Wisconsin Statutes Relating to Land Surveying

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(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 Institutions.

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, 177 Wis. 2d 66 (1993), 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. County of Eau Claire 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.

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.

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

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.

59.44 County abstractor; appointment; duties; fees.

(1) (a) Except as provided under par. (b), whenever any county adopts a tract index system or any recognized chain of title system, the board may create a department to be known as an abstract department, either in connection with or independent of the office of the register of deeds, as the board considers advisable. The board may appoint a competent person for a term of 2 years, who shall be known as the county abstractor, and shall have charge of and operate the abstract department. The board shall furnish a seal for the abstractor, who shall place the seal on every abstract issued by the abstractor.

(b) In any county with a county executive or a county administrator, if the county creates an abstract department under par. (a), the county executive or county administrator shall appoint and supervise the county abstractor. Such appointment shall be subject to confirmation by the board unless the board, by ordinance, elects to waive confirmation or unless the appointment is made under a civil service system competitive examination procedure established under s. 59.52 (8) or ch. 63.

(2) The register of deeds shall be eligible to hold the office of county abstractor and may hold both offices at the same time.

(3) The county abstractor shall make and deliver to any person an abstract of title to any land in the county, upon the payment of the required fee.

(4) The board shall fix the salary of said abstractor, provide such clerical assistance as may be necessary and fix their compensation and shall fix the fees to be received for the compiling and furnishing of abstracts and may at any time prescribe regulations for the operation and conduct of said department. All fees received for the compiling and furnishing of abstracts shall be paid into the county treasury.

(5) The board may by two-thirds vote of all the members of the board discontinue furnishing abstracts.

History: 1985 a. 29; 1991 a. 316; 1995 a. 201 s. 387; Stats. 1995 s. 59.44; 1995 a. 225 s. 163; 1997 a. 35.

59.45 County surveyor; duties, deputies, fees.

(1) SURVEYOR; DUTIES. (a) The county surveyor shall do all of the following:

1. Execute, personally or by a deputy, all surveys that are required by the county or by a court. Surveys for individuals or corporations may be executed at the county surveyor's discretion.

2. Make, personally or by a deputy, a record, in books or on drawings and plats that are kept for that purpose, of all corners that are set and the manner of fixing the corners, of each survey made personally, by deputies or by other professional land surveyors and arrange or index the record so it is an easy-to-use reference and file and preserve in the office the original field notes and calculation thereof. Within 60 days after completing any survey, the county surveyor shall make a true and correct copy of the foregoing record, in record books or on reproducible papers to be furnished by the county and kept in files in the office of the county surveyor to be provided by the county. In a county with a population of 750,000 or more where there is no county surveyor, a copy of the record shall also be filed in the office of the regional planning commission which acts in the capacity of county surveyor for the county.

3. Furnish a copy of any record, plat or paper in the office to any person on demand and upon payment to the county of the required fees.

4. Administer to every survey assistant engaged in any survey, before commencing their duties, an oath or affirmation to faithfully and impartially discharge the duties of survey assistant, and the deputies are empowered to administer the same.

5. Perform all other duties that are required by law.

(b) Surveys for individuals or corporations may be performed by any professional land surveyor who is employed by the parties requiring the services, providing that within 60 days after completing any survey the professional land surveyor files a true and correct copy of the survey in the office of the county surveyor. In counties with a population of 750,000 or more the copy shall be filed in the office of the register of deeds and in the office of the regional planning commission which acts in the capacity of county surveyor for the county.

(2) SURVEYOR; DEPUTIES. The county surveyor may appoint and remove deputies at will on filing a certificate thereof with the clerk.

(3) SURVEYOR; FEES. In addition to the regular fees of professional land surveyors that are received from the parties employing the county surveyor, the county surveyor may receive a salary from the county.

History: 1995 a. 201 ss. 328, 389, 391, 399; 1997 a. 35; 2013 a. 358; 2017 a. 207 s. 5.

Discussing the compensation and duties of an elected county surveyor and possible conflicts of interest in public contracts. 60 Atty. Gen. 134.

Discussing the duties of county surveyors and other land surveyors and minimum standards for property surveys. 69 Atty. Gen. 160.

59.46 Penalty for nonfeasance. Any county surveyor, any city, village, or town engineer, or any professional land surveyor who fails or refuses to perform any duty required of that person by law shall forfeit not less than $25 nor more than $50 for each such failure or refusal.

History: 1991 a. 316; 1993 a. 246; 1995 a. 201 s. 401; Stats. 1995 s. 59.46; 2013 a. 358.

59.47 County auditors; powers; duties. (1) In every county, except as provided in s. 59.255 (2) (i), the clerk shall act as auditor, unless a separate office of county auditor is created as provided in sub. (2), and, when directed by resolution of the board, shall examine the books and accounts of any county officer, board, commission, committee, trustees or other officer or employee entrusted with the receipt, custody or expenditure of money, or by or on whose certificate any funds appropriated by the board are authorized to be expended, whether compensated for services by fees or by salary, and all original bills and vouchers on which moneys have been paid out and all receipts of moneys received by them. The clerk shall have free access to such books, accounts, bills, vouchers and receipts as often as may be necessary to perform the duties required under this subsection and he or she shall report in writing the results of the examinations to the board.

(2) The board by resolution may create a separate office of county auditor and may fix the compensation of the auditor. The auditor shall perform the duties and have all of the powers conferred upon the clerk as auditor by sub. (1), and shall perform such additional duties and shall have such additional powers as are imposed and conferred upon him or her from time to time by resolution adopted by the board.

(3) If a county auditor's office is created under sub. (2), the chairperson of the board shall appoint a person known to be skilled in matters of public finance and accounting to act as county auditor. The appointment shall be made under ss. 63.01 to 63.17 and shall be subject to confirmation by the board. The auditor shall direct the keeping of all of the accounts of the county, in all of its offices, departments and institutions, and shall keep books of account necessary to properly perform the duties of the office. The auditor's salary and the amount of the official bond shall be fixed by the board. The auditor shall perform all duties pertaining to the office, have all of the powers and perform the duties in sub. (1) and perform other duties imposed by the board.

(4) The board by resolution may authorize a county auditor appointed under sub. (3) to appoint a deputy auditor under ss. 63.01 to 63.17 to aid him or her in the discharge of the duties of his or her office, and who, in the absence or disability of the county auditor, or in case of a vacancy in said office, shall perform all the duties of the office of county auditor until such vacancy is filled, or disability is removed. Such deputy shall execute and file an official bond in the same amount as that given by the county auditor.

History: 1977 c. 265, 305, 447; 1983 a. 192; 1995 a. 201 s. 420; Stats. 1995 s. 59.47; 2011 a. 62.

Discussing this section's effect on county bookkeeping and auditing. 67 Atty. Gen. 248.

The statutory duties of the county clerk under ch. 70 may not be transferred to the county auditor, but the county auditor may be granted supervisory authority over the manner in which such duties are exercised. OAG 6-08.

The removal of the county auditor is subject to the specific civil service provisions established by ordinance or resolution of the county board under ss. 63.01 to 63.17 and is not governed by the more general removal provision contained in s. 17.10 (3). Rather than creating the separate office of county auditor under sub. (2), a county board could create a department of administration under s. 59.52 (1) (b) and assign administrative audit functions to that department under that statute. If the administrative function is under the jurisdiction of the county auditor, the function may be assigned to the department of administration. A person in the department of administration who performs audit functions therefore need not be appointed using civil service procedures. OAG 6-08.

59.48 County assessor. The county executive elected under s. 59.17 or the county administrator elected or appointed under s. 59.18 shall appoint a county assessor as prescribed in and subject to the limitations of s. 70.99, approve the hiring of the assessor's staff as prescribed in that section and otherwise comply with that section. In counties with neither a county executive nor a county administrator the appointment of the county assessor shall be the duty of the chairperson of the board subject to the approval of the board and subject to the limitations of s. 70.99. The hiring of the assessor's staff shall be the duty of the county assessor subject to the limitations of s. 70.99.

History: 1995 a. 201 s. 171.

SUBCHAPTER V

POWERS AND DUTIES OF COUNTIES

59.51 Board powers. (1) ORGANIZATIONAL OR ADMINIS-

(24) LIME TO FARMERS. The board may manufacture agricultural lime and sell and distribute it at cost to farmers and may acquire lands for such purposes.

(25) INTERSTATE HAZARDOUS LIQUID PIPELINES. A county may not require an operator of an interstate hazardous liquid pipeline to obtain insurance if the pipeline operating company carries comprehensive general liability insurance coverage that includes coverage for sudden and accidental pollution liability.

History: 1995 a. 201 ss. 108, 109, 133, 150, 161, 163, 172, 214 to 216, 218 to 221, 437 to 442, 438, 449 to 451, 455, 456; 1995 a. 227; 1997 a. 35; 1999 a. 150 s. 672; 2005 a. 149; 2011 a. 146, 150; 2013 a. 14, 165; 2015 a. 55; 2015 a. 197 s. 51; 2017 a. 207 s. 5.

Sub. (25) preempts county-imposed insurance requirements for pipeline operators that carry comprehensive general liability insurance policies including pollution liability coverage. When the pipeline operator's insurance policy included coverage broader than the statutorily-described insurance, sub. (25) precluded a county from requiring the pipeline operator to obtain additional insurance. Enbridge Energy Co. v. Dane County, 2019 WI 78, 387 Wis. 2d 687, 929 N.W.2d 572, 16-2503.

The insured's "time element" pollution insurance was congruent with the "sudden and accidental" coverage referenced in sub. (25). That subsection does not require coverage for all unexpected and unintended pollution regardless of when the pollution event is discovered or reported to the insurer. Enbridge Energy Co. v. Dane County, 2019 WI 78, 387 Wis. 2d 687, 929 N.W.2d 572, 16-2503.

Discussing the authority of a county to enact and enforce a minimum standards housing code. 59 Atty. Gen. 248.

Section 59.07 (49) [now sub. (22)] authorizes billboard regulations relating solely to highway safety. 61 Atty. Gen. 191.

The county board may delegate relatively broad powers to the land conservation committee in connection with the lease or purchase of real property for the purposes of soil and water conservation, but such property transactions are subject to the approval of the county board. 74 Atty. Gen. 227.

A board established under s. 59.07 (135) [now sub. (2)] is restricted to performing advisory, policy-making, or legislative functions. 77 Atty. Gen. 98.

Section 59.07 (135) (L) [now sub. (2) (L)] authorizes counties that are responsible units of government to levy taxes for capital and operating expenses incurred in the operation of the county's recycling program only upon local governments that are not responsible units of government. Counties may levy taxes for both operating and capital expenses incurred in connection with any other form of solid waste management activity only on local governments participating in that activity. 80 Atty. Gen. 312.

Section 59.18 (2) (b) transfers the authority to supervise the administration of county departments from boards and commissions to department heads appointed by the county administrator. Section 59.18 (2) therefore entirely negates sub. (2) insofar as it provides that the board may "employ" a system manager. In a county with a county administrator, the solid waste management board is purely an advisory body to the county administrator and to the county board and a policy-making body for the solid waste management department as a whole. OAG 1-12.

59.71 Special counties; record keeping. (1) In this section, "eminent domain proceedings" means the laying out, widening, extending or vacating of any street, alley, water channel, park, highway or other public place by any court, legislature, county board, common council, village board or town board.

(2) When the county board of a county with a population of 250,000 or more, according to the last state or United States census, prepares and compiles in book form an eminent domain record containing an abstract of facts relating to eminent domain proceedings and makes an order that the record, with an index thereto, be thereafter maintained and kept up, and provides a suitable book for that purpose, the register of deeds shall thereafter maintain and keep up the record and index.

(3) The register of deeds shall enter an abstract of all eminent domain proceedings in the record maintained under sub. (2). The abstract shall substantially contain the facts as to the filing of a notice of lis pendens, the date of filing, the description, the court in which or the body before whom the proceeding is pending, the result of the proceedings, the action taken, and the date of the action and shall briefly state all of the essential facts of the proceeding. The index to the record shall be a practical index, with reference to the document numbers assigned and, if volume and page numbers are assigned, the volume and page where the abstracts are filed or recorded.

(4) The abstracts and records to be kept by the register of deeds shall be certified by the register to be true and correct and when so certified shall be prima facie evidence of the facts therein recited and shall be received in all courts and places with the same effect as the original proceedings; and the record so prepared and compiled by the county board shall be prima facie evidence of the facts therein recited and shall also be received in all courts and places with the same effect as the original proceedings.

History: 1991 a. 316; 1995 a. 201 s. 371; Stats. 1995 s. 59.71; 1995 a. 225 s. 161; 1997 a. 35; 2017 a. 102.

59.72 Land information. (1) DEFINITIONS. In this section:

(a) "Land information" means any physical, legal, economic or environmental information or characteristics concerning land, water, groundwater, subsurface resources or air in this state. "Land information" includes information relating to topography, soil, soil erosion, geology, minerals, vegetation, land cover, wildlife, associated natural resources, land ownership, land use, land use controls and restriction, jurisdictional boundaries, tax assessment, land value, land survey records and references, geodetic control networks, aerial photographs, maps, planimetric data, remote sensing data, historic and prehistoric sites and economic projections.

(b) "Land records" means maps, documents, computer files and any other storage medium in which land information is recorded.

(c) "Local governmental unit" means a municipality, regional planning commission, special purpose district or local governmental association, authority, board, commission, department, independent agency, institution or office.

(2) DUTIES. (a) No later than June 30, 2017, the board shall post on the Internet, in a searchable format determined by the department of administration, the following information related to individual land parcels:

1. Property tax assessment data as provided to the county by municipalities, including the assessed value of land, the assessed value of improvements, the total assessed value, the class of property, as specified in s. 70.32 (2) (a), the estimated fair market value, and the total property tax.

2. Any zoning information maintained by the county.

3. Any property address information maintained by the county.

4. Any acreage information maintained by the county.

(b) No later than June 30 following the end of any year in which a county that accepts a grant under s. 16.967 (7) or retains any fees under sub. (5) (b), the county land information office shall submit to the department of administration a report describing the expenditures made with the moneys derived from those grants or retained fees.

(3) LAND INFORMATION OFFICE. The board may establish a county land information office or may direct that the functions and duties of the office be performed by an existing department, board, commission, agency, institution, authority, or office. If the board establishes a county land information office, the office shall:

(a) Coordinate land information projects within the county, between the county and local governmental units, between the state and local governmental units and among local governmental units, the federal government and the private sector.

(b) Within 2 years after the land information office is established, develop and receive approval for a countywide plan for land records modernization. For any county in which land records are not accessible on the Internet, the plan shall include a goal of providing access to public land records on the Internet. The plan shall be submitted for approval to the department of administration under s. 16.967 (3) (e). No later than January 1, 2014, and by January 1 every 3 years thereafter, the land information office shall update the plan and receive approval from the de-

partment of administration of the updated plan. A plan under this paragraph shall comply with the standards developed by the department of administration under s. 16.967 (3) (cm).

(c) Review and recommend projects from local governmental units for grants from the department of administration under s. 16.967 (7).

(3m) LAND INFORMATION COUNCIL. (a) If the board has established a land information office under sub. (3), the board shall have a land information council consisting of not less than 8 members. The council shall consist of the register of deeds, the treasurer, and, if one has been appointed, the real property lister or their designees and the following members appointed by the board for terms prescribed by the board:

1. A member of the board.

2. A representative of the land information office.

3. A realtor or a member of the Realtors Association employed within the county.

4. A public safety or emergency communications representative employed within the county.

4m. The county surveyor or a professional land surveyor employed within the county.

