

CHAPTER 806

CIVIL PROCEDURE — JUDGMENT

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NOTE: Chapter 806 was created by Sup. Ct. Order, 67 W (2d) 714, which contains Judicial Council Committee notes explaining each section. Statutes prior to the 1983-84 edition also have these notes.

806.01 Judgment. (1) (a) A judgment is the determination of the action. It may be final or interlocutory.

(b) Each judgment shall specify the relief granted or other determination of the action, and the name and place of residence of each party to the action.

(c) Every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded the relief in the pleadings. If there be no answer the relief granted to the plaintiff shall not exceed that demanded in the complaint. If the amount of money sought was excluded from the demand for judgment, as required under s. 802.02 (1m), the court shall require the plaintiff to specify the amount of money claimed and provide that information to the court and to the other parties prior to the court rendering judgment.

(2) If a partial judgment is proper in an action with several parties, the court in its discretion, may render judgment against one or more of the defendants and dismiss or permit the action to proceed against the others. In case of a finding substantially disposing of a claim on its merits, but leaving an account to be taken or a condition to be performed in order fully to determine the rights of the parties, an interlocutory judgment may be rendered disposing of all issues covered by the finding and reserving final judgment.

History: Sup. Ct. Order, 67 W (2d) 715; 1975 c. 218; 1985 a. 145; 1987 a. 256.
See note to 808.01, citing *Estreen v. Bluhm*, 79 W (2d) 142, 255 NW (2d) 473.

Order filed after verdict which gave plaintiff option of accepting reduced judgment or new trial limited to issue of damages, was not a "judgment" under this section. *Collins v. Gee*, 82 W (2d) 376, 263 NW (2d) 158.

The new Wisconsin rules of civil procedure: Chapters 805—807. Graczyk, 59 MLR 671.

806.02 Default judgment. (1) A default judgment may be rendered as provided in subs. (1) to (4) if no issue of law or fact has been joined and if the time for joining issue has expired. Any defendant appearing in an action shall be entitled to notice of motion for judgment.

(2) After filing the complaint and proof of service of the summons on one or more of the defendants and an affidavit

that the defendant is in default for failure to join issue, the plaintiff may move for judgment according to the demand of the complaint. If the amount of money sought was excluded from the demand for judgment, as required under s. 802.02 (1m), the court shall require the plaintiff to specify the amount of money claimed and provide that information to the court and to the other parties prior to the court rendering judgment. If proof of any fact is necessary for the court to give judgment, the court shall receive the proof.

(3) If a defendant fails to appear in an action within the time fixed in s. 801.09 the court shall, before entering a judgment against such defendant, require proof of service of the summons in the manner required by s. 801.10 and, in addition, shall require further proof as follows:

(a) Where a personal claim is made against the defendant, the court shall require proof by affidavit or other evidence, to be made and filed, of the existence of any fact not shown by the complaint which is needed to establish grounds for personal jurisdiction over the defendant. The court may require such additional proof as the interests of justice require.

(b) Where no personal claim is made against the defendant, the court shall require such proofs, by affidavit or otherwise, as are necessary to show the court's jurisdiction has been invoked over the status, property or thing which is the subject of the action. The court may require such additional proof as the interests of justice require.

(4) In an action on express contract for recovery of a liquidated amount of money only, the plaintiff may file with the clerk proof of personal service of the summons on one or more of the defendants and an affidavit that the defendant is in default for failure to join issue. The clerk shall render and enter judgment against the defendants who are in default for the amount demanded in the complaint. Leaving the summons at the abode of a defendant is not personal service within the meaning of this subsection.

(5) A default judgment may be rendered against any defendant who has appeared in the action but who fails to

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appear at trial. If proof of any fact is necessary for the court to render judgment, the court shall receive the proof.

History: Sup. Ct. Order, 67 W (2d) 716; Sup. Ct. Order, 73 W (2d) xxxi; Sup. Ct. Order, 82 W (2d) ix; Sup. Ct. Order, 101 W (2d) xi; Sup. Ct. Order, 109 W (2d) xiii; 1987 a. 256.

Cross References: For time required for notice under (2), see 801.15 (4).

See 802.06 (1) for provision giving the state 45 days to respond to a complaint or counterclaim.

Judicial Council Committee's Note, 1976: A clerk of court is permitted under s. 806.06 (2) to render the judgment described in ss. 806.02 (4) and 806.03. [Re Order effective Jan. 1, 1977]

Judicial Council Committee's Note, 1977: Sub. (5) has been modified to allow a judge in a default judgment matter to receive rather than mandatorily hear the proof of any fact necessary for a court to render judgment. This change allows a judge the option of in-chamber consideration of affidavits presented by attorneys. Under the present language the time of the judge may be taken up in open court hearing proof presented by the attorney orally whereas proof submitted by the attorney in the form of affidavits may be just as competent and trustworthy. Under the new language, the judge still retains the option of hearing proof in open court of any fact necessary to render a default judgment. [Re Order effective July 1, 1978]

Judicial Council Note, 1981: Sub. (2) is amended to allow the court to receive proof of facts necessary for default judgment by affidavit rather than hearing. An analogous change was made in sub. (5) in 1977 for the same reasons. [Re Order effective July 1, 1981]

Judicial Council Note, 1982: Sub. (4) is amended by eliminating the requirement that the plaintiff file the complaint in order to receive a default judgment. The complaint will already have been filed with the court when the action was commenced, prior to service of the summons. Sec. 801.02 (1). [Re Order effective Jan. 1, 1983]

There was no abuse of discretion in denying relief where movant answered complaint by business letter, movant was experienced business person, well-educated and had undergone nearly identical experience in former case. *Hansher v. Kaishian*, 79 W (2d) 374, 255 NW (2d) 564.

Lawyer's failure to answer complaint due to misplacing client's papers while moving office did not relieve client from resulting default judgment. *Dugenske v. Dugenske*, 80 W (2d) 64, 257 NW (2d) 865.

See note to 806.07, citing *Maier Const., Inc. v. Ryan*, 81 W (2d) 463, 260 NW (2d) 700.

See note to 806.07, citing *Wis. Pub. Serv. Corp. v. Krist*, 104 W (2d) 381, 311 NW (2d) 624 (1981).

See note to 802.10, citing *Gaertner v. 880 Corp.*, 131 W (2d) 492, 389 NW (2d) 59 (Ct. App. 1986).

806.03 Judgment on admitted claim; order to satisfy. In an action on an express contract for the recovery of a liquidated sum of money only, if the answer admits any part of the plaintiff's claim or if the answer sets up a counterclaim for an amount less than the plaintiff's claim and contains no other defense to the action, the clerk, on motion of the plaintiff, shall render and enter judgment for the amount so admitted or for the amount claimed in the complaint less the amount of the defendant's counterclaim. When the defendant admits part of the plaintiff's claim to be just, the court, on motion, may order the defendant to satisfy that part of the claim and may enforce the order as it enforces a judgment or provisional remedy.

History: Sup. Ct. Order, 67 W (2d) 718; Sup. Ct. Order, 73 W (2d) xxxi.

Judicial Council Committee's Note, 1976: A clerk of court is permitted under s. 806.06 (2) to render the judgment described in ss. 806.02 (4) and 806.03. [Re Order effective Jan. 1, 1977]

806.04 Uniform declaratory judgments act. (1) SCOPE. Courts of record within their respective jurisdictions shall have power to declare rights, status, and other legal relations whether or not further relief is or could be claimed. No action or proceeding shall be open to objection on the ground that a declaratory judgment or decree is prayed for. The declaration may be either affirmative or negative in form and effect; and such declarations shall have the force and effect of a final judgment or decree, except that finality for purposes of filing an appeal as of right shall be determined in accordance with s. 808.03 (1).

(2) POWER TO CONSTRUE, ETC. Any person interested under a deed, will, written contract or other writings constituting a contract, or whose rights, status or other legal relations are affected by a statute, municipal ordinance, contract or franchise, may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract or franchise and obtain a declaration of rights,

status or other legal relations thereunder. No party shall be denied the right to have declared the validity of any statute or municipal ordinance by virtue of the fact that the party holds a license or permit under such statutes or ordinances.

(3) BEFORE BREACH. A contract may be construed either before or after there has been a breach thereof.

(4) REPRESENTATIVES, ETC. Any person interested as or through a personal representative, executor, administrator, trustee, guardian or other fiduciary, creditor, devisee, legatee, heir, next of kin or cestui que trust, in the administration of a trust, or of the estate of a decedent, an infant, mental incompetent or insolvent, may have a declaration of rights or legal relations in respect thereto:

(a) To ascertain any class of creditors, devisees, legatees, heirs, next of kin or others; or

(b) To direct the personal representatives, executors, administrators or trustees to do or abstain from doing any particular act in their fiduciary capacity; or

(c) To determine any question arising in the administration of the estate or trust, including questions of construction of wills and other writings.

