37. Mechanic's Lien Imperfections.

FACTS:

QUESTION: Curious as to the consensus – when you file a mechanic's lien foreclosure, do you include any lender/lienholder? Of course, subject to priority of liens of Iowa Code Section 572.18 – in my case the contractor Notice of Commencement was filed PRIOR to the lender's mortgage.

RESPONSE(S):

38. Proposal for a 30-day Notice to Force Off Mechanic's Notice and Lien Registry (MNLR) Pre-Lien Notices.

FACTS: A proposal came up recently [November 2024] that I think is interesting. This would not be a proposal for the upcoming legislative session but for 2026.

Iowa Code § 572.28 provides a vehicle for demanding that a mechanic's lien claimant commence an action within 30 days to enforce the lien or it is forfeited. (A very helpful provision.) We don't have a parallel process regarding preliminary notices or notices of commencement under the MNLR. After two years, the notice is deemed inactive (Iowa Code § 572.34(12)). A few questions:

QUESTION: 1. Should we adopt such a provision? Just because we don't currently have a parallel provision doesn't mean we need one. Have you run into situations where there was a desire to force a pre-lien claimant under the MNLR to move forward or forfeit its claim?
2. If we should develop such a tool, how should the notice be served? On the MNLR? By personal service or certified mail?
3. Any other considerations?

RESPONSE(S): 1. Please count me as supporting the writer's proposal.
2. Use the method for service of tax redemption notices in Iowa Code Chapter 447.9(1): both ordinary and certified mail, with affidavit of mailing electronically filed with MNLR.
3.Add to service description a sentence explicitly setting evidential satisfaction of notice, along these lines:

"If one of the mailings is returned to sender as undeliverable, but the other is not returned, then effective delivery of notice shall be conclusively presumed."
And if certified mail receipt is returned then file that with MNLR also.

39. Adverse Possession of Municipal Property.

FACTS: This may be a wild goose chase but I have a client that has maintained land for quite a few years. However, it was recently discovered that part of the property may be owned by the City. The property is not being used for a public purpose and in fact is only adjacent to property the City rents out (but has no use with such rental property).

QUESTION: I know the general rule is that there is no adverse possession against a municipality but wondering if there are any exceptions to that rule. I haven't found much. Any responses would be appreciated.

RESPONSE(S): I've never heard of an exception but will enjoy using an argument if one is revealed.

* * * * *

If you have extraordinary facts, you may be able to apply the doctrine of equitable estoppel against the interest of a government entity. Fencl v. City of Harpers Ferry, 620 N.W.2d 808 (Iowa 2000). That is as close as you are going to get adverse possession against a government entity in Iowa.

If the property is dedicated as right of way, there are also some abandonment cases that might help. See generally Allamakee County v. Collins Trust, 599 N.W.2d 448 (Iowa 1999).

* * * * *

If the City is not using, wouldn't the easiest thing be to have them convey it to your client for a reasonable amount. They would get rid of property, and the liability associated with the same, that the City didn't even know they owned. It is like a "found penny" for them.

If you can't reach agreement with the City, then I am glad to discuss the Fencl v. Harpers Ferry case with you (I represented Fencl), but would say that you need to have a client that is fighting on principal, because the cost of trial and appeal is more than likely to exceed the value of the real estate. You can reach out to me directly.

40. Baratta Affidavit Form.

FACTS: At the Iowa City Real Property seminar last fall, some attorneys, in conversation, mentioned something they called the Baratta Affidavit.
I think it concerns Iowa Code Section 624.23 and the demand to levy execution on a homestead judgment.

QUESTION: Would anyone be able to share this affidavit form with me.

RESPONSE(S): Tim Gartin did a presentation at Drake Law School which included a discussion of this topic, as well as a sample form.

I have attached it, all credit should be attributed to Tim.

Hope this helps.

[See Attachment]

Underutilized Tools of a Real Estate Lawyer

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It is important that real estate attorneys be comfortable using the remedial tools the legislature has provided us. This outline looks at several tools that have caused confusion among attorneys.

I. Preliminary Question: Does the objection render the title unmarketable?

A. Iowa Land Title Standard 1.1 provides:

Standard: The purpose of the examination of title should be to secure a title for the examiner's client which is in fact marketable and which is shown by the record to be marketable, subject to no encumbrances other than those expressly provided for by the client's contract. Objections and requirements should be made only when the irregularities or defects can reasonably be expected to expose the purchaser or lender to the hazard of adverse claims or litigation. To render the title to land unmarketable, there must be a reasonable probability of litigation. The mere bare possibility or remote probability that there may be litigation with respect to the title is not sufficient to render it unmarketable.

Comments: Title Standards are primarily intended to eliminate technical objections which do not impair marketability and some common objections which

> are competent to be filed *in lieu of* administration proceedings during the time in which such proceedings can be instituted would make the statute a device to create defects rather than to explain them, to encourage omission of administration, thereby making defects to be 'explained'. That surely is not its purpose. Rather it is designed as a practical remedy for defects due to failure to follow orderly procedure when such procedure was available.[22]

IV. Notice of Homestead and Demand to Levy

Judgments do not attach to homestead property.[23] Iowa Code § 561.4 provides a means of platting the homestead in order to establish of record that certain real estate should be considered homestead property. A simpler approach to establishing a property as homestead was created when Iowa Code § 624.23(2)(b) was rewritten.

---

[22] *Id.* at 689.

[23] Iowa Code § 624.23(2); *Baratta v. Polk County Health Services, Inc.*, 588 N.W.2d 107, 114 (Iowa 1999) (holding "We find that the purpose of the enactment of subsection two of Iowa Code § 624.23 was not to change prior law on the effect of judgment liens upon homestead rights, but to provide a simplified procedure for homestead owners to clear the title of their homesteads from any recorded judgments against them which may cloud title to the property."). Note that Iowa Code § 561.21 provides that the homestead is liable for certain debts:

> The homestead may be sold to satisfy debts of each of the following classes:
>
> 1. Those contracted prior to its acquisition, but then only to satisfy a deficiency remaining after exhausting the other property of the debtor, liable to execution.
>
> 2. Those created by written contract by persons having the power to convey, expressly stipulating that it shall be liable, but then only for a deficiency remaining after exhausting all other property pledged by the same contract for the payment of the debt.
>
> 3. Those incurred for work done or material furnished exclusively for the improvement of the homestead.
>
> 4. If there is no survivor or issue, for the payment of any debts to which it might at that time be subjected if it had never been held as a homestead.

A. Iowa Code § 624.23.

1. Judgments in the appellate or district courts of this state, or in the circuit or district court of the United States within the state, are liens upon the real estate owned by the defendant at the time of such rendition, and also upon all the defendant may subsequently acquire, for the period of ten years from the date of the judgment.

2. a. Judgment liens described in subsection 1 do not attach to real estate of the defendant, occupied as a homestead pursuant to chapter 561, except as provided in section 561.21 or if the real estate claimed as a homestead exceeds the limitations prescribed in sections 561.1 through 561.3.

b. A claim of lien against real estate claimed as a homestead is barred unless execution is levied within thirty days of the time the defendant, the defendant's agent, or a person with an interest in the real estate has served written demand on the owner of the judgment. The demand shall state that the lien and all benefits derived from the lien as to the real estate alleged to be or to have been a homestead shall be forfeited unless the owner of the judgment levies execution against that real estate within thirty days from the date of service of the demand. The demand shall contain an affidavit setting forth facts indicating why the judgment is not believed to be a lien against the real estate. A warranty of title by a former occupying homeowner in a conveyance for value constitutes a claim of exemption against all judgments against the current homeowner or the current homeowner's spouse not specifically exempted in the conveyance. Written demand shall be served in any manner authorized for service of original notice under the Iowa rules of civil procedure or in a manner provided in section 654.4A, subsections 1 through 3. A copy of the written demand and proof of service of the written demand shall be filed in the court file of the case in which the judgment giving rise to the alleged lien was entered.

c. A party serving a written demand under this subsection may obtain an immediate court order releasing the claimed lien by posting with the clerk of court a cash bond in an amount of at least one hundred twenty-five percent of the outstanding balance owed on the judgment. The court may order that in lieu of posting the bond with the clerk of court, the bond may be deposited in either the trust account of an attorney licensed to practice law in this state or in a federally insured depository institution, along with the restriction that the bond not be disbursed except as the court may direct. A copy of the court order shall be served along with a written demand under this subsection. Thereafter, any execution on the judgment shall be against the bond, subject to all claims and defenses which the moving party had against the execution against the real estate,

including but not limited to a lack of equity in the property to support the lien in its proper priority. The bond shall be released upon demand of its principal or surety if no execution is ordered on the judgment within thirty days of completion of service of the written demand under this subsection.

3. Judgment liens described in subsection 1 shall not attach to subsequently acquired real estate owned by the defendant if the personal liability of the defendant on the judgment has been discharged under the bankruptcy laws of the United States.

4. a. In addition to other provisions relating to the attachment of liens, full faith and credit shall be afforded to liens arising for overdue support due on support judgments entered by a court or administrative agency of another state on real estate in this state owned by the obligor, for the period of ten years from the date of the judgment. Notwithstanding any other provisions of law, including but not limited to the formatting of forms or requirement of signatures, the lien attaches on the date that a notice of interstate lien promulgated by the United States secretary of health and human services is filed with the clerk of district court in the county where the real estate is located.

b. The lien shall apply only prospectively as of the date of attachment to all real estate the obligor may subsequently acquire and does not retroactively apply to the chain of title for any real estate that the obligor had disposed of prior to the date of attachment.

5. A judgment lien attaching to the real estate of a city may be discharged at any time by the city filing with the clerk of the district court in which the judgment was entered a bond in the amount for which the judgment was entered, including court costs and accruing interest, with surety or sureties to be approved by the clerk, conditioned for the payment of the judgment amount, interest, and court costs. If the real estate is located in a county other than that in which the judgment was entered, the clerk of the district court in which the judgment was entered shall certify to the clerk of the district court of the county in which the real estate is located that the bond has been filed.

6. A judgment against a city shall not give rise to a lien attaching to the streets, alleys, or utility easements of a city or attaching to the real estate of a city which is used by the city for transportation, health, safety, or utility purposes.

7. If a case file has been sealed by the court, or if by law the court records in a case are not available to the general public, any judgments entered in the case shall not become a lien on real property until either the identity of the judgment creditor becomes public record, or until the

> judgment creditor, in a public document in the case in which judgment is entered, designates an agent and office, consistent with the requirements of section 490.501, on which process on the judgment creditor may be served. Service may be made on the agent in the same manner as service may be made on a corporate agent pursuant to section 490.504. An agent who has resigned without designating a successor agent and office and who is otherwise unavailable for service may be served in the manner provided in section 490.504, subsection 2, at the agent's office of record.

B. The purposes of the notice of homestead and demand to levy.

1. The purpose of this provision is to provide a judgment holder with notice that the subject property is claimed as homestead and that the judgment holder has 30 days in which to proceed to enforce the judgment against the property or be barred as to the subject property.

2. A second purpose of this provision is to make a claim of record (through the Clerk of Court) that the subject property is the homestead property and that the judgment holder was afforded the statutory notice of the intent to declare the property as the homestead of the owner.

3. This process *does not* change the relationship between the judgment holder and the judgment debtor; rather, it simply a more efficient manner for designating property as the homestead while protecting the Due Process rights of the judgment holder. Note that the judgments referenced in Iowa Code § 561.21 are liens against the homestead.

4. *See* Exhibit 3 for a notice of homestead and demand to levy.

