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REAL ESTATE
CASE LAW AND LEGISLATIVE UPDATE

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Case Law

A. Standard Water Control Systems, Inc. v. Michael D. Jones and Cori Jones

Iowa Court of Appeals No. 15-0458. Filed August 31, 2016

Mike and Cori Jones contracted with Standard Water Control Systems to waterproof the basement of their residence. Work was started in July of 2013 and during the work Standard Water's employees struck a waterline and a sewer line with a jackhammer. The ruptured water and sewer lines caused damage to the property. Standard Water continued the work on basement but did not complete the job. Jones would not allow Standard Water to come back to the property the next day to finish the remainder of the work. Standard Water tendered a bill to Jones for the $5,400 which represented the balance owed on the project. Jones stated they would not pay the bill and 16 days after its first and last day of work at the Jones residence Standard Water filed a notice of commencement of work and mechanic's lien. Jones then sent Standard Water a letter demanding foreclosure of the mechanic's lien pursuant to Iowa Code § 572.28. Standard Water filed this action to foreclose. The district court found Jones was in breach of contract and entered judgment and foreclosed on the mechanics' lien. On appeal Jones argued that the Notice of Commencement was not filed timely. Iowa Code § 572.13A which provides as follows:

> A general contractor or owner-builder who has contracted or will contract with a subcontractor to provide labor or furnish material for the property shall post a notice of commencement of work to the mechanics' notice and lien registry internet website within ten days of commencement of work on the property. A notice of commencement of work is effective only as to any labor, service, equipment, or material furnished to the property subsequent to the posting of the notice of commencement of work.

Jones argued that the statue applies to all general contractors and those owner builders who have contracted or will contract with a subcontractor to provide labor, furnish material to the property. Standard Water contents that the last antecedent rule is inapplicable here and the phrase "who has contracted or will contract" modifies both "general contractor" and "owner-builder." Standard Water did not have a subcontractor and therefore they argued that the notice of commencement of work within 10 days of commencing work as a prerequisite to filing and enforcing its mechanics lien was not applicable to them. The Iowa Court of Appeals in reviewing the applicable statute found that the statute is intended to provide a mechanism by which owners of residential real estate have notice of who is working on the property and what claim could be filed by that party.

In short, the statute is intended to provide the owner with the identity of subcontractors unknown to the owner who might have potential claims against the property and provide a mechanism to force the subcontractor to file a notice of any

potential claims. The Iowa Court of Appeals found that Standard Water's interpretation was correct. This section requires a general contractor who has contracted or will contract with a subcontractor to provide the owner with a notice that persons or companies improving real property may be entitled to a lien upon the improved property. In this case, the general contractor had no subcontractors and therefore they were not required to file a notice of commencement of their work pursuant to the statute. There were also issues regarding the amount of attorney fees that were incurred by Standard Water. The Court of Appeals remanded the case to district court on the issue of attorney fees.

B. Bank One, National Association v. Christopher G. Daniels, et al.
Iowa Court of Appeals No. 15-1271: Filed August 17, 2016

The bank filed an action to foreclose on February 6, 2003 and obtained a foreclosure decree on April 8, 2003. The Defendant, Daniels filed a Chapter 13 action in Bankruptcy Court action which stayed the Bank's attempt to execute on the judgment. The Bankruptcy Court action was dismissed in early 2007. Thereafter, the bank filed a praecipe for special execution but for reasons unexplained no sheriff's deed was executed. In June of 2015, the bank filed a notice electing to rescind and set aside the April 8, 2003 foreclosure decree. The district court ruled that Iowa Code § 654 notice of rescission, must be filed before the mortgagee's rights become unenforceable by operation of the statue of limitations. The district court opined that Iowa Code § 615.1 which is a two-year statute of limitations was applicable. The court ruled that the action had to be commenced within two years after the bankruptcy action was dismissed which would have been February 15, 2009. The bank appeals claiming the district court erred in holding a Notice of Recession of the foreclosure judgment was subject to a two-year statute of limitations under that Iowa Code § 615.1. The Iowa Court of Appeals cited the recent Iowa Supreme Court Case of US Bank, N.A. v. Callen. The issue before the Iowa Court of Appeals was whether or not the ten year statute of limitations under Iowa Code § 614.15 or the twenty-one year statute of limitations under Iowa Code § 614.21 was applicable to this situation when the cause of action accrued in February of 2007. The Court of Appeals remanded the case to district court to determine which statute of limitations was applicable.

C. Pheasant Hills Eldridge Condominium Owners & Facilities Association v. Charles W. Ray
Iowa Court of Appeals No. 15-0587: Filed August 31, 2016

Charles Ray owned a condominium unit in the Plaintiff's condominium development. Over the years, Charles Ray had many altercations with the Association. He was not a model neighbor. He repeatedly allowed liquids to permeate the ceiling of the unit below him, place personal belongings in common areas, spray water on a

common deck, retrieve mail in his underwear, stole mail - a crime of which he was convicted, possessed firearms as a felon - a crime of which probation was revoked. He also failed to pay his dues on time, generated mold within his unit, created fire hazards inside and outside of his unit and failed to maintain his garage. The Association regulated owner conduct through its bylaws which were periodically amended. In the early 2000s an amendment was made which allowed for the authorized involuntary sale of a unit of an owner who violated any of the covenants, restrictions or provisions of the declaration, the bylaws or the regulations adopted by the Association.

Over the years the Association sent Ray many notices of bylaw violations and eventually sent him a 30-day notice to cure the violations. A Notice was served on him with a 10-day notice to terminate his ownership rights. The Association then followed up with an application for injunctive relief seeking an order requiring him to sell his unit and immediately terminate his occupancy. The district court entered a decree of mandatory injunction terminating Ray's interest in the property, ordering the sale of the unit and enjoining Ray from reacquiring his interests. Ray appealed alleging that (1) the Association failed to prove it served proper notice of a meeting where the forced sale amendment to the bylaws was approved; (2) the association's attempt to force the sale of the unit not reasonable; and (3) principles of equity did not allow the forced sale.

The Court of Appeals determined that there was proper notice of the meeting where the bylaws were amended to allow for the forced sale of the unit. The Court also found that the forced sale provision was reasonable in that it provided a detailed basis for activities that would result in the possible forced sale of the unit. None of the reasons were ambiguous. The Court also relied upon the business judgment rule which requires the Court to defer to the Association's interpretation of the bylaws and whether or not there had been a violation. The Court stated it relied on previous cases by the Iowa Supreme Court which stated that the business judgment rule severely limits second guessing the business decisions which have been made by those whom the corporation has chosen to make them, absent a showing of self-dealing or a conflict of interest. The Court therefore found that the Association's interpretation of whether or not a violation had occurred would not be set aside by the Court. The decision of the district court was affirmed.

D. Bernard J. Wilhlm and Patricia M. Balek v. Shirley A. Campbell, et al.
Iowa Court of Appeals No. 15-0011: Filed September 14, 2016

Wilhlm, Balek and Campbell inherited four parcels of land from their parents as tenants in common. The land at issue was divided into several parcels including a 60 and 160 acre parcel in Cerro Gordo County and two 40 acre parcels both in Franklin County. Two of the siblings, Wilhlm and Balek brought partition actions in Cerro Gordo and Franklin Counties asking that the properties be sold and divide the proceeds. The third sibling, Campbell, requested an in kind division as to her share. She requested an approximate 79 acres parcel including a multigenerational family homestead. The cases

were consolidated in Cerro Gordo County and the district court ordered that the property be sold and the proceeds divided equally. The reasoning by the district court to deny the request for partition in kind was that appraisals of the farm land were speculative and the Court could not determine on its own whether or not a partition in kind was proper.

