

CHAPTER 700

INTERESTS IN PROPERTY

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700.01 Definitions. In this chapter, unless the context indicates otherwise:

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

(2) "Document of title" means a document which is evidence of ownership of certain kinds of personal property, tangible or intangible, the ownership of which may be transferred by transfer of the document; it includes but is not limited to an investment security, a negotiable instrument and a certificate of title to tangible personal property; it does not include items excepted in s. 700.22.

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

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

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

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

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

History: 1983 a. 189.

Cross Reference: See 990.01 (27) and (35) which define real and personal property.

700.02 Classification of interests in property as to duration. Interests in property are classified as to duration as:

(1) A fee simple absolute;

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

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

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

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

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

700.03 Classification of present and future interests. Interests in property are classified as to time of enjoyment as:

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

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

700.04 Classification of future interests. Future interests are classified as:

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

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

Where conditional testamentary disposition failed, court found a gift by implication rather than a reversionary interest which would have contravened the testatrix' intent. *In re Trust of Pauly*, 71 W (2d) 306, 237 NW (2d) 719.

700.05 Classification of remainders. Remainders are classified as:

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

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

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

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

History: 1971 c. 66.

700.06 Interest for life of another; succession. An interest measured by the life of a person other than the owner of the interest passes on the death of the owner (prior to the death of the person who is the measuring life) as an asset of the owner's estate and is realty or personalty according to the nature of the property subject to the interest.

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

700.08 Estate tail becomes fee simple; effect of gift over after attempted estate tail. The use of language in an instrument appropriate to create a present or future interest in fee tail (such as to a named person "and the heirs of his body" or "and his issue") creates a present or future interest in fee simple; if the same instrument attempts to create a future interest after the interest which is made a fee simple by reason of this section, the future interest is valid.

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

700.10 Remainder to heirs of owner of life interest; abolition of rule in Shelley's case. If an instrument purports to transfer an interest for life to one person and a remainder to his heirs or the heirs of his body, a remainder is created in his heirs or heirs of his body.

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

700.12 After-born children included in class gift. If an instrument transfers an interest to a group of persons described as a class, such as "issue", "children", "nephews and nieces" or any other class, a person conceived at the time the membership in the class is determined and born alive subsequently is entitled to take as a member of the class if he otherwise satisfies the conditions for class membership.

700.13 Remainders presumed not to shorten prior interest; acceleration of remainders. (1) If an instrument transfers an interest for life or years and a future interest to take effect on a stated contingency not defeating or avoiding the

prior interest transferred, and the stated contingency occurs before the normal termination of the prior interest transferred, the future interest takes effect at the normal termination of the prior interest.

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

700.14 Indestructibility of contingent future interests. No future interest is destroyed merely by the termination in any manner of any or all preceding interests before the happening of a contingency to which the future interest is subject.

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

700.16 Perpetuities and suspension of power of alienation. (1) (a) A future interest or trust is void if it suspends the power of alienation for longer than the permissible period. The permissible period is a life or lives in being plus a period of 30 years.

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

(c) If a future interest or trust is created by exercise of a power of appointment, the permissible period is computed from the time the power is exercised if the power is a general power as defined in s. 702.01 (3) even if the power is exercisable only by will; in the case of other powers the permissible period is computed from the time the power is created but facts at the time the power is exercised are considered in determining whether the power of alienation is suspended beyond a life or lives in being at the time of creation of the power plus 30 years.

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

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

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

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

(b) Transfers to literary or charitable corporations;

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

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

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

(f) Employes' trusts created as part of a plan as described in s. 815.18 (31).

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

History: Sup. Ct. Order, 67 W (2d) 777; 1983 a. 189 s. 329 (26).

700.17 Classification and characteristics of certain concurrent interests. (1) CLASSIFICATION OF CONCURRENT INTERESTS. Interests in property may be owned concurrently by 2 or more persons as joint tenants or as tenants in common. A joint tenancy or tenancy in common established exclusively

between spouses after the determination date is classified as provided under s. 766.60 (4) (b).

