

TITLE XXII.

Fraudulent Conveyances and Contracts.

CHAPTER 240.

FRAUDULENT CONVEYANCES AND CONTRACTS RELATING TO REAL ESTATE.

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240.01 Conveyances, when void. Every conveyance of any estate or interest in land, or the rents and profits of lands and every charge upon lands or upon the rents and profits thereof, made or created with the intent to defraud prior or subsequent purchasers for a valuable consideration of the same lands, rents or profits, as against such purchasers, shall be void.

240.02 Conveyances not fraudulent, when. No such conveyance or charge shall be deemed fraudulent in favor of a subsequent purchaser who shall have actual or legal notice thereof at the time of his purchase, unless it shall appear that the grantee in such conveyance or person to be benefited by such charge was privy to the fraud intended.

240.03 Conveyances with power of revocation, void. Every conveyance or charge of or upon any estate or interest in lands containing any provision for the revocation, determination or alteration of such estate or interest or any part thereof, at the will of the grantor, shall be void as against subsequent purchasers from such grantor for a valuable consideration of any estate or interest so liable to be revoked or determined, although the same be not expressly revoked, determined or altered by such grantor by virtue of the power reserved or expressed in such prior conveyance or charge.

240.04 Such conveyances valid, when. Where a power to revoke a conveyance of any lands or the rents and profits thereof and to reconvey the same shall be given to any person other than the grantor in such conveyance, and such person shall thereafter convey the same lands, rents or profits to a purchaser for a valuable consideration, such subsequent conveyance shall be valid in the same manner and to the same extent as if the power of revocation were recited therein and the intent to revoke the former conveyance expressly declared.

240.05 Same subject. If a conveyance to a purchaser, under either section 240.03 or 240.04, shall be made before the person making the same shall be entitled to execute his power of revocation it shall nevertheless be valid from the time the power of revocation shall actually vest in such person in the same manner and to the same extent as if then made.

240.06 Conveyance of land, etc., to be in writing. No estate or interest in lands, other than leases for a term not exceeding one year, nor any trust or power over or concerning lands or in any manner relating thereto shall be created, granted, assigned, surrendered or declared unless by act or operation of law or by deed or conveyance in writing, subscribed by the party creating, granting, assigning, surrendering or declaring the same or by his lawful agent thereunto authorized by writing.

Note: A land contract signed by the president, but not by the secretary, of the vendor corporation is good as between the vendor and purchaser, where the president was authorized to act for the corporation in such matter, since 235.19 (2), providing that a conveyance of land by a corporation shall be signed by the president and secretary thereof, only affects the recordability of the contract and the rights of subsequent purchasers who purchase from the vendor in ignorance of the existence of the contract. *Jefferson Gardens, Inc. v. Terzan*, 216 W 230, 257 NW 154.

An oral contract of joint adventure between O. and associates to buy and sell a leasehold, title to which was conveyed to O. who alone contracted to purchase it, and who then conveyed to a corporation for a consideration which was divided among the adventurers, was not by such completion of the venture taken out of the statute of frauds so as to entitle the seller's assignee to recover against an associate of O. for breach of contract obligations entered into by O. in purchasing the leasehold. At such prior time, the contract of adventure being then wholly void because of the statute, O.

had no authority in law as agent to bind his associates, and the subsequent execution of such contract did not operate retroactively to create an agency and a liability as of a prior date. *Goodsitt v. Richter*, 216 W 351, 257 NW 23.

Where tenants at will told owner of farm that they were leaving farm after sustaining uninsured loss from fire, but remained, continued to make home for owner, and made valuable improvements, on owner's agreement that they should receive farm, continued possession was referable solely to oral contract, and was sufficient as part performance to avoid statute of frauds. *Estate of Cullen*, 224 W 463, 272 NW 363.

Resulting trusts and constructive trusts are within the exception of trusts created by "operation of law." *Schofield v. Rideout*, 233 W 550, 290 NW 155.

In an action to recover an amount owing on an original loan secured by a mortgage, and an amount owing on an additional loan, and to foreclose the mortgage as security for both loans, the plaintiffs were not en-

titled to foreclosure of the mortgage as security for the additional loan, where the parties had merely orally agreed that the mortgage securing the original loan should be extended to cover the subsequent loan, although no rights of third persons had intervened, since, in view of the statute of frauds, 240.06, no rights in and to real property can be granted by parol, and consequently no additional mortgage lien or incumbrance on real property can be created by parol agreement to secure other indebtedness than that which was intended to be secured when the mortgage was executed. *Healy v. Fidelity Savings Bank*, 238 W 12, 298 NW 170.

