

CHAPTER 334, LAWS OF 1969

AN ACT to repeal 49.08 (2) and 230.01 to 230.46; to renumber 230.71 to 230.84, 230.87 to 230.96 and chapter 232; to renumber and amend 230.70, 230.85, 230.86 and 230.97; to amend 72.17 (1), 703.02 (intro.), 703.06 (3) and 703.12 (1), as renumbered; and to create chapters 700 and 703 (title) of the statutes, relating to interests in property and condominiums.

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

SECTION 1. 49.08 (2) of the statutes is repealed.

SECTION 2. 72.17 (1) of the statutes is amended to read:

72.17 (1) If no application for administration of the estate of any deceased person is made within 60 days after his death, and such estate appears to come under the provisions of the inheritance tax laws, or when administration has been completed without determining the tax, or when no tax is due, and that fact has not been found by the court, or when any certificate of survivorship or of heirship has been applied for or issued under ~~section 230.47 or 237.09~~ s. 867.04, or when a certificate of assignment is applied under ~~section~~ s. 310.075, the public administrator of the proper county, or any person interested in such estate, may make application for such special or general administration as ~~may be~~ is necessary for the purpose of the adjustment and payment of such tax, if any, or if no tax is due, for an order determining that fact. In cases arising under this ~~and the following~~ subsection and sub. (2), the public administrator, if appointed such special administrator, shall be entitled in the discretion of the court to the fees allowed by law to administrators, or to other reasonable compensation. In cases arising under this ~~and the following~~ subsection and sub. (2), the public administrator shall notify, by registered mail, the transferees of such estates in which it appears probable that a tax is due on any ~~of~~ such transfers and has not been determined. If proceedings to determine the tax are not instituted by such transferees within 60 days from the receipt of the registered notice of the public administrator, the public administrator shall institute such proceedings, and the costs and expenses of such special administration shall be paid by the estate in those cases in which a tax is found due; when no tax is found due, the costs and expenses of such special administration shall be paid by the county treasurer out of the inheritance tax funds in his hands, upon the certificate of the county judge.

SECTION 3. 230.01 to 230.46 of the statutes are repealed.

SECTION 4. 230.70 of the statutes is renumbered 703.01 and amended to read:

703.01 Sections ~~230.70 to 230.97~~ 703.01 to 703.28 shall be known as the "Unit Ownership Act"; and said act is meant when the term "this act" is used in said sections.

SECTION 5. 230.71 of the statutes is renumbered 703.02 and 703.02 (intro.), as renumbered, is amended to read:

703.02 (intro.) ~~As used in~~ In ss. ~~230.70 to 230.97~~ 703.01 to 703.28, unless the context requires otherwise:

SECTION 6. 230.72 to 230.74 of the statutes are renumbered 703.03 to 703.05.

SECTION 7. 230.75 of the statutes is renumbered 703.06 and 703.06 (3), as renumbered, is amended to read:

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703.06 (3) The common areas and facilities shall remain undivided and no unit owner or any other persons shall bring any action for partition or division of any part thereof, unless the property has been removed from this act ~~as provided in~~ *under ss. ~~230.85 and 230.95~~ 703.16 and 703.26*. Any covenant to the contrary shall be void.

SECTION 8. 230.76 to 230.80 of the statutes are renumbered 703.07 to 703.11.

SECTION 9. 230.81 of the statutes is renumbered 703.12 and 703.12 (1), as amended, is amended to read:

703.12 (1) Description of the land as provided in s. ~~230.80~~ *703.11*, the post-office address of the property, including in either case the volume and page, or the reel and image, and date of recording of the declaration.

SECTION 10. 230.82 to 230.84 of the statutes are renumbered 703.13 to 703.15.

SECTION 11. 230.85 of the statutes is renumbered 703.16 and amended to read:

703.16 (1) All of the unit owners may remove a property from the provisions of this ~~act~~ *chapter* by an instrument to that effect, duly recorded, provided that the holders of all liens affecting any of the units consent thereto or agree, in either case by instruments duly recorded, that their liens be transferred to the percentage of the undivided interest of the unit owner in the property.

(2) Upon removal of the property from this ~~act~~ *chapter*, the property shall be deemed to be owned in common by the unit owners. The undivided interest in the property owned in common which appertains to each unit owner shall be the percentage of undivided interest previously owned by such owner in the common areas and facilities.