5. Any other members of the board or public that the board designates.

(am) Notwithstanding par. (a), if no person is willing to serve under par. (a) 3., 4., or 4m., the board may create or maintain the council without the member designated under par. (a) 3., 4., or 4m.

(b) The land information council shall review the priorities, needs, policies, and expenditures of a land information office established by the board under sub. (3) and advise the county on matters affecting the land information office.

(4) AID TO COUNTIES. (a) A board that has established a land information office under sub. (3) and a land information council under sub. (3m) may apply to the department of administration for a grant for a land information project under s. 16.967 (7).

(b) A board shall use any grant received by the county under s. 16.967 (7) (a) and any fees retained under sub. (5) (b) to design, develop, and implement a land information system under s. 16.967 (7) (a) 1. and to make public records in the system accessible on the Internet before using these funds for any other purpose.

(5) LAND RECORD MODERNIZATION FUNDING. (a) Before the 16th day of each month a register of deeds shall submit to the department of administration $15 from the fee for recording or filing each instrument that is recorded or filed under s. 59.43 (2) (ag) 1. or (e), less any amount retained by the county under par. (b).

(b) Except as provided in s. 16.967 (7m), a county may retain $8 of the portion of each fee submitted to the department of administration under par. (a) from the fee for recording or filing each instrument that is recorded or filed under s. 59.43 (2) (ag) 1. or (e) if all of the following conditions are met:

1. The county has established a land information office under sub. (3).

1m. The county has created a land information council under sub. (3m).

2. A land information office has been established for less than 2 years or has received approval for a countywide plan for land records modernization under sub. (3) (b).

3. The county uses the fee retained under this paragraph to satisfy the requirements of sub. (2) (a), or, if the county has satisfied the requirements of sub. (2) (a), to develop, implement, and maintain the countywide plan for land records modernization on the Internet.

(6) LAND RECORDS MODERNIZATION. With regard to land records modernization as described in sub. (3) (b), if a register of deeds transfers an instrument that was filed or recorded with the register of deeds before April 1, 2006, to an electronic format, as described in s. 59.43 (4), 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.

History: 1989 a. 31, 339; 1995 a. 201 s. 457; Stats. 1995 s. 59.72; 1997 a. 27 ss. 2175aj to 2175c, 9456 (3m); 2001 a. 16, 104; 2003 a. 33 s. 2811; 2003 a. 48 ss. 10, 11; 2003 a. 206 ss. 8 to 9, 23, 24; 2005 a. 25 ss. 1236 to 1238, 2493; 2009 a. 314; 2013 a. 20, 358.

59.73 Surveys; expressing bearings, subdividing sections. (1) HOW BEARINGS EXPRESSED IN SURVEYS. In all surveys the bearings shall be expressed with reference to a magnetic, true or other identifiable line of the public land survey, recorded and filed subdivision or to the Wisconsin coordinate system. In all cases the reference selected shall be so noted as set forth in s. 59.45 (1) (a) 2. and if magnetic must be retraceable and identifiable by reference to a monumented line.

(2) SUBDIVIDING SECTIONS. Whenever a county surveyor or professional land surveyor is required to subdivide a section or smaller subdivision of land established by the United States survey, the county surveyor or professional land surveyor shall proceed according to the statutes of the United States and the rules and regulations made by the secretary of the interior in conformity to the federal statutes. While so engaged a professional land surveyor and the professional land surveyor's assistants shall not be liable as a trespasser and shall be liable only for any actual damage done to land or property.

History: 1995 a. 201 ss. 393, 394, 421; 1999 a. 96; 2013 a. 358.

The exemption from liability for trespass in sub. (2) did not prevent the Department of Natural Resources from issuing a citation against a surveyor for violating an administrative rule prohibiting operating vehicles on park land. DNR v. Bowden, 2002 WI App 129, 254 Wis. 2d 625, 647 N.W.2d 865, 01-2820.

Discussing resurveys of public lands. United States v. Citko, 517 F. Supp. 233 (1981).

59.74 Perpetuation of section corners, landmarks. (1) RELOCATION AND PERPETUATION OF SECTION CORNERS AND DIVISION LINES. (a) If a majority of all the resident landowners in any section of land within this state desire to establish, relocate or perpetuate any section or other corner of any section, or in the same section a division line of the section, they may make a formal application in writing to the circuit judge for the county in which the land is situated. The circuit judge shall file the application in his or her court and shall within a reasonable time give at least 10 days' notice in writing to the owners of all adjoining lands, if those owners reside in the county where the land is situated and if not, by publication of a class 3 notice, under ch. 985, stating the day and hour when the circuit judge will consider and pass upon such application. The circuit judge shall hear all interested parties and approve or reject the application at that time. If the application is approved, the clerk shall notify the county surveyor who shall within a reasonable time proceed to make the required survey and location. If a corner is to be perpetuated, the surveyor shall deposit in the proper place a stone or other equally durable material of the dimensions and in the manner and with the markings provided under s. 60.84 (3) (c), and shall also erect witness monuments as provided under sub. (2). The surveyor shall be paid the cost of the perpetuation from the general fund of the county.

(b) All expense and cost of the publication of the notice and of the survey and perpetuation shall be apportioned by the clerk among the several parcels of land in the section upon the basis of the area surveyed, shall be included by the clerk in the next tax roll and shall be collected in the same manner as other taxes are collected.

(2) PERPETUATION OF LANDMARKS. (a) 1. No landmark, monument, corner post of the government survey or survey made by the county surveyor or survey of public record may be destroyed, removed, or covered by any material that will make the landmark, monument, or corner post inaccessible for use, without first having erected witness or reference monuments as provided in subd. 2. for the purpose of identifying the location of the landmark and making a certified copy of the field notes of the survey setting forth all the particulars of the location of the landmark with relation to the reference or witness monuments so that its location can be determined after its destruction or removal. The certified copy of the field notes shall be filed as provided under par. (b) 2.

2. Witness monuments shall be made of durable material, including cement, natural stone, iron or other equally durable material, except wood. If iron pipe monuments are used, they shall be made of 2 inch or more galvanized iron pipe not less than 30 inches in length having an iron or brass cap fastened to the top and marked with a cross cut on the top of the cap where the point of measurement is taken. If witness monuments are made of cement, stone or similar material, they shall be not less than 30 inches in length nor less than 5 inches in diameter along the shortest diagonal marked on the top with a cross where the point of measurement is taken.

(b) 1. Whenever it becomes necessary to destroy, remove, or cover up in such a way that will make it inaccessible for use, any landmark, monument of survey, or corner post within the meaning of this subsection, the person including employees of governmental agencies who intend to commit such act shall serve written notice at least 30 days prior to the act upon the county surveyor of the county within which the landmark is located. Notice shall also be served upon the municipality's engineer if the landmark is located within the corporate limits of a municipality. The notice shall include a description of the landmark, monument of survey, or corner post and the reason for removing or covering it. In this paragraph, removal of a landmark includes the removal of railroad track by the owner of the track. In a county having a population of less than 750,000 where there is no county surveyor, notice shall be served upon the clerk. In a county with a population of 750,000 or more where there is no county surveyor, notice shall be served upon the executive director of the regional planning commission which acts in the capacity of county surveyor for the county. Notwithstanding par. (c), upon receipt of the notice the clerk shall appoint a professional land surveyor to perform the duties of a county surveyor under subd. 2.

2. The county surveyor or executive director of the regional planning commission, upon receipt of notice under subd. 1., shall within a period of not to exceed 30 working days, either personally or by a deputy, or by the municipality's engineer make an inspection of the landmark, and, if he or she considers it necessary because of the public interest to erect witness monuments to the landmark, he or she shall erect 4 or more witness monuments or, if within a municipality, may make 2 or more offset marks at places near the landmark where they will not be disturbed. The county surveyor shall make a survey and field notes giving a description of the landmark and the witness monuments or offset marks, stating the material and size of the witness monuments and locating the offset marks, the horizontal distance and courses in terms of the references set forth in s. 59.45 (1) (a) 2. that the witness monuments bear from the landmark and, also, of each witness monument to all of the other witness monuments. The county surveyor may also make notes as to such other objects, natural or artificial, that will enable anyone to locate the position of the landmark. The county surveyor upon completing the survey shall make a certified copy of the field notes of the survey and record it as provided under s. 59.45 (1). The municipality's engineer upon completing the survey shall record the notes in his or her office, open to the inspection of the public, and shall file a true and correct copy with the county surveyor. In a county with a population of 750,000 or more, the certified copy of the field notes of the survey shall be filed in the office of the regional planning commission which acts in the capacity of county surveyor for the county.

(c) In those counties where there are no county surveyors a petition can be made to the board by any resident of this state requesting the board to appoint a professional land surveyor to act in the capacity of the county surveyor. The board, upon receipt of this petition, shall appoint a professional land surveyor to act in the capacity of the county surveyor. In counties with a population of 750,000 or more, the board may appoint a governmental agency to act in the capacity of county surveyor.

(d) The cost of the work of perpetuating the evidence of any landmark under the scope of this subsection shall be borne by the county or counties proportionally, in which said landmark is located.

(e) 1. Except as provided in subd. 2., any person who removes, destroys or makes inaccessible any landmark, monument of survey, corner post of government survey, survey made by the county surveyor or survey of public record without first complying with this subsection shall be fined not to exceed $1,000 or imprisoned in the county jail for not more than one year.

2. Any person who removes railroad track as provided in par. (b) 1. without first complying with par. (b) 1. shall be subject to a forfeiture not to exceed $1,000.

(f) Any person who destroys, removes or covers any landmark, monument or corner post rendering them inaccessible for use, without first complying with pars. (a) 1. and (b) 1. shall be liable in damages to the county in which the landmark is located, for the amount of any additional expense incurred by the county because of such destruction, removal or covering.

(g) Every professional land surveyor and every officer of the department of natural resources and the district attorney shall enforce this subsection.

(h) Any professional land surveyor employed by the department of transportation or by a county highway department, may, incident to employment as such, assume and perform the duties and act in the capacity of the county surveyor under this subsection with respect to preservation and perpetuation of landmarks, witness monuments, and corner posts upon and along state trunk, county trunk, and town highways. Upon completing a survey and perpetuating landmarks and witness monuments under par. (b) 2., a professional land surveyor employed by the state shall file the field notes and records in the district office or main office of the department of transportation, and a professional land surveyor employed by a county shall file the field notes and records in the office of the county highway commissioner, open to inspection by the public, and in either case a true and correct copy of the field notes and records shall be filed with the county surveyor. In a county with a population of 750,000 or more where there is no county surveyor, a copy of the field notes and records shall also be filed in the office of the regional planning commission which acts in the capacity of county surveyor for the county.

(i) The records of the corners of the public land survey may be established and perpetuated in the following manner: commencing on January 1, 1970, and in each calendar year thereafter, the county surveyor or a deputy may check and establish or reestablish and reference at least 5 percent of all corners originally established in the county by government surveyors, so that within 20 years or less all the original corners will be established or reestablished and thereafter perpetuated.

(j) The county surveyor may employ other professional land

surveyors to assist in this work and may accept reference checks for these corners from any professional land surveyor.

(k) The cost of perpetuating these corners shall be paid out of the county road and bridge fund or other county fund under s. 83.11.

History: 1995 a. 201 ss. 395, 396, 423; 2013 a. 358; 2017 a. 207 s. 5.

Discussing resurveys of the public lands under s. 59.635 (8) [now sub. (2) (i)]. 66 Atty. Gen. 134.

A city or village engineer acting under s. 59.635 (2) [now sub. (2) (b) 2.] need not be registered as a land surveyor. 68 Atty. Gen. 185.

59.75 Certificates and records as evidence. The certificate and also the official record of the county surveyor when produced by the legal custodian thereof, or any of the county surveyor's deputies, when duly signed by the county surveyor in his or her official capacity, shall be admitted as evidence in any court within the state, but the same may be explained or rebutted by other evidence. If any county surveyor or any of his or her deputies are interested in any tract of land a survey of which becomes necessary, such survey may be executed by any professional land surveyor appointed by the board.

History: 1977 c. 449; 1995 a. 201 s. 398; Stats. 1995 s. 59.75; 2013 a. 358.

59.76 Registration of farms. The owner of any farm or country estate, or that person's authorized agent, may register the name of the farm or estate in the office of the register of deeds of the county in which the farm or estate is situated. The owner or purchaser of the farm or any part of the farm may change or release the name from that person's respective interest in the farm by recording a certificate stating that the original registered name is released. A new name of the farm or any parts of the farm may then be registered. Every register of deeds shall index all registrations of farm documents and make the index available upon request. The index shall contain the name of the owner of the farm or estate and the name for the farm or estate that the owner or agent may designate, if no other farm or estate in the county has been previously registered under the same name. The fee for recording an instrument under this subsection shall be the fee specified under s. 59.43 (2) (ag).

History: 1971 c. 211; 1981 c. 245; 1991 a. 316; 1993 a. 301; 1995 a. 201 s. 463; Stats. 1995 s. 59.76; 2017 a. 102.

SUBCHAPTER VIII

POPULOUS COUNTIES

59.79 Milwaukee County. In a county with a population of 750,000 or more, the board may:

(1) HOUSING FACILITIES. Build, furnish and rent housing facilities to residents of the county. Such a county may borrow money or accept grants from the federal government for or in aid of any project to build, furnish and rent such housing facilities, to take over any federal lands and to such ends enter into such contracts, mortgages, trust indentures, leases or other agreements as the federal government may require. It is the intent of this subsection to authorize such a county to do anything necessary to secure the financial aid and the cooperation of the federal government in any undertaking by the county authorized by this subsection, including the authority to provide housing subsidies or allowances by participation in federal government housing programs.

(2) INTERGOVERNMENTAL COMMITTEES; APPROPRIATION. Appropriate money to defray the expenses of any intergovernmental committee organized in the county with participation by the board to study countywide governmental problems, and make recommendations thereon. All items of expense paid out of the appropriations shall be presented on vouchers signed by the chairperson and secretary of the intergovernmental committee.

(3) TRANSPORTATION STUDIES. Undertake the necessary studies and planning, alone or with other urban planning activities, to determine the total transportation needs of the county areas; to formulate a program for the most efficient and economical coordination, integration and joint use of all existing transportation facilities; and to study the interrelationship between metropolitan county area growth and the establishment of various transportation systems for such area in order to promote the most comprehensive planning and development of both. In pursuance of such undertaking the board may employ the services of consultants to furnish surveys and plans, and may appropriate funds for the payment of the cost of such work and the hiring of consultants.

(5) FEE FOR CERTAIN MARRIAGE CEREMONIES. Enact an ordinance imposing a fee to be paid in advance to the clerk for each marriage ceremony performed by a judge or a circuit or supplemental court commissioner specified in s. 765.16 (1m) (e) in the courthouse, safety building, or children's court center during hours when any office in those public buildings is open for the transaction of business. The amount of the fee shall be determined by the board.

(7) LAKEFRONT PARKING FACILITY. (a) Contract with the state to use and pay reasonable charges for the use of all or a portion of the parking facility authorized under s. 13.485 and to guaranty all or a portion of the debt service for revenue obligations issued under s. 13.485 as compensation for benefits to be derived by the county and the public from the facility funded by the issuance.

