

CHAPTER 706**CONVEYANCES OF REAL PROPERTY; RECORDING; TITLES**

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706.01 Scope, definitions, construction. (1) Subject to the exclusions in sub. (2), this chapter shall govern every transaction by which any interest in land is created, aliened, mortgaged, assigned or may be otherwise affected in law or in equity.

(2) Excluded from the operation of this chapter are transactions which an interest in land is affected:

- (a) By act or operation of law; or
- (b) By will; or

(c) By lease for a term limited to one year or less; or by contract or option to lease for such period which postpones the commencement of the agreed lease to a time not later than 60 days after the date of the contract or option; or by assignment, modification or termination of lease when, at the time such assignment, modification or termination is made, the unexpired term is limited to one year or less, and remains so limited under the lease as modified; except that instruments relating to such excluded transactions, if in recordable form, shall be entitled to record.

(3) This chapter shall be liberally construed, in cases of conflict or ambiguity, so as to effectuate the intentions of parties who have acted in good faith.

(4) A “conveyance” is a written instrument, evidencing a transaction governed by this chapter, which satisfies the requirements of s. 706.02.

(5) “Conveyance of mineral interests” means any transaction under sub. (1) entered into for the purpose of determining the presence, location, quality or quantity of metalliferous minerals or for the purpose of mining, developing or extracting metalliferous minerals, or both. Any transaction under sub. (1) entered into by a mining company is rebuttably presumed to be a conveyance of mineral interests.

(6) “Grantor” means the person from whom an interest in lands passes by conveyance and includes, without limitation, lessors, vendors, mortgagors, optionors, releasors, assignors and trust settlors of interest in lands. “Grantee” means the person to whom such interest passes. Whenever consistent with the context, reference to the interest of a party includes the interest of the party’s heirs, successors, personal representatives and assigns.

(7) “Homestead”, as used in this chapter, means the dwelling, and so much of the land surrounding it as is reasonably necessary for use of the dwelling as a home, but not less than one-fourth acre (if available) and not exceeding 40 acres.

(7m) “Interest in minerals” means any fee simple interest in minerals beneath the surface of land which is:

- (a) Separate from the fee simple interest in the surface of the land; and
- (b) Created by an instrument transferring, granting, assigning or reserving the minerals.

(8) “Metalliferous minerals” means naturally occurring minerals containing metal.

(8m) “Mineral” means a naturally occurring substance recognized by standard authorities as mineral, whether metalliferous or nonmetalliferous.

(9) “Mining company” means any person or agent of a person who has a prospecting or mining permit under s. 293.45 or 293.49.

(10) “Signed” includes any handwritten signature or symbol on a conveyance intended by the person affixing or adopting the same to constitute an execution of the conveyance.

History: 1971 c. 41; 1977 c. 253; 1983 a. 189, 455; 1993 a. 486; 1995 a. 227.

The doctrine of part performance is not an “operation of law” under sub. (2) (a) which excludes the application of ch. 706 to a transaction. *Wyss v. Albee*, 183 W (2d) 245, 515 NW (2d) 517 (Ct. App. 1994).

706.02 Formal requisites. (1) Transactions under s. 706.01 (1) shall not be valid unless evidenced by a conveyance which:

- (a) Identifies the parties; and
- (b) Identifies the land; and

(c) Identifies the interest conveyed, and any material term, condition, reservation, exception or contingency upon which the interest is to arise, continue or be extinguished, limited or encumbered; and

- (d) Is signed by or on behalf of each of the grantors; and

(e) Is signed by or on behalf of all parties, if a lease or contract to convey; and

(f) Is signed, or joined in by separate conveyance, by or on behalf of each spouse, if the conveyance alienates any interest of a married person in a homestead under s. 706.01 (7) except conveyances between spouses, but on a purchase money mortgage pledging that property as security only the purchaser need sign the mortgage; and

(g) Is delivered. Except under s. 706.09, a conveyance delivered upon a parol limitation or condition shall be subject thereto only if the issue arises in an action or proceeding commenced within 5 years following the date of such conditional delivery; however, when death or survival of a grantor is made such a limiting or conditioning circumstance, the conveyance shall be subject thereto only if the issue arises in an action or proceeding commenced within such 5-year period and commenced prior to such death.

(2) A conveyance may satisfy any of the foregoing requirements of this section:

(a) By specific reference, in a writing signed as required, to extrinsic writings in existence when the conveyance is executed; or

(b) By physical annexation of several writings to one another, with the mutual consent of the parties; or

(c) By several writings which show expressly on their faces that they refer to the same transaction, and which the parties have mutually acknowledged by conduct or agreement as evidences of the transaction.

History: 1971 c. 211 s. 126; 1977 c. 177.

Under 235.01 (2), Stats. 1967, there can be no waiver of the necessity of a wife's joining in a deed of a homestead and no finding of agency of the husband will sustain the deed. *Wangen v. Leum*, 46 W (2d) 60, 174 NW (2d) 266.

A deed which does not express the consideration held incomplete where there was no evidence of an agreement as to what the consideration was. *Johnson v. Mielke*, 49 W (2d) 60, 181 NW (2d) 503.

In pleading a contract which is subject to the statute of frauds it is not necessary to allege facts to establish that the contract complies with the statute or is within its exceptions. *Ritterbusch v. Ritterbusch*, 50 W (2d) 633, 184 NW (2d) 865.

An option to purchase land must be in writing and cannot be modified orally, but a seller may orally agree to accept payment in full rather than in instalments. *Kubnick v. Bohne*, 56 W (2d) 527, 202 NW (2d) 400.

The 4 elements of the test of undue influence to set aside a will are also applicable in order to void an inter vivos transfer. *Ward v. Ward*, 62 W (2d) 543, 215 NW (2d) 3.

Standing alone, an added provision in a 30-day option agreement to purchase real estate did not comply with the statute of frauds. *Edlebeck v. Barnes*, 63 W (2d) 240, 216 NW (2d) 551.

An oral contract for the conveyance of an interest in land is void unless there is a memorandum that conforms to the statute of frauds. *Trimble v. Wis. Builders, Inc.* 72 W (2d) 435, 241 NW (2d) 409.

