Stats. 1967	*Stats. 1969*
323.06	701.19
323.065	701.19
323.07	701.16
323.10	701.15

CHAPTER 700.

Interests in Property.

Committee Note, 1969: Chapter 700 replaces ch. 230 which, except for addition of the Unit Ownership Act, has substantially the same content as the corresponding chapter in the 1849 Statutes. The substance was borrowed from Michigan, which in turn had copied its chapter from the New York Revised Statutes of 1830. There have of course been some amendments, deletions and additions over the years, but there has never been a comprehensive attempt at modernization. Although the original chapter dealt only with estates in land, additions have incorporated various rules dealing with personal property as well. This revision encompasses both real and personal property, and accordingly it is no longer titled "Estates in Real Property" but "Interests in Property".

The thrust of the original New York revision, which Wisconsin indirectly copied, was to restrict the creation of future interests in land. Over the course of the last century this scheme has broken down under both judicial and legislative erosion. Chapter 230 no longer accurately reflects the literal rules or the general policy of the modern law.

The salient features of the revised chapter are the following:

(1) In accord with the overall trend of legislation both real and personal property are included.

(2) The archaic statutory classification of estates, which is neither followed by the courts nor adopted by professional usage, has been replaced by a modern classification of interests based on the American Law Institute Restatement of Property and the Estates, Powers and Trusts Law adopted in New York in 1966.

(3) A number of technical rules of property embodied in ch. 230 have been retained but modernized in language so that they may be better understood; in some instances minor changes have been made in the rules.

(4) The statutory rule against suspension of the power of alienation has been restated to reflect accurately the present law as interpreted by the Supreme Court. There has been no change in the policy of that law, which permits relatively unhampered freedom in the creation of long-term trusts.

(5) The group of statutes relating to joint tenancy has been reframed with some shift in the rules but basically completing the trend of prior Wisconsin legislative amendments to carry out the intention of the person creating such interests.

(6) Finally the restrictive nature of ch. 230 is eliminated with the repeal of s. 230.42, which abolished all expectant estates (future interests) not enumerated and defined in the chapter. [Bill 652-A]

700.01 History: 1969 c. 334; Stats. 1969 s. 700.01.

Committee Note, 1969: Subs. (1) and (3) have significance only in the sections dealing with joint tenants and tenants in common. They describe the writings which may evidence such tenancies. While sub. (2) has the same significance as subs. (1) and (3), some of the instruments of transfer listed in sub. (2) are referred to in other sections.

Sub. (4) includes any type of transfer of an interest in property and subs. (5) and (6) extend this chapter to interests in both real and personal property. Subs. (5) and (6) replace the more restrictive definitions in ss. 230.23 and 230.36.

Sub. (7) is relevant in distinguishing a future interest retained by a transferor or his successors in interest from a future interest created in some other person. See ss. 700.02 (2) and 700.04. A reversionary interest arising from an incomplete testamentary transfer would pass initially to the transferor's personal representative and, if not sold by the latter, would pass to the transferor's heirs by intestate succession as his successors in interest. However, a reversionary interest arising from an incomplete lifetime transfer initially would be in the transferor. His successors in interest would include persons receiving the reversionary interest through a subsequent lifetime or testamentary transfer from the transferor as well as his heirs. The latter could be successors in interest only if the transferor still owned the reversionary interest at the time of his death and died intestate as to such interest. [Bill 652-A]

700.02 History: 1969 c. 334; Stats. 1969 s. 700.02.

Committee Note, 1969: Because of the application of this and other sections to both real and personal property, the classifications in this section apply to personal property as well as real property. In some respects this is novel since traditionally the fee simple absolute in sub. (1) described complete ownership of real property and was not applied to absolute ownership of personal property, but to effectuate an integration of both types of property in one statute, the same term has to be applied to both. New York has done the same thing. McKinney's N. Y. EPTL ss. 1-2.6, 1-2.15, 6-1.1.

