

House Study Bill 150

HOUSE FILE \_\_\_\_\_
BY (PROPOSED COMMITTEE ON
LOCAL GOVERNMENT BILL BY
CHAIRPERSON VAN ENGELHOFEN)

Passed House, Date \_\_\_\_\_ Passed Senate, Date \_\_\_\_\_
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_
Approved \_\_\_\_\_

A BILL FOR

1 An Act relating to the duties of county recorders and county
2 auditors concerning instruments affecting real estate.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
4 TLSB 1568YC 81
5 sc/gg/14

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1 1 Section 1. Section 331.602, subsection 5, Code 2005, is
1 2 amended by striking the subsection.
1 3 Sec. 2. Section 331.603, subsection 3, Code 2005, is
1 4 amended to read as follows:
1 5 3. The recorder may reproduce in miniature on a durable
1 6 medium any instrument to be recorded. When a recorded
1 7 instrument involves a release, or assignment, or other
1 8 subsequent reference to an original document, the separate
1 9 instrument filed acknowledging the release, or assignment, or
1 10 other subsequent reference shall be reproduced. In lieu of
1 11 marginal entries, the recorder shall make notations on both
1 12 the index and the record of the original instrument cross=
1 13 reference the release, assignment, or other subsequent
1 14 reference with the record of the original document. When an
1 15 official record is produced in miniature, a security copy
1 16 shall be reproduced at the same time and kept outside of the
1 17 courthouse.
1 18 Sec. 3. Section 458A.22, Code 2005, is amended to read as
1 19 follows:
1 20 458A.22 DUTY TO HAVE FORFEITED LEASE RELEASED == AFFIDAVIT
1 21 OF NONCOMPLIANCE == NOTICE TO LANDOWNER == REMEDIES.
1 22 1. When any oil, gas, or metallic mineral lease given on
1 23 land situated in Iowa and recorded, becomes forfeited by
1 24 failure of the lessee to comply with its provisions or the
1 25 Iowa law, the lessee shall, within sixty days after date of
1 26 forfeiture of the lease, have the lease surrendered in
1 27 writing, duly acknowledged, and placed on record in the county
1 28 where the leased land is situated, or the lease may be
1 29 released by a marginal release on margin of the record without
1 30 cost to the owner of land described in the lease. If the
1 31 lessee fails to execute and record a release of the recorded
1 32 lease within the time provided for, the owner of the land may
1 33 execute and file with the recorder of the counties in which
1 34 the forfeited lease has been recorded an affidavit of
1 35 noncompliance in substantially the following form:
2 1 AFFIDAVIT OF NONCOMPLIANCE
2 2 State of Iowa )
2 3 County of ..... ) ss.
2 4 ....., being first duly sworn, upon oath deposes and says
2 5 that the deponent is ..... as referred to in an (oil and gas)
2 6 (metallic mineral) mining lease dated the ... day of .....
2 7 (month), .... (year), which lease is recorded in Volume ...,
2 8 Page ..., or as Instrument # ... of the County Records of
2 9 ..... County, ..., and which lease covers the following
2 10 described lands: .....
2 11 .....
2 12 And further, deponent says that on the ... day of .....
2 13 (month), .... (year), under the terms of said lease, there
2 14 should have been paid to the deponent or deposited to the
2 15 deponent's credit in the ..... Bank of ..... the sum of
2 16 .... Dollars (\$....), the payment of which was necessary in
2 17 order to keep the above described lease in force and effect.
2 18 Deponent hereby swears the above payment has never been made

2 19 to the deponent or the deponent's representatives, in money or  
2 20 otherwise, nor has same been deposited to the deponent's  
2 21 credit in the above bank.  
2 22 And further, deponent says that there has been no drilling  
2 23 or development of any nature or kind whatsoever done on the  
2 24 land covered by the lease referred to herein, as called for  
2 25 under the terms of said lease.

2 26 .....  
2 27 .....  
2 28 Subscribed and sworn to before me, a Notary Public for the  
2 29 State of Iowa, this .... day of ..... (month), ... (year)  
2 30 .....  
2 31 Notary Public

2 32 My commission expires .....  
2 33 AFFIDAVIT OF THE BANKER  
2 34 State of ..... )  
2 35 County of ..... ) ss.

