MEMORANDUM

TO: ISBA Ad Hoc Committee Concerning ILTA Proposed Amendment of Iowa Code § 16.91(5)

DATE: December 31, 2007

FROM: Pat Bauer

RE: Additional Background Information / Outline of Current Thinking / Treatment of Existing Waivers / Possible "Third Way" Revision of § 16.91(5)

ADDITIONAL BACKGROUND INFORMATION

To increase the chances of them getting through via e-mai, the asterixed attachments are being sent out in separate messages.

*PROPERTY LAW HORNBOOK**

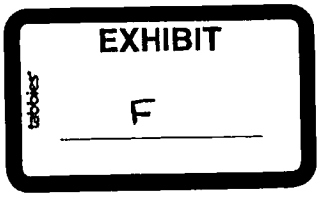
Pages 882-887 describe three categories of notice sufficient to deprive a purchaser for value of recording act protection: (i) actual notice (pp. 883-884), (ii) constructive notice of facts apparent from a visual inspection of the property (pp. 883-886), and (iii) constructive notice of information found in the public records (pp. 886-887).

Pages 891-897 describe the differences between grantor/grantee and tract indices (pp. 891-894), how chain of title problems play out differently between the different indices (pp. 894-897), and discuss the actual notice implications in circumstances where a tract index search reveals an instrument that wouldn't be discovered if the search had been limited to a grantor/grantee search (p. 897 n.18 and accompanying text).

*INDICES & ABSTRACT**

For possible use in explaining some of the circumstances we've been discussing to lawyers who may not be familiar with indices and abstracts, pages 313-328 are samples from my real estate course materials.

Pages 313-315	Manuscript grantor/grantee indices for Town Lot Deeds and Town Lot Mortgages (used in Johnson County up through early 1980s) [deed at Book 546, page 1 and mortgage at Book 272, page 426]
Page 316	Fixed terminal computerized grantor/grantee index (used in Johnson County from mid-1980s through early 2000s
Page 317	Web-based computerized grantor/grantee index (used in Johnson County from early 2000s onward, with both entries and images going back to early 1980s)



Page 318	Image of document retrievable through web-based computerized grantor/grantee index
Pages 319-321	Manually Maintained Tract Index, Melrose Park Third Addition, Lots 19-40 [Security Abstract Company, Iowa City]
Pages 322-327	Abstract of Title (Excerpt) [Security Abstract Company, Iowa City]

*SESSION LAWS & ADMINISTRATIVE RULES**

1985 Iowa Acts, Ch. 252, § 30 (pages 2-3) - Initial enactment does not contain any requirement concerning title plants

1986 Iowa Admin. Code 524-9.14(2) (page 6) - Requirement concerning title plants imposed by administrative rule

1990 Iowa Admin. Code 524-914 (2) (page 10) - Provisions of existing rule concerning "grandparented" attorneys to require continuous provision of abstract services from November 12, 1986 to date of application

1990 Iowa Admin. Code 524-917(2) (page 10) - To achieve widest possible geographic coverage, division will consider waivers of attorney and abstracter participation requirements

1992 Iowa Acts, Ch. 1090 (page 11) - Enactment of existing second and third paragraphs incorporating provisions concerning abstracting services previously imposed by administrative rules

2004 Iowa Admin. Code 265-9.6(3)(b)-(c) (page 14) - Administrative rules presently governing title plants and grandparented attorneys

2004 Iowa Admin. Code 265-9.7 (page 15) - Administrative rules presently governing waiver of participation requirements

DOCUMENTS CONCERNING HENDRICKS WAIVER
<http://www.iowalandtitle.org/publications.cfm>

Hendricks Title Guaranty Waiver Application
Petition to Intervene
Hendricks Amended Application
Brief of Intervenor
Supplemental Supporting Letters**
Hendricks Reply Brief
Motion for Stay
Resistance to Motion for Stay
Waiver Ruling
Petition for Judicial Review
Walter Murphy Dissenting Opinion

Brief of Petitioner
Title Guaranty Reply Brief
Hendricks Reply Brief
ILTA Final Brief

OUTLINE OF CURRENT THINKING

The world is changing and Iowa Title Guaranty wants to change with it. Over the course of the past decade, land records have been computerized and made available over the internet. Over the course of the past half-decade, mortgage credit has been extended by persons and in ways that involve similar dramatic departures from the ways things had been done in the past.

Although rather understandable, Iowa Title Guaranty's decision to adapt to these changes through means of a waiver seems unsound on at least four fronts. For starters, the context in which the second and third paragraphs were added to § 16.91(5) back in 1992 strongly suggest a substantial legislative antipathy towards accomplishing such a move through administrative action of the sort Iowa Title Guaranty had initiated in 1990. Second, in accepting informal advice to the effect that a county limitation cannot be imposed on a waiver granted to a lawyer, Iowa Title Guaranty has failed to make a fairly obvious distinction between the absolute and unqualified "as of right" grandparenting provision of the second paragraph added to § 16.91(5) back in 1992 and the (at least according to it) utterly unqualified "entirely in its discretion" waiver provisions contained in the following third paragraph. Third, by relying on strikingly relaxed standards of hardship and public interest, Iowa Title Guaranty has conferred a boon on one lawyer that it will be hard-pressed to withhold on any sort of principled ground from other lawyers (or for that matter non-lawyers).

Finally and perhaps most seriously, Iowa Title Guaranty's seeming disregard for the legitimate interests of title abstracters who are providing prompt and fairly priced abstracting services has brought on an effort to achieve a legislative resolution of the issues this matter presents. In all likelihood, however, such a cure might well be worse than the circumstance in need of correction. For all of the reasons that prompted its initial establishment, the public interest is served by ensuring that Title Guaranty is widely available as a competitive alternative to title insurance, and it seems quite misguided to think that the General Assembly should spend its time to considering the differences between grantor/grantee and tract indices or mastering the rapidly evolving channels of mortgage lending brought on by the secondary market and such things as mortgage-backed securities. Moreover, entirely apart from the possible distorting effects of financial interests, individual abstracters and lawyers and their professional organizations may also experience substantial difficulties in seeing things clearly when conditions and practices may vary rather dramatically in different parts of the state.

In the final analysis, Iowa Title Guaranty seems best-situated to engage in the kinds of calculations needed to resolve the issues this matter presents. The fact that its initial effort to do so seems seriously flawed shouldn't stand in the way of recommitting the matter to its determination with "further instructions" about how and why it should be considering changes in the ways in which abstracting services are provided throughout Iowa. The appended potential "third way" revision is nothing more than a suggestion of the sort of corrective action

that might get this matter back before Iowa Title Guaranty in a way that might be more profitable than the seemingly less desirable alternatives of (a) letting things proceed as they've been proceeding (by opposing ILTA's proposed legislation) or (b) essentially making an equivalent mistake in the opposite direction (by supporting ILTA's proposed legislation).

TREATMENT OF EXISTING WAIVERS

Determining a path going forward often is greatly complicated by the difficulties of applying any corrective action to existing circumstances. If I understand things correctly, however, the complexities here may well be pretty much limited to the Hendricks waiver.

ILTA's brief in the pending action for judicial review of that waiver contains the following statement of operative facts:

> Prior to the instant case, ITG had only approved waivers for attorneys on five previous occasions[1]:
>
> | | |
> |---|---|
> | June 5, 2001 | David Dunakey |
> | June 5, 2001 | Charles Augustine |
> | June 14, 2005 | Steven Sents |
> | December 6, 2005 | John Donohoe |
> | December 6, 2005 | Michael Gorsline |
>
> ITG has never granted a waiver from the forty-year title plant requirement to a nonattorney abstractor, although ITG has, on occasion, permitted abstractors to participate on a temporary waiver basis while their title plant was being created.
>
> * * *
>
> On the basis of an incomplete record, the Sents, Donohoe and Gorsline cases appear to have been granted waivers on the basis of the location of their practices (Louisa County, Scott County and Scott County, respectively) and the fact that each was mentored by "grandfathered" attorneys that would soon be retiring from practice.
>
> [1] A sixth waiver, for attorney Mitchell Taylor, was overturned by the district court on appeal. Des Moines County Abstract Company vs. Iowa Finance Authority, Title Guarantee Division, CVEQ006597, Des Moines County, (4/5/07).
>
> *<http://www.iowalandtitle.org/documents/Brief%20of%20Petitioner%20ILTA-070910.pdf>, at page 5*

Assorted considerations of reliance and estoppel might well support leaving the above waivers unaffected by any legislative change, but an alternative might be limiting such waivers to the actual extent of their utilization up to the time of the change. Although a similar approach could be applied to the Hendricks waiver, some fuller measure of retroactivity might be warranted in light of the minimization of considerations of reliance and estoppel caused by the pendency of a judicial review proceeding.

POTENTIAL "THIRD WAY" REVISION

16.91 Title Guaranty Program.

* * *

5. a. The participation of abstractors and attorneys shall be in accordance with rules established by the division and adopted by the authority pursuant to chapter 17A. Each participant shall at all times maintain liability coverage in amounts approved by the division. Upon payment of a claim by the division, the division shall be subrogated to the rights of the claimant against all persons relating to the claim.

b. Except as may otherwise be authorized by rules established and adopted in accordance with the requirements of subsection 5, paragraph "a" ~~Additionally~~, each participating abstractor is required to own or lease, and maintain and use in the preparation of abstracts, an up-to-date abstract title plant including tract indices for real estate for each county in which abstracts are prepared for real property titles guaranteed by the division. The tract indices shall contain a reference to all instruments affecting the real estate which are recorded in the office of the county recorder, and shall commence not less than forty years prior to the date the abstractor commences participation in the title guaranty program.

c. ~~However, a~~ [A] participating attorney providing abstract services continuously from November 12, 1986, to the date of application, either personally or through persons under the attorney's supervision and control is exempt from the requirements of ~~this paragraph~~ subsection 5, paragraph "b".

d. In accordance with rules established and adopted in accordance with the requirements of subsection 5, paragraph "a", the ~~The~~ division may waive the requirements of ~~this~~ subsection 5, paragraph "b" or subsection 5, paragraph "c" pursuant to an application of an attorney or abstractor which shows that the requirements impose a hardship to the attorney or abstractor and that the waiver clearly is in the public interest or is absolutely necessary to ensure availability of title guaranties throughout the state. Except as may otherwise be authorized by such rules, all waivers must be limited to one or more specific counties and must be supported by findings concerning a lack of adequate abstracting services in such counties satisfying pricing and performance standards set forth in such rules.

* * *

THE LAW OF
PROPERTY

Third Edition

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HORNBOOK SERIES®

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any prior unrecorded conveyances the debtor has made. A similar result follows with respect to mechanics lien claimants; since they originally perform their work without taking any interest in the land, and since they give no further value in return for the lien, an earlier conveyance, even though unrecorded, will have priority.[20]

The rule, then, is that the "value" must be paid contemporaneously with or subsequent to the conveyance to be protected; otherwise the conveyee is not "out" anything in reliance on the records. But consider the case of the creditor who has previously made an unsecured loan, and who later takes a deed of the land in full or partial satisfaction of the debt. The creditor's position here is superficially similar to one who takes a mortgage to secure an antecedent debt, as discussed in the previous paragraph. Yet there is a vast difference, for here the creditor has detrimentally changed legal position by treating the debt as satisfied, typically by cancelling the debtor's promissory note and thereby giving up all further claim against the debtor. Surprisingly, a number of courts have misunderstood this distinction, and have found no value to have been paid.[21] This is plainly incorrect; the creditor should be protected, and the more recent decisions adopt this view.[22]

Taking Without Notice. The second aspect of bona fide purchaser status is lack of notice of the prior unrecorded conveyance. Thus it is necessary to consider what sorts of notice might be imputed to a purchaser of real estate. Three main types of notice are discussed in the cases: (1) actual knowledge, gained from whatever source; (2) constructive notice of facts which would be apparent upon a visual inspection of the property and an interrogation of those in possession of it;[23] and (3) constructive notice of information found in the public records.

Overlying all of these is the doctrine of "inquiry notice", which holds that one who has information from any source suggesting the existence of a prior conveyance must make a reasonable investigation of it; a purchaser who fails to do so will be held to the knowledge that such

20. See Stout v. Lye, 103 U.S. (13 Otto) 66, 26 L.Ed. 428 (1880). Contra, see Shade v. Wheatcraft Industries, Inc., 248 Kan. 531, 809 P.2d 538 (1991) (mortgage loses priority to mechanics lien that attaches after mortgage is given but before it is recorded, if lien claimant has no actual knowledge of mortgage). In many cases, the "relation back" feature of mechanics liens provides the lien claimant with a better priority than he or she would gain through the recording acts; see, G. Nelson & D. Whitman, Real Estate Finance Law § 12.4 (3d ed. 1994).

21. See 4 Am.L.Prop. § 17.10 note 29 (1952), citing numerous cases refusing to treat the creditor as a BFP.

22. Fox v. Templeton, 229 Va. 380, 329 S.E.2d 6 (1985); Wight v. Chandler, 264 F.2d 249 (10th Cir.1959); Orphanoudakis v. Orphanoudakis, 199 Va. 142, 98 S.E.2d 676 (1957); Reserve Petroleum Co. v. Hutchison, 254 S.W.2d 802 (Tex.Civ.App.1952), refused n.r.e.

23. In several states, including Massachusetts and Missouri, the recording acts refer to "actual notice." See Mass.Gen. Laws Ann. c. 183, § 4, construed in Toupin v. Peabody, 162 Mass. 473, 39 N.E. 280 (1895); Vernon's Ann.Mo.Stat. § 442.400, construed in Drey v. Doyle, 99 Mo. 459, 12 S.W. 287 (1889); Note, 16 Mo.L.Rev. 142 (1951). A few other states use the phrase "actual notice" or similar terminology, but in fact recognize constructive notice of more or less the conventional type described in the text. See Bowen v. Perryman, 256 Ark. 174, 506 S.W.2d 543 (1974); Lane v. Courange, 187 Kan. 645, 359 P.2d 1115 (1961); Taylor v. Hanchett Oil Co., 37 N.M. 606, 27 P.2d 59 (1933). See 4 Am.L.Prop. § 17.12 note 3 (1952).

an investigation would have disclosed.[24] In such cases, an inquiry of one's own grantor is prima facie insufficient, for that is the very person who has the strongest incentive to conceal the prior conveyance.[25] Incidentally, the term "constructive notice," as used in the recording act cases, refers generically to any notice which is imputed by legal rules. Thus, notice growing out of the fact of an adverse claimant's possession, from the public records, or from the doctrine of inquiry notice is "constructive" if the purchaser does not in fact make the necessary search or investigation; the law simply imputes the knowledge to the purchaser anyway.[26]

Actual notice may come from a variety of sources. For example, the grantor may inform the purchaser of a preexisting encumbrance, such as a lease or easement.[27] A conveyee under the prior instrument or others in the locality may also do so.[28] The purchaser may have learned of the conveyance in the course of business dealings or personal relationships.[29] It may be discovered during a visit to the property or an examination of the public records. Actual notice of facts which suggest the existence of third parties' interests in the land may form the basis for a duty to make a further reasonable investigation under the doctrine of "inquiry notice," but the purchaser need not pursue rumors or ambiguous statements.[30]

A purchaser who buys property in the possession of someone other than the grantor will be held to constructive notice of the rights which an inquiry of the possessor would have disclosed.[31] Moreover, the inquiry

24. See Methonen v. Stone, 941 P.2d 1248 (Alaska 1997); Guthrie v. National Advertising Co., Ind.App. 556 N.E.2d 337 (1990); Miller v. Hennen, 438 N.W.2d 366 (Minn.1989). Massachusetts, in reliance on the "actual notice" language of its recording act, supra, has virtually eliminated the doctrine of inquiry notice; see In re Dlott, 43 B.R. 789 (Bkrtcy.D.Mass.1983). Precisely the contrary conclusion was reached on this same language in the Utah act; see Johnson v. Bell, 666 P.2d 308 (Utah.1983) ("actual notice" includes facts which would lead a prudent person to make inquiry and thereby gain actual knowledge of the state of title).

25. See Berge v. Fredericks, 95 Nev. 183, 591 P.2d 246 (1979).

26. See 5 Tiffany, Real Property § 1284 (3d ed. 1939), arguing that inquiry notice is a species of actual, rather than constructive notice. The distinction is not of any great importance, and the cases are not entirely consistent, but it seems more sensible to regard all legally-imputed notice, including inquiry notice, as "constructive."

27. Guthrie v. National Advertising Co., 556 N.E.2d 337 (Ind.App.1990); Massey v. Wynne, 302 Ark. 589, 791 S.W.2d 368 (1990); McDonald v. McGowan, 402 So.2d 1197 (Fla.App.1981); Hunt Trust Estate v. Kiker, 269 N.W.2d 377 (N.D.1978).

28. First Alabama Bank v. Key, 394 So.2d 67 (Ala.Civ.App.1981). Cf. Levine v. Bradley Real Estate Trust, 457 N.W.2d 237 (Minn.App.1990) (where easement claimant stated that an easement might be signed, but did not state that it actually existed, the statement did not give notice of the easement).

29. First Alabama Bank v. Brooker, 418 So.2d 851 (Ala.1982); Chisholm v. Mid-Town Oil Co., 57 Tenn.App. 434, 419 S.W.2d 194 (1966). Cf. Durden v. Hilton Head Bank & Trust Co. N.A., 198 Ga.App. 232, 401 S.E.2d 539 (1990) (purchaser not held to knowledge of prior deed, even though his attorney had prepared it some months earlier for another client); First of America Bank v. Alt, 848 F.Supp. 1343 (W.D.Mich.1993) (IRS not bound by actual knowledge of prior unrecorded mortgage).

30. Kabayan v. Yepremian, 116 F.3d 1295 (9th Cir.1997); Friendship Manor, Inc. v. Greiman, 244 N.J.Super. 104, 581 A.2d 893 (1990), certification denied 126 N.J. 321, 598 A.2d 881 (1991).

31. Grose v. Sauvageau, 942 P.2d 398 (Wyo.1997); American Nat'l Bank v. Vin-

must be a rather direct one; a mere casual conversation with the possessor may not be enough.[32] If the possessor is also a former record owner, about half the cases excuse the purchaser from making an inquiry, at least if the possessor has been there only for a relatively short time since the conveyance; the holdover's presence is supposedly explainable by the notion that the present owner has merely allowed the predecessor to remain on the land temporarily.[33] But since there are so many possible alternate explanations for the former owner's continued possession, the more sensible rule is to require an inquiry in all cases.[34]

It seems simple to expect the purchaser to inquire of the possessor, but in practice several tricky problems arise. They stem mainly from the rule that no inquiry is necessary if the seller personally is in possession, since such possession is consistent with the record title and an inquiry would presumably be redundant.[35] Suppose there are two or more people in possession, and one of them is the record owner. Is a prospective purchaser bound to inquire of the other possessors, or can it simply be assumed that they are licensees of the record owner who will have to vacate the property when the sale is completed? The latter inference is a particularly natural one when all of the possessors are members of the same family; if a mother and father contract to sell their house, it hardly seems necessary to make an inquiry of their children! The bulk of the cases agree, holding that no inquiry need be made of those who possess along with the record owner;[36] but one finds occasional contrary decisions.[37] Some cases only eliminate the need to inquire of other possessors

son, 273 Ill.App.3d 541, 210 Ill.Dec. 426, 653 N.E.2d 13 (Ill.App.1995); Claflin v. Commercial State Bank, 487 N.W.2d 242 (Minn.App.1992); Willett v. Centerre Bank, 792 S.W.2d 916 (Mo.App.1990); Williston Co-op. Credit Union v. Fossum, 459 N.W.2d 548 (N.D.1990). USLTA § 3-202 follows the rule.

32. See, e.g., Webb v. Stewart, 255 Or. 523, 469 P.2d 609 (1970), in which the plaintiff, a prior record owner, remained in possession. The purchaser's agent remarked to him, "Well, it looks like you've sold your house." Plaintiff confirmed that he had done so, but was permitted by the court to show that no proper delivery of the deed had ever occurred. The agent's inquiry was held insufficient. See also Willis v. Stager, 257 Or. 608, 481 P.2d 78 (1971). On the other hand, there is no need to inquire of the possessor about the rights of other persons to whom the possessor might have made conveyances; see Mellon National Mortgage Co. v. Jones, 54 Ohio App.2d 45, 374 N.E.2d 666 (1977).

33. Buhecker v. R.B. Petersen & Sons Const. Co., Inc., 112 Nev. 1498, 929 P.2d 937 (Nev.1996); Vann v. Whitlock, 692 P.2d 68 (Okl.App.1984); Raub v. General Income Sponsors of Iowa, Inc., 176 N.W.2d 216 (Iowa 1970); Annot., 105 A.L.R. 845 (1936); 4 Am.L.Prop. § 17.14 (1952).

34. See Holleran v. Cole, 200 W.Va. 49, 488 S.E.2d 49 (W.Va.1997); In re Weisman, 5 F.3d 417 (9th Cir.1993); Perimeter Development Corp. v. Haynes, 234 Ga. 437, 216 S.E.2d 581 (1975); Webb v. Stewart, supra note 32; 5 Tiffany, Real Property § 1292 (3d ed. 1939).

35. Kane v. Huntley Financial, 146 Cal. App.3d 1092, 194 Cal.Rptr. 880 (1983); Valley National Bank v. Avco Development Co., 14 Ariz.App. 56, 480 P.2d 671 (1971). See 4 Am.L.Prop. § 17.14 (1952).

36. See Kane v. Huntley Financial, supra note 35; Yancey v. Harris, 234 Ga. 320, 216 S.E.2d 83 (1975) (dictum); In re Mavromatis' Estate, 70 Misc.2d 55, 333 N.Y.S.2d 191 (1972); Triangle Supply Co. v. Fletcher, 408 S.W.2d 765 (Tex.Civ.App.1966), refused n.r.e.; Diamond v. Wasserman, 14 Misc.2d 781, 178 N.Y.S.2d 91 (1958), reversed 8 A.D.2d 623, 185 N.Y.S.2d 411 (1959); Strong v. Strong, 128 Tex. 470, 98 S.W.2d 346 (1936). See 4 Am.L.Prop. § 17.13 (1952).

37. J.C. Else Coal Co. v. Miller and Banker, 45 Ill.App.2d 475, 196 N.E.2d 233 (1964).

if the record owner appears to be "in control" and the others "subordinate;"[38] but this seems a slender thread on which to hang a purchaser's title.

A similar problem is raised by the possession of a tenant of the record owner. If the lease is recorded or the purchaser is given a copy of it, he or she might assume that there is no need for a further inquiry of the tenant. Such an assumption can be fatal, for the great majority of the cases hold the purchaser to inquiry notice of any option to purchase, lease extension, or other rights of the tenant even if they were negotiated after the original lease was signed and do not appear in it.[39] Thus, one cannot safely fail to inquire of the tenant even though her or his possession is "consistent with the record." A careful purchaser will insist that all tenants execute "estoppel statements" which set out the status of their leases in detail with the understanding that the purchaser is relying on them.

What sort of possession will place a purchaser on inquiry notice? The courts commonly say it must be visible, open, exclusive, and unambiguous.[40] Yet one can find cases imputing notice from very limited and ambiguous acts of possession. In Miller v. Green[41] a landlord sold farm land to his tenant. The tenant, who failed to record, did not reside on the land, and his only acts there were to plow two of a total of 63 acres and to have his father haul a number of loads of manure onto the land. The Wisconsin Supreme Court thought this sufficient to give notice to a subsequent purchaser who was in fact entirely unaware of this limited activity. A more sensible case is Wineberg v. Moore,[42] in which the prior purchaser of the property, which consisted of 880 acres of timber land with a residential cabin, did not reside there. However, there were personal possessions of his in the cabin, and he had posted several "no trespassing" signs which gave his name and address. The court found these acts sufficient to give notice to a later purchaser, although it conceded that they did not "present the strongest case possible."