SECTION 12. 230.86 of the statutes is renumbered 703.17 and amended to read:

703.17 The removal provided for in s. ~~230.85~~ *703.16* shall in no way bar the subsequent resubmission of the property to this ~~act~~ *chapter*.

SECTION 13. 230.87 to 230.96 of the statutes are renumbered 703.18 to 703.27.

SECTION 14. 230.97 of the statutes is renumbered 703.28 and amended to read:

703.28 (1) All unit owners, tenants of such owners, employees of owners and tenants, or any other persons that in any manner use property or any part thereof subject to this ~~act~~ *chapter* shall be subject to this ~~act~~ *chapter* and to the declaration and bylaws of the association of unit owners adopted pursuant to this ~~act~~ *chapter*.

(2) All agreements, decisions and determinations lawfully made by the association of unit owners in accordance with the voting percentages established in this ~~act~~ *chapter*, declaration or bylaws, shall be deemed to be binding on all unit owners.

SECTION 14m. Chapter 232 of the statutes is renumbered chapter 702.

SECTION 15. Chapter 700 of the statutes is created to read:

CHAPTER 700.

INTERESTS IN PROPERTY.

700.01 DEFINITIONS. In this chapter unless the context indicates otherwise:

(1) "Document of title" means a document which is evidence of ownership of certain kinds of personal property, tangible or intangible, the ownership of which may be transferred by transfer of the document; it includes but is not limited to an investment security, a negotiable instru-

ment and a certificate of title to tangible personal property; it does not include items excepted in s. 700.22.

(2) "Instrument of transfer" means an instrument which is effective to transfer an interest in property; it includes but is not limited to a will, a deed, a contract to transfer, a real estate mortgage and an instrument creating a security interest in personal property under ch. 409.

(3) "Bill of sale" means an instrument evidencing a sale of tangible personal property which names the seller and buyer and describes the property sold.

(4) "Transfer" means a transfer effective during the lifetime of the transferor or by reason of his death.

(5) "Interest" means an interest in property.

(6) "Property" means real or personal property.

(7) "Successors in interest" means persons who obtain a reversionary interest by transfer or operation of law.

700.02 CLASSIFICATION OF INTERESTS IN PROPERTY AS TO DURATION. Interests in property are classified as to duration as:

(1) A fee simple absolute;

(2) A defeasible fee simple which may be a fee simple determinable automatically expiring upon the occurrence of a stated event, a fee simple subject to a condition subsequent with a power in the transferor or his successors in interest to reacquire the fee by reason of a breach of the condition, or a fee simple with a remainder over to a person other than the transferor or his successors in interest to take effect upon the occurrence of a stated event; for purposes of this subsection, a stated event can be either the happening, or the nonhappening, of a specified occurrence, and can be either certain or not certain to happen;

(3) An interest for life, which may be created for the duration of a life or lives of one or more human beings;

(4) An interest for years, which is any interest the duration of which is described in units of a year or multiples or divisions thereof;

(5) A periodic interest, which will continue for successive periods of a year, or successive periods of a fraction of a year, unless terminated;

(6) An interest at will, which is terminable at the will of either the transferor or the transferee and has no designated period of duration.

700.03 CLASSIFICATION OF PRESENT AND FUTURE INTERESTS. Interests in property are classified as to time of enjoyment as:

(1) A present interest, which entitles the owner to the present possession or enjoyment of the benefits of property; or

(2) A future interest, which does not entitle the owner to possession or enjoyment of the benefits of property until a future time.

700.04 CLASSIFICATION OF FUTURE INTERESTS. Future interests are classified as:

(1) A reversionary interest left in the transferor or his successors in interest, either as a reversion, a possibility of reverter upon the simultaneous creation of a fee simple determinable, or a power of reacquisition; or

(2) An interest created in a person other than the transferor or his successors in interest, called a remainder, to take effect at the termination of a preceding interest created at the same time or without the intervention of such a preceding interest.

