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SENATE FILE

219

BY QUIRMBACH

LOCAL GOVERNMENT

Passed Senate, Date _____ Passed House, 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:

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SC 219 LOCAL GOVERNMENT

1 Section 1. Section 331.602, subsection 5, Code 2005, is
2 amended by striking the subsection.

3 Sec. 2. Section 331.603, subsection 3, Code 2005, is
4 amended to read as follows:

5 3. The recorder may reproduce in miniature on a durable
6 medium any instrument to be recorded. When a recorded
7 instrument involves a release, or assignment, or other
8 subsequent reference to an original document, the separate
9 instrument filed acknowledging the release, or assignment, or
10 other subsequent reference shall be reproduced. In lieu of
11 marginal entries, the recorder shall ~~make notations on both~~
12 ~~the index and the record of the original instrument~~ cross-
13 reference the release, assignment, or other subsequent
14 reference with the record of the original document. When an
15 official record is produced in miniature, a security copy
16 shall be reproduced at the same time and kept outside of the
17 courthouse.

18 Sec. 3. Section 458A.22, Code 2005, is amended to read as
19 follows:

20 458A.22 DUTY TO HAVE FORFEITED LEASE RELEASED -- AFFIDAVIT
21 OF NONCOMPLIANCE -- NOTICE TO LANDOWNER -- REMEDIES.

22 1. When any oil, gas, or metallic mineral lease given on
23 land situated in Iowa and recorded, becomes forfeited by
24 failure of the lessee to comply with its provisions or the
25 Iowa law, the lessee shall, within sixty days after date of
26 forfeiture of the lease, have the lease surrendered in
27 writing, duly acknowledged, and placed on record in the county
28 where the leased land is situated, ~~or the lease may be~~
29 ~~released by a marginal release on margin of the record without~~
30 ~~cost to the owner of land described in the lease~~. If the
31 lessee fails to execute and record a release of the recorded
32 lease within the time provided for, the owner of the land may
33 ~~execute and file with the recorder of the counties in which~~
34 ~~the forfeited lease has been recorded~~ an affidavit of
35 noncompliance in substantially the following form:

1 AFFIDAVIT OF NONCOMPLIANCE

2 State of Iowa)
3 County of) ss.

4, being first duly sworn, upon oath deposes and says
5 that the deponent is as referred to in an (oil and gas)
6 (metallic mineral) mining lease dated the ... day of
7 (month), (year), which lease is recorded in Volume ...,
8 Page ..., or as Instrument # ... of the County Records of
9 County, ..., and which lease covers the following
10 described lands:
11

12 And further, deponent says that on the ... day of
13 (month), (year), under the terms of said lease, there
14 should have been paid to the deponent or deposited to the
15 deponent's credit in the Bank of the sum of
16 Dollars (\$....), the payment of which was necessary in
17 order to keep the above described lease in force and effect.
18 Deponent hereby swears the above payment has never been made
19 to the deponent or the deponent's representatives, in money or
20 otherwise, nor has same been deposited to the deponent's
21 credit in the above bank.

22 And further, deponent says that there has been no drilling
23 or development of any nature or kind whatsoever done on the
24 land covered by the lease referred to herein, as called for
25 under the terms of said lease.

26
27

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

31
32 My commission expires
33 Notary Public

33 AFFIDAVIT OF THE BANKER

34 State of)
35 County of) ss.

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

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

10

11 (Cashier) (President) of Bank

12 Subscribed and sworn to before me, a Notary Public for the
13 State of Iowa on the day of (month), ... (year)

14

15 Notary Public

16 My commission expires

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

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

31 3. If the lessee shall does not notify the county-recorder
32 owner of the land as above provided in subsection 2, then the
33 county-recorder owner shall record-said file the original
34 affidavit for recording with the county recorder, and
35 thereafter the record of the said lease shall not be notice to

1 the public of the existence of ~~said~~ the lease or of any
2 interest therein or rights thereunder, and ~~said~~ the record
3 shall not be received in evidence in any court of the state on
4 behalf of the lessee against the lessor, and ~~said~~ the lease
5 shall stand forfeited.

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

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

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

17 558.49 INDEX RECORDS.

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

- 20 1. Each grantor.
- 21 2. Each grantee.
- 22 3. The date and time when the instrument was filed with
23 the recorder.
- 24 4. The date of the instrument.
- 25 5. The nature of the instrument.
- 26 6. The document reference number where the record of the
27 instrument may be found.
- 28 7. The description of the real estate conveyed.