(b) Take any action that is necessary to facilitate contracting with the state under par. (a), including the levying of any direct annual tax for that purpose.

(8) CONTRACTUAL PERSONNEL SERVICES. Enter into a contract for a period not to exceed 2 years for the services of retired county employees, provided such services shall not replace or duplicate an existing office or position in the classified or unclassified service nor be considered an office or position under s. 63.03.

(10) COUNTY HOSPITAL. Determine policy for the operation, maintenance and improvement of the county hospital under s. 49.71 (2) and, notwithstanding the powers and duties specified under s. 46.21 (2) (k), (3r) and (6) with respect to the county hospital and the administrator and specified under s. 46.21 (2) (b), (L), (m), (n), (nm), (o), (p) and (q) and (3g), provide for the management of the county hospital as the board considers appropriate, except that the employee positions at the hospital will be county employee positions. If the board acts under this subsection, the board may not discontinue operation, maintenance and improvement of the county hospital under s. 49.71 (2) and shall exercise the duties under s. 46.21 (4m). This subsection does not apply if the board acts under s. 46.21 with respect to the county hospital under s. 49.71 (2).

History: 1995 a. 201 ss. 137, 164, 166, 168, 170, 184, 189, 194 to 196, 223, 225, 235, 236, 431, 454; 1999 a. 9, 83; 2001 a. 61; 2007 a. 63; 2013 a. 4 s. 2; 2013 a. 14, 372; 2017 a. 207 s. 5.

Milwaukee County has authority to acquire vacant land on the open market and to resell it at a reduced price to private parties under a contract of sale that requires purchasers to build low-income and middle-income housing, especially for persons displaced by expressway construction. 60 Atty. Gen. 242.

59.792 Milwaukee County; sewage, waste, refuse. (1) In this section:

(a) "County" means a county with a population of 750,000 or more.

(b) "Waste" includes, without limitation because of enumeration, garbage, ashes, municipal, domestic, industrial and commercial rubbish, waste or refuse material.

(2) The county's board may provide for the transmission and

board may provide for the destruction of obsolete town records under s. 19.21 (4).

History: 1983 a. 532.

60.84 Monuments. (1g) DEFINITION. In this section, "professional land surveyor" means a professional land surveyor licensed under ch. 443.

(1r) SURVEY, CONTRACT FOR. The town board may contract with the county surveyor or any professional land surveyor to survey all or some of the sections in the town and to erect monuments under this section as directed by the board.

(2) BOND. Before the town board executes a contract under sub. (1r), the county surveyor or professional land surveyor shall execute and file with the town board a surety bond or other financial security approved by the town board.

(3) MONUMENTS. (a) Monuments shall be set on section and quarter-section corners established by the United States survey. If there is a clerical error or omission in the government field notes or if the bearing trees, mounds, or other location identifier specified in the notes is destroyed or lost, and if there is no other reliable evidence by which a section or quarter-section corner can be identified, the county surveyor or professional land surveyor shall reestablish the corner under the rules adopted by the federal government in the survey of public lands. The county surveyor or professional land surveyor shall set forth his or her actions under this paragraph in the U.S. public land survey monument record under sub. (4).

(b) All monuments set under this section are presumed to be set at the section and quarter-section corners, as originally established by the United States survey, at which they respectively purport to be set.

(c) To establish, relocate, or perpetuate a corner, the county surveyor or professional land surveyor shall set in the proper place a monument, as determined by the town board, consisting of any of the following:

1. A stone or other equally durable material, not less than 3 feet long and 6 inches square, with perpendicular, dressed sides and a square, flat top. As prescribed by the town board, the top shall be engraved with either of the following:

a. A cross formed by lines connecting the corners of the top.

b. If the monument is set at a section corner, the number of the section or, if set at a quarter-section corner, "1/4S".

2. A 3-inch diameter iron pipe, not less than 3 feet long, with pipe walls not less than one-quarter inch thick, galvanized or coal-charred to prevent rust. The pipe shall have a flat plate, screwed to the top, engraved as prescribed in subd. 1. The pipe shall have a suitable bottom plate or anchor.

3. An equivalent monument agreed upon by all parties of the contract.

(d) A monument under par. (c) shall be set 2 1/2 feet in the ground. If the monument is located in a highway, the top of the monument shall be even with or below the surface of the highway.

(4) U.S. PUBLIC LAND SURVEY MONUMENT RECORD. The county surveyor or professional land surveyor shall prepare a U.S. public land survey monument record setting forth a complete and accurate record of any monument erected on section and quarter section corners under this section, including the bearings and distances of each monument from each other monument nearest it on any line in the town. The U.S. public land survey monument record and a map of any additional monuments set shall be recorded in the office of the register of deeds or filed in the office of the county surveyor of the county in which the surveyed land is located and of the adjoining county if a monument is located on the county line.

History: 1983 a. 532; 2013 a. 358.

60.85 Town tax increment law. (1) DEFINITIONS. In this section, unless a different intent clearly appears from the context:

(a) "Agricultural project" means agricultural activities classified in the North American Industry Classification System, 1997 edition, published by the U.S. office of management and budget, under the following industry numbers:

1. 111 - Crop production
2. 112 - Animal production
3. 1151 - Support activities for agriculture.
4. 1152 - Support activities for animal production.
5. 493120 - Farm product warehousing and storage, refrigerated.

(b) "Environmental pollution" has the meaning given in s. 299.01 (4).

(c) "Forestry project" means forestry activities classified in the North American Industry Classification System, 1997 edition, published by the U.S. office of management and budget, under the following industry numbers:

1. 113 - Forestry and logging.
2. 1153 - Support activities for forestry.

(d) "Highway" has the meaning provided in s. 340.01 (22).

(e) "Manufacturing project" means manufacturing activities classified in the North American Industry Classification System, 1997 edition, published by the U.S. office of management and budget, under the following industry numbers:

1. 3116 - Animal slaughtering and processing.
2. 321 - Wood product manufacturing
3. 322 - Paper manufacturing.
4. 325193 - Ethyl alcohol manufacturing.

(g) "Planning commission" means a plan commission created under s. 62.23, if the town board exercises zoning authority under s. 60.62 or the town zoning committee under s. 60.61 (4) if the town board is not authorized to exercise village powers.

(h) 1. "Project costs" means, subject to sub. (2) (b), any expenditures made or estimated to be made or monetary obligations incurred or estimated to be incurred by the town which are listed in a project plan as costs of public works or improvements within a tax incremental district or, to the extent provided in subd. 1. j., without the district, plus any incidental costs, diminished by any income, special assessments, or other revenues, including user fees or charges, other than tax increments, received or reasonably expected to be received by the town in connection with the implementation of the plan. Only a proportionate share of the costs permitted under this subdivision may be included as project costs to the extent that they benefit the tax incremental district. To the extent the costs benefit the town outside the tax incremental district, a proportionate share of the cost is not a project cost. "Project costs" include:

a. Capital costs including, but not limited to, the actual costs of the construction of public works or improvements, new buildings, structures, and fixtures; the demolition, alteration, remodeling, repair or reconstruction of existing buildings, structures and fixtures other than the demolition of listed properties as defined in s. 44.31 (4); the acquisition of equipment to service the district; the removal or containment of, or the restoration of soil or groundwater affected by, environmental pollution; and the clearing and grading of land.

b. Financing costs, including, but not limited to, all interest paid to holders of evidences of indebtedness issued to pay for project costs and any premium paid over the principal amount of

affecting the substantial justice and equity of the tax. The provisions of this section shall not impair or affect the remedies given by other provisions of law for the collection or enforcement of such tax against the person to whom the property was assessed.

History: 2023 a. 12.

70.21 Partnership; estates in hands of personal representative; personal property, how assessed. (1) For assessments made before January 1, 2024, except as provided in sub. (2), the personal property of a partnership may be assessed in the names of the persons composing the partnership, so far as known or in the firm name or title under which the partnership business is conducted, and each partner shall be liable for the taxes levied on the partnership's personal property.

(1m) For assessments made before January 1, 2024, undistributed personal property belonging to the estate of a decedent shall be assessed as follows:

(a) If a personal representative has been appointed and qualified, on the first day of January in the year in which the assessment is made, the property shall be assessed to the personal representative.

(b) If a personal representative has not been appointed and qualified, on the first day of January in the year in which the assessment is made, the property may be assessed to the decedent's estate. The tax on the property shall be paid by the personal representative if one is subsequently appointed, or by the person or persons in possession of the property at the time of the assessment if a personal representative is not appointed.

(2) For assessments made before January 1, 2024, the personal property of a limited liability partnership shall be assessed in the name of the partnership, and each partner shall be liable for the taxes levied thereon only to the extent permitted under s. 178.0306.

History: 1977 c. 29 s. 1646 (3); 1995 a. 97; 2001 a. 102; 2015 a. 295; 2023 a. 12.

70.22 Personal property being administered, how assessed. (1) For assessments made before January 1, 2024, in case one or more of 2 or more personal representatives or trustees of the estate of a decedent who died domiciled in this state are not residents of the state, the taxable personal property belonging to the estate shall be assessed to the personal representatives or trustees residing in this state. In case there are 2 or more personal representatives or trustees of the same estate residing in this state, but in different taxation districts, the assessment of the taxable personal property belonging to the estate shall be in the names of all of the personal representatives or trustees of the estate residing in this state. In case no personal representative or trustee resides in this state, the taxable personal property belonging to the estate may be assessed in the name of the personal representative or trustee, or in the names of all of the personal representatives or trustees if there are more than one, or in the name of the estate.

(2) (a) For taxes levied before January 1, 2024, the taxes imposed pursuant to an assessment under sub. (1) may be enforced as a claim against the estate, upon presentation of a claim for the taxes by the treasurer of the taxation district to the court in which the proceedings for the probate of the estate are pending. Upon due proof, the court shall allow and order the claim to be paid.

(b) Before allowing the final account of a nonresident personal representative or trustee, the court shall ascertain whether there are or will be any taxes remaining unpaid or to be paid on account of personal property belonging to the estate, and shall make any order or direction that is necessary to provide for the payment of the taxes.

(3) The provisions of this section shall not impair or affect any remedy given by other provisions of law for the collection or enforcement of taxes upon personal property assessed to personal representatives or trustees.

History: 1991 a. 316; 1997 a. 253; 2001 a. 102; 2023 a. 12.

70.23 Duties of assessors; entry of parcels on assessment roll. (1) The assessor shall enter upon the assessment roll opposite to the name of the person to whom assessed, if any, as before provided in regular order as to lots and blocks, sections and parts of sections, a correct and pertinent description of each parcel of real property in the assessment district and the number of acres in each tract containing more than one acre.

(2) When 2 or more lots or tracts owned by the same person are considered by the assessor to be so improved or occupied with buildings as to be practically incapable of separate valuation, the lots or tracts may be entered as one parcel. Whenever any tract, parcel or lot of land has been surveyed and platted and a plat of the platted ground filed or recorded according to law, the assessor shall designate the several lots and subdivisions of the platted ground as the lots and subdivisions are fixed and designated by the plat.

History: 1971 c. 215; 1983 a. 532; 1993 a. 491; 1997 a. 35, 253; 1999 a. 96.

70.24 Public lands and land mortgaged to state. The secretary of state shall annually, before January 1, make and transmit to the county clerk of each county an abstract containing a correct and full statement and description of all public lands sold and not patented by the state, and of all lands mortgaged to the state lying in the county; and immediately on receipt thereof the county clerk shall make and transmit to the county assessor and to the clerk of each town, village or city in the county not under the assessment jurisdiction of the county assessor a list from said abstract of such lands lying in such town, village or city. Every assessor shall enter on the assessment roll, in a separate column, under distinct headings, a list of all such public and mortgaged lands, and the same shall be assessed and taxed in the same manner as other lands, without regard to any balance of purchase money or loans remaining unpaid on the same.

History: 1977 c. 29 s. 1646 (3); 1977 c. 273.

70.25 Lands, described on rolls. In all assessments and tax rolls in all advertisements, certificates, papers, conveyances, or proceedings for the assessment and collection of taxes and in all related proceedings, except in tax bills, any descriptions of land that indicate the land intended with ordinary and reasonable certainty and that would be sufficient between grantor and grantee in an ordinary conveyance are sufficient. No description of land according to the United States survey is insufficient by reason of the omission of the word quarter or the figures or signs representing it in connection with the words or initial letters indicating any legal subdivision of lands according to government survey. Where a more complete description may not be practicable, and the deed or a mortgage describing any piece of real property is recorded in the office of the register of deeds for the county, an abbreviated description including the document number of the deed or mortgage or the volume and page where the deed or mortgage is recorded, and the section, village, or city where the property is situated, is sufficient. Where a more complete description may not be practicable, and the piece of property is described in any certificate, order, or judgment of a court of record in the county, an abbreviated description including the document number of the court record or the volume and page where the court record is recorded, and the section, village, or city where the property is situated, is sufficient. Descriptions in property tax bills shall be as provided under s. 74.09 (3) (a).

History: 1987 a. 378, 399, 403; 2017 a. 102.

70.27 Assessor's plat. (1) WHO MAY ORDER. Whenever any area of platted or unplatted land or land and the buildings,

improvements, and fixtures on that land is owned by 2 or more persons in severalty, and when in the judgment of the governing body having jurisdiction, the description of one or more of the different parcels thereof cannot be made sufficiently certain and accurate for the purposes of assessment, taxation, or tax title procedures without noting the correct metes and bounds of the same, or when such gross errors exist in lot measurements or locations that difficulty is encountered in locating new structures, public utilities, or streets, such governing body may cause a plat to be made for such purposes. Such plat shall be called "assessor's plat," and shall plainly define the boundary of each parcel, building, improvement, and fixture, and each street, alley, lane, or roadway, or dedication to public or special use, as such is evidenced by the records of the register of deeds or a court of record. Such plats in cities may be ordered by the city council, in villages by the village board, in towns by the town board, or the county board. A plat or part of a plat included in an assessor's plat shall be deemed vacated to the extent it is included in or altered by an assessor's plat. The actual and necessary costs and expenses of making assessors' plats shall be paid out of the treasury of the city, village, town, or county whose governing body ordered the plat, and all or any part of such cost may be charged to the land, without inclusion of improvements, so platted in the proportion that the last assessed valuation of each parcel bears to the last assessed total valuation of all property included in the assessor's plat, and collected as a special assessment on such property, as provided by s. 66.0703.

(2) CERTIFICATION, APPROVAL, RECORDING. Such plat, when completed and certified as provided by this section, and when approved by the governing body, shall be acknowledged by the clerk thereof and recorded in the office of the register of deeds. No plat may be recorded in the office of the register of deeds unless it is produced on media that is acceptable to the register of deeds.

(3) ASSESSMENT, TAXATION, CONVEYANCING. (a) Reference to any land or land and the buildings, improvements, and fixtures on that land as the reference appears on a recorded assessor's plat is deemed sufficient for purposes of assessment and taxation. Conveyance may be made by reference to such plat and shall be as effective to pass title to the land so described as it would be if the same premises had been described by metes and bounds. Such plat or record thereof shall be received in evidence in all courts and places as correctly describing the several parcels of land or land and the buildings, improvements, and fixtures on that land therein designated. After an assessor's plat has been made and recorded with the register of deeds as provided by this section, all conveyances of lands or land and the buildings, improvements, and fixtures on that land included in such assessor's plat shall be by reference to such plat. Any instrument dated and acknowledged after September 1, 1955, purporting to convey, mortgage, or otherwise give notice of an interest in land or land and the buildings, improvements, and fixtures on that land that is within or part of an assessor's plat shall describe the affected land by the name of the assessor's plat, lot, block, or outlot.