(5) ENUMERATION NOT EXCLUSIVE. The enumeration in subs. (2), (3) and (4) does not limit or restrict the exercise of the general powers conferred in sub. (1) in any proceeding where declaratory relief is sought, in which a judgment or decree will terminate the controversy or remove an uncertainty.

(6) DISCRETIONARY. The court may refuse to render or enter a declaratory judgment or decree where such judgment or decree, if rendered or entered, would not terminate the uncertainty or controversy giving rise to the proceeding.

(7) REVIEW. All orders, judgments and decrees under this section may be reviewed as other orders, judgments and decrees.

(8) SUPPLEMENTAL RELIEF. Further relief based on a declaratory judgment or decree may be granted whenever necessary or proper. The application therefor shall be by petition to a court having jurisdiction to grant the relief. If the application be deemed sufficient, the court shall, on reasonable notice, require any adverse party whose rights have been adjudicated by the declaratory judgment or decree, to show cause why further relief should not be granted forthwith.

(9) JURY TRIAL. When a proceeding under this section involves the determination of an issue of fact, such issue may be tried and determined in the same manner as issues of fact are tried and determined in other civil actions in the court in which the proceeding is pending.

(10) COSTS. In any proceeding under this section the court may make such award of costs as may seem equitable and just.

(11) PARTIES. When declaratory relief is sought, all persons shall be made parties who have or claim any interest which would be affected by the declaration, and no declaration may prejudice the right of persons not parties to the proceeding. In any proceeding which involves the validity of a municipal ordinance or franchise, the municipality shall be made a party, and shall be entitled to be heard. If a statute, ordinance or franchise is alleged to be unconstitutional, the attorney general shall also be served with a copy of the proceeding and be entitled to be heard. In any proceeding under this section in which the constitutionality, construction or application of any provision of ch. 227, or of any statute allowing a legislative committee to suspend, or to delay or prevent the adoption of, a rule as defined in s. 227.01 (13) is placed in issue by the parties, the joint committee for review of administrative rules shall be served with a copy of the petition and, with the approval of the joint committee on legislative

organization, shall be made a party and be entitled to be heard. In any proceeding under this section in which the constitutionality, construction or application of any provision of ch. 13, 20, 111, 227 or 230 or subch. I, III or IV of ch. 16 or s. 753.075, or of any statute allowing a legislative committee to suspend, or to delay or prevent the adoption of, a rule as defined in s. 227.01 (13) is placed in issue by the parties, the joint committee on legislative organization shall be served with a copy of the petition and the joint committee on legislative organization, the senate committee on organization or the assembly committee on organization may intervene as a party to the proceedings and be heard.

(12) CONSTRUCTION. This section is declared to be remedial; its purpose is to settle and to afford relief from uncertainty and insecurity with respect to rights, status and other legal relations; and is to be liberally construed and administered.

(13) WORDS CONSTRUED. The word "person" wherever used in this section, shall be construed to mean any person, partnership, joint stock company, unincorporated association or society, or municipal or other corporation of any character whatsoever.

(14) PROVISIONS SEVERABLE. The several subsections and provisions of this section except subs. (1) and (2) are declared independent and severable, and the invalidity, if any, of any part or feature thereof shall not affect or render the remainder of the statute invalid or inoperative.

(15) UNIFORMITY OF INTERPRETATION. This section shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it, and to harmonize, as far as possible, with federal laws and regulations on the subject of declaratory judgments and decrees.

(16) SHORT TITLE. This section may be cited as the "Uniform Declaratory Judgments Act"

History: Sup. Ct. Order, 67 W (2d) 718; 1975 c. 218; Sup. Ct. Order, 82 W (2d) ix; 1977 c. 449; 1979 c. 38, 89, 175; 1979 c. 330 s. 13; 1979 c. 352, 355; 1981 c. 96 s. 67; 1981 c. 187 s. 10; 1981 c. 390 s. 252; 1983 a. 255 s. 6; 1985 a. 182 s. 57; Sup. Ct. Order, 166 W (2d) xix.

Judicial Council Committee's Note, 1977: Sub. (3m), as created by ch. 263, laws of 1973, is added. Sub. (3m), which was created during the time the rules of civil procedure were in the process of being adopted, was inadvertently not included in new s. 806.04 along with the other provisions of former s. 269.56. The only intent of the Judicial Council during the preparation of the Rules of Civil Procedure in regard to old s. 269.56 was to renumber it to s. 806.04. [Re Order effective July 1, 1978]

Judicial Council Note, 1991: Sub. (1) is amended to clarify that a declaratory judgment is not appealable as of right unless it disposes of the entire matter in litigation as to one or more of the parties. [Re Order effective July 1, 1992]

An action for declaratory judgment will not lie to define a law enforcement officer's right to demand that a doctor take a blood sample for an intoxication test where the complaint cites no statute under which the doctor is threatened with prosecution and where various facts might affect the rights of the person from whom blood is to be drawn. *Waukesha Memorial Hospital v. Baird*, 45 W (2d) 629, 173 NW (2d) 700.

While in most cases a court may not know a declaratory judgment would not terminate a controversy giving rise to the proceeding until it had heard the evidence, a court need not go through trial to arrive at a foregone conclusion when it appears on the face of the complaint a declaratory judgment would not terminate the controversy. (Language in *Miller v. Currie*, 208 Wis. 199, intimating otherwise, is modified in accordance herewith.) *American Med. S. Inc. v. Mutual Fed. S. & L.* 52 W (2d) 198, 188 NW (2d) 529.

Sub. (5) qualifies the specific powers enumerated in subs. (2), (3) and (4) as well as sub. (1) and the discretionary power in sub. (6) applies to all cases. Even if a complaint states a cause of action for declaratory relief it may be dismissed if a declaratory judgment would not terminate the controversy. *American Med. S. Inc. v. Mutual Fed. S. & L.* 52 W (2d) 198, 188 NW (2d) 529.

In a suit for declaratory judgment the complaint should not be dismissed when the judgment declares the rights on the complaint or the merits are decided; dismissal is proper when for a valid reason the merits are not reached and the suit should not be entertained. *Kenosha v. Unified School Dist. No. 1*, 55 W (2d) 642, 201 NW (2d) 66.

A complaint alleging that the insurance commissioner is threatening action against an insurance agent who also contracts to service employee welfare funds, claiming a violation of 211.14 (2) (a), Stats. 1969, states a valid basis for declaratory judgment as against a demurrer. *Pension Management, Inc. v. DuRose*, 58 W (2d) 122, 205 NW (2d) 553.

In a complaint of putative father, challenge to the propriety of seeking declaratory relief is not sustained because the relief sought falls within the broad

scope of declaratory judgment jurisdiction, meets the 4 requisites for its invocation, and a judgment entered herein will terminate the controversy. *Slawek v. Stroh*, 62 W (2d) 295, 215 NW (2d) 9.

Plaintiffs-taxpayers have standing to challenge constitutionality of county assessor statute. *Thompson v. Kenosha County*, 64 W (2d) 673, 221 NW (2d) 845.

Request by the employer for declaratory judgment cannot be entertained because the purpose of the statute was to expedite justice and to avoid long and complicated litigation, not to interrupt legal proceedings presently in operation. *State v. WERC*, 65 W (2d) 624, 223 NW (2d) 543.

Service of a copy of the proceedings upon the attorney general under (11) is not only mandatory, but goes to the jurisdiction of the court to hear the action in the first instance. *Bollhoffer v. Wolke*, 66 W (2d) 141, 223 NW (2d) 902.

Sustaining of the demurrer was also proper with respect to plaintiffs' attempt via declaratory judgment to effect dissolution of a subdivision corporation where: (1) The determination of the corporation's right to exist would affect members thereof not before the court as parties; (2) sub. (11) requires that all persons who "would be affected by the declaration" shall be made parties; and (3) a corporation may only be dissolved by voluntary act of its shareholders or involuntary proceedings initiated by the attorney general. *Rudolph v. Indian Hills Estates, Inc.* 68 W (2d) 768, 229 NW (2d) 671.

Hospitals are "direct objects" of 70.11 (4m) for purposes of standing to bring declaratory judgment action seeking tax exemption for medical equipment leased by hospital from commercial lessor. *Madison Gen. Hosp. Assn. v. City of Madison*, 71 W (2d) 259, 237 NW (2d) 750.

Declaratory judgments discussed. *State ex rel. Lynch v. Conta*, 71 W (2d) 662, 239 NW (2d) 313.

Discussion of the use of the declaratory judgment act against the state, agencies and officers. *Lister v. Bds. of Regents*, 72 W (2d) 282, 240 NW (2d) 610.

In declaratory judgment action by taxpayers against school board, legal conclusions in complaint challenging constitutionality of taxing statute were permissible. Declaratory judgment actions discussed. *Tooley v. O'Connell*, 77 W (2d) 422, 253 NW (2d) 335.

