Supplement Appendix A
Selected Wisconsin Statutes

Note. The statutory sections in this appendix are reprinted from the Legislative Reference Bureau website, https://legis.wisconsin.gov/rsb/stats.html, and are current through the 2021–22 Wisconsin Statutes, as affected by acts through 2023 Wis. Act 272.

CHAPTER 30

NAVIGABLE WATERS, HARBORS AND NAVIGATION

30.131 Wharves and piers placed and maintained by persons other than riparian owners. (1) Notwithstanding s. 30.133, a wharf or pier of the type which does not require a permit under ss. 30.12 (1) and 30.13 that abuts riparian land and that is placed in a navigable water by a person other than the owner of the riparian land may not be considered to be an unlawful structure on the grounds that it is not placed and maintained by the owner if all of the following requirements are met:

(a) The owner of the riparian land or the owner's predecessor in interest entered into a written easement that was recorded before December 31, 1986, and that authorizes access to the shore to a person who is not an owner of the riparian land.

(b) The person to whom the easement was granted or that person's successor in interest is the person who places and maintains the wharf or pier.

(c) The placement and maintenance of the wharf or pier is not prohibited by and is not inconsistent with the terms of the written easement.

(d) The wharf or pier has been placed seasonally in the same location at least once every 4 years since the written easement described in par. (a) was recorded.

(e) The wharf or pier is substantially the same size and configuration as it was on April 28, 1990, or during its last placement before April 28, 1990, whichever is later.

(f) The placement of the wharf or pier complies with the provisions of this chapter, with any rules promulgated under this chapter and with any applicable municipal regulations or ordinances.

(2) Notwithstanding s. 30.133, an easement under sub. (1) may be conveyed if it is conveyed at the same time, and to the same person, that the land to which the easement is appurtenant is conveyed.

History: 1989 a. 217; 1993 a. 167.

The application of s. 30.131 is discussed. Godfrey Co. v. Lopardo, 164 Wis. 2d 352, 474 N.W.2d 786 (Ct. App. 1991).

This section does not grant rights to a nonriparian owner vis a vis a riparian owner. The statute speaks only to the lawfulness of a pier maintained under a nonriparian access easement. The terms and purpose of the easement may include the right to use and maintain the pier. Wendt v. Blazek, 2001 WI App 91, 242 Wis. 2d 722, 626 N.W.2d 78, 00–2448.

30.132 Riparian rights. (1) DEFINITIONS. In this section:

(a) "Commission" means the public service commission.

(b) "Hydroelectric operator" means an operator of a project.

(c) "Project" means a hydroelectric project regulated by the federal energy regulatory commission or the department.

(d) "Project riparian" means an owner of land that abuts a navigable waterway, the abutting bed of which is owned by a hydroelectric operator.

(2) PRESUMPTION OF RIPARIAN RIGHTS. An owner of land that abuts a navigable waterway is presumed to be a riparian owner and is entitled to exercise all rights afforded to a riparian owner, including the right to place a pier, other structures, or deposits, even if the bed of the waterway is owned in whole or in part by another, unless those rights are specifically prohibited by the deed to the land, written agreement, or other recorded instrument. The exercise of these riparian rights is subject to the requirements of this chapter and, if the waterway is within the boundaries of a project, the reasonable restrictions imposed by the hydroelectric operator necessary for the hydroelectric operator to comply with requirements imposed under state or federal law or a federal energy regulatory commission license.

(3) PROJECT RIPARIAN RIGHTS.

(a) *Application to exercise riparian rights*. A project riparian may make written application to the applicable hydroelectric operator for permission to exercise a riparian right in a waterway within the boundaries of a project, including the right to place a pier or other structures or deposits and the right to modify an existing structure authorized under par. (b), subject to the requirements of this chapter. The hydroelectric operator shall approve or deny an application under this paragraph no later than 60 days after receiving the application. The hydroelectric operator may deny an application under this paragraph only if necessary for the hydroelectric operator to comply with requirements imposed under state or federal law or a federal energy regulatory commission license but may approve the application subject to reasonable restrictions necessary for the hydroelectric operator to comply with requirements imposed under state or federal law or a federal energy regulatory commission license. The hydroelectric operator may charge an applicant a reasonable fee to cover the hydroelectric operator's administrative costs related to a structure or deposit that is approved under this paragraph.

(b) *Existing structures*. Notwithstanding par. (a), a project riparian may maintain a structure that was placed in a waterway within the boundaries of a project prior to June 20, 2021, subject to the requirements of this chapter and the reasonable restrictions imposed by the hydroelectric operator necessary for the hydroelectric operator to comply with

requirements imposed under state or federal law or a federal energy regulatory commission license. A hydroelectric operator may not charge a fee related to a structure authorized under this paragraph unless a fee is provided for in an agreement between the hydroelectric operator and the project riparian that existed prior to June 20, 2021.

(c) *Appeal to the commission*. A project riparian whose application is denied or approved with restrictions or who is charged an unreasonable fee under this subsection may appeal in writing to the commission. The commission may investigate the appeal and issue an order based on its investigation. The commission may not issue an order under this paragraph without a public hearing conducted in accordance with s. 196.26 (2).

(d) *Immunity from liability*. A hydroelectric operator is not liable to any person for any injury or damage arising from a project riparian's use of the hydroelectric operator's property as provided in this section.

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

History: 2021 a. 47.

30.133 Prohibition against conveyance of riparian rights. (1) Beginning on April 9, 1994, and except as provided in s. 30.1335, no owner of riparian land that abuts a navigable water may grant by an easement or by a similar conveyance any riparian right in the land to another person, except for the right to cross the land in order to have access to the navigable water. This right to cross the land may not include the right to place any structure or material, including a boat docking facility, as defined in s. 30.1335 (1) (a), in the navigable water.

(2) This section does not apply to riparian land located within the boundary of any hydroelectric project licensed or exempted by the federal government, if the conveyance is authorized under any license, rule or order issued by the federal agency having jurisdiction over the project. This section does not apply to riparian land that is associated with an approval required for bulk sampling or mining that is required under subch. III of ch. 295.

History: 1993 a. 167; 2007 a. 20; 2009 a. 180, 352; 2013 a. 1.

Small lock boxes were not "intended for any type of independent use" within the meaning of a condominium "unit" under s. 703.02 (15) and were not valid condominium units. Without a valid condominium unit, the transfer of riparian rights purportedly attached to the condominium lock boxes was in violation of this section. ABKA Limited Partnership v. Department of Natural Resources, 2002 WI 106, 255 Wis. 2d 486, 648 N.W.2d 854, 99-2306.

This section prohibits the severing by easement or by a similar conveyance of riparian rights from the riparian lands to which they are attached, preventing the reservation of

riparian rights apart from riparian land by an easement, as well as the granting of riparian rights to a nonriparian. Berkos v. Shipwreck Bay Condominium Association, 2008 WI App 122, 313 Wis. 2d 609, 758 N.W.2d 215, 06-2747.

NOTE: The above annotated cases cite to the pre-2007 Wisconsin Act 20 version of s. 30.133. See also s. 30.1335, created by 2007 Wisconsin Act 20.

CHAPTER 32

EMINENT DOMAIN

32.02 Who may condemn; purposes. The following departments, municipalities, boards, commissions, public officers, and business entities may acquire by condemnation any real estate and personal property appurtenant thereto or interest therein which they have power to acquire and hold or transfer to the state, for the purposes specified, in case such property cannot be acquired by gift or purchase at an agreed price:

(1) Any county, town, village, city, including villages and cities incorporated under general or special acts, school district, the department of health services, the department of corrections, the board of regents of the University of Wisconsin System, the building commission, a commission created by contract under s. 66.0301, with the approval of the municipality in which condemnation is proposed, a commission created by contract under s. 66.0303 that is acting under s. 66.0304, if the condemnation occurs within the boundaries of a member of the commission, or any public board or commission, for any lawful purpose, but in the case of city and village boards or commissions approval of that action is required to be granted by the governing body. A mosquito control commission, created under s. 59.70 (12), and a local professional football stadium district board, created under subch. IV of ch. 229, may not acquire property by condemnation.

(2) The governor and adjutant general for land adjacent to the Wisconsin state military reservation at Camp Douglas for the use of the Wisconsin national guard.

(3) Any railroad corporation, any grantee of a permit to construct a dam to develop hydroelectric energy for sale to the public, any Wisconsin plank or turnpike road corporation, any drainage corporation, any interstate bridge corporation, or any corporation formed under chapter 288, laws of 1899, for any public purpose authorized by its articles of incorporation.

(4) Any Wisconsin telegraph or telecommunications corporation for the construction and location of its lines.

(5) (a) "Foreign transmission provider" means a foreign corporation that satisfies each of the following:

1. The foreign corporation is an independent system operator, as defined in s. 196.485 (1) (d), or an independent transmission owner, as defined in s. 196.485 (1) (dm), that is approved by the applicable federal agency, as defined in s. 196.485 (1) (c).

2. The foreign corporation controls transmission facilities, as defined in s. 196.485 (1) (h), in this and another state.

(b) Any Wisconsin corporation engaged in the business of transmitting or furnishing heat, power or electric light for the public or any foreign transmission provider for the construction and location of its lines or for ponds or reservoirs or any dam, dam site, flowage rights or undeveloped water power.

(6) Any Wisconsin corporation furnishing gas, electric light or power to the public, for additions or extensions to its plant and for the purpose of conducting tests or studies to determine the suitability of a site for the placement of a facility.

(7) Any Wisconsin corporation formed for the improvement of any stream and driving logs therein, for the purpose of the improvement of such stream, or for ponds or reservoir purposes.

(8) Any Wisconsin corporation organized to furnish water or light to any city, village or town or the inhabitants thereof, for the construction and maintenance of its plant.

(**9)** Any Wisconsin corporation transmitting gas, oil or related products in pipelines for sale to the public directly or for sale to one or more other corporations furnishing such gas, oil or related products to the public.

(10) Any rural electric cooperative association organized under ch. 185 which operates a rural electrification project to:

(a) Generate, distribute or furnish at cost electric energy at retail to 500 or more members of said association in accordance with standard rules for extension of its service and facilities as provided in the bylaws of said association and whose bylaws also provide for the acceptance into membership of all applicants therefor who may reside within the territory in which such association undertakes to furnish its service, without discrimination as to such applicants; or

(b) Generate, transmit and furnish electric energy at wholesale to 3 or more rural electric cooperative associations furnishing electric energy under the conditions set forth in par. (a), for the construction and location of its lines, substation or generating plants, ponds or reservoirs, any dam, dam site, flowage rights or undeveloped water power, or for additions or

extension of its plant and for the purpose of conducting tests or studies to determine the suitability of a site for the placement of a facility.

(11) Any housing authority created under ss. 66.1201 to 66.1211; redevelopment authority created under s. 66.1333; community development authority created under s. 66.1335; local cultural arts district created under subch. V of ch. 229, subject to s. 229.844 (4) (c); or local exposition district created under subch. II of ch. 229.

(11m) The Wisconsin Aerospace Authority created under subch. II of ch. 114.

(12) Any person operating a plant which creates waste material which, if released without treatment would cause stream pollution, for the location of treatment facilities. This subsection does not apply to a person with a permit under ch. 293 or subch. III of ch. 295.

(13) Any business entity authorized to do business in Wisconsin that shall transmit oil or related products including all hydrocarbons which are in a liquid form at the temperature and pressure under which they are transported in pipelines in Wisconsin, and shall maintain terminal or product delivery facilities in Wisconsin, and shall be engaged in interstate or international commerce, subject to the approval of the public service commission upon a finding by it that the proposed real estate interests sought to be acquired are in the public interest.

(15) The department of transportation for the acquisition of abandoned rail and utility property under s. 85.09.

(16) The department of natural resources with the approval of the appropriate standing committees of each house of the legislature as determined by the presiding officer thereof and as authorized by law, for acquisition of lands.

History: 1971 c. 100 s. 23; 1973 c. 243, 305; 1975 c. 68, 311; 1977 c. 29, 203, 438, 440; 1979 c. 34 s. 2102 (52) (b); 1979 c. 122; 1979 c. 175 s. 53; 1981 c. 86, 346, 374; 1983 a. 27; 1985 a. 29 s. 3200 (51); 1985 a. 30 s. 42; 1985 a. 187; 1985 a. 297 s. 76; 1987 a. 27; 1989 a. 31; 1993 a. 246, 263; 1993 a. 491 s. 284; 1995 a. 27 s. 9126 (19); 1995 a. 201; 1997 a. 204; 1999 a. 65; 1999 a. 150 s. 672; 1999 a. 167; 2001 a. 30 s. 108; 2005 a. 335; 2007 a. 20, s. 9121 (6) (a); 2009 a. 28, 205; 2011 a. 32; 2013 a. 1; 2015 a. 55.

Cross-reference: See s. 13.48 (16) for limitation on condemnation authority of the building commission.

The inalienability of the power of eminent domain is a well-settled rule. A party with the right to condemn cannot lose that power through contract. The right to condemnation cannot be waived or abrogated by estoppel. Personal rights may be waivable, but public rights are not. Andrews v. Wisconsin Public Service Corporation, 2009 WI App 6, 315 Wis. 2d 772, 762 N.W.2d 837, 07-2541.

CHAPTER 59

COUNTIES

59.43 Register of deeds; duties, fees, deputies. (1b) DEFINITION. In this section, "book," if automated equipment is used, may include forms, tab or computer printed sheets as well as cards and other supply forms which although processed separately may be bound after preparation.

(1c) REGISTER OF DEEDS; DUTIES. Subject to sub. (1m), the register of deeds shall:

(a) Record or cause to be recorded in suitable books to be kept in his or her office, correctly and legibly all deeds, mortgages, instruments, and writings authorized by law to be recorded in his or her office and left with him or her for that purpose, provided the documents have plainly printed or typewritten on the document the names of the grantors, grantees, witnesses, and notary. The register of deeds shall record or file or cause to be recorded or filed all plats and certified survey maps that are authorized to be accepted for recording or filing in his or her office. Any county, by a resolution adopted by the board, may combine the separate books or volumes for deeds, mortgages, miscellaneous instruments, attachments, lis pendens, sales and notices, certificates of organization of corporations, plats, or other recorded or filed instruments or classes of documents as long as separate indexes may be produced. Notwithstanding any other provisions of the statutes, any county adopting a system of microfilming or like process or a system of recording documents by optical imaging or electronic formatting under ch. 228 may substitute the headings, reel, disc, or electronic file name and microfilm image (frame) for volume and page where recorded and different classes of instruments may be recorded, reproduced, or copied on or transferred to the same reel, disc, or electronic file or part of a reel or disc. All recordings made prior to June 28, 1961, that would have been valid under this paragraph, had this paragraph then been in effect, are validated by this paragraph.

(b) Perform the duties that are related to vital records under ss. 69.05 and 69.07.

(c) State upon the record of any conveyance of real estate the real estate transfer fee paid or, if the conveyance is not subject to a fee, the reason for the exemption, citing the relevant subsection of s. 77.25.

(d) Keep safely and maintain the documents, images of recorded documents and indexes mentioned in this section and in s. 84.095 in the manner required.

(e) Endorse upon each instrument or writing received by the register for record a certificate of the date and time when it was received,

specifying the day, hour and minute of reception, which shall be evidence of such facts. Instruments shall be recorded in the order in which they are received.

