64. Real Estate Omitted from Closed Estate.

FACTS: Decedent spouse owned a tract of real estate with her husband as JTWROS. She died over 5 years ago and her estate was probated but her undivided interest in this tract was not included. I'm thinking of transferring with an Affidavit of Surviving Spouse but Title Standard 9.16 specifically states there cannot be administration of the estate. No inheritance tax issue.

QUESTION: Do you folks think an Affidavit works or do I have to reopen the estate and show the property interest?

RESPONSE(S): I'd go with the Affidavit.

* * * * *

I agree – Affidavit is sufficient.

* * * * *

Don't have access to my hard copy of the Title Standards but joint tenancy property passes outside the estate upon death and all that is by needed is the Affidavit of Surviving Joint Tenant (spouse) under Title Standard 9.9 I believe.

* * * * *

Certainly reopening an already-probated estate is allowed.
Prohibition against opening runs only against attempts to open never-probated estates after five years.

But when the deed to H & W did establish Joint Tenancy w/ right of survivorship--
The interest passed to H outside any estate.
Wills or statutes of descent don't touch a JT w/ROS title.
Ordinarily only real estate not held in JT w/ROS can "be affected by" probate action. (Although exceptions exist--see Serovy.)
See
Benz v. Paulson, 246 Iowa 1005, 70 N.W.2d 570 (1955)
Rembe v. Stewart, 387 N.W.2d 313 (Iowa 1987)
In re Estate of Serovy, 711 N.W.2d 290 (Iowa 2006)

All you really face is a title chain record showing:
1) conveyance to H & W as tenants w/ rights of survivorship
2) no change in that status until
3) death of W, and

4) probate of W's estate that mistakenly omits reference to existence of a non-probate asset (1/2 proportional interest in the JT real estate).

So disregard the omission from the estate's documentation.
An Affidavit will clarify any error. See Iowa Code section 558.8.

65. Remainder Interest in Life Estate.

FACTS: In administering a trust, I have run into the following issue: Husband and wife own 240 acres. They subsequently convey a 1/2 interest to husband's revocable trust and a 1/2 interest to wife's revocable trust. Wife dies. Wife's revocable trust then conveys a deed naming husband, individually as life tenant, remainder interest to a residuary trust created under the terms of wife's revocable trust.

QUESTION: The question is, can a residuary trust created under a revocable trust be a remainderman to a life estate?

RESPONSE(S):

66. Reversionary Interest, Land Use Restrictions, and Certified Claims.

FACTS: My firm has come across a situation we're not quite sure how to handle. Our client's deceased father sold some land with restrictive covenants back in the 1980s to the As. A temporary amendment to the use restrictions was signed by Client, Client's father, and the As. This amendment expired when the As sold the land to B. Client and client's dad signed a Verified Claim of Continuing Use Restriction in February of 2004. The land was sold to B in 2010. Client's father died in February of 2023 and no probate has been opened. Client wants to do another Verified Claim of Continuing Use Restriction before the 21 years are up in February of 2025, but we don't know if he can sign it as the reversionary rights were not deeded from Client's dad to Client when Client's dad quit claimed most of his land to Client in 1991.

QUESTION: Would people recommend opening a probate to make sure Client has those reversionary rights? Would it be better to have Client and Client's siblings sign the Verified Claim of Continuing Use Restriction as they are the only heirs of Client's dad? Are there any other issues we should be looking out for?

RESPONSE(S): FWIW and others certainly can correct:

A Quit Claim Deed normally conveys: "all our right, title, interest, estate, claim and demand in the following described real estate".

As a matter of conveyance I think the reversionary rights were then conveyed if the language above was used, which is found in the present Bar Form QCD.

You could bolster the claim with an Affidavit Explanatory of Title.

The surest way would be to administer an estate.

* * * * *

The deed itself specifically set out ongoing restrictions for a particular commercial activity. There is a deceased father who held the right, he is the one who transferred, died, three children survive , no spouse. Is son, who owns real estate next door, in the class of claimants under the statute, 614.24(1), that could file the verified claim to preserve the use restriction by setting out the factual matters that he would inherit under operation of law at least an interest by inheritance?

* * * * *

My opinion is not based upon any real legal research that I have done. So you get my opinion FWIW.

I think the Quit Claim Deed, if the language I quoted was used, would have conveyed the restrictive covenant rights to the grantee of the deed. The deed transferring all Grantors' interest to the Grantee owning the neighboring property includes the benefits of the use restrictions. That means as a subsequent owner your client would have the right to file a verified claim to preserve the use restrictions and in that claim set out the actual basis for his doing so.

If you rely on intestate succession, I am not sure that he actually inherits all rights by operation of law as apparently the father has three children. If those rights were not conveyed, then all three of the children would be entitled to receive their respective shares of that property right and any one of them could then file a claim as such an owner.

Your client would probably be in the strongest position since the restrictions apparently must benefit the property that he owns. It might be somewhat dubious for the other two if they do not own property that would benefit by the use restriction in some way.

67. Title Opinion on Land Being Bought from a Trust.

FACTS: We were looking at an abstract where the property was deeded to a revocable trust. The abstract also states that the grantor is now (recently) deceased. Recently, I saw that an attorney on another matter had requested proof that there were no claims under Iowa Estate Recovery. Title Standard 4.7 doesn't seem to say anything about it, but does require a showing regarding Iowa Inheritance Tax (in this case an affidavit will suffice). Iowa Code Section 614.14 affidavit language states that the trustee is authorized to transfer "free and clear of any adverse claims."

QUESTION: Do you require a showing of no claim for estate recovery (none in the abstract) beyond the Iowa Code Section 614.14 affidavit?

RESPONSE(S):

68. Title Standard 9.8 Affidavit For Out-of-State Intestate Decedent Whose Estate Was Administered?

FACTS: Decedent owns 1/2 of farm in fee simple and enjoys a life estate in the other 1/2. The remaindermen are Kid A and Kid B.

Kid B dies in 1998 and leaves a life estate in her interest in the farm to Kid B's Husband. The remaindermen are Grandkid A, Grandkid B, and Grandkid C.

Decedent passes away in 2016.

Kid B's Husband dies in 2018 and an attorney files an Affidavit of Death Terminating Life Estate which states in relevant part:

"The remainder interest in the above-described real estate is now owned by three persons in equal undivided shares in fee simple absolute. Such persons are Grandkid A, Grandkid B, and Grandkid C's Child. Grandkid C's Child is the child of Grandkid C."

Grandkid C's Child transfers their interest in farm to Grandkid A in 2019 by Warranty Deed. Grandkid C has also purchased the other shares of the farmland from all the other owners over the years.

Now Grandkid B wants to buy the farm from Grandkid C.

I don't believe that title can be transferred to Grandkid C's Child through an Affidavit of Death Terminating Life Estate.

I'm trying to clean this up and my first thought was a 9.8 Affidavit. But after talking to Grandkid C's Child, I learned that Grandkid C died in 2006 in Illinois. Grandkid C was intestate, but an estate was opened and their estate was probated.

QUESTION: Do we have to reopen the estate in Illinois and then open ancillary administration in Iowa to sort this out?

RESPONSE(S): Yes: Probably best to reopen estate and open Iowa ancillary estate.

A few points I don't understand. These facts seem to conflict:
"Grandkid C's Child (GKCC) transfers [whatever interest he has]...to Grandkid A (GKA) in 2019 by Warranty Deed."
"Grandkid C (GKC) ...purchased the other shares of the farmland...over the years."
"Now Grandkid B (GKB) wants to buy the farm from GKC."

"GKC died in Illinois in 2006." Estate administered.

Who received Kid B's 1/2 fee simple interest in 2016?
Did GKC own anything more than 1/6 remainder interest?
Who received GKC's property in 2006? GKCC only?
Is Kid A still alive?
Was GKCC a legal adult when he conveyed to GKA?
Did GKCC at some time purchase Kid A's 1/2 fee simple interest?

You correctly note that GKCC cannot take title to Iowa land (is he an absentee owner?) merely by the filing of affidavit of death.
Not sure how GKB can purchase property from GKC, dead these 17 years...

Snarled up title, this.

69. Transfers With a Pre-nup.

FACTS: I have two independent-minded individuals who married each other late in life. Each both have their own adult children. They have a pre-nuptial agreement waiving rights of spousal share. They each want to do their own thing and create their own revocable trusts. They each currently have land titled in their individual names.

QUESTION: They each have also inquired if the deeds can be signed individually, without the necessity of the other spouse's signature. Because of the pre-nup, is this possible? If so, what would need to be recorded so it shows up in the abstract? Something like a "memorandum of pre-nuptial agreement" that states the nuts and bolts without having to record the whole agreement? (Kind of like a memorandum of contract).

RESPONSE(S): I would want any deeds to be signed by both spouses in order to validly convey real estate. See Title Standard 5.3.

70. Trust as Joint Tenants.

FACTS: I came across a situation I've never seen before and wanted to get some input from the Section. I have a deed that names Husband Revocable Trust and Wife Revocable Trust as joint tenants with full rights of survivorship. Husband is now deceased.

I have always thought that a trust cannot be part of a joint tenancy because a trust is an entity, not an individual who can experience death. Because of this, I plan to use a Trustee Deed and Trustee Affidavit to distribute the real estate, rather than an Affidavit of Joint Tenant.

QUESTION: Is there any other "clean up" that needs to be done? Does the current deed listing the trusts as JTWROS need to be corrected?

RESPONSE(S): The way Iowa law treats self-settled revocable trusts, it is easy to understand how lay people could think they are just like individual ownership. But unless the Iowa legislature does something no other state has ever done, common law will not recognize a revocable trust as a possible joint tenant. Survivorship is something that can be done only by humans, not by artificially created entities like corporations or trusts. Therefore, I would advise your client that the attempt to create a joint tenancy between H & W revocable trusts must fail, and the result on the death of one spouse must be treated under trust law.

71. Being in Jail – Service of Notice – Tax Sale.

FACTS: County holds a tax certificate. Time has come to give notice to delinquent taxpayer and interested parties of Notice of Expiration of Right of Redemption. The delinquent taxpayer will not be in jail when the Notice is served. But might be during the redemption period.

QUESTION: Does that affect the ability to get the tax deed?

RESPONSE(S): Iowa Code Section 447.9 requires that notice be mailed by both regular and certified mail to the last known mailing address of the party entitled to notice. If the mailing address used is the last known address determined after conducting a reasonable investigation to determine that address (see Dearchs v. Boardwalk Investors, 791 N.W.2d 427 (Iowa Ct. App. 2010)), the fact that the person may later move or become incarcerated following the mailing of the notice and completion of service should not invalidate the service.

* * * * *

No. The statute controls all service practice.
Iowa Code Chapter 447 gives no "get out of redemption free" card for jail bird taxpayers.

At most, Iowa Code Section 447.7(1) allows for an attorney or other "legal representative" to redeem property for someone under "legal disability."

I am not convinced that being in jail is a legal disability.
But one could so argue.
If you do--then the jail bird must redeem by representative.
Or redemption doesn't happen.

72. How to Purchase Old Tax Sale.

FACTS: I have a weird situation regarding tax sales:

- 2013: Property went to tax sale; it was "purchased" by the County under Iowa Code Section 446.18-19;
- It does not appear that any future taxes were paid nor did the property go to tax sale;
- My client (prior to my involvement) sought an assignment of the tax sale and agreed to pay the subsequent taxes with the County.
- County has said that we need to do the Notice of Right of Redemption and then they will issue the deed.

Reading the code, I think that under Iowa Code Section 446.37 the tax sale from 2013 would be cancelled. I am trying to figure out the best way for my client to get clear title. If we go forward with the Notice of Right of Redemption and file such documentation with the Treasurer and can get the Deed, I think that would start the Statute of Limitations on tax sale deeds running. We don't think anyone is going to contest it. On the other hand, that can be risky and probably isn't the best way to go about it. FYI, the owners of the property are deceased and we know of a tax sale where the heirs did not contest a tax sale deed.

QUESTION: Any thoughts on how to get clear title to the property?

RESPONSE(S): Further, my understanding is that any tax sale certificate acquired by a county and then assigned continues its exemption from the expiration period. See Iowa Attorney General Opinion No. 77-8-16 (August 31, 1977), 1977 Iowa Op. Atty. Gen. 233.

If the County assigned the 2013 tax sale certificate to your client, then I believe your client could pursue extinguishing the right of redemption and acquiring a tax sale deed if desired.

* * * * *

The last sentence of Section 446.37 exempts certificates held by the county from the three year limitation.

73. Old Parcel Never Sold at Tax Sale.

FACTS: I have a client that wants to purchase a property. The property taxes have been very low, but the previous owner passed away over 10 years ago and it appears that no one has purchased at the tax sale. My client is working with the County on what she would need to do and how much to pay to get the property transferred to her, but I am not sure the County has any authority here to transfer due to no one purchasing at the tax sales.

QUESTION: What would you want to see to make sure she is getting clear title? It would be difficult to give notices to any heirs and no estate can be opened due to the lapse of time. Does she purchase the taxes, wait the requisite time, and then seek to have transferred? Again, there really isn't any way to find out who the heirs would be.

RESPONSE(S): These are likely subject to "public bidder" sales. See Iowa Code Section 446.18 & .19.

These sales are for properties that did not sell at a regular, annual tax sale.

* * * * *

Did the County end up taking the land at scavenger sale?
That's usually how title changes, after the land goes begging at regular tax sale.
Hard to believe that the County left the land off the tax rolls for ten years.
If the land's now titled in the County--
Then extend to the Board of Supervisors a reasonable offer to buy.

* * * * *

But the County does not always want to take those. If they did buy these, they would show up as such.

* * * * *

Iowa Code Section 446.18 includes the phrase, "offered for one year or more, and remain unsold for want of bidders".

In my local county, I have seen the Board of Supervisors work with the Treasurer to bid on more than five years of unpaid property taxes to get the tax sale certificate into the county's name. Then, the county assigned the tax sale certificate to the new buyer, and the buyer completed service of the appropriate redemption notices to the property owner and other interested persons. After expiration of the redemption period, the Treasurer issued the tax deed.

IMO: If the prior unpaid taxes have not been purchased over these past ten years, the county still has the option to bid on the prior unpaid taxes (Iowa Code Section 446.19). It would make sense for the county board to make the bid for all of the past due taxes now and then make that part of the cost of assignment to the new buyer.

74. Tax Sale Against Decedent/Notice of Estate Recovery.

FACTS: We are examining an abstract in which the current title holders acquired title through a tax deed. Prior to this tax deed, an individual owned real estate that was subject to the tax sale. In the redemption period after the issuance of the certificate, the original owner of the property died; no estate was ever opened for the decedent. The certificate holder provided the decedent's ostensible heirs and some other possible estate parties such as the Iowa Department of Revenue/Iowa Attorney General a Notice of the expiration of the right to redemption. No notice was provided to Iowa Estate Recovery, and no DHS clearance has been obtained.

QUESTION: Would Iowa Estate Recovery have held a sufficient interest to require a notice of this tax sale and right to redeem?

RESPONSE(S): Not according to the Code. Iowa Department of Health and Human Services (HHS) Estate Recovery has no "interest of record".
All the provision of medical assistance does is create a "debt".
Only if HHS has followed the procedures allowed by sections of 249F.3 and 249F.5 does HHS obtain an "interest of record" in the county where the real estate is located.

249F.1 Definitions.
As used in this chapter, unless the context otherwise requires:
...
2. A. "Transfer of assets" means any transfer or assignment of a legal or equitable interest in property...from a transferor to a transferee for less than fair consideration, made **while the transferor is receiving medical assistance**...
...
3. "Transferee" means the person who receives a transfer of assets.
4. "**Transferor" means the person who makes a transfer of assets**.

First, we note that a county conducting a tax sale cannot qualify as a "transferor" of the taxed property in question. The meaning of "Transferor" refers to your decedent. But further:

249F.2 Creation of debt.
A transfer of assets creates a debt due and owing to the department of human services from the transferee in an amount equal to medical assistance provided to or on behalf of transferor...

249F.3 Notice of debt -- failure to respond -- hearing -- order.

