

Table of Contents

Volume 1

PART I. REAL ESTATE TRANSACTIONS

CHAPTER 1. EXAMINATION OF ABSTRACTS OF TITLE

- § 1:1 Purpose of abstracts of title
- § 1:2 Vendor furnishes abstract
- § 1:3 Organization of matters in the abstract
- § 1:4 Procedure for examination of an abstract—In general
- § 1:5 —Checking abstract for completeness
- § 1:6 —Locating tract which is subject of examination
- § 1:7 —The examination proper
- § 1:8 —Court proceedings and in special situations
- § 1:9 —Additional comments on examination
- § 1:10 Matters affecting title which the abstract does not or cannot cover
- § 1:11 What defects in the abstract or record title are to be noted
- § 1:12 What defects in the abstract or record title may be waived
- § 1:13 Example of title examination—Sample abstract
- § 1:14 —Form of worksheet
- § 1:15 —Comments on worksheet and abstract examination
- § 1:16 —Defects in sample abstract that may be waived
- § 1:17 Opinions of title
- § 1:18 Form of opinion of title
- § 1:19 Supplemental title opinion
- § 1:20 An explanation of land descriptions
- § 1:21 Description based on governmental survey
- § 1:22 Government lots
- § 1:23 Descriptions based on recorded plats
- § 1:24 Descriptions based on metes and bounds

CHAPTER 2. CURING TITLE DEFECTS

- § 2:1 General remarks
- § 2:2 The use of the affidavit

- § 2:3 Affidavit of possession
- § 2:4 Affidavit of identity
- § 2:5 Affidavit of heirship
- § 2:6 Affidavit showing married or single status
- § 2:7 Affidavit establishing dates of birth, death or marriage
- § 2:8 Affidavit to show death of joint tenant
- § 2:9 Affidavit of identification of plats and subdivisions
- § 2:10 Clarifying descriptions to property
- § 2:11 Marketable record title act
- § 2:12 Quit claim (or warranty) deeds
 - § 2:13 —To release actual or possible outstanding interests
 - § 2:14 —To correct or clarify descriptions
 - § 2:15 —To correct or clarify status or names of parties to a former deed or correct improper executions or acknowledgments
- § 2:16 —To release easements, privileges, or the like
- § 2:17 Summary of methods for curing common defects—
 - Name variance
- § 2:18 —Marital status
- § 2:19 —No notary seal
- § 2:20 —No corporate seal
- § 2:21 —Insufficient or inaccurate description
- § 2:22 —Age of party
- § 2:23 —Identity of judgment debtor
- § 2:24 —Unsatisfied mortgage
- § 2:25 —Defective or no determination of inheritance tax
- § 2:26 —Strangers to title
- § 2:27 —Mechanics' liens
- § 2:28 —No patent
- § 2:29 —Joint tenancy
- § 2:30 Form of affidavit of possession
- § 2:31 Form of affidavit of identity
- § 2:32 Form of affidavit of heirship

CHAPTER 3. QUIET TITLE ACTIONS

- § 3:1 Nature of the action
- § 3:2 Parties
- § 3:3 Petition
- § 3:4 Description of premises
- § 3:5 Service
- § 3:6 Lis pendens
- § 3:7 Guardians
- § 3:8 Servicemembers Civil Relief Act
- § 3:9 Judgment

TABLE OF CONTENTS

§ 3:10	Conclusion
§ 3:11	Form of petition
§ 3:12	Form of affidavit of non-residence
§ 3:13	Form of application for appointment of guardian ad litem
§ 3:14	Form of order appointing guardian ad litem
§ 3:15	Form of affidavit as to military service
§ 3:16	Form of application for appointment of attorney
§ 3:17	Form of order appointing attorney
§ 3:18	Form of answer of guardian ad litem
§ 3:19	Form of answer of attorney for defendants in military service
§ 3:20	Form of judgment and decree

CHAPTER 4. BOUNDARY DISPUTES

§ 4:1	Disputed boundaries—Action to establish
§ 4:2	—Notice
§ 4:3	—Petition
§ 4:4	—Acquiescence in line or corner for ten years
§ 4:5	—Commission of surveyors
§ 4:6	—Trial by court
§ 4:7	—Boundaries by agreement
§ 4:8	—Summary of procedure
§ 4:9	—Form of petition
§ 4:10	—Form of decree

CHAPTER 5. OPTIONS TO PURCHASE REAL ESTATE

§ 5:1	Types of option agreements
§ 5:2	Formal provisions of an option to purchase real estate
§ 5:3	Designating the parties to an option
§ 5:4	Consideration for the option
§ 5:5	Description of the property
§ 5:6	Amount of purchase price and terms of payment
§ 5:7	Length of time in which to exercise option
§ 5:8	Manner of exercising option
§ 5:9	Abstract of title
§ 5:10	Type of conveyance
§ 5:11	Proration of taxes, special assessments and insurance
§ 5:12	Covenant binding heirs and assigns
§ 5:13	Other provisions
§ 5:14	Form of option to purchase real estate
§ 5:15	Preemption

CHAPTER 6. AGREEMENTS TO PURCHASE REAL ESTATE

- § 6:1 General comments
- § 6:2 Buyer's and seller's perspectives—The lawyer's role
- § 6:3 Contract law and statutes relating to real estate transfers apply
- § 6:4 Matters a purchaser should check before signing contract
- § 6:5 Matters a seller should check before executing contract
- § 6:6 Disclosure statement
- § 6:7 Residential property seller disclosure statement (form)
- § 6:8 Lead-based paint disclosure—Sales (form)
- § 6:9 Addendum to purchase agreement re lead-based paint (form)
- § 6:10 Designating the parties in a real estate contract
- § 6:11 Description of realty
- § 6:12 Items of personalty included in the sale
- § 6:13 Price and terms of payment
- § 6:14 Down payment or earnest money
- § 6:15 Proration of taxes and special assessments
- § 6:16 Type of title and mode of conveyance
- § 6:17 Abstract of title
- § 6:18 Encumbrances
- § 6:19 Possession
- § 6:20 Retaining money in escrow until completion of premises
- § 6:21 Survey
- § 6:22 Acceptance by the seller
- § 6:23 Application of insurance proceeds in event of loss
- § 6:24 Conditions precedent
- § 6:25 —Financing
- § 6:26 —Inspections, repairs and alterations
- § 6:27 —Possession
- § 6:28 —Zoning regulations and restrictions
- § 6:29 Representations and warranties
- § 6:30 The closing
- § 6:31 Amendment—Consideration
- § 6:32 Form of offer to purchase real estate

CHAPTER 7. DRAFTING DEEDS

- § 7:1 Information to be secured before drafting deeds
- § 7:2 What deed form to use
- § 7:3 Executing a deed
- § 7:4 Acceptance by grantee

TABLE OF CONTENTS

§ 7:5	Taxation of real estate transfers
§ 7:6	Recording the deed
§ 7:7	Declaration of value
§ 7:8	Recording conveyances of agricultural land
§ 7:9	Designating the grantor or grantors
§ 7:10	—If the grantor is married
§ 7:11	—If the grantor is single
§ 7:12	—If the grantors are joint tenants, or tenants in common
§ 7:13	—If name of the grantor has been changed
§ 7:14	—If the grantor is a minor or incompetent
§ 7:15	—If the grantor is a corporation
§ 7:16	—If the grantor is a partnership
§ 7:17	—If the grantor is a limited liability company
§ 7:18	Designating the grantee or grantees
§ 7:19	—If the grantees desire to take title as joint tenants
§ 7:20	—Creating joint tenancies in more than two parties
§ 7:21	—If the grantee is acting in a representative capacity
§ 7:22	—If the grantee is a corporation
§ 7:23	—If the grantee is a partnership
§ 7:24	—If the grantee is a limited liability company
§ 7:25	Expressing the consideration
§ 7:26	Description
§ 7:27	Exceptions and reservations
§ 7:28	Restrictions
§ 7:29	Easements
§ 7:30	Explanations
§ 7:31	—To show exemption from Iowa transfer tax
§ 7:32	Listing encumbrances
§ 7:33	Drafting deeds in special situations—The correction deed
§ 7:34	—Deed in fulfillment of contract for a deed or land contract
§ 7:35	—Deed in satisfaction of mortgage
§ 7:36	—Deeds to cure title
§ 7:37	Deeds of persons owning a fractional interest
§ 7:38	Deeds given in return for support
§ 7:39	Deed reserving life estate in grantor
§ 7:40	Form of Iowa warranty deed

CHAPTER 8. CLOSING A REAL ESTATE TRANSACTION—ESCROWS

§ 8:1	General remarks
§ 8:2	Duties of purchaser's attorney

- § 8:3 Duties of seller's attorney
- § 8:4 The typical home purchase
- § 8:5 —New home—New loan
- § 8:6 —Assumption of existing loan
- § 8:7 —Refinancing
- § 8:8 —Federal loan programs
- § 8:9 State and federal legislation affecting the closing of
real estate transactions
- § 8:10 State and federal legislation—The equal credit
opportunity act
- § 8:11 —The real estate settlement Procedure Act of 1974, as
amended
- § 8:12 Proration of taxes
- § 8:13 Proration of special assessments
- § 8:14 Proration of rent and transfer of deposits
- § 8:15 Time for proration
- § 8:16 Utilities
- § 8:17 Miscellaneous charges
- § 8:18 Closing conference
- § 8:19 Writing letter or memo to client
- § 8:20 Mechanics of closing statement
- § 8:21 Procedure after straight closing conference
- § 8:22 Title guaranty—Introduction
- § 8:23 —Manual
- § 8:24 —Participation in program
- § 8:25 —Outline of procedure
- § 8:26 —Role of attorney
- § 8:27 —Role of lender
- § 8:28 —Role of abstractor
- § 8:29 —Title guaranty certificates
- § 8:30 —Attorney checklist
- § 8:31 Declaration of value
- § 8:32 Groundwater hazard statement
- § 8:33 Escrow transactions
- § 8:34 —Where commonly used
- § 8:35 —Who should act as agent
- § 8:36 —Provisions of agreement
- § 8:37 —Form of agreement
- § 8:38 —Involving agricultural land
- § 8:39 Loan estimate
- § 8:40 Closing Disclosure form
- § 8:41 Buyers lien certificate (form)
- § 8:42 Tenant estoppel certificate (form)
- § 8:43 Groundwater hazard statement (form)

TABLE OF CONTENTS

CHAPTER 9. DRAFTING REAL ESTATE MORTGAGES AND NOTES

- § 9:1 Scope of chapter
- § 9:2 Matters preliminary to preparing mortgage for prospective mortgagee
- § 9:3 Execution of the mortgage note
- § 9:4 —Place of payment
- § 9:5 —Terms of payment
- § 9:6 —Interest rate
- § 9:7 —Joint and several liability
- § 9:8 —Attorney fees
- § 9:9 —Prepayment clause
- § 9:10 —Sinking fund prepayments
- § 9:11 —No recourse clause
- § 9:12 —Signatures
- § 9:13 —Endorsing payments
- § 9:14 What mortgage form to use
- § 9:15 Formalities of execution of a real estate mortgage
- § 9:16 Designating the mortgagor or mortgagors
- § 9:17 —If the mortgagor is married
- § 9:18 —If the mortgagor is single or a widow(er)
- § 9:19 —If the mortgagors hold title as joint tenants or tenants in common
- § 9:20 —If the mortgagor is a married woman
- § 9:21 —If the mortgagor is a minor or incompetent
- § 9:22 —If the mortgagor is a corporation
- § 9:23 —If the mortgagor is a partnership
- § 9:24 —If the mortgagor is an LLC
- § 9:25 —If the mortgagor goes by several names
- § 9:26 —If the mortgagor has legally changed his name since acquiring title
- § 9:27 Expressing the consideration
- § 9:28 Designating the mortgagee
- § 9:29 —If the mortgagees desire to own the mortgage as joint tenants
- § 9:30 —If the mortgagee is acting in a representative capacity
- § 9:31 —If the mortgagee is a corporation
- § 9:32 —If the mortgagee is a partnership
- § 9:33 —If the mortgagee is an LLC
- § 9:34 Description
- § 9:35 Encumbrances
- § 9:36 Insurance
- § 9:37 Terms of payment

