

CHAPTER 706

CONVEYANCES OF REAL PROPERTY; RECORDING; TITLES

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706.01 Scope, definitions, construction.

(1) Subject to the exclusions in sub. (2), this chapter shall govern every transaction by which any interest in land is created, aliened, mortgaged, assigned or may be otherwise affected in law or in equity.

(2) Excluded from the operation of this chapter are transactions which an interest in land is affected:

- (a) By act or operation of law; or
- (b) By will; or

(c) By lease for a term limited to one year or less; or by contract or option to lease for such period which postpones the commencement of the agreed lease to a time not later than 60 days after the date of the contract or option; or by assignment, modification or termination of lease when, at the time such assignment, modification or termination is made, the unexpired term is limited to one year or less, and remains so limited under the lease as modified; except that instruments relating to such excluded transactions, if in recordable form, shall be entitled to record.

(3) A "conveyance" is a written instrument, evidencing a transaction governed by this chapter, which satisfies the requirements of s. 706.02.

(4) "Signed" includes any handwritten signature or symbol on a conveyance intended by the person affixing or adopting the same to constitute an execution of the conveyance.

(5) "Grantor" means the person from whom an interest in lands passes by conveyance and includes, without limitation, lessors, vendors, mortgagors, optionors, releasors, assignors and trust settlers of interest in lands. "Grantee" means the person to whom such interest passes. Whenever consistent with the context, reference to the interest of a party includes the interest of his heirs, successors, personal representatives and assigns.

(6) This chapter shall be liberally construed, in cases of conflict or ambiguity, so as to effectuate the intentions of parties who have acted in good faith.

(7) "Homestead", as used in this chapter, means the dwelling, and so much of the land surrounding it as is reasonably necessary for use of the dwelling as a home, but not less than one-fourth acre (if available) and not exceeding 40 acres.

History: 1971 c 41

706.02 Formal requisites. (1) Transactions under s. 706.01 (1) shall not be valid unless evidenced by a conveyance which:

- (a) Identifies the parties; and
- (b) Identifies the land; and
- (c) Identifies the interest conveyed, and any material term, condition, reservation, exception or contingency upon which the interest is to arise, continue or be extinguished, limited or encumbered; and
- (d) Is signed by or on behalf of each of the grantors; and
- (e) Is signed by or on behalf of all parties, if a lease or contract to convey; and

(f) Is signed, or joined in by separate conveyance, by or on behalf of each spouse, if the conveyance alienates any interest of a married person in a homestead under s. 706.01 (7) except conveyances between spouses; and

(g) Is delivered. Except under s. 706.09, a conveyance delivered upon a parol limitation or condition shall be subject thereto only if the issue arises in an action or proceeding commenced within 5 years following the date of such conditional delivery; however, when death or survival of a grantor is made such a limiting or conditioning circumstance, the conveyance shall be subject thereto only if the issue arises in an action or proceeding commenced within such 5-year period and commenced prior to such death.

(2) A conveyance may satisfy any of the foregoing requirements of this section:

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(a) By specific reference, in a writing signed as required, to extrinsic writings in existence when the conveyance is executed; or

(b) By physical annexation of several writings to one another, with the mutual consent of the parties; or

(c) By several writings which show expressly on their faces that they refer to the same transaction, and which the parties have mutually acknowledged by conduct or agreement as evidences of the transaction.

History: 1971 c. 211 s. 126.

Under 235.01 (2), Stats. 1967, there can be no waiver of the necessity of a wife's joining in a deed of a homestead and no finding of agency of the husband will sustain the deed. *Wangen v. Leum*, 46 W (2d) 60, 174 NW (2d) 266.

A deed which does not express the consideration held incomplete where there was no evidence of an agreement as to what the consideration was. *Johnson v. Mielke*, 49 W (2d) 60, 181 NW (2d) 503.

In pleading a contract which is subject to the statute of frauds it is not necessary to allege facts to establish that the contract complies with the statute or is within its exceptions. *Ritterbusch v. Ritterbusch*, 50 W (2d) 633, 184 NW (2d) 865.

An option to purchase land must be in writing and cannot be modified orally, but a seller may orally agree to accept payment in full rather than in installments. *Kubnick v. Bohne*, 56 W (2d) 527, 202 NW (2d) 400.

706.03 Agents, officers and guardians.

(1) A conveyance signed by one purporting to act as agent for another shall be ineffective as against the purported principal unless such agent was expressly authorized, and unless the authorizing principal is identified as such in the conveyance or in the form of signature or acknowledgment. The burden of proving the authority of any such agent shall be upon the person asserting the same.

(2) Unless a different authorization is recorded under sub. (3) or is contained in articles of incorporation adopted and filed pursuant to s. 180.70 (2), any officer of a private corporation, whose signature is attested by another officer, is authorized to sign conveyances in the corporate name. The absence of a corporate seal shall not invalidate any corporate conveyance. Public corporations shall authorize and execute conveyances as provided by law.