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

(b) 1. If a joint tenant feloniously and intentionally kills another joint tenant of the same property, the joint tenancy is severed so that the interest of the decedent passes as the decedent's property and the killer has no right of survivorship as to that property.

2. Section 852.01 (2m) (b) and (c) applies to this paragraph.

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

History: 1971 c. 66; 1981 c. 228; 1985 a. 37.

NOTE: As to sub. (1), see notes in 1985 Wis. Act 37, marital property trailer bill.

Rental income must be attributed to joint tenants in proportion to ownership. *McManus v. Dept. of Revenue*, 91 W (2d) 682, 283 NW (2d) 576 (1979).
Concurrent ownership; joint tenancy and tenancy in common. Talsky, 55 MLR 321.

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

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

(2) **HUSBAND AND WIFE.** If persons named as owners in a document of title, transferees in an instrument of transfer or buyers in a bill of sale are described in the document, instrument or bill of sale as husband and wife, or are in fact husband and wife, they are joint tenants, unless the intent to create a tenancy in common is expressed in the document, instrument or bill of sale. This subsection applies to property acquired before January 1, 1986.

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

(4) **COFIDUCIARIES.** Notwithstanding s. 700.18 and subs. (1) to (3), co-personal representatives and cotrustees hold title to interests in property as joint tenants.

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

History: 1971 c. 66; 1983 a. 186.

Nature of cotenancies and their taxation—death and gift. Sheedy, Sullivan, 56 MLR 3.

700.20 Extent of undivided interests in tenancy in common. The extent of the undivided interests of tenants in common for the duration of the tenancy is determined by the

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

History: 1971 c. 66.

700.21 Covendons in contracts to transfer. (1) If 2 or more persons are named as covendons in a contract to transfer an interest in property which they own as joint tenants, the purchase price is payable to them as joint tenants, unless the contract expresses a contrary intent. If 2 or more persons are named as covendons in a contract to transfer an interest in property which they own as tenants in common, the purchase price is payable to them according to their interests, unless the contract expresses a contrary intent.

(2) If 2 or more persons are named as covendons in a contract to transfer an interest in property which is owned by less than all of the covendons, the purchase price is payable to the owner or owners of the interest in property to which the contract relates, unless the contract expresses an intent that the purchase price is payable to the covendons as joint tenants or as tenants in common.

History: 1971 c. 66.

700.215 Exception for equitable rights of cotenants and third persons. Nothing in ss. 700.17 to 700.21 prevents an equitable lien arising in favor of one cotenant against another tenant or tenants because of events occurring after the establishment of the cotenancy relationship nor prevents imposition of a constructive trust in favor of a 3rd person in an appropriate case.

History: 1971 c. 66.

700.22 Exception for bank deposits, checks and government bonds. (1) Nothing in ss. 700.17 to 700.21 governs the determination of rights to deposits (including checking accounts or instruments deposited therein or drawn thereon, savings accounts, certificates of deposit, investment shares or any other form of deposit) in banks, building and loan associations, savings and loan associations, credit unions or other financial institutions.

(2) Nothing in ss. 700.17 to 700.21 applies to United States obligations to the extent they are governed by law of the United States.

History: 1971 c. 66.

The rationale underlying the adoption of the contract theory as applied to joint savings accounts does not hold with respect to joint checking accounts, the very nature of which is such that it is utilized more as a shared wallet than as a shared investment, as is the case with a savings account; hence there is no sound reason for ascribing to the joint checking accounts the attributes of a common-law joint tenancy other than survivorship. No tracing of assets is permissible. *Estates of Beisbier*, 47 W (2d) 409, 177 NW (2d) 919.

700.23 Liability among cotenants for rents and profits. (1) The provisions of this section apply only in the absence of a valid agreement to the contrary between the cotenants. As used in this section, "proportionate share" means a share determined by the number of joint tenants, in the case of a joint tenancy, and the extent of a tenant in common's undivided interest, in the case of a tenancy in common.

