LIST SERVE ISSUES

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REAL ESTATE TRANSACTIONS SEMINAR
DES MOINES, IOWA
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ISBA List Serve Issues.

ISBA Listserve.

The ISBA Listserve for the Real Estate and Title Law Section continues to be a valuable resource for Iowa lawyers. And, as Iowa lawyer Mark V. Hanson points out, the responses have been clear evidence for the following principles:

A. Lawyers' collegiality in Iowa is good.

B. Lawyers with in-depth knowledge on a topic are willing to share and raise the knowledge level of all lawyers.

C. Lawyers wanting to do what they can to have good land titles in Iowa and if they can point another attorney in the right direction, they have contributed significantly to that goal.

D. Good example of what a useful tool the email net is to share among the real estate lawyers.

The following issues and responses have been obtained from the ISBA Listserve for the Real Estate and Title Law Section. The author has edited the facts, issues and responses for the reader.

The author encourages Iowa lawyers to participate in the ISBA Listserve and, upon review of these materials, send in additional information or comments which can be added to these topics.

In Memoriam

George F. Madsen

3-24-33 12-14-22

St. John 3:16

In Memoriam of Sioux City lawyer George F. Madsen, Marshall's Iowa Title Opinions and Standards Second Edition, with pocket part, has been re-printed and is available from The Iowa State Bar Association, who now owns the copyright.

In the words of Mr. Madsen's Preface to Second Edition: "In the finest tradition, Jesse E. Marshall gave dignity to the law, and this volume is published as a tribute to him." – May 1, 1978

Forty-five years later, ISBA Past President Dan Moore (2008–2009) states: "In the finest tradition, George F. Madsen gave dignity to the law, and this volume is re-printed as a tribute to him." – September 14, 2023

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MARSHALL'S
IOWA TITLE OPINIONS AND STANDARDS

ANNOTATED

SECOND EDITION

By
GEORGE F. MADSEN, B.A., LL. B.
Sioux City, Iowa

An Annotated Compilation of Opinions on Title Problems
and Iowa Title Standards
With Commentary

THE ALLEN SMITH COMPANY
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Indianapolis, Indiana 46202

1. Plats of Survey Out of Fractional Legal Descriptions.

FACTS: My question is whether two plats surveying two parcels that border one another are precise enough to establish their specific locations in relation to the fractional boundary line between the two landowners.

One landowner owns the W½E½SW¼ and the other landowner owns the E½E½SW¼. There is a fence line that appears to have been intended to run along the boundary line of these two halves, but there is no fence agreement or survey locating the fractional boundary between these two halves in the abstract I am examining.

In 1997 the owner of the W½E½SW¼ has Parcel A surveyed. The surveyor does not locate the fractional boundary between the two halves, he simply runs the eastern border of parcel A along the fence line and describes Parcel A as "a parcel in the SW¼." Based on the metes and bounds, this survey places the fence line 1,986.07' from the SW corner of the section.

In 2024 the owner of the E½E½SW¼ has Parcel D surveyed (this is the parcel I am examining). Again, the surveyor does not locate the fractional boundary between the two halves, he simply runs the western border of parcel D along the eastern border of parcel A and describes Parcel D as "a parcel of land located in the SE¼SW¼." Based on the metes and bounds, this survey places the fence line 687.08' from the S¼ Corner of the Section.

This wasn't the easiest thing to explain, so if my account of the facts is unclear, please feel free to ask for clarification.

QUESTION: My concern is that if neither survey locates the fractional boundary between the two halves, I don't think I can determine with certainty that Parcel A and Parcel D are confined to their respective halves of the SE¼SW¼. And if they are not, if one parcel is encroaching on the other's half, is this a defect that requires a remedy?

RESPONSE(S): This is an issue I am seeing more and more. Surveyors are marking lines of occupation, but surveyors are not showing lines as established by color of title. While there may be some theories such as boundary by acquiescence which would establish the fence line as the true property line, there is no way for a title examiner to confirm that this is the case by abstract examination. For this reason, in instances such as this, I will note that the fence may not be the true property line as established by color of title and that depending on the circumstances (which would need to be confirmed by a survey showing the boundary line by color of title), the neighboring owner may have some claim of right, title or interest in the property as abstracted. Perhaps reciprocal Quit Claim Deeds by the two neighboring owners would be a solution here depending on the circumstances.

* * * * *

Sounds like a Mediation required and a flip of the coin.

* * * * *

Oh and bring both surveyors to mediation.

2. **Responsibility for Sinkhole Between Sidewalk and Curb.**

FACTS:

- John Doe owns a residential property in the City of Des Moines
- A sinkhole has emerged In the right of way area between Doe's sidewalk and the public street
- City of Des Moines personnel has been onsite a few times to view the situation
-
    - When asked who is responsible for resolving the sinkhole issue, the City cannot cite any applicable ordinance; but insists that it is the adjacent property owner John Doe's responsibility to fix.

QUESTION:

RESPONSE(S): So long as the City has passed an ordinance requiring the abutting owner to maintain the area between the curb and the property line, Iowa Code Section 364.12(c) probably shifts maintenance responsibility to Doe. But interestingly liability may not follow under the recent IA Supreme Court case of SPLITTGERBER v. BANKERS TRUST COMPANY, 8 N.W.3d 135. The City of Des Moines was a party to Splittgerber. Within the case the Court cites the applicable Des Moines City Ordinance as "Code of Ordinances § 102–2 (2022)". Splittgerber may be worth looking at for your client. I read Splittgerber to still allow a City to shift the responsibility to maintain the area you describe to the abutting property owner, although the case may also limit or eliminate any corresponding shift of liability from the City to the abutting property owner for failing to do so.

3. HOA Common Elements Uncertainty.

FACTS: I have a condo association who is looking to update and clean up their Declaration/Bylaws. Over the last few years, there has been an ongoing argument amongst the owners and Board members regarding whether or not windows and exterior doors are common elements, to be paid for by the HOA. Those owners with large amounts of windows obviously want them to be a HOA expense, and those with less, would rather have them be private. The existing condo docs are completely silent as to windows/exterior doors and are very vague as to what is to be included as a general common element.

Iowa Code Ch.499B includes in the definition of "General common elements" the term "exterior walls". It also does not specifically address windows/exterior doors. The disagreement continues among owners and their respective attorneys as to whether or not "exterior walls" includes windows and exterior doors within those walls. The disagreement is to the extent the Board doubts the ability to pass an amendment making a decision in either direction.

QUESTION: Anyone have some sources that address this issue?

RESPONSE(S): Doorways would be part of common area—they putatively provide access to and from the owner's unit.
5 Am.Jur. Legal Forms 2d S64:1 Introductory comments (2024) (emphasis added):

Ownership of a condominium unit is a hybrid form of interest in real estate, entitling an owner to both the exclusive ownership and possession of a unit and an undivided interest as a tenant in common with the other unit owners in the common areas. Each condominium owner in a multiunit structure has title to the individual unit in fee simple, while holding an undivided interest in stairways, halls, lobbies, ***doorways***, and other common areas and facilities.

Windows, on the other hand, aren't made so much for access as for other purposes. (e.g., getting light and air through holes in the wall.)
Are the windows (frames, panes, etc) themselves common (and therefore HOA responsible)? Debatable.

Some language in *Wyman v. Ayer Properties, LLC*, 83 Mass. App. 21, 979 N.E.2d 782 (2012) suggests windows belong to individual units, not to common areas.
At least not if the windows connect directly to private units.
Wyman is the only case I can find anywhere addressing windows in context of condo commons.

Plaintiff Wyman was one of the condo trustees who acted to recover damages for, inter alia, badly installed windows that damaged condo units.

"[T]wenty two window frames were suffering excessive weather damage and leakage extending *beyond the common area and into the window bodies, sashes, and panes inside individual units*..." (emphasis mine)

But the above was the Appeals Court's description of the Superior Court's fact-finding.
It was not a legal ruling as to the actual legal status of windows.
Unhelpfully, the Massachusetts Supreme Judicial Court (SJC) affirmed in part and reversed in part.
Wyman v. Ayer Properties, LLC, 469 Mass. 64, 11 N.E.3d 1074 (2014).
In its recitation of the trial judge's fact findings the SJC employed the phrase "harm to the common area window frames".
Then, the SJC affirmed the trial judge's ruling awarding the condo trustees damages for negligent construction of the windows!

SO –if we can draw any guidance from *Wyman*, HOA may sue for correction to windows that let water into condo private units.
Which, maybe, answers your question?
If "exterior walls" are common areas under Iowa Code Chap 499, then by logical extension HOLES in those exterior walls ought to be common...

4. Horizontal Property Act.

FACTS: Our firm has a client who owns a two-story downtown building. The top floor is for apartments and the bottom floor is for commercial use. The client wants to sell the top floor to Buyer A (apartments will not be divided up) and sell the bottom floor to Buyer B. We thought we might use the Horizontal Property Act to divide the two floors and then control the relationship between Buyer A and Buyer B using a reciprocal easement agreement; however, the Horizontal Property Act doesn't seem to fit this.

If you have sample documentation you're willing to share, that would be very helpful.

QUESTION: Has anyone done something like this? How did you proceed?

RESPONSE(S): Iowa's Horizontal Property Statute is flexible enough to do what you want to do. A condo is about the only legal device available to subdivide property vertically. It is relatively complicated (expensive) to divide up an existing building that was built more than 10 years ago. It is further complicated to do a condo regime where you have a commercial condo regime and a residential condo regime in a single declaration. I have done a few, and actually live and work in a condo with 42 residential and four commercial units. I seriously doubt that dividing a single existing building into 2 units can be cost effective, but that is your client's call. The big expenses in an existing building split are the engineering cost of describing the common elements dividing the lower and upper floors and compliance with current building codes. This is way too complicated to deal with in this format.

