DRAKE LAW SCHOOL
GENERAL PRACTICE REVIEW

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REAL ESTATE CASE LAW & LEGISLATIVE UPDATE

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Case Law

A. AD, LLC v. Paramo v. Fenton

Iowa Court of Appeals No. 21-1334. Filed October 5, 2022

An individual sold a property on contract to another individual via an oral contract. Terms between the parties were in dispute during this litigation and the Court ultimately found for the buyer as to the terms of the transaction. The one issue before the Court was whether the oral contract contained a right of forfeiture under Iowa Code §656. The contract vendor tried to argue that the forfeiture provision was included in the oral agreement. The District Court declined to find a forfeiture provision in the contract and the Iowa Court of Appeals affirmed the District Court. The Iowa Court of Appeals in reviewing the standards regarding whether a contract contains a forfeiture clause found as follows: "While the appellants rely on their pursuit of forfeiture as evidence of the existence of a forfeiture provision, there was no independent evidence of the same, and the Supreme Court has agreed that, absent a forfeiture clause, a party cannot, "by serving a notice of forfeiture, . . . engraft onto said contract such a clause to the detriment of the other party." Absent any evidence that the agreement contemplated forfeiture, the Court of Appeals concluded there was substantial evidence to support the District Court's findings and conclusions and reject the appellants' challenge on this point.

This case stands for the proposition that to have a forfeiture under Iowa Code §656 it is essential that the contract itself contains language indicating that a forfeiture provision was included. A failure to include this provision will result in a contract being determined not to have a forfeiture provision in the contract.

B. J. Jenkins as Trustee of the 2216 Lay Street Trust v. Lenor Clark and Jason Clark

Iowa Court of Appeals No. 21-1646. Filed October 19, 2022

Mr. and Mrs. Clark purchased property on contract from the Trust for the sum of $89,900. They paid a down payment and agreed to pay monthly payments. There was a dispute over whether the payments were being timely made by the vendee. The contract contained a forfeiture clause under Iowa Code §656. On July 16, 2021, the Trust served the Clarks with a thirty-day notice of forfeiture, which set forth a new amount owed based on the monthly payments and unpaid insurance payments. The Clarks disputed the propriety of this notice and its accounting. After the thirty days passed, the Trust filed an affidavit of forfeiture. The Trust served a three-day notice to quit via certified and regular mail plus posting and on September 8, 2021, the Trust filed an action in small claims court for possession of the property.

At the hearing with the small claims magistrate the Clarks filed a motion to transfer the action to District Court, arguing that a Court sitting in small claims does not have jurisdiction to determine issues of title. At the hearing, the Court declined to transfer the

case, finding the Trust "properly forfeited the contract" and granting its petition for possession of the property. An appeal was filed by the Clarks and they obtained a stay of the execution of the writ of removal. On October 26, 2021, the district associate court affirmed the ruling and issued a writ of possession to the Trust, finding that "by leaving the contract forfeiture unchallenged, the small claims court is left with a validly forfeited contract and title is no longer at issue." The Clarks filed an application for discretionary review, which the Iowa Supreme Court granted. The Iowa Supreme Court also granted the Clarks' request for a stay of the writ of possession. The Iowa Supreme Court transferred the case to the Court of Appeals for resolution. The contract vendor argued that because the contract vendees did not challenge the title to the property during the 30-day period of the forfeiture, they were prohibited from challenging it at this time. The Iowa Court of Appeals addressed the issue of whether the forfeiture must be separately challenged in District Court within thirty days after notice thereof. The Iowa Court of Appeals found that limiting the opportunity to challenge the validity of a forfeiture to a thirty-day window in which buyers have an opportunity to cure would not make practical sense. Not only would the forfeiture be incomplete, but the timeline to file an original District Court action and obtain injunctive relief may prove futile in saving the home. Moreover, the validity of the forfeiture requires resolution during an FED hearing.

Finally, and most importantly, for Courts to summarily prevent purchasers from challenging a real estate forfeiture merely because thirty days have passed from a private actor's notice thereof would raise significant concerns for their constitutional rights to due process. The Court found that validity of a forfeiture may be raised during an FED action and after the thirty-day period following a notice of forfeiture.

The Court then went on to determine whether the small claims court had jurisdiction to determine title after the Clarks challenged the validity of the forfeiture. The Iowa Court of Appeals found that the small claims court did not have jurisdiction as title issues involving property interest are significantly beyond a small claims court's jurisdictional limit of $6,500 and the district associate Court's jurisdictional limit of $10,000. The Iowa Court of Appeals found that small claims court does not have jurisdiction to hear title issues in an FED action.

The Iowa Court of Appeals reversed the decision and remanded this action for a new trial before a District Court judge with instructions to allow the full presentation of equitable defenses to the underlying forfeiture.

C. Brinkley v. City of Milford Zoning Board of Adjustment
Iowa Court of Appeals No. 22-0195. Filed November 2, 2022

The Brinkleys owned property in the City of Milford that abutted property owned by the Okoboji Community School District on the north, south and west. In 2004 there was a special permit issued for this property which required the school district to place vegetative screening along the north, south and west sides of the property adjacent to the Brinkley's property. This screening was partially done but the vegetative

screening was not completed in accordance with the previous special use permit requirements. The school district then came into the Board of Adjustment in May of 2022 asking for a special use permit for the construction of a bus barn and multipurpose building on its high school campus. The Brinkleys opposed this special use permit because no vegetative screening was completed in 2004. They believed the vegetative screening was necessary to prevent glare from vehicles to impact their property. The Board of Adjustment granted the special use permit and as a special condition provided that "the vegetative screens plan as presented by the school must be planted within 12 months after the 'substantial completion' of the school project." In July of 2021, the Brinkleys filed this Petition for Writ of Certiorari, arguing the Board acted without substantial evidence and illegally by granting the special use permit despite OCSD's failure to plant the vegetative screen required in the 2004 Board decision. The District Court found that the Board acted legally in reaching a reasonable decision and there was substantial evidence to support the Board's decision. The court annulled the writ. The Brinkleys appealed the decision. The Court in reviewing a decision of the Board of Adjustment will "review an original certiorari action for the correction of errors of law." The Board of Adjustment "commits an illegality if the decision violates a statute, is not supported by substantial evidence, or is unreasonable, arbitrary, or capricious." In this case the court found that there was substantial evidence to support the findings of the Board of Adjustment in allowing the vegetative screening to be planted 12 months after substantial completion of construction of the bus barn and other facility. The Brinkleys argued that this condition was inadequate because the school district may wait 12 months after substantial completion of the construction before finishing the vegetative screening. The Brinkleys argued that there was no assurance that the school district would do the screening because of their failure to comply with the 2004 condition of that special use permit. The court found that that issue regarding the 2004 special use permit was not before them. If the Brinkleys had wanted to enforce the 2004 special permit they could have asked for a mandamus action to compel the school district to comply with the 2004 decision pursuant to the Zoning Ordinance. Here the Court of Appeals concluded that the Board's decision was supported by substantial evidence and was not illegal, unreasonable nor arbitrary or capricious. The Court of Appeals noted they hoped the school district would install the fence or vegetative screening with due speed at the earliest time possible to accommodate the needs of the Brinkleys and the public without further litigation.

