

TITLE XXII.

Fraudulent Conveyances and Contracts.

CHAPTER 240.

FRAUDULENT CONVEYANCES AND CONTRACTS RELATING TO REAL ESTATE.

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240.01 Conveyances, when void. Every conveyance of any estate or interest in land, or the rents and profits of lands and every charge upon lands or upon the rents and profits thereof, made or created with the intent to defraud prior or subsequent purchasers for a valuable consideration of the same lands, rents or profits, as against such purchasers, shall be void.

240.02 Conveyances not fraudulent, when. No such conveyance or charge shall be deemed fraudulent in favor of a subsequent purchaser who shall have actual or legal notice thereof at the time of his purchase, unless it shall appear that the grantee in such conveyance or person to be benefited by such charge was privy to the fraud intended.

240.03 Conveyances with power of revocation, void. Every conveyance or charge of or upon any estate or interest in lands containing any provision for the revocation, determination or alteration of such estate or interest or any part thereof, at the will of the grantor, shall be void as against subsequent purchasers from such grantor for a valuable consideration of any estate or interest so liable to be revoked or determined, although the same be not expressly revoked, determined or altered by such grantor by virtue of the power reserved or expressed in such prior conveyance or charge.

240.04 Such conveyances valid, when. Where a power to revoke a conveyance of any lands or the rents and profits thereof and to reconvey the same shall be given to any person other than the grantor in such conveyance, and such person shall thereafter convey the same lands, rents or profits to a purchaser for a valuable consideration, such subsequent conveyance shall be valid in the same manner and to the same extent as if the power of revocation were recited therein and the intent to revoke the former conveyance expressly declared.

240.05 Same subject. If a conveyance to a purchaser, under either section 240.03 or 240.04, shall be made before the person making the same shall be entitled to execute his power of revocation it shall nevertheless be valid from the time the power of revocation shall actually vest in such person in the same manner and to the same extent as if then made.

240.06 Conveyance of land, etc., to be in writing. No estate or interest in lands, other than leases for a term not exceeding one year, nor any trust or power over or concerning lands or in any manner relating thereto shall be created, granted, assigned, surrendered or declared unless by act or operation of law or by deed or conveyance in writing, subscribed by the party creating, granting, assigning, surrendering or declaring the same or by his lawful agent thereunto authorized by writing.

240.07 Limitation of section 240.06. Section 240.06 shall not be construed to affect in any manner the power of a testator in the disposition of his real estate by a last will and testament nor to prevent any trust from arising or being extinguished by implication or operation of law.

See note to 238.02, citing Estate of Russell, 10 W (2d) 346, 102 NW (2d) 768.

240.08 Contract for lease or sale to be in writing. Every contract for the leasing for a longer period than one year or for the sale of any lands or any interest in lands

shall be void unless the contract or some note or memorandum thereof, expressing the consideration, be in writing and be subscribed by the party by whom the lease or sale is to be made or by his lawfully authorized agent.

A contract of purchase contingent on obtaining "proper financing" is unenforceable and a note given as a down payment cannot be collected. *Gerruth Realty Co. v. Fire*, 17 W (2d) 89, 115 NW (2d) 557.

A description "the real estate owned by the sellers and located in the town of Oak Grove, now known as the 'Dobie Inn' and used in the business of the sellers" is insufficient since the sellers owned other property in the town. The buyers can recover their down payment less the sellers' expenses. *Stuesser v. Ebel*, 19 W (2d) 591, 120 NW (2d) 679.

To take the defective agreement out of operation of the statute of frauds, plaintiff could not rely upon his occupancy of the premises as tenant, his operation of a tavern under a license which extended beyond the termination date of the lease, his installation of fixtures, nor the fact that he purchased tavern equipment from the landlord, since these facts were not exclusively referable to the exercise of the option to purchase, but were equally referable to his occupancy of the premises as tenant. *Wiegand v. Gissal*, 28 W (2d) 488, 137 NW (2d) 412, 138 NW (2d) 740.

Where 2 tenants in common with undivided interests in real property orally agreed to execute reciprocal wills, whereby each would devise to the other his or her interests in the property, conditioned upon the devisee's survival—execution by plaintiff of her will alone (without mentioning therein the underlying agreement) was not sufficient to constitute part performance so as to remove the bar of the statute of frauds. *Estate of Rogers*, 30 W (2d) 284, 140 NW (2d) 273.

An option extension must comply with this section by expressing any new consideration for it, but if it does not the seller may be estopped to assert the defense if the buyer was induced to rely on it to his detriment. *Bratt v. Peterson*, 31 W (2d) 447, 143 NW (2d) 538.

Pitfalls in the standard offer to purchase form. 46 MLR 499.

Recoupment in realty transactions based on a void contract. 49 MLR 419.

Right of a defaulting vendee to recover down payment under void contract for the sale of land. 1964 WLR 167.

240.09 Specific performance. Nothing in this chapter contained shall be construed to abridge the powers of courts to compel the specific performance of agreements in case of part performance of such agreements.

240.10 Real estate agency contracts. (1) Every contract to pay a commission to a real estate agent or broker or to any other person for selling or buying real estate shall be void unless such contract or note or memorandum thereof describing such real estate, expressing the price for which the same may be sold or purchased, the commission to be paid and the period during which the agent or broker shall procure a buyer or seller, be in writing and be subscribed by the person agreeing to pay such commission.

(2) Every contract to pay a commission to any real estate agent or broker or to any person for leasing real estate for a term exceeding 3 years shall be void unless such contract, note or memorandum thereof describing such real estate, expressing the rent to be paid or a method to determine the same, the length of the lease, the commission to be paid, and the period during which said person shall procure a tenant, be in writing and be subscribed by the person agreeing to pay such commission.

History: 1965 c. 333; 1967 c. 26.

Where an oral contract for the payment of a commission on the sale of real estate was void but the broker, in settling with the sellers, withheld and deducted a commission from the proceeds of the sale with the full knowledge, consent, and approval of the sellers, it amounted to a voluntary payment which could not subsequently be recovered by the sellers. *Geis v. McKenna*, 10 W (2d) 16, 102 NW (2d) 101.

A contract under which services were to be rendered by a broker in obtaining a suitable tenant for a building to be erected at a specified location, but which contained no other statement of the terms of rental acceptable to the owner of the real estate, was void for failure to express the terms of rental. *Wozny v. Basack*, 21 W (2d) 86, 123 NW (2d) 513.

Compensation is not essential to agency; hence inability under this section of a real estate broker to collect a commission because the agreement with his principal was not in writing would not render the agreement void nor prevent him as agent from subjecting himself to the fiduciary duties arising therefrom. *Hilboldt v. Wisconsin R. E. Brokers' Board*, 28 W (2d) 474, 137 NW (2d) 482.

In action for violation of a real estate listing contract it is not necessary to allege facts to establish that the contract complies with the statute. *Purtell v. Tehan*, 29 W (2d) 631, 139 NW (2d) 655.

Contingent financing clauses in real estate purchase contracts. *Rauschenbush*, 1963 WLR 666.