3 1 I, ....., (Cashier) (President) of the ..... Bank of  
3 2 ....., being first duly sworn, upon my oath declare that  
3 3 there has not been deposited to the credit of ..... in the  
3 4 ..... Bank of ....., by ..... or any other party, any sum  
3 5 of money whatsoever, in payment of rental under the terms of  
3 6 the (oil and gas) (metallic mineral) mining lease referred to  
3 7 in this affidavit.

3 8 Witness my hand this ..... day of ..... (month), ...  
3 9 (year)

3 10 .....  
3 11 (Cashier) (President) of ..... Bank  
3 12 Subscribed and sworn to before me, a Notary Public for the  
3 13 State of Iowa on the .... day of ..... (month), ... (year)  
3 14 .....  
3 15 Notary Public

3 16 My commission expires .....

3 17 2. The owner of the land shall retain the original  
3 18 affidavit and shall mail a copy of the affidavit by restricted  
3 19 certified mail, as defined in section 618.15, to the lessee.

3 20 If the lessee ~~shall~~, within thirty days after receipt of the  
3 21 ~~filing of such~~ affidavit, ~~give~~ gives notice in writing, ~~by~~  
3 22 ~~restricted certified mail,~~ to the county recorder of the  
3 23 ~~county where said owner of the land is located that said the~~  
3 24 lease has not been forfeited and that ~~said the~~ lessee still  
3 25 claims that ~~said the~~ lease is in full force and effect, then  
3 26 the ~~said affidavit shall not be recorded but the county~~  
3 27 ~~recorder shall notify the owner of the land of the action of~~  
3 28 ~~the lessee, and the owner of the land shall be entitled to the~~  
3 29 remedies provided by this chapter for the cancellation of such  
3 30 disputed lease.

3 31 3. If the lessee shall does not notify the county recorder  
3 32 owner of the land as above provided in subsection 2, then the  
3 33 county recorder owner shall record said file the original  
3 34 affidavit for recording with the county recorder, and  
3 35 thereafter the record of the ~~said~~ lease shall not be notice to  
4 1 the public of the existence of ~~said the~~ lease or of any  
4 2 interest therein or rights thereunder, and ~~said the~~ record  
4 3 shall not be received in evidence in any court of the state on  
4 4 behalf of the lessee against the lessor, and ~~said the~~ lease  
4 5 shall stand forfeited.

4 6 Sec. 4. Section 558.41, subsection 4, Code 2005, is  
4 7 amended to read as follows:

4 8 4. TERMINATION OF LIFE ESTATE. Upon the termination of a  
4 9 life estate interest through the death of the holder of the  
4 10 life estate, any surviving holder or successor in interest  
4 11 shall prepare a change of title or affidavit for tax purposes  
4 12 and ~~delivery of the deed or change of title shall deliver such~~  
4 13 ~~instrument~~ to the county recorder of the county in which each  
4 14 parcel of real estate is located.

4 15 Sec. 5. Section 558.49, Code 2005, is amended to read as  
4 16 follows:

4 17 558.49 INDEX RECORDS.

4 18 The recorder must keep index records, arranged  
4 19 alphabetically by grantor and grantee, to show the following:

- 4 20 1. Each grantor.
- 4 21 2. Each grantee.
- 4 22 3. The date and time when the instrument was filed with  
4 23 the recorder.
- 4 24 4. The date of the instrument.
- 4 25 5. The nature of the instrument.
- 4 26 6. The document reference number where the record of the  
4 27 instrument may be found.
- 4 28 7. The description of the real estate conveyed.
- 4 29 Sec. 6. Section 558.57, Code 2005, is amended to read as

4 30 follows:

4 31 558.57 ENTRY ON AUDITOR'S TRANSFER BOOKS.

