TITLE XXI.

Alienation and Descent of Real Property, and of Wills.

CHAPTER 235.

ALIENATION BY DEED, AND PROOF AND RECORDING OF INSTRUMENTS.

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235.01 Conveyances, how made; homesteads. Conveyances of land or any estate or interest therein may be made by deed signed and sealed by the person from whom the estate or interest is intended to pass, being of lawful age, or by his lawful agent or attorney, and acknowledged or proved as directed in this chapter, without any other act or ceremony whatever; but no mortgage or other alienation by a married man of his homestead, exempt by law from execution, or any interest therein, legal or equitable, present or future, by deed or otherwise, shall be valid without his wife's consent, evidenced by her act of joining in the same deed, mortgage or other conveyance, or by her act of executing a separate deed, mortgage or conveyance of the same nature as her husband's, except a conveyance from husband to wife. When separate deeds, mortgages or conveyances are executed by the husband and wife, each such instrument shall contain a statement that it is executed and delivered on condition that an instrument of similar import be executed and delivered by the other and that neither of such instruments shall be effective until both are so executed and delivered. Such statement shall appear in bold face type and with greater prominence than any other portion of the text of the instrument. When a mistake is made in the description of land occupied as a homestead, the attempted conveyance shall be construed as an executory contract to convey said homestead by said husband and wife, and the description of said land may at any time be corrected as other convey-

ances are corrected, and shall bind said parties as fully as though it were correctly described. [*1945 c. 410*]

Note: A husband's contract to convey part of the homestead, not signed by the wife was void in toto, and specific performance thereof was improperly decreed. (Stats. 1929) Eaton Center Co-op. C. Co. v. Kalkofen, 209 W 170, 244 NW 620.

See note to 202.08, citing Bartz v. Eagle Point M. F. Ins. Co., 218 W 551, 260 NW 469.

A wife, who acquiesced in her husband's contract to sell a designated acre of their 160-acre farm, permitted the purchaser to construct buildings, and did not claim the acre as part of the homestead until after a decree of specific performance of such contract against the husband without any restriction as to use was estopped from claiming the acre as part of the homestead, since the husband was legally competent to make a homestead selection which omitted the acre in question. Hainz v. Kurth, 227 W 260, 278 NW 413.

Between the parties thereto, a deed absolute in form, if given to secure a loan or intended to be a mortgage, will be considered by the courts to be a mortgage. A transaction involving a deed of mortgaged premises given by mortgagor to mortgagee will be carefully scrutinized by the court. A transaction involving a deed of mortgaged premises given by mortgagor to mortgagee will be sustained if it was fairly made and no unconscionable advantage was taken of the mortgagor. Ordinarily, parol evidence is admissible to show that a deed absolute in form was intended to be a mortgage. Acme Brick Co. v. Jacobi-Erdman, Inc., 235 W 539, 292 NW 453.

Homestead rights, as distinguished from dower, are not estates, and the husband has it within his power to abandon a property as his homestead, thereby defeating the right which his wife theretofore had to veto the sale of the homestead property by not joining in the conveyance thereof. Radtke v. Radtke, 247 W 330, 19 NW (2d) 169.

Deed of conveyance signed by grantors and delivered with the name of grantors and the consideration omitted at the time of delivery, the omissions of which are subsequently inserted by the grantee, is a valid instrument of conveyance if the instrument so completed represents the actual agreement of the parties. 28 Atty. Gen. 527.

235.02 No covenants implied. No covenant shall be implied in any conveyance of real estate whether such conveyance contain special covenants or not. 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 or other separate instrument to secure such payment shall have been given the remedies of the mortgagee shall be confined to the lands mentioned in the mortgage.

Note: The grantees were held not to have an implied easement on a strip of land adjoining that conveyed to them. Frank C. Schilling Co. v. Detry, 203 W 109, 233 NW 635.

The defense of breach of covenant of peaceable and quiet possession does not lie in an action to recover rent under a lease for a term exceeding three years, in the absence of an express covenant of peaceable possession in the lease, since a lease for such term is a "conveyance of real estate," in which no covenant can be implied. Bahcall v. Gloss, 244 W 473, 12 NW (2d) 674.

235.03 Grant of land held adversely. No grant of land shall be void for the reason that at the time of delivery thereof such lands shall be in actual possession of a person claiming under title adverse to the grantor.

235.04 Words of inheritance not essential. In conveyances of lands words of inheritance shall not be necessary to create or convey a fee, and every grant of lands or any interest therein shall pass all the estate or interest of the grantor unless the intent to pass a less estate or interest shall appear by express terms or be necessarily implied in the terms of such grant.

235.05 Quitclaim deed. A deed of quitclaim and release of the form in common use or of the form hereinafter provided shall be sufficient to pass all the estate which the grantor could lawfully convey by deed of bargain and sale.

235.06 Warranty and quitclaim deeds; exceptions to covenants. (1) Conveyances of land may be in substantially the following form:

WARRANTY DEED.

A. B., grantor, of .... county, Wisconsin, hereby conveys and warrants to C. D., grantee, of .... county, Wisconsin, for the sum of .... dollars, the following tract of land in .... county (here describe the premises).

Witness the hand and seal of said grantor this .... day of ...., 19...

In presence of
....
....

.... [Seal]
.... [Seal]

QUITCLAIM DEED.

A. B., grantor, of .... county, Wisconsin, hereby quitclaims to C. D., grantee, of .... county, Wisconsin, for the sum of .... dollars, the following tract of land in .... county (here describe the premises).

Witness the hand and seal of said grantor this .... day of ...., 19...

In presence of
....
....

.... [Seal]
.... [Seal]

(2) Such deeds, when executed and acknowledged as required by law, shall, when of the first of the above forms, have the effect of a conveyance in fee simple to the grantee, his

heirs and assigns of the premises therein named together with all the appurtenances, rights and privileges thereto belonging, with a covenant from the grantor, his heirs and personal representatives that he is lawfully seized of the premises; has good right to convey the same; that he guarantees the grantee, his heirs and assigns in the quiet possession thereof; that the same are free from all incumbrance and that the grantor, his heirs and personal representatives will forever warrant and defend the title and possession thereof in the grantee, his heirs and assigns against all lawful claims whatsoever; any exceptions to such covenants may be briefly inserted in such deed, following the description of the land; and when in the second of the above forms, shall have the effect of a conveyance in fee simple to the grantee, his heirs and assigns of all right, title, interest and estate of the grantor, either in possession or expectancy, in and to the premises therein described and all rights, privileges and appurtenances thereto belonging.

Note: A mere quitclaim deed of land, executed and delivered by a widow, who was the owner of a life estate therein under the will of her husband and who had the power to convey, to her daughter in consideration of a promise to support, conveyed to the grantee only the life estate, the interest which the widow then owned, even if the widow had the power under the will to convey a fee. Meister v. Francisco, 233 W 319, 289 NW 643.

235.07 Life estates; form of deed; rights of parties. (1) Deeds reserving a life estate may be in substantially this form:

DEED RESERVING A LIFE ESTATE.

A. B., grantor, of .... county, Wisconsin, hereby conveys unto C. D., grantee, of .... county, Wisconsin, for the sum of (here also state any other consideration) dollars, the following tract of land in .... county (here describe premises).

To have and to hold said tract of land, together with the appurtenances thereto, unto the said C. D., the said A. B. reserving unto himself a life estate in said tract of land for his own life and for the life of (here insert the name of the wife or other person for whose life a life estate is reserved).

And the said C. D., as a part of the consideration for the grant of said tract of land, does agree to assume and pay (here state any incumbrance that may be assumed by the grantee or any agreement that may be had in regard to the payment of taxes, assessments, etc., by the grantee).

Witness the hand and seal of said grantor this .... day of ...., 19...

In presence of
....
....

.... [Seal]
.... [Seal]

(2) Such deed when executed and acknowledged as required by law shall reserve to the grantor or other person or persons, for whose lives a life estate is reserved and to the survivor of them, a good and sufficient title and right to the exclusive possession of the lands conveyed, until the death of all the persons for whose lives such estate is reserved; and upon the death of all the persons for whose lives such an estate is reserved the fee to such lands shall vest absolutely in the grantee.