1. The department of human services may issue a notice establishing and demanding payment of an accrued or accruing debt due and owing... The notice shall be sent by restricted certified mail ... If service of the notice is unable to be completed by restricted certified mail, the notice shall be served upon the transferee in accordance with the rules of civil procedure. The notice shall include all of the following:

249F.5 Filing and docketing of order -- order effective as court decree.
1. A true copy of an order entered by the department of human services pursuant to this chapter...may be filed in the office of the clerk of the district court...
2. ...The approved order shall have all force, effect, and attributes of a docketed order or decree of the district court.

Having no "interest of record", Estate Recovery does not qualify for service of notice of right to redeem from tax sale.
Nor does it qualify as an entity with right to redeem.

447.9 Notice of expiration of right of redemption -- county right of redemption.
1. After one year and nine months from the date of sale...the holder of the certificate of purchase may cause to be served upon **[1]** the **person in possession** of the parcel, and also **[2]** upon the **person in whose name the parcel is taxed**, a notice signed by the certificate holder...stating...
2. **Service of the notice shall be mad**e by both regular mail and certified mail **on [3] any mortgagee having a lien** upon the parcel, **[4] a vendor of the parcel under a recorded contract** of sale, **[5] a lessor who has a recorded lease** or recorded memorandum of a lease, and **[6] any other person who has an interest of record**, at the person's last known address... Only those persons who are required to be served the notice of expiration as provided in this section or who have acquired an interest in or possession of the parcel...are eligible to redeem a parcel from tax sale....

The Legislature did not define its phrase "interest of record" in Chapter 447.
Nor do the few cases citing 447.9 and referring to the phrase offer definition.

Clemens Graf Droste zu Vischering v. Kading, 368 N.W.2d 702, 710 (Iowa 1985) implies that an "interest of record" [opening real estate to a mechanic's lien] required recorded instruments related to the real estate in question.

Butler v. Hoover Nature Trail, Inc., 530 N.W.2d 85, 89 (Iowa App. 1994) does likewise suggest that "interest of record" in section 447.9 requires some public record of the property interest.

HHS does NOT give public record of its claim of debt.

Kilts v. American Legion Okoboji Lakes Post 654, 581 N.W.2d 198, 191 (Iowa App. 1998) insists that section 447.9 "expressly accommodates the competing interests implicated by its provisions. The timing, substance, and limited objects of a tax sale certificate holder's duty to give notice are clearly delineated. Those entitled to redeem are informed of their rights and actions necessary to accomplish redemption. ..."
Denning v. First American Closing of Iowa, 756 N.W.2d 480 (Iowa App. 2008) (Table) involves a foreclosure proceeding rather than a tax sale. But the Court in its opinion quotes Madsen, *Marshall's Iowa Title Opinions and Standards* section 13.10(A) at p. 296 to effect that "interests of record" implies the sort of records that can be discovered "If a record search is made down to the date of filing a foreclosure petition..."
This seems to be the standard applied in the messy tax sale situation in *Robinson v. First American Title Ins.* Co., 755 N.W.2d 144 (Iowa App. 2008) (Table). A certificate holder's title search failed to find a mortgagee's interest that was on record-- leading to title litigation.

Implication = to be entitled to receive 447.9 notice, and to redeem from tax sale, HHS must have a recorded court order, amounting to a judgment "of record".

* * * * *

I suppose you could rely on 448.5 as well. Was there a 120-day affidavit recorded?

* * * * *

I don't believe they are entitled to notice. Section 447.9 identifies those entitled to notice and unless Estate Recovery has an interest of record in the property, they don't appear to be entitled to notice.

* * * * *

How is Tyler v. Hennepin County, Minnesota, 598 U.S. 631 (2023) decision impacting our concerns when reselling tax forfeiture parcels?

[See Attachment]

143 S.Ct. 1369
Supreme Court of the United States.

Geraldine TYLER, Petitioner
v.
HENNEPIN COUNTY, MINNESOTA, et al.

No. 22-166
|
Argued April 26, 2023
|
Decided May 25, 2023

Synopsis

Background: Taxpayer brought action against county in state court alleging county's retention of the $25,000 in excess proceeds from the sale of her condominium for $40,000 to satisfy her delinquent $15,000 property tax bill was a taking of property without just compensation, in violation of the Fifth Amendment. Following removal, the United States District Court for the District of Minnesota, Patrick J. Schiltz, Chief Judge, 505 F.Supp.3d 879, granted county's motion to dismiss, and taxpayer appealed. The United States Court of Appeals for the Eighth Circuit, Colloton, Circuit Judge, 26 F.4th 789, affirmed. Certiorari was granted.

Holdings: In a unanimous opinion, the Supreme Court, Chief Justice Roberts, held that:

[1] taxpayer plausibly pleaded a classic pocketbook injury sufficient to give her standing to sue;

[2] county's retention of the money remaining after the condominium was sold was a classic taking for which taxpayer was entitled to just compensation; and

[3] taxpayer did not constructively abandon her condominium by failing to pay property taxes.

Reversed.

Justice Gorsuch filed a concurring opinion in which Justice Jackson joined.

Procedural Posture(s): Petition for Writ of Certiorari; On Appeal; Motion to Dismiss for Failure to State a Claim.

West Headnotes (15)

[1] **Eminent Domain** ⇐ Persons entitled to sue

Taxpayer plausibly pleaded on the face of her complaint that she suffered financial harm from county's action in allegedly illegally appropriating, pursuant to Minnesota law, the $25,000 surplus from its sale, for $40,000, of her

condominium in order to satisfy her delinquent $15,000 property tax bill, and thus, she alleged a classic pocketbook injury sufficient to give her standing to sue the county for taking her property without just compensation, in violation of the Fifth Amendment, even if there were encumbrances on the home worth more than the surplus; had taxpayer received the surplus from the tax sale, she could have at the very least used it to reduce any such liability. U.S. Const. Amend. 5; Minn. Stat. Ann. §§ 281.18, 282.08.

10 Cases that cite this headnote

[2] **Federal Civil Procedure** In general; injury or interest

Federal Civil Procedure Causation; redressability

To bring suit, a plaintiff must plead an injury in fact attributable to the defendant's conduct and redressable by the court.

4 Cases that cite this headnote

[3] **Federal Civil Procedure** Matters deemed admitted; acceptance as true of allegations in complaint

On a motion to dismiss for failure to state a claim, the court takes the facts in the complaint as true.

1 Case that cites this headnote

[4] **Federal Civil Procedure** Pleading

At the motion to dismiss stage of a case, the plaintiff need not definitively prove her injury or disprove the defendant's defenses to plausibly plead an injury for standing purposes.

2 Cases that cite this headnote

[5] **Eminent Domain** Taxes, licenses, assessments, and users' fees in general

Taxation Sale of Land for Nonpayment of Tax

County's retention, pursuant to Minnesota law, of the $25,000 that was remaining after it had seized and sold taxpayer's condominium for $40,000 to satisfy her $15,000 delinquent property tax debt was a classic taking, in which the government directly appropriated private property for its own use, for which taxpayer was entitled to just compensation; the county had the power to sell taxpayer's home to recover the unpaid property taxes, but it could not use the toehold of the tax debt to confiscate more property than was due. U.S. Const. Amend. 5; Minn. Stat. Ann. § 282.08.

18 Cases that cite this headnote

[6] **Eminent Domain** Taxes, licenses, assessments, and users' fees in general

Taxation Nature of property tax

State property taxes are not themselves a taking under the Fifth Amendment, but are a mandated contribution from individuals for the support of the government for which they receive compensation in the protection which government affords. U.S. Const. Amend. 5.

1 Case that cites this headnote

[7] **Taxation** Interest and fees

Taxation ⇦ Sale of Land for Nonpayment of Tax

In collecting property taxes, the State may impose interest and late fees, and it may also seize and sell property, including land, to recover the amount owed.

1 Case that cites this headnote

[8] **Eminent Domain** ⇦ Property and Rights Subject of Compensation

To define property for purposes of the Takings Clause, the court draws on existing rules or understandings about property rights. U.S. Const. Amend. 5.

6 Cases that cite this headnote

[9] **Eminent Domain** ⇦ Property and Rights Subject of Compensation

State law is one important source for defining property for purposes of the Takings Clause, but state law cannot be the only source; otherwise, a State could sidestep the Takings Clause by disavowing traditional property interests in assets it wishes to appropriate. U.S. Const. Amend. 5.

19 Cases that cite this headnote

[10] **Eminent Domain** ⇦ Property and Rights Subject of Compensation

To define property for purposes of the Takings Clause, the Supreme Court looks to traditional property law principles, plus historical practice and the Court's precedents. U.S. Const. Amend. 5.

17 Cases that cite this headnote

[11] **Abandoned and Lost Property** ⇦ Acts and omissions constituting abandonment

Eminent Domain ⇦ Persons entitled to sue

Taxation ⇦ Surplus

Taxpayer did not constructively abandon her condominium by failing to pay property taxes, and thus, she was not precluded from obtaining just compensation for county's taking, pursuant to Minnesota law, of the $25,000 that was remaining after it had seized and sold her condominium for $40,000 to satisfy her $15,000 delinquent property tax debt; Minnesota's forfeiture scheme was not about abandonment at all, as it gave no weight to taxpayer's use of the property. U.S. Const. Amend. 5; Minn. Stat. Ann. § 282.08.

1 Case that cites this headnote

[12] **Abandoned and Lost Property** ⇦ Abandonment and Abandoned Property in General

Abandonment of property requires the surrender or relinquishment or disclaimer of all rights in the property.

1 Case that cites this headnote

[13] **Abandoned and Lost Property** ⇦ Acts and omissions constituting abandonment

It is the owner's failure to make any use of property—and for a lengthy period of time—that causes the lapse of the property right through abandonment.

[14] **Eminent Domain** ⇨ Necessity of making compensation in general

The Takings Clause was designed to bar Government from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole. U.S. Const. Amend. 5.

6 Cases that cite this headnote

[15] **Taxation** ⇨ Amount of payment

The taxpayer must render unto Caesar what is Caesar's, but no more.

West Codenotes

Held Unconstitutional

Minn. Stat. Ann. § 282.08

**1371 *Syllabus* *

Geraldine Tyler owned a condominium in Hennepin County, Minnesota, that accumulated about $15,000 in unpaid real estate taxes along with interest and penalties. The County seized the condo and sold it for $40,000, keeping the $25,000 excess over Tyler's tax debt for itself. Minn. Stat. §§ 281.18, 282.07, 282.08. Tyler filed suit, alleging that the County had unconstitutionally retained the excess value of her home above her tax debt in violation of the Takings Clause of the Fifth Amendment and the Excessive Fines Clause of the Eighth Amendment. The District Court dismissed the suit for failure to state a claim, and the Eighth Circuit affirmed.

Held: Tyler plausibly alleges that Hennepin County's retention of the excess value of her home above her tax debt violated the Takings Clause. Pp. 1374 – 1381.

(a) Tyler's claim that the County illegally appropriated the $25,000 surplus constitutes a classic pocketbook injury sufficient to give her standing. *TransUnion LLC* v. *Ramirez*, 594 U. S. ——, ——, 141 S.Ct. 2190, 210 L.Ed.2d 568. Even if there are debts on her home, as the County claims, Tyler still plausibly alleges a financial harm, for the County has kept $25,000 that she could have used to reduce her personal liability for those debts. Pp. 1374 – 1375.

(b) Tyler has stated a claim under the Takings Clause, which provides that "private property [shall not] be taken for public use, without just compensation." Whether remaining value from a tax sale is property protected under the Takings Clause depends on state law, "traditional property law principles," historical practice, and the Court's precedents. *Phillips* v. *Washington Legal Foundation*, 524 U.S. 156, 165–168, 118 S.Ct. 1925, 141 L.Ed.2d 174. Though state law is an important source of property rights, it cannot be the only one because otherwise a State could "sidestep the Takings Clause by disavowing traditional property interests" in assets it wishes to appropriate. *Id.*, at 167, 118 S.Ct. 1925. History and precedent dictate that, while the County had the power to sell Tyler's home to recover the unpaid property taxes, it could not use the tax debt to confiscate more property than was due. Doing so effected a "classic taking in which the government directly appropriates private property for its own use." *Tahoe-Sierra Preservation Council, Inc.* v. *Tahoe Regional Planning Agency*, 535 U.S. 302, 324, 122 S.Ct. 1465, 152 L.Ed.2d 517 (internal quotation marks omitted).

The principle that a government may not take from a taxpayer more than she owes is rooted in English law and can trace its origins at least as far back as the Magna Carta. From the founding, the new Government of the United States could seize and sell only "so much of [a] tract of land ... as may be necessary to satisfy the taxes due thereon." Act of July 14, 1798, § 13, 1 Stat. 601. Ten States adopted similar statutes around the same time, and the consensus that a government could not take more property than it was owed held true through the ratification of the Fourteenth Amendment. Today, most States and the Federal Government require excess value to be returned to the taxpayer whose property is sold to satisfy outstanding tax debt.

The Court's precedents have long recognized the principle that a taxpayer is entitled to the surplus in excess of the debt owed. See *United States v. Taylor*, 104 U.S. 216, 26 L.Ed. 721; *United States v. Lawton*, 110 U.S. 146, 3 S.Ct. 545, 28 L.Ed. 100. *Nelson v. City of New York*, 352 U.S. 103, 77 S.Ct. 195, 1 L.Ed.2d 171, did not change that. The ordinance challenged there did not "absolutely preclud[e] an owner from obtaining the surplus proceeds of a judicial sale," but instead simply defined the process through which the owner could claim the surplus. *Id.*, at 110, 77 S.Ct. 195. Minnesota's scheme, in comparison, provides no opportunity for the taxpayer to recover the excess value from the State.

Significantly, Minnesota law itself recognizes in many other contexts that a property owner is entitled to the surplus in excess of her debt. If a bank forecloses on a mortgaged property, state law entitles the homeowner to the surplus from the sale. And in collecting past due taxes on income or personal property, Minnesota protects the taxpayer's right to surplus. Minnesota may not extinguish a property interest that it recognizes everywhere else to avoid paying just compensation when the State does the taking. *Phillips*, 524 U.S., at 167, 118 S.Ct. 1925. Pp. 1374 – 1379.

(c) The Court rejects the County's argument that Tyler has no property interest in the surplus because she constructively abandoned her home by failing to pay her taxes. Abandonment requires the "surrender or relinquishment or disclaimer of" all rights in the property, *Rowe v. Minneapolis*, 49 Minn. 148, 51 N.W. 907, 908. Minnesota's forfeiture law is not concerned about the taxpayer's use or abandonment of the property, only her failure to pay taxes. The County cannot frame that failure as abandonment to avoid the demands of the Takings Clause. Pp. 1379 – 1381.

26 F.4th 789, reversed.

ROBERTS, C. J., delivered the opinion for a unanimous Court. GORSUCH, J., filed a concurring opinion, in which JACKSON, J., joined.

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Opinion

CHIEF JUSTICE ROBERTS delivered the opinion of the Court.

***634** ****1373** Hennepin County, Minnesota, sold Geraldine Tyler's home for $40,000 to satisfy a $15,000 tax bill. Instead of returning the remaining $25,000, the County kept it for itself. The question presented is whether this constituted a taking of property without just compensation, in violation of the Fifth Amendment.

***635** I

Hennepin County imposes an annual tax on real property. Minn. Stat. § 273.01 (2022). The taxpayer has one year to pay before the taxes become delinquent. § 279.02. If she does not timely pay, the tax accrues interest and penalties, and the County obtains a judgment against the property, transferring limited title to the State. See §§ 279.03, 279.18, 280.01. The delinquent taxpayer then has three years to redeem the property and regain title by paying all the taxes and late fees. §§ 281.17(a), 281.18. During this time, the taxpayer remains the beneficial owner of the property and can continue to live in her home. See § 281.70. But if at the end of three years the bill has not been paid, absolute title vests in the State, and the tax debt is extinguished. §§ 281.18, 282.07. The State may keep the property for public use or sell it to a private party. § 282.01 subds. 1a, 3. If the property is sold, any proceeds in excess of the tax debt and the costs of the sale remain with the County, to be split between it, the town, and the school district. § 282.08. The former owner has no opportunity to recover this surplus.