- § 9:38 Repairs clause
- § 9:39 Maintenance of all properties of mortgagor
- § 9:40 Destruction of the mortgaged property
- § 9:41 Eminent domain
- § 9:42 Special types of mortgages—The refinancing mortgage
- § 9:43 —Dragnet mortgage
- § 9:44 —Second mortgage
- § 9:45 Assignment of real estate mortgage
- § 9:46 Agreement for extension of mortgage
- § 9:47 Partial release of mortgage
- § 9:48 Satisfaction of real estate mortgage
- § 9:49 Conveying mortgaged property
- § 9:50 Completed form of mortgage note
- § 9:51 Completed form of real estate mortgage
- § 9:52 Completed form of assignment of real estate mortgage
- § 9:53 Completed form of extension of mortgage
- § 9:54 Completed form of partial release of mortgage
- § 9:55 Completed form of release or satisfaction of mortgage
- § 9:56 Form of comprehensive mortgage note

CHAPTER 10. LAND CONTRACTS AND REMEDIES

- § 10:1 The use of the land contract in preference to a deed and mortgage back
- § 10:2 Information to be secured before drafting land contract
- § 10:3 Formalities of execution
- § 10:4 Equitable conversion
- § 10:5 Use of printed form of land contract
- § 10:6 Designating the seller or sellers
- § 10:7 Designating the purchaser or purchasers
- § 10:8 Designating a corporation where it is either seller or purchaser
- § 10:9 Where either party is a partnership
- § 10:10 Designating an LLC where it is either seller or purchaser
- § 10:11 Description
- § 10:12 Items of personalty
- § 10:13 Setting forth terms of payment
- § 10:14 Acceleration clause
- § 10:15 Sale subject to mortgage
- § 10:16 Date of possession
- § 10:17 Proration of real estate taxes
- § 10:18 Purchaser's equity of redemption

TABLE OF CONTENTS

§ 10:19	Insurance
§ 10:20	Abstract of title
§ 10:21	A provision making time of the essence
§ 10:22	A provision allowing contract seller to treat purchaser as holdover tenant in the event of forfeiture
§ 10:23	Drafting land contracts when printed forms are not used
§ 10:24	—Introductory clause
§ 10:25	—Offer of sellers to sell
§ 10:26	—Acceptance by the purchaser and the terms of payment
§ 10:27	—Possession and proration of taxes
§ 10:28	—Insurance clause
§ 10:29	—Repairs clause
§ 10:30	—Forfeiture clause
§ 10:31	—Clause specifying type of deed
§ 10:32	—Clause making contract binding on heirs
§ 10:33	Assignment of land contracts
§ 10:34	Remedies of the seller under a land contract
§ 10:35	—Forfeiture of land contract
§ 10:36	— —Seller in default
§ 10:37	— —Mediation
§ 10:38	—Foreclosure of land contract
§ 10:39	—Other remedies
§ 10:40	Receivership
§ 10:41	Remedies of the purchaser
§ 10:42	Declaration of value
§ 10:43	Modification of contract
§ 10:44	Recording contracts involving agricultural land
§ 10:45	Recording contracts involving residential property
§ 10:46	Furnishing copy of contract to purchaser
§ 10:47	Form of completed land contract
§ 10:48	Contract disclosure statement
§ 10:49	Residential property seller disclosure statement

CHAPTER 11. CONDOMINIUMS

§ 11:1	General
§ 11:2	Mortgage financing of condominium units
§ 11:3	Contrast with cooperative (multiple housing) arrangement
§ 11:4	Documents which must be recorded to establish condominium regime
§ 11:5	Documents which must be recorded—The declaration
§ 11:6	—The floor plan
§ 11:7	—The bylaws

- § 11:8 Deeds of apartments
- § 11:9 Alienability of individual apartments and interests in
common elements
- § 11:10 Real estate tax and special assessments
- § 11:11 Liens
- § 11:12 Lien against owner of a unit
- § 11:13 Partition
- § 11:14 Removal of property from regime—Resubmission
- § 11:15 Disposition of the property after destruction or
damage
- § 11:16 Common expenses after voluntary conveyance

CHAPTER 12. PARTITION SUITS—REAL OR PERSONAL PROPERTY

- § 12:1 Nature of the action
- § 12:2 Preliminary information
- § 12:3 Purely statutory in Iowa
- § 12:4 Methods of partition
- § 12:5 Limitations on commencement of action
- § 12:6 Motion to dismiss
- § 12:7 Bar or estoppel against partition
- § 12:8 Allegations of petition
- § 12:9 Parties
- § 12:10 Present rights to property required
- § 12:11 Jurisdiction and venue
- § 12:12 Joinder and counter-claims
- § 12:13 Control of court
- § 12:14 Referee or referees
- § 12:15 Approval of court required
- § 12:16 Liens against all or part of property
- § 12:17 Estate less than fee and other special situations
- § 12:18 Abstracts of title—Plats—Surveys
- § 12:19 Costs, fees, expenses
- § 12:20 Steps in institution and maintenance of action
- § 12:21 The petition in equity (Form)
- § 12:22 The petition in equity—Comments on form of petition
(unknown claimants)
- § 12:23 Form of original notice for personal service
- § 12:24 Service of original notice and petition
- § 12:25 Forms for service by publication
- § 12:26 Forms where defendant is or may be in military
service
- § 12:27 Forms for appointment of guardian ad litem
- § 12:28 Form of decree for partition only

TABLE OF CONTENTS

§ 12:29	Form of referee's bond and oath
§ 12:30	Form of commission to appraisers, oath and report
§ 12:31	Form of referee's notice of public sale
§ 12:32	Form of referee's report and order—Public sale
§ 12:33	—Private sale
§ 12:34	Form of notice of hearing on referee's report
§ 12:35	Form of approval of referee's report
§ 12:36	Form of application and order for approval of deed
§ 12:37	Form of application and order fixing referee's and other fees
§ 12:38	Form of final report of referee
§ 12:39	Form of order as to notice endorsed on final report
§ 12:40	Form of notice of hearing on final report
§ 12:41	Form of order approving final report
§ 12:42	Form of final discharge of referee

CHAPTER 13. CONDEMNATION PROCEEDINGS (EMINENT DOMAIN)

§ 13:1	Nature of the proceedings
§ 13:2	Delegation of power of eminent domain
§ 13:3	Public use
§ 13:4	Public necessity
§ 13:5	For what property may be condemned
§ 13:6	For what property may not be condemned
§ 13:7	Summary of step-by-step procedure
§ 13:8	Venue and jurisdiction
§ 13:9	Parties
§ 13:10	Notice of proposed public improvement
§ 13:11	Good faith effort to negotiate
§ 13:12	Appraisal
§ 13:13	Approval of public improvement
§ 13:14	Application
§ 13:15	Appointment of commissioners
§ 13:16	Notice of assessment of damages
§ 13:17	Reserved [<i>Reserved</i>]
§ 13:18	Appraisement
§ 13:19	Payment of award—Taking of possession
§ 13:20	Appeal—Introduction
§ 13:21	Who may appeal—How taken
§ 13:22	Service of notice of appeal
§ 13:23	Filing of notice of appeal
§ 13:24	Duty of sheriff
§ 13:25	Docketing of appeal—Manner of trial
§ 13:26	Pleadings on appeal

- § 13:27 Question determined
- § 13:28 Damages—Rule
- § 13:29 Interest
- § 13:30 Advantages or benefits not to be considered
- § 13:31 Owner under no duty to minimize damages
- § 13:32 Evidence
- § 13:33 Costs and attorney fees
- § 13:34 Duty to furnish legal descriptions
- § 13:35 Form of application for condemnation
- § 13:36 Form of selection and appointment of compensation commissioners
- § 13:37 Form of notice of time of assessment
- § 13:38 Form of notice of award
- § 13:39 Form of instructions to condemnation commissioners from Iowa Chief Justice
- § 13:40 Form of notice of appeal
- § 13:41 Form of petition at law where entire tract taken
- § 13:42 Condemnee's methods to challenge

CHAPTER 14. EASEMENTS, PARTY-WALLS, ETC. AND JOINT DRIVEWAY AGREEMENTS

- § 14:1 Easement—Nature of
- § 14:2 —Methods of creating
- § 14:3 — —Express grant
- § 14:4 — —By prescription
- § 14:5 — —By implication
- § 14:6 Estoppel to deny easement
- § 14:7 Repair of easement
- § 14:8 Release or loss of easement
- § 14:9 Easement of light and air
- § 14:10 Solar access easement
- § 14:11 —Method of creation
- § 14:12 — —Voluntary
- § 14:13 — —Application
- § 14:14 —Recording
- § 14:15 —Removal
- § 14:16 Joint driveway agreements
- § 14:17 Conveyances subject to easements
- § 14:18 Party walls or walls in common
- § 14:19 Applicability of statutes to walls in common
- § 14:20 —Type of construction
- § 14:21 —Sharing of costs
- § 14:22 —Apportionment of costs of repairs and rebuilding
- § 14:23 —Increasing height of wall

TABLE OF CONTENTS

- § 14:24 Party wall agreements
- § 14:25 —Information to be secured
- § 14:26 Form of easement for power lines
- § 14:27 Form of easement for encroachment
- § 14:28 Form of joint driveway agreement
- § 14:29 Form of sidewalk easement agreement
- § 14:30 Form of party wall agreement

PART II. LANDLORD AND TENANT

CHAPTER 15. DRAFTING LEASES

- § 15:1 Introduction
- § 15:2 Acting for both parties
- § 15:3 Essential elements of a lease
- § 15:4 Checklist in conducting client interview
- § 15:5 General remarks—Forms of acknowledgment
- § 15:6 Condition of landlord's title
- § 15:7 Names and authority to act
- § 15:8 Description of the property
- § 15:9 Length of term and possession
- § 15:10 Amount of rent
- § 15:11 When and where rent is to be paid
- § 15:12 Tenant's intended use
- § 15:13 Alterations and repairs—Non-residential property
- § 15:14 Maintenance of premises—Non-residential property
- § 15:15 —Alterations, repairs and maintenance—Residential property
- § 15:16 Assigning or subletting—General
- § 15:17 —Restriction on use of premises (form)
- § 15:18 —Prohibiting assignment in whole or part (form)
- § 15:19 —Preventing assignment or subletting by operation of law (form)
- § 15:20 Destruction of premises by fire, windstorm, explosion, etc
- § 15:21 Options to extend, renew or purchase
- § 15:22 Lead-based paint disclosure
- § 15:23 —Leases (form)
- § 15:24 Termination of lease by landlord and permission to reenter
- § 15:25 Termination of lease by tenant
- § 15:26 Permission of landlord to enter premises during term of lease
- § 15:27 Holding over by tenant
- § 15:28 Notices to be given by tenant to landlord

- § 15:29 Notices to be given by landlord to tenant
- § 15:30 Other provisions
- § 15:31 The farm lease
- § 15:32 —Rent
- § 15:33 —Length of term and provisions of renewal
- § 15:34 —Description
- § 15:35 —Machinery and livestock
- § 15:36 —Feed—Planting—Plowed land
- § 15:37 —Improvements and repairs
- § 15:38 —Farming methods
- § 15:39 —Timber and orchards
- § 15:40 —Floods, fire and drought
- § 15:41 —Termination of lease prior to expiration
- § 15:42 —Recording
- § 15:43 Equipment leases—Leases of machinery, fixtures and other items of personalty
- § 15:44 Procedure for drafting a lease
- § 15:45 Damages for breach of lease
- § 15:46 Form of business lease
- § 15:47 Form of lease of restaurant
- § 15:48 Form of farm lease
- § 15:49 Form of equipment lease
- § 15:50 Form of a dwelling unit lease