235.08 Mortgage form. (1) A mortgage may be substantially in the following form:

A. B., mortgagor, of .... county, Wisconsin, hereby mortgages to C. D., mortgagee, of .... county, Wisconsin, for the sum of .... dollars, the following tract of land in .... county (here describe the premises).

This mortgage is given to secure the following indebtedness (here state amount or amounts and form of indebtedness, whether on note, bond or otherwise, time or times when due, rate of interest, by and to whom payable, etc.).

The mortgagor agrees to pay all taxes and assessments on said premises, and the sum of .... dollars attorney's fees in case of foreclosure thereof.

Witness the hand and seal of said mortgagor this .... day of ...., 19...

In presence of
....
....

.... [Seal]
.... [Seal]

(2) When executed and acknowledged as required by law shall have the effect of a conveyance of the land therein described, together with all the rights, privileges and appurtenances thereunto belonging in pledge to the mortgagee, his heirs, assigns and legal representatives for the payment of the indebtedness therein set forth, with covenant from the mortgagor that all taxes and assessments levied and assessed upon the land described, during the continuance of the mortgage, shall be paid previous to the day appointed by law for the sale of lands for taxes as fully as the forms of mortgage now and heretofore in common use in this state, and may be foreclosed in the same manner and with the same effect, except that the same cannot be foreclosed by advertisement as provided in chapter

297, upon any default being made in any of the conditions thereof as to payment of either principal, interest or taxes. Foreclosures by advertisement of mortgages in the form aforesaid, completed prior to January 1, 1913, if otherwise regular, shall be valid unless the action in which the validity of such foreclosure is questioned be commenced or the defense alleging the invalidity thereof be interposed prior to January 1, 1915.

Note: Furnishings, and equipment of apartment building, erected, equipped and furnished with money borrowed from landowner under contract binding him to convey land to parties erecting building with mortgage back when certain amount of moneys advanced was repaid and providing that title to land, building, furnishings and equipment should remain in him until transferred as therein provided for, were covered by mortgage of realty, buildings and improvements, with "all the hereditaments, privileges and appurtenances to the same belonging," as provided in mortgagee's deed to mortgagors, whether regarded as fixtures or personal property. First Wisconsin T. Co. v. Adams, 218 W 406, 261 NW 16.

Machines adapted to the purposes of and used in a soft-drink manufacturing and bottling plant, which were not fastened but were kept in place by their own weight and attached to pipes and wires supplying water and electricity, and which were installed by a mortgagor with the intention of continuing to operate the plant, and which were assessed and taxed continuously as part of the realty, constituted fixtures passing with the realty to a mortgagee as against the mortgagor. McCorkle v. Robbins, 222 W 12, 267 NW 295.

Under a mortgage providing to the effect that it should be void if the mortgagor should pay the mortgagee the sum of $2,000 or carry out the terms of a support contract, which latter provided for a cash payment to a daughter of the mortgagor on the death of the mortgagee, to be a lien on the premises mortgaged, where the clear purpose of the mortgage was to secure the mortgagee's right to support, or, in the alternative, to the sum of $2,000 which represented its assumed value, it is determined that the provision for a cash payment to the daughter of the mortgagor constituted a first lien on the premises to which the mortgage was subordinate. Menge v. Radtke, 222 W 594, 269 NW 313.

A real estate mortgage is a lien only and the lien persists until destroyed by sale of the premises thereunder. A foreclosure judgment does not destroy the lien but merely judicially determines the amount thereof. A covenant, in a mortgage covering several parcels of land, for the release of any portion of the premises from time to time "during the lien of this indenture" on the payment of its proportionate value plus taxes, continued to be binding on the mortgagee after foreclosure and until the equity of redemption was extinguished and such privilege could be assigned by the mortgagor and enforced by his assignee. Marshall & Ilsley Bank v. Greene, 227 W 155, 278 NW 425.

235.09 Assignment of mortgage. An assignment of a mortgage may be substantially in the following form:

For value received, I, A. B., of ...., Wisconsin, hereby assign to C. D., of ...., Wisconsin, the within mortgage (or a certain mortgage executed to .... by C. F. and wife, of .... county, Wisconsin, the .... day of ...., 19.., and recorded in the office of the register of deeds of .... county, Wisconsin, in Vol. .... of mortgages, on page ....), together with the .... and indebtedness therein mentioned.

Witness my hand and seal this .... day of ...., 19...

In presence of }
.... }
.... }

A. B. [Seal.]

Such assignment when executed and acknowledged shall be sufficient to vest in the assignee for all purposes all the rights of the mortgagee under the mortgage described and the amount of the indebtedness due thereon at the date of the assignment. Such assignment shall not be indorsed upon the margin of the recorded mortgage. [*1945 c. 420, 586*]

Note: Though assignor of mortgage indorsed note evidencing mortgage debt, it was not personally liable where formal assignment of mortgage provided that assignment was made without recourse. Lentz v. Dostal, 212 W 81, 249 NW 174.

235.10 Removal of buildings from mortgaged premises. The removal, without the consent of the mortgagee or his 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 his 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 his consent, all reasonable expense incurred in recovering such building shall be added to, and collected as a part of the mortgage debt.

235.11 Form of sheriff's deed on execution sale. (1) Deeds of sheriffs upon sale on execution may be in substantially the following form:

Whereas, a judgment in favor of A. B. and against C. D. was docketed in the circuit court of .... county, Wisconsin, on the .... day of ...., 19.., and E. F., sheriff (or G. H., then sheriff) of said county, in pursuance of an execution upon said judgment against the property of said C. D., said execution being dated the .... day of ...., 19.., levied upon the lands hereinafter described and proceeded according to law to advertise and sell the same to satisfy the damages and costs mentioned in the execution, and did on the .... day of ...., 19.., sell the said lands to L. M. for .... dollars, said L. M. being the best bidder therefor, and thereupon made out duplicate certificates of said sale in the form required by law and filed one of said certificates in the office of the register of deeds of the county of .... within ten days after said sale, and delivered the other to the purchaser;

And whereas, ... months have expired since said sale and said premises remain unredeemed, and no creditor of the said C. D. has acquired the right of said purchaser (or, and J. K., a creditor of said C. D., has acquired the rights of the purchaser by redemption, as the case may be):

Now, therefore, the said E. F., sheriff aforesaid, in consideration of the premises and of said sum of .... dollars to him (or to his predecessor) paid by the said L. M., hereby conveys to the said L. M. (or if a creditor shall have acquired the right of said L. M., then to said creditor by name) the following tract of land in .... county, Wisconsin (describe premises), with all the interest which said C. D. had therein on the .... day of ...., 19.., or has since acquired.

Witness the hand and seal of said sheriff this .... day of ...., 19...

In presence of
....
....

.... [Seal]
Sheriff of .... County, Wisconsin.

(2) Such deed, when executed and acknowledged as required by law, shall convey to the purchaser therein named all the interest of the judgment debtor in the property described as fully as in the form of deed for that purpose heretofore in common use in this state.

235.12 Form of deeds on foreclosure sales and by advertisement. (1) Deeds of sheriffs or referees on foreclosure of mortgage shall be sufficient if made in substantially the following form:

Whereas, a judgment of foreclosure and sale was rendered in the .... court of .... county, Wisconsin, on the .... day of .... 19.., in a certain action wherein A. B. was plaintiff and C. D. defendant, and in pursuance thereof, after due advertisement, the mortgaged premises hereinafter described were sold on the .... day of ...., 19.., to E. F. for the sum of .... dollars, he being the best bidder therefor;

And whereas, the said E. F. (or G. H., assignee of said E. F.) is now entitled to a conveyance thereof according to law:

Now, therefore, the undersigned J. K., sheriff (or referee), in consideration of the premises and of the said sum of .... dollars paid by the said E. F., hereby conveys to said E. F. the following tract of land in .... county, Wisconsin (description of land).

Witness the hand and seal of said sheriff this .... day of ...., 19...

