s. 2201; 1925 c. 4; Stats. 1925 s. 234.24; 1969 c. 284.

234.25 History: R. S. 1858 c. 86 s. 4; R. S. 1878 s. 2202; Stats. 1898 s. 2202; 1925 c. 4; Stats. 1925 s. 234.25; 1969 c. 284.

CHAPTER 235.

Alienation by Deed, and Proof and Recording of Instruments.

235.01 History: R. S. 1849 c. 102 s. 52; R. S. 1858 c. 86 s. 1; R. S. 1858 c. 134 s. 24; 1859 c. 37; 1862 c. 34 s. 1; R. S. 1878 s. 2203, 2216; 1880 c. 129; Ann. Stats. 1889 s. 2203, 2216; Stats. 1898 s. 2203, 2216; 1905 c. 45 s. 1; Supl. 1906 s. 2203, 2216; 1907 c. 568; 1911 c. 222; 1913 c. 240; 1917 c. 566 s. 36; 1925 c. 4; Stats. 1925 s. 235.01, 235.19 (2); 1945 c. 410; 1949 c. 114, 256, 639; 1951 c. 703; Stats. 1951 s. 235.01; 1953 c. 428; 1969 c. 285.

Revisor's Note, 1951: The witness requirement comes from 235.19 (1) which is later repealed. As amended, this section puts all the formal requirements in one place, at the beginning of the chapter. The provisions for proof where there is no acknowledgment (235.34 to 235.39) are comparatively rarely used, and there is no need for reference to those sections—"or proved as directed in this chapter"—in 235.01. (Bill 353-S)

Editor's Note: The legislative histories which follow are the histories of the several sections of ch. 235 through 1969, including the effects of ch. 285, Laws 1969. Five sections of ch. 235 (235.34—235.38) are restated in sections of ch. 889, on documentary and record evidence, effective July 1, 1971; and numerous other provisions of ch. 235 are restated in the revised property law, effective July 1, 1971. For more detailed information concerning the effects of ch. 285, Laws 1969, see the editor's note printed in this volume ahead of the histories for ch. 700.

1. Requirements; capacity.
2. Conveyance of homestead.
3. Conveyance by corporation.

1. Requirements; Capacity.

On acknowledgments see notes to 235.19; and on recordability see notes to 235.39.

Erasure of the grantee's name in a deed fully executed and substitution of the name of another has no effect whatever. Hilmert v. Christian, 29 W 104.

It is immaterial in what particular place the witnesses' signatures appear if it is clear that they sign as such. Webster v. Coon, 31 W 72.

The certificate of acknowledgment is no part of the execution. Knight v. Leary, 54 W 459, 11 NW 600.

A deed lacking formalities amounts to a contract to convey, passing the equitable title. Breutzer v. Lawrence, 58 W 594, 17 NW 423.

A conveyance attested by one witness only is valid between the parties, but is not entitled to be recorded, and its record is not evidence of the original deed. Herren v. Strong, 62 W 223, 22 NW 408.

A deed executed by one not named as grantor is effectual to convey his interest. Hrouska v. Janke, 66 W 252, 28 NW 166.

The formalities of witnesses and acknowledgment are necessary only to give notice to subsequent purchasers. A deed takes effect to pass the title upon its execution and delivery, and not when it is attested and acknowledged; it is a good conveyance at common law without either. Slaughter v. Bernards, 88 W 111, 59 NW 576.

As between the parties to it, a mortgage is a valid lien on the land, though it is not witnessed or acknowledged. Welsh v. Blackburn, 92 W 562, 66 NW 528.

It is not necessary that a deed should be witnessed in order to pass the title to the land described in it. It is necessary only to entitle it to be recorded, in order to operate as constructive notice. Although a deed was acknowledged by the several grantors upon different days, in different counties, and before different officers, and attested by but 2 witnesses, and it did not appear that such grantors were not together when the deed was executed, the presumption is that it was duly witnessed. Harris v. Edwards, 94 W 459, 69 NW 69.

Handing over a deed with the mistaken impression that it was correctly executed does not constitute a delivery. Zoerb v. Paetz, 137 W 59, 117 NW 793.

The grantor was unable to sign her name, so she held the top of the pen while her brother, as she supposed, wrote her name at the foot of the deed, but he in fact wrote his own name. In other respects the deed was regularly executed. The deed was a valid conveyance. McAbee v. Gerarden, 187 W 399, 204 NW 484.

In an action to set aside a deed of a farm by a father to a daughter, which farm the father devised to others after the daughter's death, testimony of the daughter's surviving husband that she had the deed in their home from the time of its execution and that he saw it, and that he found it there in her diary and record book about 6 years after her death, was sufficient to support the trial court's finding that the father delivered the deed to the daughter on or about the date of its execution with intent to pass title thereto, so that she was the owner of the farm and it did not pass under the father's will, although, among other things, the father lived on the farm from the date of the deed until the date of his death, and neither the daughter nor the husband ever occupied the farm or asserted any rights thereto during the father's lifetime. Herzing v. Hess, 263 W 617, 58 NW (2d) 430.

In the case of a conveyance, the burden of proof of unsoundness of mind and incapacity of the grantor at the time of the conveyance rests on the party who seeks the impeachment of the deed. Nyka v. State, 268 W 644, 68 NW (2d) 458.

A deed not witnessed or acknowledged (i.e., not entitled to record) may convey title. Where a telephone company was the grantee in such a deed of an easement, the United States, not having a paramount title to the easement, could not question the title of the

company. Tenney Telephone Co. v. United States, 82 F (2d) 788.

A deed of conveyance signed by grantors and delivered with the names of grantors and the consideration omitted at the time of delivery, the omissions of which are subsequently inserted by the grantee, is a valid instrument of conveyance if the instrument so completed represents the actual agreement of the parties. 28 Atty. Gen. 527.

Effect of parol authority to an agent to complete a deed incomplete on delivery. 30 MLR 202.

2. Conveyance of Homestead.

A mortgage of land by a husband to a wife to secure the repayment of moneys loaned to him by the wife from her separate estate is a valid security as against the husband and a subsequent incumbrancer. The fact that the wife did not execute such mortgage to herself, which was of premises then constituting the homestead of the parties (subsequently divorced), does not render it invalid. Wochoska v. Wochoska, 45 W 423.

Without his wife's consent a husband cannot mortgage the homestead, or enlarge or extend the terms of a mortgage thereon, or prolong the statute of limitations upon such mortgage, or renew it or materially change its legal effect, or revive it after it is once paid or otherwise discharged. Dunn v. Buckley, 56 W 190, 14 NW 67.

Where a husband has sold the homestead without his wife's consent, both he and the vendee are estopped to claim that it was exempt as against the wife, who became a purchaser under an execution to satisfy a judgment for alimony in her favor. Keyes v. Scanlan, 63 W 345, 23 NW 570.

On the execution of a conveyance of a homestead by the wife under duress see McCormick Co. v. Hamilton, 73 W 486, 41 NW 727.

A homestead may exist in land held under a contract for its purchase; and an action to enforce specific performance of the vendor's agreement to convey it may be maintained by the vendee's wife, to whom the contract has been assigned, notwithstanding the legal title was conveyed to a third party in consideration of his paying the debts of the original vendee, some of which were incurred for the purpose of making improvements on the premises, the benefit of which the wife received. She, however, was bound to pay the advances made so far as they were used in paying the purchase price and taxes on the property. Chopin v. Runte, 75 W 361, 44 NW 258.

A mortgage of the homestead which does not bind the husband because of his incapacity is not binding upon his wife; if it is avoided as to him it will be avoided as to her. Brothers v. Bank of Kaukauna, 84 W 381, 54 NW 786.

In the absence of fraud or mistake a wife is conclusively presumed to know the contents of a mortgage covering her homestead and bound by the description. German Bank v. Muth, 96 W 342, 71 NW 361.

Sec. 2203, Stats. 1898, was not intended to give the wife a mere personal right for her personal benefit which she might waive or be estopped by her conduct from insisting upon, but to protect the home for the benefit of the family and every member of it. Cumps v. Kiyo, 104 W 656, 80 NW 937.

A married man, who, with his family, occupies a homestead, consisting of a leasehold, may, in good faith, rent another house and move his household goods thereto, and he thereby relieves himself of the disability to alienate such homestead without his wife's signature. Beranek v. Beranek, 113 W 272, 89 NW 146.

The statute creates a disability upon the husband in favor of the wife and not an estate in land. Mash v. Bloom, 126 W 385, 105 NW 831.

A deed to the homestead signed by the wife may be treated as a mortgage where the wife knew of such intention although she did not know the amount to be secured. White v. Daniell, 141 W 273, 124 NW 405.

The phrase "evidenced by her act of joining in the deed, mortgage or other conveyance" contained in the amendment of 1905 is equivalent to the phrase "without the signature of the wife to the same" contained in the law before. Gotfredson Brothers Co. v. Dusing, 145 W 659, 129 NW 647.