****1374** Geraldine Tyler is 94 years old. In 1999, she bought a one-bedroom condominium in Minneapolis and lived alone there for more than a decade. But as Tyler aged, she and her family decided that she would be safer in a senior community, so they moved her to one in 2010. Nobody paid the property taxes on the condo in Tyler's absence and, by 2015, it had accumulated about $2300 in unpaid taxes and $13,000 in interest and penalties. Acting under Minnesota's forfeiture procedures, Hennepin County seized the condo and sold it for $40,000, extinguishing the $15,000 debt. App. 5. The County kept the remaining $25,000 for its own use.

Tyler filed a putative class action against Hennepin County and its officials, asserting that the County had unconstitutionally retained the excess value of her home above her tax debt. As relevant, she brought claims under the Takings ***636** Clause of the Fifth Amendment and the Excessive Fines Clause of the Eighth Amendment.

The District Court dismissed the suit for failure to state a claim. 505 F.Supp.3d 879, 883 (Minn. 2020). The Eighth Circuit affirmed. 26 F.4th 789, 790 (2022). It held that "[w]here state law recognizes no property interest in surplus proceeds from a tax-foreclosure sale conducted after adequate notice to the owner, there is no unconstitutional taking." *Id.*, at 793. The court also rejected Tyler's claim under the Excessive Fines Clause, adopting the District Court's reasoning that the forfeiture was not a fine because it was intended to remedy the State's tax losses, not to punish delinquent property owners. *Id.*, at 794 (citing 505 F.Supp.3d at 895–899).

We granted certiorari. 598 U. S. ——, 143 S.Ct. 644, 214 L.Ed.2d 382 (2023).

II

[1] [2] [3] The County asserts that Tyler does not have standing to bring her takings claim. To bring suit, a plaintiff must plead an injury in fact attributable to the defendant's conduct and redressable by the court. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560–561, 112 S.Ct. 2130, 119 L.Ed.2d 351 (1992). This case comes to us on a motion to dismiss for failure to state a claim. At this initial stage, we take the facts in the complaint as true. *Warth v. Seldin*, 422 U.S. 490, 501, 95 S.Ct. 2197, 45 L.Ed.2d 343 (1975). Tyler claims that the County has illegally appropriated the $25,000 surplus beyond her $15,000 tax debt. App. 5. This is a classic pocketbook injury sufficient to give her standing. *TransUnion LLC* v. *Ramirez*, 594 U. S. ——, ——, 141 S.Ct. 2190, 2204, 210 L.Ed.2d 568 (2021).

The County objects that Tyler does not have standing because she did not affirmatively "disclaim the existence of other debts or encumbrances" on her home worth more than the $25,000 surplus. Brief for Respondents 12–13, and n. 5. According to the County, public records suggest that the condo may be subject to a $49,000 mortgage and a $12,000 lien for unpaid homeowners' association fees. See *ibid.* ***637** The County argues that these potential encumbrances exceed the value of any interest Tyler has in the home above her $15,000 tax debt, and that she therefore ultimately suffered no financial harm from the sale of her home. Without such harm she would have no standing.

But the County never entered these records below, nor has it submitted them to this Court. Even if there were encumbrances on the home worth more than the surplus, Tyler still plausibly alleges a financial harm: The County has kept $25,000 that belongs to her. In Minnesota, a tax sale extinguishes all other liens on a property. See Minn. Stat. § 281.18; *County of Blue Earth v. Turtle*, 593 N.W.2d 258, 261 (Minn. App. 1999). That sale does not extinguish ****1375** the taxpayer's debts. Instead, the borrower remains personally liable. See *St. Paul v. St. Anthony Flats Ltd. Partnership*, 517 N.W.2d 58, 62 (Minn. App. 1994). Had Tyler received the surplus from the tax sale, she could have at the very least used it to reduce any such liability.

[4] At this initial stage of the case, Tyler need not definitively prove her injury or disprove the County's defenses. She has plausibly pleaded on the face of her complaint that she suffered financial harm from the County's action, and that is enough for now. See *Lujan*, 504 U.S., at 561, 112 S.Ct. 2130.

III

A

[5] [6] [7] The Takings Clause, applicable to the States through the Fourteenth Amendment, provides that "private property [shall not] be taken for public use, without just compensation." U. S. Const., Amdt. 5. States have long imposed taxes on property. Such taxes are not themselves a taking, but are a mandated "contribution from individuals ... for the support of the government ... for which they receive compensation in the protection which government affords." *County of Mobile v. Kimball*, 102 U.S. 691, 703, 26 L.Ed. 238 (1881). In collecting these taxes, the State may impose interest and ***638** late fees. It may also seize and sell property, including land, to recover the amount owed. See *Jones v. Flowers*, 547 U.S. 220, 234, 126 S.Ct. 1708, 164 L.Ed.2d 415 (2006). Here there was money remaining after Tyler's home was seized and sold by the County to satisfy her past due taxes, along with the costs of collecting them. The question is whether that remaining value is property under the Takings Clause, protected from uncompensated appropriation by the State.

[8] [9] [10] The Takings Clause does not itself define property. *Phillips v. Washington Legal Foundation*, 524 U.S. 156, 164, 118 S.Ct. 1925, 141 L.Ed.2d 174 (1998). For that, the Court draws on "existing rules or understandings" about property rights. *Ibid.* (internal quotation marks omitted). State law is one important source. *Ibid.*; see also *Stop the*

Beach Renourishment, Inc. v. Florida Dept. of Environmental Protection, 560 U.S. 702, 707, 130 S.Ct. 2592, 177 L.Ed.2d 184 (2010). But state law cannot be the only source. Otherwise, a State could "sidestep the Takings Clause by disavowing traditional property interests" in assets it wishes to appropriate. *Phillips*, 524 U.S., at 167, 118 S.Ct. 1925; see also *Webb's Fabulous Pharmacies, Inc. v. Beckwith*, 449 U.S. 155, 164, 101 S.Ct. 446, 66 L.Ed.2d 358 (1980); *Hall v. Meisner*, 51 F.4th 185, 190 (CA6 2022) (Kethledge, J., for the Court) ("[T]he Takings Clause would be a dead letter if a state could simply exclude from its definition of property any interest that the state wished to take."). So we also look to "traditional property law principles," plus historical practice and this Court's precedents. *Phillips*, 524 U.S., at 165–168, 118 S.Ct. 1925; see, *e.g.*, *United States v. Causby*, 328 U.S. 256, 260–267, 66 S.Ct. 1062, 90 L.Ed. 1206 (1946); *Ruckelshaus v. Monsanto Co.*, 467 U.S. 986, 1001–1004, 104 S.Ct. 2862, 81 L.Ed.2d 815 (1984).

Minnesota recognizes a homeowner's right to real property, like a house, and to financial interests in that property, like home equity. Cf. *Armstrong v. United States*, 364 U.S. 40, 44, 80 S.Ct. 1563, 4 L.Ed.2d 1554 (1960) (lien on boats); *Louisville Joint Stock Land Bank v. Radford*, 295 U.S. 555, 590, 55 S.Ct. 854, 79 L.Ed. 1593 (1935) (mortgage on farm). Historically, Minnesota also recognized that a homeowner whose property has been sold to satisfy delinquent property taxes had an interest in the excess value of her ***639** home ****1376** above the debt owed. See *Farnham v. Jones*, 32 Minn. 7, 11, 19 N.W. 83, 85 (1884). But in 1935, the State purported to extinguish that property interest by enacting a law providing that an owner forfeits her interest in her home when she falls behind on her property taxes. See 1935 Minn. Laws pp. 713–714, § 8. This means, the County reasons, that Tyler has no property interest protected by the Takings Clause.

History and precedent say otherwise. The County had the power to sell Tyler's home to recover the unpaid property taxes. But it could not use the toehold of the tax debt to confiscate more property than was due. By doing so, it effected a "classic taking in which the government directly appropriates private property for its own use." *Tahoe-Sierra Preservation Council, Inc. v. Tahoe Regional Planning Agency*, 535 U.S. 302, 324, 122 S.Ct. 1465, 152 L.Ed.2d 517 (2002) (internal quotation marks and alteration omitted). Tyler has stated a claim under the Takings Clause and is entitled to just compensation.

B

The principle that a government may not take more from a taxpayer than she owes can trace its origins at least as far back as Runnymeade in 1215, where King John swore in the Magna Carta that when his sheriff or bailiff came to collect any debts owed him from a dead man, they could remove property "until the debt which is evident shall be fully paid to us; and the residue shall be left to the executors to fulfil the will of the deceased." W. McKechnie, Magna Carta, A Commentary on the Great of King John, ch. 26, p. 322 (rev. 2d ed. 1914) (footnote omitted).

That doctrine became rooted in English law. Parliament gave the Crown the power to seize and sell a taxpayer's property to recover a tax debt, but dictated that any "Overplus" from the sale "be immediately restored to the Owner." 4 W. & M., ch. 1, § 12, in 3 Eng. Stat. at Large 488–489 (1692). As Blackstone explained, the common law demanded the same: If a tax collector seized a taxpayer's property, he was ***640** "bound by an implied contract in law to restore [the property] on payment of the debt, duty, and expenses, before the time of sale; or, when sold, to render back the overplus." 2 Commentaries on the Laws of England 453 (1771).

This principle made its way across the Atlantic. In collecting taxes, the new Government of the United States could seize and sell only "so much of [a] tract of land ... as may be necessary to satisfy the taxes due thereon." Act of July 14, 1798, § 13, 1 Stat. 601. Ten States adopted similar statutes shortly after the founding. [1] For example, Maryland required that only so much land be sold "as may be sufficient to discharge the taxes thereon due," and provided that if the sale produced more than needed for the taxes, "such overplus of money" shall be paid to the owner. 1797 Md. Laws ch. 90, §§ 4–5. This Court enforced one

such state statute against a Georgia tax collector, reasoning that "if a whole tract of land was sold when a small part of it would have been sufficient for the taxes, which at present appears to be the case, the collector unquestionably exceeded his authority." **1377 *Stead's Executors* v. *Course*, 4 Cranch 403, 414, 2 L.Ed. 660 (1808) (Marshall, C. J., for the Court).

Like its sister States, Virginia originally provided that the Commonwealth could seize and sell "so much" of the delinquent tracts "as shall be sufficient to discharge the said taxes." 1781 Va. Acts p. 153, § 4. But about a decade later, Virginia enacted a new scheme, which provided for the forfeiture of any delinquent land to the Commonwealth. Virginia passed this harsh forfeiture regime in response to the *641 "loose, cheap and unguarded system of disposing of her public lands" that the Commonwealth had adopted immediately following statehood. *McClure v. Maitland*, 24 W.Va. 561, 564 (1884). To encourage settlement, Virginia permitted "any person [to] acquire title to so much ... unappropriated lands as he or she shall desire to purchase" at the price of 40 pounds per 100 acres. 1779 Va. Acts p. 95, § 2. Within two decades, nearly all of Virginia's land had been claimed, much of it by nonresidents who did not live on or farm the land but instead hoped to sell it for a profit. *McClure*, 24 W.Va., at 564. Many of these nonresidents "wholly neglected to pay the taxes" on the land, *id.*, at 565, so Virginia provided that title to any taxpayer's land was completely "lost, forfeited and vested in the Commonwealth" if the taxpayer failed to pay taxes within a set period, 1790 Va. Acts p. 5, § 5. This solution was short lived, however; the Commonwealth repealed the forfeiture scheme in 1814 and once again sold "so much only of each tract of land ... as will be sufficient to discharge the" debt. 1813 Va. Acts p. 21, § 27. Virginia's "exceptional" and temporary forfeiture scheme carries little weight against the overwhelming consensus of its sister States. See *Martin v. Snowden*, 59 Va. 100, 138 (1868).

The consensus that a government could not take more property than it was owed held true through the passage of the Fourteenth Amendment. States, including Minnesota, continued to require that no more than the minimum amount of land be sold to satisfy the outstanding tax debt.[2] The *642 County identifies just three States that deemed delinquent property entirely forfeited for failure to pay taxes. See 1836 Me. Laws p. 325, § 4; 1869 La. Acts p. 159, § 63; 1850 Miss. Laws p. 52, § 4.[3] Two of these laws did not last. Maine amended its law a decade later to permit the former owner to recover the surplus. 1848 Me. Laws p. 56, § 4. And Mississippi's highest court promptly struck down its law for violating the Due Process and Takings Clauses of the Mississippi Constitution. See *Griffin v. Mixon*, 38 Miss. 424, 439, 451–452 (Ct. Err. & App. 1860). Louisiana's statute remained on the books, but the County cites no case showing that the statute was actually enforced against a taxpayer to take his entire property.

**1378 The minority rule then remains the minority rule today: Thirty-six States and the Federal Government require that the excess value be returned to the taxpayer.

C

Our precedents have also recognized the principle that a taxpayer is entitled to the surplus in excess of the debt owed. In *United States v. Taylor*, 104 U.S. 216, 26 L.Ed. 721 (1881), an Arkansas taxpayer whose property had been sold to satisfy a tax debt sought to recover the surplus from the sale. A nationwide tax had been imposed by Congress in 1861 to raise funds for the Civil War. Under that statute, if a taxpayer did not pay, his property would be sold and "the surplus of the proceeds of the sale [would] be paid to the owner." Act of Aug. 5, 1861, § 36, 12 Stat. 304. The next year, Congress added a 50 percent penalty in the rebelling States, but made no mention *643 of the owner's right to surplus after a tax sale. See Act of June 7, 1862, § 1, 12 Stat. 422. Taylor's property had been sold for failure to pay taxes under the 1862 Act, but he sought to recover the surplus under the 1861 Act. Though the 1862 Act "ma[de] no mention of the right of the owner of the lands to receive the surplus proceeds of their sale," we held that the taxpayer was entitled to the surplus because nothing in the 1862 Act took "from the owner the right accorded him by the act of 1861, of applying for and receiving from the treasury the surplus proceeds of the sale of his lands." *Taylor*, 104 U.S., at 218–219.

We extended a taxpayer's right to surplus even further in *United States v. Lawton*, 110 U.S. 146, 3 S.Ct. 545, 28 L.Ed. 100 (1884). The property owner had an unpaid tax bill under the 1862 Act for $170.50. *Id.*, at 148, 3 S.Ct. 545. The Federal Government seized the taxpayer's property and, instead of selling it to a private buyer, kept the property for itself at a value of $1100. *Ibid.* The property owner sought to recover the excess value from the Government, but the Government refused. *Ibid.* The 1861 Act explicitly provided that any surplus from tax sales to private parties had to be returned to the owner, but it did not mention paying the property owner the excess value where the Government *kept* the property for its own use instead of selling it. See 12 Stat. 304. We held that the taxpayer was still entitled to the surplus under the statute, just as if the Government had sold the property. *Lawton*, 110 U.S., at 149–150, 3 S.Ct. 545. Though the 1861 statute did not explicitly provide the right to the surplus under such circumstances, "[t]o withhold the surplus from the owner would be to violate the Fifth Amendment to the Constitution and to deprive him of his property without due process of law, or to take his property for public use without just compensation." *Id.*, at 150, 3 S.Ct. 545.