The Iowa Rule on partitions is contrary to the common law rule on partitions. The general rule at common law and by statute favors partition in kind but that preference is no longer true in Iowa. Iowa R. Civ. P. 1201(2) provides as follows:

> "Property shall be partitioned by sale and division of the proceeds unless a party prays for partition in kind by its division into parcels, and shows that such partition is equitable and practicable. But personality which is subject to any lien on the whole or any part can be partitioned only by sale."

The rule is unequivocal in favor of partition by sale and in placing upon the objecting party the burden to show why this should not be done in the particular case.

In this case there were three expert witnesses and the issue is whether or not appraising farmland is speculative that partition in kind becomes impractical. The parties agree that Vernon Greder would appraise the properties. He valued the properties at $3,144,000.00 and that the request by Campbell to ask for one parcel to be set off for her would be fair and equitable. Greder did concede that the value of farmland has been in some fluctuation. Two other experts Kuper and Behr concluded that partition by sale would be the proper method to compete the division of the property. The district concluded that Campbell failed to prove the division of the properties in kind was both equitable and practicable. The Court was predicated on the assumption that appraising farmland was largely a speculative endeavor. The district court stated:

> "the volatile nature of farmland is affected by the crop prices has made partition in kind merely guesswork when factoring in the nature and qualifies of the land."

The district court concluded that the "court is not in a position to engage in guesswork to determine a division in kind which may or may not be equitable to the parties. The true market value of the land will be ascertained through a sale on the free market."

The Court of Appeals disagreed with that interpretation and holding that appraisal of farmland rarely is merely a speculative endeavor. The Court saw no reason to reject the concept of an appraisal generally and hold Greder's testimony specifically out of hand. The Court of Appeals reversed the decision of the district court and held that Campbell had proved that division of the property in kind was practicable and ordered that the property be divided in kind.

E. City of Des Moines, Iowa v. Bank of New York Mellon
Iowa Court of Appeals No. 16-0288: Filed September 28, 2016

The City of Des Moines brought this action claiming that a certain property owned by a deceased owner, Earnest White, was a public nuisance and asked that the court condemn the property and declare it a public nuisance. The action was filed in 2015 and the City served unknown heirs of the wife's estate as well as a mortgage holder. The City then sought a default judgment. The district court denied the motion for default determining that a guardian ad litem must be appointed in order to represent the interests of the unknown heirs. The City appealed this decision claiming that the district court erred by requiring a guardian ad litem be appointed to protect the interests of unknown heirs. The district court found that they cannot enter a judgment against the party. The Court of Appeals determined that a district court cannot enter a judgment against a party who is a minor or confined in a penitentiary, reformatory or any state hospital for the mentally ill or one adjudged incompetent or whose physician certifies to the court that the party appears to be mentally incapable of conducting a defense without the appointment of a guardian ad litem. Iowa R. Civ. P. 1.211. The district court relied on this rule to order the appointment of the guardian to represent the interests of the unknown claimant in the subject real estate. The City on appeal claims the rules should not apply to an action which is brought in rem and that it only apples to judgments against a party in personam. The Iowa Court of Appeals agreed with the City finding that the protections of Rule 1.211 do not extend to actions in rem because "the defendant in a forfeiture proceeding is the property sought to be forfeited, not its owner." The court held that no guardian ad litem is required in this in rem action.

F. Steven A. Krummen and Stacie L. Cornwall v. W. Eric Winger, et al.
Iowa Court of Appeals No. 15-1044: Filed September 28, 2016

This case deals with an interpretation of a wind farm easement. Winger owned approximately 149 acres in Dickinson County. In 2009 they entered into a Wind Energy Lease and Agreement with Lost Lakes Wind Farm, L.L.C. A wind turbine was constructed on the Wingers' property. The Wingers decided to sell 77 acres of their farmland at an auction held on November 20, 2013, for a purchase price of $616,000.00. It was the land sold to Ms. Cornwall and her father Steven Krummen. The real estate contract provided unpaid as follows:

> "The Sellers shall assign all of the rights and obligations in the Memorandum of Wind Energy Lease and Agreement to Buyers."
>
> The Contract also provided
>
> "If Seller fails to timely perform their obligations under this Real Estate Contract, the Buyer shall have the right to terminate this Real Estate Contract and have all payments made returned to the Buyers."

The Wind Energy Lease was on the entire 149 acre parcel although apparently the wind turbine was on the parcel being purchased by Cornwall and Krummen. The purchase price was paid to Wingers and the Wingers signed a warranty deed. The warranty deed stated that "Grantors do hereby assign to the Grantees all the rights and obligations in the Memorandum of Wind Energy Lease and Agreement." The Wingers, however, were unable to assign Cornwall the rights under the lease. A provision in the lease agreement prohibits the wind energy rights from being severed from the property. The energy company would only agree to transfer to Cornwall the rights under the lease for the property they purchased. Cornwall filed a Petition against the Wingers claiming there had been a breach of the contract and requesting that the contract be terminated. A summary judgment motion was filed and the district court agreed with Cornwall that the contract should be terminated. On appeal the issue was whether or not the contract merged into the deed and therefore the provisions regarding the assignment of the lease were still in existence. The Iowa Court of Appeals determined that there was an issue regarding merger as generally "a contract to convey land presumptively becomes merged and the subsequent deed executed in performance thereof and the deed speaks and the contract is silent as to all matters of conflict between them." When a purchase agreement has been merged within the deed remedies in the purchase agreement do not survive the merger. However, there are some exceptions to the rule including if the deed is uncertain and ambiguous in its own terms, if there is a mistake in the deed and likewise certain collateral agreements or conditions which are not incorporated in the deed and which are not inconsistent with the terms of the deed as executed. Therefore, the Iowa Court of Appeals reversed the district court and stated they needed to address the issue of merger before making a determination as to the outcome of the case.

G. Hamner v. City of Bettendorf, Iowa

Iowa Court of Appeals No. 15-2154: Filed October 12, 2016

Hamner and the other Plaintiffs own certain property in the City of Bettendorf that was subject to certain easements that were executed in 1968. The easements were essentially easements for utility purposes and for sanitary sewer and storm sewer purposes and drainage purposes on their property which was located next to a creek. The City adopted many years later the Stafford Creek Stream Bank Improvement Project. The project includes removing all trees and foliage within the 25 foot easements on both sides of the creek, installing a retaining wall, adding a 70 foot coconut wood log, installing chain link fences, installing on one property a 25 ton "rip rap", reseeding the area with a variety of grasses and grading the slope of the back half of the landowners back yards making the portion of the back yard about twice as steep as before the work.

In January of 2015, the City requested the appointment of a compensation commission to appraise damages for a7.5 foot temporary construction easement north of the 25 foot easement in question. The landowners sought a temporary and permanent injunction asserting the City's eminent domain proceeding was not for a public purpose

and the 1968 Easements do not allow or authorize the City to change the water flow, direction, volume of water, change the grade, or remove the trees on the property that was subject to the easement. The landowners asserted the project was a taking which required compensation.

The district court determined that the scope of the easement did not allow for this type of activity in the easement area. The district court concluded "the City of Bettendorf does not have the rights under its existing easements to do the proposed work on and along Stafford Creek on the landowners' property. The Court finds that the work of this level proposed by the City exceeds the scope of rights granted to the City in both easements from 1968. As such, the proposed work would constitute a taking under the Iowa Constitution, and just compensation must be paid. The City must initiate condemnation proceedings for the 25 foot easement on which the work is to be done and compensate the landowners for the devaluation of their property that the taking will cause."

Both parties rely upon the case of Stew-Mc Development, Inc. v. Fisher, 770 NW 2d 832 (Iowa 2009). In that case, the court made a determination that the easement area could only be used for what was contemplated at the time of the execution and that a greater burden could not be made on the servient estate beyond that was complicated at the time of the formation. In determining the scope of the easement the court usually looks at three considerations: (1) the physical character of past use compared to the proposed use (2) the purpose of the easement compared to the purpose of the proposed use and (3) the additional burden imposed on the servient land by the proposed use. The Court went through an analysis of this easement and determined that the district court's ruling is consistent with Stew-Mac Development. In that case, the Court concluded that the scope of the developers private easement over a lane on farm properties was not broad enough to allow the uncontemplated "comparatively dense residential development" proposed. The Court held that private property cannot be taken for public use without just compensation and therefore affirmed the district court ruling that the City must compensate the landowners.