In presence of
....
....

.... [Seal]
Sheriff of .... County, Wisconsin.

(2) Such deed, when executed and acknowledged according to law, shall have the effect to convey to the purchaser therein named all the interest of the mortgagor or other persons in the premises described as fully as the forms of such deeds heretofore in common use in this state.

(3) Deeds of sheriffs on foreclosure of mortgage by advertisement under chapter 297 shall be sufficient if made substantially in the following form:

Whereas, a certain mortgage, executed by .... of ...., and recorded in the office of the register of deeds of .... county, Wisconsin, in Vol. .... of mortgages, at page ...., and foreclosed under and by virtue of chapter 297, revised statutes of Wisconsin, and in pursuance thereof, after due advertisement, the mortgaged premises hereinafter described were sold on the .... day of ...., 19.., to E. F., of ...., for the sum of .... dollars, he being the best bidder therefor;

And whereas, the said E. F. (or G. H., assignee of said ....) is now entitled to a conveyance thereof according to law:

Now, therefore, the undersigned J. K., sheriff, in consideration of the premises and of said sum of .... dollars paid by the said E. F., hereby conveys to said E. F. the following tract of land in .... county, Wisconsin (description of land).

Witness the hand and seal of said sheriff this .... day of ...., 19...

In presence of
....
....

.... [Seal]
Sheriff of .... County, Wisconsin.

(4) Such deed as in last-above form, when executed and acknowledged according to law, shall have the effect to convey to the grantee therein named all the interest of the mortgagor or other persons in the premises described as contemplated by chapter 297 as fully as the forms of such deeds heretofore in common use in this state and as fully as any form could do.

235.13 Deeds by sheriff's successor. In all cases where any sale has been or may hereafter be made by any sheriff under or in pursuance of any order, judgment or decree of any court and such sheriff did not or shall not, before the expiration of his term of office,

execute a deed to carry such sale into effect such deed may be executed by the successor of such sheriff in office at the time of the application for such deed, and any deed so executed by any successor of the sheriff making such sale while in office shall have the same force and effect as though the same had been executed by the sheriff making such sale.

235.14 Deeds of general and special guardians. (1) A guardian's deed substantially in the following form:

Whereas, by a license made by the county court of .... county, Wisconsin, on the .... day of ...., 19.., A. B., guardian of C. D., minor child of J. D., late of ...., deceased, was authorized to sell the interest of the said C. D. in the lands hereinafter described; and whereas, the said A. B., having first taken the oath and given the bond required by law, did, after due advertisement, sell, on the .... day of ...., 19.., said lands to E. F., of .... county, Wisconsin, for the sum of .... dollars, he being the best bidder therefor; and whereas, such proceedings were confirmed by an order of said county court on the .... day of ...., 19.., and this conveyance directed:

Now, therefore, the said A. B., in this capacity as guardian as aforesaid, in consideration of the premises and of the said sum of .... dollars paid by said E. F., hereby conveys to the said E. F. the following tract of land in .... county, Wisconsin (description of land).

Witness the hand and seal of the said A. B., guardian as aforesaid, this .... day of ...., 19...

In presence of
....
....

A. B., [Seal]
Guardian of C. D., minor child of J. D., deceased.

(2) When executed and acknowledged according to law shall have the effect to convey to the grantee therein named all the estate of the ward in the lands therein described.

(3) A deed by a special guardian authorized by the circuit court or circuit judge to convey real estate of any infant in substantially the following form:

Whereas, on application in the circuit court of .... county, Wisconsin, to sell all the rights, title and interest of ...., infant, in and to the real estate hereinafter described, such proceedings were had that the undersigned was, on the .... day of ...., 19.., appointed the special guardian of said infant in relation to the proceedings to be had upon such application and gave and filed a duly approved bond to the judge of said court as required, and such proceedings were thereafter had in such circuit court upon such application that by order made on the .... day of ...., 19.., by said court or by (.... ...., circuit judge), said special guardian was authorized to execute, acknowledge and deliver to .... a deed of conveyance of all the right, title and interest of said ...., infant, in and to said real estate:

Now, therefore, I, the said ...., in my capacity of special guardian aforesaid, and in consideration of the premises and .... dollars to me in hand paid by the said ...., do hereby grant and convey unto the said .... all the right, title and interest of the said ...., infant, in and to the following described real estate in .... county, Wisconsin, to wit: (description of land.)

Witness the hand and seal of the said ...., special guardian as aforesaid, this .... day of ...., 19...

In presence of
....
....
....

.... [Seal]
Special Guardian of ...., Infant.

(4) When executed and acknowledged according to law shall have the effect to convey to the grantee therein named all the estate, right and title of the infant in the lands therein described. And if there are more than one infant whose land is to be so conveyed, such form may be varied accordingly. And every such deed, when properly executed and acknowledged, and the record thereof, shall be prima facie evidence of the facts therein stated and of the authority of every such guardian to execute such deed, and of the regularity and validity of all the proceedings prior to the execution of such deed.

235.15 Use of other forms not forbidden; consideration to be stated. No form of conveyance hereinbefore prescribed in this chapter shall be deemed to exclude the use of any other form sufficient in law; and it is the duty of all parties executing a conveyance of real estate to state therein, as near as practicable, the actual and true consideration of such conveyance.

235.16 Forms approved and recommended; recording fees. (1) The several forms of deeds, mortgages, land contracts, assignments, satisfactions and other conveyancing instruments heretofore prepared by the Wisconsin state register of deeds association, denominated "State of Wisconsin" forms and numbered 1 to 60, both inclusive, and now on file with the secretary of state, are hereby approved and recommended for use in the state

of Wisconsin. Such forms shall be kept on file with and preserved by the secretary of state as a public record.

(2) The secretary of state shall upon sufficient copies thereof being furnished to him without expense, on or before August 1, 1919, thereupon certify the same to be correct copies of the forms on file in his office, approved by this section, and transmit a set of the same to each register of deeds in the state of Wisconsin; and each such register of deeds shall thereafter preserve the same on file in his office for the convenient use of the public.

(3) Whenever after January 1, 1920, there shall be offered for record any instrument for which a form is hereby approved which varies from such approved forms, then in addition to the regular recording fee, an additional charge for recording shall be made by such register of deeds equal to fifty per cent of the recording fees prescribed by section 59.57.

235.17 What may be a seal. A scroll or device as a seal upon any conveyance of lands or other instrument whatever, whether intended to be recorded or not, shall have the same force and effect as a seal attached thereto or impressed thereon and the conveyance or instrument be of the same obligation as if actually sealed; but this section shall not apply to such official or corporate seals as are or may be provided by law. All deeds and other instruments in writing executed by any person, or private corporation not having a corporate seal, and now required to be under seal, shall be deemed in all respects to be sealed instruments and shall be received in evidence as such; provided, the word "seal," the letters "L S," or a scroll or other device intended to represent a seal, are added in the place where the seal should be affixed. A seal of a court, public officer or corporation may be impressed directly upon the instrument or writing to be sealed, or upon wafer, wax or other adhesive substance affixed thereto, or upon paper or other similar substance affixed thereto by mucilage or other adhesive substance. An instrument or writing duly executed in the corporate name of a corporation, which shall not have adopted a corporate seal, by the proper officers of the corporation under any seal, shall be deemed to have been executed under the corporate seal whether the words or marks herein mentioned be affixed or not.

Note: Under 328.27 a contract of guaranty under seal within this section imports consideration and is good, even though no consideration therefor is stated; the true consideration may be shown, but not for the purpose of defeating the contract. Bradley Bank v. Pride, 208 W 134, 242 NW 505.

Although a promissory note is not required to be under seal, the maker of a note, for purposes satisfactory to himself and his payee, may make his ordinary promise in the form of a specialty by adding a seal. The printed letters "L. S." or the printed word "Seal" inclosed in brackets or parentheses, in the usual place of a seal, constitute a sufficient "scroll or device" to answer the purposes of a seal. Banking Comm. v. Magnin, 239 W 36, 300 NW 740.