4 32 ~~The After the recorder shall not record has accepted for~~

4 33 ~~recording and indexed any deed, real estate installment~~

4 34 ~~contract, or other instrument unconditionally conveying real~~

4 35 ~~estate or altering a real estate contract by assigning the~~

5 1 ~~buyer's or seller's interest, changing the name of the buyer~~

5 2 ~~or seller, changing the legal description of the property,~~

5 3 ~~forfeiting or canceling the contract, or making other~~

5 4 ~~significant changes, until the auditor shall make the proper~~

5 5 ~~entries have been made upon the transfer books in the~~

5 6 ~~auditor's office, and endorsement made upon the deed, real~~

5 7 ~~estate installment contract, or other instrument properly~~

5 8 ~~dated and officially signed, in substantially the following~~

5 9 ~~form:-~~

5 10 ~~Entered upon transfer books and for taxation this .. day of~~

5 11 ~~.... (month), .. (year). My fee \$.... collected by recorder.~~

5 12 ~~.....~~

5 13 ~~Auditor:-~~

5 14 Sec. 7. Section 558.58, subsection 1, Code 2005, is

5 15 amended to read as follows:

5 16 1. At the time of filing a deed, real estate installment

5 17 contract, or other instrument mentioned in section 558.57, the

5 18 recorder shall collect from the person filing the deed, real

5 19 estate installment contract, or instrument, and note payment

5 20 of, the recording fee provided by law and the auditor's

5 21 transfer fee, as provided by law, except as provided in

5 22 subsection 2. ~~The recorder shall deliver the deed, real~~

5 23 ~~estate installment contract, or instrument to the county~~

5 24 ~~auditor, after endorsing upon the instrument the following:-~~

5 25 ~~Filed for record, indexed, and delivered to the county~~

5 26 ~~auditor this .. day of .... (month), .. (year), at ....~~

5 27 ~~o'clock ..m.-~~

5 28 ~~Recorder's and auditor's fee \$.... paid.~~

5 29 ~~.....~~

5 30 ~~Recorder:-~~

5 31 ~~After the recorder has accepted the instrument for~~

5 32 ~~recording, the instrument shall be indexed and then delivered~~

5 33 ~~to the auditor to be placed on the auditor's transfer books.~~

5 34 Sec. 8. Section 558.60, Code 2005, is amended to read as

5 35 follows:

6 1 558.60 TRANSFER AND INDEX BOOKS.

6 2 The county auditor shall keep in the county auditor's

6 3 office books for the transfer of real estate, which shall

6 4 consist of a transfer book, index book, and plat book. As

6 5 used in this context, "book" means the method of data storage

6 6 and retrieval utilized by the county auditor.

6 7 The auditor shall index the real estate transfers by city,

6 8 block, and lot or by township, range, section, section

6 9 quarter, and subdivision, as occasion may require. The

6 10 transfer books shall show all of the following:

6 11 1. Each grantor.

6 12 2. Each grantee.

6 13 3. The date and time when the instrument was filed with

6 14 the county recorder.

6 15 4. The date of the instrument.

6 16 5. The nature of the instrument.

6 17 6. The document reference number where the record of the

6 18 instrument may be found.

6 19 7. The description of the real estate conveyed.

6 20 Sec. 9. Section 558.63, Code 2005, is amended to read as

6 21 follows:

6 22 558.63 BOOK OF PLATS == HOW KEPT.

6 23 The auditor shall keep the book of plats so as to show

6 24 showing the number of lot and block, or township and range,

6 25 divided into sections and subdivisions as occasion may

6 26 require, and shall designate thereon each piece of real

6 27 estate, and mark in pencil the name of the owner thereon, in a

6 28 legible manner; which. The plats shall be lettered or

6 29 numbered so that they may be conveniently referred to by the

6 30 memoranda of in the transfer book, and shall be drawn on the

6 31 scale of not less than four inches to the mile.

6 32 Sec. 10. Section 558.67, Code 2005, is amended to read as

6 33 follows:

6 34 558.67 CORRECTION OF BOOKS AND INSTRUMENTS.

6 35 The auditor from time to time shall correct any error

7 1 appearing in the transfer books, and shall notify the grantee

7 2 of any error in description discovered in any instrument filed

7 3 for transfer, and permit the same to be corrected by the

7 4 parties before completing such transfer shall notify the

7 5 submitter or preparer of an instrument and the grantee named

7 6 in the instrument of any error discovered in an instrument  
7 7 filed for transfer and shall further notify such persons of  
7 8 the procedure necessary to correct such error.

