the conditions of the mortgage. A mere tender of the amount due, with a tender of a satisfaction piece, is not a full performance of the conditions of the mortgage. Such a tender is a mere offer to perform, not a performance. Crumbly v. Bardon, 70 W 385, 36 NW 19.

Sec. 2915, Stats. 1898, the equivalent of sec. 2256, applies only where failure to discharge is a wilful or malicious one and is not intended to punish honest mistakes. Where there is no intentional wrong in refusal to discharge but reliance in good faith upon some supposed legal right the penalty will not be imposed, even though the supposed right may be found not to exist. Johnson v. Huber, 117 W 58, 93 NW 826.

Payment in full of the mortgage debt satisfies the mortgage without satisfaction thereof of record or in writing. Moore v. Benjamin, 228 W 591, 280 NW 340.

235.65 History: 1876 c. 199; R. S. 1878 s. 2257; Stats. 1898 s. 2257; 1925 c. 4; Stats. 1925 s. 235.65; 1941 c. 297; 1943 c. 321; 1965 c. 24; 1969 c. 285.

235.66 History: 1850 c. 48; 1855 c. 37 s. 1; R. S. 1858 c. 86 s. 26, 27; 1860 c. 73 s. 1; R. S. 1878 s. 2258; Stats. 1898 s. 2258; 1925 c. 4; Stats. 1925 s. 235.66; 1969 c. 285.

235.67 History: R. S. 1849 c. 59 s. 25; R. S. 1858 c. 86 s. 30; R. S. 1878 s. 2259; Stats. 1898 s. 2259; 1925 c. 4; Stats. 1925 s. 235.67; 1969 c. 285.

235.68 History: 1935 c. 542; Stats. 1935 s. 235.68; 1939 c. 201; 1969 c. 285.

235.69 History: 1937 c. 190; Stats. 1937 s. 235.69; 1969 c. 285.

235.70 History: 1939 c. 285; Stats. 1939 s. 235.70; 1951 c. 278; 1969 c. 276 s. 591 (1); 1969 c. 285.

235.701 History: 1939 c. 285; Stats. 1939 s. 235.701; 1943 c. 553 s. 36; 1947 c. 411 s. 6; 1947 c. 612 s. 1; 1949 c. 634; 1955 c. 696 s. 52; 1963 c. 315 s. 2; 1969 c. 285.

An intent to convert must be proved; 943.20 (1) (b) must be considered. State v. Halverson, 32 W (2d) 503, 145 NW (2d) 739.

235.72 History: 1941 c. 283; Stats. 1941 s. 235.72; 1969 c. 285.

Editor's Note: For foreign decisions construing the "Uniform Vendor and Purchaser Risk Act" consult Uniform Laws, Annotated.

While this statute is new in Wisconsin, the rule is not new. The uniform act is in harmony with the rule applied in Appleton Electric Co. v. Rogers, 200 W 331, 228 NW 505.

Insurable interest in property condemned by eminent domain. 36 MLR 112.

235.73 History: 1947 c. 74; Stats. 1947 s. 235.73; 1969 c. 285.

CHAPTER 236.

Platting Lands and Recording and Vacating Plats.

236.01 History: 1955 c. 570 s. 4; Stats. 1955 s. 236.01.

The law of restrictions on land in Wisconsin. Swietlik, 41 MLR 227.

Land-use controls and recreation in Northern Wisconsin. Waite, 42 MLR 271.

Subdivision control in Wisconsin. Melli, 1953 WLR 389.

Wisconsin's 1955 platting law. Lathrop, 1956 WLR 385.

Use of restrictive covenants in a rapidly urbanizing area. Consigny and Zile, 1958 WLR 612.

Problems of urban growth. Cutler, Donoghue, Melli, Devoy and Sundby, 1959 WLR 3.

236.02 History: 1955 c. 570 s. 4; Stats. 1955 s. 236.02; 1959 c. 256; 1961 c. 214; 1967 c. 211 s. 21 (1).

Legislative Council Note, 1955: The definitions of "county planning agency" in sub. (1), "extraterritorial plat approval jurisdiction" in sub. (2), and "town planning agency" in sub. (8) are used for the convenience of having a short term in the sections rather than spelling out the material contained in the definition.

"Municipality" has been defined in sub. (3) only because that term sometimes is construed to include towns and, as used in this chapter, it is not intended to include them.

The definitions of "plat" and "preliminary plat" in subs. (4) and (5) are self-explanatory.

The phrase "recording a plat" is defined in sub. (6) merely because the term recording implies that the plat must be copied by the register of deeds while in fact the original plat is filed with him. Although the use of the term in this connection is inaccurate, it is so common that it seemed unwise to change it.

The definition of "subdivision" in sub. (7) differs from the present definition in s. 236.01 (4) as follows. It attempts to differentiate more clearly the 2 ways in which a subdivision may be created: the division of a tract of land into 5 or more parcels at once and the division of a tract of land into 5 or more parcels over a number of years. The present statute does not set any time limit for divisions over a period of years except that there is no criminal penalty under s. 236.16 unless the division into 5 or more parcels occurs in one year. The proposed section, in defining subdivision, provides that the division into 5 or more parcels must occur within a 5-year period to constitute a subdivision. The present definition of subdivision in s. 236.01 (4) also does not specify the purpose of the division of the land. However, the penalty under s. 236.16 does not apply unless the division is for the purpose of sale. Under the proposed definition the division must be for resale or building development to constitute a subdivision.

A number of definitions in present s. 236.01 were dropped for various reasons. The definitions of "easement", "owner", "governing body", and "subdivider" were dropped because the meaning of those terms as used in this chapter is clear without a special definition. The definition of "land-division" is dropped because that term is not used in the proposed chapter. The definitions of "final plat" and "tentative plat" are replaced by definitions of "plat" and "preliminary plat". [Bill 20-S]

Under 236.02 (6), defining a "preliminary plat" as a map showing the salient features of

a proposed subdivision submitted to an approving authority for the purpose of preliminary consideration, a preliminary plat need not meet all the requirements of a final plat, and the preliminary plat involved in the instant case was nonetheless a preliminary plat because of showing a nonexistent artificial lake on the plat as a proposal. Lakeshore Development Corp. v. Plan Comm. 12 W (2d) 560, 107 NW (2d) 590.