The biggest hurdle you are likely to have with conversion of an existing building will be Iowa Code Section 499B.20:

Conversions to meet building codes. After April 25, 2000, an existing structure shall not be converted to a horizontal property regime unless the converted structure meets local city or county, as applicable, building code requirements ***in effect on the date of conversion*** or the state building code requirements, as adopted pursuant to section 103A.7, if the local city or county does not have a building code. Iowa Code 2024, Chapter 499B (24, 0), §499B.21 *For purposes of this section, if the structure is located in a city, the city building code applies and if the structure is located in the unincorporated area of the county, the county building code applies.* 2000 Acts, ch 1142, §4, 5; 2004 Acts, ch 1086, §82.

I am aware of proposed condo conversions at the time of enactment of Iowa Code Section 499B.20 where the difference between a pre and post enactment

code compliance would have been several hundred thousand dollars to bring the building up to then current building codes. It all depends on the condition of the building and the applicable building codes.

5. Horizontal Property Regime Developer Assignability.

FACTS: I have an HPR that was started by one entity. They did Phase I which is completed and all units sold. The HPR documents allowed the Developer to add additional property/units to the Regime. Due to some not important to this matter issues, the Developer assigned its rights to add the property/units to another entity (substantially owned the same) which owned adjacent property (there were no restrictions on doing so) and it was recorded as part of an HPR Amendment. The new entity built out Phase II as the developer and they are ready to sell units. However, some title opinions are showing that there needs to be a deed from Entity 1 and Entity 2.

QUESTION: Would you require a deed from Entity 1 and Entity 2? We could likely do a QCD from Entity 1 to Entity 2 for all the units in Phase 2 but would like to avoid that cost.

RESPONSE(S):

6. HPR With No Dues.

FACTS: My client is the current declarant for an HPR with authority to modify the HPR. This development has taken some unexpected turns, some in my client's control and some outside of their control, and now they would like to do away with any dues requirements for the HPR. Units are each separate buildings with well-defined separate limited common elements, and now there really aren't any general common elements. While they would like to do away with the Association all together, I don't think they can do so without taking the property out of the HPR and that is going to cause some ordinance and other issues. I think that we can just have each owner provide their own insurance (possibly listing the Association as an additional insured) since there is no general common elements and the owners are required to insure any limited common elements already. I don't see any requirement that there has to be dues in Iowa Code Chapter 499B, but wondering if others have done this and/or if there are other issues to consider.

QUESTION:

RESPONSE(S):

7. Lien from Homeowners Association.

FACTS: I have notice of lien from a homeowners association.

QUESTION: How long does a homeowners lien last?

RESPONSE(S): I have nothing for sure, but I would guess 10 years written contract.

* * * * *

I believe that owner association liens arise by virtue of contract, viz. the declaration to which each owner is contractually bound includes the ability to place a lien (without first obtaining a judgment) on the owner's unit. Additionally, the delinquent amount is usually a personal liability against the owner.

8. Mixed-Density Condominiums and Ownership of Common Elements.

FACTS: Aside from issues in drafting and whether this is actually advisable, I'm curious to know if there's general consensus about the following question under Iowa Code Chapter 499B:

In a single horizontal property regime comprising many two-unit buildings, one four-unit building, and one 30-unit building, may ownership of the common elements be split between the different classes of owners? More specifically, may the land where the two-unit buildings are constructed be owned only by the owners of the two-unit buildings, etc.?

QUESTION:

RESPONSE(S):

9. Status of Vacated Condominium Regime.

FACTS: In examining an abstract, I am presented with a situation I have never come across before. A two unit condominium was established by a Declaration of Submission pursuant to Iowa Code Chapter 499B in 2002. The subject property is a duplex, with a common wall between Unit 1 and Unit 2. The real estate the duplex is situated on consists of two irregular lots, with the common lot line being in the middle of Unit 2. In 2023, the owners of Unit 1 and Unit 2 executed and recorded an Agreement for Removal from the condominium regime pursuant to Iowa Code Section 499B.8, which provides that upon removal, "the property shall be deemed to be owned in common by the apartment owners." My client has entered into a purchase agreement to buy Unit 1, which is identified in the purchase agreement only as "Per Abstract."

1. I believe the property must be subdivided, with a common wall agreement or something similar prepared and recorded.

2. I believe a deed must be executed by the owners of both Unit 1 and Unit 2.

3. I believe each unit is unmarketable until the subdivision establishes a new legal description for each unit.

QUESTION:

RESPONSE(S):

10. House Sale Contract.

FACTS: A person sold a house on installment contract. The person to whom it was sold is now in prison. However, his significant other lives there. Contract is delinquent, of course. The significant other is agent under Power of Attorney. But I don't think that helps much. I think, at a minimum, a Guardian ad Litem (GAL)/Attorney has to be appointed to represent the buyer who is in prison. And that GAL/Attorney has to be served, etc. when it comes to a forfeiture.

QUESTION: Am I right? Is that enough? And how would that work? Contract forfeiture is not normally a court proceeding but getting a GAL/Attorney appointed would make it so, right?

RESPONSE(S): Wouldn't you just need to serve the notice (R. 1.305(4)) and be done with it?
There is no suit against the person and no judgment (R 1.211 & 1.212), so why would you need a GAL?
See In re Property Seized from Hickman, 533 N.W.2d 567

* * * * *

I was just worried because I know in litigation matters it can be difficult to get a judgment against someone who is in prison unless there is a GAL/Attorney. I realize I am more cautious than I probably need to be. When I first started as a lawyer, an attorney in the firm/mentor said to me:

"Just because you're paranoid doesn't mean that they're not out to get you!"

[See Attachment]

No. 94-979
Supreme Court of Iowa

Matter of Property Seized From Hickman

533 N.W.2d 567 (Iowa 1995)
Decided Jun 21, 1995

No. 94-979.

June 21, 1995.

APPEAL FROM DISTRICT COURT, WARREN COUNTY, WILLIAM JOY AND PETER A. KELLER, JJ.

Brian J. Pritchard, Rockwell City, pro se, and Douglas E. Kurtz, Rockwell City, for appellant.

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Thomas J. Miller, Atty. Gen., Robert P. Ewald, Asst. Atty. Gen., Kevin Parker, County Atty., and John W. Criswell, Asst. County Atty., for appellee.

Considered by McGIVERIN, C.J., and HARRIS, LARSON, LAVORATO, and NEUMAN, JJ.

HARRIS, Justice.

Does Iowa rule of civil procedure 13 require appointment of a guardian ad litem for an incarcerated owner of property that is the subject of a statutory forfeiture proceeding? The trial court thought not and we agree.

Brian J. Pritchard was prosecuted in two unrelated drug charges. He was sentenced on the first charge in 1989. His appeal on that conviction was affirmed by the court of appeals; procedendo was issued January 11, 1991.

In September 1990, while released on bail pending his appeal, Pritchard was arrested on a second drug charge. This time he was unable to post bail and remained incarcerated in a county jail. While he was so confined, the State seized Pritchard's automobile and $2774 of his cash. Pritchard thereafter demanded that this property be returned.

Following Pritchard's sentence on the second charge, there was a forfeiture hearing. Pritchard was allowed to appear pro se. He did so and testified.[1] The property was ordered forfeited.[2]

[1] In *In re Marriage of McGonigle,* 533 N.W.2d 524 (Iowa 1995), an opinion we also file today, we held that the requirements of Iowa rule of civil procedure 13 are satisfied for a prisoner who appears pro se and testifies at trial. Although the State urges the same point in arguments for affirmance here, we rest our decision on another ground.

[2] Iowa Code § 809.11 (1993) provides:

1. Forfeiture is a civil proceeding. At the hearing the burden is on the state to prove by a preponderance of the evidence that the property is forfeitable. However, forfeiture is not dependent upon a prosecution for, or conviction of, a criminal offense and forfeiture proceedings are separate and distinct from any related criminal action.

2. Court appointed counsel, at the state's expense, is not available in forfeiture proceedings. The attorney general or county attorney may represent the state in all forfeiture proceedings.

Pritchard later challenged the forfeiture order, arguing it was void because under Iowa rule of civil procedure 13[3] he was entitled to appointment of a guardian ad litem and none had been

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appointed. The matter is before us on Pritchard's appeal from a trial court order rejecting his challenge. Our review is on error. Iowa R. App. P. 4; *In re Wagner,* 482 N.W.2d 160, 162 (Iowa 1992).

[3] Iowa rule of civil procedure 13 provides:

> No judgment without a defense shall be entered against a party then a minor, or confined in a penitentiary, reformatory, or any state hospital for the mentally ill, or one judicially adjudged incompetent, or whose physician certifies to the court that he appears to be mentally incapable of conducting his defense. Such defense shall be by guardian ad litem; but the regular guardian or the attorney appearing for a competent party may defend unless the court supersedes him by a guardian ad litem appointed in the ward's interest.

We agree with the State's contention that Pritchard does not fall under the protection of rule 13 because the in rem forfeiture judgment was not entered against him.[4] Our cases reflect the view that the defendant in a forfeiture proceeding is the property sought to be forfeited, not its owner. *State v. One Certain Conveyance,* 316 N.W.2d 675, 678 (Iowa 1982); *see also Federal Land Bank of Omaha v. Jefferson,* 229 Iowa 1054, 1058, 295 N.W. 855, 857 (1941) (proceeding in rem is taken directly against property; judgment in rem operates upon property itself). Rule 13, by its clear terms, is limited to judgments "against a party." Pritchard was not a party and is thus not entitled to claim the benefits of rule 13. The trial court was correct in so holding.