700.05 CLASSIFICATION OF REMAINDERS. Remainders are classified as:

(1) Indefeasibly vested, if the interest is created in favor of one or more ascertained persons in being and is certain to become a present interest at some time in the future;

(2) Vested subject to open, if the interest is created in favor of a class of persons, one or more of whom are ascertained and in being, and if the interest is certain to become a present interest at some time in the future, but the share of the ascertained remaindermen is subject to diminution by reason of other persons becoming entitled to share as members of the class;

(3) Vested subject to complete defeasance, if the interest is created in favor of one or more ascertained persons in being and would become a present interest on the expiration of the preceding interests but may be completely defeated as provided by the transferor at, before or after the expiration of the preceding interests;

(4) Subject to a condition precedent, if the interest is created in favor of one or more unborn or unascertained persons or in favor of one or more presently ascertainable persons upon the occurrence of an uncertain event.

700.06 INTEREST FOR LIFE OF ANOTHER; SUCCESSION. An interest measured by the life of a person other than the owner of the interest passes on the death of the owner (prior to the death of the person who is the measuring life) as an asset of the owner's estate and is realty or personalty according to the nature of the property subject to the interest.

700.07 TRANSFERABILITY OF FUTURE INTERESTS. A future interest is transferable during the lifetime of the owner and passes on his death by will or under the law of intestate succession in the same manner as a present interest; but this section does not make an interest transferable if a valid condition or limitation restricts transfer, nor permit an interest to pass at death if the interest ends at death.

700.08 ESTATE TAIL BECOMES FEE SIMPLE; EFFECT OF GIFT OVER AFTER ATTEMPTED ESTATE TAIL. The use of language in an instrument appropriate to create a present or future interest in fee tail (such as to a named person "and the heirs of his body" or "and his issue") creates a present or future interest in fee simple; if the same instrument attempts to create a future interest after the interest which is made a fee simple by reason of this section, the future interest is valid.

700.09 INTEREST CONTINGENT ON DEATH WITHOUT ISSUE. If an instrument transfers an interest expressly contingent upon the death of a person without "heirs of the body", "descendants", "issue", "children" or relatives described by other terms, the interest takes effect only if that person dies not having such a relative living at the time of his death, or conceived then and born alive thereafter.

700.10 REMAINDER TO HEIRS OF OWNER OF LIFE INTEREST; ABOLITION OF RULE IN SHELLEY'S CASE. If an instrument purports to transfer an interest for life to one person and a remainder to his heirs or the heirs of his body, a remainder is created in his heirs or heirs of his body.

700.11 MEANING OF REMAINDER TO "HEIRS" OR TO "ISSUE". Unless the wording of the instrument clearly expresses a contrary intent, a remainder to the "heirs" of a designated person is construed to mean those persons who would be his heirs and in the shares provided by s. 852.01 if he were to die intestate at the time the remainder takes effect in possession or enjoyment; a remainder to the "issue" of a designated person is construed to mean those persons who would inherit property as his issue under the intestate succession statutes and in the shares provided by s. 852.01 if he were to die intestate at the time the remainder takes effect in possession or enjoyment.

700.12 AFTERBORN CHILDREN INCLUDED IN CLASS GIFT. If an instrument transfers an interest to a group of persons described as a class, such as "issue", "children", "nephews and nieces" or any other class, a

person conceived at the time the membership in the class is determined and born alive subsequently is entitled to take as a member of the class if he otherwise satisfies the conditions for class membership.

700.13 REMAINDERS PRESUMED NOT TO SHORTEN PRIOR INTEREST; ACCELERATION OF REMAINDERS. (1) If an instrument transfers an interest for life or years and a future interest to take effect on a stated contingency not defeating or avoiding the prior interest transferred, and the stated contingency occurs before the normal termination of the prior interest transferred, the future interest takes effect at the normal termination of the prior interest.

(2) Unless the instrument of transfer manifests a contrary intent, renunciation or release of an interest for life or years accelerates succeeding interests.

700.14 INDESTRUCTIBILITY OF CONTINGENT FUTURE INTERESTS. No future interest is destroyed merely by the termination in any manner of any or all preceding interests before the happening of a contingency to which the future interest is subject.

700.15 NOMINAL CONDITIONS NOT ENFORCED. A condition imposed by the transferor is not enforceable if it is or becomes merely nominal and of no actual or substantial benefit to the transferor or other person in whose favor it is to be performed.

700.16 PERPETUITIES AND SUSPENSION OF POWER OF ALIENATION. (1) (a) A future interest or trust is void if it suspends the power of alienation for longer than the permissible period. The permissible period is a life or lives in being plus a period of 30 years.