This section does not require that there be any reference to a seal in the body of the instrument in order to make it a sealed instrument. Fond du Lac Citizens Loan & Inv. Co. v. Webb, 240 W 42, 1 NW (2d) 772, 2 NW (2d) 722.

235.18 Seal; curative act. Every conveyance of real estate duly signed, witnessed and acknowledged according to the laws of this state in force at the time of its execution, but which conveyance was not sealed, shall, after 10 years after its execution, be deemed to have been a perfect conveyance and to have been entitled to record, the same as if such conveyance had been sealed at the time of its execution; and every such conveyance shall, together with any record thereof, be receivable in evidence with the same effect as if it had been sealed at the time of its execution; but this section shall not apply to deeds to which official seals or seals of corporations should have been affixed, nor shall it affect the interest of any person who, prior to the expiration of said 10-year period, has acquired an adverse interest in the said real estate. [*1941 c. 71*]

235.19 Conveyances, how executed. (1) All conveyances executed within this state, of lands or any interest in lands therein, shall be executed in the presence of two witnesses, who shall subscribe their names to the same as such.

(2) When such conveyances are of lands or any interest therein, owned by a corporation organized under any law of this state, they shall be signed by the president or other authorized officers of the corporation, sealed with the corporate seal, if any, otherwise as provided in section 235.17, and countersigned by the secretary, assistant secretary, cashier or assistant cashier, or clerk thereof; and all corporate conveyances so executed prior to the taking effect of these statutes shall be valid.

(3) Any person executing any conveyance may acknowledge the execution thereof before any judge or clerk of a court of record, court commissioner, county clerk, duly commissioned officer of any of the armed forces of the United States, including a duly commissioned officer of any of the women's auxiliary military services established by act of congress, notary public, justice of the peace, police justice or United States commissioner residing within this state who shall file with the clerk of the circuit court of the county in which he resides, his certificate of appointment as such commissioner, or a copy thereof certified by the clerk of the court which appointed him. All deeds or other written in-

struments, the execution of which has been before May 26, 1923, acknowledged before a register of deeds, are declared to be legal and valid to the same extent, and shall have the same effect as if the execution of such deed or written instrument had been acknowledged before a person authorized to take such acknowledgment. All acknowledgments of deeds or other written instruments, prior to July 10, 1943, taken before a duly commissioned officer of any of the armed forces of the United States, including a duly commissioned officer of any of the women's auxiliary military services established by act of congress, are declared to be legal and valid.

(4) Any officer taking an acknowledgment shall attach his certificate thereof, bearing the true date of making the same, under his hand and his official seal, if such officer has an official seal. [*1943 c. 468*]

Note: See note to 240.06, citing Jefferson Gardens, Inc. v. Terzan, 216 W 230, 257 NW 154.

A deed though not witnessed nor acknowledged (i. e., not entitled to record) may convey title. Where telephone company was the grantee in such a deed of an easement, the United States, not having a paramount title to the easement, could not question the title of the company. Tenney Telephone Co. v. United States, 82 F (2d) 788.

Real estate acquired in name of city may be conveyed by city pursuant to provisions of (2). 19 Atty. Gen. 402.

235.20 Defective execution cured. (1) Any instrument in writing affecting the title to real property in this state, which has been signed by the party or parties, or, if a corporation, by the proper corporate officers, but which instrument is not acknowledged or is defectively acknowledged, or is not properly witnessed, or is not sealed, or was executed without corporate authority, or was otherwise defectively executed, shall, after the same has been recorded in the office of the proper register of deeds for 10 years, have the same force and effect as though such instrument had been originally executed, witnessed, sealed and acknowledged according to law.

(2) Any instrument or certificate in writing made in connection with a map or plat of any lands, affecting the title of real property in this state, which certificate or instrument has been signed by the party or parties, or, if a corporation, by the proper corporate officers, but which instrument or certificate is not acknowledged or is defectively acknowledged, or is not properly witnessed, or is not sealed, or was executed without corporate authority, or was otherwise defectively executed, shall, after the same has been recorded in the office of the proper register of deeds for 10 years, have the same force and effect as though such instrument or certificate had been originally executed, witnessed, sealed and acknowledged as provided by chapter 236. [*1937 c. 304; 1945 c. 406, 542*]

235.21 Validation of corporate acts. Every instrument in writing made at least ten years prior to June 15, 1921, purporting to release a mortgage on real estate and which shall have been signed by any corporation by its treasurer or any other officer authorized by such corporation so to do and such signing acknowledged by such treasurer or other officer to be the voluntary act and deed of such corporation, is declared to be and to have been a full and complete release of the mortgage therein described, and the record thereof, heretofore made, is declared to be and to have been legal and valid; and every such instrument, together with the record of the same, shall be receivable in evidence with the same force and effect as if it had been signed in the manner prescribed by law at the time of its execution. The provisions of this section do not affect any action pending June 15, 1921.

235.22 Form of certificate of acknowledgment. A certificate of acknowledgment shall be sufficient if made substantially in the following form:

STATE OF WISCONSIN, } ss.
.... County. }

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 acknowledged the same.

....
(Insert designation of officer.)

Note: Notary public is criminally liable for making false certificate of acknowledgment of deed over telephone, although he believed that such party had actually executed deed. 19 Atty. Gen. 626.

235.23 Foreign deed; acknowledgment. If such conveyance shall be executed in any other state, territory or district of the United States it may be executed in the manner prescribed in section 235.19 and acknowledged in the form prescribed in section 235.22 or executed and acknowledged according to the laws of such state, territory or district; and the execution thereof may be acknowledged before and certified to by any judge or clerk of a court of record, notary public, justice of the peace, master in chancery or other officer authorized by the laws of such state, territory or district to take acknowledgments of deeds therein or before any commissioner appointed by the governor of this state for such pur-

pose; and if executed within the jurisdiction of any military post of the United States, not within this state, it may be acknowledged before and certified to by the commanding officer thereof.

235.24 Same; certificate. In the cases provided for in section 235.23, unless the acknowledgment be taken before a commissioner appointed by the governor of this state for that purpose, a clerk of a court of record with its seal attached, a notary public with his seal attached, or the commanding officer of a military post, such conveyance shall have attached thereto a certificate of the clerk or other proper certifying officer of a court of record of the county or district within which such acknowledgment was taken, under the seal of his office, that the person whose name is subscribed to the certificate of acknowledgment was, at the date thereof, such officer as he is therein represented to be and that he believes the signature of such person subscribed thereto to be genuine, and if such deed be executed and acknowledged according to the laws of such state, territory or district such certificate shall state that fact. If any such deed, the acknowledgment of which shall be taken by any such commissioner, clerk of a court of record, notary public or commanding officer of a military post, shall be executed and acknowledged according to the laws of such state, territory or district the certificate of acknowledgment may certify that fact in lieu of other proof thereof.

Note: Register of deeds should accept for recording deed acknowledged in another state and authenticated as provided by 235.24, notwithstanding enactment of ch. 329, Stats., by ch. 289, laws of 1943, which likewise relates to acknowledgments and authentication of deeds. Register of deeds in interpreting his duty to record instruments should assume that passage of later enactment was not intended to preclude resort to prior statute on subject. 32 Atty. Gen. 292.

235.25 Execution and acknowledgment abroad. (1) All deeds or other instruments requiring acknowledgment, if acknowledged without the United States, shall be acknowledged before an ambassador, minister, envoy or charge d'affaires of the United States, in the country to which he is accredited, or before one of the following officers commissioned or accredited to act at the place where the acknowledgment is taken, and having an official seal, namely: Any consular officer of the United States; a notary public; or a commissioner or other agent of this state having power to take acknowledgments to deeds.

(2) Every certificate of acknowledgment, made without the United States, shall contain the name or names of the person or persons making the acknowledgment, the date when and place where made, a statement of the fact that the person making the acknowledgment knew the contents of the instrument, and acknowledged the same to be his act; the certificate shall also contain the name of the person before whom made, his official title, and be sealed with his official seal and may be substantially in the following form:

.....(name of country).
.....(name of city, province or other political subdivision).

