CHAPTER 842

PARTITION OF INTEREST IN REAL PROPERTY

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842.01 Definitions. As used in this chapter:

(1) "Interest in real property" in addition to the interests described in s. 840.01, includes rights and interests in water power, structures for the use of water power and structures for the utilization of riparian rights. Interests of vendees under land contracts are excluded.

(2) "Lien" includes encumbrance.

History: 1973 c. 189; Sup. Ct. Order, 67 Wis. 2d 585, 767, 782 (1975); Stats. 1975 s. 842.01.

842.02 Partition; plaintiffs. (1) A person having an interest in real property jointly or in common with others may sue for judgment partitioning such interest unless an action for partition is prohibited elsewhere in the statutes or by agreement between the parties for a period not to exceed 30 years.

(2) The plaintiff in the plaintiff's complaint may demand judgment of partition and, in the alternative, if partition is impossible, judicial sale of the land or interest, and division of the proceeds.

History: 1973 c. 189; Sup. Ct. Order, 67 Wis. 2d 585, 767 (1975); Stats. 1975 s. 842.02; 1993 a. 486.

A "buy−out" agreement that lacked a termination date did not violate the 30−year limit. Schneider v. Schneider, 132 Wis. 2d 171, 389 N.W.2d 835 (Ct. App. 1986).

A limitation on partition can be implied or express. Equity dictates that a party claiming ownership under a will should be bound by reasonable restrictions in that will, including reasonable restraints on alienation. The general rule is that effect will be given to the intention of the testator as expressed in the will, and that no partition suit will lie before the date so fixed or the happening of the event named. If an heir disagrees with a restriction in a will, he or she is free to decline the bequest. Fohr v. Fohr, 2007 WI App 149, 302 Wis. 2d 510, 735 N.W.2d 570, 06−1559.

842.03 Partition when state part owner; service of process. If any lands are held by the state and by individuals as tenants in common, proceedings for the partition thereof may be had against the state in the same manner as against individuals, and the like orders and judgments shall be had therein, and the proportion of the costs and expenses of such partition, adjudged to be paid by the state, shall be certified by the attorney general and paid out of the state treasury on the warrant of the department of administration. The summons and all notices required to be served shall be served on the attorney general, who shall appear in behalf of the state and attend to its interest.

History: 1973 c. 189; Sup. Ct. Order, 67 Wis. 2d 585, 767 (1975); Stats. 1975 s. 842.03.

842.04 Defendants. Any cotenant not joined as a plaintiff must be joined as a defendant; if a judgment affecting the interest of any tenant, lienholder or person in physical possession is demanded, such person must be joined as a defendant.

History: 1973 c. 189; Sup. Ct. Order, 67 Wis. 2d 585, 767 (1975); Stats. 1975 s. 842.04.

842.05 Pleadings. (1) The complaint shall describe the lands to be partitioned and the interests of all parties as far as the same are known to the plaintiff. If a lienholder is made a defendant, the lienholder's lien shall be described.

(2) If the complaint does not demand partition of all the lands owned by the parties any of them may have the complaint amended so as to affect all the lands so owned.

History: 1973 c. 189; Sup. Ct. Order, 67 Wis. 2d 585, 767 (1975); Stats. 1975 s. 842.05; 1993 a. 486.

842.06 Water power referee. In an action concerning declaration or partition of rights to water power, the court may appoint a referee and empower the referee to examine into any matters complained of, and upon reasonable notice to the owners or occupants of water power to enter upon and take control of the mills, machinery, flumes, gates, wheels and other appurtenances of such water power and to exercise such reasonable control of the same for such reasonable time and in such reasonable manner as will enable the referee to ascertain the respective rights of the parties and to determine the manner of using, applying and preserving the same.

History: 1973 c. 189; Sup. Ct. Order, 67 Wis. 2d 585, 767 (1975); Stats. 1975 s. 842.06; 1993 a. 486.

842.07 Findings and conclusions; referee. On default and proof or after trial of issues, the court shall by findings of fact and conclusions of law determine the rights of the parties. If the basis for partition is clear, the court may enter judgment partitioning the interests. If the basis for partition is not clear, the court shall appoint a referee to report either a basis for partition, or the conclusion that partition is prejudicial to the parties.

History: 1973 c. 189; Sup. Ct. Order, 67 Wis. 2d 585, 767 (1975); Stats. 1975 s. 842.07.

The homestead exemption may arise in a partition action. Reckner v. Reckner, 105 Wis. 2d 425, 314 N.W.2d 159 (Ct. App. 1981).

