30. Club Wyndham.

FACTS: I need an attorney who has experience with Club Wyndham Rewards. Any referrals will be greatly appreciated.

QUESTION:

RESPONSE(S):

31. Common Sense Has Left the Building.

FACTS: Covenants and restrictions on a subdivision say the Homeowners Association (HOA) can assess owners for certain improvements plus interest and attorney fees. HOA makes an assessment against an owner. Owner claims HOA was operating outside of its authority. HOA files a lien on owner's home under authority in the covenants. Parties rattle the sabers at each other for awhile and the owner decides just to pay the assessment and the interest rather than spend more money fighting the issues. Owner pays the assessment and interest but not the HOA's attorney fees. The HOA wants its attorney fees and will not release the lien on owner's home. The attorney fees claimed are more than the assessment.

QUESTION:

1. Can the HOA enforce its lien to recover attorney fees if the underlying assessment has been paid?
2. Can the HOA recover additional attorney fees for recovering its attorney fees? In other words - Do they get to keep the tab running?

RESPONSE(S): Did the homeowner tender note it was in full?
Was it intended and is there evidence it was an accord and satisfaction?

* * * * *

There is no accord and satisfaction.

* * * * *

What is the wording of the attorney's fees provision in the covenants? My gut reaction is that the homeowners can probably make this worse for themselves by continuing to fight. But if there is any discretionary language in the covenants or reasonableness requirement, you might have something to argue. The following is a case where the court in question construed the attorney fee clause narrowly to not require payment of attorney fees. Arrowhead Lake Estates Homeowners Association, Inc. v. Aggarwal, 624 S.W.3d 165 (Mo. 2021). But a carefully drafted clause would probably result in the opposite outcome.

* * * * *

As history major in undergraduate, I need to point out that not only does history repeat itself, but historians repeat themselves.

With that in mind, I need to reiterate my long held belief that the bar needs to do something about authorization for developer oppression built into many condo/HOA agreements. Since our sympathy with the homeowners is a sentiment, while the developers' position is an interest, the dynamics in Des Moines militate against a law establishing even some basic rights for the home/condo owners. But there is something we can do unilaterally. The bar should develop a minimum standard for these agreements to protect owners against this type of oppression, and title examiners can then insert into their title opinions something like:

"The Iowa State Bar Association has established minimum safeguards which should be written into condo/HOA agreements to protect you against developer overreach. I have examined the condo/HOA agreement and it does not meet these minimum standards."

Now, most home buyers will not pay attention to that part of the title opinion, at least until it is too late; but sooner or later the word will get out that HOA/Condo agreements can be dangerous as well as beneficial, and hopefully, at least one developer will start advertising that their condo/HOA agreements meet the ISBA standards. And, perhaps, others may follow.

* * * * *

The covenants in this situation are extremely oppressive and we have two board members serving on a committee that are clearly on a power trip. They use the covenants as a club.

32. Condemnation of Real Estate Subject to Permanent Injunction.

FACTS: Owner of land was permanently enjoined from transferring any real estate in state of Iowa by court order in 2019. City wants to condemn property as blighted.

QUESTION: Any advice on how the injunction affects condemnation proceedings?

RESPONSE(S): The transfer is not by the individual, it is by the operation of law. At least that is how I would review it.

33. Dissolved Corporation.

FACTS: Closely held corporation owns property and has since 1986, the principal owner of which was John Doe. John Doe as president deeded almost all of the property held by the corporation to himself and his wife and then to a revocable trust. The property I am examining was missed in the transfers and is still held in the corporation.

Since deeding the property to the trust both grantors have died, their daughter is the trustee of the trust, and the corporation has not been a going concern for 20 years. There are no bylaws, minutes, or any other records still around. The daughter now wants to sell the property as trustee of the trust.

I have had scenarios where the company is no longer a going concern and have relied on Iowa Code Sections 490.1401-1409 but they have always involved a principal of the dissolved corporation providing the necessary documentation to resolve including any affidavits and deeds in conformance with section 490.1405.

QUESTION: Any thoughts on the best mechanism to get this out of the company and into the deceased individual's names (at which point in time I can resolve through an heirship affidavit and deeds from heirs).

RESPONSE(S): Who owns the corporation's shares? The corporation has no board of directors, and all corporations must have a board of directors under Iowa Code § 490.801(1) (barring existence of a shareholder agreement under Iowa Code § 490.732, but with no corporate records in existence I don't think anyone will contest this). Under Iowa Code § 490.810(1)(a) the shareholders may fill the vacancy (or vacancies) on the board of directors. Assuming the daughter or the trust is the shareholder, she can appoint herself to the corporation's board and then manage the corporation as its director. Then she can sell the property and distribute the proceeds as appropriate.

34. Grain Bin Rental Agreement.

FACTS:

QUESTION: Does anyone have a template for a Grain Bin rental agreement they would be willing to share?

RESPONSE(S):

35. Homestead Credit for Family Farm LLCs.

FACTS: At least one county has been allowing the homestead credit for family farm LLCs. The assessor has told me that those days may be numbered because the code only allows the credit to family farm corporations and not LLCs. It appears to me that she is correct.

QUESTION: Is there a good reason why family farm LLCs are not able to take advantage of the homestead credit but that corporations are? Should there be a law change?

RESPONSE(S):

36. Linn County Plat Map or Farm & Home Directory.

FACTS:

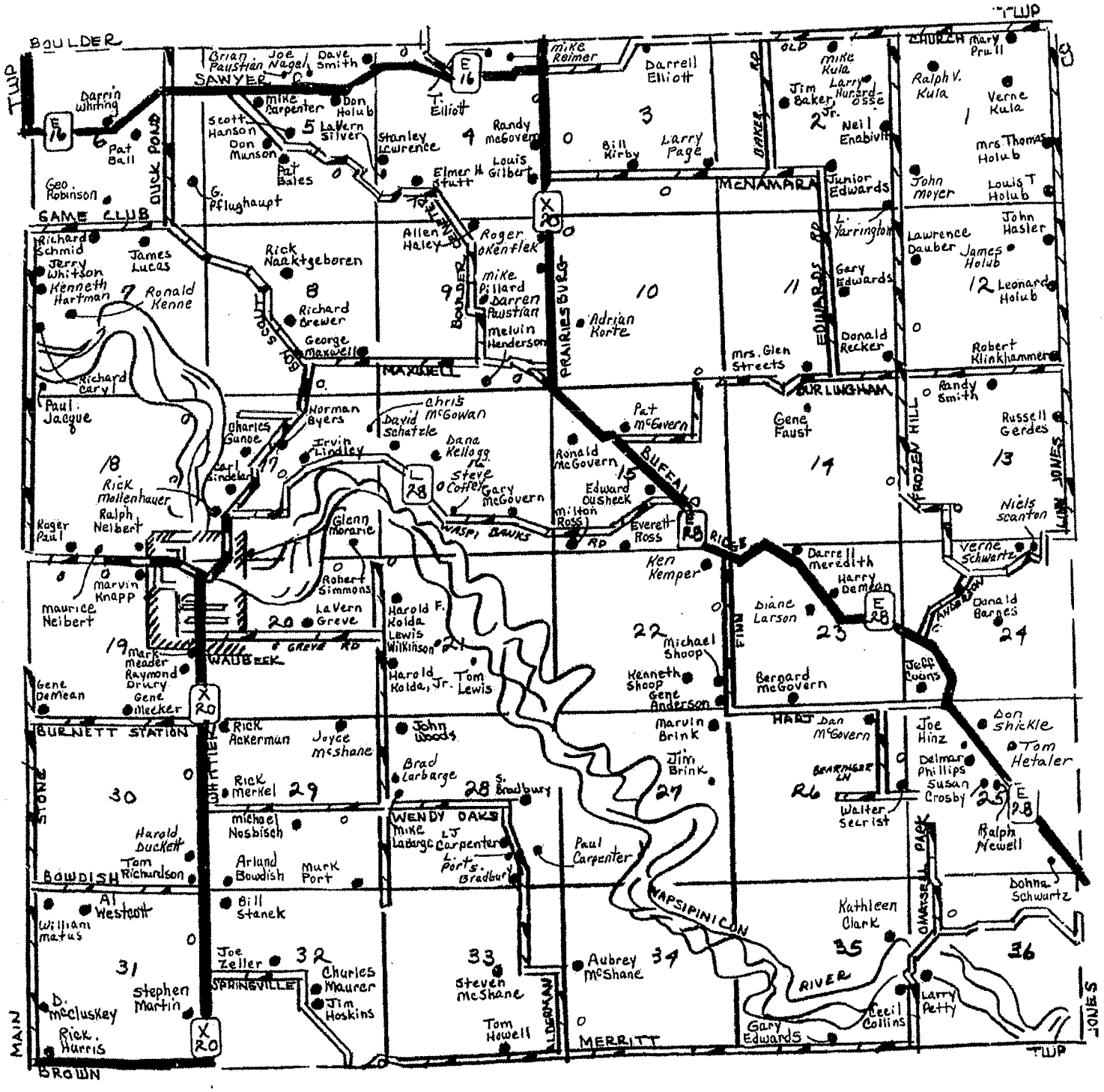
QUESTION: Is there anyone on this list who happens to have an old fashioned plat booklet with a map of the owners in Buffalo Township - Linn County?

RESPONSE(S): From Booth 2001-2002.

[See Attachment]

BUFFALO

T85N_R5



37. Looking For a Form – Release of Restrictions and Covenants.

FACTS: My client created a subdivision and subjected the land to restrictions and covenants. Client now wants to sell a portion of the land inside of the subdivision to a farmer for farming purposes. Looking for a form anyone may have used to accomplish this.

QUESTION:

RESPONSE(S):

38. Looking for Good Doc Form.

FACTS: I'm looking for a good form of a Possessory Title Affidavit that could be modified to an Affidavit of Continued Use for an easement.
I have client with an important, though seldom used easement he fears will someday be challenged under abandonment theory.

QUESTION: Any suggestions will be appreciated.

RESPONSE(S):

39. Prenuptial Agreement for Out of State Couple Regarding Iowa Farm Land.

FACTS: This is "somewhat" a real estate question about preparing a Prenup regarding Iowa farm land. Future H and W are considered South Dakota residents, although Future H is involved in his family's Iowa farming operation. They would like to do a prenuptial agreement that states that the farm land and related operations are separate and stay with Future H if there is a divorce, etc. Land is in Iowa. My thought is they need a South Dakota attorney, as they are both residents there, and need an enforceable South Dakota prenuptial agreement. Attorney for one of the other family members says that it is Iowa real estate, so the prenup can be done in Iowa and still enforceable in South Dakota, even if they are residents of South Dakota. I have concerns about doing this as the prenup may concern other matters than the Iowa real estate and, if it is litigated, it would be in their state of domicile (currently South Dakota). Not to mention potential unauthorized practice of law in South Dakota.

QUESTION: Am I being too picky here? Thoughts on doing this?

RESPONSE(S):

40. Railroad Crossing. Iowa Code Sections 327G.11 & 327G.12.

FACTS: I am looking for someone with experience getting a Railroad to construct a private crossing pursuant to Iowa Code Sections 327G.11 and 327G.12. Specifically the procedure in Iowa Code Section 327G.12 which requires a written application to the Department of Inspections and Appeals and provides for an order which "apportion(s) the costs as appropriate".

QUESTION: In other words, who pays for the cost of constructing the private crossing?

RESPONSE(S):

41. Real Estate Never Transferred to Partnership.

FACTS: Four persons own farm real estate as tenants in common (TIC). Their then-lawyer creates a partnership with a FID#. The land is never formally transferred into the partnership.

The County Assessor recognizes this and land records reflect ownership by the original TIC titleholders and not the partnership.

The partnership engages a tenant on a crop share basis. The partnership reports all of the net proceeds from the crop share lease and takes deductions for inputs, insurance, taxes, building, tile, fence etc. depreciation etc. as if it owned the land. The TIC owners report nothing except what is on their respective yearly K1s from the partnership. *None of the TIC owners/partners are aware of any of the details.*

A voluntary or involuntary partition into 25% and 75% shares is being assessed, followed by an LLC formed by the 75% owners with their share of the partitioned land as an asset.

QUESTION: 1. The farm real estate appears to be owned personally and is not a partnership asset. Correct? Or, if the land has been treated as being in the partnership (however unknowingly by the owners who never had this explained to them), does the partnership have to be addressed in some form (such as Quiet Title, or possibly as a contingent party in the partition) in one or more legal proceedings?
2. What is a tax strategy here? "Leave it lay where Jesus flang it" for the '23 (and maybe '24) return and earlier years, and wait until the 75% owners effect a partition and reorganize with an LLC which owns their 75% share? Seems so, but would appreciate comments.

RESPONSE(S): I would include the Partnership as a party to the partition solely for the purpose of quit claiming the respective 75%-25% tracts. The Partnership should do a final return for the last year and then the new LLC and the other owner can show future income on those returns.

