Notices of Commencement of Work (C.O.W.), and not Owner Notices) and ruled that only GCs *with subs* had to file Notices of C.O.W. (no later than 10 days of the commencement of the work to preserve their lien rights). As you recall, section 572.13A was a new section added in 2013 as part of the larger changes to Chapter 572 that included implementation of the MNLR.

- In 2017, section 572.13A was amended, through the addition of a few commas, with the result being that as of the effective date of that amendment, all GCs, *with or without subs*, are required to file a Notice of C.O.W. no later than 10 days of the commencement of the work to preserve their lien rights.

- Neither in the 2017 amendments, nor any future amendments, have amended section 572.13 pertaining to the Owner Notice. Per the plain language of section 572.13, the Owner Notice requirement (as opposed to the C.O.W. Notice requirement) still only applies to *GCs with subs or who will contract subs*. The Standard Water court also noted as such. Standard Water, 888 N.W.2d at 677 ("We conclude the statute as a whole supports Standard Water's interpretation. Standard Water invokes section 572.13, the "owner notice" section. That section requires a "general contractor who has contracted or will contract with a subcontractor" to provide the owner with a notice that persons or companies improving real property may be entitled to a lien upon the improved property. Iowa Code § 572.13. A nearly identical section, substituting the phrase "original contractor" for "general contractor," was in effect prior to 2013 as well. *See* Iowa Code § 572.13 (2011). Standard Water argues that because section 572.13 relates to general contractors who hire subcontractors, it follows that section 572.13A also relates to general contractors who hire subcontractors. There is persuasive force in creating a parallel between the two provisions.")

[See Attachment]

IN THE COURT OF APPEALS OF IOWA

No. 15-0458
Filed August 31, 2016

STANDARD WATER CONTROL SYSTEMS, INC.,
Plaintiff-Appellees/Counterclaim-Defendants,

vs.

MICHAEL D. JONES AND CORI JONES,
Defendants-Appellants/Counterclaim-Plaintiffs.

Appeal from the Iowa District Court for Polk County, Lawrence P. McLellan, Judge.

Homeowners appeal from a district court order foreclosing a mechanic's lien. **AFFIRMED IN PART, VACATED IN PART, AND REMANDED.**

John F. Fatino of Whitfield & Eddy, P.L.C., Des Moines, for appellant.

Jodie C. McDougal and Elizabeth R. Meyer of Davis Brown Law Firm, Des Moines, and Bradley M. Beaman of Bradshaw, Fowler, Proctor & Fairgrave, P.C., Des Moines, for appellee.

Heard by Tabor, P.J., and Bower and McDonald, JJ.

MCDONALD, Judge.

Mike and Cori Jones contracted with Standard Water Control Systems to waterproof the basement of their residence. Standard Water started work on July 15, 2013. While working in the basement, one of Standard Water's employees struck a water line and a sewer line with a jackhammer. The water and sewer lines were encased within the concrete floor and the footings. The placement of the lines was unusual and not foreseeable. The ruptured water and sewer lines caused damage to the Joneses' property.

Standard Water continued to work on the basement on the day of July 15 but did not complete the job. Several witnesses testified the job was ninety-five percent complete at the end of the day. The Joneses would not allow Standard Water back on the property the next day or any day thereafter to finish the remainder of the work. Standard Water tendered a bill to the Joneses for $5,400, which represented the balance owed on the project. The Joneses stated they would not pay the bill because the work was incomplete and because Standard Water had damaged the property. The Joneses incurred costs to assess and repair the damage to their property.

Sixteen days after its first and last day of work at the Joneses' residence, Standard Water filed a notice of commencement of work and mechanic's lien. In October 2013, the Joneses sent Standard Water a letter demanding foreclosure of the mechanic's lien pursuant to Iowa Code section 572.28 (2013). Standard Water filed an action to foreclose the lien and for breach of contract, and the Joneses filed an answer and counterclaims. The district court found the Joneses were in breach of contract and entered judgment in personam against the

defendants for $5400 plus interest at twelve percent and attorney fees in the amount of $43,835.25. The district court concluded Standard Water was entitled to in rem judgment against the property for the same amount and entitled to foreclose the mechanic's lien. The Joneses timely filed this appeal, challenging the validity of the lien, the validity of the parties' contract, and the amount of the fee award.

I.

