

## CHAPTER 893

## LIMITATIONS OF COMMENCEMENT OF ACTIONS AND PROCEEDINGS

893.01	Civil actions; objection as to time of commencing.	893.24	Within 9 months.
893.02	Realty, seizin and possession of.	893.245	Foreign corporation, conveyances.
893.03	Defense or counterclaim, when effectual.	893.25	Actions upon accounts.
893.04	Entry upon realty, when valid.	893.26	Other personal actions.
893.05	Presumption from legal title.	893.27	Defenses barred.
893.06	Presumption of adverse holding under conveyance or judgment.	893.29	Bank bills not affected.
893.07	Adverse possession defined.	893.30	Limitation when person out of state.
893.08	Extent of possession not founded on writing, judgment, etc.	893.31	Application to alien enemy.
893.09	Adverse possession, what is.	893.32	Effect of military exemption from civil process.
893.10	Action barred by adverse possession, when.	893.33	Persons under disability.
893.11	Tenant's possession that of landlord.	893.34	Limitation in case of death.
893.12	What use not adverse.	893.35	Appeals; if judgment for defendant reversed, new action for plaintiff.
893.13	Rights not impaired.	893.36	When action stayed.
893.135	Limitation if disability exists; temporary.	893.37	Disability.
893.14	Actions, time for commencing.	893.38	More than one disability.
893.15	Action concerning real estate.	893.39	Action, when commenced.
893.155	Within 6 years.	893.40	Attempt to commence action.
893.16	Within 20 years.	893.41	Presenting claims.
893.17	Within 20 years, against railroads and utilities for entry on lands.	893.42	Acknowledgment or new promise.
893.18	Within 10 years.	893.43	Acknowledgment, who not bound by.
893.19	Within 6 years; one year notice of damage by railroad.	893.44	Actions against parties jointly liable.
893.195	Within 5 years.	893.45	Parties need not be joined, when.
893.20	Within 3 years.	893.46	Payment, effect of, not altered.
893.205	Within 3 years.	893.47	Payment by one not to affect others.
893.21	Within 2 years.	893.48	Computation of time, basis for.
893.22	Within one year.	893.49	Dismissal of suit after answer.
893.23	Within 30 days.	893.50	Extension of time if no person to sue.
		893.51	What actions not affected.
		893.52	County court; insufficient service.

**893.01 Civil actions; objection as to time of commencing.** Civil actions can only be commenced within the periods prescribed in this chapter, except when, in special cases, a different limitation is provided by statute. But the objection that the action was not commenced within the time limited can only be taken by answer or demurrer in proper cases.

History: 1965 c. 66 s. 2.

**893.02 Realty, seizin and possession of.** No action for the recovery of real property or the possession thereof shall be maintained unless it appear that the plaintiff, his ancestor, predecessor or grantor was seized or possessed of the premises in question within 20 years before the commencement of such action.

History: 1965 c. 66 s. 2.

**893.03 Defense or counterclaim, when effectual.** No defense or counterclaim, founded upon the title to real property or to rents or services out of the same, shall be effectual unless the person making it or under whose title it is made, or his ancestor, predecessor or grantor was seized or possessed of the premises in question within 20 years before the committing of the act with respect to which it is made.

History: 1965 c. 66 s. 2.

**893.04 Entry upon realty, when valid.** No entry upon real estate shall be deemed sufficient or valid as a claim unless an action be commenced thereupon within one year after the making of such entry and within 20 years from the time when the right to make such entry descended or accrued; and when held adversely under s. 893.07, within 10 years from the time when such adverse possession begun.

History: 1965 c. 66 s. 2; 1965 [13.93 (1) (e)].

**893.05 Presumption from legal title.** In every action to recover real property or the possession thereof the person establishing a legal title to the premises shall be presumed to have been possessed thereof within the time required by law, and the occupation of such premises by another person shall be deemed to have been under and in subordination to the legal title unless it appear that such premises have been held and possessed adversely to such legal title for 10 years, under s. 893.06, or 20 years under s. 893.08, before the commencement of such action.

History: 1965 c. 66 s. 2; 1965 [13.93 (1) (e)].

**893.06 Presumption of adverse holding under conveyance or judgment.** Where the occupant or those under whom he claims entered into the possession of any premises un-

der claim of title, exclusive of any other right, founding such claim upon some written instrument, as being a conveyance of the premises in question, or upon the judgment of some competent court, and that there has been a continual occupation and possession of the premises included in such instrument or judgment or of some part of such premises under such claim for 10 years, the premises so included shall be deemed to have been held adversely; except that when the premises so included consist of a tract divided into lots the possession of one lot shall not be deemed the possession of any other lot of the same tract.

**History:** 1965 c. 66 s. 2.

Occupation of property pursuant to a deed is presumptively and in fact adverse to the former owner's title. Recording is the best evidence of a claim of title. Adverse possession is gained even if the conveyance is defective. It cannot be claimed that possession is not adverse until reconveyance is demanded. *Polanski v. Eagle Point*, 30 W (2d) 507, 141 NW (2d) 281.

Claim to adverse possession of the disputed area made on the theory that an ambiguity in the deeds created color of title could not be validly asserted where the deeds contained no ambiguity. *Grosshans v. Rueping*, 36 W (2d) 519, 153 NW (2d) 619.

