# CHAPTER 700

# INTERESTS IN PROPERTY



**700.01 Definitions.** In this chapter, unless the context indicates otherwise:

**(1)** "Bill of sale" means an instrument evidencing a sale of tangible personal property which names the seller and buyer and describes the property sold.

**(2)** "Document of title" means a document which is evidence of ownership of certain kinds of personal property, tangible or intangible, the ownership of which may be transferred by transfer of the document; it includes but is not limited to an investment security, a negotiable instrument and a certificate of title to tangible personal property; it does not include items excepted in s. 700.22.

**(3)** "Instrument of transfer" means an instrument which is effective to transfer an interest in property; it includes but is not limited to a will, a deed, a contract to transfer, a real estate mortgage and an instrument creating a security interest in personal property under ch. 409.

**(4)** "Interest" means an interest in property.

**(5)** "Property" means real or personal property.

**(6)** "Successors in interest" means persons who obtain a reversionary interest by transfer or operation of law.

**(7)** "Transfer" means a transfer effective during the lifetime of the transferor or by reason of the transferor's death.

**History:** 1983 a. 189; 1991 a. 316.

**Cross−reference:** See ss. 990.01 (27) and (35) which define real and personal property.

**700.02 Classification of interests in property as to duration.** Interests in property are classified as to duration as:

**(1)** A fee simple absolute;

**(2)** A defeasible fee simple which may be a fee simple determinable automatically expiring upon the occurrence of a stated event, a fee simple subject to a condition subsequent with a power in the transferor or the transferor's successors in interest to reacquire the fee by reason of a breach of the condition, or a fee simple with a remainder over to a person other than the transferor or the transferor's successors in interest to take effect upon the occurrence of a stated event; for purposes of this subsection, a stated event can be either the happening, or the nonhappening, of a specified occurrence, and can be either certain or not certain to happen;

**(3)** An interest for life, which may be created for the duration of a life or lives of one or more human beings;

**(4)** An interest for years, which is any interest the duration of which is described in units of a year or multiples or divisions thereof;

**(5)** A periodic interest, which will continue for successive periods of a year, or successive periods of a fraction of a year, unless terminated;

**(6)** An interest at will, which is terminable at the will of either the transferor or the transferee and has no designated period of duration.

**History:** 1991 a. 316.

**700.03 Classification of present and future interests.** Interests in property are classified as to time of enjoyment as:

**(1)** A present interest, which entitles the owner to the present possession or enjoyment of the benefits of property; or

**(2)** A future interest, which does not entitle the owner to possession or enjoyment of the benefits of property until a future time.

**700.04 Classification of future interests.** Future interests are classified as:

**(1)** A reversionary interest left in the transferor or the transferor's successors in interest, either as a reversion, a possibility of reverter upon the simultaneous creation of a fee simple determinable, or a power of reacquisition; or

**(2)** An interest created in a person other than the transferor or the transferor's successors in interest, called a remainder, to take effect at the termination of a preceding interest created at the same time or without the intervention of such a preceding interest.

**History:** 1991 a. 316.

When a conditional testamentary disposition failed, the court found a gift by implication rather than a reversionary interest that would have contravened the testator's intent. In re Trust of Pauly, 71 Wis. 2d 306, 237 N.W.2d 719 (1976).

**700.05 Classification of remainders.** Remainders are classified as:

**(1)** Indefeasibly vested, if the interest is created in favor of one or more ascertained persons in being and is certain to become a present interest at some time in the future;

**(2)** Vested subject to open, if the interest is created in favor of a class of persons, one or more of whom are ascertained and in being, and if the interest is certain to become a present interest at some time in the future, but the share of the ascertained remaindermen is subject to diminution by reason of other persons becoming entitled to share as members of the class;

**(3)** Vested subject to complete defeasance, if the interest is created in favor of one or more ascertained persons in being and would become a present interest on the expiration of the preceding interests but may end or may be completely defeated as provided by the transferor at, before or after the expiration of the preceding interests;

**(4)** Subject to a condition precedent, if the interest is created in favor of one or more unborn or unascertained persons or in favor of one or more presently ascertainable persons upon the occurrence of an uncertain event.

**History:** 1971 c. 66.

**700.06 Interest for life of another; succession.** An interest measured by the life of a person other than the owner of the interest passes on the death of the owner, if the owner's death is prior to the death of the person who is the measuring life, as an asset of the owner's estate and is realty or personalty according to the nature of the property subject to the interest.

**History:** 1999 a. 85.

**700.07 Transferability of future interests.** A future interest is transferable during the lifetime of the owner and passes on the owner's death by will or under the law of intestate succession in the same manner as a present interest; but this section does not make an interest transferable if a valid condition or limitation restricts transfer, nor permit an interest to pass at death if the interest ends at death.

