

**702.09 History:** 1965 c. 52; Stats. 1965 s. 232.09; 1969 c. 334; Stats. 1969 s. 702.09.

**702.11 History:** 1965 c. 52; Stats. 1965 s. 232.11; 1969 c. 334; Stats. 1969 s. 702.11.

**702.13 History:** 1965 c. 52; Stats. 1965 s. 232.13; 1969 c. 334; Stats. 1969 s. 702.13.

**702.15 History:** 1965 c. 52; Stats. 1965 s. 232.15; 1969 c. 334; Stats. 1969 s. 702.15.

**702.17 History:** 1965 c. 52; Stats. 1965 s. 232.17; 1969 c. 334; Stats. 1969 s. 702.17.

**702.19 History:** 1965 c. 52; Stats. 1965 s. 232.19; 1969 c. 334; Stats. 1969 s. 702.19.

**702.21 History:** 1965 c. 52; Stats. 1965 s. 232.21; 1969 c. 334; Stats. 1969 s. 702.21.

## CHAPTER 703.

### Condominiums.

**703.01 History:** 1963 c. 78; Stats. 1963 s. 230.70; 1969 c. 334 s. 4; Stats. 1969 s. 703.01.

**703.02 History:** 1963 c. 78; Stats. 1963 s. 230.71; 1965 c. 468; 1967 c. 59; 1969 c. 334 s. 5; 1969 c. 411 s. 14; Stats. 1969 s. 703.02.

**703.03 History:** 1963 c. 78; Stats. 1963 s. 230.72; 1969 c. 334 s. 6; 1969 c. 411 s. 14; Stats. 1969 s. 703.03.

**703.04 History:** 1963 c. 78; Stats. 1963 s. 230.73; 1969 c. 334 s. 6; Stats. 1969 s. 703.04.

**703.05 History:** 1963 c. 78; Stats. 1963 s. 230.74; 1969 c. 334 s. 6; Stats. 1969 s. 703.05.

**703.06 History:** 1963 c. 78; Stats. 1963 s. 230.75; 1967 c. 59; 1969 c. 334 s. 7; 1969 c. 411 s. 14; Stats. 1969 s. 703.06.

**703.07 History:** 1963 c. 78; Stats. 1963 s. 230.76; 1969 c. 334 s. 8; Stats. 1969 s. 703.07.

**703.08 History:** 1963 c. 78; Stats. 1963 s. 230.77; 1969 c. 334 s. 8; Stats. 1969 s. 703.08.

**703.09 History:** 1963 c. 78; Stats. 1963 s. 230.78; 1969 c. 334 s. 8; 1969 c. 411 s. 14; Stats. 1969 s. 703.09.

**703.10 History:** 1963 c. 78; Stats. 1963 s. 230.79; 1969 c. 334 s. 8; Stats. 1969 s. 703.10.

**703.11 History:** 1963 c. 78; Stats. 1963 s. 230.80; 1967 c. 59; 1969 c. 55; 1969 c. 334 s. 8; 1969 c. 411 s. 14; Stats. 1969 s. 703.11.

**703.12 History:** 1963 c. 78; Stats. 1963 s. 230.81; 1967 c. 59; 1969 c. 334 s. 9; 1969 c. 411 s. 14; Stats. 1969 s. 703.12.

**703.13 History:** 1963 c. 78; Stats. 1963 s. 230.82; 1967 c. 59; 1969 c. 334 s. 10; Stats. 1969 s. 703.13.

**703.14 History:** 1963 c. 78; Stats. 1963 s. 230.83; 1969 c. 334 s. 10; Stats. 1969 s. 703.14.

**703.15 History:** 1963 c. 78; Stats. 1963 s. 230.84; 1969 c. 334 s. 10; 1969 c. 411 s. 14; Stats. 1969 s. 703.15.

**703.16 History:** 1963 c. 78; Stats. 1963 s. 230.85; 1969 c. 334 s. 11; Stats. 1969 s. 703.16.

**703.17 History:** 1963 c. 78; Stats. 1963 s. 230.86; 1969 c. 334 s. 12; 1969 c. 411 s. 14; Stats. 1969 s. 703.17.

**703.18 History:** 1963 c. 78; Stats. 1963 s. 230.87; 1969 c. 334 s. 13; Stats. 1969 s. 703.18.

**703.19 History:** 1963 c. 78; Stats. 1963 s. 230.88; 1969 c. 334 s. 13; 1969 c. 411 s. 14; Stats. 1969 s. 703.19.

**703.20 History:** 1963 c. 78; Stats. 1963 s. 230.89; 1969 c. 334 s. 13; Stats. 1969 s. 703.20.

**703.21 History:** 1963 c. 78; Stats. 1963 s. 230.90; 1969 c. 334 s. 13; Stats. 1969 s. 703.21.

**703.22 History:** 1963 c. 78; Stats. 1963 s. 230.91; 1969 c. 334 s. 13; 1969 c. 411 s. 14; Stats. 1969 s. 703.22.

**703.23 History:** 1963 c. 78; Stats. 1963 s. 230.92; 1969 c. 334 s. 13; Stats. 1969 s. 703.23.

**703.24 History:** 1963 c. 78; Stats. 1963 s. 230.93; 1969 c. 334 s. 13; Stats. 1969 s. 703.24.

**703.25 History:** 1963 c. 78; Stats. 1963 s. 230.94; 1969 c. 334 s. 13; Stats. 1969 s. 703.25.

**703.26 History:** 1963 c. 78; Stats. 1963 s. 230.95; 1969 c. 334 s. 13; Stats. 1969 s. 703.26.

**703.27 History:** 1963 c. 78; Stats. 1963 s. 230.96; 1969 c. 334 s. 13; Stats. 1969 s. 703.27.

**703.28 History:** 1963 c. 78; Stats. 1963 s. 230.97; 1969 c. 334 s. 14; Stats. 1969 s. 703.28.

## CHAPTER 704.

### Landlord and Tenant.

**704.01 History:** 1969 c. 284; Stats. 1969 s. 704.01.

**704.03 History:** 1969 c. 284; Stats. 1969 s. 704.03.

**Committee Note, 1969:** This section constitutes a Statute of Frauds so far as leases are concerned. It, therefore, replaces s. 240.06 as to leases. The section incorporates the basic Statute of Frauds section, which is s. 706.02 and has further requirements particularly applicable to leases. The present statute requires a writing signed only by the landlord. However, the modern lease is as much a contract as it is a conveyance of an interest in land. Moreover, even under statutes requiring only the signature of the landlord, many courts require conduct on the part of the tenant indicating acceptance of the lease. The proposed statute actually embodies present practice, since written leases normally provide for signature by both parties. The change in the law will, therefore, not disrupt practices, but will accord with normal expectations.

