FORECLOSURE AND FORECLOSURE TITLES

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I. INTRODUCTION

This outline is designed to aid practitioners in addressing various title defects arising because of, or despite the foreclosure of a mortgage; or those impacting a foreclosure title that arose independent of the foreclosure process. The outline is geared not only toward the title examiner, but also to the foreclosure attorney. It will not describe the foreclosure process in-depth, but rather only insofar as is necessary to further serve the purposes of this outline. The types and categories of title problems that could be discussed are perhaps limitless. This outline will address some of the more prevalent issues relating to foreclosure titles.

II. BRIEF OVERVIEW OF FORECLOSURE ALTERNATIVES

A. **GENERALLY.** The foreclosure component of this outline is limited to the foreclosure of mortgages. Generally, Chapters 654 and 655A of the Code of Iowa govern mortgage foreclosures in Iowa.

B. **TYPES OF FORECLOSURES.** Iowa law provides the foreclosure attorney with a variety of alternatives once the client has made the decision to commence foreclosure.

1. **JUDICIAL FORECLOSURES.** Judicial foreclosures are addressed primarily in Chapter 654 of the Code of Iowa. The procedures vary depending upon whether the real estate subject to the foreclosure proceeding is used for agricultural or non-agricultural purposes, or whether the foreclosure attorney elects to proceed with or without redemption.

a. **Judicial Foreclosure of Agricultural Land**.[1] The procedures relating to the foreclosure of agricultural real estate are set forth in Chapter 654 of the Code of Iowa.

(1) Notice of Right to Cure. Prior to initiation of a judicial foreclosure involving agricultural land, the creditor must give

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[1] The Code of Iowa defines agricultural land as "land suitable for use in farming." Iowa Code § 9H.1(2) (2007).

the borrower notice of a forty-five day right to cure the default.[2]

(a) Notice of Right to Cure Not Required in Some Cases. The borrower has no right to cure, where the creditor has given the borrower a proper notice of right to cure with respect to two prior defaults on the obligation secured by the mortgage, or the borrower has voluntarily surrendered possession of the real estate and the creditor has accepted it in full satisfaction of the debt.[3] Also, the borrower has no right to cure where the creditor has given the borrower a proper notice of right to cure with respect to a prior default within twelve months prior to the alleged default.[4]

(2) Mediation. Prior to initiation of a judicial foreclosure proceeding involving agricultural real estate, certain mediation requirements must be satisfied.[5] This is perhaps the most significant difference between the judicial foreclosure of agricultural and non-agricultural real estate.

b. Judicial Foreclosure of Non-agricultural Land. Chapter 654 governs the judicial foreclosure of non-agricultural real estate.

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[2] Iowa Code § 654.2A (2007).

[3] Id.

[4] Id.

[5] See Iowa Code § 654.2C (2007). Pursuant to section 654.2C, a person may not initiate the judicial foreclosure of a mortgage encumbering "agricultural property" that secures a debt of $20,000 or more until the person receives a mediation release or until the court determines after notice and hearing that any delay from requiring mediation would result in irreparable harm to the foreclosure creditor. Iowa Code § 654.2C (2007). See Iowa Code § 654A.1(1) (2007) (defining agricultural property as "agricultural land that is principally used for farming as defined in section 9H.1 . . ."). See Chapter 654A of the Code of Iowa for the statutory provisions that govern farm-mediation relative to agricultural foreclosures.

Despite the mediation notice requirements contained in section 654.2C, the section specifically provides that the "[t]itle to land that is agricultural property is not affected by the failure of any creditor to receive a mediation release, regardless of its validity." Iowa Code § 654.2C (2007).

(1) Notice of Right to Cure. As is true with judicial foreclosure involving agricultural real estate, a creditor seeking to judicially foreclose on non-agricultural land must give the borrower notice of right to cure. However, in the case of non-agricultural property, the applicable cure period is only thirty days.[6]

(a) Notice of Right to Cure Not Required in Some Cases. A borrower does not have a right to cure if the creditor has given that borrower a right to cure in connection with a prior default within 365 days of the present default.[7] Also, the notice requirements of section 654.2D do not apply if the creditor is an individual(s), or if the mortgaged property is property other than a one-family or two-family dwelling which is the residence of the mortgagor.[8]

(2) Foreclosure Without Redemption. Sections 654.20 through 654.26 of the Code of Iowa offer an alternative judicial foreclosure method that has become, by far, the most widely used method of foreclosure of mortgages encumbering non-agricultural real estate. For creditors not seeking a default judgment against the borrower, Iowa's foreclosure without redemption procedure expedites the creditor's journey from borrower default to property liquidation.[9] Care should be exercised by the foreclosure practitioner and title examiner in

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[6] Iowa Code § 654.2D(3) (2007). A creditor is deemed to have given the notice when the creditor delivers the notice to the consumer or mails the notice to the borrower's residence. Iowa Code § 654.2D(2) (2007). Once the creditor has given notice of right to cure, the borrower shall have until the expiration of thirty days thereafter to cure the default. Iowa Code § 654.2D(3) (2007).

[7] Iowa Code § 654.2D(7) (2007).

[8] Iowa Code § 654.2D(8) (2007).

[9] In short, foreclosure without redemption simply eliminates the borrower's equitable right of redemption following the sheriff's foreclosure sale. The result to the creditor is a quicker foreclosure process which in turn means a shorter period from borrower default to ultimate sale of the real estate in satisfaction of that default. Practitioners dealing with foreclosures and foreclosure-impacted title should become familiar with the various provisions and requirements relating to foreclosure without redemption.

becoming familiar with the notice provisions and other requirements related to foreclosure without redemption.[10]

(a) Special Notice Requirements. An election to proceed with a foreclosure without redemption is effective only if the first page of the petition contains the specific notice set forth in section 654.20 of the Code of Iowa.[11]

(b) Sale Held Immediately Following Judgment. Under foreclosure without redemption, the sheriff's sale is to be held promptly following entry of judgment, unless the mortgagor files a demand for the delay of the sale prior to entry of judgment.[12]

(c) Demand For Delay of Sale. At any time prior to entry of judgment, the mortgagor may file a demand for delay of sale.[13] If any such demand is filed, the sheriff's sale shall be held following expiration of two months from the entry of judgment, unless the property is the residence of the mortgagor and is a one-family or two-family dwelling, in which case the sale shall be held after the expiration of twelve months, or six months if the petition includes a waiver of deficiency judgment.[14]

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[10] See Iowa Code §§ 654.20-.26 (2007)(containing Iowa's foreclosure without redemption provisions).