A party acquiring the legal title to land through a judicial sale under a judgment obtained in an action to foreclose a mortgage or a contract for the purchase of land may make a valid conveyance of such legal title without the signature of the wife of the mortgagor still in possession or of the wife of the contract vendor still in possession of the premises. Youngs v. Wegner, 157 W 489, 146 NW 803.

A contract by a husband with a real estate agent to procure a purchaser of his homestead is valid, although not signed by the wife; and such agent may recover the agreed compensation when he produces a person ready, able and willing to buy. Mackenzie v. Studenmayer, 175 W 373, 185 NW 286.

An oral contract made by the owner of a house to convey it to a husband and wife for their homestead, but to reserve to himself the right to repurchase, was partially executed by the execution of the deed, and by the execution on the next day by the husband of a contract to reconvey which was not signed by the wife. The latter was a part performance of the original oral agreement, which was an entire contract, and was binding on the wife. Papenthien v. Coerper, 184 W 156, 198 NW 391.

A lease of premises, part of which constitute the homestead of the lessor, which his wife did not sign, was void, and the lessee was entitled to quit, notwithstanding the wife of the lessor may have been at all times ready and willing to sign the lease and the lessee had notice thereof before abandonment, the rights of the parties being fixed at the time of the execution and delivery of the lease. Hovie v. Pleshek, 187 W 55, 203 NW 910.

Where a defendant husband and wife voluntarily abandoned their old homestead the wife is estopped to assert a homestead exemption as a defense even though she signed no writing. Krueger v. Groth, 190 W 387, 209 NW 772.

A husband's contract to convey part of the homestead, not signed by the wife, was void in toto, and specific performance thereof was im-

properly decreed. Eaton Center Co-op. C. Co. v. Kalkofen, 209 W 170, 244 NW 620.

A son who purchased his parents' homestead by oral agreement acquired no title. Bartz v. Eagle Point Mut. Fire Ins. Co. 218 W 551, 260 NW 469.

A wife, who acquiesced in her husband's contract to sell a designated acre of their 160-acre farm, permitted the purchaser to construct buildings, and did not claim the acre as part of the homestead until after a decree of specific performance of such contract against the husband without any restriction as to use was estopped from claiming the acre as part of the homestead, since the husband was legally competent to make a homestead selection which omitted the acre in question. Hainz v. Kurth, 227 W 260, 278 NW 413.

Homestead rights, as distinguished from dower, are not estates, and the husband has it within his power to abandon a property as his homestead, thereby defeating the right which his wife theretofore had to veto the sale of the homestead property by not joining in the conveyance thereof. Radtke v. Radtke, 247 W 330, 19 NW (2d) 169.

A husband's deed, made without the wife's consent, of a farm homestead owned in joint tenancy, to the assignee of a mortgage on the property, was absolutely void and, hence, in an action to foreclose the mortgage, wherein the plaintiff disclaimed any interest under the deed, the court properly ordered the deed canceled and allowed the plaintiff full recovery on the mortgage. Tupitza v. Tupitza, 251 W 257, 29 NW (2d) 54.

235.01 does not apply to a contract for the sale of his homestead by a married man whose wife is a nonresident alien who has never been in this state. Duda v. Beben, 252 W 295, 31 NW (2d) 603.

A wife who orders her husband out of the homestead is not in a position to object if the ejected spouse accepts such separation from the home as permanent and, acting thereon, conveys his interest therein to someone else. Siegel v. Clemons, 266 W 369, 63 NW (2d) 725.

3. Conveyance by Corporation.

A land contract signed by the president, but not by the secretary, of the vendor corporation is good as between the vendor and purchaser, where the president was authorized to act for the corporation in such matter. Jefferson Gardens, Inc. v. Terzan, 216 W 230, 257 NW 154.

A lease for a term of 3 years, giving the lessee an option for an additional 3 years, was of itself a lease for 6 years, so that, where it was not signed by the president or other authorized officers of the lessor corporation, it was void. Milwaukee Hotel Wisconsin Co. v. Aldrich, 265 W 402, 62 NW (2d) 14.

A lease for 2 years renewable for 2 more unless either party refused is not a conveyance under 235.01 (5). St. Regis Apart. Corp. v. Sweitzer, 32 W (2d) 426, 145 NW (2d) 711.

Real estate acquired in the name of a city may be conveyed by the city pursuant to the provisions of 235.19 (2), Stats. 1929. 19 Atty. Gen. 402.

235.02 History: R. S. 1849 c. 59 s. 5, 6; R. S. 1858 c. 86 s. 5, 6; R. S. 1878 s. 2204; Stats. 1898 s. 2204; 1925 c. 4; Stats. 1925 s. 235.02; 1969 c. 285.

A mortgage of real estate may be made without any accompanying personal liability. Musgat v. Pumpelly, 46 W 660, 1 NW 410.

As to land dedicated for a street, see Mahler v. Brumder, 92 W 477, 66 NW 502.

Where the upper story of a leased building was reached by a stairway used in common with that of the next building there was no implied covenant to prevent the interruption of the access to such upper story by the tearing down of the next building. Koeber v. Somers, 108 W 497, 84 NW 991.

Where statements were made as to the condition of a house and a promise was made to put the house in first class condition, the negotiations were merged in the lease, and no covenant of the condition of the house could be implied. Hunter v. Hathaway, 108 W 620, 84 NW 996.

Where a deed grants a mill site with water rights appurtenant thereto, with condition that the grantee make one-third of all necessary repairs upon the dam and race, but without a covenant of the grantors to make any repairs, they cannot be compelled to make the other two-thirds. Koch v. Hustis, 113 W 599, 87 NW 834.

Although a lease contains a covenant binding the lessee to make certain repairs and to do certain other things with reference to the leased premises, the lessor does not for that reason expressly covenant that the lessee be given possession; and under secs. 2204 and 2242, Stats. 1898, if the lease be for a term exceeding 3 years no covenant to put the lessee in possession can be implied. Goldman v. Dieves, 159 W 47, 149 NW 713.

Under the facts stated the grantees did not have an implied easement on a strip of land adjoining that conveyed to them. Frank C. Schilling Co. v. Detry, 203 W 109, 233 NW 635.

The defense of breach of covenant of peaceable and quiet possession does not lie in an action to recover rent under a lease for a term exceeding 3 years, in the absence of an express covenant of peaceable possession in the lease, since a lease for such term is a "conveyance of real estate," in which no covenant can be implied. Bahcall v. Gloss, 244 W 473, 12 NW (2d) 674.

Covenants for title in Wisconsin. Rundell, 2 WLR 65.

235.03 History: R. S. 1849 c. 59 s. 7; R. S. 1858 c. 86 s. 7; 1865 c. 365 s. 1; R. S. 1878 s. 2205; Stats. 1898 s. 2205; 1925 c. 4; Stats. 1925 s. 235.03; 1969 c. 285.

235.04 History: 1874 c. 316 s. 1; R. S. 1878 s. 2206; Stats 1898 s. 2206; 1925 c. 4; Stats. 1925 s. 235.04; 1969 c. 285.

Sec. 2206, R. S. 1878, is broad enough to cover a devise by will and dispenses with the necessity of words of inheritance in a will in order that it may convey an absolute title in fee. Baker v. Estate of McLeod, 79 W 534, 48 NW 657.

The words "heirs and assigns" are not necessary to the creation of an equitable servitude which will pass with the land, but the

use of those words is a strong indication of the purpose of the grantor although not controlling. Clark v. Guy Drews Post, 247 W 48, 18 NW (2d) 322.

A deed which provided in the granting clause that the grantor had granted, sold, and conveyed to the grantee, his sister, certain described real estate for a consideration of $1, but which had revenue stamps affixed thereto in an amount creating a presumption that $7,000 was paid for the deed, and which provided in the habendum clause that the grantee was to hold the premises "upon trust" to lease the same and apply the rents and profits thereof to the use of the grantor, and which was signed by both the grantor and the grantee, had the effect of granting to the grantee the fee title to the property, charged with a trust for the lifetime of the grantor, and not as merely creating a trust with no disposition of the property on the grantor's death. Flynn v. Palmer, 270 W 43, 70 NW (2d) 231.

235.05 History: R. S. 1849 c. 59 s. 3; R. S. 1858 c. 86 s. 3; R. S. 1878 s. 2207; Stats. 1898 s. 2207; 1925 c. 4; Stats. 1925 s. 235.05; 1969 c. 285.

A quitclaim deed by a mortgagee operates as a discharge of his mortgage. Latton v. McCarty, 142 W 190, 125 NW 430.

A quitclaim deed, executed by the original owner after entry of a default judgment against him in an action to foreclose a tax deed, conveyed the full title, where the tax deed was in fact invalid and said judgment was afterwards set aside and still later discontinued. Home Inv. Co. v. Emerson, 153 W 1, 140 NW 283.