For discussion of subdivisional control of parcels or tracts of land see 52 Atty. Gen. 411.

236.03 History: 1955 c. 570 s. 4; Stats. 1955 s. 236.03; 1957 c. 599, 610; 1959 c. 274; 1961 c. 214.

Legislative Council Note, 1955: Sub. (1) restates s. 236.03 (1) of the present law.

Sub. (2) is a new provision. It requires that the original owner of land divided into 5 or more parcels over a period of years must stand the expense of platting and eliminates the necessity of obtaining the signatures of purchasers of the lots.

Sub. (3) is a restatement of s. 236.02 of the present statutes except that the references to other sections in ch. 236 have been changed to conform to the numbers in the proposed draft and except for the inclusion of s. 236.15 (1) (e). [Bill 20-S]

[(2) of the council draft was not enacted and its (3) was renumbered to be (2).]

A lot consisting of three platted lots could be legally divided into two parcels of building sites without replatting pursuant to 236.03 (1). Scheer v. Weis, 13 W (2d) 408, 108 NW (2d) 523.

Plats which subdivide land into lots, blocks and streets for purposes of sale must comply with ch. 236, Stats. 1945, and may not be filed as assessors' plats under 70.27. 35 Atty. Gen. 437.

236.10 History: 1955 c. 570 s. 4; Stats. 1955 s. 236.10; 1957 c. 88, 599; 1959 c. 596; 1965 c. 249.

Legislative Council Note, 1955: This section represents a decided change from the present law. The statutory provisions dealing with the approvals necessary under the present law can be found in s. 236.06.

This section attempts to decrease markedly the number of approvals necessary for a plat. All state level approvals have been dropped and a procedure for having those agencies check the plats has been established in s. 236.12. This will be discussed in relation to that section. In addition, a few approvals at the local level have been eliminated.

The following is a comparison of the approvals in the proposed section with the present law: Sub. (1) (a) is the same as the first part of s. 236.06 (1) (f) except that, in Milwaukee county, plats on county parkways are no longer approved by the county board but are referred to it under s. 236.12. Sub. (1) (b) and (c) cover present s. 236.06 (1) (a), (b) and (c). Par. (b) deals with approvals within the extraterritorial plat approval jurisdiction of municipalities and par. (c) with those outside. These provisions differ from the present law as follows: Under the present law any county having a county platting, regional or zoning plan must approve plats within the extraterritorial plat approval jurisdiction of a municipality. The municipality can approve only in the case where it has a plan commission. Under the proposed section the county can approve in the extraterritorial plat approval jurisdiction only if it has a planning agency employing a professional engineer or planner. This change was made because the advisory committee felt that unless the county had staff and facilities the municipality's interest should be exclusive. In the case where the county does have staff and facilities, the proposed section requires that the municipality must have a plan commission with a staff or an official map before it can approve plats outside its corporate limits. County approvals outside the extraterritorial plat approval jurisdiction of municipalities and town board approvals have not been changed.

Sub. (1) (d) covers s. 236.06 1) (i) of the present law but differs considerably from that provision. The proposed section applies only to counties with a population of 500,000 or more (Milwaukee county) while the present provision applies to any county having a county planning board or department employing permanently a registered civil engineer. The referrals of the plat to certain state agencies and to cities of the first class are dropped. The county board can no longer charge a fee for its examination of the plat.

Sub. (2) is a cross-reference to the provision on overlapping extraterritorial jurisdictions in 66.32.

Sub. (3) is a new provision allowing for the delegation of plat approval to the local plan commission. It will have very limited application since most plats involve the dedication and acceptance of streets.

Sub. (4) is a new provision in ch. 236 but it does not give the governing units any powers they do not have now under s. 66.30.

Sub. (5) is a new provision. It allows a municipality to waive its right to approve plats in all or part of its extraterritorial plat approval jurisdiction. This provision is included because municipalities sometimes are not interested in the complete area of their extraterritorial jurisdiction. [Bill 20-S]

Private zoning on Milwaukee's metropolitan fringe. Beuscher, Consigny and Zile, 1958 WLR 612 and 1959 WLR 451.

236.11 History: 1955 c. 570 s. 4; Stats. 1955 s. 236.11; 1957 c. 88; 1959 c. 65, 256; 1961 c. 324.

Legislative Council Note, 1955: Sub. (1) (a) deals with the submission of a preliminary plat. The purpose of a preliminary plat is to give the approving authority an idea of the plan for the subdivision and to enable it to give the subdivider some assurance that he is proceeding in an acceptable manner. Therefore, sub. (1) (a) differs markedly from s. 236.10 (1) of the present statutes which requires the tentative plat to comply with the requirements for a final plat. Sub. (1) (a) of the proposal requires only that the plat be in sufficient detail to show the proposed layout. The proposed section also offers the subdivider some safeguards in that it sets a time limit for action on the preliminary plat and requires

that the reasons for rejection be given in writing.

Sub. (1) (b) deals with the final plat and contains another safeguard for the subdivider in that if the plat conforms to the layout in the preliminary plat it is entitled to approval as to that layout. There is no similar provision in the present law. Sub. 1) (b), second sentence, differs from the present law in that it gives the approving authority the option to accept or reject a plat if it is not submitted within 6 months of the approval of the preliminary plat. The present law requires the final plat be submitted within 60 days. Sub. (1) (b), sentence 3, contains a new provision which the advisory committee considered desirable. It allows the subdivider to submit only that part of the approved preliminary plat which he intends to develop at that time. In practice this is done in many cases today where the subdivider, because of the cost of developing the area, only wishes to record a small portion of the entire plat at any given time. This procedure is looked on with favor because it tends to limit the number of new subdivided lots on the market and to curb excessive subdivision.