Where contract for sale of land with indefinite description is taken out of statute of frauds by part performance, extrinsic evidence admissible but for statute of frauds may be introduced to provide description. *Clay v. Bradley*, 74 W (2d) 153, 246 NW (2d) 142.

Question under (1) (b) whether property boundaries are identified to a reasonable certainty is for the jury to determine with the aid of all competent extrinsic evidence. *Zapuchlak v. Hucal*, 82 W (2d) 184, 262 NW (2d) 514.

Homestead defense under 706.02 (1) (f) is not defeated by 706.04, but tort claim may exist against signing spouse who misrepresents non-signing spouse's acquiescence. *Glinski v. Sheldon*, 88 W (2d) 509, 276 NW (2d) 815 (1979).

Defense of statute of frauds is waived if not raised in trial court. *Hine v. Vilter*, 88 W (2d) 645, 277 NW (2d) 772 (1979).

Mortgage fraudulently executed by use of forged signature of one grantor was wholly void. *State Bank of Drummond v. Christophersen*, 93 W (2d) 148, 286 NW (2d) 547 (1980).

Where contract for sale of land and personalty is not divisible, contract is entirely void if this section is not satisfied. *Spensley Feed v. Livingston Feed*, 128 W (2d) 279, 381 NW (2d) 601 (Ct. App. 1985).

The homestead signature requirement of sub. (1) (f) must be waived affirmatively by actual signing of the mortgage; failure to plead as an affirmative defense did not constitute waiver. *Weber v. Weber*, 176 W (2d) 1085, 501 NW (2d) 413 (1993).

A quitclaim deed of a married couple's homestead from one spouse to the other is not valid to alienate the grantor's interest in the property in any way that would eliminate either spouse's contractual obligations under a mortgage containing a valid drag-net clause. *Schmidt v. Waukesha State Bank*, 204 W (2d) 426, 555 (NW) 2d 655 (Ct. App. 1996).

The statute of frauds does not bar a tort action for intentional misrepresentation. *Winger v. Winger*, 82 F (3d) 140 (1996).

706.03 Agents, officers and guardians. (1) In this section:

(a) "Private corporation" means a corporation other than a public corporation.

(b) "Public corporation" means this state, a county, town, city or village in this state, a subunit of the state, county, town, city or village, a special purpose district in this state or any state or municipal authority or similar organization financed in whole or in part by public funds.

(1m) A conveyance signed by one purporting to act as agent for another shall be ineffective as against the purported principal unless such agent was expressly authorized, and unless the authorizing principal is identified as such in the conveyance or in the form of signature or acknowledgment. The burden of proving the authority of any such agent shall be upon the person asserting the same.

(2) Unless a different authorization is recorded under sub. (3) or is contained in the corporation's articles of incorporation, any one officer of a private corporation is authorized to sign conveyances in the corporate name. The absence of a corporate seal shall not invalidate any corporate conveyance. Public corporations shall authorize and execute conveyances as provided by law.

(3) Any private corporation may, by resolution of its governing board, duly adopted, certified and recorded in the office of the register of deeds of the county in which a conveyance executed by such corporation is to be recorded, authorize by name or title one or more persons, whether or not officers of such corporation, to execute conveyances, either generally or with specified limitation, in the name and on behalf of such corporation. After adoption and recording of such resolution and until recording of a resolution amending or revoking the same, conveyances may be

executed on behalf of such corporation only in accordance with the terms thereof.

(3m) A nonprofit association, as defined in s. 184.01 (2), may authorize a person to execute conveyances of estates or interests in real property by executing and filing a statement of authority under s. 184.05.

(4) A conveyance by a minor or incompetent is effective only if executed by an authorized guardian on behalf of such minor or incompetent. In the case of a limited incompetency, such restriction does not apply if an individual has been determined competent to make contracts under s. 880.33 (3).

History: 1971 c. 228; 1975 c. 393; 1977 c. 428; 1989 a. 303; 1991 a. 16, 173; 1997 a. 140.

Where a partner's actions in a transaction on behalf of a partnership fall within the express provisions of s. 178.06 (1), a partner who acts on behalf of the partnership is "an agent of the partnership" and s. 178.06 (1) controls. Where the partner's actions do not fall within those provisions the partner "purports to act as an agent" and s. 706.03 controls. *Wyss v. Albee*, 193 W (2d) 101, 532 NW (2d) 444 (1995).

706.04 Equitable relief. A transaction which does not satisfy one or more of the requirements of s. 706.02 may be enforceable in whole or in part under doctrines of equity, provided all of the elements of the transaction are clearly and satisfactorily proved and, in addition:

(1) The deficiency of the conveyance may be supplied by reformation in equity; or

(2) The party against whom enforcement is sought would be unjustly enriched if enforcement of the transaction were denied; or

(3) The party against whom enforcement is sought is equitably estopped from asserting the deficiency. A party may be so estopped whenever, pursuant to the transaction and in good faith reliance thereon, the party claiming estoppel has changed his or her position to the party's substantial detriment under circumstances such that the detriment so incurred may not be effectively recovered otherwise than by enforcement of the transaction, and either:

(a) The grantee has been admitted into substantial possession or use of the premises or has been permitted to retain such possession or use after termination of a prior right thereto; or

(b) The detriment so incurred was incurred with the prior knowing consent or approval of the party sought to be estopped.

History: 1993 a. 486.

See note to 178.04, citing *In re Estate of Schaefer*, 72 W (2d) 600, 241 NW (2d) 607.

In equity action seeking conveyance of farm in accord with oral agreement, where tenants gave up plans to build home on other property, planted crops on farm, and painted interior of farmhouse, trial court properly ordered conveyance under (3). *Krauza v. Mauritz*, 78 W (2d) 276, 254 NW (2d) 251.

Personal services to vendor in reliance upon oral agreement are not enough, standing alone, to constitute part performance. *In Matter of Estate of Lade*, 82 W (2d) 80, 260 NW (2d) 665.

Under (3) (a), grantee with knowledge of equitable estoppel against grantor takes title subject to the estoppel. *Brevig v. Webster*, 88 W (2d) 165, 277 NW (2d) 321 (Ct. App. 1979).

See note to 706.02, citing *Glinski v. Sheldon*, 88 W (2d) 509, 276 NW (2d) 815 (1979).

