

ABSTRACTING AND TITLE ISSUES

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STATUTES OF LIMITATIONS,
CURATIVE STATUTES and
other time limitations that
affect real estate titles ©

Title Services DM-Corp.

Abstracting in All 99 Counties

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[NOTE; this outline includes new material and changes to §§450.20, 450.47, 450.48(2)(a.)535.8, 628.26, 654.2, 635.1, that are not included in the printed booklet; these changes are shown in italics.]

1. ACKNOWLEDGMENTS:

- a. Proof of execution and delivery in lieu of--§558.31. Proof of the due and voluntary execution and delivery of a deed or other instrument may be made before any officer authorized to take acknowledgments, by one competent person other than the vendee or other person to whom the instrument is executed, in the following cases:
 - i. 1. If the grantor dies before making the acknowledgment.
 - ii. 2. If the grantor's attendance cannot be procured.
 - iii. 3. If, having appeared, the grantor refuses to acknowledge the execution of the instrument.
- b. Acknowledgment as condition precedent--§558.42.
Not deemed lawfully recorded unless previously acknowledged.
- c. Forms of-- 9B.16.
- d. Specific defects legalized--§586.1. See e.-l. below.
- e. Outside jurisdiction of notary over 10 yrs., legalized--§586.1(1).
- f. By Mayors--§586.1(3).
- g. Legalized if recorded prior to 1970--§586.1(6).
- h. By county official before 1970, legalized--§586.1(4).
- i. No seal, legalized if over 10 yrs.--§589.1
- j. Absence of or defective acknowledgments-No ack. or defective over 10 yrs., legalized--§589.3, 9B.16.
- k. Corporate, where notary had interest in corp., 10 yrs., legalized--§589.4. Acknowledgments by stockholders-10 yrs.--§589.5. 9B.16.
- l. Any instrument before 1970 by attorney in fact for the grantor where power of attorney was on file, although the instrument was executed and acknowledged in the form of "A, attorney in fact for B", instead of "B, by A, the attorney in fact for B"; or if such instrument is duly recorded and there is no record in the county where the land is situated of a power of attorney authorizing the attorney in fact to so act--§586.1(8).
- m. By attorney in fact, See DEEDS LEGALIZED Defects in Execution--§589.24, also See §614.17A

2. AFFIDAVITS:

- a. 120-day tax title holder affidavit--§448.15; Claims adverse to tax title barred--§448.16 (Exceptions: U.S.), cures defective legal, improper notice, parties in possession, Title Std. 10.1 See TAX SALES
- b. Explanatory of title--§558.8 Facts presumptive become conclusive after 3 yrs.

- c. Possession. Bars claims to Real Estate antedating 1980--§614.17. Claims to real estate after 7/1/92--§614.17A bars claims over 10 yrs. old, if unbroken chain of title. Exceptions: US, Lessors, reversioners and easements, §614.36; State or subdivision; mortgages/contracts, spousal claims, §614.20; certain reversions/future interests, mineral rights.

Note: minors and mentally ill can be cut off with Aff. of Poss.--§§614.8, 614.19

Note: §§614.17 through .19, do not limit or extend a spouse cause of action to recover dower or distributive share; nor limit or extend the right to foreclose a mortgage or a contract--§614.20.

3. AGRICULTURAL LAND MANDATORY RECORDING:

- a. Requires recording of conveyance or lease > 5 yrs. within 180 days--§558(44); Agricultural land definition-- §558(43).
- b. Waiver. The mtg. or contract must include homestead waiver language *if* the property is AG land >40 acres--§561.22.

4. ATTORNEY IN FACT, See ACKNOWLEDGEMENTS paragraph 1 above; and DEEDS LEGALIZED Defects in Execution--§589.24, and See §614.17A

5. BANKRUPTCY-JUDGMENTS: Lien that is discharged in bankruptcy is not a lien on subsequently acquired real estate--§624.23(3)

6. BANKRUPTCY EXTENDS/TOLLS OTHER TIME LIMITS:

- a. The following applies to Chapters 7, 11, and 12. “In Chapter 13 the situation is much murkier...” Law of Bankruptcy, 4th Ed. Charles Jordan Tabb West Academic Publishing, (2016) at page 145. At page 146 the author states “the problem is integrating those rules.” It is imperative that you review the following Code sections in making a determination regarding the affect they have on title.
- b. 11 U.S.C. §108(a) gives Trustee the later of the original statute of limitations or two years to bring an action on behalf of the estate. For example, if a statute of limitation would run on a cause of action held by the Debtor after the Debtor files bankruptcy the Trustee has 2 years to file suit.
- c. 11 U.S.C. §108(b) if a non-bankruptcy statute fixes a time to “file any pleading, demand, notice, or proof of claim or loss, cure a default, or perform any other similar act, and such period has not expired before the date of the filing of the petition, the Trustee may only file, cure, or perform, as the case may be, before the later of”- the end of the time period or 60 days whichever is longer. For example, if the Debtor has property that was sold at sheriff’s sale and the redemption period would run while the Debtor was in bankruptcy the Trustee has 60 additional days to redeem. NOTE time period in this section does not apply to “Executory Contracts or unexpired leases”- See below.

- d. 11 U.S.C. §108(c) provides that if the statute of limitations for a judgment expires while the Debtor is subject to the jurisdiction of bankruptcy, the judgment lien is extended by 30 days after being released from jurisdiction of court by having the automatic stay lifted or by discharge. E.g. Debtor acquires real estate on January 10, 2002; on August 15, 2004 there is judgment by Acme against Debtor; on January 15, 2014 Debtor files bankruptcy doesn't list Acme or lists Acme but doesn't have the lien extinguished; the Debtor is discharged on October 15, 2014; judgment still a lien until November 15, 2014. Note the lien normally would have expired on August 15, 2014.
- e. 26 U.S.C. §6503(b) provides that the period for collection of a federal tax (e.g. Estate or Income) is suspended during the period the assets of the taxpayer are in the control of any court, State or Federal, and for 6 months thereafter. E.g. Debtor acquires real estate on January 10, 2002; on September 15, 2004 IRS filed Notice of Federal Tax Lien against Debtor with date of assessment April 15, 2004; on January 15, 2014 Debtor files bankruptcy; the Debtor is discharged on October 15, 2014. Normally the tax lien would expire on April 15, 2014 (10 yrs. unless extended). But the federal tax lien is extended for 16 months from April 15, 2014 (the 9 months Debtor was in bankruptcy + 6 months per §6503(b) **+Plus 30 days**, according to the legislative history based on §108(c)) i.e. the tax lien is good until August 15, 2015.
- f. Executory contracts and unexpired leases. See 11 U.S. Code §365. Generally, in Chapter 7, the Trustee has 60 days, or longer if extended, to accept or reject an executory contract or lease. For Chapters 11, 12, and 13 the Debtor has the right and the time limit is extended to before the confirmation or per court order.

7. CONTRACTS/MORTGAGES:

- a. Ancient-Title Std. 4.12, §614.21, §558.5: presumed abandoned and void when:
 - i. When contract was executed > 10 yrs. ago and > 10 yrs. passed since date of performance--§614.21(3).
 - ii. >20 yrs. passed and no performance date--§614.21(1).
 - iii. Applies to unrecorded contracts referred to in other documents--§558.5.
 - iv. EXCEPTIONS:
 - 1. Vendee or successor in interest, in possession--§558.5(3).
 - 2. Vendee has paid taxes for last 5 yrs.--§558.5(3).
 - v. Examiner may rely on affidavits to satisfy iv above.
- b. Examiner can accept Deed from Vendee when:
 - i. > 45 days since vendor served with demand for deed--§614.21(4).
 - ii. Vendee's affidavit on file showing service on vendor--§614.21(4) and possession.
- c. Forfeiture of real estate contract:

- i. 30 days to cure after completed service of Notice on Vendee--§656.2(1)(c).
- ii. Service of Notice must be served on parties in possession and others with an interest or claim in property, *if*
 - 1. they filed a Request for Notice- the request is good for 5 yrs. from date of filing and renewable for 5 yr. periods--§656.2(2).
- iii. Service on IRS, Federal Tax liens, IRS has 120-day right of redemption from date of "sale" --26 U.S. Code §7425(d)(1). For purposes of this section a sale of property includes the forfeiture of a land sales contract-- 26 U.S. Code §7425(c)(4). So the IRS would have 120 days after the expiration of the 30 day following the completed service of Notice on the Vendee.
- d. Defective forfeiture prior to 7/1/91 or more than 10 yrs. ago, OK--§656.9(1).
- e. Mandatory Recording:
 - i. §558.46 requires recording of contract for one or two family "residential" or commercial with 3 or > separate living spaces within 90 days, reduced to 30 days if Seller has sold 4 or more properties within last 365 days filing
 - ii. Failure to file - fine and no forfeiture--§558.46(3).
- f. Deed from heir, no probate, by affidavit > 40 days from death--§633.356(1).
- g. Suit to enforce--§614.1(5)(a) 10 yrs. from time, cause of action accrues.
- h. Suit Based on allegation instrument not authorized by entity: recorded before 7/1/13, barred on 7/1/18; recorded after 7/1/13 barred after 2 yrs.--§614.14A (3).
- i. Contract Disclosure Statement: Seller must mail copy of contract to buyer within 5 days after signing, unless buyer acknowledges receipt of a copy, applies *IF* the seller has sold 4 or more properties in last 365 days--§558.70(3) and §558.70(4).
- j. Contract Disclosure Statement Civil Liabilities: Buyer has 1 yr. to file suit if injured by sellers' violation of--§558.70, see §558.1.
- k. Executory contracts and unexpired leases See BANKRUPTCY
EXTENDS/TOLLS OTHER TIME LIMITS

8. CORPORATIONS:

- a. Seal--§558.2 eliminates need to affix or refer to seal.
- b. Execution not authorized by entity: before 7/1/13 barred 7/1/18; after 7/1/13 2 yrs. from recording--§614.14A, Title Std. 3.3.

9. DECREES/ACTIONS: See also JUDGMENTS

- a. Decrees by Guardian--§587.4; sales before 1/1/69 where the original notice shows that service of notice pertaining to the sale of such real estate was made on the minor or ward outside the state of Iowa, such services of notices are hereby legalized.
- b. Estates:

- i. Limitation of administration 5 yrs.--§633.331.
 - ii. Claims barred 4 months after 2nd publication or 1 month after mailed notice--§633.410(1).
- c. Probate orders-§587.12 - based on notice by publication before 7/1/70 legalized-§587.12(1).
- d. Death:
 - i. Limitation to bring action vs. decedent's estate extended 6 months--§614.2.
 - ii. Person having cause of action has 1 yr. from date of death--§614.9.
- e. Published Notice Affidavit--§587.9 before 1/1/69 legalized.
- f. Quiet Title: prior to 1/1/66 legalized, -§587.7 -- over 10 yrs. barred--§614.1(7).
- g. Real estate -- Action to recover- 10 yrs. from time cause of action accrues--§614.1(5).
- h. Rent. 5 years--§614.1(5)(b).
- i. Spouse fails to join conveyance--§614.15(2) 10 yrs.
- j. Tax sale: See TAX SALE
- k. Trustees-Transfers legalized 1 yr. from recording--§614.14.
- l. Wills-Judgments to set aside/construe will. Legalized 10 yrs. despite failure of notice--§587.5.
- m. Default Judgment-Requirements: IRCP 1.972
 - i. Written notice of intention to file application for default sent by mail to a party, or if represented to atty. 10 days prior to filing application for default. Note: no notice required for party served by publication--IRCP 1.972(4).
 - ii. Application for default.
 - iii. Motion attacking validity of judgment for failure to comply with--IRCP 1.972 must be filed w/n 30 days after sheriff's deed or 90 days after judgment or decree where there is no sheriff's deed--§614.18A.
 - iv. Motion to Set Aside for mistake, inadvertence, surprise, excusable neglect, or unavoidable casualty must be filed w/n 60 days after entry of judgment- IRCP 1.977.

10. DEEDS LEGALIZED:

- a. Ancient--§614.22(2). All actions barred against the following deeds: tax, guardian's, executor's, administrator's, receiver's, referee's, assignee's, or sheriff's over 10 yrs. -- no exceptions for disability--§614.22(2). However, party claiming through deed must be in possession--§614.22(2)(b).
- b. Defects in Execution. A deed of conveyance, or other instrument purporting to convey real estate, executed by a county treasurer under a tax sale, a sheriff under execution sale, or by a resident or foreign executor, administrator, referee,

receiver, Trustee, guardian, commissioner, individual, partnership, association, or corporation, >10 yrs. is legalized, valid, and binding, notwithstanding defects in the execution of the deed or instrument., *if* the grantee or the grantee's heirs or devisees, have been in the actual, open, adverse possession--§589.24. Query, no POA of record.

- c. City/County-Deed > 10 yrs. ok without necessary steps --§589.31.
 - d. County No seal or clerks signature >10 yrs. ok--§589.2.
 - e. Fiduciaries (executor, administrator, Trustee, guardian, assignee, receiver, referee, or commissioner) --§589.11. >10 yrs. ok despite failure of notice, served upon all interested parties, or that fiduciary is not shown to have been duly authorized by an order of court to execute the conveyance, that a bond was not given, or that a report of the sale was not made; or the sale or deed of was not approved by the court, or the record fails to disclose compliance with any law, and all such conveyances are valid.
 - f. Fiduciary, Sale--§633.93 >5 yrs. from the recording of the conveyance ok--Title Std. 9.6.
 - g. No action to recover by person claiming through decedent, ward, or beneficiary > 5 yrs.--Title Std. 9.6.
 - h. Sheriff--§589.12 - 10 yrs.
 - i. Sheriff - deputy--§589.13 - 10 yrs.
 - j. Spouse as attorney-in-fact--§589.17 - 10 yrs.
 - k. Foreign executors/trustees--§589.18 - 10 yrs.
 - l. Tax See TAX SALES
 - m. Grantor as "spouse"/ "heir"--§558.14 conclusive presumption of authority - 10 yrs.
 - n. Trustee- Action based on claim arising before January 1, 2009 until December 31, 2010, claim arising after January 1, 2009, 1 yr. from the recording of the instrument from which the claim arose--§614.14.
 - o. Entities: P/P, corporation, LLC, non-profit which was not authorized by entity: recorded before 7/1/13 barred 7/1/18; after 7/1/13, 2 yrs. from date of recording -- §614.14A, Title Stds. 3.3 and 10.7.
 - p. Stray Deeds See Title Standard 4.5
11. DEED IN LIEU OF FORECLOSURE – AG LAND: §654.19 mtgee and mtgor can enter agreement which allows mtgor to re-purchase the land for up to 5 years.

12. Due on Sale in mortgage See Foreclosure

13. ENTITIES:

See LIMITED LIABILITY COMPANY and PARTNERSHIPS below and--Title Std. 10.7.

14. ENVIRONMENTAL COVENANTS: Perpetual--§455L.9 and are an exception to the 40-yr. marketable title--§614.32(6).

15. ESTATE GIFT TAX:

- a. FEDERAL 10 yrs. from date of death 26 U.S. Code §6324, UNLESS the estate tax is deferred see 26 U.S. Code §6324A; OR EXTENDED see §6324B; NOTE transferees remain liable but purchasers or security % takes free of lien. See also Marshall 18.1(A)

16. FINANCING STATEMENTS:

- a. 5 yrs. unless utility--§554.9403(2).
- b. 5 yrs. unless continuation filed within 6 months of 5 yrs.; EXCEPT lien for rent upon crops-see f. below
- c. Public finance or manufactured homes 30 yrs., extended if continuation filed in last 5 yrs.
- d. Utility effective until terminated, see e. below, mortgage as financing statement effective until mortgage is released.
- e. Mortgage as financing statement, effective until mortgage is released.
- f. Landlord lien for rent upon all crops, the financing statement effective until a termination is filed. --§570.1(3). Note if tenant gives Landlord written demand for termination Landlord has 20 days to file termination statement--§570.1(4).
- g. See also LIEN for RENT-CROPS--infra.

17. FORECLOSURE:

- a. Time Limit to Bring:
 - i. 10 yrs. §614.1(5) actions on written contracts; *or*
 - ii. 20 yrs. 614.21 action to foreclose mtg. See CONTRACTS.
- b. Judgment creditor personally served with NOTICE OF PENDING FORECLOSURE has 30 days to intervene--§654.15B.
- c. Lis pendens cuts off future parties in possession--no need to serve.
- d. Ag land, mediation release required before filing--§654A, §654B., §654C.
- e. AG land see Deed In lieu of Foreclosure-Ag Land above. §654.19 5 yrs. to repurchase.
- f. *Due on sale clause in mortgage: §535.8*
e.(1) Notwithstanding 628.3 the mortgagor may redeem any time within eighteen months from day of sale, mortgagor entitled to the exclusive possession for the first 15 mnths. Redemption by creditors provided in sections 628.5, 628.15,

and 628.16 shall be 16 months. This does not apply if the lender establishes, that the security interest or the likelihood of repayment is impaired as a result of the transfer of interest.