(f) Endorse plainly on each instrument a number consecutive to the number assigned to the immediately previously recorded or filed instrument, such that all numbers are unique for each instrument within a group of public records that are kept together as a unit and relate to a particular subject.

(g) Safely keep and return to the party entitled thereto, on demand within a reasonable time, every instrument that is left with the register for record not required by law to be kept in the register's office.

(h) Register, file and index all marriages contracted, deaths and births occurring in the county.

(i) Make and deliver to any person, on demand and upon payment of the required fees, a certified copy, with the register's official seal affixed, of any record, paper, file, map or plat in the register's office.

(j) File and safely keep in the register's office all of the records, documents and papers of any post of the Grand Army of the Republic and of any historical society in the register's county.

(k) Keep an index of all organizational documents of corporations, fraternal societies, religious organizations, associations, and other entities, and all amendments of the documents, that are allowed or required by law to be filed or recorded in the register's office. The index shall be accessible and searchable by the name of the corporation, fraternal society, religious organization, association, or other entity and shall contain a reference to the document number of the organizational document or amendment and, if given on the document, the volume and page where the organizational document or amendment is filed or recorded in the register's office.

(L) Record all documents pertaining to security interests, as defined in s. 401.201 (2) (t), that are required or authorized by law to be recorded with the register. Except as otherwise prescribed by the department of financial institutions under subch. V of ch. 409, these documents shall be executed in a manner that satisfies the requirements set forth in sub. (2m) (b) 1. to 5.

(m) Keep these chattel documents in consecutive numerical arrangement, for the inspection of all persons, endorsing on each document the document number and the date and time of reception.

(n) Upon the recording of a financing statement or other document evidencing the creation of a security interest, as defined in s. 401.201 (2) (t), required to be filed or recorded with the register under s. 409.501 (1) (a), index the statement or document in the real estate records index under sub. (9).

(o) Upon the filing of an assignment, continuation statement, termination statement, foreclosure affidavit, extension, or release pertaining to a filed financing statement or other chattel security document, index the document in the real estate records index under sub. (9).

(p) Perform all other duties that are required of the register of deeds by law.

(q) Record and index writings that are submitted according to s. 289.31 (3), evidencing that a solid or hazardous waste disposal facility will be established on the particular parcel described in the writings.

(r) Record and index marital property agreements under ch. 766 and statements and revocations under s. 766.59.

(s) Record and index statements of claim and perform the other duties specified under s. 706.057 (7).

(t) Upon commencement of each term, file his or her signature and the impression of his or her official seal or rubber stamp in the office of the secretary of state.

(u) Submit that portion of recording fees collected under sub. (2) (ag) 1. and (e) and not retained by the county to the department of administration under s. 59.72 (5).

(v) Record and index statements of authority under s. 184.05.

(1g) AUTHORITY TO REJECT ENTIRE GROUP OF RELATED DOCUMENTS. If the register of deeds is presented with a group of related documents that has been identified by the person submitting the documents by any reasonable method as representing a single transaction and one or more documents within the group may not be recorded because of a failure to comply with any provision of sub. (2m), the register of deeds may return the entire group of documents unrecorded.

(1m) RESTRICTIONS ON RECORDING INSTRUMENTS WITH SOCIAL SECURITY NUMBERS.

(a) Except as otherwise provided in this subsection, a register of deeds may not record any instrument offered for recording if the instrument contains the social security number of an individual.

(b) If a register of deeds is presented with an instrument for recording that contains an individual's social security number, and if the register of deeds records the instrument but does not discover that the instrument contains an individual's social security number until after the instrument is recorded, the register of deeds may not be held liable for the instrument drafter's placement of an individual's social security number on the instrument and the register of deeds may remove or obscure characters from the social security number such that the social security number is not discernable on the instrument.

(c) If a register of deeds records an instrument that contains the complete social security number of an individual, the instrument drafter is liable to the individual whose social security number appears in the recorded public document for any actual damages resulting from the instrument being recorded.

(cm) If a register of deeds is presented with an instrument for recording that contains an individual's social security number the register of deeds may, prior to recording the instrument, remove or obscure characters from the social security number such that the social security number is not discernable on the instrument.

(d) Paragraphs (a) to (c) do not apply to a federal income tax lien.

(e) Paragraphs (a) to (c) do not apply to vital records under subch. I of ch. 69.

(f) Paragraphs (a) to (c) do not apply to certificates of discharge or release recorded under s. 45.05.

(1r) PERSONAL INFORMATION OF JUDICIAL OFFICERS. The register of deeds shall shield from disclosure and keep confidential documents containing information covered by a written request of a judicial officer under s. 757.07, if the judicial officer specifically identifies the document number of any document to be shielded under this subsection. This subsection applies only to electronic images of documents specifically identified by a judicial officer as covered by a written request under s. 757.07. The register of deeds may allow access to a document subject to protection under this subsection only if the judicial officer consents to the access or access is otherwise permitted as provided under s. 757.07 (4) (e).

NOTE: Sub. (1r) is created eff. 4-1-25 by 2023 Wis. Act 235.

(2) REGISTER OF DEEDS; FEES. Every register of deeds shall receive the following fees:

(a) 1. In this subsection, "page" means one side of a single sheet of paper.

2. Any instrument that is submitted for recording shall contain a blank space at least 3 inches by 3 inches in size for use by the register of deeds. If the space is not provided, the register of deeds may add a page for his or her use and charge for the page a fee that is established by the county board not to exceed an amount reasonably related to the actual and necessary cost of adding the page.

(ag)

1. Subject to s. 59.72 (5), for recording any instrument entitled to be recorded in the office of the register of deeds, $30, except that no fee may be collected for recording a change of address that is exempt from a filing fee under s. 185.83 (1) (b) or 193.111 (1) (b).

2. In the event of conflict in the statutes regarding recording fees, subd. 1. shall control, except that subch. V of ch. 409 and s. 409.710 shall control this section.

(ar) No person may record under this section a single instrument that contains more than one mortgage, or more than one mortgage, being assigned, partially released or satisfied.

(b) For copies of any records or papers, $2 for the first page plus $1 for each additional page, plus $1 for the certificate of the register of deeds, except that the department of revenue is exempt from the fees under this paragraph.

(c) Notwithstanding any other provision of law the register of deeds with the approval and consent of the board may enter into contracts with municipalities, private corporations, associations, and other persons to provide noncertified copies of the complete daily recordings and filings of documents pertaining to real property for a consideration to be determined by the board which in no event shall be less than cost of labor and material plus a reasonable allowance for plant and depreciation of equipment used.

(d) For performing functions under s. 409.523, the register shall charge the fees provided in s. 409.525, retain the portion of the fees prescribed under s. 409.525, and submit the portion of the fees not retained to the state. A financing statement and an assignment or notice of assignment of the security interest, offered for filing at the same time, shall be considered as only one document for the purpose of this paragraph. Whenever there is offered for filing any document that is not on a standard form prescribed by ch. 409 or by the department of financial institutions or that varies more than 0.125 inch from the approved size as prescribed by sub. (1c), the appropriate fee provided in s. 409.525 or an additional filing fee of one-half the regular fee, whichever is applicable, shall be charged by the register.

(e) Subject to s. 59.72 (5), for filing any instrument which is entitled to be filed in the office of register of deeds and for which no other specific fee is specified, $30.

(f) The fees for processing vital records or for issuing copies of vital records shall be as provided in s. 69.22.

(g) For making a new tract index upon the order of the board, the amount that is fixed by the board, to be paid from the county treasury.

(h) For recording and filing a cemetery plat under s. 157.07, a subdivision plat under s. 236.25 or a condominium plat under s. 703.07, $50.

(j) All fees under this subsection shall be payable in advance by the party procuring the services of the register of deeds, except that the fees

for the services performed for a state department, board or commission shall be invoiced monthly to such department, board or commission.

(k) For recording a transportation project plat under s. 84.095, $25.

(2m) STANDARD FORMAT REQUIREMENTS FOR RECORDED DOCUMENTS.

(a) Except as provided in pars. (d) and (e), no document may be recorded in the office of a register of deeds unless it substantially complies with all of the following on the first page of the instrument:

1. The name of the instrument is clear and is located not less than 0.5 inch nor more than 3 inches from the top of the document. If more than one instrument name is given, the first name given shall be used for indexing purposes.

2. A horizontal area within 3 inches of the top of the instrument in the upper left corner of the instrument, not less than 0.5 inch by 2 inches, is left blank for the unique document number.

3. An area in the upper right corner of the instrument, at least 3 inches by 3 inches, is left blank for recording information.

4. A horizontal area for the return address, at least one inch by 3 inches, is on the instrument in one of the following areas:

a. Directly below the recording information area described under subd. 3.

b. Directly below the document number area described under subd. 2.

c. Directly below the name of the instrument if the return address does not extend further than 3 inches from the top of the instrument.

5. a. Subject to subd. 5. b. and c., a space and a line are provided directly below the return address information and the line is labeled as "parcel identifier number", "parcel identification number", "parcel ID number", "parcel number" or "PIN".

b. If multiple parcels are affected by the instrument, the line described under subd. 5. a. may be used to refer the reader to another area of the instrument where the parcel identifier number is located.

c. Subdivision 5. a. applies only in a county whose board requires the use of a parcel identifier number.

(b) Except as provided in pars. (d) and (e), no document may be recorded in the office of a register of deeds unless it substantially complies with all of the following:

1. The paper is white and is at least 20 pound weight.

2. The page width is 8.5 inches and the page length is either 11 inches or 14 inches. The maximum deviation from any of these measurements may not exceed 0.25 inch.

3. A multipage instrument is not hinged or otherwise joined completely at the top or sides.

4. The entire document is clear and the letters, numbers, symbols, diagrams and other representations in the document are large enough and dense enough to be reproduced or read by a copy machine and a microfilm camera or optical scanner to the extent that the image captured is legible.

5. The ink is black, blue, or red, except that signatures and coded notations on maps may be other colors.

6. The top margin of each page is 0.5 inch, except that company logos may appear within this margin if they do not interfere with any of the other requirements of this subsection.

7. The bottom and side margins of each page are at least 0.25 inch.

(c) The register of deeds shall provide, upon request, a blank form which a person may complete and use as the first page of an instrument that the person seeks to record. The blank form shall be provided without charge and shall conform to the provisions of pars. (a) and (b).

(d) Paragraphs (a) and (b) do not apply to any of the following instruments:

1. Copies of documents that are certified by the state or by a city, village, town or county, or by a subunit or instrumentality of any of the foregoing.

3. Filed documents.

4. Federal income tax lien form 688 (Y) (c).

(e) Every instrument that the register of deeds accepts for recordation under this subsection shall be considered recorded despite its failure to conform to one or more of the requirements of this subsection, if the instrument is properly indexed in a public index maintained in the office of the register of deeds.

(3) REGISTER OF DEEDS; DEPUTIES. Every register of deeds shall appoint one or more deputies, who shall hold office at the register's pleasure. The appointment shall be in writing and shall be recorded in the register's office. The deputy or deputies shall aid the register in the performance of the register's duties under the register's direction, and in case of the register's vacancy or the register's absence or inability to perform the duties of the register's office the deputy or deputies shall perform the duties of register until the vacancy is filled or during the continuance of the absence or inability.

(4) REGISTER OF DEEDS; MICROFILMING AND OPTICAL DISK AND ELECTRONIC STORAGE.

(a) Except as provided in par. (b), upon the request of the register of deeds, any county, by board resolution, may authorize the register of deeds to photograph, microfilm, or record on optical discs or in electronic format records of deeds, mortgages, or other instruments relating to real property or may authorize the register of deeds to record on optical discs or in

electronic format instruments relating to security interests in accordance with the requirements of s. 16.61 (7) or 59.52 (14) and to store the original records within the county at a place designated by the board. The storage place for the original records shall be reasonably safe and shall provide for the preservation of the records authorized to be stored under this paragraph. The register of deeds shall keep a photograph, microfilm, or optical disc or electronic copy of such records in conveniently accessible files in his or her office and shall provide for examination of such reproduction or examination of a copy generated from an optical disc or electronic file in enlarged, easily readable form upon request. Compliance with this paragraph satisfies the requirement of sub. (1c) (a) that the register of deeds shall keep such records in his or her office. The register of deeds may make certified copies reproduced from an authorized photograph, from a copy generated from optical disc or electronic storage, or from the original records.

(b) The register of deeds may microfilm or record on optical discs or in electronic format notices of lis pendens that are at least one year old, in accordance with the requirements of s. 16.61 (7) or 59.52 (14) (b) to (d). The register of deeds shall keep a microfilm or optical disc or electronic copy of notices of lis pendens in conveniently accessible files in his or her office and shall provide for examination of such reproduction or examination of a copy generated from optical disc or electronic storage in enlarged, easily readable form upon request. Compliance with this paragraph satisfies the requirement of sub. (1c) (a) that the register of deeds shall keep such records in his or her office. The register of deeds may make certified copies reproduced from a copy generated from microfilm or from optical disc or electronic storage. The register of deeds may destroy or move to off-site storage any notice of lis pendens that has been microfilmed or recorded on optical disc or in electronic format under this paragraph.

(c) With regard to any instrument filed with or recorded by a register of deeds before April 1, 2006, which the register of deeds makes available for viewing or download on the Internet, the register of deeds shall make a reasonable effort to make social security numbers from the transferred instrument's electronic format not viewable or accessible on the Internet.

(d) No later than March 31 annually, every register of deeds of a county that has not completed making social security numbers from electronic format records not viewable or accessible on the Internet under par. (c) shall submit to the department of administration a report regarding the progress made by the county during the preceding year in making social security numbers from electronic format records not viewable or

accessible on the Internet under par. (c), including a statement of the number of instruments transferred to an electronic format in the preceding year, the number of these instruments from which social security numbers were made not viewable or accessible on the Internet in the preceding year, the number of instruments remaining from which social security numbers remain to be made not viewable or accessible on the Internet, and the estimated time needed to review the remaining instruments for making social security numbers not viewable or accessible on the Internet.

(5) INCLUDING NAME OF PERSON DRAFTING INSTRUMENT.

(a) No instrument by which the title to real estate, or any interest therein or lien thereon, is conveyed, created, encumbered, assigned or otherwise disposed of shall be recorded by the register of deeds unless the name of the person who, or governmental agency which, drafted such instrument is printed, typewritten, stamped or written thereon in a legible manner. An instrument complies with this subsection if it contains a statement in the following form: "This instrument was drafted by .... (name) ....".

(b) Paragraph (a) does not apply to an instrument executed before May 9, 1957, or to:

1. A decree, order, judgment or writ of a court.

3. An instrument that is executed or acknowledged outside of this state.

4. A transportation project plat that conforms to s. 84.095.

(6) EFFECT OF CERTAIN OMISSIONS IN REGISTERS' RECORDS. The validity and effect of the record of any instrument in the office of register of deeds shall not be lessened or impaired by the fact that the name of any grantor, grantee, witness or notary was not printed or typed on the instrument or by the fact that it does not comply with sub. (5).

(7) INCLUDING PARCEL IDENTIFICATION NUMBER.

(a) In counties with a population of 500,000 or more where parcel identification numbers are used in the tax roll for taxes based on the value of property in municipalities, any conveyance, as defined in s. 706.01 (4), of any interest in real estate located in such a municipality shall contain reference to the parcel identification number affected. The parcel identification number shall be required for the recording of the conveyance.