D. Community 1st Credit Union v. Jonathan L. Hart, et al.
Iowa Court of Appeals No. 21-05555. Filed November 2, 2022

Community 1st Credit Union brought a foreclosure action against Hart and his spouse on certain agricultural property. The foreclosure was filed in February of 2019. On September 26, 2019, Community 1st purchased the real estate at a sheriff's sale for a bid of $1,600,000.00. In January of 2020, Hart filed for bankruptcy. In February of 2020 the Bankruptcy Court granted partial relief in the automatic stay "to permit the Iowa District Court in Appanoose County to address the effect of the sheriff's deed not being issued to date." On February 12, 2021, Hart filed a motion asserting the sheriff's sale was defective because no sheriff's deed had been recorded as required by statute.

The District Court rejected Hart's motion finding, "Hart suffers no harm by the delay in recording the sheriff's sale and such failure to record the sheriff's deed did not warrant setting aside the sheriff's sale. The District Court instructed the sheriff to deliver the deed to Community 1st.

Hart argues the sheriff's sale violates Iowa Code §654.16A which provides in part, "Not later than the time a sheriff's deed to agricultural used for farming … is recorded, the grantee recording the sheriff's deed shall notify the mortgagor of the mortgagor's right of first refusal. The grantee shall record the sheriff's deed within one year and 60 days from the date of the sheriff's sale. "Here the deed was not filed within that period of time. Hart argues that sheriff's sale should be set aside. Community 1st asserts the Iowa Code does not provide statutory authority to set aside a sale for failure to timely file a sheriff's deed. Hart points to no such authority.

The Iowa Court of Appeals relied upon the general rule on execution sales as follows: "Iowa law erects a strong presumption in favor of an execution sale. In the absence of fraud, collusion, or other substantial and justifiable prejudice, mere irregularities in the procedures leading to or following an execution sale will not support a debtor's motion to set aside the sale." The Court found no fraud, collusion or other substantial and justifiable prejudice and found that the failure to record the sheriff's deed within one year and 60 days from the date of the sheriff's sale was not a defect which would result in the sheriff's sale being set aside.

E. Barke v. D&D Real Estate Holdings, LLC
Iowa Court of Appeals No. 21-1564. Filed October 5, 2022

D&D purchased the Golfview apartment complex in 2018 where Barke had been a resident since December 2014. In April of 2018, the parties entered a written month to month. Barke made several maintenance calls to D&D between April 2018 and August 2019. Some of her issues were addressed. Barke also made a complaint to D&D regarding a tenant in the area that was using illegal drugs and causing disturbances. Barke reported to D&D the domestic violence disturbances occurring in the apartment below Barke's. D&D's leasing agent replied noting there are two sides of each story. Complaints had been made about Barke harassing others and knocking on tenants' door. After many issues with Barke, D&D issued a "notice to not renew lease," notifying Barke her month-to-month lease would end January 31, 2020. The notice was given on November 1, 2019.

The one issue before the Court of Appeals was whether or not there was any type of breach of quiet enjoyment by the landlord for Barke's enjoyment of the premises. The Court of Appeals found that any actions by D&D did not interfere with her possession of the property and did not support a claim for quiet enjoyment. There was also an issue regarding whether she had the right to summon emergency assistance and whether or not that was violated by the landlord. The Court of Appeals found it was not.

The most important issue raised in this case is whether or not the failure to renew a month-to-month lease was retaliatory conduct under Iowa Code §562A.27(2). The Court of Appeals found that there was a difference between the language in Iowa Code §§562A and 562B in that Iowa Code §562A provides that retaliatory conduct would be considered "increasing rent or decreasing services or by bringing or threatening to bring an action for possession." Under Iowa Code §562B retaliatory action was "increasing rent or decreasing services or by bringing or threatening to bring an action for possession or by failing to renew a rental agreement." The Court presumed the omission of the language "failing to renew a rental agreement" from Iowa Code §562A.36(1) was intentional. D&D's failure to renew a rental agreement would not constitute retaliatory conduct for purposes of Chapter 562A. The decision of the District Court was affirmed by the Court of Appeals.

F. Grout as Trustee of the Helen Schardein 2018 Revocable Trust v. Sickels
Iowa Supreme Court No. 21-0556. Filed January 27, 2023

The District Court and the Court of Appeals ruled that the joint tenancy was severed by the deed from the one-half owner to her trust. The proceeds of the sale of the property would all go to the trust interests because the previously owner conveyed their interest to the trust and paid all of the purchase price for the property. The Iowa Supreme Court ruled that the transfer of the one-half interest to the trust of the individual was sufficient to sever the joint tenancy of the property. They relied upon the case of *In re Est. of Johnson* where the Court adopted an intent-based test for determining whether a joint tenancy had been created, severed or terminated. In this case there is no dispute that Schardein made a legal valid conveyance of her interest in the lake lot to a separate legal entity, the trust. By transferring the property to the trust, the transfer terminates the prior joint tenancy with right of survivorship. There is no question that the intent was to sever the joint tenancy as it would be impractical to have a trust and an individual own a property in joint tenancy because the trust would never end.

The next question is what share of the proceeds should each party receive? The Iowa Court of Appeals and the District Court determined that the trust should receive all of the proceeds because she paid the purchase price for the property. The Iowa Supreme Court disagreed in finding that creation of a two-party joint tenancy with rights of survivorship leads to presumption that each of the parties owns a one-half proportional interest in the property. In this case, even though the predecessor to the trust interest in the property paid for the lot it was clear that the predecessors of the trust intended the property would be owned as joint tenants with right of survivorship with each party being entitled to a one-half interest in the property.

Therefore, the interest of each party would be divided equally with some adjustments made for any expenses made by one party over another party after the property had been acquired. The decision of the Court of Appeals and the District Court was affirmed in part, reversed in part and remanded.

G. Dolly Investments, LLC v. MMG Sioux City, LLC, et al.
Iowa Supreme Court No. 21-0014. Filed January 6, 2023

The Iowa Court of Appeals affirmed the District Court finding that the landlord was the first to breach the lease by changing the locks to the leased premises and therefore the tenant had only limited liability for damages to the landlord.