- g. Ag land Sale:
 - i. Borrower has right of first refusal after sheriff's sale--§654.16A(1).
 - ii. If Grantee wants to sell property other than at a public auction, mortgagor has 10 days to exercise his right of first refusal--§654.16A(4.)
 - iii. If Grantee sells at public auction mortgagor must be given 60-day notice of sale--§654.16A (2).
 - iv. Grantee has 1 yr. 60 days from the date of the sale to record Sheriff's Deed-- §654.16A(1).
 - v. Prior to recording deed the grantee at sheriff's sale must give defendant/mortgagor notice of right of first refusal--§654.16A(1).
- h. Non-Ag land, residential, mediation, non-compliance not a defect if sheriff deed recorded--Title Std. 6.1 and comment.
- i. Non-Ag, not necessary to show right to cure or notice of acceleration--Title Std. 6.1 (9).
- j. No notice of default (or defective) --IRCP 1.972, ok if > 30 days recorded sheriff's deed--Title Std. 6.1(13).
- k. Sheriff's Notice of Sale to Debtor in possession (or parties in possession) defective, ok if > 90 days since sale--Title Std. 6.1, §626.79.
- l. Mortgagee deceased See--Title Std. 7.8.
- m. Continuation - Moratorium. A foreclosure can be delayed if mtg. default is based on weather, pests, or governor declares state of emergency. Time limits vary--See - §654.15.
- n. Request for Notice of Sale: Junior Creditor can serve mortgagee with request for notice of sheriff's sale; proof of service must be filed at least 10 days before sale. If mortgagee fails to give notice of sale, Junior Creditor has 30 days after sale to file motion to set aside-- §654.15A.
- o. Notice to Junior Creditors: Lender can serve Junior Creditors with notice of pending foreclosure and right to intervene. Junior Creditors have 30 days to intervene. If Junior Creditors cannot be served, Lender can amend petition at least 60 days before sale and serve by publication--§654.15B.
- p. Homestead - Separate Redemption - AG Land. Mortgagor can, not later than 10 days before the sale, set aside up to 40 acres for Homestead. Mortgagor has 1 yr. from date of sale to redeem--§654.16.
- q. Divestment of Junior Liens: If foreclosing mortgagee of a 1 or 2 family residence, and mortgagor agreed to a modification, Junior Creditors have 45 days to either take an assignment or file an objection--§654.17B. NOTE: this section was repealed effective 7/1/2014.

- r. US Federal Govt. has 60 days to appear. Service is by serving the US attorney in district where RE is located and by certified or registered mail to Atty. Gen. 28 USC § 2410.
- s. Default Judgment. See DECREES/ACTIONS Default Judgment-Requirements: IRCP 1.972 Above
- t. Notice of Foreclosure Sale by Sheriff -Posting and Publication:
 - i. 4 weeks of time and place--§626.74
 - ii. By posting in 3 public places (one must be court house) and published twice (one must be 4 weeks before sale) --§626.75.
 - iii. *Sale without notice per--§§626.74, .75 does NOT affect validity of sale--§626.77.*
- u. Notice of Foreclosure Sale-Notice to Defendant Debtor and Parties in Possession:
 - i. *IF* Debtor is in actual possession, sheriff must serve Notice of time and place of sale by--IRCP 1.305(1), 20 days before sale. If Debtor can't be served, then Notice can be posted on door and mailed to last mailing address of Debtor--§626.78.
 - ii. Sales without Notice to Defendant Debtor per--§626.78 may be set aside on motion made within 90 days--§626.79.
- v. Notice of Foreclosure Sale-Parties in Possession: See--Title Std. 6.1 If not named and served, buyer takes subject to their rights.
- w. Rescission:
 - i. At any time before the Sheriff's deed and before the mtgee's rights are unenforceable (10 yrs. or 20 yrs.), the foreclosure may be rescinded by successful bidder at Sheriff's sale. However;
 - ii. If foreclosure is rescinded after two years from judgment the mtg. loses right to a deficiency judgment--§614.17, U.S. Bk. Nat'l Ass'n v. Lamb 874 N.W.2d 112 (Iowa, 2016).
- x. Sale Free of Liens. At any time during foreclosure, plaintiff may apply to court for approval accept offer to buy. The court sets the time to object--§654.17A.
- y. Federal Tax liens IRS has 120 day right of redemption from date of tax deed--26 U.S. Code §7425(d)(1).

18. FORECLOSURE ALTERNATIVE NONJUDICIAL VOLUNTARY:

See REDEMPTION FROM ALTERNATIVE VOLUNTARY FORECLOSURE below.

19. FORECLOSURE WITHOUT REDEMPTION-NON-AG LAND DELAY OF SALE: §654.20-.26

At any time prior to entry of judgment the mtgor may file demand for delay of sale as follows: (§654.21)

- a. Property is your Residence and is a 1 or 2 family dwelling:

- i. Petition *does not* waive deficiency 6 months from date of decree.
 - ii. Petition *waives* deficiency- 3 months from date of decree.
 - iii. *Parties may file stipulation to waive deficiency and sale held promptly after stip. Filed §628.26*
- b. Property is *not* your residence or is your dwelling but is not 1 or 2 family dwelling-2 months--§654.21.
- c. At any time prior to judgment mtgor may pay mtgee, foreclosure shall be dismissed, if paid after judgment and before sale, the judgment shall be satisfied--§654.21.
- d. No demand for delay of sale – sale held promptly after judgment--§654.22.
- e. Mtgor no right to redeem after sale--§654.23.
- f. Purchaser at sale entitled to immediate deed and possession--§654.24.
- g. Iowa code Chapter 628 Redemption *does not* apply.

20. FORECLOSURE NONJUDICIAL NON-AG MORTGAGES: Iowa Code Ch 655A

- a. Mtgee serves mtgor, parties in possession and junior lienholders of record with notice of defaults--§655A.3. Service is by IRCP for original notice or by §654.4A.
- b. Mtgor has 30 days from completed service to cure, *or* record a Notice of Rejection and serve a copy of the Notice of Rejection on mtgee. If mtgor fails to do so the mtg. is foreclosed.

21. FORTY YEAR MARKETABLE TITLE ACT: §§614.29-38.

- a. All claims prior to root of title (date recorded) over 40 yrs. are cut off--§§614.31, 33.
- b. Exceptions: leases, easements, US, interest within chain of title, interests preserved by filing notice, possession for 40 yrs., adverse possession, --§614.32, §614.36. Environmental Covenants. An environmental covenant may not be extinguished, limited, or impaired by application of section 558.68 (perpetuities) or sections 614.24 through 614.38--§455I.9.

22. HOMESTEAD:

- a. Platting Claimed exempt - Owner may serve lienholders with a notice that property is homestead; lienholders have 30 days to execute--§624.23, §624.23(2).
- b. Exempt from judicial sale--§561.16.
- c. Exempt in hands of issue for antecedent debts of parent or issue except those contracted for by owner prior to acquisition, except medical assistance per--§249A.53, §561.19.
- d. New homestead exempt--§561.20.
- e. Conveyance or encumbrance--§561.13 Not valid unless joined in by spouse in same or like instrument, EXCEPTIONS if

- i. Spouse only holds homestead or dower, and relinquishes same, no need to join in granting clause.
- ii. Spouse's interest terminated by divorce or court order.
- iii. Barred by §614.15 >10 yrs.
- iv. Encumbrance is purchase money mortgage.
- v. Court finds invalidating conveyance or encumbrance would unjustly enrich non-signing spouse.
- f. Execution. The owner, husband, wife, or single person may set off and plat the homestead--§561.4. If the homestead is not platted at time of levy the officer shall give the owner 10 days to plat if found in the county--§561.5.
- g. Waiver. The mtg. or contract must include waiver language *if* the property is AG land >40 acres--§561.22

23. HOMESTEAD - SEPARATE REDEMPTION - AG LAND: Mortgagor can, not later than 10 days before the sale, set aside up to 40 acres for Homestead. Mortgagor has 1 yr. to redeem--§654.16.