C. The rules for using the notice of homestead and demand to levy.

1. The original notice should be sent by certified mail to the judgment holder at the address of record with the clerk of court and a copy to the attorney of record, if any.[24]

---

[24] Iowa Code § 654.4A provides:

> In addition to any other form of service authorized by law, where in rem relief is the only relief requested in a foreclosure action or nonjudicial foreclosure under section 654.18 or chapter 655A against either a party or a person to be served with a notice pursuant to section 654.15B, all of the following shall apply:

2. A copy of demand and certified mail receipt filed with the Clerk of Court.

3. The judgment lien is not resolved until 30 days have passed from the date of service of the demand. If there is a need for a faster resolution, Iowa Code § 624.23(2)(c) creates a procedure for posting a bond.

---

1. If the person to be served is a judgment creditor, service may be made by certified mail, with proof of delivery, to the judgment creditor's registered agent or to the judgment creditor at the judgment creditor's principal place of business in the state where the business is organized, as indicated by the records in the office of the secretary of state, or to the judgment creditor at the last address indicated in the case in which the judgment was entered.

2. Upon affidavit that service cannot be made on a judgment creditor either pursuant to subsection 1 or by personal service in this state, service may be made by certified mail, with proof of delivery, on the judgment creditor's attorney of record if that attorney is a practicing attorney in this state, along with a copy of this section, and a payment of ten dollars. The attorney shall forward the notice by ordinary mail to the judgment creditor's last known address but the attorney shall have no further duties under this section with respect to the notice.

3. An attorney who agrees to accept service on behalf of a judgment creditor may charge a reasonable fee, not to exceed ten dollars, for accepting service.

4. If a person, other than a governmental taxing unit, is an interested person with respect to a decedent's estate in probate, the person may be named generally as a person interested in the decedent's estate and service of process shall be made by personal service or certified mail, along with proof of delivery, on the attorney for the personal representative. If the estate is probated in this state and a person has requested notice pursuant to section 633.42, the mortgagee shall also serve that person or the person's attorney by ordinary mail at the address specified in the request for notice. A person so served may intervene as a named defendant as a matter of right.

5. If a defendant, other than a governmental taxing unit, is a person whose identity is not reasonably ascertainable, and the person has an interest in a decedent's estate not probated in this state, such person may be named generally as a person with an interest in the decedent's estate and service of process shall be made by publication unless the mortgagee has actual notice that the decedent's estate is probated in another state. A person so served may intervene as a named defendant as a matter of right.

D. When the notice of homestead and demand to levy should be used.

1. John Doe takes title to property and uses it as his homestead. The following year, a judgment (not of the type referenced in Iowa Code § 561.21) is filed against Doe and becomes a potential lien against the real estate.

E. When the notice of homestead and demand to levy should not be used.

1. If the property has shifted in use from homestead to non-homestead purposes since the time the notice was filed.

2. Preexisting judgments.

Iowa Code § 654.12B provides that "[t]he lien created by a purchase money mortgage shall have priority over and is senior to preexisting judgments against the purchaser and any other right, title, interest, or lien arising either directly by, through, or under the purchaser." The mortgage needs to recite that it is given as a purchase money mortgage. One of the risks associated with relying on this provision is that it is a protection where "the funds are in fact so used" for the purchase of real estate.[25] Arguably, if the loan exceeds the amount needed to purchase the homestead real estate (*e.g.*, a duplex where half of the building is going to be for income purposes), a judgment holder may assert its judgment has priority over the mortgage. The closing agent should verify the use of the funds where the purchase money mortgage protection is sought. The following language should be used in the title certificate:

> It is my opinion that the above-described lien is subordinate to the mortgage you intend to issue a Title Guaranty Certificate upon. This is because the mortgage is marked "purchase money mortgage" and because all of the funds advanced upon this mortgage were actually used to purchase the property or to pay for the costs in connection with the purchase. Purchase money mortgages are superior to liens against the purchaser pursuant to Iowa Code Section 542.12(B).

[25] *See* Iowa Code § 654.12B(2).

Exhibit 3

IN THE IOWA DISTRICT COURT FOR <> COUNTY

<>, Plaintiff, <>, Defendant.	:	Case No. <> Notice of Homestead Designation and Demand to Levy (§ 624.23(2)(b))

TO: _____[26]

_____

_____

You obtained a judgment in this matter. This judgment is a potential lien against the real estate located in <> County, Iowa, legally described as:

_____

_____

_____

YOU AND EACH OF YOU ARE HEREBY NOTIFIED that the undersigned declares that the above-described real estate is or has been the homestead of the Defendant and FURTHER RESPECTFULLY DEMANDS that you levy execution against the above-described real estate, within thirty (30) days from the date of service of the demand.

Pursuant to Iowa Code Section 624.23, if you fail to levy within thirty (30) days from the date of service of the demand, the lien and all benefits derived from the lien as to said real estate alleged to be or to have been homestead, SHALL BE FORFEITED.

The undersigned, being first duly sworn or affirmed do hereby depose and state of my personal knowledge that:

[26] Judgment owner.

1. I make this affidavit from my personal knowledge for purposes of establishing of record, pursuant to § 624.23(2) of the Code of Iowa, certain facts known to me and affecting the chain of title to the above-described real property.

2. The above-described real estate was conveyed to <> by a warranty deed filed <> as Inst. No. <> / in Book <>, Page <>, of the <> County records.

3. From the time I purchased the above-described real estate through _____, I occupied the premises as my homestead.

As a result of the above-described real estate being my homestead property, the above-referenced judgment does not attach as a lien affecting the real estate. *Baratta v. Polk County Health Services, Inc.*, 588 N.W.2d 107, 113 (Iowa 1999).

State of Iowa, <> County) SS.

_____ _____

print name: Date

Subscribed and sworn or affirmed before me by <> on <> _____, 20___.

_____

Notary Public in and for said State and County

Original sent by certified mail to <>.

Copy sent by certified mail to <> (the attorney of record for the <>).

Copy of demand and certified mail receipt filed with the <> County Clerk of Court.

Proof of Service

The undersigned certifies that the foregoing instrument was served upon all parties to the above cause to each of the attorneys of record herein at their respective addresses disclosed on the pleadings on _____, 20____

By: [ ] U.S. Mail [ ] FAX
[ ] Hand Delivered [ ] Overnight Courier
[X] Certified Mail [ ] Other

Signature _____

[Written demand shall be served in any manner authorized for service of original notice under the Iowa rules of civil procedure or in a manner provided in section 654.4A, subsections 1 through 3. A copy of the written demand and proof of service of the written demand shall be filed in the court file of the case in which the judgment giving rise to the alleged lien was entered.]

41. Child Support if Parents Remarry to Each Other.

FACTS: New one for me. Dissolution filed with child support owed by H in 1993-1994. H purchases real estate in 1999. H and W subsequently remarry (at least the name and middle initial are exactly the same of W) and deed for property as joint tenancy to both H and W. H is now deceased. There is no showing since 1994 about child support payments.

QUESTION: Does the re-marriage of H and W negate any need to confirm Child Support Payments? Would you make any objection or require anything about child support being paid?

RESPONSE(S): Comments inserted in highlight below.

New one for me. Dissolution filed with child support owed by H in 1993-1994. Child support is a judgment as each installment comes due, subject to 10 year statute of limitations for each payment. H purchases real estate in 1999. H and W subsequently remarry (at least the name and middle initial are exactly the same of W) I assume that W2 is the same as the child support judgment creditor W1, but I would think you need to establish that by affidavit or otherwise and deed for property as joint tenancy to both H and W. H is now deceased. At which point W becomes the owner, and any child support liens to her would merge into her title. There is no showing since 1994 about child support payments. Does the re-marriage of H and W negate any need to confirm Child Support Payments? Would you make any objection or require anything about child support being paid? No, absent circumstances not cited in your synopsis.

* * * * *

If the DOB of the children are in the decree and the lien only survives 10-years from the last payment due date, may not be an issue based on the record. Children would have been 19 years of age no later than 2013 which is more than 10-years ago. Perhaps there is secondary education provision which may cause you an issue.

42. FHA & VA Financing.

FACTS:

QUESTION: Is it "discrimination" and thus illegal to refuse to accept an offer subject to VA and/or FHA financing. The clients only want to deal with persons seeking conventional financing.

Do you know whether other States have laws? The clients are in Wisconsin.

RESPONSE(S): It is common to refuse VA or FHA financing as they have greater requirements as to property condition. It is not "discrimination" as there are significant distinctions to the seller.

It is similar to a seller demanding cash only, simply to avoid the hassle and uncertainty of varying lender requirements.

* * * * *

It is not discrimination. As a seller I can require only a cash only offer. It will limit the number of people that would be interested in my home but that is a requirement that I can make.

* * * * *

Many sellers in the market now and since I have been practicing for thirty years now have the impression that VA and FHA loans are much more stringent on the condition of the property. From what I have seen personally and what I understand from loan officers the FHA and VA requirements are much less than they were years ago.

When there is an FHA or VA product the main additional items that the appraiser would look at are for chipping or peeling paint (lead based issues) and safety issues, generally the absence of railings. The appraisers are not sent to the property to perform the functions or the detail of a home inspector. Many clients I have worked with, once explained are fine with the FHA or VA loans which opens the market up to more potential offers.

If your clients have a well-tended-to-house they may benefit from accepting VA or FHA offers. Their misunderstanding is common, but not well founded in the market we are in. They could feel free to talk to a loan officer that works with VA and FHA to obtain the details.

* * * * *

I made GI and FHA loans for 35 years... they are a much different product today..

43. Foreign Investment in Real Property Tax Account (FIRPTA) Withholding.

FACTS: I represent a buyer of a house where the sellers are not U.S. citizens and the buyers have come across the following IRS website:

https://www.irs.gov/individuals/international-taxpayers/firpta-withholding

The language that has my client (and me) hung up is the following:

In most cases, the buyer (transferee) is the withholding agent. The transferee must find out if the transferor is a foreign person. If the transferor is a foreign person and the transferee fails to withhold, the transferee may be held liable for the tax. For cases in which a U.S. business entity, such as a corporation or partnership, disposes of a U.S. real property interest, the business entity itself is the withholding agent.

I was under the impression that the settlement agent was tasked with withholding, but that is not what the IRS website provides.

QUESTION: Thus, how is a buyer to protect themselves in such a situation where they are not able to confirm that a FIRPTA withholding is required? I feel like there is an obvious answer, but I don't see it. What are the best practices here? How does one know whether the sellers are foreign persons?

RESPONSE(S): In some transactions there is a FIRPTA affidavit obtained from the seller to affirm there is not a withholding requirement.

If you are convinced seller cannot truthfully sign the standard affidavit and the amount is over $300k, somebody needs to be sending a check--
https://www.irs.gov/individuals/international-taxpayers/firpta-withholding
And filling out the form--
https://www.irs.gov/forms-pubs/about-form-8288

At least that's what the internet machine says.

The buyer isn't going to know all that, so I think a forward-thinking professional settlement agent might say-- "hey, Mr. and Mrs. Buyer, sorry to lay this on you, but it is your responsibility to do all this stuff (you chose this seller, not me), but we can write the check and prepare the form for you for $X or you can take it to your tax preparer."

44. Iowa Mobile ID and Notary Purposes.

FACTS: Today I was presented with an Iowa Mobile ID when I asked to see a driver's license when notarizing a signature. This was a first for me. For notary purposes, the physical driver's license is still required.