(b) In counties with a population of less than 750,000 where parcel identification numbers are used in the tax roll for taxes based on the value of property in municipalities, any conveyance, as defined in s. 706.01 (4), of any interest in real estate located in such a municipality shall contain reference to the parcel identification number affected if the county in which the parcel is located enacts an ordinance that requires the use of such a number in a conveyance. The parcel identification number shall be

required for the recording of the conveyance, for administrative purposes only, if the county enacts an ordinance under this paragraph.

(8) REQUIRED SIGNATURE AND SEAL ON SURVEY DOCUMENT FOR FILING OR RECORDING. It is unlawful for the register of deeds of any county or any proper public authority to file or record a map, plat, survey, or other document within the definition of the practice of professional land surveying under s. 443.01 (6s), which does not have impressed thereon, and affixed thereto, the personal signature and seal of a professional land surveyor under whose responsible charge the map, plat, survey, or other document was prepared. This subsection does not apply to any deed, contract, or other recordable document prepared by an attorney, or to an order, including any map or other document filed with the order, that is recorded under subch. I or VI of ch. 77.

(9) REAL ESTATE RECORDS INDEX.

(a) 1. A register of deeds shall maintain an index for the real estate record series that contains at least all of the following:

am. Document number assigned under sub. (1c) (f) to the instrument that is consecutive and unique within the record series and, if given on the instrument, the volume and page where the instrument is recorded or filed.

b. Time and date of the instrument's acceptance.

c. Name of the grantor.

d. Name of the grantee.

e. Description of the land.

f. Name of the instrument.

h. To whom the instrument is delivered, unless the document is kept on file.

i. The amount of fees received.

2. The index shall be accessible and searchable by at least all of the following means:

a. Name of the grantor.

b. Name of the grantee.

c. Document number assigned to the instrument under sub. (1c) (f) and, if given on the instrument, the volume and page where the instrument is recorded or filed.

d. By tract of land parcel if the county has a tract index.

(b) With regard to assignments, satisfactions, partial releases, and subordinations of mortgages, the index under par. (a) shall also contain the document number of the original mortgage instrument and, if given on the original mortgage instrument, the volume and page where the original mortgage instrument is recorded or filed whenever the original mortgage instrument is referenced on the assignment, satisfaction, partial release, or subordination.

(c) With regard to affidavits of correction of previously filed or recorded documents, the register of deeds shall include on the previously filed or recorded document a notation of the document number of the affidavit of correction, the date when the affidavit of correction is filed or recorded, and, if the affidavit of correction is assigned a volume and page number, the volume and page where the affidavit of correction is filed or recorded.

(d) With regard to certifications to discharge and release discriminatory restrictions under s. 710.25 (5) (a) related to previously filed or recorded documents, the register of deeds shall, if possible, include on the previously filed or recorded documents a notation of the document number of the certification, the date when the certification is filed or recorded, and, if the certification is assigned a volume and page number, the volume and page where the certification is filed or recorded.

(11) RECORD OF ATTACHMENTS, LIS PENDENS, ETC. A register of deeds shall file or record, and index in the real estate records index, every writ of attachment or certified copy of such a writ and certificate of real estate attached, every certificate of sale of real estate, and every notice of the pendency of an action affecting real estate, which may be filed or recorded in the register's office.

(12) DESTRUCTION, TRANSFER OF DOCUMENTS; RECORDING, INDEXING DOCUMENTS.

(a) The board of any county may, upon request of the register of deeds, authorize the destruction of all obsolete documents pertaining to chattels antedating by 6 years, including final books of entry.

(b) A board may, upon request of the register of deeds, authorize the destruction of all documents pertaining to town mutual insurance companies that were formerly required to be filed under ch. 202, 1971 stats., and that under s. 612.81 no longer have to be filed and all documents pertaining to stock corporations that were formerly required to be recorded under ch. 180, 1987 stats., and that under ch. 180 no longer have to be recorded. At least 60 days prior to the proposed destruction, the register of deeds shall notify in writing the state historical society which may order delivery to it of any records of historical interest. The state historical society may, upon application, waive the notice.

(c) Notwithstanding this subsection, sub. (1c), and ss. 16.61 (3) (e), 19.21 (1) and (5), and 59.52 (4), the board may authorize the transfer of the custody of all records maintained by the register of deeds under s. 342.20 (4), 1979 stats., to the department of transportation.

(d) In a county where the board has established a system of recording and indexing by means of electronic data processing, machine printed forms, or optical disc storage, the process of typing, keypunching, other

automated machines, or optical imaging may be used to replace any handwritten entry or endorsement as described in this subsection or in sub. (1c). The various documents and indexes may also be combined into a general document file with one numbering sequence and one index at any time.

(12m) TRACT INDEX SYSTEM.

(a) The board by ordinance may require the register of deeds to keep a tract index such that records containing valid descriptions of land may be searched by all of the following:

1. Quarter-sections of land or government lots within the county, the boundaries of which refer to the public land survey system or a recorded private claim, as defined in s. 236.02 (9m).

2. Recorded and filed certified survey map and lot or outlot number.

3. Recorded and filed plat, by name and lot, block, outlot or unit within the plat, according to the description of the land.

(b) No index established under par. (a) may be discontinued, unless the county establishing the index adopts, keeps and maintains a complete abstract of title to the real estate in the county as a part of the records of the office of the register of deeds of that county.

(c) If the board determines that a tract index system is unfit for use, the board may, by resolution, establish a new and corrected tract index. Any person who is authorized by the board to compile the new tract index shall have access to the old tract index and any other county records that may assist the person in compiling the new tract index. Upon completion, and approval by the board, of the new tract index system, the old tract index system shall be preserved as provided in s. 59.52 (3) (b). The resolutions of the board ordering, approving and adopting the new tract index systems, certified by the clerk, shall be recorded in each volume of the new tract index system and upon the resolution of the board adopting the new system, such a system is the only lawful tract index system in the register of deeds' office.

History: 1995 a. 201 ss. 326, 327, 335, 338 to 353, 355, 361, 367, 369, 375, 377 to 380, 382 to 384; 1995 a. 225 ss. 159, 160, 162; 1995 a. 227; 1997 a. 27 ss. 2164am to 2164e, 9456 (3m); 1997 a. 35, 79, 140, 252, 282, 303, 304; 1999 a. 96; 2001 a. 10; 2001 a. 16 ss. 1999m to 2001m, 4041b; 2003 a. 33 s. 2811; 2003 a. 48 ss. 10, 11; 2003 a. 206 ss. 1 to 7, 23, 24; 2005 a. 25 ss. 1231 to 1234, 2493; 2005 a. 41, 139, 441; 2009 a. 98, 314, 320; 2013 a. 20, 92, 358; 2015 a. 48, 196; 2017 a. 102; 2017 a. 207 s. 5; 2017 a. 334; 2023 a. 210, 235.

Cross-reference: See s. 779.97 for fees for filing federal liens and releases of liens.

Cross-reference: See s. 182.01 (3) for the requirement that certain corporate documents must bear the name of the drafter of the instrument before it may be filed by the department of financial services.

The express powers to appoint and discharge deputies under this section are separate from those of the county and are not subject to a collective bargaining agreement entered into by the county. Crawford County v. WERC, 177 Wis. 2d 66, 501 N.W.2d 836 (Ct. App. 1993).

Crawford County v. WERC is restricted to its facts. Deputized employees, apart from a chief deputy, are exempt from the terms of collective bargaining agreements only to the extent that they are managerial or supervisory employees. Eau Claire County v. AFSCME Local 2223, 190 Wis. 2d 298, 526 N.W.2d 802 (Ct. App. 1994).

Except for their elected superior's power to appoint and discharge, chief deputies are subject to the Municipal Employment Relations Act, ss. 111.70 to 111.77, and are not excluded from a collective bargaining unit as a matter of law. Oneida County v. WERC, 2000 WI App 191, 238 Wis. 2d 763, 618 N.W.2d 891, 00-0466.

A register of deeds does not have authority to correct an original recording of a deed made by a predecessor. 61 Atty. Gen. 189.

Section 59.513 [now s. 59.43 (5)] does not apply unless the instrument affects real estate in the manner described in the statute. 63 Atty. Gen. 594.

In a county maintaining a tract index system, the register of deeds must enter into the index any deed, mortgage, or other recorded instrument that affects title to or mentions an indexed tract or any part thereof. 63 Atty. Gen. 254.

Registers of deeds have no obligation to file or record "common-law liens" or "common-law writs of attachment." 69 Atty. Gen. 58.

Registers of deeds entering into contracts under sub. (2) (c) may insist on provisions protecting the identity and integrity of records obtained under the contracts and protecting the public. Authority to require provisions directly prohibiting the contracting party from selling or disseminating copies of the records is not prohibited and may reasonably be implied from the general contracting authority under sub. (2) (c). OAG 1-03.

The fee requirements of sub. (2) (b), not those of s. 19.35 (3), apply to electronic copies of records obtained pursuant sub. (4), unless the requester has entered into a contract authorized by sub. (2) (c). OAG 1-03.

Under s. 706.05 (1), only instruments that affect an interest in land are entitled to be recorded. A land patent is the instrument by which the government conveys title to portions of the public domain to private individuals. "Land patents," "updates of land patent" and other, similarly-titled documents filed by private individuals that purport to be grants of private land from private individuals to themselves or other private individuals are not true land patents and are invalid on their face and not entitled to recording under s. 706.05 (1). OAG 4-12.

CHAPTER 66

GENERAL MUNICIPALITY LAW

66.1005 Reversion of title. (1) When any highway or public ground acquired or held for highway purposes is discontinued, the land where the highway or public ground is located shall belong to the owner or owners of the adjoining lands. If the highway or public ground is located between the lands of different owners, it shall be annexed to the lots to which it originally belonged if that can be ascertained. If the lots to which the land originally belonged cannot be ascertained, the land shall be equally divided between the owners of the lands on each side of the highway or public ground.

(2) (a) Whenever any public highway or public ground acquired or held for public purposes has been vacated or discontinued, all easements and rights incidental to the easements that belong to any county, school district, town, village, city, utility, or person that relate to any underground or overground structures, improvements, or services and all rights of entrance, maintenance, construction, and repair of the structures, improvements, or services shall continue, unless one of the following applies:

1. The owner of the easements and incidental rights gives written consent to the discontinuance of the easements and rights as a part of the vacation or discontinuance proceedings and the vacation or discontinuance resolution, ordinance or order refers to the owner's written consent.

2. The owner of the easements and incidental rights fails to use the easements and rights for a period of 4 years from the time that the public highway or public ground was vacated or discontinued.

(b) The easements and incidental rights described in par. (a) may be discontinued in vacation or discontinuance proceedings in any case where benefits or damages are to be assessed as provided in par. (c), if one of the following applies:

1. The interested parties fail to reach an agreement permitting discontinuance of the easements and incidental rights.

2. The owner of the easements and incidental rights refuses to give written consent to their discontinuance.

(c) Damages for the discontinuance of the easements and rights described in par. (a) shall be assessed against the land benefited in the proceedings for assessment of damages or benefits upon the vacation or discontinuance of the public highway or public ground. Unless the parties agree on a different amount, the amount of the damages shall be the present

value of the property to be removed or abandoned, plus the cost of removal, less the salvage value of the removed or abandoned property. The owner of the easements and incidental rights, upon application to the treasurer and upon furnishing satisfactory proof, shall be entitled to any payments of or upon the assessment of damages.

(d) Any person aggrieved by the assessment of damages under this subsection may appeal the assessment in the same time and manner as is provided for appeals from assessments of damages or benefits in vacation or discontinuance proceedings in the town, village or city.

History: 2003 a. 214 ss. 15, 86 to 91.

NOTE: 2003 Wis. Act 214, which affected this section, contains extensive explanatory notes.

CHAPTER 82

TOWN HIGHWAYS

82.19 Discontinuance of highways. (1) An unrecorded highway, or any part of an unrecorded highway, that has become or is in the process of becoming a public highway by user in any town may be discontinued using the procedures under ss. 82.10 to 82.12. Any proceedings to discontinue an unrecorded highway shall not be evidence of the acceptance at any time by the town of the highway or any part of the highway.

(2) (a) Every highway shall cease to be a public highway 4 years from the date on which it was laid out, except the parts of the highway that have been opened, traveled, or worked within that time.

(b) 1. In this paragraph, "vehicular travel" means travel using any motor vehicle required to be registered under ch. 341 or exempt from registration under s. 341.05.

2. Any highway that has been entirely abandoned as a route of vehicular travel, and on which no highway funds have been expended for 5 years, shall be considered discontinued.

(c) This subsection does not apply to state or county trunk highways or to any highway, street, alley, or right-of-way that provides public access to a navigable lake or stream.

History: 2003 a. 214 ss. 83 to 85, 92, 167.

NOTE: 2003 Wis. Act 214, which affected this section, contains extensive explanatory notes.

Whether a highway has been entirely abandoned for a discontinuation to occur under sub. (2) depends on whether the highway has remained open to all who had occasion to use it. Even if a single family and their guests used the highway, that could be sufficient to keep it from being abandoned. Lange v. Tumm, 2000 WI App 160, 237 Wis. 2d 752, 615 N.W.2d 187, 99-3247.

An owner may not convert a public highway to a private road by taking control of the road and leading others to believe that they need permission to use it, even when the state or local government has discontinued maintenance of the road. A public highway is not entirely abandoned if it is used only by the owner of the land over which the highway lies. Under sub. (2), the identity of the user is irrelevant. Markos v. Schaller, 2003 WI App 174, 266 Wis. 2d 470, 668 N.W.2d 755, 02-1824.

That a roadway was overgrown and difficult or impossible for vehicles to travel without damage and that members of the public sought permission to use the road were considerations that underpinned a finding that the road was not open to all. Povolny v. Totzke, 2003 WI App 184, 266 Wis. 2d 852, 668 N.W.2d 834, 02-3011.

NOTE: The above annotations cite to s. 80.32 (1) or (2), the predecessor statutes to s. 82.19.

To establish abandonment under this section, the higher burden of proof of clear and convincing evidence, rather than the lower preponderance of the evidence standard, must be applied. Town of Schoepke v. Rustick, 2006 WI App 222, 296 Wis.2d 471, 723 N.W. 2d 770, 05-3183.

82.27 Landlocked property and property with insufficient highway access. (1) DEFINITION. In this section, "advantages" means the greater of the following:

(a) The increase in value of the landlocked property after the highway is laid out or the way or road is widened.

(b) The administrative costs under sub. (5), and the estimated cost of constructing or widening the highway, including both the cost of constructing a turnaround, if one is necessary, and the damages paid to the owner of the land over which the highway is laid out or the way or road is widened.

(2) APPLICATION. The owner of real estate located within a town may apply to the town board to have a highway laid out to the owner's land. Except as provided in sub. (7), the application shall be delivered to the town clerk of the town in which the real estate is located. The application shall contain an affidavit, executed by the applicant, that describes the affected real estate and recites facts that satisfy the board that the circumstances either in par. (a) or in par. (b) exist:

(a) The real estate is shut out from all public highways by being surrounded by real estate owned by other persons, or by real estate owned by other persons and by water, and that the owner is unable to purchase a right–of–way to a public highway from the owners of the adjoining real estate or that such a right–of–way cannot be purchased except at an exorbitant price, which price shall be stated in the affidavit.