The first type of defeasible fee in sub. (2) is a fee subject to automatic termination and the transferor or his successors in interest retain a possibility of reverter. See Saletri v. Clark, 13 Wis. 2d 325, 108 N.W. 2d 548 (1961) and Restatement of Property, s. 23 (1936). The 2nd type in sub. (2) is a fee subject to a condition subsequent with a power of reacquisition (formerly called a right of reentry or power of termination) in the transferor or his successors in interest which is exercisable in their discretion after the condition is breached. Id., s. 24; Pepin County v. Prindle, 61 Wis. 301, 21 N.W. 254 (1884). In Price v. Ruggles, 244 Wis. 187, 11 N.W. 2d 513 (1943) the court failed to note that the transferor would have had to make an incomplete testamentary disposition for a power of reacquisition to arise in the transferor's heirs. Instead the court found that the remaindermen who took under the will, rather than as heirs of the transferor by intestate succession, had the power to ter-

minate the preceding interest. Since persons who take future interests under the same instrument which creates a preceding present interest are not successors in interest as that term is used in sub. (2), persons receiving a remainder after a fee are described in sub. (2) as "a person other than the transferor or his successors in interest". This 3rd type of defeasible fee is known in other jurisdictions as a fee subject to an executory limitation. Restatement of Property, s. 25 (1936). But since executory interests are not recognized by that name in ch. 230 and its predecessors and the definition of a remainder is broadened so as to include them, this approach has been continued in this revision. An example of the 3rd type of defeasible fee in sub. (2) is found in the fact situation in Weymouth v. Gray, 167 Wis. 218, 167 N.W. 270 (1918) where a husband gave a fee to his widow which was defeasible on her remarriage with a remainder to take effect upon the happening of that event. The latter part of sub. (2) permits any fee to be defeasible also on an event certain to happen or if a stated event does not happen.

Subs. (3), (4) and (6) are more detailed than in s. 230.01; sub. (5) has been added as a codification of case law; and the "estate by sufferance" arising when a tenant holds over after the expiration of a lease without the consent of the landlord has been omitted because of its tenuous quality. [Bill 652-A]

700.03 History: 1969 c. 334; Stats. 1969 s. 700.03.

Committee Note, 1969: Ss. 230.07 and 230.08 have been broadened by emphasis in subs. (1) and (2) not only on possession but enjoyment of the benefits of property. The latter includes, e.g., a present or future interest of a trust beneficiary since the trustee normally has possession of the trust assets. [Bill 652-A]

700.04 History: 1969 c. 334; Stats. 1969 s. 700.04.

Committee Note, 1969: Sub. (1) uses a generic term, reversionary interest, to cover the 3 types of retained future interests described there. Only the reversion was described in ss. 230.09 and 230.12 but the Supreme Court has recognized the other 2 types. See the comment following s. 700.02.

Sub. (2) is based on s. 230.10, rather than s. 230.11, since s. 230.09 divided estates in expectancy into future estates and reversions and s. 230.24 is too restrictive. Sub. (2) is also intended to replace s. 230.27, "termination" in sub. (2) being intended to cover a remainder taking effect in abridgement of as well as at the expiration of a preceding interest. Thus, sub. (2) includes not only all future interests traditionally classified as remainders but also all future interests which might otherwise be classified as executory interests. See Restatement of Property, s. 158 (1936). [Bill 652-A]

700.05 History: 1969 c. 334; Stats. 1969 s. 700.05.

Committee Note, 1969: This replaces the classification of remainders in s. 230.13 with the general classification adopted in Will of Wehr, 36 Wis. 2d 154, 152 N.W. 2d 154 (1967), plus additional detailed descriptions of each of the 4 types of remainders. See comments following Restatement of Property, s. 157 (1936). Will of Bray, 260 Wis. 9, 49 N.W. 2d 716 (1951) illustrates an indefeasibly vested remainder and the problems arising when the owner of such a remainder dies prior to the date of distribution. A remainder can be both vested subject to open and subject to complete defeasance. Scott v. West, 63 Wis. 529, 24 N.W. 161 (1885). As to the distinction between a remainder vested subject to complete defeasance on a condition subsequent and a remainder subject to a condition precedent, cf. Will of Colman, 253 Wis. 91, 33 N.W. 2d 237 (1948) with Will of Wehr, supra. [Bill 652-A]

700.06 History: 1969 c. 334; Stats. 1969 s. 700.06.

Committee Note, 1969: This is in substance the same as s. 230.06 and is necessary because the common law rule was that if A had an estate in land for the life of B and A died prior to B, A's interest did not descend to his heirs because A did not have an estate of inheritance and real property did not pass to his personal representative. [Bill 652-A]