QUESTION:

RESPONSE(S):

45. Memberships in Cooperatives – Primer Needed.

FACTS: We have a growing number of cooperatives in Iowa. Perhaps we should hold a CLE program on how they work. A few questions to help me (us) think about best practices:

QUESTION: 1. Membership certificates for the coop units are recorded in the Recorder's office. When an owner of cooperative unit dies, it is my understanding that the Auditor's office removes the name of the prior owner once a new certificate is recorded by the cooperative. Thus, if Jane Doe dies owning a cooperative unit, the cooperative would facilitate the sale or transfer internally and issue a new certificate. Am I saying this correctly?

2. How does the cooperative know what to do when Jane Doe dies absent the probate of her estate? In other words, who has authority to sell the cooperative unit? What happens to the proceeds?

3. Is there merit to owning a cooperative unit in a revocable trust? Under what circumstances? What if the unit was owned by an LLC as a tool for passing the cooperative unit?

4. Can a person finance the purchase of cooperative unit? Can the loan be secured with a UCC filing?

5. If you practice across multiple counties, are you seeing uniformity in the way counties are handling condo units?

Feel free to add questions. I hope this is helpful.

RESPONSE(S):

46. Notary in Canada.

FACTS:

QUESTION: Does anyone know if a Deed executed in Canada before a Canadian Notary is valid under ICA 9B?

RESPONSE(S): Yes. Such act ought to be valid under Iowa law.

9B.2 Definitions.
In this chapter: ...
6. "*Notarial act*" means an act...that a notarial officer may perform under the law of this state.
The term includes taking an acknowledgement, administering an oath or affirmation, taking a verification on oath or affirmation, witnessing or attesting a signature...
[NB: the "act" need not be done by an officer specifically authorized to "perform under the law of this state" –merely of the sort of act that an Iowa notary could perform.
7. "*Notarial officer*" means a notary public or other individual authorized to perform a notarial act.

9B.14 Foreign notarial act.
1. As used in this section, "foreign state" means a government other than the United States, a state, or a federally recognized Indian tribe.
[NB: seems that a Canadian province falls outside the exclusions, and therefor qualifies.]
2. If a notarial act is performed under authority and in the jurisdiction of a foreign state or constituent unit of the foreign state...the act has the same effect under the law of this state as if performed by a notarial officer of this state.

47. Property Abandonment?

FACTS: Person A agreed to store personal property (including one vehicle) for Person B in their storage shed on their residential property. At the time, the verbal agreement was for a few months free of charge.

After a few months, Person A asked that the items be removed or rent to be paid. Person B did not do either. Person B was subsequently arrested (unrelated) and then fled the state, leaving their items behind. Person B has occasionally asserted ownership of the items via text message but has not made plans to clear out or pay rent.

Person B never actually resided at the property, if that makes a difference.

QUESTION: Person A wants their shed space back. My research indicates that we would have a hard time proving abandonment, so is there any option other than an action for forcible entry and detainer?

RESPONSE(S): Last time I looked (and I have been retired for pushing 13 years now) Iowa does not have a good statute for this type of situation. When I was chair of the ISBA real estate legislative committee in the last decade, we tried to do something but it went nowhere, as I recall.

What I would do, (unless the legislature has addressed this problem) is:

1. Contact the local law enforcement people and describe the situation and your plans (see next paragraph). Maybe our hero has been arrested and they may give you contact information.
2. I would then:
3.
    a. Take photos and write an inventory of all property in the storage, dividing it into three groups:
    b.
        i. Property readily marketable (or cash).
        ii. Property not readily marketable, but which local charities such as Goodwill/Salvation Army will accept.
        iii. Property with no market value, suitable only for the dumpster.
4. I would then send a letter to our hero, with a copy of the inventory, at the best address you can find indicating that he has 30 days from the date of the letter to remove all he wants from the storage, that [here list any marketable property] will be placed for sale, and that all other property will be disposed of. Then after the 30 day window,
5. Turn any marketable property into cash, subtracting any costs of sale, (and give it along with any cash found on the property), minus your

reasonable costs of disposition of all the property, to our hero's account at the State Treasurer's abandoned property fund.

6. Dispose of the remaining property to Goodwill (etc.) or the dumpster.
7. Send our hero a letter detailing the dispositions, with copy to local law enforcement.

48. Securing Real Estate Closings.

FACTS: Specifically, wiring instructions to ghost accounts, or ensuring the wiring is ready for closing in the right accounts at the right times. There's apparently a rise of fraud from outside actors and we're trying to work on our own policies.

If anyone has experience or willing to share their procedures to ensure safe closings for our clients, I'd appreciate any input.

QUESTION: I'm just wondering what others are doing to protect closings from faulty/fraudulent wiring in closings?

RESPONSE(S): We know most of the loan officers involved for local lenders and government lenders we work with and choose to make that the majority of our business. We have a practice of making personal contact early on in the transaction with larger lenders so we have a person we can call at a known number to verify any closing information and wiring instructions. Some of the big banks have various departments the transaction may pass through from application to preclosing to closing to post closing and we require an "introduction" to the new contact if we are unfamiliar with them.

* * * * *

If my office is the closing agent, my preference is to ask the buyer to give me the name and telephone # of the bank officer who will be originating the wire, and ask the buyer to alert that person to expect a phone call from me. I then telephone the bank officer and ask them their email address and to expect a secure email from my assistant with our wire instructions. We then email those instructions securely to that person only, not copying in anyone else.

49. Squatter.

FACTS: Client has their first squatter.

QUESTION: Any practice tips?

RESPONSE(S): Note that you can dispense with the notice to quit and jump right to the FED. Iowa Code Section 648.3.

* * * * *

My practice has been to take one of two actions:

1) Issue the squatters a 3-day notice to quit with a footnote that the notice is being given as a courtesy despite the fact that owner can proceed directly to an eviction action without the notice pursuant to the holding of the Iowa Supreme Court in Bernet v. Rogers, 519 N.W.2d 808 (Iowa 1994). This was my practice for a number of years because I found magistrates struggling to handle an eviction with no previous notice to the occupants; or,
2) Immediately file an eviction, and, prior to the hearing, file a statement of facts with the court to explain plaintiff's position that no pre-eviction notice was required as defendant's have no agreement with the owners to occupy or otherwise have no interest in the real estate.

I have been using the 2nd option for the past couple of years, and it seems to do the trick.

* * * * *

I was going to suggest the same thing that the other writer suggested, with the additional advice for your client to confirm they never created an accidental tenancy. So long as the squatter never paid rent of any kind, didn't ever have a lease (in writing or not), using *Burnet v. Rogers* is a great and quick way to go. But if this squatter is a former tenant that overstayed their welcome, you'll need to evict as you would any tenant.

* * * * *

My squatter had an agreement to rehabilitate a structure for resale. Property has no current electricity, gas, or water. Squatter failed to make any improvements, but did turn the structure into a storage unit.

50. Title Insurance.

FACTS: ISBA Real Estate and Title Law Section Members-

I'm just passing along some information about title insurance. Last year, (2023), Americans paid more than $15 billion in title insurance premiums. Only $647 million in claims were paid (0.04% of premiums). In Iowa, about $5.5 million was paid to private title insurance companies last year, and they paid a total of $44,000 in claims (0.8% of premiums).

QUESTION:

RESPONSE(S): I'd like to see the statistics showing that title insurance is "cheaper and quicker than abstract title opinion model can provide." Please provide that information.

* * * * *

We've done the study many times. When you consider total transactional cost, including Title Opinion and Abstracting, title insurance is cheaper. The real cost to Iowa consumers however is speed. The modern mortgage industry demands title reports in 48 hours frequently, our Iowa system, though much more sound, can't compete on speed, The consequence is exclusion from certain national mortgage products or point penalty resulting from national vendors hesitant to play by our rules.

The sad result is the proliferation of off shore title provider that avoid the Iowa Bar and the American title insurance market and use 50 dollar online searches to insure title without our, or any local engagement. This isn't a new conversation, it's why the Iowa Guaranty was created to provide commercial title insurance while trying to protect local record integrity. The problem is we haven't adapted to speed needs of modern mortgage financing provided by national vendors and are losing all control to the Rocket Mortgage originators and those like them

This is a critical discussion we need to expand if the Iowa Bar is hoping to remain relevant to transactional real estate 10 years or so from now, Title Insurance should be a discussion topic on every Iowa Bar agenda.

* * * * *

While I disagree that title insurance is cheaper, and I have seen the numbers "many times" as well, I think the best answer is simpler than we think: we must digitize all the paper abstracts in Iowa. There is only one entity that is capable of

making such a thing happen: Iowa Title Guaranty. The technology exists to digitize the abstracts and send them out directly from licensed abstractors to licensed attorneys electronically for review. Imagine the speed and cost savings of such a move in the long run. No more chasing down paper abstracts, no more searching for paper abstracts and receipt chains. Have the root scanned in and stored electronically by ITG and its participating attorney abstracters, but still owned by the titleholder of the property. We could maintain our higher standards of title but meet the needs of all stakeholders, and frankly we would improve the quality of life of real estate attorneys in Iowa by allowing more remote working opportunities.

* * * * *

I have seen premiums cheaper than ITG.
The out of state title companies want to see my preliminary title opinion, then they want my Final and the abstract.

I disagree with the writer that title insurance is cheaper. We do not need Iowa Title Guaranty. Our professional liability insurance covers the potential loss, and virtually all attorney fees I've seen in these matters are less than the title insurance cost by far. Iowa Title Guaranty exists only because the big banks, who drive their corporate customers, don't understand the Iowa concept.

* * * * *

Just consider that Iowa is the last jurisdiction I know of that deals with abstracts at all. 40 years ago we used them in many states and watched over time their obsolescence. Iowa will not be the big rock in the river that the world is forced to adjust to forever. We can save the Bar's relevance to transactional real estate, unlike most states, but need to admit that the market has a right to demand things we don't yet believe are important.

* * * * *

This would seem to open up the door to having lawyers worldwide do Iowa real estate work, rather than Iowa real estate attorneys.

Also, one consideration that's being overlooked is that a large chunk of Iowa Title Guaranty premiums go back into projects in Iowa, rather than to shareholders of out of state title insurance companies.

* * * * *

Iowa Title Guaranty would still be the sole regulator of which attorneys are qualified to review Iowa titles and which abstractors are qualified to maintain the digital abstracts.

* * * * *

Digital abstracting is already occurring in Iowa, as approximately 50% of all abstracts our office reads, arrive in digital form from Iowa abstractors. This has greatly improved efficiency in the critical last 7-10 days of a closing period and often allows us to issue title on day of receipt of the digital abstract. I'm happy to share this experience over the last 2 years if helpful.

* * * * *

Wait, what? I agree that in most cases our E & O policies might cover a potential and that is the first go to by Iowa Title Guaranty and why they require us to have policies in order to issue in the first place. However it is not that the big banks don't understand the concept, it is that there needs to be a policy (any policy, for that matter) in place to allow any mortgage to be put on the secondary market. Without a policy, the mortgage must be solely held in-house for its duration.

51. Time Share.

FACTS: I have not had good experience concerning time shares. I have been contacted by folks that bought 3-time shares in Mexico in 2021 that when I looked at them, I thought must have been extremely overpriced. Now they have received an offer to sell, from The Real Estate Group of Chicago, LLC, in an amount over 4 times over what they paid. This old man needs some comfort.

QUESTION: I have written to the Chicago attorney that organized this Illinois LLC, and is the registered agent, but has anyone had any experience with The Real Estate Group of Chicago, LLC.

RESPONSE(S): Rule # 1 Do not ever send money for any reason no matter how convincing they are.

Most if not all are scams.