The County argues that *Taylor* and *Lawton* were superseded by *Nelson v. City of New York*, 352 U.S. 103, 77 S.Ct. 195, 1 L.Ed.2d 171 (1956), but that case is readily distinguished. There New York City ***644** foreclosed on properties for unpaid water bills. Under the governing ordinance, a property owner had almost two months after the city filed for foreclosure to pay off the tax debt, and an additional 20 days to ask for the surplus from any tax sale. *Id.*, at 104–105, n. 1, 77 S.Ct. 195. No property owner requested his surplus within the required time. The owners later sued the city, claiming that it had denied them due process and equal protection of the laws. *Id.*, at 109, 77 S.Ct. 195. In their reply brief before this Court, the owners also argued for the first time that they had been denied just compensation under the Takings Clause. *Ibid.*

****1379** We rejected this belated argument. *Lawton* had suggested that withholding the surplus from a property owner always violated the Fifth Amendment, but there was no specific procedure there for recovering the surplus. *Nelson*, 352 U.S., at 110, 77 S.Ct. 195. New York City's ordinance, in comparison, permitted the owner to recover the surplus but required that the owner have "filed a timely answer in [the] foreclosure proceeding, asserting his property had a value substantially exceeding the tax due." *Ibid.* (citing *New York v. Chapman Docks Co.*, 1 App.Div.2d 895, 149 N.Y.S.2d 679 (1956)). Had the owners challenging the ordinance done so, "a separate sale" could have taken place "so that [they] might receive the surplus." 352 U.S., at 110, 77 S.Ct. 195. The owners did not take advantage of this procedure, so they forfeited their right to the surplus. Because the New York City ordinance did not "absolutely preclud[e] an owner from obtaining the surplus proceeds of a judicial sale," but instead simply defined the process through which the owner could claim the surplus, we found no Takings Clause violation. *Ibid.*

Unlike in *Nelson*, Minnesota's scheme provides no opportunity for the taxpayer to recover the excess value; once absolute title has transferred to the State, any excess value always remains with the State. The County argues that the delinquent taxpayer could sell her house to pay her tax debt ***645** before the County itself seizes and sells the house. But requiring a taxpayer to sell her house to avoid a taking is not the same as providing her an opportunity to recover the excess value of her house once the State has sold it.

D

Finally, Minnesota law itself recognizes that in other contexts a property owner is entitled to the surplus in excess of her debt. Under state law, a private creditor may enforce a judgment against a debtor by selling her real property, but "[n]o more shall be sold than is sufficient to satisfy" the debt, and the creditor may receive only "so much [of the proceeds] as will satisfy" the debt. Minn. Stat. §§ 550.20, 550.08 (2022). Likewise, if a bank forecloses on a home because the homeowner fails to pay the mortgage, the homeowner is entitled to the surplus from the sale. § 580.10.

In collecting all other taxes, Minnesota protects the taxpayer's right to surplus. If a taxpayer falls behind on her income tax and the State seizes and sells her property, "[a]ny surplus proceeds ... shall ... be credited or refunded" to the owner. §§ 270C.7101, 270C.7108, subd. 2. So too if a taxpayer does not pay taxes on her personal property, like a car. § 277.21, subd. 13. Until 1935, Minnesota followed the same rule for the sale of real property. The State could sell only the "least quantity" of land sufficient to satisfy the debt, 1859 Minn. Laws p. 58, § 23, and "any surplus realized from the sale must revert to the owner," *Farnham*, 32 Minn., at 11, 19 N.W., at 85.

The State now makes an exception only for itself, and only for taxes on real property. But "property rights cannot be so easily manipulated." *Cedar Point Nursery* v. *Hassid*, 594 U. S. ——, ——, 141 S.Ct. 2063, 2076, 210 L.Ed.2d 369 (2021) (internal quotation marks omitted). Minnesota may not extinguish a property interest that it recognizes everywhere else to avoid paying just compensation when it is the one doing the taking. *Phillips*, 524 U.S., at 167, 118 S.Ct. 1925.

***646** IV

[11] The County argues that Tyler has no interest in the surplus because she constructively abandoned her home by failing ****1380** to pay her taxes. States and localities have long imposed "reasonable conditions" on property ownership. *Texaco, Inc. v. Short*, 454 U.S. 516, 526, 102 S.Ct. 781, 70 L.Ed.2d 738 (1982). In Minnesota, one of those conditions is paying property taxes. By neglecting this reasonable condition, the County argues, the owner can be considered to have abandoned her property and is therefore not entitled to any compensation for its taking. See Minn. Stat. § 282.08.

The County portrays this as just another example in the long tradition of States taking title to abandoned property. We upheld one such statutory scheme in *Texaco*. There, Indiana law dictated that a mineral interest automatically reverted to the owner of the land if not used for 20 years. 454 U.S., at 518, 102 S.Ct. 781. Use included excavating minerals, renting out the right to excavate, paying taxes, or simply filing a "statement of claim with the local recorder of deeds." *Id.*, at 519, 102 S.Ct. 781. Owners who lost their mineral interests challenged the statute as unconstitutional. We held that the statute did not violate the Takings Clause because the State "has the power to condition the permanent retention of [a] property right on the performance of reasonable conditions that indicate a *present intention to retain the interest.*" *Id.*, at 526, 102 S.Ct. 781 (emphasis added). Indiana reasonably "treat[ed] a mineral interest that ha[d] not been used for 20 years and for which no statement of claim ha[d] been filed as abandoned." *Id.*, at 530, 102 S.Ct. 781. There was thus no taking, for "after abandonment, the former owner retain[ed] no interest for which he may claim compensation." *Ibid.*

[12] **[13]** The County suggests that here, too, Tyler constructively abandoned her property by failing to comply with a reasonable condition imposed by the State. But the County cites no case suggesting that failing to pay property taxes is itself ***647** sufficient for abandonment. Cf. *Krueger v. Market*, 124 Minn. 393, 397, 145 N.W. 30, 32 (1914) (owner did not abandon property despite failing to pay taxes for 30 years). Abandonment requires the "surrender or relinquishment or disclaimer of" all rights in the property. *Rowe v. Minneapolis*, 49 Minn. 148, 157, 51 N.W. 907, 908 (1892). "It is the owner's failure to make *any* use of the property"—and for a lengthy period of time—"that causes the lapse of the property right." *Texaco*, 454 U.S.,

at 530, 102 S.Ct. 781 (emphasis added). In *Texaco*, the owners lost their property because they made *no* use of their interest for 20 years and then failed to take the simple step of filing paperwork indicating that they still claimed ownership over the interest. In comparison, Minnesota's forfeiture scheme is not about abandonment at all. It gives no weight to the taxpayer's use of the property. Indeed, the delinquent taxpayer can continue to live in her house for years after falling behind in taxes, up until the government sells it. See § 281.70. Minnesota cares only about the taxpayer's failure to contribute her share to the public fisc. The County cannot frame that failure as abandonment to avoid the demands of the Takings Clause.

* * *

[14] **[15]** The Takings Clause "was designed to bar Government from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole." *Armstrong*, 364 U.S., at 49, 80 S.Ct. 1563. A taxpayer who loses her $40,000 house to the State to fulfill a $15,000 tax debt has made a far greater contribution to the public fisc than she owed. The taxpayer must render unto Caesar what is Caesar's, but no more.

****1381** Because we find that Tyler has plausibly alleged a taking under the Fifth Amendment, and she agrees that relief under "the Takings Clause would fully remedy [her] harm," we need not decide whether she has also alleged an excessive ***648** fine under the Eighth Amendment. Tr. of Oral Arg. 27. The judgment of the Court of Appeals for the Eighth Circuit is reversed.

It is so ordered.

Justice GORSUCH, with whom Justice JACKSON joins, concurring.

The Court reverses the Eighth Circuit's dismissal of Geraldine Tyler's suit and holds that she has plausibly alleged a violation of the Fifth Amendment's Takings Clause. I agree. Given its Takings Clause holding, the Court understandably declines to pass on the question whether the Eighth Circuit committed a further error when it dismissed Ms. Tyler's claim under the Eighth Amendment's Excessive Fines Clause. *Ante*, at 1380 – 1381. But even a cursory review of the District Court's excessive-fines analysis—which the Eighth Circuit adopted as "well-reasoned," 26 F.4th 789, 794 (2022)—reveals that it too contains mistakes future lower courts should not be quick to emulate.

First, the District Court concluded that the Minnesota tax-forfeiture scheme is not punitive because "its primary purpose" is "remedial"—aimed, in other words, at "compensat[ing] the government for lost revenues due to the non-payment of taxes." 505 F.Supp.3d 879, 896 (Minn. 2020). That primary-purpose test finds no support in our law. Because "sanctions frequently serve more than one purpose," this Court has said that the Excessive Fines Clause applies to *any* statutory scheme that "serv[es] *in part* to punish." *Austin v. United States*, 509 U.S. 602, 610, 113 S.Ct. 2801, 125 L.Ed.2d 488 (1993) (emphasis added). It matters not whether the scheme has a remedial purpose, even a predominantly remedial purpose. So long as the law "cannot fairly be said *solely* to serve a remedial purpose," the Excessive Fines Clause applies. *Ibid.* (emphasis added; internal quotation marks omitted). Nor, this Court has held, is it appropriate to label sanctions as "remedial" ***649** when (as here) they bear " 'no correlation to any damages sustained by society or to the cost of enforcing the law,' " and "any relationship between the Government's actual costs and the amount of the sanction is merely coincidental." *Id.*, at 621–622, and n. 14, 113 S.Ct. 2801.

Second, the District Court asserted that the Minnesota tax-forfeiture scheme cannot "be punitive because it actually confers a windfall on the delinquent taxpayer when the value of the property that is forfeited is less than the amount of taxes owed." 505 F.Supp.3d, at 896. That observation may be factually true, but it is legally irrelevant. Some prisoners better themselves behind bars; some addicts credit court-ordered rehabilitation with saving their lives. But punishment remains punishment all the same. See Tr. of Oral Arg. 61. Of course, no one thinks that an individual who profits from an economic penalty has a *winning*

excessive-fines claim. But nor has this Court ever held that a scheme producing fines that punishes some individuals can escape constitutional scrutiny merely because it does not punish others.

Third, the District Court appears to have inferred that the Minnesota scheme is not "punitive" because it does not turn on the "culpability" of the individual property owner. 505 F.Supp.3d, at 897. But while a focus on "culpability" can sometimes make a provision "look more like punishment," this Court has never endorsed the converse view. *Austin*, 509 U.S., at 619, 113 S.Ct. 2801. Even without emphasizing culpability, this Court has ****1382** said a statutory scheme may still be punitive where it serves another "goal of punishment," such as "[d]eterrence." *United States v. Bajakajian*, 524 U.S. 321, 329, 118 S.Ct. 2028, 141 L.Ed.2d 314 (1998). And the District Court expressly approved the Minnesota tax-forfeiture scheme in this case in large part because " 'the ultimate possibility of loss of property serves as a *deterrent* to those taxpayers considering tax delinquency.' " 505 F.Supp.3d, at 899 (emphasis added). Economic ***650** penalties imposed to deter willful noncompliance with the law are fines by any other name. And the Constitution has something to say about them: They cannot be excessive.

All Citations

598 U.S. 631, 143 S.Ct. 1369, 215 L.Ed.2d 564, 23 Cal. Daily Op. Serv. 4716, 2023 Daily Journal D.A.R. 4853, 29 Fla. L. Weekly Fed. S 851

Footnotes

* The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Timber & Lumber Co.*, 200 U.S. 321, 337, 26 S.Ct. 282, 50 L.Ed. 499.

1 1796 Conn. Acts p. 356–357, §§ 32, 36; 1797 Del. Laws p. 1260, § 26; 1791 Ga. Laws p. 14; 1801 Ky. Acts pp. 78–79, § 4; 1797 Md. Laws ch. 90, §§ 4–5; 1786 Mass. Acts pp. 360–361; 1792 N. H. Laws p. 194; 1792 N. C. Sess. Laws p. 23, § 5; 1801 N. Y. Laws pp. 498–499, § 17; 1787 Vt. Acts & Resolves p. 126. Kentucky made an exception for unregistered land, or land that the owner had "fail[ed] to list ... for taxation," with such land forfeiting to the State. 1801 Ky. Acts p. 80, § 5.

2 Many of these new States required that the land be sold to whichever buyer would "pay [the tax debt] for the least number of acres" and provided that the land forfeited to the State only if it failed to sell "for want of bidders" because the land was worth less than the taxes owed. 1821 Ohio pp. 27–28, §§ 7, 10; see also 1837 Ark. Acts pp. 14–17, §§ 83, 100; 1844 Ill. Laws pp. 13, 18, §§ 51, 77; 1859 Minn. Laws pp. 58, 61, §§ 23, 38; 1859 Wis. Laws Ch. 22, pp. 22–23, §§ 7, 9; cf. Iowa Code pp. 120–121, §§ 766, 773 (1860) (requiring that property be offered for sale "until all the taxes shall have been paid"); see also *O'Brien v. Coulter*, 2 Blackf. 421, 425 (Ind. 1831) (*per curiam*) ("[S]o much only of the defendant's property shall be sold at one time, as a sound judgment would dictate to be sufficient to pay the debt.").

3 North Carolina amended its laws in 1842 to permit the forfeiture of unregistered "swamp lands," 1842 N. C. Sess. Laws p. 64, § 1, but otherwise continued to follow the majority rule, see 1792 N. C. Sess. Laws p. 23, § 5.

End of Document

75. <u>30+ Years</u>.

FACTS: I've been at this for 30 years and this is the first time I have seen an entry like the one in the middle of the appended page.

QUESTION: Any thought on the cure?

RESPONSE(S): Apparently Jessie died owning an interest in this real estate but there is no deed in the record showing how Jessie acquired that title. In my neck of the woods, if the abstractors see an issue which will generate a phone call to them asking them why they missed that deed, they will just put a note in the abstract so it is apparent the absence of the deed is not their oversight. I don't think the presence of the abstractor's note gives you anything to cure.

* * * * *

But then I don't have a 40 year chain of marketable title, do I. The estate was in the 1990's, and with the gap, wouldn't that be less than the 40 years we need to go back?

* * * * *

I agree with that. I assumed there was a deed somewhere prior to the entries you posted. Title rests in someone's name. The probate looks to be closed more than ten years so the will can serve as a muniment of title older than ten years. Iowa Code Section 614.17? If you don't like that answer then you are going to need a deed from whoever holds title.

Is there no root of title in the abstract?

[See Attachment]

WARRANTY DEED

Alice M. Carrigan, a widow — Book 495 Page 583

To — Dated July 14, 1965
Filed July 15, 1965

Leroy C. Worden and Jessie M. Worden, husband and wife, As joint tenants with right of Survivorship, and not as tenants In common — $11,000.00

Conveys: The South Half of the Southeast Quarter (S½ SE¼) of Section Eleven (11), Township Eighty-one (81) North, Range Forty-three (43) West of the 5th P.M., Harrison County, Iowa.

No. 5

Abstracter's Note: The next document found in the chain of title is the following Change of Title in Book 544 Page 1801. We did not find a recorded deed to the Worden's for the SE¼ NE¼ or the NE¼ SE¼ of Section 11, Township 81, Range 43.

No. 6

IN THE DISTRICT COURT OF IOWA, IN AND FOR HARRISON COUNTY

In the Matter of the Estate Of Jessie May Worden, Deceased — Probate No. 12101

Docket 41 Page 8

Petition For Probate of Will and Appointment of Executor filed February 4, 1991.

Will of Jessie May Worden bequeaths the following property:

The Southeast Quarter of the Northeast Quarter (SE¼ NE¼) and the Northeast Quarter of the Southeast Quarter (NE¼ SE¼) of Section Eleven (11), Township Eighty-one (81) North, Range Forty-three (43) West of the 5th P.M., Harrison County, Iowa,

to her son, Leroy C. Worden, Jr., for and during his natural life and upon his death, I devise to the children of said Leroy C. Worden, Jr., then living in fee simple absolutely, share and share alike.

Inventory filed December 16, 1991, shows that Jessie May Worden, died testate on November 24, 1990, a resident of Moorhead, Iowa. Survived by her spouse, LeRoy C. Worden, age 84.

Lists the following beneficiaries:
LeRoy C. Worden, spouse
LeRoy C. Worden, Jr., son
Betty R. Hammack, daughter
Carolyn Dianne Martin, gr daughter

--continued--

76. Change of Title.

FACTS: Decedent died in 1964. Decedent was survived by spouse and one child. Decedent's Will was a formula Will that stated the difference between "the maximum marital deduction....and the aggregate amount of such marital deduction, if any...." goes into testamentary trust "A" and the rest, residue, and remainder of assets to testamentary trust "B". Spouse was supposed to be trustee of trust "A", and child and child's spouse were supposed to be trustees of trust "B".

HOWEVER, the Report of Change of Title states exactly this: "I hereby certify that the title to the real estate hereinafter described, has been changed and established in SPOUSE and CHILD and CHILD'S SPOUSE. The change of title to the above-described real estate was made as follows: By Will."

QUESTION: Thus, I think my question relates to the legal effect of this change of title.

