96. Severing Joint Tenancy.

FACTS: A and B are husband and wife. They own real estate held in the name of A, B, C, D and E as Joint Tenants with Full Rights of Survivorship and Not as Tenants in Common.

QUESTION: Can they deed their share of the real estate to themselves as Tenants in Common and sever the Joint Tenancy with C, D and E?

RESPONSE(S): See *In re Est. of Johnson*, 739 N.W.2d 493, 501 (Iowa 2007). Iowa applies an intent-based test to severing a joint tenancy and says the intent should normally, or perhaps even always, be clear from a legally effective instrument. So, it appears a valid quitclaim deed (or perhaps a deed in fee simple without warranty under Iowa Code § 558.19) from A & B to A & B as tenants in common that expressed a specific intent to sever the joint tenancy (I recommend "This deed is intended to sever the joint tenancy between A, B, C, D, and E.") should be effective to do so. Joint tenants have the power to unilaterally (or, as here, bilaterally) sever the joint tenancy. *Keokuk Sav. Bank & Trust Co. v. Desvaux*, 259 Iowa 387, 392, 143 N.W.2d 296, 299 (1966). Moreover, Iowa has generally abolished the rule that a deed must have different grantors and grantees (see cases cited in *Johnson*).

In short: read *Johnson*, make the parties' intent clear on the deed, and I think you should be fine.

* * * * *

You mean A and B severing their 2/5ths ownership, correct? So after the Quit Claim Deed from A&B as Joint Tenants to A&B as Tenants in Common, A & B own 1/5th each as Tenants in Common and CDE own 3/5th as Joint Tenants with Full Rights of Survivorship and Not as Tenants in Common.

97. Subdivision.

FACTS: I've examined an abstract where there was a minor subdivision that was filed in February 2024. None of the required filings under Iowa Code § 354.11(1) were filed with the exception of the County Auditor approving the name of the subdivision. The subdivision has four lots. In June, four plats of survey filed in June and now the four lots are now eight lots. My concern is that cities and counties don't have the authority to ignore the statutory requirements for subdivisions.

QUESTION: Can we just use the filing of plats of survey to double (or triple) the number of lots to by-pass the regular subdivision process? If so, why not do this all the time?

I have not seen this done before. Is there a title defect? If so, does it rise to an objection under Title Standard 1.1? If the city approved all this, does that resolve the matter?

RESPONSE(S): How many conveyances have been made under this notional 'subdivision'?
Are you the first examiner reviewing the first conveyance? Or have others gone into the fog, before us?

You hint that the city in question rendered approval of the plat. See Iowa Code section 354.8, esp. subsection 2.
Was this done by resolution? Does the abstract show this resolution?
Did the County Auditor approve more than only the subdivision name? Such as—the plat? The Lot #s?
Has the Auditor indexed each numbered lot as a separate tax parcel?
And did your Recorder record the plat(s)? I presume so, else it would not be part of your examination.

If the Auditor and Recorder did so act then I conclude that you have a valid legal description.
And if you have a valid legal description then you have a valid conveyance based upon the plat.
Not sure that the City's approval matters, but if you have it then no worries: public interest is served.

"Though a plat that fails to comply with statutory requirements is generally ineffective as notice and void as a conveyance or dedication of public easements or public grounds, a conveyance by reference to a recorded plat or merely by drafting the description on the basis of the plat is not affected by the plat being

invalid. 2 This is because the plat, whether valid or invalid, if conclusively identified, is as much a part of the description as would be the case if it were copied into the instrument or if the data furnished by it were set out in full. 3"
1 *Patton & Palomar on Land Titles 3d* section 120 "Reference to Defective Recorded Plats", pp. 308-09 (2003).
Which of course began life as Patton on Iowa Land Title Examinations section 71, Reference to Plats Other Than Governmental pp. 124-25 (1929).
Which reads almost identically and cites the same cases (below).

FN2.
Young v. Cosgrove, 83 Iowa 682, 49 N.W. 1040 (1891):
"It is said that the first plat is invalid, not having been made and filed in accord with the law. We need not inquire whether this position be correct. The holder of the title to the land recognized the plat by following its descriptions, and thus, as between himself and his grantee, adopted it. Surely, when an instrument is referred to designate land or give description thereof, we are not required to hold such an instrument valid and regular in order to accept the description it gives. A void deed or a void plat could well describe lands which could be properly and conveniently referred to for such description in deeds conveying them. These views upon this point dispose of the case..."
[Second & third sentences quoted, and principle followed, in *Pearson v. City of Guttenberg*, 245 N.W.2d 519 (Iowa 1976) which ahead of the pull quote says: "It is to be initially understood the validity or invalidity of a plat does not affect the efficacy of a Deed which describes property conveyed by reference to such plat."]

FN3.
Willson v. Beck, 160 Iowa 276, 142 N.W. 78 (1913) "It was an indefinite description, and, being so, the parties would take according to the plat measurement as to the shore line."
[I missed whatever relevance this ruling may have on the footnoted point.]
Barringer v. Davis, 141 Iowa 419, 120 N.W. 65 (1909). Opinion quotes U.S. Supreme Court in *Cragin v. Powell*, 128 U.S. 691, 9 S.Ct. 203, 32 L.Ed. 566 (1888):
"it is said to be "a well-settled principle that when lands are granted according to an official plat of the survey of such lands, the plat itself, with all of its notes, lines, descriptions, and landmarks becomes a part of the grant or deed by which they are conveyed, and controls, so far as limits are concerned, as if such descriptive features were written out on the face of the deed or grant itself.""
Board of Park Commissioners v. Taylor, 133 Iowa 453, 108 N.W. 927 (1906):
"But when a lot is thus described as on a map or plat to which reference is made, such map or plat becomes, for the purpose of description, a part of the deed and has the same effect as though it were incorporated into the instrument."

Some thoughts on Chapter 354's application to your facts, for what they may be worth. [00000000]

1. Guessing your plat post-dates enactment of the Full Employment For Surveyors Act (Chapter 354), in 1990.
2. Nothing in Chapter 354 creates any criminal penalties for noncompliance. Nor civil either.
3. Without criminal penalties I think no one can legally force compliance with Chapter 354.
4. Nor will objection lie without some kind of statutory warning "TITLE IS NOT GOOD WITHOUT COMPLIANCE!"
5. Nothing in the Purpose Statement for Chapter 354 is violated by what you relate was done/not done.
6. Indeed, the Purpose Statement appears satisfied. No local gov't objects and grantor exercises his property rights.
7. At least one record plat of survey of division has been filed, rightly or wrongly. Maybe also a re-plat?
8. Provided section 354.4 is satisfied you should have usable legal description(s). 354.7.
9. *Workable legal description is the single most necessary item related to platting.* 354.1(1), 354.3(1), 354.5.
10. The Auditor has NOT notified anyone that the recorded conveyance is deficient in any way. 354.3(2).

I quote pertinent parts of Chapter 354:

354.1 Statement of purpose.
It is the purpose of this chapter to...[balance government authority] and the rights of landowners. It is therefore determined to be in the public interest:

1. *To provide for accurate, clear, and concise legal descriptions of real estate in order to prevent*, wherever possible, land boundary disputes or *real estate title problems*.
2. To provide for a *balance between the land use rights of individual landowners and ...the public* when a city or county is developing or enforcing *land use regulations*.
3. To provide for statewide uniform procedures and standards for the platting of land while *allowing for the widest possible latitude for cities and counties...regulating the division of land...*
4. To encourage orderly community development...

Emphasis added by me.

354.3 Covenant of warranty.
1. ... *A conveyance of land is deemed to be a warranty that the description contained in the conveyance is sufficiently certain and accurate for the purposes of assessment, taxation, and entry on the transfer books and plat books required to be kept by the auditor.* The description contained in a conveyance shall be sufficiently certain and accurate for assessment and taxation purposes if *it provides sufficient information to allow all the boundaries to be accurately*

determined and does not overlap with or create a gap between adjoining land descriptions.
2. *A recorded conveyance in violation of this chapter may be entered on the transfer books of the auditor's office. The auditor shall notify the grantor and the grantee that the conveyance is in violation of this chapter and demand compliance* as provided for in section 354.13.
Emphasis added by me.

354.4 Divisions requiring a plat of survey.
1. The grantor of land...shall have a plat of survey made of the division...The grantor or surveyor shall contact the county auditor who...shall review the division to determine [what the survey shall include] ... The plat of survey shall be prepared in compliance with chapter 355 and shall be recorded. [information to be included is listed.]
2. The auditor shall note a permanent real estate index number upon each parcel shown on a plat...for real estate tax administration purposes. ...

354.6 Subdivision plats. ...
2. A subdivision plat shall have a succinct name or title that is unique, as approved by the auditor, for the county in which the plat lies. The auditor shall evidence the approval of such name or title in a statement that shall accompany the plat as provided in section 354.11. *The plat shall include an accurate description of the land* included in the subdivision and shall give reference to two section corners...or...two established monuments within the official plat. Each lot within the plat shall be assigned a progressive number.
Emphasis added by me.

354.11 Attachments to subdivision plats.
1. *A subdivision plat*...that is presented to the recorder for recording shall conform to section 354.6 and *shall not be accepted for recording unless accompanied by the following documents*:
[a through f.]
Emphasis added by me.

354.18 Recording of plats.
1. A plat of survey...and a subdivision plat, with attachments, shall be recorded in the office of the county recorder, and an exact copy of the plat shall be filed in the offices of the county auditor and assessor.
2. ... A recorder shall not record a subdivision plat that violates this chapter.

BUT the recorder apparently DID accept the plat—which appears in your abstract.
So---whoopee if the recorder ignored 354.11. The plat is recorded and is part of your deed.
As to why not double the number of lots by a replat—maybe because of the "progressive number" requirement of 354.6(2).

But depending plat layout, and where the bisected lots occur—
I think you could comply with the "progressive number" requirement in several ways.
Example: A subdivision plat shows four numbered Lots: 1, 2, 3 and 4.
A subsequent plat cuts the lots in half, and renumbers.
Option 1: 1A and 1B, 2A and 2B, 3A and 3B, 4A and 4B.
Option 2: 1 and 1.1, 2 and 2.1, 3 and 3.1, and 4 and 4.1.
Option 3: 1 and 5, 2 and 6, 3 and 7, 4 and 8...
Although, I think that if the Auditor approves the 1st plat and then tries

"Both for engineering and legal purposes land is described by describing its boundaries. This is done directly by reference to fixed monuments, both natural and artificial; or indirectly, by using the name, letter or number assigned to the tract by a public or private survey." [Draft title objections to plats following this statement ALL relate to various defects in legal description (see sections 59-62 and 66-71); none to procedural issues related to platting.]
Flick, *Abstract and Title Practice* section 51 et seq., pp.45 & etc. (1951).

* * * * *

Is the following a fair synthesis of these legal authorities?

From a title examiner's perspective: Drawings of a surveyor (e.g. unofficial subdivision plats with lot numbers or plats of survey with parcel letters) filed of record can be used as a valid legal description if the conveyance identifies the certified surveyor's drawing by reference to the recording data of the plat.

