

House Study Bill 728

HOUSE FILE _____
BY (PROPOSED COMMITTEE ON
LOCAL GOVERNMENT BILL BY
CHAIRPERSON VAN ENGELENHOVEN)

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 and
3 certain other filings recorded by the county recorder.
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
5 TLSB 5829HC 81
6 sc/gg/14

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1 1 Section 1. Section 331.602, subsection 5, Code Supplement
1 2 2005, is 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 331.606B, subsection 2, unnumbered
1 19 paragraph 1, Code 2005, is amended to read as follows:
1 20 Each document or instrument, other than a plat or survey or
1 21 a drawing related to a plat or survey, that is presented for
1 22 recording ~~and that contains any of~~ shall contain the following
1 23 information ~~shall have that information~~ on the first page
1 24 below the three-inch margin:
1 25 Sec. 4. Section 331.607, subsection 1, Code 2005, is
1 26 amended to read as follows:
1 27 1. ~~A record for military discharges~~ Military personnel
1 28 ~~records~~ as provided in section 331.608.
1 29 Sec. 5. Section 331.608, subsections 3 and 9, Code
1 30 Supplement 2005, are amended to read as follows:
1 31 3. The recorder shall record without charge the
1 32 commissions and warrants of veteran officers and
1 33 noncommissioned officers; ~~orders citing a veteran for bravery~~
1 34 ~~and meritorious action, and;~~ citations and bestowals of medals
1 35 from the state, federal, or foreign governments; ~~and any other~~
2 1 ~~documents needed to perfect a claim.~~
2 2 9. As used in this section, "veteran" means a veteran as
2 3 defined in section 35.1, who enlisted or was inducted from the
2 4 county, resided at any time in the county, or is buried in the
2 5 county. For purposes of records maintained for claims filed
2 6 under chapter 426A, "veteran" also means a veteran as defined
2 7 in section 426A.11, subsection 4.
2 8 Sec. 6. Section 458A.22, Code 2005, is amended to read as
2 9 follows:
2 10 458A.22 DUTY TO HAVE FORFEITED LEASE RELEASED == AFFIDAVIT
2 11 OF NONCOMPLIANCE == NOTICE TO LANDOWNER == REMEDIES.
2 12 1. When any oil, gas, or metallic mineral lease given on
2 13 land situated in Iowa and recorded, becomes forfeited by
2 14 failure of the lessee to comply with its provisions or the
2 15 Iowa law, the lessee shall, within sixty days after date of
2 16 forfeiture of the lease, have the lease surrendered in
2 17 writing, duly acknowledged, and placed on record in the county

2 18 where the leased land is situated, or the lease may be
2 19 released by a marginal release on margin of the record without
2 20 cost to the owner of land described in the lease. If the
2 21 lessee fails to execute and record a release of the recorded
2 22 lease within the time provided for, the owner of the land may
2 23 execute and file with the recorder of the counties in which
2 24 the forfeited lease has been recorded an affidavit of
2 25 noncompliance in substantially the following form:

2 26 AFFIDAVIT OF NONCOMPLIANCE

2 27 State of Iowa)
2 28 County of) ss.
2 29, being first duly sworn, upon oath deposes and says
2 30 that the deponent is as referred to in an (oil and gas)
2 31 (metallic mineral) mining lease dated the ... day of
2 32 (month), (year), which lease is recorded in Volume ...,
2 33 Page ..., or as Instrument # ... of the County Records of
2 34 County, ..., and which lease covers the following
2 35 described lands:

3 1
3 2 And further, deponent says that on the ... day of
3 3 (month), (year), under the terms of said lease, there
3 4 should have been paid to the deponent or deposited to the
3 5 deponent's credit in the Bank of the sum of
3 6 Dollars (\$...), the payment of which was necessary in
3 7 order to keep the above described lease in force and effect.
3 8 Deponent hereby swears the above payment has never been made
3 9 to the deponent or the deponent's representatives, in money or
3 10 otherwise, nor has same been deposited to the deponent's
3 11 credit in the above bank.
3 12 And further, deponent says that there has been no drilling
3 13 or development of any nature or kind whatsoever done on the
3 14 land covered by the lease referred to herein, as called for
3 15 under the terms of said lease.

3 16
3 17
3 18 Subscribed and sworn to before me, a Notary Public for the
3 19 State of Iowa, this day of (month), ... (year)
3 20
3 21 Notary Public

3 22 My commission expires

3 23 AFFIDAVIT OF THE BANKER

3 24 State of)
3 25 County of) ss.
3 26 I,, (Cashier) (President) of the Bank of
3 27, being first duly sworn, upon my oath declare that
3 28 there has not been deposited to the credit of in the
3 29 Bank of, by or any other party, any sum
3 30 of money whatsoever, in payment of rental under the terms of
3 31 the (oil and gas) (metallic mineral) mining lease referred to
3 32 in this affidavit.
3 33 Witness my hand this day of (month), ...
3 34 (year)

3 35
4 1 (Cashier) (President) of Bank
4 2 Subscribed and sworn to before me, a Notary Public for the
4 3 State of Iowa on the day of (month), ... (year)
4 4
4 5 Notary Public

4 6 My commission expires

4 7 2. The owner of the land shall retain the original
4 8 affidavit and shall mail a copy of the affidavit by restricted
4 9 certified mail, as defined in section 618.15, to the lessee.