38. See 5 Tiffany, Real Property § 1290 (3d ed. 1939).

39. Janss v. Pearman, 863 S.W.2d 643 (Mo.App.1993); Grosskopf Oil, Inc. v. Winter, 156 Wis.2d 575, 457 N.W.2d 514 (1990), review denied 461 N.W.2d 445 (1990). See Annots., 37 A.L.R.2d 1112 (1953); 74 A.L.R. 350 (1931); 4 Am.L.Prop. § 17.12 note 12. There is a small minority view; see Gates Rubber Co. v. Ulman, 214 Cal.App.3d 356, 262 Cal.Rptr. 630 (1989); Stumph v. Church, 740 P.2d 820 (Utah App.1987); Scott v. Woolard, 12 Wn.App. 109, 529 P.2d 30 (1974). In a similar vein, the possession of a tenant will give notice of the land.ord's interest even if it is not of record, at least if an inquiry of the tenant would have disclosed it in fact; see In re Fletcher Oil Co., 124 B.R. 501 (Bkrtcy.E.D.Mich.1990) (Michigan law).

40. Lamb v. Lamb, 569 N.E.2d 992 (Ind. App.1991) (clearing of underbrush does not impart constructive notice of contract purchaser's claim); Ames v. Brooks, 179 Kan. 590, 297 P.2d 195 (1956).

41. 264 Wis. 159, 58 N.W.2d 704 (1953). Compare Bradford v. Kimbrough, 485 So.2d 1114 (Ala.1986), in which the jury found that farming and bulldozing operations by prior claimant were insufficient to impart constructive notice, with White v. Boggs, 455 So.2d 820 (Ala.1984), in which maintaining a grove of trees on the land and using it as a driveway were found sufficient.

42. 194 F.Supp. 12 (N.D.Cal.1961); see also Foster v. Piasecki, 259 A.D.2d 804, 686 N.Y.S.2d 184 (App.Div.1999). Cf. Nussbaumer v. Fetrow, 556 N.W.2d 595 (Minn.App. 1996) (house under construction and "for sale signs" gave no notice of owner's identity).

Even if there is no human occupancy of the land at all, structures on it may be enough to give notice. The signs in Wineberg v. Moore furnish one illustration. Similarly, a prospective purchaser who observes a driveway running across the subject property to a neighboring house should inquire of the neighbor about a possible easement.[43] A structure on adjacent land which encroaches on the subject property also gives notice of the adjoining owner's rights.[44] But many types of improvements, unlike those just mentioned, furnish no clue as to the identity of the person who erected them, and thus provide no starting point for an inquiry; this is generally so of buildings, growing crops, and the like. Cases can be found which impute constructive notice on such facts,[45] but they are analytically unsound.[46]

The third principal source of notice is that given by the records themselves. At first blush this statement seems irrelevant; if the earlier conveyance is recorded, there is no way a subsequent purchaser can take priority over it, whether he or she has notice of it or not. But the idea that the records give constructive notice is nonetheless important, for a recorded document in the chain of title to the land may describe or make reference to another, unrecorded one, and thus give notice of the latter.[47] This is a perfectly reasonable notion if the reference is clear and complete, but in many cases it is not, and the courts have had considerable difficulty in dealing with broad and ambiguous references. Suppose a prior deed recites that title is conveyed "subject to an easement in favor of Mary Jones." Unfortunately the easement's location is not given, its

43. Gill Grain Co. v. Poos, 707 S.W.2d 434 (Mo.App.1986); Dana Point Condominium Ass'n, Inc. v. Keystone Service Co., 141 Ill.App.3d 916, 96 Ill.Dec. 249, 491 N.E.2d 63 (1986); Otero v. Pacheco, 94 N.M. 524, 612 P.2d 1335 (App.1980), cert. denied 94 N.M. 674, 615 P.2d 991 (1980); Fenley Farms, Inc. v. Clark, 404 N.E.2d 1164 (Ind. App.1980).

44. Nikas v. United Construction Co., 34 Tenn.App. 435, 239 S.W.2d 41 (1950) (encroachment by party wall). Compare Levien v. Fiala, 79 Wn.App. 294, 902 P.2d 170 (1995) (encroachment of 5-foot x 70-foot triangle by fence is too slight and does not give notice of encroacher's claim) with Bank of Mississippi v. Hollingsworth, 609 So.2d 422 (Miss.1992) (fence enclosing 18-acre tract gives notice of encroacher's claim).

45. See Vandehey Development Co. v. Suarez, 108 Or.App. 154, 814 P.2d 1094 (1991), review denied 312 Or. 235, 819 P.2d 731 (1991) (prior grantees camped on land from time to time, improved roof of building on it, cut the grass, and placed lawn furniture on it; constructive notice found); Harker v. Cowie, 42 S.D. 159, 173 N.W. 722 (1919) (growing crops); Carnes v. Whitfield, 352 Ill. 384, 185 N.E. 819 (1933).

46. See Bearden v. John Hancock Mut. Life Ins. Co., 708 F.Supp. 1196 (D.Kan. 1987); W.I.L.D. W.A.T.E.R.S., Ltd. v. Martinez, 152 A.D.2d 799, 543 N.Y.S.2d 579 (1989); Burnex Oil Co. v. Floyd, 106 Ill. App.2d 16, 245 N.E.2d 539 (1969), appeal after remand 4 Ill.App.3d 627, 281 N.E.2d 705 (1971); 4 Am.L.Prop. § 17.15 (1952).

47. Municipal Trust & Sav. Bank v. United States, 114 F.3d 99 (7th Cir.1997); Waggoner v. Morrow, 932 S.W.2d 627 (Tex. App.1996); Astoria Fed. Sav. & Loan Ass'n v. June, 190 A.D.2d 644, 593 N.Y.S.2d 250 (App.Div.1993); Camino Real Enterprises, Inc. v. Ortega, 107 N.M. 387, 758 P.2d 801 (1988). The scope of the "chain of title" is discussed in § 11.11 infra. If the instrument containing the reference is itself not entitled to be recorded or is defectively acknowledged, most cases hold that it gives no constructive notice of its contents. See § 11.9 note 42, supra, and accompanying text. Cf. Connecticut Nat'l Bank v. Lorenzato, 221 Conn. 77, 602 A.2d 959 (Conn.1992) (recorded but unsigned mortgage gives constructive notice); In re Barnacle, 623 A.2d 445 (R.I.1993). See also Statler Mfg., Inc. v. Brown, 691 S.W.2d 445 (Mo.App.1985) (building contractor has no reason to search the records, and hence no constructive notice of their contents).

scope is not indicated, and a title searcher may have no idea which Mary Jones is involved or where she may be found. If a court imputes inquiry notice on such facts, the investigative burden it imposes can be a very heavy one. The test should be whether a reasonable inquiry has been made.[48] If the reference is quite indefinite, it may provide no starting point for an investigation at all, and hence it may be reasonable to make none. In a few states statutes have been enacted to limit the searcher's duty of inquiry to cases in which the prior conveyance referred to is itself recorded.[49]

The concept of constructive notice from public records operates to expand the scope of title searches, for many types of records besides those in the recorder's office are often deemed to give notice. Property tax, special assessment, and court records are commonly included, as are various sorts of liens or claims of local government agencies.[50] The common law doctrine of lis pendens has a similar effect. It holds that the commencement of any judicial action which may affect a land title, and in which the land is specifically described, acts as constructive notice of the action's pendency, so that a purchaser who buys thereafter will be bound by the court's decree as fully as the original parties.[51] In some states statutes provide for recordation of notices of lis pendens in the land records system, but most of these statutes are not exclusive and leave some room for the operation of the doctrine even when no notice is recorded.[52] The result is that a searcher must check the relevant court dockets as a part of every title examination.

48. See In re CJW Ltd., Inc., 172 B.R. 675 (Bankr.M.D.Fla.1994); United States v. Smith, 803 F.2d 647 (11th Cir.1986); Miller v. Alexander, 13 Kan.App.2d 543, 775 P.2d 198 (1989). Cf. Camp Clearwater, Inc. v. Plock, 52 N.J.Super. 583, 146 A.2d 527 (1958), affirmed 59 N.J.Super. 1, 157 A.2d 15 (1959); Fertitta v. Bay Shore Development Corp., 252 Md. 393, 250 A.2d 69 (1969).

49. See Colo.Rev.Stat.1973, § 38-35-108, construed in Swofford v. Colorado National Bank, 628 P.2d 184 (Colo.App.1981); Mass.Gen.Laws Ann. c. 184, § 25; New Jersey Stat.Ann. 46:22-2; N.Y.—McKinney's Real Property Law § 291-e, applied in L.C. Stroh & Sons, Inc. v. Batavia Homes & Development Corp., 17 A.D.2d 385, 234 N.Y.S.2d 401 (1962). The Uniform Simplification of Land Transfers Act takes an additional step, providing that a reference to another instrument gives no notice unless the latter is recorded and the reference includes its "record location", such as a book and page number in the official records; see USLTA § 3-207. See generally L. Simes and C. Taylor, The Improvement of Conveyancing by Legislation 101-06 (1960).

50. See § 11.9 note 32, supra.

51. See In re Land, 980 F.2d 601 (9th Cir.1992); Chrysler Corp. v. Fedders Corp., 670 F.2d 1316 (3d Cir.1982); Partlow v. Clark, 295 Or. 778, 671 P.2d 103 (1983); Jones v. Jones, 249 Miss. 322, 161 So.2d 640 (1964); G. Nelson & D. Whitman, Real Estate Finance Law § 7.13 (3d ed. 1994); White, Lis Pendens in the District of Columbia: A Need for Codification, 36 Cath. U.L.Rev. 703 (1987); Janzen, Texas Statutory Notice of Lis Pendens: A Deprivation of Property Interest Without Due Process, 19 St. Mary's L.J. 377 (1987); Notes, 47 Harv.L.Rev. 1023 (1934); 25 Cal.L.Rev. 480 (1937).

52. See Citizens for Covenant Compliance v. Anderson, 12 Cal.4th 345, 47 Cal.Rptr.2d 898, 906 P.2d 1314 (Cal.1995) (recorded subdivision plat gives constructive notice); Haugh v. Smelick, 126 Idaho 481, 887 P.2d 26 (1993) (same); Note, 20 Iowa L.Rev. 476 (1934); West's Ann.Cal.Code Civ.Proc. § 409. A few statutes require recordation of a notice in the land records in all cases; see West's Fla.Stat.Ann. § 48.23; Mich.Comp.Laws Ann. § 600.2701; Virginia Code 1950, §§ 8.01-268, 8.01-269.

plainly be foolish to make any further payments to her (presumably crooked) grantor.[69] Equally plainly, she ought to be protected to the extent of the payments she has already made while in good faith, and the cases uniformly do so. There are at least three methods that courts have developed to achieve this *pro tanto* protection.[70] The most common is to award the land to the prior claimant, but to give the contract purchaser a right to recover the payments she has made with interest, usually with a lien on the land to assist in that recovery.[71] A second approach is to give the contract purchaser a fractional interest as a tenant in common based on the portion of the total price which she has paid prior to receiving notice; the adverse claimant would hold the remaining fractional share.[72] The third method is to permit the contract buyer to complete the purchase simply by paying the remaining installments to the adverse claimant.[73] Only this method gives the purchaser the full benefit of her bargain, certainly a desirable objective in light of her innocence. Courts exercise considerable latitude in the cases, taking into account the relative equities of the parties and the value of the property. If the contract purchaser has made improvements on the land, she will generally be compensated for them.[74]

§ 11.11 The Recording System—Indexes, Search Methods, and Chain of Title

The previous discussion has indicated that a purchaser of land has constructive notice of matters in the public records only if they are in the chain of title. Indeed, instruments which are recorded but are outside the chain of title may be treated as if they were not recorded at all. The term "chain of title" is a shorthand way of describing the collection of documents which one can find by the use of the ordinary

69. See Black River Associates, Inc. v. Koehler, 126 Vt. 394, 233 A.2d 175 (1967). The New York recording statute, unusual in this respect, protects the purchaser for payments made both before and after notice if he or she was in good faith at the time of contracting; see N.Y.—McKinney's Real Prop.Law § 294, subd. 3; La Marche v. Rosenblum, 82 Misc.2d 1046, 371 N.Y.S.2d 843 (1975), affirmed 50 A.D.2d 636, 374 N.Y.S.2d 443 (1975).

70. See generally Daniels v. Anderson, 162 Ill.2d 47, 204 Ill.Dec. 666, 642 N.E.2d 128 (Ill.1994); Tomlinson v. Clarke, 60 Wn. App. 344, 803 P.2d 828 (1991); Perry v. O'Donnell, 749 F.2d 1346 (9th Cir.1984); Annot., 109 A.L.R. 163 (1937). A lessee is protected in the same general way as a contract purchaser—that is, only to the extent of rental payments made prior to receipt of notice. See Egbert v. Duck, 239 Iowa 646, 32 N.W.2d 404 (1948). Hence a long-term lease may be terminated prematurely, with great hardship to the lessee. See Johnson, Purpose and Scope of Recording Statutes, 47 Iowa L.Rev. 231, 235 (1962).

71. In a similar context, see Hocking v. Hocking, 137 Ill.App.3d 159, 91 Ill.Dec. 847, 484 N.E.2d 406 (1985) (installment contract purchaser held entitled to reimbursement of portion of the price he paid before gaining notice that the land was subject to a resulting trust); Scult v. Bergen Valley Builders, Inc., 76 N.J.Super. 124, 183 A.2d 865 (1962), affirmed 82 N.J.Super. 378, 197 A.2d 704 (1964).

72. It is hard to find any modern authority which actually applies this approach.

73. Sparks v. Taylor, 99 Tex. 411, 90 S.W. 485 (1906); Green v. Green, 41 Kan. 472, 21 P. 586 (1889).

74. See Henry v. Phillips, 163 Cal. 135, 124 P. 837 (1912) (dictum); 5 Tiffany, Real Property § 1305 note 44 (3d ed. 1939).

techniques of title search. Hence, it can be understood only through comprehension of the way the records are indexed and searched.

Since the typical recorder's office may contain thousands of volumes and millions of documents, some form of index is essential so that searchers can locate instruments that affect the land whose title is being searched. Thus the office contains two types of volumes: index books and books which hold the actual copies of the legal instruments. The latter are sometimes called "deed books," even though they include other types of documents, such as leases, mortgages, and releases in addition to deeds.

There are two dominant methods of indexing. The oldest and most common is based on the names of the parties to each instrument. Under this "name index" system, two separate alphabetical indexes are maintained: one by the names of the grantors or other persons against whom the document operates, and the other by the names of the grantees or other persons in whose favor it operates. A separate set of these indexes is typically constructed each year, and they may be consolidated periodically into index books covering, say, 5-year or 10-year time spans. A few counties employ computers to produce and regularly update a consolidated set of grantor and grantee indexes for the entire time covered by the records.

An alternative and far superior approach to indexing is the tract or parcel index, but it is available in only a handful of states.[1] Here a separate page or set of pages in the index books is devoted to each tract of land, such as a quarter-quarter section, a specific block in a subdivision, or even an individual parcel of land. This page reflects the history of the tract's title from the time of the original conveyance from the sovereign.

In both name and tract index systems, the index books do not contain copies of the actual documents. Instead, they merely give the names of the parties, the recording date, the book and page number of the deed book in which the full copy of each instrument is to be found, and sometimes a brief legal description of the land affected. The searcher must jot down the book and page number and must then pull down and open the relevant deed book to read the instrument itself.

In a name index system the search procedure is generally as follows.[2] The searcher begins by looking for the name of the putative

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1. States having tract indexes in all counties include Nebraska, North Dakota, Oklahoma, South Dakota, Utah, and Wyoming. States which permit tract indexing on a county option basis include Kansas, Ohio, Wisconsin and Minnesota. New York City has a "block index" system. Some counties in other states may operate non-required tract indexes, but their information imparts no constructive notice; see In re Bruder, 207 B.R. 151 (N.D.Ill.1997) (Illinois law). See generally Note, The Tract and Grantor–Grantee Indices, 47 Iowa L.Rev. 481 (1962). See Maggs, Land Records of the Uniform Simplification of Land Transfers Act, 1981 So.Ill.U.L.J. 491, 500–01.

2. See generally Behringer & Altergott, Searching Title and Clearing Away What You Find, 4 Prac.Real Est.Law. 11 (No. 6, Nov.1988); Berryhill, Title Examination in Virginia, 17 U.Rich.L.Rev. 229 (1983); Johnson, Title Examination in Massachusetts, reproduced as chapter 39, J. Casner &

present owner in the grantee index, working backward from the present date. When it is found, the searcher notes the name of the corresponding grantor of that instrument, and then seeks his or her name in the grantee index. This process is repeated until the searcher has worked backward in time through a chain of successive conveyances extending back to the sovereign.[3] The second phase of the search is to look up the name of each of the prior owners, as discovered by the foregoing process, in the grantor index to determine whether any of them made an "adverse" conveyance—that is, one to a person outside the chain of title. In the third phase, the searcher must pull down the relevant deed books and read carefully each instrument which has been identified from both the grantee and grantor indexes, to determine that it is in regular order, is properly executed, and purports to transfer the land in question. Finally, the searcher must check whatever public records are maintained separately from the indexes to the deed books, such as court dockets and probate indexes, tax and assessment records, and the like.

A search in a jurisdiction using a tract index is much simpler, since all instruments affecting a given parcel will be indexed on a single page or a set of consecutive pages in the index book. It is easy to construct the chain of title and to identify potentially adverse conveyances merely by running one's eye down the appropriate column. Of course, the instruments themselves must still be read and the other public records checked.

Whether a name or a tract index is used, the accuracy of the index is obviously crucial; an instrument which is copied into the deed books, but is unindexed or erroneously indexed as a result of carelessness by the recording personnel, is as impossible to find as a needle in a haystack. Should such a document be considered as "recorded" in litigation between its grantee and a later grantee from a common grantor who seeks the protection of the recording act? The cases are divided, and often turn on the specific language of the act. The majority regard mere copying of the instrument into the deed book as a sufficient recording to protect its proponent,[4] but the modern trend is to treat unindexed or

B. Leach, Cases & Text on Property (2d ed. 1969). In most jurisdictions, the doctrine of "idem sonans" requires the searcher to examine not only documents indexed under the precise name of the apparent owner, but also those indexed under similar-sounding names.

3. In some jurisdictions it is common to extend the search back only some fixed number of years, such as 40 or 60, rather than all the way to a conveyance from the sovereign. See Whitman, Transferring North Carolina Real Estate, Part I: How the Present System Functions, 49 N.C.L.Rev. 413, 425–26 (1971); Coe v. Hays, 105 Md.App. 778, 661 A.2d 220 (Md.1995) (60–year title search is the usual standard is Maryland).

4. See, e.g., Hanafy v. United States, 991 F.Supp. 794 (N.D.Tex.1998); Susquehanc Lease Co. v. Lucchesi, 707 A.2d 540 (Pa.Super.1998); Leeds Bldg. Products, Inc. v. Weiblen, 267 Ga. 300, 477 S.E.2d 565 (Ga.1996), appeal after remand 225 Ga. App. 806, 488 S.E.2d 131 (1997); Anderson v. North Florida Production Credit Ass'n, 642 So.2d 88 (Fla.App.1994); United States v. Lomas Mortgage, USA, Inc., 742 F.Supp. 936 (W.D.Va.1990) (Virginia law); Annot., 63 A.L.R. 1057 (1929); Cross, The "Record Chain of Title" Hypocrisy, 57 Colum.L.Rev. 787, 790 Note 15 (1957); 4 Am.L.Prop. § 17.31 (1952).

misindexed instruments as unrecorded.[5] Both the earlier and later grantees are innocent in this situation, but the former could at least have discovered the error by returning to the recorder's office a few days after the recording to check the indexing. The latter, on the other hand, had no basis for a suspicion that the earlier document even existed, and could not possibly have corrected the indexing error. The losing party may, of course, have an action against the recorder or the bonding company.

Chain of Title Problems. Because of the way titles are searched in name-index records systems, certain types of adverse conveyances are difficult or impossible to find even though they are extant in the deed books and are accurately indexed. There are four generic types of such problems, discussed below.[6] The courts have tended to protect searchers in these cases by treating the conveyances in question as if they were unrecorded and as giving no constructive notice.[7] The treatment here focuses on name-index systems, since most of these difficulties do not arise in the less-common tract-index systems. The illustrations below are based on an assumed chain of title from the sovereign to A, B, and C in succession, and an adverse conveyance by one of them, unknown to the searcher, to X.

The first problem is the "wild" deed. Assume that B, a former owner who is in the chain of title and is readily identifiable by a searcher, made an unknown and unrecorded deed, adverse to the chain of title, to X. Further assume that X then deeded to Y, and that deed was regularly recorded. A searcher may check the grantor index under B's name but will find nothing, since the B–X deed is unrecorded. The X–Y deed is recorded, but it is impossible for the searcher to discover from the index books, since neither X's nor Y's name is known to the searcher. It can be found only by browsing through all of the deed books themselves, a task which might take several years! The cases uniformly treat the X–Y deed, contrary to literal fact, as if it were unrecorded and as imparting no constructive notice.[8] If they did not do so, the result

5. See Lewis v. Superior Court, 30 Cal. App.4th 1850, 37 Cal.Rptr.2d 63 (Cal.App. 1994); FNMA v. Levine–Rodriguez, 153 Misc.2d 8, 579 N.Y.S.2d 975 (Sup.Ct.1991); Howard Savings Bank v. Brunson, 244 N.J.Super. 571, 582 A.2d 1305 (1990). See also Cipriano v. Tocco, 772 F.Supp. 344 (E.D.Mich.1991) (indexing in tract index was sufficient to give constructive notice, although statute required indexing in grantor-grantee index as well).

6. The classic discussion is Cross, The Record Chain of Title Hypocrisy, 57 Colum.L.Rev. 787 (1957). In addition to the chain of title problems discussed in the text of this section, see the treatment of the "omnibus" legal description, § 11.2 supra at notes 18–19, which raises a similar problem.

7. The opinions are often sloppy on this matter, concluding merely that the instrument gives no constructive notice. But to protect the subsequent searcher and his client, it is necessary both to treat it as giving no constructive notice and to deem it unrecorded; obviously, if it is regarded as "recorded," no subsequent conveyee can prevail against it under the recording acts. A good example of a more careful statement is found in Sabo v. Horvath, 559 P.2d 1038 (Alaska 1976).

8. In re Bruder, 207 B.R. 151 (N.D.Ill. 1997) (Illinois law); Mederos v. Selph (L.T.), Inc., 625 So.2d 894 (Fla.App.1993); Nile Valley Federal Sav. & Loan Ass'n v. Security Title Guarantee Corp., 813 P.2d 849 (Colo.App.1991). See 4 Am.L.Prop. § 17.17

would be an unconscionable burden on title examiners and a severe flaw in the system's basic operation. Observe that in a tract index system the wild deed is perfectly easy for the searcher to find, since it is indexed on the same page or pages as all other instruments affecting the parcel in question; hence it is considered to be properly recorded, and there is no need for any special rule governing it.[9]

A second chain-of-title problem is raised by the conveyance which is recorded too late. Again, assume B is a former owner in the regular chain of title who makes an adverse conveyance to X. X fails to record at that time. B thereafter conveys to C in the chain of title. C records C's deed, but is not a BFP, perhaps because C does not pay value or has knowledge of the adverse conveyance to X. (This assumption is necessary, since if C were a BFP the "shelter" principle discussed earlier would protect any later grantee from C.[10]) Some time after C records, X finally records the old deed from B. The problem is this: if C now contracts to sell the land to D, is D's title searcher expected to find the B–X deed? If so, the searcher must search in the grantor index for adverse conveyances by B, not only during the period B owned the land, but on up to the present date as well—thus taking account of the fact that someone like X might have recorded a deed long after receiving it. It is not impossible for a searcher to do this, but it adds very considerably to the time and expense of the search. The cases are fairly evenly divided, with somewhat more than half requiring the more extensive search effort and treating X's later-recorded deed as properly recorded; the minority deem it unrecorded.[11] The problem does not arise in a tract-index system, since the B–X deed is easy to spot on the index page even though it is recorded out of time sequence.