The Iowa Supreme Court, upon further review, looked at the case and decided to resolve the case based on the legal effect of each parties' breach rather than which party breached first. The Supreme Court concluded that both parties breached the lease agreement but only the tenant's breach was material and so the landlord's duty to perform was discharged by the material breach of the tenant. The Iowa Supreme Court went through an analysis of the relationship between the landlord and tenant in this case. The Court indicated that the landlord was notified that the tenant had closed its doors. The landlord conducted a walkthrough of the premises on June 25 and because of the condition of the premises decided to secure the property. The landlord changed the locks on the building, and later secured a realtor to find a replacement tenant. A letter was sent by MMG's lawyer to Dolly a day after the locks were changed. The letter stated that MMG did not consent to Dolly reentering the property and changing the locks. In that letter, there was no indication that the tenant requested access to the property or to receive a new set of keys. On July 3 of that year Dolly's lawyers sent MMG a notice to cure the breach. At that point, MMG had paid neither the remaining half of the June rent nor any part of the July rent. An action was commenced by Dolly against MMG for breach of contract and damages for unpaid rent, future rent and future taxes. MMG answered denying liability and counterclaiming for the breach of contract and conversion.

The District Court initially ruled in favor of Dolly but after a Motion to Reconsider was filed by the tenant, the District Court ruled that the landlord materially breached the lease by changing the locks without giving MMG written notice in a 15-day period to cure nonpayment. Therefore, the District Court reduced Dolly's damages to $9,375 to reflect the unpaid half of the June rent only. The Court of Appeals affirmed the District Court's decision. .

On appeal, Dolly makes three arguments. The first argument relates to repudiation. The second argument of Dolly is that MMG materially breached the lease agreement by not paying the June 2019 rent in full and therefore discharged Dolly's duty to perform. The third argument is that Dolly did not materially breach the lease agreement. The Court did not look at the issue as MMG's repudiation of the lease because it was not brought up in the initial District Court action.

Where there are breaches of the lease by both parties the Supreme Court is required to determine which entity materially breached the lease. The Supreme Court relied upon §241 and §242 of the Restatement (Second) of Contracts. Section 241 of the Restatement defines a breach as a failure to render or to offer performance and explains such failure may be material if they (1) deprive an injured party of a reasonably

expected benefit, (2) cannot be adequately remedied, (3) produce a forfeiture in the nonperforming party, (4) are not likely to be cured by the nonperforming party, and (5) result from the nonperforming party's failure to comply with standards of good faith and fair dealing.

In reviewing these sections of Restatement (Second) of Contracts the Supreme Court concluded MMG materially breached not by missing rent payments but rather by failing to cure its nonpayment of rent within 15 days of receiving notice. The Supreme Court also concluded that Dolly's breach was not material according to an analysis as set forth in the Restatement of Contracts (Second). The Supreme Court having established that MMG's breach was material and Dolly's breach was not, the Supreme Court determined that because MMG's default was material that MMG owed certain damages to the landlord.

In summary, both Dolly and MMG breached a commercial lease. MMG's breach was material; Dolly's breach was not material. MMG's material breach suspended Dolly's duty to perform during the 15-day cure period. Once that period ended, Dolly's duty to perform was discharged. The Court remanded the case to the District Court to award Dolly's breach of contract damages based upon the existing record.

H. Thielen v. Anderson

Iowa Court of Appeals No. 22-0458. Filed January 25, 2023

The Thielens brough this action for partition. A Jean Wolfe deeded certain Cass County property to Tatiana Anderson, now Thielen, and her father and mother, Randall and Rebecca Anderson, as tenants with full rights of survivorship. Tatiana and her husband, Zach Thielen, petitioned for a partition by sale of the property in June of 2021. The Andersons asserted that Tatiana was not a joint owner in the property but rather the deed was granted to the Andersons and Tatiana Thielen for estate purposes. The Andersons tried to argue that Tatiana Thielen only owned a future interest in the property that would arise upon the death of Randall and Rebecca Anderson.

The property was purchased by the Andersons, work was performed on the property and Tatiana contributed no financial support in the purchase or repair of the property. Other than the written real estate deed there are no writings clarifying the arrangement between the parties concerning this real estate and responsibility for any expenditures. The District Court dismissed the Petition action of Tatiana stating that Tatiana did not have an actual present ownership interest in the real estate as a joint tenant, but that Randall and Rebecca owned and were responsible for the real estate. The District Court echoed the estate plan argument described by the Andersons and noted the "understanding" was that the parents would leave the real estate to Tatiana *only* at their deaths. The District Court determined that Thielen had no current interest in the property and therefore she is not entitled to bring an action for partition. The District Court then directed the Andersons to file an action to quiet title, indicating that the title needed to be "clarified." The Iowa Court of Appeals determined that there had

to be a mutual mistake before a court could reform a deed. The District Court did not find a mutual mistake but indicated that it could reform the deed to express the intentions of the grantor even though strictly speaking the mistake is not mutual. The Iowa Court of Appeals found that the District Court erred by reforming the deed. The Iowa Court of Appeals determined that the District Court cannot simply determine "the intent of the parties under the facts and then fulfill it." The intent must be derived from an instrument effectuating the intent to sever the joint tenancy. The Court found that there was no indication that the grantor intended to leave the property to the three parties in any different than what was of record.

There was also an issue of whether a quiet title action could be part of a partition action and the Court of Appeals determined that a quiet title action could be part of a partition action under Iowa Code §651.7. The District Court's action was reversed, and it was remanded to the District Court for further action.

I. Kluender v. Plum Grove Investments, Inc.

Iowa Supreme Court No. 21-1437. Filed February 3, 2023

The former landowner of a property claims that Iowa's tax-sale statute violates due process requirements of the Constitution of the United States and the Constitution of the State of Iowa because it does not require personal service of a written notice that the taxpayer will lose their land if they don't pay their tax debt within 90 days. The District Court and the Iowa Supreme Court disagreed with that challenge and held the statute was valid and not unconstitutional.

The Supreme Court went through an analysis of the various tax sale procedures in Iowa and the various notices that are required to be given to the titleholder at the time of the sale and the time of redemption. In both instances the service of notice was to be provided by both regular mail and certified, return mail.

In this case Kluender owned certain property. He had not paid taxes. The property went to tax sale in June of 2017. Plum Grove purchased the property at tax sale and had a certificate of purchase. In April 2020, Plum Grove complied with Iowa Code §447.9 by sending the required 90-day notice to Kluender. The notice was sent both by regular mail and certified mail to the parcel itself as well as to the Kluender's last known address, his home in Ionia. Kluender did not pick up the certified letter, but regular letters were not returned as undeliverable. Kluender brought this action against Plum Grove claiming a facial challenge to Iowa Code §447.9 in that the code section does not require personal service of notices of redemption and therefore Iowa Code §447 violates Federal and State Constitution guarantees of due process." The Supreme Court went through an analysis of the Fourteenth Amendment to the United States Constitution which prevents any state from "depriving any person of life, liberty, or property, without due process. The Iowa Constitution states that "no person shall be deprived of life, liberty, or property, without due process of law." Kluender claims that the statute is totally invalid and therefore incapable of any valid application. The Supreme Court went through an analysis of the law on this issue and found the notice is required to be

send both certified and regular mail was sufficient to comply with the due process clause of the United States Constitution and the State of Iowa. The Supreme Court therefore affirmed the District Court in finding that the tax statute was not unconstitutional.