Before the undersigned .... (naming the officer and designating his official title) duly commissioned (or appointed) and qualified, this day personally appeared at the place above named .... (naming the person or persons acknowledging) who declared that he (she or they) knew the contents of the foregoing instrument, and acknowledged the same to be his (her or their) act.

Witness my hand and official seal this .... day of ...., 19...

.... (name of officer),
(Seal) .... (official title).

Should any conveyance be executed according to the laws of the country where acknowledged, the certificate of acknowledgment shall certify that fact.

(3) When the seal affixed shall contain the name or the official style of the officer, any error in stating, or failure to state otherwise the name or the official style of the officer, shall not render the certificate defective.

(4) A certificate of acknowledgment of a deed or other instrument acknowledged without the United States before any officer mentioned in subsection (1) of this section shall also be valid if in the same form as now is or hereafter may be required by law, for an acknowledgment within this state.

(5) If any conveyance be executed in a foreign country it may be executed in the manner prescribed in section 235.19 or according to the laws of such country.

235.255 Instruments executed by persons in war service validated. (1) DEFINITIONS. As used in this section the term:

(a) "Person engaged in war service" means any member of the armed forces of the United States, including those held as prisoners of war; any officer or seaman of the merchant marine of the United States; any citizen of the United States who is interned in a foreign country; or any citizen of the United States who is outside the limits of the United States by permission, assignment or direction of any department or official of the United States government, in connection with an activity pertaining to the prosecution of any war in which the United States is then engaged.

(b) "During the period of the existing war" means the period commencing September 16, 1940, and ending one year after the termination by treaty of peace proclaimed by the President of the wars in which the United States is now (1945) engaged.

(c) "Conveyance" means any (writing signed by the person executing it and intended to be a) deed, mortgage, power of attorney, or other instrument (except a will or codicil) affecting the title to or disposition of real or personal property, and the validity of which is governed by the laws of this state.

(2) VALIDATION. Whenever, during the period of the existing war, a person engaged in war service has executed, or shall execute, a conveyance, it shall not be invalid because of the lack of, or defective, seal, attestation, witnessing or acknowledgment; nor shall the conveyance be denied recordation because of lack of, or defective, acknowledgment, witnessing or attestation, if there is recorded an affidavit that the person executing it was a person engaged in war service at the time of the execution of the instrument.

(3) WILLS. Whenever, during the period of the existing war, a person engaged in war service has executed, or shall execute, a will or codicil, it shall not be denied probate, because of lack of witnesses; because the witnesses cannot be found or produced to prove the will; because the signatures of the witnesses cannot be proved; because of any defect in attestation or publication; or because the testator was below testamentary age, if the court finds the signature to be genuine and finds from the face of the instrument or other proof that the signer intended it to take effect as a will or codicil. Nothing herein contained shall be construed to affect the validity of nuncupative or oral wills.

(4) EXCEPTIONS. (a) This section shall not apply to a conveyance, will or codicil which, before the effective date of this act (1945) has been judicially construed to be invalid.

(b) Nothing in this section shall be deemed to affect the rights of the the signer of such legal instrument, will or codicil, or his successors in interest, arising out of fraud, duress, undue influence, mental incompetence, or in the case of a conveyance the rights arising out of infancy.

(5) SEVERABILITY. If any subsection, paragraph or other provision of this section, or its application to any person or circumstance shall be held unconstitutional, such decision shall not affect the constitutionality of any other subsection, paragraph or other provision, or its application to other persons or circumstances. [*1945 c. 463*]

235.26 Deed of married woman. Every married woman of full age residing in this state or elsewhere may, by joint or separate deed, convey her lands in this state or any interest therein or by joint or separate deed of conveyance release her dower in any lands of her husband which have been conveyed voluntarily by him or upon execution, judgment of foreclosure or decree of court in the same manner and with like effect as if she were unmarried; and every conveyance of any such real estate or interest therein, executed and acknowledged by any married woman in the manner prescribed in this chapter, shall have the same effect as if she were unmarried. The acknowledgment of a married woman when required by law may be taken in the same form as if she were sole.

235.27 Dower, how barred. Every married woman of the age of eighteen years and upwards may bar her dower in any real estate by joining with her husband or with his guardian, if he be under guardianship for any cause, in a conveyance thereof duly executed and acknowledged by her in the manner above prescribed in this chapter; and the joinder of her name as grantor with her husband in any deed so executed by her shall be sufficient to bar her dower without any other words therein. And whenever her husband's title to any land shall have been lawfully conveyed to another she may, either before or after the decease of her husband, bar her dower therein by her quitclaim deed of such land to such other person executed and acknowledged as upon conveyance of her own separate estate.

Note: Where a wife's homestead and dower rights were subject to an existing mortgage executed by the husband before marriage, and a new mortgage executed after marriage satisfied the existing mortgage, any failure to execute the new mortgage with the formalities required by 235.19 and 235.27 could not deprive the new mortgagee of its right to foreclose against the wife's interests, the new mortgagee being entitled to subrogation or to an equitable designment of the rights of the original mortgagee. Home Owners' Loan Corp. v. Papara, 241 W 112, 3 NW (2d) 730.

235.28 Conveyance by attorney. Any married woman may, by letter of attorney, executed and acknowledged in the manner prescribed in this chapter, authorize and empower her attorney to bar her dower or to convey any other interest in any real estate in the same manner and in the same cases as she might personally do.

235.29 Acknowledgment or proof, how made. Every such conveyance and letter of attorney executed by a married woman, whether executed alone or in conjunction with her husband, of or relating to real estate may be acknowledged by her or the proof of the execution thereof may be taken and certified the same as if she were unmarried.

235.30 Dower of insane wife, how released. Whenever any married man shall present a petition, duly verified by his oath, to the circuit court or to the county court of the county in which he resides, showing that his wife is insane; that he is the owner of real estate, describing the same, in which his wife has an inchoate dower interest or homestead interest, and that it would be for his interest to convey, mortgage or otherwise dispose of or that he has conveyed, mortgaged or disposed of any or all of such real estate or of any interest therein, and praying for an order authorizing him or some other person to execute deeds of any such real estate for his wife, relinquishing her dower or homestead interest therein, such court or presiding judge shall make an order fixing the time, not more than 60 nor less than 20 days from the filing of such petition, and the place for the hearing thereof, and shall also appoint some suitable person to act as the guardian of such wife in relation to the matter of such petition; a copy of such petition and order shall be personally served on such wife and such next of kin, if any, as the court or the presiding judge shall direct, at least 20 days and upon such guardian at least 15 days, if she be a resident of this state, and if she be not such resident it shall be served on such wife at least 30 days and on such guardian at least 20 days before the time fixed for such hearing. [*1945 c. 102*]

235.31 Dower of insane wife, how released. Any grantee, immediate or remote, of the husband of an insane woman, may in like manner apply to the circuit court of the county where the real estate conveyed is located to bar the dower of such insane woman, as provided in section 235.30, and thereupon like proceedings shall be had, and such grantee may recover from such husband the amount paid to the guardian of such insane woman, pursuant to the order of the court unless the value of such dower right was expressly excluded from the consideration of the conveyance.

235.32 Duty of guardian; order of court. (1) The guardian so appointed shall ascertain as to the propriety and necessity of granting the prayer of the petition, and he and such wife shall have power to resist such application, and they or either of them may deny by answer any or all of the allegations of such petition and produce witnesses and take depositions to show the impropriety of granting the same, and may demand that the issues therein shall be tried by a jury.

(2) Upon the hearing of such petition the proofs shall in all cases be produced in open court; and if it shall appear that such wife is insane, and that the application is made in good faith, and that it will be for her benefit to grant the prayer of said petition the court shall make an order directing the petitioner or such other person as the court shall designate to execute in the name of such wife deeds of release to the proper parties of the dower or homestead right of such wife in or to any lands sold or to be sold, mortgaged or conveyed by such husband during her insanity, describing such lands in such order; provided, the court shall, as a condition of granting such order, require that there shall be secured, in such manner as the court shall direct, upon the estate of such husband, or out of the proceeds of the sales of such real estate, or by bond with sufficient sureties, conditioned for the support and maintenance of such wife, such sum for the use and benefit of such wife during her life as the court shall under all the circumstances deem just, regard being had to the station and condition in life of the said husband and wife.