A surrender of a land contract may be affected by acts of the parties or by operation of law. Ordinarily surrender of possession by the vendee and its acceptance by the vendor works a surrender of the land contract "by operation of law," absolving each of the parties from all rights and interests therein and liabilities arising therefrom. *In re Erickson*, 106 F. (2d) 937.

240.07 Limitation of section 240.06. Section 240.06 shall not be construed to affect in any manner the power of a testator in the disposition of his real estate by a last will and testament nor to prevent any trust from arising or being extinguished by implication or operation of law.

Note: The trusts arising from "operation of law" are "resulting trusts," which are implied from the supposed intention of the parties and the nature of the transaction, and "constructive trusts," which are raised independently of any such intention and enforced on the conscience of the trustee by equitable construction and operation of law. When an agent with his own money fraudulently purchases property which he is orally employed to purchase for his principal, a constructive

trust is created, and the agent is estopped by his fraudulent conduct from setting up the statute of frauds. Inability under 240.10 of a real estate agent to collect a commission because the agreement with his principal was not in writing, does not prevent his liability to the principal under a constructive trust, since compensation is not essential to agency. *Krzysko v. Gaudynski*, 207 W 608, 242 NW 186.

240.08 What contracts to be written. Every contract for the leasing for a longer period than one year or for the sale of any lands or any interest in lands shall be void unless the contract or some note or memorandum thereof, expressing the consideration, be in writing and be subscribed by the party by whom the lease or sale is to be made or by his lawfully authorized agent.

Note: This statute was not intended to give one person a technical escape from a fair and definite agreement with another. By the terms of a written land contract, the vendor agreed to place a mortgage for a definite sum upon the land and to convey the land subject to such mortgage. The fact that the rate of interest and time of payment of the mortgage was not mentioned in the land contract did not render the land contract invalid. *Kenner v. Edwards R. & F. Co.*, 204 W 575, 236 NW 597.

The application of the contract provision that the trade price included all personal property and crops on the farm, except one hog and from twelve to eighteen hens, and the identification of the subject-matter thereof, could be shown by parol evidence as to the surrounding circumstances and situation of the parties at the time the contract was made. *Haumersen v. Sladky*, 220 W 91, 264 NW 653.

A land contract, although required to be in writing, may be modified orally as respects extending the time of payment, unless such oral modification violates 241.02 requiring agreements not to be performed within one year to be in writing. *Vaudreuil Lumber Co. v. Culbert*, 220 W 267, 263 NW 637.

The performance that supports oral contracts void under the statute of frauds is performance by the party seeking to enforce the contract, not performance by the other party. *Kessler v. Olen*, 228 W 662, 280 NW 352.

A will made pursuant to an oral agreement to convey lands, to constitute a valid memorandum of the agreement, must show the consideration. A will is valid without a seal; the seal upon it has no effect whatever. *Kessler v. Olen*, 228 W 662, 281 NW 691.

Under 215.33 (2) (c), (d), it is the duty of the special deputy commissioner to accept offers and consummate sales of the property only after approval by the banking commis-

sion and the circuit court has been given; and the special deputy's submission for such approval of an offer to purchase real estate, signed by the offeror and containing a blank space for the special deputy's signature of acceptance, does not constitute an "acceptance" by the special deputy. *In re Wisconsin Savings Loan & Building Ass'n*, 241 W 1, 4 NW (2d) 127.

An oral promise or agreement to compensate for services by a devise of real estate in whole or in part is void, and can be resorted to for no purpose except to rebut the presumption that the services were gratuitously rendered. *Estate of Rosenthal*, 247 W 555, 20 NW (2d) 643.

Where a combined receipt for a down payment made by the plaintiffs to a real estate agent authorized to sell the defendants' property, and agreement for sale, signed by the defendants, referred only to "the purchasers" and did not contain their names, but an option to purchase, signed by the agent and delivered to the plaintiffs, did contain their names, and the evidence warranted a finding that it was understood and agreed by all parties that "the purchasers" referred to in the agreement for sale were the plaintiffs, there was a contract satisfying the statute of frauds, so as to be specifically enforceable. A contract for the sale of lands which clearly appears from several writings considered together satisfies the statute of frauds and may be specifically enforced. *Padol v. Switalski*, 248 W 183, 21 NW (2d) 375.