Sub. (2) covers s. 236.10 (2) of the present chapter. It gives the approving authority 60 instead of 40 days to act and allows an extension of the time for approval by agreement with subdivider. It also provides that failure to take action on the plat within the specified time means approval of the plat. The provision requiring the reasons for rejection to be stated on the records of the approving authority and a copy to be given to the subdivider is also new. [Bill 20-S]

Where the common council neither approved nor rejected a plat within the 60-day period, the supreme court must assume in the absence of evidence to the contrary that the council would have rejected the plat if it did not comply with requirements; and if the time was not extended and no unsatisfied objections were filed, the clerk was required to certify the plat, and mandamus will lie to compel him to do so. State ex rel. James L. Callan, Inc. v. Barg, 3 W (2d) 488, 89 NW (2d) 267.

See note to 236.13, citing Lakeshore Development Corp. v. Plan Comm. 12 W (2d) 560, 107 NW (2d) 590.

236.12 History: 1955 c. 570 s. 4; Stats. 1955 s. 236.12; 1957 c. 88, 599; 1959 c. 228 s. 70; 1959 c. 641 s. 30; 1961 c. 214; 1963 c. 304; 1967 c. 211 s. 21 (1); 1969 c. 154; 1969 c. 366 s. 117 (2) (a); 1969 c. 500 s. 30 (2) (e).

Legislative Council Note, 1955: This section differs greatly from the present law and is an attempt to apply a procedure somewhat similar to that used in Milwaukee county under present s. 236.06 (1) (i) to all areas of the state. It excludes the county and city of Milwaukee since those units of government have sufficient local resources to check their own plats. [See sub. (1)]

The procedure outlined in this section gives certain agencies and units of government the right to object to plats although their approval is not required. This should expedite matters considerably since all agencies involved can be examining copies of the plat to discover their objections, if any, at the same time. These copies of the plat are sent by the local unit of government which must approve the plat. [Sub. (2)] In some cases there will be more than one such unit of government and the section provides [sub. (5)] that in such a case the unit to which the original is first submitted shall send out the copies.

Sub. (2) (a), (b) and (c) set forth the agencies or units of government which should receive copies of the plat and the circumstances under which they should receive them. Par. (a) contains the state agencies which receive copies of plats. The director of regional planning receives 2 copies of all plats. Under present s. 236.06 (1) (h), the director of regional planning approves plats outside the corporate limits of municipalities. Under the proposed provision, there will be an increase in the number of plats which he will review. Two copies of the plat shall be sent to the director of regional planning for the state highway commission to review if the plat abuts or adjoins a state trunk highway or connecting street. This is no change in the present law (s. 236.06 (l) (j)) except that the highway commission does not approve the plat but objects to it if it fails to comply with the commission's standards under new s. 236.13 (1) (e). Two copies of the plat shall be sent to the director of regional planning for the state board of health to review if the subdivision is not served by a public sewer and provision for such service has not been made. Under present law, the state board of health must approve plats of subdivisions on lakes or streams or providing access to lakes or streams (s. 236.06 (1) (g)). Under the proposed provision, there will be an increase in the number of plats which the board of health must review. This change was made in spite of the increased burden it may place on the state board of health because of the health problems resulting from subdivisions not served by public sewer. Sub. (2) (b) and (c) deal with local agencies which receive copies of the plat. Par. (b) comes from the present requirement in s. 236.06 (1) (f) that plats abutting county parks or parkways in municipalities in Milwaukee county (except in the city of Milwaukee) must be approved by the county board. The proposed provision applies not only to plats in municipalities in Milwaukee county but to plats in or outside municipalities in other counties having a park commission if the plat abuts a county park or parkway. The county board no longer approves the plat but the plat is referred to the park commission for its objections, if any.

Two copies of the plat are required for each agency so that it will have one copy for its files after it has returned a copy for the subdivider.

Sub. (3) describes the procedure to be followed when an agency which receives a copy of the plat wishes to raise an objection.

Sub. (4) contains a procedure to provide evidence that copies of the plat have been sent to the agencies as required by law.

Sub. (6) relates to procedures by approving bodies and attempts to expedite that procedure. [Bill 20-S]

The date of approval of a plat is a question

of fact and should be given as the time when approval was actually given. 18 Atty. Gen. 312.

Retroactive approval by the county board to plats recorded without approval is not possible. 43 Atty. Gen. 75.

The director of the planning division must object to a plat which does not comply with the binding requirements of 236.20 (1) (b), Stats. 1965, and may not waive this requirement. 55 Atty. Gen. 14.

236.13 History: 1945 c. 269; Stats. 1945 s. 66.60 (3); 1955 c. 570 s. 4; Stats. 1955 s. 66.60 (3), 236.13; 1957 c. 130, 610; Stats. 1957 s. 236.13; 1961 c. 336; 1965 c. 614; 1967 c. 211 s. 21 (1); 1969 c. 276; 1969 c. 366 s. 117 (2) (a); 1969 c. 500 s. 30 (2) (e).

Legislative Council Note, 1955: The present statutes are not clear as to what the approving or objecting authority may base its approval or objection on. This section specifies the controlling statutes, ordinances or rules and provides in sub. (3) that no other requirement can be made.

Sub. (1) (a), (b) and (c) need no explanation. Par. (d) restricts the board of health to rules relating to lot size and lot elevation in subdivisions not served by public sewer. Present statutes refer to any rules necessary to insure proper sanitary conditions (s. 140.05 (7)) but are restricted to subdivisions on lakes or streams. Par. (e) paraphrases the provision of s. 236.03 (8) of the present law which apparently is the basis of the approval by the state highway commission.

Sub. (2) is taken from ss. 236.09 and 236.143 (4) but is an enlargement of those sections, in that it includes any public improvements reasonably necessary while s. 236.09 is restricted to streets, alleys or public places or other improvements shown on the plat and s. 236.143 (4) refers only to streets.