(3) Any private corporation may, by resolution of its governing board, duly adopted, certified and recorded in the office of the register of deeds of the county in which a conveyance executed by such corporation is to be recorded, authorize by name or title one or more persons, whether or not officers of such corporation, to execute conveyances, either generally or with specified limitation, in the name and on behalf of such corporation. After adoption and recording of such resolution and until recording of a resolution amending or revoking the same, conveyances may be executed on behalf of such corporation only in accordance with the terms thereof.

(4) Conveyances by minors and incompetents are effective only if executed by an authorized guardian on behalf of such minor or incompetent.

History: 1971 c. 228.

706.04 Equitable relief. A transaction which does not satisfy one or more of the requirements of s. 706.02 may be enforceable in whole or in part under doctrines of equity, provided all of the elements of the transaction are clearly and satisfactorily proved and, in addition:

(1) The deficiency of the conveyance may be supplied by reformation in equity; or

(2) The party against whom enforcement is sought would be unjustly enriched if enforcement of the transaction were denied; or

(3) The party against whom enforcement is sought is equitably estopped from asserting the deficiency. A party may be so estopped whenever, pursuant to the transaction and in good faith reliance thereon, the party claiming estoppel has changed his position to his substantial detriment under circumstances such that the detriment so incurred may not be effectively recovered otherwise than by enforcement of the transaction, and either:

(a) The grantee has been admitted into substantial possession or use of the premises or has been permitted to retain such possession or use after termination of a prior right thereto; or

(b) The detriment so incurred was incurred with the prior knowing consent or approval of the party sought to be estopped.

706.05 Formal requisites for record. (1)

Every conveyance, and every other instrument which affects title to land in this state, shall be entitled to record in the office of the register of deeds of each county in which land affected thereby may lie.

(2) Except as different or additional requirements may be provided by law, every instrument offered for record shall:

(a) Bear such signatures as are required by law;

(b) Contain a form of authentication authorized by s. 706.06, 706.065 or 706.07;

(c) Identify, to the extent that the nature of the instrument permits, and in form and terms which permit ready entry upon the various books and indices publicly maintained as land records of such county, the land to which such instrument relates and the parties or other persons whose interests in such land are affected. Such identification may be either by the terms of the instrument or by reference to an instrument of record in the same office, naming the place where such record may be found.

(3) Any person who anticipates that he may become a party to a number of conveyances of a given form may cause a prototype of such form to be recorded, accompanied by a certificate declaring the intention of the recording party to incorporate the terms of such prototype in future recorded conveyances by reference.

(4) Copies of instruments affecting title to land in this state, authenticated by certificate of any public officer, either of this or any other state or foreign country, in whose office the original is filed or recorded pursuant to law, may be recorded in every case in which the original would be entitled to record under this section.

(5) Except as may otherwise be expressly provided, no instrument shall be denied acceptance for record because of the absence of venue, seals, witnesses or other matter of form.

(6) Every instrument which the register of deeds shall accept for record shall be deemed duly recorded despite its failure to conform to one or more of the requirements of this section, provided the instrument is properly indexed in a public index maintained in the office of such register of deeds and recorded at length at the place there shown.

(7) A duly recorded certificate signed by or on behalf of the holder of record of any mortgage or other security interest in lands, and authenticated as provided by s. 706.06, 706.065 or 706.07 identifying the mortgage or other interest and stating that the same has been paid or satisfied in whole or in part, shall be sufficient to satisfy such mortgage or other interest of record.

(8) If any mortgage-holder after a full or partial performance of the conditions of the mortgage, whether before or after a breach thereof, unreasonably fails or refuses to execute and record, within 7 days after written request and tender of recording fees, a proper full or partial satisfaction of such mortgage together with any instruments required to establish of record the right of the signer to satisfy the same, he shall be liable to the mortgagor in the sum of \$100 penalty damages, plus actual damages occasioned by such neglect or refusal.

History: 1971 c. 211

706.06 Authentication. (1) Any instrument may be acknowledged, or its execution otherwise authenticated by its signators, as provided by the laws of this state; or as provided in this section, s. 706.065 or 706.07.

(2) Any public officer entitled by virtue of his office to administer oaths, and any member in good standing of the state bar of Wisconsin, may authenticate one or more of the signatures on an instrument relating to lands in this state, by indorsing the instrument "Acknowledged", "Authenticated" or "Signatures Guaranteed",

or other words to similar effect, adding the date of authentication, his own signature, and his official or professional title. Such indorsement, unless expressly limited, shall operate as an authentication of all signatures on the instrument; and shall constitute a certification that each authenticated signature is the genuine signature of the person represented; and, as to signatures made in a representative capacity, that the signer purported, and was believed, to be such representative.

(3) Affidavits shall be authenticated by jurat, executed by a person entitled to administer oaths.

(4) In addition to any criminal penalty or civil remedy otherwise provided by law, knowingly false authentication of an instrument shall subject the authenticator to liability in tort for compensatory and punitive damages caused thereby to any person.

History: 1971 c. 211; 1973 c. 243.