4 10 If the lessee shall, within thirty days after receipt of the
4 11 filing of such affidavit, give gives notice in writing, by
4 12 restricted certified mail, to the county recorder of the
4 13 county where said owner of the land is located that said the
4 14 lease has not been forfeited and that said the lessee still
4 15 claims that said the lease is in full force and effect, then
4 16 the said affidavit shall not be recorded but the county
4 17 recorder shall notify the owner of the land of the action of
4 18 the lessee, and the owner of the land shall be entitled to the
4 19 remedies provided by this chapter for the cancellation of such
4 20 disputed lease.

4 21 3. If the lessee shall does not notify the county recorder
4 22 owner of the land as above provided in subsection 2, then the
4 23 county recorder owner shall record said file the original
4 24 affidavit for recording with the county recorder, and
4 25 thereafter the record of the said lease shall not be notice to
4 26 the public of the existence of said the lease or of any
4 27 interest therein or rights thereunder, and said the record
4 28 shall not be received in evidence in any court of the state on

4 29 behalf of the lessee against the lessor, and ~~said the lease~~
4 30 shall stand forfeited.

4 31 Sec. 7. Section 558.41, subsection 4, Code 2005, is
4 32 amended to read as follows:

4 33 4. TERMINATION OF LIFE ESTATE. Upon the termination of a
4 34 life estate interest through the death of the holder of the
4 35 life estate, any surviving holder or successor in interest
5 1 shall prepare a change of title or affidavit for tax purposes
5 2 and ~~delivery of the deed or change of title shall deliver such~~
5 3 ~~instrument~~ to the county recorder of the county in which each
5 4 parcel of real estate is located.

5 5 Sec. 8. Section 558.49, subsection 3, Code 2005, is
5 6 amended to read as follows:

5 7 3. The date and time when the instrument was filed with
5 8 the recorder.

5 9 Sec. 9. Section 558.57, Code 2005, is amended to read as
5 10 follows:

5 11 558.57 ENTRY ON AUDITOR'S TRANSFER BOOKS.

5 12 ~~The After the recorder shall not record has accepted for~~
5 13 ~~recording and indexed any deed, real estate installment~~
5 14 ~~contract, or other instrument unconditionally conveying real~~
5 15 ~~estate or altering a real estate contract by assigning the~~
5 16 ~~buyer's or seller's interest, changing the name of the buyer~~
5 17 ~~or seller, changing the legal description of the property,~~
5 18 ~~forfeiting or canceling the contract, or making other~~
5 19 ~~significant changes, until the auditor shall make the proper~~
5 20 ~~entries have been made upon the transfer books in the~~
5 21 ~~auditor's office, and endorsement made upon the deed, real~~
5 22 ~~estate installment contract, or other instrument properly~~
5 23 ~~dated and officially signed, in substantially the following~~
5 24 ~~form:-~~

5 25 Entered upon transfer books and for taxation this .. day of
5 26 (month), .. (year). My fee \$.... collected by recorder.

5 27
5 28 Auditor.

5 29 Sec. 10. Section 558.58, subsection 1, Code 2005, is
5 30 amended to read as follows:

5 31 1. At the time of filing a deed, real estate installment
5 32 contract, or other instrument mentioned in section 558.57, the
5 33 recorder shall collect ~~from the person filing the deed, real~~
5 34 ~~estate installment contract, or instrument, and note payment~~
5 35 ~~of, the recording fee provided by law and the auditor's~~
6 1 ~~transfer fee, as provided by law, except as provided in~~
6 2 subsection 2. ~~The recorder shall deliver the deed, real~~

6 3 ~~estate installment contract, or instrument to the county~~
6 4 ~~auditor, after endorsing upon the instrument the following:-~~
6 5 Filed for record, indexed, and delivered to the county

6 6 auditor this .. day of (month), .. (year), at
6 7 o'clock ..m.

6 8 Recorder's and auditor's fee \$.... paid.

6 9
6 10 Recorder.

6 11 After the recorder has accepted the instrument for
6 12 recording, the instrument shall be indexed and then delivered
6 13 to the auditor to be placed on the auditor's transfer books.

6 14 Sec. 11. Section 558.60, Code 2005, is amended to read as
6 15 follows:

6 16 558.60 TRANSFER AND INDEX BOOKS.

