

1969 Assembly Bill 655

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CHAPTER 285, LAWS OF 1969

AN ACT to repeal 235.01 to 235.08, 235.09, 235.11 to 235.33, 235.39 to 235.49, 235.50 to 235.52, 235.53 to 235.58, 235.62 to 235.64, 235.66 to 235.72 and 240.06 to 240.09; to renumber 235.088, 235.10, 235.34, 235.35, 235.38, 235.-491, as affected by chapter , laws of 1969 (LRB-3189), 235.525, 235.60, 235.61, 235.65 and 235.73; to renumber and amend 235.36, 235.37 and 235.59; to amend 59.07 (12) and 318.06 (9); and to create chapters 706, 708 and 710 (title) of the statutes, relating to a revision of the law of conveyances and mortgages and land contracts.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 59.07 (12) of the statutes is amended to read:

59.07 (12) Procure transcripts or abstracts of the records of any other county affecting the title to real estate in such county, and such transcripts or abstracts shall be prima facie evidence of title ~~except as provided in s. 235.47.~~

SECTION 2. 235.01 to 235.08 of the statutes are repealed.

SECTION 3. 235.088 of the statutes is renumbered 708.03.

SECTION 4. 235.09 of the statutes is repealed.

SECTION 5. 235.10 of the statutes is renumbered 708.04.

SECTION 6. 235.11 to 235.33 of the statutes are repealed.

SECTION 7. 235.34 and 235.35 of the statutes are renumbered 889.240 and 889.241, respectively.

SECTION 8. 235.36 and 235.37 of the statutes are renumbered 889.242 and 889.243 and are amended to read:

889.242 If any grantor residing in this state ~~shall refuse~~ *refuses* to acknowledge his conveyance and all the subscribing witnesses thereto ~~be are~~ dead or out of the state, it may be proved before any court of record by proving the handwriting of the grantor or of any subscribing witness, upon the court first summoning the grantor to hear the testimony as provided in ~~section 235.35 s. 889.241.~~

889.243 The court before whom any conveyance may be presented to be proved, as provided in ss. ~~235.34 to 235.36~~ 889.240 to 889.243, may issue subpoenas to the subscribing witnesses or others, as ~~the case may require~~ *required*, to appear and testify touching the execution of such deed, which subpoenas may be served in any part of this state; and every person so subpoenaed who, without reasonable cause, neglects to appear or refuses to answer on oath touching the matters aforesaid shall be liable to the party injured in the sum of \$100 damages and for such further damages as the party may sustain thereby, and may also be punished as for a contempt by the court.

SECTION 9. 235.38 of the statutes is renumbered 889.244.

SECTION 10. 235.39 to 235.49 of the statutes are repealed.

SECTION 11. 235.491 of the statutes, as affected by chapter , laws of 1969 (Senate Bill 692), is renumbered 706.09.

SECTION 12. 235.50 to 235.52 of the statutes are repealed.

SECTION 13. 235.525 of the statutes is renumbered 708.05.

SECTION 14. 235.53 to 235.58 of the statutes are repealed.

SECTION 15. 235.59 of the statutes is renumbered 816.25 and amended to read:

816.25 ~~Wherever~~ After a mortgage ~~shall have~~ has been foreclosed by an action in any court and the judgment and costs in such action shall have been paid and satisfaction thereof of the mortgage entered upon the docket the register of deeds, upon presentation to him of the certificate of the clerk of the court, certifying to the facts aforesaid, shall note on the margin of the record of such mortgage the following: "This mortgage foreclosed in circuit court (or other court, giving the title of the same), judgment docketed therein, and has been fully paid and satisfaction entered;" and such entry shall have the same effect as the record of a discharge by a mortgagee duly executed and acknowledged, the clerk in request, shall sign a certificate attesting to such facts, which certificate is entitled to record.

SECTION 16. 253.60 of the statutes is renumbered 818.09.

SECTION 17. 235.61 of the statutes is renumbered 708.07.

SECTION 18. 235.62 to 235.64 of the statutes are repealed.

SECTION 19. 235.65 of the statutes is renumbered 818.07.

SECTION 20. 235.66 to 235.72 of the statutes are repealed.

SECTION 20m. 235.73 of the statutes is renumbered 706.01 (8).

SECTION 21. 240.06 to 240.09 of the statutes are repealed.

SECTION 22. 318.06 (9) of the statutes is amended to read:

318.06 (9) Property passing by descent or by will to persons as joint tenants or tenants in common may be partitioned among such persons by the judgment of the county court assigning such property, provided a petition therefor is filed with the court prior to such judgment signed by all parties interested in the property involved. Such petition shall be supported by a stipulation signed by all persons interested in the property in the manner as provided by ~~section 235.01~~ s. 706.02 which stipulation shall set out the manner in which the property is to be divided and the agreement of all persons interested therein in such division. This subsection shall be applicable to the property of estates which has not been assigned by judgment of the court filed prior to June 9, 1945, and shall validate all partitions of property accomplished prior to said date in the manner as herein provided.

SECTION 23. Chapter 706 of the statutes is created to read:

CHAPTER 706.

CONVEYANCES OF REAL PROPERTY; RECORDING; TITLES.

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 consti-

tute 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 settlors of interests 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.

COMMENT: In sub. (2) leases for terms of over one year are treated as conveyances for all purposes.

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. 706.10, 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:

- (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 evidence of the transaction.

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

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 author-

ized, 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.

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

(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.

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

(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.

COMMENT: Applies to conveyances principle of ss. 180.41, 180.70, incorporating nonofficer agents.