Failure to execute document can be cured under this section. "Unclean hands" defense discussed. *Security Pac. Nat. Bank v. Ginkowski*, 140 W (2d) 332, 410 NW (2d) 589 (Ct. App. 1987).

Section 706.04 does not refer to deficiencies under 706.03. *Triple Interest, Inc. v. Motel 6, Inc.* 414 F Supp. 589.

706.05 Formal requisites for record. (1) Subject to s. 59.43 (2m), every conveyance, and every other instrument which affects title to land in this state, shall be entitled to record in the office of the register of deeds of each county in which land affected thereby may lie.

(2) Except as different or additional requirements may be provided by law, every instrument offered for record shall:

(a) Bear such signatures as are required by law;

(b) Contain a form of authentication authorized by s. 706.06 or 706.07;

(c) Identify, to the extent that the nature of the instrument permits, and in form and terms which permit ready entry upon the various books and indices publicly maintained as land records of such

county, the land to which such instrument relates and the parties or other persons whose interests in such land are affected. Except as provided in sub. (2m), identification may be either by the terms of the instrument or by reference to an instrument of record in the same office, naming the place where such record may be found.

(2m) (a) Except as provided in par. (b), any document submitted for recording or filing that is to be indexed in the real estate records, any document submitted for recording or filing that modifies an original mortgage or land contract and any subordination agreement submitted for recording or filing shall contain the full legal description of the property to which it relates if the document or subordination agreement is intended to relate to a particular parcel of land. The legal description may be included on the document or may be attached to the document. Any such document shall also contain the volume number and page number of any original mortgage or land contract that the document affects.

(b) The requirement of a full legal description under par. (a) does not apply to:

1. Descriptions of easements for the construction, operation or maintenance of electric, gas, railroad, water, telecommunications or telephone lines or facilities.

2. Descriptions of property that is subject to liens granted on property thereafter acquired by a rural electric cooperative, or a telephone cooperative, organized under ch. 185, by a pipeline company under s. 76.02 (5), by a public utility under s. 196.01 (5) or by a railroad under s. 195.02 (1) or (5).

(c) The requirement under par. (a) does not affect the validity of liens under par. (b) 2.

(3) In addition to the requirements under sub. (2), every conveyance of mineral interests offered for record shall:

(a) Fully disclose the terms and conditions of the agreement including both the financial arrangements and the exploration rights. Financial arrangements include the consideration exchanged for the interest in land, terms for payment, optional payments, royalty agreements and similar arrangements. Exploration rights include the conditions and extent of any surface and subsurface rights to the land, options to purchase further interest in the land, options to conduct mining operations and similar arrangements.

(b) Fully disclose the parties including any principal, parent corporation, partner or business associate with an interest in the conveyance. This paragraph shall be interpreted to provide maximum disclosure of any person with an economic interest in the transaction.

(4) Any person who anticipates becoming a party to a number of conveyances of a given form may cause a prototype of such form to be recorded, accompanied by a certificate declaring the intention of the recording party to incorporate the terms of such prototype in future recorded conveyances by reference.

(5) Copies of instruments affecting title to land in this state, authenticated by certificate of any public officer, either of this or any other state or foreign country, in whose office the original is filed or recorded pursuant to law, may be recorded in every case in which the original would be entitled to record under this section.

(6) Except as may otherwise be expressly provided, no instrument shall be denied acceptance for record because of the absence of venue, seals, witnesses or other matter of form.

(7) Every instrument which the register of deeds shall accept for record shall be deemed duly recorded despite its failure to conform to one or more of the requirements of this section, provided the instrument is properly indexed in a public index maintained in the office of such register of deeds and recorded at length at the place there shown.

(8) A duly recorded certificate signed by or on behalf of the holder of record of any mortgage or other security interest in lands, and authenticated as provided by s. 706.06 or 706.07 identifying the mortgage or other interest and stating that the same has

been paid or satisfied in whole or in part, shall be sufficient to satisfy such mortgage or other interest of record.

(9) If any mortgage–holder after partial performance of the conditions of the mortgage, whether before or after a breach thereof, unreasonably fails or refuses to execute and record, within 7 days after written request and tender of recording fees, a proper partial satisfaction of the mortgage together with any instruments required to establish of record the right of the mortgagor to satisfy the same, the mortgage–holder is liable to the mortgagor in the sum of \$100 penalty damages, plus actual damages occasioned by the failure or refusal.

(10) (a) Unless otherwise requested in writing or unless par. (b) applies, a mortgage–holder shall execute and record a proper full satisfaction of a mortgage, together with any instruments required to establish of record the right of the mortgagor to satisfy the mortgage, within 30 days after the date on which the mortgagor completes full performance of the conditions of the mortgage.

(b) A mortgage–holder shall execute and record a mortgage satisfaction as required under par. (a) within 7 days after both the mortgagor completes full performance and the mortgage–holder receives by certified mail a written request from the mortgagor for a full satisfaction.

(c) Any person who violates par. (b) is liable to the mortgagor for penalty damages of \$100 for each day that the violation remains uncorrected, up to a total of \$2,000, plus actual damages resulting from the violation. A person may not be held liable for actual damages unless the mortgagor paid the costs that are to be compensated.

(d) A mortgage–holder may charge a mortgagor for the cost of fees paid in recording the satisfaction.

(12) Every conveyance of any interest in real property offered for recordation shall be accompanied by the form under s. 77.22 (2). If the property is subject to certification under s. 101.122 (4) (a), waiver under s. 101.122 (4) (b) or stipulation under s. 101.122 (4) (c), the documents of conveyance offered for recordation shall have appended the certificate required under s. 101.122 (4) (a), a waiver under s. 101.122 (4) (b) or a stipulation under s. 101.122 (4) (c).

History: 1971 c. 211; 1977 c. 217, 253, 447; 1979 c. 221; 1983 a. 492 s. 3; 1985 a. 174; 1991 a. 66, 269; 1993 a. 145, 486; 1995 a. 110, 201; 1997 a. 35.

706.055 Register of mineral rights. The register of deeds shall record all conveyances of mineral interests in a register of mineral rights.

History: 1977 c. 253.

706.057 Lapse and reversion of interests in minerals.

(1) APPLICABILITY. This section does not apply to an interest in minerals which is owned by the same person who owns the fee simple interest in the surface of the land above the interest in minerals.