1. Does this change of title make the title to this property 1/3 spouse, 1/3 child, and 1/3 child's spouse? Is that possible if child's spouse is in no way mentioned in decedent's Will, and also is not a legal heir or beneficiary? (In other words, how can a change of title "By Will" effect change of title to someone not in the Will?)

2. OR, legally, can these reports of change of title be read more loosely, and we must look to the terms of the Will in order to find who has title? Is it somehow possible to argue this change of title was really to spouse, child, and child's spouse as TRUSTEES of the testamentary trusts? (Although, in this particular instance, not sure if that is even possible, since spouse, child, and child's spouse were trustees of SEPARATE trusts).

3. OR, if it is not either, then what? Is the Report of Change of Title correctible?

I have thought about corrective deeds and fixing everything after the fact, but I don't even know what to correct until I figure out what this Report of Change of Title actually did! Any thoughts or guidance from people will be greatly appreciated.

RESPONSE(S): I take the position that the change of title is ministerial and administrative and not a muniment of title. The Will is the title instrument, subject to other orders while the property is in the hands of the executor. The certificate of change of title is the Clerk's memo to the County Auditor, Treasurer, and Assessor about the condition of title established by the court. You probably have to reopen the estate to get an order straightening it out.

* * * * *

I completely agree. I am shadowing two matters where the issue was whether a change of title served as a muniment of title. In both cases, the District Court ruled against the change of title being recognized as a muniment of title. Waiting to see if there will be appeals.

* * * * *

The Certificate of Change of Title is authorized by Iowa Code Section 558.66.

Subsection 1 indicates that an Auditor who is in receipt of an instrument that satisfies Section 558.66 shall enter the updated real estate ownership on the county transfer books.

Subsection 3(a) describes the Clerk of Court certificate "indicating that the title to real estate has been finally established in any named person by judgment or decree or by will."

Subsection 3(b) describes the affidavit of surviving joint tenant.

Subsection 4 expressly states: "An instrument recorded pursuant to this section is not a muniment of title."

For these reasons, a change of title can have no legal effect. Rather it is the judgment, decree or will in the District Court that is the legally operative instrument that transferred ownership. This is parallel to the affidavit of joint tenant in which the affiant merely informs the Auditor of the change of ownership that legally occurred with one joint tenant died. The same could also be said about an affidavit that reports the termination of a life estate due to a party's death.

The Clerk of Court has no power or authority to convey ownership of any real estate, and Section 558.66 does not confer any such power. As provided in Subsection 3(a), the Clerk is merely reporting to the Auditor the change of title that occurred by the judgment or decree of the court or pursuant to an admitted will.

IMHO, even if a change of title was never certified by the Clerk of Court or recorded by the Recorder, the judgment, decree, or Will standing alone without the change of title form is the muniment of title.

The language of the Will controls. The Change of Title did not convey or establish the ownership interest of any party.

In light of Section 558.66(4), it would seem an appeal in your cases should be unlikely.

Bonus opinion: abstractors that type a change of title in the format: "Clerk of Court to John Doe (new property owner) recorded on date as instrument no. _____" are incorrectly providing the impression that the Clerk of Court is conveying ownership. This is simply not the legal reality. The typical Change of Title form is actually signed by the Clerk of Court and addressed to the Auditor. The body of the Change of Title then gives the factual information describing the judgment, decree or will that changed title and the identity of the new owner.

* * * * *

Ask for Order Nunc Pro Tunc to authorize issuing corrected Change of Title.

The existing Change of Title is a document with an error in the transferees' names. That could be corrected by an Affidavit of Possession or an Affidavit Explanatory of Title, if you believe such a fix is in the best interest of your client.

* * * * *

Since the 1964 Will is your root of title and the abstract does not show any intervening title transactions, the current "owner" of the property knows the family history and has been in possession of the property - probably for many years.

We can't go back in time and enforce a trust that was never funded. Who are the residuary beneficiaries of the trusts? If following the typical "formula", the Testator's children would be the ultimate beneficiaries. Hopefully one or more of these original trust beneficiaries believe that they own the real estate today.

An Affidavit Explanatory of Title can recite the family history starting with the Testator and ending with the party or parties who currently believe that they own the property. Based upon the details of the family history you can identify who could have theoretical grounds to make a claim of fractional ownership of the real estate. Then you can collect Quit Claim Deeds from the children or grandchildren of the Testator who might have theoretical grounds to a fractional share to the current "owner". Finally, an Affidavit of Possession by the owner can swear to their possession of the property for more than ten years.

If I represented a Buyer of this real estate, I would want to know the family history from the Testator to the present "owner" to evaluate who in the family tree could make a claim for a fractional ownership share. The process of the previous paragraph answers issues. If you find a descendant who can't or won't sign a Quit Claim Deed, then a Quiet Title Action may become necessary.

* * * * *

To recap, I am dealing with a property where, in the 1960's, a change of title was issued in an estate to persons A, B, C, but it SHOULD have been transferred to TRUST X. I understand the change of title does not create the title per se, and it is actually the Will that is the muniment of title. However, suffice it to say that the Will is a formulaic Will, the provisions are extremely complicated, and it is basically impossible to decipher from the terms of the Will who should or should not have title. A, B, and C are all dead.

It sounds like I have two options. I am hoping to get final comment on the options:

Option #1: Affidavit Explanatory of Title. This option basically allows me to explain that title was always actually in Trust X pursuant to the Will, and the change of title was in error. Does anyone see why this option does NOT work? I have two concerns. The first is that this is simply an Affidavit. Thus, after I file it, how do I actually get the title transferred to Trust X so Trust X can convey? Secondly, the Will that created title to Trust X is very complex. Will I have any issues with an examiner down the road that they may not want to "take my word for it" so to speak that title was always supposed to be in Trust X?

Option #2: Re-open the Estate and get an Order from a judge correcting the change of title. This seems like the safest option. This way, I have a judge's order stating this is how title was supposed to be all along. However, the probate records were lost in the Cedar Rapids flood. Has anyone confronted this problem of trying to file on a probate in Linn County where all the records were lost?

77. Changing a Legal Description After Deeding Away a Portion of the Property.

FACTS: I set client up with a revocable living trust plan. The legal description from the previous deed is what I used in the deed to trust, and it is super simple: Lots A, B, and C in city, county, state.

Upon filing, the city treasurer mailed a letter pointing out a small portion of one of the lots was platted with an acquisition plat and deeded to the city after client took title to the property.

I'm partly of the mind that the client has adequately deeded the extent of their property interests in the three lots into trust, and it doesn't really matter. However that feels like a reactionary legal take and not a proactive planner take.

QUESTION: Would it be adequate to just use a corrective deed to change the legal to reference "Lots A, B, and C less that property that was identified by acquisition plat in book X page Y"?

Is it overkill to get a new plat of survey done so I'm not the origin of the new legal description? I'm not opposed to the simple and cost-effective fix, just thought I'd test the collective wisdom of someone who may be seeing this in an abstract down the line.

RESPONSE(S): I like the corrective deed to correct legal to be Lots A, B, and C except ..... and perhaps reference deed to City book and page. I think this is plenty.

78. Deed/Title.

FACTS: Decedent owned a 1/3rd interest in a farm. During life, decedent created a revocable trust and deeded such farm to the trust. The deed states "an undivided one-half interest in and to" and then states the legal description for the entire farm.

QUESTION: By purporting to deed MORE to the trust than they actually own, does this properly convey to the trust?

OR, is this a deed of only a 1/6th interest in the farm? In other words, did they only deed half of their interest (50% of 1/3)?

RESPONSE(S):

79. Delivery of Deed – Presumption of Delivery.

FACTS: I am reading an abstract that includes a Quit Claim Deed given pursuant to a divorce decree. The divorce occurred in a different county from the subject real estate, and the divorce decree is not shown in the abstract.

The deed is dated "8/30/31" (handwritten). [Ignore the "31" – it's plainly erroneous]

The acknowledgement says the grantor acknowledged execution of the deed "on this 30th day of August, 2021."

The deed was recorded on September 2, 2021.

I am reading the abstract for the buyer who plans to buy the house in town from the grantee of the deed in question.

QUESTION: Any corrective action needed?

RESPONSE(S): The deed is presumed to be delivered on the date of acknowledgement. 6
Also, where an instrument bears date subsequent to date of acknowledgement, the date of acknowledgement is the presumed date of delivery. 7

6 *Crabtree v. Crabtree*, 136 Iowa 430, 113 N.W. 923 (1907)
7 *Henry County v. Bradshaw*, 20 Iowa 355 (1866).

both cited in
2 *Patton & Palomar on Land Titles* 3d, S352, pp.175-76 (2003).
(footnotes as numbered)

As far as the divorce goes:
If the deed refers to the parties' divorce, and says its purpose is to carry out the divorce decree--
then that's probably sufficient evidence of record to support a W to H or H to W conveyance. I think you needn't transcribe the divorce decree from another county.

5 *Keefe v. Cropper*, 196 Iowa 1179, 194 N.W. 305 (1923):
"A[]...purchaser is put on inquiry by an instrument properly indexed and recorded by the recitals or matters that would put a reasonable person on inquiry and he is bound to take notice of all facts.
...

"Potter was charged with knowing what the records of Black Hawk County disclosed and also those facts of inquiry to which the record directed his attention. [Citations].
...
"Potter clearly had the right to rely on the positive statements in the deed. He was justified in believing that Keefe's recitals in the deed were true. Unless it may be said that the recorded instruments directed the attention of the purchaser to the fact that the mortgage might constitute a lien superior to the judgment lien, his duty to make further inquiry did not exist, and he was under no obligation to search further."

cited in
2 *Patton & Palomar on Land Titles* 3d, S391, p.230-31 (2003):
"The examiner might be able to rely on recitals as to marital status in the certificate of acknowledgement in states whose statutes give them evidentiary value. 5

and followed in
United Properties, Inc. v. Walsmith, 312 N.W.2d 66 (Iowa App. 1981):
"[A] solemn recital must be accepted as true and one upon which a subsequent purchaser may with safety rely. [citation to *Keefe*]."

* * * * *

I would include in the deed the language of the Affidavit of Possession, or a stand alone Affidavit of Possession.
And include language explanatory of title that there was an obvious scrivener's error.

[See Attachment]

196 Iowa 1179
Supreme Court of Iowa.

KEEFE
v.
CROPPER ET AL.

No. 34973.
June 22, 1923.

Synopsis

Appeal from District Court, Black Hawk County; E. B. Stiles, Judge.

Action in equity to foreclose a real estate purchase-money mortgage and determine the priority between adverse claimants to the land mortgaged. The opinion states the facts. The trial court determined the equities to be with the plaintiff mortgagee. The appellant, who is a subsequent grantee of the execution sale purchaser, appeals. Reversed.

Superseding former opinion (190 N. W. 971).

West Headnotes (11)

1 **Records** 326k199(2) Particular matters affecting or affected by registered title
Real Property Conveyances 322Hk1182 Records

The verity of public records is not subject to impeachment for slight or transient reasons, and a solemn recital in the deed must be accepted as true, and as one upon which a subsequent purchaser may with safety rely.

1 Case that cites this headnote

2 **Mortgages and Deeds of Trust** 266VIII(C) Purchase Money Mortgages, Priorities Concerning

A "purchase-money mortgage" is what its name implies, and is predicated on the theory that upon the simultaneous execution of the deed and mortgage the title to the land does not for a single moment rest in the purchaser, but merely passes through his hands and vests in the mortgagee, so that no lien of any character can attach to the title of the mortgagee, and that title has preference over previous judgments against the purchaser-mortgagor.

6 Cases that cite this headnote

3 **Mortgages and Deeds of Trust** 266k1352 Particular liens and claims

Intent to create a mortgage at the time the mortgagor takes the legal title is the element that carries the priority, and, when it exists, the mortgage, in the eyes of equity, is a "purchase-money mortgage," even though the execution of the deed and of the mortgage were not simultaneous.

1 Case that cites this headnote

4 **Mortgages and Deeds of Trust** 266k1352 Particular liens and claims

The fact that the deed did not refer to a contemplated mortgage or any other reserved right or equity, and that the mortgage contained no recital it was a purchase-money mortgage, does not affect the equities as between the original parties.

5 **Mortgages and Deeds of Trust** 266k1352 Particular liens and claims

An equitable purchase-money mortgage can be defeated only by one acquiring the legal title and an equity equal to that of the mortgagee without notice of the existence of the mortgagee's equity.

6 **Estoppel** 156k72 Acts making injury possible as between actor and another equally blameless

One who made the loss possible by executing deed reciting full payment of a consideration, and taking a purchase-money mortgage executed three days after the deed without a recital it was a purchase-money mortgage, should stand the loss as against a purchaser at an execution sale who had no notice the mortgage was a purchase-money mortgage.

3 Cases that cite this headnote

7 **Creditors' Remedies** 108Hk543 Estate or Interest Acquired

A purchaser at execution sales acquires the same rights as if he had taken by bargain and sale from the judgment debtor and in addition the rights of the judgment lienholder.

8 **Creditors' Remedies** 108Hk551 Notice

A purchaser at a sheriff's sale under execution stands in relation to the recording statute as though he were a purchaser at the same date from the judgment debtor himself, and is charged with knowledge of all recorded instruments affecting the title and of all facts which he could ascertain by an inquiry suggested by the recitals of the instruments.

3 Cases that cite this headnote

9 **Creditors' Remedies** 108Hk551 Notice

A purchaser at an execution sale takes free from the outstanding equities of which he had no notice.

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10 **Creditors' Remedies** 108Hk551 Notice

Where a deed conveying land to judgment debtor recited that the consideration was paid in full and a mortgage given by the debtor to his vendor was executed three days thereafter and contained no recital that is was a purchase-money mortgage, the purchaser at an execution sale was not charged with knowledge that the mortgage was in fact executed to secure the balance of the purchase money due.

6 Cases that cite this headnote

11 **Creditors' Remedies** 108Hk552 Judgment creditor as purchaser

The judgment creditor purchasing lands at a sheriff's execution sale stands on the same footing in respect to unrecorded conveyances as any other bona fide purchaser, and takes precedence over an unrecorded deed or outstanding equities of which he had no notice at the time of his purchase.

2 Cases that cite this headnote

Attorneys and Law Firms

*306 Thomas & Thomas, of Traer, and Edwards, Longley, Ransier & Harris, of Waterloo, for appellants.

McCoy & Beecher, of Waterloo, for appellee.

Opinion

DE GRAFF, J.

The material facts in this case are not in dispute. The action was originally instituted to foreclose a real estate mortgage, but by amendment to the petition it is alleged that the mortgage is a purchase-money mortgage to secure the unpaid portion of the consideration and prays that the title and interest of the mortgagee be adjudged superior to the title and interest claimed by appellant Potter, whose title, as an alleged subsequent purchaser for value, is predicated upon a judgment lien and purchase by execution sale thereunder.

The chronology of the various transactions involved make understandable the legal question presented. (1) On January 9, 1917, one Briggs secured a judgment in Black Hawk county, Iowa, against the defendant-purchaser, Fred S. Cropper. (2) On April 24, 1917, plaintiff, Peter J. Keefe, of Benson county, N. D., executed and delivered a warranty deed with full covenants to certain real estate situated in Black Hawk county, Iowa, to the said Fred S. Cropper. (3) On April 27, 1917, Cropper executed and delivered to Keefe a mortgage on said real estate to pay the unpaid purchase price thereof. (4) On May 3, 1917, the real estate mortgage was duly recorded. (5) On May 9, 1917, the warranty deed was duly recorded. (6) On June 17, 1917, the real estate was sold on execution by virtue of the judgment lien held by Briggs against defendant Cropper. (7) On September 29, 1917, the certificate of sale was duly issued to Briggs, the purchaser at the execution sale, who assigned same to one E. L. Jones. (8) On September 30, 1918, no redemption having been made, a sheriff's

deed was duly executed, conveying said real estate to Jones. (9) By mesne conveyances from Jones the title to said real estate came to the appellant Potter, and each purchaser in the chain of title paid value. Cropper also conveyed title, and by mesne conveyances his title eventually came to Potter.

The case is not without some difficulty, but by an analysis of the legal principles involved, we believe a conclusion may be reached consonant with logic and law.