24. INHERITANCE TAX - IOWA:

§450.7(1)(b) 10 yrs. from date of death

a. Exemptions:

- i. Entire estate if < \$25,000--§450.4(1).
- ii. The share of the estate passing to the surviving spouse, parents, grandparents, great-grandparents, and other lineal ascendants, children including legally adopted children and biological children entitled to inherit under the laws of this state, stepchildren, and grandchildren, great-grandchildren, and other lineal descendants is excluded from taxation under this chapter--§450.7(1)(a)
- iii. The sale, exchange, mortgage, or pledge of property by the personal representative pursuant to a testamentary direction or power, pursuant to section--§633.387, or under order of court, divests the property from the lien of the tax--§450.7(3).

b. Inheritance tax can be extended for 10 years after death--§450.6.

25. JUDGMENTS: See also DECREES/ACTIONS

- a. To enforce foreclosure judgment from mortgage or contract if 1 or 2 family dwelling, which is residence of Debtor or AG property - 2 yrs.--§615.1(1).
- b. Fine as judgment--§909.6.
- c. A judgment lasts for 20 yrs.--§614.1 but is a Lien for 10 yrs. on real estate of defendant and property subsequently acquired--§624.23(1). If the creditor wishes to extend the lien beyond the 10-year limitation he must file a new action on the

original judgment, which cannot be commenced until after 9 years have expired from the date of the first judgment. *Whitters v. Neal*, 603 N.W. 2d 622 (Iowa 1999) Exceptions: property occupied as a homestead--§624.23(2); and judgments discharged in bankruptcy for real estate subsequently acquired after bankruptcy--§624.23(3); and purchase money mortgage has priority over pre-existing judgments--§654.12B.

- d. Homestead-See above. A claim of lien is barred unless execution is levied within 30 days after being judgment holder is served with the demand--§624.23(2)(b).
- e. Federal judgments. 20 years and may be extended for 20 years--28 USC §3201
- f. HAZARDOUS WASTE IA Lien for expenses incurred in clean up, no time limit but to perfect must be filed w/n 120 days after expenses incurred. NOTE. NOT A LIEN on single or multifamily residence--§455B.396.
- g. Judgment on obligation secured by note or contract w/o foreclosure on a 1 or 2 family residence 2 yrs.--§615.3.
- h. *Rent Execution on judgment. §615.1A 10 years from judgment of a court not of record, or 20 years from judgment of a court of record, exclusive of any time was stayed pending a bankruptcy or order of court. However, if judgment is sold or assigned to a third party no execution shall be issued after 2 years.*
- i. Judgments of courts of record. Those founded on a judgment of any state court of record, or of the federal courts, within twenty years, except that shall not apply to an action to recover a judgment for child support, spousal support, or a judgment of distribution of marital assets--§614.1(6).
- j. If the case file is sealed or not available to public any jdmt. in the case is not a lien until either it becomes public or until the creditor files a designation of the name and office of an agent to receive service--§624.23(7)
- k. Action to set aside Quite Title decree-10 years --§614.1(7).
- l. Written contract, claim for rent- Time to file 5 years--§614.1(5)(b).
- m. Written contracts — judgments of courts not of record — recovery of real property. Time to file 10 years--§614.1(5)(a).
- n. Time Limit to Vacate a Judgment Petition must be filed and served in the original action within one year after the entry of the judgment or order involved--IRCP 1.1013. See Rule 1.1012 for the grounds necessary for vacating or modifying a judgment. They include: Mistake, neglect or omission of the clerk; Irregularity or fraud practiced in obtaining it; Erroneous proceedings against a minor or person of unsound mind, when such errors or condition of mind do not appear in the record; Death of a party before entry of the judgment or order, and its entry without substitution of a proper representative; Unavoidable casualty or misfortune preventing the party from prosecuting or defending; Material evidence, newly discovered, which could not with reasonable diligence have been discovered and produced at the trial, and was not discovered within the time for

moving for new trial. However, this one-year statute of limitation cannot be used to bar a judgment that is void. See *Perelson v. Davidson* 860 N.W. 2d 343 Iowa App. 2014)

26. LEGAL DESCRIPTION - PLAT: §589.23 See PLATS.

27. LIEN FOR RENT - CROPS: To perfect Landlord must file financing statement within 20 days of possession--§570.1. Lien continues for 1 yr. after a year's rent, in no case > 6 months after expiration of term--§570.2.

28. LIENS: See Iowa Code Chapters 570-584 for the different types of statutory liens.

a. See JUDGMENTS, MECHANICS LIENS, PATERNITY, and TAX.

b. AG Supply Dealer Lien: A supplier of chemicals, seed, feed or petroleum to farmer has 31 days after purchase to perfect by filing financing statement--§570.4A.

29. LIMITED LIABILITY COMPANY: See Appendix for schematic.

a. Conveyance Executed before 7/1/13--Title Std. 15.3, and §§489.302, 407A.

i. Managed by members, signed by majority of members with recitation in ordinary course of business presumed-- OK

ii. Managed by Managers, signed by majority of managers with recitation in ordinary course of business, presumed OK.

iii. Record must show:

1. Whether member managed, or manager managed.

2. Whether sale in ordinary course.

3. Authority of signor.

iv. If sale NOT IN ORDINARY COURSE, consent of all member required.

b. Conveyance executed **after 7/1/13** not necessary to show that person who executed had authority.

c. If a statement of authority is of recorded and filed with secretary of state bfpv may rely on as conclusive-- §489.302.

d. Statement of authority filed with secretary of state before 7/1/13 effective for 5 yrs.

e. Statement of authority after 7/1/13 effective indefinitely--Title Std. 15.4 and §489.302.

30. MARGINAL ASSIGNMENT OF MORTGAGE OR LIEN--§589.10: Legalized if over 10 yrs.

31. MECHANICS LIEN:

- a. Liens filed prior to January 2013, remain with Clerk of District Court; after January 1, 2013 filed with Secretary of State.
 - b. Notice of Commencement for General Contractors must be filed within 10 days, if not no lien--§572.13A(4).
 - c. Preliminary notice — subcontractor — residential construction, A preliminary notice posted before the balance due is paid to the general contractor or the owner-builder is effective as to all labor and material furnished --§572.13B.
 - d. Action to enforce barred:
 - i. After 2 yrs. 90 days after last labor or materials--§572.27.
 - ii. 30 days after demand by owner to commence action--§572.28.
 - e. Priority:
 - i. Liens posted < 90 days after last work or materials, prior over other liens except those recorded prior to commencement of work--§572.18.
 - ii. Liens posted > 90 days < 2 yrs. 90 days subject to a good faith purchaser or lender for value without notice--§572.18(3).
 - f. Satisfaction of lien--§572.23: if contractor refused to satisfy, owner may personally serve demand and after 30 days may file proof of service and is constructive notice of cancellation of lien.
 - g. RESIDENTIAL: Notice of commencement (contractor) and Preliminary Notice (sub-contractor). Are prerequisites to mechanics lien – they are not liens; not a defect or cloud on title--Title Std. 1.13. But Abstract should show.
 - h. RESIDENTIAL: Re Notice of Commencement & Preliminary Notice-Examiner should not require abstracter to show, but abstract should show if a search was made for Notice of Commencement and Preliminary Notice. NOTE--§572.13A (5), §572.13B (5) **only apply to residential.**
32. MINERAL INTEREST in coal > 20 yrs. barred unless an extension is filed prior to 20 yrs.--§§557C1, C4-recorder's duty to file in claimants index..
33. MORTGAGE PURCHASE MONEY: Has priority over preexisting judgments against the purchaser and any other interest, or lien arising through, or under the purchaser. A mortgage is a PMM to the extent it is either: a. Taken or retained by the seller of the real estate to secure all or part of its price, and costs. b. Taken by a lender who, provides funds for the purchase--§654.12B.
34. MORTGAGES & CONTRACTS/ ANCIENT: §614.21: See CONTRACTS/MTGS
- a. Barred after 20 yrs. from date thereof--§614.21(1); Exceptions:
 - i. < 10 yrs. since maturity or recorded extension §614.21(1) (a). Query, what if maturity date can be calculated with an amortization schedule?

- ii. Except mortgages or security interest to US, See Title Std. 1.9, cf. Title Std. 1.1
- iii. Stray See Title Standard 4.5

35. MORTGAGEE DECEASED: What is required, See Title Std. 7.7

36. NAMES-VARIATIONS:

- a. Individual Presumption of identity where difference in given name/initials/and surname sound the same or is abbreviated in one of the instruments--Title Std. 8.1, 8.3; §558.6.
- b. Corporate, OK, if from names used and other circumstances the correct name can be inferred with reasonable certainty--Title Std. 3.4.

37. NOTARIES:

- a. Nonresident, notary seal presumption lawful--§558.15.
- b. Where notary or spouse had an interest and are a party to the instrument--voidable--§9B4.