**History:** 1991 a. 316.

**700.08 Estate tail becomes fee simple; effect of gift over after attempted estate tail.** The use of language in an instrument appropriate to create a present or future interest in fee tail, such as to a named person "and the heirs of his body" or "and the heirs of her body" or "and his issue" or "and her issue", creates a present or future interest in fee simple. If the same instrument attempts to create a future interest after the interest that is made a fee simple by reason of this section, the future interest is valid.

**History:** 1993 a. 486; 1999 a. 85.

**700.09 Interest contingent on death without issue.** If an instrument transfers an interest expressly contingent upon the death of a person without "heirs of the body", "descendants", "issue", "children" or relatives described by other terms, the interest takes effect only if that person dies not having such a relative living at the time of death, or conceived then and born alive thereafter.

**History:** 1991 a. 316.

**700.10 Remainder to heirs of owner of life interest; abolition of rule in Shelley's case.** If an instrument purports to transfer an interest for life to one person and a remainder to that person's heirs or the heirs of that person's body, a remainder is created in that person's heirs or heirs of that person's body.

**History:** 1991 a. 316.

**700.11 Interests in "heirs" and the like. (1)** If a statute, inter vivos governing instrument, as defined in s. 700.27 (1) (c), or governing instrument, as defined in s. 854.01 (2), specifies that property is to be distributed to, or a future interest is to be created in, a designated individual's "heirs," "heirs at law," "next of kin," "relatives," "family," or a term that has a similar meaning, or if a class gift in favor of "descendants," "issue," or "heirs of the body" does not specify the manner in which the property is to be distributed among the class members, the property is distributed according to s. 854.22.

**(2)** The common law doctrine of worthier title is abolished under s. 854.22 (3). Situations in which the doctrine may have applied are governed by s. 854.22 (1).

**History:** 1991 a. 316; 1997 a. 188; 2005 a. 216.

**700.12 After−born persons included in class gift.** With respect to membership in a class under a class gift, the status of a person who was born after the membership in the class was determined is governed by s. 854.21 (5).

**History:** 1991 a. 316; 1997 a. 188.

**700.13 Remainders presumed not to shorten prior interest; acceleration of remainders. (1)** If an instrument transfers an interest for life or years and a future interest to take effect on a stated contingency not defeating or avoiding the prior interest transferred, and the stated contingency occurs before the normal termination of the prior interest transferred, the future interest takes effect at the normal termination of the prior interest.

**(2)** The effect of a renunciation or release of an interest for life or years is as provided in ss. 700.27 (8) and 854.13 (10).

**History:** 2005 a. 216.

**700.14 Indestructibility of contingent future interests.** No future interest is destroyed merely by the termination in any manner of any or all preceding interests before the happening of a contingency to which the future interest is subject.

**700.15 Nominal conditions not enforced.** A condition imposed by the transferor is not enforceable if it is or becomes merely nominal and of no actual or substantial benefit to the transferor or other person in whose favor it is to be performed.

**700.16 Perpetuities and suspension of power of alienation. (1)** (a) A future interest or trust is void if it suspends the power of alienation for longer than the permissible period. The permissible period is a life or lives in being plus a period of 30 years.

(b) If the settlor of a living trust has an unlimited power to revoke, the permissible period is computed from termination of such power.

(c) If a future interest or trust is created by exercise of a power of appointment, the permissible period is computed from the time the power of appointment is exercised if the power of appointment is a general power of appointment, as defined in s. 702.102 (7), even if the general power of appointment is exercisable only by will. In the case of other powers of appointment the permissible period is computed from the time the power of appointment is created but facts at the time the power of appointment is exercised are considered in determining whether the power of alienation is suspended beyond a life or lives in being at the time of creation of the power of appointment plus 30 years.

**(2)** The power of alienation is suspended when there are no persons in being who, alone or in combination with others, can convey an absolute fee in possession of land, or full ownership of personalty.

**(3)** There is no suspension of the power of alienation by a trust or by equitable interests under a trust if the trustee has power to sell, either expressed or implied, or if there is an unlimited power to terminate in one or more persons in being.

**(4)** This section does not apply to limit any of the following:

(a) Transfers, outright or in trust, for charitable purposes;

(b) Transfers to literary or charitable corporations;

(bm) Transfers to a veteran's memorial organization under s. 84.09 (5r);

(c) Transfers to any cemetery corporation, society or association;

(d) Transfers, outright or in trust, to the state society of physicians and surgeons incorporated under the law of this state, when the transfer is for the advancement of medical science;

(e) Transfers to any person pursuant to ch. 703; or

(f) Employees' trusts created as part of a plan or contract as described in s. 815.18 (3) (j).

**(5)** The common−law rule against perpetuities is not in force in this state.

**History:** Sup. Ct. Order, 67 Wis. 2d 585, 777 (1975); 1983 a. 189 s. 329 (26); 1989 a. 278; 1995 a. 406; 2013 a. 92; 2023 a. 127.