700.07 History: 1969 c. 334; Stats. 1969 s. 700.07.

Committee Note, 1969: This replaces s. 230.35 which is restricted to remainders and reversions under s. 230.09. At one time the Supreme Court indicated a liberal attitude toward alienability of a power of reacquisition but more recently expressed doubt as to how a possibility of reverter descends. Cf. State ex rel. State Historical Society v. Carroll, 261 Wis. 6, 51 N.W. 2d 723 (1952) with Will of Wehr, 36 Wis. 2d 154, 152 N.W. 2d 868 (1967). This section would permit transfer during life or by reason of death of a possibility of reverter and of a power of reacquisition in the same manner that reversions and remainders passed under s. 230.35. Since such interests can be transferred voluntarily, they are also subject to creditors in the manner permitted in Meyer v. Reif, 217 Wis. 11, 258 N.W. 391 (1935) in the case of a contingent remainder. The latter part of the section gives recognition to valid restrictions on transfer; a restriction on the transfer of a legal future interest might be invalid while a restriction on the transfer of an equitable future interest by a trust beneficiary would be valid. See Zillmer v. Landguth, 94 Wis. 607, 69 N.W. 568 (1896) and Van Osdell v. Champion, 89 Wis. 661, 62 N.W. 539 (1895). Finally, the last part of this section emphasizes that a future interest which terminates on the death of the owner cannot pass under his will or by intestate succession. [Bill 652-A]

700.08 History: 1969 c. 334; Stats. 1969 s. 700.08.

Committee Note, 1969: This replaces ss. 230.03 and 230.04. While the traditional wording for a fee tail is to a named person "and the heirs of his body", the Supreme Court has stated that a transfer to "A and his issue" has the same effect. Webber v. Webber, 108 Wis. 626, 84 N.W. 896 (1904). The court also indicated that "to A for life, remainder to his issue" would have the same effect but this

seems to be contrary to the statute abolishing the Rule in Shelley's Case which validates a remainder to heirs of the body of the owner of the preceding life interest and which should extend to a remainder to such person's issue. See s. 700.10 infra. The latter part of this section is new and validates, e.g., a future interest in C where the transfer is "to A and the heirs of his body but if A dies without issue then to C" or a transfer "to A for life, remainder to B and the heirs of his body but if B dies without issue then to C". The effect of a gift over upon death without issue is dealt with in the following section. [Bill 652-A]

700.09 History: 1969 c. 334; Stats. 1969 s. 700.09.

Committee Note, 1969: This replaces ss. 230.22 and 230.31. It retains the present preference for a "definite failure" rather than an "indefinite failure" construction. The latter would permit the contingent interest to take effect if lineal descendants become extinct in any future generation. [Bill 652-A]

700.10 History: 1969 c. 334; Stats. 1969 s. 700.10.

Committee Note, 1969: This is a simplified statement of present s. 230.28, abolishing the ancient Rule in Shelley's Case. The latter rule would apply to a limitation "to A for life, remainder to his heirs" by ignoring the obvious intent to give a remainder to those persons who at A's death are his heirs and instead giving the remainder to A; so that A ended up with the life estate and the remainder, which merged into a fee in A. Wisconsin abolished the rule in 1849. Under the statute A would take only a life estate and his heirs would take the remainder. [Bill 652-A]

700.11 History: 1969 c. 334; Stats. 1969 s. 700.11.

Committee Note, 1969: This section is new. It changes the law in part and codifies it in other respects. Thus if there is a devise to A for life, remainder to his "heirs" or a remainder to his "issue", the interpretation of the words "heirs" or "issue" would accord with the meaning of those words in the statutes on intestate succession. For example, an adopted child would be included, and the principle of representation would apply in a proper case. This is the present law; see Will of Vedder, 244 Wis. 134, 11 N.W. 2d 642 (1943); Estate of Adler, 30 Wis. 2d 250, 140 N.W. 2d 219 (1966). However, suppose there is a gift to A for life, remainder to B but if he dies before A then to B's heirs. Under present judicial construction B's heirs would be determined at B's death in the absence of special factors (see Estate of Bray, 257 Wis. 507, 44 N.W. 2d 245, 45 N.W. 2d 72 (1950); Will of Latimer, 266 Wis. 158, 63 N.W. 2d 65 (1954)). In such a situation it is more in accord with the intent of the transferor to determine the class (whether "heirs" or "issue") when the remainder takes effect in enjoyment, i.e., when in our example A dies. The statute makes this construction possible. [Bill 652-A]