[4] We need not and do not consider a number of other contentions. We express no opinion on whether one incarcerated in a county jail — as distinguished from a penitentiary or reformatory — is protected under rule 13. Neither do we decide whether Pritchard's challenge is time barred.

AFFIRMED.

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11. Installment Contract Cancellation.

FACTS:

QUESTION: I need to cancel/rescind a real estate installment agreement. Does anybody have a form I can use?

RESPONSE(S): Assuming the contract has forfeiture authorized in it, and this is not farm property, the safest thing is to forfeit the contract. If you take a deed back to the seller you have to worry about any liens that may be against the buyer, which may transfer to the seller's interest as part of the transfer back.

* * * * *

Some years ago (in a brain fog) I let a client talk me into doing a quit claim deed back. Then she died. Then when her daughters wanted to sell the property, there was an outstanding child support lien against the husband former Vendee. Daughters of course denied it was their mother's idea, and wanted me to fix it. So two things occurred.

1. I tracked down the child's mother, and luckily got her to sign a release when I put cash on the table. Also luckily, I got by for a nominal sum.
2. I vowed never to take a deed back again (unless there were a title lien search verifying there were no liens.)

* * * * *

If you are taking a deed back, you want a title lien search as close as is humanly possible to the signing/filing of the deed. Same day if you can swing that.

* * * * *

That's what I'll do. I am planning on a forfeiture by consent - do any of you fine lawyers have a form for such a thing? I envision a document signed by both parties agreeing to forfeit vendee's interest in the contract and waiving the notice and limitation of action requirements of Iowa Code Chapter 656.

* * * * *

I would not waive the 30 days. Draft that they are consenting, and accepted service. But wait out the 30 days. Then record a service affidavit, and running of 30 days.

In my child support fiasco, I drafted a Forfeiture and put it in my desk drawer for use if there were a problem.

I had objections to using the forfeiture after a deed had been given. So I could not use a post deed, forfeiture.
The objectors also objected to waiving the 30 days.

So, don't screw yourself into a knot hole from which you wish you had never gotten yourself.
Play it by the book.
Some other attorneys may also object to the Vendee accepting service. You can have a disinterested person hand the Vendee the Notice, and then sign the service affidavit.

You can explain to the cooperative Vendee of the intricacies and technologies of a forfeiture, and while it is a "friendly" forfeiture it still needs to have the record that you performed all the requirements.

12. Joint Tenancy Created by Contract or Deed?

FACTS: Recorded Real Estate Contract to H and W, as joint tenants with full rights of survivorship. Two years later, the Warranty Deed in fulfillment of the contract is recorded, but it grants title to H and W (no language about how title held). H later dies, and I'm trying to determine ownership interests.

QUESTION: My memory tells me that the Real Estate Contract is what establishes joint tenancy and that the fact that the later deed does not specify joint tenancy doesn't extinguish the joint tenancy established by the contract. But, I think I learned that over 15 years ago and at this point, I can't remember if it's true or not!

RESPONSE(S): It seems to me that Iowa Code Section 557.15 [2][a] addresses your question. There is a presumption of joint tenancy between the spouses in the deed in fulfillment of the contract in the absence of joint tenancy language.

* * * * *

My recollection is that the deed controls, but our Assessor or maybe the Treasurer disagreed with me. This was some years ago and I did not find an Iowa case that was clear enough to convince a nonlawyer. Haven't looked again. However, if the deed is new enough for the changed statute, then that will take care of it. Iowa Code Section 557.15(2).

* * * * *

Reminder: The effective date for the current version of Iowa Code Section 557.15(2) is January 1, 2015.

* * * * *

Consider as well this piece of prior discussion on the Real Estate list serve. A Memorandum of Contract is recordable, but many (most) Recorders, and one of the assistant attorney generals of the State stated such Memorandum was not a contract and not sufficient to change the title on the County books, to reflect Vendor and Vendee. The Recorder's office showed the recorded Memorandum of course. But the other offices did not show the contract and did not show the vendee as being on the title. Which caused some concern in the Vendee. With that bit of push back from the County offices, and non-lawyers doing the pushing back, and an assistant attorney general who probably didn't know much real estate law, I did not win the argument. So, I created a short form Installment Contract for purpose of recording a 2 page document containing the bare bones terms sufficient to create a "contract" – and no where do I even breathe the word "memorandum".

13. Memorandum of Real Estate Contract.

FACTS: In our situation the County Auditor preapproved the legal description and the document itself but after recording refuses to show change of ownership. As a result, the County Treasurer sends the tax statement to the Seller, not to the Buyer, even though the cover page of the Memorandum shows the name and address of the Buyer for the tax statement

Iowa Code Section 558.57 uses the words "other instrument unconditionally conveying real estate" and "the auditor shall make the proper entries on the transfer books in the auditor's office".

QUESTION: What is your experience with filing a Memorandum of Real Estate Contract as expressly authorized under Iowa Code Section 558.46(4)? Do your County Auditors show the change of ownership on their transfer books the same as if the Real Estate Contract is recorded?

Is the County Auditor required to show the change of ownership on the transfer books so the County Treasurer can send the tax statement to the Buyer? Otherwise, what is the purpose of showing the name and address of the person to send the tax statement on the cover sheet?

How do County Auditors around the State handle these situations?

RESPONSE(S): The list serve discussed this several years ago.
I got into an argument with a Recorder.
She sent me an Assistant Attorney General opinion, from something like 25 or more years ago, saying a Memorandum of Real Estate Contract was not a contract. She was going to follow the AAG's opinion, and not some attorney's. And Iowa Code sections be damned.
So, it was plain to me, she was not going to have the county records show the Buyer on title from a Memorandum, and I should never file a Memorandum again.
I changed my Memorandum form into an actual Contract (in my shortened form), giving the essential information for an actual Contract. Then state that the contract incorporates fully the terms contained in The Iowa State Bar Association Form of Real Estate Installment Contract, or if I use my own form I reference it. I do not breathe the word "Memorandum".
This then gives me a one page or sometimes a two page recording, and references and incorporates the longer form with the additional terms we all love.
And since it is the actual Contract, the Recorder sends it through for change of title, and shows the Vendor and Vendee, Or Seller and Buyer. And no further problems.

* * * * *

Your situation is why earlier this year I proposed the following change for our legislative subcommittee:

Proposal:
Tax books are updated with the filing of a contract, but not the filing of a memorandum of contract. I would suggest the following changes to bring uniformity to the situation:

558.46(4) "If a real estate contract is required to be recorded under this section, the requirement is satisfied by recording either the entire real estate contract or a memorandum of the contract containing at least the names and addresses of all parties named in the contract, the name and address of the taxpayer, a description of all real property and interests in the real property subject to the contract, the length of the contract, and a statement as to whether the seller is entitled to the remedy of forfeiture and as to the dates upon which payments are due."

(new subsection)558.66(3)(e) A memorandum of real estate contract pursuant to section 558.46(4).

* * * * *

What is the reason your suggestion has not been adopted?

* * * * *

I made it only a few months earlier, so I am not certain the subcommittee has even met since then. I do hope they adopt it when they meet as it seemed like a rather nominal change and one that should fix the glitch.

14. Multi-property Installment Contract.

FACTS:

QUESTION: For a real estate installment contract listing multiple properties, would that automatically trigger the disclosure requirement of Iowa Code Section 558.70 so you would need the disclosure for multiple sales? My reading is it is solely about the number of contracts, not the number of properties sold, but I would welcome any input.

RESPONSE(S): 1 CONVEYANCES, §558.70
558.70 Contract disclosure statement required for certain residential real estate installment sales.
1. Prior to executing a residential real estate installment sales contract, the contract seller shall deliver a written contract disclosure statement to the contract purchaser which shall clearly set forth the following information:
a. If the real estate subject to the contract has been separately assessed for property tax purposes, the current assessed value of the real estate.
b. (1) A complete description of any property taxes due and payable on the real estate and a complete description of any special assessment on the real estate and the term of the assessment.
(2) Information on whether any property taxes or special assessments are delinquent and whether any tax sale certificates have been issued for delinquent property taxes or special assessments on the real estate.
c. A complete description of any mortgages or other liens encumbering or secured by the real estate, including the identity and address of the current owner of record with respect to each such mortgage or lien, as well as a description of the total outstanding balance and due date under any such mortgage or lien.
d. A complete amortization schedule for all payments to be made pursuant to the contract, which amortization schedule shall include information on the portion of each payment to be applied to principal and the portion to be applied to interest.
e. If the contract requires a balloon payment, a complete description of the balloon payment, including the date the payment is due, the amount of the balloon payment, and other terms related to the balloon payment. For purposes of this paragraph, a "balloon payment" is any scheduled payment that is more than twice as large as the average of earlier scheduled payments.
f. The annual rate of interest to be charged under the contract.
g. A statement that the purchaser has a right to seek independent legal counsel concerning the contract and any matters pertaining to the contract.
h. A statement that the purchaser has a right to receive a true and complete copy of the contract after it has been executed by all parties to the contract.
i. The mailing address of each party to the contract.
j. If the contract is subject to forfeiture, a statement that if the purchaser does not

comply with the terms of the contract, the purchaser may lose all rights in the real estate and all sums paid under the contract.
2. The contract disclosure statement shall be dated and signed by each party to the contract, and the contract purchaser shall be provided a complete copy of the contract at the time the disclosure statement is delivered to the contract purchaser pursuant to subsection 1.
3. Within five days after a residential real estate installment sales contract has been executed by all parties to the contract, the contract seller shall mail a true and correct copy of the contract by regular first class mail to the last known address of each contract purchaser. However, this requirement is satisfied as to any purchaser who acknowledges in writing that the purchaser has received a true and correct copy of the fully executed contract.
4. This section applies to a contract seller who entered into four or more residential real estate contracts in the three hundred sixty-five days previous to the contract seller signing the contract disclosure statement. For purposes of this subsection, two or more entities sharing a common owner or manager are considered a single contract seller. This section does not apply to a person or organization listed in section 535B.2, subsections 1 through 6.
5. A violation of this section affects title to property only as provided in section 558.71.
6. For purposes of this section, "residential real estate" means a residential dwelling containing no more than two single-family dwelling units, which is not located on a tract of land used for agricultural purposes as defined in section 535.13.
7. This section and any rules adopted to administer this section shall not limit or abridge Sat Dec 23 11:05:53 2023 Iowa Code 2024, Section 558.70 (17, 0) §558.70, CONVEYANCES 2 any duty, requirement, obligation, or liability for disclosure created by any other provision of law, or under a contract between the parties. 2002 Acts, ch 1136, §1, 6; 2005 Acts, ch 83, §9, 10; 2007 Acts, ch 22, §99; 2008