From a transfer book perspective: Each County Auditor has discretion to create and maintain the transfer books for their county based upon their own internal procedures. Thus, if the Auditor will enter a transfer based upon A) an unofficial plat by reference to the name of the plat and lot number, or B) a Plat of Survey by reference to plat letter and section/township/range, then the transfer requirements of the statutes are sufficiently satisfied.

* * * * *

To answer the previous writer's questions –
Q: Are you the first examiner reviewing the first conveyance? Or have others gone into the fog, before us?
A: Yes, I'm the first. I agree with the premise underlying the question that where others have passed on a defect, there is some consolation in numbers.
Q: You hint that the city in question rendered approval of the plat. See section 354.8, esp. subsection 2. Was this done by resolution? Does the abstract show this resolution?
A: The abstract shows the resolution by the city council.

Q: Did the County Auditor approve more than only the subdivision name? Such as—the plat? The Lot #s?
A: A particularly interesting question. There is an e-mail (pretty informal) from the county auditor that says they are "fine with the use of the name for the new minor subdivision." The e-mail is silent on the lot numbers.
Q: Has the Auditor indexed each numbered lot as a separate tax parcel? And did your Recorder record the plat(s)? I presume so, else it would not be part of your examination.
A: Yes, parcel id numbers have been issued for each of the new lots.
Q: If the Auditor and Recorder did so act then I conclude that you have a valid legal description. And if you have a valid legal description then you have a valid conveyance based upon the plat. Not sure that the City's approval matters, but if you have it then no worries: public interest is served.
A. Yes, I will assume this as well. I still have lingering concerns about a city by-passing the state ordinance on subdivisions, but your comments have helped me bifurcate my political sense of this with the title examination inquiry. Very helpful.

I have waived my objection.

98. Title.

FACTS: I have a client who thought he had a valid LLC with partners with an EIN number and filed taxes for years. Now he is trying to sell the real estate and the LLC was never registered with the State of Iowa and some of the partners are no longer partners. Real estate is in the name of the LLC. Many tax returns were filed in the name of the LLC and partnership.

QUESTION: Would a partnership agreement to sell the real estate explaining everything suffice to transfer the real estate? Would he need include all the former partners?

RESPONSE(S):

99. Title.

FACTS: My client bought a corporation. (Not the land....bought the corporation).

This corporation had its land deeded to it in 1975. One of the deeds incorrectly spells the corporation's name. (For instance, spelled Evergrean corp., rather than Evergreen Corp.).

QUESTION: Must fix? If so, best way?

RESPONSE(S): Wouldn't a comprehensive affidavit suffice?

* * * * *

I would probably file an Affidavit of Possession, and add a couple of additional paragraphs to it, stating that: (a) the 1975 deed contained a misspelling; (b) there is no Evergrean corp. existing in Iowa according to the records of the Iowa Secretary of State (if true), and (c) Evergreen Corp. has been in actual and exclusive possession since the 1975 deed.

I lean towards fixing it now. It would be possible to wait until the corporation conveys the property, and then identify the grantor as Evergreen Corp., a/k/a Evergrean corp.

100. Tenants in Common.

FACTS: I have a situation where my client is buying an undivided 1/3 interest in a Lot of land.

The abstract ONLY traces his "one-third" interest. The legal description is for "Lot 2 and an undivided one-third interest in Outlot B". The abstract uses that same legal description.

The abstractor is abstracting only that specific legal description. So, I have the history for Lot 2 but only have the history of ONE of the 1/3 interests in Outlot B (i.e., they've only searched that specific legal description). It's a strange scenario.

My assumption is that the abstract should contain information for the entirety of Outlot B. The abstract does not show who owns the other 2/3's or how they obtained ownership. I called and told them I needed that information and they disagreed. They did end up doing a "personal lien search" on the other owners of Outlot B and provided the tax information for Outlot B. I have no way of confirming that the persons whose personal lien information was "searched" are the other owners.

Rural county, poorly developed subdivision. The Outlot should be part of the HOA and not owned by surrounding Lot owners.

QUESTION: If I'm an undivided 1/3 owner of a Lot of land, as tenants in common, shouldn't my abstract show everything affecting that entire LOT?

RESPONSE(S): Your skepticism appears to be well founded.
The abstract you examine does not show all facts that may bear upon the title to the land your clients seek to obtain.
I think it ought to do so. Other abstracts have done, and have served as bones of contention in litigation.
See, e.g., *McCubbin v. Urban*, 247 Iowa 862, 77 N.W.2d 36 (1956):
"III. The principal proposition urged, both here and in the trial court, concerns a guardian's deed appearing in the chain of title. The abstract shows an undivided interest in this real estate was owned by one Willis Wayne Vert, a minor and a resident of the state of Colorado. ...The [trial] court specifically found it had jurisdiction over the subject matter and the parties. It authorized and approved the sale and deed which was dated in November, 1947. Grantees therein are the Appellees here."

Having said that—
Ordinarily liens against interests held by an undivided owner do not affect other holders' undivided interests.

See, e.g.,
Baratta v. Polk Co. Health Services, 588 N.W.2d 107 (Iowa 1999) footnote 1 citing *Adamson v. Rice*, 478 N.W.2d 414 (Iowa App. 1991).

Query:
Does your client's purchase agreement contain a provision along the lines below?
Must Seller "convey unto the second party by warranty deed, with abstract showing good title"?
If yes—
Then "the record title, which might be epitomized in the abstract " is a "condition precedent to his right to demand" payment.

See, e.g.: *Fagan v. Hook*, 134 Iowa 381, 105 N.W. 155, (1905), modified on rehearing 134 Iowa 381, 111 N.W. 918 (1907)
[collecting/citing multiple cases, and quoting treatises; and quoted in 1 Patton & Palomar on Land Titles 3d section 45 (2003)] :
"The contract calls for an abstract showing good title, and nothing less than this would satisfy this condition, no matter what the vendor's real title might be."
...
"The object of an abstract is to enable the vendee to pass upon the validity of the title, and to enable him to do so it should contain everything material concerning its sources and condition. *Kane v. Rippy* (Or.) 23 Pac. 180; *Bumaby v. Equitable Reversionary Interest Society*, 54 L. J. Ch. 466; *Taylor v. Williams* (Colo. App.) 31 Pac. 504; 1 Cyc. 213. "The object of an abstract," says Mr. Curwen, in his work on Abstracts (section 36) "is to furnish the buyer and his counsel with a statement of every fact and abstract of the contents of every deed on record upon which the validity and marketableness of the title depend, so full that no reasonable inquiry shall remain unanswered, so brief that the mind of the reader shall not be distracted by irrelevant details, so methodical that counsel may form an opinion on each conveyance as he proceeds in his reading, and so clear that no new arrangement or dissection of the evidence may be required. The buyer has the right to demand a marketable title. He has a right to demand that the abstract of title shall disclose such evidence of that title as will enable him to defeat any action to recover or incumber the land." The title may be good; but one to whom an abstract showing good title has been promised as a condition precedent is not bound to accept any evidence thereof, except that contained in the abstract. The vendee in such a case is not required to accept or rely on parol evidence of title, or information dehors the records, or the word of the vendor. That the title was not only to be good, but that the abstract was to so exhibit it, was a valuable consideration in entering into the agreement; for every one recognizes the superior salability of land with good paper title."

To same effect see *Culley v. Dixon*, 199 Iowa 136, 201 N.W. 532 (1925) (six abstracts showed various encumbrances; obligation to provide abstract showing merchantable title not met)

* * * * *

An abstract to land is to show all title history, not an arbitrarily selected amount.

101. Title Examination.

FACTS: Real estate is held in the name of husband and wife as joint tenants per warranty deed. There is a dissolution action where the real estate was awarded to husband but no quit claim deed or certificate of change of title was ever filed. There were further dissolution proceedings where the court specifically ordered that husband may sell the real estate without the permission of the wife.

QUESTION: Does anything need to be done such as a Quit Claim Deed or certificate of change of title? Not sure I've ever seen this exact language before.

RESPONSE(S): I think that depends upon what the decree and/or stipulation says. If it requires a quit claim deed or CIT then you need to obtain that in order to get the property out of spouse's name.

* * * * *

If the decree is self-executing, you nevertheless should require the recording of a certificate for change of title (unless wife is willing to execute a quit claim deed). Otherwise, the Auditor's office likely will not update its transfer records relative to the property to reflect that wife is no longer an owner.

* * * * *

It sounds like a self executing judgement. No Quit Claim Deed needed. Have Clerk issue change of title to Recorder. But the change of title is not the muniment of title. It is only administrative. The self executing judgment is the muniment of title.

* * * * *

A follow up on my earlier post on self-executing divorce judgments establishing title to real estate in one spouse.
I would highly recommend that attorneys who submit a draft of a proposed divorce decree to the judge, as well as any judge issuing such a divorce decree, lose the term "quit claim deed" entirely.
Judges signing divorce decrees, you have ability to self-execute the title delivery in your decree.
Divorce Attorneys drafting proposed orders, you have the ability to avoid headaches down the road when the other spouse neglects to deliver the quit claim deed as provided in the decree. Self-executing = boom, done deal.
The decree can even include language ordering the Clerk of Court to issue a Change of Title to the Recorder's Office to make it abundantly clear that title is in

a specified spouse and you have instruction to do the proverbial paperwork – so you are one step closer to nailing it down.
Subsequent title examiner – your job will be so much easier. Your muniment of title is the Decree, not the Clerk's Change of Title.

* * * * *

I agree, a Quit Claim Deed is not necessary if the Court orders a Change of Title in the Decree. I have no idea how this practice got started using a Quit Claim Deed rather than a Change of Title. The Decree is then self-executing and there is no fighting or forgetting to get the Quit Claim Deed signed. Of course, the legal description in the Decree needs to be correct.

* * * * *

As I recall, the real estate bar has had difficulty communicating with the family law bar on this subset of issues in the past.

FWIW:

Perhaps the real estate committee could draft a form order to implement the real property terms of the divorce decree. In some small way, it could be an analog to the Qualified Domestic Relations Order that is used to implement the ERISA retirement account terms of the divorce decree.

This form (possibly named "Uniform Real Property Disposition Order") could be tendered to the Iowa Supreme Court for their input under the premise that the form could be integrated into the public forms for pro se parties to a divorce.

In this iteration, the courts in consultation with the real estate bar could help standardize language that would clearly identify the "best practices" approach to articulating the real property terms of the settlement or court findings into the decrees and orders of the district court.

* * * * *

In my opinion, the decree or judgment (whether in probate court, family court, or special actions like partition and quiet title) must include the legal description and must direct the Clerk of Court to issue the Change of Title.

* * * * *

Does the Decree require language ordering the Clerk to issue the Change of Title? Is the legal description enough? I am being told I must have the Clerk advising I must have the language ordering the Clerk to change title.

102. Title Opinion Drafting Considerations.

FACTS: I have come across several title opinions recently that prompt me to consider the subject of courtesies when drafting opinions. These are not in particular order and I invite adding to the list.

QUESTION:

RESPONSE(S):

1. When requiring documents (e.g., Iowa Code § 614.14 trustee and grantee affidavits, documents that address judgments), it is highly appreciated by those responding to the objections to provide enough information to relieve the responding attorney from having to research documents that are referenced in the abstract before you.