52. Affidavit of Missing Mortgage Assignment and Related Issues.

FACTS: Mortgage has the following matters raised a concern:

Issue 1:

- 2006: Owner gives a mortgage to Ameriquest; Abstract states mortgage is due in 2036
- 2009: US Bank as Trustee, by an Attorney in Fact, files an Affidavit of Missing Assignment of the mortgage saying US Bank "is the current holder and/or custodian of the note secured by the Mortgage/Deed of Trust" and that it has received final payment and is releasing the mortgage. Affidavit also states language that the undersigned indemnifies against any loss which may occur in regards to the release; No Attorney in Fact is recorded and mortgage is released in 2009.
- Property has been sold subsequently several times and a foreclosure was even done but no service on Ameriquest or anything related to the above.
- **Because it is over 10 years, would you state that the mortgage is released without requiring anything further?**

Issue 2:

- Foreclosure on property by Mortgagee with Decree entered in 2017;
- Sheriff's Deed done in 2018;
- Abstract updated by different abstractor in 2019: Abstractor says: "We have **NOT** reviewed the Foreclosure file but are adding the following additional information in regards to judgment being UNSATISFIED": States judgment IN REM - UNSATISFIED
- **Would you require the abstractor to update the status of the Foreclosure and/or have an order in the Foreclosure? What would you want to see in the Order?**

Issue 3:

- After foreclosure above the property was deeded to "Federal National Mortgage Association". However, subsequent deed states the name of the grantor as "Fannie Mae a/k/a Federal National Mortgage Association." I believe these are one in the same from some outside research but would you require anything in the abstract stating they are the same or does the "a/k/a" language suffice.

QUESTION: Thank you in advance for any suggestions.

RESPONSE(S):

1. Yes. See Iowa Code section 589.8. Affiant claims USB = assignee from original record mortgage holder; USB releases mortgage; 10+ years pass.

2. Probably not, *__provided__* that the "judgment IN REM" simply means the mortgagor's judgment in the foreclosure.
   Because the execution sale will have divested the mortgagee of any further right in the property.
   Not sure what "judgment" remains "UNSATISFIED" after a sheriff's execution sale. A prior judgment not foreclosed??
   Maybe the mortgagee's unreleased mortgage? More information would be useful here. The abstracter's 2019 statement baffles me.
   Ordinarily a Sheriff's Sale conveys all interest in the property held by (a) the judgment debtor, (b) all post-judgment creditors, and (c) the mortgagee.
   See *Bankers Trust Co. v. Knee*, 222 Iowa 988, 270 N.W. 438 (1936); *Bell v. Hall*, 4 G. Greene 68 (1853), and:
   "We have frequently held that, unless the court retains jurisdiction of the case to provide for future installments, a sale of the mortgaged
   premises under foreclosure passes to the purchaser all the title and interest of the mortgagor *__and mortgagee__* in and to the premises,
   and that the purchaser takes free from the [mortgagee's' lien of the unpaid installments. [citations.]"
   Wells v. Ordway, 108 Iowa 86, 78 N.W. 806 (1899).
   I'd think that the sheriff would pay over his sale proceeds to the Clerk, who would apply them against the mortgagee's judgment.
   You might want to obtain the mortgage foreclosure file yourself, review it, and see what happened.
3. No. The grantor identity lists both versions of the name and suffices, so far as I'm concerned.

53. Another Novel Situation.

FACTS: Well this is a wild one. (For context, I've worked nearly exclusively in estates for several years now and avoid most real estate matters, but I've got too much of a bleeding heart to tell this person "best of luck!")

Person A and Person B were married and bought a house in 2020 for $160K. B was in the military so they got a VA loan for $165K. A and B divorce in early March 2022, both parties were pro se and focused only on the child custody arrangement. Nothing in the decree addressed title to the house.

A is not too sophisticated and assumed the common misconception that "the bank owned the house" and believed B when he said he would take care of it. Apparently B's way of taking care of it was to file for a modification of mortgage and a second mortgage (for $50K) a week after the divorce. I pulled the documents and A is adamant the signatures on the modification and second mortgage are not her signatures. FWIW, it lends to her credibility that her signatures on the modification and second mortgage don't match and the notary is a UPS store notary.

Naturally, B has since skipped town and the house has both of them listed in a foreclosure action. It sounds as though B invoked some sort of FEMA relief option to stay the foreclosure action so the tab has been running. On top of that, the homeowners association has appeared on the foreclosure for unpaid dues and I'm guessing there are probably a number of special assessments of this neglected property. Person A's credit is a mess and she is going to have a foreclosure on her record let alone the debts involved.

QUESTION: Anyone out there have any ideas on how to handle this? Anyone interested in handling it? If B did fraudulently obtain a mortgage for that $50K, does he really just get to ride away from this mess unscathed? Does A have any recourse?

RESPONSE(S): I have interspersed my analysis in **boldface.** In the latter third of my late unlamented career, I basically did mortgage foreclosure, and this situation as you will see does not surprise me.

Person A and Person B were married and bought a house in 2020 for $160K. B was in the military so they got a VA loan for $165K. A and B divorce in early March 2022, both parties were pro se and focused only on the child custody arrangement. Nothing in the decree addressed title to the house. **So if there was nothing in the decree, I would think that the title to the property was still in both parties.**

A is not too sophisticated and assumed the common misconception that "the bank owned the house" and believed B when he said he would take care of it. Apparently B's way of taking care of it was to file for a modification of mortgage and a second mortgage (for $50K) a week after the divorce. I pulled the documents and A is adamant the signatures on the modification and second mortgage are not her signatures. FWIW, it lends to her credibility that her signatures on the modification and second mortgage don't match and the notary is a UPS store notary. **This was not unknown during the mortgage "feeding frenzy" of the first decade of the century, when speed in closing was a more pressing priority to lenders than was getting clear title.**

Naturally, B has since skipped town and the house has both of them listed in a foreclosure action. It sounds as though B invoked some sort of FEMA relief option to stay the foreclosure action so the tab has been running. On top of that, the homeowners association has appeared on the foreclosure for unpaid dues and I'm guessing there are probably a number of special assessments of this neglected property. Person A's credit is a mess and she is going to have a foreclosure on her record let alone the debts involved.
Anyone out there have any ideas on how to handle this? Anyone interested in handling it? If B did fraudulently obtain a mortgage for that $50K, does he really just get to ride away from this mess unscathed? Does A have any recourse? **I suspect that the latter 2 mortgages were originated with title insurance and not with an attorney's title opinion. I would contact the foreclosure plaintiff attorney, advise him of the probable forgeries, perhaps providing copies of A's driver's license and other credible documents with her signatures, ask for a copy of the title insurance policy, and simultaneously file an answer coupling with your general denial an assertion that the signatures purporting to be A's are not genuine. Assuming that B and all other defendants are in default, I would propose a stipulated order to the effect that the only issue at trial will be the authenticity of the signatures purporting to be those of A. If the foreclosure plaintiff counsel knows what he is doing, he will then demand that the title insurance carrier appoint counsel to try the case. Read the title policy carefully; you might want to use language quoted *verbatim* from the policy in the stipulated order so that the title carrier cannot wiggle out of its duties.**

Once the title insurance carrier is on the case, and you satisfy him/her that the signatures are forgeries, you should explain that while your client might be willing to affix genuine signatures to the mortgages, her hand currently has writer's block, which could be assuaged by placing in it a check in a substantial sum (presumably somewhere near the value of her half interest), along with an agreement that she will have no personal liability on the mortgages including the original one.

You might want to suggest to your client a contingent fee arrangement for your services.

* * * * *

I'd be looking to find what law firm, title company, or other entity handled the suspect transaction and shake that tree. Handwriting analysis can provide argument to invalidate the signature and the notary entity should have liability. Also, if you can establish it's not a valid signature, the court can invalidate the mortgage.

* * * * *

Sometimes all we can do is damage control. Even if "Person A" got a fraud judgment against "Person B" there are probably no assets and then would spend more time and money getting the judgment. Unfortunately the more we practice, the more injustice we see.

54. Deceased Mortgagor.

FACTS: Mortgagor passes intestate. Mortgaged property has significant equity. Mortgagee contacted only heir to let her know of equity. After a little back and forth, heir is now not responding.

QUESTION: Apart from having the mortgagee open an estate, does anyone have any advice – legal or practical – as to how to get mortgage paid?

RESPONSE(S): You can foreclose against the heir's legatees without opening an estate.

* * * * *

Mortgagee can either foreclose the mortgage or open the estate as a creditor and petition to sell the real estate.

* * * * *

Have been out of this game for about 12 years, so my knowledge of the law may not correspond to recent changes, however:

I would foreclose, adding as defendants the known heir, anyone listed as next of kin in the obituary(ies), junior creditors, and "all persons with an interest in the estate of [decedent], who died on [date of death] a resident of [county.]" Presumably, if the known heir is not interested in rescuing the equity, (s)he will default, and the creditor will win the sheriff's sale for a full debt (and not a penny more) bid. If there is an overplus, I would, after notifying the known heirs and any other interested parties who appear, and waiting a decent interval for one of them to jump in, get an order directing the sheriff to put the overplus in the state treasurer's unclaimed property fund.

55. Getting USDA Payoffs on Mortgage.

FACTS: We are assisting a client with a real estate closing. The Closing Agent contacted USDA regarding getting a payoff. The initial amount showed about $50,000. Just before closing they received a payoff of about $80,000 which appears way off base. Closer can't seem to get ahold of anyone at the Payoff Department and this has already delayed closing.

QUESTION: Any suggestions/advice in getting in touch with someone at USDA to get an accurate payoff?

RESPONSE(S): This is really interesting. I believe the process for obtaining payoffs to be amazingly reliable. I don't remember a time when there was a dispute about the accuracy of a payoff. A couple of questions –

1. Is there any possibility of a fraudulently created payoff? I'm really spooked by the possibility of this. What is the amount secured by the mortgage?

2. Can the borrower go online and generate a payoff that can confirm the approximate amount owed? I wouldn't close without an actual payoff from the USDA but the figure provided by the borrower could help sort this out. As a reminder, the Title Guaranty mortgage force off program does not apply to federal loans.

3. Is it possible that the borrower has more than one loan with the USDA and there was a mix up in which loan was being retired?

56. Open End Mortgage.

FACTS:

QUESTION: On an open-end mortgage, must there be a release or will a satisfaction "take care of" the mortgage including the open-end feature?

RESPONSE(S): You ask will a "satisfaction" suffice. That leaves me wondering what exactly is meant by / covered by this so called "satisfaction". It leaves me too ignorant, as an examining attorney.
My experience in open-ended mortgages is requirement that there be a showing of Zero balance, and notification to the lender of a new mortgage being filed, and any further advances on the open-end will be junior to the new mortgage. Or, a specific release of the property in question from the open-ended mortgage. (Perhaps a "Partial Release"?). Or a subordination of the open-end mortgage to the new primary and first lien, mortgage. I have seen subordinations used extensively in ag lending.

You want a record that doesn't leave question. Ask for what you are entitled to ask for.

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I'd be concerned about the effect of a satisfaction (rather than a release) being problematic in view of the phrasing of Iowa Code Section 654.12A and facts of some of the cases involving issues about its effects:

654.12A Priority of advances under mortgages.
1. Subject to section 572.18, if a prior recorded mortgage contains the notice prescribed in this section and identifies the maximum credit available to the borrower, then loans and advances made under the mortgage, up to the maximum amount of credit together with interest thereon, are senior to indebtedness to other creditors under subsequently recorded mortgages and other subsequently recorded or filed liens even though the holder of the prior recorded mortgage has actual notice of indebtedness under a subsequently recorded mortgage or other subsequently recorded or filed lien. So long as credit is available to the borrower, payment of the outstanding mortgage balance to zero shall not extinguish the prior recorded mortgage if it contains the notice prescribed by this section. The notice prescribed by this section for the prior recorded mortgage is as follows:
NOTICE: This mortgage secures credit in the amount of ..... Loans and advances up to this amount, together with interest, are senior to

indebtedness to other creditors under subsequently recorded or filed mortgages and liens.
2. However, the priority of a prior recorded mortgage under this section does not apply to loans or advances made after receipt of notice of foreclosure or action to enforce a subsequently recorded mortgage or other subsequently recorded or filed lien.