A quitclaim deed has all the force and effect of a deed of bargain and sale, and it entitles the grantee to the same protection under the recording statutes. Olmstead v. McCrory, 158 W 323, 148 NW 871.

235.06 History: 1874 c. 316 s. 1, 2; R. S. 1878 s. 2208; Stats. 1898 s. 2208; 1925 c. 4; Stats. 1925 s. 235.06; 1969 c. 285.

Neither an unlawful intrusion upon land nor the taking of it by eminent domain amounts to a breach of the ordinary covenants in a deed. Smith v. Hughes, 50 W 620, 7 NW 653.

Plaintiff obtained a warranty deed of land May 8, 1879, but did not record it until February 1, 1882. Defendant obtained a quitclaim deed from the same grantor of the same land. Defendant had no notice of plaintiff's deed, and his deed was first recorded. The defendant was entitled to the protection given by sec. 2241, R. S. 1878, and such deed was a "conveyance" sufficient to protect him. Cutter v. James, 64 W 173, 24 NW 874.

A valid tax certificate held by a third person at the time a warranty deed of the land upon which such certificate was issued is given is a breach of the covenant against incumbrances; and placing on record a tax deed to the holder of the certificate, the land being vacant and unoccupied, is a breach of the covenant of seizin. Daggett v. Reas, 79 W 60, 48 NW 127.

A grantee under a warranty deed may recover from the grantor the amount of a tax assessed upon a reassessment for a time prior to delivery of the deed. Nelson v. Gunderson, 189 W 139, 207 NW 408.

A quitclaim deed of land, executed and delivered by a widow, who was the owner of a life estate therein under the will of her husband and who had the power to convey to her daughter in consideration of a promise to support, conveyed to the grantee only the life estate, the interest which the widow then owned, even if the widow had the power under the will to convey a fee. Meister v. Francisco, 233 W 319, 289 NW 643.

Where no provision indicating the character of the title is made in a contract for the sale of real estate, the law implies that the vendor is to convey a marketable title free from incumbrances, and in such case the purchaser is entitled to the statutory warranty deed provided for in 235.06, Stats. 1945. Petre v. Slowinski, 251 W 478, 29 NW (2d) 505.

Where the owner of adjoining lots conveyed an east parcel to one grantee, and later conveyed the remaining west parcel, including a corner lot, to the plaintiff, and at the time of such conveyances there were underground sewer and water pipes extending from the east property and across the west property and connecting onto the city mains located under the street at the west side of the plaintiff's corner lot, the fact, that for an expenditure of $490 it was possible for the east property to connect onto the water mains underlying another street without the necessity of any pipes crossing the plaintiff's property, conclusively established that the test of necessity had not been met in order to have an implied easement over the plaintiffs' property; hence, there being no easement, the defendant grantors' covenant against incumbrances was not breached. That the existence of the underground pipes caused expense to the plaintiff in removing them did not make the same an "incumbrance." Bullis v. Schmidt, 5 W (2d) 457, 93 NW (2d) 456.

Where the allegations of the complaint of a purchaser for breach of covenants contained in a warranty deed, and the answer and the affirmative defenses set up by it, disclosed that there existed a use of an easement which was open, notorious, continuous, and adverse to the plaintiff, and under claim of right, all known to the plaintiff antedating the plaintiff's purchase, the plaintiff, on the basis of such pleadings, could not maintain an action for the breach of covenants. Merchandising Corp. v. Marine Nat. Ex. Bank, 12 W (2d) 79, 106 NW (2d) 317.

Covenants for title in Wisconsin. Rundell, 2 WLR 65.

235.07 History: 1907 c. 246; Stats. 1911 s. 2208m; 1925 c. 4; Stats. 1925 s. 235.07; 1969 c. 285.

235.08 History: 1874 c. 316 s. 3; R. S. 1878 s. 2209; Stats. 1898 s. 2209; 1913 c. 295; 1925 c. 4; Stats. 1925 s. 235.08; 1963 c. 45; 1969 c. 285.

The mortgagor of real estate retains not only the legal title to the premises mortgaged, but also the right to the possession thereof, and may sell, rent, or further incumber them. Grether v. Nick, 193 W 503, 215 NW 571.

Furnishings, and equipment of an apartment building, erected, equipped and fur-

nished with money borrowed from a landowner under a contract binding him to convey land to parties erecting a building with mortgage back when a certain amount of moneys advanced was repaid and providing that title to the land, building, furnishings and equipment should remain in him until transferred as therein provided for, were covered by a mortgage of realty, buildings and improvements, with "all the hereditaments, privileges and appurtenances to the same belonging," as provided in the mortgagee's deed to mortgagors, whether regarded as fixtures or personal property. First Wisconsin T. Co. v. Adams, 218 W 406, 261 NW 16.

Machines adapted to the purposes of and used in a soft-drink manufacturing and bottling plant, which were not fastened but kept in place by their own weight and attached to pipes and wires supplying water and electricity, and which were installed by a mortgagor with the intention of continuing to operate the plant, and which were assessed and taxed continuously as part of the realty, constituted fixtures passing with the realty to a mortgagee as against the mortgagor. McCorkle v. Robbins, 222 W 12, 267 NW 295.

Under a mortgage providing to the effect that it should be void if the mortgagor should pay the mortgagee the sum of $2,000 or carry out the terms of a support contract, which latter provided for a cash payment to a daughter of the mortgagor on the death of the mortgagee, to be a lien on the premises mortgaged, where the clear purpose of the mortgage was to secure the mortgagee's right to support, or, in the alternative, to the sum of $2,000 which represented its assumed value, the provision for a cash payment to the daughter of the mortgagor constituted a first lien on the premises to which the mortgage was subordinate. Menge v. Radtke, 222 W 594, 269 NW 313.

A real estate mortgage is a lien only and the lien persists until destroyed by sale of the premises thereunder. A foreclosure judgment does not destroy the lien but merely judicially determines the amount thereof. A covenant, in a mortgage covering several parcels of land, for the release of any portion of the premises from time to time "during the lien of this indenture" on the payment of its proportionate value plus taxes, continued to be binding on the mortgagee after foreclosure and until the equity of redemption was extinguished and such privilege could be assigned by the mortgagor and enforced by his assignee. Marshall & Ilsley Bank v. Greene, 227 W 155, 278 NW 425.

A mortgage under seal cannot be impeached for want of consideration in the absence of allegations of fact showing fraud, so that a denial of consideration for the mortgage note presents no obstacle to foreclosure of the mortgage. Virkshus v. Virkshus, 250 W 90, 26 NW (2d) 156.

While 235.08, Stats. 1963, in pertinent part recites that a mortgage when executed and acknowledged as required by law shall have the effect of a conveyance of land therein described, the mortgage and the note which it is given to secure are nevertheless personal property. Burmeister v. Schultz, 37 W (2d) 254, 154 NW (2d) 770.

235.088 History: 1961 c. 224; Stats. 1961 s. 235.088; 1969 c. 285.

235.09 History: 1874 c. 316 s. 8; 1878 c. 254; R. S. 1878 s. 2210; Stats. 1898 s. 2210; 1925 c. 4; Stats. 1925 s. 235.09; 1945 c. 420, 586; 1969 c. 285.

Though the assignor of a mortgage indorsed the note evidencing the mortgage debt, it was not personally liable where the formal assignment of the mortgage provided that the assignment was made without recourse. Lentz v. Dostal, 212 W 81, 249 NW 174.

235.10 History: 1917 c. 419; Stats. 1917 s. 2210a; 1925 c. 4; Stats. 1925 s. 235.10; 1969 c. 285.

235.11 History: 1874 c. 316 s. 5; 1878 c. 253; R. S. 1878 s. 2211; Stats. 1898 s. 2211; 1925 c. 4; Stats. 1925 s. 235.11; 1969 c. 285.

A sheriff's deed is presumptive evidence of title, and a previous judgment need not be shown. Morse v. Stockman, 73 W 89, 40 NW 679.

235.12 History: 1874 c. 316 s. 6; R. S. 1878 s. 2212; 1887 c. 327; Ann. Stats. 1889 s. 2212; Stats. 1898 s. 2212; 1925 c. 4; Stats. 1925 s. 235.12; 1969 c. 285.

235.13 History: 1885 c. 338; Ann. Stats. 1889 s. 2212a; Stats. 1898 s. 2212a; 1925 c. 4; Stats. 1925 s. 235.13; 1969 c. 285.

235.14 History: 1874 c. 316 s. 7; R. S. 1878 s. 2213; 1889 c. 345; Ann. Stats. 1889 s. 2213; Stats. 1898 s. 2213; 1917 c. 566 s. 37; 1925 c. 4; Stats. 1925 s. 235.14; 1969 c. 285.

235.15 History: 1873 c. 210 s. 6; R. S. 1878 s. 2214; Stats. 1898 s. 2214; 1925 c. 4; Stats. 1925 s. 235.15; 1953 c. 553; 1969 c. 285.