1 Our first inquiry may well be directed to the underlying principle of a purchase-money mortgage and the essence of its priority. A "purchase-money mortgage" is what the term implies, and is predicated on the theory that upon the simultaneous execution of the deed and mortgage the title to the land does not for a single moment rest in the purchaser, but merely passes through his hands and, without stopping, vests in the mortgagee. It follows, therefore, that no lien of any character can attach to the title of the mortgagee, and that the title and interest has preference over previous judgments against the purchaser-mortgagor. Laidley v. Aiken, 80 Iowa, 112, 45 N. W. 384, 20 Am. St. Rep. 408; Kaiser v. Lembeck, 55 Iowa, 244, 7 N. W. 519; Stewart v. Smith, 36 Minn. 82, 30 N. W. 430, 1 Am. St. Rep. 651.

2 The intent to create the mortgage at the time the mortgagor takes the legal title is the element that carries the priority, and when it exists the mortgage in the eyes of equity is a purchase-money mortgage. In the instant case there was such an agreement. Cropper testified that that was the agreement, and there is no contention on the part of appellant to the contrary. Cropper secured the legal title to the real estate in question through his deed from the grantor Keefe, but there existed in the grantor at that time the equitable right to have the mortgage executed.

3 It will be remembered that the mortgage in question was executed three days subsequently to the transfer of the legal title, and that the deed does not refer directly or indirectly to a contemplated mortgage or to any other reserved right or equity; nor does the mortgage itself contain a recital that it is in fact a purchase-money mortgage. As between the original parties such recitals are immaterial, since in the eyes of equity the lien did exist.

45 With the rights of a title purchaser who pays value without notice, either actual or constructive, of the outstanding secret equity, a different rule must prevail. The mortgage can be defeated only by one acquiring a legal title and an equal equity without notice of the existence of the other equity. A person acquires his equal equity by paying valuable consideration, if he has no notice of the prior equity. The appellant Potter can have no greater legal right than the judgment-debtor Cropper had in the real estate, and no greater equitable rights than the judgment debtor had unless Potter, or some one from whom he holds, acquired legal title and paid value therefor without notice of the outstanding equitable right. The fact that the purchaser at the execution sale was a judgment creditor, and not a third person,

makes no difference. A purchaser at an execution sale has the same protection against outstanding equities as any other purchaser.

6 What did the execution purchaser buy that was subsequently sold to appellant Potter? He bought exactly the same rights as if he had taken by bargain and sale from Cropper, but took in addition the rights of the judgment lienholder on April 24th. The execution purchaser and any subsequent purchaser from him acquired the right to defeat *307 all outstanding equities of which the purchaser had no notice.

7 We are committed to the doctrine that a purchaser at an execution sale takes free from the outstanding equities of which he had no notice and will take the land discharged of every claim or title whether arising under an unrecorded instrument or a mere equity of which he had no notice at the time of the purchase. Gower v. Doheney, 33 Iowa, 36; Weaver v. Carpenter, 42 Iowa, 343.

8 Under this view a purchaser at a sheriff's sale stands in relation to the recording statute as though he were a purchaser at the same date from the judgment debtor himself. A sheriff's deed is a statutory conveyance and stands upon the same basis as a conveyance by the owner.

There is but one controlling question in this case. Did the appellant Potter take with notice of any outstanding equity in the appellee Keefe by reason of the recorded instruments? Was the appellant Potter derelict in the duty of making inquiry that rests on the reasonably prudent person under similar circumstances?

There can be no dispute that the record of the mortgage was notice of the existence of the mortgage to all of the purchasers. Consequently there were no purchasers without notice unless the fact that they did not know that the mortgage was given for purchase money makes each a purchaser for value without notice.

Did the recorded mortgage put the purchaser on inquiry? If a person is put on inquiry he is bound to investigate. In law he knows all that he could ascertain by an inquiry. An execution purchaser is put on inquiry by an instrument properly indexed and recorded by the recitals or matters therein that would put a reasonable person upon inquiry and he is bound to take notice of all facts, that he might have learned by pursuing the path thus indicated. Thomas v. Kennedy, 24 Iowa, 397, 95 Am. Dec. 740; Loser v. Savings Bank, 149 Iowa, 672, 128 N. W. 1101, 31 L. R. A. (N. S.) 1112.

The contention of appellant is that the execution purchaser "is charged by the record with notice of rights created by the instruments as recorded and not with notice arising from facts surrounding the instruments which are not recorded."

Potter was charged with knowing what the records of Black Hawk county disclosed and also those facts of inquiry to which the record directed his attention. See Wilson v. Miller et al., 16 Iowa, 111; Weare v. Williams, 85 Iowa, 253, 52 N. W. 328; Anderson v. Blood, 152 N. Y. 285, 46 N. E. 493, 57 Am. St. Rep. 515.

In Day v. Brenton, 102 Iowa, 482, 71 N. W. 538, 63 Am. St. Rep. 460, it is said:

> "The uniform course of decisions in this state has been to discourage secret liens, and to protect those who invest their money in reliance upon the integrity of the county records."

See, also, Huber v. Bossart et al., 70 Iowa, 718, 29 N. W. 608.

9 Potter paid value for the land, and it is not claimed that he had actual notice or knowledge of any outstanding equity. The abstract of title disclosed a warranty deed from Keefe to Cropper dated April 24, 1917. This deed on its face conveyed every title, interest, or claim that Keefe owned, warranted the premises free from incumbrance except a prior mortgage for $6,500, and expressly stated that the entire purchase price had then been paid in full. It also disclosed a judgment in favor of one Briggs against the purchaser Cropper dated January 9, 1917, and execution and sheriff's sale thereunder, the assignment of the certificate of sale to one Jones, a sheriff's deed, and a deed from the grantee Jones to one Otte dated October 21, 1918. Therefore, when Potter purchased from Otte, what was there on the public records that disclosed that Keefe's mortgage of $3,900 was a purchase-money mortgage and a superior lien on this land?

Would the reasonably prudent person be justified in concluding that the lien of that mortgage had been terminated by the foreclosure of the prior judgment lien and sale? Potter clearly had the right to rely on the positive statements in the deed. He was justified in believing that Keefe's recitals in the deed were true. Unless it may be said that the recorded instruments directed the attention of the purchaser to the fact that the mortgage might constitute a lien superior to the judgment lien, his duty to make further inquiry did not exist, and he was under no obligation to search further.

It is also shown that Keefe not only took back a mortgage three days later on the described parcel of real estate subject to a mortgage of $6,500 previously executed by Keefe, but that it was also subject to a mortgage for $1,500 which Cropper had executed in the interim between April 24 and April 27. If Potter and his antecedent purchaser were justified in assuming that the terms of the Keefe mortgage measured his interest in the real estate, then we have reached the end of the story. See Brown v. Wade, 42 Iowa, 647; Rogers v. Hussey et al., 36 Iowa, 664.

The gap that intervened between the giving of the deed and the execution of the mortgage is chargeable to the appellee Keefe. The mortgage itself does not purport to create a lien until April 27, 1917. Keefe is not entitled to enlarge the scope of his mortgage beyond its express term as against a subsequent purchaser for value without notice. A mortgage lien is created and measured by the contract of the parties supplemented with the rights that equity may create. Keefe undoubtedly had a lien on the property for the *308 unpaid purchase money, but the mortgage created a new and distinct lien. Koevenig v. Schmitz, 71 Iowa, 175, 32 N. W. 320.

10 When a third person acquires an interest in land in good faith and for value, that interest cannot be prejudiced by a secret equity unless he is chargeable with notice of the existence of that equity. Keefe and Cropper alone knew of that equity. The judgment became an apparent lien on April 24, 1917. The mortgage became an apparent lien on April 27, 1917. The superior character of the latter lien in order to be established against a purchaser for value must be predicated on notice to the purchaser. Halloway v. Platner, 20 Iowa, 121, 89 Am. Dec. 517; Koch v. West, 118 Iowa, 468, 92 N. W. 663, 93 Am. St. Rep. 394. Keefe's failure to place a simple recital in either deed or mortgage is the cause of all the confusion in the temple. He was under no legal obligation so to do; but he, as well as the subsequent purchaser, is presumed to know the law. His rights are now in conflict with the claim of him who asserts his innocence. It is a sensible rule of law that when a loss occurs and one of two persons must sustain that loss, it must be borne by the one whose act of omission or commission made the loss possible. Keefe failed to do what a prudent man would do.

We are not unmindful that some reasons may be placed on the other side of the scales in weighing the facts and circumstances at the time of the purchase by Potter, but upon a full and critical examination of the record and the legal principles involved we are constrained to reverse the decree of the trial court.

11 The verity of public records are not subject to impeachment for slight or transient reasons. A solemn recital in a deed must be accepted as true and upon which a subsequent purchaser may with safety rely. To hold otherwise a court would penalize an innocent purchaser and reward the person who made possible the loss.

The judgment and decree entered is reversed.

All the Justices concur.

All Citations

196 Iowa 1179, 194 N.W. 305

End of Document

Related documents

Selected topics | Secondary Sources | Briefs | Trial Court Documents

Execution
Sale
Purchase Money Mortgage and Owner
Judicial Sale Purchaser of Medical Office Building

80. Error in Regime Legal Description.

FACTS: I am examining an abstract where the legal description was always the North 82.25 feet of "x".

Then, less than 10 years ago, an attorney prepared a deed conveying the North 82.25 of Government Lot 1 per Land Deed Book 52, Page 388, filed November 1, 1993. ("New legal description".)

This referenced deed had never appeared in the chain of title for this real estate and did not have a metes and bounds description of "x" but had a different legal description. The abstractor told me he felt that the new legal description used was not correct.

After the deed was filed using the new legal description, a regime was filed using the new legal description. I don't feel I can certify title to the new legal description since prior conveyances are not shown for this exact legal description.

I feel that I need to amend the legal description in the deed that used the new legal description in the first place and amend the Declaration to the correct legal description.

Several of the units in this regime have transferred so all those titleholders would have incorrect deeds. However, when their abstracts are updated, the new legal description would be shown, and I think a 'formerly known as' description could be used tying the old description and the correct description together moving forward?

Marshall's Iowa Title Opinions Section 12.1(H-2) holds that title cannot be established by affidavit and I feel like this situation falls under that provision thus requiring a corrective deed and regime. However, if anyone has any recommendations, I would appreciate it. I don't want to create an even bigger mess.

QUESTION: Does this sound like a solution? Does anyone think an affidavit explanatory of title would work instead of amending the regime? Or should the regime be amended, and an affidavit filed?

RESPONSE(S): My suggestion would be to have both corrective deeds/documents, as well as Affidavit Explanatory of Title. You could cross reference in the documents to each other. So next examiners get the full picture of the error and the reason for the correction.

It might not be a bad idea to try to track the "why" of the extraneous legal description, to be able to incorporate that explanation and the "why" of the correction.

Marshall is probably referring to prohibition against establishing title by Affidavit of Possession, where someone has occupied, and now wants to claim. A no-no. You are not establishing title. You are correcting legal description.

* * * * *

You are wise to beware the amended description.
You have duty to compare the descriptions.
(Old Professor Patton lays out your problem, below.)

I recommend that you require grantor to
1) use the old description in his conveyance, and
2) file affidavit confirming that "x" and "new legal description" were intended to cover/convey exactly the same property. Make it a 558.8 Affidavit Explanatory of Title. After three years no one can contest the shotgun marriage of the two descriptions.

1 Patton & Palomar on Land Titles 3d section 112, pp.286-87 (2003)
(my emphasis in italic):

In addition to the need for a description of sufficient certainty that the conveyance shall be operative, the examiner must *ascertain whether all the legal descriptions used in the chain of title describe or include the tract to which the examination relates.* Not only this, but, in order to establish an adequate link in the chain of title, each instrument must contain a legal description of the property that adequately identifies the property without the necessity of evidence from another source (aliunde). Checking the successive instruments of the lands involved is a considerable portion of the work of examining a title. Much of the complication encountered results from the lack of technical preparation of those in the United States who are entrusted with conveyancing. The drafting of proper legal descriptions is a science in and of itself. Too often it is considered as merely a matter of filling out a printed form.
So long as successive descriptions are by government subdivisions, or by lot and block of private surveys, or by fractional parts of those tracts, comparing descriptions is simple. But *when the methods of description vary in the different transfers*, checking the identity of the land involved sometimes becomes quite complicated. In such cases there are usually no corresponding terms that can be compared, and *the checking can be done only after plotting the boundaries of the different descriptions*. The methods used in the case of fractional parts, or of designated areas of larger tracts, will be outlined in subsequent sections of this chapter. Lands described by natural or artificial monuments (streams, roads, etc.) can be mapped from the recorded plats of private government surveys. An

ordinary ruler will serve in getting the lines true to scale, though a drafting scale will be more convenient. In order to reproduce lines whose location is described by angles or by compass courses, one will need a drafter's protractor. Also, a variety of computer software programs are available that will produce a detailed and accurate plat of a legal description.

At times an examiner will find that having legal descriptions plotted by an experienced draftsman or surveyor will save a significant amount of time. If a surveyor is to be used in a transaction, an examiner may wish to make survey requirements so that especially difficult problems with legal descriptions may be resolved by the most efficient and reliable means.

81. Legal Description.

FACTS: If I have a legal description in a Warranty Deed:

The North 54 feet of the West 1,652 feet of the South Half of the South Half of the Southwest Quarter (S ½ S ½ SW ¼) of Section 6, Township 78 North, Range 25 West of the 5th P.M., Iowa, EXCEPT the North 330 feet thereof, now included in and forming a part of the City of West Des Moines, Polk County, Iowa.

And then a subsequent Plat Acquisition where the owners conveyed a fee simple taking for public right-of-way, described as follows:

The South 50 feet of said North 54 feet of the West 1,652 feet of the South ¼ of the Southwest ¼ of Section 6

QUESTION: I am preparing an Affidavit of Surviving Spouse. Should I include that description of what was conveyed in the legal description?

The North 54 feet of the West 1,652 feet of the South Half of the South Half of the Southwest Quarter (S ½ S ½ SW ¼) of Section 6, Township 78 North, Range 25 West of the 5th P.M., Iowa, EXCEPT the North 330 feet thereof, *and EXCEPT the South 50 feet of said North 54 feet of the West 1,652 feet of the South ¼ of the Southwest ¼ of Section 6*, now included in and forming a part of the City of West Des Moines, Polk County, Iowa.

RESPONSE(S): I think it looks good. I usually ask the County Auditor to approve the legal description to confirm I have it right before we file it. Most of them will help out and this can avoid having to re-record a document.

82. Legal Description.

FACTS:

- Property has been a metes and bounds description and has been split up a couple of times;
- Issue 1:
    - State of Iowa did a condemnation in the mid 1980s called for "North 89 Deg 01.1 East 3.5' ".
    - Subsequent deeds included this call.
    - However, according to a Surveying Engineer "the original description of the parcel was in a different bearing system than the State of Iowa" condemnation.
    - The bearings are off slightly, but are also on the western portion of the then parcel which has been sold off separately.
    - Subsequent surveys appear to use some of the original description and part of the newer one after the condemnation. The surveyor states "The difference between this bearing and the State of Iowa acquisition bearing across the 3.5' amounts to 0.02' which is minimal difference."
    - The question is the remedy. We are planning on having the Surveyor do an Affidavit Explanatory of Title describing this difference and that it is slightly different but negligible.
- Issue 2:
    - One of the calls reads "North 89 Deg 47.0' East 286.5 feet" in the abstract legal description. The correct call should be "North 89 Deg 47.0' West 286.5". It is difficult to find where the problem lies but all parties agree on the correct direction.

Again, we are looking at incorporating what should be correct in the Surveyor's Affidavit and also an Affidavit of Possession, with the surveyor stating what the correct metes and bounds calls should be.

QUESTION: The question comes down to whether or not the abstract should be required to be updated prior to closing to reflect the correct legal description or if the two Affidavits are sufficient. Technically, the last update of the abstract legal description is not correct but the correct.

RESPONSE(S):

83. Manufactured Home Title.

FACTS: Homeowner and her husband purchased a home about ten years ago. The home is a manufactured home on a permanent foundation on a piece of land which they also own. The title to the manufactured home has never been surrendered. Additionally, the title to the manufactured home was never transferred into their names from the previous owners. To make things worse, the previous owners have since passed away.