The third problem is raised by the deed which is recorded too early. Imagine that B purports to deed the land to X before B has any title, and X immediately records the deed. Later B acquires the title from A. The doctrine of estoppel by deed is usually held to pass title to X instantly on

(1952); 1 R. Patton & C. Patton, Land Titles § 69 notes 71–74 (2d ed. 1957).

9. Miller v. Hennen, 438 N.W.2d 366 (Minn.1989); Utah Farm Production Credit Ass'n v. Wasatch Bank, 734 P.2d 904 (Utah 1986); Andy Associates, Inc. v. Bankers Trust Co., 49 N.Y.2d 13, 424 N.Y.S.2d 139, 399 N.E.2d 1160 (1979) (under New York City block index). It can be argued that the tract index system, with its greater power to disclose out-of-chain documents, is actually disadvantageous in the sense that it brings to light "wild" and other types of instruments discussed in the text which impair the marketability of titles, and which would be cut off by chain-of-title reasoning in a name index system. See L. Simes, Handbook for More Efficient Conveyancing 93–94 (1961).

10. See § 11.10, supra, at notes 61–62.

11. See generally Perry v. O'Donnell, 749 F.2d 1346 (9th Cir.1984); Rolling "R" Construction, Inc. v. Dodd, 477 So.2d 330 (Ala.1985). Treating the late-recorded deed as unrecorded and as imparting no constructive notice, see Fekishazy v. Thomson, 204 A.D.2d 959, 612 N.Y.S.2d 276 (App.Div. 1994); Residents of Green Springs Valley Subdivision v. Town of Newburgh, 168 Ind. App. 621, 344 N.E.2d 312 (1976); Jefferson County v. Mosley, 284 Ala. 593, 226 So.2d 652 (1969). See In re Dlott, 43 B.R. 789 (Bkrtcy.D.Mass.1983), questioning the continuing vitality of Morse v. Curtis Treating the late-recorded deed as properly recorded, see Angle v. Slayton, 102 N.M. 521, 697 P.2d 940 (1985); Spaulding v. H.E. Fletcher Co., 124 Vt. 318, 205 A.2d 556 (1964); Woods v. Garnett, 72 Miss. 78, 16 So. 390 (1894); Cross, supra note 6, at notes 25–26.

these facts, at least if the B–X deed contained warranties or represented that title was being conveyed.[12] But if B later purports to convey to C, the question is raised whether C's title searcher can be expected to find the B–X deed. This is not impossible, but to do so the searcher must examine the grantor index under B's name not only during the time B owned the land, but for a lengthy and burdensome prior period as well[13], in order to account for the possibility that B made an adverse conveyance before acquiring title. Most of the recent cases have excused the searcher from this obligation, holding that the B–X deed must be regarded as unrecorded.[14] As before, the problem does not exist in a tract-index system.[15]

The final chain-of-title problem involves a common owner of two or more parcels who includes, in a conveyance of one parcel, language purporting to encumber the title to one or more other parcels retained. To illustrate, assume that A owns adjacent parcels 1 and 2, and sells parcel 1 to X including in the deed a covenant promising to restrict parcel 2 to single-family residential use. Later A sells parcel 2 to B without mentioning the restriction. Is B bound by it?

Consider the difficulty which B will face in discovering that the A–X deed exists and affects parcel 2. In many states which use name indexes, the index books include a "brief description" column which indicates in summary form what land is affected by each indexed document. Some statutes mandate that this column be included in the index books, while in other states it is maintained by the recorder voluntarily as a convenience to searchers. If the column exists, it is by no means certain that the recording office personnel will fill it in correctly in the present situation, marking entry for the A–X deed as affecting both parcel 1 and parcel 2. They will probably do so only if the deed's impact on parcel 2 is very obvious or they read it very carefully; neither of these is likely.

Arguably, a searcher is entitled to rely on the "brief description" column only if it is legally mandated; failing that, the searcher's only alternative is to read every conveyance by A in the county during the time A owned parcel 2, no matter what land the "brief description" entry for each of them mentions, and to see whether any of them affect

12. See § 11.5, supra.

13. To be safe, the searcher would need to look under B's name in the grantor index books for about 80 years prior to the B–C deed, since this would be a reasonable estimate of B's maximum "conveyancing life." Some states follow a doctrine of lineal warranty which would bind a descendant to a warranty deed made by his or her ancestor, so that one could not safely stop even at 80 years! See Johnson, Title Examination in Massachusetts, reproduced as chapter 39, J. Casner & B. Leach, Cases & Text on Property (2d ed. 1969), at 903. Johnson reports that despite the searcher's rather clear legal duty to examine for early-recorded deeds in Massachusetts, most searchers in fact do not do so.

14. Southeastern Sav. & Loan Ass'n v. Rentenbach Constructors, Inc., 114 B.R. 441 (E.D.N.C.1989), affirmed 907 F.2d 1139 (4th Cir.1990) (early-recorded deed is treated as unrecorded); Schuman v. Roger Baker & Associates, Inc., 70 N.C.App. 313, 319 S.E.2d 308 (1984) (same); Security Pacific Finance Corp. v. Taylor, 193 N.J.Super. 434, 474 A.2d 1096 (1984) (same). Cf. Collins v. Scott, 943 P.2d 20 (Colo.App.1996). See § 11.5, supra, at notes 17-21.

15. See Balch v. Arnold, 9 Wyo. 17, 59 P. 434 (1899).

parcel 2. Such a task can be monumental if B is an active real estate dealer or subdivider who has sold hundreds of land parcels.

Unlike the other chain of title problems, this one does not necessarily disappear in a tract index system. The question simply becomes whether the recording personnel are sophisticated enough to recognize that the A–X deed affects both parcels 1 and 2, and thus should be indexed under both tracts. Moreover, the problem is not limited to restrictive covenants; it can arise any time a deed of one parcel contains language imposing any encumbrance—an easement, a lease, or a lien, for example—on another parcel. In name-index jurisdictions the cases are about evenly divided as to whether the "buried" language creating the encumbrance is regarded as properly recorded;[16] they usually contain little or no analysis of the role of the "brief description" column in the searcher's task. In a state with official tract indexes, there is a stronger argument for protecting the searcher, since tract indexes are inherently predicated on the notion that the recorder's staff can and should discover what land is affected by every document they index.[17]

On the whole, the chain of title problems illustrate quite effectively the deficiencies of the recording system, especially in its use of name indexes. In many areas of the western, midwestern, and southwestern United States few title searches are conducted in the public records. Instead, title insurance and abstract companies have created sets of private records, called "title plants," in which they do their searches. Since the plants are invariably arranged on a tract-index basis, most of the chain-of-title problems discussed above are of no practical importance in these areas of the nation. It would make little sense for a court to adopt the sorts of rules described above for the protection of name-index searchers in a case in which the actual search was made in a private tract index which contained and properly indexed the out-of-chain documents. Since the whole chain-of-title concept is a judicially-created exception to the literal language of the recording acts, made in recognition of the practical difficulty of finding out-of-chain documents through use of the official indexes, there seems to be no reason to extend it to situations where that difficulty does not exist.[18]

16. Protecting the searcher, see Oliver v. Schultz, 885 S.W.2d 699 (Ky.1994); Witter v. Taggart, 78 N.Y.2d 234, 573 N.Y.S.2d 146, 577 N.E.2d 338 (N.Y.1991); Basore v. Johnson, 689 S.W.2d 103 (Mo.App.1985); Dunlap Investors Limited v. Hogan, 133 Ariz. 130, 650 P.2d 432 (1982); Glorieux v. Lighthipe, 88 N.J.L. 199, 96 A. 94 (1915). Finding the encumbrance validly recorded, see Szakaly v. Smith, 544 N.E.2d 490 (Ind. 1989); Hi-Lo Oil Co. v. McCollum, 38 Ohio App.3d 12, 526 N.E.2d 90 (1987); Stegall v. Robinson, 81 N.C.App. 617, 344 S.E.2d 803 (1986), review denied, stay denied 317 N.C. 714, 347 S.E.2d 456 (1986); Guillette v. Daly Dry Wall, Inc., 367 Mass. 355, 325 N.E.2d 572 (1975); Finley v. Glenn, 303 Pa. 131, 154 A. 299 (1931). See also In Genovese Drug Stores, Inc. v. Connecticut Packing Co., 732 F.2d 286 (2d Cir.1984).

17. In a tract-index system, then, the question is essentially one of official misindexing; see text at notes 4–5 supra. By contrast, the court in the *Guillette* case, supra note 16, specifically rejected the searcher's defense of reliance on the "brief legal description" entry, observing that such entries were not required by law in Massachusetts.

18. See § 11.5, supra, at notes 24–26. None of the decisions from states where private-plant searches predominate have given this issue any discussion. For exam-

§ 11.12 Curative and Marketable Title Acts

Under the conventional recording system, a purchaser of land must obtain an historical search of the records back to a conveyance from the sovereign in order to be certain that the record title is good. This sort of complete search is expensive and time-consuming. Moreover, in most cases it has little practical value, since most titles which are good "of record" for the past several decades are good in fact, and nothing recorded in more remote times casts any serious doubt on them. Nevertheless, one cannot be certain that no old documents create title defects until one has looked at them; the searcher who limits his or her search to a shorter period than the entire chain of title is taking a distinct and significant risk.

At least four types of legislation have been enacted in various states which reduce this risk. The oldest and most widespread is the statute of limitations in an action to recover possession of land,—the basis of the doctrine of adverse possession.[1] There is no doubt that adverse possession has cured millions of title defects; indeed, that is probably the main justification for the doctrine. But the title examiner who relies on adverse possession as a substitute for a full historical search is merely exchanging one significant risk for another. The problem is that adverse possession depends on a long list of facts which usually do not appear of record, which the searcher probably does not know are true, and which even if true may be hard to prove in court. Have the owners in the record chain of title been in possession which was actual, open, hostile, exclusive, and continuous for the statutory period? Has the statute's running been tolled by the infancy, imprisonment, or insanity of the holder of paramount title?[2] Is that paramount title held by a governmental body against which the statute will not run?[3] Is it a future interest, against which the limitations period does not commence until it becomes possessory?[4] To learn the answers to these questions is generally far more effort than a full historical search of the records! Yet without clear

ple, the court seems to have applied chain-of-title reasoning despite evidence that the title insurer had actual knowledge of the out-of-chain encumbrance in Dunlap Investors Limited v. Hogan, supra note 16. See also Far West Sav. & Loan Ass'n v. McLaughlin, 201 Cal.App.3d 67, 246 Cal. Rptr. 872 (1988), in which the court applied standard chain of title reasoning to a "wild deed" transaction in southern California, where virtually every title search is performed by title companies in tract-indexed private plants. The same is probably true of Snow v. Pioneer Title Ins. Co., 84 Nev. 480, 444 P.2d 125 (1968).

§ 11.12

1. See generally § 11.7 supra.

2. See § 11.7, supra, at note 5; P. Basye, Clearing Land Titles § 54 (1970).

3. See § 11.7, supra, at note 4; Basye, supra note 2, at § 53.

4. Gilley v. Daniel, 378 So.2d 716 (Ala. 1979); Wilson v. McDaniel, 247 Ark. 1036, 449 S.W.2d 944 (1970), appeal after remand 250 Ark. 316, 465 S.W.2d 100 (1971); 2A Powell, Real Property ¶ 301 (1979); 19 A.L.R.2d 729 (1951). An exception exists where the adverse possession begins before the time the title is split into present and future interests; see Restatement of Property § 226; Hubbard v. Swofford Brothers Dry Goods Co., 209 Mo. 495, 108 S.W. 15 (1907). See generally Basye, supra note 2, at § 55.

Baumert, Karen F.	Gerald T. Gaffey + wife	WD	May 23 1979	536	403	23		Forest Heights
Baker, Larry D.	Mary Margaret McElroy	WD	Apr 20 1979					Lakeside Addn
			Apr 25 1979	544	158			Hills
Baxter, Nicholas J. + Teri	Donald E. Gregory + Virginia	WD	Apr 27 1979					East Tall Pine
			Apr 27 1979	544	171	6		Coralville Ia.
Bayliss, Thomas L. + Ann	Iowa State Bank Trust Co. Trustee	WD	May 1 1979					Pheasant Court
			May 2 1979	544	222	1		Iowa City
Baker, Joan + Larry D.	Lester Kempf + wife	WD	May 2 1979					
			May 4 1979	544	262	—		TH79-6
Barnes, Paulette A.	Pat Harding Const. Co. Inc.	WD	May 29 1979					Village Green
			May 29 1979	545	107	48		Iowa City Ia.
Barnard, Bronnell E. Jr.	Lee N. Wicks + wife	WD	Dec 5 1979					Pt. I-A, Pt. B
			June 18 1979	545	386	52		Iowa City
Baker, Larry N. + Barbara J.	Kent W. Gragg + Linda J.	WD	June 20 1979			176		Pt VIII
			June 21 1979	545	437			Westwinds Park
Baker, Patrick B. + Wife	Robert J. Kolaczky + wife	WD	June 22 1979			Pt 3		
			June 22 1979	546	1			University Heights
Baker, Ruth E.	Thomas M. Dreyer & Cynthia Inc.	WD	June 28 1979			Pt		Bowery + Beeder
			June 28 1979	546	70	35		Iowa City, Ia.
Ball, Joan J. + Viona L.	Homes of Distinction	WD	June 8 1979					
			July 2 1979	546	131	10	12	Coralville
Bartley, James A. & Joan C.	George L. Jones III + Frances L. D.	WD	June 28 1979					Part 3 Bryan
			July 5 1979	546	165	159		Heights Addn
Barcelo, Nancy V.	Dennis L. Torney + Catherine	WD	June 30 1979			Pt		East Iowa City
			July 9 1979	546	201	5+6	12	
Baker, Donald Jon + Ann	Paul Allen Parker + wife	WD	June 29 1979					Court Hill
			July 17 1979	546	288	29		Iowa City
Bates, Reid + Nancy	David M. Triggs et al	QCD	Aug 3 1979			Pt		D. J. W. Clark's
			Aug 17 1979	547	259	2		Iowa City
Bates, Reid + Nancy	David M. Triggs et al	WD	Aug 3 1979			Pt		D. J. W. Clark's
			Aug 17 1979	547	258	2		Iowa City
Bartelme, Michael J. + Lou Ann	Gregory L. Watkins	WD	Aug 24 1979					Tower Addn
			Aug 27 1979	547	440	16		Iowa City Ia.
Baker, Robert J., Jr. + Denise	Pat Harding Construction Co. Inc.	WD	Sept 7 1979					Village Green Ia
			Sept 10 1979	553	150	52		Iowa City
Barry, Kenneth A. + Judith	Gerald T. Gaffey + wife	WD	Sept 10 1979					Beaver Creek
			Sept 11 1979	553	177	7		North Liberty

GRANTOR Index to Town Lot Deeds — Johnson County, Iowa

LOCATE NAME BY REFERENCE TO KEYTABLE IN FRONT OF THIS SECTION.

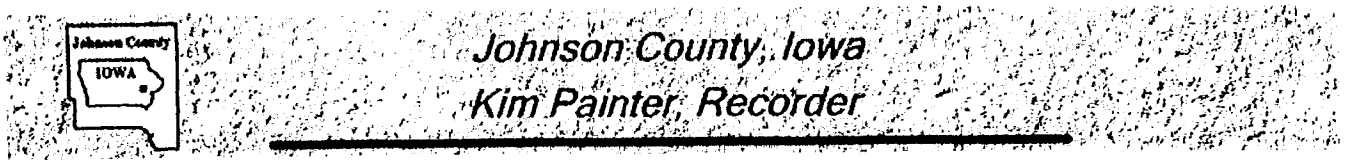
GRANTOR SURNAME	GRANTOR GIVEN NAME	GRANTEE	KIND OF INSTRUMENT	1. DATE OF INSTR. 2. DATE OF FILING MONTH	DAY	YEAR	RECORDED BOOK	PAGE	DESCRIPTION OF PROPERTY LOT	BLK.	ADDITION, CITY, TOWN, ETC.
Klever, Marvin L.	& Barbara A.	Anthony K. Kiel	WD.	Apr. 28	1979						
				May 3	1979	544	238	72			Henry Bryn Add Pt III City of IC.
Kleinmeyer, Alfred R.	& Norma	Mark A. Kleinmeyer et al	WD	May 3	1979						
				May 4	1979	544	268				16-79-6
Klemfuth, Charles C.		Lee L. Willis	WD.	May 16	1979				Pt		
				May 18	1979	545	51	2	2		Burlend Place Add to IC.
Kledger, Ricky Lee	et al	Carol L. Roberts	WD	May 30	1979						
				May 30	1979	545	145	Pt 8	11		Kendell
Kohli, Steven O.	& Michael J.	& Linda O. Christopher Jackson	WD	Jun 1	1979			91			Court Hill - Scott Blvd pt 6 IC
				Jun 8	1979	545	266				
Kolasky, Robert J.	& Virginia S.	Patrick B. Bauer & wife	WD.	June 23	1979			4			
				June 22	1979	546	1	Pt 3			University Heights
Knobe, Henry		Gladys E. Manning et al	WD	May 17	1979			4			
				Jun 26	1979	546	28				11-79-6
Kornegor, Ralston R.	& Thelma G.	Jim Reid Construction Corp	WD	June 29	1979						
				June 29	1979	546	117	46			Kornegor Sub Part 1 North Liberty
Knicke, W. Patrick	& Robyn T.	Richard E. Reid & Joanne	WD.	June 28	1979						
				June 29	1979	546	113	15	11		Coralville Heights John 6.
Knapp, James C.	& Shirley A.	& Linda R. Chauncey E. Jones	WD	July 12	1979			64			Eight + Knick 3rd, IC
				July 16	1979	546	269				
Kondelka, Clair J.	& Lucille	Statutory Ruth L. Brown	WD	July 17	1979						Lucas
				July 30	1979	546	398	Pt 3	6		Iowa city
Kotteman, William P.	& Nancy	& wife James A. Murphy	WD	Aug 2	1979						Bel Air 1st
				Aug 7	1979	547	99	1	12		Iowa city
Klee, Doug D.	& Marjorie	& wife Barry L. Alvarez	WD	Aug 1	1979						Pt. 12, Court Hill
				Aug 8	1979	547	135	53x			Iowa city
Kosinski, Gail L.	& Patricia	Clyde J. Hale & wife	WD	Aug 7	1979			Pt			Pt. 1 Village Green
				Aug 15	1979	547	230	53			Iowa city
Kopel, Teresa M.	& Eldon J.	& wife Richard D. Shepardson	WD	Aug 22	1979						
				Aug 28	1979	553	4	2	3		Summit Hill
Kondelka, Lucille J.	& Clair J.	Ruth L. Brown	WD	Aug 13	1979			Pt			
				Aug 30	1979	553	39	3	6		Lucas add. IC
[illegible]	[illegible]	Velma E. [illegible]	WD	Oct 4	1979						Kornegor Sub Pt 1

Barta, Kenneth A. & Cynthia M.	Iowa State Bank & Trust	M	Mar 14 1979 Mar 16 1979	267 449	1 16	Swisher's 1st
Baumert, Karen J. et al	American Federal	M	Mar 27 1979 Mar 28 1979	268 167	23	3rd No. Liberty Beaver Creek
Barber, Charles A., Trustee et al	Iowa State Bank & Trust	M	Apr 12 1979 Apr 12 1979	269 59	8 1	Ranchouse 1st North Liberty, Ia.
Bayliss, Thomas L. & Ann M.	Hills Bank & Trust	M	May 1 1979 May 2 1979	269 424	1	Orchard Court 1st Iowa City, Iowa
Batterson, Judy J.	Iowa State Bank & Trust	Rel BK 844 pg 325 M	Apr 30 1979 May 3 1979	270 19	14 79 16	
Barrett, Franklin & Mary P.	Perpetual Savings & Loan	See Rel. Bk. 594 Pg 14 (5-6-80) M	Apr 26 1979 May 21 1979	270 311	pt 9	Wilson & Hartz IC
Batter, Nicholas J. & Terri	Iowa State Bank & Trust	M	May 24 1979 May 24 1979	270 417	6	pt 1 Tall pines Coralville
Bassett, Steven L. & Paulette	Capital Mortgage Corp	Rel BK 608 pg 95 M	May 29 1979 July 29 1979	271 34	48	Village Green South Iowa City, Ia.
Barnard, Brownell E. &	Banco Mortgage Co.	Willie E. Rel BK 678 pg 324 M	Jun 15 1979 Jun 18 1979	272 274	52	pt 1-A NH. Prospect
Baker, Terry N. & Barbara J.	Iowa State Bank & Trust	M	Jun 20 1979 Jun 21 1979	272 393	176	pt 8 Wash. Park, IC
Bauer, Patrick B. et al	Capital Mortgage Corp.	Rel BK 845 pg 334 BKR 80	Jun 22 1979 Jun 22 1979	272 426	4	Union Otte.
Baker, Ruth E.	Iowa State Bank & Trust	M	Jun 28 1979 Jun 28 1979	273 121	pt 35	Bailey & Becker IC
Bartley, James A. & Jean C.	Perpetual Savings & Loan	M	June 29 1979 July 5 1979	273 365	159	pt 3 Brush Manor Otte, IC & IC
Barcalo, Nancy N.	First National Bank	Rel. Rel. Bk 608 Pg. 214 (10-2-81) M	July 9 1979 July 9 1979	273 446	pt 5 & 6 12	
Bastian, Thomas A. & Beverly J.	Avco Financial	Rel BK 591 pg 388 Avco 11-26-80 M	July 13 1979 July 16 1979	274 138	& pt 8 4	OT Tree Top
Baker, Donald James & Ann E.	Perpetual Savings & Loan	M	July 2 1979 July 17 1979	274 214	29	Court Hill Add to IC.
Baumgartner, Lloyd M. & Ruth V.	Iowa State Bank & Trust	Rel BK 591 pg 91 3-2-81 Collateral Assign	Aug 3 1979 Aug 9 1979	551 376		15-79-6 or Blk 6 Lucas Add.