[11] See section 654.20 for the form of the notice and further particulars. Note that the notice varies depending upon whether the petition contains a waiver of deficiency judgment. Iowa Code § 654.20 (2007).

[12] Iowa Code § 654.22 (2007).

[13] Iowa Code § 654.21 (2007).

[14] Id. Where a demand for delay of sale has been filed, the mortgagor may secure a dismissal of the foreclosure action at any time prior to judgment by paying to the plaintiff the amount claimed in the petition. Id. Following judgment, but prior to sale, the mortgagor may pay the plaintiff the amount of the judgment, which shall result in satisfaction of the judgment, and the sale shall not be held. Id.

(i) Stipulation Waiving Delay. Where a demand for delay of sale has been filed, the mortgagor and mortgagee nevertheless may subsequently stipulate to the waiver of the delay.[15]

(d) No Redemption Following Sale. The key component to foreclosure without redemption is that the mortgagor shall have no right to redeem following sheriff's sale, and the sale purchaser is immediately entitled to a deed and possession.[16]

c. **Recent Statutory Amendments Concerning Judicial Foreclosure.** In recent years, the legislature has adopted a number of significant amendments to Chapter 654.

(1) Release of Superior Liens By Bond. Section 654.9A, adopted in 2006, provides a mechanism whereby the foreclosure plaintiff may eliminate a superior lien holder's interest in the real estate by posting a bond with sureties.[17]

(2) Negative Notice. In 2006 the Iowa legislature adopted a notice of right to intervene provision that allows a foreclosure plaintiff to address and eliminate the claims of others in the real estate without having to join any such parties as defendants to the foreclosure proceeding.[18] Under section 654.15B, a foreclosure plaintiff may serve an apparent claimant with notice advising the claimant of the pendency of the foreclosure proceeding and describing the claimant's

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[15] Id.

[16] Iowa Code §§ 654.23-.24 (2007).

[17] Iowa Code § 654.9A (2007). The amount of the bond shall be no less than twice the amount of the senior lien holder's claim, and notice must be served on the party making the claim as provided under section 654.9A. If the claimant fails to file an action on the bond within twelve months from service of notice, "the claimant shall be barred from any further remedy." Id. On the other hand, the court may award the claimant reasonable attorney fees in a successful action on the bond. Id.

[18] See Iowa Code § 654.15B (2007).

apparent interest in the real estate.[19] Unless the claimant intervenes within thirty days following service of the notice, the court may adjudicate the rights of the claimant against the property as if the claimant had been added as a defendant and default had been entered against the claimant.[20]

(3) Recision of Foreclosure. Under section 654.17, the foreclosure plaintiff, or the successful sheriff's sale bidder, with the written consent of the mortgagor(s), may rescind the foreclosure action by filing notice of such recision with the clerk of court along with a filing fee of fifty dollars.[21] Upon the filing of the recision notice, the mortgage loan shall be enforceable according to its original terms, and the rights of all persons interested in the property may be enforced as though the foreclosure had not been filed.[22]

(4) Sale of Property Free of Liens. Pursuant to section 654.17A, the foreclosure plaintiff may apply to the court for an order approving an offer for the commercially reasonable sale of the real estate free of the claims of any parties to the action and parties served with negative notice under section 654.15B.[23] The court may grant the motion unless a party in interest files written objection within the time prescribed for such by the court.[24] An objecting party holding a claim junior to that of the plaintiff "shall either apply for assignment of senior claims pursuant to section 654.8, otherwise provide adequate protection to senior creditors, or establish that a sheriff's sale

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[19] Id. See id. for the form of notice prescribed under the statute.

[20] Id.

[21] Iowa Code Ann. § 654.17(1) (West 2009). After notice of recision has been filed, In addition to the filing fee, the mortgagee shall pay an additional fee of twenty-five dollars if the original loan documents are contained in the court file, whereupon the clerk shall make copies for the court file and return the originals to the mortgagee. Id.

[22] Iowa Code Ann. § 654.17(2) (West 2009). Following the filing of the notice of recision, "any findings of fact or law shall be preclusive for purposes of any future action unless the court, upon hearing, rules otherwise." Id.

[23] Iowa Code § 654.17A (2007).

[24] Id.

is substantially more likely than the proposed sale to provide the creditor with more favorable satisfaction of its lien."[25]

2. **NON-JUDICIAL FORECLOSURES.** Non-judicial foreclosure alternatives are found in both Chapters 654 and 655A of the Code of Iowa.

a. **Non-judicial Foreclosure (non-voluntary).** Chapter 655A provides a method of foreclosure that is very similar to the forfeiture of real estate contracts. This method of foreclosure may not be used where the subject property is used for an agricultural purpose as defined section 535.13 of the Code of Iowa, or where the property is "a one or two family dwelling which is, at the time of the initiation of the foreclosure, occupied by the equitable titleholder."[26]

(1) Notice of Right to Cure. As is the case with the judicial foreclosure of non-agricultural real estate, a creditor seeking to utilize Chapter 655A, must first give the borrower a thirty-day notice of right to cure the default.[27]

(2) Notice of Non-judicial Foreclosure. A mortgagee initiates non-judicial foreclosure by serving on the mortgagor a written notice of its election to proceed under Chapter 655A.[28]

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[25] Id.

[26] Iowa Code § 655A.9 (2007). Section 535.13 defines an agricultural purpose as "a purpose related to the production, harvest, exhibition, marketing, transportation, processing or manufacture of agricultural products by a person who cultivates, plants, propagates or nurtures the agricultural products." Iowa Code § 535.13 (2005).

[27] Iowa Code § 654.2D (2007). As is true with the judicial foreclosure of non-agricultural mortgages, the borrower does not have a right to cure if the creditor has given that borrower a right to cure in connection with a prior default within 365 days of the present default. Id. Also, the notice requirements of section 654.2D do not apply if the creditor is an individual(s), or if the mortgaged property is property other than a one-family or two-family dwelling which is the residence of the mortgagor. Id.

[28] Iowa Code § 655A.3 (2007).

(a) Specific Requirements of the Notice.

(i) The notice must reasonably identify the mortgage by document reference number, and must accurately describe the real estate.[29]

(ii) The notice must specify the terms of the mortgage with which the mortgagor has not complied.[30]

(iii) The notice must state that the mortgage will be foreclosed unless the mortgagor either performs the terms of default or files a rejection of notice with recorder within thirty days after completed service of the notice.[31] Section 655A.3(1)(c) requires that specific language be included in the notice.[32] You should refer to this section for further particulars.