The Joneses argue Standard Water's mechanic's lien was invalid due to Standard Water's purported failure to comply with statutory filing and notice requirements. Actions to enforce mechanic's liens are equitable proceedings. *See Flynn Builders, L.C., v. Lande*, 814 N.W.2d 542, 545 (Iowa 2012). Normally, appeals from actions brought in equity are reviewed de novo. *See* Iowa R. App. P. 6.907. However, this dispute raises issues of statutory interpretation and construction. Our review of issues of statutory interpretation and construction is for the correction of legal error. *See Bank of Am., N.A. v. Schulte*, 843 N.W.2d 876, 880 (Iowa 2014).

We look no further than the language of the statute when it is unambiguous. *Estate of Ryan v. Heritage Trails Assocs., Inc.,* 745 N.W.2d 724, 730 (Iowa 2008). If a statute is ambiguous, we turn to principles of statutory interpretation. *In re Estate of Bockwoldt,* 814 N.W.2d 215, 223 (Iowa 2012). A statute is ambiguous if reasonable people can disagree about its meaning. *Id.* When interpreting statutes, we seek the legislature's intent. *Schaefer v. Putnam,* 841 N.W.2d 68, 75 (Iowa 2013). Rather than analyzing words or phrases in isolation, we assess the entire statute. *Hardin Cty. Drainage Dist. 55 v. Union*

Pac. R.R. Co., 826 N.W.2d 507, 512 (Iowa 2013). We consider a statute's legislative history, including prior versions of the statute. *State v. Romer,* 832 N.W.2d 169, 176 (Iowa 2013). Under the pretext of construction, we may not extend a statute, expand a statute, or change its meaning. *Id.*

At issue is Iowa Code section 572.13A(1)—a matter of first impression for this court, as section 572.13A was only enacted in 2013. That subsection provides, in pertinent part:

> A general contractor or owner-builder who has contracted or will contract with a subcontractor to provide labor or furnish material for the property shall post a notice of commencement of work to the mechanics' notice and lien registry [MNLR] internet website within ten days of commencement of work on the property. A notice of commencement of work is effective only as to any labor, service, equipment, or material furnished to the property subsequent to the posting of the notice of commencement of work.

Iowa Code § 572.13A(1). The terms "general contractor," "owner-builder," and "subcontractor" are all defined by statute. *See* Iowa Code § 572.1.

The parties have different interpretations of the statute. The Joneses argue the doctrine of the last antecedent means the clause "who has contracted or will contract" modifies only the term "owner-builder." The Joneses thus contend the statute applies to (a) all general contractors and (b) those owner-builders who have contracted or will contract with a subcontractor to provide labor or furnish material to the property. Standard Water, as a covered general contractor, did not post a notice of commencement of work within ten days of first furnishing materials or furnishing labor. As a result, the Joneses claim, Standard Water was prohibited from filing and enforcing its mechanic's lien. Standard Water contends the last-antecedent rule is inapplicable here and the phrase "who

has contracted or will contract" modifies both "general contractor" and "owner-builder." Standard Water did not contract with a subcontractor. Standard Water thus concludes it did not have to file a notice of commencement of work on the MLNR within ten days of commencing work as a prerequisite to filing and enforcing its mechanic's lien.

We conclude the challenged phrase could reasonably bear both interpretations and is thus ambiguous. *See Bockwoldt,* 814 N.W.2d at 223. Under the circumstances, the last-antecedent rule is not dispositive, and we turn to other interpretive aids. *See Fjords N., Inc., v. Hahn*, 710 N.W.2d 731, 738 (Iowa 2006) ("[T]he last-antecedent rule is not inflexible, and it does not apply where the entire act reveals that the qualifying sentence applies to several preceding subjects. Ultimately, we look to the intent of our legislature.").

We first look to the purpose of the statute. "The statute is intended to provide a mechanism by which owners of residential real estate receive notice of who was working on the property and claims by the same party." IAB Vol. XXXV, No. 11 (11/28/2012) p. 935, ARC 0464C. The Joneses argue that the phrase "claims by the same party" suggests the MNLR's primary purpose is to alert owners to liens filed against the property. The Joneses assert that exempting an entire subset of contractors from this notice requirement, viz. general contractors who do not hire subcontractors, defeats the spirit of the law. We disagree. The purpose of the statute is twofold. It requires identification of "who was working on the property" and notice of any claims by those persons. In short, the statute is intended to provide the owner with the identity of subcontractors unknown to the owner who might have potential claims against the property and provide a

mechanism to force the subcontractors to file notice of any potential claims. The Joneses' interpretation of the statute is overbroad in the sense that it would require a contractor who did not hire any subcontractors to provide notice to the homeowner that the contractor was performing work on the property. This is obviously unnecessary and puts form over substance. In contrast, Standard Water's interpretation—that only general contractors who hire subcontractors provide the required notice—is in accord with the purpose of the statute without requiring the general contractor to engage in unnecessary filing.