Subs. (4) and (5) are new provisions intended to safeguard the rights of the subdivider. [Bill 20-S]

The provision for appeal contemplates some affirmative action by the approving authority; where no action is taken an appeal will not lie, and mandamus is the proper remedy. State ex rel. James L. Callan, Inc. v. Barg, 3 W (2d) 488, 89 NW (2d) 267.

A village could require, as a condition of its approval of a plat, that the subdivider make and install any public improvements reasonably necessary, including a water system, and the village could require, as a condition for accepting the dedication, that the designated facilities previously constructed and provided be without cost to the village, and that such facilities be according to the village's specifications and under its inspection, including water mains and laterals. Zastrow v. Brown Deer, 9 W (2d) 100, 100 NW (2d) 359.

Where the subdivider was the owner of part of the land, and had contracts of purchase and options to purchase the rest, this was sufficient to entitle the subdivider to submit a preliminary plat for consideration of the village plan commission, and the subdivider was a "person aggrieved" by the decision of the commission rejecting the preliminary plat, so as to be entitled to appeal therefrom under 236.13 (5). Lakeshore Development Corp. v. Plan Comm. 12 W (2d) 560, 107 NW (2d) 590.

On a petition for a writ of certiorari to review a village plan commission's rejection of a preliminary plat of a proposed subdivision, a motion to quash the issued writ, made before the plan commission made a return to the writ, was permissible procedure, where the function of the motion was to raise a question of the jurisdiction of the court. Lakeshore Development Corp. v. Plan Comm. 12 W (2d) 560, 107 NW (2d) 590.

The state board of health under 236.04 (15) and 140.05 (7), Stats. 1939, may, to ensure proper sanitary conditions, require lots to exceed the minimum width and area prescribed by 236.03 (7). 28 Atty. Gen. 349.

For discussion of the applicability of 236.13 (2m), Stats. 1965, to the division, disposition, and platting of lands lying within 500 feet of a body of navigable water see 56 Atty. Gen. 42.

Requiring dedication of park lands or payment of fees as a condition precedent to plat approval. Zilary, 1961 WLR 310.

236.15 History: 1955 c. 570 s. 4; 1955 c. 652; Stats. 1955 s. 236.15; 1957 c. 88, 599; 1959 c. 664; 1961 c. 214; 1967 c. 211 s. 21 (1).

Legislative Council Note, 1955: This section is, in large part, a restatement of provisions in s. 236.03. Sub. (1) (a) to (e) in the proposed section are primarily restatements of present s. 236.03 (2) to (6). There has been some rearrangement and rewording but there has been no intent to make any substantive changes except: (1) pipe monuments now must meet a specified weight requirement and in the case of block corners, etc. no provision for smaller pipes is made as in the present law; and (2) the monuments for lake and stream ends of lot lines are changed.

Sub. (1) (f), (g) and (h) are attempts to introduce some flexibility into the monument requirements.

In the present statute the accuracy of the survey is mentioned only in s. 236.06 (8) which provides that a governing body may reject a plat if the error in the latitude and departure closure of the survey is greater than the ratio of 1 in 3,000. Since accuracy is a very important surveying requirement it should be included here. (Sub. (2)) (Bill 20-S)

236.16 History: 1955 c. 570 s. 4; Stats. 1955 s. 236.16; 1957 c. 88; 1961 c. 214; 1963 c. 304; 1965 c. 110, 142; 1967 c. 211 s. 21 (1).

Legislative Council Note, 1955: This section establishes certain minimum state-wide requirements. Sub. (1) sets the minimum size of lots allowed. The first sentence is taken from s. 236.03 (7) of the present statutes but, in keeping with the trend toward larger lots, the minimum sizes are increased in 2 ways: 40,000 population is the dividing line between the 2 sizes of lots allowed instead of 30,000 population. This means that more counties will be required to have the larger size lots. Secondly, the minimum size is increased from 40 feet and 4,800 square feet to 50 feet and 6,000 square feet in more populous counties and from 50 feet and 6,000 square feet to 60

feet and 7,200 square feet in less populous counties.

Sub. (2) is a new provision although undoubtedly streets in subdivisions are required to be of the size on the master plan or official map or of the width of the existing streets. However, the requirement that the streets must be at least 60 feet wide in the absence of a local ordinance probably isn't required at present in all cases.

Sub. (3) is the requirement now in s. 236.04 (14) except that the width of the streets is increased from 50 to 60 feet. (Bill 20-S)

A subdivision adjoins a lake when lots and intervening parcel running to the water's edge are commonly sold as a unit. 36 Atty. Gen. 185.

Public access to a lake or stream under 236.16 (3), Stats. 1961, must be connected with the rest of the public highway system by a public road. 52 Atty. Gen. 63.

236.18 History: 1963 c. 341; Stats. 1963 s. 236.18.

236.20 History: 1955 c. 570 s. 4; Stats. 1955 s. 236.20; 1957 c. 88, 599; 1959 c. 256, 664; 1961 c. 214; 1963 c. 304, 361; 1965 c. 204; 1967 c. 26; 1967 c. 211 s. 21 (1).

Legislative Council Note, 1955: This section corresponds to present s. 236.04 and is, in large part, a restatement of that section. However, it groups the requirements for a final plat into 5 subsections for ease in reading: (1) Drawing requirements; (2) Map and engineering information; (3) Name, location and position; (4) Roads and public spaces; and (5) Site conditions and topography.

Sub. (1) is a restatement of subs. (2), (2) (a) and (3) of the present section.

Sub. (2) covers subs. (4) and (5) of the present section; they set out most of the engineering detail the plat must contain. These provisions have been rearranged and consolidated and in some cases the wording has been revised but the only substantive changes are: in par. (e) the present provision allowing lots to be lettered in alphabetical order has been dropped and lots must be numbered consecutively now; in par. (k) the number of degrees and minutes, not just degrees as the present law requires, in all exterior boundary and block angles must be given; par. (1) relating to curve information is new and was drafted by a subcommittee of surveyors. Sub. (4) (b), (k) and (n) have been dropped on the ground that they are covered by other provisions.