It seems to me that the statute is specific to each property, so I, myself, would err on the side of more info needed per property so as not to risk title issues sooner or later.

15. Real Estate Contract Not Satisfied.

FACTS: I cannot seem to locate the answer to this situation:

H & W – Real Estate Installment Contract to Buyer & Spouse 1982

Contract balance paid in full. No Deed issued.

Buyer & Spouse in possession for all time.

Buyer is deceased – REK was JTWROS so Affidavit of Surviving Spouse can take to Spouse.

H & W – location/alive? Etc. all unknown. No probate records in Iowa.

QUESTION: How do I "fix" this – short of a Quiet Title action?

RESPONSE(S): I think that your answer is Iowa Code Section 614.21(4)(a)&(b), if the maturity of the contract was more than 10 years ago. You can serve notice of the demand for deed by publication, and if you don't get a response in the time period, you file the affidavit of service and compliance, and then the Auditor updates your records. At least, that is what the statute says. I haven't had an occasion to use the statute so I don't know how your Auditor will respond. It could be the first time they have ever seen an attempt to use that section. Good luck, and let the list serve know how it turns out.

* * * * *

I will try to make a nice form and let you know how it goes.

16. Tax Question – Installment Sale of Farm.

FACTS: I have a brother who wishes to sell a farm to another brother on contract, but at no interest.

QUESTION: After review of the IRC, am I correct that 1274(c)(3) appears to provide an exception to the unstated interest rule, and that you CAN sell a farm at no interest, as long as the sale of the farm is less than $1 million?

RESPONSE(S):

17. Title Opinion.

FACTS: X sells a property to Z on contract in March 2022.

Z enters into a mortgage with BANK for the property in October 2023.

Z receives deed in fulfillment of contract from X in November 2023.

QUESTION: Under these facts, is mortgage still OK and valid? Does it ripen into security interest on the property once Z receives deed? Also, just so I understand this, for the 1-month period of time where Z did not have deed in fulfillment, what does the mortgage encumber? Can bank only step in and fulfill the contract so that they can get title and foreclose?

RESPONSE(S):

1) Mortgage is a-okay in my opinion. BANK willingly took mortgage on (only!) a vendee's contractual interest.

When mortgagor/vendee obtains the full legal title—BANK's position could not possibly *worsen*.

2) If by "ripen" you mean: BANK's interest increases; i.e mortgage extends to vendee/mortgagor's full interest in the mortgaged land—then I agree with you.

See doctrine of After Acquired Title, aka Estoppel By Deed. Iowa Code section 557.4 & cases cited in *Sorensen v. Wright*, 268 N.W.2d 203 (Iowa 1978).

3) Mortgagee BANK holds a lien upon vendee's "real estate interest"; i.e., whatever equity in the land vendee has acquired.

Miles Homes, Inc. v. Grant, 257 Iowa 697, 134 N.W.2d 569 (1965); *Hampton Farmers Co-Op v. Fehd*, 257 Iowa 555, 133 N.W.2d 862 (1965).

Surely BANK could "step in" to complete vendee's contract and foreclose, if it thought such action necessary to prevent a forfeiture.

That's why, usually, a financing BANK will take a vendee/mortgagor's assignment of his contract with vendor. BANK stands in vendee's shoes.

18. Executor's Deed to LLC Rather than Beneficiaries Under Will.

FACTS: Are there any problems or benefits - both from an abstracting perspective and spousal rights - if an Executor of an Estate transfers real estate directly to an LLC created and owned by the beneficiaries, rather than to the beneficiaries directly? I assume it's being done for ease and less recording fees. There will be a petition requesting Court approval and a resulting Order in the Probate proceeding. There are a number of beneficiaries; each of them and their spouses would otherwise have to deed their interest to the LLC.

QUESTION:

RESPONSE(S): In essence you are "jumping titles". I think you need to have each beneficiary sign an Assignment of their interest in the real estate filed in the probate matter as well as the Petition and Order.

Then you still need Quit Claim Deeds from each spouse to terminate their spousal rights claim.

* * * * *

In my opinion the Will vests title in the beneficiaries, and the Court Officer Deed is only a muniment of title (contrary to the terms of the Will). The beneficiaries' right to contest would be cut off by the court approval after notice to them; but my concern is that title in the LLC would still be subject to spousal rights of the beneficiaries' spouses, unless subsequently waived.

19. Life Estates and LLC's.

FACTS: Property was inherited as follows: 1/2 to A, and 1/2 Life Estate to B, Remainder to C (B's child).

Upon receiving title in this manner, B & C signed a deed conveying their 1/2 interest to an LLC, and the LLC issued membership units to B. (The other 1/2 is A).

B died.

QUESTION: Is an Affidavit of Death Terminating Life Estate necessary in this situation? Or do you just transfer the membership units internally?

RESPONSE(S): There is nothing to transfer as it has already been transferred to the LLC.

20. LLC Real Estate Sale.

FACTS: A property is in an LLC where the husband owns the LLC 100% as a member.

QUESTION: IF he is married does the wife need to sign to sell the real estate or is only the member required to sign to sell the real estate?

RESPONSE(S): The Operating Agreement will control, I believe. If A is the Sole Member of his LLC, he won't need his wife to sign anything, as the "Seller" is not a married person or a person at all, but a corporate entity.

On the other hand, if the LLC has other Members (whether or not a Member is married to him), he may need one or more Members to sign off, or to swear and affirm he has the ability to sell the property on behalf of the LLC.

Look carefully to the Operating Agreement for your process, there could be other restrictions or conditions.

* * * * *

Husband's signature, only, should suffice.
[Review Iowa Code section 489.407A, and the LLC Articles of Organization/bylaws for provisions addressing property transfers.]

Can find no case law on the point.
Historically deed signatures by partners in partnerships have been deemed sufficient w/o spousal signatures.
Indeed, sufficient even without signatures of all partners!
See dicta in *Bartemeier v. Central Nat. Fire Ins. Co.*, 180 Iowa 354, 160 N.W. 24 (1916), quoting
Rock Island Plow Co. v. Breese, 83 Iowa 553, 49 N.W. 1026 (1891):
"It may be [true] that it [partnership deed] was a valid instrument without the signature of both members of the partnership...."
[No hint of spousal duty to sign away statutory share.]

Recite that H is the sole LLC member, with all authority to convey LLC property.

* * * * *

No marital rights in LLC. Title Standard 15.1

Unless organizational or governance documents are filed of record and require something different, you don't need any showing anymore as to who has authority to sign and are able to assume the person signing has authority. Title Standard 15.3.

21. Partition Actions Where Real Estate is Owned by an Entity.

FACTS: I attended an excellent presentation today by Pat Dillon at the ISU Center for Agricultural Law and Taxation's Agricultural Law Seminar. One of the things that surfaced in Pat's program was the fact that partition under Iowa Code Ch. 651 is only available to individual owners. Thus, an important tool is not available once the heirs transfer the farm into a corporation or limited liability company. My question is whether we like the status quo.

On a different note, Pat pondered whether partition actions should require mediation as they are in the dissolution of marriage context. Also, an interesting idea.

QUESTION: Should we change it? I deeply admire the work Jim Nervig did with partition. It was a tremendous improvement. Can (should) it be expanded to include entity ownership?

RESPONSE(S): I have said that probate/trusts/etc. are a divorce among your kids when you are gone!

I just encountered this issue where 4 parties own unequal shares in an LLC, and there are many limits on voting, dissolution of company and disposition of assets. So, maybe we should do some sort of study into the viability of a partition type action for entities.

* * * * *

What about revocable living trusts? Can they avail remedies under Iowa Code Ch. 651?

* * * * *

If we expand on it, a partition remedy is a no-fault divorce. The current LLC/corporate remedies are like fault-based divorce. The grounds of the fault-based divorce are economic misconduct by those in control of the entity.

I think that there are good reasons to let the operating agreement and the chapter on LLCs govern the remedies that are available to LLC members. Most LLC operating agreements will include a provision that waives the right to seek partition. I don't think that it would generally be preferable to be able to do an end run around that operating agreement to seek partition. Whether the remedies available to a member should be broader than what the current LLC statute contemplates is a different question, and a good one. It may be that the remedies

available to a member need to be broadened. But I think that the remedies should be in the LLC chapter, rather than in an expanded partition chapter.