SEARCH NAME

BAUER, PATRICK B

INDEX TYPE	DATE FILED	DT-INST/ DT-DSCHG	RECORDED BOOK	PAGE	KIND OF INSTRMNT	DESCRIPTION (NOT WARRANTED)
2 WILLIAM HOWARD TADE						
GENERAL	05/07/86	04/30/86	843	0001	DEED/ WD	LOT 31 MELROSE PARK 3RD ADDN UNIV HTS
1 BANC IOWA SAVINGS BANK						
GENERAL	05/07/86	05/02/86	843	0002	MORT/	LOT 31 MELROSE PARK 3RD ADDN UNIV HTS
1 JENIFER L MALONEY						
GENERAL	05/09/86	05/09/86	843	0196	DEED/ WD	LOT 4 UNIV HEIGHTS & PT LT 3 UNIV HEIGHTS SEE REC
2 CAPITOL FEDERAL SAVINGS BANK						
GENERAL	05/21/86	05/15/86	845	0334	REL/	ORIG MORT BK 272 PG 426
1 HILLS BANK & TRUST COMPANY						
GENERAL	04/07/93	04/01/93	1522	0316	MORT	LT 31 MELROSE PARK THIRD ADDN UNIVERSITY HTS
2 PERPETUAL SAVINGS BANK						
GENERAL	04/22/93	04/06/93	1529	0013	REL	SEE ORIG MORT BK 843 PG 2
1 HILLS BANK & TRUST COMPANY						
GENERAL	06/11/97	05/06/97	2286	0139	MORT	LT 31 MELROSE PARK 3RD ADDN U HTS
2 HILLS BANK & TRUST COMPANY						
GENERAL	07/30/98	07/27/98	2546	0128	REL	ORIG MORT BK 1522 PG 319
2 HILLS BANK & TRUST COMPANY						
GENERAL	06/13/00	06/08/00	2968	0308	REL	SEE MORT BK 2286 PG 139



Indexing Name Search - Indexed Entries

Print Page

NOTE: An ARROW ▶ in the lower right hand corner of Description (Remarks) indicates there are Additional Locations associated with the instrument.
Search criteria: Name(s) Selected 1)BAUER, PATRICK B For ALL INDEX TYPES For ALL PARTY TYPES For All Groups For All Kinds on Thursday, August 05, 2004 10:06:03 AM

Select	Image	Party Code	Index Type	Date Filed	Kind	Remarks (Not Warranted)	Book	Page	Original Book	Original Page	File Number	Original File Number	Amount
☐	View Image	2	GEN	05/07/1986	DEED WD	LOT 31 MELROSE PARK 3RD ADDN UNIV HTS	843	1					
		Count: 2 SEARCH NAME: BAUER, PATRICK B											
		Count: 2 FIRST GRANTOR: TADE, KATHRYN J											
☐	View Image	1	GEN	05/07/1986	MORTGAGE	LOT 31 MELROSE PARK 3RD ADDN UNIV HTS	843	2					
		Count: 2 SEARCH NAME: BAUER, PATRICK B											
		Count: 1 FIRST GRANTEE: BANC IOWA SAVINGS BANK											
☐	View Image	1	GEN	05/09/1986	DEED WD	LOT 4 UNIV HEIGHTS & PT LT 3 UNIV HEIGHTS SEE REC	843	196					
		Count: 2 SEARCH NAME: BAUER, PATRICK B											
		Count: 2 FIRST GRANTEE: MALONEY, JENIFER L											
☐	View Image	2	GEN	05/21/1986	RELEASE	ORIG MORT BK 272 PG 426	845	334					
		Count: 2 SEARCH NAME: BAUER, PATRICK B											
		Count: 1 FIRST GRANTOR: CAPITOL FEDERAL SAVINGS BANK											
☐	View Image	1	GEN	04/07/1993	MORTGAGE	LT 31 MELROSE PARK THIRD ADDN UNIVERSITY HTS	1522	316					
		Count: 2 SEARCH NAME: BAUER, PATRICK B											
		Count: 1 FIRST GRANTEE: HILLS BANK & TRUST COMPANY											
☐	View Image	2	GEN	04/22/1993	RELEASE	SEE ORIG MORT BK 843 PG 2	1529	13					
		Count: 2 SEARCH NAME: BAUER, PATRICK B											
		Count: 1 FIRST GRANTOR: PERPETUAL SAVINGS BANK											
☐	View Image	1	GEN	06/11/1997	MORTGAGE	LT 31 MELROSE PARK 3RD ADDN U HTS	2286	139					
		Count: 2 SEARCH NAME: BAUER, PATRICK B											
		Count: 1 FIRST GRANTEE: HILLS BANK & TRUST COMPANY											
☐	View Image	2	GEN	07/30/1998	RELEASE	ORIG MORT BK 1522 PG 319	2546	128					
		Count: 2 SEARCH NAME: BAUER, PATRICK B											
		Count: 1 FIRST GRANTOR: HILLS BANK & TRUST COMPANY											
☐	View Image	2	GEN	06/13/2000	RELEASE	SEE MORT BK 2286 PG 139	2968	308					
		Count: 2 SEARCH NAME: BAUER, PATRICK B											
		Count: 1 FIRST GRANTOR: HILLS BANK & TRUST COMPANY											

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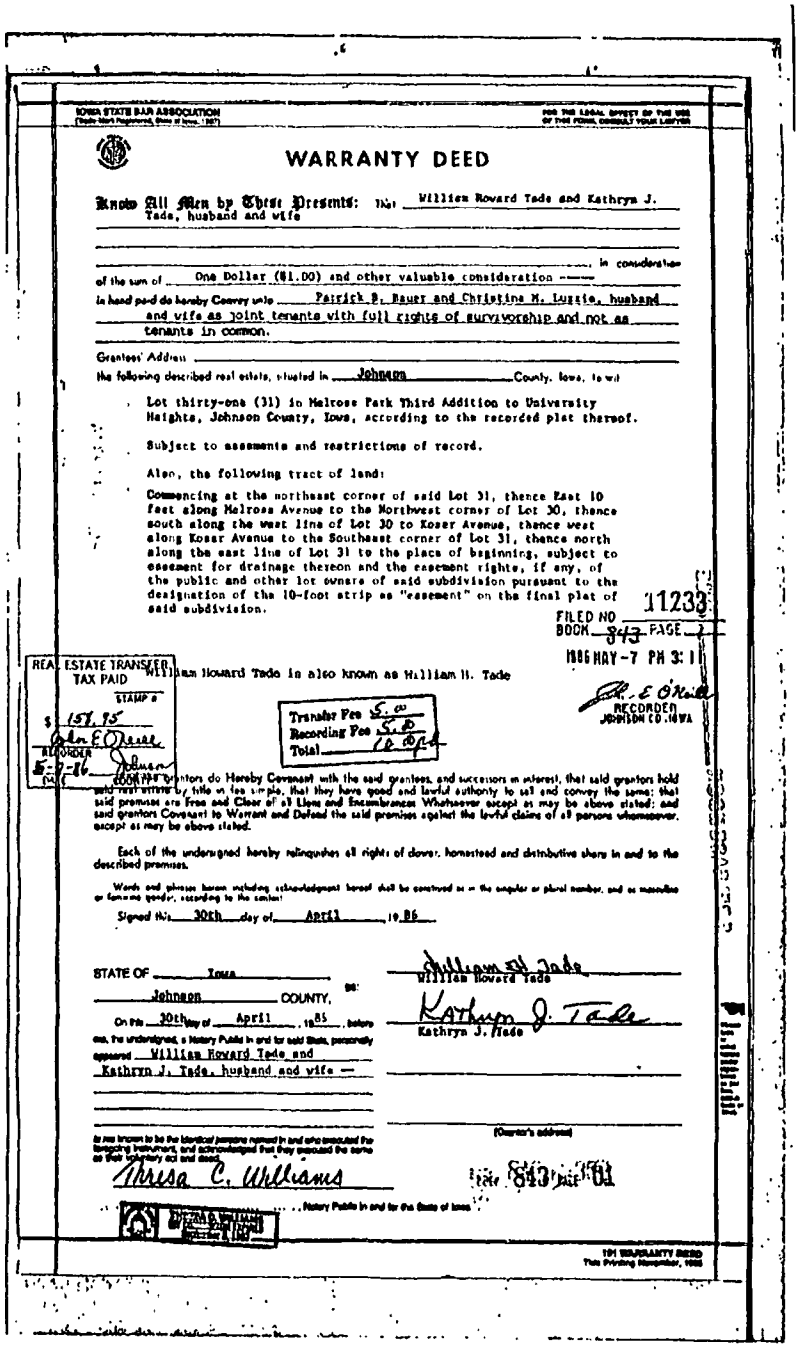


IOWA STATE BAR ASSOCIATION

FOR THE LEGAL EFFECT OF THIS USE OF THESE FORMS, CONSULT YOUR LAWYER

WARRANTY DEED

Know All Men by These Presents: That William Howard Tade and Kathryn J. Tade, husband and wife

of the sum of One Dollar ($1.00) and other valuable consideration ——— in consideration in hand paid do hereby Convey unto Patrick B. Bauer and Christine M. Lurzie, husband and wife as joint tenants with full rights of survivorship and not as tenants in common.

Grantees' Address ———

the following described real estate, situated in Johnson County, Iowa, to-wit

Lot thirty-one (31) in Melrose Park Third Addition to University Heights, Johnson County, Iowa, according to the recorded plat thereof.

Subject to assements and restrictions of record.

Also, the following tract of land:

Commencing at the northeast corner of said Lot 31, thence East 10 feet along Melrose Avenue to the Northwest corner of Lot 30, thence south along the west line of Lot 30 to Keser Avenue, thence west along Keser Avenue to the Southeast corner of Lot 31, thence north along the east line of Lot 31 to the place of beginning, subject to easement for drainage thereon and the easement rights, if any, of the public and other lot owners of said subdivision pursuant to the designation of the 10-foot strip as "easement" on the final plat of said subdivision.

FILED NO 11233
BOOK 343 PAGE 1
1986 MAY -7 PM 3:1
RECORDED
JOHNSON CO. IOWA

REAL ESTATE TRANSFER
TAX PAID
STAMP #
$ 157.95
RECORDER
5-7-86

William Howard Tade is also known as William H. Tade

Transfer Fee 5.00
Recording Fee 5.00
Total 10.00

The grantors do Hereby Covenant with the said grantees, and successors in interest, that said grantors hold said real estate by title in fee simple, that they have good and lawful authority to sell and convey the same; that said premises are Free and Clear of all Liens and Encumbrances Whatsoever except as may be above stated; and said grantors Covenant to Warrant and Defend the said premises against the lawful claims of all persons whomsoever, except as may be above stated.

Each of the undersigned hereby relinquishes all rights of dower, homestead and distributive share in and to the described premises.

Words and phrases herein including acknowledgment hereof shall be construed as in the singular or plural number, and as masculine or feminine gender, according to the context

Signed this 30th day of April, 19 86

William H. Tade
William Howard Tade

Kathryn J. Tade
Kathryn J. Tade

(Grantor's address)

STATE OF Iowa
Johnson COUNTY, ss:

On this 30th day of April, 19 86, before me, the undersigned, a Notary Public in and for said State, personally appeared William Howard Tade and Kathryn J. Tade, husband and wife —

to me known to be the identical persons named in and who executed the foregoing instrument, and acknowledged that they executed the same as their voluntary act and deed.

Thrisa C. Williams
Notary Public in and for the State of Iowa

Rec'd 343 pg 01

101 WARRANTY DEED
This Printing November, 1985

Security Abstract Company Tract Index

BROUGHT FWD. FROM BOOK _____ PAGE _____

FORM 210-2 SUB-DIVISION MELROSE PARK 3RD ADDITION ADDITION CITY UNIVERSITY HEIGHTS BLOCK

GRANTOR	GRANTEE	INST. CONS.	DATE FILED MO.	DAY	YEAR	RECORDED BOOK	PAGE	(Lots 19 thru 30) LOT NUMBERS (Lots 31 thru 40) 1 2 3 4 5 6 7 8 9 10 31 32 33 34 35 36 37 38 39 40	REMARKS
			12	4	79				
Northwestern Mutual Life Insur Co	James S. + Barbara J. Ward	Mtg Rel	12	26	79	562	226	0	(see mtg 124-355)
			7	3	80				
Connie Anne Spurgeon	Iowa State Bank + Trust Co.	mtg	7	7	80	287	244	30	
Thomas L + Anne S. Larsen (ka Anne S. Hacker	Thomas L. + Anne S. Larsen	WD	9	2	80	575	211	24	
" " " "	Linda Joyce Luprecht	WD	9	2	80	574	41	24	
			9	27	80				
Linda Joyce Luprecht	Perpetual Sav + Loan	mtg	9	25	80	790	61	24	
			9	25	78				
W. Keith Spurgeon	Connie Anne Spurgeon	ACD	7	10	81	601	374	30	
			7	10	81				
Connie Anne Spurgeon	Iowa State Bank + Trust Co.	mtg	7	14	81	301	373	30	
Iowa State Bank + Trust			10	30	81				
Ruth T. Devine Estate	Armond + Laryne L. Paglia	COD	11	5	81	604	42		0
			1	19	82				
Connie Anne Spurgeon	Iowa State Bank + Trust	mtg	1	22	82	307	204	30	
			12	22	83				
George D. + Reva L. Ferris	Perpetual Sav + Loan	mtg	1	4	83	319	46	29	
			11	16	32				
Northwestern Bell Telephone Co.	Public	Rel	2	13	33	638	313	0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0	(release 143-301)
			5	2	83				
Connie Anne Spurgeon	Richard P. + Dianne L. McVey	WD	5	2	83	643	73	30	
			5	2	83				
Richard P. + Dianne L. McVey	American Federal Sav + Loan	mtg	5	2	83	324	273	30	
			5	2	83				
James C. + Dolores Nadine Hardy	First National Bank	mtg	5	14	83	324	348	26	
			7	29	83				
James C. + Mary E. Searls	Hawkeye State Bank	mtg	8	19	83	334	40	0	
			9	2	83				
Shirley M. + Mary Eileen Wharton	Shirley M. + Mary Eileen Wharton	WD	9	9	83	658	426	28	
			9	10	83				
Armond + Laryne L. Paglia	James P. + Leslie J. LaBella	Cont	9	13	83	662	247		0
			12	19	84				
St. Andrew United Presbyterian Church	Alvin F. Oesterchaft	WD	12	21	84	744	328	27	
			12	18	84				
R. Bruce Haupert	Public	Aff	12	21	84	744	329	27	
			12	19	84				
Alvin F. Oesterchaft	Hills Bank + Trust	Mtg	12	21	84	744	330	27	
			12	11	84				
Lester J. Trooman	Public	Aff	12	21	84	744	332	27	
			12	19	84				
Alvin F. Oesterchaft	St. Andrew United Presbyterian Church	Mtg	12	21	84	744	333	27	
			7	2	85				
Mary E. Wharton	Pace Setter Products	Mtg	8	20	85	792	66	28	
			9	26	85				
Armond + Laryne L. Paglia	Armond C. Paglia	Cont	9	26	85	802	97		0
			1	16	85				
Alvin F. + Sharon R. Oesterchaft	Hills Bank + Trust	Mtg	1	20	85	824	114	27	
			4	20	86				+ to Ordinance
William Harold + Kathryn J. Jade	Patrick B. Bauer + Christine M. Luzzie	WD	5	7	86	843	1	0	
			5	2	86				
Patrick B. Bauer + Christine M. Luzzie	Bancinsure Sav Bank	Mtg	5	7	86	843	2	0	

FORM 210-2 SUB-DIVISION MELROSE PARK 3RD ADDITION ADDITION CITY UNIV. HGTS. BLOCK

GRANTOR	GRANTEE	INST. CONS.	DATE FILED MO.	DAY	YEAR	RECORDED BOOK	PAGE	(Lots 9 thru 30) LOT NUMBERS (Lots 31 thru 40) 1 2 3 4 5 6 7 8 9 10 31 32 33 34 35 36 37 38 39 40	REMARKS
			9	21	87			2	
Robert G. + Carmen N. Thompson	Seyed A. + Fatemeh Roohalamini	WD	9	21	87	B73	341	2	
			9	21	87			2	
Seyed A. + Fatemeh Roohalamini	Perpetual Sav + Loan	Mtg	9	21	87	B73	342	2	
			9	26	87				(2: Rem Mortg)
Grace W. Deshchaft	Alvin F. Deshchaft	QCD	9	30	87	B84	314	27	
			9	19	87				
Alvin F. + Sharon R. Deshchaft	Dennis L. + Judith A. Moss	WD	9	30	87	B84	315	27	
			9	30	87				
Dennis L. + Judith A. Moss	United Federal Sav Bank	Mtg	9	30	87	B84	316	27	
			9	21	87				Corrects 373 - 341
Robert G. + Carmen N. Thompson	Seyed A. + Fatemeh Roohalamini	WD	12	14	87	902	263	2	
			12	24	87				
Thomas G. Mortenson	First National Bank	Mtg	12	31	87	A016	238		O
			2	18	87				
Philip A. + Kathleen M. McLaughlin	Hills Bank + Trust	Mtg	2	26	87	B19	44	23	
			5	20	87				
James C. + Mary E. Sands	Iowa State Bank + Trust	Mtg	5	22	87	B42	71	O	
			6	30	87				
Linda Joyce Ruprecht	Harold J. Black	WD	7	1	87	B55	121	24	
			6	30	87				
Harold J. Black	First National Bank	Mtg	7	1	87	B55	122	24	
			7	14	87				
" "	" " "	Mtg	7	20	87	B60	292	24	
			8	31	87				
Richard A. + Dianne L. McVey	Michael J. + Patricia K. Curley	WD	8	31	87	B73	185	30	
			8	31	87				
Michael J. + Patricia K. Curley	Hills Bank + Trust	Mtg	8	31	87	B73	186	30	
			9	22	87				Lot 36 + 21
Francois M. + Doris E. Abboud	Doris E. Abboud	QCD	10	1	87	B80	323	21 22	
		Asmt'd	5	26	88				
Armond C., Jr. + Polly Pagliai	Peoples Trust + Sav Bank	cont	9	27	88	1004	336		O
			8	19	88				
Michael J. + Patricia K. Curley	Carol L. Winter	WD	9	16	88	1020	549	30	
			9	15	88				
Carol L. Winter	Iowa Bankers Mortgage	Mtg	9	16	88	1020	550	30	
			8	17	88				
Ranga Swamy + Carol Rajagopal	Iowa State Bank	Mtg	8	23	88	1022	221	O	
		Change	9	23	88				
James Chester Hardy	Dolores Nadine Hardy	Title	9	26	88	1028	353	26	
			2	24	88				
Phyllis M. Terrell	First National Bank	Mtg	2	27	88	B048	35		O
			8	31	88				
Harold J. Black	" " "	Mtg	9	11	88	1081	358	24	
		Change	9	20	89				Probate 21234
Mary Eileen Wharton, dec.	Shirley M. Wharton	Title	9	21	89	1083	460	28	
			10	4	89				
Shirley M. Wharton	Lorna G. + Mark A. Coffey	WD	10	4	89	1086	30	28	
			10	4	89				
Lorna G. + Mark A. Coffey	Hills Bank + Trust Co.	Mtg	10	4	89	1086	31	28	
			11	21	89				
Mark A. + Lorna G. Coffey	" " " "	Mtg	11	27	89	1095	398	28	
Thomas G. Mortenson; Mary Ellen Becker	Thomas G. Mortenson; Mary Ellen Becker	WD	12	15	89	1096	269		Lot 40 Melrose Park 1st Add. O
			12	15	89				

BROUGHT FWD. FROM BOOK _____ PAGE _____ FORM 210-2 SUB-DIVISION Monroe Park 2nd ADD

ABSTRACT OF TITLE — CITY LOTS

ADDITION CITY University Heights BLOCK BOOK NO. _____ PAGE NO. _____

GRANTOR	GRANTEE	INST. CONS.	DATE FILED MO.	DAY	YEAR	RECORDED BOOK	PAGE	LOT NUMBERS Lots 19 thru 30 Lots 31 thru 40	REMARKS
Thomas G. Mortenson; Mary Ellen Becker	Iowa Bankers Mortgage		8	17	90				
		Mtg	8	21	90	1160	101	40	
			2	4	91				
Rangaswamy + Carol Rajagopal	Iowa State Bank + Trust	Mtg	2	11	91	1203	284	30	
			11	7	91				
Harold J. Black; Carolyn J. Swails	" " "	Mtg	11	12	91	1296	116	24	
			11	7	91				
" " " "	" " "	Mtg	11	12	91	1296	120	24	
			11	8	91				
Carolyn J. Swails	Public	Aff	11	12	91	1296	122	24	
			12	16	91				
Dennis L. + Velma R. Kelso	Perpetual Sav Bank, FSB	Mtg	12	20	91	1309	95	pt 35	NW5: lot 35
			12	16	91				
" " "	" " "	Mtg	12	24	91	1310	52	pt 35	NW5: lot 35
Thomas G. Mortenson; Mary Ellen Becker	First National Bank		3	2	92				
		Mtg	3	12	92	1340	186	40	
Jankiz Bardach; Phyllis M. Harper-Bardach	" " "		3	9	92				
		Mtg	3	17	92	1342	94	19	
Carol L. Winker	" " "		3	9	92				
		Mtg	3	19	92	1343	207	30	
Mark A. + Lorna G. Tuttle	Martha H. Riezman		6	12	92				
		WD	6	16	92	1387	249	28	
Martha H. + Raymond G. Riezman	Hills Bank + Trust		6	16	92				
		Mtg	6	16	92	1387	250	28	
Robert E. Yager	Public		6	19	92			pt 21	E 4 of 21 Deed 27420
		Disclaimer	6	29	92	1394	322	20	
Raymond G. Riezman	Martha Riezman aka Martha H. Riezman		7	28	92				re: Dom 92 Fc
		QCD	8	12	92	1417	132	28	
George David + Reva Lou Ferris	Jeanne C. + Brenda A. Barr		11	-	92				
		WD	11	12	92	1463	9	29	
Jeanne C. + Brenda A. Barr	First National Bank		11	9	92				
		Mtg	11	12	92	1463	10	29	
Robert E. Yager Executor Phyllis M. Yager Estate	First National Bank, Trustee Trust u/w/o Phyllis M. Yager		11	6	92				
		QCD	12	21	92	1480	105	pt 21 20	E 1/2 of 21 Deed 27420
Patrick B. Bauer; Christine M. Luzzie	Hills Bank + Trust		4	1	93				
		Mtg	4	7	93	1512	316	31	
			4	19	93				
Judith A. + Dennis L. Moss	Iowa State Bank + Trust	Mtg	4	26	93	1530	115	27	
			5	10	93				
James C. + Mary E. Seacls	First National Bank	Mtg	5	18	93	1544	212	32	
Mary Ellen Becker; Thomas G. Mortenson	" " "		5	28	93				
		Mtg	6	10	93	1558	248	40	
James C. + Mary Seacls	" " "		6	30	93				
		Mtg	7	8	93	1577	107	32	

Certificate No.: 11807

P.O. BOX 143
IOWA CITY, IOWA

ABSTRACT OF TITLE

PREPARED BY

Security Abstract Company

of JOHNSON COUNTY, IOWA

Abstract of Title to the following described premises, situated in Johnson County, Iowa, to wit:

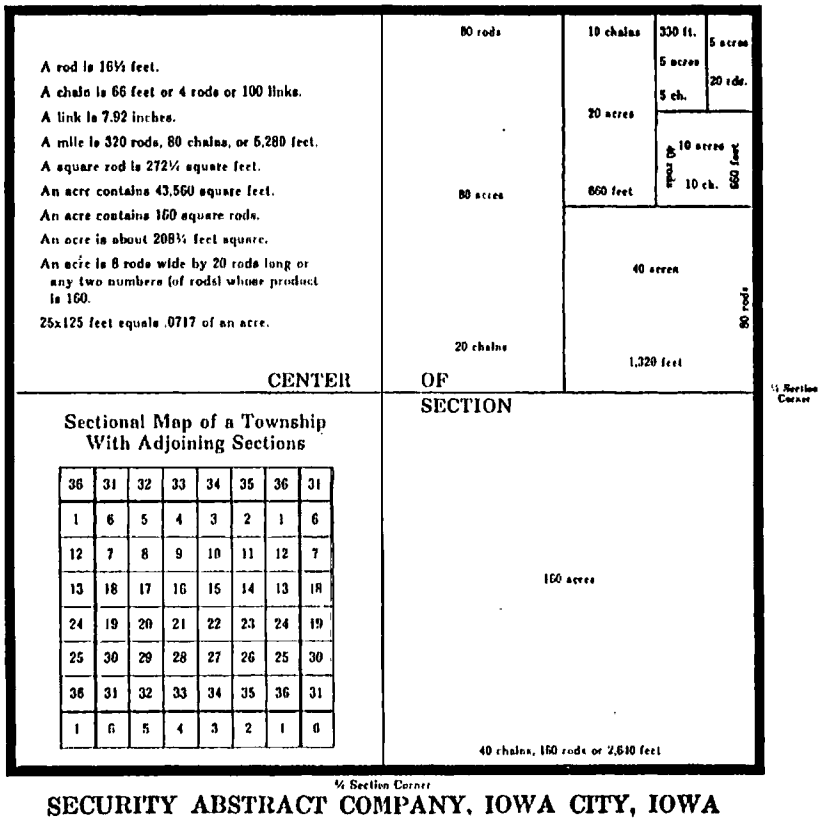
Lot 31 in Melrose Park Third Addition to University Heights, Johnson County, Iowa, according to the plat thereof recorded in Book 5, Page 40, Plat Records of Johnson County, Iowa.

and

Commencing at the northeast corner of Lot 31 in Melrose Park Third Addition to University Heights, Johnson County, Iowa, according to the plat thereof recorded in Book 5, Page 40, Plat Records of Johnson County, Iowa, thence East 10 feet along Melrose Avenue to the Northwest corner of Lot 30, thence south along the west line of Lot 30 to Koser Avenue, thence west along Koser Avenue to the Southeast corner of Lot 31, thence north along the east line of Lot 31 to the place of beginning.