(b) Other Parties to Receive Notice. The mortgagee must also serve a copy of the notice of non-judicial foreclosure on parties in possession, and on all junior lien holders of record.[33]

(c) Method of Service. The notice of non-judicial foreclosure or any rejection of the same must be served in the same manner as is required for an original notice.[34]

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[29] Iowa Code § 655A.3(1)(a) (2007).

[30] Iowa Code § 655A.3(1)(b) (2007). The terms of default specified in the notice shall not include any obligation arising from acceleration of the indebtedness secured by the mortgage. Id.

[31] Iowa Code § 655A.3(1)(c) (2007).

[32] Id.

[33] Iowa Code § 655A.3(2) (2007).

[34] Iowa Code § 655A.4 (2007).

(d) Rejection of Notice. The mortgagor may nullify the mortgagees ability to utilize Chapter 655A by recording a rejection of notice, together with proofs of service of the rejection on the mortgagee.[35]

(e) Proof of Service of Notice. If the terms and conditions of default are not performed within thirty days, the party serving notice or causing it to be served shall file with the recorder a copy of the notice together with proofs of service of the same.[36]

(f) Effect of Foreclosure. Upon the filing of the notice and proofs of service, and where no rejection has been filed, the mortgagee acquires and succeeds to all interest of the mortgagor, all inferior liens are extinguished, and the indebtedness secured by the mortgage is extinguished.[37]

(g) Lis Pendens Equivalent. Where the mortgagee files with the county recorder the section 655A.3(1) written notice of non-judicial foreclosure and proof of service of the same on the mortgagor, such filing shall have the same force and effect as a lis pendens filing under section 617.10 of the Code of Iowa.[38]

b. Alternative Non-judicial Voluntary Foreclosure. Section 654.18 codifies Iowa's alternative non-judicial voluntary foreclosure

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[35] Iowa Code § 655A.6 (2007).

[36] Iowa Code § 655A.7 (2007).

[37] Iowa Code § 655A.8 (2007).

[38] Iowa Code § 655A.3(3) (2007). "Such filing shall have the same force and effect on third parties as an indexed notation . . . pursuant to section 617.10 and shall commence on the filing of proof of service on the mortgagors and terminate on the filing of a rejection [of notice of non-judicial foreclosure], an affidavit of completion [of non-judicial foreclosure], or the expiration of ninety days from completion of service on the mortgagors, whichever occurs first." Id. See Iowa Code §§ 617.10-.11, .14 (2007) (containing those portions of Iowa's lis pendens provisions relevant to this discussion).

procedure.[39] This means of non-judicial foreclosure is both less utilized and more cumbersome than the non-voluntary procedure provided for under Chapter 655A. One important advantage with the voluntary procedure under section 654.18, however, is that it may be used in connection with the foreclosure of agricultural real estate.[40]

3. **DEED IN LIEU OF FORECLOSURE.** Sometimes, the mortgagor is willing to simply convey the property back to the mortgagee, which, in cases where there are no junior lien holders of record, eliminates the need to go through any type of foreclosure.

a. **Generally.** Although appearing unparalleled in terms of their simplicity, care must be exercised by the foreclosure practitioner and title examiner when dealing with deeds in lieu of foreclosure. In addition to the deed in lieu, it is advisable for the foreclosure attorney to secure a statement from the mortgagor establishing that the deed is given freely, voluntarily and for adequate consideration so as to reduce problematic outcomes from possible future judicial scrutiny. Any such statement also should establish that the deed is given as a full conveyance and not for purposes of additional security.[41]

b. **Agricultural Land.** Section 654.19 provides a special means for a deed in lieu of foreclosure in connection with agricultural land. In short, the parties enter into an agreement wherein the mortgagor agrees to transfer the real estate to the mortgagee in full or partial satisfaction of the obligation secured by the mortgage.[42] The agreement is then recorded with the deed transferring title to the real estate.[43]

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[39] Iowa Code § 654.18 (2007).

[40] See Iowa Code § 654.18 (2007).

[41] See Grant S. Nelson & Dale A. Whitman, Real Estate Finance Law §§ 6.18-.19 (3d ed. 1994), for a brief discussion of some of the concerns associated with the use of deeds in lieu of foreclosure.

[42] Iowa Code § 654.19 (2007).

[43] Id.

III. COMMON POST-FORECLOSURE TITLE DEFECTS

A. PROPER DEFENDANTS TO THE FORECLOSURE.

A. PROPER DEFENDANTS TO THE FORECLOSURE. Failure to name and properly join necessary parties as defendants to a foreclosure proceeding can result in significant problems with the post-foreclosure marketability of title. Such problems usually result in great expense and delay for the foreclosing mortgagee.

1. **THE NECESSARY/PROPER PARTY DISTINCTION.** In terms of considering who should be joined as a party defendant to a foreclosure proceeding, often a distinction is made between "necessary" parties and "proper" parties. A party is "necessary" if joining that party is necessary to impart the foreclosure sale purchaser with essentially the same title to the real estate as that possessed by the mortgagor upon execution of the mortgage.[44] A party whose interest in the real estate is clearly subordinate to the interest of the mortgagee is a necessary party. A "proper" party, is one whose presence in the proceeding is convenient and desirable, and who will be bound by the proceedings, but whose presence is not necessary to give the foreclosure sale purchaser the same title to the real estate as was possessed by the mortgagor upon execution of the mortgage.[45] A party whose interest in the real estate is superior to the interest of the mortgagee is a proper party.

2. **FORECLOSURE AS A TITLE-CLEANSING TOOL.** A judicial foreclosure can be a powerful title-cleansing tool. An examination of record title prior to foreclosure may reveal parties who clearly have interests subordinate to that of the mortgagee, such as the mortgagor, or a junior mortgagee. Often, however, there may be difficulty in determining whether the interest of a party is superior to the interest of the foreclosing mortgagee. One example of this problem is where the record reflects an ongoing child support obligation against the mortgagor that originated prior to the recording of the foreclosure plaintiff's mortgage. To the extent the child support creditor is owed child support that accrued prior to the recording date of the mortgage, the interest of such creditor may under normal circumstances be superior to the interest of the plaintiff. However, the record may not reflect the level to which the ongoing child support installments have been satisfied. In such cases, the wise course of action is for the foreclosure plaintiff to join the child support creditor as a party defendant and allege superiority of the mortgage

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[44] Grant S. Nelson & Dale A. Whitman, Real Estate Finance Law § 6.12 (3d ed. 1994).