**893.07 Adverse possession defined.** For the purpose of constituting an adverse possession by any person claiming a title founded upon some written instrument or some judgment land shall be deemed to have been possessed and occupied in the following cases:

(1) Where it has been usually cultivated or improved;

(2) Where it has been protected by a substantial inclosure;

(3) Where, although not inclosed, it has been used for the supply of fuel or of fencing timber for the purpose of husbandry or for the ordinary use of the occupant;

(4) Where a known farm or a single lot has been partly improved the portion of such farm or lot that may have been left not cleared or not inclosed, according to the usual course and custom of the adjoining country, shall be deemed to have been occupied for the same length of time as the part improved or cultivated.

**History:** 1965 c. 66 s. 2.

**893.08 Extent of possession not founded on writing, judgment, etc.** When there has been an actual continued occupation of any premises under a claim of title, exclusive of any other right, but not founded upon any written instrument or any judgment or decree, the premises so actually occupied, and no other, shall be deemed to be held adversely.

**History:** 1965 c. 66 s. 2.

To establish a road as a public highway by virtue of user for 20 years, the user must be adverse or under such circumstances as will give rise to a presumption of an intention on the part of the owner to dedicate the road as a public highway, and 20 or more years of adverse user by the public would create a presumption of such intention to dedicate. The use of a way of necessity is permissive and not adverse. *Bino v. Hurley*, 14 W (2d) 101, 109 NW (2d) 544.

**893.09 Adverse possession, what is.** For the purpose of constituting an adverse possession by a person claiming title, not founded upon some written instrument or some judgment or decree, land shall be deemed to have been possessed and occupied in the following cases only:

(1) When it has been protected by a substantial inclosure.

(2) When it has been usually cultivated or improved.

**History:** 1965 c. 66 s. 2.

Various elements of adverse possession for 20 years discussed. *Burkhardt v. Smith*, 17 W (2d) 132, 115 NW (2d) 540.

Putting in lawn, flower bed and erecting building on disputed strip is sufficient notice of adverse occupation of land. If claimant, after statute has run, admits the line is not correct, this will not change the title to the strip. *Laurin v. Wyroski*, 20 W (2d) 254, 121 NW (2d) 764.

Fasturing cattle up to a fence line for more than 20 years is adverse possession under (1) if coupled with a claim of title. Even if it was obvious that the fence was not on the line a claim can be made and it would not be proper to ask on cross-examination whether defendant only intended to claim to the true line. *Northwoods Development Corp. v. Klement*, 24 W (2d) 387, 129 NW (2d) 121.

**893.10 Action barred by adverse possession, when.** An adverse possession of 10 years under ss. 893.06 and 893.07 or of 20 years under ss. 893.08 and 893.09 shall constitute a bar to an action for the recovery of such real estate so held adversely or of the possession thereof. No title to real property belonging to the state shall be obtained by adverse possession, prescription or user unless such adverse possession, prescription or user has been continued uninterruptedly for more than 40 years. No title to real property held in trust by the state under s. 24.01 (2) to (6) shall be obtained by adverse possession, prescription or user.

**History:** 1965 c. 66 s. 2.

Use of a shack for hunting for years may constitute adverse possession if such use was exclusive. *Kraus v. Mueller*, 12 W (2d) 430, 107 NW (2d) 467.

Assuming that the existence of a fence erected by the plaintiff, and the significance of a monument near the lake, were known to the defendant, acquiescence in such boundary would make out a prima facie case that the plaintiff's fence was on the correct boundary, but such prima facie showing would be overcome by proof that the boundary referred to in the deeds of conveyance was a different line. *Seybold v. Burke*, 14 W (2d) 397, 111 NW (2d) 143.

The limitation periods imposed by this section are applicable even though the cause of action is one for declaratory relief rather than one strictly for the recovery of real estate, since adverse possession of the subject real estate for the limitation period extinguishes the title of

the original owner and vests title in the adverse possessor. *Marky Investment v. Arnezeder*, 15 W (2d) 74, 112 NW (2d) 211.

Even if a deed is void because it runs to a fictitious person or is obtained by fraud, it still will afford color of title to support a claim of adverse possession under color of title. If adverse possession by another runs for the full statutory period of limitation after the death of a husband or after accrual of the dower right, a widow's dower right is barred. *Marky Investment v. Arnezeder*, 15 W (2d) 74, 112 NW (2d) 211.

**893.11 Tenant's possession that of landlord.** Whenever the relation of landlord and tenant shall have existed between any persons the possession of the tenant shall be deemed the possession of the landlord until the expiration of 10 years from the termination of the tenancy; or where there has been no written lease until the expiration of 10 years from the time of the last payment of rent, notwithstanding such tenant may have acquired another title or may have claimed to hold adversely to his landlord; but such presumption shall not be made after the periods herein limited.

**History:** 1965 c. 66 s. 2.

**893.12 What use not adverse.** (1) No presumption of the right to maintain any wire or cable used for telegraph, telephone, electric light or any other electrical use or purpose whatever shall arise from the lapse of time during which the same has been or shall be attached to or extended over any building or land; nor shall any prescriptive right to maintain the same result from the continued maintenance thereof.

(2) The mere use of a way over uninclosed land shall be presumed to be permissive and not adverse.

**History:** 1965 c. 66 s. 2.

**Cross Reference:** See 182.017 (5) relating to right to condemn for easement for transmission lines.

Picnic tables erected on the shore of a lake, and a boat livery operated on the lake, with access to the lake only over a private roadway, did not change the character of the land through which the roadway passed as wild and unimproved land. *Bino v. Hurley*, 14 W (2d) 101, 109 NW (2d) 544.

**893.13 Rights not impaired.** The right of any person to the possession of any real estate shall not be impaired or affected by a descent being cast in consequence of the death of any person in possession of such estate.