The only real problem posed by the current partnership tax filing creates is if one of the partners were looking to do an exchange. For exchange purposes, if the Partnership files a return and K-1s are issued, the IRS will disregard the TIC ownership and therefore also disallow an exchange by the "partner." Thus, the old "drop and swap" in the vernacular.

* * * * *

I had this problem several years ago.

I treated the partnership as only the operator and not a landowner So when land transferred, deeds went from individuals and spouses.

Tax was paid via the FEIN on the partnership return and since it had no asset other than the bank account it was not hard to finalize with the tax people.

You may want to make sure the prior tax returns do not show any land ownership on the Schedule L. If so you will need to deal with that from a tax standpoint. In my case the land had never been listed as an asset on the Schedule L.

* * * * *

1. Correct.
Land was always owned by the TICs.
Never transferred to Partnership.
No part of 486A.204 is satisfied.
Ergo: remains private to the TICs.
Partnership owns nothing. ...

Maybe--Possession, as a tenant?
TIC consensus, w/o written lease?

2. IMO, continue as you have done.
Give IRS naught to wonder about.
Service might get curious if filing changes.
Either way--
Tax consequences seem identical.
Wouldn't they be?
Sch. E versus K1. Same numbers.

To whom did that lawyer owe duty?

42. Real Estate & Title Law Section Proposed 2024 Legislative Agenda.

FACTS: Tim Gartin, Chair of the Real Estate Section Council. From November 3, 2023: I am pleased to present the two proposals we are offering to the ISBA Board of Governors for consideration. I appreciate the feedback we received from you about our various proposals under consideration. It resulted in some of the proposals being pulled and the refinement of others. Thank you!

It is hard to believe but we are now beginning our work on the 2025 legislative agenda. If you have proposals or even just problems that you think might warrant a legislative change, please e-mail those to me. We put those ideas in our "parking lot" and section council members volunteer to research them and help us consider whether the proposals should be advanced further in the process.

I would to thank the members of the Real Estate Section Council: Erek Sittig (Vice Chair), Chuck Augustine, Allie Greim, Lindsey Guerrero, Lonny Kolln, Laura Krehbiel, Kayla Sproul, Mitch Taylor, Matt Veldey, Sarah Wendler, Jillian Williams, and Paul Wilson. They are doing important work. (We also have a lot of fun.) If you have an interest in serving on the section council, I would be happy to visit with you. It is very rewarding and we learn from each other.

QUESTION:

RESPONSE(S): Good proposals. Thank you Tim, and Council, for all your work.

* * * * *

I have concerns about the first proposal expressed in two documents I sent the two of you back in September after our Zoom call about excluding Sundays from the required landlord tenant notices (being forwarded separately).

Please let me know if these two documents were shared with the section council and deemed unpersuasive or whether my expectation that they would be so shared was mistaken.

If it should be the former (i.e., the documents were considered by the section council), I'd appreciate the opportunity to discuss with the two of you the reasons advanced for deciding to proceed with the first proposal.

If the latter (i.e., the documents weren't shared with the section council), I'd like to know your thoughts about the appropriateness of my posting them to the list serve about the first proposal.

[See Attachment]

Real Estate & Title Law Section Council 2024 Affirmative Legislative Agenda

The Iowa Bar Association Real Estate & Title Law Section is pleased to offer the following two proposals, approved on September 7, 2023, to the Board of Governs for consideration for the Bar's legislative agenda. Respectfully submitted by Tim Gartin, Chair.

1. Revise Iowa Code § 648.1 (Grounds for FED) and add a contract vendee who fails to leave after an installment contract has been forfeited.

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.

2. Dormant Mineral Rights

XXX.1 Short title.
This chapter may be cited as the Iowa Dormant Mineral Interest Act.

XXX.2 Statement of policy.

1. The public policy of this State is to enable and encourage marketability of real property and to mitigate the adverse effect of dormant mineral interests on the full use and development of both surface estate and mineral interests in real property.

2. This Chapter shall be construed to effectuate its purpose to provide a means for termination of dormant mineral interests that impair marketability of real property.

XXX.3 Definitions.

As used in this Chapter:

1. *"Mineral interest"* means an interest in a mineral estate, however created and regardless of form, whether absolute or fractional, divided or undivided, corporeal or incorporeal, including a fee simple or any lesser interest or any kind of royalty, production payment, executive right, nonexecutive right, leasehold, or lien, in minerals, regardless of character.

2. *"Minerals"* includes gas, oil, other gaseous, liquid, and solid hydrocarbons, oil shale, cement material, sand and gravel, road material, building stone, chemical substance, gemstone, metallic, fissionable, and non-fissionable ores, colloidal and other clay, steam and other geothermal resource, and any other substance defined as a mineral by the law of this State.

XXX.4 Exclusions.

1. This Chapter does not apply to:

a. a mineral interest of the United States or an Indian tribe, except to the extent permitted by federal law; or

b. a mineral interest of this State or an agency or political subdivision of this State, except to the extent permitted by state law other than this Chapter.

c. a mineral interest in coal is governed by Iowa Code Chapter 557C.

2. This Chapter does not affect water rights.

XXX.5 Termination of dormant mineral interest.

1. A mineral interest, if continuously unused for a period of 20 years as of a date that is more than one year following the effective date of this Chapter, whichever is later, is a dormant mineral interest and is extinguished. A dormant mineral interest shall merge with the surface estate in shares proportionate to the ownership of the surface estate, subject to existing liens for taxes or assessments, unless a statement of claim as described in section XXX.5 is recorded prior to the expiration of said time period. Disability or lack of knowledge of any kind on the part of any person does not suspend the running of the limitations period provided for in this subsection.

2. Any of the following actions taken by or under authority of the owner of a mineral interest in relation to any mineral that is part of the mineral interest constitutes use of the entire mineral interest:

a. Active mineral operations on or below the surface of the real property or other property unitized or pooled with the real property, including production, geophysical exploration, exploratory or developmental drilling, mining, exploitation, and development, but not including injection of substances for purposes of disposal or storage. Active mineral operations constitutes use of any mineral interest owned by any person in any mineral that is the object of the operations.

b. Payment of taxes on a separate assessment of the mineral interest or of a transfer or severance tax relating to the mineral interest.

c. Recordation of an instrument that creates, reserves, or otherwise evidences a claim to or the continued existence of the mineral interest, including an instrument that transfers, leases, or divides the interest. Recordation of an instrument constitutes use of: (i) any recorded interest owned by any person in any mineral that is the subject of the instrument, and (ii) any recorded mineral interest in the property owned by any party to the instrument.

d. Recordation of a judgment or decree that makes specific reference to the mineral interest.

3. This section applies notwithstanding any provision to the contrary in the instrument that creates, reserves, transfers, leases, divides, or otherwise evidences the claim to or the continued existence of the mineral interest or in another recorded document unless the instrument or other recorded document provides an earlier termination date.

XXX.6 Statement of claim – preservation of mineral interest.

1. A mineral interest may be preserved by recording a statement of claim before the termination of the 20-year period set forth in section XXX.4. In such case, the mineral interest is preserved in each county in which the notice is recorded.

2. The statement of claim may be executed by an owner of the mineral interest or by another person acting on behalf of the owner, including an owner who is under a disability or unable to assert a claim on the owner's own behalf or whose identity cannot be established or is uncertain at the time of execution of the notice. The statement of claim may be executed by or on behalf of a co-owner for the benefit of any or all co-owners or by or on behalf of an owner for the benefit of any or all persons claiming under the owner or persons under whom the owner claims. The statement of claim must contain the name of the owner of the mineral interest, a description and the recording or filing information of the instrument that created the mineral interest, and the legal description of the land on or under which the mineral interest is located.

3. A reference generally and without specificity to any or all mineral interests of the owner in any real property situated in the county is not effective to preserve a particular mineral interest unless there is, in the county, in the name of the person claiming to be the owner of the interest, a previously recorded instrument that creates, reserves, or otherwise evidences that interest, or a judgment or decree that confirms that interest.

4. Upon the timely recording of a statement of claim, the mineral interest is deemed to be in use on the date the statement of claim is recorded.

XXX.7 Notice of termination of mineral interest.

Upon the termination of dormant mineral interest, a person who has succeeded or purports to have succeeded to the ownership of the terminated mineral interest or that person's agent or attorney may serve a notice of such termination on the prior owner of record of the mineral interest. The notice of termination shall set forth the facts indicating why the mineral interest is dormant and shall state that unless the prior owner or purported prior owner of the mineral interest records a statement of claim as described in XXX.5 within 30 days from the date of service of the notice

of termination, an affidavit reflecting compliance with this section may be recorded. The notice of termination may be served personally or by publication, on the same conditions, and in the same manner as is provided for the service of original notices, except that when the notice is served by publication an affidavit shall not be required before publication. In the case of service by publication, service shall be deemed complete on the day of the last publication. The recording of an affidavit reflecting compliance with this section shall be conclusive evidence of the termination of the mineral interest and the merger of the mineral interest with the surface estate as provided for in section XXX.4(1). The recording of a statement of claim within 30 days following service of the notice of termination shall not serve to preserve a mineral interest that has become dormant and a person asserting the termination of a dormant mineral interest may bring an equitable action for the adjudication that mineral interest is dormant and has been extinguished.

XXX.8 Application and limiting provision.

1. Except as otherwise provided in this section, this Chapter applies to all mineral interests, whether created before, on, or after its effective date.

2. This Chapter does not limit or affect any other procedure provided by law for clearing an abandoned mineral interest from title to real property.

Explanation

The purpose of this Act is to establish a procedure for the termination of dormant mineral interests that impair the marketability of real property. Public policy favors the termination of dormant mineral interests, and legislative intervention is necessary to do so.

A severance of a mineral interest from the surface interest occurs when all or a portion of the mineral interest is owned separately from the surface interest. This often occurs when the owner of real estate reserves all or a portion of the mineral interest in the real estate upon the transfer of the remainder of the real estate.

Dormant mineral interests in general, and severed mineral interests in particular, present difficulties when the owner of the interest is missing or unknown. Under the common law, a fee simple interest in land cannot be extinguished or abandoned by nonuse, and it is not necessary to rerecord or to maintain current property records in order to preserve an ownership interest in minerals. Thus, it is possible that the only document of record that reflects the existence of a severed mineral interest is the document that initially created the mineral interest. Subsequent mineral owners, such as the heirs of the original mineral owner, may be unconcerned about an apparently valueless mineral interest and may not even be aware of the interest and the record may not reflect or be clear as to their ownership of the mineral interest.

When mineral owners are missing or unknown, it creates problems for the surface owners who wish to develop or convey their surface estate. A mineral interest includes the right of reasonable entry on the surface for purposes of mineral extraction; and this right of entry effectively precludes development of the surface and constitutes a significant impairment of marketability.

Furthermore, the owner of a dormant mineral interest is not motivated to develop the minerals since undeveloped rights may not be taxed and may not be subject to loss through adverse

possession by surface occupancy. The greatest value of a dormant mineral interest to the mineral owner may be its effectual impairment of the surface estate, which may have hold-up value when a person seeks to assemble an unencumbered fee. Even if one owner of a dormant mineral interest is willing to relinquish the interest for a reasonable price, the surface owner may find it impossible to trace the ownership of other fractional shares in the old interest.

Under the draft bill, the surface owner may serve a notice of termination on the prior owner of record of a mineral interest that has been dormant for 20 years or more, provided (i) the record also evidences no activity involving the mineral interest during that period, (ii) the owner of the mineral interest fails to record a statement of claim to preserve the mineral interest within that period, and (iii) no taxes are paid on the mineral interest within that period. To protect the rights of a dormant mineral owner who through inadvertence fails to timely record a statement of claim, the statute enables late recording of a statement of claim within 30 days from the date of service of the notice of termination. If the dormant mineral owner fails to record a statement of claim within this time period, the surface owner may record an affidavit reflecting compliance with XXX.6, which shall be conclusive evidence of the termination of the mineral interest and the merger of the mineral interest with the surface estate as provided for in section XXX.5(1). The recording of a statement of claim within 30 days following service of the notice of termination alone shall not serve to preserve a mineral interest that has become dormant and a surface owner asserting the termination of a dormant mineral interest may bring an equitable action for the adjudication that mineral interest is dormant and has been extinguished.

The proposed Act does not apply to: (a) a mineral interest of the United States or an Indian Tribe, except as permitted by federal law; (b) a mineral interest of the State of Iowa or an agency or political subdivision of the State of Iowa, except to the extent permitted by state law other than this this Act; (c) a mineral interest in coal governed by Iowa Code Chapter 557C; (d) water rights. Public entities are excepted by this section because they have perpetual existence and can be located if it becomes necessary to terminate by negotiation a mineral interest held by the public entity. This Act does not affect mineral interests of Indian tribes, groups, or individuals to the extent that the interests are protected against divestiture by superseding federal treaties or statutes. Although this Act affects minerals dissolved or suspended in water, it is not intended to affect water law.