700.12 History: 1969 c. 334; Stats. 1969 s. 700.12.

Committee Note, 1969: This replaces present s. 230.30 and is somewhat broader in scope. S. 230.30 applies where there is a life estate in A with a remainder to his issue; issue in gestation when A dies but born alive thereafter would take. But the same kind of problem can arise in a direct gift of a present interest and where the parent of the afterborn child is not the one who dies. Thus a testator executes a will leaving "$25,000 to be divided among my surviving grandchildren". Clearly a grandchild conceived at the time of testator's death and born alive thereafter should share in the class gift, but there is neither a future interest nor is the grandchild born after the death of "parents" as s. 230.30 presently requires. This section undoubtedly states the modern law. [Bill 652-A]

700.13 History: 1969 c. 334; Stats. 1969 s. 700.13.

Committee Note, 1969: Sub. (1) retains the rule established in s. 230.29 although it is unlikely that a modern court would reach an opposite result. Sub. (2) is a statement of the rule applied in Estate of Reynolds, 39 Wis. 2d 155, 158 N.W. 2d 328 (1968) where the Supreme Court permitted acceleration of remainders. [Bill 652-A]

700.14 History: 1969 c. 334; Stats. 1969 s. 700.14.

Committee Note, 1969: This replaces ss. 230.32 to 230.34 and is designed to retain the present law. [Bill 652-A]

700.15 History: 1969 c. 334; Stats. 1969 s. 700.15.

Committee Note, 1969: This replaces s. 230.46. Although the section has limited impact, it enables a court to refuse enforcement to frivolous conditions imposed by a transferor in rare cases where the freedom accorded by modern law is abused. [Bill 652-A]

700.16 History: 1969 c. 334; Stats. 1969 s. 700.16.

Committee Note, 1969: This section is a restatement or codification of the present Wisconsin law. Present ss. 230.14, 230.15 and 230.23, as supplemented by the special rule in ss. 230.16 and 230.17, contain what is technically known as "the statutory rule against suspension of the power of alienation". It is a policy rule designed to limit the kinds of future interests which can be created in the remote future. In fact, as the statutes have been construed by the Wisconsin Supreme Court they have very restricted application, so that it has even been said that we have no real limit in Wisconsin. Actually the statutory rule does restrict creation of legal interests in unborn persons who will not be ascertained within the period; but a similar equitable interest can be created in the same persons by a trust with a power of sale in the trustee. The key Wisconsin case is Will of Walker, 258 Wis. 65, 45 N.W. 2d 94 (1950) (implied power of sale in trust takes case out of statutory rule). If the trustee has a power of sale, the property (land, stocks, bonds, whatever is the subject of the trust) is not withdrawn from commerce. Although this gives the owner of wealth greater control over the future devolution of that property after his death than he would have in other states, this

power has not been abused. The "liberal" Wisconsin rule has worked well in practice, and there appears to be no need to adopt a more restrictive rule. In fact, in other states which have the more traditional commonlaw Rule Against Perpetuities, the trend in recent years has been to modify the rule to permit greater freedom in creation of future interests and to avoid the defeat of reasonable estate plans by a technical rule of law.

This section therefor involves no change in the law. However, it appears desirable to state the statute in terms which reflect the actual rule. The present statutory exceptions have been retained of course. [Bill 652-A]

700.17 History: 1969 c. 334; Stats. 1969 s. 700.17.

Committee Note, 1969: Sub. (1) replaces s. 230.43; subs. (2) and (3) are new. The 1st sentence of sub. (2) is intended to change the rule in Jezo v. Jezo, 23 Wis. 2d 399, 127 N.W. 2d 246, 129 N.W. 2d 195 (1964). Joint tenants own equal interests not only at the inception of the joint tenancy but during its entire existence. Of course, a joint tenant's interest is subject to equitable liens which arise in favor of the other tenant or tenants because of the cotenancy relationship and, in an appropriate case, to a constructive trust imposed for the benefit of a 3rd party. See s. 700.21. Sub. (3) gives tenants in common undivided interests which are not necessarily equal. See s. 700.20 (2). The last part of sub. (3) describes the result reached in Hass v. Hass, 248 Wis. 212, 21 N.W. 2d 398, 22 N.W. 2d 151 (1946); but since the common law requirements of unity of title and time for creation of a joint tenancy are abolished in s. 700.19 (6), an express intent to create this type of interest would be required now. [Bill 652-A]

700.18 History: 1969 c. 334; Stats. 1969 s. 700.18.

Committee Note, 1969: This section retains the general preference in s. 230.44 for a tenancy in common. The persons referred to in the instruments defined in s. 700.01 (1), (2) and (3) continue to exclude a spouse named as covendor of land owned by the other spouse in severalty. See Estate of Fischer, 22 Wis. 2d 637, 126 N.W. 2d 596 (1964). [Bill 652-A]