7 9 Sec. 11. Section 614.21, unnumbered paragraph 1, Code  
7 10 2005, is amended to read as follows:

7 11 No action shall be maintained to foreclose or enforce any  
7 12 real estate mortgage, bond for deed, trust deed, or contract  
7 13 for the sale or conveyance of real estate, after twenty years  
7 14 from the date thereof, as shown by the record of such  
7 15 instrument, unless the record of such instrument shows that  
7 16 less than ten years have elapsed since the date of maturity of  
7 17 the indebtedness or part thereof, secured thereby, or since  
7 18 the right of action has accrued thereon, or unless the record  
7 19 shows an extension of the maturity of the instrument or of the  
7 20 debt or a part thereof, and that ten years from the expiration  
7 21 of the time of such extension have not yet expired. The date  
7 22 of maturity, when different than as appears by the record of  
7 23 the instrument, and the date of maturity of any extension of  
7 24 said indebtedness or part thereof, may be shown at any time  
7 25 prior to the expiration of the above periods of limitation by  
7 26 the holder of the debt or the owner or assignee of the  
7 27 instrument filing an extension agreement, duly acknowledged as  
7 28 the original instrument was required to be acknowledged, in  
7 29 the office of the recorder where the instrument is recorded,  
~~7 30 or by noting on the margin of the record of such instrument in~~  
~~7 31 the recorder's office an extension of the maturity of the~~  
~~7 32 instrument or of the debt secured, or any part thereof; each~~  
~~7 33 notation to be witnessed by the recorder and entered upon the~~  
~~7 34 index of mortgages in the name of the mortgagor and mortgagee.~~

7 35 Sec. 12. Sections 558.61, 558.62, and 558.64, Code 2005,  
8 1 are repealed.

8 2 EXPLANATION

8 3 This bill makes changes to the Code relating to the duties  
8 4 of county recorders and county auditors concerning instruments  
8 5 affecting real estate.

8 6 The bill strikes a requirement that the county recorder  
8 7 compile and forward to the inheritance tax division of the  
8 8 department of revenue a list of deeds which are dated or  
8 9 acknowledged more than six months before the date of  
8 10 recording.

8 11 The bill requires the recorder to cross-reference to the  
8 12 original document an instrument that makes subsequent  
8 13 reference to the original document.

8 14 The bill changes the process by which an oil, gas, or  
8 15 metallic mineral lease is forfeited by the lessor or released  
8 16 by the lessee. The bill requires that if a lessee fails to  
8 17 record with the county recorder a release of a lease, the  
8 18 owner of the land shall send to the lessee, by restricted  
8 19 certified mail, an affidavit of noncompliance. If the lessee  
8 20 disputes the forfeiture of the lease, the lessee must notify  
8 21 the owner of the land, by restricted certified mail, within 30  
8 22 days of receiving the affidavit of noncompliance. The bill  
8 23 further provides that if the lessee does not so notify the  
8 24 owner of the land, the owner shall record the affidavit of  
8 25 noncompliance with the county recorder.

8 26 The bill makes changes relating to the county recorder's  
8 27 duty to record instruments affecting real estate and the  
8 28 county auditor's duty to note transfers of real estate. The  
8 29 bill repeals those sections which illustrate the endorsements  
8 30 to be made on instruments and the form of real estate transfer  
8 31 books and instead lists the information required to be noted  
8 32 on the instruments and in the transfer books. The bill  
8 33 defines "book", in the context of the county auditor's  
8 34 transfer book, index book, and plat book, to mean the method  
8 35 of data storage and retrieval utilized by the auditor.

9 1 The bill provides that notice of any surviving holder or  
9 2 successor in interest of a life estate that has been  
9 3 terminated through the death of the holder of the life estate  
9 4 may be made by affidavit filed for recording with the county  
9 5 recorder in lieu of a deed or change of title.

9 6 The bill requires the county auditor to notify the  
9 7 submitter or preparer, and the grantee, of an instrument filed  
9 8 for transfer of any error discovered in the instrument.

9 9 The bill strikes the option of making a notation, witnessed  
9 10 by the county recorder, on the margin of an instrument  
9 11 indicating an extension of the debt maturity date relating to  
9 12 the real estate described in the instrument and requires that  
9 13 such an extension agreement be filed with the county recorder  
9 14 for recording.

