

Assembly Bill 151

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CHAPTER 274, LAWS OF 1967

AN ACT to create 235.491 of the statutes, relating to limitations of actions by former owners for recovery of lands conveyed by tax deed and rights of purchasers of real estate for value without notice to have and hold such real estate free of certain adverse claims after expiration of statutes of limitations.

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

235.491 of the statutes is created to read:

235.491 NOTICE OF CONVEYANCE FROM THE RECORD. (1)
WHEN CONVEYANCE IS FREE OF PRIOR ADVERSE CLAIM. A purchaser for a valuable consideration, without notice as defined in sub. (2), and his successors in interest, shall take and hold the estate or interest purported to be conveyed to such purchaser free of any claim adverse to or inconsistent with such estate or interest, if such adverse claim is dependent for its validity or priority upon:

(a) *Nondelivery.* Nondelivery, or conditional or revocable delivery, of any recorded conveyance, unless the condition or revocability is expressly referred to in such conveyance or other recorded instrument.

(b) *Conveyance outside chain of title not identified by definite reference.* Any conveyance, transaction or event not appearing of record in the chain of title to the real estate affected, unless such conveyance, transaction or event is identified by definite reference in an instrument of record in such chain. No reference shall be definite which fails to specify, by direct reference to a particular place in the public land record, or, by positive statement, the nature and scope of the prior outstanding interest created or affected by such conveyance, transaction or event,

the identity of the original or subsequent owner or holder of such interest, the real estate affected, and the approximate date of such conveyance, transaction or event.

(c) *Unrecorded extensions of interests expiring by lapse of time.* Continuance, extension or renewal of rights of grantees, purchasers, optionees, or lessees under any land contract, option, lease or other conveyance of an interest limited to expire, absolutely or upon a contingency, within a fixed or determinable time, where 2 years have elapsed after such time, unless there is recorded a notice or other instrument referring to such continuance, extension or renewal and stating or providing a later time for the enforcement, exercise, performance or termination of such interest and then only if less than 2 years have elapsed after such later time. This paragraph shall not apply to life estates, mortgages or trust deeds, nor shall it inferentially extend any interest otherwise expiring by lapse of time.

(d) *Nonidentity of persons in chain of title.* Nonidentity of persons named in, signing or acknowledging one or more related conveyances or instruments affecting real estate, provided the persons appear in such conveyances under identical names or under variants thereof, including inclusion, exclusion or use of: commonly recognized abbreviations, contractions, initials, or foreign, colloquial, or other equivalents; first or middle names or initials; simple transpositions which produce substantially similar pronunciation; articles or prepositions in names or titles; description of entities as corporations, companies, or any abbreviation or contraction of either; name suffixes such as senior or junior; where such identity or variance has appeared of record for 5 years.

(e) *Marital interests.* Dower or homestead of the spouse of any transferor of an interest in real estate, where the recorded conveyance purporting to transfer the same states that the person executing it is single, unmarried or widowed; or fails to indicate the marital status of such transferor, and where such conveyance has, in either case, appeared of record for 5 years. This paragraph shall not apply to the interest of a married woman who is described of record as holder in joint tenancy with such transferor.

(f) *Lack of authority of officers, agents or fiduciaries.* Any defect or insufficiency in authorization of any purported officer, partner, agent or fiduciary to act in the name or on behalf of any corporation, partnership, principal, trust, estate, minor, incompetent or other holder of an interest in real estate purported to be conveyed in a representative capacity, after the conveyance has appeared of record for 5 years.

(g) *Defects in judicial proceedings.* Any defect or irregularity, jurisdictional or otherwise, in an action or proceeding out of which any judgment or order affecting real estate issued after the judgment or order has appeared of record for 5 years.

(h) *Nonexistence, incapacity or incompetency.* Nonexistence, ultra vires act or legal incapacity or incompetency of any purported person or legal entity, whether natural or artificial, foreign or domestic, provided the recorded conveyance or instrument affecting the real estate shall purport to have been duly executed by such purported person or legal entity, and shall have appeared of record for 5 years.

(i) *Facts not asserted of record.* Any fact not appearing of record, but the opposite or contradiction of which appears affirmatively and expressly in a conveyance, affidavit or other instrument of record in the chain of title of the real estate affected for 5 years. Such facts may, without limitation by noninclusion, relate to age, sex, birth, death, capacity, relationship, family history, descent, heirship, names, identity of persons, marriage, marital status, homestead, possession or adverse pos-

session, residence, service in the armed forces, conflicts and ambiguities in descriptions of land in recorded instruments, identification of any recorded plats or subdivisions, corporate authorization to convey, and the happening of any condition or event which terminates an estate or interest.

(j) *Defects in tax deed.* Nonexistence or illegality of any proceedings from and including the assessment of the real estate for taxation up to and including the execution of the tax deed after the tax deed has been of record for 5 years.

(k) *Interests not of record within 30 years.* Any interest of which no affirmative and express notice appears of record within 30 years.

(2) NOTICE OF PRIOR CLAIM. A purchaser has notice of a prior outstanding claim or interest, within the meaning of this section wherever, at the time such purchaser's interest arises in law or equity:

(a) *Affirmative notice.* Such purchaser has affirmative notice apart from the record of the existence of such prior outstanding claim, including notice, actual or constructive, arising from use or occupancy of the real estate by any person at the time such purchaser's interest therein arises, whether or not such use or occupancy is exclusive; but no constructive notice shall be deemed to arise from use or occupancy unless due and diligent inquiry of persons using or occupying such real estate would, under the circumstances, reasonably have disclosed such prior outstanding interest; nor unless such use or occupancy is actual, visible, open and notorious; or

(b) *Notice of record within 30 years.* There appears of record in the chain of title of the real estate affected, within 30 years and prior to the time at which the interest of such purchaser arises in law or equity, an instrument affording affirmative and express notice of such prior outstanding interest conforming to the requirements of definiteness of sub. (1) (b); or

(c) *Same.* The applicable provisions of sub. (1) (c) to (k) requiring that an instrument remain for a time of record, have not been fully satisfied.

(3) WHEN PRIOR INTEREST NOT BARRED. This section shall not be applied to bar or infringe any prior outstanding interest in real estate:

(a) *Public service corporations, railroads, trustees, governmental units.* While owned, occupied or used by any public service corporation as defined in s. 196.01 or any railroad corporation as defined in s. 195.02, or any trustee or receiver of any such corporation, or any mortgagee or trust deed trustee or receiver thereof; nor any such interest while held by the United States, the state or any political subdivision or municipal corporation thereof; or

(b) *Unplatted, unimproved, unused etc.* Which, at the time such subsequent purchaser's interest arises, is unplatted, vacant and unoccupied, unused, unimproved and uncultivated; except that this paragraph shall not apply to prior interests dependent for validity or priority upon the circumstances described in sub. (1) (a), (b), (j) and (k).

(4) CHAIN OF TITLE: DEFINITION. The term "chain of title" as used in this section includes instruments, actions and proceedings discoverable by reasonable search of the public records and indices affecting real estate in the offices of the register of deeds and in probate and of clerks of courts of the counties in which the real estate is located; a tract index shall be deemed an index where the same is publicly maintained.

(5) CONSTRUCTION. Nothing in this section shall be construed to raise or support any inference adverse or hostile to marketability of titles.

(6) This section shall take effect and may be invoked by qualified purchasers without notice as defined in sub. (2) whose interests arise on or after July 1, 1968, and by their successors in interest thereafter.

Approved December 26, 1967.