Sub. (1) incorporates s. 706.02; requires in addition that the lease contain a statement of the amount of rent, the date when the lease commences and its duration or termination date, and a sufficiently definite description of

the premises; it also sets forth requirements for a "minimum" lease. Most leases will, in fact, contain elaborate provisions dealing with other aspects of the leasing arrangement. However, where the parties have made a written agreement which they intend to be binding even though it does not spell out any more than the minimum terms of a lease, the statute recognizes such a lease as valid. The statute would also apply to a contract to make a lease. If, however, the parties sign a preliminary agreement which contemplates additional negotiations on important matters, there is in fact no contract because there has not yet been a full meeting of the minds. On the other hand, the parties may have made a complete agreement, leaving such matters as duty to repair to be settled by normal rules of law. As to any such matters not covered by a properly signed written agreement, ss. 704.05 and 704.07 will govern.

It should be recalled that under s. 704.01 on Definitions, a lease for one year with a provision for automatic renewal or extension is nevertheless considered to be a lease for a year; hence, such an arrangement may be oral. Likewise an agreement for a year-to-year tenancy may be oral.

Sub. (2) deals with entry under a lease for more than one year which is either oral or in writing signed only by one of the parties. A similar problem exists under present Statute of Frauds and most courts treat the tenant as a periodic tenant. This is the present Wisconsin law.

There is a problem under the case law as to whether a tenant becomes a year-to-year tenant or month-to-month, if he pays rent monthly. Theoretically, the rent-paying interval determines this at common law. The proposed statute follows the pattern in s. 704.23 dealing with the nature of a periodic tenancy where a tenant holds over after his lease expires. If a tenant under a lease agreement, which does not comply with the requirements under sub. (1), pays rent monthly on premises used for residential purposes, he becomes a month-to-month tenant. If the premises are used for agricultural or commercial, industrial or other nonresidential purposes, the tenant holds on a year-to-year basis without regard to the rent-paying interval. The reason for this distinction is that agricultural and commercial premises are customarily rented on at least an annual basis. On the other hand, residential premises can easily be rented monthly, and neither the landlord nor the tenant needs the protection of more than the 28 day notice provided in s. 704.19.

Sub. (3) deals with the assignment of leases. It follows the same pattern as present s. 240.06. If the interest being assigned is more than one year, this subsection requires that the assignment be in writing in order that it be enforced against the assignor. Oral assignment of an interest of more than one year would be binding against the assignee if he went into possession. Thus the landlord could sue the assignee for rent or breach of any conveyance running with the land, on the basis of privity of estate. The landlord could sue the assignee in contract on the basis of an agreement to assume the obligations of the original lease

only if the assignee had signed an assumption agreement.

Sub. (4) deals with the situation where a landlord and tenant agree to terminate a valid written lease prior to its normal termination date. If the lease has more than one year to run, both parties must agree in writing to the termination. If the parties have made an oral agreement in such a case and the tenant moves out in reliance on the oral agreement, there would then be a surrender by operation of law, which under the last sentence of this subsection would be effective. If the lease has less than one year to run, the parties may terminate the lease by an oral agreement just as they may create a lease for a year or less by oral agreement.

Sub. (5) states the burden of proof required in cases where the parties have not both signed a written agreement, but their agreement is valid under this section. For example, clear and convincing evidence would be required to prove an oral lease for one year or less, or to bind an assignor who assigns a lease with an unexpired term of one year or less, or to terminate such a lease. [Bill 654-A]

**704.05 History:** 1969 c. 284; Stats. 1969 s. 704.05.

**Committee Note, 1969:** This section is intended to govern the rights and duties of a landlord and tenant whenever there is no inconsistent provision in writing signed by both the parties. In this respect it supplements s. 704.03 requiring a writing signed by both. If there is a written lease signed by both and the lease contains a provision dealing with any of the matters covered in subs. (2) to (5), it becomes an issue for the court to determine whether the lease provision is inconsistent with the provision in this section or whether the statute controls.

This section does not deal with all of the rights and duties of a landlord and tenant, but only with selected problems. See also s. 704.07. In general, the policy stated in this section is to balance fairly the interests of both the landlord and the tenant. Some of the present rules of law in this regard are based on historic notions of the lease as a conveyance rather than a contract. Some of the provisions of this section are patterned on clauses used in modern leases. Others are codifications of the present law and have been included to call attention of the landlord and tenant to the legal consequences of their arrangement. Together with s. 704.07 on repair, the section is a partial statutory lease where the parties have no formal agreement on these matters. It is also hoped that draftsmen of written leases will use the statutory provisions as a standard of fairness in preparing form or individual leases.

Sub. (2) states the normal rule that the tenant has a right to exclusive possession of the premises, but qualifies that right in certain situations. Thus a landlord is given the right to enter the premises for certain purposes if he gives the tenant advance notice and enters at a reasonable time. For example, if a landlord wishes to inspect the premises he would have to notify the tenant in advance and determine a time when his inspection would not

unduly inconvenience the tenant. The same procedure would be followed if the landlord wished to enter in order to make repairs or show the premises to a prospective tenant or purchaser. In one limited situation the landlord is given a right to enter without advance notice. This is the case where the tenant is absent from the premises and the landlord believes that entry is necessary to protect the premises. For example, if the tenant is out of town during the winter for a long period and the landlord believes that the heating system may have failed with possible danger of waterpipe freezing, the landlord may enter if such a belief is reasonable under the circumstances. If the landlord uses force in such a situation, he cannot be sued for trespass, but would be liable to the tenant for any damages to the tenant's property caused by his entry.

Sub. (3) is not a change in the present law, but states familiar principles. The judicial doctrine of waste already prevents the tenant from making physical changes in the nature of the property. Under this subsection the tenant must obtain prior consent of the landlord for decorating or altering the premises, but such consent may be either oral or written. The requirement that the tenant use the premises only for lawful purposes is a familiar one. The requirement that the tenant cannot use the premises so as to interfere with other tenants of the same building or other buildings owned by the same landlord is frequently found in leases and has been implied by the Wisconsin Supreme Court in *Bruckner v. Helfaer*, 197 Wis. 582, 222 N.W. 790 (1929).