**700.17 Classification and characteristics of certain concurrent interests. (1)** CLASSIFICATION OF CONCURRENT INTERESTS. Interests in property may be owned concurrently by 2 or more persons as joint tenants or as tenants in common. A joint tenancy or tenancy in common established exclusively between spouses after the determination date is classified as provided under s. 766.60 (4) (b).

**(2)** CHARACTERISTICS OF JOINT TENANCY. (a) Each of 2 or more joint tenants has an equal interest in the whole property for the duration of the tenancy, irrespective of unequal contributions at its creation. On the death of one of 2 joint tenants, the survivor becomes the sole owner; on the death of one of 3 or more joint tenants, the survivors are joint tenants of the entire interest. If a survivor disclaims under s. 854.13 (2) (b), the joint tenancy is severed as of the date of death with respect to the disclaimed interest.

(am) Survivorship under par. (a) is governed by s. 854.03 (2).

(b) If a joint tenant unlawfully and intentionally kills another joint tenant of the same property, the disposition of the deceased joint tenant's interest in the joint tenancy is governed by s. 854.14.

**(3)** CHARACTERISTICS OF TENANCY IN COMMON. Each of 2 or more tenants in common has an undivided interest in the whole property for the duration of the tenancy. There is no right of survivorship incident to a tenancy in common, but a remainder may be created to vest ownership in the survivor of several persons who own as tenants in common other preceding interests, such as a life interest, in the same property.

**History:** 1971 c. 66; 1981 c. 228; 1985 a. 37; 1987 a. 222; 1995 a. 360; 1997 a. 188; 1999 a. 85.

**NOTE: As to sub. (1), see notes in 1985 Wis. Act 37, marital property trailer bill.**

Rental income must be attributed to joint tenants in proportion to ownership. McManus v. Department of Revenue, 91 Wis. 2d 682, 283 N.W.2d 576 (1979).

Concurrent ownership; joint tenancy and tenancy in common. Talsky, 55 MLR 321.

**700.18 Determination of cotenancy generally.** Two or more persons named as owners in a document of title, transferees in an instrument of transfer or buyers in a bill of sale are tenants in common, except as otherwise provided in s. 700.19 or ch. 766.

**History:** 1991 a. 301.

A warranty deed to 2 grantees as "single persons" did not express an intent to classify the property as something other than survivorship marital property when the grantees subsequently married. The use of the phrase "single persons" simply described a fact: that at the time they purchased the vacant lot, the grantees were not married. "Single persons" does not represent a classification of property ownership of any kind, to wit, tenancy in common, joint tenancy, marital property, or any other recognized classification. Droukas v. Estate of Felhofer, 2014 WI App 6, 352 Wis. 2d 380, 843 N.W.2d 57, 13−0147.

Wisconsin's New Probate Code. Erlanger. Wis. Law. Oct. 1998.

**700.19 Creation of joint tenancy. (1)** GENERALLY. The creation of a joint tenancy is determined by the intent expressed in the document of title, instrument of transfer or bill of sale. Any of the following constitute an expression of intent to create a joint tenancy: "as joint tenants", "as joint owners", "jointly", "or the survivor", "with right of survivorship" or any similar phrase except a phrase similar to "survivorship marital property".

**(2)** HUSBAND AND WIFE. If persons named as owners in a document of title, transferees in an instrument of transfer or buyers in a bill of sale are described in the document, instrument or bill of sale as husband and wife, or are in fact husband and wife, they are joint tenants, unless the intent to create a tenancy in common is expressed in the document, instrument or bill of sale. This subsection applies to property acquired before January 1, 1986, and, if ch. 766 does not apply when the property is acquired, to property acquired on or after January 1, 1986.

**(2m)** DOMESTIC PARTNERS. If persons named as owners in a document of title, transferees in an instrument of transfer, or buyers in a bill of sale are described in the document, instrument, or bill of sale as domestic partners under ch. 770, or are in fact domestic partners under ch. 770, they are joint tenants, unless the intent to create a tenancy in common is expressed in the document, instrument, or bill of sale.

**(3)** COMORTGAGEES. If covendors owned realty as joint tenants and a purchase money mortgage names the covendors as mortgagees, the mortgagees are joint tenants, unless the purchase money mortgage expresses an intent that the mortgagees are tenants in common.

**(4)** COFIDUCIARIES. Notwithstanding s. 700.18 and subs. (1) to (3), co−personal representatives and cotrustees hold title to interests in property as joint tenants.

**(5)** CHANGE IN COMMON LAW REQUIREMENTS. The common law requirements of unity of title and time for creation of a joint tenancy are abolished.

**History:** 1971 c. 66; 1983 a. 186; 1991 a. 301; 2009 a. 28.

The common law requirement that a grantor cannot also be a grantee in a deed creating a joint tenancy is no longer the law in Wisconsin. Marchel v. Estate of Marchel, 2013 WI App 100, 349 Wis. 2d 707, 838 N.W.2d 97, 12−2131.