J. Castles Gate Homeowners' Association v. K & L Properties, LLC
Iowa Court of Appeals No. 22-0286. Filed February 8, 2023

This case involves the use of Iowa Code §§6A and 6B which allows an individual to exercise eminent domain when they have no public or private way to their lands. This section essentially applies to landlocked property which allows the owner to institute condemnation proceedings to secure a public way over other land. K & L filed a written application with the chief judge of the judicial district of the county in which the land sought to be condemned is located pursuant to Iowa Code §6B.3(1). K & L's property was landlocked, and they sought to condemn neighboring property owned by the Association to provide "a public way, for non-agricultural purposes, which will connect K & L's real estate to an existing public road." On June 28, the chief judge signed the application, as well as documents appointing compensation commissioners and alternates.

K & L on August 6 had the application, notice of assessment and plat map served on the registered agent for the Association and on August 9 it was served on the wife of the president of the Association. Thirty-one days later on September 9 the Association filed a "Petition for Judicial Review of eminent domain authority" seeking dismissal of the condemnation application because it sought "condemnation rights that are not authorized by Iowa Code §6A.4(2)." The Association maintained that condemnation was impermissibly if sought for economic development rather than "public use" and the property to be condemned was not the "nearest feasible route to an existing public road." The Association did not raise any deficiencies in the procedure used by K & L to start the proceedings.

In its answer, K & L asserted the Association's Petition was untimely because it "was served with a Notice of Assessment on August 6 and 9, 2021, pursuant to Iowa Code §6B.8 . The request for judicial review was served 31 days after being served upon the president of the Association which is one day late.' The Association resisted the Motion to Dismiss the action stating that certain documents that were required by the statute were not properly served upon the Association.

Following the hearing, the District Court ruled that K & L's service of the notice and application on the Association "substantially complied with the relevant eminent domain notice statute," and the Association's Petition for Judicial Review was therefore untimely. The Court granted K & L's Motion for Summary Judgment.

The Court went through an analysis of the items that were not included in the documentation served upon the Association. The first requirement was that the list of the commissioners appointed must be personally served on the owner of the property. The Court determined that even though they did not provide the list of commissioners to

the owner there was still a substantial compliance by K & L with the statute and the decision of the District Court was appropriate. There were also other challenges to the action by K & L including failure to comply with Iowa Code §6B.3(3)(a) which required the that the application be filed with the county recorder to put all parties on notice and failure to comply with §6B.2A(1)(f) and §6B.2D(1). The Court concluded that even though these were missteps by K & L, K & L substantially complied with the notice of assessment required under §6B.8 and therefore the request for judicial review was untimely filed by the Association.

K. Christ Vision, Inc. v. City of Keokuk
Iowa Court of Appeals No. 21-50908. Filed January 25, 2023

Christ Vision, Inc. owned a church building in the City of Keokuk. It was a historic Unitarian Church. After many years of disputes over the repairs to this church, a decree was entered finding the property to be a nuisance. To abate the nuisance the Court gave Christ Vision, Inc. three options. (1) Christ Vision could repair the church as specified by the city; (2) Christ Vision could demolish the church, or (3) Christ Vision would deed the property to Keokuk or another party approved by the City. If the parties did not reach a written agreement by March of 2017 or another agreed upon time, Keokuk would "take any action needed to abate the conditions." Keokuk finally had to demolish the building as Christ Vision, Inc. did not submit a plan or any type of other indication as to how they would proceed with the demolition with the abating of the nuisance. A few years after the church was demolished by the City of Keokuk, Christ Vision brought this action challenging the demolition of the property by the City of Keokuk on constitutional claims. The District Court granted summary judgment for the city.

The first constitutional claim was that the City took the property without just compensation, under the theory of inverse condemnation. The Iowa Court of Appeals relying upon a previous case and the Iowa Supreme Court in *City of Eagle Grove v. Cahalan*, 904 N.W.2d 552 held that the state's exercise of its related police powers over abandoned property did not constitute a taking. The Court found here that Keokuk can enforce this nuisance law without compensating Christ Vision for its losses stemming from that enforcement. The church owner also challenged the demolition of the property based upon due process under the Iowa Constitution that "no person shall be deprived of life, liberty; or property without due process of law." Christ Vision argued that the city had to proceed under Iowa Code §657A if they were going to demolish the property. The District Court as well as the Iowa Court of Appeals found that there was another way they could proceed to demolish the property under their city code. The Court of Appeals found that there was no due process violation in demolishing the building and the District Court's ruling on the Motion for Summary Judgment was affirmed.

L. Lincoln Savings Bank v. Debra D. Emmert
Supreme Court of Iowa No. 20-1663. Filed February 24, 2023

A foreclosure action was commenced by Lincoln Savings Bank. Lincoln Savings Bank filed their foreclosure petition and there was no answer filed by the Defendant, Emmert. The Bank knew that Emmert was represented on other matters and the Bank believed she was represented by an attorney named Phillip Brooks. The Bank sent the notice of intent to file default judgment to Brooks and not to Emmert. Default judgment was entered. The Defendant Emmert employed another attorney who filed an appearance and asked to have the default judgment set aside. The Iowa Court of Appeals determined that the Bank satisfied the notice rule by mailing the notice of intent only to Brooks, the attorney, and affirmed the District Court's default judgment. Emmert makes two arguments challenging the notice and resulting default judgment. The Iowa Supreme Court accepted the case on further review.

First, she argues that the notice to Brooks was improper because Brooks was not her attorney and had never been her attorney of record in this matter. Second, she argues that even if Brooks had been serving as her lawyer in this matter, sending notice to Brooks alone was not enough. The bank needed to send the notice of intent to her in addition to her lawyer.

The Court interpreted Iowa Rule of Civil Procedure 1.972. Iowa Rule of Civil Procedure 1.972 provides in part "no default shall be entered unless the application contains a certification that written notice of intention to file the written application" for default was given after the default occurred and at least 10 days prior to the filing of the written application for default. A copy of the notice shall be attached to the written application for default.

Under 1.972(3) "(a) to the party a copy of the notice of intent to file application for default shall be sent by ordinary mail to the last known address of the party claimed to be in default. No other notice to a party claimed to be in default is required; (b) when a party claimed to be in default is known by the party requesting the entry of default to be represented by an attorney, whether or not the attorney has formally appeared, a copy of the notice of intent to file written application for default shall be sent by ordinary mail to the attorney for the party claimed to be in default. This rule shall not be construed to create any obligation to undertake any affirmative effort to determine the existence or identity of counsel representing the party claimed to be in default."

