

CHAPTER 708

MORTGAGES AND LAND CONTRACTS

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708.01 Effect of mortgage. A mortgage on real property creates a lien on the property mortgaged; except for the lien and subject to s. 708.11, the mortgagor retains the interest that the mortgagor had at the time of mortgage until that interest is divested by some later act.

History: 1993 a. 486; 1995 a. 283.

An acceleration clause providing that a mortgage shall become due and payable at the option of the mortgagee in the event the mortgaged premises are leased or transferred without its written permission, while not contrary to public policy, is enforceable only in accord with the equitable principles governing foreclosure actions. *Mutual Federal S. & L. v. American Med. Services*, 66 W (2d) 210, 223 NW (2d) 921.

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.

708.03 Prohibiting lender from designating attorney for mortgagor. A bank, savings bank, savings and loan association or other lender or lending agency requiring a borrower to give a mortgage on real estate as security for a loan or an existing indebtedness may not designate the attorney to represent the mortgagor's interest in connection with the giving of the mortgage if the mortgagor has or desires a different attorney for that purpose. Any person violating this section shall be fined not more than \$100 for each violation.

History: 1991 a. 221.

708.04 Removal of buildings from mortgaged premises. The removal, without the consent of the mortgagee or the mortgagee's assigns, of any building from any real estate upon which there is an unsatisfied mortgage, properly recorded, shall not destroy the lien of such mortgage upon such removed building, but the mortgagee or the mortgagee's assigns shall be entitled to recover the possession of the same in an action of replevin, from any person, and wherever the same may be situated, without regard to the question of the adequacy of the real estate remaining to pay the mortgage debt. If such removal be made by the mortgagor or with the mortgagor's consent, all reasonable expense incurred in recovering such building shall be added to, and collected as a part of, the mortgage debt.

History: 1993 a. 486.

708.05 Mortgages, power to sell under. When a power to sell lands shall be given to the grantee in any mortgage or other conveyance intended to secure the payment of money the power shall be deemed a part of the security and shall vest in and may be executed by any person, who, by assignment or otherwise, shall become entitled to the money so secured to be paid.

708.07 Satisfaction of state mortgages. In any case where the records of the offices of the state treasurer and secretary of state fail to show any payments made upon any mortgage of real estate to the state or territory of Wisconsin since January 1, 1865, it shall be the duty of the state treasurer, on demand, to execute, acknowledge and deliver to the owner of all or any portion of the land conveyed by any such mortgage a satisfaction in due form of law acknowledging the satisfaction and discharge of such mortgage, and such satisfaction when so executed shall be conclusive

evidence of the payment and discharge of such mortgage and the satisfaction of the lien thereby secured.

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.

A purchase money mortgage executed at the time of delivery of the conveyance of legal title has priority, as to the property conveyed, over existing judgments and executions against the mortgagor-vendee, whether the mortgagee is the vendor or a 3rd party who furnishes the purchase price. *Northern State Bank v. Toal*, 69 W (2d) 50, 230 NW (2d) 153.

708.10 Loan funds at closings. (1) DEFINITIONS. In this section:

(a) "Affiliate" means, with respect to any lender, any person that controls, is controlled by, or is under common control with, the lender.

(b) "Borrower" means a person who borrows money from a lender to finance a transaction under a loan that is secured by a real estate mortgage.

(c) "Lender" means all lenders identified under s. 706.11 (1), mortgage brokers, as defined under s. 224.71 (4), and savings and loan associations organized under ch. 215, except that "lender" does not include any federal, state or local unit of government or any agency, political subdivision or instrumentality of such a unit of government.

(d) "Loan settlement" means the occurrence of all of the following:

1. The execution by the borrower of a promissory note, mortgage and any other documents that are required by the lender to be signed as a condition to the granting of a loan to the borrower.

2. The delivery of the proceeds of the loan to the borrower or to a 3rd party on behalf of the borrower.

3. If the borrower has a right to rescind the loan under federal or state law, the expiration of the borrower's right of rescission.

(e) "Qualified loan funds" means any of the following:

1. Wire transfer.

2. Cashier's check or teller's check.

3. A check that is negotiable, as defined in s. 403.104 (1), and on which the lender or an affiliate of the lender is the drawee, as defined in s. 403.103 (1) (b).

4. Transfer of the loan funds by the lender into an account maintained by the lender or an affiliate of the lender in favor of the settlement agent or borrower.

(f) "Settlement agent" means a person retained by the lender who provides services that benefit the lender and borrower in a transaction and who receives and disburses money in connection with the transaction.

(g) "Transaction" means a transaction under s. 706.01 (1), including a refinancing of an existing indebtedness that is secured by a mortgage on real property, except that "transaction" does not include an open end credit plan as defined under 15 USC 1602 (i).

(h) "Wire transfer" means the electronic funds transfer system of the federal reserve banks. When funds are transferred by wire

transfer, delivery of the funds is complete when a transaction number has been assigned to the wire transfer.

(2) LOAN FUND DISPERSAL. (a) Except as provided in par. (b), if a settlement agent is to deliver qualified loan funds to the borrower in a transaction, or to a 3rd party on behalf of the borrower, a lender may not permit or require a borrower to complete a loan settlement unless the lender unconditionally delivers qualified loan funds to the settlement agent before or immediately on completion of the loan settlement.

(b) If the lender and the borrower have agreed that less than all of the loan funds are to be disbursed at the loan settlement, the lender shall deliver qualified loan funds to the settlement agent only in the amount to be disbursed at the loan settlement.

History: 1995 a. 394; 1997 a. 35, 145, 152.

708.11 Assignments of rents, leases and profits. (1) In this section, “assignment” means any assignment, pledge, transfer or any other conveyance of an interest in rents, leases or profits, whether contained in a mortgage, security agreement or other document executed by the assignor.

(2) When any debt or other obligation is secured by an assignment, the assignment shall be effective as to the assignor upon the execution and delivery of the assignment to the assignee. The assignment shall be perfected as to all subsequent purchasers, mortgagees, lien creditors, and all other 3rd parties for all purposes from the time and date of recording the assignment in the register of deeds office of the county in which the real property affected by the assignment is located. The assignment shall be governed by ch. 706 and shall be considered a conveyance for the purposes of ch. 706. An assignee who enforces an assignment in

accordance with its terms shall not be considered to be a mortgagee in possession with attendant liability.

(3) (a) Unless otherwise agreed upon in writing, the assignee shall be entitled to enforce the assignment without the necessity of any of the following:

1. Furnishing notice to the assignor or any lessee.
2. Obtaining possession of the real property.
3. Impounding the rents.
4. Securing the appointment of a receiver.
5. Taking any other affirmative action.

(b) Unless otherwise agreed upon in writing, the assignee may not exercise any right to collect rents or profits created under an assignment until the assignor is in default on the obligation to the assignee. Enforcement of the assignment shall not be considered a cure of an event of default notwithstanding the collection of rents or profits in excess of any delinquent amounts due the assignee.

(4) Any tenant or lessee who, upon notice from an assignee, makes rent payments to the assignee in accordance with the terms of the assignment shall be given credit for the payment as if the payment had been made to the assignor, but nothing in this section shall affect the other rights and obligations of the assignor or the tenant or lessee as to one another.

(5) This section does not invalidate assignments of leases, rents or profits that were perfected by other means before May 9, 1996.

History: 1995 a. 283.

Enforcing Assignments of Leases, Rents and Profits. Leibsle. Wis. Law. May 1996.