For example, today I was asked to prepare Iowa Code § 614.14 affidavits. Here is the language I use in my title opinion to assist the attorney who is drafting the trustee affidavit:

X. Since this deed will be executed by the trustee, there must be recorded along with the deed current affidavits from both the grantor and grantee, under § 614.14, Code of Iowa.

a. Title is in the trustee or trustees by virtue of a deed executed by <>, a married couple / a single person, which was recorded on <>, 20____ in Book <>, Page <> / as Inst. No. <> of the county records.

Here is the language I use when there is a judgment in general and a judgment in a dissolution of marriage:

<>. Entry No. <> reports a judgment in favor of <> against <> entered on <> in <> Case No. <>, Docket <>, Page <> in the initial amount of $<> plus interest and costs. Unless the defendant named is not the same as the titleholder shown above<> Upon recording of the deed to the proposed grantee (unless the defendant named is not the same as the grantee) this will constitute a lien against the real estate which must be paid.<> You are advised to check with the Clerk of Court prior to closing to determine the correct amount of the judgment and the amount of any court costs which may be payable.

<>. Entry No. <> reports Dissolution of Marriage Case No. <>, Docket <>, Page <> in which a judgment was entered on <> in favor of <> (the Petitioner<>Respondent<>) against <> (the Petitioner<>Respondent<>) for child

support<> spousal support<> property support (in the amount of $_____)<>. I require the judgment holder, <>, file an Affidavit which acknowledges receipt of all child support, spousal support, and/or the property settlement due under the Decree of Dissolution up to and including the date upon which your deed and/or mortgage is recorded.

Here is my language for filings on the MNLR:

X. The abstractor performed a search on the Iowa Secretary of State Mechanic's Notice and Lien Registry website against the legal description, address, current titleholder(s), and parcel number of the real estate. The MNLR website should be searched at the time of closing and filing the mortgage.

a. A Commencement of Work / Preliminary Notice was filed by <> on <> (MNLR #<>). I require a lien waiver to be obtained and filed on the MNLR.

2. When **organizing your title opinion**, I recommend using headings to help realtors and lenders (and attorneys) quickly navigate those paragraphs that identify title objections and those that are more informational. We don't have a recommended format for title opinions, but I have seen several opinions lately that were several pages of just numbered paragraphs and important title objections were left until the end.

3. **Open-end mortgages**. It is vital for the settlement agent to know whether a mortgage is open-end. I encourage you to ask your local abstractors to show this distinction in the abstract. Here is the language I use with open-end mortgages:

I advise that you determine whether this mortgage is securing a line of credit that will require written instructions from the borrower in order to obtain a mortgage release.

If the mortgage is an open-end mortgage and there are no instructions to close the LOC, the borrower could potentially draw on the loan even after the loan has been paid in full.

103. Title Opinion: Real Property with Mobile Home.

FACTS: If you have a mobile home that has not been converted to real property as part of a real estate transaction, are there special considerations for a title examiner?
Is a direction that a separate title transfer document for the mobile home and a bill of sale should be obtained, and confirmation no outstanding taxes on the mobile home via the county treasurer sufficient?
I assume there would be no mention of that mobile home on the Warranty Deed related to the real property?

My other question involves the rare occasion when there is no government patent. It seems like Title Standard 1.1 would cover this, but I have a memory of reading a warning about this. Is there a typical warning for that scenario in a title opinion?

QUESTION:

RESPONSE(S): A mobile home not converted to real property is (of course) personal property; and in Iowa title is evidenced, like motor vehicles, by a certificate of title. Since, I believe, Iowa is a "title state, " the ownership and any liens are as noted on the certificate. So, while you want to go through the usual real estate provisions on the underlying land, you will have to have the seller produce the certificate of title, have any outstanding liens noted on the title released by the creditor, and have the title transferred to your client at the county treasurer's office just as if it were a motor vehicle.

* * * * *

Also, if you are doing title work for a mortgage lender, and the mobile home is not in a mobile home park, consider asking the seller to complete the paperwork with the county treasurer to surrender the title and make it part of the realty - thus, mobile home (now realty) will be subject to the lender's mortgage (especially if the lender's needs a purchase money mortgage for an owner-occupied home).

104. Title Standard 1.1 vs Quiet Title Action.

FACTS: Husband and wife each owned a commercial property together.

Husband and wife were divorced in 1992. Divorce decree granted husband the property, but required wife to sign QCD.

No QCD was filed.

Husband sold property.

Wife died in 2013.

Examining attorney is requiring QCD of wife's interest in the property or Quiet Title Action. Due to her death, it would likely need to be Quiet Title Action.

QUESTION: To what degree may we rely on Title Standard 1.1 in this scenario? Is a QTA needed?

RESPONSE(S): How about remedial legislation that addresses divorce decrees like this, as we seem to see this situation all the time. If a divorce decree requires a Quit Claim Deed to be filed, but none was ever recorded, the law will presume title in the spouse to receive the QCD... unless spouse who has the obligation to file a QCD has filed/recorded a notice document within 2 years of the divorce that would show up in the abstract stating an alleged valid claim exists (unless the Decree itself states the QCD might need to be filed on a date later than 2 years)...and then some language as to forcing a hearing like a creditor gets within the old divorce matter. Could we work it like the Mortgage Release Program within Title Guaranty?

I picked 2 years out of the hat as an arbitrary number that, generally speaking, I think would cover 98.34% of all situations like this.

* * * * *

Discuss with one of the County's judges an application for the Clerk to issue a change of title per the Decree.

* * * * *

We see this situation all the time. Why? I can think of no good reason to draft that S1 is to give a quit claim deed to S2 to effectuate title transfer, when the decree itself can say "Property A is titled in S2. The Clerk of Court shall Issue a

Change of Title to the County Recorder to reflect this order on title in the county records."
Often the Decree says something like, "The residence, legally described as ---- goes to S2, and S1 shall give a QCD to S2."

Heck if the drafter stopped with the first phrase, I could live with it. Maybe I would want as title examiner that a change of title be one of the pieces of paper required. But I would thereafter ignore S2's health and wellbeing, and life or death after the Decree was entered.
How about a mandatory CLE for divorce attorneys and judges entering a divorce decree explaining the theory and practice of drafting self-executing title transfer in divorce decrees?

* * * * *

IF the 1992 divorce decree included in its award to Husband a ***legal description*** of the commercial tract—
Then no QCD or QTA is necessary. The divorce decree itself becomes a muniment of title—i.e. "documentary evidence of title".
Fencl v. City of Harpers Ferry, 620 N.W.2d 808 (Iowa 2000) (citing Black's Law Dictionary definition); also
Martin v. Martin, 720 N.W.2d 732 (Iowa 2007) ("[A] decree for dissolution of marriage may constitute a muniment of title…"

A judge has granted the property to Husband same as a QTA would do.
The QCD would be superfluous and its absence would not create any condition upon the conveyance from Wife to Husband.
The Decree will serve equally well, so long as it contains a legal description.
If the 1992 divorce decree did not include a legal description of the commercial property—
Then QTA.

Requirements for QCDs tend to be inserted in divorce decrees because attorneys think they're required.
See Iowa's Equitable Distribution statute: Iowa Code section 598.21(1).
But that section merely requires the court to "transfer the title to the property according[]" to the court's division of property.
QCD is merely one of the options the legislature afforded to the court to accomplish the transfer.

3 Turner, Equitable Distribution of Property, 4th Edition.
S9.4. Transfer of Title—Mechanics of title transfer
Method of Transfer
"In transferring title to assets, the court should normally award unconditional fee ownership. 42 …
"There are two available methods for transferring title to real property. The first method is a direct order changing title;

the second method is an order directing the owning spouse to convey the property by deed. 44 The court has the power to
use the first method only if the property at issue is located within the state in which the court sits. 45 Where the language
of the decree uses both methods, the presence of an order to convey does not prevent enforcement of the direct order
changing title. 46
"When the decree transfers title to real property, it must include a complete legal description of the land conveyed. 47
Without a complete legal description, a transfer of title is always erroneous, and it may in some states be legally void. 48
...
"The equitable distribution statute is an independent source of authority permitting trial courts to transfer title to property.
Transfers under the equitable distribution statute therefore do not have to follow the same set of formalities as transfers
under the law of partition." 50

EDP footnotes of potential interest
44, 46 *Bakewell v. Breitenstein*, 396 S.W.3d 406 (Mo. App. 2013)
47 *Schild v. Schild*, 272 S.W.3d 329 (Mo. App. 2008); *Alport v. Alport*, 571 S.W.3d 680 (Mo. App. 2019);
Stokes v. Polley, 145 Wash 2d 341, 37 P.3d 1211 (2001).
50 *Brady v. Brady*, 39 S.W.3d 557 (Mo. App. 2001).

* * * * *

When did H sell the property?

* * * * *

Great idea for purposes of keeping tax records straight. And has a smidgen of support in Iowa case law so far as title be concerned.
See *Kraft v. Kraft*, 964 N.W.2d 351 (Iowa App. 2021)(Table):
"The certificate following the closure of the estate proceeding is sufficient "[d]ocumentary evidence of title."
See *Muniment of Title, Black's Law Dictionary* (11th ed. 2019)... But we agree with the appellees that the record
interest was created in the probate proceeding and finalized by the certificate of change of title following
closure of the estate."

Cavil & Caveat:
Note the Court's weasling in that last sentence—the "record interest was created in the probate proceeding and finalized by" the COT...

The *Kraft* opinion reveals that title passed through a decedent's WILL that was probated. IMHO the WILL was the muniment of title.
I am not at all sure that our Court of Appeals correctly described muniments of title in its *Kraft* opinion.
A much better treatment appears in *City of Lake View v. Houston*, 2008 WL 5412284 (Iowa App. 2008) (emphasis by the court—which also referred to Black's):
"Muniments of title are deeds, wills, and court judgments *through which a particular land title passes and upon which its validity depends*.[citation]."
A Change of Title certificate fits none of these three categories.
Also see attorney's opinion about COT referenced--and effectively endorsed--by the COA in *Davis v. Roberts* 563 N.W.2d 16 (Iowa App. 1997).

105. Valid Joint Tenancy.

FACTS: I have run across this Grantee clause in abstracts twice recently (but never before) and wonder whether the real estate bar believes that this creates a valid joint tenancy:

...an undivided ½ interest to Person A and an undivided ½ interest to Person B, as joint tenants with full rights of survivorship and not as tenants in common...

It seems that to give meaning to all the terms, each person would have an interest in all of ½ of the property, instead of having an undivided ½ interest in the whole property. Also seems that they both would need to have an interest in the whole property in order to create a joint tenancy.

QUESTION: Does this create a valid joint tenancy? Am I missing something?

RESPONSE(S): I have had some direct replies requesting context for this question. My specific context is probate.

One co-owner passed in 2024; surviving co-owner is a grandchild of decedent.

The abstract has an Affidavit of Surviving Joint Tenant without probate and without any information identifying the beneficiaries of the decedent's Will or decedent's intestate heirs. Although I don't know whether or not decedent had a Will, I am personally aware that decedent had adult children who would be intestate heirs if there was an intestate probate, and that surviving co-owner would not be an intestate heir. Surviving co-owner is now selling the property to my client. What do I need to require?