(b) 1. The owner is the owner of a private way or road, whose width shall be stated in the affidavit, that leads from the described real estate to a public highway but the way or road is too narrow to afford the owner reasonable access from the described real estate to the public highway; and

2. The owner is unable to purchase a right-of-way from the described real estate to a public highway, or is unable to purchase land on either or both sides of the existing way or road to make the way or road of sufficient width or that the right-of-way or additional land cannot be purchased except at an exorbitant price, which price shall be stated in the affidavit.

(3) SETTING THE HEARING DATE; NOTICE. Upon receipt of an application under sub. (2), the town board shall set a time and place to conduct a hearing regarding the application. The hearing shall be held after 10 days and within 30 days of the receipt of the application by the town board. Notice of the time and place of the hearing shall be served as required by s. 82.10 and published as a class 2 notice under ch. 985.

(4) HEARING. (a) The town board shall meet at the time and place stated in the notice and decide, in its discretion, whether to grant the application. The board may grant the application by either laying out a new highway across the surrounding land or by adding land to the existing way or road described in the affidavit. If the board decides to lay out a new highway, the new highway shall be at least 66 feet wide unless the board determines this width to be impracticable. If the board decides to widen an existing way or road, the resulting highway shall not be less than 49.5 feet nor more than 66 feet in width.

(b) The town board shall determine the damages to the owner or owners of the real estate on which the highway shall be laid out or from whom land shall be taken and the advantages to the applicant. The town board may not determine damages in an amount exceeding the price stated in the affidavit of the applicant.

(c) Upon laying out a highway or widening a private way or road, the town board shall issue a highway order. If it is necessary to include a turnaround, the turnaround shall be laid out on the applicant's land. The applicant shall pay the town treasurer the amount determined as advantages within 30 days of the board's decision. Within 10 days of payment, the town board shall file the order with the town clerk and record the order with the register of deeds for the county in which the land is located.

(5) CHARGING COSTS TO THE APPLICANT. If the town board grants the application, the items listed in pars. (a) to (d) may be included in the determination of advantages. If the town board denies the application, 50 percent of all of the following may be charged to the applicant as a special charge under s. 66.0627:

(a) Attorney fees reasonably incurred by the town.

(b) The cost of any survey or the fee of any expert on valuation, or both, reasonably incurred by the town.

(c) Administrative costs such as clerical costs and publication costs.

(d) If special meetings are held only for the purpose of considering the application, per diem compensation for the supervisors.

(6) REAL ESTATE LANDLOCKED BY SALE. In a town, if the owner of land that is accessible or that is provided with an easement to a public highway subdivides and transfers any part of the land, the owner shall provide a cleared easement at least 66 feet in width that shall be continuous from the highway to the part of the subdivision sold. If the seller fails to provide the required easement, the town board may, pursuant to proceedings under this section, lay out a road at least 66 feet wide from the inaccessible land to the public highway over the remaining lands of the seller without assessment of damages or compensation to the seller.

(7) LAYING OUT A HIGHWAY TO AN ADJOINING TOWN. If it is impracticable to lay out a highway to an existing highway that is in the town where the land is situated, a landowner may apply to have a highway laid out to a highway in an adjoining town. The application shall comply with the requirements of sub. (2), except that the affidavit shall also state that it is impracticable to lay out a new highway to an existing highway in the town where the land is located and that it is practicable to lay out a highway to an existing highway in the adjoining town. The owner shall execute the application in duplicate and present one copy to the clerk of the town where the land is located and one copy to the clerk of the town where the proposed highway is to be laid out. The town boards shall proceed as provided in this section, except that all orders and notices shall be signed by both boards, and all papers required to be filed shall be made in duplicate and filed with each town clerk. The applicant shall pay the amount determined as advantages to the treasurer of the town in which the applicant's land is situated within 30 days of the decision. The order shall be recorded within 10 days of payment. All damages assessed shall be paid by the town where the applicant's land is situated.

(8) HIGHWAY TO ISLANDS IN MISSISSIPPI RIVER. (a) The owner of an island in the bottoms of the Mississippi River may submit an application under this section if the island is shut out from the bank of the river and from all highway access by islands, sloughs, and the lands of others, and the owner cannot purchase any highway access at a reasonable price.

(b) The application shall describe the affected land and shall contain an affidavit that recites the facts in par. (a).

(c) The town shall not be liable for lack of repair or for defects in a highway laid out pursuant to this subsection, nor shall the town be liable for any accident or injury on a highway laid out under this subsection.

(9) LIMIT ON APPLICATIONS. The determination to deny an application under this section shall be final for the term of 3 years. No application to lay out a highway to the same property shall be considered within 3 years from the date of the refusal.

(10) HIGHWAY TO REMAIN PUBLIC FOR AT LEAST 2 YEARS. A highway laid out under this section shall be a public road and shall remain and be maintained as a public road for at least 2 years from the date of the order.

History: 2003 a. 214 ss. 63 to 71, 170.

NOTE: 2003 Wis. Act 214, which affected this section, contains extensive explanatory notes.

A town board need not lay the road over land of the seller under former s. 80.13 (5) [now sub. (6)] but may lay the road over land of another under former s. 80.13 (3) [now sub. (4)]. Gaethke v. Town of Clay Banks, 86 Wis. 2d 495, 273 N.W.2d 764 (1979).

In the exercise of the discretion provided for under former s. 80.13 (3) [now sub. (4)], the town board may elect not to lay out a town road at all. Tagatz v. Township of Crystal Lake, 2001 WI App 80, 243 Wis. 2d 108, 626 N.W.2d 876, 00-1035.

CHAPTER 86

MISCELLANEOUS HIGHWAY PROVISIONS

86.16 Utility lines on highways; place of poles; penalty. (1) Any person, firm, or corporation, including any foreign corporation authorized to transact business in this state, may, subject to ss. 30.44 (3m), 30.45 and 196.491 (3) (d) 3m., with the written consent of the department with respect to state trunk highways, and with the written consent of local authorities with respect to highways under their jurisdiction, including connecting highways, construct and operate lines, wires, or fiber for telecommunications service, as defined in s. 182.017 (1g) (cq), telegraph, telephone, or electric lines, or pipes or pipelines, for the purpose of transmitting voice, video, data, messages, water, liquid manure, heat, light, or power along, across, under, or within the limits of the highway.

(1m) (a) If a pipe or pipeline transmitting liquid manure along, across, or within the limits of a highway under the jurisdiction of a local authority is not subterranean, all of the following apply:

1. Subject to par. (c), a person holding a permit issued by the local authority under s. 86.07 (2) for a manure hose that is the pipe or pipeline is not required to obtain written consent for the pipe or pipeline under sub. (1).

2. Subject to par. (c), a person may obtain written consent under sub. (1) for the pipe or pipeline in lieu of obtaining a permit issued by the local authority under s. 86.07 (2).

(b) Any culvert installed in the ground for the purpose of running through it a hose transmitting liquid manure is considered a pipe or pipeline transmitting liquid manure under sub. (1) and, before such installation, written consent under sub. (1) is required.

(c) A local authority may specify that only the permit described in par. (a) 1. or only the written consent described in par. (a) 2. will be accepted by the local authority as the method for authorizing a pipe or pipeline transmitting liquid manure within or across a highway right-of-way.

(2) All poles used in the construction of such lines shall be set in such manner as not to interfere with the use of such highway by the public, nor with the use of the adjoining land by the owner thereof; and all pole lines shall hereafter be constructed so as to meet the requirements of the provisions of the state electrical code promulgated by the public service commission.

(3) No tree shall be cut, trimmed or the branches thereof cut or broken in the construction or maintenance of any such line without the consent of the owner of the tree.

(4) Any person erecting any telephone, telegraph, electric light or other pole or stringing any telephone, telegraph, electric light or other wire, or constructing any pipes or pipe lines in violation of the provisions of this section shall forfeit a sum not less than $10 nor more than $50.

(5) Any person, firm, or corporation whose written application for permission to construct such lines, pipes, or pipelines within the limits of a highway has been refused, or has been on file with the department or local authority for 20 days and no action has been taken thereon, may file with the department or local authority a notice of appeal to the division of hearings and appeals. The department or local authority shall thereupon return all of the papers and action of the department or local authority to the division of hearings and appeals, and the division of hearings and appeals shall hear and try and determine the appeal on 10 days' notice to the department or local authority, and the applicant. The order entered by the division of hearings and appeals shall be final.

(6) If the department consents under sub. (1) to the construction of broadband infrastructure in unserved areas, as designated under s. 196.504 (2) (e), the department may not charge any fee for the initial issuance of any permit necessary to construct broadband infrastructure along, across, or within the limits of a highway.

History: 1977 c. 29 s. 1654 (8) (d), (e); 1979 c. 34; 1981 c. 347 s. 80 (2); 1989 a. 31; 1993 a. 16, 490; 1997 a. 204; 2007 a. 63; 2015 a. 231; 2017 a. 59; 2023 a. 77.

Cross Reference: See also s. Trans 200.05, Wis. adm. code.

Pipelines to transport water under sub. (1) include wastewater as well as freshwater pipelines. Review of a town's refusal to grant permission to a city to construct a sewer line was within the scope of DHA's authority under sub. (5). Town of Barton v. Division of Hearings & Appeals, 2002 WI App 169, 256 Wis. 2d 628, 649 N.W.2d 293, 01-1209.

CHAPTER 236

PLATTING LANDS AND RECORDING AND VACATING PLATS

236.29 Dedications. (1) EFFECT OF RECORDING ON DEDICATIONS. When any plat is certified, signed, acknowledged and recorded as prescribed in this chapter, every donation or grant to the public or any person, society or corporation marked or noted as such on said plat shall be deemed a sufficient conveyance to vest the fee simple of all parcels of land so marked or noted, and shall be considered a general warranty against such donors, their heirs and assigns to the said donees for their use for the purposes therein expressed and no other; and the land intended for the streets, alleys, ways, commons or other public uses as designated on said plat shall be held by the town, city or village in which such plat is situated in trust to and for such uses and purposes.

(2) DEDICATIONS TO PUBLIC ACCEPTED BY APPROVAL. When a final plat of a subdivision has been approved by the governing body of the municipality or town in which the subdivision is located and all other required approvals are obtained and the plat is recorded, that approval constitutes acceptance for the purpose designated on the plat of all lands shown on the plat as dedicated to the public including street dedications.

(3) MUNICIPALITY MAY LEASE TO A SUBDIVISION ASSOCIATION LAND ACCEPTED FOR PARK. The municipality or town in which the accepted subdivision is located may lease to a subdivision association any part of the subdivision intended for park purposes where such part has never been improved nor work done thereon nor funds expended therefor by the governing body, but such lease shall not exceed 10 years and shall only be for park improvement purposes.

(4) ACCEPTANCE OF STORM WATER FACILITIES DEDICATED TO PUBLIC. Notwithstanding sub. (2), unless an earlier date is agreed to by the municipality, the dedication of any lands within a plat of a subdivision located within a municipality that are intended to include a permanent man-made facility designed for reducing the quantity or quality impacts of storm water runoff from more than one lot and that are shown on the plat as "Dedicated to the Public for Storm Water Management Purposes" is not accepted until at least 80 percent of the lots in the subdivision have been sold and a professional engineer registered under ch. 443 has certified to the municipality that all of the following conditions are met with respect to the facility:

(a) The facility is functioning properly in accordance with the plans and specifications of the municipality.

(b) Any required plantings are adequate, well-established, and reasonably free of invasive species.

(c) Any necessary maintenance, including removal of construction sediment, has been properly performed.

History: 2007 a. 44.

A complaint against plat subdividers by a city set forth a cause of action with respect to costs incurred by the city in moving a tower and acquiring a right-of-way when the plat of a street dedicated as part of a subdivision did not show the existence, location, or easement of a power company's transmission line located in the area platted as a street. Kenosha v. Ghysels, 46 Wis. 2d 418, 175 N.W.2d 223 (1970).

While sub. (1) provides that "every donation or grant to the public ... marked or noted as such on [a properly recorded] plat shall be deemed a sufficient conveyance to vest the fee simple of all parcels of land so marked or noted," statutory dedication requires compliance with statutory procedure. For the state to rely on sub. (1) to convey property via a certified survey map (CSM) that marked a parcel as a dedication, the property first has to be properly dedicated in accordance with s. 236.34 (1m) (e). Under that statute, the city council or village or town board involved must have approved the dedication. As no governmental board involved in the development in this case approved any road dedication or land grant for inclusion in the CSM, the CSM lacked the force and effect required to convey the property to the state. Somers USA, LLC v. Department of Transportation, 2015 WI App 33, 361 Wis. 2d 807, 864 N.W.2d 114, 14-1092.

236.293 Restrictions for public benefit. Any restriction placed on platted land by covenant, grant of easement or in any other manner, which was required by a public body or which names a public body or public utility as grantee, promisee or beneficiary, vests in the public body or public utility the right to enforce the restriction at law or in equity against anyone who has or acquires an interest in the land subject to the restriction. The restriction may be released or waived in writing by the public body or public utility having the right of enforcement.

History: 1979 c. 248.

The hidden dangers of placing easements on plats. Ishikawa. WBB Apr. 1988.

236.34 Recording of certified survey map; use in changing boundaries; use in conveyancing. (1) DESCRIPTION AND USES.

(am) A certified survey map of not more than 4 parcels of land, or such greater maximum number specified by an ordinance enacted or resolution adopted under par. (ar) 1., consisting of lots or outlots may be recorded in the office of the register of deeds of the county in which the land is situated.

(ar) 1. Notwithstanding s. 236.45 (2) (ac) and (am), a municipality, town, or county that has established a planning agency may enact an ordinance or adopt a resolution that specifies a maximum number of parcels that is greater than 4 into which land that is situated in the municipality, town, or county and zoned for commercial, multifamily

dwelling, as defined in s. 101.01 (8m), industrial, or mixed-use development may be divided by certified survey map.

2. Before the enactment of an ordinance or the adoption of a resolution under subd. 1., the governing body of the municipality, town, or county shall receive the recommendation of its planning agency and shall hold a public hearing on the ordinance or resolution. Notice of the hearing shall be given by publication of a class 2 notice, under ch. 985. Any ordinance enacted or resolution adopted shall be published in a form suitable for public distribution.

3. Notwithstanding subd. 1., an ordinance enacted or resolution adopted under subd. 1. by a municipality may specify the number of parcels into which land within the extraterritorial plat approval jurisdiction of the municipality, as well as land within the corporate limits of the municipality, may be divided by certified survey map if the municipality has the right to approve or object to plats within that area under s. 236.10 (1) (b) 2. and (2).

4. If more than one governing body has authority to enact an ordinance or adopt a resolution under subd. 1. with respect to the same land and those governing bodies enact ordinances or adopt resolutions with conflicting provisions, any certified survey map affecting that land must comply with the most restrictive provisions.

(bm) A certified survey map may be used to change the boundaries of lots and outlots within a recorded plat, recorded assessor's plat under s. 70.27, or recorded certified survey map if the reconfiguration does not result in a subdivision or violate a local ordinance or resolution.

(cm) A certified survey map may not alter areas previously dedicated to the public or a restriction placed on the platted land by covenant, by grant of an easement, or by any other manner.

(dm) A certified survey map that crosses the exterior boundary of a recorded plat or assessor’s plat shall apply to the reconfiguration of not more than 4 parcels, or such greater maximum number specified by an ordinance enacted or resolution adopted under par. (ar) 1., by a single owner, or if no additional parcels are created. Subject to sub. (2m), such a certified survey map must be approved in the same manner as a final plat of a subdivision must be approved under s. 236.10, must be monumented in accordance with s. 236.15 (1), and shall contain owners’ and mortgagees’ certificates that are in substantially the same form as required under s. 236.21 (2) (a).