Service on the attorney general is a jurisdictional prerequisite under (11) even when the constitutional issue is collateral to or a preliminary step in the determination of rights sought to be declared. *O'Connell v. Bd. of Ed., Jt. Dist. #10*, 82 W (2d) 728, 264 NW (2d) 561.

Service under (11) on attorney general is timely if made in time to permit defense against claim of unconstitutionality. *Town of Walworth v. Fontanaon-Geneva Lake*, 85 W (2d) 432, 270 NW (2d) 442 (Ct. App. 1978).

Where constitutionality of statute is challenged in action other than declaratory judgment action, attorney general must be served but failure to do so at trial level was cured by service at appellate level. In *Matter of Estate of Fessler*, 100 W (2d) 437, 302 NW (2d) 414 (1981).

Trial court did not abuse discretion by declaring rights which would be created if a proposed release agreement were executed. *Loy v. Bunderson*, 107 W (2d) 400, 320 NW (2d) 175 (1982).

Attorney's fees are not recoverable as "costs" under (10). *Kremers-Urban Co. v. American Employers Ins.* 119 W (2d) 722, 351 NW (2d) 156 (1984).

Under (11) plaintiff must serve JCRAR within 60 days pursuant to 893.02. *Richards v. Young*, 150 W (2d) 549, 441 NW (2d) 742 (1989).

Discussion of standing requirement. *Weber v. Town of Lincoln*, 159 W (2d) 144, 463 NW (2d) 869 (Ct. App. 1990).

Facts or conditions necessary for declaratory relief listed and discussed. *Miller Brands-Milwaukee v. Case*, 162 W (2d) 684, 470 NW (2d) 290 (1991).

806.05 Declaratory judgments against obscene matter.

(1) GROUNDS FOR AND COMMENCEMENT OF ACTION. Whenever there is reasonable cause to believe that any book, magazine, or other written matter, or picture, sound recording or film, which is being sold, loaned, or distributed in any county, or is in the possession of any person who intends to sell, loan or distribute the same in any county, is obscene, the district attorney of such county, in the name of the state, as plaintiff, may file a complaint in the circuit court for such county directed against such matter by name. Upon the filing of such complaint, the court shall make a summary examination of such matter. If it is of the opinion that there is reasonable cause to believe that such matter is obscene, it shall issue an order, directed against said matter by name, to show cause why said matter should not be judicially determined to be obscene. This order shall be addressed to all persons interested in the publication, production, sale, loan, exhibition and distribution thereof, and shall be returnable within 30 days. The order shall be published as a class 2 notice, under ch. 985. A copy of such order shall be sent by certified mail to the publisher, producer, and one or more distributors of said matter, to the persons holding the copyrights, and to the author, in case the names of any such persons appear on such matter or can with reasonable diligence be ascertained by said district attorney. Such publication shall commence and such notices shall be so mailed within 72 hours of the issuance of the order to show cause by the court.

(1m) INTERLOCUTORY ADJUDICATION. After the issuance of the order to show cause under sub. (1), the court shall, on motion of the district attorney, make an interlocutory finding and adjudication that said book, magazine or other written matter or picture, sound recording or film is obscene, which finding and adjudication shall be of the same effect as the final judgment provided in sub. (3) or (5), but only until such final judgment is made or until further order of the court.

(2) RIGHT TO DEFEND; JURY TRIAL. Any person interested in the publication, production, sale, loan, exhibition or distribution of such matter may appear and file an answer on or before the return day named in said notice. If in such answer the right to trial by jury is claimed on the issue of the obscenity of said matter, such issue shall be tried to a jury. If no right to such trial is thus claimed, it shall be deemed waived, unless the court shall, for cause shown, on motion of an answering party, otherwise order.

(3) DEFAULT. If no person appears and answers within the time allowed, the court may then, without notice, upon motion of the plaintiff, if the court finds that the matter is obscene, make an adjudication against the matter that the same is obscene.

(4) SPEEDY HEARING; RULES OF EVIDENCE. If an answer is filed, the case shall be set down for a speedy hearing, but an adjudication of default and order shall first be entered against all persons who have not appeared and answered in the manner provided in sub. (3). If any person answering so demands, the trial shall not be adjourned for a period of longer than 72 hours beyond the opening of court on the day following the filing of the answer. At such hearing, subject to chs. 901 to 911, the court shall receive the testimony of experts and evidence as to the literary, cultural or educational character of said matter and as to the manner and form of its production, publication, advertisement, distribution and exhibition. The dominant effect of the whole of such matter shall be determinative of whether said matter is obscene.

(5) FINDINGS AND JUDGMENT. If, after the hearing, the court or jury, unless its finding is contrary to law or to the great weight and clear preponderance of the evidence, determines that the matter is obscene, the court shall enter judgment that the matter is obscene. If it is determined that the matter is not obscene, the court shall enter judgment dismissing the complaint, and a total of not more than \$100 in costs, in addition to taxable disbursements, may be awarded to the persons defending the matter, which shall be paid from the county treasury. Any judgment under this subsection may be appealed to the court of appeals under chs. 808 and 809 by any person adversely affected, and who is either interested in the publication, production, sale, loan, exhibition or distribution of the matter, or is the plaintiff district attorney.

(6) ADMISSIBILITY IN CRIMINAL PROSECUTIONS. In any trial for a violation of s. 944.21, the proceeding under this section and the final judgment of the circuit court under sub. (3) or (5) or the interlocutory adjudication under sub. (1m), shall be admissible in evidence on the issue of the obscenity of said matter and on the issue of the defendant's knowledge that said matter is obscene, provided, that if the judgment of the court sought to be introduced in evidence is one holding the matter to be obscene, it shall not be admitted unless the defendant in said criminal action was served with notice of the judgment of the court hereunder, and the criminal prosecution is based upon conduct by said defendant occurring more than 18 hours after such service or such appearance, whichever is earlier.

History: Sup. Ct. Order, 67 W (2d) 721; 1975 c. 218; 1977 c. 187, 272. Statutory procedures and constitutionality of the statute discussed State v. I. A. Woman—Part II, 53 W (2d) 102, 191 NW (2d) 897.

Notice procedure under (1) met. due process requirements. State v. Eratomic, 87 W (2d) 536, 275 NW (2d) 160 (Ct. App. 1979).

806.06 Rendition, perfection and entry of judgment. (1) (a) A judgment is rendered by the court when it is signed by the judge or by the clerk at the judge's written direction.

(b) A judgment is entered when it is filed in the office of the clerk of court.

(c) A judgment is perfected by the taxation of costs and the insertion of the amount thereof in the judgment.

(d) A judgment is granted when given orally in open court on the record.

(2) The judge or the clerk upon the written order of the judge may sign the judgment. The judgment shall be entered by the clerk upon rendition.

(3) After an order or judgment is entered, either party may serve upon the other a written notice of entry containing the date of entry.

(4) A judgment may be rendered and entered at the instance of any party either before or after perfection. If the party in whose favor the judgment is rendered causes it to be entered, the party shall perfect the judgment within 30 days of entry or forfeit the right to recover costs. If the party against whom the judgment is rendered causes it to be entered, the party in whose favor the judgment is rendered shall perfect it within 30 days of service of notice of entry of judgment or forfeit the right to recover costs. If proceedings are stayed under s. 806.08, judgment may be perfected at any time within 30 days after the expiration of the stay. If the parties agree to settle all issues but fail to file a notice of dismissal, the judge may direct the clerk to draft an order dismissing the action. No execution shall issue until the judgment is perfected or until the expiration of the time for perfection, unless the party seeking execution shall file a written waiver of entitlement to costs.

(5) Notice of entry of judgment or order must be given within 21 days after the entry of judgment or order to constitute notice under s. 808.04 (1).

History: Sup. Ct. Order, 67 W (2d) 724; 1975 c. 218; Sup. Ct. Order, 83 W (2d) xiii; Sup. Ct. Order, 92 W (2d) xiii; Sup. Ct. Order, 104 W (2d) xi.

Judicial Council Committee's Note, 1979: Sub. (5) is amended by adding a reference to the entry of an order so as to conform with 808.04 (1), which establishes appeal time periods from the entry of a judgment "or" order. [Re Order effective Jan. 1, 1980].

Judicial Council Committee's Note, 1981: Subs. (3) and (5) are amended to clarify what constitutes a sufficient notice of entry to reduce the appeal time. The notice of entry must be a written document, other than the judgment or order, containing the date of entry and served after the entry of the judgment or order. The notice must accurately and completely inform the opposing party as to the date of entry. [Re Order effective Jan. 1, 1982].

Notice of entry of judgment was "given" within meaning of 806.06 (5) when it was mailed; 801.15 (5) was inapplicable. Bruns v. Munitz, 97 W (2d) 742, 295 NW (2d) 112 (Ct. App. 1980).