Sub. (4) probably states the present Wisconsin law on tenant fixtures. The policy of the law is to permit a tenant to remove fixtures in order to encourage installation of commercial fixtures and also because the contrary rule would result in a windfall to the landlord. The tenant has the right to remove such fixtures provided that he either restores the premises to their original condition or pays the cost of restoration. The second sentence, on replacement fixtures, is a statement of the rule in *Auto Acceptance & Loan Corporation v. Kelm*, 18 Wis. 2d 178, 118 N.W. 2d 175 (1962). That the right to remove such fixtures is not lost by an extension or renewal of a lease, see *Second National Bank v. Merrill*, 69 Wis. 501, 34 N.W. 514 (1887); *Shields v. Hansen*, 201 Wis. 349, 230 N.W. 51 (1930). If fixtures installed by a tenant are subject to a security interest, the rights of the holder of the security interest may be governed by other rules of law than those stated in this section.

Sub. (5) is new. It is intended to provide a simple remedy for the landlord faced with personal property left on the premises by a tenant either at the end of his lease or when he moves out during a lease. In many cases the property left behind has little value and has in fact been abandoned by the tenant. However, abandonment as a judicial concept requires proof and finding of intent to abandon. The landlord who disposes of such goods at present runs the risk that he will be sued by the tenant for conversion and that a jury may place a high value on the apparently worthless goods. Moreover, there is no statu-

tory authority to even store such goods. Under the proposed subsection, if the property has an apparent value of less than \$100, the landlord has a choice of proceeding either by storing the goods or disposing of them after notice to the tenant. Disposition may be made by private or public sale, or if the goods are not saleable, by giving them to a charitable organization or simply having them removed as trash. The statute provides protection for the tenant where the property is being disposed of by giving him an opportunity to repossess after notice. If the landlord elects to store the property, he may do so either with or without notice to the tenant. The landlord may himself store the property or arrange with a public warehouse for storage. If the property apparently is worth a hundred dollars or more, the landlord may only store the property. In such case his lien for storage must be foreclosed in the manner provided in s. 409.504. Note that where the property is less than \$100 and the landlord first stores the property, the landlord can enforce his lien by refusing to deliver possession to the tenant until he pays the lien and by sale under par. (a) 2.

In some of these cases where personal property is left on the premises, the property has substantial value and is abandoned by the tenant because he cannot meet payments under a security agreement. If this section is to be effective, the landlord must be able to proceed and even cut off the interests of the secured party. If the value of the property exceeds \$100, and the secured party has filed notice of his security interest, this section requires the landlord to give notice to such a party. If the value of the property is less than \$100, notice to secured parties is not required. In this respect, the section treats property having a value of less than \$100 in the same manner as the Uniform Commercial Code treats parties having a security interest in consumer goods.

Only sub. (5) provides definite remedies. The other sections state rights and duties and leave to the courts the task of implementing those duties with appropriate remedies. [Bill 654-A]

**704.07 History:** 1969 c. 284; Stats. 1969 s. 704.07.

**Committee Note, 1969:** Except for sub. (4), this section is new. In the absence of statute a landlord has no duty to keep leased premises in repair; and the tenant has a limited duty to make what are called "tenantable" repairs as necessary to prevent waste. Most leases today contain some kind of provision regarding repairs. Many informal tenancies, however, operate under the common law rule. The purpose of this section is to allocate a duty of repair between the landlord and the tenant in a fair manner. This section does not operate if there is a contrary provision in a lease signed by both parties; in this respect it is similar to s. 704.05. Whether a provision in a lease is "contrary" or should be construed to be consistent with this section is a problem of construction for the court. Since the policy of the statute is to impose a greater duty on the landlord, generally worded clauses in a

lease should not be construed to override the statute. Thus, although at common law a provision that the tenant shall return the premises in as good condition as at the beginning of the lease would be construed to require the tenant to make repairs and even rebuild the premises if destroyed by fire, such a clause should not be held contrary to this section.

The second sentence of sub. (1) merely preserves the law under special statutes such as the safe place statute.

Sub. (2) imposes on the landlord the duty to make certain types of repairs. It does not apply if the need for the repair was caused by misuse of the premises by the tenant, which would fall under sub. (3) or if the premises are damaged by fire or other casualty within sub. (4). Under this subsection the landlord is expected to make types of repairs of major proportions, which it is not reasonable to expect a tenant to make.

Sub. (3) deals with the duty of the tenant to make repairs. Regardless of the scope of the repair, a tenant must repair any damage caused by his negligence or improper use of the premises. This is similar to the common law duty of a tenant not to commit intentional or ameliorating waste. In addition, the tenant is expected to make minor repairs of certain types, since he is in possession of the premises. Thus, if water faucets need washers or the sink is stopped up, the tenant would have to take care of such a matter. If, on the other hand, an air-conditioning unit furnished with the premises needed a new compressor, it would be the duty of the landlord to take care of such a repair because the cost would be substantial.

The statutory language refers to negligence or improper use of the premises "by the tenant". However, under normal rules of agency, the tenant may be charged with acts of his agents. Under certain circumstances he would also be responsible if the improper use of the premises were by his own family and even by invited guests. Thus, if a tenant knew his guests were wrecking a rented apartment, he would be under a duty to repair under this section. It has been left to the courts to spell out the rules under which acts of third persons may legally be treated as acts "of the tenant".

Sub. (4) replaces present s. 234.17. The latter section was borrowed from New York 1903; it has never been amended. At common law the tenant bore the risk of a fire or any other casualty loss. Hence, if a leased building were destroyed by fire, the tenant would remain liable for rent. Such a rule was too harsh, and many states including New York and Wisconsin changed the rule by statute. Sub. (4) makes minor changes in the present statute in order to give further protection to the tenant. This section applies only if the premises are rendered "untenantable" by reason of the casualty. Whether a loss makes the premises untenantable is a question of fact in a given case. The statute is designed to afford greater flexibility where the premises can be repaired. In such a case the landlord may promptly repair, and the tenant is protected by an abatement of the rent for the period of repair. However, if there would be

undue hardship on the tenant, as where he has to move out during the repair and sign a lease of other premises, then he may still move out under this subsection. Under this new statute the tenant is not liable for rent from the time of the damage to the premises and is entitled to recover rent paid in advance. The present statute has no such provision, and its New York prototype was interpreted not to provide for any rebate on the rent until amended to provide specifically for this. Sub. (4) does not apply if there is a contrary provision in the lease (see sub. (1)) or if the damage is caused by negligence or improper use by the tenant. Thus, if a fire is caused by a tortious act of the tenant, he would remain liable for rent under his lease and would also have a duty under tort law to pay for the damage. [Bill 654-A]

**704.09 History:** 1969 c. 284; Stats. 1969 s. 704.09.

**Committee Note, 1969:** Sub. (4) is intended to preserve the rules embodied in present ss. 234.14 and 234.15. In all other aspects this section is new. However, in many respects the new portions of the statute do not change the law but restate the rules which courts would apply. It was thought desirable to restate these rules in statutory form with the minor changes indicated hereafter.