29 Sec. 6. Section 558.57, Code 2005, is amended to read as
30 follows:

31 558.57 ENTRY ON AUDITOR'S TRANSFER BOOKS.

32 The After the recorder ~~shall not record~~ has accepted for
33 recording and indexed any deed, real estate installment
34 contract, or other instrument unconditionally conveying real
35 estate or altering a real estate contract by assigning the

1 buyer's or seller's interest, changing the name of the buyer
2 or seller, changing the legal description of the property,
3 forfeiting or canceling the contract, or making other
4 significant changes, until the auditor shall make the proper
5 entries have-been-made upon the transfer books in the
6 auditor's office, and endorsement made upon the deed, real
7 estate installment contract, or other instrument properly
8 dated and officially signed, in substantially the following
9 form:

10 Entered upon transfer books and for taxation this --- day of
11 --- (month), --- (year). My fee \$ --- collected by recorder.
12
13 Auditor.

14 Sec. 7. Section 558.58, subsection 1, Code 2005, is
15 amended to read as follows:

16 1. At the time of filing a deed, real estate installment
17 contract, or other instrument mentioned in section 558.57, the
18 recorder shall collect from the person filing the deed, real
19 estate installment contract, or instrument, and note payment
20 of, the recording fee provided by law and the auditor's
21 transfer fee, as provided by law, except as provided in
22 subsection 2. The recorder shall deliver the deed, real
23 estate installment contract, or instrument to the county
24 auditor, after endorsing upon the instrument the following:

25 Filed for record, indexed, and delivered to the county
26 auditor this --- day of --- (month), --- (year), at ---
27 o'clock --- m.
28 Recorder's and auditor's fee \$ --- paid.

29
30 Recorder.

31 After the recorder has accepted the instrument for
32 recording, the instrument shall be indexed and then delivered
33 to the auditor to be placed on the auditor's transfer books.

34 Sec. 8. Section 558.60, Code 2005, is amended to read as
35 follows:

1 558.60 TRANSFER AND INDEX BOOKS.

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

7 The auditor shall index the real estate transfers by city,
8 block, and lot or by township, range, section, section
9 quarter, and subdivision, as occasion may require. The
10 transfer books shall show all of the following:

11 1. Each grantor.

12 2. Each grantee.

13 3. The date and time when the instrument was filed with
14 the county recorder.

15 4. The date of the instrument.

16 5. The nature of the instrument.

17 6. The document reference number where the record of the
18 instrument may be found.

19 7. The description of the real estate conveyed.

20 Sec. 9. Section 558.63, Code 2005, is amended to read as
21 follows:

22 558.63 BOOK OF PLATS -- HOW KEPT.

23 The auditor shall keep the book of plats ~~so-as-to-show~~
24 showing the number of lot and block, or township and range,
25 divided into sections and subdivisions as occasion may
26 require, and shall designate thereon each piece of real
27 estate, and ~~mark-in-pencil~~ the name of the owner ~~thereon~~, ~~in-a~~
28 ~~legible-manner~~, ~~which~~. The plats shall be lettered or
29 numbered so that they may be conveniently referred to ~~by-the~~
30 ~~memoranda-of~~ in the transfer book, ~~and-shall-be-drawn-on-the~~
31 ~~scale-of-not-less-than-four-inches-to-the-mile~~.

32 Sec. 10. Section 558.67, Code 2005, is amended to read as
33 follows:

34 558.67 CORRECTION OF BOOKS AND INSTRUMENTS.

35 The auditor ~~from-time-to-time-shall-correct-any-error~~

1 ~~appearing in the transfer books, and shall notify the grantee~~
2 ~~of any error in description discovered in any instrument filed~~
3 ~~for transfer, and permit the same to be corrected by the~~
4 ~~parties before completing such transfer~~ shall notify the
5 submitter or preparer of an instrument and the grantee named
6 in the instrument of any error discovered in an instrument
7 filed for transfer and shall further notify such persons of
8 the procedure necessary to correct such error.

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

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

35 Sec. 12. Sections 558.61, 558.62, and 558.64, Code 2005,

1 are repealed.

2

EXPLANATION

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

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

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

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

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

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

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

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

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