6 17 The county auditor shall keep in the county auditor's
6 18 office books for the transfer of real estate, which shall
6 19 consist of a transfer book, index book, and plat book. As
6 20 used in this context, "book" means the method of data storage
6 21 and retrieval utilized by the county auditor.

6 22 The auditor shall index the real estate transfers by city,
6 23 block, and lot or by township, range, section, section
6 24 quarter, and subdivision, as occasion may require. The
6 25 transfer books shall show all of the following:

6 26 1. Each grantor.

6 27 2. Each grantee.

6 28 3. The date and time when the instrument was filed with
6 29 the county recorder.

6 30 4. The date of the instrument.

6 31 5. The nature of the instrument.

6 32 6. The document reference number where the record of the
6 33 instrument may be found.

6 34 7. The description of the real estate conveyed.

6 35 Sec. 12. Section 558.63, Code 2005, is amended to read as
7 1 follows:

7 2 558.63 BOOK OF PLATS == HOW KEPT.

7 3 The auditor shall keep the book of plats ~~so as to show~~
7 4 showing the number of lot and block, or township and range,

7 5 divided into sections and subdivisions as occasion may
7 6 require, and shall designate thereon each piece of real
7 7 estate, and mark in pencil the name of the owner thereon, in a
~~7 8 legible manner; which. The plats shall be lettered or~~
7 9 numbered so that they may be conveniently referred to by the
~~7 10 memoranda of in the transfer book, and shall be drawn on the~~
~~7 11 scale of not less than four inches to the mile.~~

7 12 Sec. 13. Section 558.67, Code 2005, is amended to read as
7 13 follows:

7 14 558.67 CORRECTION OF BOOKS AND INSTRUMENTS.

~~7 15 The auditor from time to time shall correct any error~~
~~7 16 appearing in the transfer books, and shall notify the grantee~~
~~7 17 of any error in description discovered in any instrument filed~~
~~7 18 for transfer, and permit the same to be corrected by the~~
~~7 19 parties before completing such transfer shall notify the~~
7 20 submitter or preparer of an instrument and the grantee named
7 21 in the instrument of any error discovered in an instrument
7 22 filed for transfer and shall further notify such persons of
7 23 the procedure necessary to correct such error.

7 24 Sec. 14. Section 561.4, Code 2005, is amended to read as
7 25 follows:

7 26 561.4 SELECTING == PLATTING.

7 27 The owner, husband or wife, or a single person, may select
7 28 the homestead and cause it to be platted, but a failure to do
7 29 so shall not render the same liable when it otherwise would
7 30 not be, and a selection by the owner shall control. When
7 31 selected, it shall be designated by a legal description, or if
7 32 impossible it shall be marked off by permanent, visible
7 33 monuments, and the description shall give the direction and
7 34 distance of the starting point from some corner of the
7 35 dwelling, which description, with the plat, shall be filed and
8 1 recorded by the recorder of the proper county ~~in the homestead~~
~~8 2 book, which shall be, as nearly as may be, in the form of the~~
~~8 3 record books for deeds, with an index kept in the same manner~~
8 4 provided in sections 558.49 and 558.52.

8 5 Sec. 15. Section 614.21, unnumbered paragraph 1, Code
8 6 2005, is amended to read as follows:

8 7 No action shall be maintained to foreclose or enforce any
8 8 real estate mortgage, bond for deed, trust deed, or contract
8 9 for the sale or conveyance of real estate, after twenty years
8 10 from the date thereof, as shown by the record of such
8 11 instrument, unless the record of such instrument shows that
8 12 less than ten years have elapsed since the date of maturity of
8 13 the indebtedness or part thereof, secured thereby, or since
8 14 the right of action has accrued thereon, or unless the record
8 15 shows an extension of the maturity of the instrument or of the
8 16 debt or a part thereof, and that ten years from the expiration
8 17 of the time of such extension have not yet expired. The date
8 18 of maturity, when different than as appears by the record of
8 19 the instrument, and the date of maturity of any extension of
8 20 said indebtedness or part thereof, may be shown at any time
8 21 prior to the expiration of the above periods of limitation by
8 22 the holder of the debt or the owner or assignee of the
8 23 instrument filing an extension agreement, duly acknowledged as
8 24 the original instrument was required to be acknowledged, in
8 25 the office of the recorder where the instrument is recorded,
~~8 26 or by noting on the margin of the record of such instrument in~~
~~8 27 the recorder's office an extension of the maturity of the~~
~~8 28 instrument or of the debt secured, or any part thereof; each~~
~~8 29 notation to be witnessed by the recorder and entered upon the~~
~~8 30 index of mortgages in the name of the mortgagor and mortgagee.~~

8 31 Sec. 16. Section 614.35, Code 2005, is amended to read as
8 32 follows:

8 33 614.35 RECORDING INTEREST.