The entire section is intended to govern transfer of part of the premises as well as of the whole premises.

Sub. (1) deals with power to transfer. At common law tenancies at will were personal and hence nontransferable. On the other hand all leasehold interests (terms for fixed periods) were transferable unless the lease restricted transfer; as a practical matter most leases prohibit transfer by the tenant, either by way of assignment or by sublease, by an express clause requiring consent of the lessor. Periodic tenancies (week-to-week, month-to-month, or year-to-year) have some of the characteristics of tenancies at will, of which periodic tenancies were an historic offshoot, but for transfer purposes have been treated like terms for years and hence transferable. The proposed statute would treat week-to-week tenancies and month-to-month tenancies (and any other periodic tenancy less than year-to-year) like tenancies at will; hence these would be nontransferable in the absence of agreement. In all other cases the tenant has power to assign or sublet unless the lease provides otherwise; this would include year-to-year tenancies which are substantial enough to be treated like leases for a term and often are created by written lease. The lessor or landlord may likewise transfer in any case; rarely will the leasing agreement restrict his power, but it may do so if the parties agree.

The 3rd sentence of sub. (1) states present law in Wisconsin and elsewhere. *Zwietusch v. Luehring*, 156 Wis. 96, 144 N.W. 257 (1914); *Liquidation of Citizens S. & T. Co.*, 171 Wis. 601, 177 N.W. 905 (1920).

Sub. (2) states the present law and serves to remind parties of the general rule that an assignment does not relieve the transferring party of his contractual obligations. Thus if a tenant assigns the lease, he remains liable

on contract if the assignee defaults. This is true even if the landlord consents to the assignment and accepts rent from the new tenant. If the original tenant wishes to free himself from further liability, he should get an express release as provided in the statute. He would be released, however, if the landlord entered into a new lease with the assignee since this would constitute a novation.

Sub. (3) states historical rules in modern language. The assignee (either of the tenant's interest or of the landlord's interest) is liable on the ancient theory of privity of estate but only on covenants which "run with the land". The latter requirement has caused much litigation. By stating the rule in terms of liability on all covenants except those "either expressly or by necessary implication personal to the original parties" a modern court will have a freer hand in carrying out the intent of all parties concerned with the assignment, than under the ancient rules expressed in Spencer's Case, 5 Coke 16a (1583) and its judicial sequels.

Sub. (4) restates in simplified form the substance of present ss. 704.14 and 704.15. Those sections were originally remedial only, although they have occasionally been erroneously cited by courts for substantive propositions. The sections trace to the Statute of 32 Henry VIII c. 34 (1540) and were designed to allow the assignee to have the same remedies as the original parties to the lease; primarily this was to permit the grantee of the reversion to exercise rights of reentry, which were nonassignable at common law.

Sub. (5) is new, adopting a rule opposite to the famous Rule in Dumpsor's Case, 4 Coke 119 (1603). That case held that when a lessor consents to one assignment, he waives or extinguishes a provision in the lease against assignment without his consent; hence subsequent assignments may be made without his consent. See 7 Wis. L. Rev. 51 (1931). This rule has been strongly criticized. Professor Powell in his treatise states that "most American jurisdictions have indicated that this rule is too contrary to common sense to justify its acceptance". 2 Powell, Real Property p. 312 n. 84. Landlords having competent legal advice meet the problem by inserting in the original lease a provision that one consent does not license additional assignments or by insisting as a condition to the assignment that the assignee covenant not to make further assignments without consent. The rule therefore operates only as a trap for the unwary. Since Wisconsin has not passed on this issue and the Supreme Court might well reject the rule in Dumpsor's case and reach the same result as the proposed subsection, no change in the law is involved. [Bill 654-A]

**704.11 History:** 1969 c. 284; Stats. 1969 s. 704.11.

**Committee Note, 1969:** The proposed section makes no change in the present law. The section replaces present s. 234.01.

At common law the landlord had a right to seize all chattels on the premises, including those belonging to third parties, and to hold them until the tenant paid his rent. Later he was given a power of sale by statute. This

right, called distress, was for many years the primary method of collecting rent. Although the right still exists in some states, it has been abolished by statute in many states while in still others the landlord has been given a statutory lien in place of his right to distress. The present Wisconsin statute was enacted in 1866 to override the holding of the Wisconsin Supreme Court in Colburn v. Harvey, 18 Wis. 147 (1864) that the right of distress existed in this state as part of the common law.

The reference to s. 289.43 is to distinguish the lien of the boarding or lodging house owner. There appears to be no need to create a statutory lien in other situations, present remedies for recovery of rent being adequate. Subject to the provisions of the Uniform Commercial Code, the parties are free to create a lien by express agreement. [Bill 654-A]

**704.13 History:** 1969 c. 284; Stats. 1969 s. 704.13.

**Committee Note, 1969:** This section replaces present s. 234.02 on "attornment to a stranger", which is almost an exact copy of a 1738 English statute, 11 George II c. 19 s. 11. The proposed statute would modernize the language without change in substance. It would seem clear, even in the absence of such a statute, that a tenant cannot prejudice his landlord by acknowledging a third person as his new landlord.

Aside from a statute, a tenant is estopped from denying his landlord's title either in a suit by the landlord to recover possession or in a suit for rent, unless of course the tenant has been evicted by the third person under a paramount title established by a court. See Amer. Law of Property s. 3.65. [Bill 654-A]

**704.15 History:** 1969 c. 284; Stats. 1969 s. 704.15.

**Committee Note, 1969:** This section is new. Some of the printed forms in use in Wisconsin provide for automatic renewal unless written notice is given a certain number of days in advance of the expiration date. Where the period for advance notice is more than 30 days, the clause is likely to be a trap for the tenant. The landlord is usually aware of the notice requirement since he drafts the lease, whereas typically the tenant of residential property does not realize the significance of the clause or forgets about the notice requirement long before his lease is to expire. Other states have already adopted legislation to prevent this abuse; see N.Y. General Obligations Law s. 5-905.