(2) USE OF AN INTEREST IN MINERALS. In this section, an interest in minerals is used if any of the following occur:

(a) Any minerals are mined in exploitation of the interest in minerals.

(b) A conveyance of mineral interests is recorded under this chapter.

(c) Any other conveyance evidencing a transaction by which the interest in minerals is created, aliened, reserved, mortgaged or assigned is recorded under this chapter.

(d) Property taxes are paid on the interest in minerals by the owner of the interest in minerals.

(e) The owner of the interest in minerals records a statement of claim under sub. (4) or (5) concerning the interest in minerals.

(3) LAPSE. (a) Except as provided in par. (b) or (c), an interest in minerals lapses if the interest in minerals was not used during the previous 20 years.

(b) An interest in minerals which was not used during the 20-year period prior to July 1, 1984, does not lapse if the interest in minerals is used within 3 years after July 1, 1984.

(c) An interest in minerals which was used during the period from 17 to 20 years prior to July 1, 1984, does not lapse if the interest in minerals is used within 3 years after July 1, 1984.

(4) STATEMENT OF CLAIM; RECORDING; REQUIREMENTS. If the owner of an interest in minerals uses the interest in minerals by recording a statement of claim, the statement of claim shall comply with this subsection. The statement of claim shall contain the name and address of the owner of the interest in minerals, a description of the location and boundary of the interest in minerals and a reference to the recorded instrument which created the interest in minerals. The statement of claim shall be recorded with the register of deeds for the county in which the interest in minerals is located.

(5) CURE OF LAPSE. The lapse of an interest in minerals under sub. (3) is cured if the owner of the interest in minerals records a statement of claim complying with all of the requirements of sub. (4) before the surface owner records a statement of claim under sub. (6) (a) or before a statement of claim takes effect under sub. (6) (b) 1., whichever is later.

(6) CLAIM OF LAPSED INTEREST IN MINERALS. (a) The owner of the land under which an interest in minerals exists may claim that portion of a lapsed interest in minerals which lies beneath the owner's land by recording a statement of claim. The statement of claim shall contain the name and address of the owner of the land under which the lapsed interest in minerals is located and a description of the land under which the interest in minerals is located. The statement of claim shall be recorded with the register of deeds for the county in which the land is located.

(b) 1. Except as provided in subd. 2., a statement of claim which is recorded under par. (a) before the lapse of the interest in minerals to which the claim applies takes effect when the interest in minerals lapses.

2. A statement of claim which is recorded under par. (a) before the lapse of the interest in minerals to which the claim applies is void 6 years after the statement of claim is recorded if the interest in minerals does not lapse within that 6-year period.

(7) STATEMENT OF CLAIM; RECORDING; REGISTER OF DEEDS' DUTY. The register of deeds shall provide copies of the uniform form for statements of claim under subs. (4), (5) and (6). Upon receipt of a statement of claim under sub. (4), (5) or (6) in the office of the register of deeds, the register of deeds shall record the claim in a manner which will permit the existence of an interest in minerals to be determined by reference to the parcel or parcels of land above the interest in minerals. The claimant shall pay the recording fee under s. 59.43 (2).

(9) DETERMINATION OF OWNERSHIP. (a) The owner of an interest in minerals which is the subject of a claim under sub. (6) (a), within 3 years after the claim is recorded with the register of deeds or within 3 years after the claim takes effect as provided under sub. (6) (b) 1., whichever is later, may bring an action for a declaratory judgment or declaration of interest on the ownership of the interest in minerals. The action shall be commenced in the circuit court in the county where the interest in minerals is located.

(b) 1. If the court finds that the owner of the interest in minerals used the interest in minerals within the time limits specified under sub. (3) or that the owner of the interest in minerals recorded a claim under sub. (5) before the surface owner recorded a claim under sub. (6) (a) or before the claim took effect as provided under sub. (6) (b) 1., whichever is later, the court shall issue a judgment declaring that the interest in minerals is not lapsed.

2. If the court finds that the owner of the interest in minerals did not use the interest in minerals within the time limits specified under sub. (3) and did not record the claim under sub. (5) before the surface owner recorded the claim under sub. (6) (a) or before the claim took effect as provided under sub. (6) (b) 1. whichever

is later, the court shall issue a judgment affirming the surface owner's claim.

(c) Upon the issuance of a judgment affirming the surface owner's claim or, if no action is brought under par. (a), at the end of the 3-year period after the surface owner's claim is recorded or at the end of the 3-year period after the claim takes effect as provided under sub. (6) (b) 1., whichever is later, the ownership of the interest in minerals reverts to the owner of the land under which the lapsed interest in minerals is located and title to the interest in minerals is merged with the title to the surface of the land.

(10) WAIVER; LIMITATION. No person may waive or agree to waive the provisions of this section and any waiver or agreement of this type is void.

History: 1983 a. 455; 1985 a. 29; 1995 a. 201.

See note to 75.12, citing 74 Atty. Gen. 59.

Under this section owner of surface of land under which mineral rights have lapsed must record claim to lapsed mineral rights in order to foreclose separate mineral rights owner from curing lapse. 79 Atty. Gen. 61.

706.06 Authentication. (1) Any instrument may be acknowledged, or its execution otherwise authenticated by its signatories, as provided by the laws of this state; or as provided in this section or s. 706.07.

(2) Any public officer entitled by virtue of his or her office to administer oaths, and any member in good standing of the state bar of Wisconsin, may authenticate one or more of the signatures on an instrument relating to lands in this state, by indorsing the instrument "Acknowledged", "Authenticated" or "Signatures Guaranteed", or other words to similar effect, adding the date of authentication, his or her own signature, and his or her official or professional title. Such indorsement, unless expressly limited, shall operate as an authentication of all signatures on the instrument; and shall constitute a certification that each authenticated signature is the genuine signature of the person represented; and, as to signatures made in a representative capacity, that the signer purported, and was believed, to be such representative.

(3) Affidavits shall be authenticated by a certificate of due execution of the instrument, executed by a person entitled to administer oaths.

(4) In addition to any criminal penalty or civil remedy otherwise provided by law, knowingly false authentication of an instrument shall subject the authenticator to liability in tort for compensatory and punitive damages caused thereby to any person.