235.18 History: 1883 c. 348; Ann. Stats. 1889 s. 2206a; Stats. 1898 s. 2215a; 1911 c. 215; 1911 c. 664 s. 26; 1925 c. 4; Stats. 1925 s. 235.18; 1941 c. 71; 1969 c. 285.

An instrument purporting to convey land, but which, by mistake, has only one witness and is not sealed, is in equity a contract to convey the land, and the consideration expressed will be presumed to be the true one. It may be assigned, and the assignee may sue to compel a conveyance. Dreutzer v. Lawrence, 58 W 594, 17 NW 423.

Ch. 348, Laws 1883, is valid on the principle that the legislature might have dispensed, in the first instance, with the necessity of a seal by a justice of the peace to the acknowledgment of a plat which dedicated land to the public. Williams v. Milwaukee I. E. Asso. 79 W 524, 48 NW 665.

By validating a defectively executed plat the beneficial interest in the fee of a street marked thereon, subject only to the public easement, was vested in the owners of lots abutting on the street, at least from the time the plat became valid by the enactment of this statute. Taylor v. Chicago, M. & St. P. R. Co. 83 W 636, 53 NW 853.

235.185 History: 1969 c. 14, 411; Stats. 1969 s. 235.185.

Legislative Council Note, 1969: Subsection (1) refers to persons whose title is created by

the laws of another place whose notarial act is directed to be recognized in this state. Under federal laws there are several classes of persons who now fall within sub. (1) (c), (d) and (e). As an example, the following are authorized to take acknowledgments: 1. Wardens, clerks and parole officers of federal penal and correctional institutions for employes and inmates, 18 U.S.C. s. 4004. 2. Commissioned and warrant officers of the Coast Guard, 14 U.S.C. s. 636. 3. United States commissioners, 5 U.S.C. s. 92, 28 U.S.C. s. 637. 4. Commanding officers of coast and geodetic survey vessels not in the jurisdiction of the United States, 33 U.S.C. s. 875. 5. Foreign service officers of the United States, 22 U.S.C. s. 1203 and C.F.R. Tit. 22, s. 92.2.

Subsection (2) (a) is a change from existing law in some states. Practically all states provide that if the notarial act is performed by an officer of the United States, the signature of the officer and a statement of his rank is sufficient proof of the authority of the holder of the office to perform the notarial act. Subsection (2) (a) also provides that no authentication is necessary of the power of an officer designated by the laws of a state in the United States. Thus, a notary of another state may, by signing his name and his title and his number, if any, establish his proof of authority of a notary to perform the notarial act.

Subsection (2) (b) requires authentication if the notarial act is performed by a person authorized by the laws of a foreign country to perform the act. Two methods of authentication are made. Authentication may be made by a certificate by a foreign service officer of the United States resident in the foreign country or a certificate by a diplomatic officer of the foreign country resident in the United States that a person holding the office is authorized to perform the notarial act or authentication may be made by affixing an official seal of the officer.

In some states, title companies, banks and law digests maintain lists of officials authorized to perform notarial acts. Subsection (2) (b) 3 gives official recognition to this practice as an alternative method of proof of authority.

Subsection (2) (c) is a "catch-all" to cover authentication where the person taking the acknowledgment does not fall within the categories covered by sub. (2) (a) and (b).

Subsection (2) (d) distinguishes proof of the authority of the holder of the office from proof of the genuineness of the signature and the genuineness of the claim that the person is an officer. (Bill 6-A)

235.19 History: 1874 c. 316 s. 9; R. S. 1878 s. 2217; 1897 c. 124 s. 2; Stats. 1898 s. 2217; 1925 c. 4; Stats. 1925 s. 235.22; 1943 c. 289; Stats. 1943 s. 235.22, 329.01-329.12, 329.14-329.16; 1945 c. 33 s. 56, 57; 1951 c. 703 s. 7-11; Stats. 1951 s. 235.19; 1957 c. 146, 194, 672; 1959 c. 14, 19, 343; 1961 c. 423, 495; 1965 c. 617; 1967 c. 276; 1969 c. 285.

Revisor's Note, 1951: 235.19 (13) (old 329.14) was not in the uniform acknowledgments act. The legislative intent in adding it by amendment when the legislature adopted the uniform act in 1943 (Am. 1-S to Bill 203-S, which became ch. 289, Laws 1943) cannot now be ascertained. The amendment now made preserves the law as it now exists. It would be better either to repeal this provision or to make it apply to all acknowledgments. [Bill 353-S]

Editor's Note: For foreign decisions construing the "Uniform Acknowledgments Act" consult Uniform Laws, Annotated.

An acknowledgment of a mortgage made to a married woman is not invalid because the officer who took it was her husband. Kimball v. Johnson, 14 W 674.

An acknowledgment dated the first of November, without mentioning the year, is valid. Chase v. Whiting, 30 W 544.

A notary public may take an acknowledgment throughout the state. Maxwell v. Hartmann, 50 W 660, 7 NW 103.

On the question whether a certificate may be placed on a paper attached to a document see Davis v. Fulton, 52 W 657, 9 NW 809.

If the acknowledgment is omitted the conveyance is not recordable or constructive notice if recorded, though the original may have the notary's official seal affixed, which the record does not show. Girardin v. Lampe, 58 W 267, 16 NW 614.

Where the acknowledgment omits the words, "to me known to be the person who executed the foregoing instrument," the deed and its attestation may be resorted to, to show that the officer knew that the person who made the acknowledgment was the person who executed the deed and has substantially so certified. A literal compliance with the requirement of the statute is not essential. Hiles v. La Flesh, 59 W 465, 18 NW 435.

It is not necessary that the grantor, in set terms, acknowledge that he executed a certificate; that it was executed is sufficient. Laughlin v. Kieper, 125 W 161, 103 NW 264.

Where an acknowledgment of a deed is dated before the deed itself, the deed is entitled to record. Blaha v. Borgman, 142 W 43, 124 NW 1047.

A notary public is criminally liable for making a false certificate of acknowledgment of a deed over the telephone, although he believed that a party had actually executed the deed. 19 Atty. Gen. 626.

A register of deeds should accept for recording a deed acknowledged in another state and authenticated as provided in 235.24, notwithstanding ch. 289, Laws 1943. 32 Atty. Gen. 292.

235.20 History: Ann. Stats. 1889 s. 2216, 2216b; Stats. 1898 s. 2216, 2216a; 1907 c. 568; 1921 c. 178 s. 1, 3; 1923 c. 176; 1925 c. 4; 1925 c. 454 s. 11; Stats. 1925 s. 235.19 (3) (2nd and 3rd sent.), 235.20; 1937 c. 304; 1943 c. 468; 1945 c. 460, 542; 1951 c. 703 s. 6; Stats. 1951 s. 235.20; 1969 c. 285.

Although a plat of lands was invalidly executed and not effective as a conveyance when made, the curative legislation embodied in sec. 2216b, Stats.1898, have given it full validity and efficacy as a statutory dedication. Bates v. Beloit, 103 W 90, 78 NW 1102.

Where the owner of land did not formally acknowledge a plat as prescribed by sec. 5, ch. 41, R. S. 1849, but executed it under oath, the defect was cured after record of the prescribed statutory period. Lins v. Seefeld, 126 W 610, 105 NW 917.

The absence of acknowledgments from the subscribed and sworn-to certificate on the plat was cured by 235.20. Williams v. Larson, 261 W 629, 53 NW (2d) 625.

235.21 History: 1961 c. 420; Stats. 1961 s. 235.21; 1969 c. 285.

235.22 History: 1961 c. 420; Stats. 1961 s. 235.22; 1969 c. 285.

235.255 History: 1945 c. 463; Stats. 1945 s. 235.255; 1951 c. 261 s. 10; 1969 c. 285.

Editor's Note: For foreign decisions construing the "Uniform Validating Instruments Executed in War Service Act" consult Uniform Laws, Annotated.

235.26 History: R. S. 1849 c. 13 s. 2; 1850 c. 44 s. 3; R. S. 1858 c. 86 s. 2, 14; 1878 c. 197; R. S. 1878 s. 2221; 1895 c. 125 s. 2; Stats. 1898 s. 2221; 1925 c. 4; Stats. 1925 s. 235.26; 1961 c. 420; 1969 c. 285.

Where a husband procured land to be conveyed to his wife by way of settlement, he paying the consideration she could convey such land in the same manner and with like effect as if unmarried. Price v. Osborn, 34 W 34.

It seems that a deed by a married woman, in 1846, of her separate real property without joining her husband, was void. But such a deed was valid under the married woman's act of 1850. McKesson v. Stanton, 50 W 297, 6 NW 881.

Separate acknowledgment is unnecessary since enactment of ch. 229, Laws 1850, and sec. 3, ch. 44, Laws 1850. Hayes v. Frey, 54 W 503, 11 NW 695.