Johnson County, Iowa is situated in the South Eastern part of Iowa and consists of a part of Congressional Township 77 and Townships 78-79-80-81, North of Base line established on a parallel with the mouth of St. Francis River, Arkansas, And Ranges 5-6-7 and 8 West of the Fifth Principal Meridian which is established from the mouth of the Arkansas River.

A SECTION OF LAND—640 ACRES

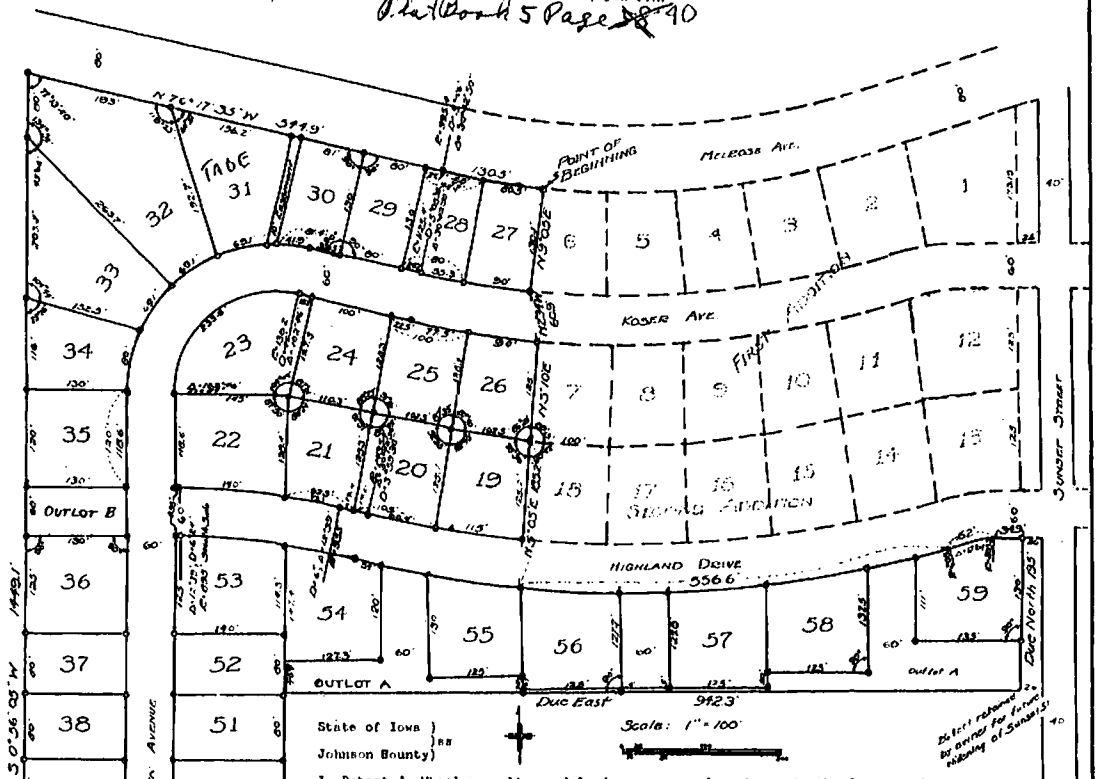


¼ Section Corner

SECURITY ABSTRACT COMPANY, IOWA CITY, IOWA

PLAT OF MELROSE PARK THIRD ADDITION
TO UNIVERSITY HEIGHTS, JOHNSON COUNTY, IOWA
A SUBDIVISION IN THE EAST HALF, NORTHEAST QUARTER, SECTION 17,
TOWNSHIP 79 NORTH, RANGE 6 WEST, 5TH P.M.

Plat Book 5 Page 90



State of Iowa)
) ss
Johnson County)

I, Robert J. Wheeler, a licensed land surveyor and engineer in the State of Iowa, being duly sworn, hereby certify that I have surveyed and subdivided at the direction of the owner the parcel of land shown on the above plat in the East Half, Northeast Quarter, Section 17, Township 79 North, Range 6 West, 5th P.M. and known as Melrose Park Third Addition to University Heights, Johnson County, Iowa, which is described as follows:

Commencing at the Northwest Corner, Lot 6, Melrose Park First Addition to University Heights, said point is on the south line of Melrose Avenue, thence westerly along the the said south line of Melrose Avenue following a curve concave northerly (radius is 995.4 feet) 130.5 feet, thence N 76° 17' 35" W along the said south line of Melrose Avenue 544.9 feet, thence S 0° 56' 05" W 1449.1 feet, thence S 89° 03' 55" E 330 feet, thence N 0° 56' 05" E 665.5 feet, thence Due East 942.3 feet to a point 26 feet west of the west line of Sunset Street thence Due North 195 feet to a point on the south line of Highland Drive, thence West 34.9 feet, thence westerly along a curve (radius is 208.2 feet) 62 feet, thence westerly along said south line of Highland Drive following a curve concave northerly (radius is 1495.4 feet) 556.6 feet, thence N 5° 05' E 185.2 feet, thence N 5° 10' E 125 feet, thence N 2° 34' W 60.9 feet, thence N 9° 05' E 130.1 feet to the point of beginning.

I further certify that the subdivided lots and streets are denoted by 1/2 inch x 30 inch iron pipe at points marked o on the above plat.

PEALS #3228

Subscribed and sworn to before me this _____day of _____, 1961 by Robert J. Wheeler, personally known to me to be the above professional engineer and land surveyor.

Notary Public in and for Johnson County
My commission expires _____.

This plat was approved by the Town of University Heights Council at a meeting held _____day of _____1961.

Forrest Allen, Mayor

Melvin Betterly, Clerk

William Howard Tade and Kathryn J. Tade, husband and wife,

(93) to

Patrick B. Bauer and Christine M. Luzzie, husband and wife, as joint tenants with full rights of survivorship and not as tenants in common.

* Warranty Deed dated April 30, 1986.
Recorded May 7, 1986, Book 843, Page 1.
* Conveys: Lot thirty-one (31) in Melrose
Park Third Addition to University Heights,
* Johnson County, Iowa, according to the
recorded plat thereof.
* Subject to easements and restrictions of
record.
* Also, the following tract of land:
Commencing at the northeast corner of said
* Lot 31, thence East 10 feet along Melrose
Avenue to the Northwest corner of Lot 30,
* thence south along the west line of Lot 30
to Koser Avenue, thence west along Koser
* Avenue to the Southeast corner of Lot 31,
thence north along the east line of Lot 31 to the place of beginning, subject to easement for drainage thereon and the easement rights, if any, of the public and other lot owners of said subdivision pursuant to the designation of the 10-foot strip as "easement" on the final plat of said subdivision.

William Howard Tade is also known as William H. Tade.

Patrick B. Bauer and Christine M. Luzzie, husband and wife,

(94) to

Banc Iowa Savings Bank.

* Mortgage dated May 2, 1986.
Recorded May 7, 1986, Book 843, Page 2.
* Covers: Lot thirty-one (31) in Melrose
Park Third Addition to University Heights,
* Johnson County, Iowa, according to the
recorded plat thereof.
* For: payable according to note,
with the full debt, if not paid earlier, due
* and payable on June 1, 2001.
Provides for the acceleration of maturity in
* the event of default and also provides that
the period of redemption from foreclosure sale shall be reduced as provided by Chapter 628, Code of Iowa, as amended.

If all or any part of the Property or any interest in it is sold or transferred (or if a beneficial interest in Borrower is sold or transferred and Borrower is not a natural person) without Lender's prior written consent, Lender may, at its option, require immediate payment in full of all sums secured by this Security Instrument.

(95) Tax lists show no taxes a lien against this property.

(96) Incorporated by reference herein are entries 1 through 95, supra.

Banc Iowa Savings Bank, by: James T. Wills, First Vice President, and Paula G. Fields, Assistant Vice President,

(97) to

The Federal Home Loan Mortgage Corporation.

* Assignment of Mortgage dated March 3, 1987. Recorded July 10, 1987, Book 958, Page 59.
* Assigns all right, title, and interest in and to a certain mortgage recorded in Book 843, Page 2, as set out above at entry #94.

Patrick B. Bauer and Christine M. Luzzie, husband and wife,

(98) to

Hills Bank and Trust Company.

* Mortgage dated April 1, 1993. Recorded April 7, 1993, Book 1522, Page 316.
* Covers: Lot thirty-one (31) in Melrose Park Third Addition to University Heights, Johnson County, Iowa, according to the recorded plat thereof.
* For: payable according to note, with the full debt, if not paid earlier, due and payable on April 6, 1998. Provides for the acceleration of maturity in the event of default and also provides that the period of redemption from foreclosure sale shall be reduced as provided by Chapter 628, Code of Iowa, as amended.

If all or any part of the property or any interest in it is sold or transferred (or if a beneficial interest in Borrower is sold or transferred and Borrower is not a natural person) without Lender's prior written consent, Lender may, at its option, require immediate payment in full of all sums secured by this Security Instrument.

(99) Lot 31 Melrose Park Third Addition: Taxes for fiscal year 1991, paid in full.
Tax lists show no taxes a lien against this property.

Federal Home Loan Mortgage Corporation (Freddie Mac), by: Gail Kowalski, Assistant Treasurer, Attest: Susan Lutz, Assistant Secretary, (seal),	*	Limited Power of Attorney dated August 15, 1991.
	*	Recorded October 31, 1991, Book 1292, Page 266.
	*	Recites:

(100) to

The Public.

FEDERAL HOME LOAN MORTGAGE CORPORATION (Freddie Mac), a corporation organized and existing under the laws of the United States of America, having an office for the conduct of business at 17771 Business Center Drive, Reston, Virginia, 22090 constitutes and appoints the officers of:

Perpetual Savings Bank, FSB
110 Second Avenue SE
Cedar Rapids, IA 52407

Officers Name	Officers Title
David H. Lodge	Sr. Vice President
Dennis M. Fitz	Vice President
Gary L. Caldwell	Vice President
Thomas J. Helmeyer	Asst. Vice President

its true and lawful attorney-in-fact, and in its name, place and stead and for its use and benefit, to execute and acknowledge all documents with respect to home mortgages serviced for the undersigned by said attorney-in-fact, which are customarily and reasonably necessary and appropriate to the release of a mortgage, deeds of trust or deeds to secure debt upon payment and discharge of all sums secured thereby, as to one-to-four-family mortgages, deeds of trust or deeds to secure debt owned by the undersigned and serviced for the undersigned by said attorney-in-fact, whether the undersigned is named therein as mortgagee or beneficiary or has become mortgagee or beneficiary by virtue of assignment of such mortgage, deed of trust or deed to secure debt.

The undersigned gives to said attorney-in-fact full power and authority to execute such instruments as if the undersigned were personally present, hereby ratifying and confirming all that said attorney-in-fact shall lawfully do or cause to be done by authority hereof.

This limited power of attorney has been executed and is effective as of this 15th day of August 1991, and the same shall continue in full force and effect until the occurrence of any of the following events or until revoked in writing by the undersigned:

(i) the suspension or termination of the attorney-in-fact as Seller or Servicer of mortgages to Freddie Mac,

(ii) the transfer of servicing from the attorney-in-fact to another Servicer for cause,

(iii) the appointment of a receiver or conservator with respect to the business of the attorney with respect to the business of the attorney-in-fact, or

(iv) the filing of a voluntary or involuntary petition in bankruptcy by the attorney-in-fact or any of its creditors: or until revoked in writing by the undersigned.

Perpetual Savings Bank, FSB, as Attorney-in-Fact for the Federal Home Loan Mortgage Corporation, by: Hal D. Gilchrist, Senior Vice President, and Thomas J. Wehmeyer, Vice President,

(101) to

Patrick B. Bauer and Christine M. Luzzie.

* Satisfaction of Mortgage dated April 6, 1993. Recorded April 22, 1993, Book 1529, Page 13.
* Releases a certain mortgage recorded in Book 843, Page 2, as set out above at entry #94.

Except as set out herein, we find no judgments or mechanic's liens affecting this property, no notice of lien for any unpaid Iowa tax, no notice of lien for taxes assessed under the Internal Revenue Laws of the United States, or any other lien or claim properly indexed in the records of Johnson County, Iowa, against:

Patrick B. Bauer
Christine M. Luzzie

(Searches under the above-listed names specifically include certification as to all customary and usually recognized abbreviations and derivations of first and middle names, and also include certification as to all middle initials, if no initial is given, and as to the addition of Jr. or Sr., if neither is stated.)

The Security Abstract Company hereby certifies that the above and foregoing constitute a correct Abstract of Title to the real estate described on the caption sheet hereof, from May 29, 1986 at 4 o'clock P.M., to April 16, 1993 at 4 o'clock P.M., consisting of entries No. 97 to No. 99 inclusive, and that all conveyances, deeds, trust deeds, liens, encumbrances, mortgages (not barred by the provisions of 614.21, Code of Iowa or not duly released of record), tax sales, tax deeds, transcripts of judgments from the United States and from state courts, all taxes, including personal taxes and special assessments, actions indexed in lis pendens, and all other matters of record whatsoever that in any manner affect the title to or are liens upon said lands are noted hereon, so far as shown by the records of Johnson County, Iowa; and that all instruments abstracted herein are shown by the record to have been duly executed and properly acknowledged unless otherwise shown.

By _____
President

Vice President

Certificate No: 11807

TITLE GUARANTY DIVISION
Member No. 8506

SECURITY ABSTRACT COMPANY, IOWA CITY, IOWA

CHAPTER 252

FINANCING

S.F. 577

AN ACT relating to the economy of the State of Iowa, by amending the definition of small business for purposes of the Iowa housing finance authority's program for which bonds may be issued, by changing the name of the Iowa housing finance authority, by requiring that real estate brokers' trust accounts be deposited in interest-bearing accounts and the interest transferred quarterly to the treasurer of state and deposited in the title guaranty fund, by providing that the Iowa housing finance authority initiate a self-sustaining title guarantee program for title of real property, creating a commitment costs fund, creating a title guaranty fund, by modifying the limitations on bank offices upon merger or acquisition, by providing for an alternative nonjudicial voluntary foreclosure procedure including providing for redemption periods of lienholders under the procedure, permitting the charging of fees incurred under the title guaranty program, requiring the disclosure of the availability of the title guaranty program and making penalties applicable, by creating an Iowa economic protective and investment authority, providing for the authority's powers and duties, providing for incentives for lending institutions to participate in the operating assistance program, providing for a five-year write-off of interest bought down under the authority's operating assistance program, permitting life insurance companies and associations to invest in bonds of the African development bank, providing for the valuation of real property held by or used to secure loans held by lending institutions, providing for the disposal of real property held by a state bank, by modifying the investment powers of the state chartered savings and loan associations and savings banks, revising the requirements of amendments to a uniform commercial code financing statement, providing for stipulation of redemption periods, providing for an alternative nonjudicial voluntary foreclosure procedure including providing for redemption periods for lienholders, providing for the execution of foreclosure judgments, providing for the creation of the Iowa export trading company, providing for interim study committees, and providing an effective date.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 117.46, subsection 1, Code 1985, is amended to read as follows:

1. Each real estate broker shall maintain a common trust account in a bank, or a savings and loan association, savings bank, or credit union for the deposit of all down payments, earnest money deposits, or other trust funds received by the broker or the broker's salespersons on behalf of the broker's principal, except that a broker acting as a salesperson shall deposit these funds in the common trust account of the broker for whom the broker acts as salesperson. The account shall be an interest-bearing account. The interest on the account shall be transferred quarterly to the treasurer of state and deposited in the title guaranty fund and used for public purposes and the benefit of the public pursuant to section 220.91 unless there is a written agreement between the buyer and seller to the contrary. The broker shall not benefit from interest received on funds of others in the broker's possession.

f. Members shall elect a chair and vice chair annually and other officers as they determine. The director shall serve as secretary to the board.

g. The net earnings of the division, beyond that necessary for reserves, backing, guaranties issued or to otherwise implement the public purposes and programs authorized, shall not inure to the benefit of any person other than the state and are subject to section 220.2, subsection 8.

Sec. 27. Section 220.3, Code 1985, is amended by adding the following new subsection:

NEW SUBSECTION. 14. The abstract-attorney's title opinion system promotes land title stability for determining the marketability of land titles and is a public purpose. A public purpose will be served by providing, as an adjunct to the abstract-attorney's title opinion system, a low cost mechanism to provide for additional guaranties of real property titles in Iowa. The title guaranties will facilitate mortgage lenders participation in the secondary market and add to the integrity of the land-title transfer system in the state.

Sec. 28. Section 220.5, Code 1985, is amended by adding the following new subsection:

NEW SUBSECTION. 16. Through the title guaranty division, make and issue title guaranties on Iowa real property in a form acceptable to the secondary market, to fix and collect the charges for the guaranties and to procure reinsurance against any loss in connection with the guaranties.

Sec. 29. NEW SECTION. 220.40 COMMITMENT COSTS FUND.

A commitment costs fund is created within the treasurer of state's office. The moneys shall be used by the authority to cover initial commitment costs of authority bond issues and loans in order to facilitate and ensure equal access across the state to funds for programs for first time home buyers. Moneys in the fund shall not revert to the general fund and interest on the moneys in the fund shall be retained as part of the fund and not accrue to the general fund.

Sec. 30. NEW SECTION. 220.91 TITLE GUARANTY PROGRAM.

1. The authority through the title guaranty division shall initiate and operate a program in which the division shall offer guaranties of real property titles in this state. The terms, conditions and form of the guaranty contract shall be forms approved by the division board. The division shall fix a charge for the guaranty in an amount sufficient to permit the program to operate on a self-sustaining basis, including payment of administrative costs and the maintenance of an adequate reserve against claims under the title guaranty program. A title guaranty fund is created in the office of the treasurer of state. Funds collected under this program shall be placed in the title guaranty fund and are available to pay all claims, necessary reserves and all administrative costs of the title guaranty program. Moneys in the fund shall not revert to the general fund and interest on the moneys in the fund shall be retained as a part of the fund and shall not accrue to the general fund. If the authority board in consultation with the division board determines that there are surplus funds in the title guaranty fund after providing for adequate reserves and operating expenses of the division, the surplus funds shall be transferred to the commitment costs fund created pursuant to section 220.40.

2. A title guaranty issued under this program is an obligation of the division only and claims are payable solely and only out of the moneys, assets and revenues of the title guaranty fund and are not an indebtedness or liability of the state. The state is not liable on the guaranties.

3. With the approval of the authority board the division and its board shall consult with the insurance department in developing a guaranty contract acceptable to the secondary market and developing any other feature of the program with which the department may have special expertise. The department shall establish the amount for a loss reserve fund. Except as provided in this subsection, the title guaranty program is not subject to the jurisdiction of or regulation by the insurance department or the commissioner of insurance.

4. Each participating mortgage lender, attorney and abstractor shall pay an annual participation fee to be eligible to participate in the title guaranty program. The fee shall be set by the division, subject to the approval of the authority.

5. The participation of abstractors, attorneys and lenders shall be in accordance with rules established by the division and adopted by the authority pursuant to chapter 17A. Each participant shall at all times maintain liability coverage in amounts approved by the division. Upon payment of a claim by the division, the division shall be subrogated to the rights of the claimant against all persons relating to the claim.

6. Prior to the issuance of a title guaranty, the division shall require evidence that an abstract of title to the property in question has been brought up-to-date and certified by a participating abstractor in a form approved by division rules and a title opinion issued by a participating attorney in the form approved in the rules stating the attorney's opinion as to the title. The division shall require evidence of the abstract being brought up-to-date and the abstractor shall retain evidence of the abstract as determined by the board.

7. The attorney rendering a title opinion shall be authorized to issue a title guaranty certificate subject to the rules of the authority. A person or mortgage lender participating in the title guaranty program shall not charge or receive any portion of the charge for the guaranty as a result of their participation in the title guaranty program.

8. A participating mortgage lender shall notify the division when the mortgage covered by a title guaranty has been satisfied of record.

9. The authority shall adopt rules pursuant to chapter 17A that are necessary for the implementation of the title guaranty program as established by the division and that have been approved by the authority.

Sec. 31. Section 511.8, subsection 4, Code 1985, is amended to read as follows:

4. INTERNATIONAL BANK BONDS. Bonds or other evidence of indebtedness issued, assumed or guaranteed by the International Bank for reconstruction and development, in an amount not to exceed two percent of its total assets as shown by the last annual report, or by the Inter-American Development Bank in an amount not to exceed two percent of its total assets as shown by the last annual report or by the Asian Development Bank in an amount not to exceed two percent of its total assets as shown by the last annual report or by the African Development Bank in an amount not to exceed two percent of its total assets as shown by the last annual report. However, the combined investment in bonds or evidences of indebtedness permitted by this subsection shall not exceed four percent of its total assets as shown by the last annual report.

Sec. 32. Section 524.103, Code 1985, is amended by adding the following new subsection:

NEW SUBSECTION. 27. "Bankers' bank" means a bank which is organized under the laws of any state or under federal law, and whose shares are owned exclusively by other banks or by a bank holding company whose shares are owned exclusively by other banks, except for directors' qualifying shares when required by law, and which engages exclusively in providing services for depository institutions and officers, directors and employees of those depository institutions.

Sec. 33. NEW SECTION. 524.109 BANKERS' BANK AUTHORIZED.

A state bank may be organized under this chapter as a bankers' bank. The bankers' bank is subject to all rights, privileges, duties, restrictions, penalties, liabilities, conditions and limitations applicable to state banks generally except as limited in the definition of bankers' bank contained in the section 524.103, subsection 27. However, a bankers' bank shall have the same powers as those granted by federal law and regulation to a national bank organized as a bankers' bank under 12 U.S.C. § 27.

Sec. 34. Section 524.910, subsection 2, Code 1985, is amended to read as follows:

INSURANCE DIVISION[191] *(cont'd)*

ITEM 9. New rule 191—40.17(514B) is added as follows:

191—40.17(514B) Reinsurance. Reinsurance contracts and stop-loss agreements entered into by an HMO shall be subject to prior approval and shall meet the following minimum requirements:

40.17(1) Reinsurance contracts and stop-loss agreements shall provide that the commissioner of insurance be given notice of termination by certified mail at least thirty (30) days prior to the effective date of termination of the reinsurance contract or stop-loss agreement.

40.17(2) Retention levels shall be reasonable in light of the HMO's financial condition and potential liabilities.

ITEM 10. New rule 191—40.18(514B) is added as follows:

191—40.18(514B) Provider contracts. An HMO's arrangements for health care services shall be by written contract. Initial provider contracts shall be subject to prior approval. Thereafter, any provider contract deviating from previously submitted or approved contracts shall be submitted to the division within thirty (30) days of execution for informational purposes. In all instances, all provider contracts shall include the following provision: (Provider) hereby agrees that in no event, including, but not limited to nonpayment by the HMO, HMO insolvency or breach of this agreement, shall (Provider) bill, charge, collect a deposit from, seek compensation, remuneration or reimbursement from, or have any recourse against subscriber/enrollee or persons other than HMO acting on their behalf for services provided pursuant to this Agreement. This provision shall not prohibit collection of supplemental charges or copayments on HMO's behalf made in accordance with terms of (applicable Agreement) between HMO and subscriber/ enrollee. (Provider) further agrees that (1) this provision shall survive the termination of this Agreement regardless of the cause giving rise to termination and shall be construed to be for the benefit of the HMO subscriber/enrollee and that (2) this provision supersedes any oral or written contrary agreement now existing or hereafter entered into between (Provider) and subscriber/enrollee or persons acting on their behalf.

