



Iowa General Assembly

2004 Legal Updates

Legislative Services Agency – Legal Services Division

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RECORDING REAL ESTATE CONTRACTS - CRIMINAL OFFENSE

Filed by the Iowa Supreme Court
December 3, 2004

State v. Wolford, No. 130/03-1726

<http://www.judicial.state.ia.us/supreme/opinions/20041203/03-1726.asp>

Overview. The Iowa Supreme Court ruled in *State v. Wolford* that a violation of Iowa Code section 558.46, relating to recording of real estate contracts, constitutes a public offense punishable through criminal prosecution and that execution of a second contract to replace an original contract does not extinguish the seller's statutory obligation to record the original contract.

Statutory Background. Iowa Code section 558.46 was enacted in 1998 and requires that installment contracts for the sale of residential real estate must be recorded in the office of county recorder by the seller within 180 days of the date the contract was signed by the seller and buyer. The county recorder is to forward to the county attorney each contract recorded after the expiration of the 180-day period. The contract seller is subject to a fine not to exceed \$100 per day for each day over 180 that the contract is not recorded.

Factual Background. An individual entered into a real estate contract with the trustee of the Medinoski Trust for the purchase of a home. Over a year later, the parties entered into a second contract concerning the same property, which included the same terms and conditions as the original contract but with a lower interest rate. The Trust was cited by the State for failing to timely record the second real estate contract. The county attorney charged the Trust with 36 simple misdemeanor counts, one for each day the Trust did not record the second contract after expiration of the 180-day time period. An amended complaint was later filed by the State asserting an additional 246 simple misdemeanor counts based on failure to record the original contract. The associate district court substituted Wolford Corporation (Wolford) as the proper defendant on all 282 counts because the Trust had entered into a management agreement with Wolford. The court ruled that Wolford's failure to timely record the real estate contracts was punishable as a criminal misdemeanor. The district court affirmed the decision of the associate district court. Wolford Corporation filed a petition for discretionary appeal to the Supreme Court of Iowa which the Court granted.

Issues. The Court considered the following issues on appeal:

- 1) Whether a violation of Iowa Code section 558.46 constitutes a public offense punishable through criminal prosecution, and
- 2) Whether execution of the second contract extinguished Wolford's statutory obligation to record the original contract.

Analysis. On the first issue, the Court determined that the intent of the General Assembly was to make a violation of Iowa Code section 558.46 a public offense punishable through a criminal prosecution. The Court stated that the General Assembly can draft a criminal statute in any form and it need not use any special language to criminalize an act, i.e., a criminal statute need not include language that a violation of the statute constitutes a misdemeanor or felony. However, use of the words "punishable by a fine" in the statute indicates that the plain language of the statute makes a violation a public offense. The Court noted that Iowa Code section 701.2 defines a "public offense" as "that which is prohibited by statute and is punishable by fine or imprisonment." The Court reasoned that had the General Assembly not intended that

a violation of Iowa Code section 558.46 be a public offense, the General Assembly would have used the words “civil fine” or “civil penalty.”

The Court also rejected Woford’s argument that violation of Iowa Code section 558.46 was a civil infraction because the fines collected are required to be deposited in the county general fund. The Court stated that the language of the statute, and not disposition of the fines collected, determines whether it is a public offense.

On the second issue, the Court ruled that execution of the second contract did not extinguish Woford’s obligation to file the original contract. The Court stated that the purpose of recording a real estate contract is to give third persons notice of the seller’s and buyer’s respective interests in the real estate created by the contract and to protect a buyer’s interest in the real estate covered by the contract. In this case, the buyer’s interest in the real estate was created upon execution of the original contract.

Dissent. The dissent stated that Iowa Code section 558.46 does not contain clear and definite language declaring a violation of that section a crime, and where there is doubt, it must be resolved in favor of the defendant. The dissent noted that use of the word “fine” is not determinative of a public offense and that the General Assembly simply intended the word “fine” in Iowa Code section 558.46 to mean “a payment extracted by the government and payable to the government.” The dissent also noted that if the General Assembly intended a violation of Iowa Code section 558.46 to be a crime, it would have placed that section in the criminal provisions of the Code.

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