43. Restrictive Covenants.

FACTS:

QUESTION: Is it typical practice to include a warning/comment in a title opinion identifying Restrictive Covenants in the abstract over 21 years old and advising that those restrictions that may fall within Iowa Code Section 614.24 (5) (a)-(c) could still apply? Or, as examining attorneys, is the practice to review the restrictions and make a determination if a restriction falls within those categories?

RESPONSE(S): I still object as you detailed because a lot of the older covenants include easements and other restrictions that are not subject to the stale use restrictions.

* * * * *

We always point out the Restrictive Covenants, state they do not affect title, include a copy and state that no opinion is being rendered as to their continuing enforceability due to the lapse of 21 years, but advise them to familiarize themselves with them in the event any are still enforceable.

[See Attachment]

614.24 Reversion or use restrictions on land — preservation.

1. No action based upon any claim arising or existing by reason of the provisions of any deed or conveyance or contract or will reserving or providing for any reversion, reverted interests or use restrictions in and to the land therein described shall be maintained either at law or in equity in any court to recover real estate in this state or to recover or establish any interest therein or claim thereto, legal or equitable, against the holder of the record title to such real estate in possession after twenty-one years from the recording of such deed of conveyance or contract or after twenty-one years from the admission of said will to probate unless the claimant shall, personally, or by the claimant's attorney or agent, or if the claimant is a minor or under legal disability, by the claimant's guardian, trustee, or either parent or next friend, file a verified claim with the recorder of the county wherein said real estate is located within said twenty-one year period. In the event said deed was recorded or will was admitted to probate more than twenty years prior to July 4, 1965, then said claim may be filed on or before one year after July 4, 1965. Such claims shall set forth the nature thereof, also the time and manner in which such interest was acquired. For the purposes of this section, the claimant shall be any person or persons claiming any interest in and to said land or in and to such reversion, reverter interest or use restriction, whether the same is a present interest or an interest which would come into existence if the happening or contingency provided in said deed or will were to happen at once. Said claimant further shall include any member of a class of persons entitled to or claiming such rights or interests.

2. The provisions of this section requiring the filing of a verified claim shall not apply to the reversion of railroad property if the reversion is caused by the property being abandoned for railway purposes and the abandonment occurs after July 1, 1980. The holder of such a reversionary interest may bring an action based upon the interest regardless of whether a verified claim has been filed under this section at any time after July 4, 1965.

3. This section shall not impair the validity of an environmental covenant established pursuant to chapter 455I.

4. This section shall not extinguish, limit, or impair the validity of a document or instrument specified in section 499A.23 or 499B.21, or any property interests created by such document or instrument.

5. As used in this section, *"use restrictions"* means a limitation or prohibition on the rights of a landowner to make use of the landowner's real estate, including but not limited to limitations or prohibitions on commercial uses, rental use, parking and storage of recreational vehicles and their attachments, ownership of pets, outdoor domestic uses, construction and use of accessory structures, building dimensions and colors, building construction materials, and landscaping. As used in this section, *"use restrictions"* does not include any of the following:

a. An easement granting a person an affirmative right to use land in the possession of another person including but not limited to an easement for pedestrian or vehicular access, reasonable ingress and egress, solar access, utilities, supporting utilities, parking areas, bicycle paths, and water flow.

b. An agreement between two or more parcel owners providing for the sharing of costs and other obligations for real estate taxes, insurance premiums, and for maintenance, repair, improvements, services, or other costs related to two or more parcels of real estate regardless of whether the parties to the agreement are owners of individual lots or incorporated or unincorporated lots or have ownership interests in common areas in a horizontal property regime or residential housing development.

c. An agreement between two or more parcel owners for the joint use and maintenance of driveways, party walls, landscaping, fences, wells, roads, common areas, waterways, or bodies of water.

[C66, 71, 73, 75, 77, 79, 81, §614.24]

2005 Acts, ch 102, §18; 2007 Acts, ch 22, §103; 2014 Acts, ch 1067, §1; 2014 Acts, ch 1095, §5, 6

Referred to in §229.27, 327G.77, 455I.9, 457A.2, 499A.23, 499B.21, 614.26, 614.27, 614.28

44. Right of First Refusal (and Second)?

FACTS: I have a client selling Parcel A. Client is retaining adjacent parcel B. Buyer of Parcel A wants a right of first refusal if client ever sells parcel B. Client wants to give family member the right of first refusal and Buyer of Parcel A, right of second refusal (or maybe it is still first) if family member does not buy. I can't find anything prohibiting this course of action in my research. I have drafted right of first refusal agreements before, and I have done something similar in a will with multiple parties given a right prior to sale to public, but not as a separate agreement.

QUESTION: If possible, do you do one agreement and have all parties sign? Pitfalls to watch out for?

RESPONSE(S): First of all - I hate and never do Right of First Refusal. As usually drafted the seller gets an offer from Prospective Buyer. The Holder of Right of First Refusal (HRFR) then gets to match it.
Prospective Buyer being smart realizes that he is being used as a pissing post. (That is a valid legal term). He has several reactions. He purposely submits a low offer to trigger the Right of First Refusal. He, being another neighbor, vows to make Owner's life hell for 3 generations. Because he was pissed off for being used as a pissing post.
Rather give Family Member a one shot option to purchase. Have language on how price is established. Make another option with HRFR only now it is option not Right of First Refusal. With him make it totally conditioned on Family Member not exercising the option. Charge HRFR a fee for the option. If Family Member does not buy, HRFR has one shot to buy. If he buys his fee is applied to purchase price. If he does not buy, Owner pockets the fee. HRFR has one shot only.

45. Service of Process on Discover Bank.

FACTS: I have a foreclosure in which Discover Bank is named as a party due to a judgment lien. It is not listed with the Secretary of State and on its website it lists CT Corporation System, but CT Corporation System has advised me that it is not the registered agent.

QUESTION: Does anyone have an address where I can serve Discover Bank?

RESPONSE(S): Discover Bank is chartered in Delaware. According to this list from the Delaware Office of the State Banking Commissioner its main address is 502 East Market Street, Greenwood, DE 19950, its mailing address is P.O. Box C, Greenwood, DE 19950, and its president, James J. Roszkowski, can be reached at (302) 349-4512 (practically speaking I'm sure the president's receptionist could direct you to the bank's general counsel with whom you could coordinate service).

* * * * *

I was searching several places and went to the Delaware Secretary of State's website and found the registered agent is The Corporation Trust Company in Wilmington.

* * * * *

For a foreclosure you can serve a judgment creditor by certified mail. We always serve Discover Bank by certified mail at:

P.O. Box 15083
Wilmington, DE 19850

That was the service address we were given to use by Discover Bank directly, because we were having dozens of files being returned as unable to complete service.

[See Attachment]

State of Delaware
OFFICE OF THE STATE BANK COMMISSIONER

DELAWARE FINANCIAL INSTITUTIONS

As Of March 17, 2023

State Chartered Banks

Applied Bank
2200 Concord Pike
Suite 102
Wilmington, DE 19803

Mr. Rocco Abessinio
Chairman of the Board & CEO
Telephone: 1-302-326-4200

Bank of Delmarva, The
910 Norman Eskridge Highway
Seaford, DE 19973

Mr. Jeffrey F. Turner
Chairman of the Board
Telephone: 1-410-548-7892
1-800-787-4542

Barclays Bank Delaware
125 S West Street
Wilmington, DE 19801

Mr. Peter Bernard
Chairman of the Board
Telephone: 1-302-255-8000
1-877-200-7625

BNY Mellon Trust of Delaware
301 Bellevue Parkway
3rd Floor
Wilmington, DE 19809

Ms. Elizabeth M. Luk
Chairman of the Board
Telephone: 1-302-791-3600

Comenity Bank
Delaware Corporate Center I
One Righter Parkway, Suite 100
Wilmington, DE 19803

Mr. Baron Schlachter
Chairman of the Board
Telephone: 1-302-529-6140

Community Bank Delaware
16982 Kings Highway
Lewes, DE 19958

Mr. Alexander J. Pires, Jr.
Chairman of the Board & CEO
Telephone: 1-302-226-3333

Mailing Address:
P.O. Box 742
Lewes, DE 19958

County Bank
19927 Shuttle Road
Rehoboth Beach, DE 19971

Mr. David E. Gillan
Chairman of the Board & CEO
Telephone: 1-302-226-9800

Deutsche Bank Trust Company Delaware
111 Continental Drive
Suite 102
Newark, DE 19713

Alice Neumann
Chairman of The Board
Telephone: 1-302-636-3301

DELAWARE FINANCIAL INSTITUTIONS

As Of March 17, 2023

State Chartered Banks

Discover Bank
502 East Market Street
Greenwood, DE 19950

Mailing Address:
P.O. Box C
Greenwood, DE 19950

Mr. James J. Roszkowski
President
Telephone: 1-302-349-4512

Count = **9**

State Savings Banks

Artisans' Bank
Red Clay Center at Little Falls
2961 Centerville Road
Wilmington, DE 19808

Ms. Elizabeth D. Albano
President & Chief Executive Officer
Telephone: 1-302-658-6881
1-800-282-8255

Count = **1**

Resulting Branches

Bank of America, National Association
100 North Tryon Street
Charlotte, NC 28202

Cathy Bessant
Vice - Chair
Telephone: 1-800-432-1000

Bank of Ocean City
10005 Golf Course Road
Ocean City, MD 21842

Mr. Hugh Cropper, IV.
Chairman of the Board
Telephone: 1-410-213-0173

Calvin B. Taylor Banking Company of Berlin
24 North Main Street
Berlin, MD 21811

Mailing Address:
P.O. Box 5
Berlin, MD 21811-0005

Mr. Thomas K. Coates
Director
Telephone: 1-410-641-1700

Citizens Bank, N.A.
One Citizens Plaza
Providence, RI 02903

Mr. Bruce Van Saun
Chairman of the Board/Pres/CEO/COO
Telephone: 1-401-282-7000

Farmers Bank of Willards, The
7484 Market Street
Willards, MD 21874

Ms. Lois A. Sirman
Chairman of the Board
Telephone: 1-410-835-8404

First Citizens Community Bank
15 South Main Street
Mansfield, PA 16933

Mr. Randall E. Black
President
Telephone: 1-570-662-2121

DELAWARE FINANCIAL INSTITUTIONS

As Of March 17, 2023

Resulting Branches

FSNB, National Association
1420 West Lee Boulevard
Lawton, OK 73501

Mr. John R. Davis
Chiarman of the Board/President/CEO
Telephone: 1-580-357-9880
1-800-749-4583

Mailing Address:
P.O. Box 33009
Fort Sill, OK 73503

Fulton Bank, N.A.
One Penn Square
Lancaster, PA 17602

Mr. Phil Wenger
Chairman of the Board & CEO
Telephone: 1-717-581-3000
1-800-752-9580

Mailing Address:
P.O. Box 520
Georgetown, DE 19947

JPMorgan Chase Bank, National Association
1111 Polaris Parkway
Columbus, OH 43240

Mr. Stephen B. Burke
Chairman of the Board
Telephone: 1-800-935-9935

Manufacturers and Traders Trust Company
One M&T Plaza
Buffalo, NY 14203

Mr. René F. Jones
Chairman of the Board & CEO
Telephone: 1-716-842-5445

Provident State Bank
312 Main Street
P.O. Box 219
Preston, MD 21655

Mr. David H. Wilson, Sr
Chairman of the Board
Telephone: 1-410-673-2401

Shore United Bank, N.A.
18 East Dover Street
Easton, MD 21601

Mr. Alan J. Hyatt
Chairman of the Board
Telephone: 1-410-822-1400
1-877-758-1600

Mailing Address:
P.O. Box 949
Easton, MD 21601

Wells Fargo Bank, National Association
101 North Phillips Avenue
Sioux Falls, SD 57104

Mr. Mark A. Chancy
Chairman of the Board
Telephone: 1-605-575-6900

Mailing Address:
90 South Seventh Street, 17th Floor
MAC # N9305-174
Minneapolis, MN 55402

Count = **13**

National Banks

DELAWARE FINANCIAL INSTITUTIONS

As Of March 17, 2023

National Banks

HSBC Trust Company (Delaware), N.A.
300 Delaware Avenue
Suite 1401
Wilmington, DE 19801

Linda Elfenbein
Telephone: 1-302-657-8400

PNC Bank, National Association
PNC Bank Center
222 Delaware Avenue
Wilmington, DE 19801

Mr. William S. Demchak
Chairman/President/CEO
Telephone: 1-412-762-2000
1-800-722-1172

Mailing Address:
249 Fifth Avenue
Pittsburgh, PA 15222-2707

Santander Bank, National Association
824 North Market Street
Wilmington, DE 19801

Mr. T. Timothy Ryan, Jr.
Chairman of the Board
Telephone: 1-302-654-5182
1-877-768-2265