The Defendant in this case, Emmert, argues that (a) and (b) of Rule 1.972(3) should be conjunctive ''and' the word and added. The lawyers for the Plaintiff argued that it should be disjunctive requiring notice to the party if the party is not known to be represented but requiring notice only to the lawyer if the party is known to be represented.

The Supreme Court went through a history of the rule and whether or not this should be conjunctive or disjunctive. The Supreme Court determined that the rule requires a notice to be given to both the Defendant and the Defendant's attorney if known. The bank tried to argue that this might be an ethical violation as attorneys are not allowed to communicate with a party to an action if they know they are represented

by counsel. The Iowa Supreme Court held that if we construe 1.972 to require notice to both the party and the party's lawyer no ethical violation occurs because the lawyer is authorized to do so by law. The Supreme Court construed Rule 1.972 to require Plaintiffs to send the 10-day notice of intent to file an application for default to both the party and, if known, the parties counsel. This interpretation provides stronger protection against default judgments entered based on oversight. The Court went on to say that today's decision does not affect the finality of judgments. If notice of intent was not mailed as required by rule 1.972(3) and a judgment was entered before the date of this decision, that judgment may be attacked only by an otherwise proper and timely post judgment motion or appeal. The Iowa Supreme Court found in Emmert's favor on the challenge of this ground. The Iowa Supreme Court did not resolve her separate argument that Brooks did not represent her in the matter and thus that mailing to Brooks alone was insufficient.

M. Aterra 144, 1960 Grand Avenue, WDM, LLC. V. David B. Anders
Iowa Court of Appeals No. 22-0774; filed February 22, 2023

David B. Anders was a member of an LLC known as Crazy Chicken, LLC, a Nebraska Limited Liability Company. Crazy Chicken entered into a lease agreement with the then owners of a shopping center in West Des Moines. The property was managed by John Mandelbaum and he negotiated the lease. Mr. Anders, who is one of the members of Crazy Chicken, signed the lease on behalf of the LLC. The initial term was for five years and gave Crazy Chicken the option to renew for up to two additional five-year terms so long as Crazy Chicken notified the landlord no later than six months prior to the expiration of the then current lease term, was not in default and had not been late on rent more than three times. Anders was the only member of Crazy Chicken asked to give a personal guaranty. His personal guaranty guaranteed the timely payment of rent and all other charges to be paid by Crazy Chicken under the lease and it also stated that the guaranty would remain in full force and effect as to any renewal or extension of the lease regardless of any modification or amendment of the lease.

Sometime in 2007 or 2009, Anders transferred his ownership interest in Crazy Chicken to the other members. In June 2010, the other members of Crazy Chicken notified Mandelbaum they wanted to renew the lease. There is a first addendum to the lease executed and as part of that addendum, the other three members of the LLC Beister, Beister and Nabity executed personal guarantees. In 2019, the owners of the shopping center sold the property to the Plaitniff, Aterra. Aterra purchased the property. The purchase agreement specifically included any guarantees or warranties relating to the real estate or personal property.

In July 2020, Crazy Chicken and a manager for Aterra executed the fourth addendum to the lease agreement.

In August of 2020, Aterra advised Crazy Chicken that it was in default of the lease agreement for failure to pay rent and other charges required under the terms of the lease and for vacating and abandoning the premises in violation of the agreement.

Aterra initiated this lawsuit a few months later. It brought the action against Crazy Chicken, the three parties who guaranteed the lease in 2010, as well as Anders.

Anders tried to argue that the previous owners of the shopping center, through Mandelbaum, abandoned his guaranty and accepted others in its place and that Aterra was barred from recovery under the doctrine of accord and satisfaction.

There was no actual written release of Anders from his personal guaranty. Aterra argued that Anders' personal guaranty stated that the guaranty remains in full force and effect as to any renewal or extension of the lease and regardless of any modification or amendment to the lease agreement.

Aterra moved for summary judgment which was denied as to the personal guaranty of Anders because of a fact question. Anders tried to argue that he had reached an agreement with Mandelbaum to have his personal guaranty released in 2010 in substitution for the three personal guarantees of the members of the LLC. Mandelbaum was not able to testify due to a memory issue but his assistant testified that it was unlikely Mandelbaum would ever release someone from a personal guaranty.

The Court in rendering its decision found that Anders' personal guaranty was still in effect and he was still liable for all amounts due under the lease as well as attorneys fees. The judgment was in the amount of $144,666.84 with attorney's fees in the amount of $108,169.80 and costs in the amount of $1,825.30. The issue of attorney's fees was addressed by the Court but prior to the judgment on the attorney's fees Andes appealed the decision finding he was liable under the personal guaranty. The Court of Appeals, in reviewing the decision, found that because the personal guaranty of Anders was a continuing guaranty rather than one that was specific to certain issues he was still liable under the guaranty. There was no evidence that the previous owner of the shopping center abandoned his guaranty even though there was testimony that Anders felt Mandelbaum had released him from the guaranty when he received the other guarantees. There was no actual written release document. The Court also reviewed Anders' accord and satisfaction argument. There was no evidence to show that Mandelbaum had taken a new personal guaranty in place of Anders' guaranty. Therefore, the Court affirmed the judgment rendered by a District Court finding that the personal guaranty of Anders was continuing in nature and he was personally liable. The issue of the attorney's fees was not proffered before the Court because Anders did not appeal the judgment on the attorney's fees.

N. Shri Lambodara, Inc. v. Parco, LTD.
Iowa Court of Appeals No. 22-0993. Filed May 10, 2023

Parco, Ltd. and Shri Lambodara, Inc. own properties in a shopping center. Lambodara owned Lot 3, which is a hotel, and which was adjacent to Lot 1 owned by Parco, which was a restaurant. The shopping center is divided into three lots. Parco occupies the bottom portion of the property. Lot 2 is in the upper left hand portion of the property and Lot 3 is in the upper right hand corner of the parcel and owned by Lambodara.

A 1984 deed of dedication with eight covenants governs all business on the lots. The first three paragraphs of the deed (a through c) regulate use of the land in ways immaterial to this appeal, and the fourth paragraph d establishes a 21-year expiration for the three preceding paragraphs. Paragraph g which is the paragraph in question provides as follows: "For the mutual benefit of the undersigned, its successors and assigns in the ownership of the lot in said subdivision, the undersigned covenants that no barriers will ever be erected to prevent free and unlimited access for the owners and tenants and invitees on the lots in said subdivision between the driveways and parking areas on the lots in said subdivision, and this provision shall be a covenant running with the land as though incorporated in each and every deed and mortgage for all the lots in said subdivision hereafter, and maybe be enforced by the owners or tenants of any lot in said subdivision."