706.065 Uniform recognition of acknowledgments act. (1) RECOGNITION OF NOTARIAL ACTS PERFORMED OUTSIDE THIS STATE. For the purposes of this section, "notarial acts" means acts which the laws and regulations of this state authorize notaries public of this state to perform, including the administering of oaths and affirmations, taking proof of execution and acknowledgments of instruments and attesting documents. Notarial acts may be performed outside this state for use in this state with the same effect as if performed by a notary public of this state by the following persons authorized pursuant to the laws and regulations of other governments in addition to any other person authorized by the laws and regulations of this state:

(a) A notary public authorized to perform notarial acts in the place in which the act is performed;

(b) A judge, clerk or deputy clerk of any court of record in the place in which the notarial act is performed;

(c) An officer of the foreign service of the United States, a consular agent or any other person authorized by regulation of the United States department of state to perform notarial acts in the place in which the act is performed;

(d) A commissioned officer in active service with the armed forces of the United States and any other person authorized by regulation of the armed forces to perform notarial acts if the notarial act is performed for one of the following or his dependents: a merchant seaman of the United States, a member of the armed forces of the United States or any other person serving with or accompanying the armed forces of the United States; or

(a) A notary public authorized to perform notarial acts in the place in which the act is performed;

(b) A judge, clerk or deputy clerk of any court of record in the place in which the notarial act is performed;

(c) An officer of the foreign service of the United States, a consular agent or any other person authorized by regulation of the United States department of state to perform notarial acts in the place in which the act is performed;

(d) A commissioned officer in active service with the armed forces of the United States and any other person authorized by regulation of the armed forces to perform notarial acts if the notarial act is performed for one of the following or his dependents: a merchant seaman of the United States, a member of the armed forces of the United States or any other person serving with or accompanying the armed forces of the United States; or

(e) Any other person authorized to perform notarial acts in the place in which the act is performed.

(2) AUTHENTICATION OF AUTHORITY OF OFFICER. (a) If the notarial act is performed by any of the persons described in sub. (1) (a) to (d), other than a person authorized to perform notarial acts by the laws or regulations of a foreign country, the signature, the rank or title and the serial number, if any, of the person are sufficient proof of the authority of a holder of that rank or title to perform the act. Further proof of his authority is not required.

(b) If the notarial act is performed by a person authorized by the laws or regulations of a foreign country to perform the act, there is sufficient proof of the authority of that person to act if:

1. Either a foreign service officer of the United States resident in the country in which the act is performed or a diplomatic or consular officer of the foreign country resident in the United States certifies that a person holding that office is authorized to perform the act;

2. The official seal of the person performing the notarial act is affixed to the document; or

3. The title and indication of authority to perform notarial acts of the person appears either in a digest of foreign law or in a list customarily used as a source of such information.

(c) If the notarial act is performed by a person other than one described in pars. (a) and (b), there is sufficient proof of the authority of that person to act if the clerk of a court of record in the place in which the notarial act is performed certifies to the official character of that person and to his authority to perform the notarial act.

(d) The signature and title of the person performing the act are prima facie evidence that he is a person with the designated title and that the signature is genuine.

(3) CERTIFICATE OF PERSON TAKING ACKNOWLEDGMENT. The person taking an acknowledgment shall certify that:

(a) The person acknowledging appeared before him and acknowledged he executed the instrument; and

(b) The person acknowledging was known to the person taking the acknowledgment or that the person taking the acknowledgment had satisfactory evidence that the person acknowledging was the person described in and who executed the instrument.

(4) RECOGNITION OF CERTIFICATE OF ACKNOWLEDGMENT. The form of a certificate of acknowledgment used by a person whose authority is recognized under sub. (1) shall be accepted in this state if:

(a) The certificate is in a form prescribed by the laws or regulations of this state;

(b) The certificate is in a form prescribed by the laws or regulations applicable in the place in which the acknowledgment is taken; or

(c) The certificate contains the words "acknowledged before me", or their substantial equivalent.

(5) CERTIFICATE OF ACKNOWLEDGMENT. The words "acknowledged before me" mean:

(a) That the person acknowledging appeared before the person taking the acknowledgment;

(b) That he acknowledged he executed the instrument;

(c) That, in the case of:

1. A natural person, he executed the instrument for the purposes therein stated;

2. A corporation, the officer or agent acknowledged he held the position or title set forth in the instrument and certificate, he signed the instrument on behalf of the corporation by proper authority, and the instrument was the act of the corporation for the purpose therein stated;

3. A partnership, the partner or agent acknowledged he signed the instrument on behalf of the partnership by proper authority and he executed the instrument as the act of the partnership for the purposes therein stated;

4. A person acknowledging as principal by an attorney in fact, he executed the instrument by proper authority as the act of the principal for the purposes therein stated;

5. A person acknowledging as a public officer, trustee, administrator, guardian or other representative, he signed the instrument by proper authority and he executed the instrument in the capacity and for the purposes therein stated; and

(d) That the person taking the acknowledgment either knew or had satisfactory evidence that the person acknowledging was the person named in the instrument or certificate.

(6) SHORT FORMS OF ACKNOWLEDGMENT. The forms of acknowledgment set forth in this subsection may be used and are sufficient for their respective purposes under any law of this state. The forms shall be known as "statutory short forms of acknowledgment" and may be referred to by that name. The authorization of the forms in this subsection does not preclude the use of other forms.