History: 1971 c. 211; 1973 c. 243; 1979 c. 110; 1983 a. 492 s. 3; 1993 a. 486.

706.07 Uniform law on notarial acts. (1) **DEFINITIONS.** In this section:

(a) "Acknowledgment" means a declaration by a person that the person has executed an instrument for the purposes stated therein and, if the instrument is executed in a representative capacity, that the person signed the instrument with proper authority and executed it as the act of the person or entity represented and identified therein.

(b) "In a representative capacity" means:

1. For and on behalf of a corporation, partnership, trust, or other entity, as an authorized officer, agent, partner, trustee, or other representative;

2. As a public officer, personal representative, guardian, or other representative, in the capacity recited in the instrument;

3. As an attorney in fact for a principal; or

4. In any other capacity as an authorized representative of another.

(c) "Notarial act" means any act that a notary public of this state is authorized to perform, and includes taking an acknowledgment, administering an oath or affirmation, taking a verification upon oath or affirmation, witnessing or attesting a signature, certifying or attesting a copy, and noting a protest of a negotiable instrument.

(d) “Notarial officer” means a notary public or other officer authorized to perform notarial acts.

(e) “Verification upon oath or affirmation” means a declaration that a statement is true made by a person upon oath or affirmation.

(2) NOTARIAL ACTS. (a) In taking an acknowledgment, the notarial officer must determine, either from personal knowledge or from satisfactory evidence, that the person appearing before the officer and making the acknowledgment is the person whose true signature is on the instrument.

(b) In taking a verification upon oath or affirmation, the notarial officer must determine, either from personal knowledge or from satisfactory evidence, that the person appearing before the officer and making the verification is the person whose true signature is on the statement verified.

(c) In witnessing or attesting a signature, the notarial officer must determine, either from personal knowledge or from satisfactory evidence, that the signature is that of the person appearing before the officer and named therein.

(d) In certifying or attesting a copy of a document or other item, the notarial officer must determine that the proffered copy is a full, true, and accurate transcription or reproduction of that which was copied.

(e) In making or noting a protest of a negotiable instrument, the notarial officer must determine the matters set forth in s. 403.505 (2).

(f) A notarial officer has satisfactory evidence that a person is the person whose true signature is on a document if that person:

1. Is personally known to the notarial officer;
2. Is identified upon the oath or affirmation of a credible witness personally known to the notarial officer; or
3. Is identified on the basis of identification documents.

(3) NOTARIAL ACTS IN THIS STATE. (a) A notarial act may be performed within this state by the following persons of this state:

1. A notary public;
2. A judge, clerk or deputy clerk of a court of record;
3. A court commissioner;
4. A register of deeds or deputy register of deeds;
5. A municipal judge; or
6. A county clerk or deputy county clerk.

(b) Notarial acts performed within this state under federal authority as provided in sub. (5) have the same effect as if performed by a notarial officer of this state.

(c) The signature and title of a person performing a notarial act are prima facie evidence that the signature is genuine and that the person holds the designated title.

(4) NOTARIAL ACTS IN OTHER JURISDICTIONS OF THE UNITED STATES. (a) A notarial act has the same effect under the law of this state as if performed by a notarial officer of this state, if performed in another state, commonwealth, territory, district, or possession of the United States by any of the following persons:

1. A notary public of that jurisdiction;
 2. A judge, clerk, or deputy clerk of a court of that jurisdiction;
- or
3. Any other person authorized by the law of that jurisdiction to perform notarial acts.

(b) Notarial acts performed in other jurisdictions of the United States under federal authority as provided in sub. (5) have the same effect as if performed by a notarial officer of this state.

(c) The signature and title of a person performing a notarial act are prima facie evidence that the signature is genuine and that the person holds the designated title.

(d) The signature and indicated title of an officer listed in par. (a) 1. or 2. conclusively establish the authority of a holder of that title to perform a notarial act.

(5) NOTARIAL ACTS UNDER FEDERAL AUTHORITY. (a) A notarial act has the same effect under the law of this state as if performed

by a notarial officer of this state if performed anywhere by any of the following persons under authority granted by the law of the United States:

1. A judge, clerk, or deputy clerk of a court;
2. A commissioned officer on active duty in the military service of the United States.
3. An officer of the foreign service or consular officer of the United States; or
4. Any other person authorized by federal law to perform notarial acts.

(b) The signature and title of a person performing a notarial act are prima facie evidence that the signature is genuine and that the person holds the designated title.

(c) The signature and indicated title of an officer listed in par. (a) 1., 2. or 3. conclusively establish the authority of a holder of that title to perform a notarial act.

(6) FOREIGN NOTARIAL ACTS. (a) A notarial act has the same effect under the law of this state as if performed by a notarial officer of this state if performed within the jurisdiction of and under authority of a foreign nation or its constituent units or a multinational or international organization by any of the following persons:

1. A notary public or notary;
2. A judge, clerk, or deputy clerk of a court of record; or
3. Any other person authorized by the law of that jurisdiction to perform notarial acts.

(b) An “apostille” in the form prescribed by the Hague convention of October 5, 1961, conclusively establishes that the signature of the notarial officer is genuine and that the officer holds the indicated office.

(c) A certificate by a foreign service or consular officer of the United States stationed in the nation under the jurisdiction of which the notarial act was performed, or a certificate by a foreign service or consular officer of that nation stationed in the United States, conclusively establishes any matter relating to the authenticity or validity of the notarial act set forth in the certificate.

(d) An official stamp or seal of the person performing the notarial act is prima facie evidence that the signature is genuine and that the person holds the indicated title.

(e) An official stamp or seal of an officer listed in par. (a) 1. or 2. is prima facie evidence that a person with the indicated title has authority to perform notarial acts.

(f) If the title of office and indication of authority to perform notarial acts appears either in a digest of foreign law or in a list customarily used as a source for that information, the authority of an officer with that title to perform notarial acts is conclusively established.

(7) CERTIFICATE OF NOTARIAL ACTS. (a) A notarial act must be evidenced by a certificate signed and dated by a notarial officer. The certificate must include identification of the jurisdiction in which the notarial act is performed and the title of the office of the notarial officer and may include the official stamp or seal of office. If the officer is a notary public, the certificate must also indicate the date of expiration, if any, of the commission of office, but omission of that information may subsequently be corrected. If the officer is a commissioned officer on active duty in the military service of the United States, it must also include the officer’s rank.