**History:** 1965 c. 66 s. 2.

**893.135 Limitation if disability exists; temporary.** (1) If a person entitled to commence any action for the recovery of real property or to make an entry or defense founded on the title to real property or to rents or services out of the same be, at the time such title shall first descend or accrue, either (a) within the age of 21 years; or

(b) insane; or (c) imprisoned on a criminal charge or in execution upon conviction of a criminal offense, for a term less than for life, the time during which such disability shall continue shall not be deemed any portion of the time in this chapter limited for the commencement of such action or the making of such entry or defense; but such action may be commenced or entry or defense made, after the time limited and within 5 years after the disability shall cease or after the death of the person entitled, who shall die under such disability; but such action shall not be commenced or entry or defense made after that period.

(2) After December 31, 1945, this section shall not operate to extend the time for commencing any action with respect to which the 30-year or the 60-year limitation period established in s. 893.15 shall have expired, whether the cause of action shall have arisen prior or subsequent to the enactment of this subsection.

**History:** 1965 c. 66 s. 2; 1965 [13.93 (1) (e)].

**893.14 Actions, time for commencing.** The following actions must be commenced within the periods respectively hereinafter prescribed after the cause of action has accrued except that the period shall not be considered to have expired when the court before which the action is pending shall be satisfied that the person originally served knowingly gave false information to the officer with intent to mislead him in the performance of his duty in the service of any summons or civil process. In the event the court so finds the period of limitation shall be extended for one year.

**History:** 1965 c. 66 s. 2.

The parties can contract for a shorter period of limitation than that provided for by statute. *Olson v. Harnack*, 10 W (2d) 256, 102 NW (2d) 761.

A statute of limitations cannot operate retroactively to defeat actions and proceedings commenced prior to enactment. *Shaurette v. Capitol Erecting Co.* 23 W (2d) 538, 128 NW (2d) 34.

**893.15 Action concerning real estate.** (1) Except as provided in sub. (5), no action affecting the possession or title of any real estate shall be commenced by any person, the state, or any subdivision thereof after January 1, 1943, which is founded upon any unrecorded instrument executed more than 30 years prior to the date of commencement of such action, or upon any instrument recorded more than 30 years prior to the date of commencement of the action, or upon any transaction or event occurring more than 30 years prior to the date of commencement of the action, unless within 30 years after the execution of such unrecorded instrument or within 30 years after the date of recording of such

recorded instrument, or within 30 years after the date of such transaction or event there is recorded in the office of the register of deeds of the county in which the real estate is located, some instrument expressly referring to the existence of such claim, or a notice setting forth the name of the claimant, a description of the real estate affected and of the instrument or transaction or event on which such claim is founded, with its date and the volume and page of its recording, if it be recorded, and a statement of the claims made. This notice may be discharged the same as a notice of pendency of action. Such notice or instrument recorded after the expiration of 30 years shall be likewise effective, except as to the rights of a purchaser for value of the real estate or any interest therein which may have arisen prior to such recording.

(2) The recording of such notice, or of an instrument expressly referring to the existence of the claim, shall extend for 30 years from the date of recording (whether such recording occurred before or after the enactment of this section), the time in which any action founded upon the written instrument or transaction or event referred to in the notice or recorded instrument may be commenced; and like notices or instruments may thereafter be recorded with like effect before the expiration of each successive 30-year period.

(3) This section does not extend the right to commence any action beyond the date at which such right would be extinguished by any other statute.

(4) This section shall be construed to effect the legislative purpose of barring all claims to an interest in real property, whether dower (which for the purpose of this section shall be considered as based on the title of the husband without regard to the date of marriage) inchoate or consummate, curtesy, remainders, reversions and reverter clauses in covenants restricting the use of real estate, mortgage liens, old tax deeds, inheritance, gift and income tax liens, rights as heirs or under wills, or any claim of any nature whatsoever, however denominated, and whether such claims are asserted by a person sui juris or under disability, whether such person is within or without the state, and whether such person is natural or corporate, or private or governmental, unless within such 30-year period there has been recorded in the office of the register of deeds some instrument expressly referring to the existence of such claim, or a notice pursuant to this section. This section does not apply to any action commenced by any person who is in possession

of the real estate involved as owner at the time the action is commenced, nor does this section apply to any real estate or interest therein while the record title thereto remains in a railroad corporation or a public service corporation as defined in s. 184.01, or any trustee or receiver thereof, or to claims or actions founded upon mortgages or trust deeds executed by such corporations, or trustees or receivers thereof; nor does this section apply to any real estate or interest therein while the record title thereto remains in the state or any political subdivision or municipal corporation thereof.

(5) Actions to enforce easements, or covenants restricting the use of real estate set forth in any instrument of public record shall not be barred by this section for a period of 60 years after the date of recording such instrument, and the timely recording of instruments expressly referring to such easements or covenants or of notices pursuant to this section shall extend such time for 60-year periods from such recording.

(6) The word "purchaser" as used in this section shall be construed to embrace every person to whom any estate or interest in real estate shall be conveyed for a valuable consideration and also every assignee of a mortgage or lease or other conditional estate.

**History:** 1965 c. 66 s. 2.

(1) applies to actions founded on adverse possession but where the claimant of title by adverse possession can prove the adverse possession, he falls within the exception in (4) as one "in possession of the real estate involved as owner" even though the acts of adverse possession occurred more than 30 years before trial. *Herzog v. Bujniwicz*, 32 W (2d) 26, 145 NW (2d) 124.