235.27 History: R. S. 1858 c. 86 s. 13; R. S. 1858 c. 89 s. 13; R. S. 1878 s. 2222; Stats. 1898 s. 2222; 1925 c. 4; Stats. 1925 s. 235.27; 1953 c. 494; 1961 c. 328; 1969 c. 285.

An instrument not witnessed or sealed, but purporting to convey land, made by husband and wife, is valid and amounts to a contract to convey. The vendee may compel a conveyance which will release the right of dower. Dreutzer v. Lawrence, 58 W 594, 17 NW 423.

Where a wife's homestead and dower rights were subject to an existing mortgage executed by the husband before marriage, and a new mortgage executed after marriage satisfied the existing mortgage, any failure to execute the new mortgage with the formalities required by 235.27 and 235.19 could not deprive the new mortgagee of its right to foreclose against the wife's interests, the new mortgagee being entitled to subrogation or to an equitable assignment of the rights of the original mortgagee. Home Owners' Loan Corp. v. Papara, 241 W 112, 3 NW (2d) 730.

235.28 History: R. S. 1858 c. 86 s. 13; R. S. 1878 s. 2223; Stats. 1898 s. 2223; 1925 c. 4; Stats. 1925 s. 235.28; 1969 c. 285.

A power of attorney by husband and wife, duly executed, authorizing the conveyance of "any of the real estate of which we or either of us are seized," is sufficient to bar her dower, although no express statement to that effect is made in it. Bertschy v. Bank of Sheboygan, 89 W 473, 61 NW 1115.

235.29 History: 1850 c. 229 s. 2; R. S. 1858 c. 86 s. 12; R. S. 1878 s. 2224; Stats. 1898 s. 2224; 1925 c. 4; Stats. 1925 s. 235.29; 1969 c. 285.

235.30 History: 1877 c. 280 s. 1, 2; R. S. 1878 s. 2225; 1879 c. 194 s. 2 sub. 17; 1885 c. 365; Ann. Stats. 1889 s. 2225; Stats. 1898 s. 2225; 1921 c. 590 s. 27; 1925 c. 4; Stats. 1925 s. 235.30; 1945 c. 102; 1969 c. 285.

A note and a mortgage, given upon order of a court in proceedings wherein a defendant was permitted to convey lands and the dower of his insane wife therein, were given as security for the support of the wife during her life, and not to create any estate in the wife or to admeasure her dower; and upon her death the obligations are discharged. Shea v. Cody, 191 W 438, 211 NW 139.

235.31 History: 1919 c. 687; Stats. 1919 s. 2225a; 1925 c. 4; Stats. 1925 s. 235.31; 1969 c. 285.

235.32 History: 1877 c. 280; R. S. 1878 s. 2226; Stats. 1898 s. 2226; 1917 c. 286; 1925 c. 4; Stats. 1925 s. 235.32; 1969 c. 285.

235.33 History: 1899 c. 6 s. 1; Supl. 1906 s. 2226a; 1925 c. 4; Stats. 1925 s. 235.33; 1969 c. 285.

235.34 History: R. S. 1849 c. 59 s. 14, 15; R. S. 1858 c. 86 s. 15, 16; R. S. 1878 s. 2227; Stats. 1898 s. 2227; 1925 c. 4; Stats. 1925 s. 235.34; 1969 c. 285.

Sec. 2227, R. S. 1878, is not complied with by a certificate of a foreign notary to the effect that the subscribing witnesses to an unacknowledged conveyance of land in this state had stated to him under oath, after the grantor's death, that they saw her sign, seal and execute the instrument of conveyance. Shattuck v. Bates, 92 W 633, 66 NW 706.

235.35 History: R. S. 1849 c. 59 s. 16, 17; R. S. 1858 c. 86 s. 17, 18; R. S. 1878 s. 2228; Stats. 1898 s. 2228; 1925 c. 4; Stats. 1925 s. 235.35; 1967 c. 276; 1969 c. 285.

Under a similar territorial statute of 1839 a certificate of a justice of the peace that the execution of a deed was proved before him to his satisfaction by a subscribing witness, the grantor having been duly summoned by personal service of summons with a copy of deed attached and having been present at the examination was sufficient. Myrick v. McMillan, 13 W 188.

235.36 History: R. S. 1849 c. 59 s. 18; R. S. 1858 c. 86 s. 19; R. S. 1878 s. 2229; Stats. 1898 s. 2229; 1925 c. 4; Stats. 1925 s. 235.36; 1969 c. 285.

235.37 History: R. S. 1849 c. 59 s. 19, 20; R. S. 1858 c. 86 s. 20, 21; R. S. 1878 s. 2230; Stats. 1898 s. 2230; 1925 c. 4; Stats. 1925 s. 235.37; 1967 c. 276; 1969 c. 285.

235.38 History: R. S. 1849 c. 59 s. 21, 22; R. S. 1858 c. 86 s. 22, 23; R. S. 1878 s. 2231; Stats. 1898 s. 2231; 1925 c. 4; Stats. 1925 s. 235.38; 1969 c. 285.

235.39 History: R. S. 1849 c. 59 s. 23; R. S. 1858 c. 86 s. 24; R. S. 1878 s. 2232; Stats. 1898 s. 2232; 1925 c. 4; Stats. 1925 s. 235.39; 1961 c. 622; 1967 c. 276; 1969 c. 285.

The legislature intended that the acknowledgment should be spread upon the record in

order to make such record valid. In order to be constructive notice the record must show such an execution as to make the deed valid as between the parties, and that it was so acknowledged as to entitle it to record. Girardin v. Lampe, 58 W 267, 16 NW 614.

An error in the date of the certificate of acknowledgment does not prevent the deed from being effectually recorded. Yorty v. Paine, 62 W 154, 22 NW 137.

A deed purporting to have been executed by 20 grantors in 6 states, signed by only 2 witnesses whose attestation was restricted to the execution thereof by the last grantor, one of them being the notary public who took said grantor's acknowledgment, is not entitled to be recorded except as a conveyance of his interest. Harrass v. Edwards, 94 W 459, 69 NW 69.

235.40 History: 1856 c. 41 s. 1; R. S. 1858 c. 86 s. 29; R. S. 1878 s. 2233; Stats. 1898 s. 2233; 1925 c. 4; Stats. 1925 s. 235.40; 1969 c. 285.

235.41 History: 1867 c. 131 s. 1; R. S. 1878 s. 2234; Stats. 1898 s. 2234; 1925 c. 4; Stats. 1925 s. 235.41; 1969 c. 285.

235.42 History: 1850 c. 48 s. 1; 1855 c. 37 s. 1; R. S. 1858 c. 20 s. 120; R. S. 1858 c. 86 s. 26, 28; 1867 c. 11 s. 1; 1873 c. 44; R. S. 1878 s. 2235; Stats. 1898 s. 2235; 1925 c. 4; Stats. 1925 s. 235.42; 1969 c. 285.

235.43 History: 1859 c. 157 s. 1; R. S. 1878 s. 2236; Stats. 1898 s. 2236; 1899 c. 351 s. 31; Supl. 1906 s. 2236; 1925 c. 4; Stats. 1925 s. 235.43; 1969 c. 285.

A judgment correcting a recorded deed and enlarging the description constitutes a completed conveyance of the same nature as the deed itself. The record of such judgment in the register's office relates back to the time when lis pendens was filed, and all purchasers whose conveyances were not then recorded will be bound thereby, though not parties to the action in which it was rendered. Cutler v. James, 64 W 173, 24 NW 874.

A judgment providing for the foreclosure of a deed as a mortgage is not defective because it fails to provide for a reconveyance in case of redemption as the satisfaction of the judgment may be recorded under sec. 2236, Stats. 1898. (Phelan v. Fitzpatrick, 84 W 240, distinguished.) White v. Daniell, 141 W 273, 124 NW 405.

235.435 History: 1951 c. 30; Stats. 1951 s. 235.435; 1969 c. 285.

Comment of Advisory Committee, 1951: Recording bankruptcy proceedings is desirable to take advantage of the notice provisions of the federal bankruptcy law. [Bill 91-S]

235.44 History: R. S. 1849 c. 59 s. 31; R. S. 1858 c. 86 s. 36; R. S. 1878 s. 2237; Stats. 1898 s. 2237; 1925 c. 4; Stats. 1925 c. 235.44; 1969 c. 285.

A power of attorney is good as between the parties to a conveyance executed in pursuance of it though it is neither attested nor recorded. Slaughter v. Bernards, 88 W 111, 59 NW 576.

A recorded revocation of a power of attorney is not constructive notice. Best v. Gunther, 125 W 518, 104 NW 82 and 918.

An instrument purporting to be a copy of a resolution of the state board of veterans affairs authorizing the director to act for it in matters relating to conveyances of property, satisfaction of mortgages, etc., not signed or acknowledged, is not entitled to be recorded under 235.44 as a power of attorney. 35 Atty. Gen. 325.