* * * * *

This was a question from the Mitchell County Abstract Company that I said I would ask. Since then I have found this.

Gentlemen,

It appears Iowa Title Guaranty (ITG) is the entity that made a difference between release and satisfaction. As abstractors historically we would show a release as it releases and discharges a mortgage recorded 1/1/2011 as Document No. 2011 1. In late 2020 early 2021 ITG required we set out the release in full or attach the release to make sure it contained the words, release, satisfied and/or discharged in full.

The following is from correspondence from Lindsey Guerrero in December of 2020.

ITG requires that open-end mortgages be satisfied, closed and released. There has been discussion (and disagreement) amongst attorneys as to whether certain forms of "satisfactions" are adequate to release an open-end mortgage. A satisfaction merely states that the balance of the loan has been paid to zero, but it does not specifically "release" the lien from the Land. A release provides that the lien has been released or detached from the Land—confirming that the Land no longer serves as collateral for the loan and no longer encumbers the real property. A document entitled “satisfaction” may be acceptable, so long as the substantive terms within the body of the document provide that the lien is discharged and released. If the open-end account is not closed, obtaining a mere satisfaction without the "magic" release language could result in a previous owner taking a future draw against the property. ITG once paid a large claim in which the seller’s open-end mortgage was not closed and released, and years later, the seller drew from his line of credit.

In drafting the new requirement, we attempted to provide abstractors with as much discretion as possible when determining how to show the release. If the abstractor prefers not to type the release document in full, we will allow them to include a copy of the document. We originally proposed requiring that the abstractor simply show the substantive release clause ("released and discharged in full" or other similar language) but during our workgroup meetings participants expressed the concern that this would result in abstractors engaging in the

practicing of law - that only an attorney should be making the determination as to whether the release language is valid and effective.

.....

Since this time it has been the recommendation of the ILTA to set out a Release or Satisfaction in full. That said, the words release and/or satisfaction are interchangeable as long as it acknowledges receipt in full.

57. Petition by City or County for Title to Abandoned Property Iowa Code Section 657A.10B.

FACTS: I am reviewing an abstract with entries showing the Petition for Abandonment by a City. It appears that all creditors except the mortgage holder and State of Iowa (judgments for different tickets) were given proper notice. City deeds over property to subsequent purchaser.

QUESTION: I assume the property is still subject to the mortgage and State of Iowa judgments? Not sure why mortgage holder and State of Iowa were not listed/served.

RESPONSE(S):

58. Strange Mortgage and Title Issue.

FACTS: I am reviewing an abstract that has the following:

- Mortgage dated 6/2/2009 and filed 7/1/2009. However, it shows a due date of "1st day of June, 2009" (which is underlined by the abstractor). Technically we are after the 10-year mark for the 6/1/2009 date but it seems like a mistake. I would assume I should still ask for it to be released.
- Real Estate has used one legal description throughout until 2009; then a mortgage uses that legal description and an "Also Described As" in subsequent mortgages and also in a Sheriff's deed that was from a foreclosure of one of those mortgages.

QUESTION: Would an Affidavit of Possession that also stated personal knowledge that the legal descriptions are one in the same sufficient?

RESPONSE(S):

59. Disclaimer.

FACTS: Husband dies in 1998. Will gives Wife his undivided one-half interest in Blackacre to her absolutely and in fee simple title. Wife files timely disclaimer that disclaims her remainder interest in the undivided one-half interest of Blackacre.

Can a person disclaim just a remainder to effectually give themselves just a life estate?

I assume at the time the attorney and the Wife were hoping to avoid bringing Husband's undivided one-half interest into her estate by trying to change the nature of her ownership by disclaiming the remainder. This would allow her to keep the income but not bring in his undivided one-half into her estate. Maybe I'm off in my thinking.

But Wife has now died, and I am not quite sure if that underlying disclaimer was valid and she only has a life estate in ½ of Blackacre or if it was invalid and she has the entire interest in Blackacre (her ½ and his ½).

All thoughts, case law, knowledge, guidance, are welcomed!

QUESTION:

RESPONSE(S): IMHO the answer is "yes" a person can disclaim the remainder in real estate and thereby keep the income for life.
All that remains is to file IowaDocs Form 179 or similar.

60. Income for Life v. Life Estate.

FACTS:

QUESTION: 1. Will gives farmland life estate to X, Remainder to C. X and C desire to join in a sale of the land. X is 55 years old. Pursuant to the life estate tables in the back of the Iowa Code, this places the life estate at 60.539% of the total value of the farm. If farm sells for $1 million, is X entitled to $605,390?

2. Same scenario, except now the actual language of the will states "income for life" to X, and remainder to C. Entitled to any proceeds? Or do you think in this scenario, required to reinvest proceeds and get income only? Also, for titling purposes, is this a life estate/remainder situation? Or does this create a constructive trust? (Since we didn't give entire bundle of sticks...i.e. income only and also not benefit and possession, must a trustee take possession to administer "income for life"?).

RESPONSE(S): Yes to both, unless the parties agree to gift some of the proceeds they may be entitled to under the tables.

61. Inheritance Tax.

FACTS: I am reviewing an abstract where X died in 2020. X had no spouse or children and left his assets to what appears to be 2 charities and a cousin.
X specifically devised real estate to Y (one of the charities). The real estate was transferred to Y by Court Officer Deed in September of 2020 prior to issuance of the inheritance tax clearance.
A transcript of the estate was transcribed to the County of the real estate.
Y sold the property in December of 2020 to Z, again no inheritance tax clearance is shown in the abstract.

My client is buying the real estate from Z.

I checked X's probate file in the County of death and an Inheritance Tax Clearance was filed in the probate in March of 2021.

Would you require that an additional transcript of the Inheritance Tax Clearance from X's probate be filed in County of real estate so that it can be included in the abstract, or because Y is a charity and should not have owed inheritance tax would you pass on this requirement under Title Standard 1.1.

QUESTION:

RESPONSE(S): Ordinarily, I'd go with Title Standard 1.1. And that may in fact be a perfectly reasonable way out for you.

But-- we're dealing with the Gummint and that means different (and often nonsensical) rules apply.
I cite myself here: Hanson's First Law of Taxation is "In disputes with tax collectors, the Taxpayer is Always Wrong".

What kind of charity is Y? Is it a church?
If so then the *Zion Lutheran Church* holding (see below) may assure tax exemption (and I'd bless use of Title Standard 1.1).
If not—Ehhh.
__Just to be safe__, you might require that Z get and file in his county a certified transcript of the CIT filing from the other county's estate proceeding.
Reason: the restrictive wording of the inheritance tax exemption statute.

450.4 Exemptions.
The tax imposed by this chapter shall not be collected: ...
2. When the property **passes for a charitable**, educational, or religious **purpose** as defined in sections 170(c) and 2055 of the Internal Revenue Code. [emphasis added]

3. When the property passes to public libraries or public art galleries within this state...or to hospitals within this state...or to trustees for such uses within this state, or to municipal corporations for purely public purposes.

If "charity" Y is one of the entities specifically exempted from tax by subsection 3, then no problem. Title Standard 1.1.
Subsection 3 specifically speaks of property that "passes to" an exempt entity within a certain class of entities.

Contrast the language of subsection 2. Those words do not track those of subsection 3.
We must presume that the legislature intended the difference, because the former (and litigated) Subsection 2 used to read
"When the property passes in any manner ***to societies, institutions*** **or associations** incorporated or organized under the laws of this state for charitable, educational, or religious purposes..." [emphasis added]
Subsection 2 speaks vaguely, and only, of "a charitable...purpose" for the bequest.
I think we may not skate past a (need for) showing the purpose of the gift, by simply saying the property was left "to" a museum, a school, or a church...

The mixed bag of case law provides not much more clarity.

In re Estate of Martin, 710 N.W.2d 536 (Iowa 2006) (exempt "purposes" of bequest found—unfortunately Court gives no description of how the purposes were or should be shown)
"We note that some property passing under the decedent's will in the present case was bequeathed for a charitable, educational or religious purpose and was exempted by IDRF in
the calculation of the inheritance tax pursuant to Iowa Code section 450.4(2)."

Matter of Bliven's Estate, 236 N.W.2d 366 (Iowa 1975) (intestate estate dispute resolved by agreement of parties passing some of estate to two charities; taxation imposed upon entire estate)
"Without question, the involved controversy demonstrates existent ambiguity in the terms and applications of Code S[ection] 450.4(2)."
"Tax exemption statutes are to be strictly construed in favor of taxation."
"[O]ur inheritance tax exemption statute never came into play as to any right in said estate indirectly acquired...by these charitable organizations."
"[I]t is well established an inheritance tax is a charge, not on the property left by a decedent, but rather on the privilege to receive the same by will or intestate succession."
For later assessment/analysis of *Bliven*, see Nance v. Iowa Dept. of Revenue, 908 N.W.2d 261 (Iowa 2018).

Goergen v. State Tax Commission, 165 N.W.2d 782 (Iowa 1969)(Subsection 4 held to limit Subsection 2 when bequest is made for specific Subsection 4 purpose)

"To say that all bequests to religious institutions are totally exempt from the Iowa inheritance tax, notwithstanding that such bequests are specified for the performance of a religious service by some person regularly ordained, authorized, or licensed by some religious society to perform such services on behalf of the testator or some person named in his will, would seem to ignore the provisions of subsection 4 of section 450.4 and render the provision meaningless, superfluous, and nonworkable. "

"It is true, if subsection 4 had been deleted from section 450.4, the institutions named would have received their bequests exempt from the inheritance tax regardless of the use made of the bequest." [dicta, emphasis added—finding similar to that in *Zion Lutheran Church* below]

Zion Lutheran Church v. Executors of Lamp's Estate, 260 Iowa 363, 149 N.W.2d 137 (1967) (two churches appealed ruling abating their bequests in an insolvent estate).

"Appellants [the churches], ***being exempt, have not paid and are not expected to pay inheritance tax*** on their bequests. We do not view S[ection] 450.4, Iowa Code, 1966, as statement of general legislative policies under all circumstances, but rather as a delineation of permissible inheritance tax exemptions within the context of the chapter in which it is placed." [emphasis added]

* * * * *

I would suggest that a copy of the clearance be attached to an affidavit explaining that it was filed in the other county and that the affidavit then be recorded.

62. Life Estate Fun.

FACTS: Issues like these are why life estates are not as simple as people think.

- W owns property solely in her name;
- W then retained a life estate and deeded remainder interest to her stepson (same name as H but since H was deceased, we assume it was to stepson) and her sister (S); W does not remember doing this and thought she owned property outright;
- Sister's daughter (Buyer) has come to us for a "simple" sale from W to her for the home;
- We have informed her that Stepson, Sister, and their spouses need to sign off (purchase agreement and deed) and that technically they would have a right to their portion of the net proceeds;
- Assuming we can get Stepson and Sister to agree all funds go to W, we would like to find a way that the remainder interest was not ever accepted by Stepson and Sister. What is the best way to accomplish: (1) have Stepson and Sister deed their interest back to W (likely considered a gift but fairly small gift in this circumstance)? Or (2) can Sister and Stepson affirmatively state somehow that they never accepted the gift of the remainder interest (they didn't get any benefit; they didn't even know about it) and likely still just QCD back to W without creating a gift? We will be getting a title opinion done so we would still know if there are any judgments against Stepson or Sister and can take care of those if they come up.