**893.155 Within 6 years.** No action to recover damages for any injury to property, or for an injury to the person, or for bodily injury or wrongful death, arising out of the defective and unsafe condition of an improvement to real property, nor any action for contribution or indemnity for damages sustained on account of such injury, shall be brought against any person performing or furnishing the design, planning, supervision of construction or construction of such improvement to real property, more than 6 years after the performance or furnishing of such services and construction. This limitation shall not apply to any person in actual possession and control as owner, tenant or otherwise, of the improvement at the time the defective and unsafe condition of such improvement constitutes the proximate cause of the injury for which it is proposed to bring an action.

**History:** 1961 c. 412; 1965 c. 66 ss. 2, 5.

This section cannot be applied retroactively. *Shaurette v. Capitol Erecting Co.* 23 W (2d) 538, 128 NW (2d) 34.

**893.16 Within 20 years.** Within 20 years:

(1) An action upon a judgment or decree of any court of record of this state or of the United States sitting within this state.

(2) An action upon a sealed instrument when the cause of action accrues within this state, except those mentioned in ss. 19.015, 321.02, 893.19 and 893.20 (2).

History: 1965 c. 66 s. 2.

**893.17 Within 20 years, against railroads and utilities for entry on lands.**

Whenever any land or any interest therein has been or shall hereafter be taken, entered upon or appropriated for the purpose of its business by any railroad corporation, electric railroad or power company, telephone company or telegraph company without said corporation or company having first acquired title thereto by purchase or condemnation, as by statute provided, the owner of any such land, his heirs, assigns and legal representatives shall have and are hereby given the right to at any time within 20 years from the date of such taking, entry or appropriation, sue for damages sustained because of such taking, from the corporation or company so taking, entering upon or appropriating said lands or its successors in title, in the circuit court of the county in which said land is situated.

History: 1965 c. 66 s. 2.

**893.18 Within 10 years.** Within 10 years:

(1) An action upon a judgment or decree of any court of record of any other state or territory of the United States or of any court of the United States sitting without this state.

(2) An action upon a sealed instrument when the cause of action accrued without this state, except those mentioned in s. 893.19.

(3) An action for the recovery of damages for flowing lands, when such lands have been flowed by reason of the construction or maintenance of any milldam.

(4) An action which, on and before February 28, 1857, was cognizable by the court of chancery, when no other limitation is prescribed in this chapter.

(5) An action for the recovery of damages for flowing lands when such lands shall have been flowed by reason of the construction or maintenance of any flooding dam or other dams constructed, used or maintained for the purpose of facilitating the driving or handling of saw logs on the Chippewa, Menomonee, or Eau Claire rivers or any tributary of either of them.

(6) Any action in favor of the state when

no other limitation is prescribed in this chapter. No cause of action in favor of the state for relief on the ground of fraud shall be deemed to have accrued until discovery on the part of the state of the facts constituting the fraud.

(7) (a) No action or proceeding affecting the title to or possession of any real estate which is founded on a defect in jurisdiction over a person named as a party defendant in a judgment entered in a court of record of this state shall be commenced after 10 years from the filing of such judgment with the clerk of the said court, provided that during such time a lis pendens or such judgment or a certified copy thereof, naming such person as a party defendant, has been of record in the office of the register of deeds of the county in which such real estate is located, unless within 10 years after the date of the filing of such judgment with the said clerk there is filed in the office of such register of deeds some instrument or notice giving the name of the person claiming to have been affected thereby, describing such defect, and the real estate affected. Any such instrument or notice filed after the expiration of such 10 years shall be likewise effective, except as to the rights of a purchaser, without notice and for value, of such real estate or interest therein which may have arisen prior to such filing. Such instrument or notice may be discharged in the same manner as a lis pendens.

(b) Paragraph (a) shall have no application to judgments in estates of decedents.

History: 1965 c. 66 s. 2.

See note to 247.03, citing *Ginkowski v. Ginkowski*, 28 W (2d) 530, 137 NW (2d) 403.

**893.19 Within 6 years; one year notice of damage by railroad.** Within 6 years:

(1) An action upon a judgment of a court not of record.

(2) An action upon any bond, coupon, interest warrant or other contract for the payment of money, whether sealed or otherwise, made or issued by any town, county, city, village or school district in this state.

(3) An action upon any other contract, obligation or liability, express or implied, except those mentioned in ss. 893.16 and 893.18.

(4) An action upon a liability created by statute when a different limitation is not prescribed by law.

(5) An action to recover damages for an injury to property, or for an injury to the character or rights of another, not arising on contract, except in case where a different period is expressly prescribed.

(6) An action to recover personal property or damages for the wrongful taking or detention thereof.

(7) An action for relief on the ground of fraud. The cause of action in such case is not deemed to have accrued until the discovery, by the aggrieved party, of the facts constituting the fraud.

(8) No action against any railroad corporation for damages to property occasioned by fire set from a locomotive or for stock killed or injured by such corporation shall be maintained unless within one year after the happening of the event causing such damage the complaint be served or a notice in writing, signed by the party owning such property or stock, his agent or attorney, shall be given to the corporation in the manner provided for service of a circuit court summons, stating the time and place such damage occurred and that satisfaction therefor is claimed of such corporation. No such notice shall be deemed insufficient solely because of any inaccuracy or failure therein in stating the time when or describing the place where such damages occurred if it shall appear that there was no intention on the part of the claimant to mislead said corporation and that the latter was not in fact misled thereby.

(9) An action upon a claim, whether arising on contract or otherwise, against a decedent or against his estate, unless probate of his estate in this state shall have been commenced within 6 years after his death.

**History:** 1965 c. 66 ss. 2, 5.

**Cross References:** See 316.01 (2) for statute of limitation of lien on lands of a decedent for payment of his debts. See 893.25 for limitation of an action on a "mutual and open account." See 321.02 (3) for 4-year limitation on action against sureties on bonds in county court.