The Joneses contend the statute as a whole supports their interpretation. The Joneses rely on section 572.13A(4): "A general contractor who fails to provide notice pursuant to this section is not entitled to a lien and remedy provided by this chapter." They assert this section compels all general contractors to provide the notice of commencement of work as a prerequisite to filing and enforcing a mechanic's lien. The Joneses' position is circular. While the section upon which they rely provides that a general contractor who fails to provide notice pursuant to the statute is not entitled to the lien, the statute does not identify the class of general contractors required to provide notice pursuant to the statute. The Joneses' reliance on this provision merely presumes the answer to the relevant question.

We conclude the statute as a whole supports Standard Water's interpretation. Standard Water invokes section 572.13, the "owner notice" section. That section requires a "general contractor who has contracted or will contract with a subcontractor" to provide the owner with a notice that persons or companies improving real property may be entitled to a lien upon the improved

property. Iowa Code § 572.13. A nearly identical section (substituting the phrase "original contractor" for "general contractor") was in effect prior to 2013 as well. *See* Iowa Code § 572.13 (2011). Standard Water argues that because section 572.13 relates to general contractors who hire subcontractors, it follows that section 572.13A also relates to general contractors who hire subcontractors. There is persuasive force in creating a parallel between the two provisions.

Section 572.13B also provides support for Standard Water's interpretation. That section requires subcontractors to provide a "preliminary notice" identifying themselves. Iowa Code § 572.13B(1). Such notice is posted on the MNLR site. Iowa Code § 572.13B(1). The notice is also mailed to the owner by the secretary of state. Iowa Code § 572.13B(2). The notice is not, however, mailed to owner-builders. Iowa Code § 572.13B(2). Presumably, this is because owner-builders have the same relationship with subcontractors as do general contractors with subcontractors; that is, they are directly contracting with one another and do not need to identify themselves.

Three sections of the chapter thus effectuate the twofold purpose of the statute: a general contractor who hires subcontractors unknown to the owner provides the owner with notice of said subcontractors (section 572.13), a general contractor or owner-builder who has contracted or will contract with a subcontractor posts a notice when work commences (section 572.13A), and a subcontractor posts a notice identifying themselves in situations where they might otherwise be unknown to owners (section 572.13B). These three sections work in concert to identify persons working on the property and to provide adequate notice of any claims by those persons.

The Joneses contend the administrative code controls the issue, relying on rule 721-45.4(1). The rule provides: "A general contractor for residential construction shall post a notice of commencement of work to the MNLR within ten days of commencement of work, or the general contractor is not entitled to a lien or remedies provided in Iowa Code chapter 572." Iowa Admin. Code r. 721-45.4(1). The Joneses argue the rule clearly required Standard Water to file a notice of commencement of work within ten days as a prerequisite to obtaining and enforcing a lien and lien remedies and the rule is entitled to deference. The Joneses state agency deference is proper when the legislature has "clearly vested an agency with the authority to interpret the statutory provision at issue." The argument fails, however, because the legislature has not done so in this case. The Iowa legislature gave the secretary of state the power to "creat[e] and administ[er] the [MNLR]." Iowa Code § 572.34(1). The power to create and administer an online registry is not the same as interpretive power. *See NextEra Energy Res. LLC v. Iowa Utils. Bd.*, 815 N.W.2d 30, 37 (Iowa 2012) ("[T]he fact that an agency has been granted rule making authority does not 'give an agency the authority to interpret *all* statutory language.'" (citations omitted)). "[B]road articulations of an agency's authority, or lack of authority, should be avoided in the absence of an express grant of broad interpretive authority." *Renda v. Iowa Civil Rights Comm'n*, 784 N.W.2d 8, 14 (Iowa 2010). If an agency has not clearly been vested with the authority to interpret, the court does not owe that agency's interpretation deference. *See* Iowa Code § 17A.19(10)(c).