Last document in litigation should indicate on its face that for purposes of appeal it is final order or judgment and no subsequent document is contemplated. Radoff v. Red Owl Stores, Inc., 109 W (2d) 490, 326 NW (2d) 240 (1982).

See note to 808.04 citing Linnmar, Inc. v. First Enterprises, 161 W (2d) 706, 468 NW (2d) 741 (Ct. App. 1991).

806.07 Relief from judgment or order. (1) On motion and upon such terms as are just, the court may relieve a party or legal representative from a judgment, order or stipulation for the following reasons:

(a) Mistake, inadvertence, surprise, or excusable neglect;

(b) Newly-discovered evidence which entitles a party to a new trial under s. 805.15 (3);

(c) Fraud, misrepresentation, or other misconduct of an adverse party;

(d) The judgment is void;

(e) The judgment has been satisfied, released or discharged;

(f) A prior judgment upon which the judgment is based has been reversed or otherwise vacated;

(g) It is no longer equitable that the judgment should have prospective application; or

(h) Any other reasons justifying relief from the operation of the judgment.

(2) The motion shall be made within a reasonable time, and, if based on sub. (1) (a) or (c), not more than one year after the judgment was entered or the order or stipulation was made. A motion based on sub. (1) (b) shall be made within the time provided in s. 805.16. A motion under this section does not affect the finality of a judgment or suspend its operation. This section does not limit the power of a court to entertain an independent action to relieve a party from judgment, order, or proceeding, or to set aside a judgment for fraud on the court.

History: Sup. Ct. Order, 67 W (2d) 726; 1975 c. 218.

See note to 806.02, citing *Hansher v. Kaishian*, 79 W (2d) 374, 255 NW (2d) 564.

See note to 806.02, citing *Dugenske v. Dugenske*, 80 W (2d) 64, 257 NW (2d) 865.

Trial court abused discretion in refusing to vacate default judgment under (1) (a) where defendant sent letter purporting to be an answer to plaintiff's counsel. *Maier Const., Inc v. Ryan*, 81 W (2d) 463, 260 NW (2d) 700.

Section 805.17 (3) does not limit trial court's discretionary power to grant relief under 806.07 (1) (h) when reasons justifying relief are apparent to the court. In *Matter of Estate of Smith*, 82 W (2d) 667, 264 NW (2d) 239.

Motion filed over 6 months after entry of judgment was not filed within "reasonable time" under (2). *Rhodes v. Terry*, 91 W (2d) 165, 280 NW (2d) 248 (1979).

See note to 808.07, citing *Chicago & N.W.R.R. v. Labor & Ind. Rev. Comm.* 91 W (2d) 462, 283 NW (2d) 603 (Ct. App. 1979).

Sub. (1) (h) is to be liberally construed to allow relief from judgments whenever appropriate to accomplish justice. *Conrad v. Conrad*, 92 W (2d) 407, 284 NW (2d) 674 (1979).

Neglect of both lawyer and client was not "excusable". *Charolais Breeding Ranches v. Wiegel*, 92 W (2d) 498, 285 NW (2d) 720 (1979).

Trial court did not abuse discretion in setting aside judicial sale where buyer based bid on incorrect figures in judgment of foreclosure. *Family Savings and Loan Assn. v. Barkwood Landscaping Co., Inc.* 93 W (2d) 190, 286 NW (2d) 581 (1980).

Relief from judgment entered in ch. 227 review may not be granted under this section. *Charter Mfg. v. Milw. River Restoration*, 102 W (2d) 521, 307 NW (2d) 322 (Ct. App. 1981).

Court did not err in refusing to reopen erroneously entered judgment. *Wis. Pub. Serv. Corp. v. Krist*, 104 W (2d) 381, 311 NW (2d) 624 (1981).

New testing methods to establish paternity cannot be used to affect finality of long-decided paternity determination. *State ex rel. R. A. S. v. J. M.* 114 W (2d) 305, 338 NW (2d) 851 (Ct. App. 1983).

See note to 814.025, citing *Wengerd v. Rinehart*, 114 W (2d) 575, 338 NW (2d) 861 (Ct. App. 1983).

Sub. (1) (h) allows relief even if claim sounds in par. (a), (b) or (c) if extraordinary circumstances justify relief. *State ex rel. M.L.B. v. D.G.H.* 122 W (2d) 536, 363 NW (2d) 419 (1985).

"Reasonable time" requirement of (2) does not apply to void judgments. *Neyland v. Vorwald*, 124 W (2d) 85, 368 NW (2d) 648 (1985).

Order granting motion under (1) (a) is not appealable as of right. *Wellens v. Kahl Ins. Agency, Inc.* 145 W (2d) 66, 426 NW (2d) 41 (Ct. App. 1988).

Order vacating judgment arises in context of underlying action and is not appealable as of right because additional proceedings will follow. *Wellens v. Kahl Ins. Agency, Inc.* 145 W (2d) 66, 426 NW (2d) 41 (Ct. App. 1988).

Court may not use (1) (h) purely as vehicle to extend time period for appeal. *Eau Claire County v. Employers Ins.* 146 W (2d) 101, 430 NW (2d) 579 (Ct. App. 1988).

Finding that there are grounds to reopen divorce judgment under (1) does not require reopening it; trial court may exercise discretion in determining whether there are factors militating against reopening judgment. In re *Marriage of Johnson v. Johnson*, 157 W (2d) 490, 460 NW (2d) 166 (Ct. App. 1990).

A change in the judicial view of an established rule of law is not an extraordinary circumstance justifying relief under (1) (h). *Schwochert v. American Family Ins. Co.*, 166 W (2d) 97, 479 NW (2d) 190 (Ct. App. 1991).

806.08 Stay of proceedings to enforce a judgment. (1)

Unless otherwise ordered by the court, an interlocutory or final judgment in an action for an injunction or in a receivership action shall not be stayed during the period after its entry and until an appeal is taken or during the pendency of an appeal. Subsection (3) governs the suspending, modifying, restoring, or granting of an injunction during the pendency of an appeal.

(2) In its discretion and on such conditions for the security of the adverse party as are proper, the court may stay the execution of or any proceedings to enforce a judgment pending the disposition of a motion for a new trial, or to alter

or amend a judgment, or of a motion for relief from a judgment or order.

(3) When an appeal is taken from an interlocutory or final judgment or appealable order granting, dissolving or denying an injunction, the court in its discretion may suspend, modify, restore, or grant an injunction during the pendency of the appeal upon such terms as to bond or otherwise as it considers proper for the security of the rights of the adverse party.

(4) When an appeal is taken, the appellant may obtain a stay in accordance with s. 808.07.

(5) This section does not limit any power of an appellate court or of a judge or justice thereof to stay proceedings during the pendency of an appeal or to suspend, modify, restore, or grant an injunction during the pendency of an appeal or to make any order appropriate to preserve the existing state of affairs or the effectiveness of the judgment subsequently to be entered.

(6) When a court has rendered a final judgment under the conditions stated in s. 806.01 (2), the court may stay enforcement of that judgment until the entering of a subsequent judgment or judgments and may prescribe such conditions as are necessary to secure the benefit thereof to the party in whose favor the judgment is entered.

History: Sup. Ct. Order, 67 W (2d) 726; Sup. Ct. Order, 67 W (2d) ix; 1977 c. 187 s. 135; 1979 c. 110 s. 60 (9).

806.09 Restitution in case of reversed judgment; purchaser for value. (1)

If any judgment or part of a judgment is collected and such judgment is afterwards set aside or reversed, the trial court shall order the same to be restored with interest from the time of the collection, but in case a new trial is ordered the party who has collected the judgment may retain the same pending the new trial, upon giving a bond in such sum and with such sureties as the court shall order, conditioned for the restoration of the amount collected with interest from the time of collection. The order of restitution may be obtained upon proof of the facts upon notice and motion and may be enforced as a judgment. Nothing herein shall affect or impair the right or title of a purchaser for value in good faith without notice.

(2) Whenever in a civil action on appeal to the court of appeals or the supreme court the appellant fails to stay execution and pending the appeal the sheriff or other officer collects all or any part of the judgment appealed from, the officer collecting the judgment shall deposit the amount collected, less the officer's fees, with the clerk of the court out of which execution issued. In case of reversal on the appeal, restitution may be made in accordance with sub. (1). In case of affirmance the clerk shall pay over the deposit to the judgment creditor on the filing of the remittitur from the court of appeals or the supreme court.

History: Sup. Ct. Order, 67 W (2d) 728; 1975 c. 218; 1977 c. 187.