TD Bank USA, National Association
2035 Limestone Road
Wilmington, DE 19808

Mr. Mark Chauvin
Chairman of the Board
Telephone: 1-207-761-8558

Mailing Address:
P.O. Box 9540
Portland, ME 04112

TD Bank, N.A.
2035 Limestone Road
Wilmington, DE 19808

Mr. Mark Chauvin
Chairman of the Board
Telephone: 1-302-351-4560

Mailing Address:
P.O. Box 9540
Legal Department
Portland, ME 04112

Wilmington Trust, National Association
Rodney Square North
1100 North Market Street
Wilmington, DE 19890

Ms. Doris P. Meister
Director
Telephone: 1-716-842-5445
1-800-814-8386

Count = **6**

Foreign Bank Representative Office

DELAWARE FINANCIAL INSTITUTIONS

As Of March 17, 2023

Foreign Bank Representative Office

Royal Bank of Canada
200 Bay Street
Toronto, ON M5J 2J5

Mr. David I. McKay
President & Chief Executive Officer
Telephone: 1-302-892-5901
1-416-955-7800

Mailing Address:
P.O. Box 1
Toronto, ON M5J 2J5

— Little Falls Centre II
2751 Centreville Road, Suite 212
Wilmington, DE 19808

Count = **1**

National Non-Deposit Trust Companies

ADP Trust Company, N.A.
800 Delaware Avenue
Suite 602
Wilmington, DE 19801

Mr. Michael Bonarti
Chairman of the Board
Telephone: 1-302-657-2164

Bessemer Trust Company of Delaware, N.A.
20 Montchanin Road
Suite 1500
Wilmington, DE 19807

Mr. Stuart S. Janney, III
Chairman of the Board
Telephone: 1-302-230-2675

Brown Brothers Harriman Trust Company of Delaware, N.A.
1013 Centre Road
Suite 101
Wilmington, DE 19805

Mr. Daniel Arciola
Director
Telephone: 1-302-552-4040

Citicorp Trust Delaware, National Association
20 Montchanin Road
Suite 180
Greenville, DE 19807

Mr. Manoj Gopalakrishnan
Chairman of the Board
Telephone: 1-302-298-3694

Evercore Trust Company, N.A.
300 Delaware Avenue
Suite 1225
Wilmington, DE 19801
Mailing Address:
55 East 52nd Street
23rd Floor
New York, NY 10055

Mr. Jeffrey S. Maurer
Chairman and Chief Executive Officer
Telephone: 1-302-304-7361

Goldman Sachs Trust Company, N.A., The
200 Bellevue Parkway
Suite 250
Wilmington, DE 19809

Ms. Stacy K. Mullaney
Chairman of the Board
Telephone: 1-302-793-3282

DELAWARE FINANCIAL INSTITUTIONS

As Of March 17, 2023

National Non-Deposit Trust Companies

Key National Trust Company of Delaware
1105 North Market Street
Suite 500
Wilmington, DE 19801

Mr. Burton Hotz
Chairman of the Board
Telephone: 1-302-574-4702

Neuberger Berman Trust Company of Delaware N.A.
919 North Market Street
Suite 506
Wilmington, DE 19801

Mr. Samuel V. Petrucci
Chairman of the Board
Telephone: 1-302-830-4340

Stifel Trust Company Delaware, National Association
100 South West Street
Wilmington, DE 19801

Mr. Chris Reichert
Chairman of the Board
Telephone: 1-302-351-8900
1-844-735-9472

U.S. Bank Trust National Association
1011 Centre Road
Suite 203
Wilmington, DE 19805
Mailing Address:
800 Nicollet Mall
Minneapolis, MN 55402

Ms. Sally A. Mullen
Chairman of the Board
Telephone: 1-302-576-3703

Wells Fargo Delaware Trust Company, N.A.
505 Carr Road
Suite 200
Wilmington, DE 19809-2870

Mr. Joseph F. Ready
Chairman of the Board
Telephone: 1-302-575-2002

Count = **11**

State Non-Deposit Trust Companies

Brandywine Trust Company, LLC
7234 Lancaster Pike
Suite 300
Hockessin, DE 19707

Mr. Richard E. Carlson
President/CEO/Secretary
Telephone: 1-302-234-5750

Commonwealth Trust Company
29 Bancroft Mills Road
Wilmington, DE 19806

Ms. Caroline H. Dickerson
Chairman of the Board
Telephone: 1-302-658-7214

Delaware Charter Guarantee & Trust Company
1013 Centre Road
3rd Floor
Wilmington, DE 19805

Mr. Mike Gaul
Chairman of the Board & CEO
Telephone: 1-302-995-2131
1-800-209-9010

Delaware Trust Company
251 Little Falls Drive
Wilmington, DE 19808

Mr. William G. Popeo
Chairman of the Board/President/CEO
Telephone: 1-302-636-5404x68763
1-877-374-6010

DELAWARE FINANCIAL INSTITUTIONS

As Of March 17, 2023

State Non-Deposit Trust Companies

J.P. Morgan Trust Company of Delaware
500 Stanton Christiana Road
NCC2
Newark, DE 19713-2107

Mr. Wilson J.C. Braun, Jr.
Chairman of the Board/President/CEO
Telephone: 1-302-634-2197

JTC Trust Company (Delaware) Limited
200 Bellevue Parkway
Suite 500
Wilmington, DE 19809

Timothy B. Carroll
Chairman of the Board
Telephone: 1-302-798-2160

RBC Trust Company (Delaware) Limited
4550 Linden Hill Road
Suite 200/202
Wilmington, DE 19808

Alma Banuelos
National Head of Trust and Estate Services - C
Telephone: 1-302-892-6900
1-800-441-7698

Wilmington Trust Company
Rodney Square North
1100 North Market Street
Wilmington, DE 19890-0001

Ms. Doris P. Meister
Chairman of the Board
Telephone: 1-716-842-5445
1-800-814-8386

Count = **8**

State Limited Purpose Trust Companies

Arden Trust Company
2751 Centerville Road
Suite 400
Wilmington, DE 19808

Mr. James Poer
Chairman of the Board
Telephone: 1-302-246-5400
1-888-803-7466

BMO Delaware Trust Company
20 Montchanin Road
Suite 240
Greenville, DE 19807

Ms. Shannon Kennedy
Chairman of the Board
Telephone: 1-302-652-1660

BNY Mellon Investment Servicing Trust Company
301 Bellevue Parkway
Wilmington, DE 19809

Ms. Alexandra Waite Goodburn
Chairman of the Board
Telephone: 1-302-791-2000
1-800-441-9800

Brown Advisory Trust Company of Delaware, LLC
5701 Kennett Pike
Suite 100
Centreville, DE 19807

Mr. Michael D. Hankin
Chairman of the Board & President
Telephone: 1-302-351-7600
1-800-645-3923

Bryn Mawr Trust Company of Delaware, The
20 Montchanin Road
Suite 100
Greenville, DE 19807

Mr. Robert W. Eaddy
President & Treasurer & Director
Telephone: 1-302-798-1792

DELAWARE FINANCIAL INSTITUTIONS

As Of March 17, 2023

State Limited Purpose Trust Companies

Charles Schwab Trust Company of Delaware
4250 Lancaster Pike
Suite 100
Wilmington, DE 19805
Mailing Address:
2360 Corporate Circle
Suite 400
Henderson, NV 89074

Mr. Paul V. Woolway
Chairman of the Board
Telephone: 1-302-622-8301

CIBC Delaware Trust Company
One Righter Parkway
Suite 180
Wilmington, DE 19803

Mr. John S. Markwalter, Jr.
Chairman of the Board & CEO
Telephone: 1-302-478-4050

Computershare Delaware Trust Company
919 North Market Street
Suite 1600
Wilmington, DE 19801

Mr. Frank Madonna
Chairman of the Board & President
Telephone: 1-302-502-8006

Depository Trust Company of Delaware, LLC
3601 North Market Street
Wilmington, DE 19802

Mr. Jonathon E. Potts
Chairman of the Board/CEO
Telephone: 1-302-765-3889

Eleutherian Trust Company, LLC
1105 North Market Street
Suite 900
Wilmington, DE 19801

Mr. Eli R. Sharp
Chairman of the Board
Telephone: 1-302-294-0820

Fiduciary Trust International of Delaware
4250 Lancaster Pike
Suite 210
Wilmington, DE 19805

Leslie Bohner
President
Telephone: 1-302-654-4651

First Republic Trust Company of Delaware LLC
1201 North Market Street
Suite 1002
Wilmington, DE 19801

Ms. Kelly E. Johnston
President
Telephone: 1-302-888-2988

First State Trust Company
Delaware Corporate Center I
One Righter Parkway - Suite 120
Wilmington, DE 19803

Mr. Subir Chatterjee
Chairman of the Board
Telephone: 1-302-573-5816
1-800-554-1364

Glenmede Trust Company of Delaware, The
20 Montchanin Rd
Suite 2000
Wilmington, DE 19801

Ms. Linda R. Manfredonia
President and Chief Executive Officer
Telephone: 1-302-661-2900

Goldman Sachs Trust Company of Delaware, The
200 Bellevue Parkway
Suite 250
Wilmington, DE 19809

Ms. Kelly A. Johnson
Chairman of the Board & President
Telephone: 1-302-830-1857

DELAWARE FINANCIAL INSTITUTIONS

As Of March 17, 2023

State Limited Purpose Trust Companies

Greenleaf Trust Delaware
4001 Kennett Pike
Suite 226
Greenville, DE 19807-2029

William D. Johnston
Chairman of The Board
Telephone: 1-302-317-2163

LeFrak Trust Company, The
1105 North Market Street
Suite 801
Wilmington, DE 19801

Mr. Harrison T. LeFrak
President
Telephone: 1-302-656-2390

Northern Trust Company of Delaware, The
1313 North Market Street
Suite 5300
Wilmington, DE 19801

Mr. David A. Diamond
Chairman of the Board & President
Telephone: 1-302-428-8700

Oppenheimer Trust Company of Delaware
3411 Silverside Road
Tatnall Building Suite 105
Wilmington, DE 19810

Mr. Albert G. Lowenthal
Chairman of the Board
Telephone: 1-302-792-3500

Parkwood Trust Company
919 North Market Street
Suite 429
Wilmington, DE 19801

Mr. Bradley S. Smith
President
Telephone: 1-302-426-1220

PGB Trust & Investments of Delaware
Montchanin Corporate Center
20 Montchanin Road, Suite 201
Greenville, DE 19807

Mr. Daniel J. Leary, III
President
Telephone: 1-302-255-1506

PIM Trust Company
200 Bellevue Parkway
Suite 150
Wilmington, DE 19809

Mr. Howard P. Milstein
Chairman of the Board/President/CEO
Telephone: 1-302-798-2160

PNC Delaware Trust Company
222 Delaware Avenue
Suite 1520
Wilmington, DE 19801

Gregory E. Miraglia
Telephone: 1-855-852-0158

Rockefeller Trust Company (Delaware), The
3711 Kennett Pike
Suite 220
Wilmington, DE 19807

S. Thomas Davidson
President
Telephone: 1-302-498-6000

Rodney Trust Company
100 Commerce Drive
Suite 305
Newark, DE 19713

Mr. Louis B. Thalheimer
Chairman of the Board & CEO
Telephone: 1-302-737-1205
1-866-213-1008

DELAWARE FINANCIAL INSTITUTIONS

As Of March 17, 2023

State Limited Purpose Trust Companies

Tiedemann Trust Company
200 Bellevue Parkway
Suite 525
Wilmington, DE 19809

Mr. Stephen Aucamp
President
Telephone: 1-302-656-5644

Truist Delaware Trust Company
1011 Centre Road
Suite 108
Wilmington, DE 19805

Mr. Steven L. Tinkler
President and Chairman
Telephone: 1-302-892-9943

U.S. Trust Company of Delaware
2951 Centerville Road
Wilmington, DE 19808

Mr. Thomas M. Forrest
Chairman/President/CEO
Telephone: 1-302-434-6400
1-800-878-7878

UMB Delaware Inc.
405 Silverside Road
Suite 101
Wilmington, DE 19809

Mark Flannagan
Telephone: 1-816-860-4574

Count = **29**

Out of State Federal Savings Banks with DE Branches

First Shore Federal Savings & Loan Association
106 South Division Street
Salisbury, MD 21801

Ms. Catherine A. M. Tyson
Chairman of the Board
Telephone: 1-410-546-1101
1-800-634-6309

Count = **1**

Federal Savings Banks

AIG Federal Savings Bank
503 Carr Road
Suite 130
Wilmington, DE 19809

Mr. John T. Genoy
Chairman of the Board
Telephone: 1-302-765-1889

Wilmington Savings Fund Society, FSB
500 Delaware Avenue
Wilmington, DE 19801

Mr. Rodger Levenson
President
Telephone: 1-302-792-6000
1-888-973-7226

Count = **2**

State Building and Loan Associations

DELAWARE FINANCIAL INSTITUTIONS

As Of March 17, 2023

State Building and Loan Associations

Arden Building and Loan Association
2117 The Highway
Arden, DE 19810

Ms. Joan M. Fitzgerald
President
Telephone: 1-302-299-3851

Bridgeville Building & Loan Association
102 Market Street
Bridgeville, DE 19933

Mailing Address:
P.O. Box 315
Bridgeville, DE 19933

Mr. Howard E. Hardesty, II.
Chairman of the Board & President
Telephone: 1-302-337-8008

Count = **2**

Count All Filings Listed = 83

End of Report

46. Solar Lease Company: BFA Energy.

FACTS: I am working with my clients regarding a proposed solar lease they received from BFA Energy.