700.19 History: 1969 c. 334; Stats. 1969 s. 700.19.

Committee Note, 1969: Sub. (1) expands s. 230.45 (2) and (3) to make intent the important factor irrespective of the relationship of the parties or whether realty or personalty is involved. To give intent to this primacy generally, sub. (6) abolishes unity of title and time as a requirement for creation of a joint tenancy. In addition, sub. (1) is intended to make the intent expressed in the document of title, instrument of transfer or bill of sale conclusive and prevent courts from going behind such written evidence in search of subjective intent. Finally, sub. (1) gives examples of a sufficient manifestation of intent to create a joint tenancy.

Sub. (2) replaces s. 230.45 (1) as to husband and wife and, combined with sub. (6), also replaces s. 230.45 (2).

S. 230.45 (1) favored a joint tenancy generally for mortgagees. Under this revision, unless the mortgagees are husband and wife so as to come within sub. (2), owned the property sold as joint tenants within sub. (3) or are fiduciaries under sub. (5), the mortgage must express an intent to create a joint tenancy under sub. (1); otherwise the mortgagees are tenants in common under s. 700.18.

Covendors under contracts to sell receive treatment equivalent to mortgagees under subs. (1), (4) (a) and (5) but not under sub. (2) since husband and wife as covendors would not be transferees under an instrument of transfer. Sub. (4) (b) is needed to prevent search for intent to create a joint tenancy outside the terms of the contract. See Estate of Fischer, 22 Wis. 2d 637, 126 N.W. 2d 596 (1964) and Estate of Martin, 22 Wis. 2d 649, 126 N.W. 2d 549 (1964).

Sub. (5) expands s. 230.45 (1) by including administrators, and deviates from the general rule of intent to create a joint tenancy. Personal representatives and trustees should hold as joint tenants without exception.

Sub. (6) preserves the unity of interest requirement because of the right of survivorship and unity of possession would be necessary in any cotenancy. Only unity of title and time are abolished since these prevented an owner in severalty from creating a joint tenancy with another directly instead of using a strawman. See Zander v. Holly, 1 Wis. 2d 300, 84 N.W. 2d 87 (1957). [Bill 652-A]

700.20 History: 1969 c. 334; Stats. 1969 s. 700.20.

Committee Note, 1969: While covendors would not be tenants in common under s. 700.18 since they are not transferees in an instrument of transfer, that section does not limit search for intent to the instrument of transfer so sub. (1) is a desirable complement to s. 700.19 (4) (b).

Sub. (2) permits tenants in common to have the extent of their interests fixed by written evidence. Only where such evidence is lacking, should the rebuttable presumption of equal interests be used. [Bill 652-A]

700.21 History: 1969 c. 334; Stats. 1969 s. 700.21.

Committee Note, 1969: Despite the equal interests of joint tenants under s. 700.17 (2) or the extent of the undivided interests of tenants in common which may be fixed under s. 700.20 (2), an equitable lien may arise in favor of one cotenant which is enforceable against another cotenant's interest. Thus, Connell v. Welch, 101 Wis. 8, 76 N.W. 596 (1898) held a cotenant who had paid off a mortgage on the entire property was entitled to an equitable lien on the other cotenant's share for their equitable portion of the amount paid on the mortgage, none of the cotenants being personally liable for its payment. While an equitable lien may arise in appropriate situations, it does not change the interests of cotenants until the lien is foreclosed. This revision is intended to change the rule in Jezo v. Jezo, 23 Wis. 2d 399, 127 N.W. 2d 246, 129 N.W. 2d 195 (1964) that on dissolution of a joint tenancy in a partition proceeding the interests of joint tenants are merely presumed

to be equal. Under this revision the interests of joint tenants are equal and tenants in common whose interests have been fixed by written evidence as permitted in s. 700.20 (2) continue to be fixed in a partition proceeding, although the court may recognize an equitable lien against the interest of a cotenant in appropriate cases.