H. Iowa Arboretum, Inc. v. Iowa 4-H Foundation

Iowa Court of Appeals No. 15-7040: Filed October 28, 2016

Iowa Arboretum, Inc. leased certain property in Boone County from Iowa 4-H Foundation which consisted of approximately 300 acres of agricultural land. This particular property was adjacent to the Iowa Arboretum, Inc.'s property. They entered into a 99 year lease between the parties for the development into an Arboretum. The parties leased this property for a number of years then a dispute developed between the parties and the question before the Iowa District Court as well as the Iowa Court of Appeals was whether or not the 99 year lease violated the Iowa Constitution. Article I, Section 24 prohibits leases for agricultural land beyond 20 years. The district court concluded that it did not violate the Constitution because the property was not being used

for agricultural purposes. The Iowa Supreme Court went through a detailed analysis of the Iowa Constitution and in particular Article 1, Section 24 to determine whether or not this lease violated that section. The Court determined that the constitutional provision limiting agricultural leases to a length of time no longer than 20 years does not apply to land suitable for agricultural purposes but leased for purely nonagricultural purposes. Even if there is some incidental use of the property for agricultural purposes, the Court found that the lease did not violate the constitutional prohibition against agricultural leases that extend beyond 20 years. The Court found that the evil sought to be protected by the Constitution was not present in this case because of the nature of the use of the agricultural property which in this case was for an Arboretum. The Court determined that it is not the actual fact that the land was agricultural land but how the property was being used. Here the Court found that the use of the property is not for agricultural purposes even with some incidental agricultural use would not make the lease invalid. The district court's decision was affirmed.

I. Nationstar Mortgage, L.L.C. v. Laverne William Bowman and Cheryl Diane Bowman

Iowa Court of Appeals No. 15-0843: Filed November 9, 2016

Norma Sink owned certain property in Burlington, Iowa. The property was subject to two mortgages with F&M Bank. In 2014 Norma Sink sold the property on contract to the Defendants, Laverne & Cheryl Bowman. The purchase price was $35,000.00. The contract provided as follows:

> "Further, the parties agreed Sink would have the right to mortgage the property up to 100% of the unpaid balance of the purchase price."

The contract also provided as follows:

> "Buyers hereby expressly consent to such a mortgage and agrees to execute and delivery all necessary papers to aid Sellers in securing such a mortgage which shall be prior and paramount to any of Buyers' then rights in said property."

Sink obtained a reverse mortgage on the property and paid off the mortgages to F&M Bank. The Plaintiff in this case Nationstar Mortgage, L.L.C. did not do a title search or obtain a title opinion to determine whether any entity could make a claim against the property. The amount that was due to the bank after Sink's death amounted to approximately $63,000.00. The trial court entered a ruling on January 12, 2015, determining that by paying off the F&M 2001 mortgage, Champion was subrogated to the position of F&M Bank. F&M Bank's 2001 mortgages gave them priority in the property superior to Bowman.

The court went through an analysis of what subrogation entailed. The Court found that subrogation is the substitution of one person in place of another. The party substituted succeeds to the right of the other in relation to the debt or claim, and its rights, remedies, or securities.

The Iowa Supreme Court found that states have three approaches to determine whether or not subrogation is applicable. The first approach is that actual or constructive knowledge of the intervening interest is irrelevant; the second approach is that a plaintiff with actual or constructive knowledge of the intervening interest cannot seek equitable subrogation; and the third approach says the plaintiff with actual knowledge cannot seek equitable subrogation. The Iowa Supreme Court has adopted the second approach and because the contract was filed of record there was constructive knowledge of the intervening interest to the Plaintiff. The Court found that equity will not rectify a mistake due to inexcusable negligence. Here, the new bank should have done a search and found the contract which provided that while a new mortgage could be placed on the property it cannot be placed in an amount exceeding 100% of the then unpaid balance. Therefore, the decision of the district court was reversed and the Iowa Court of Appeals concluded that the district court erroneously subrogated Champion to F&M Bank's priority position.

J. Copycat Photography Center, Inc. v. Frisco-Ozarks Partners, L.L.C., et al.
Iowa Court of Appeals No. 15-2005: Filed November 23, 2016

The Plaintiffs in this action obtained a judgment against Frisco-Ozarks Partners, L.L.C. in December of 2012. The total amount of the judgment was approximately $200,000.00. At Plaintiffs request, the Polk County Clerk of Court issued an execution on October 7, 2013, resulting in a sheriff's sale on March 11, 2014, of the property in question where the Plaintiff had successful bid on the property with a credit bid of $65,000. However, there was a first mortgage on the property to Northwest Bank which had a mortgage with an outstanding debt of approximately $320,000. In June of 2014, Frisco-Ozarks executed a quit claim deed conveying the property to the bank in a voluntary non-judicial foreclosure pursuant to Iowa Code § 654.18. Notice was given to the Plaintiffs allowing them to redeem the property prior to completion of the nonjudicial foreclosure. The Plaintiffs took no action to redeem the property. Subsequent to the finalization of the foreclosure, TSM Hospitality, L.L.C. purchased the property from the bank for $320,000 - the amount of the Frisco-Ozarks indebtedness to the bank. Less than one month later TSM sold the property to Double DG, L.L.C. which is a new company owned by the primary owner of Frisco-Ozark Partners, L.L.C. for $335,000. In December of 2014, Double DG sold the property for the sum of $500,000 to a company not named in the dispute. It is this transaction, the sale of the property to this other party, four months after the lien was extinguished by the consensual alternative nonjudicial foreclosure upon which the Plaintiffs rely to establish the market value of the property and that the Defendants fraudulently intended to deny the Plaintiffs the path to collect their judgment. This action was commenced by the Plaintiffs arguing a civil conspiracy

to fraudulently convey the property to escape the judgment against Frisco-Ozarks. The lower court granted summary judgment to the Defendants.

The Iowa Court of Appeals found that a fraudulent conveyance is generally defined as a transaction by means of which the owner of real or personal property has sought to place the land or goods beyond the reach of his creditors, or which operates to the prejudice of their legal or equitable rights. The district court found that there was no fraudulent conveyance as the matter of law. There were no genuine facts in dispute. The Plaintiffs agree that the bank was in no way a part of the alleged conspiracy to keep the property in question from them but the Plaintiffs argue at the hearing that the Defendants had elected to comply with a voluntary 30 day foreclosure as a way to interfere with the Plaintiff's rights. The Defendants' decision to consent to foreclosure may have made it more difficult for the Plaintiffs to redeem the property due to the shortened timeline but the Defendants were within their rights in doing so. That Court Appeals relied upon the case of Benson v. Richardson, 537 NW 2d 748 (Iowa 1995) which states "that a debtor may prefer one creditor over another by way of sale, mortgage, or the giving of security to others even if the debtors intentions toward the nonpreferred creditor are spiteful and the action will delay or prevent the nonpreferred creditor from obtaining judgment." The Iowa Court of Appeals as well as the district court held that once the Plaintiffs elected not to redeem the property from the consensual nonjudicial foreclosure the lien was extinguished. The Plaintiffs tried to argue that later transactions involving the property should be considered as part of their claim for fraudulent transfer. The Plaintiffs no longer had a lien attached to the property and any action taken by the Defendants afterwards cannot have been done in an attempt to circumvent the Plaintiff's rights. The decision of the district court was affirmed.