(1m) PREPARATION. A certified survey must meet the following requirements:

(a) The survey shall be performed and the map prepared by a professional land surveyor. The error in the latitude and departure closure of the survey may not exceed the ratio of one in 3,000.

(b) All corners shall be monumented in accordance with s. 236.15 (1) (ac), (c), (d), and (g).

(c) The map shall be prepared in accordance with ss. 236.16 (4) and 236.20 (2) (a), (b), (c), (e), (f), (g), (h), (i), (j), (k), and (L) and (3) (b), (d), and (e) at a graphic scale of not more than 500 feet to an inch, which shall be shown on each sheet showing layout features. The map shall be prepared with a binding margin 1.5 inches wide and a 0.5 inch margin on all other sides on durable white media that is 8 1/2 inches wide by 14 inches long, or on other media that is acceptable to the register of deeds, with a permanent nonfading black image. When more than one sheet is used for any map, each sheet shall be numbered consecutively and shall contain a notation giving the total number of sheets in the map and showing the relationship of that sheet to the other sheets. "CERTIFIED SURVEY MAP" shall be printed on the map in prominent letters with the location of the land by government lot, recorded private claim, quarter-quarter section, section, township, range and county noted. Seals or signatures reproduced on images complying with this paragraph shall be given the force and effect of original signatures and seals.

(d) The map shall include a certificate of the professional land surveyor who surveyed, divided, and mapped the land which has the same force and effect as an affidavit and which gives all of the following information:

1. By whose direction the professional land surveyor made the survey, division, and map of the land described on the certified survey map.

2. A clear and concise description of the land surveyed, divided, and mapped by government lot, recorded private claim, quarter-quarter section, section, township, range and county; and by metes and bounds commencing with a monument at a section or quarter section corner of the quarter section that is not the center of a section, or commencing with a monument at the end of a boundary line of a recorded private claim or federal reservation in which the land is located. If, however, the land is shown in a recorded subdivision plat, recorded addition to a recorded subdivision plat, or recorded certified survey map that has previously been tied to the monumented line of a quarter section, government lot, recorded private claim, or federal reservation in which the land is located, the land shall be described by the subdivision name or certified survey map number and the description of the lot and block thereof.

3. A statement that the map is a correct representation of all of the exterior boundaries of the land surveyed and the division of that land.

4. A statement that the professional land surveyor has fully complied with the provisions of this section in surveying, dividing, and mapping the land.

(e) A certified survey map may be used for dedication of streets and other public areas, and for granting easements to the public or any person, society, or corporation marked or noted on the map, when owners' certificates and mortgagees' certificates which are in substantially the same form as required by s. 236.21 (2) (a) have been executed and the city council or village or town board involved have approved such dedication or grant. Approval and recording of such certified surveys shall have the force and effect provided by s. 236.29.

(em) 1. Except as provided in subd. 2., if the certified survey map divides land into more than 4 parcels in accordance with an ordinance enacted or resolution adopted under sub. (1) (ar) 1., notwithstanding pars. (b) and (c), the survey and the map shall comply with ss. 236.15, 236.20, and 236.21 (1) and (2) and the map shall be submitted to the department of administration for a review of the compliance with those sections.

2. Subdivision 1. does not apply if any of the following applies:

a. The certified survey map is only changing the boundaries of lots and outlots in a recorded plat, recorded assessor's plat under s. 70.27, or recorded certified survey map, regardless of whether the certified survey map crosses the exterior boundary of the recorded plat, assessor's plat, or certified survey map.

b. The certified survey map is dividing land that is wholly situated in a 1st class city.

c. The certified survey map is dividing unincorporated land in a county with a population of 750,000 or more.

(er) 1. Except as provided in subd. 2., the certified survey map and survey shall comply with the rules of the department of transportation described in s. 236.13 (1) (e) and the map shall be submitted to the department of transportation for a review of the compliance with those rules if all of the following apply:

a. The certified survey map divides land into more than 4 parcels in accordance with an ordinance enacted or resolution adopted under sub. (1) (ar) 1.

b. The certified survey map is changing the external boundary of a recorded plat, recorded assessor's plat, or recorded certified survey map.

c. The certified survey map or recorded plat, recorded assessor's plat, or recorded certified survey map shows lots that abut or adjoin a state trunk highway or connecting highway.

2. Subdivision 1. does not apply if any of the following applies:

a. The certified survey map is dividing land that is wholly situated in a 1st class city.

b. The certified survey map is dividing unincorporated land in a county with a population of 750,000 or more.

(f) Within 90 days of submitting a certified survey map for approval, the approving authority, or its agent authorized to approve certified survey maps, shall take action to approve, approve conditionally, or reject the certified survey map and shall state in writing any conditions of approval or reasons for rejection, unless the time is extended by agreement with the subdivider. Failure of the approving authority or its agent to act within the 90 days, or any extension of that period, constitutes an approval of the certified survey map and, upon demand, a certificate to that effect shall be made on the face of the map by the clerk of the authority that has failed to act.

(2) RECORDING. (a) Certified survey maps prepared in accordance with subs. (1) and (1m) shall be numbered consecutively by the register of deeds and shall be recorded in a bound volume kept in the register of deeds' office, known as the "Certified Survey Maps of .... County", or stored electronically in the register of deeds office.

(b) If the certified survey map is approved by a local unit of government, the register of deeds may not accept the certified survey map for record unless all of the following apply:

1. The certified survey map is offered for record within 12 months after the date of the last approval of the map and within 36 months after the date of the first approval of the map.

2. The certified survey map shows on its face all of the certificates and affidavits required under subs. (1) and (1m).

(2m) COUNTY APPROVAL AUTHORITY. (a) Except as provided in par. (b), a county planning agency under s. 236.10 (1) (b) or (c) 2. has no authority to approve or object to a certified survey map that divides land that is located in a town that has, before the certified survey map is submitted for approval, enacted an ordinance under s. 60.23 (34) or (35) withdrawing the town from county zoning and the county development plan.

(b) A county planning agency under s. 236.10 (1) (b) 3. or (c) 2. may object to any of the following portions of a certified survey map that divides land located in a town described in par. (a):

1. Any land shown on and subject to the certified survey map that is shoreland, as defined in s. 59.692 (1) (b), in the county.

2. Any land shown on and subject to the certified survey map that is in a 100-year floodplain in the county.

(3) USE IN CONVEYANCING. When a certified survey map has been recorded in accordance with this section, the parcels of land in the map

shall be, for all purposes, including assessment, taxation, devise, descent, and conveyance, as defined in s. 706.01 (4), described by reference to all of the following:

(a) The number of the map.

(b) The lot or outlot number of the parcel.

(c) If the map is assigned a document number, the document number assigned to the map.

(d) If the map is assigned a volume and page number, the volume and page where the map is recorded.

(e) The name of the county.

(4) VACATION. A certified survey map may be vacated by the circuit court of the county in which the parcels of land are located in the same manner and with like effect as provided in ss. 236.40 to 236.44, except that application for vacation of the certified survey map may be made by any of the following:

(a) The owner of any lot or outlot in the land that is the subject of the certified survey map.

(b) The county board if the county has acquired an interest by tax deed in any lot or outlot in the land that is the subject of the certified survey map.

History: 1979 c. 248 ss. 22, 25 (3); 1983 a. 189 s. 329 (26); 1983 a. 473; 1987 a. 390; 1997 a. 99; 1999 a. 96; 2001 a. 16; 2005 a. 9, 41; 2013 a. 272, 358; 2015 a. 48, 178; 2017 a. 102; 2017 a. 207 s. 5; 2017 a. 243; 2021 a. 238 s. 45; 2023 a. 264.

While s. 236.29 (1) provides that "every donation or grant to the public ... marked or noted as such on [a properly recorded] plat shall be deemed a sufficient conveyance to vest the fee simple of all parcels of land so marked or noted," statutory dedication requires compliance with statutory procedure. For the state to rely on s. 236.29 (1) to convey property via a certified survey map (CSM) that marked a parcel as a dedication, the property first has to be properly dedicated in accordance with sub. (1m) (e). Under that statute, the city council or village or town board involved must have approved the dedication. As no governmental board involved in the development in this case approved any road dedication or land grant for inclusion in the CSM, the CSM lacked the force and effect required to convey the property to the state. Somers USA, LLC v. Department of Transportation, 2015 WI App 33, 361 Wis. 2d 807, 864 N.W.2d 114, 14-1092.

Sub. (2) requires that certified survey maps be numbered consecutively without dependent reference to ownership, developer or surveyor. 61 Atty. Gen. 34.

Certified survey maps under this section cannot substitute for subdivision surveys under s. 236.02 (8) [now sub. (12)]. Penalties under s. 236.31 apply to improper use of certified surveys. 67 Atty. Gen. 294.

CHAPTER 706

CONVEYANCES OF REAL PROPERTY; RECORDING; TITLES

706.01 Definitions. In this chapter:

(4) "Conveyance" means a written instrument, evidencing a transaction governed by this chapter, that satisfies the requirements of s. 706.02, subject to s. 706.25.

(5) "Conveyance of mineral interests" means any transaction under s. 706.001 (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 s. 706.001 (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, including, without limitation, lessors, vendors, mortgagors, optionors, releasors, assignors and trust settlors of interest in lands, and "grantee" means the person to whom the interest in land 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" 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 that 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.

(7r) "Legal description" means a description of a specific parcel of real estate that is described in one of the following ways, whichever is appropriate:

(a) By one of the ways under s. 66.0217 (1) (c).

(b) By condominium name and unit number in a platted condominium development.

(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 permit under s. 293.45 or a mining permit under s. 293.49 or 295.58.

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

History: 1971 c. 41; 1977 c. 253; 1983 a. 189, 455; 1993 a. 486; 1995 a. 227; 1999 a. 85; 2005 a. 41, 421; 2013 a. 1; 2015 a. 196; 2021 a. 168.

A necessary implication under s. 706.10 (3) is one that is so clear as to be express; it is a required implication. The words "heirs and assigns," or any similar language, are unnecessary under s. 706.10 (3) to indicate a transferable interest. As a matter of law, "Grantee" has the exact same meaning as "Grantee and his heirs and assigns" unless another meaning is expressly stated or implied. Therefore, "heirs and assigns" need not be construed as having any legal effect and the use of the term in a grant of water flowage rights and not in a grant of sand removal rights in the same deed did not create a necessary implication that the sand rights were non-transferable. Borek Cranberry Marsh v. Jackson County, 2010 WI 95, 328 Wis. 2d 613, 785 N.W.2d 615, 08-1144.

706.02 Formal requisites. (1) Transactions under s. 706.001 (1) shall not be valid unless evidenced by a conveyance that satisfies all of the following:

(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; 1999 a. 85.

There can be no waiver of the necessity of a spouse's joining in a deed of a homestead and no finding of agency will sustain the deed. Wangen v. Leum, 46 Wis. 2d 60, 174 N.W.2d 266 (1970).

In pleading a contract that 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 Wis. 2d 633, 184 N.W.2d 865 (1971).

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 installments. Kubnick v. Bohne, 56 Wis. 2d 527, 202 N.W.2d 400 (1972).

The test of undue influence to set aside a will is also applicable in order to void an inter vivos transfer due to undue influence. Ward v. Ward, 62 Wis. 2d 543, 215 N.W.2d 3 (1976).

A general rule used in construing conveyance instruments as to whether they comply with the statute of frauds is to determine if there is ambiguity or uncertainty as to some of the essential elements of the documents. If so, extrinsic evidence may be resorted to in order to determine what was the real agreement or intention of the parties. However, the document itself must provide some foundation, link or key to the extrinsic evidence. Edlebeck v. Barnes, 63 Wis. 2d 240, 216 N.W.2d 551 (1974).

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 Wis. 2d 435, 241 N.W.2d 409 (1976).

When a contract for the sale of land with an indefinite description is taken out of the statute of frauds by part performance, extrinsic evidence admissible but for the statute of frauds may be introduced to provide the description. Clay v. Bradley, 74 Wis. 2d 153, 246 N.W.2d 142 (1976).

The question under sub. (1) (b) of 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 Wis. 2d 184, 262 N.W.2d 514 (1978).

The homestead defense under sub. (1) (f) is not defeated by s. 706.04, but a tort claim may exist against a signing spouse who misrepresents the non-signing spouse's acquiescence. Glinski v. Sheldon, 88 Wis. 2d 509, 276 N.W.2d 815 (1979).

The defense of the statute of frauds is waived if not raised in the trial court. Hine v. Vilter, 88 Wis. 2d 645, 277 N.W.2d 772 (1979).

A mortgage fraudulently executed by the use of a forged signature of one grantor was wholly void. State Bank of Drummond v. Christophersen, 93 Wis. 2d 148, 286 N.W.2d 547 (1980).

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

The homestead signature requirement of sub. (1) (f) must be waived affirmatively by actual signing of the mortgage. A failure to plead the statute of frauds as an affirmative defense did not constitute a waiver. Weber v. Weber, 176 Wis. 2d 1085, 501 N.W.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 dragnet clause. Schmidt v. Waukesha State Bank, 204 Wis. 2d 426, 555 N.W.2d 655 (Ct. App. 1996), 95-1850.

An in-court oral stipulation could create a mortgage interest in property, but a homestead conveyance must bear the conveyor's signatures. Because the stipulation lacked signatures, it was not a mortgage that could defeat the homestead exemption under s. 815.20. Equitable Bank, S.S.B. v. Chabron, 2000 WI App 210, 238 Wis. 2d 708, 618 N.W.2d 262, 99-2639.

If the language within the four corners of a deed is unambiguous, the court need look no further for the parties' intent. Eckendorf v. Austin, 2000 WI App 219, 239 Wis. 2d 69, 619 N.W.2d 129, 00-0713.

Spouses may affirmatively waive the homestead protection in sub. (1) (f) in a premarital agreement. Jones v. Estate of Jones, 2002 WI 61, 253 Wis. 2d 158, 646 N.W.2d 280, 01-1025.

A conveyance that "identifies the land" as required by sub. (1) means the conveyance must identify the property with "reasonable certainty." "Reasonable certainty" means that by the aid of the facts and circumstances surrounding the parties at the time the court can with reasonable certainty determine the land which is to be conveyed. It does not, however, necessarily require a legal description. Anderson v. Quinn, 2007 WI App 260, 306 Wis. 2d 686, 743 N.W.2d 492, 06-2462.

Parol evidence in the context of the statute of frauds does not operate to supply fatal omissions of a writing but rather to render the writing intelligible. A clear distinction must be drawn between the proper admission of extrinsic evidence for the purpose of applying the description to identified property versus the improper supplying of a description or adding to a description that on its face is insufficient. As the description "remaining acreage" was, on its face, insufficient to identify the specific property, parol evidence would not be admissible under the statute of frauds. 303, LLC v. Born, 2012 WI App 115, 344 Wis. 2d 364, 823 N.W.2d 269, 11-2368.

The mortgage in this case was equitably assigned to the holder of the original note by operation of law upon transfer of the note. Therefore, equitable assignment of the mortgage was not barred by the statute of frauds under this section. Dow Family, LLC v. PHH Mortgage Corporation, 2014 WI 56, 354 Wis. 2d 796, 848 N.W.2d 728, 13-0221.