(b) Notwithstanding par. (a), lands within an assessor's plat that are divided by a subdivision plat that is prepared, approved and recorded and filed in compliance with ch. 236 or a certified survey map that is prepared and recorded and filed in compliance with s. 236.34 shall be described for all purposes with reference to the subdivision plat or certified survey map, as provided in ss. 236.28 and 236.34 (3).

(4) AMENDMENTS. Amendments or corrections to an assessor's plat may be made at any time by the governing body by recording with the register of deeds a plat of the area affected by such amendment or correction, made and authenticated as provided by this section. It shall not be necessary to refer to any amendment of the plat, but all assessments or instruments wherein any parcel of land or land and the buildings, improvements, and fixtures on that land are described as being in an assessor's plat, shall be construed to mean the assessor's plat of lands or land and the buildings, improvements, and fixtures on that land with its amendments or corrections as it stood on the date of making such assessment or instrument, or such plats may be identified by number. This subsection does not prohibit the division of lands or land and the buildings, improvements, and fixtures on that land that are included in an assessor's plat by subdivision plat, as provided in s. 236.03, or by certified survey map, as provided in s. 236.34.

(5) SURVEYS, RECONCILIATIONS. The surveyor making the plat shall be a professional land surveyor licensed under ch. 443 and shall survey and lay out the boundaries of each parcel, building, improvement, fixture, street, alley, lane, roadway, or dedication to public or private use, according to the records of the register of deeds, and whatever evidence that may be available to show the intent of the buyer and seller, in the chronological order of their conveyance or dedication, and set temporary monuments to show the results of such survey which shall be made permanent upon recording of the plat as provided for in this section. The map shall be at a scale of not more than 100 feet per inch, unless waived in writing by the department of administration under s. 236.20 (2) (L). The owners of record of lands or the land and the buildings, improvements, and fixtures on that land in the plat shall be notified by certified letter mailed to their last-known addresses, in order that they shall have opportunity to examine the map, view the temporary monuments, and make known any disagreement with the boundaries as shown by the temporary monuments. It is the duty of the professional land surveyor making the plat to reconcile any discrepancies that may be revealed so that the plat as certified to the governing body is in conformity with the records of the register of deeds as nearly as is practicable. When boundary lines between adjacent parcels, as evidenced on the ground, are mutually agreed to in writing by the owners of record, those lines shall be the true boundaries for all purposes thereafter, even though they may vary from the metes and bounds descriptions previously of record. Such written agreements shall be recorded in the office of the register of deeds. On every assessor's plat, as certified to the governing body, shall appear the document number of the record and, if given on the record, the volume and page where the record is recorded for the record that contains the metes and bounds description of each parcel, as recorded in the office of the register of deeds, which shall be identified with the number by which such parcel is designated on the plat, except that a lot that has been conveyed or otherwise acquired but upon which no deed is recorded in the office of register of deeds may be shown on an assessor's plat and when so shown shall contain a full metes and bounds description.

(6) MONUMENTS, PLAT REQUIREMENTS. The provisions of s. 236.15 as to monuments, and the provisions of s. 236.20 as to form and procedure, insofar as they are applicable to the purposes of assessors' plats, shall apply. Any stake or monument found and accepted as correct by a professional land surveyor laying out an assessor's plat shall be indicated as "stake found" or "monument found" when mapping the plat and such stake or monument shall not be removed or replaced even though it is inconsistent with the standards of s. 236.15.

(7) CERTIFICATE. When completed, the assessor's plat shall be filed with the clerk of the governing body that ordered the plat. On its title page shall appear the sworn certificate of the professional land surveyor who made the plat, which shall state and contain:

(a) The name of the governing body by whose order the plat was made, and the date of the order.

(b) A clear and concise description of the land or the land and

the buildings, improvements, and fixtures on that land so surveyed and mapped, by government lot, quarter quarter-section, township, range and county, or if located in a city or village or platted area, then according to the plat; otherwise by metes and bounds beginning with some corner marked and established in the United States land survey.

(c) A statement that the plat is a correct representation of all the exterior boundaries of the land surveyed and each parcel thereof.

(d) A statement that the professional land surveyor has fully complied with the provisions of this section in filing the same.

(8) PLAT FILED WITH GOVERNING BODY. Within 2 days after the assessor's plat is filed with the governing body, it shall be transmitted to the department of administration by the clerk of the governing body which ordered the plat. The department of administration shall review the plat within 30 days of its receipt. No such plat may be given final approval by the local governing body until the department of administration has certified on the face of the original plat that it complies with the applicable provisions of ss. 236.15 and 236.20. After the plat has been so certified the clerk shall promptly publish a class 3 notice thereof, under ch. 985. The plat shall remain on file in the clerk's office for 30 days after the first publication. At any time within the 30-day period any person or public body having an interest in any lands affected by the plat may bring a suit to have the plat corrected. If no suit is brought within the 30-day period, the plat may be approved by the governing body, and filed for record. If a suit is brought, approval shall be withheld until the suit is decided. The plat shall then be revised in accordance with the decision if necessary, and, without rereferral to the department of administration unless rereferral is ordered by the court. The plat may then be approved by the governing body and filed for record. When so filed the plat shall carry on its face the certificate of the clerk that all provisions of this section have been complied with. When recorded after approval by the governing body, the plat shall have the same effect for all purposes as if it were a land division plat made by the owners in full compliance with ch. 236. Before January 1 of each year, the register of deeds shall notify the town clerks of the recording of any assessors' plats made or amended during the preceding year, affecting lands in their towns.

History: 1977 c. 29 s. 1646 (3); 1979 c. 221, 248, 355, 361; 1983 a. 473; 1987 a. 172; 1989 a. 31, 56; 1991 a. 316; 1995 a. 27 ss. 3361, 3362, 9116 (5); 1997 a. 27, 99; 1999 a. 96; 1999 a. 150 s. 672; 2005 a. 41, 254; 2013 a. 358; 2017 a. 102; 2023 a. 12.

Cross-reference: See also ch. Adm 49, Wis. adm. code.

The reference to s. 66.60 [now s. 66.0703] in sub. (1) refers only to the collection procedures; it does not make all of that section apply. Dittner v. Town of Spencer, 55 Wis. 2d 707, 201 N.W.2d 45 (1972).

The division of a lot within an assessor's plat is an amendment of the plat and must be made by following the procedure under this section. Ahlgren v. Pierce County, 198 Wis. 2d 576, 543 N.W.2d 812 (Ct. App. 1995), 95-2088.

The provisions of s. 236.41 relating to vacation of streets are inapplicable to assessors' plats. Once properly filed and recorded, an assessor's plat becomes the operative document of record, and only sections specified in s. 236.03 (2) apply to assessors' plats. Schaetz v. Town of Scott, 222 Wis. 2d 90, 585 N.W.2d 889 (Ct. App. 1998), 98-0841.

Section 236.03 (2) sets forth the "applicable provisions" of ss. 236.15 and 236.20 with which assessors' plats must comply under sub. (8). A determination by the state under sub. (8) that an assessor's plat does not comply with the applicable provisions of ss. 236.15 and 236.20 may be reviewed under ch. 227. 58 Atty. Gen. 198.

The temporary survey monuments required to be set in the field prior to the submission of an assessor's plat for state level review are not made permanent until the recording of the assessor's plat. 59 Atty. Gen. 262.

Section 236.295 does not apply to assessors' plats. The amendment or correction of an assessor's plat under sub. (4) is an exercise of the police power that is accomplished for the same purposes and in the same manner as the original assessor's plat. The governing body involved is not required to conduct a public hearing concerning a proposed amendment or correction to an assessor's plat of record. Other questions concerning the amendment or correction of an assessor's plat are answered. 61 Atty. Gen. 25.

70.28 Assessment as one parcel. No assessment of real property which has been or shall be made shall be held invalid or irregular for the reason that several lots, tracts or parcels of land have been assessed and valued together as one parcel and not separately, where the same are contiguous and owned by the same person at the time of such assessment.

70.29 Personalty, how entered. For assessments made before January 1, 2024, the assessor shall place in one distinct and continuous part of the assessment roll all the names of persons assessed for personal property, with a statement of such property in each village in the assessor's assessment district, and foot up the valuation thereof separately; otherwise the assessor shall arrange all names of persons assessed for personal property on the roll alphabetically so far as convenient. The assessor shall also place upon the assessment roll, in a separate column and opposite the name of each person assessed for personal property, the number of the school district in which such personal property is subject to taxation.

History: 1991 a. 316; 2023 a. 12.

70.30 Aggregate values. For assessments made before January 1, 2024, every assessor shall ascertain and set down in separate columns prepared for that purpose on the assessment roll and opposite to the names of all persons assessed for personal property the number and value of the following named items of personal property assessed to such person, which shall constitute the assessed valuation of the several items of property therein described, to wit:

(9) The number and value of steam and other vessels.

(11) The value of machinery, tools and patterns.

(12) The value of furniture, fixture and equipment.

(13) The value of all other personal property except such as is exempt from taxation.

History: 1981 c. 20; 1983 a. 27 s. 2202 (45); 1983 a. 405; 1991 a. 39; 2023 a. 12.

70.32 Real estate, how valued. (1) Real property shall be valued by the assessor in the manner specified in the Wisconsin property assessment manual provided under s. 73.03 (2a) from actual view or from the best information that the assessor can practicably obtain, at the full value which could ordinarily be obtained therefor at private sale. In determining the value, the assessor shall consider recent arm's-length sales of the property to be assessed if according to professionally acceptable appraisal practices those sales conform to recent arm's-length sales of reasonably comparable property; recent arm's-length sales of reasonably comparable property; and all factors that, according to professionally acceptable appraisal practices, affect the value of the property to be assessed.

(1g) In addition to the factors set out in sub. (1), the assessor shall consider the effect on the value of the property of any zoning ordinance under s. 59.692, 61.351, 61.353, 62.231, or 62.233, any conservation easement under s. 700.40, any conservation restriction under an agreement with the federal government and any restrictions under ch. 91. Beginning with the property tax assessments as of January 1, 2000, the assessor may not consider the effect on the value of the property of any federal income tax credit that is extended to the property owner under section 42 of the Internal Revenue Code.

(1m) In addition to the factors set out in sub. (1), the assessor shall consider the impairment of the value of the property because of the presence of a solid or hazardous waste disposal facility or because of environmental pollution, as defined in s. 299.01 (4).

(2) The assessor, having fixed a value, shall enter the same opposite the proper tract or lot in the assessment roll, following the instruction prescribed therein.

(a) The assessor shall segregate into the following classes on the basis of use and set down separately in proper columns the

CHAPTER 82

TOWN HIGHWAYS

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NOTE: 2003 Wis. Act 214, which affected this chapter, contains extensive explanatory notes including a conversion table showing the location of prior statutes in the current chapter.

SUBCHAPTER I

FUNDING AND GOVERNANCE

82.01 Definitions. In this chapter, the following words and phrases have the designated meanings unless specifically noted:

(1) "Department" means the department of transportation.

(2) "Freeholder" means a person who owns a fee simple or life estate interest in land, a person who is a land contract vendee, or a person who has an interest in land arising under ch. 766.

(3) "Highway order" means an order laying out, altering, or discontinuing a highway or a part of a highway, that contains a legal description of what the order intends to accomplish and a scale map of the land affected by the order.

(4) "Laid out" means any formal act or process by which a municipality determines the location of a highway.

(5) "Legal description" means a complete description of land without internal references to any other document, and shall be described in one of the following ways:

(a) By metes and bounds commencing at a monument at the section or quarter section corner or at the end of a boundary line of a recorded private claim or federal reservation in which the annexed land is located and in one of the following ways:

1. By government lot.
2. By recorded private claim.
3. By quarter section, section, township, and range.

(b) If the land is located in a recorded and filed subdivision or in an area that is subject to a certified survey map, by reference as described in s. 236.28 or 236.34 (3).

(c) If the land is depicted in a transportation project plat filed or recorded under s. 84.095, by reference as described in s. 84.095 (7) (a).

(6) "Municipality" means a city, village, or town.

(7) "Opened" means the completion of work on a highway that places the highway in a condition ready for public use.

(8) "Recorded highway" means a highway for which the order laying out or altering the highway, or a certified copy of the order, has been recorded in the office of the register of deeds in the county in which the highway is situated or, for highways that were laid out or altered before January 1, 2005, in the office of the clerk of the town or the county in which the highway is situated.

(9) "Town line highway" means a highway that runs on or across the boundary line between a town and another town, a village, or a city.

(10) "Unrecorded highway" means a highway that is not a recorded highway.

(11) "Worked" means action of the town in regularly maintaining a highway for public use, including hauling gravel, grading, clearing or plowing, and any other maintenance by or on behalf of the town on the road.

History: 2003 a. 214 s. 20, 154.

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

82.03 Duties of town board. (1) OVERSIGHT OF HIGHWAYS, SUPERINTENDENT OF HIGHWAYS. (a) The town board shall have the care and supervision of all highways under the town's jurisdiction, including the highways specified in s. 83.06. The town board may appoint in writing a superintendent of highways to supervise, under the board's direction, the construction, repair, and maintenance of the highways and bridges under the town's jurisdiction. Where no superintendent of highways is appointed, it shall be the duty of the town board to perform all of the duties that are prescribed by law for the superintendent of highways to perform, including keeping the highways passable at all times.

(b) The town board may appoint more than one superintendent of highways. If more than one superintendent is appointed, the town board shall divide the town into as many districts as there are superintendents. The districts shall be numbered and a superintendent shall be assigned to each district. A superintendent may be a member of the town board.

(c) The town board shall fix the compensation and may require and set the amount of a bond of the superintendent. The town board may reimburse the superintendent for expenses incurred in performing his or her duties as superintendent.

(d) The town board shall provide the superintendent of highways with necessary forms and books made in compliance with standards prescribed by the department.

(2) FUNDING AND EQUIPMENT. The town board shall provide machinery, implements, material, and equipment needed to construct, maintain, and repair the highways and bridges under the

town's jurisdiction, and for those purposes may acquire by purchase or by condemnation under ch. 32 stone, gravel, sand, clay, earth, gravel pits, stone quarries, and interests in land under s. 83.07.

(3) OVERSIGHT OF SUPERINTENDENT. The town board shall direct the superintendent of highways in the performance of the superintendent's official duties.

(4) CONTROL OF EXPENDITURES. The town board shall direct when and where all highway funds shall be expended.

(5) MAINTENANCE. (a) The town supervisors may enter any lands near any highway in the town to construct necessary drains or ditches or embankments for the improvement or protection of the highway.

(b) The town supervisors may enter any private lands with their employees and agents for the following purposes:

1. To remove weeds and brush to keep the highway reasonably safe for travel.

2. To erect or remove snow fences to keep highways reasonably free from snow and open for travel during the winter season.

(c) To erect on the right-of-way fences other than snow fences.

(6) LIABILITY. (a) The town shall be responsible for any damage resulting from activities undertaken under the authority granted by sub. (5). The owner of lands entered upon or used for any of the purposes identified in sub. (5) may apply to the town board to appraise the resulting damages, and such damages may be determined by agreement. If the parties are unable to agree upon the damages, the board shall make an award of damages and file the award with the town clerk, and the clerk shall give notice, by certified mail with return receipt requested, of the filing to the owner.