(b) A certificate of a notarial act is sufficient if it meets the requirements of par. (a) and it:

1. Is in the short form set forth in sub. (8);
2. Is in a form otherwise prescribed by the law of this state;
3. Is in a form prescribed by the laws or regulations applicable in the place in which the notarial act was performed; or
4. Sets forth the actions of the notarial officer and those are sufficient to meet the requirements of the designated notarial act.

(c) By executing a certificate of a notarial act, the notarial officer certifies that the officer has made the determination required by sub. (2).

(8) SHORT FORMS. The following short form certificates of notarial acts are sufficient for the purposes indicated, if completed with the information required by sub. (7) (a):

(a) For an acknowledgment in an individual capacity:

State of

County of

This instrument was acknowledged before me on (date) by (name(s) of person(s)).

....(Signature of notarial officer)

(Seal, if any)

....Title (and Rank) [My commission expires:]

(b) For an acknowledgment in a representative capacity:

State of

County of

This instrument was acknowledged before me on (date) by (name(s) of person(s)) as (type of authority, e.g., officer, trustee, etc.) of (name of party on behalf of whom instrument was executed).

.... (Signature of notarial officer)

(Seal, if any)

....Title (and Rank) [My commission expires:]

(c) For a verification upon oath or affirmation:

State of

County of

Signed and sworn to (or affirmed) before me on (date) by (name(s) of person(s) making statement).

....(Signature of notarial officer)

(Seal, if any)

....Title (and Rank) [My commission expires:]

(d) For witnessing or attesting a signature:

State of

County of

Signed or attested before me on (date) by (name(s) of person(s)).

....(Signature of notarial officer)

(Seal, if any)

....Title (and Rank) [My commission expires:]

(e) For attestation of a copy of a document:

State of ...

County of

I certify that this is a true and correct copy of a document in the possession of

Dated:

....(Signature of notarial officer)

(Seal, if any)

....Title (and Rank) [My commission expires:]

(9) NOTARIAL ACTS AFFECTED BY THIS SECTION. This section applies to notarial acts performed on or after November 1, 1984.

(10) UNIFORMITY OF APPLICATION AND CONSTRUCTION. This section shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this section among states enacting it.

(11) SHORT TITLE. This section may be cited as the uniform law on notarial acts.

History: 1983 a. 492; 1989 a. 123; 1995 a. 449.

706.08 Nonrecording, effect. (1) (a) Every conveyance (except patents issued by the United States or this state, or by the proper officers of either) which is not recorded as provided by law shall be void as against any subsequent purchaser in good faith and for a valuable consideration of the same real estate or any portion thereof whose conveyance shall first be duly recorded.

(b) A conveyance of mineral interests which is not recorded in the office of the register of deeds of the county in which the land is located, within 30 days after it is signed by the lessor, is void.

(2) Where a public tract index or abstract of title index is maintained, an instrument properly indexed therein and recorded at length at the place there shown shall be deemed to be duly recorded for purposes of this section, despite any error or omission in the process of including the instrument, or prior instruments in the same chain of title, in other records. Where an instrument is not properly indexed in such tract or abstract of title index, or where such index is not publicly maintained, the instrument shall be deemed to be duly recorded only if the instrument, together with prior instruments necessary to trace title by use of alphabetical indices by names of parties, are properly indexed in such alphabetical indices, and recorded at length at the places there shown. Wherever an instrument is duly recorded hereunder, its record shall be effective as of the date and hour at which it is shown by the general index to have been accepted for record.

(3) When an express trust is created, but its existence is not disclosed in a recorded conveyance to the trustee, the title of the trustee shall be deemed absolute as against the subsequent creditors of the trustee not having notice of the trust and as against purchasers from such trustee without notice and for a valuable consideration.

(4) It shall be conclusively presumed that a person is a trustee of a valid express trust and has full power of conveyance if all of the following occur:

(a) The person is designated as trustee and holds an interest in land as trustee.

(b) The person's authority and powers as trustee are not set forth in a recorded instrument.

(c) The person conveys an interest in land as trustee to a good faith purchaser, as defined in s. 401.201 (33).

(5) When a conveyance purports to be absolute in terms, but is made or intended to be made defeasible by force of another instrument for that purpose, the original conveyance shall not be thereby defeated or affected as against any person other than the maker of the defeasance or the maker's heirs or devisees or persons having actual notice thereof, unless the instrument of defeasance has been recorded in the office of the register of deeds of the county where the lands lie.

(6) The recording of an assignment of a mortgage shall not in itself be deemed notice of such assignment to the mortgagor so as to invalidate any payment made to the mortgagee without actual notice of such assignment.

(7) No letter of attorney or other instrument containing a power to convey lands, when executed and recorded under this chapter, shall be deemed to be revoked by any act of the party by whom it was executed unless the instrument containing such revocation is also recorded in the same office in which the instrument containing the power was recorded, and such record shall import notice to all persons, including the agent named in said letter of attorney of the contents thereof. The death of the party executing such letter of attorney shall not operate as a revocation thereof as to the attorney or agent until the attorney or agent has notice of the death, or as to one who without notice of such death in good faith deals with the attorney or agent.

History: 1977 c. 253; 1989 a. 231; 1993 a. 486.

An unrecorded conveyance, if delivered, is valid against judgment creditors since they are not bona fide creditors for value. *West Federal S. & L. v. Interstate Investment*, 57 W (2d) 690, 205 NW (2d) 361.

Purchaser having constructive notice that there may have been unrecorded conveyance was not "purchaser in good faith" under (1) (a). *Kordecki v. Rizzo*, 106 W (2d) 713, 317 NW (2d) 479 (1982).

706.09 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 the purchaser's 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.* Homestead of the spouse of any transferor of an interest in real estate, if the recorded conveyance purporting to transfer the homestead states that the person executing it is single, unmarried or widowed or fails to indicate the marital status of the transferor, and if the conveyance has, in either case, appeared of record for 5 years. This paragraph does not apply to the interest of a married person who is described of record as a holder in joint tenancy or of marital property with that transferor.