The statute applies only to residential property, not to commercial leases where both lessor and lessee want and need the protection of automatic renewal and are familiar with longer notice provisions. Under this section the tenant may enforce against his landlord an automatic renewal clause in a residential lease; only the tenant is protected by the statute and only the landlord must give notice alerting the tenant to the presence of the renewal or extension clause. This is because most residential leases are drafted by landlords, and landlords are more aware of their legal rights. The additional notice is not an

unreasonable burden on landlords. [Bill 654-A]

**704.17 History:** 1969 c. 284; Stats. 1969 s. 704.17.

**Committee Note, 1969:** This section replaces present ss. 291.01 (2) and (3), 234.19, and the last sentence of s. 234.03. The section is intended to change the law by differentiating between the kinds of tenancies, with greater protection for the tenant with a long-term lease. The present notice requirements apply alike to all kinds of tenancies. Moreover, the present 3 day notice to a tenant to pay or vacate is illusory; the tenant can pay up at any time during the unlawful detainer proceedings and stay the proceedings. A tenant under a long-term lease may repeatedly fall behind in payment of rent, with great inconvenience to the lessor; only if the lease provides special remedies, such as acceleration of rent or a power to terminate the lease for default in rent, is the lessor given any legal recourse. On the other hand, the present 3-day notice for breach of conditions other than nonpayment of rent affords the tenant no protection in any situation; he has no power to remedy his default in such a case, even though the landlord has suffered no real damage, unless a court will invoke equitable relief against forfeiture (a highly uncertain relief in light of the clear statutory language of the present statute).

Sub. (1) applies to month-to-month and week-to-week tenancies. Month-to-month tenancies can in any case be terminated by 28 days' notice under proposed s. 704.19, and week-to-week by a week's notice under the same section. However, a defaulting tenant ought to be entitled to less notice. This subsection would allow his removal if he is given a 5 day notice to pay rent and he fails to pay; after the 5 day period, he has no right to pay up and stay proceedings under the proposed revision of the eviction statutes. The present 3 day notice in s. 291.01 (2) has been increased to 5 days for 2 reasons: the tenant will no longer be able to cure default after the notice period, and a 3 day notice given on Friday may leave a tenant with no time to arrange financing because of the weekend closing of financial institutions. The subsection also retains the present 14 day notice from s. 234.03; this will enable a landlord to evict a defaulting tenant without giving him a chance to cure the default by paying rent, but on the other hand the landlord need not wait another full month in order to terminate under s. 704.19. The 14 day period is a reasonable compromise, affording the tenant reasonable time to find new quarters and yet not delaying the landlord unduly. The same period of 14 days is utilized in par. (b) dealing with breach of other covenants or conditions in the lease. The 14-day notice need not end with the end of the rent-paying period as the 28 day notice under s. 704.19 must.

Sub. (2) deals with leases for a year or less and with year-to-year tenancies. Again the 5 day notice to pay or vacate is the basic weapon of the landlord for default in rent. If such a notice is given and the tenant succeeds in remaining in possession, either by paying rent

on time or because of waiver by the landlord, a subsequent default in rent can be the occasion of a 14-day notice by the landlord with no opportunity to cure the default. Under present law a tenant can repeatedly default in rent and not be removed, simply because he pays up the rent late. The power to terminate after a second default is copied from the statutes of other states.

Sub. (3) deals with leases for terms longer than one year. Most of these leases will be for substantial periods, such as 10 years or longer. In the long-term lease the tenant should be provided with protection against loss of his lease by reason of a single breach, even if intentional. Accordingly here the landlord must give the tenant a 30 day notice to comply with the lease. If the tenant fails to comply within that period, he may be removed from the premises by legal process. In the long-term lease, where both parties are usually represented by legal counsel in the drafting of the lease, sub. (5) permits the parties to negate the statutory provisions by express agreement. Sub. (3) will, therefore, govern only if the lease does not provide otherwise.

In sub. (3), if a tenant fails to pay an instalment of rent when due, and the lease contains an acceleration clause empowering the landlord to declare the rent for the entire balance of the lease as due and payable, must the tenant pay the entire balance or only the instalment on which he has defaulted? Even aside from any judicial declaration that the acceleration clause is void as a penalty, it is the intent of this section that the tenant need pay only the instalment on which he has defaulted, plus, of course, any regular instalment falling due during the 30 day notice period. [Bill 654-A]

**704.19 History:** 1969 c. 284; Stats. 1969 s. 704.19.

**Committee Note, 1969:** This section replaces present s. 234.03 and makes substantial changes in the law. Like present s. 234.03 it governs periodic tenancies and tenancies at will. The wording "however created" makes the statute embrace all kinds of such tenancies, regardless of method of creation; periodic tenancies may arise because of a rental agreement with no fixed term, an entry by a tenant under a lease void under the statute of frauds or other statute followed by payment of rent on a regular basis, or by a tenant holding over under s. 704.23 after his lease expires. The present statute may be subject to judicial interpretation that some year-to-year tenancies are not included (see *Brown v. Dayser*, 60 Wis. 1, 18 N.W. 523 (1884), which was followed by an amendment to present s. 234.03); the proposed statute, therefore, expressly embraces year-to-year tenancies as well as all other periodic tenancies.

The present statute requires a 30 day notice and by judicial interpretation the day on which notice is given may not be included in computing the period. This has led to some confusion, particularly among persons unfamiliar with the law. Thus if rent is payable on the first day of the month, a landlord or tenant cannot terminate the tenancy at the

end of the month under the present statute by giving notice on the first if the month has less than 31 days (February, April, June, September and November). The proposed statute makes 2 changes in the notice period: one is a reduction of the basic period to 28 days with the day of giving notice counted as part of the period, and the other is to require a 90 day notice to terminate agricultural tenancies from year-to-year. The 28 day period is based on the shortest month, February. The change in the agricultural situation is because a 28 day notice is clearly inadequate, both for the tenant and the landlord; arrangements for change in farm tenancies, which customarily turn over on March 1, have to be made well before the end of the calendar year. Under the proposed statute a farm tenant whose tenancy began on March 1 would have to give notice on or before December 1; similarly the landlord would have to give a notice on or before that date to terminate the tenant's rights.