(a) For an individual acting in his own right:

State of _____

County of _____

The foregoing instrument was acknowledged before me this (date) by (name of person acknowledged.)

(Signature of person taking acknowledgment)

(Title or rank)

(Serial number, if any)

(b) For a corporation:

State of

County of

The foregoing instrument was acknowledged before me this (date) by (name of officer or agent, title of officer or agent) of (name of corporation acknowledging) a (state or place of incorporation) corporation, on behalf of the corporation.

(Signature of person taking acknowledgment)

(Title or rank)

(Serial number, if any)

(c) For a partnership:

State of

County of

The foregoing instrument was acknowledged before me this (date) by (name of acknowledging partner or agent), partner (or agent) on behalf of (name of partnership), a partnership.

(Signature of person taking acknowledgment)

(Title or rank)

(Serial number, if any)

(d) For an individual acting as principal by an attorney in fact:

State of

County of

The foregoing instrument was acknowledged before me this (date) by (name of attorney in fact) as attorney in fact on behalf of (name of principal).

(Signature of person taking acknowledgment)

(Title or rank)

(Serial number, if any)

(e) By any public officer, trustee or personal representative:

State of

County of

The foregoing instrument was acknowledged before me this (date) by (name and title of position).

(Signature of person taking acknowledgment)

(Title or rank)

(Serial number, if any)

(7) ACKNOWLEDGMENTS NOT AFFECTED BY THIS SECTION. A notarial act performed prior to May 3, 1969 is not affected by this section. This section provides an additional method of proving notarial acts. Nothing in this section diminishes or invalidates the recognition accorded to notarial acts by other laws or regulations of this state.

(8) UNIFORMITY OF INTERPRETATION. This section shall be so interpreted as to make uniform the laws of those states which enact it.

(9) SHORT TITLE. This section may be cited as the uniform recognition of acknowledgments act.

706.07 Uniform acknowledgment act. (1) MANNER OF ACKNOWLEDGMENT. Any instrument may be acknowledged as provided by the laws of this state, or as provided by this section.

(2) WHO MAY TAKE WITHIN THE STATE. The acknowledgment of any instrument may be made in this state before:

(a) A judge of a court of record;

(b) A clerk or deputy clerk of a court having a seal;

(c) A register of deeds;

(d) A notary public;

(e) A clerk of a court of record;

(f) A court commissioner;

(g) A county clerk or deputy county clerk;

(h) A municipal justice; or

(i) A United States commissioner residing within this state who files with the clerk of the circuit court of the county in which he resides his certificate of appointment as commissioner, or a copy thereof certified by the clerk of the court which appointed him.

(3) WHO MAY TAKE WITHIN THE UNITED STATES. The acknowledgment of any instrument may be made without the state but within the United States or a territory or insular possession of the United States or the District of Columbia or the Philippine Islands and within the jurisdiction of the officer, before:

(a) A clerk or deputy clerk of any federal court;

(b) A clerk or deputy clerk of any court of record of any state or other jurisdiction;

(c) A notary public;

(d) A commissioner of deeds.

(4) WHO MAY TAKE WITHOUT THE UNITED STATES. The acknowledgment of any instrument may be made without the United States before:

(a) An ambassador, minister, charge d'affaires, counselor to or secretary of a legation, consul general, consul, vice consul, commercial attache or consular agent of the United States accredited to the country where the acknowledgment is made;

(b) A notary public of the country where the acknowledgment is made;

(c) A judge or clerk of a court of record of the country where the acknowledgment is made.

(5) REQUIRED KNOWLEDGE OF OFFICER. The officer taking the acknowledgment shall know or have satisfactory evidence that the person making the acknowledgment is the person described in and who executed the instrument.

(6) MARRIED WOMAN'S ACKNOWLEDGMENT. An acknowledgment of a married woman may be made in the same form as though she were unmarried.

(7) FORMS OF CERTIFICATES. An officer taking the acknowledgment shall indorse thereon or attach thereto a certificate substantially in one of the following forms:

(a) By individuals:

State of,
County of

On this the day of, 19.., before me,, the undersigned officer, personally appeared, known to me (or satisfactorily proven) to be the person whose name subscribed to the within instrument and acknowledged thathe.... executed the same for the purposes therein contained.

In witness whereof I hereunto set my hand and official seal.

..... Title of Officer.

(b) By a corporation:

State of,
County of

On this the day of, 19.., before me,, the undersigned officer, personally appeared, who acknowledged himself to be the of, a corporation, and that he, as such, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation by himself as

In witness whereof I hereunto set my hand and official seal.

..... Title of Officer.

(c) By an attorney in fact:

State of,
County of

On this the day of, 19.., before me,, the undersigned officer, personally appeared, known to me (or satisfactorily proven) to be the person whose name is subscribed to the foregoing instrument as attorney in fact for and acknowledged that he executed the same as the act of his principal for the purposes therein contained.

In witness whereof I hereunto set my hand and official seal.

..... Title of Officer.