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

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

(a) A proportionate share of the reasonable rental value of the land accruing after written demand for rent if the occupy-

ing tenant manifests his intent to occupy the premises to the exclusion of the other cotenant or cotenants;

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

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

History: 1971 c. 66.

700.24 Death of a joint tenant; effect of liens. A real estate mortgage, a security interest under ch. 409, or a lien under ss. 71.13 (3) (b), 72.86 (2), ch. 49 or 779 on or against the interest of a joint tenant does not defeat the right of survivorship in the event of the death of such joint tenant, but the surviving joint tenant or tenants take the interest such deceased joint tenant could have transferred prior to death subject to such mortgage, security interest or statutory lien.

History: 1971 c. 307 s. 118; 1975 c. 39; 1979 c. 32 s. 92 (9).

Although the docketing of a judgment by a judgment creditor creates a lien upon the debtor's interest in joint tenancy property, it does not without levy and execution sever the joint tenancy, and if the debtor dies following docketing of the judgment, but prior to execution thereon the surviving joint tenant takes the entire interest in the property free of the judgment creditor's lien, because the debtor's interest in the property which was the subject of the lien has been extinguished. *Northern State Bank v. Toal*, 69 W (2d) 50, 230 NW (2d) 153.

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

700.35 Renewable energy resource easements. In this section, "renewable energy resource easement" means an easement which limits the height or location, or both, of permissible development on the burdened land in terms of a structure or vegetation, or both, for the purpose of providing access for the benefited land to wind or sunlight passing over the burdened land. Every renewable energy resource easement shall be in writing and shall be subject to the same conveyancing and instrument recording requirements as other easements. Renewable energy resource easements shall run with the land benefited and burdened unless otherwise expressly stated therein.

History: 1981 c. 354.

700.40 Uniform conservation easement act. (1) DEFINITIONS. In this section, unless the context otherwise requires:

(a) "Conservation easement" means a holder's nonpossessory interest in real property imposing any limitation or affirmative obligation the purpose of which includes retaining or protecting natural, scenic or open space values of real property, assuring the availability of real property for agricultural, forest, recreational or open space use, protecting natural resources, maintaining or enhancing air or water quality, preserving a burial site, as defined in s. 157.70 (1) (b),

or preserving the historical, architectural, archaeological or cultural aspects of real property.

(b) "Holder" means either of the following:

1. Any governmental body empowered to hold an interest in real property under the laws of this state or the United States.

2. Any charitable corporation, charitable association or charitable trust, the purposes or powers of which include retaining or protecting the natural, scenic or open space values of real property, assuring the availability of real property for agricultural, forest, recreational or open space use, protecting natural resources, maintaining or enhancing air or water quality, or preserving the historical, architectural, archaeological or cultural aspects of real property.

(c) "Third-party enforcement right" means a right provided in a conservation easement empowering a governmental body, charitable corporation, charitable association or charitable trust, which, although eligible to be a holder, is not a holder, to enforce any term of the easement.

(2) CREATION, CONVEYANCE, ACCEPTANCE AND DURATION.

(a) Except as otherwise provided in this section, a conservation easement may be created, conveyed, recorded, assigned, released, modified, terminated or otherwise altered or affected in the same manner as any other easement.

(b) No right or duty in favor of or against a holder and no right in favor of a person having a 3rd-party enforcement right arises under a conservation easement prior to its acceptance by that holder and recordation of that acceptance.

(c) Except as provided in sub. (3) (b), a conservation easement is unlimited in duration unless the conservation easement otherwise provides.

(d) No conservation easement may impair an interest in real property existing at the time the conservation easement is created, unless the owner of that interest is a party to the conservation easement or consents to it.

(3) ACTIONS. (a) An action affecting a conservation easement may be brought by any of the following:

1. An owner of an interest in the real property burdened by the conservation easement.

2. A holder of the conservation easement.

3. A person having a 3rd-party enforcement right.

4. A person authorized by other law.

(b) This section does not affect the power of a court to modify or terminate a conservation easement in accordance with any principle of law or equity.