In sum, we conclude Standard Water's interpretation of the statute is superior to the Joneses'. Standard Water's interpretation does the most service

to the stated intent of the law. It is consistent with the text of the statute. It is consistent with other language used in the statute as a whole. It advances the public policy interest in informing homeowners of subcontractors of whom they may otherwise not be aware who may be filing a late lien against the property. In contrast, in reading the statute, we find no public policy interest in informing homeowners of general contractors whom they themselves have hired.

II.

The Joneses next argue a portion of the parties' contract is unenforceable. Our scope of review is for correction of errors at law. *See LeMars Mut. Ins. Co. v. Farm & City Ins. Co.*, 494 N.W.2d 216, 217 (Iowa 1992). Section 7 of the parties' agreement states:

> [Standard Water] will not be responsible for any damages to hidden or unknown installments under the floor, or under or behind the walls. [Standard Water] will not be responsible for any damages to any framed wall components that shift, move, fall or are altered during interior drain tile installation. It is [the Joneses'] responsibility to bring walls, floors, and other impacted areas back to their original condition and [Standard Water] will not be liable for damages attributable thereto.

The Joneses argue this clause is void under Iowa law because it is an improper indemnity clause under Iowa Code section 537A.5(2), which provides:

> [A] provision in a construction contract that requires one party to the construction contract to indemnify, hold harmless, or defend any other party to the construction contract, including the indemnitee's employees, consultants, agents, or others for whom the indemnitee is responsible, against liability, claims, damages, losses, or expenses, including attorney fees, to the extent caused by or resulting from the negligent act or omission of the indemnitee or of the indemnitee's employees, consultants, agents, or others for whom the indemnitee is responsible, is void and unenforceable as contrary to public policy.

The district court found that the statute only "voids indemnification clauses and section 7 is not an indemnification clause." The district court found this clause

did not apply to claims between the parties and that indemnity occurs when a claim is "brought by persons not a party to the provision."

We agree with the district court. The contract section is not void because it is not an indemnity clause. "An indemnification clause 'does not apply to claims between the parties to the agreement. Rather it obligates the indemnitor to protect the indemnitee against claims brought by persons not a party to the provision.'" *FNBC Iowa, Inc. v. Jennessey Grp., L.L.C.*, 759 N.W.2d 808, 811 (Iowa Ct. App. 2008) (citation omitted). In this action between the parties, there is no indemnity clause.

III.

Finally, the Joneses dispute the attorney fees award. In a mechanic's lien action, a prevailing plaintiff may be awarded reasonable attorney fees. Iowa Code § 572.32. The supreme court has stated that the following are appropriate factors to consider in taxing a fee in such a case:

> a. the time necessarily spent;
> b. the nature and extent of the service;
> c. the amount involved;
> d. the difficulty of handling and importance of the issues;
> e. the responsibility assumed and results obtained;
> f. the standing and experience of the attorney in the profession and the customary charges for similar service.

See Schaffer v. Frank Moyer Constr., Inc., 628 N.W.2d 11, 24 (Iowa 2001).

Standard Water sought an attorney fees award of $56,014.25. The district court granted an award of fees but reduced the amount to $43,835.25 upon review of the fees requested. The award of attorney fees "is vested in the district court's broad, but not unlimited discretion." *Baumhoefener Nursery, Inc. v. A & D P'ship, II*, 618 N.W.2d 363, 368 (Iowa 2000). "The district court must look at the

whole picture and, using independent judgment with the benefit of hindsight, decide on a total fee appropriate for handling the complete case." *Landals v. George A. Rolfes, Co.*, 454 N.W.2d 891, 897 (Iowa 1990).

In light of our consideration of the *Schaffer* factors, we are not persuaded the attorney fees award should stand. While recognizing that undue emphasis on the size of the judgment is improper, the fee award exceeded 800% of the underlying judgment. *Cf. Paper's Lumber & Supply v. Schipper*, No. 12-0103, 2013 WL 750410, at *5 (Iowa Ct. App. Feb. 27, 2013) (rejecting argument fee award "above a certain percentage of the underlying judgment is per se unreasonable," but noting fee award was "just over forty percent of the underlying judgment"). In addition, the district court underemphasized the time *necessarily* spent on this matter given the limited amount at issue and the limited factual issue presented. We remand for additional fact-finding to determine an award consistent with the facts presented in this case and the *Schaffer* factors.