38. PARTNERSHIPS: Action to invalidate where execution not authorized by entity—§558.72, §614.14A(3) See--Title Std. 10.7 and 12.1.

- a. Deed or contract recorded prior to 7/1/13 barred after 6/30/18.
- b. Deed or contract recorded on or after to 7/1/13 barred after 2 yrs. after recording.

39. PATERNITY: Lien is created *at time of filing* complaint upon real estate of respondent--§600B.16.

40. PERPETUITIES: §558.68--Must vest 21 yrs. after lives in being and gestation--§558.68(1).

41. PLATS: Description land describing lots in plats of survey or by auditor or city surveyor for the owner > 10 yrs. legalized--§589.23.

42. POWER OF APPOINTMENT RELEASE BY DONEE: Legalizes acknowledged release--§559.1.

43. POWER OF ATTORNEY, See DEEDS LEGALIZED Defects in Execution--§589.24, also See §614.17A.

44. POWERS TO CONVEY: All instruments containing a power to convey, or in any manner relating to real estate, including certified copies of petitions in bankruptcy, cannot be revoked as to third parties until a revocation is recorded--§558.1.

45. PROBATE:

- a. No probate of an estate unless commenced within 5 yrs. from date of death-- §633.331.
- b. Claims barred 4 months 2nd publication or 1 month after mailed notice-- §633.410. EXCEPT claims relating to the recovery of medical assistance six months after sending notice to the entity designated by the department of human services to receive notice.
- c. Notice of admission of Will or appointment - legalized after 5 yrs.--§590.1.
- d. Distribution of property by affidavit ok, if estate < \$25th and > 40 days from date of death--§633.356.
- e. Conveyances recorded > 10 yrs. where grantor described as heir(s), surviving spouse of some person deceased, conclusive evidence as if probated--§558.14.
- f. Actions which set aside or construed a will >10 yrs. old is legalized even if no service on all parties, or parties with disabilities were not served--§587.5.
- g. *Small estate. When value is <\$100,000. It may be administered per §635.. See code for time limits.*
- h. *Deferred Estate. See §§450.20, 450.47, and 450.48(2)(a.)tax remains a lien on real estate until the tax or interest is paid.*

46. PURCHASE MONEY MORTGAGE PRIORITY: The lien created by a recorded purchase money mortgage shall have priority over and is senior to preexisting judgments against the purchaser and any other right, title, interest, or lien arising either directly or indirectly by, through, or under the purchaser--§654.12B.

47. QUIET TITLE Suit to set aside 10 years--§614.1(7)

48. RAILROADS:

- a. Reversion of railroad property - rights divest with removal of track or 1 year from authorization to remove rack by r/r--§327G.76.
- b. Reversion - right-of-way, pass to adjacent owners - perfect title with affidavit of ownership--§327G.77.
- c. Utilities on the r/r right of way remain; subject to payment of fair market value by utility, utility shall make offer to owner w/n 60 days--§327G77(3).

49. RECORDING, INDEXING & CONSTRUCTIVE NOTICE:

- a. Only properly filed **and indexed** documents entitled to constructive notice-- §558.11 and §558.55.
- b. Proper acknowledgment a prior condition for lawful recording. Also see cases and-- §558.42.

- c. Unless properly recorded, an instrument affecting title is of no validity against a BFPV without notice--§558.41.

50. RENT – EXECUTION ON JUDGMENT See JUDGMENTS.

51. RESCISSION OF FORECLOSURE ACTION: SEE FORECLOSURE

52. REDEMPTION FROM FORECLOSURE. Plaintiff has not waived deficiency. Ch. 628 See also FORECLOSURE and FORECLOSURE WITHOUT REDEMPTION-NON-AG LAND above.

- a. 1 year from date of sale,
- b. For first 6 months right of redemption. is exclusive,
- c. Debtor entitled to possession--§§628.1A, .3.
- d. From 6 mths. to 9 mths. other creditors can redeem--§628.5.
- e. If property <10 acres parties can agree to reduce mtgor's. Redemption time to 6 months *if* mtgee agrees to waive deficiency *or* 3 months *if not AG land*. The mtgor has exclusive time to redeem for 2 months and other time periods for creditors is 3 months--§628.26.
- f. See also HOMESTEAD - SEPARATE REDEMPTION - AG LAND
- g. If AG land parties may agree after petition is filed to *extend* redemption up to 5 years--§628.26A.
- h. If property is abandoned, and Plaintiff has waived deficiency, and mtg. provides then redemption can be reduced to 60 days and mtgor has exclusive right to redeem for first 30 days and other time periods for creditors is 40 days--§628.27.
- i. If *not* AG, and *not* residence or if residence *not* one or two family, and deficiency not waived. Redemption is 180 days and mtgor has exclusive right to redeem for first 90 days after sale and other time periods for creditors is reduced to 135 days. BUT if deficiency has been waived then redemption 90 days and mtgor has exclusive right for first 30 days and other time periods for creditors is 60 days.
- j. Federal Tax liens IRS has 120-day right of redemption *from date of tax deed*--26 U.S. Code §7425(d)(1).

53. REDEMPTION FROM ALTERNATIVE VOLUNTARY FORECLOSURE: §654.18

- a. Upon written agreement the mtgor conveys the property to mtgee.
- b. Mortgagee mails notice to all junior lienholders they have 30 days from date of mailing to redeem--§654.18(1)(e)(1) OR,
- c. Mortgagee serves junior lienholders personally or by publication, if by publication they have 30 days to redeem from day of last publication-no affidavit required before service--§654.18(1)(e)(1).

54. REDEMPTION FORM TAX SALE: See TAX SALE: Notice of Expiration of Right of Redemption below.

55. RELEASES:

- a. Judgment/mortgage released by foreign executors, administrators, guardians > 10 yrs. legalized--§589.21.
- b. > 10 yrs. legalized--§589.8.
- c. Mortgage, mortgagee dead, how to release see Title Std. 7.7 for different fact patterns. The mortgage may be released by affidavit by mortgagee's successor if it is small estate <\$25th and > 40 days after death of mtgee--§633.356.

56. REVERSIONS - STALE USES: >21 yrs. barred--§614.24(1), - no exception for disability--614.27, see generally §614.28.

57. RIGHTS OF FIRST REFUSAL: cut off >10 yrs --§614.17A, See WEST LAKES PROPERTIES, L.C., v. GREENSPON PROPERTY MANAGEMENT, INC., No. 16-1463 COURT OF APPEALS OF IOWA September 27, 2017

58. SERVICE OF PROCESS:

- a. If parties aren't served within 90 days after filing, the court may dismiss the suit--IRCP 1.302(5).
- b. Defendants must serve and w/n reasonable time file motion or answer w/n 20 days after service--IRCP 1.303(1); unless a statute provides otherwise, or the court sets a different time-- IRCP 1.303(2), (3); if served by publication, 20 days after last publication-- IRCP 1.303(4).
- c. Rule 1.305 Personal service. Original notices are "served" by delivering a copy to the proper person.
Personal service may be made as follows:
- d. 1.305(1) Upon any individual who has attained majority and who has not been adjudged incompetent, either by taking the individual's signed, dated acknowledgment of service endorsed on the notice, or by serving the individual personally; or by serving, at the individual's dwelling house or usual place of abode, any person residing therein who is at least 18 years old, but if such place is a rooming house, hotel, club or apartment building, a copy may be delivered to such person who resides with the individual or is either a member of the individual's family or the manager or proprietor of such place; or upon the individual's spouse at a place other than the individual's dwelling house or usual place of abode if probable cause exists to believe that the spouse lives at the individual's dwelling house or usual place of abode.