(b) Within 60 days after the date of filing of a town board's award of damages under par. (a), the owner may appeal to the circuit court following the same procedures provided under s. 32.05 (10) for condemnation proceedings. The clerk of courts shall enter the appeal as an action pending in the court with the owner as plaintiff and the town as defendant. The action shall proceed as an action in the court subject to all of the provisions of law relating to actions brought therein, but the only issue to be tried shall be the amount of just compensation to be paid by the town, and the action shall have precedence over all other actions not then on trial. The action shall be tried by jury unless waived by both the plaintiff and the defendant. The amount of the town's award shall not be disclosed to the jury during the trial. Costs shall be allowed or litigation expenses awarded in an action under this paragraph in the same manner as provided under s. 32.28 for condemnation proceedings.

(7) HIGHWAY NAMES. The town board shall, by ordinance, assign a name to each of the roads that are under the town's jurisdiction. No road name may be used on more than one road within the jurisdiction of the town.

(8) USE OF DAMS AS ROADWAYS. The town board may contract with the owner of a dam that has a roadway on it for the use of the roadway. The contract shall provide who shall be responsible for keeping the roadway in repair and may be for a period of time that the board determines.

(9) RUSTIC ROADS. As specified in s. 83.42, the town board shall maintain the rustic roads under its jurisdiction and may apply to have a highway designated as a rustic road or withdrawn from the rustic road system.

(10) ADDITIONS TO AND DELETIONS FROM COUNTY TRUNK HIGHWAY SYSTEM. The town board shall approve or deny additions to and deletions from the county trunk highway system as provided in s. 83.025 (1).

(11) EMERGENCY CLOSURE OF COUNTY TRUNK HIGHWAY. The town chairperson may close county trunk highways when they have been rendered dangerous for travel and immediately notify the county highway commissioner under s. 83.09.

(12) CONTROLLED-ACCESS HIGHWAYS. The town board shall work with the county and other governmental bodies in establishing and maintaining controlled-access highways under s. 83.027.

(13) COUNTY-CONTROLLED HIGHWAYS IN A TOWN. The town board may contract under s. 83.035 with the county to enable the county to construct and maintain streets and highways in the town.

(14) PURCHASE OF EQUIPMENT. The town board may purchase road building and maintenance supplies from the county under s. 83.018.

(15) AGREEMENTS WITH OTHER GOVERNMENTAL BODIES. The town board, under s. 83.027 (9), may enter into agreements with other governmental bodies respecting the financing, planning, establishment, improvement, maintenance, use, regulation, or vacation of controlled-access highways or other public ways in their respective jurisdictions.

(16) COUNTY AID HIGHWAYS. The town board may improve county aid highways under s. 83.14.

(17) HIGHWAY LIGHTING. The town board may provide lighting for highways located in the town under s. 60.50 (4).

(18) SOLID WASTE TRANSPORTATION. The town board may designate highways on which solid waste may be transported under s. 60.54.

(19) TUNNELS UNDER HIGHWAYS. The town board shall ensure that all tunnels constructed pursuant to s. 82.37 are constructed in accordance with the requirements of s. 82.37 and are kept in good repair by the landowner.

History: 2003 a. 214 ss. 106 to 116, 122, 150, 155, 156; 2005 a. 253; 2015 a. 105.

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

The duty to keep highways passable is made mandatory by ss. 81.01 and 81.03 [now this section and s. 82.05], when read together. State ex rel. Cabott, Inc. v. Wojcik, 47 Wis. 2d 759, 177 N.W.2d 828 (1970).

A town has initial authority to name town roads under sub. (7). However, the town's authority is subject to the county's discretionary authority under s. 59.54 (4) to establish a road naming and numbering system for the specific purpose of aiding in fire protection, emergency services, and civil defense. A county may cooperate with a town regarding road name changes, but ultimately the county has authority to implement name changes, even if a town does not consent, when the name changes are made under s. 59.54 (4). Liberty Grove Town Board v. Door County Board of Supervisors, 2005 WI App 166, 284 Wis. 2d 814, 702 N.W.2d 33, 04-2358.

82.05 Superintendent of highways.

(1) The term of office of highway superintendents shall be one year from the date of their appointment.

(2) The superintendent of highways shall supervise the construction and maintenance of all highways in the superintendent's district that are required to be maintained by the town, and keep them passable at all times, and perform such other services in connection with the highways as the town board requires. The superintendent may arrange for the prosecution of the highway work as the superintendent considers necessary and appoint any overseers that the highway work requires.

(3) When any highway under the superintendent's charge becomes impassable, the superintendent shall put the highway in passable condition as soon as practicable. Upon actual notice of the existence of any depression, ditch, hump, or embankment that impedes the use of any highway under the superintendent's charge, the superintendent, or in the absence of a superintendent the chairperson of the town board, shall as soon as practicable take action to make the highway safe for travel, which may include closing the highway.

(4) The superintendent shall routinely notify the town board of all highway work.

History: 1991 a. 316; 2003 a. 214 ss. 117, 118, 157, 158; Stats. 2003 s. 82.05.

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

The duty to keep highways passable is made mandatory by ss. 81.01 and 81.03 [now this section and s. 82.03], when read together. State ex rel. Cabott, Inc. v. Wojcik, 47 Wis. 2d 759, 177 N.W.2d 828 (1970).

82.08 Town bridges or culverts; construction and repair; county aid. (1) PETITIONS. A town that has voted to construct or repair any bridge or culvert that is on, or that after the construction will be connected to, an existing highway maintained by the town may file a petition for county aid with the county highway commissioner. The petition shall describe the location and size of the bridge or culvert and shall contain a statement that the town has provided the funds required by sub. (3).

(2) FUNDING REQUIREMENTS. (a) Except as provided in par. (b), upon receipt of a petition for a bridge or culvert with a 36-inch or greater span, or a structure of equivalent capacity to carry water, the county board shall appropriate the sum required by sub. (3) and shall levy a tax therefor. The tax, when collected, shall be held in a separate account administered by the county highway committee.

(b) If on January 1, 2003, a county has a policy of providing funding only for bridges and culverts larger than the requirement of par. (a), the county may refuse to fund bridges and culverts that do not meet the minimum requirements of that policy. The minimum size bridge or culvert that a county is required to fund under this section may be raised, but not lowered, by the affirmative vote of a majority of the towns in the county. The county board of any county that has never granted aid under this section may, in its discretion, refuse all petitions under sub. (1).

(3) SHARED COST. The town and county shall each pay one-half of the cost of construction or repair. In determining the cost of construction or repair of any bridge or culvert, the cost of constructing or repairing any approach not exceeding 100 feet in length shall be included.

(4) EMERGENCY PETITION. Whenever the construction or repair of any bridge or culvert must be made without delay, the town board may file its petition with the county clerk and the county highway committee, explaining the necessity for immediate construction or repairs. It shall then be the duty of the town board and the county highway committee to construct or repair the bridge or culvert as soon as practicable. The construction or repair of a bridge or culvert undertaken pursuant to this subsection shall entitle the town to the same county aid that the town would have been entitled to had it filed its petition with the county board as provided in sub. (1).

(5) SUPERVISION OVER DESIGN, CONSTRUCTION, AND COST. (a) Except as provided under par. (b), the county highway committee and the town board shall have full charge of design, sizing, letting, inspecting, and accepting the construction or repair, but the town board may leave the matter entirely in the hands of the county highway committee. The county highway committee and the town board must agree on the cost of the project and must consult each other during construction.

(b) For a project receiving funds under s. 84.18, supervision and control of construction of the project shall be as provided under s. 84.18 (6).

(6) CONSTRUCTION REQUIREMENTS. No county order may be drawn under sub. (2) for the construction of a bridge or culvert unless the design and construction comply with requirements under s. 84.01 (23).

(7) NO TAX. Except as provided in ss. 61.48 and 84.14 (3), nothing contained in this section shall authorize the levy of a tax upon the property in any city or village that is required to maintain its own bridges.

(8) ADMINISTRATION CHARGE. The county may charge the towns that apply for aid under this section an administration charge. The administration charge shall be fixed as a percentage of the total costs of administering aid under this section and the percentage shall be no more than the percentage that the county charges the state for records and reports.

History: 1977 c. 190; 1981 c. 296; 1983 a. 192 s. 303 (2); 1983 a. 532; 2003 a. 214 ss. 140 to 145, 147, 159; Stats. 2003 s. 82.08; 2013 a. 152; 2023 a. 162.

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

The county is obligated to pay its half of the cost of construction or repair of a bridge even if the final cost exceeds the amount the town requested in the petition. An estimate is sufficient in a petition for aid. Costs need not be determined exactly. Town of Grand Chute v. Outagamie County, 2004 WI App 35, 269 Wis. 2d 657, 676 N.W.2d 540, 03-1897.

The bridge at issue in this case was not a "bridge on a highway maintainable by the town" under s. 81.38 [now this section] because the bridge aid petition did not request funding to help connect the bridge to a highway maintainable by the town, there was no existing highway extending to the planned bridge site at the time of the petition, and the bridge was not connected to a highway maintainable by the town upon completion. Section 81.38 requires funding for only those bridges built on highways in existence at the time of a bridge's construction. Town of Madison v. County of Dane, 2008 WI 83, 311 Wis. 2d 402, 752 N.W.2d 260, 06-2554.

Although a 2003 act changed the phrase "highway maintainable" to "highway maintained," this amendment did not change the substantive meaning of the statute. Town of Madison v. County of Dane, 2008 WI 83, 311 Wis. 2d 402, 752 N.W.2d 260, 06-2554.

NOTE: The above annotations cite to s. 81.38, the predecessor statute to this section.

82.09 County aid for dams used for bridges. A town board may file a petition with the county board stating that the town board has voted to acquire the right to use a roadway on a dam. The petition shall contain a legal description and scale map of the dam and roadway, and shall state the amount agreed to be paid to the owner for the use of the roadway. Upon receipt of a petition, the county board shall appropriate a sum equal to 50 percent of the amount agreed to be paid for the use. The county board shall, on the order of the chairperson of the county board and county clerk, cause such sum to be paid to the treasurer of the town whenever the town board notifies the county highway commissioner that a contract for the use of the roadway has been executed.

History: 2003 a. 214 s. 151.

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

SUBCHAPTER II

BASIC PROCEDURES

82.10 Initiation of procedures. (1) APPLICATION FOR HIGHWAY CHANGES. Six or more resident freeholders may apply to the town board to have a highway laid out, altered, or discontinued. The application shall be in writing and shall be delivered to the town clerk. The application shall contain all of the following:

(a) A legal description of the highway to be discontinued or of the proposed highway to be laid out or altered.

(b) A scale map of the land that would be affected by the application.

(2) RESOLUTION. Notwithstanding sub. (1), the town board may initiate the process of laying out, altering, or discontinuing a town highway by the introduction of a resolution. The resolution shall contain all of the following:

(a) A legal description of the highway to be discontinued or of the proposed highway to be laid out or altered.

(b) A scale map of the land that would be affected by the resolution.

(3) NOTICE REQUIREMENTS. Upon receipt of an application under sub. (1) or the introduction of a resolution under sub. (2), the board shall provide notice of the time that and the place where it will meet to consider the application or resolution. The notice

shall contain a legal description of the highway to be discontinued or of the proposed highway to be laid out or altered and a scale map of the land that would be affected by the application or resolution.

(4) NOTICE RECIPIENTS. (a) The town board or, at the town board's direction, the applicants shall publish a class 3 notice under ch. 985 and shall, at least 30 days before the hearing, give notice by registered mail to all of the following:

1. The owners of record of lands through which the highway may pass.

2. The owners of record of all lands abutting the highway.

3. The department of natural resources.

4. The county land conservation committee in each county through which the highway may pass.

5. The secretary of transportation, if the highway that is the subject of the application or resolution is located within one-quarter mile of a state trunk highway or connecting highway.

6. The commissioner of railroads, if there is a railroad highway crossing, within the portion of the highway that is the subject of the application or resolution.

(b) If procedures are begun under sub. (1), the applicants shall bear the cost of publication. If the procedures are begun under sub. (2), the town shall bear the cost of publication.

(5) LIS PENDENS. In the case of an application under sub. (1), the applicant shall file a lis pendens under s. 840.11. In the case of a resolution under sub. (2), the board shall file a lis pendens within 10 days of the introduction of the resolution.

History: 2003 a. 214 ss. 29, 34 to 38, 161; 2009 a. 107, 223.

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

82.11 Meeting. (1) The town supervisors shall personally examine the highway or proposed highway that is the subject of an application or resolution under s. 82.10. At the time and place stated in the notice under s. 82.10, the town board shall hold a public hearing to decide, in its discretion, whether granting the application or resolution is in the public interest. Before the town board holds a public hearing on or takes any action on the application or resolution, the town board must be satisfied, by affidavit of the applicant or otherwise, that the notices in s. 82.10 (4) have been given.

(2) (a) No town official may act in laying out, altering, or discontinuing a highway if acting would result in a violation of the code of ethics under s. 19.59 or of a local ordinance enacted under s. 19.59 (1m). If a town official is prevented from acting, the remaining town officials shall act.

(b) Every town shall have a written policy on how the town board will act on an application or resolution when there are fewer than 2 supervisors in the town who are able to act on the application or resolution. In the absence of a policy, the town clerk may act. If the town clerk is prevented from acting, the treasurer may act.

History: 2003 a. 214 ss. 33, 40, 162.

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

82.12 Highway order. (1) A town board shall make a determination upon any application or resolution to lay out, alter, or discontinue any highway within 90 days after receipt of the application or introduction of a resolution.

(2) If the board determines under sub. (1) to lay out, alter, or discontinue any highway, it shall issue a highway order. The highway order shall be recorded with the register of deeds for the county in which the highway is or will be located and shall be filed with the town clerk. The town clerk shall submit a certified copy of the order to the county highway commissioner. If the town has an official map, the order shall be incorporated into the official map.

(3) The determination not to issue a highway order shall be final for one year. No application to lay out, alter, or discontinue a highway shall be filed within one year from the date of a determination not to issue a highway order covering the highway or portion of the highway covered in the refused application.

History: 2003 a. 214 ss. 42, 74, 76, 163.

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

82.13 Highways to school buildings. Upon being notified that a public school in a town lacks highway access, the town board shall lay out a highway to the public school, using the procedures in this subchapter. No application for the highway shall be necessary. Section 82.12 (3) shall not apply to proceedings under this section.

History: 2003 a. 214 s. 72; Stats. 2003 s. 82.13.

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

82.14 Acquiring rights to land; damages from discontinuance. (1) Unless the acquisition can be made by mutual agreement, the town board shall utilize the procedures under s. 32.05 to acquire rights to land for the purpose of laying out or altering a town highway.

(2) If lands acquired by contract for highway purposes are encumbered, and the owners of the fee and of the encumbrance do not agree on the allocation of any damages to be paid due to the taking, the damages may be paid to the clerk of the circuit court of the county in which the land is located. Upon the application of any interested party and upon not less than 5 days' written notice to the other party, the court may apportion the damages paid to the clerk among the parties.

(3) An owner of property abutting on a discontinued highway whose property is damaged by the discontinuance may recover damages as provided in ch. 32.

History: 2003 a. 214 ss. 82, 164.