806.10 Judgment docket. (1) At the time of entry of a judgment directing in whole or in part the payment of money, or a judgment naming a spouse under s. 806.15 (4), and upon payment of the fee prescribed in s. 814.61 (5) (b), the clerk shall enter in a judgment docket, either arranged alphabetically or accompanied by an alphabetical index, a docket of such judgment containing:

(a) The full name and place of residence of each judgment debtor and of the spouse or former spouse of the judgment debtor if the spouse is named in a judgment described under s. 806.15 (4). If the judgment or judgment docket fails to give the place of residence of the judgment debtor or the judgment debtor's spouse or former spouse, the validity of the judgment is not affected thereby, but the judgment creditor may at

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any time file with the clerk an affidavit stating, on knowledge or information and belief, the information. The clerk shall thereupon enter the facts according to the affidavit in the docket, noting the date and hour of the entry.

(b) The name of the judgment creditor, in like manner.

(c) The name of the attorney for the judgment creditor, if stated in the record.

(d) The date of the entry of the judgment.

(e) The day and hour of entering such docket.

(f) The amount of the debt, damages or other sum of money recovered, with the costs.

(g) If the judgment is against several persons such statement shall be repeated under the name of each person against whom the judgment was rendered, in the alphabetical order of their names, respectively, when the docket is arranged alphabetically, or entered in the index under the name of each such person when the docket is kept with an alphabetical index accompanying.

(2) Whenever any docketed judgment shall be reversed and the remittitur filed the clerk shall enter on the docket "reversed on appeal".

(3) Every clerk who docket a judgment or decree and enters upon the docket a date or time other than that of its actual entry or neglects to docket the same at the proper time shall be liable in treble damages to the party injured.

History: Sup. Ct. Order, 67 W (2d) 729; 1975 c. 218; 1983 a. 303; 1987 a. 151, 393; 1991 a. 134.

806.11 Delinquent income or franchise tax docket. At the time of filing the warrant provided by s. 71.74 (14) or 71.91 (5), the clerk shall enter in the delinquent income or franchise tax docket, either arranged alphabetically or accompanied by an alphabetical index, a docket of such warrant containing:

(1) The name of each delinquent income or franchise tax debtor, with place of residence if it is stated in the warrant.

(2) The date of the warrant.

(3) The day and hour of entering such docket.

(4) The amount of delinquent income or franchise taxes with interest, penalties and costs as set forth in the warrant.

(5) If the warrant be against several persons such statement shall be repeated under the name of each person against whom the warrant was issued, in the alphabetical order of their names, respectively, when the docket is arranged alphabetically, or entered in the index under the name of each such person when the docket is kept with an alphabetical index accompanying.

History: Sup. Ct. Order, 67 W (2d) 730; 1975 c. 218; 1985 a. 145; 1987 a. 312 s. 17; 1991 a. 39.

806.115 Filing of duplicate copy of warrant. The department of revenue may file in any county a duplicate copy of a warrant filed under s. 71.74 (14) or 71.91 (5) and the clerk shall enter such duplicate copy on the delinquent income tax docket as provided in s. 806.11, and upon entry therein the duplicate copy shall have the same legal effect as the warrant filed under s. 71.91 (5).

History: 1975 c. 224; 1987 a. 312 s. 17; 1987 a. 403 s. 256

806.12 Transcript of municipal judge's judgment. The clerk of the circuit court shall, upon the production of a duly certified transcript of a judgment for more than \$10, exclusive of costs, rendered by any municipal judge in the county, forthwith file the same and docket such judgment in the docket of the court in the manner prescribed in s. 806.10. When the transcript shows that execution was stayed in the municipal court, with the name of the surety thereof, the clerk shall docket the judgment against such surety as well as the judgment debtor, and such surety shall be bound thereby as a judgment debtor and the surety's property be subject to lien

and be liable thereon to the same extent as the surety's principal. Every such judgment, from the time of such filing of the transcript thereof, shall be deemed the judgment of the circuit court, be equally under the control thereof and be carried into execution, both as to the principal judgment debtor and the debtor's surety, if any, in the same manner and with like effect as the judgments thereof, except that no action can be brought upon the same as a judgment of such court nor execution issued thereon after the expiration of the period of the lien thereof on real estate provided by s. 806.15.

History: Sup. Ct. Order, 67 W (2d) 731; 1975 c. 218; 1977 c. 305 s. 64

806.13 Judgments docketed in other counties. When a judgment is docketed as provided in ss. 806.10, 806.12 and 806.24, or a warrant is docketed as provided in s. 108.22 (2) (a), it may be docketed in like manner in any other county, upon filing with the clerk of court thereof a transcript from the original docket, certified to be a true copy therefrom by the clerk of the original court having custody thereof.

History: Sup. Ct. Order, 67 W (2d) 731; 1975 c. 224; 1987 a. 38 s. 136.

806.14 Enforcement of real estate judgment in other counties. If a judgment affecting real property is rendered in any county other than that in which the property is situated, the clerk of the circuit court of the county where the property is situated shall, upon production of a duly certified copy of the judgment and payment of the fee specified by s. 814.61 (5) (b), file and docket it. The judgment may thereupon be enforced in the circuit court for either county.

History: Sup. Ct. Order, 67 W (2d) 732; Sup. Ct. Order, 109 W (2d) xiii.

Judicial Council Note, 1982: This section is amended by deleting provision for a trial court to order the transfer of all papers, entries, orders and minutes in an action affecting real property to the clerk of circuit court for the county in which the property is situated. The revised statute retains provision for the docketing of a certified copy of the judgment by the clerk of circuit court for the county where the property is situated, giving that court concurrent jurisdiction to enforce the judgment [Re Order effective Jan. 1, 1983]

806.15 Lien of judgment; priority; statute may be suspended. (1) Every judgment properly docketed showing the judgment debtor's place of residence shall, for 10 years from the date of entry, be a lien on the real property, except the homestead mentioned in s. 815.20, in the county where docketed, of every person against whom it is rendered and docketed, which the person has at the time of docketing or which the person acquires thereafter within the 10-year period.

(2) When the collection of the judgment or the sale of the real estate upon which it is a lien shall be delayed by law, and the judgment creditor shall have caused to be entered on the docket "enforcement suspended by injunction" or otherwise, as the case may be, and such entry dated, the time of such delay after the date of such entry shall not be taken as part of said 10 years. And whenever an appeal from any judgment shall be pending and the bond or deposit requisite to stay execution has been given or made, the trial court may, on motion, after notice to the judgment creditor, on such terms as it shall see fit, direct the clerk to enter on the docket that such judgment is "secured on appeal" and thereupon it shall cease during the pendency of such appeal to be a lien.

(3) If the judgment is affirmed on appeal or the appeal is dismissed the clerk shall, on the filing of the remittitur, enter on the docket "lien restored by affirmance" or "lien restored by dismissal of appeal" with the date of such entry, and the lien thereof shall be thereupon restored. Similar entries may be made with the like effect upon the docket of such judgment in any other county upon filing with the clerk of the circuit court thereof a transcript of the original docket.

(4) A lien under this section does not attach to property that is held, as defined in s. 766.01 (9), by a person who is the

spouse or former spouse of a judgment debtor and that is not held by the judgment debtor, unless the spouse of the judgment debtor is a named defendant in the action for which judgment is rendered, the spouse of the judgment debtor is named in the judgment itself, the obligation is determined an obligation described in s. 766.55 (2) and any of the following applies:

(a) With respect to property held by the spouse of the judgment debtor when the judgment is docketed, the property is expressly determined available under s. 766.55 to satisfy the obligation.

(b) The property is acquired after the judgment is docketed.

(5) If a judgment lien has attached under sub. (4) (b) to property that is exempt under s. 815.205 (1) from execution on the judgment lien and execution has not been issued in connection with the enforcement of the judgment lien, a person with an ownership interest in the property may proceed under s. 806.04 for declaratory relief if, within 10 days after demand, the owner of the judgment fails to execute a recordable release of the property from the judgment lien.

History: 1973 c. 211; Sup. Ct. Order, 67 W (2d) 732; 1975 c. 200; 1985 a. 37, 135, 137, 145, 332; 1987 a. 393; 1991 a. 301

NOTE: 1991 Wis. Act 301, which affected this section, contains extensive legislative council notes.

Cross Reference: See 806.19 (4) for procedure to be followed to obtain satisfaction of judgment discharged in bankruptcy

A judgment creditor who obtains a lien on the land by docketing his judgment is not a purchaser for value, and the fact that a judgment creditor may be without notice of a prior equitable interest when he docketed is not sufficient to give his lien priority over that of a prior equitable mortgagee, for the failure of notice does not inure to the benefit of a subsequent judgment creditor because he does not part with any value in reliance on the misleading state of his debtor's title. *IFC Collateral Corp. v. Commercial Units, Inc.* 51 W (2d) 41, 186 NW (2d) 214.

Judgment lien can be enforced against bankrupt's property if judgment was obtained before satisfaction order was entered under 806.19 (4). *State Central Credit Union v. Bigus*, 101 W (2d) 237, 304 NW (2d) 148 (Ct. App. 1981).