ARC 7067

INSURANCE DIVISION[191]

NOTICE OF INTENDED ACTION

Twenty-five interested persons, a governmental subdivision, an agency or an association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code §17A.4(1)"b".

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under §17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 505.8 the Iowa Division of Insurance hereby gives Notice of Intended Action to amend Chapter 42 of the Iowa Administrative Code entitled, "Gender-Blended Minimum Nonforfeiture Standards for Life Insurance."

The present rules of the Department are being amended in order to bring them into conformity with the model regulation adopted by the National Association of Insurance Commissioners in June 1986.

Any interested person may make written comments not later than November 11, 1986, addressed to Sharon A. Henry, Insurance Division of Iowa, Lucas State Office Building, Des Moines, Iowa 50319.

The following amendment is proposed.

Rule 191—42.3(508) introductory paragraph, is amended to read as follows:

191—42.3(508) Use of gender-blended mortality tables. For any policy of insurance on the life of either a male or female insured delivered or issued for delivery in this state ~~before January 1, 1989 and~~ after the operative date of Iowa Code section 508.37, an insurer may:

ARC 7069

IOWA FINANCE AUTHORITY[524]

NOTICE OF INTENDED ACTION

Twenty-five interested persons, a governmental subdivision, an agency or an association of 25 or more persons may demand an oral presentation hereon as provided in §17A.4(1)"b", Iowa Code.

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under §17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of 1985 Iowa Code supplement section 220.91, subsection 9, the Iowa Finance Authority hereby gives Notice of Intended Action to amend Chapter 9, "Title Guaranty Division," Iowa Administrative Code.

The Iowa Finance Authority proposes general rules that will specify the basic rulemaking and contested case procedures to be employed by the new Division established by 1985 Iowa Acts, Senate File 577. The rules also address the Division's implementation of the new title guaranty program.

The proposed rulemaking may have an impact on small businesses.

Any interested person may make written suggestions or comments on the proposed rules prior to November 12, 1986. Such written material should be directed to the Director, Title Guaranty Division, Iowa Finance Authority, 550 Liberty Building, 6th and Grand, Des Moines, Iowa 50309. Persons who want to convey their views orally should contact the Division Director, Larry L. Tuel, at 515/281-4058 or at the offices of the Authority, Suite 550, Liberty Building, 6th and Grand, Des Moines, Iowa 50309. There also will be a public hearing on Wednesday, November 12, 1986, at 10:30 a.m. in the Authority's offices at Suite 550, Liberty Building, 6th and Grand, Des Moines, Iowa 50309. Persons may present their views at this public hearing either orally or in writing. The public hearing will be concluded at 11:30 a.m. or whenever all persons wishing to convey their views have finished, whichever is later.

These rules are intended to implement Iowa Code sections 17A.3, 17A.9, and 17A.10 to 17A.18, and 1985 Iowa Code supplement sections 220.1(34), 220.1(35), 220.2(1), 220.3(14), 220.5(15), 220.40, 220.91, 535.8(10), and 535A.12.

The following rules are proposed:

524—9.8(220) Petition to promulgate, amend, or repeal a rule. An interested person or legal entity may petition the division requesting promulgation, amendment, or repeal of a rule. The petition shall be in writing, signed by or on behalf of the petitioner, and shall contain a statement of:

1. The rules sought to be promulgated, amended, or repealed. A rule proposed to be amended shall be stated in full with proposed deletion enclosed in brackets and proposed additions underlined.

IOWA FINANCE AUTHORITY[524] *(cont'd)*

2. Factual rationale for the proposed action.
3. Any propositions of law to be asserted.
4. Factual account of impact on petitioner of proposed action.
5. Name and address of petitioner and any other person or entity known to be interested in the rule sought to be adopted, amended, or repealed.

The petition should be typed or printed, and captioned BEFORE THE IOWA FINANCE AUTHORITY, TITLE GUARANTY DIVISION and shall be deemed filed when received by the director of the title guaranty division. Upon receipt of the petition, director shall:

1. Within ten (10) days, mail a copy of the petition to any parties named therein. The petition shall be deemed served on the date of mailing to the last known address of the party being served.
2. Submit petition to the division board at the next scheduled meeting, with recommended action.
3. Within sixty (60) days after the date of receipt of petition, either deny the petition or initiate rulemaking proceedings in accord with Iowa Code chapter 17A.

In the event of denial of a petition, the division shall issue an order setting forth the reasons for denial of the petition. The order shall be mailed to the petitioner and all other persons upon whom a copy of the petition was served.

524—9.9(220) Request for oral presentation concerning intended rulemaking. Twenty-five (25) interested persons, a governmental subdivision, the administrative rules review committee, an agency, or an association having not less than twenty-five (25) members may make written request for oral presentation concerning an intended rulemaking. The request shall state:

1. Name, address, and telephone number of each person or agency party to the request;
2. The number and title of the proposed rule as given in the notice of intended rulemaking;
3. The general content of the oral presentation.

Receipt and acceptance of such request shall be promptly acknowledged by the division. Not less than twenty (20) days after publication of notice of intended rulemaking, the division shall allow oral presentations as requested at a time when, and the place where stated in the publication of notice of intended rulemaking.

If requested to do so by an interested person, either prior to adoption or within thirty (30) days thereafter, the division shall issue a concise statement of the principal reasons for and against the rule adopted, incorporating therein the reasons for overruling considerations urged against the rule.

524—9.10(220) Declaratory rulings. The division shall provide declaratory rulings as to the applicability of any statutory provision, rule, or other written statement of law or policy, decision, or order when petitioned to do so by the public where, in the judgment of the division, it is necessary or helpful for them to conduct their affairs in accordance with the law.

Requests for declaratory rulings shall be made to the director in writing.

Within thirty (30) days after submission of a request for declaratory ruling, the division shall issue a written ruling on the rule, statute, or policy in question.

The division may decline to rule when, in the judgment of the division, the ruling would be beyond the division's scope of authority, when no clear answer is determinable, or when the issue presented is pending resolution by a court of Iowa or by the Attorney General.

524—9.11(220) Procedure for informal settlements in contested cases. Unless precluded by statute, informal settlement of disputes over rules of the division that may otherwise result in contested case proceedings as prescribed in Iowa Code section 17A.12 shall be encouraged.

All such informal settlements shall be made by the director subject to ratification by the division, and by the parties contesting the rule in question. The settlement shall be expressed in a written stipulation representing an informed mutual consent.

524—9.12(220) General. The title guaranty division of the Iowa finance authority has established a program for offering mortage lenders and the general public low cost protection against loss or damage caused by defective titles to Iowa real property. The title guarantees offered by the division will facilitate mortgage lender participation in the secondary market and add to the integrity of the land-title transfer system in the state. Title guaranty owners and lenders certificates will be available through participating attorneys throughout the state who shall act as limited agents for the division for the sole purpose of issuing title guaranty certificates subject to the rules of the division and applicable law. Any participating attorney rendering a title opinion shall be authorized to issue a title guaranty certificate subject to the rules of the division. The division shall require participating abstracters to update the abstract to any real property for which a guaranty is desired, in accord with division standards. Upon request by a mortgagor or participating lender, the participating attorney will issue a title guaranty commitment and the final guaranty certificate after reviewing an abstract prepared by a participating abstracter. Participating mortgage lenders shall inform borrowers of the availability of the title guaranty and the cost associated with the purchase of a title guaranty.

524—9.13(220) Participation requirements for attorneys. Any attorney licensed to practice law in the state of Iowa shall be eligible to participate in the title guaranty program upon execution and acceptance by the division of a participation agreement in the form prescribed by the division. The participation agreement will require that the participating attorney:

1. Maintain attorney's liability insurance with limits of not less than one hundred thousand dollars ($100,000) per claim and not less that three hundred thousand dollars ($300,000) total annual limit, and disclose to the division the name, address, and phone number of the liability carrier and the amount of insurance maintained.
2. Examine real estate titles for the purpose of accurately reporting the state of the title involved in accordance with the Iowa Land Title Examination Standards of the Iowa State Bar Association, where applicable, or other applicable law.
3. Pay an initial participation fee of twenty-five dollars ($25) for the year beginning January 1, 1987, and pay an annual renewal fee of ten dollars ($10) for each year thereafter. Participation fees are due no later than January 30 of each calendar year.
4. Abide by the rules of the division and applicable law.

524—9.14(220) Participation requirements for abstracters. Any abstracter or abstracting concern shall be eligible to participate in the title guaranty program upon execution and acceptance of a participation agreement in a form prescribed by the division. The participation

IOWA FINANCE AUTHORITY[524] *(cont'd)*

agreement shall require the participating abstracter or abstracting concern to:

1. Prepare abstracts in accord with the most current Iowa Land Title Association Uniform Abstracting Standards, where applicable.

2. Own or lease, and maintain and use in the preparation of abstracts an up-to-date abstract title plant including tract indices for real estate for each county in which abstracts are prepared for titles to real property guaranteed by the division. Each of the tract indices shall be designated to encompass a geographical area of not more than one (1) block in the case of platted real estate, nor more than one (1) section in the case of unplatted real estate. The tract indices shall include a reference to all of the instruments affecting real estate recorded in the office of the county recorder, and the tract indices shall commence not less than forty (40) years prior to the effective date of the abstracter's participation in the title guaranty program.

3. Maintain abstracter's liability insurance in an amount not less than fifty thousand dollars ($50,000) total annual limit, and disclose to the division the name of the liability carrier and the amount of insurance maintained.

4. Pay an initial participation fee of twenty-five dollars ($25) for the year beginning January 1, 1987, and pay an annual renewal fee of ten dollars ($10) for each year thereafter. Participation fees are due no later than January 30 of each calendar year.

5. Retain either a carbon copy or a mechanical reproduction of each certificate continuation and new abstract of title prepared after December 31, 1986, for which a title guaranty is issued.

6. Abide by the rules of the division and applicable law.

524—9.15(220) Participation requirements for lenders. Any mortgage lender as defined in Iowa Code section 220.1(14) that is authorized to make mortgage loans on Iowa real estate shall be eligible to participate in the title guaranty program upon execution and acceptance by the division of a participation agreement in the form prescribed by the division. The participation agreement shall require the participating lender to:

1. Maintain fidelity coverage, or furnish a direct surety bond issued in favor of the division on policy forms normally used by lenders of the same class as the participating lender, in a minimum amount of one hundred thousand dollars ($100,000). Additionally, each participating lender shall maintain errors and omissions coverage on policy forms normally used by lenders of the same class as the participating lender, in a minimum amount of one hundred thousand dollars ($100,000). Each participating lender shall disclose to the division the name of each liability insurance or bond carrier and the amount of insurance or bond maintained.

2. Notify the division when the lender receives information that a mortgage covered by a title guaranty has been satisfied of record.

3. Pay an initial participation fee of twenty-five dollars ($25) for the year beginning January 1, 1987, and pay an annual renewal fee of ten dollars ($10) for each year thereafter. Participation fees are due no later than January 30 of each calendar year.

4. Abide by the rules of the division and applicable law.

524—9.16(220) Forms, endorsements, and manuals. The division shall adopt title guaranty certificate forms and endorsement forms that are acceptable to the secondary market in accord with the provisions of Iowa Code chapter 220. In addition, the division shall publish a manual for use by participating attorneys, abstracters, and lenders, which manual may be revised from time to time. Such manual shall include forms of the certificates and endorsements. The manual shall also include the membership participation standards and requirements and such other matters deemed necessary by the division for implementation and effective administration of the title guaranty program.

524—9.17(220) Application for waiver of participation requirements. It is the intention of the division to make title guaranties available statewide. Therefore, in order to achieve the widest possible geographic coverage, the division will allow any abstracter, attorney, or lender the opportunity to apply for a waiver of the participation requirements set out in rules 9.13(220), 9.14(220), and 9.15(220). Any application for waiver of participation requirements should be directed to the board of the division and should succinctly state which participation requirements are requested to be waived. The request should contain adequate supporting information and argument so that the board may make an informed decision on the request. It is the intention of the board to waive participation requirements only when it is determined that they result in a hardship to the requesting abstracter, attorney, or lender, and the waiver is absolutely necessary to ensure availability of title guaranties throughout the state.

524—9.18(220) Rates. The division shall fix the rate for the owner's guaranty, the lender's guaranty, and the various endorsements that will be offered by the division. The division shall make a published rate schedule available to mortgage lenders. If an owner guaranty is purchased, the mortgagee may purchase a lender guaranty for a flat fee of fifteen dollars ($15).

524—9.19(220) Charges. No participant in the title guaranty program shall charge or receive any portion of the charge for the guaranty as a result of participation in the title guaranty program.

524—9.20(220) Disclosure information. Iowa financial institutions, including lenders participating in the title guaranty program, shall advise prospective borrowers of the availability of the title guaranty program and shall also provide prospective borrowers with information about the title guaranty program as provided to the financial institution by the title guaranty board. The title guaranty board shall make available to Iowa lending institutions a brochure that explains the title guaranty program and the coverages offered. Each financial institution shall, on the taking of a loan application, advise the prospective borrowers of the availability of the title guaranty program and provide the prospective borrower with a copy of said brochure. Each financial institution shall cause borrowers to execute a form captioned "Acknowledgement of Title Guaranty Information" as provided to the financial institution by the board. The form shall become a permanent part of the financial institution's mortgage file.

524—9.21(220) Seal. The division shall have a corporate seal that may be altered from time to time. The seal shall impress the words "Title Guaranty Division Iowa Finance Authority" and may be used to authenticate acts and legal instruments of the division.

IOWA FINANCE AUTHORITY[524] *(cont'd)*

Rules 9.8(220) to 9.21(220) are intended to implement Iowa Code sections 17A.3, 17A.9 and 17A.10 and 1985 Iowa Code supplement sections 220.1, 220.2, 220.3, 220.5, 220.40, 220.91, 535.8(10) and 535A.12.

524—9.22(17A,220) Contested case proceedings presiding officer. In all matters relating to title guaranties, contested cases shall be presented to the board of the title guaranty division.

524—9.23(17A,220) Right to contested case proceedings. In any case in which the legal rights, duties, or privileges of a party are required by Constitution or statute to be determined after an opportunity for an evidentiary hearing, any party aggrieved by action of the board or staff of the division may request review of the action by the board of the division at its next regularly scheduled board meeting. An aggrieved party may request either an informal resolution of the complaint or may request contested case proceedings. The board or staff of the division may also initiate contested case proceedings without a request by an aggrieved party. An evidentiary hearing need not be provided if there are no factual issues. In those cases, policy issues shall be presented to the board at its next meeting.

524—9.24(17A,220) Time limit for request. A request for contested case proceedings must be made by an aggrieved party within sixty (60) days after official notification of an action.

524—9.25(17A,220) Notice of contested case. After receiving a timely request for contested case proceedings, or when contested case proceedings are initiated by the board or staff without a request, notice complying with Iowa Code section 17A.12, subsection 2, shall be mailed to the parties, certified mail, return receipt requested. Alternatively, notice may be given in any manner permitted by the Iowa Rules of Civil Procedure for the commencement of a civil action or may be given in accordance with any applicable "long arm statutes."

524—9.26(17A,220) Form of request. A request for contested case proceedings shall be in writing and be signed by the aggrieved party or by an attorney at law representing the aggrieved party.

524—9.27(17A,220) Subpoena power. The division shall have all subpoena power conferred on it by statute. Division subpoenas shall be issued to a party on request, shall be signed by the director of the division, and shall be under the seal of the division.

524—9.28(17A,220) Conduct of contested case. Contested case proceedings shall comply with Iowa Code sections 17A.12 to 17A.17. The position of the division shall first be presented, then the position of the aggrieved party shall be offered. Rebuttal by either side may be made where appropriate, and the chair or other presiding officer of the division board may limit or direct the hearing to avoid repetitive or unnecessary portions of a presentation.

524—9.29(17A,220) Decisions. Decisions of the board shall be in writing and shall be mailed to the parties involved in the proceeding.

524—9.30(17A,220) Petition for receipt of additional evidence. If, prior to the issuance of the final decision, any party feels that the submission of additional evidence is necessary, the party shall request an opportunity to present additional evidence by mailing a request to the chair of the division's board by ordinary mail, c/o the division's office at 550 Liberty Building, Des Moines, Iowa 50309. The party shall, in addition, notify all opposing parties by certified mail, return receipt requested, including in such notice to the opposing parties all information submitted to the chair.

The chair shall review the requests and either reject the request or establish an additional hearing no sooner than seven (7) calendar days from his or her decision. The chair shall notify the parties of a decision to adopt additional evidence by certified mail, return receipt requested. Notice of a decision to reject additional evidence may be by ordinary mail.

Rules 9.22(17A,220) to 9.30(17A,220) are intended to implement Iowa Code sections 17A.10 to 17A.18.

ARC 7050

JOB SERVICE, DIVISION OF[345]

NOTICE OF INTENDED ACTION

Twenty-five interested persons, a governmental subdivision, an agency or an association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code §17A.4(1)"b".

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under §17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 96.11(1) and 17A.3, the Division of Job Service, Department of Employment Services, hereby gives Notice of Intended Action to adopt amendments to Chapter 4, "Claims and Benefits," and Chapter 6, "Appeals Procedures," Iowa Administrative Code.

Chapter 4 is amended throughout by striking the words "claims bureau" and inserting in lieu thereof "claims section". Chapter 6 is amended to comply with the proposed uniform rules by rescinding 345—6.5(96) and 345—6.8(96) and inserting new language.

The purpose of this notice is to solicit public comment on an emergency adopted and implemented filing, ARC 7049, the subject matter of which is incorporated by reference.

Interested persons, governmental agencies, and associations may present written comments or statements on the proposed amendments not later than 4:30 p.m., November 12, 1986, to James A. Hunsaker III, Department of Employment Services, 1000 East Grand Avenue, Des Moines, Iowa 50319. A public hearing will be held at 9:30 a.m., November 12, 1986, at the above address. Persons may present their views at this public hearing orally or in writing. Persons who wish to make oral presentations at the hearing should contact Mr. Hunsaker at least one day prior to the date of the public hearing.

This rule is identical to that published as Notice of Intended Action.

This rule will become effective February 4, 1987.

Rule 191—42.3(508) introductory paragraph, is amended to read as follows:

191—42.3(508) Use of gender-blended mortality tables. For any policy of insurance on the life of either a male or female insured delivered or issued for delivery in this state ~~before January 1, 1989 and~~ after the operative date of Iowa Code section 508.37, an insurer may:

[Filed 12/8/86, effective 2/4/87]
[Published 12/31/86]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 12/31/86.

ARC 7258

INSURANCE DIVISION[191]

Pursuant to the authority of Iowa Code sections 505.8 and 508.37, the Commissioner of Insurance adopts new Chapter 44, "Smoker/Nonsmoker Mortality Tables," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin on November 5, 1986, as ARC 7077.

Changes from the Notice are as follows:

Rule 44.1(508)—"premium rates" changed to "risk classifications" and rule 44.4(508)—the reference to Iowa Code changed from section 508.36(3)"a"(7)"f" to section 508.36(3)"a"(1).

These rules are intended to implement Iowa Code section 508.37(6)"h"(6).

These rules will become effective on February 4, 1987.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, page 485, the text of these rules (chapter 44) is being omitted. These rules are identical to those published under Notice as ARC 7077, Iowa Administrative Bulletin, 11/5/86, with the exception of rule 44.1(508), the words "premium rates" were changed to "risk classifications" and rule 44.4(508), the reference to Iowa Code in paragraph 2 was changed from section 508.36(3)"a"(7)"f" to section 508.36(3)"a"(1).

[Filed 12/10/86, effective 2/4/87]
[Published 12/31/86]

[For replacement pages for IAC, see IAC Supplement, 12/31/86]

ARC 7273

IOWA FINANCE AUTHORITY[524]

Pursuant to the authority of 1985 Iowa Code supplement, section 220.91, subsection 9, the Iowa Finance Authority hereby amends Chapter 9, "Title Guaranty Division," Iowa Administrative Code.

The Iowa Finance Authority adopts general rules that will specify the basic rule making and contested case procedures to be employed by the new Division established by 1985 Iowa Acts, chapter 252. The rules also address the Division's implementation of the new title guaranty program.

Notice of Intended Action was published in the Iowa Administrative Bulletin as ARC 7069 on October 22, 1986. A public hearing was held in Des Moines on November 12, 1986. A number of abstracters and attorneys commented on the need for attorneys doing abstracting to maintain and use a forty (40)-year title plant. Rule 9.14(220) has been changed to conform to the present practice of attorneys preparing abstracts by providing that participating attorneys, or persons under their supervision or control providing abstracting services on or before November 12, 1986, be exempted from the forty (40)-year title plant requirement.

These rules are intended to implement Iowa Code sections 17A.3, 17A.9, and 17A.10 to 17A.18, and 1985 Iowa Code supplement sections 220.1(34), 220.1(35), 220.2(1), 220.3(14), 220.5(15), 220.40, 220.91, 535.8(10) and 535A.12 and will become effective February 4, 1987.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, October 22, 1986, page 785, the text of these rules (amendment to ch 9) is being omitted. These rules are identical to those published under Notice as ARC 7069 except a sentence was added to 9.14(220) to conform to the present practices.

[Filed 12/12/86, effective 2/4/87]
[Published 12/31/86]

[For replacement pages for IAC, see IAC Supplement, 12/31/86]

ARC 7246

JOB SERVICE, DIVISION OF[345]

Pursuant to the authority of Iowa Code section 17A.3, the Director of the Department of Employment Services hereby adopts amendments to Chapter 4, "Claims and Benefits," and Chapter 6, "Appeals Procedure," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin, October 22,1986, as ARC 7050.

These rules are identical to those published in Iowa Administrative Bulletin dated October 22, 1986, as ARC 7049 with the exception that rule 6.5(96) has been slightly modified so that it conforms with the standard wording for the declaratory ruling language used in Iowa Administrative Code.

Chapter 4 is amended throughout by striking the words "claims bureau" and inserting in lieu thereof "claims section". Chapter 6 is amended to comply with the proposed uniform rules by rescinding rules 345—6.5(96) and 345—6.8(96) and inserting new language.

The rules were adopted by the Department of Employment Services Director on December 8, 1986, and will become effective February 4, 1987. Emergency filed rules (ARC7049) will be rescinded effective February 4, 1987.

These rules are intended to implement 1986 Iowa Acts, chapter 1245, sections 901 through 942.

The following rules are adopted:

INSPECTIONS AND APPEALS DEPARTMENT[481] *(cont'd)*

53.19(2) There shall be written and implemented policies and procedures governing the delivery of bereavement services.

This rule is intended to implement Iowa Code section 135.95(6).

481—53.20(135) Records. In accordance with accepted principles of medical record practice, each hospice shall maintain a centralized complete record on every individual receiving services. This record shall be preserved for at least three years following termination of services.

53.20(1) Each entry shall be dated and signed, including the name and title of the person who makes the entry.

53.20(2) The record shall include documentation of all services provided, whether furnished by the hospice or by contractual agreement. Each record shall include, but not be limited to:

a. Patient identification and demographic data;
b. Initial and subsequent assessments;
c. The plan of care;
d. Medical history;
e. Documentation of all services provided;
f. Consent and authorization forms;
g. Physicians' orders;
h. Medication records;
i. Discharge summary; and
j. Discharge and transfer records.

53.20(3) The hospice shall have written and implemented policies to safeguard destruction or unauthorized use of patient records. Written procedures shall govern use and removal of records, conditions for release of information and identification by title of the person who may release records.

These rules are intended to implement Iowa Code sections 135.90 to 135.95.

[Filed 4/12/90, effective 6/6/90]
[Published 5/2/90]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 5/2/90.

ARC 864A

IOWA FINANCE AUTHORITY[524]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 220.5 and 220.91, the Iowa Finance Authority hereby adopts amendments to Chapter 9, "Title Guaranty Division," Iowa Administrative Code.

The Iowa Finance Authority's adoption reflects changes in the law on Title Guaranty and changes in the Title Guaranty program implemented by the Title Guaranty Division.