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

82.15 Appeal of a highway order. Any person aggrieved by a highway order, or a refusal to issue such an order, may seek judicial review under s. 68.13. If the highway is on the line between 2 counties, the appeal may be in the circuit court of either county.

History: 2003 a. 214.

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

The judge's role is administrative and not judicial. Entry of judgment is beyond a circuit judge's jurisdiction under this section. Town Board v. Webb, 118 Wis. 2d 362, 348 N.W.2d 591 (Ct. App. 1984).

NOTE: The above annotation cites to s. 80.17, the predecessor statute to this section.

This section contemplates certiorari review under s. 68.13 as the prescribed method for review of a highway order or of a refusal to issue such an order. Section 68.13 establishes both the procedure and a time limit for seeking review of a highway order under most circumstances. Inasmuch as the plaintiffs were seeking a determination that the town's refusal to issue a highway order was not in accordance with law, they should have proceeded under s. 68.13. Dawson v. Town of Jackson, 2011 WI 77, 336 Wis. 2d 318, 801 N.W.2d 316, 09-0120.

The 30-day period during which certiorari review is available for a town board's highway order to lay out, alter, or discontinue a highway begins to run on the date that the highway order is recorded by the register of deeds. Pulera v. Town of Richmond, 2017 WI 61, 375 Wis. 2d 676, 896 N.W.2d 342, 15-1016.

82.16 Highway orders; presumptions. (1) Every order laying out, altering, or discontinuing a highway under this chapter, and any order restoring the record of a highway, shall be presumptive evidence of the facts therein stated and of the regularity of all the proceedings prior to the making of the order.

(2) The validity of an order described in sub. (1), if fair on its

face, is not open to collateral attack, but may be challenged in an action brought under s. 82.15.

(3) It shall be presumed that a release was given by the owners of the lands over which the highway was laid out and the public shall be entitled to use the full width of the highway, as laid out, without further compensation if all of the following apply:

(a) An order laying out the highway has been filed for more than 30 years.

(b) No award of damages or agreement or release has been filed.

(c) The highway, or a part of the highway, has been used by the public and public money has been expended on the highway for at least 5 years.

History: 1979 c. 323; 2003 a. 214 ss. 94 to 96, 166; Stats. 2003 s. 82.16; 2003 a. 327.

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

82.17 Highway papers, where filed. All applications, orders, awards, bonds, and other papers relating to the laying out, altering, or discontinuing of highways under this chapter shall be promptly filed in the office of the town, city, or village clerk where the highway is located, except as otherwise specifically provided in this chapter.

History: 2003 a. 214 s. 93; Stats. 2003 s. 82.17.

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

82.18 Width of highways. Except as otherwise provided in this chapter, highways laid out under this chapter shall be laid out at least 66 feet wide unless, in the town board's discretion, that width is impractical. If the town board determines that a 66-foot width is impractical, the width shall be determined by the town board but shall be at least 49.5 feet in width. When no width is specified in the highway order, the highway shall be 66 feet wide.

History: 1999 a. 97; 2003 a. 214 s. 43; Stats. 2003 s. 82.18.

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

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 this section.

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.

82.20 Removal of fences from highway; notice. (1) If the town board issues an order to lay out or alter a highway through enclosed, cultivated, or improved lands, the town board or highway superintendent shall give the owner or occupant of the lands through which the proposed highway will pass written notice of its, his, or her intent to remove the fences in the path of the new or altered highway. The notice shall state when the town board or highway superintendent intends to remove the fences, which shall not be less than 30 days from the date on which the notice was given to the owner or occupant. If the owner or occupant does not remove the fences before the time stated in the notice, the town board or highway superintendent shall remove the fences and may charge the landowner for the costs of the removal under s. 66.0627.

(2) The notice under sub. (1) shall not be sent until the time for filing an appeal under s. 82.15 has expired and no appeal was taken or until all appeals under s. 82.15 have been brought to a final determination.

(3) This section does not authorize the opening of a highway through enclosed, cultivated, or improved lands or the removal of fences between May 15 and September 15, except in cases of emergency to be determined by the town board.

History: 1991 a. 316; 1999 a. 97; 2003 a. 214 ss. 77 to 79; Stats. 2003 s. 82.20.

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

SUBCHAPTER III

SPECIAL PROCEDURES

82.21 Highways on and across town and municipal lines. (1) INITIATING THE PROCEDURE. The procedure to lay out, alter, or discontinue a highway on the line between a town and another town, a city, or a village, or a highway extending from one town into an adjoining town, city, or village, shall begin only when one of the following occurs in each affected municipality:

(a) Six resident freeholders of the town, city, or village deliver an application to lay out, alter, or discontinue a town line highway to the clerk of every town, city, or village that would be affected by the proposal.

(b) The town board, city council, or village board introduces a resolution to lay out, alter, or discontinue a town line highway.

(2) CONTENTS OF THE APPLICATION OR RESOLUTION. An application or resolution under sub. (1) shall contain a legal description of the highway to be discontinued or of the proposed highway to be laid out or altered and a scale map of the land that would be affected by the application. Upon completion of the requirements of sub. (1), the governing bodies of the municipalities, acting together in cooperation, but voting upon applications or resolutions as separate governing bodies, shall proceed under ss. 82.10 to 82.13.

(3) APPOINTMENT OF CITY OR VILLAGE COMMISSIONERS.

Upon receipt of an application or introduction of a resolution, the city council or village board may appoint 3 commissioners to act on behalf of the affected city or village in all respects. The commissioners shall be duly sworn to faithfully discharge their duties as commissioners before entering upon those duties.

(4) APPORTIONMENT OF AUTHORITY AND RESPONSIBILITY. (a) A highway order issued by 2 towns or by a town and a city or village may designate the part of the highway that each shall construct and repair, and pay the damages for, if any. As to the portion of the highway that the town, city, or village agrees to construct, keep in repair, and pay damages for, the town, city, or village shall have all of the authority and be subject to all of the responsibility in relation to that part of the highway as if that part were wholly located in the town, city, or village.

(b) Two town boards or a town board and a city council or village board, meeting together, may make an order in accordance with par. (a) apportioning or reapportioning the authority and responsibility for a town line highway or any part of a town line highway that they consider advisable, if any of the following conditions exists:

1. No apportionment has been made in a highway order.
2. The highway or part of the highway had its origin in user.
3. In the judgment of the town boards, or the town board and the city council or village board, circumstances have been so altered since the last apportionment of the highway or part of the highway that the current apportionment has been rendered inequitable or impracticable.

(c) An order made under par. (b) shall be filed with the clerk of each affected municipality and shall have the same effect as an apportionment made in connection with the original highway order.

(d) Any written order or agreement made before August 27, 1947, by a majority of the supervisors of each town concerned, acting together, apportioning, or reapportioning a town line highway has the same effect as though made on or after August 27, 1947.

(5) APPEAL OF APPORTIONMENT. (a) If an order laying out or altering a town line highway has not apportioned the authority and responsibility for the highway or if a municipality considers the current apportionment to be inequitable, an affected municipality may apply to the circuit judge of the county in which the affected municipality is located, for the appointment of 3 commissioners to apportion the authority and responsibility between each affected municipality. The municipality filing the application shall serve a copy of the application on the clerk of each municipality to be affected. The circuit judge may set the time and place of the hearing before the commissioners at least 10 days after the application is filed with the judge.

(b) Upon receipt of an application under par. (a), the circuit judge shall appoint 3 residents of the county as commissioners. The commissioners shall, on not less than 10 days' notice nor more than 60 days' notice in writing to the clerk of each affected municipality, apportion the authority and responsibility of each affected municipality on account of the highway. The commissioners shall make the determination in writing and shall file the determination with the clerk of each affected municipality. The commissioners' determination shall have the same effect as an order made under sub. (4).

(6) WHERE PAPERS FILED. All awards, notices, and papers required to be filed shall be filed in the office of the clerk of each affected municipality. Any highway orders issued under this section shall be recorded with the register of deeds for any county in which the highway is or will be located.

History: 2003 a. 214 ss. 46 to 53, 58, 60, 169; 2015 a. 11.

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

"Acting together" in sub. (2) does not require that separate votes taken by two governing bodies in deciding an application to lay out, alter, or discontinue a public highway on or across municipal lines be counted in the aggregate as if the two bodies voted as one. Approval of both boards is necessary to approve an application. Dawson v. Town of Jackson, 2011 WI 77, 336 Wis. 2d 318, 801 N.W.2d 316, 09-0120.

82.23 Municipal line bridges. Unless otherwise provided by statute or agreement, every highway bridge on a city, village, or town boundary shall be repaired and maintained by any adjoining municipality in which the bridge is located. The cost of repairs and maintenance shall be paid by the adjoining municipalities in proportion to the last equalized valuation of the property in the adjoining municipalities.

History: 2003 a. 214 s. 54.

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

82.25 Highway taxes for limited-use road. Notwithstanding s. 60.10 (1) (a) and (2) (a), the town board may levy and collect a tax on property located in a recorded and filed plat that existed on January 1, 2003, situated in a town requiring the approval of such town board, and adjoining a private road used by the public located therein, and on property adjoining, where the owner regularly uses such road which is not a portion of any town, county, state, or federal highway system, not exceeding 3 mills for each dollar of assessed valuation thereof. The proceeds of the tax shall be expended for the improvement and maintenance of any private roads used by the public located within the recorded and filed plat. The town board shall not expend any of the funds collected under this section upon a private driveway.

History: 1985 a. 29; 1991 a. 316; 1997 a. 35; 1999 a. 96; 2003 a. 214 s. 129.

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

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 ad-

ditional 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 s. 80.13 (5) [now sub. (6)] but may lay the road over land of another under s. 80.13 (3) [now sub. (4)]. Gaethke v. Town Board, 86 Wis. 2d 495, 273 N.W.2d 764 (1979).

In the exercise of the discretion provided for under 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 23, 00-1035.

82.28 Highways and bridges on state boundaries. The board of any town or county that is bounded in part by a river or a highway that is also a state boundary line may enter into an agreement with any adjoining municipality or county in the other state for the maintenance, construction, and reconstruction of boundary line highways and bridges. The costs shall be apportioned by agreement.

History: 2003 a. 214.

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

82.29 Highways abutted by state park lands; discontinuance or relocation. Any part of a highway lying wholly within state park lands may be discontinued or relocated by the state agency having jurisdiction over the state park by filing written notice of the discontinuance or relocation with the clerk of the municipality that has jurisdiction over the highway and upon approval by the municipality after holding a hearing as provided in s. 82.10. No discontinuance or relocation under this section may deprive a landowner of all highway access. This section does not apply to state trunk highways or connecting highways.

History: 1977 c. 29 s. 1654 (3); 2003 a. 214 s. 30; Stats. 2003 s. 82.29.

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

SUBCHAPTER IV

EXISTING HIGHWAYS

82.31 Validation of highways. (1) RECORDED HIGHWAYS.

Any recorded highway that has been laid out under this chapter is a legal highway only to the extent that it has been opened and worked for 3 years. Any laid out highway that has not been fully and sufficiently described or recorded or for which the records have been lost or destroyed is presumed to be 66 feet wide.

(2) UNRECORDED HIGHWAYS. (a) Except as provided in pars. (b) and (c), any unrecorded highway that has been worked as a public highway for 10 years or more is a public highway and is presumed to be 66 feet wide.

(b) No road or bridge built upon the bottoms and sloughs of the Mississippi River by citizens or a municipality of any other state shall become a legal highway or a charge upon the town in which the road is located unless upon petition the highway is legally laid out by the town board.

(c) No lands granted for highway purposes that did not become a legal highway prior to July 1, 1913, shall become a legal highway unless the grant is accepted by the town board or by the town meeting of the town where the lands and proposed highway are located, and until a resolution of acceptance of the grant is recorded in the office of the town clerk.

History: 2003 a. 214 ss. 21 to 23.

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

When a governmental unit shows public use of a road for 20 years or public maintenance for ten years, a landowner claiming that the road is private has the burden of proving permissive use. Ruchti v. Monroe, 83 Wis. 2d 551, 266 N.W.2d 309 (1978).

When a highway was established by user, the existence of ancient fences within two rods of either side of the center of the highway was sufficient to rebut the sub. (2) presumption that the highway was four rods in width. Threlfall v. Town of Muscoda, 190 Wis. 2d 121, 527 N.W.2d 367 (Ct. App. 1994).

The test under sub. (2) for whether a highway has been "worked" is whether the work demonstrates the public's ownership of the road so that the public use of the road is not merely permissive. Continuous work on a road by a public entity is more likely to demonstrate ownership than sporadic work. County of Langlade v. Kaster, 202 Wis. 2d 448, 550 N.W.2d 722 (Ct. App. 1996), 95-2694.

When documents indicate an intent to dedicate roadways to the public, in the absence of official acceptance by the municipality, prior acceptance by the general public users prevents revocation of the offer to dedicate. Nothing prevents the acceptance of the ongoing offer by a municipality. Upon formal acceptance the municipality becomes liable for maintenance and for damages that might result from defects. Cohn v. Town of Randall, 2001 WI App 176, 247 Wis. 2d 118, 633 N.W.2d 674, 00-2176.

A street is presumed to be 66 feet wide unless rebutted, by a preponderance of the evidence, by those contending that the street is some other width. Village of Brown Deer v. Balisterri, 2013 WI App 137, 351 Wis. 2d 665, 841 N.W.2d 59, 13-0748.

The general definition of highway in s. 990.01 (12) governs and does not have any limitation restricting the definition to vehicular traffic. Case law has extended the definition of highway to include roads, streets, bridges, sidewalks, driveway aprons, and shoulders of the highway. Village of Brown Deer v. Balisterri, 2013 WI App 137, 351 Wis. 2d 665, 841 N.W.2d 59, 13-0748.

Discussing rights-of-way boundaries of nondedicated roads. 69 Atty. Gen. 87.

NOTE: The above annotations cite to s. 80.01 (1) or (2), the predecessor statutes to this section.

82.33 Lost records; how restored; effect. (1) Whenever the record of the laying out of any highway has been lost or destroyed, the board of the town in which the highway is located, upon notice being served in accordance with s. 82.10 (4), may make a new record of the highway. The notice shall state the time when and the place where the board will decide whether to make the new record. The notice shall contain a legal description of the highway for which the proposed record will be made and a scale map of the land that would be affected. Notice need not be given to persons who waive the notice or consent to the issuance of the order.

(2) At the time and place stated in the notice, the town board shall hold a public hearing regarding the proposed new record, and shall make a new record as it considers proper. If the board finds that the highway is a legal highway, the record of which has been lost or destroyed, the board shall issue a written order stating those facts and specifying the course, width, and other pertinent description of the highway. The order shall be filed with the town clerk and recorded in the office of the register of deeds for the county in which the highway is located. Any number of highways may be included in one notice or order under this section. A failure or refusal to make a new record for any highway does not preclude a subsequent proceeding for that purpose.

(3) Any person through whose land a highway described in an order filed under sub. (2) passes may appeal under s. 82.15 on the grounds that the highway described in the order was not a legal highway in fact. No person may call into question the regularity of proceedings under this section except owners of land on whom notice should have been served but in fact was not and persons claiming under those owners.

History: 1999 a. 97; 2003 a. 214 s. 98; Stats. 2003 s. 82.33.

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

82.35 Temporary highways and detours; damages. (1) The town board, upon its own motion, may lay out and open temporary highways through any lands in the following situations:

(a) When any highway is practically impassable or dangerous to travel.