(f) *Lack of authority of officers, agents or fiduciaries.* Any defect or insufficiency in authorization of any purported officer, partner, manager, agent or fiduciary to act in the name or on behalf of any corporation, partnership, limited liability company, 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, acts in excess of legal powers 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 possession, 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, electric cooperatives, trustees, governmental units.* While owned, occupied or used by any public service corporation, any railroad corporation as defined in s. 195.02, any electric cooperative organized and operating on a nonprofit basis under ch. 185, or any trustee or receiver of any such corporation or electric cooperative, 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) EFFECTIVE DATE. 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.

History: 1975 c. 94 s. 91 (16); 1979 c. 110; 1983 a. 186; 1987 a. 330; 1993 a. 112, 486, 496.

This section does not create or govern interests in land but deals with circumstances when a purchaser of land will be held to have notice of adverse interests. Interests arising through adverse possession or use are governed by ch. 893. *Rock Lake Estates Unit Owners Ass'n v. Lake Mills*, 195 W (2d) 348, 536 NW (2d) 415 (Ct. App. 1995).

Marketable title and stale records: Clearing exceptions and closing deals. *Halligan, WBB May*, 1986.

706.095 Interspousal remedies. Nothing in this chapter limits a spouse's remedy against the other spouse under ch. 766 for misuse of marital property.

History: 1983 a. 186.

706.10 Forms, construction. (1) The several terms and forms of conveyance authorized by law or in common use in this state on July 1, 1971, shall have the same operation and effect under this chapter as formerly, except as this chapter may expressly provide to the contrary; but this section shall not preclude the adoption or use of other, different or more concise forms which conform to the requirements of this chapter.

(2) No conveyance shall be void for the reason that at the time of delivery thereof such lands are in actual possession of a person claiming under title adverse to the grantor.

(3) In conveyances of lands words of inheritance shall not be necessary to create or convey a fee, and every conveyance shall pass all the estate or interest of the grantor unless a different intent shall appear expressly or by necessary implication in the terms of such conveyance.

(4) A quitclaim deed shall pass all of the interest in or appurtenant to the land described which the grantor could lawfully convey, but shall not warrant or imply the existence, quantity or quality of any such interest.

(5) A conveyance by which the grantor contracts to warrant the land or its title shall be construed according to its terms, under rules of law for construction of contracts. A conveyance by which the grantor warrants the land or its title shall be construed, except as the terms of the conveyance may otherwise provide, to include covenants, for the benefit of the grantee, the grantee's heirs, successors and assigns, that the grantor at the time of conveyance is lawfully seized of the land; has good right to convey the same land or its title; that the same land or its title is free from all encumbrance; and that the grantor, the grantor's heirs and personal representatives will forever guarantee and defend the title and quiet possession of the land against all lawful claims whatever originating prior to the conveyance, except as the claims may arise out of open and notorious rights of easement, or out of public building, zoning or use restrictions.

(6) Except as provided in sub. (7) and except as otherwise provided by law, no warranty or covenant shall be implied in any conveyance, whether or not such conveyance contains special warranties or covenants. No mortgage shall be construed as implying a covenant for the payment of the sum thereby intended to be secured, and when there shall be no express covenant for such payment contained in the mortgage and no bond or other separate instrument to secure such payment shall have been given, the remedies of the mortgagee, shall be confined to the lands mentioned in the mortgage.

(7) In the absence of an express or necessarily implied provision to the contrary, a conveyance evidencing a transaction under which the grantor undertakes to improve the premises so as to equip them for grantee's specified use and occupancy, or to procure such improvement under grantor's direction or control, shall imply a covenant that such improvement shall be performed in a

workmanlike manner, and shall be reasonably adequate to equip the premises for such use and occupancy.

History: 1973 c. 243; 1979 c. 175; 1993 a. 486.

Subdivider-vendor must disclose material facts which are not readily discernible to noncommercial purchaser. *Ollerman v. O'Rourke Co., Inc.* 94 W (2d) 17, 288 NW (2d) 95 (1980).

Sub. (5) confirms that the rules of contract construction are to be used in interpreting the covenants of a deed. The measure of damages for breach of covenant is the common law measure of damages for breach of warranty of title. *Schorsch v. Blader*, 209 W (2d) 401, 563 NW (2d) 538 (Ct. App. 1997).

Builder-vendor liability for construction defects in houses. *Kirschnik*, 55 MLR 369.

Duty to disclose limited to commercial vendors. 64 MLR 547 (1981).

706.105 Applicability of general transfers at death provisions. Chapter 854 applies to transfers at death under a conveyance.

History: 1997 a. 188.

706.11 Priority of certain mortgages, trust funds.

(1) Except as provided in sub. (4), when any of the following mortgages has been duly recorded, it shall have priority over all liens upon the mortgaged premises and the buildings and improvements thereon, except tax and special assessment liens filed after the recording of such mortgage and except liens under ss. 292.31 (8) (i) and 292.81:

(a) Any mortgage executed to a federal savings and loan association or state or federal savings bank.

(b) Any mortgage executed to the department of veterans affairs under s. 45.352, 1971 stats.

(c) Any mortgage assigned to or executed to any of the following:

1. The United States, this state or a county, city, village or town in this state, or an agency, department or other formally constituted subunit of any of the foregoing.

2. The Wisconsin health and educational facilities authority created under ch. 231, the Wisconsin housing and economic development authority created under ch. 234 or any other authority created by state law.

(d) Any mortgage executed to a state or national bank or to a state or federally chartered credit union.

(e) Any mortgage executed under s. 66.521 to a trustee, as defined in s. 66.521 (2) (n).

(f) Any mortgage executed to a mortgage banker, as defined in s. 224.71 (3).

(g) Any mortgage executed to an insurer licensed to do business in this state.

(h) Any mortgage executed to a licensee under s. 138.09.

(1m) (a) In this subsection:

1. "Commitment" means an agreement under which a mortgagee agrees to advance to the mortgagor or another person funds that will be secured by the mortgage.

2. "Construction mortgage" means a mortgage that secures an obligation incurred for the construction of an improvement on land, including the acquisition cost of the land.