A cause of action of a special administratrix of the estate of a decedent whose son had wrongfully taken possession of the decedent's farm personal property, to recover such property or its value from the son, was a cause of action for conversion, to which the applicable statute of limitations was (6). *Peters v. Kell*, 12 W (2d) 32, 106 NW (2d) 407.

A party may be estopped by fraud, or other wrongful conduct, from asserting the statute of limitations as a defense. [*Pietsch v. Milbrath*, 123 W 647, overruled.] There can be no estoppel unless the aggrieved party relied to his injury on such fraudulent conduct. *Peters v. Kell*, 12 W (2d) 32, 106 NW (2d) 407.

In (7), providing a 6-year statute of limitations for actions for relief on the ground of fraud, the language that "the cause of action in such case is not deemed to have accrued until the discovery, by the aggrieved party, of the facts constituting the fraud," has no application to 893.10 [330.10], since that section contains no exception to meet cases of fraud. *Marky Investment v. Arnezeder*, 15 W (2d) 74, 112 NW (2d) 211.

When no time is specified for payment for work done, payment is not due until completion of the work and the limitation period then begins to run. *Estate of Dobrecevic*, 17 W (2d) 1, 115 NW (2d) 597.

An action for malicious communication of false and slanderous information to the U. S. Immigration service was a claim for defamation barred

in 2 years by 893.21 (2) and was not covered by 893.19 (5). *Cordova v. Gutierrez*, 23 W (2d) 598, 128 NW (2d) 62.

Since there is no limitation specifically made applicable to sec. 301 (a) by any provision of the Labor Management Relations Act, nor any that can be supplied by reasonable construction, the 6-year limitations set forth in (3), is applicable where interstate commerce may be affected to sec. 301 (a) actions for breaches of collective-bargaining agreements. *Tully v. Fred Olson Motor Service Co.* 27 W (2d) 476, 134 NW (2d) 393.

An allegation that an instrument was left in plaintiff's body during an operation and that both the doctor and hospital, knowing of this, assured plaintiff that he was in fit condition to be discharged, states a cause of action for active fraud and (7) would apply, but on motion for summary judgment plaintiff cannot prevail if he can only support the allegation by an affidavit based on information and belief. *McCluskey v. Thranow*, 31 W (2d) 245, 142 NW (2d) 787.

**893.195 Within 5 years.** Within 5 years of date of birth of child: An action under ch. 52 for the establishment of the paternity of the child, except that this limitation shall not apply where the parties thereto enter into an agreement for the support of the child in accordance with s. 52.28 or where a second proceeding is had pursuant to s. 52.31 (2). Where a warrant or summons under ch. 52 has been issued within such 5 years, ss. 893.30 and 939.74 (3) shall both be applicable in computing time under this section.

**History:** 1965 c. 66 s. 2; 1965 [13.32 (2) (e)].

**893.20 Within 3 years.** Within 3 years:

(1) An action against a sheriff, coroner, town clerk, or constable upon a liability incurred by the doing of an act in his official capacity and in virtue of his office or by the omission of an official duty, including the nonpayment of money collected upon execution; but this subsection shall not apply to an action for an escape.

(2) An action by the state or any of its departments or agencies or by any county, town, village, city, school district or other municipal unit to recover any sum of money by reason of the breach of an official bond or the breach of a bond of any nature whatsoever, whether required by law or not, given by a public officer or any agent or employe of a governmental unit; such period to commence running when such governmental unit receives knowledge of the fact that a default has occurred in some of the conditions of such bond and that it was damaged because thereof.

(3) An action or proceeding to test the validity of a change of any county seat, within 3 years after the date of the publication of the governor's proclamation of such change; and every defense founded upon the invalidity of any such change must be interposed within 3 years after the date of the aforesaid publication, and the time of commencement of the action or proceeding to which any such de-

fense is made shall be deemed the time when such defense is interposed.

**History:** 1965 c. 66 s. 2.

**Cross Reference:** For 3-year statute of limitation of lien on lands of a decedent for payment of his debts, see 316.01 (2).

**893.205 Within 3 years.** Within 3 years:

(1) An action to recover damages for injuries to the person for such injuries sustained on and after July 1, 1955, unless notice in writing as provided in s. 330.19 (5), 1955 statutes, was served prior to July 1, 1959, in which event s. 330.19 (5), 1955 statutes, shall apply. But no action to recover damages for injuries to the person, received without this state, shall be brought in any court in this state when such action is barred by any statute of limitations of actions of the state or country in which such injury was received unless the person so injured shall, at the time of such injury, have been a resident of this state.

(2) An action brought to recover damages for death caused by the wrongful act, neglect or default of another where death resulted on or after July 1, 1955.

**History:** 1961 c. 650; 1965 c. 66 s. 2.

The legislature cannot revive a cause of action for wrongful death already barred by statute by extending the time retroactively. *Haase v. Sawicki*, 20 W (2d) 308, 121 NW (2d) 876.

A complaint based upon an assault served more than 2 years after the period of limitations prescribed for an assault action in 893.21 (2) could not be amended to allege a cause of action for negligence so as to stop the running of the statute of limitations on actions for negligence by relating back to the date on which the original complaint was served and thus fall within the 3-year period prescribed in 893.205 for injuries to the person. *Johnson v. Bar-Mour, Inc.* 27 W (2d) 271, 133 NW (2d) 748.