Sub. (3) of the proposed section covers subs. (6), (7), (11), (12) and (13) of the present section except that the location of the subdivision is given by quarter section and not by quarter-quarter section as required by present law. In (3) (c) of the proposed provision the small scale drawing must show a graphic scale and north point and be oriented on the sheet in the same direction as the main drawing. In pars. (e) and (f) state highways were added.

Proposed sub. (4) restates subs. (8), (9) and (10) of the present statute except that the requirement that street names shall be the same as the names of connecting streets in adjoining plats has been dropped.

Sub. (5) is a restatement of sub. (16) of the present section.

Sub. (14) of the present section, dealing with provision for highways to the shore every ½ mile in lake, and stream subdivisions, and sub. (15), requiring that lake and stream subdivisions comply with the requirements of the state board of health, are covered in proposed ss. 236.13 and 236.16. (Bill 20-S)

Rules for construing plats are stated in Miller v. Lavelle, 130 W 500, 110 NW 421.

Where the starting point of a survey and plat is definitely described and easily located, the plat controls the location of boundary lines between the owners of lots platted. Dickinson v. Smith, 134 W 6, 114 NW 133.

The original location of monuments prevails over courses and distances. Brew v. Nugent, 136 W 336, 117 NW 813.

For discussion of the effect of ch. 361, Laws 1963, on regulations governing preparation and filing of plats see 55 Atty. Gen. 14.

236.21 History: 1955 c. 570 s. 4; Stats. 1955 s. 236.21; 1957 c. 88; 1959 c. 190, 256; 1961 c. 214.

Legislative Council Note, 1955: The introductory paragraph is taken from s. 236.065 of the present law.

Sub. (1) and (2) (a) are now s. 236.05. Sub. (1) is the same as the present provision. Sub. (2) (a) differs as follows: the owner's certificate must contain a statement of the required approvals for the plat; a reference is made to the exception in proposed s. 236.03 (2) that the signatures of owners of lots in a subdivision created by the sale of 5 or more lots over a period of years are not necessary; signatures must be acknowledged in accordance with s. 235.19 (uniform acknowledgment act) rather than witnessed and acknowledged as in the present law; the provision is clarified by requiring not only the signature of the owner but also that of his wife, who holds a dower interest and whose signature is necessary for any dedication.

Sub. (2) (b) is now s. 236.06 (9). It is so closely connected with the owner's certificate of dedication that it seemed advisable to put it here.

Sub. (3) is now s. 236.055. The only change in the provision is that the certificate of either the clerk or treasurer of the municipality or town is sufficient while both are required now. The present provision requires the certificate of the clerk and treasurer of the "municipality" but it is not clear that this includes town. Since "municipality" is defined in the proposed draft to include only city or village, "town" was added in this subsection. (Bill 20-S)

Ch. 41, secs. 1 to 5, R. S. 1849, required a plat of land to be certified by the surveyor, acknowledged by the proprietors and recorded. Proprietors of lands within the present city of Superior caused a plat thereof to be made, acknowledged and recorded by a surveyor whose certificate recited that the plat was made under the direction of one N "as agent of the proprietors," and the approval of such agent was indorsed. Afterwards in a duly acknowledged and recorded power of attorney from the proprietors running to N the platted

lands were described and it was stated that "the town of Superior has been laid out, surveyed and the plat thereof recorded * * * under their direction." The acts of the surveyor and agent were thereby ratified. Bright v. Superior, 163 W 1, 156 NW 600.

"Unpaid special assessments" applies to future instalments of special assessments even though they are not delinquent. 38 Atty. Gen. 559.

236.25 History: 1955 c. 570 s. 4; Stats. 1955 s. 236.25.

Legislative Council Note, 1955: Research has shown a variation in the things for which registers of deeds check in determining whether a plat is acceptable for recordation. To clear up the confusion here, the proposed draft sets out in sub. (2) all the things which the register of deeds must check before accepting the plat. At present these appear in different sections (236.05, 236.055, and 236.06) with more things which he must check appearing in a fourth section (236.11). The requirement in s. 236.11 that the register of deeds check the plat to see if the streets and alleys conform to those of the existing plat has been dropped on the ground that it is checked by the governing body as a condition of approval.

Sub. (2) differs from the present law in several respects: The approvals of the plat must appear on the face of the plat (at present they may accompany it) and the approval of the governing bodies no longer has to be a copy of the resolution ordinance approving the plat. It may be anything which is satisfactory evidence that the governing body has approved the plat. This could be a copy of the resolution or ordinance or it could be a certificate of the city clerk and mayor or similar officials to the effect that the plat was approved by the governing body. This change was made because at present the resolution or ordinance frequently is not reproduced and other evidence of approval is given although such evidence does not comply with the statute. But if it fulfills the purpose of showing that the plat was approved it should be acceptable. Another change from present law is that the subdivider is given 6 months instead of 90 days from the first approval to record his plat. Some changes also have been made in certificates or affidavits which must be on the plat. An additional certificate that copies of the plat were sent as required by s. 236.12 is now necessary (see reference to s. 236.12 (4) in sub. (2) (c)). Instead of the approval of governing bodies the register of deeds may find a certificate that the plat is deemed approved. (See reference to s. 236.11 (2) in sub. (2) (d)).