(3) If in any such proceedings it shall appear that the land petitioned to be sold or mortgaged was acquired by the husband solely from his share of the proceeds of a former sale or mortgage in which former sale or mortgage the dower or homestead interest of such wife was adjusted, the court may in its order authorize the execution and delivery of a deed or mortgage in behalf of such wife without requiring any portion of the proceeds to be held for her benefit. All conveyances executed in pursuance of such order shall release and bar all her dower or homestead interest in the real estate described therein and which shall be sold and conveyed by her husband during her insanity. The power granted by such order, so far as the same shall not have been executed, shall cease as soon as such wife shall become sane and shall apply for and procure a revocation thereof.

235.33 Conveyance to heir. Whenever any person holding a contract for the conveyance of land, as purchaser thereof, shall die before the execution of a deed of such lands to him, and such deceased person shall have been entitled to receive such deed prior to his death, or full payment therefor shall be made by his widow or any heir of such deceased, it shall be lawful for the vendor of said land to execute a deed naming such deceased person as grantee therein, and to deliver said conveyance to the widow, or any heir of said deceased, and the execution and delivery thereof shall pass the title to the heirs or devisees, subject to the rights of the widow, if any, in the same manner and with the same interest or estate which they would have received, had the deed been made prior to the death of the deceased and subject to all claims, liens or equities, which might exist had the title passed by descent or devise.

235.34 Conveyance, how proved. When any grantor shall die or depart from or reside out of this state, not having acknowledged his conveyance, the due execution thereof may be proved by any competent subscribing witness thereto before any court of record; if all the subscribing witnesses to such deed shall be dead or out of this state the same may be proved before any such court by proving the handwriting of the grantor and of any subscribing witness thereto.

235.35 How made when grantor refuses. If any grantor residing in this state shall refuse to acknowledge his conveyance the grantee or any person claiming under him may apply to any justice of the peace in the county where the land lies or where the grantor or any subscribing witness to the conveyance resides, who shall thereupon issue a summons to the grantor to appear at a certain time and place before said justice to hear the testimony of the subscribing witnesses to the conveyance; and the summons, with a copy of the conveyance annexed, shall be served at least seven days before the time therein assigned for proving the same. At the time mentioned in such summons or at any time to which the hearing may be adjourned the due execution of the conveyance may be proved by the testimony of one or more of the subscribing witnesses; and if proved to the satisfaction of the justice he shall certify the same thereon, and in such certificate he shall note the presence or absence of the grantor as the fact may be.

235.36 How, when witnesses dead. If any grantor residing in this state shall refuse to acknowledge his conveyance and all the subscribing witnesses thereto be 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.

235.37 Witnesses, how subpœnaed; neglect to appear. The court or justice before whom any conveyance may be presented to be proved, as provided in the preceding sections, may issue subpœnas to the subscribing witnesses or others, as the case may require, to appear and testify touching the execution of such deed, which subpœnas may be served in any part of this state; and every person so subpœnaed who shall, without reasonable cause, neglect to appear or refuse to answer on oath touching the matters aforesaid shall be liable to the party injured in the sum of one hundred dollars damages and for such further damages as the party may sustain thereby, and may also be punished as for a contempt by the court or justice.

235.38 Copy of defective conveyance may be filed. Any person interested in a conveyance that is not acknowledged may, before or during any such application to prove the same, file in the office of the register of deeds a copy of the conveyance compared with the original by the register, which shall, if such proceedings shall have been or shall within ten days thereafter be commenced, have the same effect as the recording of such conveyance until the expiration of seven days after the termination of such proceedings, if such conveyance shall before that time be duly proved or recorded.

235.39 Recordability. A certificate of the acknowledgment of any conveyance or of the proof of the execution thereof before a court of record or justice of the peace, signed by the clerk of such court or by the justice before whom the same was taken, and in the cases when the same is necessary, the certificate required by section 235.24 shall entitle such conveyance with the certificates aforesaid to be recorded in the office of the register of deeds of every county in which any of the lands lie.

235.40 Copy of deed. Whenever any conveyance of lands situated in different counties shall have been recorded in any county within which any of such lands are situated a copy of the record of such conveyance, duly certified by the register of deeds, may be recorded in any other county in which any of such lands are situated in the same manner and with like effect as the originals.

235.41 Lands partly in another state. Whenever any conveyance of any lands, a part of which are situated in this state and a part in some other state, shall have been recorded in such other state a copy of the record of such conveyance, certified by the officer whose duty it is under the laws of such other state to certify to the record of conveyances, may be recorded in every county in this state in which any part of said lands are situated in the same manner and with like effect as the original.

235.42 Patents; receivers' certificates. All patents of lands which shall have been issued by the territory or state of Wisconsin or by the proper officers thereof, or by the United States or its proper officers, and all duly certified copies of such patents issued by the United States or this state, or the officers of either, and the receipt of the receiver of any land office of the United States of the entry or purchase of any lands lying in this state, together with an assignment thereof indorsed thereon, may be recorded in the office

of the register of deeds of any county wherein any part of the lands described in such patent or receiver's receipt are situated.

235.43 **Judgments, etc.** All judgments, decrees and orders rendered or made by any court in cases where the title to land shall have been in controversy or operating to pass title thereto or otherwise affect the title, may be recorded in the office of the register of deeds of every county where any part of the lands are situate, in the same manner and with like effect as conveyances. Such recording may be done from a duly certified copy thereof.

235.44 **Letters of attorney.** A letter of attorney or other instrument containing a power to convey lands as agent or attorney for the owner thereof when executed, acknowledged and proved in the manner prescribed in this chapter for the execution, acknowledgment and proof of conveyances may be recorded in the office of the register of deeds of any county in which any of the lands to which such power relates are situated.

235.45 **Bonds and contracts.** Every bond or contract for the sale or purchase of lands or concerning any interest in lands, made in writing, under seal, attested by two witnesses and acknowledged, may be recorded in the office of the register of deeds of the county where the lands lie.

235.46 **Real estate titles; record evidence.** Affidavits, witnessed by two subscribing witnesses, stating facts as to possession of any premises, descent, heirship, date of birth, death or marriage, or as to the identity of a party to any conveyance of record, or that any such party was or is single or married, or as to the identification of any plats or subdivisions of any city or village, may be recorded in the office of the register of deeds in any county where such conveyance is recorded, or within which such premises or city or village is situated, and the record of any such affidavit, or a certified copy thereof, shall be prima facie evidence of the facts touching any such matter, which are therein stated.

Note: Alleged defects in the plaintiffs' title were not such as to preclude specific performance of the contract, where an interlocutory judgment gave the defendant the right to have the plaintiffs, by recorded proof, entirely remove whatever basis existed for doubt or apprehension, and where the plaintiffs on their own motion duly established that they had recorded proper proof. Haumersen v. Sladky, 220 W 91, 264 NW 653.

235.46 was intended only to provide means of correcting defects in record title to real estate. Affidavit filed under that section cannot take place of delayed birth certificate filed pursuant to 69.57 for purpose of showing age and citizenship. 31 Atty. Gen. 73.

235.47 **Records of conveyances for new counties.** Where a portion of any county shall have been made a part or all of another county, and the original records of conveyances affecting the title to lands so set off shall remain in such original county, the county board of such new county may direct the register of deeds of either county to prepare in book form true and correct copies (with an entry in the margin of each conveyance showing the volume and page of the original record thereof) of all such original records, and he shall enter at the end of each transcribed volume under his hand and official seal his certificate to the effect that he has carefully compared the same with such originals, and that the foregoing are true and correct copies of such original records, and of the whole thereof. Such certified volumes of records shall be kept in the office of the register of deeds of such new county, and shall have the same effect as the originals; and a copy of such certified records or of any of them shall be received in all courts and places as a copy of the original record.