A cause of action for malpractice accrues when the injury caused by the professional misconduct is sustained, i.e., as of the date a malpractice is committed and not as of the date when the patient discovers that he was in fact negligently injured. *McCluskey v. Thranow*, 31 W (2d) 245, 142 NW (2d) 787.

**893.21 Within 2 years.** Within 2 years:

(1) An action by a private party upon a statute penalty or forfeiture when the action is given to the party prosecuting therefor and the state, except when the statute imposing it provides a different limitation.

(2) An action to recover damages for libel, slander, assault, battery or false imprisonment.

(4) An action to recover a forfeiture or penalty imposed by any bylaw, ordinance or regulation of any town, county, city or village or of any corporation organized under the laws of this state, when no other limitation is prescribed by law.

(5) Any action to recover unpaid salary, wages or other compensation for personal services, except fees for professional services.

**History:** 1961 c. 650; 1965 c. 66 s. 2.

In the absence of an express contract, recovery for services rendered a deceased person would be based on quantum meruit and (5) would apply. *Estate of Rienow*, 16 W (2d) 403, 114 NW (2d) 840.

(5) does not apply to a claim for work and material when the contract is entire. (5) can apply to services performed outside a home. *Estate of Dobreceovich*, 17 W (2d) 1, 115 NW (2d) 597.

The limitation of (5) applies to actions for quantum meruit recovery for personal services. *Estate of Voss*, 20 W (2d) 238, 121 NW (2d) 744.

A claim for payment for housework is barred by (5) even though performed by an independent contractor. *Cordova v. Gutierrez*, 23 W (2d) 593, 128 NW (2d) 62.

See note to 893.205, citing *Johnson v. Bar-Mour, Inc.* 27 W (2d) 271, 133 NW (2d) 748.

(5) does not apply to an action against an employer and a union for damages for wrongful discharge. *Cheese v. Afram Brothers Co.* 32 W (2d) 320, 145 NW (2d) 716.

Where personal services are intertwined with other claims so as to be inseparable, the 6-year statute will apply, but they must be inseparable in fact. *Estate of Javornik*, 35 W (2d) 741, 151 NW (2d) 721.

**893.22 Within one year.** Within one year:

(1) An action against a sheriff or other officer for the escape of a prisoner arrested or imprisoned on civil process.

(2) All actions for damages for seduction or alienation of affections.

**History:** 1965 c. 53 s. 60; 1965 c. 66 s. 2.

**Cross References:** See 893.19 (8) for one-year notice provision as to actions against railroad companies.

When the loss of consortium occurs, the cause of action accrues and the one-year statute of limitations begins to run. Alienation of affections is a gradual process, usually a series of wrongful acts or persuasions taking place over a period of time and culminating in the loss of consortium of the spouse. *Chenow v. Aliota*, 14 W (2d) 352, 111 NW (2d) 141.

The period of limitation is deemed to commence when the plaintiff loses the affection of the spouse, rather than the time of any particular acts of the defendant causing the loss. The basis of a cause of action for alienation of a wife's affections is a loss of consortium—the wife's companionship and society and her duties such as conjugal affection and assistance toward her husband—and when the loss of consortium occurs, a cause of action accrues and the one-year statutory limitation begins to run. *Fischer v. Mahlke*, 18 W (2d) 429, 118 NW (2d) 935.

**893.23 Within 30 days.** Within 30 days:

An action to contest the validity of any state or municipal bond which has been certified by the attorney general, as provided in s. 14.53 (5a), for other than constitutional reasons, must be commenced within 30 days after such certification in the case of a state bond, and within 30 days after the recording of such certificate as provided by s. 67.02 (3), in the case of a municipal bond.

**History:** 1965 c. 66 s. 2.

**893.24 Within 9 months.** Every action or proceeding to avoid any special assessment, or taxes levied pursuant to the same, or to restrain the levy of such taxes or the sale of lands for the nonpayment of such taxes, shall be brought within 9 months from the notice thereof, and not thereafter. This limitation shall cure all defects in the proceedings, and

defects of power on the part of the officers making the assessment, except in cases where the lands are not liable to the assessment, or the city has no power to make any such assessment, or the amount of the assessment has been paid or a redemption made.

**History:** 1965 c. 66 s. 2.

This section applies to an action to set aside a special assessment for cleaning out a drainage ditch originally constructed in 1904. *Essock v. Cold Spring*, 10 W (2d) 98, 102 NW (2d) 110.

See note to 66.12, citing *Bornemann v. New Berlin*, 27 W (2d) 102, 133 NW (2d) 328.

**893.245 Foreign corporation, conveyances.** Any action to recover possession of, or avoid the title to, any real or personal property because such property was acquired, held or disposed of by a foreign corporation at any time before July 10, 1963, and without complying with the terms of s. 180.801, statutes of 1951, or corresponding provisions of prior statutes shall be brought on or before December 31, 1965, and not thereafter.

**History:** 1965 c. 53, 66 s. 2.

**Note:** Section 63 of ch. 53, Laws 1965, provides: "The repeal of section 330.22 (3) and (4) of the statutes and the creation of section 330.245 by this act shall not be construed as reviving or reinstating any cause of action barred on or before December 31, 1965, by section 330.22 (3) or (4), or by any prior statute of like effect."

**893.25 Actions upon accounts.** In actions brought to recover the balance due upon a mutual and open account current the cause of action shall be deemed to have accrued at the time of the last item proved in such account.

**History:** 1965 c. 66 s. 2.

**893.26 Other personal actions.** All personal actions on any contract not limited by this chapter or any other law of this state shall be brought within 10 years after the accruing of the cause of action.