(b) When the town board considers it necessary to suspend travel on a highway or on any part of a highway due to construction, repair, or other reasons.

(2) (a) The board may contract in writing with the owner or lessee of any land through which it proposes to lay out a temporary highway, as to the location of the highway, and the damages that the owner or lessee is to receive. The contract shall be filed with the town clerk.

(b) In the absence of a contract under par. (a), the board shall determine the location of the temporary highway and the award of damages. Unless an emergency exists, the board shall serve the landowner with notice of the location of the highway and the award of damages and shall provide the landowner with 48 hours to object. The town board shall file a written order with the town clerk specifying the location of the temporary highway and the damages awarded.

(c) The owner or occupant of any land occupied by a temporary highway may, at any time after it is opened and within 30 days after it is vacated or discontinued, apply to the town board to determine the owner's or occupant's damages.

(3) If a temporary highway is opened in connection with or on account of road or bridge construction, the damages agreed upon or awarded pursuant to this section may be treated as part of the construction cost and paid out of the construction funds.

(4) A temporary highway shall exist only so long as needed and shall be considered vacated and discontinued when the permanent highway is again opened for public travel.

History: 1991 a. 316; 2003 a. 214 ss. 124 to 127, 172; Stats. 2003 s. 82.35.

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

82.37 Tunnel under highway by landowner. The owner of land on both sides of a town highway may construct a tunnel under the highway, and may erect fences that are necessary for the use of the tunnel. The tunnel shall not interfere with or endanger travel on the highway. The owner shall maintain the tunnel and shall be liable for all damages that occur as a result of the failure to keep the tunnel in repair. Unless authorized by a town meeting, the tunnel shall not be less than 25 feet in length. The electors of the town at an annual town meeting may authorize the construction of a tunnel that is less than 25 feet, but at least 16 feet in length.

History: 1989 a. 56, 359; 2003 a. 214 s. 138; Stats. 2003 s. 82.37.

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

82.50 Town road standards. (1) The following minimum

geometric design standards are established for improvements on town roads:

Annual Average 24-hour Traffic (ADT)	Minimum Design Standards
(a) Local service, intermittent traffic	
1. Right-of-way	3 rods
2. Roadway width	20 feet
3. Surface width	16 feet
(b) Under 100 ADT	
1. Right-of-way	3 rods
2. Roadway width	24 feet
3. Surface width	18 feet
4. Maximum grades	9 percent-11 percent
(c) 100 to 250 ADT	
1. Right-of-way	4 rods
2. Roadway width	26 feet
3. Surface width	20 feet
4. Maximum grades	8 percent-11 percent
(d) 251 to 400 ADT	
1. Right-of-way	4 rods
2. Roadway width	32 feet
3. Surface width	22 feet
4. Maximum grades	6 percent-8 percent
5. Curvature	6°-12.5°
(e) 401 to 1,000 ADT	
1. Right-of-way	4 rods
2. Roadway width	34 feet
3. Surface width	22 feet
4. Maximum grades	5 percent-8 percent
5. Curvature	5°-12.5°
(f) 1,001 to 2,400 ADT	
1. Right-of-way	4 rods
2. Roadway width	44 feet
3. Surface width	24 feet
4. Maximum grades	5 percent-7 percent
5. Curvature	4.5°-7.5°
(g) Over 2,400	State trunk standards

(2) The department may approve deviations from the minimum standards in special cases where the strict application of the standards is impractical and where such deviation is not contrary to the public interest and safety and the intent of this section.

(3) This section does not apply to improvements on town roads existing on October 1, 1992.

History: 1981 c. 20; 1987 a. 137 s. 6; 1989 a. 56; 1991 a. 39; 1993 a. 490; 1999 a. 85; 2003 a. 214 s. 182; Stats. 2003 s. 82.50.

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

This section vests in a town a certain degree of discretion with respect to complying with minimum standards for town roads. Nothing in the statutes controls the circumstances in which a town may apply for a deviation under sub. (2), which indicates that the application is left to the town's discretion. DSG Evergreen Family Limited Partnership v. Town of Perry, 2020 WI 23, 390 Wis. 2d 533, 939 N.W.2d 564, 17-2352.

Sub. (1) does not impose obligations on a town that are susceptible to a declaration of rights, nor does it create a private cause of action by which a plaintiff can recover damages for an alleged failure to construct a proper road. DSG Evergreen Family Limited Partnership v. Town of Perry, 2020 WI 23, 390 Wis. 2d 533, 939 N.W.2d 564, 17-2352.

82.51 Rules for town road bridge standards. The department shall establish by rule uniform minimum design standards for the improvement of town road bridges.

History: 1981 c. 20; 1987 a. 137 s. 6; 2003 a. 214 s. 83; Stats. 2003 s. 82.51.

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

82.52 Rules for town road standards. The department shall establish by rule uniform minimum geometric standards for the improvement of existing town roads.

History: 1991 a. 39; 2003 a. 214 s. 184; Stats. 2003 s. 82.52.

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

CHAPTER 83

COUNTY HIGHWAYS

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83.001 Definition. In this chapter, "department" means the department of transportation.

History: 1985 a. 223.

83.01 County highway commissioner. (1) ELECTION OR APPOINTMENT. (a) Except as provided under pars. (b) and (c), the county board shall elect a county highway commissioner. If the county board fails to elect a county highway commissioner, the county shall not participate in state allotments for highways.

(b) In counties having a population of 750,000 or more, the county highway commissioner shall also be the director of public works. The person holding the position of county highway commissioner and director of public works, under the classified service, on June 16, 1974, shall continue in that capacity under civil service status until death, resignation or removal from such position. Thereafter the county executive shall appoint as successor a director of transportation who shall assume the duties of county highway commissioner and director of public works and is subject to confirmation by the county board, as provided in s. 59.17 (2) (bm).

(c) Except as provided under par. (b), in any county with a county executive or a county administrator, the county executive or county administrator shall appoint and supervise the county highway commissioner. The appointment is subject to confirmation by the county board unless the county board, by ordinance, elects to waive confirmation or unless the appointment is made under a civil service system competitive examination procedure established under s. 59.52 (8) or ch. 63. Notwithstanding s. 83.01 (7) (a) and (b), the highway commissioner is subject only to the supervision of the county executive or county administrator.

(2) TERM. (a) Unless the county board establishes a different term of service by ordinance, the county highway commissioner shall serve for a term of 2 years, except as provided in par. (b).

(b) Unless the county board establishes a different term of service under par. (a), upon his or her first election or appointment the county highway commissioner shall serve until the first Monday in January of the 2nd year succeeding the year of the election or appointment.

(3) SALARY. The salary of the county highway commissioner shall be as determined under s. 59.22.

(4) OFFICE AND ASSISTANTS. The county board shall provide the county highway commissioner with suitable offices and such assistants as are necessary for the proper performance of the commissioner's duties.

(5) BOND. The county highway commissioner shall give bond in such sum as the county board shall from time to time require.

(6) PAYMENT OF SALARIES. The salaries, expenses of maintaining an office and the necessary traveling expenses of the county highway commissioner, assistants and special highway patrolmen in counties having such patrolmen may be paid monthly out of the general fund after being audited and approved by the county highway committee. All such expenditures out of the general fund shall be reimbursed out of moneys received under s. 86.30.

(7) DUTIES. (a) Except as provided under s. 83.015 (2) (b), the county highway commissioner shall have charge, under the direction of the county highway committee, of the construction of highways built with county aid and of the maintenance of all highways maintained by the county.

(b) Except as provided under s. 83.015 (2) (b), the county highway commissioner shall perform all duties required by the county board and by the county highway committee and shall do or cause to be done all necessary engineering and make all necessary examinations for the establishment, construction, improvement and maintenance of highways. The county highway commissioner shall establish such grades and make such surveys and maps or cause the same to be made as the commissioner considers proper, and examine the highways and report as to the condition of roads, bridges and culverts, and make estimates of the cost of the improvement thereof, and of the cost of any relocation when required to do so or when the commissioner considers the same reasonably necessary.

(c) The county highway commissioner shall have charge of all county road machinery and tools, and shall be responsible to the county board for their proper maintenance, repair and storage, and shall in the annual report required under par. (d) make a complete inventory of the same, which inventory shall show the date of purchase, the location and condition of such machinery and tools, and the cost and present value thereof.

(d) The county highway commissioner shall make an annual report to the department and to the county board at its annual meeting containing an itemized statement of all expenditures made from the county road and bridge fund during the year end-

ing November 1. The commissioner shall include in the report an itemized estimate of the amount needed to properly maintain the county trunk highways in the county for the succeeding year and shall make such recommendations as deemed advisable.

(e) The county highway commissioner and the commissioner's employees may enter private lands for the purpose of making surveys or inspections.

(f) Whenever any fence encroaches upon any highway on the county trunk or state trunk system, the county highway commissioner may issue an order requiring the owner or occupant of the land to which such fence is appurtenant to remove the fence from the highway within 30 days. The order shall be served personally or by registered mail. If the fence is not sooner removed the commissioner shall, after the expiration of 30 days, remove the fence. The commissioner shall keep an accurate account of the expense thereof which shall be paid by the county. The expense shall be charged to the town in which such lands are situated and shall be added to its tax roll as a special tax against such lands, and shall be collected and accounted for as other county taxes are. If the claim of encroachment is disputed, the dispute shall be decided in the manner prescribed by s. 86.04 (3).

(g) The county commissioner shall compile and maintain a record of the laying out, alteration, or discontinuance of all highways in the county outside the limits of cities and villages. The record shall be known as the county highway register and be kept in the manner or form prescribed by the department. The county highway commissioner or agents shall have access to the records of town clerks and may have temporary custody of such as are necessary for the purpose of making accurate and appropriate copies thereof. The department shall assist in the compilation of the records and shall furnish to the county highway commissioner such information as the department deems appropriate relative to the laying out of military, territorial, and such other roads as have been authorized by the legislature. The information contained in the county highway register shall be kept together in a location within the county that provides a safe repository for records as determined by the county board and shall be accessible to the public. Such county highway register may be supplemented from time to time by the county highway commissioner and such supplemental information is to be treated in the same fashion as the original county highway register all of which shall be admissible in evidence.

History: 1973 c. 262; 1977 c. 29 ss. 1654 (8) (c), (d), (f), 1656 (43); 1977 c. 273; 1981 c. 217; 1985 a. 29; 1985 a. 223 s. 5; 1989 a. 171; 1991 a. 316; 1995 a. 201; 1997 a. 35; 2005 a. 41, 401; 2015 a. 197 s. 51; 2017 a. 207 s. 5.

Counties are without the power to furnish equipment or supplies or to contract to do repair work on private roads and driveways. 61 Atty. Gen. 304.

County highway commissioners are appointed by the county board. Their salary is to be fixed, and may be changed during their term, under s. 59.15 (2) [now s. 59.22 (2)]. 63 Atty. Gen. 286.

A county board may provide for an indefinite term of office for a highway commissioner. 80 Atty. Gen. 46.

83.013 County traffic safety commissions. (1) (a) For each county, the county highway commissioner or a designated representative, the chief county traffic law enforcement officer or a designated representative, the county highway safety coordinator, and a representative designated by the county board from each of the disciplines of education, medicine and law and 3 representatives involved in law enforcement, highways and highway safety designated by the secretary of transportation shall comprise a traffic safety commission that shall meet at least quarterly to review traffic accident data from the county and other traffic safety related matters. The county board chairperson, or the county executive or county administrator in a county having such offices, may appoint additional persons to serve as a member of the county traffic safety commission. The commissions shall designate a person to prepare and maintain a spot map showing the locations of traffic accidents on county and town roads and on city and village streets if the population of the city or village is less than 5,000 and to maintain traffic accident data received from cities, villages and towns with a population of 5,000 or more under s. 66.0141. Upon each review, the commission shall make written recommendations for any corrective actions it deems appropriate to the department, the county board, the county highway committee or any other appropriate branch of local government.

(b) Counties may combine for the purposes of par. (a), if desired.

(c) The commissions shall file a report on each meeting with the department.

(2) The department shall furnish each commission with traffic accident data and uniform traffic citation data for the rural, federal, state, and county highways in the jurisdictions represented in each commission, which shall identify the accident rates and arrest rates on their highways, and shall also furnish a suitable map for use in spotting accidents.

History: 1971 c. 125, 279; 1975 c. 381, 421; 1977 c. 29; 1981 c. 314; 1983 a. 291; 1985 a. 223 s. 5; 1993 a. 246; 1997 a. 27; 1999 a. 150 s. 672.

83.015 County highway committee. (1) ELECTION; COMPENSATION; TERM. (a) Except as otherwise provided in par. (c) each county board at the annual meeting shall by ballot elect a committee of not less than 3 nor more than 5 persons, to serve for one year, beginning either as soon as elected or on January 1 following their election, as designated by the county board, and until their successors are elected. Any vacancy in the committee may be filled until the next meeting of the county board by appointment made by the chairperson of the board. The committee shall be known as the "county highway committee", and shall be the only committee representing the county in the expenditure of county funds in constructing or maintaining, or aiding in constructing or maintaining highways.

(b) The members of the county highway committee shall be reimbursed for their necessary expenses incurred in the performance of their duties, and shall be paid the same per diem for time necessarily spent in the performance of their duties as is paid to members of other county board committees, not, however, exceeding $500 for per diem, in addition to necessary expenses, to any member in any year. A different amount may be fixed as a maximum by the county board.

(c) Notwithstanding par. (a), each county board may fix the number of members on the county highway committee, the membership, manner of appointment, method of filling vacancies and the terms of the members.

(d) The town chairperson of each town in which county aid construction is performed shall be a member of the county highway committee, or shall act with such committee, on all matters affecting such construction in the town, if the town has voted a portion of the cost thereof.

(2) POWERS AND DUTIES. (a) Except as provided under par. (b), the county highway committee shall purchase and sell county road machinery as authorized by the county board, determine whether each piece of county aid construction shall be let by contract or shall be done by day labor, enter into contracts in the name of the county, and make necessary arrangements for the proper prosecution of the construction and maintenance of highways provided for by the county board, enter private lands with their employees to remove weeds and brush and erect or remove fences that are necessary to keep highways open for travel during the winter, direct the expenditure of highway maintenance funds received from the state or provided by county tax, meet from time to time at the county seat to audit all payrolls and material claims

and vouchers resulting from the construction of highways and perform other duties imposed by law or by the county board.

(b) In any county with a highway commissioner appointed under s. 83.01 (1) (b) or (c), the county highway committee shall be only a policy-making body determining the broad outlines and principles governing administration and the county highway commissioner shall have the administrative powers and duties prescribed for the county highway committee under par. (a), sub. (3) (a) and ss. 27.065 (4) (b) and (13), 32.05 (1) (a), 82.08, 83.01 (6), 83.013, 83.018, 83.025 (1) and (3), 83.026, 83.035, 83.04, 83.05 (1), 83.07 to 83.09, 83.12, 83.14 (6), 83.17, 83.18, 83.42 (3) and (4), 84.01 (5), 84.06 (3), 84.07 (1) and (2), 84.09 (1), (3) (a) to (c) and (4), 84.10 (1), 86.04 (1) and (2), 86.07 (2) (a), 86.19 (3), 86.34 (1m), 114.33 (5), 349.07 (2), 349.11 (4) and (10) and 349.15 (2). No statutory power, duty or function specified elsewhere for the county highway commissioner may be deemed impliedly repealed for the sole reason that reference to it has been omitted in this paragraph.