Second question is more a request for a practice pointer. Normally shares are not designated in joint tenancy property, so I wonder if there is an advantage to wording a deed in this way, or if including "undivided ½" and "JTWFROS" on the same deed unnecessarily confuses title and risks litigation (or unnecessarily puts title examiners on the hook J) when the deed could be worded much more clearly.

Or maybe I am making this much harder than it needs to be.

* * * * *

The language is contradictory and should be avoided...either it is a joint tenancy of the whole or it is an undivided one half interest. I would probably assume the joint tenancy exists as it is clearly stated and therefore seems to reflect the intent of the parties.

If an heir chose to challenge the disposition of this asset I certainly think they would have an argument.

* * * * *

While I'm not a real estate expert, I believe I have seen some language or cases stating that while the ownership division between joint tenants during their mutual lifetime is presumed to be 50/50, this presumption can be rebutted, so in theory one could make a joint tenancy where the interest is 66/34 (or some other division). Perhaps this language is trying to say, "No, this is meant to be a traditional joint tenancy, 50/50, not some unequal division."? Perhaps it's inelegant and unnecessary, but maybe that's what this language was meant to do.

* * * * *

Great point. Maybe we can brainstorm some better ways of making that clear on a deed so as not to sow confusion? Suggestions?

I sent a second email about this issue on Monday but it was not in this email chain so I have pasted it below with some more context to my specific situation. From private comments shared with me it sounds like the consensus is that the clear JT language would get a title examiner off the hook in case of a future problem but I am still interested in comments about whether anything should be required.

One thing I am not sure I mentioned before is that one of the deeds I saw was to an unmarried couple occupying the property together, a situation in which it would make sense to each own an undivided ½ interest as tenants in common, but was on a pre-printed Joint Tenancy deed form. In that instance it seemed that the JT deed form could possibly have been used by mistake by the drafter, or that at least a complaining heir might have a colorable claim that it was a drafter's error, especially given the "undivided ½" language.

106. What Does This Legal Description Describe?

FACTS: I am looking at an abstract with this caption:

"Part of Lots Two (2) and Three (3) of Block Forty (40) in Fifth Addition to the City of Odebolt, Sac County, Iowa, lying Seventy-five (75) on the Northwesterly side of the following described line:" (then it describes a line with a lengthy effort).

QUESTION: I am trying to decide if that describes anything other than another line. Is this description adequate?

RESPONSE(S):

107. Iowa Code Chapter 558A Disclosures.

FACTS: Question from a realtor I regularly work with... Chapter 558A - 5(c) provides an exemption to disclosures for a fiduciary, including for a trust. The exemption does not apply "to a transfer of real estate in which the fiduciary... was an occupant in possession of the real estate at any time within the twelve consecutive months immediately preceding the date of transfer."

QUESTION: What counts as an "occupant in possession"? Obviously it applies to those situations where the trustees live in the residence full time. Does it apply for a trustee who uses the home as a second home but has their primary residence elsewhere, or other similar situation? At what point or level of use does a trustee count as a "occupant in possession"?

RESPONSE(S): Code language is:
fiduciary is a living natural person and was an occupant in possession of the real estate at any time within the twelve consecutive months immediately preceding the date of transfer.

FWIW it seems that if the natural person Trustee was there and possessing it as a matter of right for even a few minutes the Trustee falls within the exception and becomes a Transferor without exception to the requirements of the Chapter.

Having said that, it seems the real intent was to prevent Mom &/or Pop from using a trust to avoid compliance when selling their primary residence or second home.

108. Correcting Legal Description with Deceased Grantor.

FACTS: I am administering a trust where the original Trustor conveyed real estate into a Revocable Living Trust in March 2022. The Trustor died in December 2023. The successor Trustee sells the property. After the sale, it is discovered that the legal description in the March 2022 deed is incorrect. The Auditor discovers the error.

QUESTION: How do I correct the legal now the Grantor/Trustor has passed?

RESPONSE(S):

109. H's Signature for Property Being Sold by W's Revocable Trust.

FACTS:

- W solely owned property when she was single and transferred into her Revocable Trust while single
- W later on has married H;
- W is now selling the property;

QUESTION: Is H's signature on the transfer of property required for the transfer? H obviously didn't sign on the deed to the Rev Trust (Iowa Code Section 633.238) so I don't think there was any waiver of rights to the property. Likely can get H to sign so should he sign a separate Quit Claim Deed making sure he is giving up any rights to the property?

RESPONSE(S): H's signature is needed.
See Iowa Code Section 633.238, Sieh 713 N.W.2d 194 and Myers 825 N.W.2d 1

[See Attachment]

IN THE SUPREME COURT OF IOWA

No. 12 / 06–1485

Filed February 22, 2008

IN THE MATTER OF THE ESTATE OF EDWARD A. SIEH, Deceased,

RODGER A. SIEH and **CARENE E. LARSEN,** Trustees of the Edward A. Sieh Trust,

Appellants,

vs.

MARY JANE SIEH,

Appellee.

Appeal from the Iowa District Court for Grundy County, Todd A. Geer, Judge.

Trustees of inter vivos trust appeal from district court order subjecting trust assets to a spousal allowance under Iowa Code section 633.374 (2003). **AFFIRMED.**

Max E. Kirk and Jennifer L. Chase of Ball, Kirk & Holm, P.C., Waterloo, for appellants.

Paul C. Peglow and Bethany J. Currie of Johnson, Sudenga, Latham, Peglow & O'Hare, P.L.C., Marshalltown, for appellee.

LARSON, Justice.

The trustees of a revocable inter vivos trust have appealed from a district court order subjecting assets of the trust to payment of a spousal allowance ordered in the estate of the settlor pursuant to Iowa Code section 633.374 (2003). We affirm.

I. Facts and Prior Proceedings.

Edward Sieh established a revocable inter vivos trust in 1992 and transferred most of his property to the trust by a deed and a bill of sale. Also in 1992, he executed a will leaving the residue of his estate to the trust. He married Mary Jane in 1998, but did not change his trust or will to reflect the change in his marital status. Edward died in 2003, survived by Mary Jane, his widow, and four adult children. Mary Jane elected to take against the will under Iowa Code section 633.238. However, the assets of the estate were not sufficient to satisfy Mary Jane's elective share, so the question arose whether the assets of the revocable trust could be distributed to her as payment of her elective share. We answered that question in the affirmative in *Sieh v. Sieh*, 713 N.W.2d 194, 198 (Iowa 2006) (*Sieh I*). Our holding was informed by an analogous Iowa case, *In re Estate of Nagel*, 580 N.W.2d 810 (Iowa 1998), as well as cases from other jurisdictions and the Restatement (Third) of Property. *Sieh I*, 713 N.W.2d at 198.

After our reversal and remand in *Sieh I*, Mary Jane applied for a spousal allowance under Iowa Code section 633.374, and the trustees resisted on the ground the estate had no assets from which to pay such an award. They contended that *Sieh I* held only that the assets of the trust were subject to payment of Mary Jane's *distributive* share, but "does not direct the [district] court to augment the Sieh Estate in order to provide assets from which a spousal allowance may be paid." The

district court rejected that argument and ruled that the assets of the revocable trust were subject to payment of the spousal allowance. It awarded Mary Jane $3000 per month for twelve months, payable in a lump sum.

II. The Issues.

The trustees raise two issues: (1) did the district court abuse its discretion in awarding a spousal allowance as part of the costs of administration "when there are no assets in the estate from which the allowance can be satisfied," and (2) did the court abuse its discretion in awarding the allowance "when defendants did not have an opportunity to review and respond to plaintiff's affidavit regarding her finances" in advance of the hearing.

III. The Controlling Statute.

Iowa Code section 633.374 provides this with respect to spousal allowances:

> The court shall, upon application, set off and order paid to the surviving spouse, as part of the costs of administration, sufficient of the decedent's property as it deems reasonable for the proper support of the surviving spouse for the period of twelve months following the death of the decedent. . . . The court shall take into consideration the station in life of the surviving spouse and the assets and condition of the estate. . . . Such allowance to the surviving spouse shall not abate upon the death or remarriage of such spouse.

IV. Application of Iowa Code Section 633.374.

Under section 633.374, a district court shall order a spousal allowance. Despite the "shall" language of the statute, we have held that a court's ruling on an application for spousal support is reviewed for abuse of discretion. *In re Estate of Spurgeon*, 572 N.W.2d 595, 599 (Iowa 1998); *In re Estate of Tollefsrud*, 275 N.W.2d 412, 415 (Iowa 1979). In this case, we review the support order for an abuse of discretion, keeping

in mind the requirement of the statute that the court "take into consideration the station in life of the surviving spouse and the assets and condition of the estate." Iowa Code § 633.374.

We reject the trustees' argument that the estate may not look to assets of the trust to fund a spousal allowance. We do so, first, based on section 633.3104(2), which, at the time of this case, subjected the assets of a revocable trust to payment of the costs of administration of the settlor's estate when "the settlor's estate is inadequate to satisfy those claims and costs." By definition, a spousal allowance is a cost of administration and is, therefore, statutorily entitled to be satisfied out of the assets of the revocable trust. *Id.* §§ 633.3(8), 633.3104(2).

Our holdings in *Sieh I* and *Nagel* (which subjected trust assets to the payment of general claims) are consistent with this conclusion. In *Sieh I*, we built on *Nagel*'s holding and concluded "the rights of a surviving spouse should not be less favored than the interests of general creditors." *Sieh I*, 713 N.W.2d at 198. Similarly, we believe in this case the right of a surviving spouse to an allowance under section 633.374 should not be less favored than the claims of general creditors or the payment of a distributive share.

In addition to our case law supporting that result, the Restatement provides:

> An inter vivos donative transfer to others than the donor's spouse . . . that is revocable by the donor at the time of the donor's death, is subject to spousal rights of the donor's spouse in the transferred property that would accrue to the donor's spouse on the donor's death if the transfer had been made by the donor's will.

Restatement (Second) of Property § 34.1(3) (1992). Comment *k* to this section further explains that the assets of a revocable inter vivos trust are subject to spousal rights, specifically "family allowances."

We hold that the assets of the trust were properly subjected to payment of the spousal allowance. The court of appeals decision in *In re Estate of Epstein*, 561 N.W.2d 82 (Iowa Ct. App. 1996), decided before *Sieh I*, reached a contrary result. In *Epstein*, the court of appeals held that the assets of a revocable trust could not be used to pay a spousal allowance because the trust and estate were separate entities and to "commingle the assets of the estate and the trust run[s] contrary to the purpose of establishing two separate entities." *Id.* at 87. We reject that reasoning, based on the authorities discussed above, and overrule *Epstein* to the extent it does not allow revocable trust assets to be used to satisfy a spousal allowance.

V. The Procedural Argument.

The trustees complain that the district court abused its discretion by failing to allow them an "opportunity to review and respond" to Mary Jane's financial affidavit furnished in support of her application for a spousal allowance. Her application was filed on August 14, 2006. The trustees filed a resistance on August 16, complaining that they lacked sufficient information regarding Mary Jane's needs and "request[ing] that an appropriate financial application be submitted to the court and the parties for review prior to the court's further consideration of this matter." Mary Jane responded and furnished an affidavit of financial status on August 28, 2006. The court's order for support was entered the same day, without allowing the trustees any additional time to analyze the financial affidavit.