[45] Id.

subject to foreclosure.[46] This will allow the foreclosure plaintiff to eliminate any post-foreclosure uncertainty as to priority that may otherwise result due to the lack of record showing as to the status of child support payments.

The same course of action should be taken by the foreclosure plaintiff with regard to a party holding an apparently superior mortgage, where facts extraneous to the record lead the foreclosure plaintiff to conclude that this apparently superior mortgage has been satisfied, yet not released.

In each of these examples, the record reflects an interest that appears to be superior to the interest of the foreclosure plaintiff. According to the record, the parties holding these interests would appear to be "proper" parties. Yet, since the status of the payment or satisfaction of the underlying obligation secured by the particular interest of record may be unclear from, or inconsistent with the record, the line between "proper" and "necessary" parties is blurred.

3. **SPOUSES.** Title Standard 6.1 provides that it is necessary to join the spouse of the titleholder as a party defendant to a foreclosure proceeding in order to adjudicate the spouse's rights of homestead and dower.[47] This standard has presented particular difficulties for foreclosure attorneys. In truth, a literal reading of the standard poses little problem. However, the practical application of the standard by examining attorneys has essentially re-written the standard to requiring not only the joinder of the spouse as a party defendant, but the establishment of the titleholder's marital status as a matter of record. The problem with applying Title Standard 6.1 is that it requires knowledge by the title examiner of a matter not necessarily of record, namely the marital status of the titleholder.

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[46] In lieu of joining the child support creditor as a party defendant, recall that the foreclosure plaintiff also may resolve the issue of the creditor's potential interest in the real estate by following the "negative notice" provisions of section 654.15B of the Code of Iowa.

[47] Iowa Land Title Standards, Standard 6.1 (8th ed. 2006). Concerning the issue of the homestead rights of a non-owner spouse, see Francksen v. Miller, 297 N.W.2d 375, 377 (Iowa 1980) (holding that "one spouse cannot be divested of homestead rights by judicial proceedings in which only the other spouse is a party"). Concerning the issue of the dower rights of a non-owner spouse, see Bowden v. Hadley, 116 N.W. 689 (Iowa 1908). In Bowden, the court held that a judicial sale of property owned by one spouse for the satisfaction of debts of that spouse terminates the other spouse's right of dower. Bowden, 116 N.W. at 690. On the other hand, however, the court recognized that if the non-owner spouse had become vested with a dower interest due to the death of the owner spouse prior to judicial sale, such interest could not have been eliminated except by making that non-owner spouse a party to the foreclosure proceeding. Id.

a. **Options For Applying/Satisfying the Standard.** A foreclosure attorney has several options for satisfying the requirements of Title Standard 6.1 during the foreclosure.

(1) Allege Marital Status in the Petition. One option is for the foreclosure attorney to allege the marital status of the titleholder in the petition and then draft the foreclosure decree so as have such allegation found or held as fact. For instance, if the record reflects that title is in Jane Doe and the marital status of Jane Doe is unclear from the record, the foreclosure attorney would allege in the petition that Jane Doe is a single person if diligent search and inquiry fails to contradict this. The decree would then make a specific finding that Jane Doe is single, or would perhaps declare all material allegations of the petition to be true.

(a) Make Sure the Abstract is Complete. Often where a foreclosure petition alleges that a titleholder is unmarried and the decree holds the same, the abstract will fail to set forth these matters. Therefore, it is wise for the title examiner to personally examine the contents of the petition and decree before commencing alternative, and often time-consuming and costly steps to establish a showing consistent with the requirements of Title Standard 6.1.

(2) Name the "Unknown Spouse of Titleholder". Using the prior example, perhaps a better option for satisfying the requirements of Title Standard 6.1 is to name "any Unknown Spouse of Jane Doe" as a party defendant. Then, the foreclosure attorney would direct the process server to locate and serve any such unknown spouse. In such cases, service could be made on the unknown spouse personally, or by means of substitute service, by serving the titleholder.[48] In such cases, the return of service evidencing service on the titleholder often will contain the process server's finding, based on inquiry of the titleholder, that said titleholder is not married.

[48] See Iowa R. Civ. P. 1.305(1), for the required elements of personal service and substitute service by service on the spouse of the party defendant.

b. **Satisfying Requirements of Title Standard 6.1 Post-Foreclosure.** In some instances where title is held by a single individual, the abstract reflects service on that titleholder, and no showing is made as to said titleholder's marital status. In such instances, the practical application of the requirements of Title Standard 6.1 essentially require an affirmative showing as to the titleholder's marital status. For purposes of ruling out any lingering homestead rights in a spouse not made a party to the foreclosure, it must be shown that the titleholder was unmarried at the time of the post-decree sheriff's sale. With respect to ruling out possible dower rights in any such non-party defendant spouse, Title Standard 6.1 requires a showing that the titleholder was unmarried, or still living at the time of the sheriff's sale.[49]

(1) Satisfying Title Standard 6.1 By Affidavit. Title Standard 6.1, by its express language contemplates establishing the marital status of the titleholder by affidavit. If it can be determined and established of record by affidavit that the titleholder was unmarried at all material times related to the foreclosure proceeding, then the requirements of Title Standard 6.1 are satisfied. If it is determined that the titleholder was married, and the spouse was not made a party defendant, then a showing that the titleholder was alive at the time of the sheriff's sale is all that is necessary if it also can be established that the parcel was not the homestead of the titleholder's spouse at the time of sheriff's sale. If, on the other hand the parcel was the homestead of the titleholder's spouse at the time of the sheriff's sale (and provided it was the spouse's homestead continuously since prior to the lis

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[49] Iowa State Bar Association Iowa Land Title Standard 6.1 (8th ed. 2006). Title Standard 6.1 cites the sheriff's sale of the foreclosed parcel as the relevant point in time for purposes of determining the marital status of the titleholder. If, however, it is determined that a titleholder was unmarried at the time the foreclosure petition was entered in the lis pendens index, and was then married thereafter, but prior to the sheriff's sale, any rights in the parcel the new spouse may acquire by virtue of such marriage, or otherwise, following said lis pendens filing, would be subject to any rights in and to the parcel the foreclosure plaintiff later acquires under the foreclosure decree. See Iowa Code § 617.11 (2007) (providing that when a petition affecting real estate is indexed by the clerk in the lis pendens index, the proceeding "shall be considered pending so as to charge all third persons with notice of its pendency, and while pending no interest can be acquired by third persons in the subject matter thereof as against the plaintiff's rights").

pendens indexing of the foreclosure petition), an affidavit will not be sufficient.