8 34 To be effective and to be entitled to record, the notice
8 35 above referred to shall contain an accurate and full
9 1 description of all land affected by such notice which
9 2 description shall be set forth in particular terms and not by
9 3 general inclusions; but if ~~said the~~ claim is founded upon a
9 4 recorded instrument, then the description in such notice may
9 5 be the same as that contained in such recorded instrument.
9 6 Such notice shall be filed for record in the office of the
9 7 county recorder of the county or counties where the land
9 8 described therein in the notice is situated. The recorder of
9 9 each county shall accept all such notices presented to the
9 10 recorder which describe land located in the county in which
9 11 the recorder serves and shall enter and record full copies
9 12 ~~thereof in the same way that deeds and other instruments are~~
~~9 13 recorded of the notices in the manner provided in sections~~
9 14 558.49 and 558.52, and each recorder shall be entitled to
9 15 charge the same fees for the recording thereof of the notices

9 16 as are charged for recording deeds. In indexing such notices
9 17 in the recorder's office each recorder shall enter such
9 18 notices under the grantee indexes of deeds in the names of the
9 19 claimants appearing in such notices. ~~Such notices shall also~~
~~9 20 be indexed under the description of the real estate involved~~
~~9 21 in a book set apart for that purpose to be known as the~~
~~9 22 "claimant's book."~~

9 23 Sec. 17. Sections 558.61, 558.62, and 558.64, Code 2005,
9 24 are repealed.

9 25 EXPLANATION

9 26 This bill makes changes to the Code relating to the duties
9 27 of county recorders and county auditors concerning instruments
9 28 affecting real estate and other filings required to be
9 29 recorded by the county recorder.

9 30 The bill strikes a requirement that the county recorder
9 31 compile and forward to the inheritance tax division of the
9 32 department of revenue a list of deeds which are dated or
9 33 acknowledged more than six months before the date of
9 34 recording.

9 35 The bill requires the recorder to cross-reference to the
10 1 original document an instrument that makes subsequent
10 2 reference to the original document.

10 3 The bill specifies that the recorder is to accept for
10 4 recording all the military personnel documents listed for
10 5 recording in section 331.608, not just military discharges.
10 6 Pertaining to recording of documents filed by veterans, the
10 7 bill provides that "veteran" also means as that term is
10 8 defined in Code chapter 426A, "Military Service Tax Credits
10 9 and Exemptions".

10 10 The bill changes the process by which an oil, gas, or
10 11 metallic mineral lease is forfeited by the lessor or released
10 12 by the lessee. The bill requires that if a lessee fails to
10 13 record with the county recorder a release of a lease, the
10 14 owner of the land shall send to the lessee, by restricted
10 15 certified mail, an affidavit of noncompliance. If the lessee
10 16 disputes the forfeiture of the lease, the lessee must notify
10 17 the owner of the land, by restricted certified mail, within 30
10 18 days of receiving the affidavit of noncompliance. The bill
10 19 further provides that if the lessee does not so notify the
10 20 owner of the land, the owner shall record the affidavit of
10 21 noncompliance with the county recorder.

10 22 The bill makes changes relating to the county recorder's
10 23 duty to record instruments affecting real estate and the
10 24 county auditor's duty to note transfers of real estate. The
10 25 bill repeals those sections which illustrate the endorsements
10 26 to be made on instruments and the form of real estate transfer
10 27 books and instead lists the information required to be noted
10 28 on the instruments and in the transfer books. The bill
10 29 defines "book", in the context of the county auditor's
10 30 transfer book, index book, and plat book, to mean the method
10 31 of data storage and retrieval utilized by the auditor.

10 32 The bill provides that notice of any surviving holder or
10 33 successor in interest of a life estate that has been
10 34 terminated through the death of the holder of the life estate
10 35 may be made by affidavit filed for recording with the county
11 1 recorder in lieu of a deed or change of title.

11 2 The bill requires the county auditor to notify the
11 3 submitter or preparer, and the grantee, of an instrument filed
11 4 for transfer of any error discovered in the instrument.

11 5 The bill strikes the requirement that records of homestead
11 6 plats be indexed and recorded in a separate book and instead
11 7 shall be indexed and recorded in the general system where all
11 8 deeds and other instruments affecting real estate are
11 9 recorded. The bill makes this same change to Code section
11 10 614.35 regarding indexing and recording of notices filed to
11 11 preserve an interest in property that has a marketable chain
11 12 of title.

11 13 The bill strikes the option of making a notation, witnessed
11 14 by the county recorder, on the margin of an instrument
11 15 indicating an extension of the debt maturity date relating to
11 16 the real estate described in the instrument and requires that
11 17 such an extension agreement be filed with the county recorder
11 18 for recording.

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