(b) If the settlor of a living trust has an unlimited power to revoke, the permissible period is computed from termination of such power.

(c) If a future interest or trust is created by exercise of a power of appointment, the permissible period is computed from the time the power is exercised if the power is a general power as defined in s. 702.01 (4) even if the power is exercisable only by will; in the case of other powers the permissible period is computed from the time the power is created but facts at the time the power is exercised are considered in determining whether the power of alienation is suspended beyond a life or lives in being at the time of creation of the power plus 30 years.

(2) The power of alienation is suspended when there are no persons in being who, alone or in combination with others, can convey an absolute fee in possession of land, or full ownership of personalty.

(3) There is no suspension of the power of alienation by a trust or by equitable interests under a trust if the trustee has power to sell, either expressed or implied, or if there is an unlimited power to terminate in one or more persons in being.

(4) This section does not apply to limit any of the following:

(a) Transfers, outright or in trust, for charitable purposes;

(b) Transfers to literary or charitable corporations;

(c) Transfers to any cemetery corporation, society or association;

(d) Transfers, outright or in trust, to the state society of physicians and surgeons incorporated under the law of this state, when the transfer is for the advancement of medical science;

(e) Transfers to any person pursuant to ch. 703; or

(f) Employes' trusts created as part of a plan as described in s. 272.18 (31).

(5) The common-law rule against perpetuities is not in force in this state.

700.17 CLASSIFICATION AND CHARACTERISTICS OF CONCURRENT INTERESTS. (1) CLASSIFICATION OF CONCURRENT INTERESTS. Inter-

ests in property may be owned concurrently by 2 or more persons as joint tenants or as tenants in common.

(2) **CHARACTERISTICS OF JOINT TENANCY.** Each of 2 or more joint tenants has an equal interest in the whole property for the duration of the tenancy. On the death of one of 2 joint tenants, the survivor becomes the sole owner; on the death of one of 3 or more joint tenants, the survivors are joint tenants of the entire interest.

(3) **CHARACTERISTICS OF TENANCY IN COMMON.** Each of 2 or more tenants in common has an undivided interest in the whole property for the duration of the tenancy. There is no right of survivorship incident to a tenancy in common; but a remainder may be created to vest ownership in the survivor of several persons who own as tenants in common other preceding interests (such as a life interest) in the same property.

700.18 DETERMINATION OF COTENANCY GENERALLY. Two or more persons named as owners in a document of title, transferees in an instrument of transfer or buyers in a bill of sale are tenants in common, except as otherwise provided in s. 700.19.

700.19 CREATION OF JOINT TENANCY. (1) **GENERALLY.** The creation of a joint tenancy is determined by the intent expressed in the document of title, instrument of transfer or bill of sale. Any of the following constitute an expression of intent to create a joint tenancy: "as joint tenants", "as joint owners", "jointly", "or the survivor", "with right of survivorship" or any similar phrase.

(2) **HUSBAND AND WIFE.** If persons named as owners in a document of title, transferees in an instrument of transfer or buyers in a bill of sale are described in the document, instrument or bill of sale as husband and wife, or are in fact husband and wife, they are joint tenants, unless the intent to create a tenancy in common is expressed in the document, instrument or bill of sale.

(3) **COMORTGAGEES.** If covendors owned realty as joint tenants and a purchase money mortgage names the covendors as mortgagees, the mortgagees are joint tenants, unless the purchase money mortgage expresses an intent that the mortgagees are tenants in common.

(4) **COVENDORS IN CONTRACTS TO TRANSFER.** (a) If 2 or more persons are named as covendors in a contract to transfer an interest in property which they own as joint tenants, the purchase price is payable to them as joint tenants, unless the contract expresses a contrary intent.

(b) If 2 or more persons are named as covendors in a contract to transfer an interest in real property which is owned solely by one of the persons, the purchase price is payable to the sole owner of the interest in real property to which the contract relates, unless the contract expresses an intent that the purchase price is payable to the covendors as joint tenants.

(5) **COFIDUCIARIES.** Notwithstanding s. 700.18 and the preceding subsections of this section, 2 or more personal representatives or trustees hold title to interests in property as joint tenants.

(6) **CHANGE IN COMMON LAW REQUIREMENTS.** The common law requirements of unity of title and time for creation of a joint tenancy are abolished.