(2) Where Affidavit is Not Sufficient. Where it is determined post-foreclosure that the titleholder was married, and the requirements of Title Standard 6.1 cannot be established by affidavit, the best cure is to obtain a quit claim deed from the spouse that was not made a party defendant to the foreclosure proceeding. If this is not possible, it may be necessary to re-open the foreclosure proceeding so as to adjudicate the rights of the titleholder's spouse, or commence quiet-title proceedings.

4. **PARTIES IN POSSESSION.** It is common practice in Iowa for foreclosure attorneys to join as parties defendant those whose interest in the real estate is limited solely to their being in possession of the parcel. I have found no specific statutory provisions requiring that parties in possession be made parties defendant to a foreclosure proceeding.[50] However, it appears to be a well-accepted common law principal that "[a]ny person who may have acquired any interest in the premises, legal or equitable, by operation of law or otherwise, in privity of title with the mortgagor, may redeem, and protect such interest in the land."[51] This would appear to include parties in possession of the real estate, the existence of whom reasonable inquiry would have brought to light.[52] As such, the wise course of action for the foreclosure

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[50] Note, however, that section 655A.3 of the Code of Iowa does require that notice of non-judicial foreclosure under Chapter 655A be served on persons in possession of the real estate. Iowa Code Ann. § 655A.3(2) (West 2009).

It can be argued that the specific requirement of such notice on parties in possession for non-judicial foreclosures under Chapter 655A, coupled with the lack of such similar requirement in judicial foreclosures evidences that making mere parties in possession parties defendant is not absolutely necessary.

[51] Grant S. Nelson & Dale A. Whitman, Real Estate Finance Law § 7.2 (3d ed. 1994) (citing Smith v. Austin, 9 Mich. 465, 474 (1862)).

[52] See Raub v. General Income Sponsors of Iowa, Inc., 176 N.W.2d 216, 220 (Iowa 1970) (holding that a person is charged with notice of every fact, including the existence of parties in possession, that would have been revealed to such person had he or she made prudent inquiry and investigation into the situation). See also White v. Melchert, 227 N.W. 347, 348 (Iowa 1929) (declaring that tenant's pre-petition possession of real estate subject to foreclosure put the foreclosing mortgagee on inquiry notice and tenant was entitled to rights of equitable redemption).

attorney is to make parties in possession (whether known or unknown) parties defendant to the foreclosure proceeding. Where this has not been done, the examining attorney, while considering the guidelines of Title Standard 1.1, should weigh all facts of record with the potential of those not of record before rendering an opinion as to the marketability of title.

5. **WHERE THE MORTGAGOR IS DECEASED.** Where the mortgagor has become deceased, investigation should be made into the existence and identity of those acquiring an interest in the real estate as a result thereof. In many situations, the record fails to reflect all interests that have accrued due to or following the death of the mortgagor. For instance, without estate proceedings it may be impossible to determine from a search of the record whether the mortgagor died testate or intestate, or to determine the identity of the mortgagor's heirs or beneficiaries, or whether there is any liability for death taxes.

   a. **Where an Estate is Pending.** Where an estate is pending, the executor or administrator should be made a party defendant.[53] Also, the State of Iowa and the United States should be made parties defendant to the extent they have or may have an interest in the real estate by virtue of a lien for death taxes.

   b. **Where No Estate is Pending.** There is a difference of opinion among members of the bar as to whether the foreclosing mortgagee must open an estate where there is not already an estate pending for the deceased mortgagor. I do not believe it is necessary, and I have found no authority requiring that the mortgagee open an estate in such case.[54] Nevertheless, where the mortgagor is deceased and no estate has been opened, the best course is to join as parties defendant all unknown successors in interest to the deceased mortgagor and all other unknown claimants to the real estate and ask that the court quiet title to the real estate. Whether it is necessary for a guardian ad litem to be appointed to represent the interest of unknown parties may depend upon the nature of the relief being sought in the petition. If the petition seeks only an in rem judgment, and provided the mortgagor is not on active military duty, it is arguable that no

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[53] See Darlington v. Effey, 13 Iowa 177, 177 (1862) ("[t]he administrator is a proper, if not a necessary, party in a bill to foreclose.").

[54] As of the writing of this outline, there is a bill being considered by the Iowa legislature that, if adopted, would make it clear that where no estate is pending for a deceased mortgagor, the mortgagee need not open an estate.

guardian ad litem need be appointed.[55] Also, where no estate is pending, the State of Iowa and the United States should be made parties defendant so as to address the possibility of state and federal death taxes.

B. PROPER SERVICE OF THE ORIGINAL NOTICE. Many foreclosure-related title objections are based on the lack of, or defective service of the original notice. In some instances, the court file reflects proper and complete service, but the abstract is incomplete. In other instances, the abstract precisely reflects what the court file shows, namely the lack of proof of service, or defective service on a party defendant to the foreclosure proceeding.

1. PERSONAL SERVICE. The rules for personal service generally are found in Rule 1.305 of the Iowa Rules of Civil Procedure.[56] Every title examiner and foreclosure attorney should become familiar with the provisions of this Rule.

a. Defective or Deficient Returns of Service. Extreme care should be taken by the foreclosure attorney to review the returns of service prior to entry of the foreclosure decree. The returns of service filed in a foreclosure proceeding are often the source of marketability problems when the foreclosure plaintiff seeks to sell the property following

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[55] See In re Hickman, 533 N.W.2d 567, 568 (Iowa 1995) (addressing the applicability of former Rule 13 of the Iowa Rules of Civil Procedure in connection with statutory forfeiture proceedings). In In re Hickman, the Iowa Supreme Court held that former Rule 13 of the Iowa Rules of Civil Procedure (now Rule 1.211) does not require the appointment of a guardian ad litem for an incarcerated owner of property that is subject to statutory forfeiture proceedings. Id. The court recognized that the "defendant in a forfeiture proceeding is the property sought to be forfeited, not its owner . . . [and] Rule [1.211], by its clear terms, is limited to judgments against a party." Id.