(d) By any public officer or deputy thereof, or by any trustee, administrator, guardian or executor:

State of,
County of

On this the day of, 19.., before me,, the undersigned officer, personally appeared, of the state (county or city as the case may be) of, known to me (or satisfactorily proven) to be the person described in the foregoing instrument, and acknowledged that he executed the same in the capacity therein stated and for the purposes therein contained.

In witness whereof I hereunto set my hand and official seal.

..... Title of Officer.

(e) General:

State of,
County of

Personally came before me this day of, 19.., the above (or within) named A. B. and C. B., his wife (or if an officer adding the name of his office), to me known to be the persons who executed the foregoing (or within) instrument and acknowledge the same.

(Seal) (Insert designation of officer)

(8) EXECUTION OF CERTIFICATE. The certificate of the acknowledging officer shall be completed by his signature, his official seal if he has one, the title of his office, and if he is a notary public, the date his commission expires or if permanently commissioned, words to that effect.

(9) AUTHENTICATION OF FOREIGN ACKNOWLEDGMENTS. (a) If the acknowledgment is taken within this state or is made without the United States by an officer of the United States no authentication shall be necessary.

(b) If the acknowledgment is taken in any other state, territory or district of the United States, unless it is taken before a commissioner appointed by the governor of this state, a clerk of a court of record with its seal attached, or a notary public with his seal attached, the certificate of acknowledgment shall be authenticated by a certificate as to the official character of the officer taking the acknowledgment, executed by a clerk of a court of record of the county, parish or district in which the acknowledgment is taken. The signature to the authenticating certificate may be a facsimile printed, stamped, photographed or engraved thereon when the certificate bears the seal of the authenticating officer. A clerk authenticating an acknowledgment shall indorse thereon or attach thereto a certificate in substantially the following form:

State of,
County of

I, clerk of the in and for said county, which court is a court of record, having a seal, do hereby certify that by and before whom the foregoing (or annexed) acknowledgment was taken, was at the time of taking the same a residing (or authorized to act) in said county, and was authorized by the laws of said state to take and certify acknowledgments in said state, and, further, that I am acquainted with his handwriting and that I believe that the signature to the certificate of acknowledgment is genuine.

In testimony whereof I have hereunto set my hand and affixed the seal of the court this day of, 19..

(c) If the acknowledgment is taken without the United States and by a notary public or a judge or clerk of a court of record of the country

where the acknowledgment is taken; the certificate shall be authenticated by a certificate under the great seal of state of the country, affixed by the custodian of such seal, or by a certificate of a diplomatic consular or commercial officer of the United States accredited to that country, certifying as to the official character of such officer. The officer authenticating an acknowledgment shall indorse thereon or attach thereto a certificate in substantially the form prescribed in par. (b).

(10) VALIDITY OF FOREIGN ACKNOWLEDGMENTS. Notwithstanding any provision in this section, the execution and acknowledgment of any instrument without this state in compliance with the manner and form prescribed by the laws of the place of its execution, verified by the official seal of the officer before whom it is acknowledged, shall have the same effect as an acknowledgment prescribed by the laws of this state for instruments executed within the state, and, if so executed and acknowledged, the certificate of acknowledgment may state that fact in lieu of other proof thereof.

(11) PERSONS IN ARMED FORCES AND DEPENDENTS. In addition to the acknowledgment of instruments in the manner and form and as otherwise authorized by this section, persons serving in or with the armed forces of the U.S. or their dependents, wherever located, may acknowledge the same before any commissioned officer in active service of the armed forces of the U.S. the instrument shall not be rendered invalid by the failure to state therein the place of execution or acknowledgment. No authentication of the officer's certificate of acknowledgment shall be required but the officer taking the acknowledgment shall indorse thereon or attach thereto a certificate substantially in the following form:

On this day of 19...., before me,, the undersigned officer, personally appeared, Serial No., known to me (or satisfactorily proven) to be (serving in or with the armed forces of the United States) (a dependent of, Serial No., a person serving in or with the armed forces of the United States) and to be the person whose name is subscribed to the within instrument and acknowledged thathe.... executed the same for the purposes therein contained. And the undersigned does further certify that he is at the date of this certificate a commissioned officer of the rank stated below, and is in the active service of the armed forces of the United States.

.... Signature of Officer
Rank and Serial No. of Officer and Command to which attached.

(12) ACKNOWLEDGMENTS VALIDATED. Any defective acknowledgment taken prior to the

effective date of this section but which would be valid if taken under this section is hereby validated.

(13) ABSENCE OF SEAL OR WITNESSES. The absence of a seal or of witnesses to an instrument which is acknowledged as provided by subs. (7) (a) to (e) and (8) to (11) shall not render the instrument unrecordable.

(14) UNIFORMITY OF INTERPRETATION. This section shall be so interpreted as to make uniform the laws of those states which enact it.

(15) NAME OF ACT. This section may be cited as the uniform acknowledgment act.

706.08 Nonrecording, effect. (1) Every conveyance (except patents issued by the United States or this state, or by the proper officers of either) which is not recorded as provided by law shall be void as against any subsequent purchaser in good faith and for a valuable consideration of the same real estate or any portion thereof whose conveyance shall first be duly recorded.