**History:** 1965 c. 66 s. 2.

**893.27 Defenses barred.** A cause of action upon which an action cannot be maintained, as prescribed in this chapter, cannot be effectually interposed as a defense, counterclaim or set-off.

**History:** 1965 c. 66 s. 2.

**893.29 Bank bills not affected.** None of the provisions of this chapter shall apply to any action brought upon any bills, notes or other evidences of debt issued by any bank or issued or put into circulation as money.

**History:** 1965 c. 66 s. 2.

**893.30 Limitation when person out of state.** (1) If when the cause of action shall accrue against any person he shall be out of this state such action may be commenced within the terms herein respectively limited after such person shall return or remove to

this state. But the foregoing provision shall not apply to any case where, at the time the cause of action shall accrue, neither the party against or in favor of whom the same shall accrue is a resident of this state; and if, after a cause of action shall have accrued against any person, he shall depart from and reside out of this state the time of his absence shall not be deemed or taken as any part of the time limited for the commencement of such action; provided, that no foreign corporation which shall have filed with the secretary of state, or any other state official or body, pursuant to the requirements of any applicable statute of this state, an instrument appointing a registered agent as provided in ch. 180, a resident or any state official or body of this state, its attorney or agent, on whom, pursuant to such instrument or any applicable statute, service of process may be made in connection with such cause of action, shall be deemed a person out of this state within the meaning of this section for the period during which such appointment is effective, excluding from such period the time of absence from this state of any registered agent, resident agent or attorney so appointed who shall have departed from and resided outside of this state.

(2) This section shall not apply to any person who, while out of this state, may be subjected to personal jurisdiction in the courts of this state on any of the grounds specified in s. 262.05.

**History:** 1965 c. 66 s. 2; 1965 [13.93 (1) (e)].

**893.31 Application to alien enemy.** When a person shall be an alien subject or citizen of a country at war with the United States the time of the continuance of the war shall not be a part of the time limited for the commencement of the action.

**History:** 1965 c. 66 s. 2.

**893.32 Effect of military exemption from civil process.** The time during which any resident of this state has been exempt from the service of civil process on account of being in the military service of the United States or of this state, shall not be taken as any part of the time limited by law for the commencement of any civil action in favor of or against such person.

**History:** 1965 c. 66 s. 2.

**893.33 Persons under disability.** If a person entitled to bring an action mentioned in this chapter, except actions for the recovery of a penalty or forfeiture or against a sheriff or other officer for an escape, or for the recovery of real property or the possession thereof be,



at the time the cause of action accrued, either

- (1) Within the age of 21 years; or
- (2) Insane; or
- (3) Imprisoned on a criminal charge or in execution under sentence of a criminal court for a term less than his natural life, the time of such disability is not a part of the time limited for the commencement of the action, except that the period within which the action must be brought cannot be extended more than 5 years by any such disability, except infancy; nor can it be so extended in any case longer than one year after the disability ceases.

**History:** 1965 c. 66 s. 2.

Action may be maintained if brought within one year after plaintiff attains majority, notwithstanding dismissal of his guardian ad litem's earlier action because not brought within the limitation period. *Grummitt v. Sturgeon Bay Winter Sports Club*, 218 F Supp. 946.

**893.34 Limitation in case of death.** If a person entitled to bring an action dies before the expiration of the time limited for the commencement thereof and the cause of action survives an action may be commenced by his representatives after the expiration of that time and within one year from his death. If a person against whom an action may be brought dies before the expiration of the time limited for the commencement thereof and the cause of action survives an action may be commenced after the expiration of that time and within one year after the issuing, within this state, of letters testamentary or of administration.

**History:** 1965 c. 66 s. 2.

The filing of a claim against the estate of a deceased constituted the commencement of an action within the meaning of this section. *Estate of Dobrecevic*, 17 W (2d) 1, 115 NW (2d) 597.

**893.35 Appeals; if judgment for defendant reversed, new action for plaintiff.** If an action shall be commenced within the time prescribed therefor and a judgment therein for the plaintiff, or the defendant, be reversed on appeal, the plaintiff, or if he dies and the cause of action survives, his heirs or representatives may commence a new action within one year after the reversal.

**History:** 1965 c. 66 s. 2.

This section applies where the court modifies a judgment as well as where it reverses one. *Pattermann v. Whitewater*, 32 W (2d) 350, 145 NW (2d) 705.

**893.36 When action stayed.** When the commencement of an action shall be stayed by injunction or statutory prohibition the time of the continuance of the injunction or prohibition shall not be part of the time limited for the commencement of the action.

**History:** 1965 c. 66 s. 2.

**893.37 Disability.** No person shall avail himself of a disability unless it existed when his right of action accrued.

**History:** 1965 c. 66 s. 2.

**893.38 More than one disability.** When 2 or more disabilities shall coexist at the time the right of action accrued the limitation shall not attach until they all be removed.

**History:** 1965 c. 66 s. 2.

**893.39 Action, when commenced.** An action shall be deemed commenced, within the meaning of any provision of law which limits the time for the commencement of an action, as to each defendant, when the summons is served on him or on a codefendant who is a joint contractor or otherwise united in interest with him.