K. Graham v. Meyers

Iowa Court of Appeals No. 15-1963: Filed December 21, 2016

Jerry and Kim Meyers own a piece of property in Oskaloosa in which they have been living since late 1980. Situated between their driveway and the crop line of an adjacent property owner was a grassy strip of land. At all times the adjacent property owners possessed title to the grassy strip. When the Meyers moved into the property they began to mow the grassy strip, planted grass seed, installed landscaping stone, planted flowers in front of the building that overlapped the strip. According to Jerry Meyers they did whatever it took to keep it looking nice. The Grahams purchased the adjoining property in 1996 and they believed the Meyers were encroaching on their land and in 1999 they had a survey completed to establish the boundary line. They notified the Meyers that the land in question was their land. This action then was commenced by the Grahams for a declaratory judgment alleging the Meyers had no right, title or interest in real estate and requested an injunctive relief as well as the cost of removing the items placed upon the grassy strip. Following the trial the district court concluded the Meyers had acquired the disputed property by adverse possession and established the boundary by acquisition. This appeal then ensued. The Iowa Court of Appeals went through an

analysis of the requirements to establish title by adverse possession. "A party claiming title by adverse possession must establish hostile, actual, opened, exclusive and continuous possession under claim of right or color title for at least 10 years." The Meyers did not have color of title. There was no indication they had title to the property so they relied upon claim of right which must be asserted in good faith. Here the Court of Appeals found that the Meyers knew they did not have a right to the property and therefore they failed to establish the required good faith claim of right to the property which is an essential element of adverse possession. The district court also found that they acquired property by acquiescence. The doctrine of boundary of acquisition states, "If it is found that the boundaries and corners alleged to have been recognized and acquiesced in for ten years have been so recognized and acquiesced in, such recognized boundaries and corners shall be permanently established." Iowa Code § 650.14. The Iowa Court of Appeals found that Meyers and Grahams mutually recognized a different boundary line than the legal boundary line demarcated by the fence remnants of the survey post. The court found that the Meyers and the Grahams did not acquiesce in this boundary line and therefore reversed the district court decision quieting title in the Meyers.

L. Roll v. Newhall

Iowa Supreme Court No. 15-1838: Filed December 23, 2016

A will beneficiary appeals a district court ruling declaring that another beneficiary's adoption out of his biological family after the execution of a will did not preclude him from inheriting under a provision of the will they identified him by name and class designation .

The two parties in this action were brother and sister whose mother Marrian Newhall executed a will in 2006. Article II of the will provided in part as follows:

> "In the event my husband does not survive me, all the rest, residue and remainder of my property I give to my children, RUSSELL L. NEWHALL and MARCIA E. ROLL, share and share alike. All references to child or children shall include all children born to or adopted by me after the date this Will is executed.

In 2007 Russell was adopted by his paternal aunt Janice Anway who wished to avoid Iowa inheritance tax on her estate. In 2014 Marrian passed away and at that time Russell was Marrian's nephew under law and biological son at the time of her death. Marcia tried to argue that Russell was no longer entitled to inherit under his mother's will because he was no longer a child. A summary judgment motion was filed by Russell and the district court granted that summary judgment concluding Russell could inherit under the terms of Marrian's will despite the adoption because he was clearly named as an individual under the will and no statute barred him from recovering under the will. On appeal, Marcia

made two arguments. First, she contends the district court made an error in its determination of the testator's intent. In particular Marcia asserts the district court misunderstood relevant case law and did not take into account the will's language and the facts and circumstances surrounding its execution. Second, Marcia asserts that even if the terms of the will would otherwise permit Russell to inherit despite his adoption, the Court should hold based upon public policy that a beneficiary's right to inherit under a biological relative's will is extinguished when the beneficiary severs his or her legal relationship with that relative through a voluntary adult adoption.

The Supreme Court went through an analysis of the general principles of will construction and held that the cardinal rule of will construction is that the "the intent of the testator is the polestar and must prevail." The court found that the language in Marrian's will "to my children, RUSSELL L. NEWHALL and MARCIA E. ROLL" is capable of multiple meanings because it describes the beneficiaries as members of a class as well as individuals. Under Iowa law a class gift is defined as a gift to two or more persons who are not named and have one or more characteristics in common by which they are indicated or who answer to a general description. The rule in Iowa that a bequest or devise to person who are designated by name and by class is a gift to individuals and not a class is well-established in our case law. The court relied upon the case of In Re Estate of Carter, 213 NW 392 (1927) which states as follows: "It seems to be … well settled that, where the beneficiaries are designated by name, it prima facie indicates an intention to give to them only as individuals. Where legatees are named as individuals and also described as a class, and there is nothing more to show the testator's intention, the construction is that the gift by name constitutes a gift to the individual, to which class description is added by way of identification. The court attaches great importance to the designation of the devisees severally by name, and a provision that they shall share the gift in a fixed and definite proportion."

Relying on these cases the court determined that Russell was named as a beneficiary and under the will individually and as a member of class of children as such the individual designation prevails and Russell is entitled to inherit under his biological mother's will who was also his aunt.

The other argument made by Marcia regarding public policy is that allowing this case to stand would encourage manipulation of the rules of inheritance and would also be against general public policy. Marcia tried to argue that by finding that Russell was not entitle to inherit under his mother's will would discourage people from using the adoption code to manipulate the rules of inheritance or to avoid paying inheritance taxes. Second, she contends such an exception would be consistent with the Iowa's strong public policy to sever all legal relationships between the adopted person and his biological relatives, including the adopted person's right to inherit from his biological relatives.

The Iowa Supreme Court found that the gift from Marrian to Russell does not subvert Iowa's inheritance tax laws and that statutes have been enacted regarding adoption under intestate succession as well as disinheriting an ex-spouses under the terms of an ex-spouse's will. Those sections are Iowa Code § 633.223 and §633.271. The Court agreed that those two sections applied but they found that there was no statue which would disinherit Russell under a testate succession. The decision of the Iowa District Court was affirmed.

M. Newhall v. Roll

Iowa Supreme Court No. 14-1622: Filed December 23, 2016

Newhall and Roll were brother and sister. They inherited certain property in Hardin County from their biological aunt in 2011 and received a gift from their parents to certain property located in Butler County in 2006. They own both properties as tenants in common. The relationship between the parties was not the best and Russell sought to sever the interest in the two properties by agreement on multiple occasions before this litigation was commenced. In March of 2013, Russell filed this action seeking traditional partition by sale of both tracts. Marcia responded by requesting partition in kind. The cases were consolidated in Cerro Gordo County and at trial both experts for Marcia and Russell determined that the Butler County land was worth anywhere between $919,000 and $1.2 million and the Hardin County land was valued at anywhere between $620,000 and $778,000. At trial the lower court determined that Marcia had not met her burden of proof to establish that partition in kind would be both equitable and practicable an appeal ensued to the Iowa Court of Appeals where it found that partition in kind had been established by Marcia and divided the property such that Marcia would receive the Butler County property, Russell would receive the Hardin County property along with $75,000 from Marcia. On appeal the Iowa Supreme Court went through an analysis of the rules governing partition actions in Iowa. Prior to 1943, partition in kind was favored over partition by sale at both common law and in the previous statutory framework. In 1943 this provision was changed such that partition by sale was the favored method for petitioning and if a party sought partition in kind they had the burden of proof to show it would be both equitable and practical.

Marcia offered in this case two proposals for a partition in kind. In one proposal she proposed to give the Hardin County property to Russell along with a portion of the Butler County that was used for timber as well as pasture. The other alternative was to give the Butler County property to Marcia and the Hardin County property to Russell along with an equalization payment to Russell. The payment of money as a means of offsetting unequal distribution of real property in partition action is commonly referred to "owelty". Owelty is an equitable remedy developed at common law and used in partition actions to equalize the value of property each party receives the payment of a sum of money to the recipient of the higher valued property to the recipient of the lower value property. The Iowa Supreme Court did not make a determination as to whether owelty was allowed in Iowa as Russell contended but determined that in this case it would not be

appropriate for a partition in kind. The court found that Marcia had not met her burden of proof and vacated the court of appeals decision and affirmed the district court decision.