If the court's findings and conclusions indicate as a matter of law that any partition would be prejudicial, the court need not appoint a referee and may order a sale under s. 842.17 (1). LaRene v. LaRene, 133 Wis. 2d 115, 394 N.W.2d 742 (Ct. App. 1986).

842.08 Platting. If the court determines that the interests of the parties will be promoted by surveying or platting the premises or any part thereof, it shall, by order, direct the plaintiff or the referee to survey or to make and acknowledge a plat of such premises or a designated part thereof or both; which plat, when made, approved by the court and recorded shall have the same effect and validity as if made by the parties pursuant to ch. 236. When such plat is so made, approved and recorded, partition or sale if ordered may be made in accordance therewith.

History: 1973 c. 189; Sup. Ct. Order, 67 Wis. 2d 585, 767 (1975); Stats. 1975 s. 842.08.

842.09 Referee's expenses. The referee's expenses, including those of a surveyor and assistants, shall be subject to the approval of the court and, with the compensation allowed by the court for the referee's services, shall be paid by the plaintiff and allowed as part of the costs to be taxed.

History: 1973 c. 189; Sup. Ct. Order, 67 Wis. 2d 585, 767 (1975); Stats. 1975 s. 842.09; 1993 a. 486.

842.10 Referee's report; partition not prejudicial. (1) If the referee determines that partition can be made without prejudice to the owners, the referee shall submit to the court the referee's findings, indicating how partition is to be made. In making partition the referee shall divide the real estate and allot the several portions to the respective parties, quality and quantity relatively considered, according to the respective rights and interests of the parties as declared in the court's findings and conclusions.

(2) If the land is subject to a life estate, that fact shall be noted, and the partition of the remainder at the termination of the life estate indicated. The partition of any lands not subject to the life estate shall also be indicated.

History: 1973 c. 189; Sup. Ct. Order, 67 Wis. 2d 585, 767 (1975); Stats. 1975 s. 842.10; 1993 a. 486.

842.11 Referee's report; partition prejudicial. (1) If the referee determines that partition cannot be made without prejudice to the owners, the referee shall so report to the court, recommending sale.

(2) If, under sub. (1), all or part of the property is subject to a life estate, and after the life estate is valued, the life tenant and the owners whose interests are being partitioned all file in court an agreement or agreements, executed so as to be entitled to record, stating that the life tenant be paid such value from the proceeds of sale, the referee shall so report to the court, recommending sale clear of such life estate.

(3) If, under sub. (1), all or part of the property is subject to a life estate, but the owner of the life estate fails to file the written consent mentioned in sub. (2), or from minority or other incapacity cannot do so, the referee shall recommend sale of the portion, if any, not subject to the life estate, or may recommend sale subject to the life estate.

(4) The referee may recommend sale subject to interests of tenants and lienholders.

History: 1973 c. 189; Sup. Ct. Order, 67 Wis. 2d 585, 767 (1975); Stats. 1975 s. 842.11; 1985 a. 29; 1993 a. 486.

842.12 Hearing on report. Notice of a hearing on the referee's report shall be given to all parties who have appeared.

History: 1973 c. 189; Sup. Ct. Order, 67 Wis. 2d 585, 767 (1975); Stats. 1975 s. 842.12.

842.13 Report may be set aside. On good cause shown the court may set aside the report and refer the case to a new referee, who shall proceed as hereinbefore directed.

History: 1973 c. 189; Sup. Ct. Order, 67 Wis. 2d 585, 767 (1975); Stats. 1975 s. 842.13.

842.14 Judgment of partition. (1) If the court has determined that partition is proper under s. 842.07 or on adoption by the court of a report recommending partition without sale, the court may order or render judgment of partition which shall be conclusive on all the parties to the action and their legal representatives and on all persons claiming or to claim from such parties or persons or any of them, subsequent to the filing of the notice of the pendency of the action.

(2) Such judgment shall not affect the interests of lienholders or tenants, except that if a tenant obtained a lease from less than all of the cotenant owners, the tenant's lease shall be extinguished by the judgment, and the tenant shall have judgment for damages against the cotenant who granted the lease.

(3) If partition is adjudged, existing liens shall not be affected or impaired, except that a lien upon an undivided interest or estate shall thereafter be a charge only on the share assigned to the party against whom it exists, which share shall be charged with its just proportion of the costs in preference to such lien.

(4) If partition is adjudged, and if it appears that it cannot be made equal between the parties without prejudice to the rights or interests of some of them, the court may provide in its judgment that compensation be made by one party to the other for equality of partition, according to the equity of the case; and where any party has with the knowledge or assent of the others or any of them, made improvements upon lands partitioned, the portion of such lands upon which such improvements have been made may be allotted to such party without computing in their value the value of such improvements.