(4) Conveyances by minors and incompetents are effective only if executed by an authorized guardian on behalf of such minor or incompetent, except that a married minor at least 18 years of age may effectively convey and contract to convey on his own behalf.

COMMENT: Extends s. 235.27 to validate conveyances without guardian by married minors over 18.

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.

COMMENT: Clarifies and restates so-called "doctrine of part performance", so as to identify its elements. The section incorporates, espec-

ially sub. (2), the doctrine of *Stuesser v. Ebel*, 19 Wis. 2d 591, 120 N.W. 2d 679 (1962).

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 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.

COMMENT: Treats "unrecordable" instrument as duly recorded when notice is assured by proper entry in index.

(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 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.

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 or s. 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 "Acknowledge", "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 signor purported, and was believed, to be such representative.

COMMENT: Permits short-form acknowledgment certificates.

(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.

706.07 UNIFORM ACKNOWLEDGMENT ACT. (1) Any instrument may be acknowledged as provided by the laws of this state, or as provided by this section.

(2) 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) 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) 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) The officer taking the acknowledgment shall know or have satisfactory evidence that the person making the acknowledgment is the per-

son described in and who executed the instrument.

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

(7) 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 that _____ he _____ 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) 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) (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) 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) 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 that _____ he _____ 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) 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) 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) This section shall be so interpreted as to make uniform the laws of those states which enact it.

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

COMMENT: Sub. (10) incorporates present s. 235.22.

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. Whenever 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.

COMMENT: New provision. To reverse, where notice is assured by tract index, the "chain of title" rule adopted in *Zimmer v. Sundell*, 237 Wis. 270, 296 NW 589.

(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.

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.

COMMENT: Deletion of some 5 pages of "form and effect" material from the conveyancing statute, without apparent change of law or practice.

(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.

COMMENT: No change, except that nonwarranty is specified. Eliminates archaic reference to "deed of bargain and sale".

(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.

COMMENT: Specification of common exceptions to warranty, as practice and case law have developed them.

(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 given, the remedies of the mortgagee, shall be confined to the lands mentioned in the mortgage.

COMMENT: Equates implied warranties and covenants, rejecting implication in both cases.

(7) 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 workman-like manner, and shall be reasonably adequate to equip the premises for such use and occupancy.

COMMENT: Applies implied warranty of fitness to described conveyancing transactions in which covenant is not disclaimed expressly. *Earl Milliken, Inc. v. Allen*, 21 Wis. 2d 497, 124 NW2d 651 (1963); *Fisher v. Simon*, 15 Wis 2d 207, 112 NW2d 705 (1961); *Oremus v. Wynnhoff*, 20 Wis 2d 635, 123 NW2d 441 (1963).

706.11 PRIORITY OF CERTAIN MORTGAGES, TRUST FUNDS.

(1) Whenever any mortgage executed to a federal savings and loan association organized and existing under the laws of the United States or to the Wisconsin department of veterans affairs under s. 45.352 (5) has been duly recorded, such mortgage shall have priority over all liens upon the mortgaged premises and the buildings and improvements thereon, except tax and special assessment liens, which shall be filed subsequent to the recording of such mortgage.

(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.

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.

SECTION 24. Chapter 708 of the statutes is created to read:

CHAPTER 708.

MORTGAGES AND LAND CONTRACTS.

708.01 EFFECT OF MORTGAGE. A mortgage on real property creates a lien on the property mortgaged; except for the lien, the mortgagor retains the interest he had at the time of mortgage until that interest is divested by some later act.

COMMENT: New; restates present case law; *M&I Bank v. Greene*, 227 Wis 155, 278 NW 425 (1938).

708.02 FORECLOSURE; EFFECT IN LEASE. If property subject to lien created by mortgage or land contract is leased after the lien has attached, the lease is subject to termination at the time the interest of the lienor is terminated.

COMMENT: Present case law; see *Grether v. Nick*, 193 Wis. 503, 213 NW 304 (1927).

708.09 PURCHASE MONEY MORTGAGE DEFINED. A purchase money mortgage is one given as part of the transaction of purchase to the vendor of real estate for all or part of the purchase money or to a 3rd person who advances all or a part of the purchase money.

SECTION 25. Chapter 710 (title) of the statutes is created to read:

CHAPTER 710.

MISCELLANEOUS PROPERTY PROVISIONS.

(to precede s. 710.01)

SECTION 26. Wherever the term "ch. 235" appears in sections 45.352 (5) and 231.50 (2) of the statutes, the term "ch. 706" is substituted.

SECTION 27. Wherever the term "s. 235.01 (5)" appears in sections 188.08 (3), 188.09 (3), 188.11 (3), 188.15 (3), 188.16 (3), 188.17 (3), 188.19 (3), 188.21 (3), 188.22 (3), 188.23 (3), 188.235 (3) and 188.24 (3) of the statutes, the term "s. 706.03 (2) and (3)" is substituted.

SECTION 28. Wherever the term "s. 235.50" appears in sections 231.201,

CHAPTER 285

924

236.34 (3) and 236.45 (2) (a) of the statutes, the term "s. 706.01 (3)" is substituted.

SECTION 29. In section 289.01 (4) of the statutes, the reference to "s. 235.70" is deleted and "s. 706.11 (1)" is substituted.

SECTION 30. In section 344.36 (2) of the statutes, the reference to "s. 235.45" is deleted and "s. 706.05 (1)" is substituted.

SECTION 31. This act shall take effect on July 1, 1971.

Approved December 2, 1969.