The current owners to the property are stuck as they are unable to sell the home as a title for the home still exists but was not properly transferred into their names. They also do not have a physical copy of the title. The current owners would like to obtain a transferred title and then properly surrender the title with the county.

QUESTION: While this is not technically a real property issue as we are dealing with a manufactured home title, I am wondering what cause of action can be brought to have the title transferred with the county. Any ideas on how to resolve this issue would be greatly appreciated.

RESPONSE(S): There is an action for abandonment of a mobile home in the code that results in the Treasurer abating taxes and issuing a new title. Not sure if it would work for this situation but it's worth a look. If you send me an email I can send you some of our forms we use for our mobile home park clients.

* * * * *

We've been able to get manufactured title cleared through a quiet title action – basically, alleging that it's a permanent fixture and therefore real estate, and ask that the Court declare title has passed to the owners of the real estate. Have the decree direct the County Treasurer to issue a new certificate of title in the name of the real estate titleholders, and then you work with the Treasurer and Assessor to go through the process of cancelling the new certificate of title and converting it to real estate so you never have to worry about it again.

* * * * *

Your clients should be able to obtain duplicate certificate of title.
Treasurer must generate one upon request. That is his duty: "shall issue."
Once he issues a replacement title certificate the lost certificate dies.

321.42 Lost or damaged certificates, cards, and plates -- replacements.
...

2. a. If a certificate of title is lost or destroyed, the owner or lienholder shall apply for a replacement copy of the original certificate of title. ... The application shall be made to the department or county treasurer who issued the original certificate of title. The application shall be signed by the owner or lienholder and accompanied by a fee of twenty dollars.
b. After five days, the department or county treasurer shall issue a replacement copy using the applicant's most recent bona fide address; however, the five day waiting period does not apply to an applicant who is a lienholder or to an applicant who has surrendered the original certificate of title to the department or county treasurer. The replacement copy shall be clearly marked "replacement" and shall include security interests and liens. When a replacement copy has been issued, the previous certificate is void. ...
d. A new purchaser or transferee is entitled to receive an original title upon presenting the assigned replacement copy to the treasurer of the county where the new purchaser or transferee resides. At the time of purchase, a purchaser may require the seller to indemnify the purchaser and all future purchasers of the vehicle against any loss which may be suffered due to claims on the original certificate. A person recovering an original certificate for which a replacement has been issued shall surrender the original certificate to the county treasurer or the department.

Upon receipt of the replacement copy, surrender it back. :)
Check the purchase contract.
See if any indemnity provision exists between your clients and their vendor.

If the Treasurer's deputies won't cooperate...
Then see if you can prod the DOT into cancelling the title certificate.
Perhaps enlist your clients' local state legislators to assist.

321.101 Suspension or revocation of registration or cancellation of certificate of title by department.

...
2. The department shall cancel a certificate of title that appears to have been improperly issued or fraudulently obtained or, in the case of a mobile home or manufactured home, if taxes were owing under chapter 435 at the time the certificate was issued and have not been paid. However, before the certificate of a mobile home or manufactured home for which taxes were owing can be canceled, notice and opportunity to pay the taxes must be given to the person to whom the certificate was issued. Upon cancellation of a certificate of title, the department shall notify the county treasurer who issued it, who shall enter the cancellation upon the records. The department shall also notify the person to whom the certificate of title was issued, as well as each lienholder who has a perfected lien, of the cancellation and shall demand the surrender of the certificate of title, but the cancellation shall not affect the validity of any perfected lien.

84. Multiple Abstract Name and Title Issues.

FACTS:

- Deed to A and B, husband and wife JTWROS, in 1965; no other conveyances until 2008 when B "a single person" deeds it to C. No death records or divorce records regarding A and B. Would you require anything here? Would this fall under the 10 year statute? A could still be living.
- 2008 deed to C states that his first name is "Bill". All further references to C state "William". I assume that Title Standard 8.3 will satisfy this issue.
- C marries D. C dies and D dies within a year later; both estates probated at the same time and closed in 2022. There is an Estate Recovery Claim. Estate Recovery filed a Satisfaction and Release in C's Estate. The abstract does not show any claim or clearance for Estate Recovery in D's Estate but Estate Recovery is given notice of the proceedings. There is also an Affidavit of Notice of Payment filed by the Estate to Iowa Department of Human Services but no Release and Satisfaction. Only an Iowa Department of Revenue Certificate. I believe I need the abstract to show that notice was given in D's Estate regarding Estate Recovery and that Estate Recovery either had no claim or that the claim is now satisfied.

QUESTION:

RESPONSE(S): 1. I recommend filing an affidavit explanatory of title (Iowa Code Section 558.8).
(Question is: who would issue? D's executor? Someone with knowledge.)
AET should recite A's death and B's succession to his interest.
(Guessing A died, given 43 year gap twixt Root of Title and next conveyance.)

2. Yes.

3. IMHO the estate may convey title without clearance from Iowa Department of Health and Human Services Estate Recovery (HHSER).
You mention no HHSER order for repayment.
So property sale now takes in the nature of changing estate asset form.
(HHSER does not want the illiquid real estate--it wants cash.)
Doesn't hurt for the abstract to show that HHSER raises no claim.
But in my view it's not required.

Medicaid reimbursement issue has been addressed on List in prior posts.
To summarize relevant points:
HHSER possesses no "lien" for any Medicaid payments the State has made.
Instead, Code section 249F declares that Medicaid payments constitute a "debt".
Which might become a lien but usually does not.

Here's how the system works.
Let's assume that either C or D received Medicaid payments for nursing home care.
Further assume that the property being transferred was C & D's residence.
Toward end of his life C goes to a nursing home, while D stays in their house.
C dies. HHSER *will not impose* a claim in C's estate (even if one is opened).
Instead, as D still occupies the house, HHSER will wait for D to die.
Then in D's estate it will impose its claim for Medicaid paid on C's behalf.
Lien arises only if HHSER follows the section 249F.3 to 249F.5 process.
HHSER must file with the Clerk a written Order to Pay.
And HHSER must obtain judicial approval of the Order per section 249F.5.
(The Court is obligated to enter it, as with child support collection.)
At that point section 624.23 attaches a judgment lien upon real estate.

85. Out of State Purchaser Requesting Out of State Title Insurance Instead of Abstracting.

FACTS: I have an economic development client selling some real estate to an out of state buyer. Counsel or out of state purchaser insisting on Title Insurance from out of state company and wants to skip abstracting process. Out of state purchaser is a corporation with real estate in multiple states and indicates they have followed this procedure before when purchasing real estate in Iowa. No lender involved so cash deal. I believe the title risk is on the buyer so if contract calls for out of state Title Insurance and buyer is willing to sign off on risk of not abstracting, then buyer assumes any future risk. Buyer does not want to use Iowa Title Guaranty as their form of title insurance.

QUESTION: As Seller's Attorney, what is advisable?

RESPONSE(S): Based on recent experience, I strongly suggest that you include language in the purchase agreement which requires the buyer to use an Iowa attorney and an Iowa closing company, rather than dealing with out of state people who don't understand Iowa. I don't have an opinion re title insurance but would like to know what others say.

* * * * *

I have come across this issue several times. It's been my experience that once you tell the Buyer it's so much cheaper to have a title opinion completed then they change their mind. Consequently, the Seller shouldn't have to bear the expensive cost of worthless title insurance. I'd doubt this corporate buyer from out of state is going to renege on the deal if the Seller wishes to do things as they have always been done in Iowa.

* * * * *

Yes, buyer necessarily bears risk of loss from a title problem.
Whether he uses either our attorney-and-abstract system or title insurance.
See:
Jones v. Southern Surety Co., 210 Iowa 61, 230 N.W. 381 (1929)(insurance defense litigation over policy of title insurance, issued upon plaintiff buyer's purchase of real estate from a grantor known by both buyer and insurer's title examiner to be subject to guardianship, and whose guardian subsequently sued to set aside the conveyance):
"Defendant guaranteed or insured Jones against loss not exceeding $12,000 from any defect (with certain exceptions) of title affecting the premises described. As between defendant and Jones, defendant was by virtue of this guaranty bound to know whether or not there was a defect in the title not excepted from the policy. If a defect has been established, the defect, as has

been shown for the purpose of this case, is not within the exception. It was therefore a defect insured against, and defendant was bound to defend the action founded upon it. ...
"Defendant might, as it now argues, choose to defend or not to defend, but its choice not to defend would not relieve it of its contract liability to defend or of its contract liability for defect of title insured against. On this record Jones was within his rights in demanding that defendant defend the cancellation suit as one founded on a claim against which defendant agreed to defend. ...
"[A]s the case stands here, there was a defect in the title for which defendant was responsible and against which it unjustifiably refused to defend."

Major premise: an insurance contract provides for an insurer corporation's assumption of specified risks of loss which the insured would otherwise bear.
Minor premises: "title insurance" falls within the class of insurance contracts, and covers against loss to real estate due to legal encumbrance.
Conclusion: title insurer necessarily assumes specified risks of loss to insured from an encumbrance upon title to insured's real estate.

* * * * *

I have advised corporate buyers that Title Insurance is not legally available in Iowa. Purchase agreements cannot require the Seller to provide it. Buyer is free to obtain title insurance at their own expense and assume the title risk. I suggest that they may want to have an Iowa lawyer look at the abstract and give them an opinion. More recently, the out of state corporate buyers and their title companies have wanted the Iowa lawyer's opinion and the abstracts. Make sure you cover who will pay and bear responsibility for any encroachments and make sure Iowa law will apply to how the encroachment issue can be cured.

* * * * *

Iowa Code Section 548.48(10)

* * * * *

Unfortunately, in our area, I am seeing this more and more as a lot of out of state banks for purchases on 2nd homes. Maybe we should look at adding some default language in the ISBA purchase agreement forms? Or do others think the current default language is sufficient to cover these types of transactions?

* * * * *

Often, if they pick the title insurer, they will either pay for the whole policy and endorsements, or everything but the owner's premium. One problem which comes up if you remain involved in the title process is that they are going to want a lot of endorsements on the policy which are either overkill or don't make sense.

If they have their own title agent, that saves you and Iowa Title Guaranty a lot of time arguing/questioning the propriety of endorsements. Last, these are the people who also want an ALTA survey so make sure it's at their expense.

86. Title Question: Relation Back Doctrine.

FACTS: A enters into real estate contract for sale of Blackacre to B in 1984.
B deeds Blackacre to C in 1986 pursuant to a warranty deed.
A deeds Blackacre to B in 1987 pursuant to a warranty deed, in fulfillment of 1984 contract.

The entire remaining chain of title runs from C.

QUESTION: Under relation-back doctrine, does deed in fulfillment of contract relate back to 1984, so that I have clear title? Or was the deed to C in 1986 a "nothing-burger" and we don't have proper title running from C?

RESPONSE(S): I believe the doctrine of "after acquired title" makes A's 1987 deed to B 'relate back to' B's 1986 conveyance to C.
C becomes the full legal owner once B acquires A's bare legal title.

Don't have access right now to Westlaw, to confirm this.

* * * * *

Here is a short outline I did for the Drake program in 2021 on the doctrine of after-acquired title. I learned a lot putting this together.

[See Attachment]

The Doctrine of After-Acquired Title in Iowa

Drake Law School Real Estate Transactions Seminar
April 9, 2021
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As real estate lawyers, we sometimes find ourselves using legal principles without really understanding what we are doing. The Doctrine of After-Acquired Title (hereafter Doctrine) is an example. This presentation seeks to answer the following questions:

1. *What is the Doctrine?*
2. *What is the source of law of the Doctrine?*
3. *How the Doctrine is applied?*

I. The Doctrine defined.

The most common formulation of the Doctrine can be expressed as follows:

1. Smith owns a ½ interest in Black Acre.
2. Smith conveys all of Black Acre to Jones by warranty deed.
3. Smith subsequently receives the other ½ interest.
4. Smith's subsequently received ½ interest in Black Acre is considered to have passed to Jones immediately upon receiving it.
5. Smith is estopped from claiming an interest in Black Acre.

Patton and Palomar state:

> If, at the time of a conveyance, a grantor does not own all or part of the interest that the grantor purports to convey, but the grantor later acquires the interest that was the subject of the earlier conveyance, the grantor may be estopped from denying the claim of the grantee to the after-acquired title. Thus, if grantor purports to convey fee simple title in Black Acre to a grantee prior to having acquired that title, but later acquires fee simple title, the grantor then may be estopped from asserting a claim of title superior to grantee's claim to Black Acre. It is said that the title inures immediately for the benefit of the prior grantee. As

between grantor and grantee, it is as if their conveyance had occurred after the grantor had acquired title to the conveyed land.[1]

The goal of this material is to summarize the Doctrine in Iowa.

An interesting thought experiment is to imagine the world without the Doctrine. We could easily have a legal system in which a conveyance where only a partial interest is conveyed would be necessarily remedied by a subsequent conveyance once the grantor received it. Thus, Jones would need to pursue Smith for the missing ½ interest. Smith might decide that she doesn't want to convey the remaining ½ interest to Jones. The Doctrine serves to estop Smith from asserting any interest superior to that of Jones. When Smith receives the balance of the bundle of sticks, they immediate inure (*i.e.*, transfer) to Jones. This is actually quite fantastic – almost "spooky" – if you consider what is happening.[2]

II. The source of the Doctrine: Iowa Code § 557.4.

Iowa Code Chapter 557 (Real Property in General) is important for real estate lawyers although you may not refer to it often. For example, § 557.3 provides "Every conveyance of real estate passes all the interest of the grantor therein, unless a contrary intent can be reasonably inferred from the terms used." Thus, when a lender acquires a property through a sheriff's sale after a foreclosure, they convey all of the interest, including the judgment lien stick, in the conveyance. A separate release is not needed because that stick is presumed to be conveyed. Note that § 557.15(2) establishes that a conveyance to a married couple is presumed to be a joint tenancy and subsection (3), that "[a]n order of annulment, dissolution, or separate maintenance entered pursuant to section 598.21 is a muniment of title to the real property described, and severs a joint

[1] § 219. After-acquired title, 1 PATTON AND PALOMAR ON LAND TITLES § 219 (3d ed.) (citations omitted). *See* GEORGE F. MADSEN. MARSHALL'S IOWA TITLE OPINIONS AND STANDARDS § 4.9 (2d ed. 1978) ("[A]n after-acquired interest would inure to the grantee under a warranty deed."). 23 AM. JUR. 2D *Deeds* § 278 (2021).

[2] In 1947, Albert Einstein said, "I cannot seriously believe in quantum theory because . . . physics should represent a reality in time and space, free from spooky action at a distance." Bruce Rosenblum & Fred Kuttner, QUANTUM ENIGMA: PHYSICS ENCOUNTERS CONSCIOUSNESS 3 (Oxford University Press) (2d ed. 2011) (an excellent introduction to quantum physics).

tenancy with rights of survivorship and creates a tenancy in common in equal shares, unless otherwise provided in the order." Very important concepts for title examiners.

The Doctrine of After-Acquired Title has been codified at Iowa Code § 557.4:

> Where a deed purports to convey a greater interest than the grantor was at the time possessed of, any after-acquired interest of such grantor, to the extent of that which the deed purports to convey, inures to the benefit of the grantee. But if the spouse of such grantor joins in such conveyance for the purpose of relinquishing dower or homestead only, and subsequently acquires an interest therein as above defined, it shall not be held to inure to the benefit of the grantee.

The Doctrine has long been codified in Iowa. Section 2210 of the Iowa Code (1860) states: "Where a deed purports to convey a greater interest than the grantor was at the time possessed of, any after-acquired interest of such grantor, to the extent of that which the deed purports to convey, inures to the benefit of the grantee."