QUESTION:

RESPONSE(S): Sounds like a disclaimer deed.

63. Looking for Pleadings for Iowa Code Chapter 651 Partition Action Involving Heirs Property.

FACTS: I am preparing to file a Petition for Partition of a farm under Iowa Code Chapter 651 involving "Heirs Property" and wish to mine information and pleadings from EDMS in similar cases so I'm looking for case names, numbers and counties to view via EDMS. I'm also receptive to receiving via email any sample pleadings or discovery docs in MS Word format.

QUESTION:

RESPONSE(S): I have not done one yet, but may be doing one soon. So please share any forms you might get. And, if I see anything else, I will forward.

* * * * *

Attached is a Petition, Notice of Lis Pendens and Original Notice for a partition action our office filed for heirs property. Case #EQCV026720.

[See Attachment]

IN THE IOWA DISTRICT COURT FOR WINNESHIEK COUNTY

Plaintiffs, v. Defendants.	Case No. _____ **PETITION** **(Lis Pendens Indexing Required)**

Plaintiffs, and for their cause of action, state and allege as follows:

INTRODUCTION

1. This is a cause of action for the partition by sale of real estate consisting of a homestead and approximately 22 acres as shown on Exhibit A attached hereto. The real estate is located , Winneshiek, County, Iowa. Plaintiffs each own an undivided one-third interest in the real estate with legal description appearing herein (the legal description includes other land). The Defendant, , owns the remaining undivided one-third interest in the real estate.

PARTIES AND JURISDICTION

2. Plaintiff, , is a resident of Linn County, Iowa, residing at . Plaintiff, , holds an undivided one-third outright ownership interest in the real estate subject to this action.

3. Plaintiff, , is unmarried and is a resident of Chickasaw County, Iowa residing at . Plaintiff, , holds an undivided one-third outright ownership interest in the real estate subject to this action.

4. Defendant, , is a resident of Linn County, Iowa residing at . Defendant, , holds an undivided one-third outright ownership interest in the real estate subject to this action. The spouse of , is named as a Defendant in this action as may claim an interest in the real estate subject to this action.

5. Heirs, spouses, assigns, grantees, legatees, devisees, and beneficiaries of each and all of the named Defendants may exist and claim some right in the real estate subject to this action, and are made party defendants hereto as unknown claimants ("Unknown Claimants").

6. Upon information and belief, no creditor or person holds a lien against the real estate subject to this action.

7. Jurisdiction is proper in this Court pursuant to Iowa Code § 602.6101.

8. Venue is proper in Winneshiek County because it is the County in which the real estate subject to this action is situated. The real estate that is the subject of this action is legally described as follows:

(hereafter the "Real Estate").

9. The Real Estate was conveyed to as Tenants in Common in a Court Officer Deed dated , filed , in Book , Page in the records of the Winneshiek County, Iowa Recorder.

10. conveyed an undivided one-third interest in the Real Estate to by Warranty Deed dated, filed, in Book, Page in the records of the Winneshiek County Recorder.

11. Plaintiffs do not wish to further own fractional interest in the homestead portion and surrounding land (consisting of 22 acres m/l) of the Real Estate as shown on Exhibit A attached hereto. Plaintiffs and the Defendants have been unable to reach an agreement to purchase the Plaintiff's interests or sell the Real Estate.

COUNT ONE
(For Partition of Real Estate)

12. Plaintiffs hereby incorporate the foregoing paragraphs.

13. Plaintiffs and Defendants hold ownership interests in the Real Estate.

14. Plaintiffs request that the Court partition the Real Estate by sale and for a division of the proceeds pursuant to Iowa Code Chapter 651.

15. Plaintiffs further request that the Court file an initial decree establishing the shares and interest of all owners in the Real Estate and finding that Plaintiffs and Defendants each hold undivided one-third interests in the Real Estate. Iowa Code § 651.12.

16. Plaintiffs further request that the Court appoint a referee to sell the Real Estate. Iowa Code § 651.18.

17. Plaintiffs further request that the Court order that the costs of partition be paid by all parties in proportion to their interests in the Real Estate established by judicial decree. Iowa Code § 651.22.

18. Plaintiffs further request that the Court ender an order awarding Plaintiffs reasonable attorneys' fees and taxing the same as costs, along with any other fees that may be incurred. Iowa Code § 651.23-24.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, and, pray that the Court enter a decree establishing interest in the Real Estate, appointing a referee to sell the Real Estate, allowing Plaintiffs to recover reasonable attorneys' fees and all other costs, distributing the net proceeds in proportion to the respective Real

Estate interests held by the parties herein, and for any further relief that the Court deems just and equitable.

Dated: _____

Respectfully Submitted,
ROBERTS & EDDY, P.C.

By: _____
Brian C. Eddy, AT0002162
2349 Jamestown Avenue, Suite #4
Independence, IA 50644
Telephone: 319-334-3704
Fax: 319-334-3421
Email: beddy@robertseddy.com

By: _____
Stephanie A. Sailer, AT0013471
2349 Jamestown Avenue, Suite #4
Independence, IA 50644
Telephone: 319-334-3704
Fax: 319-334-3421
Email: ssailer@robertseddy.com

ATTORNEYS FOR PLAINTIFFS

IN THE IOWA DISTRICT COURT FOR WINNESHIEK COUNTY

Plaintiffs, v. Defendants.	Case No. _____ **NOTICE OF LIS PENDENS**

TO THE WINNESHIEK COUNTY CLERK OF COURT:

You are hereby notified that on the ____ day of _____, ____, the above-captioned action involving a Petition to Partition Real Estate was filed in the Iowa District Court in and for Winneshiek County, Iowa, Case No. _____. This Action alleges a real property claim affecting the following described real estate located in Winneshiek County, Iowa:

The Plaintiffs in this case are , and , and the Defendants are, and all Heirs, Spouses, Assigns, Grantees, Legatees, Devisees, and Beneficiaries of each and all of the named Defendants.

Respectfully submitted,

Brian C. Eddy, AT0002162
ROBERTS & EDDY, P.C.
2349 Jamestown Avenue, Suite #4
Independence, IA 50644
Telephone: 319-334-3704
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IN THE IOWA DISTRICT COURT FOR WINNESHIEK COUNTY

, Plaintiffs, v. , Defendants.	Case No. _____ **ORIGINAL NOTICE** **(Lis Pendens Indexing Required)**

TO THE ABOVE-NAMED DEFENDANTS:

YOU ARE HEREBY NOTIFIED that there is now on file in the office of the clerk of the above court a Petition in the above-entitled action, a copy of which Petition (and any documents filed with it) is attached hereto. The name and address of Plaintiffs' attorneys are Brian C. Eddy and Stephanie A. Sailer, of Roberts & Eddy, P.C., 2349 Jamestown Ave., Suite 4, Independence, IA 50644; Tel: (319) 334-3704; Fax: (319) 334-3421.

YOU ARE FURTHER NOTIFIED that unless, within 20 days after service of this original notice upon you, you serve, and within a reasonable time thereafter file a motion or answer, in the Iowa District Court for Winneshiek County. If you do not, judgment by default will be rendered against you for the relief demanded in the Petition.

This case has been filed in a county that uses electronic filing. You must register to eFile through the Iowa Judicial Branch website at https://iowacourts.state.ia.us/Efile and obtain a log in and password for filing and viewing documents in your case and for receiving service and notices from the Court.

For general rules and information on electronic filing, refer to the Iowa Court Rules Chapter 16 Pertaining to the Use of the Electronic Document Management System, available on the Iowa Judicial Branch website. For court rules on the Protection of Personal Privacy in court filings, refer to Division VI of the Iowa Court Rules Chapter 16. If you are unable to proceed electronically, you must receive permission from the Court to file in paper. Contact the Clerk of Court in the county where the Petition at Law was filed for more information on being excused from electronic filing.

If you require the assistance of auxiliary aids or services to participate in Court due to a disability, immediately call your District ADA Coordinator at (319) 833-3332. If you are hearing impaired, call Relay Iowa TTY at 1-800-735-2942. Disability coordinators cannot provide legal advice.

You are advised to seek legal advice at once to protect your interests.

64. Quit Claim Deed From Beneficiaries During Administration of Estate.

FACTS:
1. Mom owned Parcel A at the time of her death.
2. Mom's will gave Parcel A to her 4 kids, subject to Dad's life estate.
3. During the administration of the estate, 3 of the kids quit claimed all of their interest in Parcel A to their 4th sibling. (Per Iowa Code Section 633.350, title passed at death, subject to the possession of the Personal Representative.)
4. After the Quit Claim Deed was recorded, the final report was filed, which stated title to Parcel A passed to the 4 kids, subject to Dad's life estate. The Court approved the final report, and directed the Clerk to issue a change of title "pursuant to the final report." The final report does not reference the prior Quit Claim Deed or a family settlement agreement regarding Parcel A.
5. A Certificate of Title was then issued that certified that title to Parcel A has been established in the 4 kids, subject to Dad's life estate. (Per Iowa Code Section 558.66, the Certificate of Title is "not a muniment of title.")

QUESTION: Would you treat the post-Quit Claim Deed, final report and order as a stray deed per Title Standard 4.5? Or, would you require the estate to be re-opened to have the final report acknowledge and affirm the Quit Claim Deed? Or, did whatever interest in Parcel A that passed to the kids per the final report and order "inure to the benefit of the grantee" of the prior Quit Claim Deed notwithstanding the lack of warranties in that deed--thus eliminating the need for any corrective action? (See Iowa Code Section 557.4.)

RESPONSE(S): Does title pass at death, or at determination of the court?

* * * * *

I think Title Standard 1.1 is relevant:

Objections and requirements should be made only when the irregularities or defects appearing in the abstract of title actually impair the title or may be expected to expose the purchaser or lender to the hazards of adverse claims or litigation. When such a situation arises, the attorney should consult, when possible, with the prior examiner and endeavor to resolve the question in favor of marketability. He should communicate, when possible, with the prior examining attorney before delivering his opinion of title to his client.

Since the only potential claimants have deeded to the 4th child (admittedly by quit claim deed) I can't come up with a claim that could be "expected to expose" a subsequent purchaser or lender to the hazard of adverse claims or litigation. At most I would ask for an affidavit explaining that the family conveyed to the 4th child.

65. Tenants-in-Common; No Heirs.

FACTS: One thing I love about the practice of real property law is that everyday brings a different challenge. I've learned after doing this for a while that there are always new things to learn. Here's an issue that is a first for me.

I'm working on a project involving a property where 50% ownership belonged to a deceased individual with no heirs. The other 50% is owned by the party that wants to transfer the house, but as a tenant-in-common. Under Iowa Code Section 633.219, this 50% has escheated to the State of Iowa.

QUESTION: Does anyone have any suggestions on who we can contact at the State of Iowa to request a deed for the other 50% owner? Or perhaps ideas on what other steps we could take to clear title?

RESPONSE(S): Your decedent has in all probability heirs even if none are readily apparent. There are professional heir-search companies which can find these for a cut of the heirs' take. If you do a Google search of "heir search for probate," you will find companies like this one: https://heirsearch.com/ (This is not an endorsement of this particular company; this is the first one that came up!)