700.20 CREATION OF TENANCY IN COMMON AND UNDIVIDED INTERESTS THEREIN. (1) **COVENDORS IN CONTRACTS TO TRANSFER.** If 2 or more persons are named as covendors in a contract to transfer an interest in real property which is owned solely by one of the persons, the purchase price is payable to the sole owner of the interest in the real property to which the contract relates, unless the contract expresses an intent that the purchase price is payable to the covendors as tenants in common.

(2) **EXTENT OF UNDIVIDED INTERESTS.** The extent of the undivided in-

terests of tenants in common for the duration of the tenancy is determined by the intent expressed in the document of title, instrument of transfer or bill of sale; if no intent is expressed in the document, instrument or bill of sale, tenants in common are presumed to own equal undivided interests for the duration of the tenancy.

700.21 EXCEPTION FOR EQUITABLE RIGHTS OF COTENANTS AND THIRD PERSONS. Nothing in ss. 700.17 to 700.20 prevents an equitable lien arising in favor of one cotenant against another tenant or tenants because of the cotenancy relationship nor prevents imposition of a constructive trust in favor of a 3rd person in an appropriate case.

700.22 EXCEPTION FOR BANK DEPOSITS, CHECKS AND GOVERNMENT BONDS. (1) Nothing in ss. 700.17 to 700.20 governs the determination of rights to deposits (including checking accounts or instruments deposited therein or drawn thereon, savings accounts, certificates of deposit, investment shares or any other form of deposit) in banks, building and loan associations, savings and loan associations, credit unions or other financial institutions.

(2) Nothing in ss. 700.17 to 700.20 applies to United States obligations to the extent they are governed by regulations of the United States government.

700.23 LIABILITY AMONG COTENANTS FOR RENTS AND PROFITS. (1) The provisions of this section apply only in the absence of a valid agreement to the contrary between the cotenants. As used in this section, "proportionate share" means a share determined by the number of joint tenants, in the case of a joint tenancy, and the extent of a tenant in common's undivided interest, in the case of a tenancy in common.

(2) If land belonging to 2 or more cotenants is rented to a 3rd person, any cotenant may recover his proportionate share of the net rents collected by another cotenant after deduction of property taxes, maintenance costs and any other proper charges relating to the property.

(3) If land belonging to such cotenants is occupied by one cotenant and not by another, any cotenant not occupying the premises may recover from the occupying cotenant:

(a) A proportionate share of the reasonable rental value of the land accruing after written demand for rent if the occupying tenant manifests his intent to occupy the premises to the exclusion of the plaintiff;

(b) A proportionate share of the net profits if the occupying cotenant engages in mining, cutting of timber, removal of sand or gravel, or any similar operation resulting in diminution of the value of the premises. In such a case, the occupying cotenant must render an accounting to his other cotenant, showing all receipts and expenditures, and is entitled to deduct a reasonable amount for the value of his services; but any other cotenant at his election may recover in the alternative his proportionate share of the amount which he can prove would have been received by licensing a 3rd party to carry on the same operation.

(4) If one cotenant has leased the premises from another cotenant, upon expiration of his lease it is presumed that he continues to hold over as provided in s. 704.25, unless he gives to the other cotenant prior to the expiration of the lease a written notice to the contrary, by one of the methods under s. 704.21.

700.24 DEATH OF A JOINT TENANT; EFFECT OF LIENS. A real estate mortgage, a security interest under ch. 409, or a lien under ss. 45.37 (12), 71.13 (3) (b), 72.81 (6), chs. 49 or 289 on or against the interest of a joint tenant does not defeat the right of survivorship in the event of the death of such joint tenant, but the surviving joint tenant or tenants take the interest such deceased joint tenant could have transferred prior to death subject to such mortgage, security interest or statutory lien.

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SECTION 16. APPLICABILITY OF CHAPTER. This chapter applies to interests in property in existence on July 1, 1971, and to interests in property created after such date. If application of any provision of this chapter to an interest in property in existence on the effective date of this chapter is unconstitutional, it shall not affect application of the provision to an interest in property created after the effective date of this chapter.

SECTION 17. Chapter 703 (title) is created to read:

CHAPTER 703.

CONDOMINIUMS.

(to precede s. 703.01)

SECTION 18. This act shall take effect July 1, 1971.

Approved December 17, 1969.