(b) An advance of funds, including accrued but unpaid interest on the advance, that is secured by a duly recorded mortgage specified in sub. (1) (a) to (d) or (f) to (h) and that is made after the mortgage has been recorded has the same priority as the mortgage if the advance is made before the mortgagee has actual knowledge of an intervening lien or, regardless of when the advance is made, if any of the following applies:

1. The advance is made under a commitment that is entered into before the mortgagee has actual knowledge of an intervening lien, regardless of whether the advance was made after a default or other event outside of the mortgagee's control relieved the mortgagee of the obligation to advance funds under the commitment.

2. The advance is made for the reasonable protection of the mortgagee's interest, including for the payment of real property

taxes, property insurance or assessments or other maintenance charges imposed under a condominium declaration or a restrictive covenant.

3. The mortgage is a construction mortgage that clearly states on the first page of the mortgage that it is a construction mortgage and the advance is made to enable completion of the contemplated improvement on the mortgaged premises.

(2) State savings and loan associations shall have the priorities specified under s. 215.21 (4).

(3) The proceeds of any such mortgage referred to in this section shall, when paid out by a state savings bank, federal savings bank, state savings and loan association or federal savings and loan association, or of any other mortgage from any other source and received by the owner of the premises or by any contractor or subcontractor performing the work and labor, forthwith constitute a trust fund only in the hands of such owner, contractor or subcontractor for the payment proportionally of all claims due and to become due or owing from such contractor or subcontractor for lienable labor and materials until all such claims have been paid, and shall not be a trust fund in the hands of any other person. This section shall not create a civil cause of action against any person other than such owner, contractor or subcontractor. The use of any of such moneys by any owner, contractor or subcontractor for any other purpose until all claims, except those which are the subject of a bona fide dispute, have been paid in full, or proportionally in cases of a deficiency, shall constitute theft by such owner, contractor or subcontractor of any moneys so misappropriated. The district attorney of the county where the premises are situated shall on the complaint of any aggrieved party prosecute such owner, contractor or subcontractor misappropriating such moneys for such theft.

(4) Subsection (1) does not apply to a 2nd mortgage assigned to or executed to the department of veterans affairs under s. 45.79 (3) (a) 1. or s. 45.80 (4) (a) 1, 1989 stats.

History: 1971 c. 164; 1973 c. 208; 1975 c. 358, 409; 1979 c. 110 s. 60 (12); 1989 a. 231; 1991 a. 39, 221; 1993 a. 453; 1995 a. 27, 227; 1997 a. 27, 44.

The word "contractor" in sub. (3) includes an owner who acts as his own general contractor, and he can be held liable for conversion. *Paulsen Lumber, Inc. v. Meyer*, 47 W (2d) 621, 177 NW (2d) 884.

Phrase "filed after the recording of such mortgage" in (1) modifies "all liens." *Marine Bank Appleton v. Hietpas, Inc.* 149 W (2d) 587, 439 NW (2d) 604 (Ct. App. 1989).

Term "lien" in this section does not include lease. *Grosskopf Oil, Inc. v. Winter*, 156 W (2d) 575, 457 NW (2d) 514 (Ct. App. 1990).

706.12 Uniform vendor and purchaser risk act.

(1) Any contract made in this state for the purchase and sale of realty shall be interpreted as including an agreement that the parties shall have the following rights and duties, unless the contract expressly provides otherwise:

(a) If, when neither the legal title nor the possession of the subject matter of the contract has been transferred, all or a material part thereof is destroyed without fault of the purchaser or is taken by eminent domain, the vendor cannot enforce the contract, and the purchaser is entitled to recover any portion of the price that the purchaser has paid.

(b) If, when either the legal title or the possession of the subject matter of the contract has been transferred, all or any part thereof is destroyed without fault of the vendor or is taken by eminent domain, the purchaser is not thereby relieved from a duty to pay the price, nor is the purchaser entitled to recover any portion thereof that the purchaser has paid.

(2) This section shall be so construed as to make uniform the law of those states which enact it.

(3) This section may be cited as the uniform vendor and purchaser risk act.

History: 1975 c. 422; 1993 a. 486.

706.13 Slander of title. (1) In addition to any criminal penalty or civil remedy provided by law, any person who submits for filing, entering in the judgment and lien docket or recording, any lien, claim of lien, lis pendens, writ of attachment, financing statement or any other instrument relating to a security interest in or the title to real or personal property, and who knows or should have known that the contents or any part of the contents of the instrument are false, a sham or frivolous, is liable in tort to any person interested in the property whose title is thereby impaired, for punitive damages of \$1,000 plus any actual damages caused by the filing, entering or recording.

(2) This section applies to any person who causes another person to act in the manner specified in sub. (1).

(3) This section does not apply to a register of deeds or other government employe who acts in the course of his or her official duties and files, enters or records any instrument relating to title on behalf of another person.

History: 1979 c. 221; 1995 a. 224; 1997 a. 27.

Enactment of this section did not create a cause of action nor destroy the common-law right of recovery. *Schlytter v. Lesperance*, 62 W (2d) 661, 215 NW (2d) 552.

When lawsuit is commenced under this section, conditional rather than absolute privilege applies to filing of lis pendens. *Kensington Development v. Israel*, 142 W (2d) 894, 419 NW (2d) 241 (1988).

Lis pendens filing not privileged where there is no relationship between filing and underlying action. *Larson v. Zilz*, 151 W (2d) 637, 445 NW (2d) 699 (Ct. App. 1989).

For recovery for slander of title, it is not necessary in all cases to prove the loss of an actual sale. The trial court must consider whether it is reasonable under the circumstances to require proof that the slander prevented a particular sale, and if not, the court must determine the degree of particularity required. *Tym v. Ludwig*, 196 W (2d) 375, 538 NW (2d) 600 (Ct. App. 1995).

706.14 Transitional and curative provisions. The operation or effect of a conveyance made or recorded in accordance with the provisions of any prior law of this state, or thereafter validated, perfected or cured under any such prior law, shall not be impaired by any provision of this chapter.

706.15 Liens against public officials or employes. No lien may be filed, entered or recorded against the real or personal property of any official or employe of the state or any political subdivision of the state, relating to an alleged breach of duty by the official or employe, except after notice and a hearing before a court of record and a finding by the court that probable cause exists that there was a breach of duty.

History: 1979 c. 221; 1995 a. 224.