235.45 History: R. S. 1849 c. 59 s. 31; R. S. 1849 c. 60 s. 1; R. S. 1858 c. 86 s. 36; R. S. 1858 c. 87 s. 1; R. S. 1878 s. 2238; Stats. 1898 s. 2238; 1925 c. 4; Stats. 1925 s. 235.45; 1969 c. 285.

The legal status of a vendor and a vendee under a land contract presents troublesome questions of divided ownership, the particular conditions of the contract being entitled to great weight. Evans-Lee Co. v. Hoton, 190 W 207, 208 NW 872.

235.46 History: 1909 c. 302; Stats. 1911 s. 2238a; 1917 c. 382; 1921 c. 425; 1923 c. 231 s. 4; 1925 c 4; Stats. 1925 s. 235.46; 1927 c. 473 s. 42; 1957 c. 558; 1969 c. 285.

Alleged defects in the plaintiffs' title were not such as to preclude specific performance of the contract, where an interlocutory judgment gave the defendant the right to have the plaintiffs, by recorded proof, entirely remove whatever basis existed for doubt or apprehension, and where the plaintiffs on their own motion duly established that they had recorded proper proof. Haumersen v. Sladky, 220 W 91, 264 NW 653.

An affidavit which recites facts in a contract which gives an exclusive agency for the sale of land to a real estate broker, but which is not entitled to be recorded under the statute for the reason that it is not attested by 2 witnesses or acknowledged, is not entitled to be recorded in the office of the register of deeds. 16 Atty. Gen. 729.

235.46, Stats. 1941, was intended only to provide a means of correcting defects in record title to real estate. An affidavit filed under this section cannot take the place of a delayed birth certificate filed pursuant to 69.57 for the purpose of showing age and citizenship. 31 Atty. Gen. 73.

An instrument which is acknowledged before a notary public but which is not subscribed and sworn to is not entitled to be recorded as an affidavit under 235.46, Stats. 1947. 36 Atty. Gen. 568.

235.47 History: 1895 c. 48; Stats. 1898 s. 694f; 1919 c. 695 c. 166; Stats. 1919 s. 4151b; Stats. 1925 s. 327.20; 1927 c. 523 s. 80; Stats. 1927 s. 235.47; 1969 c. 285.

All transcribed original records of the older county of conveyances of lands in the territory of the newer county set off from the former must be certified to by the register of deeds of one or the other of such counties to have the effect of legal records of the newer county. 12 Atty. Gen. 501.

235.48 History: R. S. 1849 c. 59 s. 35; R. S. 1858 c. 86 s. 40; R. S. 1878 s. 2240; Stats. 1898 s. 2240; 1925 c. 4; Stats. 1925 s. 235.48; 1969 c. 285.

235.49 History: R. S. 1858 c. 86 s. 25; R. S. 1878 s. 2241; Stats. 1898 s. 2241; 1925 c. 4; Stats. 1925 s. 235.49; 1969 c. 285.

A public statement at a foreclosure sale of a right to redeem by virtue of an unrecorded deed is notice. Hodson v. Treat, 7 W 263.

A prior mortgage has no notice by record of a subsequent mortgage. Straight v. Harris, 14 W 509.

There is no notice by record in an improper county. Stewart v. McSweeney, 14 W 468.

Possession must be open, notorious, visible and exclusive. Ely v. Wilcox, 20 W 523.

An entry in a general index or reception book is notice. Shove v. Larsen, 22 W 142.

Possession of a grantor who claims the right to have his deed set aside for fraud is notice to a purchaser on execution against a grantee. McClellan v. Scott, 24 W 81.

There is no notice by record which describes land on the wrong quarter. Hay v. Hill, 24 W 235.

Possession of 60 acres, in densely-timbered country, by chopping wood and working three-fourths of an acre of the same, cleared and fenced, is constructive notice. Wickes v. Lake, 25 W 71.

A remote grantee is protected, if his chain of title is first recorded, though intermediate grantees paid nothing and are guilty of bad faith. Fallass v. Pierce, 30 W 443.

Actual knowledge of defective record is notice. Gilbert v. Jess, 31 W 110.

The statute, with certain exceptions, protects every interest, legal and equitable. A judgment canceling a recorded deed is a public record, and is notice to a purchaser from the grantee in the canceled deed whose deed is not recorded, and a purchaser from the person in whose favor judgment is rendered is protected. Hoyt v. Jones, 31 W 389.

A purchaser at a judicial sale, with recorded conveyance, is protected. Ehle v. Brown, 31 W 405.

Fencing off land and using it as a gravel pit by a town is sufficient notice to one having knowledge of such use. Quinlan v. Pierce, 34 W 304.

A grantor in possession, who has given a deed with parol defeasance, is protected against a purchaser from a grantee who had no actual notice of such possession. Brinkman v. Jones, 44 W 498.

A judgment of foreclosure, not recorded in the register's office, is not constructive notice to one not compelled to trace his title through it; as, one who purchases from the mortgagee whose mortgage is an absolute conveyance on its face, after he has foreclosed it. Helms v. Chadbourne, 45 W 60.

Indexing in a general index operates in the same manner and to the same extent in tax deeds as other conveyances. Oconto Co. v. Jerrard, 46 W 317, 50 NW 591.

An assignee of a mortgage is protected against a prior unrecorded assignment only when he can show chain of title in himself of recorded conveyances entitled to record. Potter v. Stransky, 48 W 235, 4 NW 95.

A grantee or devisee of one who has obtained the record title by fraud is charged with notice of the title of the real owner by the latter being in possession. Kluender v. Fenske, 53 W 118, 10 NW 370.

When a purchaser has notice of an unrecorded mortgage, information by the mortgagor (being his grantor) that it is all right, and is "all fixed up," is sufficient. To purchase in good faith is to purchase without knowledge of the outstanding incumbrance or any information sufficient to put the purchaser upon inquiry. Mere suspicion or rumor of payment is not sufficient to do away with the effect of knowledge. Mueller v. Bringham, 53 W 173, 10 NW 366.

Information of the existence of a mortgage "of the whole land," is sufficient notice, though the description in the mortgage is defective. Rowell v. Williams, 54 W 636, 12 NW 86.

One taking title by a deed conveying the legal title, recorded before a deed previously executed by the same grantor, obtains a presumptive legal title as against one not claiming under the first grantee, and the burden of proof is upon the latter. Lampe v. Kennedy, 56 W 249, 14 NW 43.

In order to operate as constructive notice the record of the instrument must show upon its face that such instrument was so executed and acknowledged as to entitle it to be recorded. Girardin v. Lampe, 58 W 267, 16 NW 614.

The sole purpose of registration is to give constructive notice to persons who become subsequently interested in the estate. Coe v. Manseau, 62 W 81, 22 NW 155.

A quitclaim deed is a conveyance, and when recorded the grantee, if a purchaser in good faith, will be protected against a prior unrecorded warranty deed. Cutler v. James, 64 W 173, 24 NW 874.

The possession of the vendee under an unrecorded contract is notice. Lamoreux v. Huntley, 68 W 24, 31 NW 331.

Although a will is not recorded in the register's office, yet a subsequent purchaser from an heir of the testator is bound by actual notice thereof. Prickett v. Muck, 74 W 199, 42 NW 256.

Where the covenant against incumbrances excepts a mortgage the grantee and subsequent purchasers tracing title through said deed are chargeable with notice of such mortgage, though they had no actual notice of it and it was not recorded until after the delivery of the deed, a knowledge of the facts being obtainable by reasonable diligence. Perkins v. Best, 94 W 168, 68 NW 762.

Where a mortgage is an extension of a preexisting purchase-money mortgage and another mortgagee accepts a mortgage knowing that it was intended to be and was in fact a subsequent lien, the former will be the prior lien, though both mortgages appear to have been contemporaneously executed and the latter was first recorded. The assignee of a mortgage is a purchaser and his assignment of it a conveyance, and in order that his lien may have priority over another mortgage, which although a prior lien was not first recorded, the assignment must be recorded prior to the recording the latter mortgage. Butler v. Bank of Mazeppa, 94 W 351, 68 NW 998.

The actual and open possession of land by the vendee, under an unrecorded contract for its purchase, is constructive notice of his rights to one who, while he is so in possession, takes a mortgage of the land from the vendor, but it is not notice of the rights of one to whom the vendor has secretly assigned the

contract. First Nat. Bank v. Chafee, 98 W 42, 73 NW 318.

A mortgage on real estate, executed and delivered in good faith, but not recorded until after the levy of a writ of attachment and the filing of the certificate with the register of deeds, takes precedence over such attachment lien. The recording act only protects a subsequent purchaser in good faith for a valuable consideration, who first records his conveyance, from the effect of a prior unrecorded conveyance, and does not extend to attaching creditors. Karger v. Steele-Wedeles Co. 103 W 286, 79 NW 216.