235.48 **Effect of deed made under other statutes.** All conveyances of real estate heretofore made and acknowledged or proved in accordance with the laws of this state, in force at the time of such making and acknowledgment or proof, shall have the same force as evidence and be recorded in the same manner and with like effect as conveyances executed and acknowledged in pursuance of the provisions of this chapter.

235.49 **Unrecorded deed, effect.** Every conveyance of real estate within this state hereafter made (except patents issued by the United States or this state, or by the proper officers of either) which shall not be 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.

Note: The grantee under a quitclaim deed for a nominal consideration is not a bona fide purchaser for value against one who has a dwelling upon the premises; and stands in no better position than his grantor to assert title or right of possession. Haag v. Gorman, 203 W 346, 234 NW 337.

The record of a deed whereby a grantor conveyed part of his land, the part conveyed being excluded from a highway, thus creating an implied way of necessity, was not constructive notice to a bona fide purchaser of the servient estate. Backhausen v. Mayer, 204 W 286, 234 NW 904.

Where the original mortgagors conveyed the premises to a first mortgage assignee of record, who had, however, by an unrecorded instrument, previously assigned the mortgage to another, there was no merger, and the lien of later second mortgagees and their assigns is subsequent to the lien of the first mortgage. A purchaser of premises incumbered by a mortgage is charged with knowledge that a mortgage, though recorded, is a mere incident to the note which it secures, and that title thereto passes along with the transfer of the title to the note; and such purchaser cannot deal with the fee title on

the assumption that the mortgage is discharged, unless it is discharged of record in the manner provided by the statutes or by a judgment of a court. Thauer v. Smith, 213 W 91, 250 NW 842.

Although a contract for the removal of shale had not been recorded, a subsequent purchaser of the farm, who at the time of the purchase had sufficient knowledge of the existence of the right to remove shale to put him upon inquiry, was not a "subsequent purchaser in good faith." White v. Machovec, 214 W 458, 253 NW 389.

All persons dealing with land are charged with knowledge of the contents of any instrument recorded at length, and are entitled to rely thereon. Rielly v. Arnsmeier, 220 W 564, 265 NW 713.

See note to section 289.01, citing Home Owners' Loan Corp. v. Dougherty, 226 W 8, 275 NW 363.

The recording statute, sec. 235.49, does not afford protection to those who may purchase from strangers to the title, since only those persons are affected with notice by the record who deal with or on the credit of the title in the line of which the recorded deed belongs, and, although the statute affords protection to a subsequent purchaser from the same grantor who takes from him through mesne conveyances, it does so only in case the chain of title of such subsequent purchaser back to the common grantor is first recorded. M conveyed real estate owned by him of record to R on December 5, 1928, and R conveyed to C on February 4, 1932, both deeds being recorded on January 28, 1936. M also conveyed the same real estate to G on August 1, 1933, by deed recorded on April 2, 1936. G conveyed to Z on December 13, 1933, by deed recorded on December 13, 1933. In this situation, Z, at the time of recording his deed from G, was a stranger to the title so far as the record then disclosed, so that the recording of merely such deed prior to the recording of C's chain of title availed Z nothing under the recording statute, and the fact that Z's entire chain of title back to the common grantor, M was not recorded until after C's entire chain of title was recorded deprived Z of the protection of the statute as against C. Zimmer v. Sundell, 237 W 270, 296 NW 589.

Recorded conveyances containing no express grant or reservation of a right of way afforded no notice of the existence of an implied easement of a way of necessity to a bona fide purchaser of the servient estate, and he held free from such easement, where the record did not disclose that the dominant estate was conveyed to one who had no access to any street or highway, and where the premises at the time of the conveyance of the servient estate did not disclose the existence of a way. Schmidt v. Hilty-Forster Lumber Co., 239 W 514, 1 NW (2d) 154.

When a vendor, after entering into a contract of sale, conveys the land to a third person who has knowledge or notice of the prior agreement, such third person is not a bona fide purchaser, but takes the land impressed with a trust in favor of the original vendee, and holds it as trustee for such vendee and can be compelled at the suit of the vendee to specifically perform the agreement by conveying the land in the same manner, and to the same extent, as the vendor would have been liable to do, had he not transferred the legal title. Saros v. Carlson, 244 W 84, 11 NW (2d) 676.

235.50 "Conveyance" and "purchaser" defined. The term "conveyance," as used in this chapter, shall be construed to embrace every instrument in writing by which any estate or interest in real estate is created, aliened, mortgaged or assigned or by which the title to any real estate may be affected in law or equity, except wills and leases for a term not exceeding three years; and the term "purchaser," as so used, shall be construed to embrace every person to whom any estate or interest in real estate shall be conveyed for a valuable consideration and also every assignee of a mortgage or lease or other conditional estate.

Note: A will creating a trust fund in behalf of a widow was notice to mortgagees subsequently taking mortgages on real estate of the testator, regardless of the fact that the will was not recorded in the office of the register of deeds. In re Iver Pederson Co., 37 F (2d) 265.

235.51 When deed not defeated by defeasance. When a deed purports to be an absolute conveyance in terms, but is made or intended to be made defeasible by force of a deed of defeasance or other 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 shall have been recorded in the office of the register of deeds of the county where the lands lie.

Note: Where the title of a grantee is "defeasible" only by reason of an oral understanding that the deed was given as a mortgage security for the discharge of obligations of the grantor, the deed is not one "made defeasible by force of a deed of defeasance or other instrument" within this section, but the interest of the grantor in the land is subject to the lien of a judgment against him when properly docketed and such lien is superior to a subsequent conveyance to one acquiring the land with actual notice, that is, knowledge of such facts as would put a prudent man on inquiry, as to the interest of the judgment debtor in the property. R. F. Gehrke Sheet Metal Works v. Mahl, 237 W 414, 297 NW 373.

235.52 Assignment of mortgage, not notice. The recording of an assignment of a mortgage shall not in itself be deemed notice of such assignment to the mortgagor, his heirs or personal representatives so as to invalidate any payment made by them or either of them to the mortagee.

Note: The recording of an assignment of a mortgage, which by its terms assigned the mortgage and also the negotiable note secured thereby, did not constitute notice of the assignment of the note to the mortgagors so far as a payment thereon by them to the mortgagee without knowledge of the assignment was concerned. Falk v. Czapiewski, 214 W 624, 254 NW 111.

Mortgagor's payment on unindorsed negotiable note to person specified by mortgagee as his agent to receive payments, without notice of assignment of mortgage securing note, operates as payment against assignee. Rosecky v. Tomaszewski, 225 W 438, 274 NW 259.

235.53 Effect of record of bonds or contracts. Every bond or contract mentioned in section 235.45, when executed, acknowledged and recorded as provided in said section,

shall be notice to and take precedence of any subsequent purchaser, and shall operate as a lien upon the lands therein described according to its import and meaning.

235.54 Letters of attorney, revocation. No letter of attorney or other instrument containing a power to convey lands, when executed, acknowledged and recorded as provided in 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 be 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 shall have notice of the death, or as to one who without notice of such death in good faith deals with the attorney or agent. [*1943 c. 49*]

235.55 Mortgage discharged of record. Any mortgage which shall have been recorded may be wholly satisfied or satisfied to the extent of any payment thereon by the presentation to the register of deeds in whose custody the record shall be of a certificate executed by the mortgagee, his personal representative or assignee, and acknowledged or proved and certified as hereinbefore prescribed to entitle conveyances to be recorded, specifying therein that such mortgage has been wholly or partially paid or otherwise satisfied and the extent of such satisfaction or discharge if only partial. [*1945 c. 420*]

235.56 By foreign executors, etc. When an executor or administrator shall be appointed in any other state or foreign country on the estate of any person not a resident of this state at the time of his decease and no executor or administrator thereon shall be appointed in this state, such foreign executor or administrator, upon filing in the county court of any county in which any mortgage held by the estate of such deceased person is recorded an authenticated copy of his appointment, may execute, acknowledge and deliver certificates of satisfaction or deeds of release affecting such mortgage or the premises covered thereby the same as and with like effect as executors and administrators appointed under the laws of this state may do.