N. Third Federal Savings & Loan Association of Cleveland v. Randy L. Beltramea, L.L.C.

Iowa Court of Appeals No. 16-1651: Filed June 7, 2017

Randy Beltramea owned property in Linn County Iowa. He mortgaged the property in 2003 to the predecessor of the Plaintiff. He went into default on the loan in February of 2014 and this foreclosure action commenced. There was a lien on the property to Randy Beltramea's ex-wife, Carol Beltramea, for child support. Carol was named in the foreclosure action and stated in her answer that if a decree of foreclosure is entered she requests that the decree provide that the proceeds remaining after satisfaction of the amounts due to Third Federal, if any, be distributed to junior lien holders in accordance with their lawful priority. Randy tried to assert in his answer and in his resistance to the motion for summary judgment filed by Third Federal that the child support interests of Carol were superior to Third Federal's interest in the property and that he had the right to assert that claim. The district court disagreed holding that he did not have standing to assert any type of interest of Carol in and to the property as he was a judgment debtor of Carol, a judgment creditor. On appeal, Randy asserts that the judgment debtor of a child support lien has standing to assert the priority of that lien as to Third Federal's mortgage and the child support lien and judgment are superior to Third Federal's mortgage. The Iowa Court of Appeals affirmed the district holding that generally a party does not have the right to assert other party's claims. A third party may assert a claim of a third party in limited circumstances where (1) the litigant has suffered an injury in fact; (2) the litigant must have a close relationship to the third party; and (3) there must exist some hindrance to the third party's ability to protect his or her own interests. The Court did not find such facts in this case and denied his right to assert the lien. The Court also went on to hold that the lien was not superior to that of Third Federal. Each child support installment becomes a final judgment and lien when it becomes due and attaches at that time. The life of each lien is 10 years; therefore, any delinquent child support that was due in 2003 expired prior to the commencement of this action in 2014 by Third Federal. Each child support obligation when it becomes delinquent becomes a lien and not before. The district court action was affirmed.

O. Rehr v. Guardian Tax Partners, Inc.

Iowa Court of Appeals No. 16-1962: Filed April 19, 2017

The holder of a tax sale certificate appeals the district court's order setting aside its deed as void due to the insufficiency of its proof-of-service affidavit. A property located in Clinton County, Iowa was sold at tax sale for delinquent taxes on June 18, 2012. A certificate of purchase from the county treasurer was issued and then assigned to Guardian. No one redeemed the property by June of 2015 and the certificate-holder Guardian took action to serve a notice of redemption, stating in part the following: "the right of redemption will expire and a deed . . . unless redemption is made within ninety days from the completed service of notice." Guardian's ninety-day period of redemption began as a provided in Iowa Code § 447.12 upon filing of the affidavit. That affidavit was filed, the ninety days ran and a deed was issued. On March 22, 2016, the owners, the party in possession, and 1st Gateway a first mortgage holder on the property filed a petition in equity alleging Guardian did not comply with Iowa Code § 447.9 through 447.12. Those parties alleged that Guardian's affidavit was insufficient under § 447.12 by failing to state under whose direction the affidavit was made. The plaintiffs asked the district court to enter a judgment declaring the treasurer's deed void. The district court agreed with the owners of the property and the mortgage holder and held that the affidavit was not sufficient under Iowa Code § 447.12. Iowa Code § 447.12 states in relevant part: "service is complete only after an affidavit has been filed . . . showing the making of the service, the manner of service, the time when and place where made, and under whose direction the service was made." These requirements are mandatory and are liberally construed in favor of the party challenging the deed. The affidavit in question was filed by the attorney for Guardian. In part the affidavit stated that Guardian mailed the Notice of Right of Redemption to certain parties and Guardian published notice of the expiration of Right of Redemption. The district court found that Guardian's affidavit of service was incomplete in not stating that Richardson-Severn, who is the attorney, served the notice either by mail or by publication but rather stating that Guardian mailed the notice and Guardian published the notice. The court reasoned, because Guardian is an entity that must necessarily act through an individual, the affidavit was defective and not specifying "the individual who accomplished the acts constituting service, and that the person acted at the direction of the certificate holder." Guardian alleged in its appeal that the district court's very narrow and restrictive interpretation of § 447.12 claims the result "defies common sense." The Iowa Court of Appeals' reading of the case law showed that by requiring Guardian's absolute compliance with § 447.12 requirements for its proof of service affidavit the district court was following well established precedence. The Iowa Court of Appeals is following the precedent that tax sale statutes are narrowly interpreted and all requirements of the statute have to be met. The Iowa Court of Appeals went through an analysis of various cases dealing with an interpretation of tax statutes and they ultimately decided that the district court was correct and affirmed the decision holding that Guardian as a corporation, must act as an individual, and such individual must be named, not presumed, in the affidavit to satisfy the proof of service requirements in Iowa Code § 447.12. Because Guardian's proof of service affidavit failed to show who served the notice and concomitantly under whose direction service was made the district court correctly held Guardian's affidavit of

service did not comply with the statutory requirements of Iowa Code § 447.12 and Guardian's tax deed was void.

P. City of Monroe v. Dustin M. Nicol and Michelle R. Street
Iowa Court of Appeals No. 16-1155: Filed May 3, 2017

Nicol and Street owned a home in Monroe, Iowa. They purchased the property in 2013. Beginning in May of 2013 and for over two years that followed, the City of Monroe sent them five letters regarding their failure to maintain the property. The City in April of 2015 filed a municipal infractions lawsuit citing several ordinance violations including the keeping of junk vehicles and garbage on the property. After a hearing the court entered judgment against Nicol and Street assessing civil penalties and ordering them to fully abate the violations. They did not do so. Nicol and Street also failed to pay property taxes on the property and also there were no utilities being used on the property since June of 2015. In January of 2016 the City petitioned for title to Nicol and Street's property alleging it was abandoned within the meaning of Iowa Code § 657A.10A(3) 2017. The defendants moved to dismiss the action on the grounds that the statute is unconstitutional, alleging Chapter 657A of the Code allows the taking of private property for a public purpose without just compensation to the owner. The district court found that the property met the definition of abandoned under Iowa Code § 657A and awarded the title to the city. The court also determined that Iowa Code § 657A was a legitimate exercise of police power and does not violate the Federal or Iowa Constitution.

The Iowa Court of Appeals went through an analysis whether a statute is constitutional and indicated that statutes are presumed to be constitutional. In order to rebut that presumption a person must show that the statute is unconstitutional beyond a reasonable doubt and negate every reasonable basis upon which this statute could be upheld as constitutional.

Iowa Code § 657A.10A provides that a city in which an abandoned building is located may petition the court to enter judgment awarding title to the abandoned property to the city. The property must be shown to be abandoned and some of the factors to be considered as to whether or not the property is abandoned is failure to pay property taxes as well as failure to have utilities connected to the house. Violations of the housing code are also another consideration to take into account to determine whether or not the property is abandoned. A property may be taken by the state under the police power if it appears that (1) the interests of the public require such interference (2) that the means are reasonably necessary for the accomplishment of the purposes and not unduly oppressive upon individuals. The process under Iowa Code Section 657A to take a property allows the owner of the property many opportunities to correct the problem before title is taken. The Iowa Court of Appeals found that the statute was constitutional and affirmed the district court decision.