See Federal Land Bank of Omaha v. Jefferson, 295 N.W. 855 (Iowa 1941) for a discussion of the distinction between judgments in rem and judgments in personam. In Federal Land Bank, the Iowa Supreme Court declared that the "distinguishing characteristic of judgments in rem is that they operate directly upon the property, and are binding upon all persons, in so far as their interests in the property are concerned." Federal Land Bank of Omaha, 295 N.W. at 857 (citing Wilson v. Smart, 155 N.E. 288, 291 (Ill. 1927)). The court pointed out that a proceeding in personam is intended "to impose, through the judgment of a court, some responsibility or liability directly upon the person of the defendant . . ., [while a] proceeding in rem, on the other hand, is aimed, not at the person of the defendant, but at his property, status, or some other thing within the power and jurisdiction of the court." Id.

[56] Iowa R. Civ. P. 1.305.

sheriff's sale. For example, many times a return of service in connection with a corporate defendant will reflect that the corporation was served by serving an office secretary or clerk. Such service clearly does not comply with the service requirements of the Iowa Rules of Civil Procedure.

b. Service on a Corporation Defendant. Service on a corporation is accomplished by serving the corporation's registered agent.[57]

(1) Where No Registered Agent. If the corporation "has no registered agent, or the registered agent cannot with reasonable diligence be served, the corporation may be served by registered or certified mail, return receipt requested, addressed to the secretary of the corporation at its principal office."[58]

(2) Where Corporation Administratively Dissolved. Where a corporation has been administratively dissolved pursuant to section 490.1421 of the Code of Iowa, the secretary of state becomes the corporation's agent for service of process "in any proceeding based on a cause of action which arose during the time the corporation was authorized to transact business in this state."[59]

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[57] Iowa Code § 490.504(1) (2007) ("A corporation's registered agent is the corporation's agent for service of process, notice, or demand required or permitted by law to be served on the corporation."). Pursuant to Rule 1.305 of the Iowa Rules of Civil Procedure, personal service may be made on a corporation "by serving any present or acting or last known officer thereof, or any general or managing agent, or any agent or person now authorized by appointment or by law to receive service of original notice." Iowa R. Civ. P. 1.305(6).

[58] Iowa Code § 490.504(2) (2007). If service is made in this manner, said service is perfected at the earliest of: (1) the date the corporation receives the mail; (2) the date shown on the return receipt, if signed on behalf of the corporation; (3) five days after its deposit in the United States mail, as evidenced by the postmark, if mailed postpaid and correctly addressed. Id.

[59] Iowa Code § 490.1421(5) (2007). Pursuant to section 490.1421(5), following the secretary of state's administrative dissolution of a corporation, "[s]ervice of process on the secretary of state . . . is service on the corporation" in connection with any proceeding based on a cause of action which arose while the corporation was authorized to transact business in the state of Iowa. Id. Section 490.1421(5), however, "does not preclude service on the corporation's registered agent, if any." Id.

(a) Reinstatement Following Administrative Dissolution. Where a corporation is reinstated following administrative dissolution, said reinstatement relates back to the date of the administrative dissolution, as if said administrative dissolution had never occurred.[60]

c. **Service on the State of Iowa.** Service on the State should be made by serving the county attorney for the county, or counties, in which the real estate is located, and by sending notice by certified mail to the Iowa Attorney General.[61]

(1) Additional Precaution. In addition to serving the Attorney General and the County Attorney, it is a good idea to serve the presiding officer, clerk, or secretary of a governmental board, commission, or agency, if applicable.[62]

d. **Service on the United States.**

(1) Generally. Service upon the United States shall be effected by service on the following agents, to-wit:

(a) U.S. Attorneys Office. By delivering a copy of the original notice and petition to the United States attorney for the applicable district or to an assistant United States attorney or clerical employee designated

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[60] Iowa Code § 490.1422(3) (2007).

[61] Iowa Code § 613.9 provides as follows:

> Service upon the state shall be made by serving a copy of the original notice with a copy of the petition upon the county attorney for the county, or counties, in which the real estate is located, and by sending a copy of the original notice and petition by certified mail to the attorney general, at Des Moines. The state shall appear within thirty days after the day such notice is served upon the county attorney or within thirty days after such notice is mailed to the attorney general, whichever is later.

Iowa Code § 613.9 (2007). See Iowa Code § 613.8 (2007) (providing that the state has given consent to being made a party in any suit involving the title to real estate). See also Iowa Code § 421.19 (2007) (providing that the attorney general and the county attorney for each county are to act as attorneys for the director of the department of revenue).

[62] Iowa R. Civ. P. 1.305(13).

by the United States attorney in writing filed with the clerk of court, or by sending a copy of the original notice and petition by registered or certified mail addressed to the civil process clerk at the office of the United States attorney.[63]

(b) Attorney General's Office. Also, a copy of the original notice and petition must be sent by registered or certified mail to the Attorney General of the United States at Washington, District of Columbia.[64]

(2) Serving an Agency of the United States. Service on an agency or corporation of the United States is effected by serving the United States as set forth above, and by also sending a copy of the original notice and petition by registered or certified mail to the agency or corporation.[65]

e. **Service In Connection With Military Personnel.** If the parcel was owned and occupied by any person on active duty in the United States military service, by dependents of such person, or was occupied by the employees of such person owning the parcel, within the period commencing six months prior to the tax sale, see the Soldiers and Sailors Civil Relief Act of 1940.[66]

(1) Affidavit of Military Status. Where following diligent inquiry

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[63] Fed. R. Civ. P. 4(i)(1)(A).

[64] Fed. R. Civ. P. 4(i)(1)(B).

[65] See Fed. R. Civ. P. 4(i)(2)(A).

[66] 50 U.S.C. §§ 501-91. Section 560(3) provides as follows:

> When by law such property may be sold or forfeited to enforce the collection of such tax or assessment, such person in the military service shall have the right to redeem or commence an action to redeem such property, at any time not later than six months after the termination of such service, but in no case later than six months after the date when this Act ceases to be in force; but this shall not be taken to shorten any period, now or hereafter provided by the laws of any State or Territory for such redemption.

50 U.S.C. § 560(3).

the foreclosure attorney determines that no necessary party defendant is in the military service, that attorney should file an affidavit setting forth this fact.