(2) Where a public tract index or abstract of title index is maintained, an instrument properly indexed therein and recorded at length at the place there shown shall be deemed to be duly recorded for purposes of this section, despite any error or omission in the process of including the instrument, or prior instruments in the same chain of title, in other records. Where an instrument is not properly indexed in such tract or abstract of title index, or where such index is not publicly maintained, the instrument shall be deemed to be duly recorded only if the instrument, together with prior instruments necessary to trace title by use of alphabetical indices by names of parties, are properly indexed in such alphabetical indices, and recorded at length at the places there shown. Wherever an instrument is duly recorded hereunder, its record shall be effective as of the date and hour at which it is shown by the general index to have been accepted for record.

(3) When an express trust is created, but its existence is not disclosed in a recorded conveyance to the trustee, the title of the trustee shall be deemed absolute as against the subsequent creditors of the trustee not having notice of the trust and as against purchasers from such trustee without notice and for a valuable consideration.

(4) Where a person designated as a trustee has obtained an interest in land by a conveyance or by devise, but his authority and powers are not set forth in a recorded instrument, it shall be conclusively presumed that such person is a trustee of a valid express trust and has full power of conveyance.

(5) When a conveyance purports to be absolute in terms, but is made or intended to be made defeasible by force of another instrument for that purpose, the original conveyance shall not be thereby defeated or affected as against any person other than the maker of the defeasance or his heirs or devisees or persons having actual notice thereof, unless the instrument of defeasance has been recorded in the office of the register of deeds of the county where the lands lie.

(6) The recording of an assignment of a mortgage shall not in itself be deemed notice of such assignment to the mortgagor so as to invalidate any payment made to the mortgagee without actual notice of such assignment.

(7) No letter of attorney or other instrument containing a power to convey lands, when executed and recorded under this chapter, shall be deemed to be revoked by any act of the party by whom it was executed unless the instrument containing such revocation is also recorded in the same office in which the instrument containing the power was recorded, and such record shall import notice to all persons, including the agent named in said letter of attorney of the contents thereof. The death of the party executing such letter of attorney shall not operate as a revocation thereof as to the attorney or agent until he has notice of the death, or as to one who without notice of such death in good faith deals with the attorney or agent.

An unrecorded conveyance, if delivered, is valid against judgment creditors since they are not bona fide creditors for value. *West Federal S. & L. v. Interstate Investment*, 57 W (2d) 690, 205 NW (2d) 361.

706.09 Notice of conveyance from the record.

(1) WHEN CONVEYANCE IS FREE OF PRIOR ADVERSE CLAIM. A purchaser for a valuable consideration, without notice as defined in sub. (2), and his successors in interest, shall take and hold the estate or interest purported to be conveyed to such purchaser free of any claim adverse to or inconsistent with such estate or interest, if such adverse claim is dependent for its validity or priority upon:

(a) *Nondelivery*. Nondelivery, or conditional or revocable delivery, of any recorded conveyance, unless the condition or revocability is expressly referred to in such conveyance or other recorded instrument.

(b) *Conveyance outside chain of title not identified by definite reference*. Any conveyance, transaction or event not appearing of record in the chain of title to the real estate affected, unless such conveyance, transaction or event is identified by definite reference in an instrument of record in such chain. No reference shall be definite which fails to specify, by direct reference to a particular place in the public land

record, or, by positive statement, the nature and scope of the prior outstanding interest created or affected by such conveyance, transaction or event, the identity of the original or subsequent owner or holder of such interest, the real estate affected, and the approximate date of such conveyance, transaction or event.

(c) *Unrecorded extensions of interests expiring by lapse of time*. Continuance, extension or renewal of rights of grantees, purchasers, optionees, or lessees under any land contract, option, lease or other conveyance of an interest limited to expire, absolutely or upon a contingency, within a fixed or determinable time, where 2 years have elapsed after such time, unless there is recorded a notice or other instrument referring to such continuance, extension or renewal and stating or providing a later time for the enforcement, exercise, performance or termination of such interest and then only if less than 2 years have elapsed after such later time. This paragraph shall not apply to life estates, mortgages or trust deeds, nor shall it inferentially extend any interest otherwise expiring by lapse of time.

(d) *Nonidentity of persons in chain of title*. Nonidentity of persons named in, signing or acknowledging one or more related conveyances or instruments affecting real estate, provided the persons appear in such conveyances under identical names or under variants thereof, including inclusion, exclusion or use of: commonly recognized abbreviations, contractions, initials, or foreign, colloquial, or other equivalents; first or middle names or initials; simple transpositions which produce substantially similar pronunciation; articles or prepositions in names or titles; description of entities as corporations, companies, or any abbreviation or contraction of either; name suffixes such as senior or junior; where such identity or variance has appeared of record for 5 years.

(e) *Marital interests*. Dower or homestead of the spouse of any transferor of an interest in real estate, where the recorded conveyance purporting to transfer the same states that the person executing it is single, unmarried or widowed; or fails to indicate the marital status of such transferor, and where such conveyance has, in either case, appeared of record for 5 years. This paragraph shall not apply to the interest of a married woman who is described of record as holder in joint tenancy with such transferor.