Q. First American Bank v. Urbandale Laser Wash, LLC, Walnut Creek Laser Wash, LLC and Steven Golden

Iowa Court of Appeals No. 16-0081: Filed January 11, 2017

This matter stems from a foreclosure action brought by First American Bank against the Defendants and for an in personam judgment against Steven Golden. The Bank tried to execute on the personal judgment by asking that his home be sold which is located in Clive, Iowa. The home is on a .94-acre parcel. The owner of the home, Steven Golden, filed an action asking that the sale be stayed and he then proceeded to file a homestead plat claiming that a .48-acre parcel out of the .94-acre parcel was his homestead and therefore was exempt from sale. The Iowa District Court adopted that plat. The bank argued that the homestead plat was invalid because it was not a proper certified plat or subdivision plat as defined in Iowa Code § 354 and 355. The plat did not conform to the city's zoning ordinances resulting in the creation of two non-conforming parcels. Golden resisted the bank's motion to strike the homestead plat noting that the plat was not required to be certified or a subdivision plat under Iowa Code § 354 and 355 and claiming it was proper under Iowa Code § 561. The homestead plat filed by Golden included the house, the driveway and a small portion of the property. The remaining portion of the property was not a conforming lot allowed to be subdivided under the City of Clive ordinances. The Court reviewed various code sections including Iowa Code § 561.16 which states in part: "The homestead of every person is exempt from judicial sale where there is no special declaration of statute to the contrary." The homestead is defined as "the house used as a home by the owner," and it is limited to a one-half acre piece of land if the property is in a city plat or not more than forty acres if it is agricultural land. In Merchants Mut. Bonding Co. v. Underberg, 291 N.W.2d 19 (Iowa 1980), the Court held that "homestead rights jealously are guarded by the law." Homestead laws are creatures of public policy, designed to promote the stability and welfare of the state by preserving the home where the family may be sheltered and live beyond the reach of economic misfortune. Homestead rights are purely statutory and get their vitality solely from the provisions of legislative enactment. The bank tried to argue that the ability of the court or the homeowner to plat a portion of the property as a homestead is limited to a local rules and ordinances governing the division of property in the locale. The Iowa Court of Appeals relied upon the case of Berner v. Dellinger, 222 N.W. 370, 371 (Iowa 1928) which stated as follows: "The right of a debtor to have a homestead, not exceeding 40 acres in extent, platted out of a larger tract on which he resides, is absolute and subject to but one limitation; that is, it must be set off so as to include the dwelling house or home of such debtor. Government subdivisions may be ignored and the area may be platted in any shape or form and from any part of the whole tract." The Iowa Court of Appeals affirmed the district court finding that there was no special declaration to the contrary as Iowa Code § 354, 355 or 414 did not state that a homestead has to be in compliance with those statutes. Although the remaining portion of the property which was left to the creditor to execute on was not a viable lot, the Iowa Court of Appeals affirmed the district court.

R. Johnson Propane, Heating & Cooling, Inc. v. The Iowa Department of Transportation

Iowa Supreme Court No. 16-0906: Filed March 3, 2017

The Iowa Department of Transportation condemned a portion of the landowners' property to complete the construction of a highway. The landowner waited until after the compensation commission decided the amount of damages to appeal its claim to the district court that the taking left it with an uneconomical remnant. The lower court dismissed the petition on summary judgment finding that the landowner's petition making its uneconomical remnant claim was untimely.

Johnson Propane, Heating & Cooling, Inc. owned property that abutted US Highway 20. The property was a .76-acre parcel. The Iowa DOT wanted .16 acres of that parcel and determined that it did not need the entire plot of land for the highway improvement. The remaining .60-acre tract left after the condemnation was not an uneconomical remnant as determined by the Iowa DOT. Thereafter the chief judge appointed a compensation commission whose purpose was to assess and appraise the damages because of the condemnation of the .16-acre parcel. The notice of assessment was served upon Johnson Propane on August 29. The commission was appointed, the appraisal was done and a compensation award was granted by the compensation commission of approximately $11,500.00. Johnson Propane then appealed that determination to the district court holding that due to the partial taking of the property it is virtually impossible for propane trucks to safely enter and exit the property. Without the ability to operate trucks on its property to collect and haul propane, Johnson Propane will no longer be able to use the remaining property in its business and therefore the remaining parcel was an uneconomical remnant. The district court upon a motion for summary judgment by the Iowa DOT determined that this challenge based upon the uneconomical remnant was untimely and that the challenge should have been brought within 30 days after the assessment was made by the Iowa DOT in determining whether or not it was an uneconomical remnant left after the condemnation of the .16-acre parcel. The Iowa Supreme Court determined that the only issue on appeal from the commendation award was the amount of damages owed by the acquired agency to the landowner due to the taking. Any question as to whether or not the remaining property was an uneconomical remnant has to be appealed within 30 days after the acquiring agency makes the assessment and determines that there is no economical remnant left after the condemnation. The acquiring agency makes that determination under the condemnation statute and therefore the property owner must appeal that decision within 30 days after the assessment is made. The appeal to the district court based upon the amount of damages is not the appropriate venue to determine whether or not the property remaining was an uneconomical remnant. The district court decision was affirmed.

S. DuTrac Community Credit Union and Kwik Trip, Inc. v. Radiology Group Real Estate, LC, et al.

Iowa Supreme Court No. 16-0661: Filed March 3, 2017

DuTrac owns property in Davenport, Iowa. DuTrac owned what was described as Lot 6 and the Southerly 20 feet of Lot 5 of Waterford Place. They were attempting to sell the property to Kwik Trip, Inc. As part of the due diligence, Kwik Trip, Inc.'s counsel discovered that the real estate was subject to a 1996 restrictive covenant that required the approval by an architectural control committee before any building or other structure could be erected on the property. The committee consisted of two named individuals. One of those members is now deceased and the other has indicated an unwillingness to be a part of the committee. The covenant in question states as follows: "No building or other structure shall be erected on any lot in this addition without the approval of the architectural control committee consisting of David W. Lundy and/or Dennis J. Britt. This shall be interpreted to include approval of the structure, design, building materials, site plan, landscaping and signage." DuTrac brought this declaratory judgment action, alleging that the restrictive covenant was no longer enforceable. They argued that it was ambiguous and it was an impossibility of them to perform under the terms of the covenant because of the members' situation. The district court found the covenant unenforceable due to the doctrine of impossibility and being impracticability. On appeal the Iowa Supreme Court affirmed that decision relying upon the Restatement (Third) of Property. The Restatement (Third) of Property states as follows: "When a change has taken place since the creation of a servitude that makes it impossible as a practical matter to accomplish the purpose for which the servitude was created, a court may modify the servitude to permit the purpose to be accomplished. If modification is not practicable, or would not be effective, a court may terminate the servitude. Compensation for resulting harm to the beneficiaries may be awarded as a condition of modifying or terminating the servitude." The Supreme Court determined that covenants can terminate due to changed conditions but they also can be modified to allow for the purpose to continue even if it's not possible to implement that covenant according to the original terms. The conditions that are required to allow for modification are: (1) the purpose of the restrictive covenant - can that purpose still be accomplished. This is a stringent test for relief to modify the covenant and (2) is modification or termination appropriate. The Iowa Supreme Court determined that the modification that was proposed by the appellants is not as a matter of law a practical or effective way to carry out the purpose of the restrictive covenant. The covenant as originally drafted reserved control over construction to the developers only. No succession plan was set forth beyond the two named individuals, and the required approvals had no stated criteria and applied only to initial construction, not remodeling. The Iowa Supreme Court felt that the original covenant was thus intended by design to be a limited-duration restriction that would run its course once, as the developers presumably anticipated all the lots would be quickly sold. Instead, as sometimes happens, the development took a long time to reach full maturity. The Iowa Supreme Court agreed with the district court that a committee comprised of all 18 of the lot owners, would not be comparable to the original covenant or practical modification of it. Therefore under the Restatement (Third) of Property circumstances had changed since the creation of the restrictive covenant which makes it impossible as a practical matter to

accomplish the purpose to which the covenant was originally created. Modification to the covenant as proposed is not practical nor would it be effective to accomplish the original purpose of the covenant. Termination of the covenant was appropriate. The Iowa Supreme Court affirmed the district court.