QUESTION: Just seeing if anyone has had experience with them (good or bad), etc.

RESPONSE(S):

47. US Attorney – Southern District Handling Real Estate Matters.

FACTS:

QUESTION: Does anybody know who is handling real estate matters for the US Attorney's office for the Southern District of Iowa now?

RESPONSE(S): On my foreclosures, I'm usually working with Rachel Scherle or Jason Lawrence.

48. Federal National Mortgage Association (Fannie Mae).

FACTS:

QUESTION: Can anyone direct me to the appropriate legal procedure for serving legal process upon Federal National Mortgage Association (Fannie Mae)?

RESPONSE(S): A process server calling itself "Cavalier" states:
We serve process on Fannie Mae (cavaliercps.com)

Notice must be served at FNMA's address in DC.
(FNMA itself won't provide this information on Web.)

COMPANY NAME
Federal National Mortgage Association
ADDRESS
1100 15th Street, NW Washington DC 20005

Cavalier regularly serves process on The Federal National Mortgage Association, also known as FNMA or Fannie Mae. Fannie Mae receives service of process at its address in Washington, DC.

49. Follow Up Scenario to No Redemption After Sheriff's Sale Discussion.

FACTS: There are properties that sell at Sheriff's Sales that are sold subject to redemption.
For instance, in a scenario where the USA has a right to redeem for 120 days. The below example is a current listing on the Polk County Sheriff's Sale website. In addition to the USA, cannot the mortgagor also redeem the property during this redemption period. No Sheriff's Deed has been issued; only a Certificate of Purchase that the Buyer can surrender at the end of the redemption period to receive the Sheriff's Deed.

Sheriff Number	23028459
Approximate Judgment	$185,301.77
Court Case Number	EQCE088733
Sales Date	11/14/2023 **Delayed**
Plaintiff	NATIONSTAR MORTGAGE, LLC
Defendant	ANTON BENETTI; UNKNOWN SPOUSE OF ANTON BENETTI; PEERLESS PRODUCTS, INC.; MANKO WINDOW SYSTEMS, INC.; STATE OF IOWA; CONTROL INSTALLATIONS OF IOWA, INC. D.B.A.; UNITED SATES OF AMERICA; and PARTIES IN POSSESSION,
Address	6702 College Avenue, Windsor Heights, IA, USA
Attorney	JOHNSON BLUMBERG & ASSOCIATES LLC
Attorney Phone	(312) 541-9710
Redemption Period	120 DAYS

QUESTION:

RESPONSE(S):

50. Joint Tenant Not Signing Mortgage.

FACTS: Titleholders took title as joint tenants (no mention as to marital status). One of the joint titleholders, as a single person, signs a purchase money mortgage. The other joint titleholder does not sign.

QUESTION: Is the mortgage valid? What happens to the mortgage if the one who signed dies?

RESPONSE(S): 1. The mortgage is valid. Its encumbrance is good against the half interest of the signer.
See
**State Central Sav. Bank v. Calvert*, 219 Iowa 539, 258 N.W. 713 (1935)(one joint venturer mortgaged the venture property without the other's knowledge; mortgagor joint venturer subsequently died; but joint venturers broke their joint tenancy by both signing a contract to sell the land)
**Frans v. Young*, 24 Iowa 375 (1868):
"One joint owner cannot, as such and by virtue of that relation merely, sell or mortgage or pledge the interest of the other joint owner. The purchaser, mortgagee or pledgee, though ignorant of the existence of another part owner, acquires no right to that other owner's interest in the chattel. This is upon the familiar principle in the law of personal property, that the seller can confer no greater title than he possesses.
"So, on the other hand, one joint owner can, at his pleasure and without the consent of the other, sell, mortgage or pledge his own interest in the chattel. If he sells, the purchaser takes his place and becomes a joint tenant with the other owner. So does the mortgagee, when his title becomes perfected. And the pledgee's rights are valid to the extent of the pledgor's interest in the thing pledged."
Cited in *Martin v. Fritz*, 194 Iowa 740, 190 N.W. 514 (1922).

2. If encumbrancer dies and survivor takes his interest, then the lien goes poof.
Most commonly cited case in support:
People v. Nogarr, 164 Cal.App.2d 591, 330 P.2d 858, 67 A.L.R.2d 999 (1958).

20 Am. Jur. 2d Cotenancy and Joint Ownership § 106 (2023):
Because of the nature of a joint tenancy with right of survivorship,[3] a mortgage upon realty executed by one of two joint tenants without the knowledge or consent of the other is only a lien or charge on such joint tenant's interest and comes to an end upon his or her death; therefore, the cause of action on such mortgage does not survive death.[4]

FN3: as to "nature of a joint tenancy",
see *Brown v. VonNahme*, 343 N.W.2d 445 (Iowa 1984):

"We have described the estate of joint tenancy as:
An estate held by two or more persons jointly with equal rights to share in its enjoyment during their lives and having as its distinguishing feature the right of survivorship.
In re Estate of Winkler, 232 Iowa 930, 933, 5 N.W.2d 153, 155 (1942). Thus, a joint tenant owns an undivided interest in the entire estate to which is attached the right of survivorship."
FN4 cites *Nogarr*.

I thought an Iowa case existed that confirms the FN4 point.
But can't now locate it.

On the other hand--if non-encumbrancer dies and encumbrancer succeeds to his interest, then the lien attaches to the entire property in first position.

* * * * *

I agree with the writer, with one qualification. You indicate that there was no indication that the grantees were married to each other. If they were married and the property was homestead, the conveyance by the one would be ineffective as against the other; see Iowa Code Sec. 561.13. I suggest you demand an affidavit or other proof that the grantees were in fact not married to each other, or if they were married, that the property was not their homestead.

* * * * *

As always, I'm ready to be wrong ... but I thought the purchase money nature of the mortgage beats the homestead interest? I know the case from a few years ago involved a non-signing spouse who was not in title, but would not the logic and holding of the case still apply so the mortgage would attach to the half interest, even if the titleholders were married and this was to be their homestead?

* * * * *

Just a quick comment. Homestead cannot be split. Read Baratta – Wife #2's homestead protected the property against a judgment against only Husband from attaching as a lien.

Now your comment about purchase money mortgage – I'll leave that for someone else to respond to.

* * * * *

Apologies – was not implying the homestead could be split. Was stating if the Court applied Iowa Code Section 654.12B, it was possible the Court could deem

the grant in the purchase money mortgage attached to the half interest of A prior to person B acquiring homestead protection. Because the Court has ruled B's homestead loses if B is not in title, one can at least make the same argument B's homestead loses if B is in title. In theory, the homestead protection would occur at the same instance whether B is in or not in title. At least, that is an argument one can make.

I think the analysis under 654.12B potentially changes, as B is a grantee in the deed and B's interest can be argued to not arise through A's. However, just pointing out there seems to at least be an argument against homestead automatically being declared the winner.

* * * * *

I'm hesitant to contradict such an expert as the previous writer, but I don't think there's a need to get an affidavit of non-marriage or non-homestead. While § 561.13(1) generally invalidates mortgages encumbering homesteads that aren't signed by both spouses, § 561.13(3)(b) says that § 561.13(1) does *not* invalidate purchase money mortgages (as defined in § 654.12B). If the mortgage is truly a purchase money mortgage then I agree that the mortgage encumbers the signing joint tenant's interest in the real estate, even if the joint tenants were married and the real estate was their homestead.

51. Mortgage Consideration.

FACTS: Is a Deed of Trust or Mortgage required to set forth the consideration. I found a comment in the Westlaw Iowa Practice Series that stated "the actual consideration must be stated in a mortgage" but it cites no authority and I can't find anything in the code.

QUESTION: If the document doesn't utilize Iowa Code Section 654.12A to limit the credit amount is the net effect that not listing the consideration amount puts you behind any subsequently filed mortgages?

RESPONSE(S):

52. No Merger/Assignment of Mortgage.

FACTS: Reviewing an abstract where a mortgage was given to Bank A in July of 2003. In 2013 there is an assignment of Mortgage from Bank B ("Successor by Merger" to Bank A), TO Bank C in March of 2013. There is no showing of the merger of Bank A to Bank B. Strangely, there was also another mortgage given to Bank A in 2004 and there is an assignment of such mortgage from Bank A to Bank B in 2007 in the abstract. Neither Bank A nor B are in operation any more. I am personally aware that Bank B bought at least a portion of Bank A. We have contacted the abstract company and they do not have any merger filings of record for Bank A and B which makes sense since the 2004 mortgage was assigned to Bank B in a recording.

QUESTION: The mortgage was released in 2014 by Bank C. Is the fact that the assignment was done over 10 years ago sufficient to pass title, even though the mortgage release has not been filed for over 10 years?

RESPONSE(S): Check with the Recorder about any marginal notes he may have made in his index, in 2013 re A to B.
If a marginal note is present then Iowa Code Section 589.10 does your work for you.

589.10 Marginal assignment of mortgage or lien.
If an assignment of a mortgage or other recorded lien on real estate has been executed more than ten years earlier, by written assignment on the margin of the record where the mortgage or other lien is recorded or entered, the assignment passed all the right, title, and interest in the real estate, which the assignor at the time had, with like force and effect as if the assignment had been made by separate instrument duly acknowledged and recorded; and an assignment or a duly authenticated copy of an assignment when accompanied by a duly authenticated copy of the record of the instrument or lien it purports to assign, is admissible in evidence as provided by law for the admission of the records of deeds and mortgages.

Then we have Iowa Code Section 614.21's statute of limitation:

614.21 Foreclosure of ancient mortgages.
1. An action to foreclose or enforce any real estate mortgage...after twenty years from the date thereof [July 2023], as shown by the record of such instrument, shall be barred, unless either of the following:
a. The record of such instrument shows that less than ten years have elapsed since the date of maturity of the indebtedness or part thereof, secured thereby, since the right of action has accrued.

Not sure the exception a applies. The item less than ten years old is a *release*. I don't see date of release = "date of maturity".
"A release is defined as "[t]he relinquishment, concession, or giving up of a right, claim, or privilege, by the person in whom it exists or to whom it accrues, to the person against whom it might have been demanded or enforced." *Korsmo v. Waverly Ski Club*, 435 N.W.2d 746, 748 (Iowa Ct.App.1988) (citing Black's Law Dictionary 1453 (4th ed.1968)). A release is a contract. *Stetzel v. Dickenson*, 174 N.W.2d 438, 439 (Iowa 1970) ("A release is a contract, and its validity is governed by the usual rules relating to contract.").

Conversely,
"maturity of debt" can be defined as date a debt accrued so as to be due and payable.
"Maturity. The date at which an obligation, such as the principal of a bond or a note, becomes due." Black's Law Dictionary 883 (5th Ed.)

Title Standard 1.1: no reasonable prospect of litigation, say I.
What Bank will bring a foreclosure action on an old mortgage when the defendant can waive a release of said mortgage issued nine years prior (by an entity which the Bank knows probably had interest in the debt)?

53. Release of Mortgage.

FACTS:

Mortgage from Homeowner to Family Member A, in April 1997, with a maturity date of 2027.

Mortgage from Homeowner to Family Member A, in December 1997, with same maturity date of 1st mortgage. Mortgages have slightly different principal amounts.

Notation on December 1997 references April mortgage and states "This Mortgage is given to refinance the original obligation secured on this property" and then references April 1997 mortgage by Book and Page.

Release is filed in 1999 which references only December 1997 mortgage and is signed by Executor of the Estate of Family Member A.
No estate administration is shown in the abstract. Executor is now deceased.

Title Standard 4.7 states "when a mortgage is followed by another which can be determined by the record to have been given to correct, to modify, or to be a rerecording of the former mortgage, is marketability impaired by a failure to discharge one of the mortgages if the other0 is discharged of record?" Standard: No.

QUESTION: Is the notation on the December 1997 mortgage sufficient?

RESPONSE(S):

54. Execution of Deed in Foreign Country – Notary?

FACTS: I have a Grantor who lives in the Netherlands and will be unable to travel back to the US for quite some time.

QUESTION: Can someone please educate me on the protocols for getting a real estate conveyance signed and acknowledged overseas? I am thinking there must be some way to do this at an American consulate.

RESPONSE(S): Remote online notary would be the easiest manner. We have used this for sellers in Spain and of course across the United States.

* * * * *

We generally ask clients to find a notary, and the consulate generally works well. We have used remote online but some users of the document may not accept RON.
If it's critical, time dependent, and wet notary is needed, we've sent someone on a plane on a quick trip.