CHAPTER 16. TERMINATION OF TENANCIES BETWEEN LANDLORD AND TENANT

- § 16:1 Types of tenancies
- § 16:2 Termination of tenancies—Generally
- § 16:3 —Tenancies at will
- § 16:4 —Tenant holding over
- § 16:5 —Three-day notice
- § 16:6 Termination of farm tenancies
- § 16:7 Termination of tenancies due to termination of life estate
- § 16:8 Illegal use of premises
- § 16:9 Form of notice and service
- § 16:10 Liability for rent—Holding over
- § 16:11 Action by landlord
- § 16:12 Form of three-day notice to quit
- § 16:13 Form of landlord's notice to terminate tenancy at will
- § 16:14 Form of tenant's notice to terminate tenancy at will

TABLE OF CONTENTS

**CHAPTER 17. ACTIONS TO RECOVER
REAL PROPERTY AND FORCIBLE ENTRY
AND DETAINER**

A. ACTIONS TO RECOVER REAL PROPERTY

- § 17:1 Classification of remedies
- § 17:2 Right to possession
- § 17:3 Parties
- § 17:4 Venue
- § 17:5 The Pleadings—Petition—Answer
- § 17:6 Jurisdiction
- § 17:7 Trial to court or jury
- § 17:8 Rents
- § 17:9 Growing crops
- § 17:10 Writ of possession

**B. FORCIBLE ENTRY AND DETAINER (I.C.A.
CHAPTER 648)**

- § 17:11 Nature and purpose
- § 17:12 Grounds for action
- § 17:13 Venue
- § 17:14 Jurisdiction
- § 17:15 Notice to quit
- § 17:16 Bar to action
- § 17:17 Pleadings
- § 17:18 Parties
- § 17:19 Notice of institution of action and service
- § 17:20 Priority of assignment
- § 17:21 Judgment and removal
- § 17:22 Appeals

**PART III. ESTATE PLANNING AND
PROBATE ADMINISTRATION**

**CHAPTER 18. ESTATE PLANNING
TECHNIQUES**

A. IN GENERAL

- § 18:1 Definition and purpose of estate planning
- § 18:2 Objectives of estate plan

- § 18:3 Knowledge needed in estate planning
- § 18:4 Services the estate planning attorney can provide
- § 18:5 Federal estate tax—Overview
- § 18:6 Federal gift tax—Overview
- § 18:7 Eight basic tax principles in estate planning

B. FEDERAL ESTATE TAX MARITAL DEDUCTION

- § 18:8 Introduction
- § 18:9 Limitations
- § 18:10 Types of Qualifying Bequests
- § 18:11 Simultaneous death considerations
- § 18:12 Limiting marital share and portability
- § 18:13 Deciding whether or not to make portability election
- § 18:14 Formula bequests
- § 18:15 Pecuniary bequest
- § 18:16 —Specific bequest of marital portion (form)
- § 18:17 —Specific bequest of exempt amount (form)
- § 18:18 Minimum worth clause
- § 18:19 Fractional share bequest (form)
- § 18:20 Qualified terminable interest property (form)
- § 18:21 Selection of formula
- § 18:22 Non-marital share
- § 18:23 Retaining Flexibility is Allocation of Assets
- § 18:24 Preserving step up in cost basis

C. CREATION OF SUCCESSIVE LIFE ESTATES

- § 18:25 In general
- § 18:26 Solution to family needs
- § 18:27 Tax savings
- § 18:28 Generation-skipping transfer tax—In general
- § 18:29 —Transfers subject to tax
- § 18:30 —Value of transfer and liability for payment of tax
- § 18:31 —Exclusions and exemptions
- § 18:32 —Calculation of tax
- § 18:33 —Planning opportunities

D. TESTAMENTARY TRUSTS

- § 18:34 Income tax savings

E. LIFETIME GIFTS

- § 18:35 In general
- § 18:36 Annual exclusion

TABLE OF CONTENTS

- § 18:37 —Gifts to minors
- § 18:38 Marital privileges
- § 18:39 Selection of property
- § 18:40 Illustration of tax savings
- § 18:41 Made within three years of death
- § 18:42 Sham transfers
- § 18:43 Inter vivos trusts
- § 18:44 Reserved life estates, possibilities of reverter and powers
- § 18:45 Gifts of insurance

F. SALES WITHIN THE FAMILY

- § 18:46 In general
- § 18:47 Installment sales
- § 18:48 Private annuity
- § 18:49 Remainder interest
- § 18:50 Sale with leaseback
- § 18:51 Gift with leaseback

G. TRANSFER OF CONTROL OF FAMILY BUSINESS

- § 18:52 In general
- § 18:53 Sole proprietorship
- § 18:54 Partnership
- § 18:55 Corporation

H. SOME DEVICES USED IN ESTATE PLANNING

- § 18:56 Life insurance
- § 18:57 The life insurance trust
- § 18:58 Joint ownership
- § 18:59 The revocable living trust
- § 18:60 The irrevocable trust
- § 18:61 A last will and testament
- § 18:62 The testamentary trust
- § 18:63 Planning for Digital Assets
- § 18:64 Estate planning for retirement plan assets
- § 18:65 Estate planning information sheet—Form

Volume 2

CHAPTER 19. INTER VIVOS TRUSTS (INCLUDING POWERS OF APPOINTMENT)

- § 19:1 General remarks

- § 19:2 Classifications of trusts
- § 19:3 Uses of inter vivos trusts
- § 19:4 Interview with grantor
- § 19:5 Drafting the trust instrument
- § 19:6 —Requirements for validity
- § 19:7 —Designating parties
- § 19:8 —Schedule of property
- § 19:9 —Dispositive clauses
- § 19:10 —Administrative clauses
- § 19:11 — —Payments to minors
- § 19:12 — —Invasion of principal
- § 19:13 — —Beneficiary under disability
- § 19:14 — —Spendthrift clause
- § 19:15 — —Other powers
- § 19:16 —Fiduciary clauses
- § 19:17 Giving Notice to Trust Beneficiaries
- § 19:18 Drafting the Trust Instrument—Governing Law
- § 19:19 Transfer of property from grantor to trustee
- § 19:20 Revocable trust
- § 19:21 —Methods to revoke or modify
- § 19:22 —Children born or adopted after execution
- § 19:23 —Effect of divorce or dissolution
- § 19:24 —Heirs and creditors' rights at settlor's death
- § 19:25 — —Abatement of shares
- § 19:26 —Certification for third parties
- § 19:27 Irrevocable trust
- § 19:28 Marital deduction trust
- § 19:29 Powers of appointment
- § 19:30 —Clause creating general power of appointment
(form)
- § 19:31 —Clause creating special power to appoint to anyone
except donee and his estate (form)
- § 19:32 —Clause creating special power to appoint to
descendants (form)
- § 19:33 —Limiting right to withdraw (form)
- § 19:34 —Power of invasion limited to co-trustee (form)
- § 19:35 —Right to release power by donee (form)
- § 19:36 Decanting
- § 19:37 New Trust Area Positions as of 2020
- § 19:38 Form of revocable inter vivos trust agreement
- § 19:39 Life insurance trusts
- § 19:40 —Tax considerations
- § 19:41 Form of revocable life insurance trust
- § 19:42 Form of irrevocable life insurance trust
- § 19:43 Charitable remainder trusts

TABLE OF CONTENTS

§ 19:44	—Spousal election rights
§ 19:45	—Internal revenue service forms
§ 19:46	Inter vivos charitable remainder annuity trust—Two lives, consecutive interests (form)
§ 19:47	Inter vivos charitable remainder unitrust—Two lives, consecutive interests (form)
§ 19:48	Iowa trust code outline
§ 19:49	Uniform principal and income act outline
§ 19:50	Unitrust conversion statute outline
§ 19:51	Charitable trust registration (form)
§ 19:52	Charitable trust annual report (form)
§ 19:53	Charitable Lead Trusts
§ 19:54	Iowa Uniform Custodial Trust Act

CHAPTER 20. WILL DRAFTING AND EXECUTION

§ 20:1	Introduction
§ 20:2	Considerations in drafting a will
§ 20:3	The testator's family
§ 20:4	Other objects of testator's bounty
§ 20:5	The testator's property
§ 20:6	Necessity of a will
§ 20:7	Testator's plan of distribution
§ 20:8	—Three levels of concern
§ 20:9	After-born or omitted child
§ 20:10	Payment of death taxes
§ 20:11	Residue
§ 20:12	Minimizing taxes
§ 20:13	Trusts
§ 20:14	Organization of provisions
§ 20:15	Particular will clauses—Publishing or introductory clause
§ 20:16	Revocation clause
§ 20:17	Funeral expenses and debt clause
§ 20:18	Specific legacies
§ 20:19	Cash bequests
§ 20:20	Preference or abatement of legacies
§ 20:21	Religious and charitable bequests
§ 20:22	Devises of real estate
§ 20:23	Provisions of disinheritance
§ 20:24	Residuary clause
§ 20:25	Common disaster clause
§ 20:26	Appointment of executor
§ 20:27	Attestation clause

- § 20:28 Self-proving affidavit
- § 20:29 Execution of a will
- § 20:30 Ceremony of execution
- § 20:31 Instructions to testator
- § 20:32 Drafting codicils
- § 20:33 Form of simple will where entire estate is left to one beneficiary
- § 20:34 Form of simple will providing for spouse and children
- § 20:35 Form of will with trust for children
- § 20:36 Form of trust provision for surviving spouse
- § 20:37 Wills and the marital deduction—A discussion
- § 20:38 Salient features of the marital deduction
- § 20:39 Commentary on will containing qualifying and non-qualifying trusts
- § 20:40 Form of will containing qualifying and non-qualifying marital deduction trusts
- § 20:41 Form of attestation clause when testator is unable to sign will
- § 20:42 Form of affidavit re self-proved will

CHAPTER 21. PROBATE— ADMINISTRATION OF DECEDENTS’ ESTATES

- § 21:1 Introduction
- § 21:2 Chapter outline
- § 21:3 Functions of probate
- § 21:4 Jurisdiction and venue
- § 21:5 Nature of probate
- § 21:6 Office procedure
- § 21:7 Forms used in routine testate estate
- § 21:8 Information to obtain from client
- § 21:9 Family conferences
- § 21:10 Filing of will
- § 21:11 Forms prepared for initial appearance
- § 21:12 —Petition for probate of will
- § 21:13 —Testimony of subscribing witness
- § 21:14 —Testimony where subscribing witnesses not available
- § 21:15 —Order admitting will to probate and appointing executor
- § 21:16 —Court officer’s oath
- § 21:17 —Bond
- § 21:18 —Designation of attorney
- § 21:19 Letters of appointment