Mere ambiguity does not render a contract unenforceable vis-à-vis the statute of frauds. Rather, when a conveyance includes a description of property that can be applied in multiple ways, the statute of frauds requires that parol evidence of intent be connected in some way to the language of the agreement. Prezioso v. Aerts, 2014 WI App 126, 358 Wis. 2d 714, 858 N.W.2d 386, 13-2762.

When the only signer of two mortgages was "a married person," at the time he executed the mortgages, and he had an interest in the homestead that was alienated by those conveyances, under the plain language of sub. (1) (f) the mortgage transactions were invalid from the start because they were not "signed, or joined in by separate conveyance, by or on behalf of each spouse." As such, whether the non-signing spouse had waived her interest in the homestead property by deeding the property to the signing spouse did not need to be determined. U.S. Bank National Association v. Stehno, 2017 WI App 57, 378 Wis. 2d 179, 902 N.W.2d 270, 16-0193.

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

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 ch. 140;

(c) Identify, to the extent that the nature of the instrument permits, and in form and terms that permit ready entry upon the various books and indexes 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 document number of the record and, if the record is assigned a volume and page number, the volume and page where the record is recorded.

(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 document submitted for recording or filing that is a subordination agreement shall contain the full legal description of the property to which the document relates if the document 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. The document shall also contain the document number of any original mortgage or land contract that the document affects and, if given on the original mortgage or land contract, the volume and page where the original mortgage or land contract is recorded or filed.

(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, sewer, 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 organized under ch. 185, by a telephone cooperative organized under ch. 185 or 193, by a pipeline company under s. 76.02 (5), by a public utility under s. 196.01 (5), by a railroad under s. 195.02 (1), or by a water carrier under s. 195.02 (5).

3. Descriptions of property specified under s. 70.17 (3).

(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 ch. 140 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.

(12) Every conveyance of any interest in real property offered for recordation shall be accompanied by the form under s. 77.22 (2).

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; 1999 a. 96; 2005 a. 179, 441; 2013 a. 66; 2017 a. 59, 68, 102; 2019 a. 125; 2023 a. 12.

Under sub. (1), only instruments that affect an interest in land are entitled to be recorded. A land patent is the instrument by which the government conveys title to portions of the public domain to private individuals. "Land patents," "updates of land patent" and other, similarly-titled documents filed by private individuals that purport to be grants of private land from private individuals to themselves or other private individuals are not true land patents and are invalid on their face and not entitled to recording. OAG 4-12.

706.08 Nonrecording, effect. (1) (a) Except for patents issued by the United States or this state, or by the proper officers of either, every conveyance that 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 of the same real estate whose conveyance is recorded first.

(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 indexes by names of parties, are properly indexed in such alphabetical indexes, 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 (2) (qm).

(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; 1999 a. 85; 2009 a. 320.

An unrecorded conveyance, if delivered, is valid against judgment creditors since they are not bona fide creditors for value. West Federal Savings & Loan v. Interstate Investment, 57 Wis. 2d 690, 205 N.W.2d 361 (1973).

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

An original mortgagee's knowledge of a prior mortgage not properly of record will not be imputed to an assignee of the mortgage with no knowledge of the prior mortgage and does not render the assignee not a purchaser in good faith under sub. (1) (a) who cannot claim priority. The Bank of New Glarus v. Swartwood, 2006 WI App 224, 297 Wis. 2d 458, 725 N.W.2d 944, 05-0647.

"Good faith" for purposes of sub. (1) (a) exists only when there is no notice under s. 706.09. Anderson v. Quinn, 2007 WI App 260, 306 Wis. 2d 686, 743 N.W.2d 492, 06-2462.

CHAPTER 779

LIENS

779.70 Maintenance liens. (1) Any corporation organized under the laws of this state as a nonprofit, membership corporation for the purpose of maintaining, improving, policing or preserving properties in which its members shall have common rights of usage and enjoyment, including, without limitation because of specific enumeration, private (not public) parks, plazas, roads, paths, highways, piers, docks, playgrounds, tennis courts, beaches, water pumping plant and connecting pipes or sewer plant and connecting pipes, shall have the power to prepare and annually submit to its membership a budget of the expenditures which it proposes to make for the ensuing year. Such budget shall include the expenses of maintaining the necessary organization of the corporation including salaries to officers, fees paid for auditing the books of the corporation and for necessary legal services and counsel fees to the governing board thereof.

(2) (a) Upon the adoption and approval of the annual budget by a majority of the members entitled to vote as established by the articles of incorporation and bylaws of the corporation and by rules validly adopted by resolution of the governing board of the corporation, at a regular meeting or adjournment thereof, or upon the approval of a special assessment under par. (e), the governing board of the corporation may levy an assessment not in excess of 8 mills on each dollar of assessed valuation, to be known as a maintenance assessment, against all of the lots, the ownership of which entitles the owner thereof to the use and enjoyment of the properties controlled by the corporation, but the limitation of 8 mills on each dollar of assessed valuation shall not apply in any case in which the property owners or their predecessors in title have, by written contract, or by the terms of their deeds of conveyance, assumed and agreed to pay the costs of maintaining those properties in which the owners have common rights of usage and enjoyment.

(b) The assessment levied under this section shall be equal in amount against each parcel of contiguous lots under common ownership and with one dwelling house in a parcel, with the assessment prorated among the lots in the parcel, or equal in rate against the assessed value of each lot or equal in amount against each lot, at the option of the governing board as it directs each year, except as provided in pars. (c) and (d), and shall be levied at the same time once in each year upon all lots. Assessed value shall include the value of the land comprising the lot and the improvements thereon.

(c) The governing board shall apportion the cost of operating water or sewer plants and facilities thereof and separate such costs from the other

expenses of the budget and shall include the expenses of water and sewer plant maintenance only in the levy against those lots which may be improved with a dwelling house on the date when the levy is ordered, and no portion of such cost shall be assessed against the vacant lots or the owners thereof. In computing the cost of operating water or sewer line facilities thereof, reasonable reserves may be set up for depreciation of facilities.

(d) If property owners or their predecessors in title have, by written contract, or by the terms of their deeds of conveyance, agreed to pay unequal amounts, dues or assessments to maintain those properties in which the owners have common rights of usage and enjoyment and if those amounts, dues or assessments which are not based on assessed valuations do not vary more than $25 between lots, then the governing board may apportion the costs of maintaining those properties in proportion to the amounts, dues or assessments specified in the agreement.

(e) The governing board of a corporation may call a special meeting upon at least 5 days' written notice for the purpose of making a special assessment. The nature of the proposed special assessment shall be included in the notice. A majority of members entitled to vote shall constitute a quorum for a special meeting, and a majority of members entitled to vote who are present at the special meeting shall determine a question.

(3) The governing board of a corporation described in sub. (1) shall declare the assessments levied under sub. (2) due and payable at any time after 30 days from the date of the levy. The corporation's secretary or other officer shall notify the owner of every lot so assessed of the action taken by the board, the amount of the assessment of each lot owned by such owner and the date on which the assessment becomes due and payable. The secretary shall mail the notice by U.S. mail, postage prepaid, to the owner at the owner's last-known post-office address.

(4) In the event that an assessment levied under sub. (2) against any lot remains unpaid for a period of 60 days from the date of the levy, the governing board of the levying corporation may, in its discretion, file a claim for a maintenance lien against the lot. All of the following apply to a claim for lien under this subsection:

(a) The claim may be filed at any time within 6 months from the date of the levy.

(b) The claim shall be filed in the office of the clerk of the circuit court of the county in which the lands affected by the levy lie.

(c) The claim shall contain a reference to the resolution authorizing the levy and the date of the resolution, the name of the claimant or assignee, the name of the person against whom the assessment is levied, a description of the property affected by the levy and a statement of the amount claimed.

(d) The claim shall be signed by the claimant or the claimant's attorney, need not be verified, and may be amended, in case an action is brought, by court order, as pleadings may be.

(5) The clerk of circuit court shall enter each claim for a maintenance lien in the judgment and lien docket immediately after the claim is filed in the same manner that other liens are entered. The date of levy of assessment will appear on the judgment and lien docket instead of the last date of performance of labor or furnishing materials.

(6) When the corporation, described in sub. (1) has so filed its claim for lien upon a lot it may foreclose the same by action in the circuit court having jurisdiction thereof, and ss. 779.09, 779.10, 779.11, 779.12 and 779.13 shall apply to proceedings undertaken for the enforcement and collection of maintenance liens as described in this subsection.

History: 1977 c. 316, 449; 1979 c. 32 ss. 57, 92 (9); 1979 c. 176; Stats. 1979 s. 779.70; 1989 a. 31; 1995 a. 224; 1997 a. 254.

CHAPTER 893

LIMITATIONS OF COMMENCEMENT OF ACTIONS AND PROCEEDINGS; PROCEDURE FOR CLAIMS AGAINST GOVERNMENTAL UNITS

893.25 Adverse possession, not founded on written instrument. (1) An action for the recovery or the possession of real estate and a defense or counterclaim based on title to real estate are barred by uninterrupted adverse possession of 20 years, except as provided by s. 893.14 and 893.29. A person who, in connection with his or her predecessors in interest, is in uninterrupted adverse possession of real estate for 20 years, except as provided by s. 893.29, may commence an action to establish title under ch. 841.

(2) Real estate is possessed adversely under this section:

(a) Only if the person possessing it, in connection with his or her predecessors in interest, is in actual continued occupation under claim of title, exclusive of any other right; and

(b) Only to the extent that it is actually occupied and:

1. Protected by a substantial enclosure; or

2. Usually cultivated or improved.

History: 1979 c. 323.

Judicial Council Committee's Note, 1979: This provision collects in one section all material relating to 20-year adverse possession, without change in substance. Previous ss. 893.08 and 893.09, together with part of previous s. 893.10, are integrated here. The words "and a defense or counterclaim based on title to real estate" are added in subsection (1) to assure that deletion of present section 893.03 results in no loss of substance. This section

covers the substance of previous s. 893.02, also deleted. Reference to ch. 843 describes the action which an adverse possessor may bring to establish title. The words "in connection with his or her predecessors in interest" are intended to express, but not change, the well-established common law doctrine of "tacking" together periods of possession by adverse possessors in privity with each other. The word "interest" has been substituted for "title" used in previous s. 893.10 (2) because it more accurately expresses the nature of an adverse possessor's rights until the 20-year period has run, and better reflects the substance of the privity required for tacking between successive adverse possessors. There is no requirement of good faith entry under this section. Entry, for example, under a deed known by the adverse possessor to be fraudulent would start this 20-year period running, but not the 10-year period provided by s. 893.26. [Bill 326-A]

A grantor can assert adverse possession against a grantee. Lindl v. Ozanne, 85 Wis. 2d 424, 270 N.W.2d 249 (Ct. App. 1978). See also Kelly v. Morfeld, 222 Wis. 2d 413, 588 N.W.2d 79 (Ct. App. 1998), 97-3443.

Where a survey established that disputed lands were not within the calls of the possessor's deed, the possessor's claim to property was not under color of title by a written instrument. Beasley v. Konczal, 87 Wis. 2d 233, 275 N.W.2d 634 (1979).

Acts that are consistent with sporadic trespass are insufficient to apprise the owner of an adverse claim. Pierz v. Gorski, 88 Wis. 2d 131, 276 N.W.2d 352 (Ct. App. 1979).

When evidence is presented as to the extent of occupancy of only a portion of land, only that portion may be awarded in adverse possession proceedings. Droege v. Daymaker Cranberries, Inc. 88 Wis. 2d 140, 276 N.W.2d 356 (Ct. App. 1979).

A judgment under s. 75.521 to foreclose a tax lien extinguishes all right, title, and interest in the foreclosed property, including claims based on adverse possession. Published notice was sufficient. Leciejewski v. Sedlak, 116 Wis. 2d 629, 342 N.W.2d 734 (1984).

A railroad right-of-way is subject to adverse possession, the same as other lands. Maiers v. Wang, 192 Wis. 2d 115, 531 N.W.2d 54 (1995).

Land may be acquired by adverse possession, without adverse intent, when the true owner acquiesces in another's possession for 20 years. If adjoining owners take from a common grantor by lot number, but the grantees purchased with reference to a boundary actually marked on the ground, the marked boundary, regardless of time, controls. Arnold v. Robbins, 209 Wis. 2d 428, 563 N.W.2d 178 (1997), 96-0570.

The 20-year period under this section need not be the 20 years immediately preceding the filing of the court action. Harwick v. Black, 217 Wis. 2d 691, 580 N.W.2d 354 (Ct. App. 1998), 97-1108.

The use of a surveyor is not required to establish the boundaries of the contested property as long as there is evidence that provides a reasonably accurate basis for the circuit court to know what property is in dispute. Camacho v. Trimble Irrevocable Trust, 2008 WI App 112, 313 Wis. 2d 272, 756 N.W.2d 596, 07-1472.

If the claimant's use gives the titleholder reasonable notice that the claimant is asserting ownership and the titleholder does nothing, that failure to respond may result in losing title. However, in the absence of such use by the claimant, the titleholder is not obligated to do anything in order to retain title. Peter H. and Barbara J. Steuck Living Trust v. Easley, 2010 WI App 74, 325 Wis. 2d 455, 784 N.W.2d 631, 09-0757.

The regular use of a disputed area for hunting, placement of deer stands, and the making of a dirt road to a lake did not constitute open, notorious, visible, exclusive, and hostile use. The sound of gunshots does not gives a reasonably diligent titleholder notice of adverse possession. Gunshots would have been consistent with trespassers, as would portable deer stands, some kept in place all year. The dirt road and the trail continuing on to the lake were consistent with an easement to the lake rather than adverse possession of the entire disputed parcel. Peter H. and Barbara J. Steuck Living Trust v. Easley, 2010 WI App 74, 325 Wis. 2d 455, 784 N.W.2d 631, 09-0757.

In the absence of an express provision to the contrary, one who adversely possesses under an earlier version of the adverse possession statute may continue possession under the terms of that statute even after its repeal and re-creation. DNR v. Building and All Related or Attached Structures, 2011 WI App 119, 336 Wis. 2d 642, 803 N.W.2d 86, 10-2076.

The "claim of title" requirement in this section is the statutory equivalent of the common law "hostility" requirement. The plain meaning of "claim of title" is that a possessor must subjectively intend to claim ownership of the disputed property. Although the "claim of title" requirement is presumed when all other elements of adverse possession are established, this presumption may be rebutted with evidence that a party never intended to assert ownership over the property. A party who expressly disclaims ownership of property and seeks permission for its use is not "claiming title" to the property. Wilcox v. Estate of Hines, 2014 WI 60, 355 Wis. 2d 1, 849 N.W.2d 280, 12-1869.

The true owner's casual reentry upon property does not defeat the continuity or exclusivity of an adverse claimant's possession. The true owner's reentry should be a substantial and material interruption and a notorious reentry for the purpose of dispossessing the adverse occupant. The claimant's possession need not be absolutely exclusive of all individuals, and need only be a type of possession that would characterize an owner's use of the property. Kruckenberg v. Krukar, 2017 WI App 70, 378 Wis. 2d 314, 903 N.W.2d 164, 17-0124.

The "substantial enclosure" requirement is flexible and subject to no precise rule in all cases as so much depends upon the nature and situation of the property. All that is required is some indication of the boundaries of the adverse possession to give notice and need only be reasonably sufficient to attract the attention of the true owner and put him or her on inquiry as to the nature and extent of the invasion of his or her rights. A fence is universally recognized as a way to indicate a boundary line. Kruckenberg v. Krukar, 2017 WI App 70, 378 Wis. 2d 314, 903 N.W.2d 164, 17-0124.