Notice of Intended Action was published in the Iowa Administrative Bulletin on December 13, 1989, as ARC 511A. A public hearing was held January 2, 1990, in Des Moines to solicit comments on the proposed amendment. No comments were received.

These rules are identical to the Notice.

These amended rules were adopted April 13, 1990, and will become effective on June 6, 1990.

These rules are intended to implement Iowa Code section 220.91.

Amend 524—Chapter 9 as follows:

524—9.1(220) Location. The title guaranty division ("division") of the Iowa finance authority ("authority") is located at the offices of the Iowa Finance Authority, ~~Suite 550, Liberty Building, 6th~~ and ~~Grand Avenue,~~ *200 E. Grand Avenue, Suite 222,* Des Moines, Iowa 50309, telephone ~~515/281-4058,~~ *515/242-5128.*

524—9.12(220) General. The title guaranty division of the Iowa finance authority has established a program for offering mortgage lenders and the general public low cost protection against loss or damage caused by defective titles to Iowa real property. The title guarantees offered by the division will facilitate mortgage lender participation in the secondary market and add to the integrity of the land-title transfer system in the state. Title guaranty owners and lenders certificates will be available through participating attorneys throughout the state who shall act as limited agents for the division for the sole purpose of issuing title guaranty certificates subject to the rules of the division and applicable law. Any participating attorney rendering a title opinion shall be authorized to issue a title guaranty certificate subject to the rules of the division. The division shall require participating abstracters to update the abstract to any real property for which a guaranty is desired, in accord with division standards. Upon request by a mortgagor or participating lender, the participating attorney will issue a title guaranty commitment and the final guaranty certificate after reviewing an abstract prepared by a participating abstracter. ~~Participating mortgage lenders shall inform borrowers of the availability of the title guaranty and the cost associated with the purchase of a title guaranty.~~

524—9.13(220) Participation requirements for attorneys. Any attorney licensed to practice law in the state of Iowa shall be eligible to participate in the title guaranty program upon execution and acceptance by the division of a participation agreement in the form prescribed by the division. The participation agreement will require that the participating attorney:

1. Maintain attorney's liability insurance with limits of not less than one hundred thousand dollars ($100,000) per claim and not less than three hundred thousand dollars ($300,000) total annual limit, and disclose to the division the name, address, and phone number of the liability carrier and the amount of the insurance maintained.

2. Examine real estate titles for the purpose of accurately reporting the state of the title involved in accordance with the Iowa Land Title Examination Standards of the Iowa State Bar Association, where applicable, or other applicable law.

3. Pay an initial participation fee of twenty-five dollars ($25). ~~for the year beginning January 1, 1987, and pay an annual renewal fee of ten dollars ($10) for each year thereafter. Participation fees are due no later than January 30 of each calendar year.~~

4. Abide by the rules of the division and applicable law.

524—9.14(220) Participation requirements for abstracters. Any abstracter or abstracting concern shall be eligible to participate in the title guaranty program upon execution and acceptance of a participation agreement in a form prescribed by the division. The participation agreement shall require the participating abstracter or abstracting concern to:

IOWA FINANCE AUTHORITY[524] *(cont'd)*

1. Prepare abstracts in accord with the most current Iowa Land Title Association Uniform Abstracting Standards, where applicable.

2. Own or lease, and maintain and use in the preparation of abstracts as up-to-date abstract title plant including tract indices for real estate for each county in which abstracts are prepared for titles to real property guaranteed by the division. Each of the tract indices shall be designated to encompass a geographical area of not more than one (1) block in the case of platted real estate, nor more than one (1) section in the case of unplatted real estate. The tract indices shall include a reference to all of the instruments affecting real estate recorded in the office of the county recorder; and the tract indices shall commence not less than forty (40) years prior to the effective date of the abstracter's participation in the title guaranty program. Provided however, participating attorneys ~~or persons under their supervision or control~~ providing abstract services on ~~or before~~ *continuously from* November 12, 1986, *to the date of application either personally or through persons under their supervision and control* shall be exempt from the requirements of this paragraph.

3. Maintain abstracter's liability insurance in an amount not less than fifty thousand dollars ($50,000) total annual limit, and disclose to the division the name of the liability carrier and the amount of insurance maintained.

4. Pay an initial participation fee of twenty-five dollars ($25). ~~for the year beginning January 1, 1987, and pay an annual renewal fee of ten dollars ($10) for each year thereafter. Participation fees are due no later than January 30 of each calendar year.~~

5. Retain either a carbon copy or a mechanical reproduction of each certificate continuation and new abstract of title prepared after December 31, 1986, for which a title guaranty is issued.

6. Abide by the rules of the division and applicable law.

524—9.15(220) Participation requirements for lenders. Any mortgage lender as defined in Iowa Code section 220.1(14) that is authorized to make mortgage loans on Iowa real estate shall be eligible to participate in the title guaranty program. ~~upon execution and acceptance by the division of a participation agreement in the form prescribed by the division. The participation agreement shall require the participating lender to:~~

~~1. Pay an initial participation fee of $25.~~

~~2. Abide by the rules of the division and applicable law.~~

~~This rule is intended to implement Iowa Code section 220.91.~~

524—9.17(220) Application for waiver of participation requirements. It is the intention of the division to make title guaranties available statewide. Therefore, in order to achieve the widest possible geographic coverage, the division will allow any abstracter *or* attorney ~~or lender~~ the opportunity to apply for a waiver of the participation requirements set out in rules 9.13(220) *and* 9.14(220)~~, and 9.15(220)~~. Any application for waiver of participating requirements should be directed to the board of the division and should succinctly state which participation requirements are requested to be waived. The request should contain adequate supporting information and argument so that the board may make an informed decision on the request. It is the intention of the board to waive participation requirements only when it is determined that they result in a hardship to the requesting abstracter *or* attorney~~, or lender~~, and the waiver clearly is in the public interest or is absolutely necessary to ensure availability of title guaranties throughout the state.

524—9.18(220) Rates. The division shall fix the rate for the owner's guaranty, the lender's guaranty, and the various endorsements that will be offered by the division. The division shall make a published rate schedule available to mortgage lenders. ~~If an owner guaranty is purchased, the mortgagee may purchase a lender guaranty for a flat fee of fifteen dollars ($15).~~

524—9.20(220) Disclosure information. Rescinded, effective 6/6/90.

524—9.30(17A,220) Petition for receipt of additional evidence. If, prior to the issuance of the final decision, any party feels that the submission of additional evidence is necessary, the party shall request an opportunity to present additional evidence by mailing a request to the chair of the division's board by ordinary mail, c/o the Division's Office at ~~550 Liberty Building~~ *Suite 222, 200 E. Grand Avenue,* Des Moines, Iowa 50309. The party shall, in addition, notify all opposing parties by certified mail, return receipt requested, including in such notice to the opposing parties all information submitted to the chair.

The chair shall review the requests and either reject the request or establish an additional hearing no sooner than seven (7) calendar days from the chair's decision. The chair shall notify the parties of a decision to adopt additional evidence by certified mail, return receipt requested. Notice of a decision to reject additional evidence may be by ordinary mail.

Rules 9.22(17A,220) to 9.30(17A,220) are intended to implement Iowa Code sections 17A.10 to 17A.18.

[Filed 4/13/90, effective 6/6/90]
[Published 5/2/90]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 5/2/90.

ARC 838A

LAW ENFORCEMENT ACADEMY[501]

Adopted and Filed

Pursuant to the authority of Iowa Code section 80B.11, the Iowa Law Enforcement Academy hereby amends Chapter 1, "Organization and Administration," and adopts a new Chapter 10, "Reserve Officer Weapons Certification," Iowa Administrative Code.

These changes establish weapons training requirements for reserve peace officers in the state of Iowa.

Notice of Intended Action was published as ARC 669A in the Iowa Administrative Bulletin on February 21, 1990. Public comments were solicited and a public hearing was scheduled for March 13, 1990, but no comments or suggestions were received by the Academy concerning the proposed rules. However, subrule 10.1(2) was rewritten for clarification, and subrule 10.2(3) was renumbered as a new rule 501—10.3(80D).

Sec. 2. Section 15.308, subsection 2, Code Supplement 1991, is amended by adding the following new paragraph:

NEW PARAGRAPH. h. The federal home investment partnerships program of the Cranston-Gonzalez National Affordable Housing Act of 1990, Pub. L. No. 101-625.

Approved April 15, 1992

CHAPTER 1090

TITLE GUARANTY PROGRAM

S.F. 2235

AN ACT relating to the requirements of an abstractor participating in the title guaranty program.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 220.91, subsection 5, Code 1991, is amended to read as follows:

5. The participation of abstractors and attorneys shall be in accordance with rules established by the division and adopted by the authority pursuant to chapter 17A. Each participant shall at all times maintain liability coverage in amounts approved by the division. Upon payment of a claim by the division, the division shall be subrogated to the rights of the claimant against all persons relating to the claim.

Additionally, each participating abstractor is required to own or lease, and maintain and use in the preparation of abstracts, an up-to-date abstract title plant including tract indices for real estate for each county in which abstracts are prepared for real property titles guaranteed by the division. The tract indices shall contain a reference to all instruments affecting the real estate which are recorded in the office of the county recorder, and shall commence not less than forty years prior to the date the abstractor commences participation in the title guaranty program. However, a participating attorney providing abstract services continuously from November 12, 1986, to the date of application, either personally or through persons under the attorney's supervision and control is exempt from the requirements of this paragraph.

The division may waive the requirements of this subsection pursuant to an application of an attorney or abstractor which shows that the requirements impose a hardship to the attorney or abstractor and that the waiver clearly is in the public interest or is absolutely necessary to ensure availability of title guaranties throughout the state.

Approved April 15, 1992

HUMAN SERVICES DEPARTMENT[441](cont'd)

the home. Current rules require both providers to meet Category C qualifications. This amendment allows the second provider in a Category C home to meet Category B qualifications.

Category C providers must be older (at least 21 years of age instead of 20) and have three more years of child care experience than Category B providers (four years, or five years if the provider does not have relevant postsecondary education). Some providers have reported that it is difficult to find a second provider who meets these more stringent qualifications. The Department believes that allowing this flexibility is a reasonable accommodation and will still provide for effective leadership in a Category C home.

This amendment does not provide for waivers in specified situations because this change is a benefit to providers.

Any interested person may make written comments on the proposed amendment on or before May 19, 2004. Comments should be directed to the Office of Policy Analysis, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by E-mail to policyanalysis@dhs.state.ia.us.

This amendment is intended to implement Iowa Code section 237A.3A.

The following amendment is proposed.

Amend subrule 110.10(2) as follows:

110.10(2) Provider qualifications.

a. *One provider who meets the following qualifications must always be present:*

(1) The provider shall be at least 21 years old.

~~b.~~ *(2)* The provider shall have a high school diploma or GED.

~~c.~~ *(3)* The provider shall either:

~~(1)~~ *1.* Have five years of experience as a registered or nonregistered child care provider, or

~~(2)~~ *2.* Have a child development associate credential or any two-year or four-year degree in a child care-related field and four years of experience as a registered or nonregistered child care home provider.

b. The coprovider shall meet the requirements of subrule 110.9(2).

ARC 3322B

IOWA FINANCE AUTHORITY[265]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 17A.3(1), 16.5(17), 16.91(5) and 16.91(8), the Iowa Finance Authority hereby gives Notice of Intended Action to amend Chapter 9, "Title Guaranty Division," Iowa Administrative Code.

This rule making rescinds rules 265—9.1(16) through 265—9.19(16) and adopts new rules 265—9.1(16) through 265—9.15(16) concerning the Title Guaranty Division. The new rules detail the mission, organization, program and operations of the Title Guaranty Division of the Iowa Finance Authority, including the office where and the means by which interested persons may obtain information and make submissions or requests. The existing rule 265—9.20(78GA,ch54), concerning the mortgage release certificate program, and rule 265—9.21(16), concerning the seal, are not amended as part of this rule-making action.

These new rules are proposed in accordance with Executive Order Number 8 issued by the Governor on September 14, 1999.

Chapter 9 does not provide for waivers except as required by Iowa Code section 16.91(5). Persons seeking waivers for other matters must petition the Authority for a waiver in the manner set forth under 265—Chapter 18.

The Authority will receive written comments on the proposed rules until 5 p.m. on May 18, 2004. Comments may be addressed to James Smith, Iowa Finance Authority, 100 East Grand Avenue, Suite 250, Des Moines, Iowa 50309. Comments may also be faxed to James Smith at (515) 242-4957 or may be E-mailed to james.smith@ifa.state.ia.us. Persons who wish to comment orally should contact James Smith at (515)242-4990.

These rules are intended to implement Iowa Code sections 17A.3(1), 16.5(17), 16.91(5) and 16.91(8).

The following amendment is proposed.

Rescind rules **265—9.1(16)** through **265—9.19(16)** and adopt in lieu thereof new rules 265—9.1(16) through 265—9.15(16):

265—9.1(16) Purpose. This chapter describes the mission, organization, programs and operations of the title guaranty division (division) of the Iowa finance authority (authority), including the office where and the means by which interested persons may obtain information and make submissions or requests.

265—9.2(16) Mission. The mission of the division is to operate a program that offers guaranties of real property titles in order to provide, as an adjunct to the abstract-attorney's title opinion system, a low-cost mechanism to facilitate mortgage lenders' participation in the secondary market and add to the integrity of the land-title transfer system in the state. Surplus funds in the title guaranty fund shall be transferred to the authority's housing program fund after providing for adequate reserves and for the operating expenses of the division.

265—9.3(16) Definitions. The following words and phrases, when used in this chapter, shall have the meanings set forth below unless a meaning is inconsistent with the manifest intent or the context of a particular rule:

"Certificate" means the title guaranty certificate including any part or schedule and any endorsements.

"Commitment" means the commitment to insure title including any part or schedule and any endorsements.

"Electronic record," for the purposes of the title guaranty program, means a record created, generated, sent, communicated, received, or stored by electronic means that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

"Participant" means a participating attorney and a participating abstractor.

"Participating abstractor" means an abstractor who is authorized to participate in the title guaranty program and who is in full compliance with the abstractor's participation agreement, the Code of Iowa, these rules, manuals, and guides and any other written or oral instructions or requirements given by the division.

"Participating attorney" means an attorney who is authorized to participate in the title guaranty program and who is in full compliance with the attorney's participation agreement,

the Code of Iowa, these rules, manuals, and guides and any other written or oral instructions or requirements given by the division and who is not subject to current disciplinary proceedings by the Iowa supreme court.

"Residential property," for the purposes of the title guaranty program, means residential real estate consisting of single-family housing or multifamily housing of no more than six units.

"Supervision and control," for the purposes of the title guaranty program, means that a participant's shareholders, partners, associates, secretaries, paralegals, and other persons under the participant's supervision or control who transact the business of abstracting, which includes but is not limited to any manner of title search or review, opining on titles to real estate, or issuing commitments or certificates at the direction of or in the name of the participant, shall comply with the requirements of the contracts, forms, manuals, instructions, and guides and any other written or oral instructions given by the division. A participant shall be liable to the division for loss or damage suffered by the division resulting from acts or omissions of the participant's shareholders, partners, associates, secretaries, paralegals, and other persons under the participant's supervision or control who transact the business of abstracting, which includes but is not limited to any manner of title search or review, opining on titles to real estate, or issuing commitments or certificates at the direction of or in the name of the participant as an agent of the division as though the act or omission were that of the participant.

265—9.4(16) Organization.

9.4(1) Location. The office of the division is located at 200 East Grand Avenue, Suite 350, Des Moines, Iowa 50309. Office hours are 8 a.m. to 4:30 p.m. Monday through Friday, excluding legal holidays. The division's Web site address is www.ifahome.com/partner_tgd.asp, and the division's telephone and facsimile numbers are as follows: (515)242-4989 (general telephone number); 1-800-843-0201 (toll-free telephone number); (515)242-4890 (TTY); and (515)242-4994 (facsimile).

9.4(2) Division board and staff. The powers of the division are vested in and exercised by a board of five members, appointed by the governor and subject to confirmation by the senate. The board membership includes an attorney, an abstractor, a real estate broker, a representative of a mortgage lender, and a representative of the housing development industry. A chair and vice-chair are elected annually by the members, generally at the first meeting following July 1 of each year, which is the beginning of the fiscal year. Division staff consists of a director and additional staff as approved by the executive director of the authority.

9.4(3) Division director. The executive director of the authority appoints the director of the division. The division director shall be an attorney licensed to practice law in the state of Iowa and in good standing with the Iowa supreme court at all times while acting as the division director. The appointment of and compensation for the division director are exempt from the merit system provisions of Iowa Code chapter 19A. The division director serves as an ex-officio member of the division board and as secretary to the division board.

9.4(4) Meetings. Meetings of the division board are held quarterly on the date and time determined by the board. Meetings of the division board may also be held at the call of the chair or on written request of two members. The division will give advance public notice of the specific date, time and place of each division board meeting, and will post the tentative agenda for each meeting at least 24 hours before commencement of the meeting at the division office and at the main office of the authority, as well as on the authority's Web site. Meetings may occasionally be conducted by electronic means. Any interested party may attend and observe board meetings except for any portion of a meeting that may be closed pursuant to Iowa Code section 21.5. The minutes of the board meetings are available for viewing at the division's office or via the authority's Web site. Three members of the division board constitute a quorum. An affirmative vote of a majority of the appointed members is necessary for any substantive action taken by the division board. The majority shall not include any board member who has a conflict of interest, and a statement of a conflict of interest shall be conclusive for this purpose.

265—9.5(16) Location where public may obtain information. Requests for information, inquiries, submissions, petitions and other requests may be directed to the division at the address set forth in subrule 9.4(1). Requests may be made personally, by telephone, mail, E-mail or any other medium available.

265—9.6(16) Title guaranty program.

9.6(1) General. The division operates a program to offer guaranties of real property titles in the state through the issuance of title guaranty certificates. Title guaranty certificates may be issued by the division or by participating attorneys.

9.6(2) Participating attorneys. An attorney licensed to practice law in the state of Iowa may participate in the title guaranty program upon approval by the division director of an application to the division and upon execution and acceptance by the division director of an attorney's participation agreement.

a. Authority of participating attorney. A participating attorney is authorized to act as an agent of the division but only for the purposes and in the manner set forth in the attorney's participation agreement, the Code of Iowa, these rules, manuals, requirements and any other written or oral instructions given by the division and in no other manner whatsoever. The authority of the participating attorney under the preceding sentence is not exclusive and is subject to the rights of the authority, of the division and of other participating attorneys, agents, or representatives of the division to transact the business of opining on titles to real estate or issuing commitments or certificates and is further subject to the right of the division to appoint other participating attorneys.

b. License. A participating attorney shall be licensed to practice law in the state of Iowa and shall be in good standing with the Iowa supreme court at all times while acting as an agent of the division.

c. Errors and omissions insurance. A participating attorney shall maintain errors and omissions insurance at all times while acting as an agent of the division, with such coverage and in such amounts as the division board may direct from time to time by resolution.

The division will inform the Iowa State Bar Association, the Iowa Land Title Association, and any person requesting such information of any proposed change in the amount of required errors and omissions insurance at least 30 days prior to the date of the meeting at which the matter will be considered. Interested parties may submit evidence or statements in support of or in opposition to the proposal in writing or by personal appearance before the division board.

d. Participation fees. A participating attorney shall pay participation fees in such amounts and at such times as the division board may set from time to time by resolution. Par-

IOWA FINANCE AUTHORITY[265](cont'd)

ticipation fees set by the division board are subject to the approval of the authority board.

The division will inform the Iowa State Bar Association, the Iowa Land Title Association, and any person requesting such information of any proposed change in the amount of attorney participation fees at least 30 days prior to the date of the meeting at which the matter will be considered. Interested parties may submit evidence or statements in support of or in opposition to the proposal in writing or by personal appearance before the division board.

e. Training. A participating attorney shall complete division forms and procedures training prior to issuing title guaranty certificates as an agent of the division.

f. Underwriting determinations. A participating attorney shall make all underwriting determinations prior to or at the closing. If the participating attorney does not attend the closing and is not available by telephone during the closing, all underwriting determinations must have been made by the participating attorney issuing the opinion, commitment or certificate prior to closing. For purposes of this rule, the term "underwriting determinations" includes, but is not limited to, insuring access, reviewing gap searches, possible judgments, survey matters (including encroachments), unreleased mortgages or other liens, and any other matters disclosed by the opinion, commitment or other sources of title information. A participating attorney who causes or allows an erroneous underwriting determination to be made by someone other than a member of the division's legal staff or the participating attorney who issued the opinion, commitment or certificate shall be strictly liable to the division for loss or damage the division may suffer as a result of the erroneous underwriting determination.

A participating attorney shall make all underwriting determinations arising out of the issuance of an attorney title opinion or a title commitment using both:

1. Generally accepted and prudent title examining methods; and

2. Procedures implemented by the division and outlined in these rules, manuals, and guides and any other written or oral instructions or requirements given by the division.

Any underwriting determination about which there may be a bona fide difference of opinion among local lawyers and that is not specifically covered by materials provided by the division shall be approved by division legal staff.

g. Title files. A participating attorney shall maintain separate title files or maintain client files in such a manner that information pertaining to activities of the participating attorney as an agent and underwriter for the division are readily available to the division. A participating attorney shall maintain title files and the title portion of client files for a period of ten years after the effective date of the certificate or certificates.

h. Forms. The division will provide forms to a participating attorney for use in acting as an agent of the division. A participating attorney may not alter any form supplied by the division, or use a form supplied by another person or entity to bind the division, or otherwise bind the division to liability with a form, other writing or representation not supplied or authorized by the division.

A participating attorney who obtains serialized forms from the division must maintain a forms register, in a format approved or supplied by the division, in which the participating attorney shall enter a record of and show the disposition of all serialized forms. In addition, the participating attorney shall:

1. Return the original of any damaged, spoiled, or otherwise unusable serialized form to the division;

2. Return the original of any unused serialized form to the division at the request of the division; and

3. Not transfer or attempt to transfer unissued serialized forms to another participating attorney or other person or entity unless authorized in writing by the division.

If a participating attorney fails to comply with the requirements of this rule, in addition to the division's other rights and remedies, the division may refuse to supply any forms to the participating attorney until the participating attorney complies with the requirements of this rule to the satisfaction of the division.

The participating attorney shall be liable to the division for loss or damage sustained by the division by reason of the loss of, misuse of, or inability of the participating attorney to account for any form supplied by the division, or the failure of the participating attorney to comply with the requirements of this rule.

i. Certificate amount limitations. A participating attorney shall obtain the written authorization of the division's legal staff prior to issuing a commitment or certificate which exceeds such amounts as the division board may set from time to time by resolution. If any authorization required under this rule is not obtained through the act or omission of the participating attorney, the participating attorney shall be strictly liable to the division for any loss or damage resulting from issuance of the commitment or certificate.

9.6(3) Participating abstractors. An abstractor or abstracting concern may participate in the title guaranty program upon approval by the division director of an application to the division and upon execution and acceptance by the division director of an abstractor's participation agreement.

a. Authority of participating abstractor. A participating abstractor is authorized to act as an agent of the division but only for the purposes and in the manner set forth in the abstractor's participation agreement, the Code of Iowa, these rules, manuals, requirements and any other written or oral instructions given by the division and in no other manner whatsoever. The authority of the participating abstractor under the preceding sentence is not exclusive and is subject to the rights of the authority, of the division and of other participating abstractors, agents, or representatives of the division to transact the business of abstracting, which includes but is not limited to any manner of title search or review of titles to real estate, and is further subject to the right of the division to appoint other participating abstractors.

b. Title plant. Participating abstractors shall own or lease, and maintain and use in the preparation of abstracts, an up-to-date abstract title plant including tract indices for real estate for each county in which abstracts are prepared for titles to real property guaranteed by the division. Each of the tract indices shall be designated to encompass a geographical area of not more than one block in the case of platted real estate, nor more than one section in the case of unplatted real estate. The tract indices shall include a reference to all of the instruments affecting real estate recorded in the office of the county recorder, and the tract indices shall commence not less than 40 years prior to the effective date of the abstractor's participation in the title guaranty program.

c. Exempt attorneys. Participating attorneys who have been providing abstract services continuously from November 12, 1986, to the date of application to be a participating abstractor, either personally or through persons under their supervision and control, shall be exempt from the requirement to own or lease a title plant. This exemption is a person-

al exemption of the individual participating attorney, is not transferable, and terminates at such time as the individual ceases providing abstracting services or upon the death or incapacity of the individual.

d. Errors and omissions insurance. A participating abstractor shall maintain errors and omissions insurance at all times while acting as an agent of the division, with such coverage and in such amounts as the division board may direct from time to time by resolution.