TABLE OF CONTENTS

§ 21:20	Publication of notice of appointment
§ 21:21	Service of notice of appointment
§ 21:22	Instructions to personal representative
§ 21:23	Election of surviving spouse
§ 21:24	—Elective share of estate
§ 21:25	—Procedure for setting off share
§ 21:26	—Homestead
§ 21:27	Title to decedent's property
§ 21:28	Possession of decedent's property
§ 21:29	Collection of income
§ 21:30	Continuation of business
§ 21:31	Inventory
§ 21:32	Surviving spouse and children's allowance
§ 21:33	Sale of property
§ 21:34	—Without order of court
§ 21:35	—With order of court
§ 21:36	— —Petition
§ 21:37	— —Reasons for sale
§ 21:38	— —Notice
§ 21:39	— —Order
§ 21:40	— —Report of sale
§ 21:41	Leasing property
§ 21:42	Managing decedent's assets
§ 21:43	Claims
§ 21:44	—Time limit for filing
§ 21:45	— —Exceptions
§ 21:46	—Filing
§ 21:47	—Time for payment
§ 21:48	—Disallowance
§ 21:49	—Hearing
§ 21:50	—Secured
§ 21:51	—Medical assistance by the state
§ 21:52	Claims against beneficiary
§ 21:53	Abatement of bequests
§ 21:54	—General order
§ 21:55	—Contrary provisions
§ 21:56	—Court decisions
§ 21:57	Transfer of securities
§ 21:58	Transfer of motor vehicles
§ 21:59	Iowa inheritance tax
§ 21:60	The Iowa inheritance tax—Preparing and filing return
§ 21:61	Iowa inheritance tax—Valuation of assets
§ 21:62	— —Alternate valuation

§ 21:63	— —Special use value
§ 21:64	—Deductions
§ 21:65	—Calculation of shares
§ 21:66	—Exemptions
§ 21:67	—Exemption from filing
§ 21:68	—Rate schedule
§ 21:69	—Payment
§ 21:70	— —Deferral
§ 21:71	— —Receipt
§ 21:72	Iowa estate tax
§ 21:73	Iowa generation skipping transfer tax
§ 21:74	Specific bequests
§ 21:75	Specific Bequests—Ademption of
§ 21:76	Bequests to minors
§ 21:77	Income tax returns
§ 21:78	Compensation of executor or administrator and attorney
§ 21:79	Interlocutory report
§ 21:80	Final report
§ 21:81	Showing payment of the federal estate tax
§ 21:82	Report of referee
§ 21:83	Discharge—Procedures available
§ 21:84	—Notice and hearing
§ 21:85	—Waiver of notice
§ 21:86	—Order
§ 21:87	Matters subsequent to discharge
§ 21:88	Reopening estate
§ 21:89	Small estate administration
§ 21:90	—Restrictions on use
§ 21:91	—Commencement of proceedings
§ 21:92	—Contents of petition
§ 21:93	—Powers of personal representative
§ 21:94	—Notice to creditors
§ 21:95	—Filing of inventory
§ 21:96	—Conversion to small estate administration
§ 21:97	—Closing statement
§ 21:98	—Fees
§ 21:99	—Distribution of assets
§ 21:100	—Termination
§ 21:101	Similarity of administration of intestate and testate estates
§ 21:102	Forms Used in Routine Intestate Estate
§ 21:103	Petition for administration—Time for filing
§ 21:104	—Contents
§ 21:105	Intestate succession

TABLE OF CONTENTS

§ 21:106	—Share of surviving spouse
§ 21:107	— —Allocation
§ 21:108	—Share of others than surviving spouse
§ 21:109	—Time for determining heirs
§ 21:110	—Illegitimate children
§ 21:111	—Adoption
§ 21:112	Clearance for inheritance tax proceedings
§ 21:113	—When used
§ 21:114	Distribution of property by affidavit
§ 21:115	Reasons for probating a will
§ 21:116	Caveats
§ 21:117	Testate estate forms
§ 21:118	Form—Petition for probate of will and appointment of executor(s)
§ 21:119	—Testimony of subscribing witness on probate of will
§ 21:120	—Order admitting will to probate and appointing executor
§ 21:121	—Court officer's oath
§ 21:122	—Letters of appointment
§ 21:123	—Designation of attorney
§ 21:124	—Publication of notice of appointment
§ 21:125	—Notice to surviving spouse to elect
§ 21:126	—Election of surviving spouse in relation to will
§ 21:127	—Application for allowance for surviving spouse and order
§ 21:128	—Claim in probate
§ 21:129	—Receipt for specific bequest
§ 21:130	—Final report
§ 21:131	—Receipt and waiver of notice
§ 21:132	—Receipt, waiver of notice, and consent to discharge of executor
§ 21:133	—Waiver of hearing
§ 21:134	—Order on final report
§ 21:135	—Petition for authority to sell real estate
§ 21:136	—Order fixing time and place of hearing
§ 21:137	—Affidavit of mailing notice
§ 21:138	—Notice of hearing on application for authority to sell real estate
§ 21:139	—Order authorizing sale of real estate and approving report of sale
§ 21:140	—Notice of disallowance of claim
§ 21:141	—Affidavit of mailing notice
§ 21:142	—Request for hearing
§ 21:143	—Answer to request for hearing on claim

- § 21:144 —Petition for administration and appointment of administrator
- § 21:145 —Petition for probate of will without present administration
- § 21:146 Presumption of death
- § 21:147 —Accidental or violent means
- § 21:148 —Natural or man-made disaster
- § 21:149 Felonious death
- § 21:150 Notice to Department of Human Services re Appointment of Executor
- § 21:151 Notice to Department of Human Services re Appointment of Administrator
- § 21:152 Form of Affidavit for Distribution of Property
- Appendix 21A. Rate Schedules to Determine Amount of Inheritance Tax
- Appendix 21B. Report of Referee

CHAPTER 22. PREPARING THE FEDERAL GIFT TAX RETURN

- § 22:1 Scope of chapter

A. IN GENERAL

- § 22:2 Gift, statutory definition
- § 22:3 —Transfer
- § 22:4 — —Time when made
- § 22:5 — —Consideration for

B. TYPES OF GIFTS

- § 22:6 In general
- § 22:7 Powers of appointment
- § 22:8 —Post-October 21, 1942
- § 22:9 —Pre-October 21, 1942
- § 22:10 —Time of creation of power
- § 22:11 —Creation of gift by exercise of special power of appointment
- § 22:12 Transfer of a qualified terminable interest
- § 22:13 Loans with below market rates of interest
- § 22:14 Installment sale contracts
- § 22:15 Certain property settlements
- § 22:16 Generation-skipping transfer tax
- § 22:17 Loan guarantees
- § 22:18 Self-cancelling installment notes

TABLE OF CONTENTS

C. EXCLUSIONS AND DEDUCTIONS

- § 22:19 In general
- § 22:20 Annual exclusion
- § 22:21 Educational or medical expenses; transfers to political organizations
- § 22:22 Gift to spouse who is a United States citizen
- § 22:23 Gift to spouse who is not a United States citizen
- § 22:24 Charitable gifts
- § 22:25 Gift splitting by spouses

D. VALUATION

- § 22:26 In general
- § 22:27 Net gifts

E. FILING OF GIFT TAX RETURN

- § 22:28 In general
- § 22:29 Time limit
- § 22:30 Place
- § 22:31 Contents of return
- § 22:32 —Generation-skipping transfer tax
- § 22:33 Supplementary documents
- § 22:34 Computation of tax
- § 22:35 Payment of gift tax
- § 22:36 Liability for gift tax
- § 22:37 Recipient's basis in gifts

F. CREDIT AGAINST TAX

- § 22:38 Credit against tax
- § 22:39 Form of United States gift tax return

CHAPTER 23. PREPARATION OF THE FEDERAL ESTATE TAX RETURN

- § 23:1 Introduction

A. FILING THE RETURN

- § 23:2 In general
- § 23:3 Protection of unused deceased spouse exclusion amount
- § 23:4 Opting out of filing and paying federal estate tax in 2010
- § 23:5 Time limit
- § 23:6 Extension of time limit

- § 23:7 Penalty for late filing
- § 23:8 —Delegation of authority as reasonable cause
- § 23:9 Place

B. PAYMENT OF TAX

- § 23:10 In general
- § 23:11 Time limit
- § 23:12 —Extensions
- § 23:13 Interest on late payment
- § 23:14 Penalty for late payment
- § 23:15 Use of U.S. treasury bonds
- § 23:16 Liability of personal representative

C. GROSS ESTATE

- § 23:17 In general
- § 23:18 Alternate valuation
- § 23:19 Real estate
- § 23:20 —Conservation easement
- § 23:21 —Special use valuation
- § 23:22 — —Formulas
- § 23:23 — —Making election
- § 23:24 — —Protective elections
- § 23:25 — —Property included in the election
- § 23:26 — —Recapture of reduced federal estate tax
- § 23:27 — —Amount of tax recaptured
- § 23:28 — —Increase in basis
- § 23:29 — —Deduction of mortgage
- § 23:30 — —Marital deduction bequest
- § 23:31 Stocks and bonds
- § 23:32 Mortgages, notes, and cash
- § 23:33 Annuities
- § 23:34 —Qualified retirement plans
- § 23:35 Proceeds of life insurance
- § 23:36 Miscellaneous assets owned by decedent
- § 23:37 Joint tenancy property
- § 23:38 Powers of appointment
- § 23:39 Transfers before death
- § 23:40 —Outright gifts
- § 23:41 —Gifts with retained interests
- § 23:42 Family-owned business
- § 23:43 Qualified terminable interest property

D. DEDUCTIONS

- § 23:44 In general

TABLE OF CONTENTS

- § 23:45 Expenses, indebtedness, and taxes
- § 23:46 Losses
- § 23:47 Charitable transfers
- § 23:48 Bequests to surviving spouse
- § 23:49 —Qualified terminable interest property
- § 23:50 —Pecuniary bequests
- § 23:51 —Not United States citizen
- § 23:52 State death taxes

E. CREDITS AGAINST TAX

- § 23:53 In general
- § 23:54 Applicable credit amount
- § 23:55 State death tax credit
- § 23:56 Gift tax on post-1976 gifts
- § 23:57 Credit for tax on prior transfers

F. ADJUSTED TAXABLE GIFTS

- § 23:58 Adjusted taxable gifts after December 31, 1976
- § 23:59 Adjusted taxable gifts after August 5, 1997

G. PREPARATION OF ESTATE TAX RETURN

- § 23:60 In general
- § 23:61 Work sheet
- § 23:62 Page 1
- § 23:63 Pages 2 and 3
- § 23:64 Schedule A (real estate)
- § 23:65 Schedule A-1 (Section 2032a valuation)
- § 23:66 Schedule B (stocks and bonds)
- § 23:67 Schedule C (mortgages, notes, and cash)
- § 23:68 Schedule D (insurance on decedent's life)
- § 23:69 Schedule E (jointly owned property)
- § 23:70 Schedule F (miscellaneous property)
- § 23:71 Schedule G (transfers during decedent's life)
- § 23:72 Schedule H (powers of appointment)
- § 23:73 Schedule I (annuities)
- § 23:74 Schedule J (funeral and administration expenses)
- § 23:75 Schedule K (debts of decedent)
- § 23:76 Schedule L (net losses during administration and expenses incurred in administering property not subject to claims)
- § 23:77 Schedule M (bequests, etc., to surviving spouse)
- § 23:78 Schedule O (charitable, public and similar gifts and bequests)

- § 23:79 Schedule P (credit for foreign death taxes)
- § 23:80 Schedule Q (credit for tax on prior transfers)
- § 23:81 Schedule R (generation-skipping transfer tax)
- § 23:82 Schedule PC Protective Claim for Refund
- § 23:83 Schedule U (qualified conservation easement exclusion)
- § 23:84 Execution of return
- § 23:85 Supplemental documents
- § 23:86 Worksheet for calculating credit for tax on prior transfers (form)
- § 23:87 Portability
- § 23:88 Basis Consistency
- Appendix 23A. Unified Rate Schedule
- Appendix 23B. Computation of Maximum Credit for State Death Taxes