- e. 1.305(2) Upon a minor by serving the minor's conservator or guardian, unless the notice is served on behalf of such conservator or guardian, or the minor's parent, or some person aged 18 years or more who has the minor's care and custody, or with whom the minor resides, or in whose service the minor is employed. Where the notice is served on behalf of one who is the conservator or guardian and the conservator or guardian is the only person who would be available upon whom service could be made, the court shall appoint, without prior notice to the ward, a guardian ad litem who shall be served and defend for the minor.
- f. 1.305(3) Upon any person adjudged incompetent but not confined in a state hospital for the mentally ill, by serving the conservator or guardian, unless the notice is served on behalf of such conservator or guardian, or that person's spouse, or some person aged 18 years or more who has that person's care and custody, or with whom that person resides. When the notice is served on behalf of one who is the conservator or guardian and the conservator or guardian is the only person who would be available upon whom service could be made, the court shall appoint without prior notice to the ward, a guardian ad litem who shall be served and defend for the incompetent person.
- g. 1.305(4) Any person confined in a county care facility, or in any state hospital for the mentally ill, or any patient in the State University of Iowa hospital or its psychopathic ward, or any patient or inmate of any institution in the control of a director of a division of the department of human services or department of corrections or of the United States, may be served by the official in charge of such institution or that official's assistant. Proof of such service may be made by the certificate of such official, if the institution is in Iowa, or that official's affidavit if it is out of Iowa.
- h. 1.305(5) If any defendant, respondent, or other party is a patient in any state or federal hospital for the mentally ill, in or out of Iowa, or has been adjudged incompetent and is confined to a county care facility, the official in charge of such institution or the official's assistant shall accept service on the party's behalf, if in the official's or assistant's opinion direct service on the party would cause injury, which shall be stated in the acceptance.
- i. 1.305(6) Upon a partnership, or an association suable under a common name, or a corporation, by serving any present or acting or last known officer thereof, or any general or managing agent, or any agent or person now authorized by appointment or by law to receive service of original notice, or on the general partner of a partnership.
- j. 1.305(7) If the action, whether against an individual, corporation, partnership or other association suable under a common name, arises out of or is connected with the business of any office or agency maintained by the defendant in a county other

than where the principal resides, by serving any agent or clerk employed in such office or agency.

- k. 1.305(8) Upon any city by serving its mayor or clerk.
- l. 1.305(9) Upon any county by serving its auditor or the chair of its board of supervisors.
- m. 1.305(10) Upon any school district, school township or school corporation by serving its president or secretary.
- n. 1.305(11) Upon the state, where state made a party pursuant to statutory consent or authorization for suit in the manner provided by any applicable statute.
- o. 1.305(12) Upon any individual, corporation, partnership, or association suable under a common name, either as provided in these rules, as provided by any consent to service or in accordance with any applicable statute.
- p. 1.305(13) Upon a governmental board, commission, or agency, by serving its presiding officer, clerk or secretary.
- q. 1.305(14) If service cannot be made by any of the methods provided by this rule, any defendant may be served as provided by court order, consistent with due process of law. (April 2017)

59. SHERIFF'S SALES:

- a. Certificate cancelled after 8 yrs.--§626.97.
- b. Deeds presumptive evidence of regularity of proceedings in case--§626.100.
- c. Required Notices-See FORECLOSURE.

60. STATUTE OF LIMITATIONS-AGAINST THE STATE. "[I]n Iowa, it is well recognized that a statute of limitations does not run against the state unless specifically provided by statute." Fennelly v. A-1 Machine & Tool Co., 728 N.W.2d 163, 169 (Iowa 2006).

61. STRAY DEEDS AND MORTGAGES: See Title Standard 4.5.

62. TAX SALE:

- a. Treasurer serves person in whose name property taxed notice of upcoming sale by May 1 or next business day--§446.9(1).
- b. Publishes notice of sale at least 1 and not more than 3 weeks before sale--§446.9(2).
- c. Sale 3rd Monday in June--§446.7.
- d. Notice of Expiration of Right of Redemption:
 - i. After 3 months the purchaser who will rehab the property for housing--§446.19A; or if property is a public nuisance--§446.19B, may serve 90-day notice of expiration of right of redemption--§447.1.

- ii. After 9 months if the county or city is purchaser, §446.18 it may serve 90-day notice of expiration of right of redemption--§447.9.
 - iii. After 1 yr. and 9 months the certificate holder may serve 90-day notice of expiration of right of redemption on party in possession and person in whose name property taxed--§447.9.
 - iv. Service by regular and certified mail. Service deemed complete upon mailing--§447.9. If notice cannot be served it can be published once--§447.10.
 - v. Certificate holder must complete service *and* file affidavit of completed service with treasurer within 3 yrs. from sale or certificate cancelled--§446.37. This section does not apply when county holds certificate.
 - vi. Under section §447.12, service of the 90-day notice of expiration of right of redemption is not complete until an affidavit of service has been filed with the county treasurer. The affidavit must show “under whose direction the service was made.”
 - vii. HOWEVER, if the filing of affidavit of service is stayed by operation of law, (e.g. Bankruptcy) the time for the filing the affidavit shall not expire until the later of six months after the stay has been lifted or three years from the time of the tax sale.
 - viii. Federal Tax liens IRS has 120-day right of redemption from date of tax deed--26 U.S. Code §7425(d)(1).
- e. After receiving the tax sale deed and obtaining possession the tax titleholder may file a 120-day affidavit. A person having a claim must file it with recorder within 120 days after filing this affidavit. A person who files the claim must file suit within 60 days after filing claim--§448.15. See next section. If no claims are filed all claims are barred--§447.8(6).
 - f. Suit challenging tax sale deed can only be filed by person who had right to redeem from tax sale--§447.8. If court determines the notice of expiration was improper, the plaintiff has 30 days from date of order to redeem. If redeemed the court will order that treasurer’s deed is invalid. If plaintiff fails to redeem court will order the right to redeem is terminated--§447.8(4).
 - g. Tax sale certificate cancelled after 3 yrs.--§446.37 unless Affidavit of Completed Service filed--§446.37; if county holds certificate and assigns certificate then 3 yrs. from date of assignment--§446.31.
 - h. Defective tax sale prior to 7/1/86 despite no notice-legalized--§589.16A.
 - i. TAX DEED is Presumptive evidence of: presumptive evidence of: property subject to taxes, taxes not paid, not redeemed, listed/assessed, levied, advertised, sold per deed--§448.4. And is Conclusive evidence of following facts: -- §448.5 The listing, assessment, levy, notice and sale done as per law, grantee in deed was purchaser, pre-requisites of law complied with. The Iowa Supreme Court held

section 448.5 unconstitutional in so far as it renders a tax deed conclusive evidence as to matters that are jurisdictional and essential to the taxing power. *McCready v. Sexton & Son*, 29 Iowa 356 (1870). On the other hand, however, the legislature does have the power to declare that a tax deed is conclusive evidence of the performance of matters that are “non-essentials or matters merely directory.” See also *Martin v. Cole*, 38 Iowa 141 (1874).

- j. Minor or Person of Unsound Mind-Tax Sale: §447.7 provides that a parcel owner with a legal disability has the right to redeem a parcel from tax sale at any time prior to one year after the legal disability has been removed. §445.1(4A) defines “person with a legal disability to mean “a minor or a person of unsound mind.”
- k. Other Statute of Limitation-Tax Sale:
 - i. §448.12 “an action under section 447.8 (redemption after delivery of deed) or 448.6 (action challenging treasurer’s deed) or for the recovery of a parcel sold for the nonpayment of taxes shall not be brought after three years from the execution and recording of the county treasurer’s deed.” SEE EXCEPTION FOR MINOR AND PERSON OF UNSOUND MIND ABOVE.
 - ii. §614.22 bars actions after 10 years provided the party claiming title through deed is in possession.
 - iii. §589.14 legalizes Tax Sales after 10 years. Deed is not ineffectual because of the failure of the record to show that any of the steps in the sale and deeding of the property were complied with and these proceedings are legalized and valid as if the record showed that the law had been complied with.
 - iv. §589.16A legalizes all Tax Sales prior to 7/1/86

63. TAXES:

- a. INCOME IOWA--§422.26 10 yrs. from date of assessment.
- b. INCOME FEDERAL--26 USC 6502(a) 10 yrs. from date of assessment unless extended by agreement.
- c. Unemployment Lien 10 yrs., attaches when mailed or served on employer but becomes effective when indexed by recorder --§96.14(3).
- d. Sales and Use 10 yrs.--§423.42.
- e. Income Tax-Withholding 10 yrs.--§422.16(6).
- f. Federal See--Marshall 18.1.
- g. County property tax, No expiration--§614.1(14).
- h. Inheritance Tax- Iowa: See INHERITANCE TAX – IOWA above.
- i. See BANKRUPTCY EXTENDS/TOLLS OTHER TIME LIMITS