In bankruptcy proceedings the lien of judgment obtained before discharge was not extinguished by discharge and could be applied to the proceeds of the bankruptcy sale of the real estate to which the lien attached. *In re Tillman Produce Co., Inc.* 396 F Supp. 500.

Creditor's rights; after-acquired property. *Norman*, 56 MLR 137.
Bankruptcy and the Wisconsin judgment lien. *Doran* WBB March 1984.
Judgment lien claimants' rights against homestead exemption interests: An equitable distribution of mortgage foreclosure sale proceeds. 1981 WLR 697.

806.155 Civil action judgments. All judgments entered before the first Monday in January, 1962, in the civil court of Milwaukee county or in any court which ceased to function on that date, or in any court functioning under ch. 254, 1959 stats., are, as of that date, judgments of the circuit court in the county where judgment was entered, but no judgment shall have any other effect than when originally entered.

History: Sup. Ct. Order, 67 W (2d) 761, Appendix II, s. 43; Stats. 1975 s. 806.155; 1975 c. 39 s. 708s; 1979 c. 90

Legislative Council Note, 1979: In Supreme Court Order, 67 W (2d) 761, Appendix II, s. 43, s. 806.155 was withdrawn from the statutes. Section 806.155 is amended to reflect current statutory drafting practices, without any intention of making substantive changes in the law. In section 26 of this act, it is declared that s. 806.155 shall be printed in future editions of the statutes. [Bill 458-A]

806.16 Appellate court judgment, docketing. The clerk of the supreme court, on demand and upon payment of \$1, shall furnish a certified transcript of any money judgment of the court of appeals or the supreme court which transcript may be filed and docketed in the office of any clerk of the circuit court in the manner that other judgments are docketed and shall then be a like lien and for a like time as circuit court judgments on the real property in the county where docketed. If the court of appeals or supreme court remits its judgment for the recovery of money or for costs to the lower court, the judgment shall in like manner be docketed by the clerk of the lower court and shall have the like force and effect as judgments of the circuit court so docketed.

History: Sup. Ct. Order, 67 W (2d) 734; 1977 c. 187.

806.17 Docketing federal judgments. Every judgment and decree requiring the payment of money rendered in a district court of the United States within this state shall be, from the docketing thereof in said court, a lien upon the real property of the judgment debtor situated in the county in which it is so docketed, the same as a judgment of the state court. A transcript of such docket may be filed with the clerk of the court of any other county; and shall be docketed in the clerk's office as in the case of judgments and decrees of the state courts and with like effect, on payment of fees as provided in s. 814.61 (5).

History: Sup. Ct. Order, 67 W (2d) 734; 1975 c. 218; 1981 c. 317 s. 2202

806.18 Assignment of judgment. (1) When a duly acknowledged assignment of a judgment is filed, the clerk shall note the fact and the date thereof and of filing on the docket.

(2) An assignment may be made by an entry on the docket thus: "I assign this judgment to A. B.," signed by the owner, with the date affixed and witnessed by the clerk.

History: Sup. Ct. Order, 67 W (2d) 734; 1975 c. 218.

806.19 Satisfaction of judgments. (1) (a) A judgment may be satisfied in whole or in part or as to any judgment debtor by an instrument signed and acknowledged by the owner or, if no assignment has been filed, by the owner's attorney of record, or by an acknowledgment of satisfaction, signed and entered on the docket in the county where first docketed, with the date of entry, and witnessed by the clerk. Every satisfaction of a part of a judgment or as to some of the judgment debtors shall state the amount paid thereon or for the release of such debtors, naming them.

(b) No satisfaction by an attorney shall be conclusive upon the judgment creditor in respect to any person who has notice of revocation of the authority of such attorney, before any payment made thereon or before any purchase of property bound by such judgment has been effected.

(c) On filing a duly executed satisfaction, the clerk shall enter the same on the court record of the case and shall enter a statement of the substance thereof, including the amount paid, on the margin of the judgment docket with the date of filing the satisfaction.

(2) When an execution is returned satisfied in whole or in part the judgment is deemed satisfied to the extent of the amount so returned unless such return is vacated and the clerk shall enter in the docket that the amount stated in such return has been collected.

(3) For the purpose of paying any money judgment, the debtor may deposit with the clerk of the court in which the judgment was entered the amount of liability thereon. The clerk shall give the debtor a certificate showing the date and amount of the deposit and identifying the judgment; and shall immediately note on the docket thereof and on the margin of the judgment journal the amount and date of the deposit. The debtor shall immediately give written notice to the owner of record of the judgment and to the owner's attorney of record, personally, or by registered mail, to the last-known post-office address, stating the amount, date and purpose of the deposit, and that it is held subject to the order of the judgment owner. Ten days after giving the notice, the clerk shall, upon filing proof of service, satisfy the judgment of record, unless the trial court otherwise orders. Acceptance by the owner of the sum deposited has the same legal consequences that payment direct by the debtor would have. Payment to the clerk shall include the fee prescribed in s. 814.61 (5).

(4) (a) Any person who has secured a discharge in bankruptcy that renders void one or more judgments and any person interested in the real property affected by any such judgments may submit an application for an order of satisfac-

tion of the judgments and an attached order of satisfaction to the clerk of the court in which the judgments rendered void by discharge were entered.

(b) The application and attached order shall be in substantially the following form:

**APPLICATION FOR ORDER OF
SATISFACTION OF JUDGMENTS
DUE TO DISCHARGE IN BANKRUPTCY**

TO: Clerk of Circuit Court

... County

1. (Name of judgment debtor) has received an order of discharge of debts under the bankruptcy laws of the United States, a copy of which is attached, and (Name of judgment debtor or person interested in real property) applies for satisfaction of the following judgments:

(List of judgments by case name, case number, date and, if applicable, docket volume and page number.)

2. a. Copies of the schedules of debts as filed with the bankruptcy court showing each judgment creditor for each of the judgments described above are attached; or

b. Each judgment creditor for each of the judgments described above has been duly notified of the bankruptcy case in the following manner: (statement of form of notice).

3. The undersigned believes that each judgment listed above has been completely voided by the discharge in bankruptcy, and no inconsistent ruling has been made by, or is being requested by any party from, the bankruptcy court.

Dated this ... day of ..., 19....

.... (Signature) Judgment Debtor, Person Interested in Real Property or Attorney for Debtor or Person

ORDER OF SATISFACTION

The clerk of circuit court is directed to indicate on the judgment docket that each judgment described in the attached application has been satisfied.

Dated this ... day of ..., 19....

.... (Signature) Circuit Judge

(bm) The copy of the order of discharge that is attached to the application shall be either a certified copy or a photocopy of the order in the form in which it was served on parties in interest by the bankruptcy court.

(c) Any person submitting an application and attached proposed order shall serve a copy of the completed application and attached proposed order on each judgment creditor for each of the judgments described in the application within 5 business days after the date of submission.

(d) Upon receipt of a completed application, the clerk shall submit the attached proposed order for signature by a judge after which the clerk shall satisfy of record each judgment described in the application.

History: 1973 c. 211; Sup. Ct. Order, 67 W (2d) 735; 1975 c. 218; 1981 c. 317; 1985 a. 137; 1987 a. 202.

Cross Reference: See 806.15 (1) which provides that a judgment discharged in bankruptcy ceases to be a lien upon entry of the order of discharge.

See note to 806.15, citing State Central Credit Union v. Bigus, 101 W (2d) 237, 304 NW (2d) 148 (Ct. App. 1981).

In bankruptcy proceedings the lien of judgment obtained before discharge was not extinguished by discharge and could be applied to the proceeds of the bankruptcy sale of the real estate to which the lien attached. In re Tillman Produce Co., Inc. 396 F. Supp. 500.

Bankruptcy: effect of the 1970 bankruptcy act amendments on the discharge that never was Knight, 1971 WLR 1174.

806.20 Court may direct satisfaction; refusal to satisfy. (1)

When a judgment has been fully paid but not satisfied or the satisfaction has been lost, the trial court may authorize the attorney of the judgment creditor to satisfy the same or may by order declare the same satisfied and direct satisfaction to be entered upon the docket.

(2) If any owner of any judgment, after full payment thereof, fails for 7 days after request and tender of reasonable charges therefor, to satisfy the judgment, the owner shall be

liable to the party paying the same, the party's heirs or representatives in the sum of \$50 damages and also for actual damages occasioned by such failure.

History: Sup. Ct. Order, 67 W (2d) 737; 1975 c. 218.

806.21 Judgment satisfied not a lien; partial satisfaction.

If a judgment is satisfied in whole or in part or as to any judgment debtor and such satisfaction docketed, such judgment shall, to the extent of such satisfaction, cease to be a lien; and any execution thereafter issued shall contain a direction to collect only the residue thereof, or to collect only from the judgment debtors remaining liable thereon.

History: Sup. Ct. Order, 67 W (2d) 737.