CHAPTER 24. POST-DEATH ESTATE PLANNING

- § 24:1 Introduction
- § 24:2 Allocation of deductions
- § 24:3 —Between decedent's final and estate income tax returns
- § 24:4 —Between decedent's final income tax return and federal estate tax return
- § 24:5 —Between estate's income tax return and federal estate tax return
- § 24:6 — —Method of election
- § 24:7 — —Apportionment
- § 24:8 —Timing of deducting expenses on estate income tax return
- § 24:9 — —Illustration
- § 24:10 Equitable adjustments among beneficiaries
- § 24:11 Allocation of income
- § 24:12 —Postponing income distributions
- § 24:13 —Selection of fiscal year
- § 24:14 — —Illustration
- § 24:15 —Distribution of assets in-kind
- § 24:16 — —Tax considerations
- § 24:17 — —Election
- § 24:18 — —Planning considerations
- § 24:19 Use of the alternate valuation date to save estate taxes
- § 24:20 Enforcing marital rights to save taxes
- § 24:21 Redemption of stock to pay death taxes and funeral and administration expenses

TABLE OF CONTENTS

§ 24:22	Disclaimers
§ 24:23	—Applicable law
§ 24:24	—Interests that can be disclaimed
§ 24:25	—Requirements
§ 24:26	— —Irrevocable and in writing
§ 24:27	— —Delivery
§ 24:28	— —Time limit
§ 24:29	— —Acceptance of benefits
§ 24:30	— —Passage without direction by disclaimant
§ 24:31	—To whom disclaimed property passes
§ 24:32	Special use valuation
§ 24:33	Deferral of payment of federal estate tax
§ 24:34	Qualified terminable interest property election
§ 24:35	Allocation of generation skipping transfer tax exemption
§ 24:36	Election under internal revenue code section 645
§ 24:37	Outline of post-death estate planning options
§ 24:38	Election to treat a qualified revocable trust as part of an estate (form)

CHAPTER 25. WILL CONTESTS, CONSTRUCTIONS AND PROBATE OF LOST WILLS

A. CONTESTS

§ 25:1	Contest—How instituted
§ 25:2	Time limitation on commencing action
§ 25:3	Venue
§ 25:4	Proponent and contestant
§ 25:5	Who may contest
§ 25:6	Who may defend
§ 25:7	Joinder of parties
§ 25:8	Party not joined
§ 25:9	Discovery of subsequent will
§ 25:10	May be objected to or set aside in part
§ 25:11	Grounds for contest
§ 25:12	—Lack of testamentary capacity
§ 25:13	—Undue influence
§ 25:14	—Will not executed in accordance with statute
§ 25:15	—Other grounds
§ 25:16	Pleading inconsistent grounds
§ 25:17	Defenses
§ 25:18	Burden of proof

- § 25:19 Appeal
- § 25:20 —Collateral attack
- § 25:21 Provision against contest
- § 25:22 Declaratory judgment to determine last will
- § 25:23 Settlement of will contests
- § 25:24 No contest provision in will
- § 25:25 Form of petition to set aside probate in whole or in part
- § 25:26 Form of petition for declaratory judgment confirming will

B. PROCEEDINGS TO CONSTRUE WILL

- § 25:27 Introduction
- § 25:28 Purpose of action
- § 25:29 Instances where used
- § 25:30 Rules of construction
- § 25:31 —Testator's intent
- § 25:32 —Consideration of will as a whole
- § 25:33 —Ejusdem generis
- § 25:34 —Avoidance of intestacy
- § 25:35 —In favor of heirs
- § 25:36 —Punctuation
- § 25:37 —Gift by implication
- § 25:38 —Doctrine of election
- § 25:39 —Conflict between will and codicil
- § 25:40 Jurisdiction and venue
- § 25:41 Who bound
- § 25:42 Time limitations
- § 25:43 Parties
- § 25:44 Methods of institution
- § 25:45 By application or objections in estate
- § 25:46 Objections and application for construction—Form
- § 25:47 Defenses
- § 25:48 Trial and decision
- § 25:49 Costs and expenses
- § 25:50 Decision reviewable
- § 25:51 Petition to construe will—Form
- § 25:52 Petition for declaratory judgment construing will—Form

C. PROBATE OF LOST WILLS

- § 25:53 Object and purpose
- § 25:54 How instituted
- § 25:55 Propositions to be proven

TABLE OF CONTENTS

- § 25:56 Notice required
- § 25:57 Trial
- § 25:58 Presumptions and burden of proof
- § 25:59 Decision reviewable
- § 25:60 Limitation on commencement of action
- § 25:61 Petition or application—Form

CHAPTER 26. DECREE OF HEIRSHIP

- § 26:1 Introduction
- § 26:2 Statutory provisions
- § 26:3 Nature of proceedings
- § 26:4 Parties
- § 26:5 Jurisdiction and venue
- § 26:6 Outline of procedure
- § 26:7 Form of petition for declaratory judgment establishing heirship
- § 26:8 Form of notice on petition
- § 26:9 Form of application for appointment of guardian ad litem
- § 26:10 Form of order appointing guardian ad litem
- § 26:11 Form of declaratory judgment establishing heirship

CHAPTER 27. POWERS OF ATTORNEY

- § 27:1 General remarks
- § 27:2 When used
- § 27:3 Termination and revocation
- § 27:4 How executed
- § 27:5 Recording
- § 27:6 Affecting real estate
- § 27:7 —Homestead
- § 27:8 Disadvantages
- § 27:9 Alternatives
- § 27:10 Power of attorney for health care decisions
- § 27:11 Form—General power of attorney
- § 27:12 —Indorsing checks and depositing proceeds
- § 27:13 —Leasing premises
- § 27:14 Form of revocation of power of attorney

CHAPTER 28. CONSERVATORSHIPS AND GUARDIANSHIPS

- § 28:1 Scope of the chapter
- § 28:2 Distinction between conservator and guardian
- § 28:3 Persons requiring conservators
- § 28:4 —Minors

§ 28:5	— —Small legacy exception
§ 28:6	—Those incapable of managing their property
§ 28:7	Qualification of conservator
§ 28:8	Preference in appointment
§ 28:9	Conservatorship of minors—Information to obtain from petitioner
§ 28:10	Conservatorship of incompetent persons—Information to be obtained from petitioner
§ 28:11	Petition for appointment—Contents
§ 28:12	—Who may file
§ 28:13	—Where filed
§ 28:14	Methods of appointment—Voluntary
§ 28:15	—Involuntary—Petition
§ 28:16	— —Notice
§ 28:17	— —Ward's entitlement to representation
§ 28:18	— —Trial
§ 28:19	— —Appointment
§ 28:20	Conflict between voluntary and involuntary petitions
§ 28:21	Oath of conservator
§ 28:22	Bond of conservator
§ 28:23	Duties of conservator
§ 28:24	Property of ward—Title
§ 28:25	—Possession
§ 28:26	—Powers of ward
§ 28:27	—Gifts
§ 28:28	Ability of ward to make a will
§ 28:29	Powers of conservator
§ 28:30	—Without court order
§ 28:31	—With court order
§ 28:32	Guardian ad litem
§ 28:33	Reports
§ 28:34	—Inventory
§ 28:35	—Annual report
§ 28:36	—Final
§ 28:37	Claims against conservatorship
§ 28:38	—How entitled
§ 28:39	—Statute of limitations
§ 28:40	—Execution and levy prohibited
§ 28:41	—Liens
§ 28:42	—Payment of claim not filed
§ 28:43	—Denial and contest
§ 28:44	—By conservators
§ 28:45	—Insolvent conservatorships
§ 28:46	Removal of conservator
§ 28:47	Termination

TABLE OF CONTENTS

§ 28:48	—Limitation on right of ward
§ 28:49	—Final report
§ 28:50	—Delivery of the assets
§ 28:51	—Discharge of conservator
§ 28:52	Appeal
§ 28:53	Additional categories of conservatorships
§ 28:54	—Temporary
§ 28:55	—Standby
§ 28:56	—Veterans' administration
§ 28:57	—Foreign
§ 28:58	—Absentee
§ 28:59	Guardianship
§ 28:60	—For whom required
§ 28:61	—Qualification and preference in appointment
§ 28:62	—Petition for appointment
§ 28:63	—Powers of guardian
§ 28:64	—Standby
§ 28:65	—Reports
§ 28:66	—Ward's right to vote
§ 28:67	—Termination
§ 28:68	Guardians ad litem—In general
§ 28:69	—Statement
§ 28:70	Forms
§ 28:71	Outline of changes to Guardianship and Conservatorship Laws made 2019

PART IV. FAMILY LAW AND PRACTICE

CHAPTER 29. ADOPTION

A. TERMINATION OF PARENTAL RIGHTS

§ 29:1	Introduction
§ 29:2	Step-by-step procedure
§ 29:3	Placement investigations
§ 29:4	Release of custody
§ 29:5	Petition
§ 29:6	Appointment of guardian ad litem
§ 29:7	Notice of hearing
§ 29:8	Hearing
§ 29:9	Grounds for termination
§ 29:10	Order
§ 29:11	Form of release of custody—Single natural mother

- § 29:12 —Putative father
- § 29:13 Form of petition for appointment of custodian
- § 29:14 Form of order appointing custodian
- § 29:15 Form of petition for termination of parental rights
- § 29:16 Form of petition for appointment of guardian ad litem
- § 29:17 Form of notice of hearing
- § 29:18 Form of acceptance of service
- § 29:19 Form of acceptance of service and entry of appearance
- § 29:20 Form of proof of service of notice of hearing
- § 29:21 Form of findings of fact and order terminating parental rights

B. ADOPTION

- § 29:22 Introduction
- § 29:23 Step-by-step procedure
- § 29:24 Types of adoptions
- § 29:25 Who may adopt
- § 29:26 Consents required
- § 29:27 —Withdrawal of consent
- § 29:28 Jurisdiction and venue
- § 29:29 Petition—Contents
- § 29:30 Investigations
- § 29:31 Report of expenditures
- § 29:32 Minimum residence period
- § 29:33 Notice of hearing
- § 29:34 —Waiver
- § 29:35 Hearing
- § 29:36 Decree
- § 29:37 Death of person to be adopted
- § 29:38 Annulment
- § 29:39 Appeal
- § 29:40 Sealed records
- § 29:41 Form of petition for adoption
- § 29:42 Form of consent to adoption
- § 29:43 Form of decree of adoption
- § 29:44 Federal tax credit
- § 29:45 Interstate Adoption

CHAPTER 30. STATUTORY CHANGE OF NAME

- § 30:1 General remarks
- § 30:2 Persons authorized to change name
- § 30:3 Check list

TABLE OF CONTENTS

§ 30:4	Step-by-Step procedure
§ 30:5	Initial interview
§ 30:6	Petition—Where filed
§ 30:7	—Contents
§ 30:8	—Notice to spouse
§ 30:9	Consents required
§ 30:10	Decree—When entered
§ 30:11	—Contents
§ 30:12	Decree involving real estate
§ 30:13	Limit on number of name changes
§ 30:14	Form of petition for change of name
§ 30:15	Form of decree for change of name

CHAPTER 31. DISSOLUTION OF MARRIAGE

§ 31:1	General remarks
§ 31:2	—Representation of parties
§ 31:3	Outline of dissolution of marriage procedure
§ 31:4	Jurisdiction
§ 31:5	Type of action
§ 31:6	Residency requirement
§ 31:7	Information to be secured at initial interview
§ 31:8	Petition
§ 31:9	Caption
§ 31:10	Notice to respondent
§ 31:11	Answer by respondent
§ 31:12	Counterclaim
§ 31:13	Powers of the court
§ 31:14	Conciliation and mediation
§ 31:15	Property settlements and financial statements
§ 31:16	Property settlements—Income tax aspect
§ 31:17	Income tax dependent exemption
§ 31:18	Income taxation of alimony payments
§ 31:19	Application for temporary child support or spousal maintenance
§ 31:20	Financial statement
§ 31:21	Hearing—When held
§ 31:22	—Suggested procedure
§ 31:23	Dissolution of marriage—Evidence
§ 31:24	Factors considered in property division
§ 31:25	Factors considered in establishing spousal support or alimony
§ 31:26	Factors considered in setting child support