The purpose of sub. (3) is to make it clear that a plat which technically does not comply with the requirements for recordation, but which gets recorded in spite of that, does not create a flaw in the title of purchasers of the lots covered by that plat, does not affect the dedications made by the plat, and does not affect the validity of a description of land by reference to the plat. For example, if the plat was recorded within 31 days instead of 30 days after the last approval, or if the county treasurer's certificate or the surveyor's certificate does not appear on the face of the plat, that does not mean that the dedications are ineffective or that the title to the lots is defective. But if the lack of compliance with these provisions would create a defect in title or affect the dedications even if there were no requirements for recording the plat, then this provision does not help. For example, the fact that the county treasurer's certificate does not appear on the face of the plat is not a defect in title of and by itself but the title examiner must find other proof that delinquent taxes were paid; the fact that the approval of the municipality, town or county does not appear on the face of the plat is not a defect in title or in dedication but the title examiner must be sure from other sources that the streets have been accepted by the municipality, town or county; the fact that the owner's certificate does not appear on the face of the plat or that all persons having an interest in the property have not signed the owner's certificate is not a defect in title or in the dedication but the title examiner must be sure from other sources that the dedications were joined in by all persons having an interest in the property.

Proposed sub. (4) is a partial restatement of s. 236.11 (1). S. 236.11 (2) is covered by s. 236.26. S. 236.11 (3) requiring that a certified copy of the field survey notes for subdivisions adjoining lakes and streams be filed with the plat has been dropped on the ground that it is not complied with now.

Sub. (5) is new. It is self-explanatory. (Bill 20-S)

A plat of land is not entitled to recording unless it has the required approval and 236.16, Stats. 1945, does not exempt plats covering lots of more than 1½ acres each. 35 Atty. Gen. 296.

Plats which were recorded without the required approval must be re-recorded, but the records now in the register of deeds' office must remain for chain-of-title and description purposes. 43 Atty. Gen. 75.

236.26 History: 1955 c. 570 s. 4; Stats. 1955 s. 236.26; 1957 c. 599.

236.27 History: 1955 c. 570 s. 4; Stats. 1955 s. 236.27.

236.28 History: 1955 c. 570 s. 4; Stats. 1955 s. 236.28; 1957 c. 237.

A description of lots in a deed by their numbers as designated on the recorded plat is sufficient. Simmons v. Johnson, 14 W 523.

See note to 275.01, citing Thiel v. Damrau, 268 W 76, 66 NW (2d) 747.

Where a plat has been recorded by mistake and without the required approval, conveyances using descriptions from the plat are nevertheless effective. 34 Atty. Gen. 290.

See note to 236.25, citing 43 Atty. Gen. 75.

236.29 History: 1955 c. 570 s. 4; Stats. 1955 s. 236.29; 1965 c. 197.

Legislative Council Note, 1955: Sub. (1) is exactly the same as present s. 236.12. No change in wording is made; the section is merely renumbered. Therefore, all cases construing s. 236.12 of the present law will apply to sub. (1).

Sub. (2) is intended to cover present s. 236.06 (10). It differs from the present pro-

vision in that it requires that all approvals be obtained and the plat recorded as necessary to constitute acceptance of dedications. However, as under the present law, no further act is necessary by the governing body of the municipality or town to accept the dedications. (Bill 20-S)

The mere nonuser of a portion of a street does not operate as a surrender or abandonment of the same for the purposes of a public street. Madison v. Mayers, 97 W 399, 73 NW 43.

On dedication of a triangle adjoining a street, as part of the street, see McHugh v. Minocqua, 102 W 291, 78 NW 478.

Where, after a plat has been made, the owner sells lots and blocks with reference to the streets described therein, both he and his grantees are estopped to deny the legal existence of such streets, even though the plat was not properly acknowledged. Smith v. Beloit, 122 W 396, 100 NW 877.

The record of a plat passes no title by dedication unless the plat itself has been prepared and recorded in substantial compliance with the statutes. University of Our Lady v. Watertown, 150 W 505, 137 NW 754.

A plat of a portion of the city of Superior failed to comply with many of the requirements specified in the statutes then in force. But every material fact required by the statutes could be ascertained from the plat and a legend thereon. The plat was a substantial compliance with the statutes and showed a statutory dedication of streets; but the rights of the public under such dedication might be lost and were lost by the substitution of another plat by the proprietors devoting portions of a street to private purposes, followed by many years of such use without objection and accompanied by extensive and costly improvements subject all the time to taxation. Superior v. Northwestern F. Co. 164 W 631, 161 NW 9.

A recorded plat which was not signed or acknowledged and which covered adjoining lands, the owners of which never assented to or adopted it, did not constitute a grant or dedication of any street within the adjoining tract. Such a plat though not entitled to record may be referred to in a conveyance of any lands embraced therein for purposes of description, but such reference does not of itself dedicate any land as a street. Such a dedication by way of estoppel is not effected unless the donor intends to set apart specified land for public use. Rau v. Freund, 165 W 27, 160 NW 1063.

The recording of a plat, with an attached copy of a resolution of the village board accepting the plat with the proviso that the streets shown in the plat were not dedicated to the public but that they were reserved for the sole use in common of the lot owners, and the conveyance of lots by the proprietors with reference to the plat, constituted a dedication of all streets shown in the plat at least for the use in common of all the lot owners, binding on such proprietors and their grantees. Kennedy v. Barnish, 244 W 137, 11 NW (2d) 682.

Dedication under a prior statute is discussed in Gogolewski v. Gust, 16 W (2d) 510, 114 NW (2d) 776.

236.293 History: 1955 c. 570 s. 4; Stats. 1955 s. 236.293.

Legislative Council Note, 1955: This section is intended to clarify the status of restrictions which governmental bodies require to be placed on platted land as a condition of approval of the plat. For example, if the highway commission objects to a plat unless the lots along a state trunk highway are prohibited from having driveways onto the highway, the commission should have standing in court to enforce that restricted access.

These restrictions which public bodies can require to be placed on plats are, of course, limited to those items for which they can review a plat under s. 236.13.

This section was drafted so as to cover all types of restrictions no matter how they may have been created.

The section applies whether the public body actually required the restriction or the subdivider voluntarily provided for it, just so long as the public body is named as grantee, promissee or beneficiary in setting up the restriction. (Bill 20-S)

Creation of equitable restrictions as a tool of private (or public) zoning. Swietlik, 41 MLR 227.