806.22 Filing transcript of satisfaction. If a satisfaction of a judgment has been entered on the docket in the county where it was first docketed, a certified transcript of the docket or a certificate by the clerk, under official seal, showing the satisfaction, may be filed with the clerk of the court in any county where it is docketed, and such clerk shall thereupon make a similar entry on the clerk's docket.

History: Sup. Ct. Order, 67 W (2d) 738; 1975 c. 218.

806.23 Action on judgment, when brought. No action shall be brought upon a judgment rendered in any court of this state between the same parties, without leave of the court, for good cause shown, on notice to the adverse party.

History: Sup. Ct. Order, 67 W (2d) 738.

Trial court's denial of petition to sue on 12-year-old judgment was abuse of discretion Anderson v. Kojo, 110 W (2d) 22, 327 NW (2d) 195 (Ct. App. 1982).

806.24 Uniform enforcement of foreign judgments act. (1)

DEFINITION. In this section "foreign judgment" means any judgment, decree or order of a court of the United States or of any other court which is entitled to full faith and credit in this state.

(2) **FILING AND STATUS OF FOREIGN JUDGMENTS.** A copy of any foreign judgment authenticated in accordance with the act of congress or the statutes of this state may be filed in the office of the clerk of circuit court of any county of this state. The clerk shall treat any foreign judgment in the same manner as a judgment of the circuit court of this state. A judgment so filed has the same effect and is subject to the same procedures, defenses, and proceedings for reopening, vacating or staying as a judgment of a circuit court of this state and may be enforced or satisfied in like manner.

(3) **NOTICE OF FILING.** (a) At the time of the filing of the foreign judgment, the judgment creditor or lawyer shall make and file with the clerk of court an affidavit setting forth the name and last-known post-office address of the judgment debtor and the judgment creditor.

(b) Promptly upon the filing of the foreign judgment and affidavit, the clerk shall mail notice of the filing of the foreign judgment to the judgment debtor at the address given and shall make a note of the mailing in the docket. The notice shall include the name and post-office address of the judgment creditor and the judgment creditor's lawyer, if any, in this state. In addition, the judgment creditor may mail a notice of the filing of the judgment to the judgment debtor and may file proof of mailing with the clerk. Lack of mailing notice of filing by the clerk shall not affect the enforcement proceedings if proof of mailing by the judgment creditor has been filed.

(c) No execution or other process for enforcement of a foreign judgment filed hereunder shall issue until 15 days after the date the judgment is filed.

(4) **STAY.** (a) If the judgment debtor shows the court that an appeal from the foreign judgment is pending or will be taken, or that a stay of execution has been granted, the court shall

stay enforcement of the foreign judgment until the appeal is concluded, the time for appeal expires, or the stay of execution expires or is vacated, upon proof that the judgment debtor has furnished the security for the satisfaction of the judgment required by the state in which it was rendered.

(b) If the judgment debtor shows the court any ground upon which enforcement of a judgment of any court of this state would be stayed, the court shall stay enforcement of the foreign judgment for an appropriate period, upon requiring the same security for satisfaction of the judgment which is required in this state.

(5) **OPTIONAL PROCEDURE.** The right of a judgment creditor to bring an action to enforce the judgment instead of proceeding under this section remains unimpaired.

(6) **UNIFORMITY OF INTERPRETATION.** This section shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

(7) **SHORT TITLE.** This act may be cited as the "Uniform Enforcement of Foreign Judgments Act".

History: Sup. Ct. Order, 67 W (2d) 738; 1975 c. 218.

Cross Reference: See 618.61 for provision for reciprocal enforcement of foreign insurance decrees or orders.

The established constitutional principles that (a) without proper service of process no full faith and credit need be accorded a foreign judgment, since the requirements of due process militate against such enforcement; (b) want of jurisdiction is a matter of legitimate inquiry where enforcement of such a judgment is sought; and (c) mere recital of jurisdiction or jurisdictional facts is not sufficient to bar such inquiry, apply to both actions in rem and quasi in rem as well as to personal judgments. Hansen v. McAndrews, 49 W (2d) 625, 183 NW (2d) 1.

See note to 895.055, citing Conquistador Hotel Corp. v. Fortino, 99 W (2d) 16, 298 NW (2d) 236 (Ct. App. 1980).

Rate of interest provided by foreign judgment docketed in Wisconsin controls rather than 815.05 (8) rate. Prof. Office Bldgs. v. Royal Indem. 145 W (2d) 573, 427 NW (2d) 427 (Ct. App. 1988).

806.245 Indian tribal documents: full faith and credit. (1)

The judicial records, orders and judgments of an Indian tribal court in Wisconsin and acts of an Indian tribal legislative body shall have the same full faith and credit in the courts of this state as do the acts, records, orders and judgments of any other governmental entity, if all of the following conditions are met:

(a) The tribe which creates the tribal court and tribal legislative body is organized under 25 USC 461 to 479.

(b) The tribal documents are authenticated under sub. (2).

(c) The tribal court is a court of record.

(d) The tribal court judgment offered in evidence is a valid judgment.

(e) The tribal court certifies that it grants full faith and credit to the judicial records, orders and judgments of the courts of this state and to the acts of other governmental entities in this state.

(2) To qualify for admission as evidence in the courts of this state:

(a) Copies of acts of a tribal legislative body shall be authenticated by the certificate of the tribal chairperson and tribal secretary.

(b) Copies of records, orders and judgments of a tribal court shall be authenticated by the attestation of the clerk of the court. The seal, if any, of the court shall be affixed to the attestation.

(3) In determining whether a tribal court is a court of record, the circuit court shall determine that:

(a) The court keeps a permanent record of its proceedings.

(b) Either a transcript or an electronic recording of the proceeding at issue in the tribal court is available.

(c) Final judgments of the court are reviewable by a superior court.

(d) The court has authority to enforce its own orders through contempt proceedings.

(4) In determining whether a tribal court judgment is a valid judgment, the circuit court on its own motion, or on the motion of a party, may examine the tribal court record to assure that:

(a) The tribal court had jurisdiction of the subject matter and over the person named in the judgment.

(b) The judgment is final under the laws of the rendering court.

(c) The judgment is on the merits.

(d) The judgment was procured without fraud, duress or coercion.

(e) The judgment was procured in compliance with procedures required by the rendering court.

(f) The proceedings of the tribal court comply with the Indian civil rights act of 1968 under 25 USC 1301 to 1341.

(5) No lien or attachment based on a tribal court judgment may be filed, docketed or recorded in this state against the real or personal property of any person unless the judgment has been given full faith and credit by a circuit court under this section.

History: 1981 c. 369; 1991 a. 43.

806.25 No judgment without action. Any authorization in a note executed after June 18, 1972, for the creditor, or other person acting on the creditor's behalf, to confess judgment for the debtor shall be void and unenforceable.

History: 1973 c. 261; Sup. Ct. Order, 67 W (2d) 740; 1975 c. 218.

806.30 Definitions. In ss. 806.30 to 806.44:

(1) "Action" means a judicial proceeding or arbitration in which a money payment may be awarded or enforced with respect to a foreign-money claim.

(1m) "Bank-offered spot rate" means the rate of exchange at which a bank will issue its draft in a foreign money or will cause credit to become available in a foreign money on a next-day basis.

(2) "Conversion date" means the banking day before the date that money is used, under ss. 806.30 to 806.44, for one of the following:

(a) To pay a judgment creditor.

(b) To pay the designated official enforcing a judgment on behalf of the judgment creditor.

(c) To effect a recoupment or setoff of claims in different moneys in an action.

(3) "Distribution proceeding" means a judicial or nonjudicial proceeding for an accounting, an assignment for the benefit of creditors, a foreclosure, a liquidation or rehabilitation of a corporation or other entity or a distribution of an estate, trust or other fund in which or against which a foreign-money claim is asserted.

(4) "Foreign money" means money other than money authorized or adopted by the United States of America.

(5) "Foreign-money claim" means a claim upon an obligation to pay or a claim for recovery of a loss, expressed in or measured by a foreign money.

(6) "Money" means a medium of exchange for the payment of obligations or a store of value authorized or adopted by a government or by intergovernmental agreement.

(8) "Party" means an individual, corporation, government or governmental subdivision or agency, business trust, partnership, or association of 2 or more persons having a joint or common interest, or any other legal or commercial entity asserting or defending against a foreign-money claim.

(9) "Rate of exchange" means the rate at which the money of one country may be converted into money of another country in a free financial market convenient to or reasonably usable by the party obliged to pay or to state a rate of conversion. If separate rates of exchange apply to different

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kinds of transactions or events, the term means the rate applicable to the particular transaction or event giving rise to the foreign-money claim.

(10) "Spot rate" means the rate of exchange at which foreign money is sold by a bank or other dealer in foreign exchange for settlement by immediate payment, by charge to an account, or by an agreed delayed settlement not exceeding 2 days.

(11) "State" means a state, territory or possession of the United States of America, the District of Columbia, the Commonwealth of Puerto Rico or the United States Virgin Islands.