Hey! That's my land! Understanding Adverse Possession. Shrestha. Wis. Law. Mar. 2010.

Wait! Is That My Land? More On Adverse Possession. Shrestha. Wis. Law July/Aug. 2015.

893.26 Adverse possession, founded on recorded written instrument. **(1)** An action for the recovery or the possession of real estate and a defense or counterclaim based upon title to real estate are barred by uninterrupted adverse possession of 10 years, except as provided by s. 893.14 and 893.29. A person who in connection with his or her predecessors in interest is in uninterrupted adverse possession of real estate for 10 years, except as provided by s. 893.29, may commence an action to establish title under ch. 841.

(2) Real estate is held adversely under this section or s. 893.27 only if:

(a) The person possessing the real estate or his or her predecessor in interest, originally entered into possession of the real estate under a good faith claim of title, exclusive of any other right, founded upon a written instrument as a conveyance of the real estate or upon a judgment of a competent court;

(b) The written instrument or judgment under which entry was made is recorded within 30 days of entry with the register of deeds of the county where the real estate lies; and

(c) The person possessing the real estate, in connection with his or her predecessors in interest, is in actual continued occupation of all or a material portion of the real estate described in the written instrument or judgment after the original entry as provided by par. (a), under claim of title, exclusive of any other right.

(3) If sub. (2) is satisfied all real estate included in the written instrument or judgment upon which the entry is based is adversely possessed and occupied under this section, except if the real estate consists of a tract divided into lots the possession of one lot does not constitute the possession of any other lot of the same tract.

(4) Facts which constitute possession and occupation of real estate under this section and s. 893.27 include, but are not limited to, the following:

(a) Where it has been usually cultivated or improved;

(b) Where it has been protected by a substantial enclosure;

(c) Where, although not enclosed, it has been used for the supply of fuel or of fencing timber for the purpose of husbandry or for the ordinary use of the occupant; or

(d) Where a known farm or single lot has been partly improved the portion of the farm or lot that is left not cleared or not enclosed, according to the usual course and custom of the adjoining country, is considered to have been occupied for the same length of time as the part improved or cultivated.

(5) For the purpose of this section and s. 893.27 it is presumed, unless rebutted, that entry and claim of title are made in good faith.

History: 1979 c. 323; 1981 c. 314; 1997 a. 254.

Judicial Council Committee's Note, 1979: This section collects in one place all material relating to 10-year adverse possession, integrating previous ss. 893.06 and 893.07, together with part of previous s. 893.10. Several language changes are the same as in s. 893.25, and the comments in the note following that section apply here. Three changes may work some change in substance, and should be particularly noted:

Sub. (2) (a) requires original entry on the adversely possessed premises to be "in good faith," language not included in the previous s. 893.06. The addition is designed to make clear that one who enters under a deed, for example, knowing it to be forged or given by one not the owner, should not have the benefit of the 10-year statute. Some Wisconsin case law (contrary to the nationwide weight of authority) suggests otherwise, and the change is intended to reverse these cases. See Polanski v. Town of Eagle Point, 30 Wis. 2d 507, 141 N.W.2d 281 (1966); Peters v. Kell, 12 Wis. 2d 32, 106 N.W.2d 407 (1960); McCann v. Welch, 106 Wis. 142, 81 N.W. 996 (1900). Note, however, that good faith is required only at the time of entry, and need not continue for the full 10 years of adverse possession.

Sub. (2) (b) adds a requirement not contained in previous s. 893.10 that the written instrument or judgment under which original entry is made must be recorded within 30 days after the entry.

Sub. (2) (c) adds the requirement that the adverse possession be of all or "a material portion" of the premises described in the written instrument or judgment, replacing "some part" found in previous s. 893.06. This probably represents no change in present law, but is intended to make clear that possession of an insubstantial fragment of land described in a written instrument will not suffice as constructive possession of all the land described. [Bill 326-A]

When a deed granted a right-of-way but the claimed use was of a different strip, no right based on use for ten years was created. New v. Stock, 49 Wis. 2d 469, 182 N.W.2d 276 (1971).

The doctrine of "tacking" allows an adverse possession claimant to add his or her time of possession to that of a prior adverse possessor if the claimant is in privity with the prior adverse possessor. Adverse possession of land uncovered by the recession of a body of water is discussed. Perpignani v. Vonasek, 139 Wis. 2d 695, 408 N.W.2d 1 (1987).

For purposes of determining a "claim of title," a deed based on a recorded official government survey meets the requirements of this statute. Ivalis v. Curtis, 173 Wis. 2d 751, 496 N.W.2d 690 (Ct. App. 1993).

If the claimant's use gives the titleholder reasonable notice that the claimant is asserting ownership and the titleholder does nothing, that failure to respond may result in losing title. However, in the absence of such use by the claimant, the titleholder is not obligated to do anything in order to retain title. Peter H. & Barbara J. Steuck Living Trust v. Easley, 2010 WI App 74, 325 Wis. 2d 455, 784 N.W.2d 631, 09-0757.

The regular use of a disputed area for hunting, placement of deer stands, and the making of a dirt road to a lake did not constitute open, notorious, visible, exclusive, and hostile use. The sound of gunshots does not gives a reasonably diligent titleholder notice of adverse possession. Gunshots would have been consistent with trespassers, as would portable deer stands, some kept in place all year. The dirt road and the trail continuing on to the lake were consistent with an easement to the lake rather than adverse possession of the entire disputed parcel. Peter H. & Barbara J. Steuck Living Trust v. Easley, 2010 WI App 74, 325 Wis. 2d 455, 784 N.W.2d 631, 09-0757.

In the absence of an express provision to the contrary, one who adversely possesses under an earlier version of the adverse possession statute may continue possession under the terms of that statute even after its repeal and re-creation. DNR v. Building and All Related or Attached Structures, 2011 WI App 119, 336 Wis. 2d 642, 803 N.W.2d 86, 10-2076.

Hey! That's my land! Understanding Adverse Possession. Shrestha. Wis. Law. Mar. 2010.

893.27 Adverse possession; founded on recorded title claim and payment of taxes. (1) An action for the recovery or the possession of real estate and a defense or counterclaim based upon title to real estate are barred by uninterrupted adverse possession of 7 years, except as provided by s. 893.14 or 893.29. A person who in connection with his or her predecessors in interest is in uninterrupted adverse possession of real estate for 7 years, except as provided by s. 893.29, may commence an action to establish title under ch. 841.

(2) Real estate is possessed adversely under this section as provided by s. 893.26 (2) to (5) and only if:

(a) Any conveyance of the interest evidenced by the written instrument or judgment under which the original entry was made is recorded with the register of deeds of the county in which the real estate lies within 30 days after execution; and

(b) The person possessing it or his or her predecessor in interest pays all real estate taxes, or other taxes levied, or payments required, in lieu of real estate taxes for the 7-year period after the original entry.

History: 1979 c. 323.

Judicial Council Committee's Note, 1979: This section is new. It provides a 7-year limitation period in favor of an adverse possessor who has met all the requirements for the 10-year provision and who also has a recorded chain of title and paid the property taxes for the full 7 years. Many states provide similar or shorter periods under the same circumstances, while Wisconsin has given no statutory recognition to the importance of paying the taxes. One valuable role of adverse possession statutes is in title clearance. When a party enters in good faith, maintains possession, records all conveyances within 30 days and pays taxes for 7 years, the likelihood of genuine competing claims is small, and the gains in assurance of title from this section may well be significant. Some language from ss. 893.25 and 893.26 is repeated here; see notes to those sections for explanation. [Bill 326-A]

In the absence of an express provision to the contrary, one who adversely possesses under an earlier version of the adverse possession statute may continue possession under the terms of that statute even after its repeal and re-creation. DNR v. Building and All Related or Attached Structures, 2011 WI App 119, 336 Wis. 2d 642, 803 N.W.2d 86, 10-2076.

Hey! That's my land! Understanding Adverse Possession. Shrestha. Wis. Law. Mar. 2010.

893.28 Prescriptive rights by adverse user. (1) Continuous adverse use of rights in real estate of another for at least 20 years, except as provided in s. 893.29 establishes the prescriptive right to continue the use. Any person who in connection with his or her predecessor in interest has made continuous adverse use of rights in the land of another for 20 years, except as provided by s. 893.29, may commence an action to establish prescriptive rights under ch. 843.

(2) Continuous use of rights in real estate of another for at least 10 years by a domestic corporation organized to furnish telegraph or telecommunications service or transmit heat, power or electric current to the public or for public purposes, by a cooperative association organized under ch. 185 or 193 to furnish telegraph or telecommunications service, or by a cooperative organized under ch. 185 to transmit heat, power or electric current to its members, establishes the prescriptive right to continue the use, except as provided by s. 893.29. A person who has

established a prescriptive right under this subsection may commence an action to establish prescriptive rights under ch. 843.

(3) The mere use of a way over unenclosed land is presumed to be permissive and not adverse.

History: 1979 c. 323; 1985 a. 297 s. 76; 2005 a. 441.

Once the right to a prescriptive easement has accrued by virtue of compliance with sub. (1) for the requisite 20–year period, the holder of the prescriptive easement must comply with the recording requirements within 30 years under s. 893.33 (2) or lose the right to continued use. Schauer v. Baker, 2004 WI App 41, 270 Wis. 2d 714, 678 N.W.2d 258, 02-1674.

As sub. (1) is written, it is more natural to read "of another" to modify "real estate," rather than "rights." That is, by continuous use, one may gain a prescriptive right in another's real estate. The real estate in which a right is gained must belong to another person. A setback restriction in an owner's deed was not a "right in real estate" belonging to "another" that the owner could use adversely by continually violating the setback. Hall v. Liebovich Living Trust, 2007 WI App 112, 300 Wis. 2d 725, 731 N.W.2d 649, 06–0040.

Sub. (2) applies to permissive uses. An agreement that permitted an electric utility to construct and maintain electrical poles and transmission lines on a landowner's property that was revocable upon 30 days' written notice gave the utility "rights in real estate of another" under sub. (2). Use of the property for more than ten years by the utility established the prescriptive right to continue the use. Williams v. American Transmission Company, LLC, 2007 WI App 246, 306 Wis. 2d 181, 742 N.W.2d 882, 07-0052.

893.29 No adverse possession against the state or political subdivisions.

(1) Except as provided in sub. (2) (b), no title to or interest in real property belonging to the state or a city, village, town, county, school district, sewerage commission, sewerage district or any other unit of government within this state may be obtained by adverse possession under s. 893.25, 893.26, or 893.27 or by continuous adverse use under s. 893.28.

(1m) Except as provided in sub. (2) (d), no city, village, town, county, school district, sewerage commission, sewerage district, or any other unit of government within this state may obtain title to private property, as defined in s. 943.13 (1e) (e), by adverse possession under s. 893.25, 893.26, or 893.27.

(2)

(a) Subsection (1) applies to a claim of title to or interest in real property based on adverse possession or continuous adverse use that began on or after March 3, 1996.

(b) Subsection (1) does not affect title to or interest in real property obtained on or before March 3, 2016, by adverse possession under s. 893.25, 893.26, or 893.27 or by continuous adverse use under s. 893.28.

(c)

1. Subsection (1m) applies to a claim of title to real property based on adverse possession under s. 893.25 that began after March 3, 1996.

2. Subsection (1m) applies to a claim of title to real property based on adverse possession under s. 893.26 that began after March 3, 2006.

3. Subsection (1m) applies to a claim of title to real property based on adverse possession under s. 893.27 that began after March 3, 2009.

(d) Subsection (1m) does not affect title to real property obtained on or before March 3, 2016, by adverse possession under s. 893.25, 893.26, or 893.27.

History: 1979 c. 323; 1983 a. 178; 1983 a. 189 s. 329 (16); 1997 a. 108; 2015 a. 219.

This section does not apply to a railroad. A railroad right-of-way is subject to adverse possession, the same as other lands. Maiers v. Wang, 192 Wis. 2d 115, 531 N.W.2d 54 (1995).

In the absence of an express provision to the contrary, one who adversely possesses under an earlier version of the adverse possession statute may continue possession under the terms of that statute even after its repeal and re-creation. DNR v. Building and All Related or Attached Structures, 2011 WI App 119, 336 Wis. 2d 642, 803 N.W.2d 86, 10-2076.

893.30 Presumption from legal title. In every action to recover or for the possession of real property, and in every defense based on legal title, the person establishing a legal title to the premises is presumed to have been in possession of the premises within the time required by law, and the occupation of such premises by another person shall be deemed to have been under and in subordination to the legal title unless it appears that such premises have been held and possessed adversely to the legal title for 7 years under s. 893.27, 10 years under s. 893.26 or 20 years under s. 893.25, before the commencement of the action.

History: 1979 c. 323.

Judicial Council Committee's Note, 1979: This section is based on previous s. 893.05. The last sentence is expanded to recognize the new 7-year statute in s. 893.27. The words "and in every defense based on legal title" are added to make clear that the presumption of this section applies whether the holder of legal title is suing to recover the land, or a claiming adverse possessor is suing to establish title to it. [Bill 326-A]

The lowest burden of proof applies in adverse possession cases. Kruse v. Horlamus Industries, 130 Wis. 2d 357, 387 N.W.2d 64 (1986).

893.305 Affidavit of interruption; adverse possession and prescriptive use. (1) DEFINITIONS. In this section:

(a) "Affidavit of interruption" means an affidavit that satisfies the requirements under sub. (3).

(b) "Neighbor" means a person who holds record title to real estate abutting the record title holder's real estate.

(c) "Survey" means a property survey that complies with ch. A-E 7, Wis. Adm. Code, and that contains a certification by a professional land surveyor that the survey shows all visible encroachments on the surveyed land.

(2) INTERRUPTION BY AFFIDAVIT. A record title holder may interrupt adverse possession of real estate under s. 893.25, 893.26, 893.27, or 893.29 and adverse use of real estate under s. 893.28 (1) by doing all of the following:

(a) Recording, in the office of the register of deeds for the county in which the record title holder's parcel is located, an affidavit of interruption along with a survey of the record title holder's parcel that was certified no earlier than 5 years before the date of recording.

(b) Providing notice of the recorded affidavit of interruption in accordance with sub. (4).

(c) Recording proof that notice was provided in accordance with sub. (4) in the office of the register of deeds for the county in which the record title holder's parcel is located.

(d) If notice is provided under sub. (4) (a), recording on the neighbor's abutting parcel, within 90 days of the date the neighbor received the notice, a notice of the recorded affidavit of interruption that includes a copy of the recorded affidavit of interruption, including the attached survey. A notice of the recorded affidavit under this paragraph shall include a legal description of the neighbor's abutting parcel and of the record title holder's parcel.

(3) AFFIDAVIT OF INTERRUPTION. A record title holder shall include in an affidavit to interrupt adverse possession of real estate under s. 893.25, 893.26, 893.27, or 893.29 or adverse use of real estate under s. 893.28 (1) at least all of the following:

(a) A legal description of the parcel of land that contains the real estate that is being adversely possessed or adversely used, as described in par. (c).

(b) A statement that the person executing the affidavit is the record title holder of the parcel.

(c) A general description of the adverse possession or adverse use that the record title holder intends to interrupt by recording the affidavit.

(d) A statement that the adverse possession or adverse use of real estate described in par. (c) is interrupted and that a new period of adverse possession or adverse use may begin the day after the affidavit is recorded.