Nature of cotenancies and their taxation — death and gift. Sheedy, Sullivan, 56 MLR 3.

**700.20 Extent of undivided interests in tenancy in common.** The extent of the undivided interests of tenants in common for the duration of the tenancy is determined by the intent expressed in the document of title, instrument of transfer or bill of sale; if no intent is expressed in the document, instrument or bill of sale, tenants in common are presumed to own equal undivided interests for the duration of the tenancy.

**History:** 1971 c. 66.

**700.21 Covendors in contracts to transfer. (1)** If 2 or more persons are named as covendors in a contract to transfer an interest in property which they own as joint tenants, the purchase price is payable to them as joint tenants, unless the contract expresses a contrary intent. If 2 or more persons are named as covendors in a contract to transfer an interest in property which they own as tenants in common, the purchase price is payable to them according to their interests, unless the contract expresses a contrary intent.

**(2)** If 2 or more persons are named as covendors in a contract to transfer an interest in property which is owned by less than all of the covendors, the purchase price is payable to the owner or owners of the interest in property to which the contract relates, unless the contract expresses an intent that the purchase price is payable to the covendors as joint tenants or as tenants in common.

**History:** 1971 c. 66.

Under the plain language of the land contract in this case, the full contract price was payable to all co−vendors. By operation of sub. (1), the contract price is divided between the covendors according to their respective interests in the property, but the individual payments are not subdivided. Under sub. (1), each co−vendor had a property right to one−fourth of the full contract price and that is the amount that was garnishable by a co−vendor's creditor. What the co−vendors had done with the previous payments was irrelevant and had no impact on the rights of a creditor to garnish a co−vendor's interest in the amount due under the land contract. Prince Corporation v. Vandenberg, 2015 WI App 55, 364 Wis. 2d 457, 868 N.W.2d 599, 14−2097.

**700.215 Exception for equitable rights of cotenants and 3rd persons.** Nothing in ss. 700.17 to 700.21 prevents an equitable lien arising in favor of one cotenant against another tenant or tenants because of events occurring after the establishment of the cotenancy relationship nor prevents imposition of a constructive trust in favor of a 3rd person in an appropriate case.

**History:** 1971 c. 66; 2005 a. 253.

**700.22 Exception for bank deposits, checks, government bonds and vehicles. (1)** (a) In this subsection, "deposits" include checking accounts or instruments deposited into or drawn on checking accounts, savings accounts, certificates of deposit, investment shares or any other form of deposit.

(b) Nothing in ss. 700.17 to 700.21 governs the determination of rights to deposits in banks, building and loan associations, savings banks, savings and loan associations, credit unions or other financial institutions.

**(2)** Nothing in ss. 700.17 to 700.21 applies to United States obligations to the extent they are governed by law of the United States.

**(3)** Nothing in ss. 700.17 to 700.21 governs the transfer of interest in a vehicle for purposes of s. 342.15 (1) (d).

**History:** 1971 c. 66; 1991 a. 221; 1995 a. 421; 1999 a. 85.

**Cross−reference:** See ch. 705 for provisions applicable to multiple party accounts.

There is no sound reason for ascribing to joint checking accounts the attributes of a common−law joint tenancy other than survivorship. No tracing of assets is permissible. Estates of Beisbier, 47 Wis. 2d 409, 177 N.W.2d 919 (1970).

**700.23 Liability among cotenants for rents and profits. (1)** The provisions of this section apply only in the absence of a valid agreement to the contrary between the cotenants. As used

in this section, "proportionate share" means a share determined by the number of joint tenants, in the case of a joint tenancy, and the extent of a tenant in common's undivided interest, in the case of a tenancy in common.

**(2)** If land belonging to 2 or more cotenants is rented to a 3rd person, any cotenant may recover that cotenant's proportionate share of the net rents collected by another cotenant after deduction of property taxes, maintenance costs and any other proper charges relating to the property.

**(3)** If land belonging to such cotenants is occupied by one cotenant and not by another, any cotenant not occupying the premises may recover from the occupying cotenant:

(a) A proportionate share of the reasonable rental value of the land accruing after written demand for rent if the occupying tenant manifests an intent to occupy the premises to the exclusion of the other cotenant or cotenants;

(b) A proportionate share of the net profits if the occupying cotenant engages in mining, cutting of timber, removal of sand or gravel, or any similar operation resulting in diminution of the value of the premises. In such a case, the occupying cotenant must render an accounting to the other cotenant, showing all receipts and expenditures, and is entitled to deduct a reasonable amount for the value of services provided by the occupying cotenant; but any other cotenant may in the alternative elect to recover that cotenant's proportionate share of the amount which that cotenant can prove would have been received by licensing a 3rd party to carry on the same operation.