T. Intriligator v. Rafoth

Iowa Court of Appeals No. 16-0743: Filed February 8, 2017

This case deals with a roof that went bad on a property after it was sold by the Rafoths to the Intriligators. The sale was completed in August of 2012 and in 2013 and 2014 the metal roof leaked requiring the Intriligators to have the roof replaced two times. They brought this action pro se seeking to recover damages based upon the fact that the Rafoths violated the statutory disclosure requirements under Iowa Code § 558A, fraudulently misrepresented the roof's condition and breached the purchase contract by failing to disclose defects in the roof. The crux of their claims required proof that Rafoths failed to disclose information regarding the roof's condition they knew or reasonably should have known. After a bench trial, the district court found that the Intriligators failed to prove the elements of the claim and entered judgment in favor of the Rafoths. The case deals with various aspects regarding inadmissibility of evidence and expert witnesses that were not allowed to testify on behalf of the Intriligators. However, in the end, the court found that the parties who bring actions under Iowa Code § 558A have to prove by a preponderance of the evidence that the owners of the property knew or should have known that the defect existed on the property. The trial court concluded that they had failed to meet the burden of proof. They found that the Rafoths were particular about the way they kept their home leading the court to conclude that if there had been any problems similar to those complained of by the Intriligators it is not plausible that the Rafoths would not have abated them. The court found that there was substantial evidence supporting the court's findings and affirmed the district court.

U. In Re Steinberg Family Living Trust
David L. Steinberg v. Steven C. Steinberg

Iowa Supreme Court No. 16-0380: Filed April 28, 2017

Two brothers were beneficiaries of this family trust. The family trust provided that property located in Winnebago County would be bequeathed to Steven and property located in another portion of Iowa would be conveyed to David. During the lives of the Trustors the Winnebago property was sold and the Minnesota property was brought in to the trust in a like-kind exchange. There were no provisions to the trust instrument which provided that Steven would receive the Minnesota property. There was also a provision in the trust that indicated that Steven had the first right to purchase or rent the property conveyed to David. The issue before the court was whether the doctrine of ademption was still applicable in Iowa. Ademption means that when a specifically bequeathed

property is not in the estate at the time of the testator's death, the bequest was adeemed. The Iowa Supreme Court noted that Iowa has always adopted a doctrine of ademption and only recently modified it somewhat to provide that if the party who conveyed the property away was under some kind of disability then the court may not apply ademption. Ademption was adopted in Iowa in the early 1900s. In the early 1960s the modified intention approach was adopted which would deal with situations where the party who owned the property and conveyed it away with under some kind of disability. Steven tries to argue that Iowa should not follow that rule and should adopt the provisions of the Uniform Probate Code to deal with this issue. The Uniform Probate Code provides as follows: "any real property or tangible personal property owned by the testator at death which the testator acquired as a replacement for specifically devised real property or tangible personal property will go to that individual." The Iowa Supreme Court found that the Iowa legislature specifically omitted this section in the Uniform Probate Code that it had previously adopted and therefore the Iowa Supreme Court affirmed ademption in Iowa with only very limited exceptions.

The issue regarding the right to purchase or rent granted to Steven was an issue that was in dispute and therefore the court reversed the district court's summary judgment ruling regarding the ambiguity in the trust instrument.

V. Westlake Properties, L.C. v. Greenspon Property Management, Inc.

Iowa District Court for Polk County, Iowa; Case No. EQC 079895

This is a district court case in Polk County from August of 2016. Westlake Properties, L.C. sold certain property to Greenspon Property Management, Inc. Westlake as part of the sale also granted Greenspon the right of first refusal to purchase certain property adjacent to the property sold to Greenspon. This particular right of first refusal was filed in June of 1997. On April 11, 2016, the Plaintiff filed a petition in equity for quiet title pursuant to Iowa Code § 649 requesting the court declare the right of a first refusal void and having no further force and effect under Iowa Code § 614.17A.

The district found that in order to apply Iowa Code § 614.17A Plaintiff must show three things: (1) its claim arose more than 10 years ago; (2) that Plaintiff is in possession of the property, and (3) that Plaintiff has been the owner of the property for at least 10 years. The Defendant admitted that second and third requirements in its answer to the Petition. The Defendants disputes whether or not the right of first refusal is a claim against the property for Iowa Code § 614.17A to apply. The Iowa District Court found that it was a claim that would have lead to an actionable and valid claim by the Defendant after it had been filed in 1997. The district court found that the Defendant could have maintained the right of first refusal if it had filed an extension of the claim with the county recorder before the 10 years expired. The district court found that the right of first refusal was void after under Iowa Code § 614.17A.

W. Daniel Kline, et al. v. Southgate Property Management, LLC
Iowa Supreme Court No. 15-1350: Filed May 19, 2017

Three former tenants of Southgate Property Management, LLC brought this against the landlord for damages because the landlord's leases included several provisions known by the landlord to be prohibited provisions under Iowa Code Section 562A.. The tenants argued that Southgate leases included provisions imposing fees, charges and liquidated damages against the tenants. Examples of these fees would be a charge for a tenant's check that was returned for insufficient funds, a charge for unauthorized pets and an acceleration clause that would provide the tenant would immediately owe rent for the entire term of the lease in the event of an early termination. The tenants also claimed that certain provisions in the lease were prohibited because they limited the tenants' remedies. Those provisions included:

1. A provision that limited the remedies if the landlord was not able to deliver possession of the property to the tenant as agreed to in the lease.
2. A provision that stated all carpets be professionally cleaned at the end of the tenancy; and
3. A provision regarding a checklist detailing the conditions of the dwelling at the commencement of the lease.

The tenants also requested class certification. The district court concluded lease provisions imposing the fees and charges were prohibited under the act as they were set without any consideration of what Southgate's actual damages and fees would be in each situation. The court concluded also that the provisions limiting the remedies of the tenant was illegal and the carpet cleaning provision was also illegal. The district court also determined that class certification was proper. The landlord appealed the decision on the following grounds:(1) the provisions that were in dispute were actually not used by the landlord, (2) that even if the district court was correct in determining that the tenants had standing even though the provisions were not used that the provisions challenged by the tenants in the case are not prohibited under to Iowa Code § 562A, and (3) that the district court's certifying the class of tenants was improper.

The Supreme Court determined that the district court was correct in allowing the tenants to bring this action even though the provisions in question were not actually used by the landlord. The court went through an extensive discussion regarding the history and background of the Uniform Residential Landlord and Tenant Act under Iowa Code § 562A.

The district court determined that certain fees, charges and liquidated damages were illegal under the act. The Iowa Supreme Court relied upon a provision of the Uniform Residential Landlord and Tenant Act to Iowa Code § 562A.9(1) which states as follows:

> "The landlord and tenant may include in a rental agreement, terms and conditions not prohibited by this chapter or other rule of law including rent, term of the agreement, and other provisions governing the rights and obligations of the parties."

The Court found that parties can contract between themselves provisions in the lease as long as they are not explicitly prohibited by the act. The Iowa Supreme Court reversed the district court on this issue providing there was no basis in determining all these provisions regarding fees, charges and liquidated damages are categorically prohibited under to Iowa Code § 562A.11(1).

The Iowa Supreme Court determined the delayed possession provision was a prohibitive provision under to Iowa Code § 562A.11(1)(b) because it constituted an exculpation or limitation of the landlord's liability arising under Iowa law. The court also found that the carpet cleaning provision was not prohibited as the carpet cleaning charges are not always charged and the apartment inspection checklist was also not found to be illegal as it was a method for determining the condition of the property at the commencement of the term.

The court also determined that certification was flawed in this situation because the decision did not have the required findings to allow for a class certification.

X. Walton v. Gaffey

Iowa Supreme Court No. 15-1348: Filed May 19, 2017

This case is a similar case to the one in Kline. However, in this case there were certain provisions in the lease that were somewhat different than those contained in the Kline lease. The tenant challenged these various provisions alleging these paragraphs were prohibited by the act and requested damages. The first provision that the tenant challenged were the fees for trash removal, parking violation, unauthorized pets, etc. The fees were addressed by the court in Kline and were found to be not categorically illegal in a lease.