2. **SERVICE BY PUBLICATION.** Where personal service cannot be made on a party defendant in the state of Iowa, the original notice may be served by means of publication. Rules 1.310 through 1.315 of the Iowa Rules of Civil Procedure govern service by publication.[67]

C. **MISSING ASSIGNMENTS OF THE FORECLOSED MORTGAGE.** Often the abstract will show a mortgage in favor of one party, and will then, without assignment of said mortgage, show a foreclosure of that mortgage commenced by an entirely different party. Most often in these cases, there is some sort of assignment from the last mortgagee of record to the foreclosure plaintiff, which assignment, however, is not a matter of record. In these cases, the title examiner should accept an assignment recorded post-petition (or even post-decree or sale) with a pre-petition effective date.[68]

D. **DEFAULT AND SUMMARY JUDGMENTS.** Most judicial foreclosure proceedings do not go to trial. Where one or more defendants file an answer, judgment concerning those defendants usually is awarded to the plaintiff based on a motion for summary judgment. Where a defendant fails to serve and file an answer or other responsive pleading, judgment may be rendered by default, following a proper request for the same pursuant to Rule 1.972 of the Iowa Rules of Civil Procedure.[69]

E. **JUDGMENT/DECREE.**

1. **THE IMPORTANCE OF SPECIFIC FINDINGS/HOLDINGS.** In order to take full advantage of the title-cleansing benefits of a foreclosure decree, it is important that the decree contain specific findings and declarations in connection with those facts, which, if left obscure, would lead to various

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[67] See Iowa R. Civ. P. 1.310-1.315.

[68] One suggestion in this regard is to add to the assignment language similar to the following, to-wit: “This assignment is effective <date>, and is intended to provide constructive notice of a previously unrecorded assignment between the parties.”

[69] See Iowa R. Civ. P. 1.972. Note that most abstracters throughout the state do not show those filings reflecting compliance by the plaintiff with Rule 1.972. This is presumably so because the Iowa Land Title Association Abstracting Standards have not been updated since prior to the adoption of Rule 1.972.

objections as to the marketability of post-foreclosure title. For example, where the record is unclear as to the marital status of the mortgagor, and the foreclosing attorney has elected not to name as a party defendant "any unknown spouse" of said mortgagor, it is important that the decree support allegations in the petition that the mortgagor is unmarried so as to comply with the requirements of Title Standard 6.1.[70] Also, where the bare record suggests that the interest of a defendant is superior to the interest of the foreclosing mortgagee, it is important that the decree make a specific finding that in fact, the mortgage of the plaintiff is the superior interest.

2. **RES JUDICATA.** Res judicata is an important doctrine often overlooked by attorneys examining foreclosure titles. The doctrine of res judicata provides that "a final judgment rendered by a court of competent jurisdiction on the merits is conclusive as to the rights of the parties and their privies, and, as to them, constitutes an absolute bar to a subsequent action involving the same claim, demand or cause of action."[71]

   a. **Example.** Suppose Smith acquires title to Blackacre in 1999. In 2000, Smith grants a mortgage to Bank A, which mortgage also is recorded in 2000. In 2003, Smith grants a second mortgage to Bank B. This mortgage is recorded in 2003. In 2005, Bank B commences a judicial foreclosure of its mortgage and names Bank A as a party defendant, alleging simply that the interest of Bank B is superior to the interest of Bank A. Bank A is properly served, yet fails to file any responsive pleading. Judgment by default is rendered against Bank A, and the foreclosure decree specifically declares the interest of Bank B to be superior to the interest of Bank A. Thereafter, pursuant to the doctrine of res judicata, Bank A is precluded from bringing an action to establish its priority in the real estate, by virtue of its mortgage, over Bank B.[72]

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[70] See Iowa State Bar Association Iowa Land Title Standard 6.1 (8th ed. 2006) (requiring that the spouse of the titleholder be named and joined as a party defendant to the foreclosure proceeding in order to adjudicate that spouse's rights of homestead and dower).

[71] Bennett v. MC No. 619, Inc., 586 N.W.2d 512, 516 (Iowa 1998).

[72] Note, however, that Bank A may nevertheless bring a timely action to set aside, or otherwise attack the judgment in favor of Bank B based upon fraud, irregularity or other similar grounds as specifically provided for under Rule 1.1012 of the Iowa Rules of Civil Procedure. See Iowa R. Civ. P. 1.1012-1.1013, for the grounds and procedure for vacating or modifying a judgment or decree.

F. FORECLOSURE SALE. Chapter 626 of the Code of Iowa provides the procedure by which the foreclosed property is sold at execution sale following decree.

1. NOTICE OF SALE ISSUES.

a. Manner of Notice. The officer facilitating the execution sale must give four weeks' notice of the time and place of the sale.[73]

(1) Posted and Published Notice. The officer shall post the notice in three public places (one of which must be at the count courthouse).[74] The officer must also publish notice in two weekly publications, the first at least four weeks before the date of the sale, and the second at a later time prior to the sale.[75]

(a) Defective Notice Not Fatal. The validity of the execution sale is not affected where an officer sells the real estate without posted and published notice.[76]

(2) Personal Service of Notice to Defendant in Possession. If the mortgagor is in possession of the real estate, the officer must serve the mortgagor with notice by personal service at least twenty days prior to the sale.[77]

(a) Limitation on Action Due to Defective Notice. According to section 626.79 of the Code of Iowa, an execution sale made without personal service of notice thereof on a defendant in possession may be set

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[73] Iowa Code § 626.74 (2007).

[74] Iowa Code § 626.75 (2007).

[75] Id.

[76] Iowa Code § 626.77 (2007). Although, pursuant to section 626.77 an officer selling the real estate without posting and publishing notice "shall forfeit one hundred dollars to the defendant in execution, in addition . . . actual damages . . .," such failure to follow the statutory notice requirements has no apparent impact on the validity of the sale. It follows therefore, that an abstract failing to show compliance with these notice requirements should not elicit an objection from the title examiner.

[77] Iowa Code § 626.78 (2007).

aside on motion within ninety days thereafter.[78] It would appear therefore, that a lack of such personal service of notice should be disregarded by a title examiner after ninety days from the sale.

2. **ISSUES RELATING TO THE IDENTITY OF THE PURCHASER.**

a. **Decree in A, Sale and Deed to B.** Often the record will reflect the entry of a decree of foreclosure in favor of Bank A, and then sheriff's sale and sheriff's deed to Bank B. Although this often results in an objection from a title examiner, it should not. Virtually anyone may appear and bid at the sheriff's sale, and it should make no difference whether the purchaser is John Doe, or Bank B.

b. **Decree in A, Sale to A, Deed to B.** In other situations, the abstract will show a foreclosure decree rendered in favor of Bank A. The return of execution will then reflect that Bank A was the successful sheriff's sale purchaser. The sheriff's deed, however, is then issued in favor of Bank B. Based on these facts alone, the title examiner should make exception and require a showing of record of the connection between the sheriff's sale purchaser (Bank A) and the sheriff's deed grantee (Bank B).