**(4)** If one cotenant has leased the premises from another cotenant, upon expiration of the lease it is presumed that the cotenant who has leased the premises from the other cotenant continues to hold over as provided in s. 704.25, unless that cotenant gives to the other cotenant prior to the expiration of the lease a written notice to the contrary, by one of the methods under s. 704.21.

**History:** 1971 c. 66; 1991 a. 316.

Sub. (3) does not control all cases in which a nonoccupying cotenant asserts a claim against a cotenant in possession, and does not apply when a tenant has not been ousted from the property. Klawitter v. Klawitter, 2001 WI App 16, 240 Wis. 2d 685, 623 N.W.2d 169, 00–1464.

**700.24 Death of a joint tenant; effect of liens.** A real estate mortgage, a security interest under ch. 409, or a lien under s. 72.86 (2), 1985 stats., or s. 71.91 (5) (b), or ch. 49 or 779 on or against the interest of a joint tenant does not defeat the right of survivorship in the event of the death of such joint tenant, but the surviving joint tenant or tenants take the interest such deceased joint tenant could have transferred prior to death subject to such mortgage, security interest, or statutory lien.

**History:** 1971 c. 307 s. 118; 1975 c. 39; 1979 c. 32 s. 92 (9); 1987 a. 27 s. 3202 (47) (a); 1987 a. 312 s. 17; 1999 a. 9; 2013 a. 20.

The docketing of a judgment creates a lien upon the debtor's interest in joint tenancy property, but it does not, without levy and execution, sever the joint tenancy. If the debtor dies following docketing of the judgment, but prior to execution, the surviving joint tenant takes the entire interest in the property free of the judgment lien, as the debtor's interest in the property that was subject to the lien has been extinguished. Northern State Bank v. Toal, 69 Wis. 2d 50, 230 N.W.2d 153 (1975).

A decedent's one–half interest in joint property that was subject to a federal tax lien against the decedent becomes encumbered with the tax lien when it passes to the survivor. U.S. v. Librizzi, 108 F.3d 136 (1997).

**700.25 Applicability of chapter.** This chapter applies to interests in property in existence on July 1, 1971, and to interests in property created after such date. If application of any provision of this chapter to an interest in property in existence on July 1, 1971, is unconstitutional, it shall not affect application of the provision to an interest in property created after July 1, 1971.

**700.26 Applicability of general transfers at death provisions.** Chapter 854 applies to a transfer at death under an instrument of transfer.

**History:** 1997 a. 188.

**700.27 Disclaimer of transfers during life. (1)** DEFINITIONS. In this section:

(a) "Beneficiary under an inter vivos governing instrument" includes any person who receives or might receive property under the terms or legal effect of an inter vivos governing instrument.

(b) "Extrinsic evidence" has the meaning given in s. 854.01 (1).

(c) "Inter vivos governing instrument":

1. Means a gratuitous deed, inter vivos trust instrument, insurance policy, contract, inter vivos instrument that creates or exercises a power of appointment, or any other dispositive, appointive, or nominative instrument that transfers property other than a governing instrument as defined in s. 854.01 (2).

2. Includes an inter vivos gift that is not subject to a written instrument.

(d) "Power of appointment" has the meaning given in s. 702.102 (15).

**(2)** RIGHT TO DISCLAIM. (a) *In general.* 1. In this paragraph, "person" includes a person who is unborn or whose identity is unascertained.

2. A person who is a recipient of property or beneficiary under an inter vivos governing instrument, donee of a power of appointment created by an inter vivos governing instrument, appointee under a power of appointment exercised by an inter vivos governing instrument, taker in default under a power of appointment created by an inter vivos governing instrument, or person succeeding to disclaimed property created by an inter vivos governing instrument may disclaim any property, including contingent or future interests or the right to receive discretionary distributions, by delivering a written instrument of disclaimer under this section.

(b) *Partial disclaimer.* Property transferred under an inter vivos governing instrument may be disclaimed in whole or in part, except that a partial disclaimer of property passing by an inter vivos governing instrument or by the exercise of a power of appointment may not be made if partial disclaimer is expressly prohibited by the inter vivos governing instrument or by the instrument exercising the power of appointment.

(c) *Spendthrift provision.* The right to disclaim exists notwithstanding any limitation on the interest of the disclaimant in the nature of a spendthrift provision or similar restriction.

(d) *Disclaimer by a guardian or conservator.* A guardian of the estate or a conservator appointed under ch. 880, 2003 stats., or ch. 54 may disclaim on behalf of his or her ward, with court approval, if the ward is entitled to disclaim under this section.

(e) *Disclaimer by an agent under power of attorney.* An agent under a power of attorney may disclaim on behalf of the person who granted the power of attorney if all of the following apply:

1. The person who granted the power of attorney is entitled to disclaim under this section.

2. The power of attorney specifically grants the power to disclaim.

(f) *Disclaimer by trustee.* The trustee of a trust named as a recipient of property under an inter vivos governing instrument may disclaim that property on behalf of the trust if the trust authorizes disclaimer by the trustee. If the trust does not authorize disclaimer by the trustee, the trustee's power to disclaim is subject to the approval of the court.