We find no merit in the trustees' procedural complaint. Section 633.374 does not require that a financial affidavit be filed prior to the court's award of spousal allowance, and none of our cases suggest it. In fact, a showing of necessity is not a prerequisite for receiving a spousal

allowance. *Spurgeon*, 572 N.W.2d at 599; *In re Estate of DeVries*, 203 N.W.2d 308, 311 (Iowa 1972).

A separate statute, Iowa Code section 633.375, provides for review of an award made under section 633.374:

> The court may, upon the petition of the spouse, or other person interested, and after hearing pursuant to notice to all interested parties, review such allowance and increase or decrease the same.

This section requires notice and hearing, and presumably the presentation of financial information, because it allows for increasing or decreasing the award. However, it is clear from a reading of this section that it applies only after the fact, i.e., only after the award has been made. Moreover, the trustees have not attempted to use section 633.375 to challenge the amount of the allowance.

The trustees understandably do not claim the spousal allowance of $36,000 (in an estate of approximately $1.7 million) is excessive, and we do not address that question.

The district court correctly subjected the trust assets to payment of the spousal allowance award, and we therefore affirm.

AFFIRMED.

IN THE SUPREME COURT OF IOWA

No. 11–1378

Filed November 2, 2012

IN THE MATTER OF THE ESTATE OF KAREN J. MYERS, Deceased.

REX A. PICKEN,
Appellant.

Appeal from the Iowa District Court for Hamilton County, Carl D. Baker, Judge.

Executor appeals probate court ruling that pay-on-death assets are included in the surviving spouse's elective share. **REVERSED AND REMANDED.**

James L. Kramer of Johnson, Kramer, Good, Mulholland, Cochrane & Driscoll, P.L.C., Fort Dodge, for appellant.

William D. Kurth of Kurth Law Office, Lake City, for appellees.

WATERMAN, Justice.

This appeal presents a question of first impression: whether a surviving spouse's elective share, as defined in Iowa Code section 633.238 (Supp. 2009), includes pay-on-death (POD) assets.[1] The probate court ruled that three of Karen Myers's assets, a checking account, certificate of deposit, and an annuity, all payable on her death to her daughters, should be included in the elective share of her surviving spouse, Howard Myers.

The assignees of Howard's elective share (assignees) argue the elective share should include POD assets under *Sieh v. Sieh*, 713 N.W.2d 194, 198 (Iowa 2006), which held the elective share includes assets in a revocable trust. The executor argues the general assembly, by amending section 633.238 in 2009, expressly limited the surviving spouse's elective share to the four categories of assets listed in the statute, none of which include POD assets. The probate court, however, ruled against the executor by comparing Karen's POD assets to the revocable trust at issue in *Sieh*. This interpretation would ensure the surviving spouse's elective share rights are not defeated through the use of nonprobate assets, such as POD accounts and annuities.

For the reasons explained below, we conclude the 2009 amendment to section 633.238 trumps *Sieh*. The controlling statutory language omits POD assets from the surviving spouse's elective share. Accordingly, we reverse the ruling of the probate court.

---

[1]We use "POD assets" to refer to the POD accounts and annuity at issue in this case. Although the accounts in this case were POD accounts, the same analysis would apply to transfer-on-death (TOD) accounts.

I. Background Facts and Proceedings.

Karen died on November 2, 2009, survived by her spouse, Howard. Rex Picken, Karen's brother and the executor of her estate, admitted Karen's will to probate on November 20. At the time of her death, Karen owned a number of assets, either jointly or individually, which were valued at $479,989.29. Howard became the sole owner of real estate and other property he and Karen owned as joint tenants with right of survivorship. Karen left no other property to Howard in her will, aside from some household furnishings. Karen bequeathed the rest of her property to her daughters and stepson. The assets at issue in this appeal are a checking account and certificate of deposit at the First Federal Savings Bank valued at $91,085.71 and an annuity with River Resource Funds valued at $18,978.80. All three of these assets were accompanied by beneficiary designations that made them payable on death to Karen's daughters.

Howard filed for an elective share on June 30, 2010, and an application for support allowance on July 8. The probate court denied Howard's application for support allowance because it found Howard lacked need for such support. On February 9, 2011, Howard assigned his interest in Karen's estate, including his right to an elective share, to the heirs of DeLillian Peterson, the Ramona Russell Trust, and the Helen B. Anderson Trust.[2] Howard, a former attorney who had

---

[2]The executor argues for the first time on appeal that Howard's assignment of his elective share violated Iowa Code section 633.242 (2009), which states:

> The right of the surviving spouse to take an elective share, and the right of the surviving spouse to receive a life estate in the homestead, are personal. They are not transferable and cannot be exercised for the spouse subsequent to the spouse's death. If the surviving spouse dies prior to filing an election, it shall be conclusively presumed that the surviving spouse does not take such elective share.

surrendered his law license, assigned his interest in Karen's estate to satisfy a restitution judgment against him in a criminal action. Specifically, Howard had been convicted of second- and third-degree felony theft for stealing client funds.

On May 6, the assignees filed an application to set off the surviving spouse's share. The assignees requested that the probate court determine, as an initial matter, whether the checking account, certificate of deposit, and annuity should be included in Howard's elective share. The probate court relied on our 2006 decision in *Sieh*. There, we concluded that assets in a revocable trust were to be included in the surviving spouse's elective share, even though they were not explicitly mentioned in section 633.238 at that time. *Sieh*, 713 N.W.2d at 198. In reaching that conclusion, we emphasized the fact that "the decedent had complete control over the trust assets at all times prior to his death." *Id.* Similarly, the probate court emphasized that Karen retained control over the POD assets before her death and, thus, concluded that these assets, like the assets of a revocable trust, should be included in Howard's elective share. This issue has divided the trial courts of our state.[3]

Because the executor failed to raise this argument in probate court, we decline to reach it. *See Bowman v. City of Des Moines Mun. Hous. Agency*, 805 N.W.2d 790, 797 (Iowa 2011) ("We decline to consider an argument that is raised for the first time on appeal."). In any event, this argument lacks merit. This provision states that it is "[t]he right . . . to *take* an elective share" that is not transferable. Iowa Code § 633.242 (emphasis added).

[3]The Iowa Practice Series noted uncertainty as to whether *Sieh*'s rationale could be applied to "any asset controlled by the decedent during life for which a beneficiary designation has been made." 2 Marlin M. Volz, Jr., *Iowa Practice Series, Methods of Practice* § 21:24, at 249 (2012). Iowa district courts have reached conflicting decisions on whether such assets should be included in a surviving spouse's elective share. *See id.*; *see also Rich v. Rich*, No. EQCV141699 (Woodbury Cnty. Dist. Ct., Sept. 14, 2011) (concluding the elective share included one-third of the decedent's POD accounts and annuities and all of an individual retirement account); *In re Estate of Albers*, Probate No. ESPR039413 (Pottawattamie Cnty. Dist. Ct., Dec. 2, 2009) (ruling the surviving spouse's elective share does not include POD or TOD accounts).

We retained the executor's timely appeal to resolve this question of first impression.

II. Standard of Review.

A surviving spouse's claim against the estate for an elective share under Iowa Code section 633.236 is tried in equity. Section 633.33 provides:

> Actions to set aside or contest wills, for the involuntary appointment of guardians and conservators, and for the establishment of contested claims shall be triable in probate as law actions, and all other matters triable in probate shall be tried by the probate court as a proceeding in equity.

Iowa Code § 633.33 (2009). Cases tried in equity are reviewed de novo. Iowa R. App. P. 6.907. But, when there are no disputed facts and the appeal turns on whether the probate court's interpretation of a statute was erroneous, as is the case here, our review is for correction of errors of law. *See In re Estate of Thomann*, 649 N.W.2d 1, 3–4 (Iowa 2002).

III. Analysis.

Because the probate court relied on *Sieh*, we begin by discussing that decision. We then analyze the controlling statutory language.

A. *Sieh v. Sieh.* In *Sieh*, Mary Jane Sieh, the surviving spouse of Edward Sieh, argued that she should receive, as part of her elective share, assets of a revocable *inter vivos* trust created by Edward several years before their marriage. *Sieh*, 713 N.W.2d at 195. The beneficiaries of this trust, Edward's children, argued that the revocable trust should not be included in Mary Jane's elective share, and the probate court agreed. *Id.* We reversed, emphasizing that,

> because Edward had full control of the assets of the inter vivos trust at the time of his death, including the power to revoke the trust, the trust assets were property possessed by the decedent during the marriage and thus subject to the spouse's statutory share under section 633.238.

Id.

We reached this conclusion even though revocable trusts were not mentioned in section 633.238 at that time.[4] Section 633.238 lists the assets that are to be included in the surviving spouse's elective share. The general assembly added revocable trusts to section 633.238 in 2005 after the *Sieh* case had been decided by the district court, but before we decided the appeal. *See Sieh*, 713 N.W.2d at 197 n.2 (citing 2005 Iowa Acts ch. 38, § 14); *see also* Iowa Code § 633.238(1)(*d*) (Supp. 2005) (stating the surviving spouse's elective share includes "[o]ne third in value of the property held in trust . . . over which the decedent was a grantor and retained at the time of death the power to alter, amend, or revoke the trust"). We noted this amendment "would be significant to our present consideration only if our attempt to determine what the law was prior to the amendment leaves us with some doubt." *Sieh*, 713 N.W.2d at 197 n.2. However, we concluded revocable trusts would have been included in the surviving spouse's elective share even under the preamendment version of section 633.238. *Id.* at 198.[5]

---

[4]The version of section 633.238 applicable in *Sieh* read:

> If the surviving spouse elects to take against the will, the share of such surviving spouse will be:
>
> 1. One-third in value of all the legal or equitable estates in real property possessed by the decedent at any time during the marriage, which have not been sold on execution or other judicial sale, and to which the surviving spouse has made no relinquishment of right.
>
> 2. All personal property that, at the time of death, was in the hands of the decedent as the head of a family, exempt from execution.
>
> 3. One-third of all other personal property of the decedent that is not necessary for the payment of debts and charges.

Iowa Code § 633.238 (2003).

[5]Although we determined that the statutory language of section 633.238 could be read more expansively in *Sieh*, the legislative history to the 2005 amendment

We reached this conclusion by relying on the Restatement (Third) of Property:

> "Although property owned or owned in substance by the decedent immediately before death that passed outside of probate at the decedent's death is not part of the decedent's probate estate, such property is owned in substance by the decedent through various powers or rights, *such as the power to revoke, withdraw, invade, or sever*, or to appoint the decedent or the decedent's estate as beneficiary. Consequently, for purposes of calculating the amount of the [spouse's] elective share the value of property owned or owned in substance by the decedent immediately before death that passed outside of probate at the decedent's death to donees other than the surviving spouse is counted as part of the decedent's 'estate.' The decedent's motive in creating, exercising or not exercising any of these powers is irrelevant."

Id. at 197 (quoting Restatement (Third) of Property: Wills and Other Donative Transfers § 9.1 cmt. *j* (2003), at 212 (emphasis added)). Based on this Restatement provision, we concluded the fact Edward "had complete control over the trust assets at all times prior to his death . . . would allow the assets in the revocable trust to be included in the statutory share of Edward's spouse elect against the will." *Id.* at 198.