Paragraph 20E of the lease in question addressed the landlord's liability for appliance failures. The provision provided in part: "In the event of the failure of an appliance that is furnished by LANDLORD under this rental agreement, LANDLORD'S sole responsibility shall be the repair or replacement of the appliance at the LANDLORD'S sole discretion. In no event or circumstance will LANDLORD be responsible for any loss of use or consequential damages caused by said appliance failure."

Paragraph 23 of the agreement provides: "LANDLORD shall not be liable for damage or loss of any of the TENANT's personal property for any cause whatsoever."

Paragraph 29 of the lease provides as follows: "LANDLORD shall have all carpeting professionally shampooed, paid out of tenants security deposit."

The Iowa Supreme Court found that these three provisions of the lease were prohibited provisions in that the first two provisions in paragraph 23 and 20E were attempts to exculpate or limit the landlord's liability in violation of Iowa Code § 562A.11(1)(d). The Iowa Supreme Court also agreed that the provision regarding carpet cleaning was illegal and that there was no showing upon imposition of the fee that the carpet was dirty beyond ordinary wear and tear. The Iowa Supreme Court relying upon the DeStefano case that found this provision was illegal in that it generates an automatic deduction from the rental deposit even when none of the conditions of Iowa Code § 562A.12(3) have been met.

The Iowa Supreme Court therefore determined that the automatic fees and liquidated damages were not categorically illegal under the act but the provisions limiting the liability of the landlord in paragraphs 20E, 23 and imposing costs on the tenant for carpet cleaning under paragraph 29 were prohibited provisions. The class certification was also reversed because there was not a factual finding as to the certification.

Y. Luana Savings Bank v. Ronald Caspersen
Iowa Court of Appeals No. 16-1013: Filed March 22, 2017

Luana Savings Bank made a loan to William and Shelly Mack for the purchase of certain property located in Luana, Iowa. The bank made two loans to the Macks because they were unable to fund the entire purchase price of the home on their own. The first loan was in the amount of $71,350 signed by the Macks only and was secured by a mortgage on the property that was being purchased. The mortgage instrument indicated that it was for real estate loans of $71,350 and $17,000 dated April 18, 2009. The second loan for $17,000 was made on the consumer credit transaction form and signed by the Macks and an individual named Ronald Caspersen. This note is secured by three vehicles and made no mention of the mortgage instrument and indicated that the purpose of the loan was the balance of the home purchase. The Macks were not able to make the payments on their loan and conveyed the property back to the bank through a voluntary foreclosure under Iowa Code § 654.18. Caspersen continued to make weekly payments on the $17,000 loan. Caspersen then defaulted on the loan by not making a balloon payment due in April 2014. The home was sold by the bank for the sum of $80,000 which generated a surplus above the debt owed on the first note secured by the mortgage. Caspersen made an argument that he was entitled to the surplus from the first note and mortgage because the $17,000 note was incorporated in the open-end mortgage agreement. He felt that he was entitled to any surplus to be applied against the balance due on his note. The district court agreed and after several enlargements of findings of fact determined that Caspersen owed the bank $918.05. On appeal the bank argued that the note was not secured by the first mortgage given by the Macks. The bank argued that the note was not secured by the mortgage, the note did not reference the mortgage and

Caspersen is not a mortgagor on the mortgage instrument. Caspersen argued that the mortgage was incorporated into the note as security based on the intent of the parties and the other security portion of the note. The Court of Appeals upon a review of the note could not conclude that the parties intended to attach a security interest in the real estate to the second loan through the mortgage instrument. The note listed three vehicles as security for the additional funds and made no mention of being secured by separate mortgage instrument on the real estate. The note also did not list the legal description of the property address or any other identifying information of the property. The Iowa Court of Appeals therefore reversed the district court's finding that the note executed by Caspersen was secured by the mortgage.

Z. City of Des Moines v. Mark Ogden

Iowa Court of Appeals No. 16-1080: Filed June 7, 2017

Mark Ogden owns a mobile home park at the corner of Park and Indianola Avenue in Des Moines, Iowa. The park is a legal nonconforming use under a 1953 City of Des Moines ordinance which nonconforming use certificate was issued in 1955. The certificate allowed the operation of a trailer court on the property contrary to the 1953 zoning ordinance which prohibited the use of a mobile home park. The city claimed that the use of the park now in 2015 was such that there are numerous violations of the zoning codes that were in place at the time the land was converted to a mobile home park. The city listed the various violations in a letter to Ogden. The letter warned the violations pose a threat to the health and safety of the occupants and the violations must be brought into compliance with the applicable code to prevent further legal action. No action was taken by Ogden and the city brought this action for an injunction against the property owner for the above listed violations. The district court determined that the 1955 certificate of occupancy validly established a vested right in a nonconforming use as a trailer court. However, since the initial issuance of the certificate, the use of the property has intensified and there is a need to discontinue the nonconforming use because of concerns for the safety of life and property. There was testimony at the district court level regarding fire hazards because of the way the park is now laid out and congestion in the park. On appeal the Iowa Court of Appeals determined that there was a danger to the safety of life and property and that the park had exceeded its previous nonconforming use and intensified such use that the non-conforming use certificate was now invalid. The court went through an analysis of the various case law concerning nonconforming uses and determined that a nonconforming use can remain on the property as long as it is not enlarged or extended and as long as it does not cause danger to the safety of life and property. The Court of Appeals affirmed the district court's finding that the nonconforming use status could be revoked for the safety of life or property and because the nonconforming use had exceeded its original use by expanding the structures and reducing the open space of the mobile home park that violated multiple city ordinances. Judge Danielson dissented finding that the city did not establish that the use had been changed and intensified and that the use of the park did not affect the safety of life or property.

AA. Estate of Dorothy Harris v. Harris, et al.
Iowa Court of Appeals No. 16-0408: Filed March 8, 2017

This case deals with the mental capacity of an individual to sign a quitclaim deed. Dorothy Harris, mother of Randall Harris, Robert Harris and Richard Harris executed a quitclaim deed for her property located in Floyd County, Iowa. The deed was executed in March of 2011 and was executed to convey the property to her youngest son Randall. The mental capacity of Dorothy were raised by various parties since 2008. In 2011 Randall took his mother to an attorney to have a quitclaim deed executed transferring the property to him. The mental capacity of Dorothy was put into issue and after her death the estate brought this action to quiet title to the property to the estate asking that the court determined that the quitclaim deed was invalid. The district court determined the quit claim deed was invalid and set it aside. On appeal the Iowa Court of Appeals affirmed the district court. The party alleging lack of mental capacity sufficient to execute a deed has the burden of proving by clear, convincing and satisfactory evidence that the grantor did not possess sufficient consciousness or mentality to understand the impact of her acts when the deed was executed. The facts that a court will consider to make this determination are the grantor's physical condition; the adequacy of consideration; whether or not the conveyance was improvident; the relation of trust and confidence between the parties to the conveyance, and the weakness of mind of the grantor's judgment as to other acts within a reasonable time prior and subsequent to the act sought to be impeached. The Iowa Court of Appeals determined that because there is no consideration given for transfer; the grantor was in poor physical condition; the grantor did not have independent advice regarding the transfer of the property; and the witnesses stated her lack of mental capacity. The Court of Appeals affirmed the district court and held that the quitclaim deed should be set aside.

LEGISLATION

1. House File 134 - Regulations regarding occupancy of residential rental property.
2. House File 146 - Notice requirements for actions for forcible entry and detainer.

3. House File 371 - Attorney's fees and court costs in an action to quiet title after request for a quitclaim deed.

4. House File 478 - Property tax assessments.

5. House File 586 - Mechanic's lien revisions.

6. Senate File 413 - Statute of repose.