Parco had owned a restaurant on Lot 1 since shortly after execution of the 1984 deed and Lambodara has owned a hotel on Lot 3 since December 2009. For a number of years the relationship between Lambodara and Parco was fine and there was free access between the parking areas of all three lots. Tensions then flared in 2015 when Parco started to build a curb on its property blocking vehicle access between Lot 1 and 3. There was also some damage to a concrete portion of Parco's lot and Parco accused Lambodara of causing the damage. In December of 2020, Parco directed snow to be piled near the boundary between Lots 1 and 3 obstructing access between the lots. Lambodara demanded Parco remove the snow according to the paragraph G easement. Parco's attorney responded and claimed that paragraph G was a negative easement that had expired. Lambodara's attorney filed its action for declaratory judgment requesting the District Court construe paragraph G as an easement requiring Parco to keep free and open access between the lots. Lambodara also requested a permanent injunction against Parco impeding access between Lots 1 and 3. Parco counterclaimed for trespass and for an injunction against Lambodara. Both parties sought full or partial summary judgment. The Court reserved ruling on summary judgment and heard evidence in a bench trial. After trial, the Court granted Lambodara's motion for summary judgment finding that the language of paragraph G created an easement rather than a use restriction, and denied Parco's counterclaims.

The issue before the Court is whether or not paragraph G is an affirmative easement or a negative easement under Iowa's case law and subject to Iowa Code §614.24. The 2014 amendment to Iowa Code §614.24 is generally consistent with the

Iowa Supreme Court's prior case law and it merely clarifies the original intent of the drafters of the Stale Uses and Reversions Act. The Court found that the language in this particular use restriction was an easement and was not subject to the Stale Uses and Reversions Act.

The Iowa Court of Appeals went on to determine that it was an affirmative easement rather than an a negative easement and there was also language in the covenants which indicated that only the first three paragraphs of the covenants would be subject to the 21-year expiration time period. The Court of Appeals affirmed the District Court's finding that this language in the use restrictions was an affirmative easement which was not subject to the time limitation of Iowa Code §614.24 applicable to use restrictions.

O. Pistol Limited Company v. Green Family Flooring, Inc.
Iowa Court of Appeals No. 22-0126. Filed April 10, 2023

Pistol Limited Company owned a property at 1901-1903 Beaver Avenue in Des Moines, Iowa. Pistol operated the Chef's Kitchen in a portion of the building and leased a portion of the building at 1901 Beaver Avenue to Green Family Flooring, Inc. The lease provided for a five year lease beginning on June 1, 2014 with an additional right to renew for an additional five years. The lease also contained the following provisions: "In the event of any offer to purchase the building in which the premises are located is acceptable to [Pistol] at any time or times during the original or extended term hereof for the sale of the premises or for a lease to commence upon the expiration or earlier termination of the original or extended term hereof, [Pistol], prior to acceptance thereof, shall give [Green], with respect to each such offer, written notice thereof and a copy of said offer including the name and address of the proposed purchaser or tenant and [Green] shall have the option and right of first refusal for thirty (30) days after receipt of such notice within which to elect to purchase or lease the premises, as the case may be, on the same terms and conditions of said offer. If [Green] shall elect to purchase or lease the premises pursuant to the option and first refusal granted, it shall give notice of such election within such thirty (30) day period. [Green's] failure at any time to exercise its option under this paragraph shall not affect this lease and the continuance of [Green's] rights and obligations under this and any other paragraph herein."

In October of 2018, Green received a document titled "Declination to Exercise Right of First Refusal" from Pistol which stated Pistol had received an offer to purchase the building and Green declined to exercise the right of first refusal. Green did not sign the document. On November 12, 2018, Pistol executed a purchase agreement to sell the entire building at 1901 and 1903 Beaver Avenue for the sum of $300,000 and acknowledged that the Green Family Flooring leased a portion of the property from the landlord. There was a separate asset purchase agreement between the parent company, the restaurant and the purchaser of the property, Simon, who agreed to purchase the restaurant's assets for $235,000, plus $65,000 for inventory.

Green indicated to Pistol its intent to exercise the right of first refusal on December 7, 2018. It expressed an interest in purchasing the building for $300,000 with a closing date of January 21, 2019.

Pistol responded, "[T]he transaction involving the anticipated sale of the building at 1903 Beaver Avenue is part of a package deal involving the sale of the Chef's Kitchen restaurant business which operates at that location. The agreement to sell the building is specifically conditioned on the purchase of the business and the total consideration involved in that package deal is $700,000 with scheduled closing to take place on or about January 3, 2019."

Green did not enter into a package deal with Pistol and the closing of the sale to Simon occurred on January 4, 2019. On February 29, 2020, Pistol filed a declaratory action requesting a ruling that Green did not properly exercise its right of first refusal because it did not agree to purchase the property with the same terms and conditions as the sale to Simon.

The District Court found as follows: "The terms of the right of first refusal applied only to offers to purchase of the building. Here there was no offer for the purchase of the building alone. The Simon offer was a package offer. Simon would not buy, nor would the Littles sell, the building separate from the restaurant. Given the facts in this case, the attempt to sell the building in conjunction with the restaurant cannot be considered as an indication that Pistol was interested in selling the building alone. The contractual right of first refusal is inapplicable by its own terms."

The District Court ruled in favor of the landlord. Green asserts that Pistol could not defeat its right of first refusal by creating a package deal where the property subject to the right of first refusal is only a portion of the property sold.

In general, a right of first refusal is valid and enforceable and cannot be waived by the party holding the rights. The Court of Appeals concluded that the District Court erred by failing to follow Iowa legal precedence in its decision that the right of first refusal was inapplicable as Pistol wanted to sell the property as part of a package deal. Pistol had bargained away any right to force Green to buy either the restaurant business with the land or nothing at all. The Court therefore reversed the District Court's decision and remanded for determination of the proper remedy for Green.