I think that the same analysis would hold true for corporate entities, probably even more so than for LLCs, because the corporate remedies are better developed than the LLC ones.

* * * * *

On occasion, an individual desires to eliminate partition as an option. For example, keeping the century family farm in the family. An LLC does this unless the majority of the members agree to the contrary. The Operating Agreement can be structured to provide for a super majority to sell real estate.

* * * * *

I just received one LLC today that has this issue and I am reviewing those provisions. I have seen super majority and unanimous provisions in LLC's and Corps. So, maybe best to leave to those Chapters of the Code.

22. Foreclosure.

FACTS:

09/27/22 – In Rem Foreclosure petition filed and entered on Lis Pendens Index.
10/08/22 – Borrower personally served with Original Notice
11/26/22 – Borrower died (no probate estate appears to have been opened, but obituary lists identifiable heir)
12/28/22 – Notice of Intent to Seek Default mailed to Borrower by non-party, with their name listed in the caption as plaintiff
04/25/23 – Assignment of mortgage to non-party who mailed the notice (recorded 5/2/23, abstractor notes there is no power of attorney of record supporting the assignment by an agent)
05/24/23 – Non-party who mailed the notice files Motion to Substitute Plaintiff (order substituting entered 5/26/23)
06/22/23 – App for Default Judgment filed (includes affidavit that the decedent borrower is not in the military, to the best of plaintiff's attorney's knowledge)
06/22/23 – Order taking no action, but indicating the matter would be dismissed if certain deficiencies weren't met within 7 days
06/30/23 – Order of Dismissal without prejudice
07/18/23 – Motion to set aside dismissal
08/02/23 – Order setting aside dismissal
08/15/23 – Application for Default Judgment (again includes affidavit that the decedent borrower is not in the military, to the best of their knowledge)
08/16/23 – Foreclosure Decree entered
10/13/23 – Notice of Sale posted at property – return filed indicates "Vacant, Deceased"
12/05/23 – Sheriff's Sale occurred and deed issued to non-party bidder and current titleholder

QUESTION:

1. I think Iowa Code Section 617.11(1) could be read broadly enough to cut off the interests of heirs/beneficiaries of the borrower. Thoughts?
2. If not, is the foreclosure otherwise defective because neither a personal representative nor heirs/beneficiaries were substituted for the deceased defendant and the State was not added as a defendant? (Title Standard 7.8)
3. If neither of the first two, does the notice of intent to seek default fail because it was mailed by a non-party with an incorrect caption?
4. If the Court substitutes a mortgagee/plaintiff based on an assignment, do I need to worry that the assignment was given by an agent under a power of attorney that is not of record?

RESPONSE(S): I think the foreclosure you describe was and is defective. Severely so. Betting it was done by some Secondary Market bucket shop...

1. No.
2. Yes. Why would the State be added as defendant? Did a Medicaid claim exist?
3. Probably. IRCP 1.972(3) Notice... d. *Form of notice.* The notice required by rule 1.972(2) **shall be substantially** as set forth in rule 1.901 Form 10.

1.901 Form 10's first line below the Court title is a blank, below which appears "Plaintiff(s)."
Entering a non-party's name on the "Plaintiff" line certainly varies "substantially" from the caption on the petition (and may be fraud on the court?).
Without a prior motion to substitute plaintiff, non-party's name in the caption gives non-party no interest and no standing to take any action at all.
See, e.g., S.E.C. v. Custable, 796 F.3d 653 (7th Cir. 2015) (non-party Hare denied right to appeal).
IMHO = judgment at least voidable if not outright void. Looks as if the Court in June 2023 smelled some rat...

4. Yes, probably. Note: sometimes Google searches can dredge up POAs granted by a mortgagee to the agent, filed in other cases, even in other states.

Certified copies of that POA grant may suffice to clear the record in Iowa. Or an Iowa Code section 558.8 Affidavit Explanatory of Title might serve.

Iowa Code section 633.350 and .351 confirm that Borrower's heirs succeeded to his title immediately upon Borrower's death.
The "identifiable heir" listed in obituary is not shown to have been impleaded as substitute defendant or to have been personally served.
Don't rely upon the broad-gauge language of Iowa Code section 617.11 to substitute for good personal service upon an identifiable ***property owner***.
Where and to whom was that Notice of Intent to take default mailed?
To dead Borrower at his old earthly address? Did it not return undeliverable?

Flock v. Wyatt, 49 Iowa 466 (1878):
"IV. William Wyatt [a defendant] died after the case was submitted. The appellants insist that such being the fact no valid decree could be entered. The entry of decree, as of a date subsequent to the death of one of the defendants, we think is irregular. It should have been entered as of the date of submission, or at any rate as of a date prior to Wyatt's death. [Cause remanded "only for the correction of the irregularity herein pointed out."]

Carnes v. Crandall, 10 Iowa 377 (1860):
Judgment entry against a dead defendant revived, because the testimony that he died before the judgment entry was hearsay...

Welch v. Battern, 47 Iowa 147 (1877):
"At common law an execution cannot be issued upon a judgment after the decease of the defendant therein, and sales of lands and deeds made in pursuance thereof, upon executions so issued, are void. [Citations ---incl. U.S. Supreme Court]."
Iowa Code section 626.88 codifies the common law, although it limits the effect to a defendant against whom judgment was entered during life.
Seems to me that the common law language also applies to any defendant dying before judgment entry.
Welch holding followed in
Boyle v. Maroney, 73 Iowa 70, 35 N.W. 145, 5 Am.St.Rep. 657 (1887)
Powell v. Grewing, 562 N.W.2d 761 (Iowa 1997)

23. Foreclosure.

FACTS: I am examining an abstract for ag land which contains a foreclosure. It was filed as a foreclosure without redemption, even though this is clearly agricultural land. The Sheriff's Deed was filed 9 years ago, so the 10-year statute of limitations has not yet run. The owners did file a waiver of the right of first refusal but that is not a waiver of redemption rights they may have had.

QUESTION: Is this a valid foreclosure or do we have issues?

RESPONSE(S): If it was a judicial foreclosure, any issues of this nature are probably barred by *res judicata,* despite the apparent failure of the foreclosing plaintiff to follow the law.

* * * * *

I would add that I gather the tract is being sold by a bona fide purchaser for value, downstream from the foreclosure. Any claim for defective foreclosure procedures would also be barred by waiver and/or laches.

24. Foreclosure Notice Objection.

FACTS: I would appreciate any perspective on the following. I reviewed an abstract and a subsequent examiner has raised an objection we are discussing. If I missed an issue that requires correction, I would like to learn and address it accordingly.

-A foreclosure action was initiated, and all interested parties, including junior lien holders, were named and served.
-One defendant, who had an interest in the property, was served by publication after personal service was attempted.
-The foreclosure process concluded with an original decree (March 2022) that barred all claims, a completed sheriff's sale (2022), and a supplemental decree (September 2023) addressing junior interests.
-The defendant was dismissed between the original decree and supplementary decree in July 2023.
-This defendant later filed an affidavit (July 2023) acknowledging the foreclosure decree and completed sheriff's sale.
-The supplemental decree validated the original decree, confirming that the sheriff's sale shall stand and all actions extinguished any remaining claims.

The examining attorney is objecting and requiring either service of this defendant or a quit claim deed from the defendant due to an improper dismissal of said defendant.

QUESTION:
• Was the dismissal of the defendant improper and the foreclosure should be reopened to serve the defendant a second time?
•. Under Title Standard 1.1, would this defendant have standing to file a claim, given the previous service by publication, original decree and filed affidavit acknowledging notice of
proceedings?
• Any case law that would preclude said defendant from bringing a claim, thus resolving outstanding interest by current examiner?

RESPONSE(S): I don't know why there was a dismissal of the subject defendant after the decree. I can't conjure a reason to dismiss a party post decree and sheriff sale. The action when the decree was entered was at that point in time conclusive as to his interest in the real estate. His interest in the real estate was foreclosed. I would imagine that there was not a dismissal of the judgment against him. Merely dismissal of him from the post decree goings on between plaintiff and other defendants. He didn't have a dog in that hunt, and didn't need to be included any further.

Be that as it may, he was dismissed.
Yet he filed an affidavit acknowledging the decree and sale. Remember the original decree foreclosed his interest.
I would equate this affidavit acknowledging a decree that foreclosed his interest in the real estate, and a sale which extinguished his equity of redemption, to be in effect his acknowledgement of his interest in the real estate terminated and akin to a quit claim deed (saying I don't know what interest I had but whatever interest I did have I acknowledge the sale purchaser now has it).

Sure it would be tidy to get an actual quit claim deed on top of the acknowledgment. But is it necessary? I don't think so.
Is it necessary to serve him again for an action that was conclusive as to foreclosing his interest in the real estate? I don't think so.

* * * * *

1. A plaintiff or the court might dismiss a defendant as a party to an action.

But if the court has already foreclosed his interest—then what's the point of that?

2. No. In my opinion a party whose interest is foreclosed (and not appealed) has no standing to file any subsequent claim.
3. Maybe—*National Life Ins. Co. v. Olmstead*, 52 Iowa 354, 3 N.W. 113 (1878) ?