Two terms to review as we approach this. First, "inure" means "to take effect; to come into use <the settlement proceeds must inure to the benefit of the widow and children>"[3] Thus, the after-acquired title takes effect or comes into the use of the grantee. Second, the case law relies heavily on the concept of estoppel – "A bar that prevents one from asserting a claim or right that contradicts what one has said or done before or what has been legally established as true."[4] For example, "If, at the time of a conveyance, a grantor does not own all or part of the interest that the grantor purports to convey, but the grantor later acquires the interest that was the subject of the earlier conveyance, the grantor may be estopped from denying the claim of the grantee to the after-acquired title."[5] "The doctrine of after-acquired property is often referred to as a form of estoppel by deed."[6]

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[3] Black's Law Dictionary 842 (8th ed. 1999).
[4] *Id.* at 589.
[5] § 219. After-acquired title, 1 PATTON AND PALOMAR ON LAND TITLES § 219 (3d ed.).
[6] *Id.* at n.1.

Note that the deed in question must otherwise be valid. A defective deed is not remedied by the application of the Doctrine.[7]

Also, observe that the statute does not limit the type of deed. Rather than presume that the legislature was intentionally broad in using "deed" and was capable of limiting the scope of the Doctrine to only warranty deeds, the Iowa Supreme Court has wrestled with whether the Doctrine should equally apply to quit claim deeds. One can speculate how a Court more informed by textualism would analyze these cases.

III. How the Doctrine is applied.

A. Deeds without a warranty of title.

A deed need not contain a warranty of title in order to satisfy the Doctrine. *Bisby v. Walker*, 169 N.W. 467 (Iowa 1918). In *Bisby*, a mortgagor gave mortgages that "contained a covenant that she was lawfully seised of the premises, that they were free from encumbrance, that she had good right and lawful authority to sell and convey the same; that is the covenants ordinarily to be found in a warranty deed."[8] However, the mortgagor only had a contingent remainder interest. The Court acknowledged a split of authorities on the application of the Doctrine in such situations, but held that the grantor or mortgagor is estopped from denying that "such an estate was passed to his vendee [or mortgagee], although the deed contains no covenant of warranty at all."[9] The opinion goes on to state that "still the operation and effect of the instrument will be binding upon the grantor and those claiming under him, in respect to the estate thus described, *as if a formal covenant to that effect had been inserted*; at least, so far as to estop them from ever afterwards denying that he was seised of the particular estate at the time of the conveyance."[10]

Bisby is consistent with *Pring v. Swarm*, 157 N.W. 734 (Iowa 1916), decided two years before. *Pring* involves a quit claim deed where the grantor had only a 2/3 interest but she believed at the time she had a fee simple interest. The issue was whether the Doctrine would apply in the instance of a quit claim deed. The Court held:

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[7] 23 AM. JUR. 2D *Deeds* § 280 (2021).
[8] *Bisby v. Walker*, 169 N.W. 467, 468 (Iowa 1918).
[9] *Id.* at 469 (citations omitted).
[10] *Id.* (citations omitted) (emphasis added).

> It is true that Mrs. Pring agreed to convey by a good and sufficient quitclaim deed, and *as a general rule such sale and conveyance will not operate to pass a subsequently acquired title of the grantor or to make him liable to the grantee for any loss arising to the grantee because of an outstanding title in a third person.* But it is also held that this principle is applicable only to a quitclaim deed in the strict and proper sense of that species of conveyance, and that, if the deed bears upon its face evidence that the grantor intended to convey and the grantee expected to become invested with an estate of a particular description of quality, and that the bargain had proceeded upon such footing between the parties, then, *although it may not contain covenants of title, still the legal operation and effect of the instrument will be as binding upon the grantor and those claiming under him with respect to the estate thus described as if a formal covenant to that effect had been inserted; at least so far as to estop them from ever afterwards denying that he was seised of the particular estate at the time of the conveyances.*[11]

Thus, Iowa does not have a *per se* bar against quit claim deeds or special warranty deeds being given effect by the Doctrine.[12] It is a fact question. This position is consistent with C.J.S., which notes: "The general rule is that a quitclaim deed will not estop the grantor to set up a title subsequently acquired by the grantor, and that, under such a deed, a title subsequently acquired by the grantor will not inure to the benefit of the grantee or the grantee's successors." However:

> The rule applies where the deed is in the usual form of a quitclaim deed and does not contain any special recitals, provisions, or covenants which may serve to pass an after-acquired title. It applies only to a quitclaim deed in the strict and proper sense of that species of conveyance and, notwithstanding that a deed is in the form of, or designated as, a quitclaim deed, it may estop the grantor to set up a title subsequently acquired by him or her. Therefore, the grantor is estopped to assert a subsequently acquired title where the deed discloses an intention to convey more than the grantor's present interest or estate, as where it discloses an intention to convey the land or property itself rather than merely the grantor's right, title, or interest therein, or where it shows an intention that a title or interest subsequently acquired by the grantor shall pass thereunder. If the deed bears on its face evidence that the grantor intended to convey, and the grantee expected to

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[11] *Pring v. Swarm*, 157 N.W. 734, 736–37 (Iowa 1916) (emphasis added) (citations omitted). *See Rogers v. Hussey*, 36 Iowa 664, 667-68 (Iowa 1873) ("On the 29th of September, 1862, B. F. Allen conveyed said property to Warren Hussey. This deed, though a quit-claim, vested in Hussey the interest of Allen, which we have already seen was an indefeasible estate, and inured immediately to the benefit of Stewart, Hussey's grantee.") Thank you to our friend David Hanson for pointing out *Rogers*.

[12] *See* 23 AM. JUR. 2D *Deeds* § 284 (2021) (noting a split in the courts as to how special warranty deeds are treated as to after-acquired title).

> become invested with, an estate of a particular description or quality, and that the bargain had proceeded on such footing between the parties, it will estop the grantor to assert an after-acquired title which is within the estate purported to be conveyed.[13]

We are now able to analyze the post from August 13, 2018 on the ISBA Real Estate Listserve from our friend Mike Gabor:

1. Deutsche Bank takes title with sheriff's deed.

2. Deutsche Bank conveys by special warranty deed to FNMA.

3. Deutsche Bank (not in title) conveys by special warranty deed to new buyers (although FNMA arguably still in title). More than 10 years ago.

4. FNMA conveys by quit claim deed to Deutsche Bank.

Did/does new Buyer have good title at the time of this series of transfers?

The fact that Deutsche Bank conveyed by special warranty deed rather than a warranty deed is not dispositive. Based on *Bisby* and *Pring*, we would need to evaluate the deed from Deutsche Bank to the new buyers to determine whether there were sufficient covenants to qualify under the Doctrine. As a side note, the fact that FNMA used a quit claim deed is not a problem because it had fee simple title at that point.

B. Where the grantor's after-acquired title comes from the grantee, the Doctrine does not apply.

In *Sorenson v. Wright*, 268 N.W.2d 203 (Iowa 1978), a grantee conveyed to grantor an undivided 1/3 interest in 120 acres of Woodbury County farm land where the grantor only had a 1/9 interest to grantee.

> The doctrine rests on the premise that when a deed recites or affirms that the grantor is seized of a particular estate which the deed purports to convey, the grantor will thereafter be estopped to deny that such an estate passed to his grantee. Therefore, if he subsequently acquires the title which he previously purported to convey, it immediately inures to the benefit of his grantee. He cannot be heard to say he did not have that title at the time of his conveyance.

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[13] 31 C.J.S *Estoppel and Waiver* § 28 (2021); 23 AM. JUR. 2D *Deeds* § 284 (2021) (The Doctrine of After-Acquired Title and Quit Claim Deeds).

This principle, both at common law and under statutes, is not without exception. *One exception exists when the after-acquired interest comes from the earlier grantee. The reason for this exception is that no basis for estoppel is present in that situation.* It is not inconsistent for the original grantor to accept from the grantee the same interest he earlier purported to convey. His acceptance does not constitute a denial of the title he conveyed to the grantee.

The exception is stated in 4 Tiffany, Real Property § 1233 at 1115-16 (Third Ed.1975), as follows:

> The doctrine that a grantor is estopped to assert an after-acquired title applies only when such assertion would involve a denial that the conveyance passed the interest or estate which it purported to pass. Consequently the grantor may freely assert a title subsequently acquired by him from the grantee either by voluntary conveyance, judicial or execution sale, adverse possession, tax sale, or otherwise. *In such a case the grantor asserts, not that the conveyance failed to pass the interest which it purported to pass, but merely that, after such interests had, by the conveyance, become vested in the grantee, it was divested out of him and vested in the grantor.*[14]

Another way of restating this is that the defect in the conveyance from the grantor is not remedied by a subsequent conveyance from the grantee to the grantor: giving what you do not have does not satisfy § 557.4.

C. Deeds held in escrow.

How do we think about deeds held in escrow where there are subsequent conveyances between the grantor and grantee and then back to grantor? This addressed in *In re Clary's Estate*, 155 N.W. 282 (Iowa 1915).

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[14] *Sorenson v. Wright*, 268 N.W.2d 203, 205 (Iowa 1978) (emphasis added). *See Nicodemus v. Young*, 57 N.W. 906 (Iowa 1894) (holding that where a grantor gave a defective deed to grantee, but subsequently received title, the title inures to the grantee). *See also* 23 AM. JUR. 2D *Deeds* § 280 (2021) ("Generally, if the grantor subsequently acquires a title, which the grantor has purported to convey, *from other than the grantee or one claiming under or deriving title from the grantee*, it makes no difference, in respect to the application of the after-acquired title rule, how the grantor acquires the belated title, whether through enforcement of a mortgage, enforcement of a vendor's lien, by purchase on foreclosure of a tax lien, or on an execution sale to satisfy a judgment.") (emphasis added).

The case involved the following three deeds for a lot in Waverly:

> 1) [O]n February 9, 1907, Mary Clary executed a warranty deed, whereby she conveyed the real estate in question to Emma Clary McCoy; that said deed was left in escrow with one Hazlett, to be delivered by him after the death of Mary Clary, . .
>
> 2) On February 26, 1907, Mary Clary executed and delivered a warranty deed to Emma Clary McCoy and her husband for the same real estate, and the same was recorded May 8, 1907, and was so executed, delivered and recorded during the lifetime of Mary Clary.
>
> 3) On November 25, 1907, Emma Clary McCoy and M. J. McCoy, her husband, executed and delivered a warranty deed to Mary Clary, without reservations, of the above-described premises, which was duly filed on November 29, 1907, and in the lifetime of said Mary Clary.
>
> 4) [The deed held in escrow] was delivered to said Emma after the death of the grantor, and was filed for record April 22, 1909; that this deed contained a clause whereby the grantor reserved unto herself the possession, use, rents, and profits of the above-described real estate during the term of her natural life.[15]

What was the effect of the subsequent deed from escrow? Was the real estate in Mary's estate or was title in Emma and her husband? The Court held that under the Doctrine, any interest Emma had from the escrow deed would have inured to Mary by virtue of the November 25, 1907 deed. Thus, title vested in Mary's estate.

D. Improvements on the property not owned by the grantor at the time of the conveyance.

In *Schiltz v. Ferguson*, 231 N.W. 358 (Iowa 1930), the grantor conveyed what is now 2816 Beaver Ave., Des Moines (presently Christopher's Restaurant) to the grantee by warranty deed without reservation for the building located on the property; however, the grantor did not own the building. (Oops!) The grantor subsequently acquired title to the building, which then inured to the grantee by virtue of the Doctrine.[16]

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[15] *In re Clary's Estate*, 155 N.W. 282, 282 (Iowa 1915).
[16] *Schiltz v. Ferguson*, 231 N.W. 358, 358 (Iowa 1930).

E. Mortgages.

In *Whitley v. Johnson*, 113 N.W. 550 (Iowa 1907), a party gave a mortgage while having only a remainder interest. The question in this case was whether the Doctrine applies to mortgages such that the mortgage encumbered the entire property once the party with the life estate died. The Court held that the Doctrine applies to mortgages in the same way it applies to deeds.[17] The Court held: "And it may be conceded that in equity the rule will not be given application to defeat the proven contract agreement of the parties, either as made in express terms or to be fairly implied from the circumstances under which the instrument of conveyance was made."[18]

F. Rights of intervening judgment creditors.

A judgment lien attaches immediately upon a judgment debtor taking title to real estate.[19] However, do judgment liens attach in the context of a Doctrine situation? A law review article from 1957 poses the questions as follows:

> Fact situation number one: *A* has no title. *A* attempts to convey to *B*. Judgment is entered against *A*. *A* acquires title to the land purported to convey to *B*. Query: Does the after-acquired title pass to *B* free of, or subject to the judgment lien? It has been held that *B* gets the title free of the judgment lien.
>
> Fact situation number two: *A* has no title. Judgment is rendered against *A*. *A* attempts to convey to *B*. Then *A* acquires title to the land in question. Query: Does the after-acquired title pass to *B* free of, or subject to, the judgment lien? There is a split of authority. Some cases have held that *B*'s title is subject to the judgment lien; others have held that *B*'s title is free of the judgment lien. The better view would seem to be that *B*'s title is subject to the judgment lien, for it does not seem that, by reason of the grantor's lack of title at the time of the purported conveyance, the grantee should profit at the expense of the judgment creditors.[20]

To begin to answer this question, one must first determine whether the Doctrine is now based on legal or equitable doctrines. Because the title flows to the grantee (*B*) by inurement, without the involvement of the Court, this would seem to allow the title to

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[17] *Whitley v. Johnson*, 113 N.W. 550, 551-52 (Iowa 1907); *Bisby v. Walker*, 169 N.W. 467 (Iowa 1918).
[18] Id. at 551.
[19] Iowa Code § 624.23(1).
[20] Charles Robert Dickenson, *The Doctrine of After-Acquired Title*, 11 SW. L.J. 217, 227 (1957) (citations omitted).

pass free of the judgment lien in the first scenario. There is no opportunity for the judgment lien to attach. This approaches a "spooky" quality.

As to the second scenario, the inurement once again appears to defeat the judgment lien. Specifically, when the real estate passes to the grantor (*A*), the interest immediately inures to the grantee (*B*). It is not a matter of weighing the equities of the parties, but of applying the principle of inurement.

A slight change to the second scenario. *A* has a ½ interest in the real estate and then a judgment is rendered against *A*. *A* conveys to *B* subject to the judgment lien against the ½ interest. No dispute. When *A* acquires the balance of the title, the after-acquired ½ interest inures to *B* free of the judgment lien. Again, not a question of fairness but one of principle.

The easier path is to know the "how" without understanding the "why" in the law. We are always busy. However, it is critical for lawyers to understand the "why." The Doctrine of After-Acquired Title is unusual (spooky?) both for the way real estate interests are transferred by inurement and for the development of the case law in a manner that is not concerned with the "plain meaning" of the statute. A greater understanding of the Doctrine will increase its use in resolving title objections and surface issues for appellate courts that will enhance our understanding.

87. Title Standard 4.7.

FACTS: I am looking at a real estate transaction where title to the property was held by a revocable trust. The grantor died less than 10 years ago. A trustee's affidavit was filed with respect to a conveyance, which contains the recitations that: "Form 706, United States Estate Tax Return is not required to be filed as a result of the death of the Grantor." And "An Iowa Inheritance Tax Return is not required to be filed pursuant to Section 450.22, Subsection 2 and 3."

The grantee in that conveyance is now seeking to convey the property, and a question has arisen about whether those recitations in the affidavit were sufficient.

The comment to Title Standard 4.7 includes the following:

"The foregoing showing with regard to Iowa inheritance or estate taxes may be either as a part of an estate or CIT proceeding or by affidavit. The showing regarding the grantors and beneficiaries being alive should be made by statement on the instrument of transfer or by affidavit. The trust assets, if not shown in Schedule G of the decedent's estate inventory (gifts within three years of death or with retained income) may be required to be shown on an attached schedule by Questions 2 or 3 of the Questionnaire and the Recapitulation in the inventory (other property reportable for federal estate or inheritance tax, or gifts reducing the unified credit). If the grantor is deceased and there is no release of record for Iowa inheritance and estate tax, and the entire trust agreement is not recorded, sufficient portions of the trust must be recorded in order to enable the examiner to determine if a lien for such taxes exists."
The first sentence of the quoted section of the comment allows the showing with regard to Iowa inheritance taxes to be made by affidavit. The last sentence, however, appears to require portions of the trust agreement to be recorded.

QUESTION: How should that apparent inconsistency be reconciled? Is the affidavit enough, or do portions of the trust also need to be recorded?

RESPONSE(S):