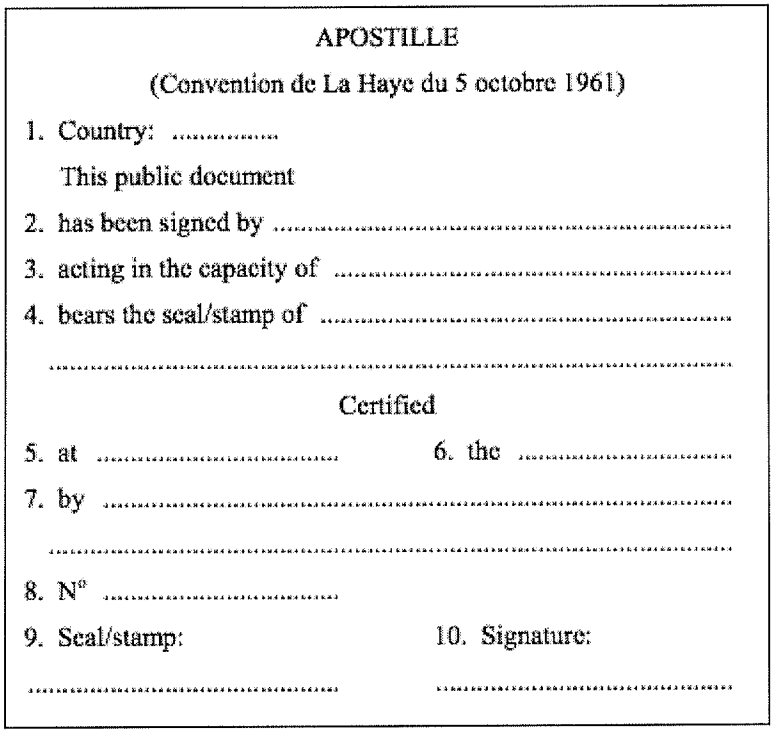
55. Notary in Mexico.

FACTS: I have a deed for a house in Iowa that needs to be signed by someone in Mexico. I presume Mexico has a Notary of some type.

QUESTION: Anyone have experience in this process, including what the jurat would look like?

RESPONSE(S): Mexico is part of the Hague Convention so they can go to a competent authority, but will also need to get an apostille completed. Here's a list of competent
authorities: https://www.hcch.net/en/states/authorities/details3/?aid=333

This is what an apostille looks like:



APOSTILLE

(Convention de La Haye du 5 octobre 1961)

1. Country: .....

This public document

2. has been signed by .....

3. acting in the capacity of .....

4. bears the seal/stamp of .....

.....

Certified

5. at ..... 6. the .....

7. by .....

.....

8. N° .....

9. Seal/stamp: 10. Signature:

....

56. 1990 Deed w/o JTWRS Language.

FACTS: H and W took title to their home in 1990 pursuant to a Quit Claim Deed. The QCD identifies the grantees as "[H name] and [W name], husband wife", with no additional language regarding joint tenancy or rights of survivorship.

H passed away in 2022. His estate has not yet been administered, and if not for this issue, would not otherwise need to be administered.

My understanding is that Iowa Code Section 557.15 addresses this issue, but that it is only effective for instruments on or after January 1, 2015, and that prior to that date, the JTWRS language was needed.

The surviving spouse does not have an immediate need to sell the home.

QUESTION: Therefore, other than administering the decedent's estate or having the surviving spouse (or the surviving spouse's eventual estate) file a quiet title action later on, are there any additional remedies (or issues) I am overlooking?

RESPONSE(S): If there is no definitive reason to sell and the spouse did not have a will bequeathing it to someone else, you can simply wait 5 years. I have an affidavit to be recorded now which also effectively removes the spouse name from the courthouse records for the interim and it effectuates the transfer at the end of the 5 years without anything needing to be filed at that time.

* * * * *

Wait to see if she lives 5 years after H's death, then file the appropriate affidavit for the property title transfer.

A bit risky if her age or health do not provide a good life expectancy cushion. She cannot sell or mortgage during that 5 year period.

Watch out if the H & W have "yours and/or mine" children. May not work the way you expect in that case.

* * * * *

I have waited the 5 years, too. But am curious as to the one writer's affidavit. And, what if the spouse dies before the 5 years is up?

* * * * *

You do not pass "GO" and you do not collect $200.

You do start counting to 5 all over again.

* * * * *

It's easier to just probate the one-half interest and be done with it.

* * * * *

I've tried the 5 year wait it out scenario; failed 2 out of the 3 times it was tried, and estates had to be opened in those two instances.

* * * * *

I have only waited the 5 years once and succeeded. Amazing that the tickler system even worked to remind me.

* * * * *

It's my understanding that title passes at death. The five years is for claims. Nothing to lose by filing the Affidavit before the five years expires. Or sign it now and wait five years and a day to file it.

* * * * *

I don't believe we've been told as to whether we have an intestate (Title Standard 9.8) situation, or testate (Title Standard 9.16), situation; but in either case I believe the needed affidavit begins with "the decedent died, (intestate or testate), more than five years ago; and then continues by describing what has happened as regards estate administration, whether intestate, or testate, during the five years post death. Whereas those five years have not yet elapsed, one can't say decedent died more than five years ago, and I'm not sure how administration, or the lack there of will be explained by an affidavit filed prior to the time five years have elapsed. I'm thinking an affidavit at this time is somewhat problematic. I could be wrong; guess it's got to happen one time in my career.
I'm curious now too, is there a sample affidavit you have in mind that would work at this time?

57. Can A Court Force an Heir to Pay Rent.

FACTS: The Probate Court disallowed a will wrongfully and there is an appeal. The house is an asset and the deceased willed to her daughter who has lived there a long time and cannot afford rent.

QUESTION: Can the Court order the heir to pay rent? Can they evict her for nonpayment of rent? Can one claim the new Supreme Court case Jenkins v. Clark 21-1646 applies.

RESPONSE(S): Seems to me-- if the daughter is the *sole heir*, then Code section 633.350 would ordinarily prevent such collection. The property is *all hers*.
Meaning: there's no separate tenant's right of occupancy and landlord's right of reversion/rent collection.

But during estate administration her possession remains subject to executor's possession, sale, etc. for administrative purposes.
So I qualify my statement above, thus: if the estate is insolvent, and needs the rental payments to meet expenses during the appeal--then perhaps a probate court could order rent payment. No law on it.

But if the daughter is *not sole heir*, but only one of a class--
Then Yes. The estate may collect rent from one co-tenant in common.
That co-tenant occupies the premises exclusively.
Ergo, she would owe compensation [rent].
Presumably to her fellow co-tenants in common.
Practically, to the estate during the period the estate is open.
See *Ihle v. Ihle*, 222 Iowa 1036, 270 N.W. 452 (1936).

58. Competing Powers of Attorney.

FACTS:

1. Four years ago, Owner executed a Durable Power of Attorney appointing A as agent with respect to all financial matters, including real estate transactions. The POA is made effective on the incapacity of Owner as determined by an attending physician.
2. In early 2023, this Durable Power of Attorney is recorded together with a letter from an attending ARNP testifying as to Owner's incapacity.
3. Owner is subsequently placed in long-term care and A executes a listing agreement for the sale of Owner's house for a period of one year.
4. In August 2023, Owner (allegedly?) executes *another* Durable Power of Attorney appointing B as agent, which document is recorded and *not* accompanied by any letters from attending physicians. A "Revocation of Power of Attorney" is subsequently delivered by the preparer of that document to A, which states in relevant part that the 2019 Power of Attorney has been revoked by Owner.

QUESTION:

1. Would the listing agreement survive the purported revocation of the 2019 POA, assuming such revocation is valid?
2. Which power of attorney would be deemed valid under these facts? (For example, on the appearance of this record in an abstract, from whom would a title examiner require signature – A? B? Would you require additional showings or demand some kind of formal determination of validity?)

RESPONSE(S): Dueling powers of attorney.
First of which is a "Springing" power of attorney.

633B.104 Durability of power of attorney.
A power of attorney created under this chapter is durable unless the power of attorney expressly provides that it is terminated by the incapacity of the principal.

633B.109 When power of attorney effective.
1. A power of attorney is effective when executed unless the principle provides in the power of attorney that it becomes effective at a future date or upon the occurrence of a future event or contingency.
2. If a power of attorney becomes effective upon the occurrence of a future event or contingency, the principal, in the power of attorney, may authorize one or more persons to determine in a writing or other record that the event or contingency has occurred.
3. If a power of attorney becomes effective upon the principal's incapacity and the person has not authorized a person to determine whether the principal is

incapacitated or the person authorized is unable or unwilling to make the determination, the power of attorney becomes effective upon a determination in writing or other record by the occurrence of any of the following:
a. A licensed physician or licensed psychologist determines that the principal is incapacitated. ...

Starting with your question 2 first:
POA 1 certainly became valid as of "early 2023".
Its 633B.109(3)(a) condition was met, IMHO.
The attending medical "physician" certified disability.
[Further, also IMHO, POA 1 probably remains valid. More on that below.]

"Physician" is not formally defined in Chapter 633B.
Nor does the term appear in the Code's General definitions in Chapter 4.
Section 135.1(4) does define "physician" as a professional licensing status.
This section applies to the Code's medical chapters. Of which 633B is not one.
So I ignore the section 135.1(4) limitations.
A 21st century ARNP very likely possesses higher level training than did "physicians" of fifty years ago, when the durable power of attorney laws were drafted.
I look to the Iowa Administrative Code's expansive perspective on "physician":
"'Healing arts' is broadly defined in chapter 38 [of IAC 641] as:
> the occupational fields of diagnosing or treating disease, providing health care and improving health by the practice of medicine, osteopathy, chiropractic, podiatry, dentistry, nursing, veterinary medicine, and supporting professions, such as physician assistants, *nurse practitioners,* radiologic technologists, and dental hygienists."

Id. (emphasis added)."
Iowa Medical Soc. v. Iowa Bd. of Nursing, 831 N.W.2d 826, 830 (Iowa 2013).

"ARNP" stands for Advanced Registered Nurse Practitioner.
See *Iowa Medical Soc., supra:* 831 N.W.2d at 827.
ARNPs are nurses trained to levels higher than RN.
They lack medical degrees.
But by training ARNPs equate to "physicians" for their many patients.

So now, your question 1:
Any contract made under valid POA 1 while in force should also remain valid.
I think the listing agreement necessarily remains good.
After all-even if not A but the Owner *himself* withdrew from the listing agreement, I think, he still would owe the agent whatever fee the listing agreement provided.

A's actual authority to make the listing agreement is a "material inquiry" and "a proper matter for the consideration of the jury"[fact finder].
See *Rosenberger v. Marsh*, 108 Iowa 47, 78 N.W. 837, 839 (1899).

A secondary, and more difficult, question about POA 1 now demands attention. Did the August 2023 purported revocation of POA 1, by a principal previously found to be incompetent, become effective so as to terminate POA 1? This question goes hand in hand with the issue of POA 2's validity.
I don't see Iowa law providing us clear answer to these issues.
Here's what we do have:

633B.201 Authority -- specific and general.

...
3. Subject to subsections 1, 2, 4, and 5, if a power of attorney grants an agent authority to do all acts that a principal could do, the agent has the general authority described in sections 633B.204 through 633B.216.

633B.203 Construction of authority generally.
Except as otherwise provided in the power of attorney, by executing a power of attorney that incorporates by reference a subject described in sections 633B.204 through 633B.217, or that grants an agent authority to do all acts that a principal could do pursuant to section 633B.201, subsection 3, a principal authorizes the agent, with respect to that subject, to do all of the following: ...
2. Contract in any manner with any person, on terms agreeable to the agent, to accomplish a purpose of a transaction...
3. Execute, acknowledge, seal, deliver, file, or record any instrument...

633B.204 Real property. ...

One purpose of the durable power of attorney is to secure land titles.
In re Estate of Anton, 731 N.W.2d 19, 27 (Iowa 2007):
"[A] purchaser of real estate or other property can be assured clear title when dealing with a duly appointed agent operating pursuant to a duly appointed power of attorney."

POA 1 surely was a valid POA at least from "early 2023" to "August 2023".
Arguably it remains in force after August 2023 if the purported revocation was not issued by a competent Owner.

If POA 2 also required disability certification then it's invalid without one.
Your fact recitation hints that POA 2 was durable.
But it did NOT contain a section 633B.109(3) requirement.
Am I right about that? If yes then POA 2 took effect when signed--IF valid.

Assuming that POA 2 did not require disability certification--
and it purports to issue only months after Owner was certified by informed medical opinion as incompetent--

B should be held to a high standard of fiduciary duty about his handling of Owner's property. A court might fairly be called upon to intervene and assess POA 2.

Dessin, Carolyn L., Acting as Agent Under a Financial Durable Power of Attorney: An Unscripted Role. 75 Neb. L. Rev. 574 (1996) [Sec. VII Part D]:
"Like the principles governing liability, the level of court supervision of agents under durable powers of attorney should be higher when the principal is incompetent. At the very least, the court should order the agent to account if there is a suggestion by an interested party that the agent is mismanaging the principal's assets. Because any property fiduciary has a duty to maintain accurate records, a duty to account would not be unduly burdensome."
This law review article has been cited approvingly by the Iowa Supreme Court. See *In re Estate of Anton*, 731 N.W.2d at 24. (Ademption case).