G. **LIS PENDENS.** The effect of the lis pendens index is of enormous significance to the title examiner and foreclosure attorney. Section 617.10 of the Code of Iowa provides that when a petition affecting real estate is filed, the clerk shall index the same in the lis pendens index.[79] "When so indexed, said action shall be considered pending so as to charge all third persons with notice of its pendency, and while pending no interest can be acquired by third persons in the subject matter thereof as against the plaintiff's rights."[80]

1. **EXCEPTION FOR MECHANICS LIENS.** A mechanic's lien "arises on the day work commences under the contract [giving rise to the mechanics lien], and attaches for all services and materials furnished."[81] The mechanic's lien

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[78] Iowa Code § 626.79 (2007).

[79] Iowa Code § 617.10 (2007).

[80] Iowa Code § 617.11 (2007).

[81] Metro. Fed. Bank of Iowa v. A. J. Allen Mechanical Contractors, Inc., 477 N.W.2d 668, 671 (Iowa 1991).

actually predates the filing of the lien statement, which merely relates back to the date of commencement of work.[82] In relation to mechanics liens, therefore, this rule significantly dampers the impact of entering of a foreclosure action in the lis pendens index. Where a mechanics lien is filed after a foreclosure proceeding is entered in the lis pendens index, the mechanics lien may nevertheless survive the foreclosure decree, if the lien is based on work commenced prior to the lis pendens indexing.

a. Example.

(1) Mortgage to *Bank X* filed January 1, 2005.

(2) *Contractor Z* commences work on the roof to the house subject to the mortgage on June 1, 2006.

(3) *Bank X's* foreclosure petition entered in the lis pendens index on July 1, 2006.

(4) *Contractor Z* files a mechanics lien statement of claim on August 1, 2006.

(5) Result. Although the interest of *Contractor Z* is subordinate to the interest of *Bank X*, lis pendens does not bar the necessity of naming *Contractor Z* as a party defendant to *Bank X's* foreclosure action. If *Bank X* fails to name *Contractor Z* as a party defendant to the foreclosure proceeding, the mechanics lien will survive the foreclosure decree.

IV. OTHER REMEDIES.

A. RE-OPENING THE FORECLOSURE PROCEEDING. In some instances, the foreclosure plaintiff, or sheriff's sale purchaser may petition the court to re-open the original foreclosure proceeding so as to address and remedy a defect to said original proceeding. This most frequently happens where a necessary party holding a junior interest was omitted as a party defendant from the original proceeding. In such situations, the foreclosure proceeding is re-opened to extinguish any equitable right

[82] Id. (citing Northwestern Nat'l Bank of Sioux City v. Metro Center, Inc., 303 N.W.2d 395, 398 (Iowa 1981)).

of redemption in the omitted party.[83]

B. **QUIET TITLE ACTION.** An alternative to re-opening of the foreclosure is an independent petition to quiet title to the real estate. A petition to quiet title may be filed to join as a party defendant an omitted junior interest-holder,[84] or it may be filed to address some other defect in title with regard to which a petition to re-open is not an appropriate solution.

C. **INDEMNITY AGREEMENTS.** In some cases, a title examiner and the pending purchaser and/or purchase-money lender may accept an indemnity agreement from the titleholder or the titleholder's title insurer as an appropriate means of addressing an outstanding title objection. This may be appropriate, for instance, where the real estate is subject to judgment lien that will expire merely days following closing. Another instance where an indemnity agreement is appropriate is where there is a disagreement between attorneys as to the existence of a cloud rendering title unmarketable.

D. **TITLE ASSURANCE.** Where the mortgagee is the sheriff's sale purchaser, it may rely on the title policy that was issued to insure the foreclosed mortgage in order to address a post-foreclosure objection to marketable title. In such cases, the title insurer may agree to re-insure the property (often in connection with the issuance of a letter of indemnity) for the benefit of the purchaser and/or the purchaser's lender.

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[83] See Lincoln Joint Stock Land Bank of Lincoln, Neb. v. Rydberg, 15 N.W. 2d 246, 247 (Iowa 1944) ("We can see no fundamental objection to the reopening of an original foreclosure for the purpose of bringing in omitted parties with possible rights of redemption."). The Lincoln court recognized that in re-opening a foreclosure proceeding following entry of the decree and sheriff's sale, there is no question as to the conclusiveness of the original decree. Id. at 248. According to the Lincoln court, the re-opening movant seeks merely to bring additional parties into the decree's embrace. Id. The court then distinguished the re-opening of the original foreclosure proceeding to join omitted parties from a proceeding to vacate or modify a binding decree between the original parties. Id.

[84] In Equitable Life Ins. Co. of Iowa v. Condon, 10 N.W. 2d 78 (Iowa 1943), the sheriff's sale purchaser brought an action to quiet title against the mortgagor's grantee, who acquired title after the mortgage was given, but was omitted as a party defendant to the foreclosure proceeding. Id., at 80. The court allowed the proceeding and afforded the omitted grantee an equitable right of redemption, holding that although the sheriff's sale purchaser took the real estate subject to the rights of the grantee, the foreclosure sale did not enlarge any such rights. Id. at 84. See also Yoder v. Kalona Sav. Bank, 119 N.W. 147, 148 (Iowa 1909) (holding that the rights of an omitted junior lienholder were not diminished by the original proceeding, but nor were they enlarged thereby, and its rights in a subsequent proceeding to quiet title are the same as its rights would have been had it been joined as a party defendant in the original proceeding).

E. **TITLE STANDARD 1.1.** Pursuant to Title Standard 1.1, the title examiner should make objections and requirements "only when the irregularities or defects can reasonably be expected to expose the purchaser or lender to the hazard of adverse claims or litigation."[85] The importance of Title Standard 1.1 to the title examiner should not be overlooked.

> While there is often a temptation to take steps deemed unnecessary by the attorney . . . , or to raise objections to a title, not because such attorney believes it necessary but out of fear that some later attorney may object, this practice is not recommended as it tends to reduce all of our standards to the lowest common denominator and to judge all title questions by the standards of the most stupid title examiner rather than by those of the one having average qualifications. I am convinced that the improvement in title practice requires that we eliminate unnecessary and merely technical objections and refuse to allow our standards to be set by the timid or captious examiner.[86]

[85] Iowa Land Title Standards, Standard 1.1 (8th ed. 2006).

[86] George F. Madsen, Iowa Title Opinions and Standards, § 16.8(D-1) (2d ed. 1978).