The assignees understandably argue *Sieh* should be read broadly to sweep into section 633.238 property within the decedent's control at

---

suggests the legislature intended otherwise. The explanation accompanying this amendment states:

> The bill amends sections of the probate code relating to the right of a surviving spouse to take an elective share of the deceased spouse's estate including the right to receive a share of the deceased spouse's revocable trust assets and the right to elect a life estate in the homestead. Current law provides that a surviving spouse may elect against the will of a deceased spouse and claim a statutory share that does not include property held in trust by the deceased spouse or the right to elect a life estate in the homestead.

H.F. 799, 81st G.A., 1st Sess., explanation (Iowa 2005). We did not mention this legislative history in *Sieh*.

the time of her death, such as the POD assets at issue here. The probate court agreed. We reach the opposite conclusion, based on the controlling statutory language as amended after *Sieh*.

B. Section 633.238. We now consider whether the general assembly's subsequent amendment of section 633.238 limited *Sieh*'s holding. The general assembly amended section 633.238 in 2009. *See* 2009 Iowa Acts ch. 52, § 4. This amendment, effective July 1, 2009, "appl[ies] to estates of decedents and revocable trusts of settlors dying on or after" that date. *Id.* § 14(3). Karen died in November of 2009, so the statute applies as amended.

By this amendment, the legislature added "limited to" to section 633.238(1), with the result that section 633.238 now reads:

> 1. The elective share of the surviving spouse shall be *limited to* all of the following:
>
> *a.* One-third in value of all the legal or equitable estates in real property possessed by the decedent at any time during the marriage which have not been sold on execution or other judicial sale, and to which the surviving spouse has made no express written relinquishment of right.
>
> *b.* All personal property that, at the time of death, was in the hands of the decedent as the head of a family, exempt from execution.
>
> *c.* One-third of all personal property of the decedent that is not necessary for the payment of debts and charges.
>
> *d.* One-third in value of the property held in trust not necessary for the payment of debts and charges over which the decedent was a grantor and retained at the time of death the power to alter, amend, or revoke the trust, or over which the decedent waived or rescinded any such power within one year of the date of death, and to which the surviving spouse has not made any express written relinquishment.
>
> 2. The elective share described in this section shall be in lieu of any property the spouse would otherwise receive under the last will and testament of the decedent, through intestacy, or under the terms of a revocable trust.

Iowa Code § 633.238 (Supp. 2009) (emphasis added).

When interpreting a statute that has been amended, "we may consider the previous state of the law, circumstances surrounding the statute's enactment, and the text both before and after the amendment." *Davis v. State*, 682 N.W.2d 58, 61 (Iowa 2004). We presume that the law has been changed if the legislature added or deleted words from the statute, "unless the remaining language amounts to the same thing." *Id.* "When interpreting amendments, we will assume that the amendment sought to accomplish some purpose and was not a futile exercise." *Id.*

The postamendment version of section 633.238 states that "[t]he elective share of the surviving spouse *shall be limited to* all of the following." Iowa Code § 633.238 (emphasis added). It is clear that the legislature, by this language, intended to limit the property that would be included in the surviving spouse's elective share to the four categories of property specifically identified in the statute. This interpretation is consistent with the general assembly's explanation accompanying the House version of the bill. The explanation states, "The bill limits the elective share of the surviving spouse who elects to take against a decedent's will to the elective share portions contained in Code section 633.238 and does not include nonprobate or nontrust assets." H.F. 677, 83rd G.A., 1st Sess., explanation (Iowa 2009);[6] *see also City of Cedar Rapids v. James Props., Inc.*, 701 N.W.2d 673, 677 (Iowa 2005) ("We give weight to explanations attached to bills as indications of legislative intent."). We conclude the 2009 amendment legislatively abrogated *Sieh* in part. Under the controlling language of the

[6]The same explanation appears in the Legislative Services Agency's summary of the legislation cited by the executor. *See* Legis. Servs. Agency, *2009 Summary of Legislation*, S.F. 365—Administration of Estates and Trusts (Iowa 2009), *available at* http://www.legis.state.ia.us/GA/83GA/Session.1/Summary/summary_2009.pdf.

amendment, the elective share is limited to those assets specifically enumerated in section 633.238(1) and cannot be judicially expanded.

The assignees did not assert in probate court or in their appellate brief that the POD assets fall into any of the four categories in section 633.238(1). The assignees, however, belatedly contended for the first time during oral argument to our court that these assets are included in the elective share under section 633.238(1)(*c*) as "personal property of the decedent." While "[w]e [may] decline to consider an argument that is raised for the first time on appeal," *Bowman*, 805 N.W.2d at 797, we reach the merits here and hold POD assets are not included in the surviving spouse's elective share under section 633.238(1)(*c*).

POD accounts, such as the checking and certificate of deposit accounts here, and annuities are nonprobate assets. 1 Sheldon F. Kurtz, *Kurtz on Iowa Estates: Intestacy, Wills, and Estate Administration* § 11.1, at 451 (3d ed. 1995) [hereinafter *Kurtz on Iowa Estates*]. Nonprobate assets are interests in property that pass outside of the decedent's probate estate to a designated beneficiary upon the decedent's death. *Id.* Although these assets are the personal property of the grantor *before* death, they become the personal property of the designated beneficiaries upon the grantor's death pursuant to a contract between the grantor and the administrator of the account. *See Karsenty v. Schoukroun*, 959 A.2d 1147, 1158 (Md. 2008) (holding that a TOD account was not part of the decedent's testate estate because the decedent's interest in the property did not survive his death, which is when the TOD account "transferred to [the beneficiary] . . . 'by reason of the contract' between him and [the administrator of the account]"); Restatement (Third) of Property: Wills and Other Donative Transfers § 1.1 cmt. *b*, illus. 12, at 10 (1999) ("Because [the grantor's] ownership interest in the account and in the

securities expired on her death, no part of the balance in the account at her death or of the securities is included in [the grantor's] probate estate."); *see also* Iowa Code § 633D.11(1) (2009) ("A transfer on death resulting from a registration in beneficiary form shall be effective by reason of the contract regarding the registration between the owner and the registering entity under the provisions of this chapter, and is not testamentary.").

Section 633.238(1)(*c*) includes "[o]ne-third of all personal property of the decedent that is not necessary for the payment of debts and charges" in the surviving spouse's elective share. Iowa Code § 633.238(1)(*c*) (Supp. 2009). The legislative history accompanying the 2009 amendment confirms that this section is limited to personal property in the decedent's probate estate.[7] Specifically, the explanation section accompanying that amendment states the surviving spouse's elective share is limited to those categories of property explicitly mentioned in section 633.238(1) and that it "does not include nonprobate . . . assets." H.F. 677, 83rd G.A., 1st Sess., explanation (Iowa 2009).[8]

---

[7]This interpretation is supported by persuasive authorities from other jurisdictions. *See, e.g., Karsenty,* 959 A.2d at 1158 (holding that the surviving spouse's elective share did not include a TOD account because decedent's interest in the account did not survive his death and thus was not part of the decedent's testate estate); *Dalia v. Lawrence*, 627 A.2d 392, 402 (Conn. 1993) ("[P]roperty . . . owned by the decedent at the time of his or her death . . . refers to property owned by the decedent in such form that it would, if willed, pass under such will." (Citations omitted.)); *see also* 1 *Kurtz on Iowa Estates* § 8.9, at 307 ("[Section 633.238] does not purport to permit the spouse to reach personal property owned by the decedent during life that forms no part of the decedent's probate estate.").

[8]Although section 633.238 exclusively controls what property is included in the surviving spouse's elective share, we note that the assignees' interpretation is also unsupported by the statutes governing POD accounts and securities. These statutes allow POD accounts and securities to be reached to satisfy certain obligations of the estate, yet they do not mention elective share rights. *See, e.g.*, Iowa Code § 524.805(8) ("A state bank may receive deposits from one or more persons with the provision that upon the death of the depositors the deposit account shall be the property of the person or persons designated by the deceased depositors as shown on the deposit account

The assignees make a strong public policy argument that elective share rights may be defeated by the use of POD assets if we interpret section 633.238 to omit them. *See* 1 *Kurtz on Iowa Estates* § 8.9, at 307 ("[T]he policies underlying elective share legislation could easily be defeated if the property owning spouse could transfer a substantial portion of her personal property during life, reduce the size of her personal estate and minimize or eliminate the value of property available to a spouse who elects against the will."). The assignees' policy argument is properly directed to the legislature. The Iowa legislature chose to include revocable trusts in the elective share under section 633.238(1)(*d*). *See* 2005 Iowa Acts ch. 38, § 14 (adding revocable trusts to the property included in the elective share). We conclude further legislation would be required to include POD assets in the elective share.

Based on the plain meaning of the operative statutory language as amended in 2009, we hold that only the assets specifically enumerated in section 633.238 may be included in the surviving spouse's elective share. POD accounts and annuities are not included under section 633.238. We overrule *Sieh* to the extent it is inconsistent with this opinion. Because Karen's POD assets should not be included in Howard's elective share, we reverse the ruling of the probate court and remand the case for recalculation of payments owed to the assignees.

---

records of the state bank. After payment by the state bank, the proceeds shall remain subject to the debts of the decedent and the payment of Iowa inheritance tax, if any."); *id.* § 633D.8(1) ("If other assets of the estate of a deceased owner are insufficient to pay debts, taxes, and expenses of administration, including statutory allowances to the surviving spouse and children, a transfer at death of a security registered in beneficiary form is not effective against the estate of the deceased sole owner . . . to the extent needed to pay debts, taxes, and expenses of administration, including statutory allowances to the surviving spouse and children.").

IV. Conclusion.

For these reasons, the probate court erred by including Karen's POD assets in Howard's elective share. The probate court order is reversed and the case remanded for further proceedings consistent with this opinion.

REVERSED AND REMANDED.

110. Incorrect Legal Description in Conveyance to Trust.

FACTS: In my abstract 3 Lots and 8.25 feet of alley for each lot were conveyed to Helen. (i.e. Lot 1 and adjacent 8.25 feet of alley; Lot 2 and adjacent 8.25 feet of alley, etc.).

Helen conveyed the 3 lots to her trust but not the alley way portions.

Her trust then conveyed the correct legal description including the 3 lots and alley portions to the current titleholders in 2009.

Helen died in 2010.

I'm worried that I needed a conveyance from Helen individually as to the alley way portions since those never got conveyed to her trust.

I had wondered about an Affidavit of Possession but Madsen, Marshall's Iowa Title Opinions and Standards Section 12.1(H-2) holds that title cannot be established by affidavit and further states "It has been frequently held that title by adverse possession must be established by an action in court and can only be so established" with citation to Fagan v. Hook, 105 N.W. 155 (Iowa 1905) modified per curiam (Iowa 1907).

QUESTION: Would anyone mind sharing their thoughts about what they would do in this situation? Do I need to track down her heirs and have them do a Title Standard 9.8 affidavit and quit claim deeds?

RESPONSE(S):

111. No Trustee Warranty Deed.

FACTS: A client seeks assistance with a platting opinion. I reviewed title and discovered that the client took title to the property by Warranty Deed early last year. The Seller was an Inter Vivos Trust, but no Trustee Affidavit pursuant to Iowa Code Section 614.14(2), Purchaser's Affidavit, or Trustee Warranty Deed was obtained. Seller's counsel says they have no way to reach the Seller.

