

1989 Senate Bill 267

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1989 WISCONSIN ACT 231

AN ACT *to renumber and amend* 706.08 (4) and 706.11 (1) (c); *to amend* 701.03 and 706.11 (1) (intro.); and *to create* 179.065, 706.08 (4) (a) to (c), 706.11 (1) (c) 1 and 2 and (e) to (h) and 706.11 (4) of the statutes, **relating to:** the priority of certain mortgages and the conveyance of real property by a general partner or by a trustee.

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

SECTION 1. 179.065 of the statutes is created to read:

179.065 Conveyance of real property of the limited partnership. (1) If title to real property is in the name of the limited partnership, a general partner may convey title to that property in the name of the limited partnership, unless the certificate of limited partnership provides otherwise.

(2) Section 178.07 (2) to (5) governs the authority of a general partner to transfer real property if the property is not in the name of the limited partnership or if the conveyance is not executed in the name of the limited partnership.

SECTION 2. 701.03 of the statutes is amended to read:

701.03 Passive trusts abolished. ~~Every~~ Except as provided in s. 706.08 (4), every trust, to the extent it is private and passive, vests no title or power in the trustee, but the beneficiary takes a title corresponding in extent to the beneficial interest given ~~him~~ the beneficiary. A trust is passive if the title or power given the trustee is merely nominal and the creating instrument neither expressly nor by implication from its terms imposes active management duties on the trustee.

SECTION 3. 706.08 (4) of the statutes is renumbered 706.08 (4) (intro.) and amended to read:

706.08 (4) (intro.) ~~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~~ It shall be conclusively pre-

sumed that ~~such a~~ a person is a trustee of a valid express trust and has full power of conveyance. if all of the following occur:

SECTION 4. 706.08 (4) (a) to (c) of the statutes are created to read:

706.08 (4) (a) The person is designated as trustee and holds an interest in land as trustee.

(b) The person's authority and powers as trustee are not set forth in a recorded instrument.

(c) The person conveys an interest in land as trustee to a good faith purchaser, as defined in s. 401.201 (33).

SECTION 5. 706.11 (1) (intro.) of the statutes is amended to read:

706.11 (1) (intro.) ~~Whenever~~ Except as provided in sub. (4), when 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:

SECTION 6. 706.11 (1) (c) of the statutes is renumbered 706.11 (1) (c) (intro.) and amended to read:

706.11 (1) (c) (intro.) Any mortgage assigned to or executed to ~~the department of veterans affairs or the authority under subch. II of ch. 45.~~ any of the following:

SECTION 7. 706.11 (1) (c) 1. and 2. and (e) to (h) of the statutes are created to read:

706.11 (1) (c) 1. The United States, this state or a county, city, village or town in this state, or an agency, department or other formally constituted subunit of any of the foregoing.

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2. The Wisconsin health and educational facilities authority created under ch. 231, the Wisconsin housing and economic development authority created under ch. 234 or any other authority created by state law.

(e) Any mortgage executed under s. 66.521 to a trustee, as defined in s. 66.521 (2) (n).

(f) Any mortgage executed to a mortgage banker, as defined in s. 440.71 (3).

(g) Any mortgage executed to an insurer licensed to do business in this state.

(h) Any mortgage executed to a licensee under s. 138.09.

SECTION 8. 706.11 (4) of the statutes is created to read:

706.11 (4) Subsection (1) does not apply to a 2nd mortgage assigned to or executed to the department of veterans affairs under s. 45.79 (3) (a) 1. or 45.80 (4) (a) 1.

SECTION 9. Initial applicability. The treatment of section 706.11 (1) (c) of the statutes and the creation of section 706.11 (1) (c) 1. and 2. and (e) to (h) of the statutes first apply to mortgages recorded on the effective date of this SECTION.
