

estate is terminated by cessation of the measuring life. Theoretically the tenant has no right to continue in possession; he is not the tenant of the reversioner or remainderman. On the one hand the tenant can be removed without any notice; yet the reversioner or remainderman has no right to commence unlawful detainer proceedings under present law because of the absence of a landlord-tenant relation between the parties. The proposed statute would remedy this in several respects. In the first place it would make the tenant liable for rental value if he remains in possession after the life estate terminates. Secondly, it gives the tenant a right to notice before he can be summarily removed. Thirdly, it does afford to the reversioner or remainderman the right to evict the tenant summarily by eviction proceedings if he gives the required notice.

Thus, for example, suppose A, owning an estate for his own life, leases to B a farm on a year-to-year basis starting on March 1. Several years later A dies in June. C is remainderman. C can collect a proportion of the annual rent (from A's death to the ensuing March 1). C cannot evict B except by giving him 90 days notice prior to March 1; if he does give such notice, he can evict B on March 1 of the following year.

If the owner of the life estate, A, had leased to B for 5 years by written lease, and the life estate ends during the first year after execution of the lease, the remainderman C can hold B for rental value after A's death, but can only remove B by first giving him a year's notice. While at first look this seems to infringe the rights of the remainderman, there are analogies in the trust field for allowing a lease beyond the life of the trust; and the tenant is the person whom the statute seeks to protect. The tenant may not know that the person in possession, with whom he deals for the lease, only owns a life estate; nor does he have any way of anticipating the length of the measuring life. Finally, in practice most reversioners and remaindermen do not want immediate factual possession of the land.

Rental value may be more than the rent stipulated in the lease. Hence the reversioner or remainderman is protected by ability to recover the current market value; but he can recover the rent under the lease as a minimum (see s. 234.25).

The lessee from the owner of a life estate takes a risk in prepaying rent. If the life estate ends, the lessee may also be liable to the reversioner or remainderman for rental value for the period after the life estate ceases; the lessee should be able to recover a corresponding portion of the prepaid rent.

If a tenant refuses to inform the reversioner or remainderman of the nature of his possession, after written demand, he can be treated as a month-to-month tenant and removed by 28 days' notice. [Bill 654-A]

CHAPTER 706.

Conveyances of Real Property; Recording; Titles.

706.01 History: 1947 c. 74; Stats. 1947 s.

235.73; 1969 c. 285 ss. 20m, 23; Stats. 1969 s. 706.01.

Committee Note, 1969: In sub. (2) leases for terms of over one year are treated as conveyances for all purposes. Sub. (7) redefines homestead in terms of marital ownership, ignoring present area, value and use limitations. [Bill 655-A]

706.02 History: 1969 c. 285; Stats. 1969 s. 706.02.

Committee Note, 1969: Sub. (1) leases and contracts require bilateral signature; sub. (2) conveyances of homesteads held in sold name of one spouse do not require other spouse to join; sub. (3) conditional deliveries are defeasible, except as provided here or in s. 706.10. [Bill 655-A]

706.03 History: 1969 c. 285; Stats. 1969 s. 706.03.

Committee Note, 1969: Sub. (1) permits proof of agency to convey by express oral authorization in all cases, resolving double standard of present ss. 240.06 and 240.08.

Sub. (1) abandons requirement of corporate signature by specified officers; sub. (2) abandons requirement of corporate seal (now essential to recording, at most).

Sub. (3) applies to conveyances principle of ss. 180.41, 180.70, incorporating nonofficer agents.

Sub. (4) extends s. 235.27 to validate conveyances without guardian by married minors over 18. [Bill 655-A]

706.04 History: 1969 c. 285; Stats. 1969 s. 706.04.

Committee Note, 1969: Clarifies and restates so-called "doctrine of part performance", so as to identify its elements. The section incorporates, especially sub. (2), the doctrine of *Stuesser v. Ebel*, 19 Wis. 2d 591, 120 N.W. 2d 679 (1962). [Bill 655-A]

706.05 History: 1969 c. 285; Stats. 1969 s. 706.05.

Committee Note, 1969: Sub. (6) treats "un-recordable" instrument as duly recorded when notice is assured by proper entry in index. [Bill 655-A]

706.06 History: 1969 c. 285; Stats. 1969 s. 706.06.

Committee Note, 1969: Permits short-form acknowledgment certificates. [Bill 655-A]

706.065 History: 1969 c. 14; 1969 c. 411 s. 1; Stats. 1969 s. 706.065.

706.07 History: 1969 c. 285; Stats. 1969 s. 706.07.

Committee Note, 1969: Sub. (10) incorporates present s. 235.22. [Bill 655-A]

706.08 History: 1969 c. 285; Stats. 1969 s. 706.08.

Committee Note, 1969: Sub. (2) is a new provision. To reverse, where notice is assured by tract index, the "chain of title" rule adopted in *Zimmer v. Sundell*, 237 Wis. 270, 296 NW 589. [Bill 655-A]

706.09 History: 1967 c. 274; Stats. 1967 s. 235.491; 1969 c. 285 s. 11; Stats. 1969 s. 706.09.

706.10 History: 1969 c. 285; Stats. 1969 s. 706.10.

Committee Note, 1969: Sub. (1) permits deletion of some 5 pages of "form and effect" material from the conveyancing statute, without apparent change of law or practice.