"The plaintiff accepts the personal responsibility of the Olmsteads, and makes no personal demand against the defendant Rivers.
The defendant having sold the mortgaged premises subject to the mortgage, and *being released from personal responsibility for any portion of the judgment* which may remain unsatisfied after exhausting the mortgaged premises, *can in no way be affected* by the amount of the recovery, *and has no interest in the matter which will authorize him to plead any facts* in reduction of the amount of recovery. *He stands as a mere stranger to the proceedings.*" (emphasis added)

* * * * *

You don't dismiss a judgment; if you are the plaintiff, you file a satisfaction; or in case of a defendant, timely move to set it aside as against your interest.

But why was our defendant dismissed when they reopened the action? If they dismissed it as against him, the new decree would not affect any interest he may have had.

I would want to review the language where our defendant "acknowledged" the decree. What was its purpose? If a decree was properly entered, it does not depend for its validity on the subsequent consent (or lack of consent) of a party or former party.

If you would send me PDFs of the relevant documents, I would be happy to comment further, either on or off the general record.

25. Iowa Code Section 428A.2 and the Need for Declaration of Value/Groundwater Hazard Statement (DOV/GWHS).

FACTS: I was called by a local realtor about an issue that is arising in our area: when an estate sells real estate during the probate proceedings. We think that exemption (3) "Any Will" would mean a distribution through probate; not a sale to any party. However, some transactions we have seen are using this exemption 3 for sales of property. New subsection/tax exemption 22 states "Deeds transferring distributions of assets to beneficiaries of a trust when conveyed without consideration", but currently still requires a DOV (I believe part of the IDOR discussion is going to include a proposal to exempt 22 from filing a DOV).

QUESTION: Is the "Any Will" language contemplated to be that much broader than the trust language? Or is it limited to just those distributions through probate with a will; not an actual sale.

RESPONSE(S):

26. Underground LP Tank.

FACTS: This is a scenario I have not seen before: Acreage being sold has an underground LP tank. It will be disclosed on the Groundwater Hazard Statement. Just wondering if there are any other legal requirements I might not be aware of. I didn't see anything in my research.

QUESTION: If anyone has had a closing with a property with an underground LP tank I would be curious to hear how you handled that.

RESPONSE(S):

27. Expungement of a Civil Judgment; Discharge Judgments as Liens.

FACTS: In November 2014, a judgment for $5,000 was entered in a small claims action. The judgment was subsequently discharged in bankruptcy. In 2022, an attorney made application to the court for expungement of the judgment (not the lien, but the judgment itself). The Court granted the application on the same day. (There is no evidence in the abstract of notice to the plaintiff -- perhaps a due process issue? I'm not sure how to think about the interests of the plaintiff once the judgment is discharged in bankruptcy. More on that shortly.)

Part of the oddness of this situation is the anomaly that we have in Iowa law that judgments discharged in bankruptcy are no longer enforceable, but yet remain liens on real estate that still need to be discharged. According to Madsen, Marshall's Iowa Title Opinions and Standards § 21.1, "[t]he effect of bankruptcy upon a judgment lien is that in the event the bankrupt is discharged he is relieved only of personal liability to all provable debts but the lien remains." I have never understood this. (It seems a bit metaphysical that a judgment discharged in bankruptcy can still be a lien against real estate.) The ISBA Real Estate Section Council recently elected not to go forward with a proposal to amend Iowa Code § 624.23(1) as it appears to be a minor issue, particularly with the Notice of Homestead available. I agreed with this decision. Thus, I recommend that bankruptcy attorneys should seek a discharge of the lien as well as the judgment. Again, where the property is the homestead, we have the Notice of Homestead and Demand to Levy to address judgment liens.

In any case, the judgment at issue is nearly ten years old and I waived the objection pursuant to Title Standard 1.1. However, if the judgment were only five years old and we had the same Order of expungement, we then have to consider the effect of such an Order to expunge a judgment.

QUESTION: I have not seen an expungement of a civil judgment before. Assume this is non-homestead property, and set aside for a moment the fact that this judgment expires as a lien in a few months, how should we think about the expungement of a civil judgment?

It is my understanding that Iowa law provides only for expungement of criminal cases that resulted in acquittal or dismissal, and some misdemeanor charges. Thus, is this Order legal? If so, then does the Order have the effect of voiding the resulting judgment lien? I presume so. If the Order is not legal, i.e., without legal effect, I presume the judgment lien remains as if the Order had never been entered.

RESPONSE(S): The rules of civil procedure (Rule 1.1016) provide a means of discharging a judgment on motion. I would assume that there are cases under this rule, and I would be very surprised if these cases would allow an expungement *ex parte.* Don't know the answer to your question, but I think a review of cases under that rule would be a good place to start.

* * * * *

I too had never heard of nor seen any such application.
For some four decades of law practice I have been aware that a discharged judgment debt is not collectible.
But it does not actually die… Nor—pertinently—does its ten-year lien under Iowa Code section 624.23.
(Unless the property was debtor's homestead, in which case the lien never attached.)
No bankruptcy-discharged Iowa judgment may be enforced by any legal process.
But judgments may not be "vacated" except in accord with Iowa Rule of Civil Procedure 1.1013. Not done here.
Were I to guess—
Attorney in the example hoped to somehow void the ten year lien by "vacating" the underlying judgment.
IMHO his effort is impermissible and will not serve.

I do agree with the Title Standard 1.1 objection waiver.
With only three months to go until 10 year expiration likely I'd do the same.

Funny-peculiar coincidence! I have very recently encountered this same issue.
Only last week the Fayette County Clerk of Court received a document of the sort described herein. Three, in fact.
Attorney for Defendant (named in three separate 2018 small claims) filed with the Clerk a "Notice".
The full title: "Notice of Discharge of Bankruptcy Case." The Notice was filed in each of the three cases.
The Attorney attached to the Notices copies of the U.S. Bankruptcy Court Northern District of Iowa

1) Certificate of Notice listing Defendant's creditors and showing name(s) of the Plaintiff(s).
2) Judge Collins' Order of Discharge, and
3) Official Form 318 explaining for debtors the effects of discharge.

I, as Fayette County Magistrate, had the Notice land in my Work In Progress in-box.
What to do, I asked myself.

First point I noted: the Notice asked for NO relief. It merely informed the record.
Which is fine: I concluded there is no relief for me to grant. Judge Collins already gave all relief necessary.

Second point I considered: any Iowa Code Section 624.23 judgment lien in existence prior to discharge remains in effect.
But no new lien can attach to any real property acquired after Debtor's 2018's bankruptcy discharge.

So for each of the three cases I filed a short "Memorandum Order" acknowledging the Notice filing.
For benefit of those searching the records (including any abstracters) my Memorandum Order stated:

1. Judgment entered in this case _____, 2018 is rendered unenforceable by Title 11 U.S. Code.

No collection action shall be taken thereon.

2. Clerk shall provide notice to the parties.

* * * * *

I'll weigh in as a bankruptcy practitioner who (by necessity) dabbles in Iowa real estate law. It's axiomatic that a bankruptcy discharges a debtor's *in personam* liability but not the *in rem* liability of any of the debtor's property. The only exceptions are stripping off fully unsecured liens in a Chapter 13 (most commonly) or Chapter 11 or 12, and lien avoidance (see the footnote).[1] Then there's Iowa Code § 624.23(3), which prevents judicial liens for discharged debts from attaching to after-acquired property. This does not affect any existing liens.

I'll take issue with one point of the writer's write-up: his contention that a lien for a discharged debt cannot be enforced. This is not how bankruptcy law works. True, suing the debtor *in personam* for the debt would violate the discharge injunction and generally be a Bad Idea, but the lien survives discharge and can be enforced. The creditor can bring an *in rem* action to get a special execution to enforce its lien. Yes, this would entail notice to the debtor as the property owner, but notifying a debtor of an *in rem* action against their property is not a problem. A contrary result would be unsustainable—a debtor's *in personam* liability for a mortgage (even one that is fully secured and therefore not subject to lien stripping) is discharged in a Chapter 7, barring a reaffirmation. If the mortgagee could not foreclose its mortgage it would have no recourse and the debtor would get a free property.

The interesting question is whether the judgment creditor could get a new judgment lien, subject to Iowa Code § 614.3's restrictions. *Whitters v. Neal*, 603 N.W.2d 622 (Iowa 1999) says the only way to "continue" a judgment lien is to file a new action on the judgment and thereby get a new judgment with a new judgment lien. (It also reiterates that enforcing a judgment lien and suing on a judgment are independent remedies.) I think that action would have to be "Creditor v. Defendant," since a judgment is treated as a contract at law, but I think such an action would violate the discharge injunction. If a judgment gives a creditor three main "powers" or "rights"—actionability (Iowa Code § 614.1(6)),

executability (Iowa Code § 614.1(1)–(2)), and lienability (Iowa Code § 624.23(1))—I think a bankruptcy discharge strips actionability (the creditor can't file a new lawsuit on its old judgment to get a new judgment, see Chader v. Wilkins, 284 N.W. 183 (Iowa 1939) for an example of a creditor doing that) and executability (the creditor can't get a general execution based on its judgment), and Iowa Code § 624.23(3) cripples lienability—no newly acquired property is subject to the judgment lien. The only remnant of the creditor's rights based on the judgment is its right to enforce any existing liens, and if that right becomes time-barred under state law then the creditor is out of luck.

This prompts one more question I'll pose for discussion: what if a creditor with a judgment gets an execution and levies on real property not subject to the judgment lien? That creditor would have an execution lien from the date of the execution. If after the execution the debtor files bankruptcy and discharges the *in personam* liability for the judgment, how long does the creditor have to enforce its execution lien? The answer is clear for a judgment lien, but I'm not so sure for an execution lien. (I also assume that a pre-judgment attachment under Iowa Code Chapter 639 would have the same effect as an execution lien, see Iowa Code § 639.38, granting the attaching plaintiff a lien on the defendant's interest in the attached property.)