(f) *Lack of authority of officers, agents or fiduciaries*. Any defect or insufficiency in authorization of any purported officer, partner, agent or fiduciary to act in the name or on behalf of any corporation, partnership, principal, trust, estate, minor, incompetent or other holder of an interest in real estate purported to be conveyed in

a representative capacity, after the conveyance has appeared of record for 5 years.

(g) *Defects in judicial proceedings.* Any defect or irregularity, jurisdictional or otherwise, in an action or proceeding out of which any judgment or order affecting real estate issued after the judgment or order has appeared of record for 5 years.

(h) *Nonexistence, incapacity or incompetency.* Nonexistence, ultra vires act or legal incapacity or incompetency of any purported person or legal entity, whether natural or artificial, foreign or domestic, provided the recorded conveyance or instrument affecting the real estate shall purport to have been duly executed by such purported person or legal entity, and shall have appeared of record for 5 years.

(i) *Facts not asserted of record.* Any fact not appearing of record, but the opposite or contradiction of which appears affirmatively and expressly in a conveyance, affidavit or other instrument of record in the chain of title of the real estate affected for 5 years. Such facts may, without limitation by noninclusion, relate to age, sex, birth, death, capacity, relationship, family history, descent, heirship, names, identity of persons, marriage, marital status, homestead, possession or adverse possession, residence, service in the armed forces, conflicts and ambiguities in descriptions of land in recorded instruments, identification of any recorded plats or subdivisions, corporate authorization to convey, and the happening of any condition or event which terminates an estate or interest.

(j) *Defects in tax deed.* Nonexistence or illegality of any proceedings from and including the assessment of the real estate for taxation up to and including the execution of the tax deed after the tax deed has been of record for 5 years.

(k) *Interests not of record within 30 years.* Any interest of which no affirmative and express notice appears of record within 30 years.

(2) **NOTICE OF PRIOR CLAIM.** A purchaser has notice of a prior outstanding claim or interest, within the meaning of this section wherever, at the time such purchaser's interest arises in law or equity:

(a) *Affirmative notice.* Such purchaser has affirmative notice apart from the record of the existence of such prior outstanding claim, including notice, actual or constructive, arising from use or occupancy of the real estate by any person at the time such purchaser's interest therein arises, whether or not such use or occupancy is exclusive; but no constructive notice shall be deemed to arise from use or occupancy unless due and diligent inquiry of persons using or occupying such real estate would, under the circumstances, reasonably

have disclosed such prior outstanding interest; nor unless such use or occupancy is actual, visible, open and notorious; or

(b) *Notice of record within 30 years.* There appears of record in the chain of title of the real estate affected, within 30 years and prior to the time at which the interest of such purchaser arises in law or equity, an instrument affording affirmative and express notice of such prior outstanding interest conforming to the requirements of definiteness of sub. (1) (b); or

(c) *Same.* The applicable provisions of sub. (1) (c) to (k) requiring that an instrument remain for a time of record, have not been fully satisfied.

(3) **WHEN PRIOR INTEREST NOT BARRED.** This section shall not be applied to bar or infringe any prior outstanding interest in real estate:

(a) *Public service corporations, railroads, trustees, governmental units.* While owned, occupied or used by any public service corporation as defined in s. 196.01 or any railroad corporation as defined in s. 195.02, or any trustee or receiver of any such corporation, or any mortgagee or trust deed trustee or receiver thereof; nor any such interest while held by the United States, the state or any political subdivision or municipal corporation thereof; or

(b) *Unplatted, unimproved, unused, etc.* Which, at the time such subsequent purchaser's interest arises, is unplatted, vacant and unoccupied, unused, unimproved and uncultivated; except that this paragraph shall not apply to prior interests dependent for validity or priority upon the circumstances described in sub. (1) (a), (b), (j) and (k).

(4) **CHAIN OF TITLE: DEFINITION.** The term "chain of title" as used in this section includes instruments, actions and proceedings discoverable by reasonable search of the public records and indices affecting real estate in the offices of the register of deeds and in probate and of clerks of courts of the counties in which the real estate is located; a tract index shall be deemed an index where the same is publicly maintained.

(5) **CONSTRUCTION.** Nothing in this section shall be construed to raise or support any inference adverse or hostile to marketability of titles.

(6) **EFFECTIVE DATE.** This section shall take effect and may be invoked by qualified purchasers without notice as defined in sub. (2) whose interests arise on or after July 1, 1968, and by their successors in interest thereafter.

706.10 Forms, construction. (1) The several terms and forms of conveyance authorized by law or in common use in this state at the effective date of this chapter shall have the same operation and effect under this chapter as

formerly, except as this chapter may expressly provide to the contrary; but this section shall not preclude the adoption or use of other, different or more concise forms which conform to the requirements of this chapter.

(2) No conveyance shall be void for the reason that at the time of delivery thereof such lands are in actual possession of a person claiming under title adverse to the grantor.

(3) In conveyances of lands words of inheritance shall not be necessary to create or convey a fee, and every conveyance shall pass all the estate or interest of the grantor unless a different intent shall appear expressly or by necessary implication in the terms of such conveyance.