P. No Boundary, LLC v. Brandi Smithson

Iowa Court of Appeals No. 22-0128. Filed April 26, 2023

On June 18, 2018, following a public tax sale, an entity named Wago 262 received a certificate of purchase for the property at issue – a condominium owned by Brandi Smithson. In April 2020, Smithson, as the "person in possession of the parcel" and "in whose name the parcel is taxed," was given a 90-day notice of the expiration of her right of redemption. On July 30, Wago 262 assigned its rights in the certificate of purchase to its affiliate business, No Boundary, LLC. Smithson did not redeem the

property within 90 days after the notice of expiration. A tax sale deed was issued and in July of 2021, No Boundary served a notice to quit on Smithson, demanding that she vacate and surrender the premises within three days. She did not attend the hearing and a default judgment was entered and a writ of removal and possession was issued. On August 25, Smithson moved to set aside the judgment and requested the issuance of a stay or injunction. She argued her failure to appear to timely answer and defend is based upon a legal disability and because of that she demanded that she had the right to redeem. A hearing was held on December 14 at which a forensic psychologist testified on Smithson's behalf. The District Court found that Smithson's suffered from a legal disability and this may avail herself of an additional period upon which to redeem as set forth in Iowa Code § 447.7. The amendment to 447.7 took effect on July 1, 2018 which was shortly after the tax sale of Smithson's property. Prior to that enactment, there was another statute which stated that someone who is a minor of unsound mind would have an additional time to redeem. The Court went through the proper legal standard in determining whether or not Smithson was a person of unsound mind which would enable her to be able to redeem for a longer period of time which is a right to redeem within one year after the disability is removed . The issue before the Iowa Court of Appeals is whether Smithson established by clear, satisfactory and convincing evidence that she was a person of unsound mind at the time her property was sold and deeded for nonpayment of taxes and therefore has an additional period of redemption. The Iowa Court of Appeals went through an analysis of what it means to be of unsound mind. They found that Ms. Smithson was able to pay her taxes on the property after she missed the one tax which lead to the tax sale. The Court of Appeals found that the District Court overlooked key evidence. The Court of Appeals found that while Smithson certainly struggled with her mental health, those struggles did not prevent her from managing her business. Smithson's payment of tax is clear evidence that she comprehended her duty to pay taxes and the consequences of failing to do so. Therefore, the Court found she was not entitled to redeem. The decision of the District Court was reversed and remanded with instructions.

Q. Linda K. Juckette v. Iowa Utilities Board and MidAmerican Energy, et al.
Iowa Supreme Court No. 21-1788. Filed June 16, 2023

MidAmerican Energy Company petitioned the Iowa Utilities Board for a franchise to build electric transmission lines in Madison County. Some of the lines would run through a road right-of-way that encumbers Linda Juckette's land. Juckette protested. The IUB granted the franchise and on judicial review the District Court affirmed the IUB's decision.

On appeal, Juckette argues that MidAmerican did not satisfy the statutory requirement that the new electric transmission lines must be necessary for public use. She also argues that MidAmerican has no right to place electric utilities structures in the road right-of-way and at a minimum, if those structures are placed in the road right-of-way, such action is a taking of private property which requires compensation under the Fifth Amendment to the United States Constitution and Article I, Section 18 of the Iowa Constitution. The District Court ruled in favor of MidAmerican Energy and on appeal,

the Iowa Supreme Court concluded that MidAmerican satisfied the statutory requirements for a franchise. The Court also concluded that Iowa Code §306.46(1) provides utilities like MidAmerican the statutory authority to construct, operate, repair, or maintain its utility facilities within a public road right-of-way including the road right-of-way that encumber Juckette's land. The constitutional issue regarding a taking that required just compensation resulted in the Court evenly divided and therefore the District Court's decision was affirmed by operation of law which found that no compensation was to be paid to Ms. Juckette. In this particular case there was a road right-of-way that was established in 1979. A plat was dedicated which provided for a road right-of-way in the eastern edge of the property. There is no express statement as to whom the right-of-way was granted but it seems undisputed that the right-of-way was granted to Madison County and the road was a county highway. In a previous case by the Iowa Supreme Court, *Keokuk Junction Ry Co. v. IES Industries* the Court held that a public highway easement did not include the right of a utility to place its poles. In 2004 the legislature enacted Iowa Code §306.46 which stated that "a public utility may construct, operate, repair or maintain its utility facilities within a public road right-of-way."

In the IUB proceedings, MidAmerican Energy asked for a franchise to allow them to construct the poles across Juckette's right-of- area. Juckette opposed saying that this was not for a public purpose or a public use and she also argued that MidAmerican could not rely on §306.46 to overcome the constitutional requirement of just compensation in order to construct electronic transmission lines on her property. In a 2-1 decision the IUB granted MidAmerican's franchise. They did not, however, address the issue of any constitutional questions.

In Juckette's decision for judicial review the District Court affirmed the IUB's decision. The District Court agreed with the IUB's decision. The District Court rejected Juckette's constitutional arguments. The Iowa Supreme Court found that there was a public use in this instance because of the fact it would benefit current and future customers even though it was primarily to benefit Microsoft. The Iowa Supreme Court also argued that the amendment to Iowa Code § 306.46 creates a statutory easement that allows utilities like MidAmerican to construct, operate, repair and maintain its utility facilities within a public road right-of-way. The only question was whether or not that construction could result in the taking that requires compensation under the Fifth Amendment to the United States Constitution and Article I, section 18 of the Iowa Constitution. The Supreme Court split on that issue so therefore the decision of the Iowa District Court was affirmed.

R. Pitz v. United States Cellular Operating Company of Dubuque Energy, et al.
Iowa Supreme Court No. 22-0038. Filed April 21, 2023

In 1988, when most cell phones were the size and shape of bricks and were stored in vehicle consoles, a cell phone service company had the foresight to enter into a thirty-year lease of property to build a cell tower. There was also a 30-year renewal option. When the lease came up for renewal in 2018, the rent was substantially below

market and the cell phone company gave written notice of renewal to the property as specifically required by the option-exercise clause. However, the cell phone company did not immediately pay the renewal rent, even though the lease provided elsewhere that the renewal rent was "payable in a lump sum in advance at the exercise of the option." The property owners believed this action was not a proper exercise of the option and took the cell phone company to court in the declaratory judgment action. The District Court and the Court of Appeals ruled in favor of the cell phone company.

The Iowa Supreme Court concluded that the payment of the renewal rent was not a condition for exercise of the option and therefore the cell tower lease was properly renewed. Strictness and literalism in the law of offer and acceptance works both ways. The optionee must comply with all stated conditions for exercise of the option, but when those conditions have been expressly set forth in a separate provision, the list should normally be treated as exclusive. Therefore, the Court affirmed the District Court and the decision of the Court of Appeals. The lease in question contained two provisions. 3.2 provided as follows: "Option to Renew. Lessee shall have the option to renew this Lease Agreement for one (1) additional term of thirty (30) years, at the rental rate set forth in Article Four and upon all the other terms and conditions hereof. Lessee may exercise such option by giving written notice to Lessor at least sixty (60) days before the expiration of the initial term of this Lease Agreement." Provision 4.2 Option Term Rent provides as follows: "Lessee shall pay to Lessor as full consideration for use of the Leased Premises during the option term, payable in a lump sum in advance at the exercise of the option, the amount of Twenty Thousand Dollars ($20,000.00), adjusted upward by the percentage of increase in the Consumer Price Index ("CPI") from the Commencement Date to the first day of the last month of the current lease term. . . . If the amount of the CPI increase is not known at the time the option is exercised, Lessee shall pay Lessor ($20,000.00) at the time of exercise and the balance of the option term rent within thirty (30) days of Lessor's notice of calculation."