236.295 History: 1955 c. 570 s. 4; Stats. 1955 s. 236.295; 1965 c. 204.

Legislative Council Note, 1955: This section is new. It is intended to give legal standing to the present practice of recording affidavits to correct surveying and other technical errors on plats and ratifications of the plat by, for example, owners who originally did not sign.

Sub. (1) sets forth the types of correction instruments which can be recorded.

Sub. (2) provides for approval by the governing body in certain cases and for notation on the plat by the register of deeds to facilitate reference to the correction instrument. The third sentence gives the status of these recorded correction instruments. (Bill 20-S)

See note to 236.21, citing Bright v. Superior, 163 W 1, 156 NW 600.

Correction instruments may not be used to change boundaries of lots in a subdivision, but are to be used for correcting errors in distances, angles, etc., when the recorded plat does not conform to the plat as it exists on the ground. 49 Atty. Gen. 113.

A correction instrument may be used to change building setback and sideyard lines. Such a change need not be reviewed by the director of the planning division. 55 Atty. Gen. 14.

236.30 History: 1955 c. 570 s. 4; Stats. 1955 s. 236.30.

Legislative Council Note, 1955: This is the same as present s. 236.06 (4). There is no change in wording; the provision is merely renumbered.

S. 236.06 (5) of the present law, providing for a forfeiture by the register of deeds who accepts a plat which is not approved or is not presented for recording within the time prescribed by statute, was dropped at the request of the register of deeds association because they felt that the register of deeds should not

be called upon to enforce the law under penalty. (Bill 20-S)

236.31 History: 1955 c. 570 s. 4; Stats. 1955 s. 236.31; 1957 c. 88.

Legislative Council Note, 1955: This section corresponds to present s. 236.16.

The penalties in this section refer to a subdivision as defined in this chapter, i.e., to 5 or more lots for sale or building development within a 5-year period. (See proposed s. 236.02.) This is a change from the present law regarding penalties which apparently applies only if 5 or more lots are divided and sold within one calendar year. This section also differs from the present law in that it allows a subdivider to offer or contract to convey lots in a subdivision before the plat is recorded if the preliminary or final plat has been filed for approval and if the contract makes it clear that it is contingent on approval of the plat.

Sub. (2) is intended to clarify the statement in present s. 236.16 (4) that "nothing herein contained shall be deemed to bar any remedy to which any aggrieved municipality, other political subdivision, or person may otherwise be entitled." The remedies stated in sub. (3) were considered to be the remedies which the section did not intend to bar; it seemed more desirable to state the remedies positively.

Sub. (3) is a restatement of a provision of s. 236.16 (4) of the present law. (Bill 20-S)

Sale in one year of more than 4 parcels of land, each less than 1½ acres in extent, in an unplatted subdivision violates 236.16, Stats. 1945. 36 Atty. Gen. 185.

236.32 History: 1955 c. 570 s. 4; Stats. 1955 s. 236.32.

Legislative Council Note, 1955: This section restates present s. 236.13. (Bill 20-S)

236.33 History: 1955 c. 570 s. 4; Stats. 1955 s. 236.33.

Legislative Council Note, 1955: This section is merely renumbered from present s. 236.22. (Bill 20-S)

236.335 History: 1959 c. 256, 693; Stats. 1959 s. 236.335; 1969 c. 366 s. 117 (2) (a).

236.34 History: 1955 c. 570 s. 4; Stats. 1955 s. 236.34; 1957 c. 88, 599, 610; 1963 c. 304; 1969 c. 285 s. 28.

Certified survey maps recorded or filed with the register of deeds under 236.34 (2), Stats. 1955, are to be kept in a bound volume and are not to be copied and returned to the owner. 45 Atty. Gen. 47.

236.35 History: 1955 c. 570 s. 4; Stats. 1955 s. 236.35.

Legislative Council Note, 1955: This section is intended as a restatement of present s. 236.15 except that (1) (c) is new. (Bill 20-S)

236.36 History: 1965 c. 193; Stats. 1965 s. 236.36.

236.40 History: 1955 c. 570 s. 4; Stats. 1955 s. 236.40.

Legislative Council Note, 1955: This section combines s. 236.19 and the first sentence of s. 236.17 of the present statutes. Since both provisions deal with who may apply for the vacation of a plat it seems logical to combine them. (Bill 20-S)

The district attorney, while he need handle only such applications to vacate plats as the county may legally prosecute, has a duty to represent the county board in such proceedings and is not entitled to extra compensation therefor. 29 Atty. Gen. 245.

A replat is not necessary when a large block or outlot in a recorded plat is divided, if the exterior boundaries are not changed. Whether a new subdivision occurs depends on the number of parcels created. The division may not be accomplished by a certified survey map or by metes and bounds descriptions. 55 Atty. Gen. 14.

236.41 History: 1955 c. 570 s. 4; Stats. 1955 s. 236.41; 1965 c. 252.

Legislative Council Note, 1955: This is intended to be a restatement of part of present s. 236.17 except that sub. (4) is new. It seemed only fair and possibly necessary for the constitutionality of the notice, to give this amount of notice to the record owners. (Bill 20-S)

236.42 History: 1955 c. 570 s. 4; Stats. 1955 s. 236.42; 1969 c. 500 s. 30 (2) (e).

Legislative Council Note, 1955: Sub. (1) is a restatement of a part of s. 236.18 except that in par. (a) the approval of the state highway commission is necessary for alleys in the rear of lots fronting on state trunk highways.

Sub. (2) is a new provision. Par. (a) makes it clear that the vacation or alteration of a plat does not affect the restrictions which are required to be placed on platted land by a public body unless that public body waives the restriction. For example, it should not be possible to put in a driveway onto a state trunk highway by vacating a portion of a plat, on which access is restricted, for that express purpose.