(g) *After death.* A person's right to disclaim survives the person's death and may be exercised by the person's personal representative or special administrator upon receiving approval from the court having jurisdiction of the person's estate after hearing upon notice to all persons interested in the disclaimed property, if the personal representative or special administrator has not taken any action that would bar the right to disclaim under sub. (9).

(h) *Disclaimers of transfers at death.* A person who is a recipient of property under a governing instrument, as defined in s. 854.01 (2), may disclaim the property as provided in s. 854.13.

**(3)** INSTRUMENT OF DISCLAIMER. The instrument of disclaimer must meet the provisions of subs. (4) and (5) and s. 854.13 (3) (a) to (c).

**(4)** TIME FOR EFFECTIVE DISCLAIMER. (a) *Present interest.* An instrument disclaiming a present interest shall be executed and delivered not later than 9 months after the effective date of the transfer under the inter vivos governing instrument. For cause shown, the period may be extended by a court of competent jurisdiction, either within or after the 9−month period, for such additional time as the court considers just.

(b) *Future interest.* An instrument disclaiming a future interest shall be executed and delivered not later than 9 months after the event that determines that the taker of the property is finally ascertained and his or her interest indefeasibly fixed. For cause shown, the period may be extended by a court of competent jurisdiction, either within or after the 9−month period, for such additional time as the court considers just.

(c) *Future right to income or principal.* Notwithstanding pars. (a) and (b), an instrument disclaiming the future right to receive discretionary or mandatory distributions of income or principal from any source may be executed and delivered at any time.

(d) *Persons under 21.* Notwithstanding pars. (a) and (b), a person under 21 years of age may disclaim at any time not later than 9 months after the date on which the person attains 21 years of age.

(e) *Interests arising by disclaimer.* Notwithstanding pars. (a) and (b), a person whose interest in property arises by disclaimer or by default of exercise of a power of appointment created by an inter vivos governing instrument may disclaim at any time not later than 9 months after the day on which the prior instrument of disclaimer is delivered, or the date on which the donee's power of appointment lapses.

**(5)** DELIVERY AND FILING OF DISCLAIMER. (a) *Delivery.* In addition to any requirements imposed by the inter vivos governing instrument, the instrument of disclaimer is effective only if, within the time specified under sub. (4), it is delivered to and received by any of the following:

1. The transferor of the property disclaimed.
2. The transferor's legal representative.
3. The holder of legal title to the property.

(b) *Delivery to trustee.* If the trustee of any trust to which the interest or power of appointment relates does not receive the instrument of disclaimer under par. (a), a copy shall also be delivered to the trustee. Failure to deliver a copy of the instrument of disclaimer to the trustee within the time specified under sub. (4) does not affect the validity of any disclaimer.

(c) *Recording.* If real property or an interest in real property is disclaimed, a copy of the instrument of disclaimer may be recorded in the office of the register of deeds of the county in which the real estate is situated.

**(6)** PROPERTY NOT VESTED. The property disclaimed under this section shall be considered not to have been vested in, created in, or transferred to the disclaimant.

**(7)** DEVOLUTION. (a) *In general.* Subject to sub. (8), unless the inter vivos governing instrument provides otherwise, either expressly or as construed from extrinsic evidence, the disclaimed property devolves as if the disclaimant had died before the effective date of the transfer under the inter vivos governing instrument. If the disclaimed interest is a remainder contingent on surviving to the time of distribution, the disclaimed interest passes as if the disclaimant had died immediately before the time for distribution. If the disclaimant is an appointee under a power of appointment exercised by an inter vivos governing instrument, the disclaimed property devolves as if the disclaimant had died before the effective date of the exercise of the power of appointment. If the disclaimant is a taker in default under a power of appointment created by an inter vivos governing instrument, the disclaimed property devolves as if the disclaimant had predeceased the donee of the power of appointment.

(b) *Devolution to issue of the disclaimants.* Unless the inter vivos governing instrument provides otherwise, either expressly or as construed from extrinsic evidence, if, by law or under the inter vivos governing instrument, the issue of the disclaimant would share in the disclaimed interest by any method of representation had the disclaimant died before the time the disclaimed interest would have taken effect in possession or enjoyment, the disclaimed interest passes only to the issue of the disclaimant who survive when the disclaimed interest takes effect in possession or enjoyment.

(c) *Disclaimer of a devisable future interest.* 1. In this paragraph, "devisable future interest" is a future interest that can be passed under the will of the person who holds the future interest.

2. If the disclaimed interest is a devisable future interest under the law governing the transfer, then the disclaimed interest devolves as if it were a nondevisable future interest.