I'm afraid I don't have anything to say about the expungement question. If the lien expires then it's a moot point (and I've found nothing that would suggest a bankruptcy tolls Iowa Code § 624.23(1)'s 10-year period, *contra* Iowa Code § 614.13 (tolling Iowa Code Chapter 614's statutes of limitations during the automatic stay) *and* 11 U.S.C. § 108(c) (ensuring creditors have at least 30 days after the automatic stay expires to file or continue *actions* to enforce their claims, even if the statute of limitations would have run in the interim).

1. A bankruptcy debtor can avoid judicial lien on exempt property under the 11 U.S.C. § 522(f), but for Iowa real property that would only apply if (a) somehow a judicial lien attached to a homestead (perhaps a lien that pre-dates the homestead's ascension to that status and survived the ascension) or (b) if there were a judicial lien on a burial plot exempt under Iowa Code § 627.4.

* * * * *

I'll take a stab at answering your "interesting question" and "one more question."

On the "interesting question" I agree with your answer.
No new suit may be had against the property owner/debtor, due to the personal nature of suing him.
Such *in personam* action would plainly violate the debtor's discharge.

On the "one more question"— **in theory** an execution lien has no expiration date.

But by implication expiration date of the judgment caps the maximum time for execution liens.

626.2 Within what time – to what counties.
Executions may issue at any time before the judgment is barred by the statute of limitations...

626.33 Lien – equitable proceeding – receiver.
"The plaintiff shall, from the time such property is so levied on, shall have a lien on
the interest of the defendant therein, and may commence an action by equitable proceedings to ascertain the nature and extent of such interest and to enforce the lien...

Again, the personal nature of suing a discharged debtor does bar such a later action.

Even if a suit is not required, and the execution is in rem only, I think laches and estoppel
will apply.

Stahl v. Roost, 34 Iowa 475 (1872) at least obliquely addresses the eariler point. The
Court noted the difference between (current sections) 624.23 and 626.33.
The Court said:
"Our statute makes a judgment a lien upon real estate within the county for ten years from its date(Rev., S4109); but a judgment continues in force, and is not barred by the statute of limitations until the lapse of twenty years. S2740. And it is also provided that an execution may issue at any time before the judgment is barred. S3246. While, in an ordinary judgment, the lien ceases after ten years, yet the right to issue execution continues for twenty years; but an **execution issued after the ten years would only operate (as at common law)** as a lien from the date of the levy. The sale under the execution would be as effectual to pass the title of the judgment defendant as if it had been issued before
the expiration of the ten years."

Extreme end for execution liens, IMHO: ten years following the expiration of the judgment lien.
That's a hard date. See Iowa Code sections 614.1(5), 626.2, and Stahl v. Roost.
The permissive grant of equitable action to determine property interest suggests, implicitly, the statute of limitations on actions should serve as a bar.

Common law suggests that either *no execution lien would attach to the land,* or *any lien attaching due to execution should expire after "a year and a day."*
Three hundred sixty-seven days seems a good measure for onset of laches against execution!

Marshall v. McLean, 3 G.Greene 363 (Iowa 1852) speaks of the origins of what's now 624.23.
"The legislature, by act approved January 19, 1846, limited the liens of judgment to ten years. ...[P]rior to its becoming a law, the lien was unlimited, and hence mischievous in its consequences and required a remedy—*vide* similar decision in *Woods v. Mains*, 1 G.
Greene, 275. Under this statute [judgment creditors] had a right anytime within ten years from the date of judgment, to assert their lien. The judgment lost none of its efficacy by lying dormant. ...**At common law, land in general was not liable for debt, nor could any execution issue on a judgment, in a personal action, after a year and a day**. 2 Bac., 728.
The Statute of West. 2, 13 Edw. I. authorized the *elegit*, and thus made land in England liable for debt from the time of the judgment. 3 Bl[ackstone's] Com[mentaries]., 418.
It also gave the *scire facias* in personal actions, by which, **after a year and a day**, the judgment might be revived **as in real actions at common law**. Co[ke Upon] Litt[leton]., 290."
[Emphasis added. The Court goes on to discuss an 1802 New York precedent on this point.]

So I conclude the execution lien cannot last past 20 years from date of the judgment entry.
Short of that cap, maybe it's alive for "a year and a day".

28. Judgment/Lien in Tax Sale.

FACTS: Abstract shows the following:

- Title to Real Estate Parcel 1 in A;
- Foreclosure Decree against A by Creditor Mortgagee (Creditor) and Parcel 2; Abstract also states "It is further Ordered, Adjudged and Decreed that said judgment be and the same is hereby declared to be a lien upon [Parcel 1]" in 2018;
    - Abstractor Note: "Said real estate is not our caption, however, individual judgment has been entered against" A;
- Tax Sale in 2021 and Notice of Right to Redeem in 2023; Affidavit does not list the Creditor from the foreclosure stated above, nor give them notice.

QUESTION: Would creditor be considered "any mortgagee having a lien upon the parcel" under Iowa Code Section 447.9(2) requiring notice?

RESPONSE(S): I would think that you need to pull the foreclosure file and see what happened. It definitely looks a bit irregular.

Having done that, and assuming that you want to get rid of the judgment lien, you should consider filing a motion under Court Rule 1.1016 or, if homestead, under Iowa Code Sec. 624.23.

* * * * *

It is very strange. The abstract states: Recites In Rem judgment but also says judgment against Defendants and real estate; and then specifically states that the Court declares the judgment is a lien against the property I am reviewing the abstract for; even though there was no mortgage there and the foreclosure is based on a mortgage on another property.

29. Judgment or Lien Search Against Contract Vendor.

FACTS: I have a title examiner objecting to an abstract because it doesn't include a judgment search against a contract vendor. My understanding is that neither judgments, nor state or federal tax liens attach to a vendor's interest.

The situation is the vendor sold on contract to the vendee in 2018. The abstract was continued to June 2023 and did show a search against the contract vendor (who was in title prior to the 2018 sale). The abstract continuation from June 2023 until February 2025 only included a search against the vendee.

I think the title examiner is wrong and that the vendor does not need to be searched in the last continuation.

QUESTION: Do you agree or disagree with me?

RESPONSE(S): I found some guidance on this topic:

ILTA Blue Book (abstractor instructions) state: "VENDORS IN CONTRACT: Terminate the Lien search on vendors on the date of the recording of the contract."

ISBA Title Standards: In the Comment (first paragraph) to *Standard:4.13 Deceased Contract Vendor* there is an explanation of how the vendor search is addressed from a legal perspective to get to that conclusion.

IOWA CODE § 656.9 (2013).

Comment:

The execution and delivery of a contract for the sale of real estate works an equitable conversion as to ownership of the real estate. Ownership of the real estate (equitable title) passes to the vendee, while the vendor retains a mere personal property interest (legal title) to the extent of and as security for the unpaid balance under the contract. As such, it follows that liens suffered or permitted by the vendee after the execution and delivery of the contract constitute liens against the real estate, while liens suffered or permitted by the vendor after the execution and delivery of the do not constitute liens against the real estate.

When a vendor has deposited a deed in completion of a contract with a third party

There could be instances where there was a "special request" to do a search on a contract vendor for some reason important to the parties. I'd bet the abstractor would accommodate – perhaps that is what you are seeing in your abstract. Hard to say.

* * * * *

I generally agree with you.

But on reflection I think I see grounds for your examiner's caution.
By entering the contract the vendor transfers ownership of *__real estate__*
He retains bare legal title as security for *__payment__* of the contract.

What if vendor submits his vendor's interests as security for his own payment of some other obligation?
Then something goes south for the vendor's outside deal, and his creditor sues everyone in sight.
Performing vendee under the contract *__might__* get dragged into his vendor's litigation.
It's happened:
Briley v. Madrid Improvement Co., 255 Iowa 388, 122 N.W. 824 (1963)
Potter v. Oster, 426 N.W.2d 148 (Iowa 1988)

30. FED, Notice of Termination, Notice to Quit.

FACTS: Client had an FED hearing based on a 30-day notice of termination of tenancy being served, but tenant remained in the property. The FED was dismissed because a 3 Day Notice to Quit was not also served.

QUESTION: Does the client need to serve a new 30-day notice of termination of tenancy and wait 30 more days? Or can a 3 Day Notice to Quit be served at this time with the new FED petition being filed in 7 days?

RESPONSE(S): The 30 days peaceable possession (?) has expired. To be safe, start over with 30 day termination ending on a date consistent with the lease (i.e. end of month if rent due on 1st). Then, serve straight 3 day when that 30 expires, then FED. And be sure to count your service days correct, particularly if the notice is posted. Our Judges are throwing the cases out if the days are not correct.

* * * * *

Timing might be tricky because they'll need to post the 30-day notice today. Don't forget about the "extra" 4 days for posted notice to become effective. For example, posting on the 30th would mean it is effective on the 4th of October - which doesn't give 30-days' notice.