IV.

We have considered each of the Joneses' arguments, whether set forth in full herein. We affirm the judgment of the district court in part and remand for further proceedings on the attorney fees award.

AFFIRMED IN PART, VACATED IN PART, AND REMANDED.

IOWA APPELLATE COURTS

State of Iowa Courts

Case Number	**Case Title**
15-0458	Standard Water Control Systems v. Jones

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29A. Mechanic's Lien Issues.

FACTS: Owner of real estate entity has similar ownership to General Contractor entity for a residential project. There is a dispute with a subcontractor. Subcontractor filed Commencement of Work, Preliminary Notice and now Mechanic's Lien. GC didn't file Commencement of Work as they are a related party to property owner. My understanding of Iowa Code Section 572.13A(2) is that the subcontractor does not need to file the Commencement of Work within 10 days of sub starting work.

Owner and GC dispute the subcontractors filed Mechanic's Lien. They have higher costs as well as they had to hire someone else to finish the project due to the dispute. If Owner/GC serve the Demand under Iowa Code Section 572.28, I assume that does not limit them from still challenging the validity of the Mechanic's Lien if sub starts lien enforcement nor disallows their counter-claims.

QUESTION: Is it better to serve the Demand for Bringing Suit under Iowa Code Section 572.28 or file a lawsuit for a challenge to the Mechanic's Lien and bring the counterclaims for damages?

RESPONSE(S): Regarding your first paragraph, you are correct. When a sub files a COW Notice on behalf of the GC, before filing its own Preliminary Notice, the COW Notice does not have to be filed within 10 days. See *Borst Bros. Constr., Inc. v. Fin. of Am. Com. LLC* ("The ten-day deadline in both subsections 1 and 2 of section 572.13A applies to contractors/owner-builders, not to subcontractors").

Regarding options, an owner/GC in the position of your client has numerous options, including the two you mentioned, as well as bonding off the lien. There are pros and cons to each. Bonding off a lien can at times be the best option if the lien is preventing the sale of the property or you otherwise need to clear off the lien quickly, and then any litigation can happen later. Also, your assumption is correct. If your client serves the demand on the claimant and the claimant files suit, the owner can challenge the validity of the lien as part of that litigation, including as part of any counterclaims the owner brings. Also, note that at that point, the anti-joinder provision of section 572.26 does not apply (*see* Capitol City Drywall Corp. v. C. G. Smith Const. Co., 270 N.W.2d 608, 611 (Iowa 1978)), and the claimant could then join any other causes of action it has against the owner in that same litigation.

29B. Annexation.

FACTS: I am examining an abstract for some parcels of real estate that purport to be annexed into a local city as part of a larger voluntary annexation proceeding.

The voluntary annexation agreement only includes parcel ID numbers for the real estate to be annexed. There is no actual legal description. Signatures of landowners on the application are illegible and are not notarized. When the City approved the annexation by resolution, a map was included showing the proposed area and a legal description was provided, along with a listing of the parcel IDs.

One of the parcels that I am examining is included by parcel ID in the voluntary annexation agreement. It is also shown on the map and its legal description is included in the resolution approving the annexation. The other parcel is neither included in the parcel IDs in the voluntary annexation agreement nor is the parcel ID included in the resolution. It is only shown in the map and the legal description.

Proceedings occurred less than 10 years ago.

QUESTION:
1. Does the voluntary annexation need to have notarized signatures?
2. Does the voluntary annexation agreement need to include actual legal descriptions or are the parcel IDs sufficient?
3. What can be done to correct the legal description to include the omitted parcel? Or does anything need to be done?

RESPONSE(S): On review of Iowa Code Chapter 368, and especially section 7-
-
Answers appear to be:
1. No.
Sole requirement is that "all owners of land in a territory...apply in writing..."
2. No. Parcel identifier numbers ought to suffice for annexation purposes.
3. Use an Affidavit Explanatory of Title under Iowa Code section 558.8. State that the annexation "territory" included the legally described parcel.

An annexation proceeding is not a transfer of real estate or interest therein.
Therefore no exact legal descriptions are necessary, IMHO.
An annexation proceeding drags within municipal borders a "territory".
Definition of "territory", 368.1(15), does not require use of formal legal descriptions in describing the "land area or areas proposed to be incorporated, annexed, or severed."
(Although surely it's good policy to do so where possible.)