No change by sub. (4), except that non-warranty is specified. Eliminates archaic reference to "deed of bargain and sale".

Sub. (5) specifies common exceptions to warranty, as practice and case law have developed them.

Sub. (6) equates implied warranties and covenants, rejecting implication in both cases.

Sub. (7) applies implied warranty of fitness to described conveyancing transactions in which covenant is not disclaimed expressly. *Earl Milliken, Inc. v. Allen*, 21 Wis. 2d 497, 124 NW 2d 651 (1963); *Fisher v. Simon*, 15 Wis. 2d 207, 112 NW 2d 705 (1961); *Oremus v. Wynhoff*, 20 Wis. 2d 635, 123 NW 2d 441 (1963). [Bill 655-A]

706.11 History: 1969 c. 285; Stats. 1969 s. 706.11.

706.12 History: 1969 c. 285; Stats. 1969 s. 706.12.

706.13 History: 1969 c. 285; Stats. 1969 s. 706.13.

706.14 History: 1969 c. 285; Stats. 1969 s. 706.14.

CHAPTER 708.

Mortgages and Land Contracts.

708.01 History: 1969 c. 285 s. 24; Stats. 1969 s. 708.01.

Committee Note, 1969: New; restates present case law; *M&I Bank v. Greene*, 227 W 155, 278 NW 425 (1938). [Bill 655-A]

708.02 History: 1969 c. 285 s. 24; Stats. 1969 s. 708.02.

Committee Note, 1969: Present case law; see *Grether v. Nick*, 193 W 503, 213 NW 304 (1927). [Bill 655-A]

708.03 History: 1961 c. 224; Stats. 1961 s. 235.088; 1969 c. 285 s. 3; Stats. 1969 s. 708.03.

708.04 History: 1917 c. 419; Stats. 1917 s. 2210a; Stats. 1925 s. 235.10; 1969 c. 285 s. 5; Stats. 1969 s. 708.04.

708.05 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 s. 13; Stats. 1969 s. 708.05.

708.07 History: 1905 c. 331 s. 1; Supl. 1906 s. 2252a; 1925 c. 4; Stats. 1925 s. 235.61; 1969 c. 285 s. 17; Stats. 1969 s. 708.07.

708.09 History: 1969 c. 285 s. 24; Stats. 1969 s. 708.09.

CHAPTER 710.

Miscellaneous Property Provisions.

710.01 History: R. S. 1849 c. 62 s. 35; R. S. 1858 c. 89 s. 35; R. S. 1878 s. 2200; Stats. 1898

s. 2200; 1925 c. 4; Stats. 1925 s. 234.22; 1969 c. 284 s. 5; Stats. 1969 s. 710.01.

710.02 History: 1887 c. 479; Ann. Stats. 1889 s. 2200a; Stats. 1898 s. 2200a; 1925 c. 4; Stats. 1925 s. 234.23; 1951 c. 576; 1953 c. 55; 1955 c. 214; 1969 c. 284 s. 5; Stats. 1969 s. 710.02.

710.03 History: R. S. 1849 c. 62 s. 36; R. S. 1858 c. 89 s. 36; R. S. 1878 s. 2201; Stats. 1898 s. 2201; 1925 c. 4; Stats. 1925 s. 234.24; 1969 c. 284 s. 5; Stats. 1969 s. 710.03.

710.05 History: 1959 c. 259; Stats. 1959 s. 231.45; 1965 c. 156; 1969 c. 276 s. 598 (1); 1969 c. 283 s. 3; 1969 c. 483; Stats. 1969 s. 710.05.

710.07 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 s. 6; Stats. 1969 s. 710.07.

710.10 History: 1969 c. 284 s. 26; Stats. 1969 s. 710.10.

Committee Note, 1969: From ss. 291.01 and 291.02. [Bill 654-A]

CHAPTERS 816 and 818.

Revisor's Note, 1969: During the 1969 session of the Legislature the State Bar sponsored various bills relating to real property. All passed except Assembly Bill 656, which would have created chapters 810 to 815, 816 and 818 of the statutes. These new chapters would have constituted a revision of the real estate procedural law.

In anticipation of the passage of Assembly Bill 656, some of the other bills renumbered some existing statutes to fit into the new procedural chapters. These section histories are printed here.

816.25 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 s. 15; Stats. 1969 s. 816.25.

818.05 History: R. S. 1849 c. 62 s. 38; R. S. 1858 c. 89 s. 38; R. S. 1878 s. 2199; Stats. 1898 s. 2199; 1925 c. 4; Stats. 1925 s. 234.21; 1969 c. 284 s. 4; Stats. 1969 s. 818.05.

818.07 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 s. 19; Stats. 1969 s. 818.07.

818.09 History: 1852 c. 233 s. 1; R. S. 1858 c. 86 ss. 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 s. 16; Stats. 1969 s. 818.09.

THE PROBATE CODE

Editor's Note: The following conversion tables relate to the new probate code enacted by ch. 339, Laws 1969, and effective April 1, 1971. Table I is designed to assist in tracing the antecedent provisions of the statutes relating to probate into the sections of the new probate code. Table II is designed to assist