(4) A quitclaim deed shall pass all of the interest in or appurtenant to the land described which the grantor could lawfully convey, but shall not warrant or imply the existence, quantity or quality of any such interest.

(5) A conveyance by which grantor contracts to warrant the land or its title shall be construed according to its terms, under rules of law for construction of contracts. A conveyance by which grantor warrants the land or its title shall be construed, except as the terms of such conveyance may otherwise provide, to include covenants, for the benefit of grantee, his heirs, successors and assigns, that grantor at time of conveyance is lawfully seized of the land; has good right to convey the same; that the same is free from all encumbrance; and that grantor, his heirs and personal representatives will forever guarantee and defend the title and quiet possession of the land against all lawful claims whatever originating prior to such conveyance, except as the same may arise out of open and notorious rights of easement, or out of public building, zoning or use restrictions.

(6) Except as provided in sub. (7) and except as otherwise provided by law, no warranty or covenant shall be implied in any conveyance, whether or not such conveyance contains special warranties or covenants. No mortgage shall be construed as implying a covenant for the payment of the sum thereby intended to be secured, and when there shall be no express covenant for such payment contained in the mortgage and no bond or other separate instrument to secure such payment shall have been given, the remedies of the mortgagee, shall be confined to the lands mentioned in the mortgage.

(7) In the absence of an express or necessarily implied provision to the contrary, a conveyance evidencing a transaction under which the grantor undertakes to improve the premises so as to equip them for grantee's specified use and occupancy, or to procure such improvement

under grantor's direction or control, shall imply a covenant that such improvement shall be performed in a workmanlike manner, and shall be reasonably adequate to equip the premises for such use and occupancy.

History: 1973 c. 243.

Builder-vendor liability for construction defects in houses. Kirschnik, 55 MLR 369

706.11 Priority of certain mortgages, trust funds. (1) Whenever any of the following mortgages has been duly recorded, it shall have priority over all liens upon the mortgaged premises and the buildings and improvements thereon, except tax and special assessment liens filed after the recording of such mortgage:

(a) Any mortgage executed to a federal savings and loan association organized and existing under the laws of the United States.

(b) Any mortgage executed to the department of veterans affairs under s. 45.352, 1971 stats.

(c) Any mortgage assigned to or executed to the department of veterans affairs or the authority under subch. II of ch. 45.

(2) State savings and loan associations shall have the priorities specified under s. 215.21 (4).

(3) The proceeds of any such mortgage referred to in this section, shall, when paid out by such state savings and loan association or federal savings and loan association, or of any other mortgage from any other source and received by the owner of the premises or by any contractor or subcontractor performing the work and labor, forthwith constitute a trust fund in the hands of such owner, contractor or subcontractor for the payment pro rata of all claims due and to become due or owing from such contractor or subcontractor for lienable labor and materials until all such claims have been paid. The use of any of such moneys by any owner, contractor or subcontractor for any other purpose until all claims, except those which are the subject of a bona fide dispute, have been paid in full, or pro rata in cases of a deficiency, shall constitute theft of any moneys so misappropriated. The district attorney of the county where the premises are situated shall on the complaint of any aggrieved party prosecute such owner, contractor or subcontractor misappropriating such moneys for such theft.

History: 1971 c. 164; 1973 c. 208.

The word "contractor" in sub. (3) includes an owner who acts as his own general contractor, and he can be held liable for conversion. *Paulsen Lumber, Inc. v. Meyer*, 47 W (2d) 621, 177 NW (2d) 884

706.12 Uniform vendor and purchaser risk act. (1) Any contract made in this state for the purchase and sale of realty shall be interpreted as including an agreement that the

parties shall have the following rights and duties, unless the contract expressly provides otherwise:

(a) If neither the legal title nor the possession of the subject matter of the contract has been transferred, all or a material part thereof is destroyed without fault of the purchaser or is taken by eminent domain, the vendor cannot enforce the contract, and the purchaser is entitled to recover any portion of the price that he has paid.

(b) If either the legal title or the possession of the subject matter of the contract has been transferred, all or any part thereof is destroyed without fault of the vendor or is taken by eminent domain, the purchaser is not thereby relieved from a duty to pay the price, nor is he entitled to recover any portion thereof that he has paid.

(2) This section shall be so construed as to make uniform the law of those states which enact it.

(3) This section may be cited as the uniform vendor and purchaser risk act.

706.13 Slander of title. In addition to any criminal penalty or civil remedy provided by law, the execution, placing of record or both of any instrument relating to the title to land, knowing the matter represented in such instrument to be false, spurious or sham, and intending thereby falsely to cloud or encumber the title, shall subject the person so executing or recording the same to liability in tort for damages, recoverable at the suit of any person interested in the land whose title is thereby impaired, in the penalty sum of \$1,000, plus any actual damages caused thereby.

706.14 Transitional and curative provisions. The operation or effect of a conveyance made or recorded in accordance with the provisions of any prior law of this state, or thereafter validated, perfected or cured under any such prior law, shall not be impaired by any provision of this chapter.