A land contract which does not specifically describe the land to be conveyed, but refers to it in such terms that by the aid of the facts and circumstances surrounding the parties at the time the court can with reasonable certainty determine the land which is to be conveyed, satisfies the statute of frauds in this regard and may be enforced. *Kuester v. Rowlands*, 250 W 277, 26 NW (2d) 639.

240.09 Specific performance. Nothing in this chapter contained shall be construed to abridge the powers of courts to compel the specific performance of agreements in case of part performance of such agreements.

Note: One agreeing to convey land to another on fixed terms may be required to perform even though no written memorandum in compliance with the statute of frauds was made, if there has been a part performance and fraud would result from not enforcing the oral agreement. *Karrels v. Karrels*, 234 W 44, 290 NW 624.

240.10 Real estate agency contracts. Every contract to pay a commission to a real estate agent or broker or to any other person for selling or buying real estate or negotiating lease therefor for a term or terms exceeding a period of three years shall be void unless such contract or note or memorandum thereof describing such real estate, expressing the price for which the same may be sold or purchased, or terms of rental, the commission to be paid and the period during which the agent or broker shall procure a buyer or seller or tenant, be in writing and be subscribed by the person agreeing to pay such commission.

Note: A commission contract of a real estate agent reserving to the owner the right to withdraw the property ninety days from its date on giving written notice, "providing no negotiations are pending at the time," did not make the term of the agency uncertain nor the contract invalid. *Pallange v. Mueller*, 206 W 100, 238 NW 815.

The contract of a real estate agent, made before a pending deal was closed, is construed as not being a contract to pay for services already rendered, and being void because it did not express the price for which the premises might be sold, nor the time for procuring a buyer, although referring to a land contract not then in existence, no action can be maintained thereon. *Prinz v. Aussem*, 207 W 603, 242 NW 183.

A principal is liable on a promissory note voluntarily given a licensed real estate broker for services rendered pursuant to an oral agreement within the statute, notwithstanding the broker could not have maintained an action on the original contract to recover the value of the brokerage services, there being a sufficient moral consideration for the note. *Elbinger v. Capitol & Teutonia Co.*, 208 W 163, 242 NW 568.

A broker employed to carry out an exchange of lands does not earn his commission where he brings to his employer a person who assumes to contract as owner, though in fact he is not, which fact the broker knows, and within the time allowed for performance proves unable to perform the contract. *Goldman v. Schmid*, 209 W 71, 244 NW 586.

This section is an enlargement of the statute of frauds. The statute is not satisfied unless the contract contains all the essential terms, either by its own terms or by reference to other writings. A contract to pay a commission to a real estate agent for procuring a lessee of a theater, in the

event a satisfactory deal should be consummated, was void because it did not state the terms of rental or the period within which the tenant should be procured. A second writing, executed at the same time as the writing relating to a commission, but relating only to leasing the theater, and neither expressly made a part of nor expressly referred to in the writing relating to a commission, could not be considered as a part of the contract to pay a commission so as to result in a valid contract complying with this section. *Brest v. Maenet Realty Co.* 245 W 631, 15 NW (2d) 798.

Where an agent is employed to procure a purchaser at a specified price, but one is procured who is not willing to pay the price named, the owner may sell to the purchaser produced at a lower figure, without rendering himself liable for commission, provided there is no fraud or bad faith on his part and the agent is unable to induce his client to pay the price demanded. *Smith v. Koch*, 247 W 551, 20 NW (2d) 566.

A written listing agreement, whereby a real estate broker was to be paid a commission for negotiating a lease of theater properties, was void for failure to comply with this section, in that it did not specify the period of time the lease was to run. *Kaufman v. La Crosse Theaters Co.* 248 W 43, 20 NW (2d) 562.

A written agreement between a property owner and real estate brokers, using the word "option" because it gave the brokers the right to sell "or purchase" certain described real estate, and providing for the payment of a specified commission to the sellers, created an agency to sell which was in compliance with this section. *Paul v. Markle*, 250 W 81, 26 NW (2d) 276.

Under this section there can be no implied contract to pay a commission. *Leuch v. Campbell*, 250 W 272, 26 NW (2d) 538.