**History:** 1965 c. 66 s. 2.

**893.40 Attempt to commence action.** An attempt to commence an action shall be deemed equivalent to the commencement thereof, within the meaning of any provision of law which limits the time for the commencement of an action, when the summons is delivered, with the intent that it shall be actually served, to the sheriff or other proper officer of the county in which the defendants or one of them usually or last resided; or if a corporation organized under the laws of this state be defendant to the sheriff or the proper officer of the county in which it was established by law, or where its general business is transacted, or where it keeps an office for the transaction of business, or wherein any officer, attorney, agent or other person upon whom the summons may by law be served resides or has his office; or if such corporation has no such place of business or any officer or other person upon whom the summons may by law be served known to the plaintiff, or if such defendant be a nonresident, or a nonresident corporation, to the sheriff or other proper officer of the county in which plaintiff shall bring his action. But such an attempt must be followed by the first publication of the summons or the service thereof within 60 days. If the action be in a court not of record the service thereof must be made with due diligence.

**History:** 1965 c. 66 s. 2.

Delivery of a federal court summons to the marshal prior to the running of the statute of limitations and service by him within 60 days is good under this section. *Magid v. Decker*, 251 F Supp. 955.

**893.41 Presenting claims.** The presentation of any claim, in cases where by law such presentment is required, to the county court shall be deemed the commencement of

an action within the meaning of any law limiting the time for the commencement of an action thereon.

**History:** 1965 c. 66 s. 2.

**893.42 Acknowledgment or new promise.**

No acknowledgment or promise shall be sufficient evidence of a new or continuing contract, whereby to take the cause out of the operation of this chapter, unless the same be contained in some writing signed by the party to be charged thereby.

**History:** 1965 c. 66 s. 2.

**893.43 Acknowledgment, who not bound by.**

If there are 2 or more joint contractors or joint administrators of any contractor no such joint contractor, executor or administrator shall lose the benefit of this chapter so as to be chargeable by reason only of any acknowledgment or promise made by any other or others of them.

**History:** 1965 c. 66 s. 2; 1965 [13.93 (1) (e)].

**893.44 Actions against parties jointly liable.**

In actions commenced against 2 or more joint contractors or joint executors or administrators of any contractors, if it shall appear, on the trial or otherwise, that the plaintiff is barred by this chapter as to one or more of the defendants, but is entitled to recover against any other or others of them, by virtue of a new acknowledgment or promise, or otherwise, judgment shall be given for the plaintiff as to any of the defendants against whom he is entitled to recover and for the other defendant or defendants against the plaintiff.

**History:** 1965 c. 66 s. 2; 1965 [13.93 (1) (e)].

**893.45 Parties need not be joined, when.**

If in any action on contract the defendant shall answer that any other person ought to have been jointly sued and shall verify such answer by his oath or affirmation, and issue shall be joined thereon, and it shall appear on the trial that the action is barred against the person so named in such answer by reason of this chapter, the issue shall be found for the plaintiff.

**History:** 1965 c. 66 s. 2; 1965 [13.93 (1) (e)].

**893.46 Payment, effect of, not altered.**

Nothing contained in ss. 893.42 to 893.45 shall alter, take away or lessen the effect of a payment of any principal or interest made by any person, but no indorsement or memorandum of any such payment, written or made upon any promissory note, bill of exchange or other writing, by or on behalf of the party to whom such payment shall be made or purport to be made, shall be deemed

sufficient proof of the payment so as to take the case out of the operation of this chapter.

**History:** 1965 c. 66 s. 2; 1965 [13.93 (1) (e)].

**893.47 Payment by one not to affect others.**

If there are 2 or more joint contractors or joint executors or administrators of any contractor no one of them shall lose the benefit of this chapter, so as to be chargeable, by reason only of any payment made by any other or others of them.

**History:** 1965 c. 66 s. 2; 1965 [13.93 (1) (e)].

**893.48 Computation of time, basis for.**

The periods of limitation, unless otherwise specially prescribed by law, must be computed from the time of the accruing of the right to relief by action, special proceedings, defense or otherwise, as the case requires, to the time when the claim to that relief is actually interposed by the party as a plaintiff or defendant in the particular action or special proceeding, except that as to a defense, set-off or counterclaim the time of the commencement of the plaintiff's action shall be deemed the time when the claim for relief as to such defense, set-off or counterclaim is interposed.

**History:** 1965 c. 66 s. 2.

**893.49 Dismissal of suit after answer.**

When a defendant in an action has interposed an answer as a defense, set-off or counterclaim upon which he would be entitled to rely in such action the remedy upon which, at the time of the commencement of such action, was not barred by law, and such complaint is dismissed or the action is discontinued the time which intervened between the commencement and the termination of such action shall not be deemed a part of the time limited for the commencement of an action by the defendant to recover for the cause of action so interposed as a defense, set-off or counterclaim.

**History:** 1965 c. 66 s. 2.

**893.50 Extension of time if no person to sue.**

There being no person in existence who is authorized to bring an action thereon at the time a cause of action accrues shall not extend the time within which, according to this chapter, an action can be commenced upon such cause of action to more than double the period otherwise prescribed by law.

**History:** 1965 c. 66 s. 2; 1965 [13.93 (1) (e)].

**893.51 What actions not affected.**

This chapter shall not affect actions against directors or stockholders of a moneyed corporation or banking association to recover a forfeiture imposed or to enforce a liability created by

law; but such actions must be brought within 6 years after the discovery by the aggrieved party of the facts upon which the forfeiture attached or the liability was created.

**History:** 1965 c. 66 s. 2.

**893.52 County court; insufficient service.**

No action or proceeding to set aside any judgment, order or decree entered before June 10, 1951, by any county court after notice of the application for such judgment, order or

decree has been given in accordance with the requirements of the then existing applicable statutes, shall be commenced after one year from said date, based solely on the ground of failure to give other or additional notice of the application therefor; and no such judgment, order or decree shall be subject to direct or collateral attack in any action or proceeding based solely on such ground, after one year from said date.

**History:** 1965 c. 66 s. 2.