Seems to me that the physician/ARNP's opinion about his (her?) patient's state of mind remains relevant for POA 2 as much as for POA 1.
Did POA 1 perhaps contain language leaving it in effect unless and until the physician certified a remission of incompetence/disability? Perhaps too much to hope for.

California Code contains a provision that, where a durable power of attorney became effective upon incapacity of the principal, the grant "ceases to be effective on a determination that the individual has recovered capacity."
Unfortunately Iowa law contains no statute mandating a capacity determination to *cancel* POA 1's grant of power. 633B.110 omits any such provision.

In criminal court proceedings "a prior adjudication of mental incompetency gives rise to a rebuttable presumption of continued incompetency." *Hurt v. U.S.* 327 F.2d 978, 981 (8th Cir. 1964) (criminal matters). Applied in the Chapter 633B context this principle, IMHO, calls in question Owner's competency to issue POA 2 and to revoke POA 1.

I find that Jesse Marshall obliquely faced the question of Owner's possible recovery of competency. Most unfortunately he didn't pursue issue at length. See Madsen, Marshall's Iowa Title Opinions and Standards section 9.1(A), pp. 177-78 (1978):
"The law, as I understand it, on the question of the validity of deeds and contracts of one mentally incompetent is that they are not **void** but **voidable** only. ...
"You suggest procuring a certificate from a psychiatrist giving his opinion that the person in question is competent. This might be of assistance in showing the exercise of good faith, but it would not, of course, be conclusive. I have the impression, from trying a number of cases involving insanity, that psychiatrists would take the position that the fact that a patient had been given shock treatments for a mental condition does not raise a presumption that he is insane, or incompetent to transact business. The question you have submitted only

indirectly involves Title Standards, and this opinion, of course, is a personal one. We are, however, glad to be of any assistance."

Not entirely satisfactory response, I suppose, but the best I can find for you Sir.

* * * * *

I have an old note in my folder: "In a case where the principal was alleged to be incompetent, the Ct. of Appeals held he could revoke the medical and general POA forms at any time. *Younts v. Martin*, No. 98-0476." I could not get the case to come up on Fastcase just now, so further research would be needed. I've always thought that it was very strange that an incompetent person could revoke their general power of attorney.

* * * * *

As a part of my check list when doing Powers of Attorney, I have always advised that a big weakness in them is that they can be revoked by the principal at any time, whether the principal is competent or not; not sure where my research is on that right now; I'm sure there is a note somewhere.

In so far as a nurse being a "physician" for the purposes of a statement as to whether a principal is incompetent or not, I'll use a nurse for that purpose when I use one to take my tonsils out. I'm afraid both results will be similarly painful.

[See Attachment]

IN THE COURT OF APPEALS OF IOWA

No. 9-168 / 98-0476

KAREN K. YOUNTS,
Appellee,

vs.

MICHAEL W. MARTIN,
Appellant.

IN THE MATTER OF THE CONSERVATORSHIP OF MICHAEL MARTIN,

MICHAEL MARTIN,
Appellant,

KAREN YOUNTS and KIRK SHEARER,
Appellees.

Appeal from the Iowa District Court for Pottawattamie County and the Iowa District Court for Mills County, James M. Richardson, Judge.

Appellant claims the district court erred in denying his motion to dismiss a petition for declaratory relief and in establishing an involuntary guardianship and conservatorship. **AFFIRMED IN PART; REVERSED IN PART.**

Deborah L. Petersen of Reilly, Petersen & Hannan, P.L.C., Council Bluffs, for appellant.

Richard B. Maher, Omaha, Nebraska, for appellees.

Heard by Huitink, P.J., and Vogel and Zimmer, JJ. Sackett, C.J., takes no part.

ZIMMER, J.

Michael Martin appeals a Pottawattamie County District Court order denying his motion to dismiss a petition for declaratory relief. He also appeals the Pottawattamie County District Court's *sua sponte* imposition upon him of an involuntary guardianship and conservatorship in Mills County. He further appeals the Pottawattamie County District Court's invalidation of his notice of termination of farm tenancy. He finally appeals a Mills County District Court order imposing an involuntary guardianship and conservatorship. We affirm in part and reverse in part.

Michael Martin is the father of Karen Younts. At age eighty-two, Martin was suffering from senile dementia and other health problems. On February 12, 1997, he executed a durable power of attorney for health care decisions and a general power of attorney. The general power of attorney became effective when Martin's physician certified in writing that Martin could not handle his financial affairs because of senile dementia. Younts, a registered nurse, was given both the medical and general powers of attorney. The conferral of powers was for Martin's benefit alone and was not coupled with any interest running to Younts.

In August 1997, Martin threatened to terminate Younts' appointment as attorney-in-fact. He also threatened to terminate a farm tenancy arrangement in which he had participated with Younts and her husband for ten years. On August 27, 1997, Younts filed a petition for declaratory judgment and an application for injunctive relief in Pottawattamie County. She sought a declaration of her rights to serve as Martin's attorney-in-fact and injunctive relief to prevent him from engaging

in business transactions she had not authorized. She did not request an injunction to bar him from revoking the powers of attorney.

On August 28, 1997, the Pottawattamie County District Court entered a temporary restraining order (TRO) prohibiting Martin from issuing notice of termination of farm tenancy. Hearing on Younts' petition was ultimately set for November 21, 1997. On August 30, Martin served notice of termination of farm tenancy.

On November 12, 1997, Martin executed two documents revoking Younts' medical and general powers of attorney. According to the record, Younts was never served with notice of revocation because Martin felt he was barred from doing so by the Pottawattamie County District Court's prior TRO. When trial began on November 21, Martin introduced these revocations into evidence. Younts did not object to their admission into evidence, but specifically refused to acknowledge their legal effect. After Younts presented her case, Martin moved to summarily dismiss Younts' petition because he had revoked her powers of attorney and because she had failed to establish he was incompetent to make those revocations. The court took the motion under advisement.

On December 29, 1997, the Pottawattamie County District Court filed an order finding Martin had been incompetent to handle his business affairs since February 12, 1997. The court ruled the medical and general powers of attorney naming Younts as attorney-in-fact were valid. The court further concluded an involuntary guardianship and conservatorship should be established for Martin in Mills County with Younts

and Kirk Shearer (Martin's accountant) as co-guardians and co-conservators. Finally, the court held the notice of termination of farm tenancy served on August 30 was invalid. Martin subsequently motioned the court to amend and enlarge its findings and requested a new trial. These motions were denied. Martin thereafter filed his notice of appeal on March 16, 1998.

On February 9, 1998, Younts and Shearer filed a petition for the appointment of an involuntary conservator for Martin in Mills County District Court. The matter came on for hearing on May 11, 1998.[1] The court took judicial notice of the Pottawattamie case and found Martin needed a guardian and conservator. The Mills County District Court appointed Younts as guardian and Shearer and Younts as co-conservators. Martin appealed from that order as well, and his appeals from the two actions were consolidated.

On appeal, Martin raises several issues. He claims the Pottawattamie County District Court erred in failing to grant his motion to dismiss after he submitted revocations of the medical and general powers of attorney. He also claims the Pottawattamie County District Court exceeded its authority by granting, *sua sponte*, an involuntary guardianship and conservatorship, and by invalidating his notice of termination of farm tenancy. Finally, he argues the Mills County District Court erred in appointing a conservator and in appointing, *sua sponte*, a guardian. He also claims appointment of Younts to either of these roles was improper.

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[1] The parties stated during oral argument they had agreed the record developed in the prior action in Pottawattamie County District Court would be used for the conservatorship action in Mills County.

I. Revocation of Powers of Attorney.

A. Scope of Review. We review Martin's claims to correct for errors at law. *See* Iowa R. App. P. 4; *Iowa Tel. Ass'n v. City of Hawarden*, 589 N.W.2d 245, 250 (Iowa 1999). The district court's decision not to grant a motion to dismiss must rest on legal grounds.

B. Merits. We agree with Martin the Pottawattamie County District Court should have granted his motion to dismiss when the revocations were submitted to the court at trial and Younts was thus made aware of those revocations. It is irrelevant, as Younts contends, that Martin may not have had the capacity to make such revocations. Under Iowa Code chapter 144B, Martin, as the principal in the power of attorney relationship, is presumed to have the capacity to revoke a durable power of attorney for health care. *See* Iowa Code §§ 144B.1(6), .8(2) (1997). Accordingly, "a durable power of attorney for health care may be revoked at any time and in any manner by which the principal is able to communicate the intent to revoke, without regard to mental or physical condition." Iowa Code § 144B.8(1) (1997). Thus, Martin's revocation of the medical power of attorney was valid.

Martin's revocation of the general power of attorney was similarly also valid. The power of attorney agreement specifically states it may be revoked at any time by Martin. General powers of attorney may be revoked at any time with or without cause. *See* 3 Am. Jur. 2d *Agency* § 43 (1986). As this agreement conferred only mere bare agency authority, it is revocable at Martin's will or even caprice. *Id.*

II. Appointment of Guardian and Conservator by Pottawattamie County District Court.

A. Scope of Review. Actions for the involuntary appointment of guardians and conservators are tried as law actions. *See* Iowa Code §§ 633.33, 633.555, 633.569 (1997); *In re Conservatorship of Leonard*, 563 N.W.2d 193, 194–95 (Iowa 1997). Our review is therefore for errors at law. *See* Iowa R. App. P. 4; *In re Conservatorship of Leonard*, 563 N.W.2d at 195. Because our review is for errors at law, we affirm only if there is substantial evidence to support the district court's findings. *See* Iowa R. App. P. 14(f)(1); *In re Conservatorship of Leonard*, 563 N.W.2d at 195.

B. Merits. We determine the Pottawattamie County District Court exceeded its authority under Iowa Code chapter 633 by appointed Younts and Shearer as co-guardians and co-conservators for Martin as part of its ruling on Younts' petition for declaratory judgment. Neither party petitioned for the appointment of a guardian or conservator in Pottawattamie County. The issue of whether a guardian or conservator should be appointed for Martin was not before the court through pleadings and was not adjudicated by consent of the parties. Before a guardianship and conservatorship may be established, a proposed ward must be advised of the nature and purpose of the proceedings as well as his rights in those proceedings. *See* Iowa Code §§ 633.561(4)(a)–(b), .575(4)(a)–(b) (1997). Because the requirements of the probate code for opening a guardianship and conservatorship were not met, we reverse the portion of the Pottawattamie County District Court order which ordered

a conservatorship and guardianship be established in Mills County and which appointed Younts and Shearer as co-guardians and co-conservators.

III. Invalidation of Martin's Notice of Termination of Farm Tenancy. Martin claims the notice of termination was not properly before the district court and therefore the court should not have made a determination as to its validity. We agree the district court should refrain from addressing issues not actually presented to it. However, in this case we determine any error in the district court's consideration of the validity of the notice of termination was harmless.

The TRO specifically and clearly barred Martin from "issuing notice of termination of farm tenancy . . . until such times as a decision is entered in this matter, declaring rights in the Power of Attorney granted Karen K. Younts pending hearing . . . ."[2] This order was entered August 28, 1997. Martin served notice of termination of farm tenancy on August 30, 1997. These facts are not disputed. Consequently, as a matter of law, his notice was in clear violation of the court's restraining order. Any error by the district court in considering this matter was harmless.

IV. Appointment of Guardian and Conservator by Mills County District Court.

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[2] The parties do not challenge the validity of the district court's TRO entered on August 28, 1997, nor do we find any reason to question that order. We assume the TRO was properly entered.

A. Scope of Review. Our review of involuntary guardianship and conservatorship actions is discussed above in section II(A).

B. Merits. Younts and Shearer petitioned only for the appointment of a conservator. We determine the Mills County District Court should not have appointed a guardian for the same reasons the Pottawattamie County District Court should not have appointed a guardian. The district court exceeded its authority in establishing a guardianship for Martin in the absence of a petition to appoint a guardian for him. Accordingly, we reverse that portion of the Mills County District Court order.

Martin does not argue the district court exceeded its authority in establishing the involuntary conservatorship. Therefore, we will affirm if there is substantial evidence to support the district court's findings that a conservatorship is warranted. *See* Iowa R. App. P. 14(f)(1); *In re Conservatorship of Leonard*, 563 N.W.2d at 195.

Whether an involuntary conservatorship may be established requires a finding that the proposed ward's "decision-making process is so impaired he or she is not able to care for his or her own personal safety and is not able to provide necessities of life." *See In re Guardianship & Conservatorship of Teeter*, 537 N.W.2d 808, 810 (Iowa App. 1995) (citing *In re Guardianship of Hedin*, 528 N.W.2d 567, 576–77 (Iowa 1995); *see also In re Conservatorship of Leonard*, 563 N.W.2d at 196 (implicitly approving application of the *Hedin* guardianship standard to the involuntary appointment of a conservator under Iowa Code section 633.566). The proposed ward must, "[b]y reason of mental, physical or other incapacity," be "unable

to make or carry out important decisions concerning the proposed ward's financial affairs." Iowa Code § 633.566; *In re Conservatorship of Leonard*, 563 N.W.2d at 195.