The division will inform the Iowa Land Title Association, the Iowa State Bar Association, and any person requesting such information of any proposed change in the amount of required errors and omissions insurance at least 30 days prior to the date of the meeting at which the matter will be considered. Interested parties may submit evidence or statements in support of or in opposition to the proposal in writing or by personal appearance before the division board.

e. Participation fees. A participating abstractor shall pay participation fees in such amounts and at such times as the division board may set from time to time by resolution. Participation fees set by the division board are subject to the approval of the authority board.

The division will inform the Iowa Land Title Association, the Iowa State Bar Association, and any person requesting such information of any proposed change in the amount of abstractor participation fees at least 30 days prior to the date of the meeting at which the matter will be considered. Interested parties may submit evidence or statements in support of or in opposition to the proposal in writing or by personal appearance before the division board.

9.6(4) Abstract of title. For the purposes of the title guaranty program, an abstract of title shall be a written or electronic summary of all matters of record including, but not limited to, grants, conveyances, easements, encumbrances, wills, and judicial proceedings affecting title to a specific parcel of real estate, together with a statement including, but not limited to, all liens, judgments, taxes or special assessments affecting the property and a certification by a participating abstractor that the summary is complete and accurate.

An abstract of title shall be brought up to date and certified by a participating abstractor prior to the issuance of a title guaranty certificate; provided that, in the event a titleholder undertakes to refinance a mortgage or grant a junior mortgage on residential property; and a title guaranty certificate was issued for a transaction while said titleholder owned the property; and no changes in the ownership or in the legal description of the property have occurred since the above described title guaranty certificate effective date, for the purposes of the title guaranty program, a title guaranty certificate may be issued for the refinanced or junior mortgage based on the coverage and exceptions from the above described prior title guaranty certificate and a search of the public records from the effective date of the above described prior title guaranty certificate including a ten-year judgment lien search against the titleholder. For the purposes of the title guaranty program, the search and title guaranty certificate issued for refinanced and junior mortgages pursuant to this rule shall be deemed to relate back to the abstract of title and title guaranty certificate issued for the transaction while the said titleholder owned the property.

All abstracts of title and searches shall be prepared and conducted in compliance with division procedures in effect at the time of the updating of the abstract or search. A participating abstractor shall retain a written or electronic copy of each abstract of title or search prepared for a title guaranty certificate and shall provide such copy to the division upon request.

9.6(5) Attorney title opinion. All attorney title opinions shall be prepared and issued in compliance with division procedures in effect at the time of issue. A participating attorney shall retain a written or electronic copy of each attorney title opinion and shall provide such copy to the division upon request. Participating attorneys who are issuing agents for the division may issue a commitment as the preliminary attorney title opinion and the title guaranty certificate as the final attorney title opinion in compliance with division procedures in effect at the time of issue.

9.6(6) Participant's interest in property. No participant shall prepare an abstract of title or issue attorney title opinions, commitments, or certificates upon property in which the participant has an interest without prior authorization of the division.

265—9.7(16) Application for waiver of participation requirements. The division board shall consider applications for waiver of the requirements of Iowa Code section 16.91(5).

9.7(1) Applications for waiver of participation requirements shall be in writing and directed to the division board. The application shall:

a. State which participation requirements are requested to be waived; and

b. Include adequate supporting information and argument so that the division board may make an informed decision on the request.

9.7(2) The applicant may request to appear before the division board but shall not be required to make a personal appearance.

a. If the applicant appears before the division board regarding the application, the applicant may present additional evidence, including the testimony of witnesses in support of the application for waiver.

b. If the applicant does not make a personal appearance before the division board regarding the application, the board may proceed to make a decision based on the application and the supporting information submitted with the application for waiver.

9.7(3) The division will inform participating abstractors and participating attorneys in the county for which the waiver is requested, the Iowa State Bar Association, the Iowa Land Title Association, and any person requesting such information that an application for waiver has been made to the division. Interested parties may submit evidence or statements in support of or in opposition to the application in writing or by personal appearance before the division board. Notification to interested parties is not a requirement for the division board to consider the waiver, and failure to inform interested parties of an application for waiver shall not void or otherwise nullify any action or decision of the division board.

9.7(4) The division board may grant the waiver if the board finds:

a. That the requirements of Iowa Code section 16.91(5) impose a hardship to the attorney or abstractor; and

b. That the waiver is:

(1) Clearly in the public interest; or

(2) Absolutely necessary to ensure availability of title guaranties throughout the state.

9.7(5) The decision of the division board shall be final agency action.

265—9.8(16) Application for title guaranty certificates. The division may authorize entities engaged in the real estate industry to apply directly to the division for a title guaranty

IOWA FINANCE AUTHORITY[265](cont'd)

commitment or certificate to be issued by the division. The applicant shall complete and submit such forms and other information as the division may require and pay the appropriate fee. Entities engaged in the real estate industry which the division may authorize include, but are not limited to, mortgage lenders as defined in Iowa Code section 16.1(27), and closing and escrow companies.

265—9.9(16) Contracts, forms, manuals, instructions, and guides. The division shall adopt and issue such contracts, forms, manuals, instructions, and guides as the division deems necessary to set out participation standards and requirements, and such other matters that the division deems necessary for implementation and effective administration of the title guaranty program. The provisions of the manuals, instructions, and guides shall be applicable to participants in the title guaranty program.

9.9(1) Adoption. The contracts, forms, manuals, instructions, and guides will be adopted or revised or amended on approval of a majority vote of the division board, without publication of notice and without providing an opportunity for public comment. In accordance with Iowa Code section 17A.4(2), the contracts, forms, manuals, instructions, and guides are a classification of rule making for which notice and public participation are impracticable and unnecessary because:

a. Iowa Code section 16.2 vests the powers of the division relating to the issuance of title guaranties in the division board, and Iowa Code section 16.91 authorizes the division board to operate the title guaranty program and adopt contracts, forms, and set fees;

b. Such contracts, forms, manuals, instructions, and guides may need to be amended quickly to address title underwriting standards and procedures, to protect the division and its programs, and to ensure the efficient operation of the division; and

c. Participants are agents or quasi agents of the division and the contracts, forms, manuals, instructions, and guides are intra-agency directives.

The division will inform the Iowa State Bar Association, the Iowa Land Title Association, and any person requesting such information of any proposed change in the contracts, forms, manuals, instructions, and guides at least 30 days prior to the date of the division board meeting at which the matter will be considered. Interested parties may submit evidence or statements in support of or in opposition to the proposal in writing or by personal appearance before the division board.

9.9(2) Availability. The contracts, forms, manuals, instructions, and guides are furnished to participants in the title guaranty program at no charge. They may be reviewed and copied in their entirety from the division's Web site. Copies shall be deposited with the administrative rules coordinator and at the state law library. Copies of paper editions for nonparticipants are available from the division upon request for a fee. The division will charge a fee to recover the costs of the binder, contents, and mailing for the paper editions. Current price information is available upon request from the division.

265—9.10(16) Rates. The division board shall fix the rate or fee, if any, for the owner's guaranty, the lender's guaranty, the various endorsements, the closing protection letter and any other product or service that will be offered by the division. The division shall set the rates by resolution and may change the rates from time to time in the same manner.

265—9.11(16) Fees and premiums. No participant in the title guaranty program shall charge or receive any portion of the fee for the guaranty or the fee for any other product or service that is paid to the division.

9.11(1) A participant shall calculate the title certificate fees according to the applicable rate schedule in effect on the effective date of the commitment or of the certificate, whichever is earlier. A participant shall collect the fee in effect for any other product or service offered by the division at the time the product or service is sold.

9.11(2) A participant may charge and collect fees that are customarily charged for services or other products provided as part of a real property transaction.

9.11(3) All fees collected by a participant payable to the division shall be held for the use and benefit of the division until paid to the division. The participant shall remit the fees payable to the division at the time and in the manner directed by the division from time to time, but in no event later than the date of the issuance of the guaranty.

265—9.12(16) Audit procedures.

9.12(1) Serialized forms audit. The division will periodically supply to a participating attorney who issues title guaranty certificates a list of all serialized forms that, according to the division's records, are in the custody and control of the participating attorney. The participating attorney shall, within 15 days of receipt of the list of serialized forms, return the list to the division either with a certification that it is correct, or with an explanation of any discrepancies between the records of the division and the participating attorney.

9.12(2) Office audits. The division may, with or without notice to a participating abstractor or participating attorney, audit the participant at the participant's office. This audit may include, but need not be limited to, a review of the participant's commitment and policy issuance procedures, an audit of serialized forms, an audit and test of title plants and tract indices, and verification of the participant's compliance with participation agreements, the Code of Iowa, these rules, manuals, and guides and any other written or oral instructions or requirements of the division.

265—9.13(16) Claims.

9.13(1) Claim procedures. In the event of loss or damage or potential loss or damage arising by reason of a matter actually, possibly, or allegedly within the coverage of a commitment or certificate or by reason of any other matter for which the division is actually, possibly, or allegedly liable (referred to herein as a "claim"), the rights and responsibilities of the division and the participating abstractor and participating attorney are as follows:

a. Upon receipt of notice by a participant of a claim, the participant must notify the division in writing, setting forth and including at a minimum:

(1) The name, address, and telephone number of the claimant and the claimant's attorney, if any;

(2) The number assigned to the commitment and certificate and a copy of the commitment and certificate if not previously forwarded to the division; and

(3) A description of the claim and copies of any documents, correspondence, surveys, title searches, or other writings, and other information supplied to or available to the participant relevant to the claim.

Under this rule, the participant shall notify the division within three business days of receipt of information about a claim and shall mail notification to the division by first-class mail at the division's address in subrule 9.4(1). In addition to the notice required by the preceding sentence, if the nature of the claim is such that the insured claimant or the division, or both, may suffer loss or damage that might be reduced or

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avoided by notice given more promptly than required by the preceding sentence, the participant shall notify the division by telephone, facsimile transmission, overnight mail or other overnight delivery service, or any combination of these methods.

b. When a participant receives a request from the division for information with respect to a claim, the participant shall supply to the division any documents, correspondence, surveys, abstracts of title, title searches, other writings, or other information known by or available to the participant and relevant to the claim, even if not specifically requested by the division. The participant's response to the division under this paragraph must be made within three days of the participant's receipt of the request and must be sent by first-class mail to the division employee, agent, or other authorized person who requested the information. In addition to the participant's response as required by the preceding sentence, if the nature of the claim is such that the insured claimant or the division, or both, may suffer loss or damage that might be reduced or avoided by a response quicker than that required by the preceding sentence, or if the division requests a quicker response, the participant shall respond by telephone, facsimile transmission, overnight mail or other overnight delivery service, or any combination of these methods, to the division employee, agent, or other authorized person requesting the information.

c. A participant shall cooperate fully in the investigation and resolution of a claim and shall supply any additional, new information that may come to the participant's attention with such promptness as the circumstances permit.

d. The division may, with or without prior notice to the participant or participants involved, investigate and resolve any claim in any manner that, in the division's sole discretion, the division may deem advisable. Investigation and resolution may include but are not limited to, determinations of liability, retention of counsel for the division or for the insured claimant, settlement with the insured claimant or other party, and recovery of amounts paid.

9.13(2) Claim loss recovery from participants.

a. Amounts paid by the division in the investigation and resolution of a claim, hereinafter referred to as a "claim loss," including, but not limited to, payments to the insured, payments to adverse claimants, attorneys' fees, and all other expenses and costs related to or arising from the claim in accordance with the provisions of this rule, are recoverable from a participant by the division.

b. In the absence of knowledge by the participant about the title defect or other matter causing the claim loss, the division shall not seek recovery from the participant when a claim loss arises from one or more of the following:

(1) Hidden defects, including, but not limited to, forged deeds and mortgages, false affidavits, and false statements of marital status;

(2) Errors by public officials in maintaining and indexing the public records including, but not limited to, errors by county assessors, recorders, clerks, and treasurers;

(3) Errors in these rules, the division's manuals, guides, procedures, and any other written or oral instructions or requirements given by the division that the participant relies upon in issuing an abstract of title, opinion, commitment, certificate, or endorsement;

(4) Errors in surveys provided by registered Iowa land surveyors that the participant relies upon in giving survey coverage or issuing an endorsement or endorsements; or

(5) Underwriting determinations or title risks approved by the division prior to issuance of the abstract of title, opinion, commitment, certificate, or endorsement.

c. The participant shall reimburse the division for a claim loss when the division determines, in accordance with 9.13(2)"d," that the participant is liable and when the claim loss arises from one or more of the following:

(1) Errors by the participant in the title search and report of information in the public record;

(2) Reliance by the participant upon sources of title searches and other title information that had not been approved by the division at the time of the reliance;

(3) Errors made by the participant in examining the title information provided in an abstract of title, survey, affidavit, or other source of title information;

(4) Errors made by the participant in the preparation or review of an abstract of title, opinion, commitment or certificate;

(5) Knowing issuance of an abstract of title, opinion, commitment or certificate by the participant upon a defective title; or

(6) Failure of the participant to follow these rules, the division's manuals, guides, procedures, or any other written or oral instructions or requirements given by the division with respect to any other matters not included within 9.13(2)"c."

d. Unless another rule, the Code of Iowa, a procedure, or a guideline provides for a different standard of liability or other rule for determining whether the participant shall be liable for a claim loss, the division shall apply the following standards:

(1) In the event that a claim loss occurs for which the division may seek recovery from the participant under 9.13(2)"c"(1), the division may demand reimbursement from the participant if the participant was grossly negligent in conducting the title search. Gross negligence includes the failure to make a search or the use of inadequate search procedures. Gross negligence under the preceding sentence includes but is not limited to failure to search certain indices, failure to search all names of parties with an interest in the real estate, or failure to search in all public offices required by the division search procedures or procedures used by prudent title searchers if the division has not established specific search procedures. In making its determination whether to seek recovery, the division may consider the complexity of the public rec-ord, the reliance of the participant upon division-approved search procedures, the training and experience of the person who made the error, and the existence or nonexistence of previous search errors by the participant.

(2) In the event that a claim loss occurs for which the division may seek recovery from the participant under 9.13(2)"c"(2), the division may demand reimbursement from the participant if the participant relied upon sources of title searches or other title information that had not been approved by the division at the time of the reliance.

(3) In the event that a claim loss occurs for which the division may seek recovery from the participant under 9.13(2)"c"(3), the division may demand reimbursement from the participant if the participant negligently examined the title information used in making a title determination, failed to raise an appropriate exception, waived an exception, or endorsed a title commitment or certificate. The division may make full review of local county abstracting standards and bar title rules as a guide to determine whether the participant has failed to meet the standard of skill and competence of an abstractor who prepares an abstract of title or a lawyer who examines titles in the community where the claim arose.

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The division may also consider whether the participant followed these rules, the division's manuals, guides, procedures, or any other written or oral instructions or requirements given by the division in examining the title. In addition, the division may seek input from other participants in the community in which the claim arose as to the standard of care of an abstractor who prepares an abstract of title or of a lawyer who examines titles in that community.

(4) In the event that a claim loss occurs for which the division may seek recovery from the participant under 9.13(2)"c"(4), the division may demand reimbursement from the participant if the participant negligently prepared and reviewed an abstract of title, opinion, commitment or certificate.

(5) In the event that a claim loss occurs for which the division may seek recovery from the participant under 9.13(2)"c"(5), the division may demand reimbursement from the participant if the issuance of the abstract of title, opinion, commitment or certificate constituted fraud, concealment or dishonesty, or if the issuance of the abstract of title, opinion, commitment or certificate was based upon an underwriting decision on an unusual risk that was made without contacting the division for approval.

(6) In the event that a claim loss occurs for which the division may seek recovery from the participant under 9.13(2)"c"(6), the division may demand reimbursement from the participant if the participant failed to follow these rules, the division's manuals, guides, procedures, or any other written or oral instructions or requirements given by the division with respect to the matter causing the claim loss.

(7) In the event the division seeks reimbursement from a participant, the division shall state the basis of the reimbursement as indicated in 9.13(2)"c" and 9.13(2)"d"(1) to (6).

e. The division board may, from time to time by resolution, establish levels of authority, including dollar amounts, for the board, the director and division staff for the settlement of claims made under the title guaranty certificates.

265—9.14(16) Rules of construction. In the construction of these rules, the following rules shall be observed, unless either the rules of the Iowa Code, Chapter 4, Construction of Statutes, or the following rules are inconsistent with the manifest intent or the context of the rule:

The word "shall" means mandatory and not permissive and the word "may" means permissive and not mandatory.

The word "closing" includes, but is not limited to, the recording of a deed executed and delivered in lieu of a mortgage foreclosure or pursuant to a mortgage foreclosure proceeding and also includes the entry into a binding agreement and transfer of possession by a seller to a buyer on a contract sale of land.

Nothing contained in these rules shall be construed to require a participating attorney to disclose privileged information of a client to the division or to any other party.

Any rule that provides a specific remedy or sanction for violation of the rule shall not be construed as limiting the ability of the division to pursue and enforce other penalties or sanctions under these rules, or otherwise, against the participating abstractor, participating attorney or other person responsible or liable, either separately, concurrently, cumulatively, or in any combination, at the sole discretion of the division.

The failure of the division to enforce a right or remedy under these rules, a statute, or the common law shall not be construed as a waiver of such right or remedy either in the specific instance or in any other instance.

265—9.15(16) Implementation. The provisions for abstracting requirements in the event of refinancing a mortgage or granting a second mortgage set out in subrule 9.6(4), first unnumbered paragraph, shall be implemented upon the issuance of a manual, instruction or guide by the division board.

265—9.16 through 9.19 Reserved.

ARC 3321B

PAROLE BOARD[205]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 904A.4(2) and 906.3, the Board of Parole hereby gives Notice of Intended Action to rescind Chapters 1 to 15 and adopt new Chapters 1 to 16, Iowa Administrative Code.

Since the Board's present rules became effective on or about July 7, 1999, there have been substantial changes in the Iowa Code sections which the rules are intended to implement, as well as in Board policy and procedure. These changes have necessitated a redrafting of the Board's administrative rules. A synopsis of the rules is as follows:

Chapter 1 defines the organization, administration, and duties of the Board of Parole.

Chapter 2 provides the general rule-making procedures of the Board of Parole.

Chapter 3 provides the manner in which the public may petition for rule making.

Chapter 4 provides the manner in which the public may request a declaratory ruling.

Chapter 5 provides information regarding the Iowa Fair Information Practices Act.

Chapter 6 defines public records and communications with the Board of Parole.

Chapter 7 provides procedures relating to victim notification.

Chapter 8 provides procedures relating to consideration for parole and work release.

Chapter 9 is reserved.

Chapter 10 provides the general parole and work release supervision procedures of the Board of Parole.

Chapter 11 provides the general parole revocation procedures of the Board of Parole.

Chapter 12 is reserved.

Chapter 13 provides the general parole discharge procedures of the Board of Parole.

Chapter 14 provides procedures relating to executive clemency.

Chapter 15 provides the general appeal procedures of the Board of Parole.

Chapter 16 provides the waiver procedures of the Board of Parole.

Any interested person may submit written comments on or before May 18, 2004, addressed to Richard S. Bordwell, Vice Chair, Board of Parole, Holmes Murphy Building, 420 Watson Powell Jr. Way, Des Moines, Iowa 50309.

These amendments are intended to implement Iowa Code section 34A.7A as amended by 2004 Iowa Acts, Senate File 2298, section 453.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [10.8(1), 10.8(4), 10.8(5)] is being omitted. These amendments are identical to those published under Notice as **ARC 3390B** and Adopted and Filed Emergency as **ARC 3391B**, IAB 6/9/04.

[Filed 7/15/04, effective 9/8/04]
[Published 8/4/04]

[For replacement pages for IAC, see IAC Supplement 8/4/04.]

ARC 3555B

INSPECTIONS AND APPEALS DEPARTMENT[481]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 10A.104(5) and 135B.7, the Department of Inspections and Appeals hereby amends Chapter 51, "Hospitals," Iowa Administrative Code.

The adopted amendments update the Department's rules pertaining to Critical Access Hospitals (CAHs) to include changes made in the federal Medicare Modernization Act. The adopted amendments increase the allowable maximum number of beds in a CAH from 15 to 25 regardless of swing-bed approval, and make a corresponding technical change in a reference date for the citation of the Medicare conditions of participation for a CAH.

Notice of Intended Action was published in the Iowa Administrative Bulletin on June 9, 2004, as **ARC 3392B**. No comments were received on the amendments. The adopted amendments are identical to those published under Notice of Intended Action.

The adopted amendments were approved by the Hospital Licensing Board on March 31, 2004, and initially reviewed by the State Board of Health at its May 12, 2004, meeting. The adopted amendments were presented to and approved by the State Board of Health at its July 14, 2004, meeting.

These amendments are intended to implement Iowa Code sections 10A.104(5) and 135B.7.

These amendments will become effective September 8, 2004.

The following amendments are adopted.

ITEM 1. Amend subrule 51.53(4) as follows:

51.53(4) The hospital shall maintain no more than ~~15~~ *25* acute care inpatient beds ~~or, in the case of a hospital having a swing-bed agreement, no more than 25 inpatient beds; and the number of beds used for acute inpatient services shall not exceed 15 beds~~.

ITEM 2. Amend subrule 51.53(5) as follows:

51.53(5) The hospital shall meet the Medicare conditions of participation as a critical access hospital as described in 42 CFR Part 485, Subpart F, as of October 1, ~~2002~~ *2003*.

[Filed 7/15/04, effective 9/8/04]
[Published 8/4/04]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 8/4/04.

ARC 3560B

IOWA FINANCE AUTHORITY[265]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 17A.3(1), 16.5(17), 16.91(5) and 16.91(8), the Iowa Finance Authority hereby amends Chapter 9, "Title Guaranty Division," Iowa Administrative Code.

This rule making rescinds rules 265—9.1(16) through 265—9.19(16) and adopts new rules 265—9.1(16) through 265—9.15(16) concerning the Title Guaranty Division. The new rules detail the mission, organization, program and operations of the Title Guaranty Division of the Iowa Finance Authority, including the office where and the means by which interested persons may obtain information and make submission or requests. The existing rule 265—9.20(78GA, ch54), concerning the mortgage release certificate program, and rule 265—9.21(16), concerning the seal, are not amended as part of this rule-making action.

Notice of Intended Action was published in the April 28, 2004, Iowa Administrative Bulletin as **ARC 3322B**. No public comment was received on these amendments. The adopted amendments are identical to those published under Notice of Intended Action.

The Authority adopted these amendments on July 7, 2004.

These amendments will become effective on September 8, 2004.

These amendments are intended to implement Iowa Code sections 17A.3(1), 16.5(17), 16.91(5) and 16.91(8).

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [rescind 9.1 to 9.19, adopt 9.1 to 9.15] is being omitted. These amendments are identical to those published under Notice as **ARC 3322B**, IAB 4/28/04.

[Filed 7/15/04, effective 9/8/04]
[Published 8/4/04]

[For replacement pages for IAC, see IAC Supplement 8/4/04.]

ARC 3565B

MEDICAL EXAMINERS BOARD[653]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 147.76 and 148E.7, the Board of Medical Examiners hereby amends Chapter 8, "Fees," Chapter 9, "Permanent Physician Licensure," Chapter 10, "Resident, Special and Temporary Physi-