* * * * *

"The landlord or the tenant may terminate a month-to-month tenancy by a written notice given to the other at least thirty days prior to the periodic rental date specified in the notice." Iowa Code Section 562A.34(2).
"If the tenant remains in possession without the landlord's consent after . . . termination, the landlord may bring an action for possession." Iowa Code Section 562A.34(4).
"A summary remedy for forcible entry and detainer is allowable: . . . Where the lessee holds over after the termination of the lease." Iowa Code Section 648.1(2).
Before action can be brought under . . . [Section 648.1(2)], three days' notice to quit must be given to the defendant in writing. Iowa Code Section 648.3(1).
Assuming that rent is due on the first of the month this means: Today, I could serve my tenant a thirty day notice declaring that the month-to-month tenancy will end on November 30. As long as the notice is served on or before October 31, November 30 is the termination date.
If the tenant does not move out on November 30, then I must serve a Three Day Notice to Quit on or after December 1 before filing the Forcible Entry and Detainer. The thirty day peaceable possession bar does not begin until December 1 because the tenant's possession was not unlawful until December 1.

31. Tenant Eviction.

FACTS: Tenant is getting evicted. Month to month tenancy. No written lease.

Tenant had placed onto the property a concrete pad, and on that concrete pad erected a garage.

Tenant has found a new property, and has built a new concrete pad on the new property. Tenant is now stating that he is going to remove the garage from my client's property. This will not be able to be done without at least some damage to my clients property.

QUESTION: Is tenant entitled to the garage?

RESPONSE(S): No. Its now a fixture appurtenant.

* * * * *

If you're wanting the caselaw, check *First Trust & Savings Bank of Moville, Iowa v. Guthridge*, 445 N.W.2d 401, 4025 (Iowa Ct. App. 1989). It outlines a three-part test to determine when personal property becomes a fixture.

* * * * *

I would agree, and taking the garage after eviction would be trespass . . . unless tenant has an equitable estoppel argument.

* * * * *

If there wasn't a severance agreement, I would say it was a leasehold improvement that inures to the benefit of the real estate and it stays.

32. Termination of Rental Agreement Where There is a Government Program.

FACTS: Client is a Landlord that has certain apartments in a government program where the State/Federal pays a substantial portion of the rent and tenant pays a small portion. Tenant is refusing to pay the small portion

QUESTION: . Strategy wise, if the government payments are automatically deposited into LL's account, would this be considered a waiver by accepting partial payment after a notice of non-payment is given? Is there a good way to stop this or anything specific to put in the notice? Any advice would be appreciated.

RESPONSE(S): Yes, accepting the government portion is a "partial payment," so the landlord wants to make sure to return any partial payment, or better yet, change their portal/payment settings to reject the payment at the start. If the "government program" you're referring to is Section 8, the landlord will need to give additional notice per HUD to terminate; I think a 30-day notice of termination of tenancy.

Depending on when the lease terminates, a 30-day termination of tenancy may be a more streamlined option.

* * * * *

In my humble opinion: Tenant's failure to pay his nominal contribution still counts as non-payment violation.

I read your situation this way: ***TWO*** separate (though somewhat interdependent) contracts exist.

1) Standard Landlord-Tenant agreement setting rent for T to pay to L: $xxx.oo per month.
2) Separate Landlord-Gummint subsidy contract whereby agency agrees to pay part of L's rent debt to T.

By 2d contract L agrees to accept from a Gummint agency $xx.oo per month in taxpayer moneys.
L shall apply taxpayers' $xx.oo against the $xxx.oo amount fixed in 1st contract.
On your facts: L did not receive the ***full amount*** of rent which T contracted to pay in return for occupancy.
I don't see L's acceptance of Gummint welfare payment of part of T's rent debt as L waiving the whole debt.

I reached the above conclusions based upon my reading of case documents coming before me as trial evidence.

See case discussion below.

First, a warning about the Feds (HUD, FHA, etc):
The Gummint agency will set all sorts of rules governing whether and how L may oust T for nonpayment.
Those will appear in Contract #2, and possibly also in some "Handbook" or similar agency rule collection.
Perhaps those rules contain restrictions on tenant ouster for nonpayment. FIND and REVIEW them!
Note: Congress attempted to prevent tenant ousters, in 2020. 15 U.S.C. section 9058. [CARES Act].

Next, a practice pointer about FEDs:
Carefully read *Des Moines RHF Housing, Inc. v. Spencer*, 919 N.W.2d 768 (Iowa App. 2018) (Table).
RHF Housing was a FED case involving rent subsidy, and Tenant's nonpayment of his portion.
Be sure to (1) allege the nonpayment of rent when due; and
(2) cast your pleadings, and present the facts of your case, to qualify under Iowa Code Chapter 648.

A dispute involving a rent subsidy came before me (sitting as judicial magistrate) in a couple of trials last Fall.
Over-simplifying a bit: Two connected cases rose, between the same parties.
First, T sued L for lack of habitability in subsidized apartment (alleged bedbugs). [This one's now on appeal.]
Next, L sued T for FED due to non-payment of T's share amount of October rent and no rent thereafter.
In the FED case, T argued that he was protected from ouster by federal and state law.
He cited CARES Act, FHA regs [7 CFR section 3560.152, .159 and .160], and Iowa Code section 648.18.
[T represented himself: I guessed that he must have consulted with a lawyer...]

I found for the landlord in both cases, including the FED second case.
Following the habitability small claim I found that, inter alia:
FHA had terminated its subsidy agreement (2d contract) but L/T (1st) contract remained in force.
After the FED trial I relevantly found/concluded:

a. After L properly terminated L/T (1st) contract, T became merely a tenant "holding over".
b. T's holdover possession was not "peaceable"—T had sued L over the apartment. Iowa Code Section 648.18 not satisfied.
c. Cited CFR sections either didn't apply or L had satisfied their requirements.

d. 15 U.S. Code section 9058(c) was intended to apply only to the 2020 emergency existing at its passage.

Alabama Ass'n of Realtors v. Dept. of Health and Human Services, 141 S.Ct. 2485 (2021).

33. Can I Request Multiple Months' Rent in Commercial Eviction?

FACTS: A client has asked me to do a commercial lease eviction based on nonpayment of rent. Multiple months have been unpaid. Their prior attorney asked for multiple months' rent to be paid in the Notice of Nonpayment of Rent and Notice to Quit and an order was granted for an FED.

QUESTION: Is it permissible to ask for more than one month of unpaid rent? Or could the action get dismissed saying that the notice is invalid on the basis that Iowa Code Section 648.18 provides, "Thirty days peaceable possession with the knowledge of the plaintiff after the cause of action accrues is a bar to this proceeding"? Meaning, if 30 days goes by without asking for that month of rent is the right to collect it now waived?

I don't want to leave money uncollected for my clients, but don't want to spend a lot of money to get the FED dismissed on a technical error.

RESPONSE(S): Not necessarily. Did the Notice to Quit break down each month's obligation? So that the most recent month's rent fell due within the 30 days?
If yes, then I think the Notice has satisfied the terms of the statute.
Your client has two separate claims (which clients can easily confuse):

1. In equity for repossession of the real estate. Which is time limited to 30 days from rent date. Iowa Code Section 648.18.
2. In law for damages: payment of all unpaid rent under the lease. Which (assuming it's written) is time limited to ten years. Iowa Code Section 614.1(5).

These are separate claims and best practice suggests they should be treated separately.

Fortunately for you this is a commercial lease, not a residential.
Is the filing to occur in magistrate court, or District Court?
Some magistrates, in my past experience, tend to enforce Iowa Code Section 648.18 strictly--in residential situations.
I would not expect solicitude for defendants violating a commercial lease.
District Court sees few FEDs, usually only when real estate title somehow is in issue.

34. Iowa Secretary of State Records Always Show a Mechanic's Lien as Active Unless Claimant Signs a Release.

FACTS: Per Iowa Code Section 572.28, the filing of the proof of service of the issuing a 30-day demand letter is constructive notice that the lien is cancelled and forfeited.
My client, however, was told by SOS staff that the lien will always be shown as active unless the lienholder files either a release or satisfaction.
My client is concerned that this "active" lien will be a problem when he sells his property.

QUESTION: What say you?

RESPONSE(S): I have attempted to cure these with an affidavit that the lien is forfeited.

35. Mechanic's Lien – Commencement of Work Filed by a Subcontractor.

FACTS: I had a strange situation where litigation over a mechanic's lien was done by a subcontractor. The subcontractor filed the Notice of Commencement of Work. We got things resolved between the GC and sub, but the Commencement of Work was still shown. I went in myself and I am wondering if a change to the system is warranted. The other parties (including buyer attorney and abstractor) kept saying that the GC filed the Commencement of Work. Apparently it shows that the GC filed the Commencement of Work even when the subcontractor does it. Furthermore, I don't think a subcontractor is going to know the correct Commencement of Work Date.

QUESTION: Would it make sense to differentiate Commencement of Works filed by subcontractors rather than the General Contractors? I see no problem with a sub filing it (as it is allowed under the code) but this did cause confusion and an issue. Also, to be able to sell the property, can the GC file a withdrawal of the commencement of work or satisfaction? Usually it has to be by the party that filed it and while the system showed the GC, it also showed the subcontractor's attorney and was under their account.

RESPONSE(S):

36. Mechanic's Lien Imperfections.

FACTS:

- Owner of residential building is the owner/builder for a remodel job;
- Client is a subcontractor for part of the project;
- No commencement of work filed by Owner/Builder;
- A different subcontractor filed a Commencement of Notice;
- However, mistakenly put themselves as the GC, but did list owner as owner of the property;
- Also put the commencement date as date that subcontract started; (they wouldn't know what the original start date was)
- Client started work earlier; so not only is the GC not really correct, neither is the commencement date.

QUESTION: Should Client file a Preliminary Notice under the same commencement of work even though it is incorrect? I think they likely have to since it is the same project. Or should they try and file a different Commencement of Work? Can they even do that with one out there?

Any problems Client would have to deal with to foreclose on Mechanic's Lien due to such issues?

RESPONSE(S):