235.57 By heirs or legatees. Any heir or legatee of such deceased person, residing within or without the state, upon recording in the office of the register of deeds proper proof of his ownership of such mortgage may, in like manner and with the like effect, satisfy or release such mortgage.

235.58 By foreign guardian. Any guardian appointed in any other state or foreign country of a minor holding and owning such mortgage, upon filing in the county court of such county an authenticated copy of his appointment as guardian and proof of ownership of such mortgage, may, in like manner and with like effect, satisfy or release such mortgage.

235.59 Discharge after foreclosure; tardy confirmation of sale. (1) Wherever a mortgage shall have been foreclosed by an action in any court and the judgment and costs in such action shall have been paid and satisfaction thereof 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.

(2) In all cases wherein a foreclosure sale has been made and the purchaser or grantee or his successors or assigns have taken possession of said land by virtue of said sale, and occupied the same for a period of six years from and after said sale, any owner of the land may apply to the court for an order confirming said foreclosure sale in all instances where a failure to obtain confirmation of sale exists, with the same force and effect as if said confirmation of sale was made as provided by law.

Cross Reference: For redemption from mortgage foreclosure, prior to sale, see 278.13.

For provisions relative to entry and docketing of judgments affecting real estate, see 270.77.

235.60 Discharge of mortgage or lien by court. The circuit court of any county in which a mortgage, lien or charge is recorded may make an order discharging such mortgage, lien or charge of record on proof being made to the satisfaction of the court that the mortgage, lien or charge has been fully paid or satisfied and that the mortgagee or the owner of the lien or charge or his assignee is a corporation which has ceased to exist or which has no officer or agent in the state of Wisconsin competent to discharge the same of record or that the mortgagee or the owner of the lien or charge or his assignee is a nonresident of the county where such mortgage, lien or charge is recorded, or is deceased, and in such case, that there is no administrator on his estate under the authority of this state. The register of deeds shall record such order or a copy thereof, certified by the

clerk under the seal of the court, and such record shall have the same effect as the record of discharge by a mortgagee or owner of a lien or charge duly executed and acknowledged. [*Supreme Court Order, effective July 1, 1939*]

235.61 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.

235.62 Discharges, entry of. Every discharge of a mortgage shall be entered by the register entering or recording the same in the general index and be subject to all the provisions of law as the other entries in such index; and in every case when such discharge is not made by an entry on the margin of the record of such mortgage the register shall record the same with the acknowledgment or proof thereof and enter a minute of the discharge of such mortgage upon the margin of the record thereof with a reference to the book and page containing the record of the discharge of the same.

235.63 Mortgage to railroad. Whenever any mortgage executed to a railroad corporation shall have been duly recorded and such mortgage shall have been transferred by such corporation, and there shall be no record of such transfer, and such corporation shall have ceased to exist or shall have no officers or agents competent to discharge the same of record, such register shall, on presentation to him of any such mortgage, together with the note or bond secured thereby, if there be any, and an affidavit showing that the person presenting the same is the lawful holder thereof and that the same has been paid or satisfied in full, file such affidavit and enter in due form, on the margin of the record of such mortgage, a satisfaction thereof.

235.64 Penalty for failure to discharge. If any mortgagee, his assignee or the personal representative of either, after a full or partial performance of the conditions of the mortgage, whether before or after a breach thereof, shall, for the space of seven days after being thereto requested, and a satisfaction piece in due form being to him or them tendered for execution, after tender of legal charges, refuse or neglect to wholly or partially discharge the same as provided in this chapter, or to execute and acknowledge a certificate of discharge or release thereof in accordance with the fact, or to record all assignments transferring such mortgage to such assignee or personal representative, he shall be liable to the mortgagor, his heirs or assigns, in the sum of one hundred dollars damages, and also for actual damages occasioned by such neglect or refusal, to be recovered in an action.

Note: Payment in full of the mortgage debt satisfies the mortgage without satisfaction thereof of record or in writing. Moore v. Benjamin, 228 W 591, 280 NW 340.

235.65 Correction of description in conveyance. The circuit court of any county in which a conveyance of real estate shall have been recorded may make an order correcting the description in such conveyances on proof being made to the satisfaction of the court that such conveyance contains an erroneous description, not intended by the parties thereto; or when the description is ambiguous and does not clearly or fully describe the premises intended to be conveyed, if the grantor therein is dead or a nonresident of the state, or is a corporation which has ceased to exist, or is an administrator, executor, guardian, trustee or other person authorized to convey and has been discharged from his trust and the person to whom it was made, his heirs, legal representatives or assigns have been in the quiet, undisturbed and peaceable possession of the premises intended to be conveyed from the date of such conveyance; but this section shall not prevent an action for the reformation of any conveyance, and if in any doubt, the court shall direct such action to be brought. [*1941 c. 297; 1943 c. 321*]

235.66 Patent to heirs of purchaser. Whenever patents for lands belonging to this state shall have been issued, in pursuance of any law, to a person who shall have died before the date of such patent the title to the land designated therein shall inure to and become vested in the heirs, devisees or assignees of such patentee as if the patent had issued to such deceased person during his lifetime.

235.67 Deeds of church pews recordable. Deeds of pews or slips in any church may be recorded by the clerk of the town in which such church is situated or by the clerk of the society or proprietors, if incorporated or legally organized; and such clerk shall receive the same fees as the register of deeds is entitled to for similar purposes.

235.68 Defective conveyances of farm or homestead property to satisfy indebtedness cured. Any deed, contract or other instrument previously given by a debtor to satisfy or compromise in whole or in part any prior indebtedness or obligation upon land

contract or real estate mortgage on a farm or homestead property, except deeds given through mediation as provided in sections 281.20 to 281.23, which has been executed, witnessed, acknowledged and recorded according to law, but in respect to which the grantee therein at the time of such recording failed to record an affidavit signed by the grantor as required in section 235.68 of the statutes for 1937, shall have the same force and effect as evidence and for all other legal purposes as though such affidavit had been originally executed, witnessed and recorded as provided by section 235.68 of the statutes for 1937. [*1935 c. 542; 1939 c. 201*]

235.69 Variance in names of parties. Title to real property shall not be unmerchantable because of any variances heretofore or hereafter appearing in the spelling, or variant forms of names, or use of initials as between grantees and grantors in deeds or leases or powers of attorney or other instruments by or through which title to real estate is conveyed, or in mortgages or assignments or releases thereof, or between grantees in deeds and persons from or through whom the title passes by will or descent, where such variance shall have appeared in the public records of the county where the lands are located, for more than 20 years; provided, however, that any persons, including infants or persons under disability, having any right of action on June 4, 1937 to recover real property or enforce a mortgage in a case involving such variances in names shall not be barred until one year from said date. [*1937 c. 190*]

235.70 Priority of certain mortgages. Whenever any mortgage executed to a federal savings and loan association organized and existing under the laws of the United States shall have 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. [*1939 c. 285*]

235.701 Building loans; trust funds. The proceeds of any such mortgage referred to in section 215.15 and section 235.70, shall, when paid out by such state building and loan association or such 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 or 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, shall have been paid in full, or pro rata in cases of a deficiency, shall constitute embezzlement of any moneys so misappropriated. It shall be the duty of the district attorney of the county where the premises are situated, on the complaint of any aggrieved party to prosecute such owner, contractor or subcontractor misappropriating such moneys for such embezzlement. [*1939 c. 285; 1943 c. 553 s. 36*]

235.72 Uniform vendor and purchaser risk act. (1) RISK OF LOSS AS BETWEEN VENDOR AND PURCHASER OF LAND. Any contract hereafter 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, when 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, when 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) UNIFORMITY OF INTERPRETATION. This section shall be so construed as to make uniform the law of those states which enact it.

(3) SHORT TITLE. This section may be cited as the Uniform Vendor and Purchaser Risk Act. [*1941 c. 283*]

Revisor's Note, 1941: While this uniform statute is new in Wisconsin, the rule is not new. The uniform act is in harmony with the rule applied in Appleton Electric Co. v. Rogers, 200 W 331, 228 NW 505.