As to notice of equities of purchaser as to land omitted by mistake as against a subsequent grantee from the same grantors see Fond du Lac L. Co. v. Meiklejohn, 118 W 340, 95 NW 142.

The grantee from an attorney of land purchased of his client, with knowledge of the client's equities, takes with notice. Young v. Murphy, 120 W 49, 97 NW 496.

An unrecorded deed is inadmissible in evidence against a subsequent purchaser in order to make out a chain of adverse possession. Roberts v. Decker, 120 W 102, 97 NW 519.

Possession of land by the heir of a person under whom the grantor claimed is sufficient to put a purchaser from such grantor having actual knowledge of the facts upon inquiry. Ward v. Russell, 121 W 77, 98 NW 939.

A person is not protected in paying the mortgage indebtedness to the record (but not the real) owner of the mortgage where such record owner does not have possession of the security or authority to act as the agent of the real owner. Bautz v. Adams, 131 W 152, 111 NW 69.

A purchaser in good faith under a deed recorded before another deed to the same land is entitled to priority even though the deed under which he claims was made with intent to defraud. McDonald v. Sullivan, 135 W 361, 116 NW 10.

Where C conveyed to M by deed absolute on its face but which M knew was intended as a mortgage; a year afterwards C mortgaged to H; thereafter M deeded to E, the interest of E is subject to the M mortgage. Erickson v. Hammond, 135 W 573, 116 NW 244.

A purchaser is charged with notice of every fact recited in any conveyance in his chain of title. Parkinson v. Clarke, 135 W 584, 116 NW 229.

One whose ignorance of the title is deliberate and intentional and who pays a merely nominal consideration is not a purchaser in good faith. Wisconsin River L. Co. v. Selover, 135 W 594, 116 NW 265.

A grantee under a warranty deed is not precluded from recovering damages against the grantor for outstanding unrecorded deeds because of his failure to record promptly his deed so as to cut off the equities of the outstanding deeds. Darlington v. J. L. Gates Land Co. 142 W 198, 125 NW 456.

A foreign corporation must comply with sec. 1770b, Stats. 1898, before it can take advantage of the recording statute. Hanna v. Kelsey R. Co. 145 W 276, 129 NW 1080.

Purchasers who enter into possession of land pursuant to an agreement with the owner to convey to them by warranty deed may defend against a mortgage executed by such owner after such possession began and recorded before the execution and recording of the agreed warranty deed, even though the deed added to the usual words of full warranty the words, "subject to a mortgage of eleven hundred thirty dollars." Miller-Piehl Co. v. Mullen, 170 W 378, 174 NW 542.

Where the state treasurer accepted, as a security deposited pursuant to sec. 2024—77j, Stats. 1898, a duly recorded first mortgage, its priority as a first lien was not lost because, subsequent to its date the depositor accepted a third mortgage of the same property, which purported to be a first mortgage, and sold the notes thereby secured to third parties without revealing the existence of the real first mortgage. Mass v. Hess, 173 W 74, 180 NW 245.

A deed of land to a wife for a valid consideration but not recorded was valid as against a creditor whose claim arose 4 years later. Kinnie v. Kinnie, 184 W 245, 199 NW 145.

The fact that no assignment of a mortgage was recorded at the time the mortgage was claimed to have been transferred by a husband to his wife in payment of debt owing to the wife was not conclusive, since recording acts do not apply to creditors, but only to subsequent purchasers in good faith. The husband's judgment creditor was not entitled to set aside the transfer of the mortgage to the wife in partial payment of a bona fide obligation when the husband was solvent. Bradley v. Selden, 201 W 61, 228 NW 494.

The grantee under a quitclaim deed for a nominal consideration is not a bona fide purchaser for value against one who has a dwelling upon the premises; and stands in no better position than his grantor to assert title or right of possession. Haag v. Gorman, 203 W 346, 234 NW 337.

Where the original mortgagors conveyed the premises to a first mortgage assignee of record, who had, however, by an unrecorded instrument, previously assigned the mortgage to another, there was no merger, and the lien of later second mortgagees and their assigns is subsequent to the lien of the first mortgage. A purchaser of premises incumbered by a mortgage is charged with knowledge that a mortgage, though recorded, is a mere incident to the note which it secures, and that title thereto passes along with the transfer of the title to the note; and such purchaser cannot deal with the fee title on the assumption that the mortgage is discharged, unless it is discharged of record in the manner provided by the statutes or by a judgment of a court. Thauer v. Smith, 213 W 91, 250 NW 842.

Although a contract for the removal of shale had not been recorded, a subsequent purchaser of the farm, who at the time of the purchase had sufficient knowledge of the existence of the right to remove shale to put him upon inquiry, was not a "subsequent purchaser in good faith." White v. Machovec, 214 W 458, 253 NW 389.

All persons dealing with land are charged with knowledge of the contents of any instrument recorded at length, and are entitled to rely thereon. Rielly v. Arnsmeier, 220 W 564, 265 NW 713.

The recording statute does not afford protection to those who purchase from strangers

to the title. Only those persons are deemed to have constructive notice by the record who deal with or on the credit of the title in the line of which the recorded deed belongs, and, although the statute affords protection to a subsequent purchaser from the same grantor who takes from him through mesne conveyances, it does so only in case the chain of title of such subsequent purchaser back to the common grantor is first recorded. Zimmer v. Sundell, 237 W 270, 296 NW 589.

Recorded conveyances containing no express grant or reservation of a right of way afforded no notice of the existence of an implied easement of a way of necessity to a bona fide purchaser of the servient estate, and he held free from such easement, where the record did not disclose that the dominant estate was conveyed to one who had no access to any street or highway, and where the premises at the time of the conveyance of the servient estate did not disclose the existence of a way. Schmidt v. Hilty-Forster Lumber Co. 239 W 514, 1 NW (2d) 154.

When a vendor, after entering into a contract of sale, conveys the land to a third person who has knowledge or notice of the prior agreement, such third person is not a bona fide purchaser, but takes the land impressed with a trust in favor of the original vendee, and holds it as trustee for such vendee and can be compelled at the suit of the vendee to specifically perform the agreement by conveying the land in the same manner, and to the same extent, as the vendor would have been liable to do, had he not transferred the legal title. Saros v. Carlson, 244 W 84, 11 NW (2d) 676.

If grantees had notice or information which if pursued would have led to knowledge of the actual facts, they are not "purchasers in good faith" within 235.49 providing that an unrecorded conveyance of real estate shall be void as against any subsequent purchaser in good faith, whose conveyance shall first be recorded. State v. Jewell, 250 W 165, 26 NW (2d) 825.

Where a vendee under an unrecorded land contract executed on Nov. 4, although not occupying the farm buildings, which were unusable, plowed some of the land and hauled manure on it practically every day in November, such acts of possession were sufficient to give constructive notice putting a subsequent purchaser on inquiry as to rights claimed by the vendee, so that a near-by farmer who purchased the farm on Nov. 29 without making such inquiry was not a "subsequent purchaser in good faith." Miller v. Green, 264 W 159, 58 NW (2d) 704.

Where plaintiff tenants had installed a building and scales on the leased premises, which they occupied under their unrecorded lease when the premises were sold, the purchaser was put on inquiry as to plaintiffs' rights in such trade fixtures and bound by what would have been discovered by such inquiry, although the purchaser's deed made no reference thereto. Therefore, the former owner was not liable to plaintiffs for damages because of the purchaser's refusal to allow plaintiffs to remove their property from the premises. Ubbink v. Herbert A. Nieman & Co. 265 W 442, 62 NW (2d) 8.

235.49, Stats. 1953, will not protect a buyer of land who knew that another person had a contract to purchase it but made no inquiry of such person as to his rights. Sweeney v. Stenjem, 271 W 497, 74 NW (2d) 174.

Possession of land is constructive notice sufficient to put the purchaser on his guard of whatever rights the possessor may have in the land if such possession is visible, open, clear, full, notorious, unequivocal, unambiguous, inconsistent with, or adverse to the title or interest of the vendor. Such possession is considered constructive notice of the rights of the possessor, whether the possesssion is used for the purpose of charging a purchaser with notice of an outstanding equity or of an unrecorded conveyance and thereby defeating any claim under this section (because of failure to record the conveyance as provided by law). Bump v. Dahl, 26 W (2d) 607, 133 NW (2d) 295, 134 NW (2d) 665.

A will creating a trust fund in behalf of a widow was notice to mortgagees subsequently taking mortgages on real estate of the testator, regardless of the fact that the will was not recorded in the office of the register of deeds. In re Iver Pederson Co. 37 F (2d) 265.

235.491 History: 1967 c. 274; Stats. 1967 s. 235.491; 1969 c. 285.

Real estate—title legislation—merchantability of title. 1968 WLR 937.