(5) A copy of the judgment shall be recorded in each county in which any part of the premises are situated, and the expense of such copy and record shall be taxed in the costs.

History: 1973 c. 189; Sup. Ct. Order, 67 Wis. 2d 585, 767, 782 (1975); Stats. 1975 s. 842.14; 1993 a. 486.

A cotenant could not have asked to be reimbursed for disproportionately borne expenses until unity of possession was dissolved and the property, or any proceeds from the sale of the property, was being divided in proportion to the economic interests held by the parties. O'Connell, Jr. v. O'Connell, 2005 WI App 51, 279 Wis. 2d 406, 694 N.W.2d 429, 04−0895.

842.15 Judicial conveyance. If partition is decreed, and a party or parties refuse to convey to effect the partition, the court's judgment shall serve as the conveyance of interests described therein.

History: 1973 c. 189; Sup. Ct. Order, 67 Wis. 2d 585, 767 (1975); Stats. 1975 s. 842.15.

842.16 Costs and charges. The judgment shall adjudge that each of the parties, other than the plaintiff, pay a proportion of the costs of the proceedings, to be ascertained by the court; and the proportion of such costs adjudged to be paid by the unknown owners shall be adjudged to be a charge upon the part remaining undivided. Execution may issue for such costs as in other cases and may be levied upon the property of the parties respectively charged therewith, and a sale of the premises allotted to such unknown owner, upon such execution, shall be as valid as if the unknown owner had been named in the proceedings and in such execution. If the complaint is dismissed or the action discontinued, the plaintiff shall be adjudged to pay costs as in other cases. The plaintiff shall also pay the costs when the defendant does not appear, unless the complaint asks partition or sale of all the lands owned by the parties of which partition may be had or unless the defendant is personally served in the action.

History: 1973 c. 189; Sup. Ct. Order, 67 Wis. 2d 585, 767 (1975); Stats. 1975 s. 842.16; 1993 a. 486.

842.17 Interlocutory judgment of sale. (1) If the court finds that the land or any portion thereof is so situated that partition cannot be made without prejudice to the owners, and there are no tenants or lienholders, it may order the sheriff to sell the premises so situated at public auction.

(2) If a lienholder or tenant consents to sale of the lienholder's or tenant's interest or is unknown, the value of the lienholder's or tenant's interest shall be paid to the lienholder or tenant or set aside for the lienholder or tenant from the proceeds of the sale before any distribution is made to the partitioning cotenants.

(3) If there are tenants or lienholders who do not consent to sale, the court may order such sale subject to the lien or tenant's interest.

(4) If a nonconsenting tenant derived his or her interest from less than all of the cotenant owners, a sale may be ordered without the nonconsenting tenant's consent, and the nonconsenting tenant's interest sold; the value of the nonconsenting tenant's interest shall be paid to the nonconsenting tenant from the proceeds of sale owing to the nonconsenting tenant's lessor.

History: 1973 c. 189; Sup. Ct. Order, 67 Wis. 2d 585, 767 (1975); Stats. 1975 s. 842.17; 1993 a. 486.

842.18 Notice and method of sale. The sheriff shall give notice of such sale for the time and in the manner required for sales of real estate on execution. The terms of sale shall be made known

at the time thereof, and if the premises consist of distinct lots or parcels they shall be sold separately.

History: 1973 c. 189; Sup. Ct. Order, 67 Wis. 2d 585, 767 (1975); Stats. 1975 s. 842.18.

842.19 Report; confirmation of sale; final judgment. **(1)** The sheriff shall promptly report the sale to the court, with a description of the land sold to each purchaser, the name of such purchaser and the price bid by the purchaser.

(2) If the sale is confirmed, final judgment shall direct the sheriff to execute conveyances pursuant thereto and also direct the application of the proceeds of such sale. The judgment shall order the issuance of a writ of assistance as necessary.

History: 1973 c. 189; Sup. Ct. Order, 67 Wis. 2d 585, 767 (1975); Stats. 1975 s. 842.19; 1993 a. 486.

842.20 Sheriff's deed. Any purchaser receiving a deed from the sheriff or other officer conducting such sale, shall be vested with all the estate, title and interest of all the parties to the action and those claiming under them, to the real estate sold, as indicated in the final judgment of sale.

History: 1973 c. 189; Sup. Ct. Order, 67 Wis. 2d 585, 767 (1975); Stats. 1975 s. 842.20.