Subs. (4) and (5) of the proposed statute are new and intended to prevent a technical approach to the notice problem; they follow the same policy behind the proposed s. 704.21 on giving of notice, that the notice to terminate tenancies is utilized by lay persons often with no legal training and the technical judicial approach of analogizing this notice to service of process should be changed. Hence if a tenant addresses the notice to a landlord, the fact that the landlord and his wife have legal title in both their names should not invalidate the notice. Similarly if property is rented from month-to-month, with rent payable on the first day of the month, the tenancy technically ends on the last day of the month, and a notice terminating the tenancy "on September 1" is invalid under present law. Again, under present law a notice to terminate the same tenancy on "September 15" would be invalid even though given more than 30 days before that date; and it is not clear whether the notice would be completely invalid or effective at the end of September. (Wisconsin has not passed on this question and other states are split.) It is desirable to clear up these uncertainties and to remove the technical approach to landlord-tenant notices. Under the proposed statute, the first notice ("on September 1"), if given 28 days before, is valid; if given by the tenant, the landlord may require the tenant to move out on August 31; if given by the landlord, the tenant could move out on September 1. In the second situation ("on September 15") the notice would be effective as of the first permissible subsequent date. Thus, even if the notice were given as late as September 3, it would be effective on September 30; if, however, the notice were given by the landlord to the tenant, the tenant could treat the tenancy as ended on September 15 (and vice versa if the notice is given by the tenant). This approach prevents the party to whom notice is given from being misled and at the same time gives him the full protection of the statutory period if he wants it.

Although sub. (4) provides that the notice must inform the other party of "the termination date", this is obviously qualified by the last sentence of sub. (5) validating a notice by

tenant specifying no termination date. In this latter limited situation sub. (4) only sets a standard, but is not mandatory. Thus, if a tenant writes his landlord "I have moved out" or "I am ending my tenancy by this notice", such a notice would be valid as of the first date which could validly have been specified in a notice complying fully with this section. A notice by a tenant that "I plan to move out the end of the current month" should be considered as stating a termination date, the last day of the month; similarly a notice by a landlord "that your tenancy is terminated as of the end of the month" would conform to the requirement of sub. (4).

Sub. (6) deals with a special problem. Suppose a tenant moves out and quits paying rent. The landlord obviously knows this in most cases. The tenant's liability for further rent may continue on the grounds that his tenancy continues to run, no proper notice having been given and the landlord not having accepted a surrender of the premises. Some courts in this situation treat knowledge as equivalent to notice and premise rent only for the period that the landlord could have recovered if proper notice had been given him in writing at the time he knew the tenant had moved out with intent to end the tenancy. This is the basis for the same rule stated in sub. (6).

Sub. (7) is intended to change the present rules for computation of the notice period. Our Supreme Court has utilized present s. 990.001 (4) (a) as relevant to computing notice periods, although it has not carried this analogy to its full logic where Sundays and legal holidays are involved. Most lay persons would assume that you could count the day on which the notice is given as part of the notice period, and the proposed statute would validate that view. Moreover, where notice is served by mail, the present s. 269.36 requires the addition of 5 days to the normal statutory period. Sub. (7) (c) would follow the normal time for transmitting mail, with allowance for no delivery on Sunday; normally mail posted by 5 p.m. will be delivered to any point within the state on the following day. Hence for the common situation of mailing, only 2 days is added to the normal period of 28 (or 90) days. [Bill 654-A]

**704.21 History:** 1969 c. 284; Stats. 1969 s. 704.21.

**Committee Note, 1969:** This section replaces present s. 234.04 and makes 2 basic changes in the statute:

(1) It makes express provision for the giving of notice by the tenant. Present s. 234.04 (1) expressly applies where service is being made "by the lessor or any person in his behalf". This apparently is due to legislative oversight. S. 234.03 requiring notice by either party was borrowed from Michigan and Massachusetts in 1849, but s. 234.04 dealing with service of notice was borrowed from New York in 1858 and the New York statute was phrased only in terms of notice by the landlord because under New York law no notice had to be given by the tenant.

(2) The present statute is phrased in terms of "service" of notice and is tied to "service of a summons" under s. 262.06, with substitute

methods of posting or service by registered mail. The proposed statute is designed to eliminate the "technical" approach to giving notice. It is inappropriate to treat notice to terminate informal tenancies with the same strictness attendant upon commencement of suit by an attorney. This is particularly so as applied to notice by the tenant, who should not have to resort to legal advice in order to end a simple month-to-month tenancy. Suppose, for example, a tenant sends his notice by regular mail and the landlord receives the notice. Under present law this method of service is invalid. The proposed statute provides for a variety of methods of giving notice, all designed to assure that the other party actually gets the notice. The proposed statute is not a radical departure; most states have never attempted by legislation to spell out the manner of giving notice. The proposed statute is phrased in terms of "giving" rather than "serving" notice. However, it is possible under the proposed change to utilize formal service procedures if the parties so wish, and attorneys handling such matters will probably prefer the more technical approach.

Since the emphasis is on actually getting notice to the other party, sub. (5) provides that if notice is not given in any of the approved ways, but is in fact received by the proper person, the notice is treated as properly given. In such a case the receipt may involve a circuitous route, and hence the time of receipt is treated as the day the notice is given under proposed s. 704.19 (7) (e). [Bill 654-A]

**704.23 History:** 1969 c. 284; Stats. 1969 s. 704.23.

**Committee Note, 1969:** This section makes it clear that a tenant who does not vacate after getting a Notice of Termination can be removed. Removal may be under ch. 299 or 813. [Bill 654-A]

**704.25 History:** 1969 c. 284; Stats. 1969 s. 704.25.

**Committee Note, 1969:** This section replaces present s. 234.07 and makes a substantial change in the law. Some of the provisions are new, codifying case law.

The principal change is in the present rule that any tenant holding over after a lease for a year or more becomes a year-to-year tenant. Under the proposed statute that rule is still true for commercial, agricultural or any other nonresidential purposes; but it does not apply to the ordinary apartment lease or lease of a house for residential purposes. Where a commercial or agricultural tenant holds over, such premises are normally rented only on a yearly basis, and it is appropriate to hold the tenant on a year-to-year basis. However, a tenant under an apartment lease, paying rent on a monthly basis, does not realize he can be held for another year if he stays in after his lease expires; moreover, the landlord can usually rent the premises at any time of the year on a monthly basis. Sub. (4) permits the parties to make a different agreement in any case.