QUESTION: Apart from working to contact the Seller, what would you propose would be necessary to resolve this mark on title?

RESPONSE(S):

112. Lost Trust Document and Dead Grantor and Trustee.

FACTS: I am dealing with a situation where farmland is titled in the name of a revocable trust, but the trust agreement/document cannot be found (neither the original nor a copy). Both the grantor (Grandma) and the trustee (her only son, hereinafter Dad) have deceased. The grantor's grandkids contacted me, asking how to proceed.

I considered probating Grandma's estate, but, because more than 5 years have passed since Grandma's death, a petition for probate or intestate administration cannot be filed per Iowa Code Section 633.331. (Ironically, if the farmland had remained in Grandma's name, then an affidavit per Title Standard 9.8 could establish title in the name of the grandkids as heirs.)

And so, I believe my only option is to file a Quiet Title Action asking the court to establish title in the grandkids. With the trust agreement lost and the grantor and trustee deceased, no one knows who the successor trustee should be nor what the distribution provisions provide. The argument would be that, as the heirs under the rules of intestacy, the grandkids have the best claim, and more than likely Grandma would have left it to them, if not her son.

Here is more information:
- The interest in farmland is actually a fractional interest - an undivided one-third.
- Grandma deeded her interest in farmland to her revocable trust in 2002. The Grantee provision indicates that the trustee is her son (hereinafter "Dad"), likely because Grandma was quite elderly at the time.
- Grandma died in 2005, survived by her only child, Dad.
- No deed conveying the farmland out of the Trust was recorded.
- Dad seems to have thought that he owned the farmland, because in his 2008 Will he leaves the farmland to his children (the grandkids).
- The farmland has been rented out on a cash rent basis since the early 2000s. I believe, but have not confirmed, that Dad was receiving the trust's cash rent proceeds in his personal name.
- Dad died in 2024. His Will is being probated in another state.
- Grandkids contacted me, thinking the farmland is owned by Dad, only to find out title is in Grandma's trust.
- Grandkids cannot locate Grandma's trust document. They didn't even know Grandma (who died 20 years ago) had a trust.

I contacted all attorneys and law firms that I thought could have been involved, but still could not locate Grandma's trust document. I tried the preparer of the QCD to the trust, the attorney who notarized the QCD, Dad's estate planning attorney, and another law firm that prepared a POA for Grandma before the trust. All indicated that they had no record of Grandma being a client.

QUESTION: Do you agree that a Quiet Title Action is the best path forward? Or, do you have any alternatives you would suggest? I appreciate any thoughts or insights.

RESPONSE(S): Perhaps you could petition the court to terminate an irrevocable trust pursuant to Iowa Code section 633A.2203(1). Recite that the trust terms are unknown because the trust instrument cannot be found, and state that since the trust terms cannot be determined, there is no material purpose that would prevent the trust from terminating. State that the grandkids are all of the legal heirs, and have them sign a consent to the termination. Ask the court to appoint a successor trustee from one of the group of grandkids, and authorize the trustee to make whatever disposition the grandkids desire.

* * * * *

I had considered whether the trust could be terminated under Iowa Code Section 633A.2203 as well.

My concern was that the court may find, since we do not have the trust document: (1) it cannot conclude "all of the beneficiaries" have consented, since we don't know, with certainty, who the trust beneficiaries are; and (2) the court cannot determine whether termination of the trust would violate its material purpose, because said purpose is unknown.

I'd be curious to know what your thoughts on these concerns.

Maybe I am being overly cautious. It is highly likely the grandkids are the sole living beneficiaries, and the purpose of the trust was to simply transfer assets to next of kin, like most revocable living trusts. The answer to "Whose ox will be getting gored, counsel?" is "No one, your honor", as coined by Mr. David Repp in his CLE presentation's on revoking irrevocable trusts.

* * * * *

You probably are—quiet title may be the way to go.
At least it should not be a litigation headache, if all interested parties are on board.

Who owned the other 2/3 interest? Dad?

* * * * *

The other 2/3 interest was owned by Grandma's siblings, and eventually passed to Grandma's nieces and nephews. So, relatives, though somewhat distant.

113. Tenants in Common of Farmland – Option to Purchase Undivided Shares After Optionors' Death.

FACTS: Title to land is owned: 1/3 by Trust, 1/3 by A and 1/3 by D. Trust beneficiaries received stepped up basis. A & D are still living. Trust wants to buy them out, but A & B don't want the capital gains issue.

Trust is suggesting an Option paying a small amount now to obtain the Option to Purchase at a fixed price (which is current fair market value). But Sellers want the Option to only be exercisable at their death. And, maybe specify the time in which they can exercise it, i.e. 90 or 120 days after death.

QUESTION: Will such an Option be valid after death? Or am I missing something?

RESPONSE(S): Yes, valid options may be granted by A and D, and be exercisable by optionee Trust(ee) after the death of the optionor(s).

See, for example
Matter of Estate of Claussen, 482 N.W.2d 381 (Iowa 1992) (dispute over validity of option exercisable within six months of testator's death: option ruled enforceable and properly exercised by notice to executors)
--cited & followed for same result in *In re Estate of Neddermeyer*, 797 N.W.2d 131 (Iowa App. 2010) (Table)
Matter of Estate of Rogers, 473 N.W.2d 36 (Iowa 1991) (dispute over price—but not enforceability—of option to son to purchase parents' undivided interests in two 40 acre tracts)
Ingraham v. Chandler, 179 Iowa 304, 161 N.W. 34, L.R.A.1917D, 713 (1917) (testator devised farmland by will but granted option to tenant via lease contract. Option exercised & upheld, at close of five year lease.)
In re Estate of Siebels, 669 N.W.2d 262 (Iowa App. 2003) (Table) (option to purchase entire farm enforced after death of optionor, given evidence of optionor's intent)

Presumed goal: allow for step up in basis for A's and D's 1/3d interests, after A and D depart this mortal coil.
I don't have any tax law decisions on these facts...

But what value will be fixed for the farm by the option?
I think that price decision must be made when the option is extended, even before it becomes a contract.
An option—or contract to sell—requires a definite price.

Western Securities Co. v. Attlee, 168 Iowa 650, 151 N.W. 56 (1915):

"An "option" is a mere offer to sell; but such offer, when accepted in a proper manner, constitutes a binding contract, enforceable by either party. Smith v. Bangham, 156 Cal. 359, 104 Pac. 689, 28 L. R. A. (N. S.) 522; Hopwood v. McCausland, 120 Iowa, 218, 94 N. W. 469. Originally plaintiff had a mere option for the purchase of the property; but, as this was founded upon a consideration, it could not be withdrawn by the other party until the expiration of the period for which it was granted or to which it was extended, and the fundamental questions in the case are: Was this option accepted? Did the minds of the parties meet upon the terms and conditions of the contract? ...
"The subject–matter of the contract—that is, the electric light plant and property––is described with sufficient definiteness. ...
" Going now to the other terms and conditions, ... The consideration for the property was changed from $125,000 in cash, payable in installments, to $125,000 in preferred stock..." [a definite price]

* * * * *

The price will be close to the current FMV of the farm, less a small discount for not having a sale commission and other expenses and for the joint ownership matter. Therefore, it will not be a "sweetheart" deal.

* * * * *

FWIW, here are some additional statutory citations I should have included.
The Trust Code appears to condone your trustee's exercise of this option. See highlighted language particularly applicable.
I think: in light of Iowa Code Section 633A.4402(2) and (5), subsection (12)'s "take an option" may be construed to include "exercise an option".

633A.4401 General Powers – Fiduciary duties.

1. A trustee, without authorization by the court, may exercise the following powers:
   a. The powers conferred by the terms of the trust.
   b. Except as limited by the terms of the trust, powers conferred by this trust code.

633A.4402 Specific powers of trustees.
In addition to the powers conferred by the terms of the trust, **a trustee may perform all actions necessary to accomplish the proper management, investment, and distribution of the trust property**, including the following powers:

1. **Collect...property received from** a settlor or **any** other **person**. The property may be retained even though it includes property in which the trustee is personally interested.
2. **Accept...additions to the property of the trust from a settlor or any other person**. ...

5. **Acquire…property, for cash or on credit, at public or private sale**, or by exchange. …
12. Grant an option involving disposition of trust property or **take an option for the acquisition of property**…

114. Transfer to Revocable Trust.

FACTS: Client is creating a revocable trust. Client currently is purchasing land on contract.

QUESTION: Just a Quit Claim Deed to the trust? Or an assignment of the real estate contract to the trust? Or both?

RESPONSE(S): Assuming that the contract allows assignment of the contract and conveyance of the equitable title to a third party, you can issue a deed (warranty or quit claim) which also states that it is also assigning the buyer's interest in the contract and specifically references the contract by date, parties and recording information. If the contract terms restrict assignment, then you have an additional hurdle. Assuming the seller consents, you can have the seller sign off on a written consent in recordable form. My recollection is that the Bar Association installment sale contract form allows assignment by either party, but does not let the original buyer off the hook for any breach of the contract by the buyer's assignee.

115. Trust Seller.

FACTS: Trustee Deed was filed less than 10 years ago without supporting affidavits. Subsequent Purchaser Affidavit has been obtained. Trustee cannot be located to obtain the trustee affidavit.

QUESTION: Suggestions?

RESPONSE(S): Look at Vaudt v. Wells Fargo Bank (IA March 2024) to see how the Iowa Supreme Court distinguished the application of the special one year limitation per Iowa Code Section 614.14(5) from the title clearing ten year limitation of Iowa Code Section 614.17A.

* * * * *

See Iowa Code Section 614.14, specifically subsections (4) and (5).

It appears the Code sets forth a number of warranties and a one-year limitation on the bringing of adverse claims following the filing of the Trustee Deed.

116. Trust Transfer.

FACTS: This seems like it should be a simple answer but not sure.

- Trustee Warranty Deed in 2015 to the kids of the Grantors;
- There is a Trustee Affidavit that they have authority to transfer such property "free and clear of any adverse claims" and it also states "The trust is irrevocable and the trustor and life income beneficiary are deceased. None of the residuary beneficiaries of the trust are deceased."
- It does not state when the Grantor died nor that the Grantor's estate was subject to any Federal Estate Tax.
- No death record in the abstract either.
- All the beneficiaries transferred their interest to an LLC

I think after 10 years we would be fine but since we aren't quite there yet I have some concern.

QUESTION: Is it overkill to request an affidavit from the Trustees stating when the Grantor of the Trust died and that no inheritance nor Federal Estate tax returns were needed to be filed?

RESPONSE(S): I think you need such an Affidavit IRC Sec 6321 & 6324. I may be wrong, but if there was an estate that was big enough to have required a Federal Estate Tax payment, the lien does not expire after 10 years if there was no Federal Estate Tax return filed.

117. Trustee as Tenant in Common-Bar Exam Question.

FACTS: Trustee holds title to undivided one-half of real estate. Beneficiaries of trust hold title to other undivided one-half. Trustee is also a beneficiary. Trust requires sale of the trust's interest at auction.