This property was transferred from the original owners of the property to their son and spouse William and Lynn Pitz. U.S. Cellular sent a certified letter to Robert and Dorothy on September 1, 2017 - over one year before the September 14, 2018, deadline for exercise of the option. This letter stated that it would "serve as notice that [U.S. Cellular] is exercising its option to renew the Lease Agreement dated November 14, 1988 for the first of one renewal term of thirty years." It was accompanied by an IRS Form W-9 and a direct deposit form, both of which U.S. Cellular asked to be completed and returned. William received those documents but did not return them timely. On October 29, U.S. Cellular forwarded a check for $31,494.02 to William and Lynn. As explained in the body of the letter, this amount represented the $41,439.50 advance rent due based on the formula set forth in paragraph 4.2 of the lease, minus required income tax withholding.

William and Lynn believed that U.S. Cellular failed to properly exercise its option to renew due to the fact that it did not timely tender the rent payment before the opinion renewal date. This action was filed for declaratory judgment by the Pitzes. It

was determined at a bench trial that the actual fair-market rental for the 30 years would be over $200,000.

The District Court ruled that U.S. Cellular had validly exercised the option. The Court determined that the payment of rent was not a condition precedent to the exercise of the option but instead was a term and condition under the renewed lease. Thus any failure to meet obligations under the term of the renewed lease did not negate the exercise of the option or the existence of the new lease itself. The Iowa Court of Appeals affirmed that decision.

The Iowa Supreme Court went through an analysis of the two separate paragraphs in the lease agreement and looked at prior case law in Iowa. All of the case law was dependent upon how the language of the option was written. The Court went through an analysis that acceptance and performance are two different things. Courts typically take a strict, compartmentalized view of acceptance and a broader, more holistic view of performance. The court indicated that is why offer and acceptance are often taught at the beginning of first-year contracts; the legal principals are more straightforward and therefore easier to learn. So the principle that we read contracts as a whole has less relevance when the issue is whether an option was properly exercised. Here the Court found that the option was exercised relying on a case of *Welsh v. Jakstas*, 82 N.E.2d 53 (Ill. 1948). It held that the option was exercised properly as payment of the rent was a performance issue which did not affect the valid exercise of the option. The Iowa District Court as well as the Iowa Court of Appeals' decision was affirmed.

S. Scholtus v. Parkside Knolls-South Homeowners Association
Iowa Court of Appeals No. 22-0600. Filed April 26, 2023

This case concerns the authority of a homeowners association to enact new restrictions on real property. The District Court found the restrictive covenants at issue were duly adopted by the Parkside Knolls-South Homeowners Association even though the HOA's governing documents did not express the authority to create restrictive covenants. Unless otherwise agreed to, all landowners must manifest assent to enter into a covenant restricting the use of their land. The Scholtuses did not assent to the covenants at issue. The Court of Appeals reversed the ruling of the District Court and remanded for entry of an order consistent with this opinion. Covenants were placed on the property in question in 1972. There were amendments in 1972 and 1978 and no subsequent claims were recorded within 21 years. The parties agreed that in 1999 the covenants expired pursuant to Iowa Code §614.24. The HOA remained in existence and continued to operate with respect to matters other than the restrictive covenants. In 2001 the Scholtuses purchased multiple lots within the subdivision including outlot 3. In 2002, the HOA minutes indicated they would be working on a revision of the covenants. There was a meeting held on April 12, 2003, where seven members of the HOA were present and affirmed the new covenants on the property. The Scholtuses were not at the hearing and did not agree to the covenants. In 2020, Fowler Land, LLC entered into an agreement to purchase Outlot 3 from the Scholtuses. The agreement was reportedly continent upon the ability to use land for a purpose not in conformance with the 2003

covenants. Fowler and the Scholtuses filed a Petition for Declaratory Judgment seeking a determination that restrictive covenants adopted in 2003 were without legal force and effect. The District Court found the covenants were valid because they were adopted following the appropriate procedure in the HOA's bylaws. The Scholtuses and Flower then filed a timely appeal.

The issue before the Court was whether or not the covenants not agreed to by the owners of the property were, in fact, valid against the property. The Iowa Court of Appeals described how lot owners may come to promise land use restrictions to one another. "Covenants are agreements or promises. The agreements or promises here are to use real estate for certain purposes only. Such promises may be made in a variety of ways, as (a) by a single restricting instrument in which lot owners join, or (b) by a landowner's series of deeds containing restrictions on lots in a tract, or, as here, (c) by a landowner's restricting instrument on lots in a tract followed by deeds to those lots. Here, there is no evidence the Scholtuses made such a promise. The covenants had expired by the time they purchased the property. The amended consent filed in 2003 were not agreed to by the Scholtuses. The Iowa Court of Appeals found that because the Scholtuses did not consent to the 2003 covenants, they did not form a contract and the covenants had no legal force and effect against the Scholtuses. Therefore the Court of Appeals reversed the District Court.

T. U.S. Bank National Association v. Cassady
Iowa Court of Appeals No. 22-1340. Filed April 26, 2023

A foreclosure proceeding was initiated in 2019 against the Estate of Valerie Cassady who had executed mortgages on her home in Warren County to Wilmington Trust, National Association and U.S. Bank. Wilmington Trust held the senior lien on the property and foreclosed naming the U.S. Bank as a junior lien as well as the Internal Revenue Service and the Villas at Orchard Hills. During the time of the foreclosure, Wilmington Trust assigned its note and mortgage to U.S. Bank who took over their first position on the property. The foreclosure sale netted proceeds above the amount that was due on the first lien. U.S. Bank then applied to condemn the foreclosure proceeds to pay off the senior and junior liens against the property. The Court granted the application for the senior interest but the court determined that the amount available to pay on the second lien to U.S. Bank was not for U.S. Bank as it had not properly foreclosed upon its junior lien interest. The Iowa Court of Appeals reversed the District Court and agreed with U.S. Bank's argument. Proceeds from the foreclosure sale go first to the senior lien. See Iowa Code §654.7. Any remaining surplus goes to the junior liens according to priority. Iowa Code §654.9. The junior lienholder does not have to foreclose on its lien to be entitled to any surplus.

Legislation

1. House File 111 - An act relating to an exception to the real estate transfer tax for deeds that transfer distribution of assets to beneficiaries of a trust.

2. House File 270 – An act relating to certain deadlines relating to the informal review and protest of property assessments in counties declared to be a disaster area.

3. House File 332 – An act relating to the disposition of real property belonging to the state by the director of the department of administrative services.

4. House File 432 – An act relating to access by certain entities to specific records and documents maintained by unit owners association.

5. House File 475 – An act relating to unfair residential real estate service agreements.

6. House File 607 – An act relating to real estate licensee liability.

7. House File 609 – An act relating to specified loans provided by a mortgage banker.

8. Senate File 445 – An act relating to protest considered by local board of reviews.