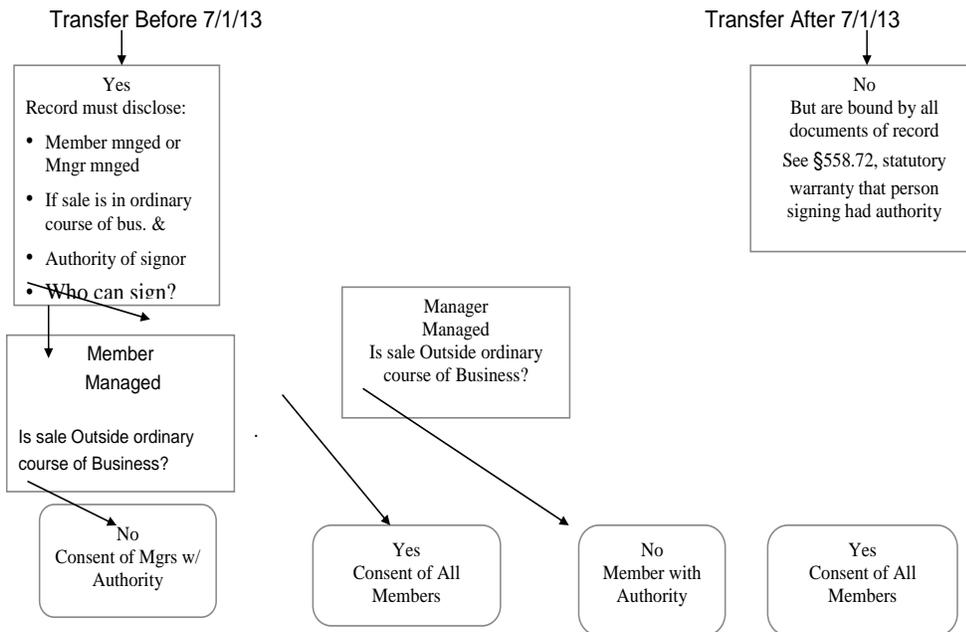
64. TRUSTEE: Transfers legalized 1 yr. after recording--§614.14.

65. LINKS:

- a. IOWA STATUTES <https://www.legis.iowa.gov/>
- b. IOWA LEGISLATIVE ARCHIVES <https://www.legis.iowa.gov/archives>
- c. IOWA COURTS ONLINE <https://www.iowacourts.state.ia.us/>
- d. IOWA SECRETARY OF STATE-CORPORATIONS/MECHANICS LIENS
<https://sos.iowa.gov/mnlr/index.aspx>
- e. IOWA LAND RECORDS-ONLINE REAL ESTATE RECORDS FOR ALL 99
COUNTIES <https://iowalandrecords.org/portal/>
- f. REAL ESTATE TAXES-IOWA TAX AND TAGS
<http://www.iowataxandtags.gov/>
- g. BANKRUPTCY-PACER <https://www.pacer.gov/login.html>
- h. LAND PATENTS-BUREAU OF LAND MANAGEMENT
<https://www.pacer.gov/login.html>
- i. IOWA TITLE GUARANTY
<https://www.iowatitleguaranty.org/Public/ResourceDesk.aspx>
- j. IOWA LAND AND PROPERTY
https://www.familysearch.org/wiki/en/Iowa_Land_and_Property
- k. MILITARY STATUS <https://scra.dmdc.osd.mil/scra/#/home>
- l. PEOPLE SEARCH <https://pipl.com/> AND <https://www.familysearch.org/search>
- m. ALL SECRETARIES OF STATE
<http://www.coordinatedlegal.com/SecretaryOfState.html>
- n. IOWA GEOGRAPHIC MAP SERVER <http://ortho.gis.iastate.edu/>
- o. IOWA STATE LIBRARY
<http://www.statelibraryofiowa.org/services/collections/law-library>
- p. US FEDERAL COURT OPINIONS
<https://www.gpo.gov/fdsys/browse/collection.action?collectionCode=USCOURTS>
- q. POWER OF ATTORNEY (if you have a document that is signed by POA and
you can't locate a copy in Iowa) <https://www2.miami-dadeclerk.com/officialrecords/StandardSearch.aspx?AspxAutoDetectCookieSupport=1>

APPENDIX

**Transfer of % in Real Estate
By LLC
Necessity of Showing Authority**



DAVID D. DUNAKY
TITLE SERVICES-DM CORP.
515-457-9002

Thursday, March 07, 2019

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HISTORY OF RECORDING STATUTES

A. IOWA'S RECORDING STATUTES — THEIR LEGAL IMPACT.

The first American statute that dealt with the recording of documents was passed in the Colony of Massachusetts in 1640. Then, and for many years thereafter, land was cheap, people tended to live on the same parcel for generations. The chains of title (i.e. the sequential list of owners of a particular parcel) were short and a person's family history was readily known by his neighbors. Consequently, if you wanted to purchase a piece of property you probably already knew who owned it, and whether the title was or was not "good." As the chains of title became longer and society became more mobile, it became the practice in some parts of the country to go to the county recorder and inquire concerning the nature of the title to a particular parcel of land, and the recorder would tell you. As property was sold and resold, divided and subdivided, it became more difficult to know who actually owned a parcel. Consequently, some recorders started making "abstracts" of the chain of title. It is still the practice in some areas that the recorder is also the abstracter. In fact, some states passed statutes requiring county recorders to make abstracts and perform searches.^{1,2} (This will be discussed in another section).

An abstract is an abbreviated account of all the documents and other matters that affect the ownership and use of a piece of property. The person examining that abstract will render an opinion as to ownership and any restrictions on the use or occupancy of the property by the owner.

As transactions increased in volume and complexity a knowledge of the law became more essential. As a result, lawyers in many states started preparing abstracts. You will note that this custom has continued in Iowa and in other states. There are a number of counties in Iowa where the abstractors are practicing attorneys. Eventually specialized companies sprang up to do abstracting.

1. 2.

Title to Real Property - Preparation and Examination of Abstracts, by George W. Thompson (1919): "The business of examining titles and making abstracts was formerly confined mainly to public officers having the custody and care of the records of instruments relating to the title to real estate (footnote omitted), but in recent years the bulk of the business has been done by private individuals, partnerships and corporations (footnote omitted). By statute in some states it is made the duty of local officers having charge of certain records relating to or affecting land titles to make and furnish searches of title when called upon for that purpose."

American Jurisprudence 2d Edition Abstracts of Title §3

B. IOWA LAW -- ITS LEGAL EFFECT.

Iowa's recording statutes are found in Chapter 558 of the Iowa Code. Of importance for this discussion is Iowa Code §558.55.

1. Filing and Indexing -- Constructive Notice.

The recorder must endorse upon every instrument properly filed for record in the recorder's office, the day, hour, and minute when filed for recording and the document reference number, and enter in the index the entries required to be entered pursuant to sections 558.49 and 558.52. the recording and indexing shall constitute constructive notice to all persons of the rights of the grantees conveyed by internments. Iowa Code §558.55 (Emphasis added).

558.49 Index records.

The recorder must keep index records to show the following:

1. Each grantor.
2. Each grantee.
3. The date and time when the instrument was filed with the recorder.
4. The date of the instrument.
5. The nature of the instrument.
6. The document reference number where the record of the instrument may be found.
7. The description of the real estate affected by the instrument.

331.602 General duties.

The recorder shall:

1. Record all documents or instruments presented to the recorder's office for recordation upon payment of the proper fees and compliance with other recording requirements as provided by law.
2. Rerecord an instrument without fee upon presentation of the original instrument by the owner if an error is made in recording the instrument. The recorder shall also note on the new record a reference to the original record and on the original record a reference to the new record.
3. If an error is made in indexing an instrument, reindex the instrument without fee. (the remainder of the section is omitted)

331.607 Books and records.

The recorder shall keep the following books and records:

1. Military personnel records as provided in section 331.608.
2. An index of unemployment contribution liens as provided in section 96.14, subsection 3.
3. A record of fees as provided in section 331.902.
4. An index of income tax liens as provided in section 422.26.
5. An index for records of private drainage systems as provided in section 468.623.
6. A record of the names and descriptions of farms as provided in section 557.22.
7. Index and records for instruments affecting real estate as provided under chapter 558.
8. An index and record of homesteads as provided in section 561.4.
9. A claimant's index and record for the notices of title interests in land as provided in section 614.35.
10. A book of copies of original entries which has been compared with the originals and certified as true copies of land records by the register of the United States land office as provided in section 622.44.
11. Other indexes and records as provided by law. IA Code Sec. 331.607 Books and records. (Iowa Statutes (2019 Edition))

The importance of this statutory scheme adopted by Iowa, simply stated, is this: unless a document is properly indexed, it is ineffective to impart constructive notice. In other

words, it has no legal affect unless an individual has actual notice of the document. The reasoning for such a law has been stated as follows: "the law in these states proceeds upon the theory that a searcher locates the pertinent records from the alphabetical indices, and that he should not be bound by any records to which he is not directed by the official indices." This has been the law in Iowa for 150 years.