Seems to me the Trustee holds bare legal title for the benefit of others and would not be the real party in interest in a partition action. I just don't see how the Trustee can sue the beneficiaries for partition when the Trust has express terms for the sale of the Trust's interest in the real estate.

I also can't quite comprehend how the Trustee can be a tenant in common with the beneficiaries of the Trust. Is that possible? The quality of title is different – Trustee holds bare legal title and beneficiaries hold fee simple title.

QUESTION: Is the Trustee a Tenant in Common with the beneficiaries? Can the Trustee file a partition action on behalf of the Trust?

RESPONSE(S): Ah boy, family estate planning outcomes.... How close do I get, with this guess:
Mom & Dad left the farm ½ to stay-at-home farmer son T, other (for income sharing purpose) ½ to all the kids A, B, C & T.
Setting up a horrendous conflict of interest for T...

To answer your questions:

1) Yes. T is tenant in common with "T as Trustee for A, B, C & T", by way of whatever document(s) passed title to the land. See Iowa Code section 557.15(1).
2) Urk. I will tentatively say yes, on basis of Iowa Code Chap. 651 and the case cited below.
3) Yes, I think--a Trustee may have legal title AND also be one of several beneficial owners of the land under the Trust.

You likely are correct that a Trustee may not sue for partition **IF** the trust instrument mandates a particular disposition method (excluding partition). If the Trustee is provided discretion then T may have maneuvering room to file for partition. THE TRUST DOCUMENT WILL CONTROL. Iowa Code Section 633A.1105. A trustee may generally file partition actions. See Iowa Code Section 633A.4402(6). BUT HE'D BETTER NOT BE SELF DEALING! See Iowa Code Sections 633A.4202 and .4501.

You might re-examine the supposition that trust beneficiaries hold **fee simple** legal title. See *Ellsworth College v. Emmet County*, below.

First some quickie attention to possibly relevant statutes. Then a bit of case law.

557.1. Who deemed seized.
All persons owning real estate not held by an adverse possession shall be deemed to be seized and possessed of the same.

557.3. Conveyance passes grantor's interest.
Every conveyance of real estate passes all the interest of the grantor therein, unless a contrary intent can be reasonably inferred from the terms used.

557.9 Defeating expectant estate.
No expectant [certainly remainder—how about beneficial? DH] estate shall be defeated or barred by an alienation or other act of the
owner of the precedent estate [including a trustee?]...; provided that on the petition of the life tenant, with the consent of the holder
of the reversion, the district court may order the sale of the property in such estate and the proceeds shall be subject to the order of court
until the right thereto becomes fully vested. The proceedings shall be as in an action for partition.

557.15 Common forms of co-ownership of real property.
1. A conveyance of real property to two or more grantees [O to T, and T as Trustee for A, B, C & T] each in their own right
[T and T-as-Trustee have different rights] creates a tenancy in common, unless a contrary intent is expressed in the conveyance
Instrument....

633A.1104 Common law of trusts.
Except to the extent that this chapter modifies the common law governing trusts, the common law of trusts shall supplement this trust code.

633A.1105 Trust terms control.
The terms of a trust shall always control and take precedence over any section of this trust code to the contrary.
If a term of the trust modifies or makes any section of this trust code inapplicable to the trust, the common law
shall apply to any issues raised by such term.

633A.4202 Duty of loyalty—impartiality—confidential relationship.
1. A trustee shall administer the trust solely in the interest of the beneficiaries, and shall act with due regard to their respective interests.
2. Any transaction involving the trust which is affected by a material conflict between the trustee's beneficiary and personal interests is
Voidable by a beneficiary affected by the transaction unless one of the following applies:

a. The transaction was expressly authorized by the terms of the trust. [I gather that partition is not so authorized.]
b. The beneficiary consented to or affirmed the transaction or released the trustee from liability as provided in section 633.4506.

[From your question I pick up a vibe that A, B & C are unhappy about T's course of action...]

c. The transaction is approved by the court after notice to interested persons. [Which a partition action MIGHT satisfy.]

3. A transaction affected by a material conflict between personal and fiduciary interests includes any sale...or other transaction
involving the trust property entered into by the trustee...

633A.4402 Specific powers of trustees.
In addition to the powers conferred by the terms of the trust, a trustee may perform all actions necessary to accomplish the...
distribution of the trust property, including the following powers:
...
6....partition....trust property.
9. Subdivide...land...
25. Upon...division or termination of a trust, make distribution in divided or undivided interests... [sounds like partition.]

633A.4501 Violations of duties—breach of trust.
1. A violation by a trustee of a duty the trustee owes a beneficiary [like—undivided loyalty!] is a breach of trust.
2. The remedies of a beneficiary for breach of trust are exclusively equitable and any action shall be brought in a
Court of equity. [Possibly as a counter claim to a partition action??]

Interestingly: Iowa Code Chapter 651, Partition, does not specify who may file partition actions.
But I suppose that a plaintiff must meet either Iowa Code Section 651.5(1) or (2).

651.5 Parties to partition of property.
1. A petition for partition of property shall include as parties all persons indispensable to the partition
including an owner of an undivided interest and the holder of a lien on all or part of the property.
2. A petition for partition of property may include as parties a person having an actual, apparent, claimed, or
contingent interest in the property.

Ellsworth College v. Emmet County, 156 Iowa 52, 135 N.W. 594, 42 A.L.R. 530 (1912):
"It is well settled that, under a will such as we have here, the *trustees took* the legal title, or, as some of the cases put it,

the fee-simple title." See cases cited in 28 Am. & Eng. Ecyy.of Law (2d Ed.) p.925; Welch v. Allen, 21 Wend.(N.Y.) 147. ...
"As a general rule, *real* and personal *property held under* a testamentary or other *trust is taxable to the trustee or*
trustees, and not to the cestui que trust or beneficiary. [multiple citations]." [emphasis added]
---cited in
In re Cooper's Estate, 229 Iowa 921, 295 N.W. 448 (1940), also
76 Am.Jur.2d *Trusts* section 281 *Beneficiary's Estates and Interests*, a. *In General*, p.299 (1992).

National Bank of Burlington v. Hueneke, 250 Iowa 1030, 98 N.W.2d 7 (1959):
"As a general rule the right to a tax exemption on funds in the hands of a trustee is determined by the nature of the
beneficial interest. [multiple citations, including to *Ellsworth College*]."
[If that interest was in fee simple then the beneficiaries would be taxed.]

Cases involving trustees as among classes of beneficiaries. All are pre-Trust Code.
But I imagine all of them remain good common law supplementing that Code.

Linsley v. Strang, 149 Iowa 690, 126 N.W. 941 (1910) (fact pattern similar to yours above):
Testator devised undivided interest in land to S as Trustee for support of various beneficiaries.
Several of these beneficiaries were either minors or of unsound mind.
S filed partition suit to divide the land, had the district court appoint a referee, got a clause inserted in the court's order that favored an offer from S, bought the land from referee w/ district court approval. The Supreme Court reversed, with some choice words condemning S.
"It is a general principle that a trustee must act with the most scrupulous good faith.
The one great duty arising from this fiduciary relation is to act in all matters relating to the trust wholly for the benefit of the beneficiary. *A trustee will not be permitted to manage the affairs his trust, or to deal with the trust property, so as to gain any advantage, directly or indirectly, for himself. These principles require no citation of authority in their support.*
*The common sense of honesty dictates such rules. As applied to the sale of trust property, the decisions, not only of this court, but of practically all courts[,] speak with no uncertain soun*d.
[Whereupon the Court proceeds to trumpet its own and others' rulings!]
..."[I]f a trustee became the purchaser at his own sale, a court of equity would set the sale aside... "If a trustee becomes interested in the purchase, the cestui que trust is entitled, as a matter of course, to have the sale set aside. ...A trustee cannot act for his own benefit.

...It is not permitted that the agent shall buy for himself or for another. To allow this, would permit him to apply the information acquired by the trust for his own benefit. ... The principle referred to is admitted, not only as established by adjudication, but also as founded in indispensable necessity, to prevent that great inlet of fraud, and those dangerous consequences which would ensue, if the trustees themselves might become purchasers, or if they were not in every respect kept within compass. *Although it may seem hard that the trustee should be the only person of all mankind who may not purchase, yet, for very obvious consequences, it is proper the rule should be strictly pursued and not in the least relaxed.*
[Citation] The danger of temptation does, out of the mere necessity of the case, work a Disqualification. ... [Much more ore in this vein]
...
"The reason for the rule is to prevent conflicting interests between the trustee and the beneficiary, and such conflict may arise from a sale made by another as from a sale made by himself. [No strawman transactions!] For instance, the trust relation demands the exercise of care for the interests of the beneficiary....if the trustee were permitted to become the purchaser, his interests would at once become antagonistic to the interests of the beneficiary. [multiple citations.]
[Amusingly, the Court observes that the district court didn't look at what he signed:]
"It should be said in this connection that the judge who signed the decree in the partition case did so without any examination thereof and as a matter of course."
(italicized portions quoted later, in *Anderson v. Telsrow* below).

Barber v. Wiemer, 183 Iowa 72, 165 N.W. 440 (1917)
Defendant Wiemer named in a trust deed as both trustee and beneficiary along with other beneficiaries (identified as "equitable owners") for whom she acted as trustee.
Or so claimed the creditors of two of the named beneficiaries. Those creditors sued Wiemer to enforce the trust in favor of their debtors. What kind of action was filed does not clearly appear; it seems to exhibit some elements of partition. The Supreme Court's opinion does not what the district court did. But the Supreme Court reversed.
Opinion appeared to favor grounding full title in Wiemer on basis of a gift; the trust deed was apparently held for naught. The Court disregarded the creditors' claims as to their debtors' title.

In re Holley's Estate, 211 Iowa 77, 232 N.W. 807 (1930):
Testator devised a mixed-up collection of undivided interests in farm land left to three children. The last undivided 4th the Testator left to these three children in trust, to provide income to a widow of a 4th child until she died or remarried, and after her to ten children of the deceased son. Remainder went to to the three children. The children as trustees filed petition to partition and sell the property—and offered to purchase the undivided 1/4th assigned for benefit of the widow. All beneficiaries [11 I guess] were served. At least some beneficiaries disagreed

with this disposition. District Court denied the petition, and the Supreme Court affirmed. The Court said:
"'One of the most familiar doctrines of the law of trusts is that a trustee cannot purchase from himself, or at his own sale. He cannot lawfully be the seller and the buyer in the same transaction." [multiple citations, including *Linsley*] This doctrine rests upon the ground of public policy. The law does not stop to inquire into the fairness of the sale, or the adequacy of price, but stamps its disapproval upon a transaction which creates a conflict between the self-interest and the integrity of the trustee. The trustee is clearly disabled from becoming a purchaser of the trust estate, whether the cestui que trust be an infant or an adult, or whether the sale be public or private. [multiple citations].

Anderson v. Telsrow, 237 Iowa 568, 21 N.W.2d 781 (1946).
Creation of a trust by Mom & Dad naming daughters A and R as trustees for both themselves and also two other daughters as joint beneficiaries. Beneficiaries sued to remove A and R and have a trust accounting. District Court found violation of trustees' duties, removed them, and required accounting. Supreme Court affirmed, quoting *Linsley* [*highlighted portion*] and *Holley*, among other case cites.