Sub. (3) continues the present law with a single exception. Normally all the terms and conditions of the original lease carry over and

govern the holder tenancy. However, it seems inappropriate to apply that rule to options to extend or to purchase the premises and the like. Hence the proposed subsection would change the rule of *Last v. Puehler*, 19 Wis. 2d 291, 120 N.W. 2d 120 (1963), which interpreted the present statutory language to embrace all terms and conditions including options and rights of first refusal. Under the proposed wording such clauses would expire with the original lease.

Sub. (5) is new. It probably states the present law. Where the original tenant assigns or sublets, he remains liable on the original lease. What effect does a holding over by the assignee or subtenant have on the original tenant? Unless he participates in the holding over somehow, he ought not to have his liability continued beyond the term of the original lease. Nor should he be liable for damages if the assignee or subtenant wrongfully holds over and the landlord has been accepting rent directly from the assignee or subtenant. He would be liable for any damages, however, if a subtenant of his did not move out at the end of the term where the subtenant was not paying rent to the landlord, but to the original tenant; since the sublease should expire before the end of the original term anyway, the original tenant ought to be sure that his subtenants do move out on time and to this extent he is charged with their acts.

Sub. (6) conforms this section to the notice section, proposed s. 704.19. The holdover tenancy would be terminated normally by a 28 day notice at the end of the period (the year if year-to-year, the month if month-to-month) or 90 days in the case of the agricultural tenancy from year-to-year. [Bill 654-A]

**704.27 History:** 1969 c. 284; Stats. 1969 s. 704.27.

**Committee Note, 1969:** This section replaces present ss. 234.05 and 234.06, which provide a penalty of double rent in certain cases. The present statutes were copied from the Statute of 11 Geo. II, c. 19 s. 18 (1738) and the English Landlord and Tenant Act of 1730, 4 Geo. II, c. 28 s. 1 respectively. At the time of the English enactments there was no summary remedy for removal of a tenant and these statutes provided a penalty in order to induce the tenant to remove according to proper notice. With the advent of effective summary procedures for removal of a tenant, there is less need to retain penalty provisions. Although most states have retained the old statutory penal provisions, the New York section corresponding to present s. 234.06 was repealed in 1920 and California repealed both of its corresponding sections in 1961.

The proposed statute allows recovery of twice rental value only as a means of establishing minimum damages. In many cases the landlord cannot as a practical matter prove loss of a rental opportunity and is burdened with the cost and inconvenience of a lawsuit to recover his damages and in some cases a second lawsuit to recover possession. The proposed statute limits the double recovery, however, to a daily apportionment of the rent. The landlord cannot under the proposed stat-

ute recover both special damages and double the rental value, as under present s. 234.06. [Bill 654-A]

**704.29 History:** 1969 c. 284; Stats. 1969 s. 704.29.

**Committee Note, 1969:** This section is new but reflects the policy laid down by the Wisconsin Supreme Court in a series of cases. The section deals with the right of the landlord to recover damages in case of removal of the tenant from the premises, either voluntarily or as a result of legal action by the landlord, and provides the measure of damages in such cases.

At common law in many states if a tenant abandons the premises, a landlord is under no obligation to mitigate his damages. He may leave the premises vacant and recover the entire rent as it accrues for the balance of the lease. In so doing he may refuse reasonable offers from other persons to rerent the premises and may even, if the lease prohibits assignment, refuse to let the tenant assign his lease to the new tenant willing to rent. In many jurisdictions the landlord may even jeopardize his chances to recover from the first tenant if he does accept an offer to rerent, the courts characterizing his acts as an "acceptance of surrender" ending the lease. The same rule applied if the landlord, faced with a tenant who refused to pay rent, brought an action to evict the tenant; the landlord by removing the tenant had elected to end the lease and thereby terminated the tenant's liability for further rent. Such a theory of course ignored the fact that the landlord was forced to act by the tenant's prior breach and that the landlord should be entitled to reasonable damages. Most leases attempt to deal with this problem but do not always provide a complete remedy so far as the landlord is concerned or a fair measure of recovery so far as the tenant is concerned.

The Wisconsin Supreme Court is one of the growing number of modern courts which have announced that the landlord has an obligation to rerent when the tenant breaches the lease; this is merely an application of the fundamental damage rule that a party must use reasonable efforts to minimize his loss, whether in contract or in tort. *Selts Investment Co. v. Promoters, etc.*, 197 Wis. 476, 222 N.W. 812 (1929); *Strauss v. Turck*, 197 Wis. 586, 222 N.W. 811 (1929); *Patton v. Milwaukee Commercial Bank*, 222 Wis. 167, 268 N.W. 124 (1936). Nevertheless the scope of the doctrine remains vague, and the case law dealing with acts which the landlord may take in mitigating damages is confused by tension with the old doctrine of surrender. It is therefore important to clarify both aspects of the law by statutory enactment, rather than leaving further development to slow and costly litigation. It is important that both parties to a lease know what the legal consequences of breach may be.

Sub. (1) states the scope of the section. It applies both where the tenant simply abandons the premises and where he is removed for nonpayment of rent or breach of a lease. It applies to a periodic tenancy as well as a lease for a definite term. In making the

section applicable against an assignee, the statute changes the present Wisconsin law; see *Lincoln Fireproof Warehouse Co. v. Greusel*, 199 Wis. 428, 224 N.W. 98, 227 N.W. 6 (1929) (holding that a landlord who rerented when an assignee abandoned the premises lost his right against the assignee because "privity of estate" was ended). The section has not application to 2 kinds of situations: (1) A tenant may be forced to move out by wrongful acts of his landlord amounting to what the law calls "constructive eviction"; the tenant in such case has removed but not "unjustifiably" within the meaning of the first sentence. (2) A tenant may move out with the express consent of his landlord; this is a true agreement to accept a surrender of the premises and the tenant has no further liability.

Sub. (2) expresses the formula for arriving at damages. It expressly recognizes recovery of damages rather than merely accrued rent, and in this regard acknowledges that a rental agreement is a contract and that damages for anticipatory breach are properly recoverable. The statute makes clear that the landlord can recover reasonable expenses incurred in trying to minimize damages, such as cost of advertising. When the landlord has actually re-rented the premises, the first tenant is credited with the actual rent received from the new tenant; however, the tenant may be able to prove that the landlord could by reasonable efforts have obtained a greater sum, in which the damages will be reduced by the greater sum. What is "reasonable" within the meaning of this section must in light of the particular circumstances be assessed in commercial terms; hence the statute refers to "local rental practice for similar properties". Thus, in some commercial office buildings it is not considered good practice to advertise in newspapers; accordingly the landlord would not have to advertise as a reasonable effort to rerent.