235.50 History: R. S. 1849 c. 59 s. 24, 29, 30; R. S. 1858 c. 86 s. 34, 35; R. S. 1878 s. 2242; Stats. 1898 s. 2242; 1925 c. 4; Stats. 1925 s. 235.50; 1969 c. 285.

An equitable mortgage is a conveyance. Shattuck v. Bates, 92 W 633.

A lease for more than 3 years is a conveyance of real estate and no covenant can be implied therein. Koeber v. Somers, 108 W 497, 84 NW 991.

A power of attorney to convey or mortgage real estate is not a "conveyance" within sec. 2242, Stats. 1898, and a recorded revocation of such power is not constructive notice. Best v. Gunther, 125 W 518, 104 NW 82, 918.

An agreement restricting the use of a tract of land executed so as to be entitled to record is a conveyance within the meaning of sec. 2242, Stats. 1898. Boyden v. Roberts, 131 W 659, 111 NW 701.

A lease for 3 years with an option for an additional 3 years is a lease for 6 years and a conveyance. Milwaukee Hotel W. Co. v. Aldrich, 265 W 402, 62 NW (2d) 14.

Covenants for title in Wisconsin. Rundell, 2 WLR 65.

235.51 History: R. S. 1849 c. 59 s. 27; R. S. 1858 c. 86 s. 32; R. S. 1878 s. 2243; Stats. 1898 s. 2243; 1925 c. 4; Stats. 1925 s. 235.51; 1969 c. 285.

Possession of a mortgagor who has given an absolute deed with an unrecorded defeasance does not alone amount to "actual notice" to a purchaser from his mortgagee; but it is otherwise if the purchaser knows of such possession. Brinkman v. Jones, 44 W 498.

Sec. 2243, Stats. 1898, is intended to protect subsequent bona fide purchases of real estate for value against any unrecorded defeasances, and does not render an unrecorded defeasance inadmissible in evidence to show that a war-

ranty deed was in fact a mortgage. Wolf v. Theresa Village Mut. Fire Ins. Co. 115 W 402, 91 NW 1014.

Where the title of a grantee is "defeasible" only by reason of an oral understanding that the deed was given as a mortgage security for the discharge of obligations of the grantor, the deed is not one "made defeasible by force of a deed of defeasance or other instrument" within 235.51, but the interest of the grantor in the land is subject to the lien of a judgment against him when properly docketed and such lien is superior to a subsequent conveyance to one acquiring the land with actual notice, that is, knowledge of such facts as would put a prudent man on inquiry, as to the interest of the judgment debtor in the property. R. F. Gehrke Sheet Metal Works v. Mahl, 237 W 414, 297 NW 373.

235.52 History: R. S. 1849 c. 59 s. 28; R. S. 1858 c. 86 s. 33; R. S. 1878 s. 2244; Stats. 1898 s. 2244; 1925 c. 4; Stats. 1925 s. 235.52; 1969 c. 285.

The mortgagor may make payment to one having apparent authority to receive it. Though the mortgagor pay the mortgage debt to the mortgagee before maturity, with the accrued interest to the day of payment, the mortgage is satisfied, such payment being made without notice of an assignment. Mason v. Beach, 55 W 607, 13 NW 884.

The recording of an assignment of a mortgage, which by its terms assigned the mortgage and also the negotiable note secured thereby, did not constitute notice of the assignment of the note to the mortgagors so far as a payment thereon by them to the mortgagee without knowledge of the assignment was concerned. Falk v. Czapiewski, 214 W 624, 254 NW 111.

A mortgagor's payment on an unindorsed negotiable note to a person specified by the mortgagee as his agent to receive payments, without notice of assignment of the mortgage securing the note, operates as payment against the assignee. Rosecky v. Tomaszewski, 225 W 438, 274 NW 259.

235.525 History: R. S. 1849 c. 58 s. 60; R. S. 1858 c. 85 s. 60; R. S. 1878 s. 2156; Stats. 1898 s. 2156; 1925 c. 4; Stats. 1925 s. 232.56; 1965 c. 52; Stats. 1965 s. 235.525; 1969 c. 285.

A joint maker of a note and mortgage who has obtained title to them by assignment may bring suit for foreclosure and for a judgment for deficiency, joining as defendants his comakers and the purchasers of the land who had assumed the mortgage debt. Fanning v. Murphy, 117 W 408, 94 NW 335.

235.53 History: R. S. 1849 c. 60 s. 3; R. S. 1858 c. 87 s. 3; R. S. 1878 s. 2245; Stats. 1898 s. 2245; 1925 c. 4; Stats. 1925 s. 235.53; 1969 c. 285.

235.54 History: R. S. 1849 c. 59 s. 42; R. S. 1858 c. 86 s. 37; R. S. 1878 s. 2246; Stats. 1898 s. 2246; 1907 c. 393; 1925 c. 4; Stats. 1925 s. 235.54; 1943 c. 49; 1969 c. 285.

The recording of a revocation of a power of attorney is not sufficient to terminate the agency without notice to the agent. Best v. Gunther, 125 W 518, 104 NW 82 and 918.

235.55 History: R. S. 1849 c. 59 s. 36, 37; R. S. 1858 c. 86 s. 41, 42; R. S. 1878 s. 2247; Stats. 1898 s. 2247; 1917 c. 41, 457; 1925 c. 4; Stats. 1925 s. 235.55; 1945 c. 420; 1969 c. 285.

235.56 History: 1864 c. 359 s. 1; R. S. 1878 s. 2248; Stats. 1898 s. 2248; 1925 c. 4; Stats. 1925 s. 235.56; 1949 c. 266; 1969 c. 285.

235.57 History: 1864 c. 359 s. 2; R. S. 1878 s. 2249; Stats. 1898 s. 2249; 1925 c. 4; Stats. 1925 s. 235.57; 1969 c. 285.

235.58 History: 1864 c. 359 s. 3; R. S. 1878 s. 2250; Stats. 1898 s. 2250; 1925 c. 4; Stats. 1925 s. 235.58; 1969 c. 285.

235.59 History: R. S. 1849 c. 59 s. 36; R. S. 1858 c. 86 s. 41; 1863 c. 76 s. 1; 1868 c. 172 s. 1; R. S. 1878 s. 2251; Stats. 1898 s. 2251; 1921 c. 381; 1925 c. 4; Stats. 1925 s. 235.59; 1947 c. 143; 1969 c. 285.

235.60 History: 1852 c. 233 s. 1; R. S. 1858 c. 86 s. 44, 45; R. S. 1878 s. 2252; Stats. 1898 s. 2252; 1903 c. 267 s. 1; Supl. 1906 s. 2252; 1925 c. 4; Stats. 1925 s. 235.60; Sup. Ct. Order, 229 W v; 1957 c. 583; 1969 c. 285.

Where the plaintiff acquired title to land by deed from his mother and quitclaim deeds from the heirs of her former husband from whom she obtained the land, and the land was mortgaged to secure a bond to support the mother, a proceeding under sec. 2252, Stats. 1898, was insufficient to remove the cloud on plaintiff's title. Rosenthal v. Rosenthal, 146 W 41, 130 NW 875.

235.61 History: 1905 c. 331 s. 1; Supl. 1906 s. 2252a; 1925 c. 4; Stats. 1925 s. 235.61; 1969 c. 285.

235.62 History: R. S. 1849 c. 59 s. 36; R. S. 1858 c. 86 s. 41, 43, 45; R. S. 1878 s. 2253; Stats. 1898 s. 2253; 1925 c. 4; Stats. 1925 s. 235.62; 1969 c. 285.

235.63 History: 1864 c. 186 s. 1; R. S. 1878 s. 2254; Stats. 1898 s. 2254; 1925 c. 4; Stats. 1925 s. 235.63; 1969 c. 285.

235.64 History: R. S. 1849 c. 59 s. 59; R. S. 1858 c. 86 s. 46; R. S. 1878 s. 2256; 1883 c. 100; Ann. Stats. 1889 s. 2256; Stats. 1898 s. 2256; 1915 c. 156 s. 1; Supl. 1906 s. 2256; 1917 c. 41; 1925 c. 4; Stats. 1925 s. 235.64; 1969 c. 285.

That the debt is not fully paid is a defense, though the mortgagee agreed to discharge on part payment. Stone v. Lannon, 6 W 497.

An action to compel discharge of a mortgage is no defense. Mallory v. Mariner, 15 W 172.

It is not a defense that defendant has given a satisfaction piece to the mortgagor, after his conveyance to plaintiff, not for record, but to defeat an action for a penalty. Eaton v. Copeland, 17 W 218.

The statute does not apply to an assignee's executor, he not being an assignee in a strict sense. Page v. Johnston, 23 W 295.

The statute applies to all classes of payments and not merely where a court of equity has adjudged a debt to have been paid. Teetshorn v. Hull, 30 W 162.

This is a penal statute, strictly construed, and dependent upon full performance of all

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