Forensic Genealogy & Legal Genealogical Research | HeirSearch
HeirSearch provides forensic genealogy research a better way with reasonable, non-percentage-based fees. Request a quote today 1-800-663-2255
heirsearch.com

What I would suggest you do is:

1. Open an estate for the decedent. (If you are not good at probate, get a specialist attorney to do it; the Supreme Court comes down hard on seat-of-the pants probate lawyers!)
2. Talk to a reputable heir search company and agree to their terms, subject to court approval, if reasonable.
3. Get a probate court order approving the heir search and the fee arrangement. Provide that the fee of the search company will come out of the missing heirs' share - after all, it is for their benefit.
4. At the same time, apply for a court order allowing sale to a bona fide purchaser for value of the decedent's share of the real estate, presumably along with a contract selling the survivor's share at the same time.
5. Once the claims period is expired, and the property is sold, pay off the heirs and the search company and close the estate.

I did one some time ago, and they found three first cousins once removed on one of the deceased's parent's side. Since a search for the second cousin level

would be prohibitive given the small size of the estate, I got a court order giving both sides of the family's share to the three heirs. I think that the heir search company charged a third; that of course being before the widespread development of internet geneology services.

* * * * *

This is a good idea. Unfortunately, any heirs would be located in Vietnam. The individual came to the US in the 1970s alone and there are no records of any family members.

* * * * *

Wow, that definitely complicates things. However, I would check with a search company to see if they can economically search for Vietnamese heirs. The worst thing that happens would be that they cannot. I don't think that advancement sin geneology are limited to the 50 states.

* * * * *

Is it on the great Iowa treasure hunt website?

* * * * *

Can you do a partition action?

66. Will as Muniment of Title.

FACTS: Husband dies January 2016 (more than 5 years ago). No probate. Attorney (not me) thought was all in Trust. Will says rest residue and remainder to Trust.

Truth of the matter: Partial interest in land NOT in Trust.

Title Standard 9.8 Affidavit, treating Husband as intestate, would transfer all to Wife.

Wife died 2023. No probate -- and really don't want to do one. Wife's Will leaves all to same Trust.

I thought I remembered something about a Will being a "muniment of title" but I am not able to find anything on this.

QUESTION: So, am I just stuck doing a probate?

RESPONSE(S): Title Standard 9.16 says if not probated, it's treated as intestate under Title Standard 9.8. Follow that procedure.

* * * * *

If the family will hold the real estate, or maybe sell it on contract that cannot be paid off for five years, then an affidavit for the husband plus having the wife's Will admitted to probate without present administration could avoid probate administration. (Sometimes it works and sometimes the family finds the 5 years too much of a problem.)

67. Another Upcoming Bill Related to Recording Documents.

FACTS: Real Estate and Title Law Section Members-
February 6, 2025
We have recently learned that some legislators are working on a bill that would make the following changes to Iowa law:

1. Counties would no longer be required to participate in the statewide Iowa Land Records system and the ILR system would no longer have any policy making authority over county recording systems. Consistency mandated by policy would no longer be a function of Iowa Land Records (or the 28E organization).
2. Counties would be allowed to set their own recording fees.
3. Counties would be allowed to provide online services including electronic recording through their local systems, and there would no longer be a requirement to have a uniform electronic recording system.

So far, feedback from a small group of attorneys has not been positive, especially as to potentially having 99 different sets of recording fees and 99 different filing systems.

QUESTION: If you have comments about this, please respond. If you would prefer to not respond publicly, you're welcome to simply email me. Thanks for your attention.

RESPONSE(S): This would be an absolute nightmare and step backwards.

* * * * *

As an attorney that works with lenders in many counties in Iowa I can sum this proposal up very succinctly. A disaster. How this one got past the back of the napkin at the local watering hole as an actual viable option is beyond me.

* * * * *

NO WAY! We already have 99 ways of dealing many other items and this should not be one more of them.

We went to a presentation this morning about a service that is being marketed for searches. The cost was to be $125 PER MONTH PER COUNTY PER USER!! You can have one user per office, but then only one user at a time could be in the program. This would be a bigger search – with more "bells and whistles" – to customize your searches. If our County offers it, then we could sign up.
There is simply no way small offices covering multiple counties could afford this.

* * * * *

This would raise consumer costs. Requiring closings to verify fees across jurisdictions will add time to the process with no notifiable benefit to any party. Likely also to result in recording delays due to small differences, leading to possiblle significant consumer harm due to gap events.

* * * * *

Maybe the issue was too much "watering" at the watering hole when this was thought up. Put me down in the, "This is a ridiculously horrible idea," camp. Strongly opposed.

* * * * *

Agreed. This would be a huge mistake.

* * * * *

What a horrendous idea. I can think of no good reason to change recording in this manner.

* * * * *

Agreed. If I had to guess, some of the larger Iowa Counties maintain a separate system for online access to records, often hosted by Cott Hosting Systems. I would guess that the impetus for this bill is from those counties trying to eliminate the requirement that they also participate in Iowa Land Records.

But I think that the lack of uniformity and the lack of a statewide platform for accessing land records would be disastrous.

* * * * *

Horrendous idea.

* * * * *

In these divisive times of ToD deeds, I'm glad we can find one thing on which we can all agree. What a terrible idea.

* * * * *

I'll also add my voice to this unanimous opinion. While we've had our issues with consistency in locating recorded documents and uniformity on Iowa Land

Records, 99 different platforms and 99 different sets of recording fees, sounds like a recipe for disaster.

* * * * *

It might be helpful to find if the Recorders Association has an opinion on this. If they oppose, this could easily die. Iowa Land Title will certainly oppose.

* * * * *

For what it's worth, Illinois has more or less this exact system – each county has different recording fees and a different electronic access system (each of which are much greater in cost than Iowa's.) It is an utter headache to navigate.

I echo those saying it would be a mistake to adopt this system or a similar one in Iowa. Whatever convenience it would give to county administrations would be far outweighed by the detriment to outside users.

* * * * *

Terrible idea.

* * * * *

Echo that statement: terrible idea.

* * * * *

Iowa Title Guaranty (ITG), will you chime-in? Or is this considered politics to stay out of?

* * * * *

I do not support moving away from Iowa Land Records.

Even if counties want to charge different recording fees, they could possibly do that through ILR. Users could find out recording costs ahead of time if ILR implemented a calculation tool like they have for transfer taxes.

* * * * *

I agree with what has previously been said. Getting away from Iowa Land Records is a bad idea and a step backwards. Having a different system in each county will only complicate and delay things, which ultimately is a disservice for the clients we serve.

* * * * *

We have a workable, low-cost, statewide standard search mechanism.
WHO is seeking to change that status, WHY, and WHO BENEFITS.
My cynicism meter is pegging...

* * * * *

I should preface this with a disclaimer that I do sit on the ESS Coordinating Committee that oversees Iowa Land Records, so I am a little biased. However, happy to provide my thoughts which echo those of us here at ITG and which do not differ from the unanimous thoughts shared below. Iowa Land Records, though definitely not perfect, is a great tool for all real estate practitioners to use to supplement the searches provided in our abstracting products. Here at ITG we use Iowa Land Records daily for underwriting, claims, compliance, and recordings for our commercial and mortgage release teams. We are very fortunate to have a statewide searching and recording system that provides certainty in fees and time of recording that I don't believe we would have if we sent everything to the counties to decide.

* * * * *

A+

* * * * *

Count me in as opposed to having it all left up to individual Recorders' Offices. The statewide system is not perfect, nothing ever is, but it sure beats having 99 systems to contend with.

* * * * *

Another example of a centralized process in Iowa having merit over a decentralized/non-uniform process in Illinois arising with court filings.

Iowa uses EDMS - a single, state-wide e-filing system that is unified between trial courts and appellate courts.

In Illinois, no such system exists. Instead, each county court or appellate court works with one of about two dozen different third-party providers to allow e-filing. No single third-party provider works with every county in the state. No Illinois court allows attorneys to directly e-file pleadings. The fees are all over the place. And, since one county court system can partner with multiple third-party providers, it means that the filing fees are different between the providers even though it is the same pleading. This adds an administrative step of having to compute the filing fee from the available providers to avoid overpaying the fee.

Each provider has their own login - I know we all love tracking additional passwords.

Fees being all over the place for a filing is one thing, but if fees are off at a closing, it adds a non-trivial amount of sand to the gearbox. So, everyone that computes closing costs would need to be prepared to check 99 different fee variations, which could change on who knows how much notice.

* * * * *

This bill is a terrible idea. It creates inefficiencies, confusion, and more work for everyone. Prior to Iowa Land Records if you needed to see a document, you either had to go to the Courthouse or call the Recorder and see if they were nice enough to send it to you. Having the ability to e-file in one spot with one set of login credentials is unbelievably efficient. The fees are consistent, and documents get recorded in a timely manner. If we have 99 systems, it may just be easier to send documents in the mail to the Recorder rather than navigating the different systems which then creates more work for the Recorders. It also delays the recording process.

* * * * *

My primary concern remains standardization of recording fees, but I certainly agree Land Records are adding efficiency. The flip side of that however, is that now hundreds of searches are done weekly by off shore title insurance providers, all enabled by our easy access to data.

We don't know how much work is lost to the local bar, and how much protection of our consumers we have lost jurisdiction over, because of our generous access to data.

* * * * *

When I worked downtown, before online court filing and recording, every once in a while the firm's runner would be sent to someplace like Sioux City, or Davenport to file or record something time sensitive. We could go back to that type of system with the bill being proposed.

* * * * *

Has anyone seen anything in writing as of yet?

* * * * *

The ILR system works. I don't know what they are smoking at the statehouse but this idea is just as crazy as some of the other bills that are being floated.

68. BOIR.

FACTS: FinCEN.gov just announced [March 3, 2025] that they are delaying any enforcement action including assessing penalties or fines related to not doing the BOI reporting. They also indicate they will be issuing an interim final rule by March 21, 2025, outlining new details on who has to file these reports.

QUESTION:

RESPONSE(S):

[See Attachment]

FinCEN Removes Beneficial Ownership Reporting Requirements for U.S. Companies and U.S. Persons, Sets New Deadlines for Foreign Companies

Immediate Release: March 21, 2025

WASHINGTON—Consistent with the U.S. Department of the Treasury's March 2, 2025 announcement (https://home.treasury.gov/news/press-releases/sb0038), the Financial Crimes Enforcement Network (FinCEN) is issuing an interim final rule (/resources/statutes-regulations/federal-register-notices/beneficial-ownership-information-3) that removes the requirement for U.S. companies and U.S. persons to report beneficial ownership information (BOI) to FinCEN under the Corporate Transparency Act.

In that interim final rule, FinCEN revises the definition of "reporting company" in its implementing regulations to mean only those entities that are formed under the law of a foreign country and that have registered to do business in any U.S. State or Tribal jurisdiction by the filing of a document with a secretary of state or similar office (formerly known as "foreign reporting companies"). FinCEN also exempts entities previously known as "domestic reporting companies" from BOI reporting requirements.

Thus, through this interim final rule, all entities created in the United States — including those previously known as "domestic reporting companies" — and their beneficial owners will be exempt from the requirement to report BOI to FinCEN. Foreign entities that meet the new definition of a "reporting company" and do not qualify for an exemption from the reporting requirements must report their BOI to FinCEN under new deadlines, detailed below. These foreign entities, however, will not be required to report any U.S. persons as beneficial owners, and U.S. persons will not be required to report BOI with respect to any such entity for which they are a beneficial owner.

Upon the publication of the interim final rule, the following deadlines apply for foreign entities that are reporting companies:

- Reporting companies registered to do business in the United States before the date of publication of the IFR must file BOI reports no later than 30 days from that date.
- Reporting companies registered to do business in the United States on or after the date of publication of the IFR have 30 calendar days to file an initial BOI report after receiving notice that their registration is effective.