Similarly, if a cotenant or sole surviving joint tenant has been unjustly enriched at the expense of a 3rd person, his interest can be subjected to a constructive trust in favor of the 3rd person. [Bill 652-A]

700.22 History: 1969 c. 334; Stats. 1969 s. 700.22.

Committee Note, 1969: Because of the variety of ownership arrangements which a depositor may intend to create, it is undesirable to restrict bank deposits to the joint tenancy—tenancy in common dichotomy used in the prior sections. Since bank deposits are excluded, and because of the ephemeral nature of checks and drafts, it is not desirable to attempt to rigidly define the relationship of copayees. It has been held that federal regulations on U.S. obligations supersede state law in some situations. See Free v. Bland, 369 U.S. 663 (1962); Yiatchos v. Yiatchos, 376 U.S. 306 (1964). [Bill 652-A]

700.23 History: 1969 c. 334; Stats. 1969 s. 700.23.

Committee Note, 1969: This section removes from the landlord-tenant statutes and substantially reenacts s. 234.21 with only minor changes in substance of the statute as interpreted by the Supreme Court. The wording of that section is misleading in light of its narrow interpretation in Estate of Elsinger, 12 Wis. 2d 471, 107 N.W. 2d 580 (1961). The section deals with the problem of liability among cotenants where one cotenant is occupying the premises, but the other cotenant or cotenants are not. S. 234.21 seemingly would require the occupying cotenant to account to his cotenants for their fair share of the "rents or profits". However, in the Elsinger case the Supreme Court interpreted the statute to apply only where the premises are rented out to a 3rd party and not where one cotenant occupies premises such as a farm and makes a profit by his possession. Although at first glance this seems unfair, it must be recognized that most cotenancies either are between husband and wife or arise by inheritance among family members. In such situations it is difficult to arrive at the intention of the parties because the arrangements are almost always unformalized. Often where the widow owns an interest in common with the children, the latter do not intend to charge her with any liability during her lifetime. Certainly where the cotenancy arises by taking title in the names of a husband and wife, the parties should be left free to adjust their economic relationship without judicial interference, up to the point of divorce.

The basic principle of the new section is to impose liability in the situations of obvious unfairness. In other cases a cotenant has the right to sue for partition.

Sub. (2) is a restatement of the judicial interpretation of s. 234.21, allowing recovery where one cotenant has rented out the premises and refuses to share the rents. In such a case sub. (2) allows recovery by the other cotenants of their proportionate share, determined on the basis of their interest in the property.

Sub. (3) does not change the present law, but gives definitive shape to the rules. Exclusion of a cotenant from possession undoubtedly results in liability under present law on a theory of "ouster"; under sub. (3) (a) liability would start to run only after written demand for rent, however. Sub. (3) (b) probably creates no new right, but spells out a remedy where one tenant cuts timber or removes minerals. It would not be an exclusive remedy, however; the other cotenant could sue for damages on a waste theory. The accounting remedy under sub. (3) (b) eliminates the difficulty of proof of damages inherent in the waste action.

Sub. (4) changes present law. Where one cotenant enters into a lease with his cotenants for a fixed period, under present law he can continue in possession after his present lease without liability for further rent. Rather than becoming a tenant from year-to-year by holding over, he reverts to his former status as a cotenant under which he has a right to possession anyway. Rockwell v. Luck, 32 Wis. 70 (1873). Sub. (4) reverses this rule and creates a presumption that the cotenant who holds over after his lease expires does so on an implied agreement to continue paying rent in exchange for exclusive possession. If he intends to end his exclusive possession, he must notify the other cotenants in writing; this may be done any time prior to the end of the lease. Although the method of giving notice is governed by new s. 234.21, this notice does not have to comply with s. 234.19 on length of notice. Once he holds over, s. 234.23 governs his tenancy status (he may be month-to-month or year-to-year according to the circumstances). The proposed change accords better with common understanding. [Bill 652-A]

700.24 History: 1969 c. 334; Stats. 1969 s. 700.24.

Committee Note, 1969: This is a restatement of s. 230.455 and continues to exclude a judgment lien. Musa v. Segelke & Kohlhaus Co., 224 Wis. 432, 272 N.W. 657 (1937). But if, for example, A and B own realty as joint tenants and A gives a mortgage on his interest, this is considered a valid mortgage on half of the realty (except in the case of a homestead owned by husband and wife as joint tenants) but it does not constitute a severance which destroys the right of survivorship. Instead on A's death, the entire property belongs to B by right of survivorship but half of the property continues to be subject to the mortgage given by A. [Bill 652-A]

700.25 History: 1969 c. 334 s. 16; 1969 c. 411 s. 15; Stats. 1969 s. 700.25.

Committee Note, 1969: Questions as to constitutionally permissible retroactive application are left for judicial determination. [Bill 652-A]