IA PRACTICE METHODS OF PRACTICE

- § 31:27 Factors in determining child custody and visitation provisions
- § 31:28 Decree
- § 31:29 Appeal
- § 31:30 Modification of decree concerning support, maintenance or custody
- § 31:31 Separate maintenance
- § 31:32 Annulment
- § 31:33 Children—Legitimacy
- § 31:34 Visitation by grandparent, great grandparent and others
- § 31:35 Collection of child support payments
- § 31:36 Mediation of family disputes
- § 31:37 Form of petition
- § 31:38 Form of application for temporary support, fees, and costs
- § 31:39 Affidavit of financial status
- § 31:40 Form of order and judgment for temporary support, fees, and costs
- § 31:41 Form of application for appointment of a conciliator
- § 31:42 Form of order appointing conciliator
- § 31:43 Form of application for waiver of conciliation
- § 31:44 Form of property settlement agreement
- § 31:45 Form of affidavit re Uniform Child Custody Jurisdiction Act
- § 31:46 Table for temporary support and maintenance
- § 31:47 Form of notice to withhold income for child support
- § 31:48 Application for waiver of waiting period

Volume 3

CHAPTER 32. PATERNITY ACTIONS

- § 32:1 Actions to establish paternity
- § 32:2 Statutory action against father
- § 32:3 Definition of child
- § 32:4 Who may institute action
- § 32:5 When action may be instituted and limitation
- § 32:6 Venue
- § 32:7 How instituted—Complaint
- § 32:8 Filing of complaint and petition
- § 32:9 Method of trial—Court or jury
- § 32:10 Civil and not criminal proceedings
- § 32:11 Defendant's right to counsel
- § 32:12 County attorney to prosecute

TABLE OF CONTENTS

§ 32:13	Blood tests
§ 32:14	Exclusion of bystanders
§ 32:15	Abatement of proceedings
§ 32:16	Verdict and judgment
§ 32:17	Custody of children
§ 32:18	Continuing jurisdiction
§ 32:19	Lis pendens and lien—Real property
§ 32:20	Writ of attachment may issue
§ 32:21	Security for payment of support
§ 32:22	Other methods of settling parentage
§ 32:23	Obligations of parents
§ 32:24	Agreement or compromise
§ 32:25	Criminal statute—Desertion and abandonment of children
§ 32:26	Discharge of father's obligation
§ 32:27	Right to inherit
§ 32:28	Children born in wedlock
§ 32:29	Action to overcome paternity—When permitted
§ 32:30	—When not applicable
§ 32:31	—Petition—Contents
§ 32:32	— —Headline for filing
§ 32:33	— —Who may file
§ 32:34	— —Where filed
§ 32:35	—Notice
§ 32:36	— —Response
§ 32:37	—Guardian ad litem
§ 32:38	—Blood or genetic testing
§ 32:39	—Jury trial
§ 32:40	—Court order
§ 32:41	—Effect of order approving
§ 32:42	—Effect of order disapproving
§ 32:43	Petition for termination of father's rights and support
§ 32:44	Form of complaint
§ 32:45	Form of petition and notice

PART V. CREDITOR'S REMEDIES AND DEBTOR'S RELIEF

CHAPTER 33. FORECLOSURE OF REAL ESTATE MORTGAGES

§ 33:1	General remarks
§ 33:2	Procedure
§ 33:3	Venue and jurisdiction

- § 33:4 Parties
- § 33:5 Preliminary matters
- § 33:6 Study the terms of the note and mortgage
- § 33:7 What to do if mortgagor has become a bankrupt
- § 33:8 What to do if mortgagor is deceased
- § 33:9 Determine amount of indebtedness
- § 33:10 Examine the abstract
- § 33:11 Notify mortgagor and perhaps others
- § 33:12 Insurance
- § 33:13 Occupancy of mortgaged premises
- § 33:14 View the premises
- § 33:15 Commencement of the action
- § 33:16 Attorney fees
- § 33:17 Answer and intervention
- § 33:18 Trial, judgment and decree
- § 33:19 —Compulsory counterclaim
- § 33:20 Sale
- § 33:21 Right of redemption
- § 33:22 —Shortening redemption period
- § 33:23 —Effect of debtor's redemption of judgment
- § 33:24 —Agreement to extend redemption period
- § 33:25 Distribution of overplus
- § 33:26 Rentals and receiverships
- § 33:27 Moratorium
- § 33:28 Satisfaction of mortgages of record
- § 33:29 Foreclosure of real estate contracts
- § 33:30 Form of petition for foreclosure
- § 33:31 Answer
- § 33:32 Form of judgment
- § 33:33 Form of motion for appointment of receiver
- § 33:34 Form of order appointing receiver
- § 33:35 Nonjudicial foreclosure of nonagricultural mortgages
- § 33:36 Alternative nonjudicial voluntary foreclosure
procedure
- § 33:37 Deed in lieu of foreclosure
- § 33:38 Priority of purchase money mortgage lien

CHAPTER 34. LIENS OF MECHANICS AND MATERIALMEN

- § 34:1 Right to lien
- § 34:2 Objects and purposes
- § 34:3 Persons entitled to lien
- § 34:4 Limitations on entitlement to mechanics liens
- § 34:5 Property interest subject to lien

TABLE OF CONTENTS

§ 34:6	Priorities
§ 34:7	Rule of construction
§ 34:8	Perfection of lien
§ 34:9	Time for filing
§ 34:10	Information—Check-List
§ 34:11	Place of filing
§ 34:12	Extent of lien
§ 34:13	Duty to satisfy
§ 34:14	Actions to enforce
§ 34:15	Limitation of time within which action may be brought
§ 34:16	Owner may force action sooner
§ 34:17	Foreclosure when prior liens on land
§ 34:18	Parties
§ 34:19	Pleadings
§ 34:20	Notice
§ 34:21	Trial and appeal
§ 34:22	Judgment and decree
§ 34:23	Execution
§ 34:24	Attorney fees
§ 34:25	Form of statement for mechanics lien
§ 34:26	Form of petition in equity
§ 34:27	Form of judgment and decree
§ 34:28	Form of waiver of mechanics lien
§ 34:29	Form of satisfaction of mechanics lien

CHAPTER 35. ATTACHMENT

§ 35:1	Definition and use
§ 35:2	Grounds for attachment—When claim due
§ 35:3	—When debt not due
§ 35:4	Value of property attached
§ 35:5	Venue
§ 35:6	Parties
§ 35:7	Jurisdiction
§ 35:8	Information to be obtained
§ 35:9	Documents to prepare
§ 35:10	Attachments on Sunday
§ 35:11	Additional security may be required
§ 35:12	Writ of attachment
§ 35:13	Following property
§ 35:14	Property which may be levied upon
§ 35:15	Return of officer and notices
§ 35:16	Examination of defendant
§ 35:17	Bond to discharge

- § 35:18 Delivery bond
- § 35:19 Motion to discharge attachment
- § 35:20 Extent of attachment
- § 35:21 Conflicting claims
- § 35:22 Court has broad powers
- § 35:23 Perishable property
- § 35:24 Equitable action required
- § 35:25 Trial, judgment and execution
- § 35:26 Appeal by plaintiff
- § 35:27 Actions by defendant for wrongful attachment
- § 35:28 Rights of other creditors
- § 35:29 Special statutory attachments
- § 35:30 Form of petition
- § 35:31 Form of order
- § 35:32 Form of amendment to petition
- § 35:33 Form of attachment bond
- § 35:34 Form of writ of attachment

CHAPTER 36. GARNISHMENT

- § 36:1 Nature and purpose
- § 36:2 Who may be garnished
- § 36:3 Garnishment—How effected
- § 36:4 Property subject to garnishment
- § 36:5 Wages of employee may be garnished subject to certain statutory exemptions
- § 36:6 Notice to defendant of exemptions
- § 36:7 Notice to defendant as to garnishment proceedings
- § 36:8 Death of garnishee
- § 36:9 Garnishee may exonerate self
- § 36:10 Failure of garnishee to attend
- § 36:11 Controverting answers of garnishee
- § 36:12 Final judgment
- § 36:13 Other claims of garnishee
- § 36:14 Rights of third parties
- § 36:15 Pleading by principal defendant
- § 36:16 Effect of judgment and appeal rights
- § 36:17 Form of notice of garnishment and interrogatories
- § 36:18 Form of notice to defendant of garnishment
- § 36:19 Form of motion for judgment
- § 36:20 Form of order setting time for hearing and prescribing notice
- § 36:21 Form of notice of hearing
- § 36:22 Form of pleading controverting answers of garnishee
- § 36:23 Form of order setting controverted matters for trial

TABLE OF CONTENTS

- § 36:24 Form of notice for hearing on controverted matters
- § 36:25 Form of judgment entry

CHAPTER 37. REPLEVIN

- § 37:1 Nature and object
- § 37:2 Property subject to replevin
- § 37:3 Bonds in general
- § 37:4 Process on sunday
- § 37:5 Venue
- § 37:6 Parties
- § 37:7 Demand
- § 37:8 Commencement of the action
- § 37:9 Procedure for immediate seizure—Hearing
- § 37:10 Issuance of writ, posting of bond and execution
- § 37:11 Retention by defendant notwithstanding writ and seizure
- § 37:12 Defendant may be examined
- § 37:13 Petition of intervention or substitution of defendant
- § 37:14 Defenses
- § 37:15 Trial and judgment
- § 37:16 Option to party
- § 37:17 Form of petition in replevin action
- § 37:18 Form of bond to be filed for immediate delivery
- § 37:19 Form of writ of replevin
- § 37:20 Application for immediate possession

CHAPTER 38. JUDGMENTS— ENFORCEMENT, REVIVAL AND RENEWAL

- § 38:1 Judgment defined
- § 38:2 Duration of judgments and revivals or renewals
- § 38:3 Special provisions bearing on limitations
- § 38:4 Non-residence of judgment defendant
- § 38:5 Interest on judgments
- § 38:6 Procedure to revive or renew judgment
- § 38:7 Judgment liens
- § 38:8 Unified trial court—Small claims judgments
- § 38:9 Duration of judgment liens
- § 38:10 Attorney's lien on judgment
- § 38:11 Judgments of federal courts
- § 38:12 Judgments of other states
- § 38:13 Transfers and survivals of judgments
- § 38:14 Identity of defendant
- § 38:15 Death of judgment creditor
- § 38:16 Judgment against person since deceased

IA PRACTICE METHODS OF PRACTICE

- § 38:17 Enforcement of judgment, orders, etc
- § 38:18 Stay of execution
- § 38:19 Form of execution
- § 38:20 Duty to levy and notice and claim of ownership or exemption
- § 38:21 Statutory exemptions
- § 38:22 Labor claims preferred
- § 38:23 Kind of property that may be appropriated
- § 38:24 Execution sales
- § 38:25 Places where sales are to be held
- § 38:26 Caveat emptor
- § 38:27 Evidence of purchase—Certificate and deeds
- § 38:28 Examination of judgment debtor
- § 38:29 Suggested matters to inquire about
- § 38:30 Equitable proceedings to enforce judgment
- § 38:31 Correction of clerk's errors
- § 38:32 Attacks upon judgments
- § 38:33 Actions to enjoin enforcement of judgment
- § 38:34 Quashing of execution
- § 38:35 Form of petition for revival or renewal of judgment
- § 38:36 Form of affidavit of identity
- § 38:37 Form of notice and affidavit of ownership or claim of exemption
- § 38:38 Form of bond
- § 38:39 Form of application for examination of judgment debtor
- § 38:40 Form of order for debtor's appearance
- § 38:41 Form of appraisal of personal property for sale under execution
- § 38:42 Form of petition for judgment on foreign judgment
- § 38:43 Form of motion to quash execution
- § 38:44 Form of petition to subject property to payment of judgment where claimed fraudulently conveyed
- § 38:45 Form of petition to set aside alleged void judgment and for injunction