**(8)** ACCELERATION OF SUBSEQUENT INTERESTS WHEN PRECEDING INTEREST IS DISCLAIMED. (a) *Subsequent interest not held by disclaimant.* Unless the inter vivos governing instrument provides otherwise, either expressly or as construed from extrinsic evidence, upon the disclaimer of a preceding interest, a subsequent interest not held by the disclaimant and limited to take effect in possession or enjoyment after the termination of the interest that is disclaimed accelerates to take effect as if the disclaimant had died immediately before the time when the disclaimed interest would have taken effect in possession or enjoyment or, if the disclaimant is an appointee under a power of appointment and that power of appointment has been exercised, as if the disclaimant had died before the effective date of the exercise of the power of appointment.

(b) *Subsequent interest held by disclaimant.* Unless the inter vivos governing instrument provides otherwise, either expressly or as construed from extrinsic evidence, upon the disclaimer of a preceding interest, a subsequent interest held by the disclaimant does not accelerate.

**(9)** BAR. Actions that bar disclaimer are as provided in s. 854.13 (11g).

**(10)** EFFECT OF DISCLAIMER OR WAIVER. The effect of the disclaimer on the disclaimant and any successors in interest is as provided in s. 854.13 (11p).

**(11)** NONEXCLUSIVENESS OF REMEDY. (a) This section does not affect the right of a person to waive, release, disclaim, or renounce property under any other statute or the common law, or as provided in the creating instrument.

(b) Any disclaimer that meets the requirements of section 2518 of the Internal Revenue Code, or the requirements of any other federal law relating to disclaimers, constitutes an effective disclaimer under this section or s. 854.13.

**(12)** CONSTRUCTION OF EFFECTIVE DATE. In this section, the effective date of a transfer under an inter vivos governing instrument is the date on which the transfer is a completed gift for federal gift tax purposes.

**History:** 2005 a. 216; 2009 a. 180; 2013 a. 92; 2023 a. 127.

**700.28 Prohibiting unreasonable restrictions on alienation of property. (1)** In this section, "political subdivision" means a city, village, town, or county.

**(2)** A political subdivision may not prohibit or unreasonably restrict a real property owner from alienating any interest in the real property.

**History:** 2015 a. 391.

**700.35 Renewable energy resource easements.** In this section, "renewable energy resource easement" means an easement which limits the height or location, or both, of permissible development on the burdened land in terms of a structure or vegetation, or both, for the purpose of providing access for the benefited land to wind or sunlight passing over the burdened land. Every renewable energy resource easement shall be in writing and shall be subject to the same conveyancing and instrument record-

ing requirements as other easements. Renewable energy resource easements shall run with the land benefited and burdened unless otherwise expressly stated therein.

**History:** 1981 c. 354.

**700.40 Uniform conservation easement act. (1)** DEFINITIONS. In this section, unless the context otherwise requires:

(a) "Conservation easement" means a holder's nonpossessory interest in real property imposing any limitation or affirmative obligation the purpose of which includes retaining or protecting natural, scenic or open space values of real property, assuring the availability of real property for agricultural, forest, recreational or open space use, protecting natural resources, maintaining or enhancing air or water quality, preserving a burial site, as defined in s. 157.70 (1) (b), or preserving the historical, architectural, archaeological or cultural aspects of real property.

(b) "Holder" means either of the following:

1. Any governmental body empowered to hold an interest in real property under the laws of this state or the United States.

2. Any charitable corporation, charitable association or charitable trust, the purposes or powers of which include retaining or protecting the natural, scenic or open space values of real property, assuring the availability of real property for agricultural, forest, recreational or open space use, protecting natural resources, maintaining or enhancing air or water quality, or preserving the historical, architectural, archaeological or cultural aspects of real property.

(c) "Third–party enforcement right" means a right provided in a conservation easement empowering a governmental body, charitable corporation, charitable association or charitable trust, which, although eligible to be a holder, is not a holder, to enforce any term of the easement.

**(2)** CREATION, CONVEYANCE, ACCEPTANCE AND DURATION. (a) Except as otherwise provided in this section, a conservation easement may be created, conveyed, recorded, assigned, released, modified, terminated or otherwise altered or affected in the same manner as any other easement.

(b) No right or duty in favor of or against a holder and no right in favor of a person having a 3rd–party enforcement right arises under a conservation easement prior to its acceptance by that holder and recordation of that acceptance.

(c) Except as provided in sub. (3) (b), a conservation easement is unlimited in duration unless the conservation easement otherwise provides.

(d) No conservation easement may impair an interest in real property existing at the time the conservation easement is created, unless the owner of that interest is a party to the conservation easement or consents to it.

**(3)** ACTIONS. (a) An action affecting a conservation easement may be brought by any of the following:

1. An owner of an interest in the real property burdened by the conservation easement.

2. A holder of the conservation easement.

3. A person having a 3rd–party enforcement right.

4. A person authorized by other law.

(b) This section does not affect the power of a court to modify or terminate a conservation easement in accordance with any principle of law or equity.

