

## CHAPTER 708

## MORTGAGES AND LAND CONTRACTS

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**708.01 Effect of mortgage.** A mortgage on real property creates a lien on the property mortgaged; except for the lien, the mortgagor retains the interest he had at the time of mortgage until that interest is divested by some later act.

An acceleration clause providing that a mortgage shall become due and payable at the option of the mortgagee in the event the mortgaged premises are leased or transferred without its written permission, while not contrary to public policy, is enforceable only in accord with the equitable principles governing foreclosure actions. *Mutual Federal S. & L. v. American Med. Services*, 66 W (2d) 210, 223 NW (2d) 921.

**708.02 Foreclosure; effect in lease.** If property subject to lien created by mortgage or land contract is leased after the lien has attached, the lease is subject to termination at the time the interest of the lienor is terminated.

**708.03 Prohibiting lender from designating attorney for mortgagor.** A bank, savings bank, savings and loan association or other lender or lending agency requiring a borrower to give a mortgage on real estate as security for a loan or an existing indebtedness may not designate the attorney to represent the mortgagor's interest in connection with the giving of the mortgage if the mortgagor has or desires a different attorney for that purpose. Any person violating this section shall be fined not more than \$100 for each violation.

History: 1991 a. 221

**708.04 Removal of buildings from mortgaged premises.** The removal, without the consent of the mortgagee or his assigns, of any building from any real estate upon which there is an unsatisfied mortgage, properly recorded, shall not destroy the lien of such mortgage upon such removed building, but the mortgagee or his assigns shall be entitled to recover the possession of the same in an action of replevin, from any person, and wherever the same may be situated, without regard to the question of the adequacy of the real estate remaining to pay the mortgage debt. If such removal be

made by the mortgagor or with his consent, all reasonable expense incurred in recovering such building shall be added to, and collected as a part of the mortgage debt.

**708.05 Mortgages, power to sell under.** When a power to sell lands shall be given to the grantee in any mortgage or other conveyance intended to secure the payment of money the power shall be deemed a part of the security and shall vest in and may be executed by any person, who, by assignment or otherwise, shall become entitled to the money so secured to be paid.

**708.07 Satisfaction of state mortgages.** In any case where the records of the offices of the state treasurer and secretary of state fail to show any payments made upon any mortgage of real estate to the state or territory of Wisconsin since January 1, 1865, it shall be the duty of the state treasurer, on demand, to execute, acknowledge and deliver to the owner of all or any portion of the land conveyed by any such mortgage a satisfaction in due form of law acknowledging the satisfaction and discharge of such mortgage, and such satisfaction when so executed shall be conclusive evidence of the payment and discharge of such mortgage and the satisfaction of the lien thereby secured.

**708.09 Purchase money mortgage defined.** A purchase money mortgage is one given as part of the transaction of purchase to the vendor of real estate for all or part of the purchase money or to a 3rd person who advances all or a part of the purchase money.

A purchase money mortgage executed at the time of delivery of the conveyance of legal title has priority, as to the property conveyed, over existing judgments and executions against the mortgagor-vendee, whether the mortgagee is the vendor or a 3rd party who furnishes the purchase price. *Northern State Bank v. Toal*, 69 W (2d) 50, 230 NW (2d) 153.