CHAPTER 39. CONSUMER BANKRUPTCY—GENERAL

- § 39:1 The Bankruptcy Law
- § 39:2 The Bankruptcy Process
- § 39:3 Jurisdiction and Venue
- § 39:4 Filing fees and forms
- § 39:5 Differentiating between Chapter 7 and Chapter 13

TABLE OF CONTENTS

**CHAPTER 40. INITIATING THE
BANKRUPTCY**

- § 40:1 Petition Forms: The voluntary petition
- § 40:2 Forms and schedules to be filed
- § 40:3 Additional schedules that must be filed
- § 40:4 Form 122A-1 and A-2: the means test
- § 40:5 Pre-filing Counseling Requirement
- § 40:6 Other Documents to be provided
- § 40:7 Post-filing procedure

**CHAPTER 41. PREPARING THE
BANKRUPTCY PETITION AND OBTAINING
DISCHARGE**

- § 41:1 The initial interview
- § 41:2 Mandated notices
- § 41:3 The means test: eligibility for chapter 7
- § 41:4 Chapter 13
- § 41:5 Documents to obtain from the client
- § 41:6 Assets: Schedules A and B
- § 41:7 Exemptions generally: Form 106C
- § 41:8 Iowa Exemptions: the homestead
- § 41:9 Iowa exemptions-personal property
- § 41:10 Federal non-bankruptcy exemptions applicable to
Iowa cases
- § 41:11 Exemption planning
- § 41:12 Forms 106D, E, F, G and H
- § 41:13 Forms 106I and J
- § 41:14 Statement of Financial Affairs (Form 107)
- § 41:15 Preferences and fraudulent transfers
- § 41:16 Dischargeability
- § 41:17 Treatment of secured debts in Chapter 7
- § 41:18 Avoidance of judicial liens
- § 41:19 Chapter 13 plans
- § 41:20 Discharge
- § 41:21 Closing of the case

**CHAPTER 42. ATTORNEY AND OTHER
STATUTORY LIENS**

- § 42:1 Scope of chapter
- § 42:2 Two types of statutory liens
- § 42:3 Harvester's lien
- § 42:4 Liens for labor and material on public improvements
- § 42:5 —Definition of terms

- § 42:6 —Bond
- § 42:7 —Lien claim
- § 42:8 —Time of filing claims
- § 42:9 —Retention from payments on contracts
- § 42:10 —Action to enforce lien
- § 42:11 Miner's lien
- § 42:12 Forwarding and commission merchant's lien
- § 42:13 Artisan's lien
- § 42:14 Cold storage locker lien
- § 42:15 Lien for care of stock and storage of boats and motor vehicles
- § 42:16 Lien for services to animals
- § 42:17 Veterinarian's lien
- § 42:18 Hospital lien
- § 42:19 Hotelkeeper's lien
- § 42:20 Lien for agricultural supply dealer
- § 42:21 Self-service storage facility lien
- § 42:22 Attorney's lien
- § 42:23 Release of lien by bond
- § 42:24 Notice to adverse party of attorney's lien
- § 42:25 Landlord's statutory lien
- § 42:26 —Extent of lien
- § 42:27 —Duration of lien
- § 42:28 —Enforcement of lien
- § 42:29 — —Step-by-step procedure
- § 42:30 — —Sale of crops subject to lien
- § 42:31 Form of petition for landlord's attachment
- § 42:32 Landlord's contractual lien

CHAPTER 43. AUXILIARY RECEIVERSHIPS

- § 43:1 Scope of this chapter
- § 43:2 Petition or application
- § 43:3 Notice
- § 43:4 Law or equity
- § 43:5 Other remedies
- § 43:6 Discretion of court
- § 43:7 Grounds for appointment
- § 43:8 Hearing on petition or application
- § 43:9 Order of appointment
- § 43:10 Qualification of receiver
- § 43:11 Officer of court—Management and disposition of property
- § 43:12 Claims, lien, taxes, etc
- § 43:13 Discovery of assets—Contempt

TABLE OF CONTENTS

§ 43:14	Reports and accountings
§ 43:15	Removal of receiver
§ 43:16	Liability of receiver
§ 43:17	Form of petition in action containing application for receiver
§ 43:18	Form of enrolled order setting application for hearing and prescribing notice
§ 43:19	Form of order appointing receiver
§ 43:20	Form of receiver's bond, oath and clerk's approval
§ 43:21	Form of notice of receivership and time for filing claims, etc
§ 43:22	Form of application and motion re discovery of assets
§ 43:23	Form of enrolled order re citation
§ 43:24	Form of interlocutory report—Order and notice
§ 43:25	Form of final report
§ 43:26	Form of order setting final report for hearing and prescribing notice
§ 43:27	Order approving final report
§ 43:28	Form of receiver's affidavit as to fees

PART VI. SPECIAL ACTIONS AND PROCEEDINGS

CHAPTER 44. POSTCONVICTION PROCEDURE—CRIMINAL

§ 44:1	Introduction
§ 44:2	Where applicable
§ 44:3	Application—Where filed
§ 44:4	—Contents
§ 44:5	—Waiver of grounds not included
§ 44:6	—Separation of facts from allegations and verification
§ 44:7	—Time for filing
§ 44:8	—Withdrawal
§ 44:9	—Amendment
§ 44:10	Response—Time for
§ 44:11	—Types of
§ 44:12	—Contents
§ 44:13	Discovery
§ 44:14	Determination of relief—Summary disposition
§ 44:15	Hearing on the Merits—The Postconviction Trial
§ 44:16	Briefing and Post-Ruling Motions
§ 44:17	Appeal
§ 44:18	Payment of costs

CHAPTER 45. ACTIONS AGAINST GOVERNMENTAL UNITS

A. SUITS AGAINST MUNICIPALITIES

- § 45:1 Introduction
- § 45:2 Definition of “Municipality”
- § 45:3 Type of actions included-tort actions
- § 45:4 Liability imposed
- § 45:5 Distinction between governmental and proprietary functions
- § 45:6 Outline of procedure
- § 45:7 Time limitation on actions
- § 45:8 —Claimant dies
- § 45:9 Service of lawsuit
- § 45:10 Suits against officers, employees, or agents
- § 45:11 —Duty of municipality to defend
- § 45:12 —Exclusive remedy
- § 45:13 Actual knowledge of defect as defense
- § 45:14 Exempted claims
- § 45:15 Liability insurance
- § 45:16 Compromise and settlement of tort claims

B. SUITS AGAINST THE STATE

- § 45:17 Introduction
- § 45:18 Liability of state of Iowa
- § 45:19 —Claims included
- § 45:20 —Employees included
- § 45:21 —Acts within scope of employment
- § 45:22 —Exceptions to liability
- § 45:23 Remedies exclusive
- § 45:24 Procedure in presenting tort claims
- § 45:25 —Outline of steps
- § 45:26 —Time for filing claim and commencing action
- § 45:27 —Place of filing
- § 45:28 —Content of claim
- § 45:29 —Answer
- § 45:30 —Administrative adjustment
- § 45:31 —Withdrawal of claim
- § 45:32 Instituting suit in Iowa district court
- § 45:33 —Time limit
- § 45:34 —Venue
- § 45:35 —Commencing action
- § 45:36 —Rules of civil procedure apply

TABLE OF CONTENTS

- § 45:37 —Compromise and settlement
- § 45:38 —Damages
- § 45:39 Appeal of district court judgment—Appellate review
- § 45:40 Attorney fees
- § 45:41 Form of claim

CHAPTER 46. PARTITION FENCE CONTROVERSIES

- § 46:1 Fence controversies
- § 46:2 Disposition of controversy
- § 46:3 Who are fence viewers
- § 46:4 Check list—Information
- § 46:5 Voluntary agreement
- § 46:6 Form of voluntary agreement
- § 46:7 Proceedings to enforce voluntary agreement or contract
- § 46:8 Absence of agreement—Purely statutory
- § 46:9 Proceedings to enforce statutory duties or obligations
- § 46:10 Controversy created—Demand to act
- § 46:11 Form of demand on adjoining landowner
- § 46:12 Jurisdiction of fence viewers
- § 46:13 Filing complaint and notice
- § 46:14 Form of complaint
- § 46:15 Form of notice to landowner
- § 46:16 Hearing before fence viewers and decision
- § 46:17 Form of order or decision
- § 46:18 Record and recordation
- § 46:19 Types of fences
- § 46:20 Default in performance
- § 46:21 Appeal and reviews
- § 46:22 Important case

CHAPTER 47. NUISANCES AND THEIR ABATEMENT

- § 47:1 Definition of terms
- § 47:2 Private nuisances
- § 47:3 Private nuisance—Factors used for determination
- § 47:4 —Examples
- § 47:5 Statutory or public nuisances
- § 47:6 Joinder of actions for damages and injunction
- § 47:7 Damages for private nuisances
- § 47:8 Injunctions to abate nuisances
- § 47:9 Defenses

- § 47:10 Burden of proof
- § 47:11 Parties liable
- § 47:12 Summary of action
- § 47:13 Remedies against public nuisances
- § 47:14 Form of petition in nuisance action

CHAPTER 48. MANDAMUS

- § 48:1 Definition
- § 48:2 Nature and purpose
- § 48:3 Illustrative cases
- § 48:4 Prerequisites
- § 48:5 —Duty
- § 48:6 —Other plain, speedy and adequate remedy
- § 48:7 —Discretion
- § 48:8 —Good faith
- § 48:9 —Demand
- § 48:10 —Damages
- § 48:11 Nature of action
- § 48:12 Jurisdiction and discretion
- § 48:13 Time in which to bring
- § 48:14 Petition
- § 48:15 Parties
- § 48:16 Pleadings and proceedings
- § 48:17 Defenses
- § 48:18 Order—To whom issued
- § 48:19 —When granted
- § 48:20 Temporary orders
- § 48:21 Joinder with other actions
- § 48:22 Appeal
- § 48:23 Performance by another
- § 48:24 Contempt—Refusal to obey order
- § 48:25 Other remedy awarded
- § 48:26 Form of petition
- § 48:27 Form of order

CHAPTER 49. CERTIORARI

- § 49:1 Nature and purpose of proceedings
- § 49:2 Step-by-step procedure
- § 49:3 When may issue
- § 49:4 —Limitations
- § 49:5 — —Statutory authorization
- § 49:6 — —Judicial function
- § 49:7 — —Jurisdiction
- § 49:8 — —Illegal Acts

TABLE OF CONTENTS

§ 49:9	Limitation as to time
§ 49:10	Jurisdiction to issue writ
§ 49:11	Parties qualified to request
§ 49:12	The petition
§ 49:13	Notice as to issuance of writ
§ 49:14	Contents of writ
§ 49:15	Motion to dismiss or quash
§ 49:16	Stay
§ 49:17	Service of and return to writ
§ 49:18	Trial or hearing
§ 49:19	Burden of proof
§ 49:20	Judgment limited
§ 49:21	Appeal
§ 49:22	Form of petition
§ 49:23	Form of order

CHAPTER 50. QUO WARRANTO

§ 50:1	Nature of action
§ 50:2	Public not private right involved
§ 50:3	Causes of action
§ 50:4	How action is entitled
§ 50:5	When county attorney or attorney general brings action
§ 50:6	When private citizen may bring action
§ 50:7	Public officers may intervene
§ 50:8	Defendants
§ 50:9	Joinder with other causes prohibited
§ 50:10	Jurisdiction and venue
§ 50:11	Exclusive remedy
§ 50:12	Time limits for suit
§ 50:13	The petition
§ 50:14	Subsequent proceedings
§ 50:15	Nature of judgment and decree
§ 50:16	Form of application and leave of private citizen
§ 50:17	Form of a petition