This legal principal was upheld by the Iowa Supreme Court in the case of Compiano v. Jones, 269 NW2d 459 (Iowa 1978) (a case involving restrictive covenants in an addition).

' Pursuant to long-standing Iowa law of 150 years, "a purchaser is charged with notice of all proper facts which either the transcript or the index discloses, and lack of indexing, or a material defect therein, causes the record to be ineffective to impart constructive notice. (This law) proceeds upon the theory that a searcher locates the pertinent records from the alphabetical indices, and that he should not be bound by any records to which he is not directed by official indices."

Rufford G. Patton, L.L.B. and Carroll G. Patton, L.L.B., Patton on Titles § 68 (2d ed. 1957). Note: there are numerous cases in Iowa that have upheld this legal precedent.

SEARCHING THE PUBLIC RECORDS TITLE PLANT VERSUS DIRECT SEARCH

Basically, there are two methods by which an abstractor will perform a search in order to prepare an abstract of title to a parcel of property.

A. A DIRECT SEARCH OF THE RECORDS.

An abstractor desirous of preparing a continuation of an abstract could choose to go to the court house and do a direct search of the public records, and abstract the information needed and found. The recorder is required by law to keep an index of certain documents. The deed index is known as the grantor/grantee index, and the entries are made alphabetical. In order to physically search those indices, the searcher may have to go through numerous index books to determine whether the owner being searched has conveyed the property. For instance, if the searcher was searching the records to determine whether John Jones had conveyed a certain piece of property the abstractor would need to look at each index book under the letter J from the time that the person owned the property to the present or until the person conveyed the property. For instance, if John Jones took title to a certain piece of real estate in Polk County in 1970, there are approximately 19 volumes for city lot deeds that exist between 1970 and 1990. After 1990 the index is computerized. (Note: the foregoing is a generalized description).

B. THE TITLE PLANT.

The abstract company could own what is called a "title plant". The company would obtain copies of each pertinent instrument that is recorded/filed in the court house and then would organize/file/index those documents using what is called a tract index. With a tract index the abstracter "pigeonholes" everything by legal description. In other words, anything that pertains to Lot 1 in Block 7 of Hearthside Addition would go into the pigeonhole for that lot. (Note: many abstractors index by block) In order to maintain a tract index, the abstracter needs to either have personnel make copies of the records or obtain copies from the recorder. As records are received the abstracter must, take those records and make an index of them, and then pigeonhole each of those documents in its appropriate spot in the abstracter's office. In Iowa there are a number of abstract companies that outsource the indexing process overseas to non-native English-speaking countries.

At the time that the abstractor wishes to prepare an abstract for that lot, the abstractor needs to go to the appropriate pigeonhole and pull out all the documents that have been filed in it since the last time the abstract for that lot was continued. Hopefully for that abstracter they have received all the documents necessary, have properly indexed them, properly pigeonholed them, and' properly retrieved them. What that abstractor would not do is go back to the court house and determine whether those documents were properly indexed in the official indices of the court house. (Note: the above is a generalize account of the method involved and may vary with different abstract companies).

C. WHICH SEARCH METHOD IS BEST?

Each method has its proponents, its advantages and its disadvantages. I would submit the following disadvantages to a title plant

1. With all the copying indexing, pigeonholing, retrieving, etc. I submit that it is easier for persons using a title plant to make a mistake than a person doing a direct search.

2. The reliability of the plant is suspect unless the plant has been inspected. When Title Guaranty was started in 1987 all title plants were accepted without question. At one point inspections were mandated by Title Guaranty, now they are optional, in 2015 the TG changed the language from "shall" to "may".

3. TG is responsible for the oversight of title plants. By contract it passed that responsibility to inspect title plants to the Iowa Land Title Association-the trade organization that collects a percentage of the gross income from its members. I requested information from TG regarding inspections and was referred to the ILTA. From its web site, I calculated that only 29% of title plants have been inspected in the last 7 years; 39% *have never been inspected*; for the remaining 32% (38 members) it has been over 7 years since they have been inspected. And according to the minutes from a TG meeting on October 7, 2014, twenty-six TG abstracters failed the inspection! I asked TG for the status of the 26 plants and have received no reply. I assume that these companies are directly searching the court hours records . They are doing so without a waiver. Originally the rules made inspections mandatory, in 2015 the TG to changed the language from "shall" to "may".

4. Because the documents are filed in a tract index by legal description as opposed to alphabetical indexing, stray documents will show up that have nothing to do with the title. Examples of these stray documents are stray mortgages and deeds. An example is as follows: your neighbor owns Lot 7 and you own Lot 6. Your neighbor obtains a mortgage on his property, inadvertently through a scrivener's error the banker or the lawyer who drafts the mortgage mistakenly describes your neighbor's land as Lot 6 instead of Lot 7. An abstracter utilizing a title plant and a tract index will include this stray document within your chain of title. Fortunately, these stray documents do not occur often. But when they do, they are vexatious. At a minimum, the sellers' attorney must convince a mortgage company or an owner to release their nonexistent interest in the property causing additional delay and cost to the transaction. The attorney is required to do so because now the parties have actual knowledge of this stray document. However, if a

direct search had been made this document would never have shown up. To sum up, the tract index produces documents which have no legal affect; thereby, occasionally causing added cost and delay. In their defense, tract indexes originally were a benefit because they pigeonholed all the documents that pertained to a piece of property in one location thereby avoiding searching numerous volumes of alphabetical indexes for the few transactions that it may reveal. However, with the advent of computerized records, even this benefit has evaporated. In Polk County the recorder's records are computerized back until prior to 1991. With a few key strokes an abstractor can search names that previously took substantially longer.'

"See The Law of Property by Roger Cunningham, p. 851, FN9 (2d ed.). "It can be argued that the tract index system, with its greater power to disclose out-of-chain documents, is actually disadvantageous in the sense that it brings to light "wild" and other types of instruments...which impair the marketability of titles, and which would be cut off by chain-of-title reasoning in a name index system. See L. Simes, Handbook for More Efficient Conveyancing 93-94 (1961)"

Alabama. Law Review 9 By John C. Payne. "Tract indexing is generally thought to be more effective than any alphabetical system."

"However, it has the disadvantage that if the tract is small enough to permit the examiner to ignore all that is irrelevant, the number of tracts becomes so large as to be unwieldy. If, on the other hand, larger tracts are employed, too much labor is required in sorting out relevant from irrelevant entries."

"In time the accumulation of material relating to all of the lots in a given block becomes so large that an uneconomical amount of labor is required to eliminate those instruments having no bearing on the title under scrutiny. If, when this occurs, a single lot is used as the basis for indexing, the number of tracts to be dealt with becomes overly large for efficient recording practices and the merging, subdivision, and overlapping of the various lots occasions undesirable confusion."

In summary, if an abstracter elects to have a title plant or search the records directly should be a business decision which should be left to the abstractor's choice. Until recently that was also the position held by the directors of Title Guaranty when considering granting a waiver to the title plant requirement. Provided that the abstractor has sufficient volume, building a title plant may make good business sense-for searches that require looking at actual index books, a person can complete far more searches in a given time period using a tract index than a person who is directly searching the index books.

D. IOWA LAW REGARDING RECORD SEARCHES.

In some states having a tract index is essential or preferable - that is not true in Iowa for the following reasons:

1. In many states, unlike Iowa, the recorder's index is not part of the record, Therefore, you are bound in those states by all the documents that are recorded, regardless of whether a searcher can locate the document by searching the chain of title. ⁶

2. Unlike many states, the grantor/grantee index in Iowa in the recorder's office is required to refer to the legal description. See Iowa code §558.49(7). In some states, if the person being searched has a common name you would need to look up each transaction to determine if the land being searched is affected. This is eliminated when the legal description is included. As a result, directly searching the index is facilitated in Iowa. It is very similar to using a telephone directory.

3. Unlike most states, Iowa does have a statutory Tract index in the auditor's office. See Iowa Code §§558.57, 61. ⁶

4. As mentioned above, the Polk County recorder's records are computerized for a period of almost 26 years. We've been informed that the average life of a mortgage is 7 years. Therefore, the search time in most instances is short.

In summary the tract index advantages that exist in other states do not exist in Iowa.

⁵ Weakness of the Present Recording System by Cross, 47 Iowa Law Review 245,24

⁶ *ibid.* p249

⁷ Improvement of Conveyancing by Legislation Sires, Taylor, Basye, p83