Sub. (3) deals with burden of proof and apportions the burden fairly between landlord and tenant.

Sub. (4) delineates the acts which a landlord is privileged to do in case of breach by the tenant. It makes some change in the present Wisconsin law. Thus under the statute a landlord may rerent without first notifying the tenant; there appears to be little purpose served by giving notice to a tenant who has already moved out and quit paying rent or been removed for breach. The basic theory of this subsection is that the landlord should be able to act to protect the property and to be free to take whatever steps appear to him to be appropriate to mitigate damages without getting trapped by the old concept that in so doing he has accepted a surrender of the premises. [Bill 654-A]

**704.31 History:** 1969 c. 284; Stats. 1969 s. 704.31.

**704.40 History:** 1969 c. 284; Stats. 1969 s. 704.40.

**Committee Note, 1969:** This section replaces present s. 234.06 as applied to holders of life estates and changes the law. The problem dealt with arises where the owner of a life estate leases property to a tenant and the life

estate is terminated by cessation of the measuring life. Theoretically the tenant has no right to continue in possession; he is not the tenant of the reversioner or remainderman. On the one hand the tenant can be removed without any notice; yet the reversioner or remainderman has no right to commence unlawful detainer proceedings under present law because of the absence of a landlord-tenant relation between the parties. The proposed statute would remedy this in several respects. In the first place it would make the tenant liable for rental value if he remains in possession after the life estate terminates. Secondly, it gives the tenant a right to notice before he can be summarily removed. Thirdly, it does afford to the reversioner or remainderman the right to evict the tenant summarily by eviction proceedings if he gives the required notice.

Thus, for example, suppose A, owning an estate for his own life, leases to B a farm on a year-to-year basis starting on March 1. Several years later A dies in June. C is remainderman. C can collect a proportion of the annual rent (from A's death to the ensuing March 1). C cannot evict B except by giving him 90 days notice prior to March 1; if he does give such notice, he can evict B on March 1 of the following year.

If the owner of the life estate, A, had leased to B for 5 years by written lease, and the life estate ends during the first year after execution of the lease, the remainderman C can hold B for rental value after A's death, but can only remove B by first giving him a year's notice. While at first look this seems to infringe the rights of the remainderman, there are analogies in the trust field for allowing a lease beyond the life of the trust; and the tenant is the person whom the statute seeks to protect. The tenant may not know that the person in possession, with whom he deals for the lease, only owns a life estate; nor does he have any way of anticipating the length of the measuring life. Finally, in practice most reversioners and remainderman do not want immediate factual possession of the land.

Rental value may be more than the rent stipulated in the lease. Hence the reversioner or remainderman is protected by ability to recover the current market value; but he can recover the rent under the lease as a minimum (see s. 234.25).

The lessee from the owner of a life estate takes a risk in prepaying rent. If the life estate ends, the lessee may also be liable to the reversioner or remainderman for rental value for the period after the life estate ceases; the lessee should be able to recover a corresponding portion of the prepaid rent.

If a tenant refuses to inform the reversioner or remainderman of the nature of his possession, after written demand, he can be treated as a month-to-month tenant and removed by 28 days' notice. [Bill 654-A]

#### CHAPTER 706.

##### Conveyances of Real Property: Recording; Titles.

**706.01 History:** 1947 c. 74; Stats. 1947 s.

235.73; 1969 c. 285 ss. 20m, 23; Stats. 1969 s. 706.01.

**Committee Note, 1969:** In sub. (2) leases for terms of over one year are treated as conveyances for all purposes. Sub. (7) redefines homestead in terms of marital ownership, ignoring present area, value and use limitations. [Bill 655-A]

**706.02 History:** 1969 c. 285; Stats. 1969 s. 706.02.

**Committee Note, 1969:** Sub. (1) leases and contracts require bilateral signature; sub. (2) conveyances of homesteads held in sold name of one spouse do not require other spouse to join; sub. (3) conditional deliveries are defensible, except as provided here or in s. 706.10. [Bill 655-A]

**706.03 History:** 1969 c. 285; Stats. 1969 s. 706.03.

**Committee Note, 1969:** Sub. (1) permits proof of agency to convey by express oral authorization in all cases, resolving double standard of present ss. 240.06 and 240.08.

Sub. (1) abandons requirement of corporate signature by specified officers; sub. (2) abandons requirement of corporate seal (now essential to recording, at most).

Sub. (3) applies to conveyances principle of ss. 180.41, 180.70, incorporating nonofficer agents.

Sub. (4) extends s. 235.27 to validate conveyances without guardian by married minors over 18. [Bill 655-A]

**706.04 History:** 1969 c. 285; Stats. 1969 s. 706.04.

**Committee Note, 1969:** Clarifies and restates so-called "doctrine of part performance", so as to identify its elements. The section incorporates, especially sub. (2), the doctrine of *Stuesser v. Ebel*, 19 Wis. 2d 591, 120 N.W. 2d 679 (1962). [Bill 655-A]

**706.05 History:** 1969 c. 285; Stats. 1969 s. 706.05.

**Committee Note, 1969:** Sub. (6) treats "unrecordable" instrument as duly recorded when notice is assured by proper entry in index. [Bill 655-A]

**706.06 History:** 1969 c. 285; Stats. 1969 s. 706.06.

**Committee Note, 1969:** Permits short-form acknowledgment certificates. [Bill 655-A]

**706.065 History:** 1969 c. 14; 1969 c. 411 s. 1; Stats. 1969 s. 706.065.

**706.07 History:** 1969 c. 285; Stats. 1969 s. 706.07.

**Committee Note, 1969:** Sub. (10) incorporates present s. 235.22. [Bill 655-A]

**706.08 History:** 1969 c. 285; Stats. 1969 s. 706.08.

**Committee Note, 1969:** Sub. (2) is a new provision. To reverse, where notice is assured by tract index, the "chain of title" rule adopted in *Zimmer v. Sundell*, 237 Wis. 270, 296 NW 589. [Bill 655-A]

**706.09 History:** 1967 c. 274; Stats. 1967 s. 235.491; 1969 c. 285 s. 11; Stats. 1969 s. 706.09.