(4) VALIDITY OF CONSERVATION EASEMENT. A conservation easement is valid even though any of the following apply:

(a) It is not appurtenant to an interest in real property.

(b) It can be or is assigned to another holder.

(c) It is not of a character recognized traditionally at common law.

(d) It imposes a negative burden.

(e) It imposes affirmative obligations upon the owner of any interest in the burdened property or upon the holder.

(f) The benefit does not touch or concern real property.

(g) There is not privity of estate or of contract.

(5) EFFECT ON ENFORCEABLE INTERESTS. Nothing in this section invalidates any interest, whether designated as a conservation easement, covenant, equitable servitude, restriction, easement or otherwise, which is otherwise enforceable under the laws of this state.

(6) UNIFORM APPLICATION AND CONSTRUCTION. This section shall be applied and construed so as to make uniform the laws relating to conservation easements among states enacting substantially identical laws.

History: 1981 c. 261; 1985 a. 316.

NOTE: Chapter 261, laws of 1981, which created this section, states in section 3 that: The treatment of ss. 700.40 and 893.33 (6m) by this act applies to:

(1) Any interest created after April 27, 1982 which complies with s. 700.40, whether designated as a conservation easement, covenant, equitable servitude, restriction, easement or otherwise.

(2) Any interest created prior to April 27, 1982 which would have been enforceable if created after April 27, 1982, unless retroactive application contravenes the constitution or laws of this state or of the United States.

700.41 Solar access. (1) PURPOSE. The purpose of this section is to promote the use of solar energy by allowing an owner of an active or passive solar energy system to receive compensation for an obstruction of solar energy by a structure outside a neighbor's building envelope as defined by zoning restrictions in effect at the time the solar collector was installed.

(2) DEFINITIONS. In this section:

(a) "Building envelope" means the 3-dimensional area on a lot on which building is permitted, as defined by the existing ground level and by any applicable height restriction, setback requirement, side yard requirement or rear yard requirement, notwithstanding any provisions for variances, special exceptions or special or conditional uses in effect in the city, town or village in which the lot is located.

(b) "Collector surface" means any part of a solar collector that absorbs solar energy for use in the collector's energy transformation process. "Collector surface" does not include frames, supports and mounting hardware.

(c) "Obstruction" means the portion of a building or other structure which blocks solar energy from a collector surface between the hours of 9 a.m. to 3 p.m. standard time if the portion of the building or structure is outside a building envelope in effect on the date of the installation of the solar collector. "Obstruction" does not include blockage by a pole, wire, television antenna or radio antenna.

(d) "Solar collector" means a device, structure or a part of a device or structure a primary purpose of which is to transform solar energy into thermal, mechanical, chemical or electrical energy.

(e) "Solar energy" has the meaning given under s. 66.032.

(f) "Solar energy system" has the meaning given under s. 13.48 (2) (h) 1. g.

(g) "Standard time" has the meaning given under s. 66.032.

(3) DAMAGES. Except as provided under sub. (4), the owner of a solar energy system is entitled to receive damages, court costs and reasonable attorney fees from any person who uses property which he or she owns or who permits any other person to use the property in any way which would create an obstruction of the owner's solar collector surface. The owner of the solar energy system shall have the burden of showing by a preponderance of the evidence the amount of the damages.

(4) APPLICABILITY. This section does not apply to any obstruction:

(a) Existing on or before May 7, 1982.

(b) For which a building permit was issued prior to installation of the solar collector, the solar energy to which is blocked by the obstruction.

(c) Existing on or before the date of installation of the solar collector, the solar energy to which is blocked by the obstruction.

History: 1981 c. 354; 1981 c. 391 s. 183; 1983 a. 27 s. 2202 (57); 1985 a. 120.

Wisconsin recognizes the power of the sun: Prah v. Maretti and the solar access act. 1983 WLR 1263.