We determine there is substantial evidence in the record showing Martin is so impaired. Four doctors offered medical opinions as to Martin's ability to handle his financial affairs, care for his own personal safety, and provide necessities of life. They stated Martin suffered from dementia, significant mental disorder, and memory difficulties. Two doctors stated Martin could not handle his own monetary decisions and financial affairs. Another questioned Martin's ability to manage complex financial decisions and suggested he should have help making such decisions. A fourth doctor recommended Martin rely upon caretakers for providing medications, nutrition, and safety. During trial, the court observed Martin to be confused during his testimony. For these reasons, we agree with the district court's conclusion that sufficient evidence exists to support appointment of an involuntary conservator to govern Martin's financial affairs. Additionally, we determine Younts and Shearer are sufficiently qualified to assume these responsibilities.

V. Conclusion.

In summary, we reverse that portion of the Pottawattamie County District Court order which established a conservatorship for Martin and which appointed Younts and Shearer as co-guardians and co-conservators. We also reverse the portion of the Mills County District Court order which established a guardianship. We affirm

the decisions of the district court on all other issues. We remand for further proceedings consistent with this ruling.

AFFIRMED IN PART; REVERSED IN PART.

No. 98-0476. [9-168] YOUNTS v. MARTIN

Appeal from the Iowa District Court for Pottawattamie County, and the Iowa District Court for Mills County. James M. Richardson, Judge. **AFFIRMED IN PART; REVERSED IN PART.** Heard by Huitink, P.J., and Vogel, and Zimmer, JJ. Sackett, C.J., takes no part. Opinion by Zimmer, J. (9 pages $3.60)

On February 12, 1997, Martin executed a durable power of attorney for health care decisions and a general power of attorney. Younts was given both the medical and general powers of attorney. Younts later petitioned for declaration of her rights to serve as Martin's attorney-in-fact and injunctive relief to prevent him from engaging in business transactions she had not authorized. On August 28, 1997, Pottawattamie County District Court entered a temporary restraining order (TRO) prohibiting Martin from issuing notice of termination of farm tenancy. On August 30, Martin served notice of termination of farm tenancy. Martin later also executed two documents revoking Younts' medical and general powers of attorney. Martin thereafter introduced these revocations into evidence at the hearing on Younts' petition. Martin moved to summarily dismiss Younts' petition because he had revoked her powers of attorney and because she had failed to establish he was incompetent to make those revocations. The Pottawattamie County District Court thereafter (1) found Martin incompetent to handle his business affairs; (2) ruled the medical and general powers of attorney were valid; (3) concluded an involuntary guardianship and conservatorship should be established for Martin in Mills County with Karen and Kirk Shearer (Martin's accountant) as co-guardians and co-conservators; and (4) held invalid the notice of termination of farm tenancy. Younts and Shearer subsequently petitioned for the appointment of an involuntary conservator in Mills County District Court. The court appointed Younts as guardian and Shearer and Younts as co-conservators. **OPINION HOLDS:** ***I. Revocation of Powers of Attorney.*** We agree with Martin the Pottawattamie County District Court should have granted his motion to dismiss when the revocations were submitted to the court at trial and Younts was thus made aware of those revocations. It is irrelevant, as Younts contends, that Martin may not have had the capacity to make such revocations. *See* Iowa Code §§ 144B.1(6), .8(1)–(2) (1997). Martin's revocation of the general power of attorney was also valid. The power of attorney agreement specifically states it may be revoked at any time by Martin. General powers of attorney may be revoked at any time with or without cause. ***II. Appointment of Guardian and Conservator by Pottawattamie County District Court.*** The court exceeded its authority when it appointed, *sua sponte*, Younts and Shearer as co-guardians and co-conservators. ***III. Invalidation of Martin's Notice of Farm Tenancy.*** The district court properly found Martin's August 30 notice violated the August 28 TRO. ***IV. Appointment of Guardian and Conservator by Mills County District Court.*** The district court exceeded its authority in establishing a guardianship for Martin. We reverse this portion of the court's order. However, sufficient evidence exists to support appointment of an involuntary conservator. Younts and Shearer are sufficiently qualified to assume these responsibilities.

59. Deed From Estate to Beneficiaries LLC.

FACTS: Will gives property equally to A, B, C, and D. A, B, C, and D were decedent's children and decedent died in 2020 so no Iowa inheritance tax.

However, Court Officer Deed from Estate was to LLC owned equally by four children.

Final Report says, title to Real Estate vests, in accordance with Decedent's Will to A, B, C, and D. Real Estate was conveyed from Estate by Court Officer Deed to LLC owned equally by A, B, C, and D with their consent and approval. Exemption on deed was Iowa Code Section 428A.2(20).

QUESTION: What, if anything, is required in this situation?

RESPONSE(S): OTTOMH:
If there was no assignment of interest filed by A, B, C & D of the real estate in the estate court file, then I would require quit claim deeds from A, B, C & D and their spouses.

* * * * *

Any worries about Inheritance Tax with the way the property was deeded?

* * * * *

If there was a power of sale in the Will, I wouldn't require anything further.

* * * * *

Is there any statement in the Final Report that the title was conveyed to the LLC at the request of the beneficiaries? If so, and the beneficiaries signed Receipts and Waivers, that may serve as the assignment.

60. Iowa Code Section 614.14 Trustee Affidavits.

FACTS:

QUESTION:

1. When preparing a title opinion where Iowa Code Section 614.14 affidavits are required, I recommend providing the names and marital status of the grantor(s) of the deed vesting title in the trustee(s). The attorney drafting the trustee affidavit can use this information rather than having to pull the prior deed from Iowa Land Records. Let's make things easier for our colleagues where we can.

2. A few attorneys incorporate the trustee affidavit into the trustee warranty deed. What are your thoughts on this?

RESPONSE(S): As to #1, that's a good tip and perhaps we need to encourage the ISBA Forms Committee to update the form? We just need to be mindful that extra language is not statutorily required and ensure people do not reject an affidavit that complies with the statute and title standards.

As to #2, my concern would be that a deed is acknowledged while an affidavit is given under oath. Those actions have different notary blocks (only the jurat is under oath). I think without a statutory change, there could be risk as to the ability to rely upon the act of a deed alone (which would have an acknowledgement) containing recitations. I have not investigated whether a jurat is sufficient for a deed, but given its wording, I could make arguments it is not appropriate—especially in the circumstance where the affiant and the grantor are not identical. For example, an acknowledgement of a trustee's signature is going to say that the record is acknowledged before the notary on date by John Smith as trustee of the trust. However, the jurat will say sworn and signed by John Smith (no mention of trust in the jurat as the fact John Smith is trustee is a recitation in the affidavit—something John Smith states under oath). Further, an affidavit is from an individual in their individual capacity (i.e., who can you swear in to testify in a court of law) as to their own personal knowledge, while the deed is from the fiduciary in their capacity. Worded another way, the deed is an act of conveyance from the Trust while the affidavit is testimony under oath by the individual serving as trustee of that trust. I am not saying they could not be combined if the statute allowed, just that I would be hesitant to pass title prior to the statute of limitations running without both instruments.

* * * * *

In addition to those comments, I take the position that one year after the conveyance the affidavits are no longer necessary per Iowa Code Section 614.14(5)(b).

* * * * *

What are you doing if it is simply a distribution of the real estate to a trust beneficiary? I think it is clear the affidavits are not required since the beneficiary is not a bona fide purchaser but I am seeing other attorneys requiring affidavits. I'm simply stating in the deed it is a distribution to avoid confusion if transfer or mortgage occurs within the year.

* * * * *

I agree. However, in order to avoid an objection from the next attorney, we always prepare both affidavits when a trust distributes real estate to a beneficiary. We change the Purchaser's Affidavit to say transferee instead of purchaser.

* * * * *

I believe that an affidavit in such circumstances is not a bad idea. While it will not offer the protections provided by the statute to a BFP, it does provide an assurance under oath as to the identity and authority of the trustee(s).

* * * * *

I agree that the Trustee's affidavit is a good idea whenever real property is distributed out of a trust. In those situations where the person receiving the distribution conveys to a bona fide purchaser within one year after the distribution, I would have the bona fide purchaser sign an affidavit stating they're relying on the trustee's affidavit.

61. Life Estate With Sale Requirement.

FACTS: I have grandchildren who inherited land which was subject to a life estate. The Decedent's Will provided as follows:
"I give, devise, and bequeath to my two daughters, X and Y, a life estate in the following described real estate, to-wit: Parcel 1, Parcel 2, and Parcel 3.

". . . When both of my daughters, X and Y, have died and the life estate created in this article terminates, then I direct that the real estate in which my daughters had a life estate shall be sold and the net proceeds therefrom shall be divided equally between all of my grandchildren or their heirs per stirpes."

Some of the grandchildren want to "buy" or keep their share of the real estate and buy-out the other grandchildren's share. The grandchildren who want to retain their share do not want to pay capital gains tax on the sale and buy back their own share of the real estate. Rather they want to buy the other shares and retain their share.

QUESTION: I do not see a problem with this under the Will, does any see a problem and have a recommendation?

RESPONSE(S): I think if everyone agrees, and files a consent in the Estate Proceeding you'll be O.K.

62. Power of Attorney – Written Certification of Physician.

FACTS: Oddly, I have not run into this before. In examining an abstract, there are several Quit Claim Deeds that was signed by an attorney-in-fact under a Power of Attorney. The Power of Attorney was recorded and in examining the contents of the Power of Attorney I see "This Power of Attorney shall become effective upon written certification by my physician that I am disabled." There is nothing in the record regarding proof of written certification.

QUESTION: Is an independent showing of a written certification required? My gut says yes, but I am concerned that if a written certification did exist at one time, it no longer exists today. If it does not exist, can an affidavit clean this up? And if so, by whom?

RESPONSE(S): Iowa Code Section 633B.109 When power of attorney effective.
...
2. If a power of attorney becomes effective upon the occurrence of a future event or contingency, the principal, in the power of attorney, may authorize one or more persons to determine in a writing or other record that the event or contingency has occurred.

Your principal specifically authorized "my physician" to trigger the principal's Power of Attorney.
"Physician" as a category is defined in Code section 135.1(4):
A person licensed to practice medicine and surgery...etc.
"My" is a possessive adjective. "My" limits the class of "physician" to only one with which the declarant claims a patient/physician relation, and who presumably has personal knowledge of the declarant's condition.
Unfortunately the physician's written certification was not recorded with the Power of Attorney.

I think Iowa Code section 558.8 can save your situation.
Someone with knowledge of declarant's physician's determination--the physician himself? his office nurse/manager? affiant's close relative?--can file an affidavit explanatory of title.
Affidavit Explanatory of Title will "explain defects in recorded links of a chain of title."
See *Sorensen v. Wright*, 268 N.W.2d 203 (Iowa 1978).
Note that the physician's written certification of incapacity is NOT itself a "link[] of a chain of title." The Quit Claim Deeds and the Power of Attorney are links.
Lack of the physician's certificate amounts to a defect in the Power of Attorney link.
Therefore the Affidavit Explanatory of Title can "explain" it.

The affidavit should (1) identify declarant's physician, (2) confirm that on such and such a date, time and place the physician did find declarant incapacitated and said so in writing, and (3) affirm that the power of attorney took effect on that date.

* * * * *

I would require the written certification to be filed of record. Without it, I do not think the conveyance is valid. I don't know how to fix it if it did not exist, unless the doctor has records and can issue the statement now. This is why I have been hesitant to use that provision much in my Powers of Attorney.

63. Probate and LLC Intertwined.

FACTS: I was working on a title opinion with somewhat of a unique issue. The land was in the LLC's name; however, the abstract showed the recently opened Estate of one of the owners of the LLC. We were doing the preliminary title opinion for the buyer and kind of wondered about the inclusion of the probate of one of the owners in the abstract. This is a testate Estate with power of sale of real estate.

We now understand that the LLC is going to distribute out the property to the Estate and the estate will sell it. There are 2 claims in the Estate, but they have not separately filed for notice in the Estate.

QUESTION:

1. What would you put in the title opinion regarding the probate? The LLC is the owner and technically it would just have to be a dee d from them without any notice in the Estate. However, knowing what we know now, we likely should also treat this as a transfer from the Estate?
2. If there is a transfer from the Estate, our office was debating what, if any, notice/court approval would be needed. There is a power of sale in the Will; do the 2 claimants, heirs, and/or beneficiaries need notice of the sale and court approval under Title Standard 9.12 or 9.13?

RESPONSE(S): I am no expert, but I always err on the side of caution and give notice with the bar date to object. If no objections, then your order can be entered to approve. I realize that it slows things down, but with the litigious world and some of the things I see in court, I always want to be safe.