FinCEN is accepting comments on this interim final rule and intends to finalize the rule this year.

###

69. Feedback Needed – Legislation of Interest to Real Estate Section.

FACTS: January 29, 2025 I'm passing along two bills that have been filed in the legislature on which your Section Council would like feedback. Please review and provide your thoughts by the end of the day Friday as to whether the ISBA should be in favor, opposed, or neither:

HF125 – Creates a new chapter of the Iowa Code defining and allowing the use of transfer on death deeds. We have heard that the Probate Section is opposed. We have also heard that the Iowa Association of Realtors and Farm Bureau are in favor.

SSB1062 – Addresses *Sundance Land Company v. Remmark*, where the Supreme Court held that unity of title extinguishes any previous acquiesced boundary.

You can find both bills and the opinion from the *Sundance* case by opening the attachment labeled "ClickToViewAttachments".

We appreciate your participation.

QUESTION:

RESPONSE(S):

1. Transfer on Death (TOD) deeds strike me as a solution hunting for a problem, while creating other problems. Reject.
2. Ugh. I have always thought Iowa Code Chapter 650 causes difficulties in title records. Acquiescence seems to require both adjoining landowners to (a) have a survey done and both sign off, or (b) if they disagree then get a court decree as muniment of title.

How in the world does a ***non-recorded*** act or set of acts "self-execute" the title to/boundaries of a land parcel?
Seems to me that, at most, such acts provide fodder for testimony in either an affidavit explanatory of title or a quiet title/acquiescence action.
-Does a "permanently established" boundary require a survey along the fence-line or other acquiesced divider?
-Must some sort of physical fixture or land feature exist? -Must an Affidavit Explanatory of Title be filed by one or both parties?

IMHO *Sundance Land Co. v. Remmark* was correctly decided and provides us a clear (if perhaps sometimes harsh) legal rule.

As Justice Mansfield wrote in Sundance, the concept of a "self executing" statutory acquiescence "seems absurd."

The *Sundance* opinion sees the negative policy implications for record titles:

"the alternative view would allow a landowner invoking chapter 650 to reach back and grab any ten-year consecutive period of an acquiesced boundary, even if that boundary had long disappeared, the parties had stopped treating it as a boundary in the distant past, or the property had been under common ownership and the boundary had ceased to be relevant. This would be highly disruptive of parties' expectations. A buyer of real estate would not be able to rely on a legal description even when there were no conditions on the ground suggesting the description did not reflect the recognized boundaries. Also, **there would be less of an incentive to get possible boundaries by acquiescence settled by decree so they became part of the record chain of title of the properties**. Title searches would become more of a game of chance." (emphasis added)

Revised Iowa Code section 650.14 appears to be an attempt to codify the dissent.

* * * * *

We need to be in lockstep with the Probate Section in opposing HF125. It is every bit as insidious as Title Insurance.

* * * * *

I respectfully disagree. I don't see any good reason why we shouldn't allow transfer on death deeds to be used in Iowa. We already have life estates, revocable trust deeds, and transfer on death for unlimited amounts of assets held in financial instruments. TODDs are just another tool for us lawyers to employ with our clients and could keep a lot of low income Iowa citizens with only a homestead property from forcing their estate into probate after they pass.

* * * * *

I believe almost every other state in our region has the option for transfer on death deeds.

There aren't enough attorneys who will probate small estates, so this would make a real difference for a lot of lower income/middle-class Iowans.

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Has the Probate Section advanced any rationale for their opposition to the transfer on death bill? If not, a lot of people will assume that their opposition is based on naked self-interest, which is not the public image we want ISBA to have.

Also, would there be any problem, under existing law if a deed read:

H & W, married to each other, deed to themselves, as trustees [Blackacre]. The terms of the trust are that they will hold the property for themselves, or their survivor, during their lifetimes. Upon the death of their survivor, the trust shall terminate and the property shall be vested in their children, Huey, Dewy and Louie. Either grantor shall have the right, until the death of their survivor, to amend or revoke the trust so created, either expressly or implicitly by the transfer or encumbrance of the property.

* * * * *

The rare instances where someone commits fraud should not be the standard by which we determine if we should have a planning opportunity at our disposal. There is will fraud, trust fraud, and deed fraud present in the planning world. We don't make decisions about if these tools are allowed or not based on these rare instances.

TODI/TOD/TODDs are a good solution for many of my clients with lesser means for all of the reasons outlined.

I do both probate and planning along with our real estate practitioners, I respectfully disagree with the stance of the bar insofar as opposition to the TODI/TOD/TODD issue.

* * * * *

Although of course I defer to practitioners on this issue, it seems to me that there is a strong desire for people to be able to avoid probate by using a deed as a "poor man's trust." Being able to transfer on death, but with revocability, is what people want to do. Why would we make that harder than it needs to be?

I have seen sad cases where people "put their kids on the deed" and don't realize the implications of that. They need to sell the land to go to a nursing home, but the kids can't agree, or spouses of kids with dower rights won't agree. This tool seems to me would be useful not only for laypersons, but also for attorneys, with clients who don't want to set up a trust.

I believe the majority of states now allow these deeds. It would be interesting to see what their experience has been, what if any problems have arisen.

* * * * *

Thank you for the phrase poor man's trust. I was scolded in court once by opposing counsel suggesting I made up the term.

* * * * *

The text of the proposed bill provides that the property would still be subject to legitimate claims against the estate and could potentially be pulled back into an estate to satisfy those claims. It also states that there is an 18 month time limit on bringing those claims.

In the instance that no estate is opened, would the beneficiaries need to publish notice to start the 18 month clock?

How could clear title be transferred by beneficiaries of TODD to a third party purchaser prior to the expiration of this 18 month period?

* * * * *

I have not read the text of the bill, but I agree with my property law professor as to the utility of a TODI. We've had TODIs for several years in Illinois. They have proven a nice tool to (a) allow fixed income seniors to achieve probate avoidance without putting children on title or the cost or complexity of a living trust; and (b) allow clients with more significant assets to fit the real estate into an established beneficiary plan where the real estate would have been the only asset forcing a probate proceeding. While they do nothing to assist with Medicaid eligibility for long-term care, that is not always the central concern of the client. Trusts are not attractive to everyone. Putting the child on the title to the home is also undesirable for some clients even with a retained life estate or through joint tenancy. The TODI is a good device for some, but not for the others. It has just given practitioners another tool in the box to achieve the client's goals.

* * * * *

As a former legislator, let me tell you something about how things work in Des Moines. The desire of members of the real estate section to come up with a workable TOD bill is a sentiment. The desire of the probate people to stop any such bill is an interest. Guess where I would put my money if I were betting on such a bill.

* * * * *

I agree with those who support the proposed legislation.

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I appreciate the concerns previously expressed by the Iowa Academy of Trust and Estate Counsel back in 2019. The white paper addresses some valid concerns (Lower Competency Threshold for TODD deeds than regular deeds, lack of spousal protection, loss of rights and priority of claimants, no warranty

with TODD deed etc. I don't know if these concerns have been addressed in the current version of the proposed legislation. If these concerns have not been addressed I would not be in favor of passage of the current legislation.

* * * * *

I disagree. The views of the Probate Section are a policy, the goal of which is to protect the citizens of the state. Suggesting it is self-interest is contrary to our oaths and more than a little disrespectful of the role lawyers play in society.

* * * * *

I don't see a dichotomy. It is possible to honestly believe in a policy which works in your interest. I honestly believe that violent criminals should be arrested and imprisoned, even though it is in my interest that such a policy be enforced, since I do not wish me or my family to be added to the list of their victims. Or are you arguing that the probate bar, in opposing TOD, is taking a disinterested position?

[See Attachment]

IOWA ACADEMY OF TRUST AND ESTATE COUNSEL

EXECUTIVE SUMMARY ON SF 2030 "TRANSFER ON DEATH DEEDS"

In quick summary, here are nine compelling reasons why **SF 2030** (Transfer on Death Deeds) is bad for Iowans.

1). Mental Capacity. Under this proposal, a person with decision-making capacity that is so impaired that the person is unable to make, communicate or carry out important decisions concerning the individual's financial affairs (the standard for appointing a conservator) would still be permitted to sign a TODD since this bill sets the mental capacity bar so low. For comparison, **the same person would NOT have the legal capacity to sign a regular deed**, create a TOD brokerage account, a POD bank account, farm lease, or other contract. This creates a huge fraud risk. Unlike a will, no witnesses are required.

2). Fiscal Impact - millions in lost revenue to the state.

A. Loss of Estate Recovery Claims for Medicaid Reimbursement. At least 90% of the thirteen million dollars Iowa Estate Recovery collected from Iowa estates in a recent fiscal year was from real estate.
B. Loss of Iowa Inheritance tax on property passing to a transferee.
C. Loss of unpaid taxes that are currently a priority claim. The State becomes a general creditor of the transferee and the taxes are much more difficult and expensive to collect (requiring an estate and filing a law suit).
D. Loss of court costs on estates that would otherwise be opened.

3). Lost Priority. The following groups would find their historically protected priority claims difficult or impossible to collect. To the extent they are not collected, we all pay more! For example:

A. Funeral homes
B. Hospitals and doctors (expense of last sickness)
C. Single parents awarded child support but not paid
D. Employees who have not been paid

The Iowa Code currently provides for a simple, efficient method of filing priority claims in estates. If the proposal authorizing "Transfer on Death Deeds" passes, then in any estate where the most significant asset or only asset is a house that has been subject to a "Transfer on Death Deed", not only would the funeral home and other creditors lose their priority position and their ability to file a claim in the estate, the executor would have the option to show there are insufficient other probate assets to pay the claim. The executor then could sue the beneficiary and execute on the judgment. If the executor is also the transferee of the "Transfer on Death Deed", he could choose not to sue himself. It is unclear if creditor interests would attach to the real estate or only to the beneficiary personally.

In addition, Section 15.4 provides that the proceedings to enforce liability under this section must be commenced not later than 18 months after the transferor's death. This uncertainty of title would keep the real estate from being marketable for a year and a half, while if the real estate passed by Will in probate, it could be sold after 4 months from date of 2nd publication.

There is no limit on the type or value of real property that could be transferred in this manner. This raises the prospect of millions of dollars on farm or commercial real estate being transferred on death in this manner to avoid creditors and taxing authorities.

4). The Proposal is Unfair. The statute explicitly provides that children of a predeceased transferee are cut out. For example, a TODD deed going to the two children would then go only to one child. Grandchildren of the pre-deceased beneficiary child would get nothing. This is contrary to what almost all people would want. Also, children born after the recording of the deed are cut out.

5). No Spousal Protection. Spouses are not required to sign this "TOD Deed". This would be an exception to the current rule that a person cannot cut out their spouse from an interest in real estate. It is highly probable that there would be no estate assets to pay the statutory surviving spouse's allowance.

6). Elder Abuse. There is no procedural safeguard or process in the bill to prevent financial elder abuse. Anyone with a pen who can get an elderly Iowan to sign in front of a notary can destroy an existing intent to pass the estate to others (which could include the spouse) than the named beneficiary. A prepared "form" is included in the act which could be misused at will. **A "protected person" in a conservatorship can apparently sign a TODD under this proposal without the consent or knowledge of the conservator or the court.**

(7). Title Issues. At death, title is transferred WITHOUT covenant or warranty of title. See Sec. 13(4).

(8). Joint Owners. A joint owner (including a joint tenant with right of survivorship) who changes his/her mind at a later date is not allowed alone to revoke a TODD originally signed by multiple owners. See Sec. 11(2)(b).

(9). Septic. Except for 455B.172(11)(a)(5), the estate exemption from septic system inspection is lost.