**(4)** VALIDITY OF CONSERVATION EASEMENT. A conservation easement is valid even though any of the following applies:

(a) It is not appurtenant to an interest in real property.

(b) It can be or is assigned to another holder.

(c) It is not of a character recognized traditionally at common law.

(d) It imposes a negative burden.

(e) It imposes affirmative obligations upon the owner of any interest in the burdened property or upon the holder.

(f) The benefit does not touch or concern real property.

(g) There is not privity of estate or of contract.

**(5)** EFFECT ON ENFORCEABLE INTERESTS. Nothing in this section invalidates any interest, whether designated as a conservation easement, covenant, equitable servitude, restriction, easement or otherwise, which is otherwise enforceable under the laws of this state.

**(6)** UNIFORM APPLICATION AND CONSTRUCTION. This section shall be applied and construed so as to make uniform the laws relating to conservation easements among states enacting substantially identical laws.

**History:** 1981 c. 261; 1985 a. 316; 2005 a. 253.

**NOTE: Chapter 261, laws of 1981, which created this section, states in section 3 that: The treatment of ss. 700.40 and 893.33 (6m) by this act applies to:**

**(1) Any interest created after April 27, 1982 which complies with s. 700.40, whether designated as a conservation easement, covenant, equitable servitude, restriction, easement or otherwise.**

**(2) Any interest created prior to April 27, 1982 which would have been enforceable if created after April 27, 1982, unless retroactive application contravenes the constitution or laws of this state or of the United States.**

**700.41 Solar and wind access. (1)** PURPOSE. The purpose of this section is to promote the use of solar and wind energy by allowing an owner of an active or passive solar energy system or a wind energy system to receive compensation for an obstruction of solar energy by a structure outside a neighbor's building envelope as defined by zoning restrictions in effect at the time the solar collector or wind energy system was installed.

**(2)** DEFINITIONS. In this section:

(a) "Building envelope" means the 3–dimensional area on a lot on which building is permitted, as defined by the existing ground level and by any applicable height restriction, setback requirement, side yard requirement or rear yard requirement, notwithstanding any provisions for variances, special exceptions or special or conditional uses in effect in the city, town or village in which the lot is located.

(b) "Collector surface" means any part of a solar collector that absorbs solar energy for use in the collector's energy transformation process. "Collector surface" does not include frames, supports and mounting hardware.

(c) 1. "Obstruction" means any of the following:

a. The portion of a building or other structure which blocks solar energy from a collector surface between the hours of 9 a.m. to 3 p.m. standard time if the portion of the building or structure is outside a building envelope in effect on the date of the installation of the solar collector.

b. The portion of a building or other structure which blocks wind from a wind energy system if the portion of the building or structure is outside a building envelope in effect on the date of the installation of the wind energy system.

2. "Obstruction" does not include blockage by a pole, wire, television antenna or radio antenna.

(d) "Solar collector" means a device, structure or a part of a device or structure a primary purpose of which is to transform solar energy into thermal, mechanical, chemical or electrical energy.

(e) "Solar energy" has the meaning given under s. 66.0403 (1) (k).

(f) "Solar energy system" has the meaning given under s. 13.48 (2) (h) 1. g.

(g) "Standard time" has the meaning given under s. 66.0403 (1) (L).

(h) "Wind energy system" has the meaning given in s. 66.0403 (1) (m).

**(3)** DAMAGES. Except as provided under sub. (4), the owner of a solar energy system or a wind energy system is entitled to receive damages, court costs and reasonable attorney fees from any person who uses property which he or she owns or who permits any other person to use the property in any way which would create an obstruction of the owner's solar collector surface or wind energy system. The owner of the solar energy system or wind

energy system shall have the burden of showing by a preponderance of the evidence the amount of the damages.

**(4)** APPLICABILITY. (a) The provisions of this section related to solar energy systems do not apply to any obstruction:

1. Existing on or before May 7, 1982.

2. For which a building permit was issued prior to installation of the solar collector, the solar energy to which is blocked by the obstruction.

3. Existing on or before the date of installation of the solar collector, the solar energy to which is blocked by the obstruction.

(b) The provisions of this section related to wind energy systems do not apply to any obstruction:

1. Existing on or before May 7, 1994.

2. For which a building permit was issued before the installation of the wind energy system, the wind to which is blocked by the obstruction.

3. Existing on or before the date of installation of the wind energy system, the wind to which is blocked by the obstruction.

**History:** 1981 c. 354; 1981 c. 391 s. 183; Stats. 1981 s. 700.41; 1983 a. 27 s. 2202 (57); 1985 a. 120; 1993 a. 414; 1999 a. 150 s. 672.

Wisconsin recognizes the power of the sun: Prah v. Maretti and the solar access act. 1983 WLR 1263.