History: 1991 a. 236.

806.31 Scope. (1) Sections 806.30 to 806.44 apply only to a foreign-money claim in an action or distribution proceeding.

(2) Sections 806.30 to 806.44 apply to foreign-money issues notwithstanding the law applicable under the conflict of laws rules of this state to other issues in the action or distribution proceeding.

History: 1991 a. 236.

806.32 Variation by agreement. (1) The parties may agree to vary from the effects of ss. 806.30 to 806.44 at any time before or after the commencement of an action or distribution proceeding, or the entry of judgment.

(2) The parties may agree upon the money to be used in a transaction giving rise to a foreign-money claim and may use different moneys for different aspects of the transaction. Stating the price in a foreign money for a particular transaction does not require, of itself, the use of that money for other aspects of the transaction.

History: 1991 a. 236.

806.33 Determining the money of the claim. (1) Except as provided in sub. (2), the proper money of the claim is one of the following:

(a) The money regularly used between the parties as a matter of usage or course of dealing.

(b) The money used at the time of a transaction in international trade, by trade usage, or common practice, for valuing or settling transactions in the particular commodity or service involved.

(c) The money in which the loss was ultimately felt or will be incurred by a party.

(2) The money in which the parties have contracted that a payment be made is the proper money of the claim for that payment.

History: 1991 a. 236.

806.34 Determining the amount of the money of certain contract claims. (1) If an amount contracted to be paid in a foreign money is measured by a specified amount of a different money, the amount to be paid is determined on the conversion date.

(2) If an amount contracted to be paid in a foreign money is to be measured by a different money at the rate of exchange prevailing on a date before default, that rate of exchange applies only for payments made a reasonable time after default, not to exceed 30 days. Thereafter, the bank-offered spot rate of exchange on the conversion date applies.

(3) A monetary claim is neither usurious nor unconscionable because the agreement on which it is based provides that the amount of the debtor's obligation to be paid in the debtor's money must, when received by the creditor, equal a specified amount of the foreign money of the country of the creditor. If, because of unexcused delay in payment of a judgment or award, the amount received by the creditor does not equal the amount of the foreign money specified in the

agreement, the court or arbitrator shall amend the judgment or award to provide the creditor with the amount of the foreign money specified in the agreement.

History: 1991 a. 236.

806.35 Asserting and defending a foreign-money claim.

(1) A claimant may assert a claim in a specified foreign money. If a foreign money is not asserted, the claimant makes a claim for a judgment in U.S. dollars.

(2) An opposing party may allege and prove that the claim is, in whole or in part, for a different money than that asserted by the claimant.

(3) Any party may assert a defense, setoff, recoupment or counterclaim in any money without regard to the money of other claims.

(4) The determination of the proper money of the claim is a question of law.

History: 1991 a. 236.

806.36 Judgments and awards on foreign-money claims; times of money conversion; form of judgment. (1) Except as provided in sub. (3), a judgment or arbitration award on a foreign-money claim must be stated in an amount of the money of the claim.

(2) The judgment or award on a foreign-money claim is payable in that foreign money or, at the option of the debtor, in the amount of U.S. dollars that will purchase that foreign money on the conversion date at a bank-offered spot rate.

(3) Assessed costs must be entered in U.S. dollars.

(4) Each payment in U.S. dollars must be accepted and credited on the judgment or award in the amount of the foreign money that could be purchased by U.S. dollars at a bank-offered spot rate of exchange at or near the close of business on the conversion date of that payment.

(5) Judgments or awards made in an action on both a defense, setoff, recoupment or counterclaim and on the adverse party's claim must be netted by converting the money of the smaller into the money of the larger and subtracting the smaller from the larger, and must specify the rate of exchange used.

(6) A judgment substantially in the following form complies with sub. (1):

IT IS ADJUDGED AND ORDERED, that defendant (insert name) pay to plaintiff (insert name) the sum of (insert amount in the foreign money) plus interest on that sum at the rate of% (insert rate — see Section 806.38 of the Wisconsin Statutes) per year or, at the option of the judgment debtor, the number of U.S. dollars that will purchase the (insert name of foreign money) with interest due, at a bank-offered spot rate at or near the close of business on the banking day before the day of payment, together with assessed costs of \$.... (insert amount) U.S. dollars.

(7) If a contract claim is of the type covered by s. 806.34 (1) or (2), the judgment or award for the amount of the money stated to measure the obligation to be paid shall be entered in the money specified for payment or, at the option of the debtor, in the number of U.S. dollars that will purchase the computed amount of the money of payment on the conversion date at a bank-offered spot rate.

(8) A judgment shall be filed and docketed in foreign money in the same manner and shall have the same effect as other judgments.

History: 1991 a. 236.

806.37 Conversions of foreign money in a distribution proceeding. The rate of exchange prevailing at or near the closing of business on the day the distribution proceeding is initiated shall govern all exchanges of foreign money in the

proceeding. A foreign-money claimant in a distribution proceeding must assert its claim in the named foreign money and show the amount of U.S. dollars resulting from a conversion as of the date the proceeding was initiated.

History: 1991 a 236

806.38 Prejudgment and judgment interest. (1) With respect to a foreign-money claim, recovery of prejudgment interest and the rate of interest to be applied in the action or distribution proceeding are matters of the substantive law governing the right to recovery under the conflict of laws rules of this state.

(2) Notwithstanding sub. (1), an increase or decrease in the amount of prejudgment interest otherwise payable may be made in a foreign-money judgment to the extent required by s. 802.05, 805.03 or 807.01.

(3) A judgment on a foreign-money claim bears interest at the same rate applicable to other judgments of this state.

History: 1991 a 236

806.39 Enforcement of foreign judgments. (1) Subject to subs. (2) and (3), if an action is brought to enforce a judgment of another jurisdiction expressed in a foreign money and the judgment is recognized in this state as enforceable, the enforcing judgment must be entered as provided in s. 806.36 whether or not the foreign judgment confers an option to pay in an equivalent amount of U.S. dollars. A satisfaction or partial payment made upon the foreign judgment must be credited against the amount of foreign money specified in the judgment, notwithstanding the entry of judgment in this state.

(2) Notwithstanding sub. (1), a foreign judgment may be filed and docketed under s. 806.24.

(3) A judgment entered on a foreign-money claim only in U.S. dollars in another state must be enforced in this state in U.S. dollars only.

History: 1991 a 236

806.40 Temporarily determining the U.S. dollar value of foreign-money claims for limited purposes. (1) For the limited purpose of facilitating the enforcement of provisional remedies in an action, the value in U.S. dollars of assets to be seized or restrained pursuant to a writ of attachment, garnishment, execution or other legal process, the amount of U.S. dollars at issue for assessing costs, or the amount of U.S. dollars involved for a surety bond or other court-required undertaking shall be ascertained as provided in subs. (2) and (3).

(2) The party seeking the process, costs, bond or other undertaking must compute the U.S. dollar amount of the foreign money claimed from a bank-offered spot rate of exchange prevailing at or near the close of business on the

banking day preceding the day of the filing of a request or application for the issuance of process or for the determination of costs, or the filing of an application for a bond or other court-required undertaking.

(3) The party seeking the process, costs, bond or other undertaking shall file with each request or application an affidavit or certificate executed in good faith by its counsel or a bank officer, stating the market quotation used, how obtained, and setting forth the calculation. Affected court officials incur no liability, after a filing of the affidavit or certificate, for acting as if the judgment was in the amount of U.S. dollars stated in the affidavit or certificate.

(4) Computations under this section are for the limited purposes of the section and do not affect computation of the U.S. dollar equivalent of the money of the judgment for payment purposes.

History: 1991 a 236

806.41 Effect of currency revalorizations. (1) If, after an obligation is expressed or a loss is incurred in a foreign money, the country issuing or adopting that money substitutes a new money in place of that money, the obligation or the loss is treated as if expressed or incurred in the new money at the rate of conversion the issuing country establishes for the payment of like obligations or losses denominated in the former money.

(2) If substitution under sub. (1) occurs after a judgment or award is entered on a foreign-money claim, the court or arbitrator shall amend the judgment or award by the rate of conversion of the former money.

History: 1991 a 236

806.42 Supplementary general principles of law. Unless displaced by ss. 806.30 to 806.44, the principles of law and equity, including the law relative to the capacity to contract, principal and agent, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy or other validating or invalidating causes supplement the provisions under ss. 806.30 to 806.44.

History: 1991 a 236

806.43 Uniformity of application and construction. Sections 806.30 to 806.44 shall be applied and construed to effectuate the general purpose of making uniform the law with respect to the subject of ss. 806.30 to 806.44 among states enacting it.

History: 1991 a 236

806.44 Short title. Sections 806.30 to 806.44 may be cited as the "Uniform Foreign-Money Claims Act".

History: 1991 a 236