CHAPTER 51. INJUNCTIONS

§ 51:1	Nature and purpose
§ 51:2	Types of injunctions
§ 51:3	Test for issuing
§ 51:4	Appropriate situations for the issuance of injunctions
§ 51:5	Parties
§ 51:6	Procedure in obtaining temporary injunction
§ 51:7	Burden of proof

- § 51:8 Motion to dissolve
- § 51:9 Effect of dissolution of discharge
- § 51:10 Offense completed
- § 51:11 Final hearing
- § 51:12 Damages on dissolution
- § 51:13 Contempt
- § 51:14 Form of petition seeking temporary injunction
- § 51:15 Form for writ of temporary injunction
- § 51:16 Form of permanent writ of injunction
- § 51:17 Form of injunction bond
- § 51:18 Form of motion to dissolve preliminary injunction

CHAPTER 52. DECLARATORY JUDGMENTS

- § 52:1 Nature and purpose of proceedings
- § 52:2 Discretionary
- § 52:3 Actual or justiciable controversy
- § 52:4 Liberal construction
- § 52:5 Statutory remedy
- § 52:6 Specific powers conferred
- § 52:7 Jurisdiction and venue
- § 52:8 Legal or equitable
- § 52:9 Motion to transfer
- § 52:10 Parties
- § 52:11 Burden of proof
- § 52:12 Form of petition
- § 52:13 Original notice
- § 52:14 Defenses
- § 52:15 Supplemental relief
- § 52:16 Judgment or decree
- § 52:17 Appeal and review

CHAPTER 53. ARBITRATION AND AWARD

- § 53:1 General comments

A. ARBITRATION UNDER THE UNIFORM ARBITRATION ACT

- § 53:2 Agreement to arbitrate—Existing controversy
- § 53:3 —Future controversy
- § 53:4 — —Exceptions
- § 53:5 —Enforcement
- § 53:6 Selection of arbitrator or arbitrators
- § 53:7 —Fees and expenses
- § 53:8 The submission

TABLE OF CONTENTS

- § 53:9 Hearing—Notice
- § 53:10 —Example of procedure
- § 53:11 —Evidence
- § 53:12 Award
- § 53:13 —Change by arbitrators
- § 53:14 —Change by district court
- § 53:15 —Confirmation
- § 53:16 Application to district court
- § 53:17 Venue
- § 53:18 Appeal
- § 53:19 Disputes between governmental agencies

B. ARBITRATION UNDER CONTRACTS BETWEEN EMPLOYERS AND EMPLOYEES

- § 53:20 Exclusion under Uniform Arbitration Act
- § 53:21 Enforcement of labor agreements by federal courts
- § 53:22 Defining the scope of Section 301
- § 53:23 —The Westinghouse case
- § 53:24 —The Lincoln Mills case
- § 53:25 — —Substantive law to be applied
- § 53:26 The Steelworkers Trilogy
- § 53:27 —United Steelworkers of America v. American Manufacturing Company
- § 53:28 —United Steelworkers of America v. Warrior & Gulf Navigation Company
- § 53:29 —United Steelworkers of America v. Enterprise Wheel and Car Corporation
- § 53:30 Jurisdiction under Section 301—Federal vs. State—Dowd Box
- § 53:31 — —Lucas Flour Company
- § 53:32 Determination of duty to arbitrate
- § 53:33 —Voluntary submission
- § 53:34 —Procedural arbitrability
- § 53:35 Enforcement of arbitration awards
- § 53:36 Finality of arbitration—Settlement agreements
- § 53:37 Judicial review of arbitral awards—Drawing essence from collective bargaining agreement
- § 53:38 Sources of guidance to the arbitrator
- § 53:39 Construing plain and ambiguous language
- § 53:40 Judicial enforcement of award
- § 53:41 Modification or vacation of award

CHAPTER 54. WORKERS' COMPENSATION

A. COVERAGE OF IOWA WORKERS' COMPENSATION LAWS

- § 54:1 Statutory organization
- § 54:2 Parties of a workers' compensation claim
- § 54:3 Employees covered by Iowa workers' compensation laws
- § 54:4 Employers under Iowa workers' compensation laws
- § 54:5 Insurance carriers
- § 54:6 Exclusivity provision

B. BASIS OF WORKERS' COMPENSATION BENEFITS UNDER CHAPTER 85

- § 54:7 Overview
- § 54:8 Employer-employee relationship
- § 54:9 What constitutes an "injury" under Chapter 85
- § 54:10 Arising out of and in the course of employment

C. BENEFIT ENTITLEMENT

- § 54:11 Medical benefits
- § 54:12 Examination under Iowa Code § 85.39
- § 54:13 Weekly benefits—Overview
- § 54:14 —Calculating the rate of compensation
- § 54:15 —Temporary total disability benefits
- § 54:16 —Temporary partial disability benefits
- § 54:17 —Healing period benefits
- § 54:18 —Permanent partial disability benefits
- § 54:19 —Permanent total disability benefits
- § 54:20 Second injury fund benefits
- § 54:21 Vocational rehabilitation benefits
- § 54:22 Death benefits

D. SETTLEMENTS

- § 54:23 Overview
- § 54:24 Agreement for settlement
- § 54:25 Compromise settlement
- § 54:26 Commutations
- § 54:27 Other types of settlements

E. AFFIRMATIVE DEFENSES

- § 54:28 Overview

TABLE OF CONTENTS

- § 54:29 Notice
- § 54:30 Statute of limitations for an original proceeding

F. RESPONSIBILITIES OF THE EMPLOYER/ INSURANCE CARRIER

- § 54:31 Filings with the workers' compensation commissioner
- § 54:32 General responsibilities

G. THE CONTESTED CASE PROCESS

- § 54:33 Overview
- § 54:34 Petition for arbitration
- § 54:35 Petition for review-reopening
- § 54:36 Petition for alternate medical care
- § 54:37 Other petitions
- § 54:38 Answer
- § 54:39 Discovery
- § 54:40 Preparation for hearing
- § 54:41 Appeal to the workers' compensation commissioner
- § 54:42 Appeal from order of workers' compensation
commissioner
- § 54:43 Appeal from district court

CHAPTER 55. APPEALS TO SUPREME COURT

- § 55:1 Applicable rules
- § 55:2 Court of record
- § 55:3 Final or interlocutory
- § 55:4 Who may appeal
- § 55:5 Limitation on right of appeal
- § 55:6 Time when appeal may be taken
- § 55:7 Time within which to make application for
interlocutory appeal or discretionary review
- § 55:8 Dismissal of appeal
- § 55:9 Cross-appeals—Time for taking
- § 55:10 Who may cross-appeal
- § 55:11 Special limitation—Constitutional amendment
- § 55:12 How taken—Notice and delivery
- § 55:13 Form of notice of appeal
- § 55:14 Application for interlocutory appeal
- § 55:15 —Form
- § 55:16 Application for interlocutory appeal or discretionary
review—Objections to application
- § 55:17 —Order denying or granting

- § 55:18 Right of appeal may be lost
- § 55:19 Time limits for all appeals
- § 55:20 The record
- § 55:21 Correcting record
- § 55:22 Form and contents of briefs and arguments
- § 55:23 Motions to dismiss or affirm and other motions
- § 55:24 Scope of review
- § 55:25 Taxation of costs
- § 55:26 Oral argument
- § 55:27 Decision of the appellate court
- § 55:28 Rehearing—Petition and time for
- § 55:29 Procedendo
- § 55:30 Certiorari or appeal
- § 55:31 Effect of decision—Affirmance—Reversal—
Modification
- § 55:32 Court of Appeals, rehearing, and further review
- § 55:33 Certification of questions of law
- § 55:34 Special rules for expedited appeals
- § 55:35 Appellate procedure timetable
- § 55:36 Appellate procedure timetable No. 1—Pre-docketing
procedure
- § 55:37 Appellate procedure timetable No. 2—Post-docketing
procedure
- § 55:38 Appellate procedure timetable No. 3—Post-docketing
procedure in Chapter 232 child in need of assistance
and termination cases

CHAPTER 56. ORGANIZING CORPORATIONS

- § 56:1 Introduction—General comments
- § 56:2 Preliminary information and checklist
- § 56:3 Scope of coverage
- § 56:4 Who may incorporate
- § 56:5 Articles of incorporation—Requirements
- § 56:6 Corporation's name
- § 56:7 Shares authorized
- § 56:8 Bylaws—Requirements
- § 56:9 Existence of board of directors
- § 56:10 Powers of the board of directors
- § 56:11 Makeup of the board of directors
- § 56:12 Number of directors
- § 56:13 Election of directors
- § 56:14 Terms of directors
- § 56:15 Removal of directors by shareholders

TABLE OF CONTENTS

§ 56:16	Vacancy on the board
§ 56:17	Compensation of directors
§ 56:18	Board of directors meetings—Regular and special
§ 56:19	Board of directors action without a meeting
§ 56:20	Notice of meetings of board of directors
§ 56:21	Quorum requirements at meeting
§ 56:22	Votes required for board of directors action
§ 56:23	Committees of the board of directors
§ 56:24	Personal liability of directors
§ 56:25	Issuance of shares
§ 56:26	Preemptive rights
§ 56:27	Appraisal rights
§ 56:28	Meetings of shareholders
§ 56:29	Notice of meetings
§ 56:30	Quorum requirements for meeting of shareholders
§ 56:31	Voting requirements for actions of shareholders on all matters, except election of directors
§ 56:32	Voting requirements in order to elect directors
§ 56:33	Action by shareholders—Single or multiple groups
§ 56:34	Voting agreements of shareholders
§ 56:35	Informal action by shareholders
§ 56:36	Distributions to shareholders
§ 56:37	Liability of shareholders
§ 56:38	Number of officers
§ 56:39	Indemnification of officers
§ 56:40	Corporate actions requiring approval of both board of directors and shareholders
§ 56:41	Restriction on transfer of shares
§ 56:42	Amendment of articles of incorporation by board of directors
§ 56:43	Amendment of articles of incorporation by the shareholders
§ 56:44	Amendment of bylaws by board of directors or shareholders
§ 56:45	Emergency bylaws
§ 56:46	A corporation's acquisition of its own shares
§ 56:47	Filing procedures and fees
§ 56:48	Forms
§ 56:49	Form of articles of correction
§ 56:50	Form of articles of incorporation
§ 56:51	Form of fictitious name resolution
§ 56:52	Form of application for use of indistinguishable name
§ 56:53	Form of application for reservation of corporate name
§ 56:54	Form of notice of transfer of reservation of corporate name

IA PRACTICE METHODS OF PRACTICE

- § 56:55 Form of application for registration of corporate name
- § 56:56 Form of application for renewal of registration of
corporate name
- § 56:57 Form of statement of change of registered office or
registered agent, or both
- § 56:58 Form of statement of resignation of registered agent
- § 56:59 Form of articles of amendment
- § 56:60 Form of restated articles of incorporation
- § 56:61 Form of articles of amendment pursuant to
reorganization
- § 56:62 Form of articles of merger
- § 56:63 Form of articles of share exchange
- § 56:64 Form of articles of dissolution by incorporators or
initial directors
- § 56:65 Form of articles of dissolution by board of directors
and shareholders
- § 56:66 Form of articles of revocation of dissolution
- § 56:67 Form of application for reinstatement
- § 56:68 Form of Foreign Profit Corporation Registration
Statement
- § 56:69 Form of application for amended Foreign Registration
Statement
- § 56:70 Form of application for certificate of withdrawal

Table of Laws and Rules

Table of Cases

Index