Par. (b) states what appears to be an established principle of law. See In re Henry S. Cooper, Inc. 240 W 377, 2 NW (2d) 871 (1942). (Bill 20-S)

236.13 and 236.14, Stats. 1933, relating to the vacation of plats, in effect when land was platted and when a purchaser purchased a lot, are imported into his contract of purchase, making his rights subject to the statutes cited in the absence of any provision in his contract to the contrary; and under such statutes the joinder of all other owners of land in a plat is unnecessary in a petition by one owner for the vacation of the plat. The circuit court has authority to vacate a plat without the consent of the municipalities whose officials have approved the platting of the land. In re Vacation of Plat of Garden City, 221 W 134, 266 NW 202.

The vacation of a plat merely frees the land from certain easements, and the title to the land remains where it was before, as against a contention that the vacation of a plat should be denied because it would adversely affect restrictive covenants contained in deeds of lots. Whether a plat shall be vacated rests in the sound discretion of the trial court. In re Henry S. Cooper, Inc. 240 W 377, 2 NW (2d) 866.

A plat recorded in 1921 showed a 100-foot road designated as "private" running in an easterly direction, which was the only legal means of entrance and exit to the subdivision. There was at the time of such recording a dwelling house entirely within the limits of the 100-foot road and on the northerly side of a 20-foot strip in the center thereof on which a concrete roadway was later constructed. The plaintiffs purchased residence property under a deed conveying land to the south line of the 100-foot road. It appeared that the public had acquired no rights by user except over the 20-foot concrete strip, and there was never any dedication of the 100-foot road as a public highway nor any legal acceptance thereof by the town board. The circuit court did not abuse its discretion in vacating all of that portion of the plat described in the plaintiffs' deed except the 20-foot concrete strip, under its authority in this section to vacate a portion of a plat except only such parts as have been dedicated to and accepted by the public for use as a street or highway. In re Vacating Plat of Chiwaukee, 254 W 273, 36 NW (2d) 61.

236.43 History: 1955 c. 570 s. 4; Stats. 1955 s. 236.43; 1957 c. 245; 1961 c. 216; 1963 c. 258.

Legislative Council Note, 1955: This section is intended to be a restatement of part of s. 236.18 and s. 236.17 (2). (Bill 20-S)

236.44 History: 1955 c. 570 s. 4; Stats. 1955 s. 236.44.

Legislative Council Note, 1955: This section is the same as the last sentence of present s. 236.18 except that it states that the applicant must be responsible for recording the order while the present statute does not make it clear who is supposed to do that. The proposal also provides for the recording of the altered plat when the plat is altered by the order. (Bill 20-S)

236.445 History: 1921 c. 590 s. 93; Stats. 1921 s. 59.08 (4a); 1951 c. 662; 1955 c. 651; Stats. 1955 s. 236.445.

236.45 History: 1955 c. 570 s. 4; 1955 c. 652; Stats. 1955 s. 236.45; 1957 c. 610; 1959 c. 671; 1965 c. 252, 646; 1967 c. 211 s. 21 (1); 1969 c. 285 s. 28.

Legislative Council Note, 1955: This section is very similar to the present s. 236.143, except that it clearly spells out the power of the local unit of government to regulate divisions of land into less than 5 parcels and into parcels larger than 1½ acres. In proposed sub. (2) the procedure relating to divisions into less than 5 lots is set forth and divisions which the local government cannot control are specified.

Under sub. (3) the subdivision regulations apply in any area where the municipality, town or county has the right to approve or object to plats. It must be remembered that under s. 236.13 where those regulations conflict, the more restrictive apply. This provision is a change from the present law in regard to county regulations which requires the town to approve the county regulations before they can apply in the town.

Sub. (4) is similar to present procedure except that it specifies the amount of notice required and requires the ordinance to be published in form suitable for public distribution. This provision is quite common in subdivision statutes and ordinances and seemed desirable. (Bill 20-S)

Where a so-called "subdivision platting" ordinance of a village was, in effect, a zoning ordinance more restrictive as to lot-size requirements than an existing county zoning ordinance, and where the affected land was in an area in litigation in annexation proceedings, the village board could not enforce its ordinance by rejecting a plat, since 59.97 (4a), Stats. 1957, declared that in such situation the county zoning ordinance should prevail. State ex rel. Albert Realty Co. v. Village Board, 7 W (2d) 93, 95 NW (2d) 808.

236.45 was intended by the legislature to invest additional authority in those municipalities which had created planning commissions to impose further requirements upon the subdivider. Jordan v. Menomonee Falls, 28 W (2d) 608, 137 NW (2d) 442.

236.46 History: 1955 c. 570 s. 4; Stats. 1955 s. 236.46; 1965 c. 252.

Legislative Council Note, 1955: This is the same as present s. 236.14, except it has been broadened to include all counties which desire to adopt regional plans and not just Milwaukee county. Sub. (1) (b) is new and applies only outside Milwaukee county. It requires that a municipality must approve the regional plan before it can apply in the extraterritorial plat approval jurisdiction of the municipality. (Bill 20-S)

236.50 History: 1955 c. 570 s. 4; Stats. 1955 s. 236.50.

Legislative Council Note, 1955: Sub. (1) is self-explanatory. July 1, 1956, was chosen as the effective date in order to insure that 1955 statute books containing the revised chapter would be available when it went into effect.

Sub. (2) is intended principally to clear up difficulties caused by the provision in present s. 236.06 (3) that any plat not approved by the bodies required by the statutes to approve or not accompanied by proper evidence of its approval or not recorded within the 90-day time limit is invalid. Under this provision a plat approved by a city council, but accompanied by a certificate of the city clerk that it had been approved instead of a copy of the resolution as required by chapter 236 would be invalid. This type of technical error has caused much concern to title examiners. (Bill 20-S)

CHAPTER 237.

Descent.

Editor's Notes: (1) The original statutory provisions on the subject of descent were borrowed from the laws of Massachusetts and, before they were enacted here, received judicial construction in that state.

The legislative histories which follow are the histories of the several sections of ch. 237 through 1969, including the effects of ch. 339, Laws 1969. Various provisions of ch. 237 are restated in a new probate code, effective April 1, 1971. For more detailed information