(e) A statement that the record title holder will provide notice as required under sub. (4).

(4) NOTICE.

(a) If the record title holder knows, or has reason to believe, that the person who is adversely possessing or adversely using the record title holder's real estate is a neighbor, the record title holder shall provide notice to the neighbor by sending all of the following by certified mail, return receipt requested, to the neighbor's address, as listed on the tax roll:

1. A copy of the recorded affidavit of interruption, including the attached survey.

2. A notice of the record title holder's intent to, within 90 days of the date the notice is received, record a notice of the affidavit of interruption on the neighbor's real estate that abuts the record title holder's parcel. Notice under this subdivision shall include a reference to this section.

(b) If the record title holder knows the identity of the person who is adversely possessing or adversely using the record title holder's real estate and the person is not a neighbor, the record title holder shall provide notice to the person by sending the person a copy of the recorded affidavit of interruption, including the attached survey, by certified mail, return receipt requested, to the person's last-known address. Notice provided under this paragraph shall include a reference to this section.

(c) If the person who is adversely possessing or adversely using the record title holder's real estate is unknown to the record title holder at the time the affidavit of interruption is recorded, the record title holder shall provide notice by publishing a class 1 notice under ch. 985 in the official newspaper of the county in which the record title holder recorded the affidavit of interruption. The published notice shall include all of the following:

1. A statement that the record title holder recorded an affidavit of interruption.

2. The recording information for the recorded affidavit of interruption.

3. The street or physical address for the parcel on which the affidavit of interruption was recorded.

4. A reference to this section.

(d) If certified mail sent by a record title holder under par. (a) or (b) is returned to the record title holder as undeliverable, the record title holder shall provide notice by publication under par. (c).

(5) EFFECT OF RECORD. If a record title holder complies with sub. (2), any period of uninterrupted adverse possession under s. 893.25, 893.26, 893.27, or 893.29 of real estate described in the affidavit of interruption and any period of continuous adverse use under s. 893.28 (1) of real estate described in the affidavit of interruption are interrupted on the date on which the affidavit of interruption is recorded on the record title holder's parcel, as required under sub. (2) (a). A new period of adverse possession or continuous adverse use may begin after the date on which the affidavit of interruption is recorded on the record title holder's parcel.

(6) ENTITLED TO RECORD. The register of deeds shall record affidavits of interruption, proofs of notice under sub. (2) (c), and notices of affidavits of interruption under sub. (2) (d) in the index maintained under s. 59.43 (9).

(7) CONSTRUCTION.

(a) An affidavit of interruption recorded under this section may not be construed as an admission by the record title holder that the real estate is being possessed adversely, as defined under s. 893.25, 893.26, 893.27, or 893.29, or is being used adversely under s. 893.28 (1).

(b) An affidavit of interruption under this section is not evidence that a person's possession or use of the record title holder's real estate is adverse to the record title holder.

(8) OTHER PROCEDURES. The procedure for interrupting adverse possession or adverse use set forth in this section is not exclusive.

History: 2015 a. 200.

893.31 Tenant's possession that of landlord. Whenever the relation of landlord and tenant exists between any persons the possession of the tenant is the possession of the landlord until the expiration of 10 years from the termination of the tenancy; or if there is no written lease until the expiration of 10 years from the time of the last payment of rent, notwithstanding that the tenant may have acquired another title or may have claimed to hold adversely to his or her landlord. The period of limitation provided by s. 893.25, 893.26 or 893.27 shall not commence until the period provided in this section expires.

History: 1979 c. 323.

Judicial Council Committee's Note, 1979: This is present s. 893.11 renumbered for more logical placement and revised slightly for the purpose of textual clarity only. It complements and supplements s. 893.30 (previous s. 893.05). The 10-year period is retained as the period during which adverse possession (for any statutory period) cannot begin to run in favor of a tenant. Adoption of a 7-year statute in s. 893.27 does not affect the policy of this section. [Bill 326-A]

893.32 Entry upon real estate, when valid as interruption of adverse possession. No entry upon real estate is sufficient or valid as an interruption of adverse possession of the real estate unless an action is commenced against the adverse possessor within one year after the entry and before the applicable adverse possession period of limitation specified in this subchapter has run, or unless the entry in fact terminates the adverse possession and is followed by possession by the person making the entry.

History: 1979 c. 323.

Judicial Council Committee's Note, 1979: This section replaces previous s. 893.04, which was very difficult to interpret with certainty. No change in substance is intended from the most reasonable probable interpretation of s. 893.04; indeed, the intention is to articulate that policy with greater clarity, consistent with the one decided case applying that section, Brockman v. Brandenburg, 197 Wis. 51, 221 N.W. 397 (1928). [Bill 326-A]

893.33 Action concerning real estate. **(1)** In this section "purchaser" means a person to whom an estate, mortgage, lease or other interest in real estate is conveyed, assigned or leased for a valuable consideration.

(2) Except as provided in subs. (5) to (9), no action affecting the possession or title of any real estate may be commenced, and no defense or counterclaim may be asserted, by any person, the state, or a political subdivision or municipal corporation of the state after January 1, 1943, that is founded upon any unrecorded instrument executed more than 30 years prior to the date of commencement of the action, or upon any instrument recorded more than 30 years prior to the date of commencement of the action, or upon any transaction or event occurring more than 30 years prior to the date of commencement of the action, unless within 30 years after the execution of the unrecorded instrument or within 30 years after the date of recording of the recorded instrument, or within 30 years after the date of the transaction or event, there is recorded in the office of the register of deeds of the county in which the real estate is located some instrument expressly referring to the existence of the claim or defense, or a notice setting forth the name of the claimant, a statement of the claims made, a description of the real estate affected and of the instrument or transaction or event on which the claim or defense is founded, and, if the claim or defense is founded on a recorded instrument, the date the instrument was recorded, the document number of the instrument, and, if the instrument is assigned a volume and page number, the volume and page where the instrument is recorded. This notice may be discharged the same as a notice of pendency of action. Such notice or instrument recorded after the expiration of 30 years shall be likewise effective, except as to the rights of a purchaser of the real estate or any interest in the real estate that may have arisen after the expiration of the 30 years and prior to the recording.

(3) The recording of a notice under sub. (2), or of an instrument expressly referring to the existence of the claim, extends for 30 years from the date of recording the time in which any action, defense or counterclaim founded upon the written instrument or transaction or event referred to in the notice or recorded instrument may be commenced or asserted. Like notices or instruments may thereafter be recorded with the same effect before the expiration of each successive 30-year period.

(4) This section does not extend the right to commence any action or assert any defense or counterclaim beyond the date at which the right would be extinguished by any other statute.

(4r) This section applies to liens of the department of health services on real property under ss. 46.27 (7g), 49.496, 49.682, and 49.849.

(5) This section bars all claims to an interest in real property, whether rights based on marriage, remainders, reversions and reverter clauses in covenants restricting the use of real estate, mortgage liens, old tax deeds, death and income or franchise tax liens, rights as heirs or under will, or any claim of any nature, however denominated, and whether such claims are asserted by a person sui juris or under disability, whether such person is within or without the state, and whether such person is natural or corporate, or private or governmental, unless within the 30-year period provided by sub. (2) there has been recorded in the office of the register of deeds some instrument expressly referring to the existence of the claim, or a notice pursuant to this section. This section does not apply to any action commenced or any defense or counterclaim asserted, by any person who is in possession of the real estate involved as owner at the time the action is commenced. This section does not apply to any real estate or interest in real estate while the record title to the real estate or interest in real estate remains in a railroad corporation, a public service corporation as defined in s. 201.01, an electric cooperative organized and operating on a nonprofit basis under ch. 185, a natural gas company, as defined in 15 USC 717a (6), or any trustee or receiver of a railroad corporation, a public service corporation, an electric cooperative, or a natural gas company, or to claims or actions founded upon mortgages or trust deeds executed by that cooperative, corporation, company, or trustees or receivers of that cooperative, corporation, or company. This section also does not apply to real estate or an interest in real estate while the record title to the real estate or interest in real estate remains in the state or a political subdivision or municipal corporation of this state.

(6) Actions to enforce easements, or covenants restricting the use of real estate, set forth in any recorded instrument shall not be barred by this section for a period of 40 years after the date of recording such instrument, and the timely recording of an instrument expressly referring to the easements or covenants or of notices pursuant to this section shall extend such time for 40-year periods from the recording.

(6m) This section does not apply to an interest in any of the following:

(a) A conservation easement under s. 700.40.

NOTE: See note following s. 700.40.

(b) An easement set forth in a recorded instrument that allows a person to travel across another's land to reach a location or for another specified purpose if any of the following applies:

1. The instrument is recorded on or after January 1, 1960.

2. An instrument is recorded before January 1, 1960, and a notice, the instrument, or an instrument expressly referring to the easement is

recorded on or after January 1, 1960, and before the property is sold or transferred.

3. The instrument or instruments expressly referring to the easement were recorded before January 1, 1960, and it is apparent from or can be proved from physical evidence of its use at such time when a person acquired the real estate subject to the easement.

(7) Only the following may assert this section as a defense or in an action to establish title:

(a) A purchaser of real estate; or

(b) A successor of a purchaser of real estate, if the time for commencement of an action or assertion of a defense or counterclaim under this section had expired at the time the rights of the purchaser in the real estate arose.

(8) If a period of limitation prescribed in s. 893.15 (5), 1977 stats., has begun to run prior to July 1, 1980, an action shall be commenced within the period prescribed by s. 893.15, 1977 stats., or 40 years after July 1, 1980, whichever first terminates.

(9) Section 893.15, 1977 stats., does not apply to extend the time for commencement of an action or assertion of a defense or counterclaim with respect to an instrument or notice recorded on or after July 1, 1980. If a cause of action is subject to sub. (8) the recording of an instrument or notice as provided by this section after July 1, 1980 extends the time for commencement of an action or assertion of a defense or counterclaim as provided in this section, except that the time within which the notice or instrument must be recorded if the time is to be extended as to purchasers is the time limited by sub. (8).

History: 1979 c. 323; 1981 c. 261; 1985 a. 135; 1987 a. 27, 330; 1991 a. 39; 1997 a. 140; 1999 a. 150; 2009 a. 378, 379; 2013 a. 20, 92; 2017 a. 102; 2019 a. 9; 2021 a. 174; s. 35.17 correction in (4r).

Judicial Council Committee's Note, 1979 [deleted in part]: This section is based primarily on previous 893.15. That section, an interesting combination of limitations statute and marketable title statute, was of significant help to real estate titles since enactment in 1941. The beneficial effects were strengthened and expanded by enactment of s. 706.09 in 1967. This draft preserves the useful essence of previous s. 893.15, while updating some language. Changes which affect substance are:

(1) The 60-year provision relating to easements and covenants is reduced to 40 years.

(2) New subs. (8) and (9) are transitional provisions applying to limitation periods already running the period specified in previous s. 893.15, or the period in this statute, whichever is shorter.

(5) This draft makes explicit that only those who purchase for valuable consideration after the period of limitation has run or their successors may avail themselves of the benefits of this statute. There is no requirement that the purchaser be without notice, which is to be contrasted with s. 706.09 of the statutes where periods far shorter than 30 years are specified in many subsections. [Bill 326-A]

"Transaction or event" as applied to adverse possession means adverse possession for the time period necessary to obtain title. Upon expiration of this period, the limitation period begins running. Leimert v. McCann, 79 Wis. 2d 289, 255 N.W.2d 526 (1977).

This section protects purchasers only. State v. Barkdoll, 99 Wis. 2d 163, 298 N.W.2d 539 (1980).

A public entity landowner was not protected from a claim that was older than 30 years. State Historical Society v. Maple Bluff, 112 Wis. 2d 246, 332 N.W.2d 792 (1983).

Hunting and fishing rights are an easement under sub. (6). There is no distinction between a profit and an easement. Figliuzzi v. Carcajou Shooting Club, 184 Wis. 2d 572, 516 N.W.2d 410 (1994).

If a nuisance is continuing, a nuisance claim is not barred by the statute of limitations; but if it is permanent, it must be brought within the applicable statute period. A nuisance is continuing if it is ongoing or repeated but can be abated. A permanent nuisance is one act that causes permanent injury. Sunnyside Feed Co., Inc. v. City of Portage, 222 Wis. 2d 461, 588 N.W.2d 278 (Ct. App. 1998), 98-0709.

The sub. (5) owner-in-possession exception to the sub. (2) 30-year recording requirement applies to adverse possession claims. O'Neill v. Reemer, 2003 WI 13, 259 Wis. 2d 544, 657 N.W.2d 403, 01-2402. See also O'Kon v. Laude, 2004 WI App 200, 276 Wis. 2d 666, 688 N.W.2d 747, 03-2819.

The owner-in-possession exception found in sub. (5) does not apply to holders of a prescriptive easement because such holders are not owners. Once the right to a prescriptive easement has accrued by virtue of compliance with s. 893.28 (1) for the requisite 20-year period, the holder of the prescriptive easement must comply with the recording requirements within 30 years under sub. (2) or lose the right to continued use. Schauer v. Baker, 2004 WI App 41, 270 Wis. 2d 714, 678 N.W.2d 258, 02-1674.

More specific statutes, govern a municipality's interest in an unrecorded highway and therefore the 30-year recording requirement under this section does not apply to a municipality's interest in an unrecorded highway. City of Prescott v. Holmgren, 2006 WI App 172, 295 Wis. 2d 627, 721 N.W.2d 153, 05-2673.

An easement continuously recorded since 1936 for which no efforts were made to establish and use it until the 1990's was not abandoned. Spencer v. Kosir, 2007 WI App 135, 06-1691.

The label of the documents here — "access easement agreement" — and the fact that each was signed by both parties did not transform the grants of easement into contracts subject to contract law. The plaintiffs alleged that a driveway could not be built on the easements described in the agreements because of a wetland delineation and sought a modification of the easements. This claim for relief was an action to enforce the recorded easements, albeit a modified version, and was therefore governed by sub. (6), not the contract statute, s. 893.43. Mnuk v. Harmony Homes, Inc., 2010 WI App 102, 329 Wis. 2d 182, 790 N.W.2d 514, 09-1178.

An owner-in-possession exception to the statute of limitations applies to owners by adverse possession. The party who initially adversely possessed land for the necessary period of time is not required to continue to "adversely" possess the disputed property to benefit from the exception. At the end of the applicable adverse possession period, title vests in the adverse possessor and the record owner's title is extinguished. Engel v. Parker, 2012 WI App 18, 339 Wis. 2d 208, 810 N.W.2d 861, 11-0025.

This section provides no exception to the limitations period under sub. (6) for enforcement of an easement against a purchaser who had actual notice of the easement. TJ Auto LLC v. Mr. Twist Holdings LLC, 2014 WI App 81, 355 Wis. 2d 517, 851 N.W.2d 831, 13-2119.

A survey map filed in the office of register of deeds was not a "recording" that renews the limitations period under sub. (6). To record an instrument, s. 59.43 (1) (e) and (f) require the register of deeds to endorse upon it a certificate of the date and time when it was received as well as a number consecutive to the number assigned to the immediately previously recorded or filed instrument. Without those marks of recording by the register of deeds, there is no basis from which a court can presume that the survey map was recorded. TJ Auto LLC v. Mr. Twist Holdings LLC, 2014 WI App 81, 355 Wis. 2d 517, 851 N.W.2d 831, 13-2119.