842.21 Costs, how paid. Unless the court otherwise directs, the costs of every party to the action, with reasonable attorney fees to be allowed by the court upon notice served personally or by mail, on the parties who are known to be residents of this state, must be deducted from the proceeds of the sale and paid to the party's attorney; but the court may direct the costs of any trial, reference or other proceeding in the action to be paid out of the share of any party in such proceeds or may render judgment against any party therefor.

History: 1973 c. 189; Sup. Ct. Order, 67 Wis. 2d 585, 767 (1975); Stats. 1975 s. 842.21; 1993 a. 486, 490.

842.22 Distribution of proceeds of sale. The proceeds of every sale shall be brought into court by the sheriff with the sheriff's report, and after deducting costs, shall be divided according to provisions of the judgment, or by order of the court among the parties in proportion to their respective rights.

History: 1973 c. 189; Sup. Ct. Order, 67 Wis. 2d 585, 767 (1975); Stats. 1975 s. 842.22; 1993 a. 486.

842.23 Distribution; cancellation of liens. When the amount of the liens upon any undivided shares has been ascertained, the court shall order a distribution of the money pertaining to such shares to be made among the lien creditors according to the priority thereof, respectively; and the clerk of the court shall procure satisfaction thereof to be acknowledged as required by law and cause such lien to be duly satisfied of record, and the expenses thereof shall be paid out of the money realized on the sale of the share which was subject to the lien.

History: 1973 c. 189; Sup. Ct. Order, 67 Wis. 2d 585, 767 (1975); Stats. 1975 s. 842.23.

842.24 Proceedings not to affect whom. The proceedings to ascertain and settle the amount of liens, as herein provided, shall not affect any other party in such action nor delay the paying over or investing the moneys to or for the benefit of any party upon whose interest there does not appear to be any existing lien.

History: 1973 c. 189; Sup. Ct. Order, 67 Wis. 2d 585, 767 (1975); Stats. 1975 s. 842.24.

842.25 Share of individual adjudicated incompetent. The share of any ward shall be paid to the guardian of the estate of the ward, except under s. 54.12 (1) or s. 880.04 (2), 2003 stats.

History: 1973 c. 189; Sup. Ct. Order, 67 Wis. 2d 585, 767 (1975); Stats. 1975 s. 842.25; 1993 a. 486; 2005 a. 387.

842.26 Investment of share of absentee. When a party whose interest has been sold is absent from the state, without legal representatives in this state and has not appeared in the action, or is unknown, or not named in the proceedings, the court shall direct that party's share to be invested in securities, at interest, for the party's benefit until claimed by the party or the party's legal representatives.

History: 1973 c. 189; Sup. Ct. Order, 67 Wis. 2d 585, 767 (1975); Stats. 1975 s. 842.26; 1993 a. 486.

842.27 Security to refund. The court may require any party, before the party receives any share of the moneys arising from such sales, to give security to the satisfaction of such court to refund the party's share, with interest thereon, in case it thereafter appears that such party was not entitled thereto.

History: 1973 c. 189; Sup. Ct. Order, 67 Wis. 2d 585, 767 (1975); Stats. 1975 s. 842.27; 1993 a. 486.

842.28 Securities, how taken. When any security is directed to be taken by the court or any investment to be made, or any security taken by a sheriff on the sale of any real estate, as heretofore directed, except where provision is made for taking the same in the name of any known owner, the bonds, mortgages or other evidences thereof shall be taken in the name of the clerk of the court in whose office the original complaint was filed and the clerk's successors in office, who shall hold the same by virtue of his or her office and shall deliver them to his or her successor.

History: 1973 c. 189; Sup. Ct. Order, 67 Wis. 2d 585, 767 (1975); Stats. 1975 s. 842.28; 1993 a. 486.

842.29 Receipt and application of payments; account. Such clerk shall receive the interest or principal of any sums as they become due and apply or reinvest the same according to the circumstances of the case, as the court directs, and shall, once every year, render to the court an account in writing and on oath of all moneys received by the clerk and of the application thereof.

History: 1973 c. 189; Sup. Ct. Order, 67 Wis. 2d 585, 767 (1975); 1993 a. 486.

842.30 Collection of sum invested. Any person interested in any investment under this chapter may, with the leave of the court, prosecute an action to enforce the same in the name of the clerk.

History: 1973 c. 189; Sup. Ct. Order, 67 Wis. 2d 585, 767 (1975).

842.31 Statute of limitations not affected. This chapter shall not authorize the revival or prosecution of any claim to lands which would otherwise be barred by the statute of limitations or by the acquiescence of any party having any such claim.

History: 1973 c. 189; Sup. Ct. Order, 67 Wis. 2d 585, 767 (1975).