(3) COST ACCOUNTING SYSTEM. (a) Each county board, except in counties of a population of 750,000 or over, shall provide for and require the county highway committee and county highway department to use the system of cost accounting devised by the department of revenue.

(b) Any variations, adjustments, corrections and revisions in the system shall be made annually so as to be effective on January 1 of each year following the proposed change.

(c) Any changes so proposed in order to become effective shall be mutually agreed upon by the department and a majority of the county highway departments of the state.

(d) The department may insist on the adoption of the uniform system in any county before entering into agreements with such county for the maintenance of state trunk highways.

History: 1971 c. 211 s. 124; 1977 c. 29 ss. 915, 1654 (8) (c); 1979 c. 110, 147; 1985 a. 29; 1985 a. 223 ss. 2, 5; 1987 a. 27; 1989 a. 56 s. 258; 1997 a. 27; 2003 a. 214; 2013 a. 20; 2015 a. 231; 2017 a. 207 s. 5.

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

This section does not preclude county boards from auditing county highway committee vouchers prior to payment thereof from county funds. However, the board's audit authority is limited to determining whether the expenditure is within the scope of the committee's statutory or delegated authority. 63 Atty. Gen. 136.

83.016 Traffic patrol officers, appointment, duties, bond. (1) The county board, or one of its committees to which it may delegate such authority, may appoint traffic officers for the enforcement of laws relating to the highways or their use, or the maintenance of order upon or near the highways. Traffic officers may arrest without warrant any person who, in their presence, violates any law relating to highways or the maintenance of order upon or near highways. Any traffic officer, sheriff, constable or other police officer may make such arrest without warrant on the request of any other traffic officer, sheriff, constable or police officer in whose presence any such offense has been committed. The appointment of any traffic officer may be revoked at any time by the county board or one of its committees to which it may delegate such authority. No traffic officer shall receive or accept from or for any person he or she has arrested, any money or other thing of value, as or in lieu of bail or for the person's appearance before a court, or to cover or be applied to the payment of fines or costs, or as a condition of such person's release.

(2) Traffic officers, before exercising their powers, shall be provided with a badge by the county board or its designee which shall be worn when on duty.

(3) Traffic officers shall furnish bonds in a sum fixed by the county board to indemnify the county for any and all claims arising out of the performance of their duties. The cost of such bonds shall be paid by the county. In lieu of furnishing bonds, such officers may be included in a schedule or blanket bond under s. 19.07 (1) (b).

History: 1977 c. 29 s. 1654 (7) (b); 1977 c. 43, 203.

83.018 Road supplies; committee may sell to municipalities. The county highway committee is authorized to sell road building and maintenance supplies on open account to any city, village, town or school district within the county; and any such city, village, town or school district is authorized to purchase such supplies.

It is permissible for a county highway department to sell road sand or salt to municipalities, either for their own use or for resale, if, in good faith, county officials believe that the purchaser does not intend to resell the sand or salt for a private purpose. OAG 2-01. But see OAG 1-20.

This section does not address the ability to lease gravel rights on county land. OAG 1-20.

83.02 County aid highways. (1) The system of prospective state highways heretofore selected by the county boards and approved by the highway commission are hereby validated but without prejudice to the exercise of the power to change such systems. Such systems are hereby designated as the county aid highway system.

(2) The department, on the petition of at least 100 freeholders, may, after investigation, make such alterations in the system of county aid highways as it deems necessary to serve the public interest.

(3) The county board may alter such systems as provided in s. 83.025 (1).

History: 1977 c. 29 s. 1654 (8) (c); 1977 c. 418 s. 924 (48); 1985 a. 223 ss. 3, 5.

83.025 County trunk highways. (1) (a) The systems of county trunk highways heretofore selected by county boards and approved by the department are hereby validated. Changes may be made in the county trunk system by the county board as provided in this section. The county board in making the changes may order the county highway committee to lay out new highways and acquire the interests necessary by the procedures under s. 83.08. A county board may not make additions to a county trunk system from a city or village street or town road without the consent of the department and of the governing body of the city, village or town in which the proposed addition is located. A county board may not make deletions from a county trunk system without the approval of the department, and, except as provided in this paragraph and par. (d), without the approval of the governing body of the city, village or town in which the proposed deletion is located or, in the case of a proposed deletion affecting more than one city, village or town, without the approval of a majority of the governing bodies of such cities, villages or towns.

(b) The county board, or the county highway committee, shall, by conference with the boards or highway committees of adjoining counties, or otherwise, cause their respective county trunk systems to join so as to make continuous lines of travel between the counties. Any highway which is a part of the county trunk system shall, by virtue thereof, be a portion of the system of county aid highways.

(c) Any city or village street or portion thereof selected as a portion of the county trunk system prior to May 1, 1939, shall be a portion of the county trunk system. All streets or highways in any city or village over which is routed a county trunk highway or forming connections through the city or village between portions of the county trunk highway system shall be a part of the county trunk system unless the governing body of the city or village, by resolution, removes the street or highway from the system, but the removal shall apply only to that portion of any street or highway which is situated wholly within the city or village.

(d) In counties having a population of 750,000 or more the

county board may remove from the county trunk highway system any part thereof which lies within an incorporated village or city, but the removal shall not be effected until one year after annexation proceeding affecting the area in question has become final.

(e) Whenever a county has completed a functional and jurisdictional classification of highways and the classification plan has been approved by the county board, the local governing bodies and the department, those roads and streets allocated to the county's jurisdiction will be known as county trunk highways. Additions and deletions from the county trunks under this paragraph in the various municipalities may be made as provided in pars. (a) and (d).

(2) The county trunk system shall be marked and maintained by the county. No county shall be responsible for the construction and maintenance of a city or village street on the county trunk highway system to a greater width than are those portions of such system outside the village or city and connecting with such street. When a portion of a county trunk highway extending from one county to another has less mileage than is practical for a patrol section, such portion shall be patrolled by the county in which the major portion of the highway lies, and each county shall bear its proportionate share of the expense of maintenance, payable monthly. The marking and signing of the county trunk highway systems shall be uniform throughout the state, as prescribed by the department.

(3) The county highway committee, subject to the approval of the county board, may enter into agreements with the department as provided in s. 86.25 (2).

History: 1973 c. 160; 1977 c. 29 s. 1654 (8) (d); 1985 a. 223; 1993 a. 246; 2017 a. 207 s. 5.

Sub. (1), as amended by ch. 160, laws of 1973, does not require counties to develop a functional and jurisdictional classification of highways. Nor is a properly approved classification plan a prerequisite to a county board's exercise of its authority pursuant to sub. (1) to incorporate town roads into the county trunk highway system without prior approval of town boards. 63 Atty. Gen. 125.

83.026 Federal aid secondary highways. The county highway committee shall cooperate with the department in the selection of a system of federal aid secondary and feeder roads within the meaning of the Federal Aid Road Act approved July 11, 1916 (39 Stats. at L. 355), and all acts amendatory thereof and supplementary thereto. The county highway committee shall request and consider recommendations from the governing bodies of municipalities within the county as to eligible highways and streets within such municipalities to be selected as part of such system. The highways and streets selected by the committee to be a part of such system shall be subject to the approval of the county board.

History: 1977 c. 29 s. 1654 (8) (c); 1985 a. 223 s. 5.

83.027 Controlled-access highways. (1) AUTHORITY OF COUNTY BOARD; PROCEDURE. The legislature declares that the effective control of traffic entering upon or leaving intensively traveled highways is necessary in the interest of public safety, convenience and the general welfare. The county board may designate as controlled-access highways the portions of the county trunk system on which, after traffic engineering surveys, investigations and studies, it finds, determines and declares that the average traffic potential is in excess of 1,000 vehicles per 24-hour day, except such controlled-access designation shall not be effective in cities, villages and towns until the decision of the county board has been referred to and approved by the governing body of such city, village or town. Such designation of a portion of any county trunk highway in any county as a controlled-access highway shall not be effected until after a public hearing in the matter has been held in the county courthouse or other convenient public place within the county following notice by publication of a class 3 notice, under ch. 985. If the county board then finds that the average traffic potential is as provided by this subsection, and that the designation of the highway as a controlled-access highway is necessary in the interest of public safety, convenience and the general welfare, it shall make its finding, determination and declaration to that effect, specifying the character of the controls to be exercised. Copies of the finding, determination and declaration shall be recorded with the register of deeds, filed with the county clerk, and published in the newspaper in which the notice of hearing was published, and the order shall be effective on such publication. At the time of designating such controlled-access mileage, the total of such mileage in any county shall not exceed 35 percent of the county trunk mileage in such county on the preceding January 1 as published by the department.

(2) CONTROLLED-ACCESS HIGHWAY DEFINED. For the purposes of this section, a controlled-access highway is a highway on which the traffic is such that the county board has found, determined and declared it to be necessary, in the interest of the public safety, convenience and the general welfare to prohibit entrance upon and departure from the highway or street except at places specially designated and provided for such purposes, and to exercise special controls over traffic on such highway or street.

(3) CONSTRUCTION; OTHER POWERS OF COUNTY BOARD. In order to provide for the public safety, convenience and the general welfare, the county board may use an existing highway or provide new and additional facilities for a controlled-access highway and so design the same and its appurtenances, and so regulate, restrict or prohibit access to or departure from it as the county board deems necessary or desirable. The county board may eliminate intersections at grade of controlled-access highways with existing highways or streets, by grade separation or service road, or by closing off such roads and streets at the right-of-way boundary line of such controlled-access highway and may divide and separate any controlled-access highway into separate roadways or lanes by raised curbings, dividing sections or other physical separations or by signs, markers, stripes or other suitable devices, and may execute any construction necessary in the development of a controlled-access highway including service roads or separation of grade structures.

(4) CONNECTIONS WITH OTHER HIGHWAYS. After the establishment of any controlled-access highway, no street or highway or private driveway, shall be opened into or connected with any controlled-access highway without the previous consent and approval of the county board, in writing, which shall be given only if the public interest shall be served thereby and shall specify the terms and conditions on which such consent and approval is given.

(5) USE OF HIGHWAY. No person shall have any right of entrance upon or departure from or travel across any controlled-access highway, or to or from abutting lands, except at places designated and provided for such purposes, and on such terms and conditions as may be specified from time to time by the county board.

(6) ABUTTING OWNERS. After the designation of a controlled-access highway, the owners or occupants of abutting lands shall have no right or easement of access, by reason of the fact that their property abuts on the controlled-access highway or for other reason, except only the controlled right of access and of light, air or view.

(7) SPECIAL CROSSING PERMITS. Whenever property held under one ownership is severed by a controlled-access highway, the county board may permit a crossing at a designated location, to be used solely for travel between the severed parcels, and such use shall cease if such parcels pass into separate ownership.

(8) RIGHT-OF-WAY. Any lands or other private or public property or interest in such property needed to carry out the purposes of this section may be acquired by the county board as provided in ss. 83.07 and 83.08.

(9) COOPERATIVE AGREEMENTS. To facilitate the purposes of this section, the county board and the governing bodies of a city, town or village are authorized to enter into agreements with each other or with the federal government respecting the financing, planning, establishment, improvement, maintenance, use, regulation or vacation of controlled-access highways or other public ways in their respective jurisdictions.

(10) LOCAL SERVICE ROADS. In connection with the development of any controlled-access highway, the county board and city, town or village highway authorities are authorized to plan, designate, establish, use, regulate, alter, improve, maintain or vacate local service roads and streets or to designate as local service roads and streets any existing roads or streets, and to exercise jurisdiction over local service roads in the same manner as is authorized over controlled-access highways under this section if, in their opinion, such local service roads or streets shall serve the necessary purposes.

(11) COMMERCIAL ENTERPRISES. No commercial enterprise shall be authorized or conducted within or on property acquired for or designated as a controlled-access highway.

(12) UNLAWFUL USE OF HIGHWAY; PENALTIES. It is unlawful for any person to drive any vehicle into or from a controlled-access highway except through an opening provided for that purpose. Any person who violates this provision may be fined not more than $100 or imprisoned not more than 30 days or both.

(13) VACATING. A controlled-access highway shall remain such until vacated by order of the county board. The discontinuance of all county trunk highway routings over a highway established as a controlled-access highway shall summarily vacate the controlled-access status of such section of highway only after a traffic engineer survey investigation and study finds, determines and declares that the vacating of the controlled-access status is in the public interest. Such vacating shall not be effected until after a public hearing is held in the county courthouse or other convenient place within the county, following notice by publication as provided in sub. (1). The county board shall record formal notice of any vacation of a controlled-access highway with the register of deeds of the county wherein such highway lies.

History: 1971 c. 186; 1977 c. 29 s. 1654 (8) (c); 1985 a. 223 s. 5; 1993 a. 246, 490.

This section must be satisfied to create a controlled-access highway. However, a county may adopt an ordinance to control driveway access from private property to a public thoroughfare without creating a controlled-access highway. Mommsen v. Schueller, 228 Wis. 2d 627, 599 N.W.2d 21 (Ct. App. 1999), 98-3095.

83.03 County aid; local levy; donations. (1) The county board may construct or improve or repair or aid in constructing or improving or repairing any highway or bridge in the county.

(2) If any county board determines to improve any portion of a county trunk highway with county funds, it may assess not more than 40 percent of the cost of the improvement but not over $1,000 in any year against the town, village or city in which the improvement is located as a special tax. The county clerk shall certify the tax to the town, village or city clerk who shall put the same in the next tax roll, and it shall be collected and paid into the county treasury as other county taxes are levied, collected and paid. A portion or all of such special assessment may be paid by donation.

(3) The county board may accept donations to the county of money or lands for highway or bridge purposes, and apply the donations in accordance with the wishes of the donor as nearly as is practicable.

(4) Any county may, by any lawful means, provide funds to match or supplement state or federal aid for the construction, reconstruction or improvement, under ch. 84, of any highway, street or bridge which it is authorized to construct, reconstruct or improve, and to pay such funds to the department or state treasury as provided in s. 84.03 (1) (b).

History: 1977 c. 29 s. 1654 (8) (c); 1985 a. 29; 1985 a. 223 s. 5.

Sub. (2) prohibits a county from imposing upon municipalities to share the cost of county road and bridge repair; it does not release a municipality from a voluntary agreement to contribute. Fond du Lac County v. Town of Rosendale, 149 Wis. 2d 326, 440 N.W.2d 818 (Ct. App. 1989).

A county board in a county with a county executive cannot enact an ordinance precluding the highway commissioner from determining that the county highway department will perform any of the work on any joint county highway project under ss. 83.03 and 83.035 if a contracting local municipality requests that all of the work on the project be competitively bid and let to private companies. OAG 2-11.

83.035 Streets and highways, construction. Any county board may provide by ordinance that the county may, through its highway committee or other designated county official or officials, enter into contracts with cities, villages and towns within the county borders to enable the county to construct and maintain streets and highways in such municipalities.

Counties may charge one percent of a project cost administrative fee for work done on municipal roads. 63 Atty. Gen. 321.

Projects involving county highway contracts entered into by the county highway committee or the county highway commissioner under ss. 83.035 and 83.04 (1) are exempt from county competitive bidding requirements. OAG 5-09.

A county board in a county with a county executive cannot enact an ordinance precluding the highway commissioner from determining that the county highway department will perform any of the work on any joint county highway project under ss. 83.03 and 83.035 if a contracting local municipality requests that all of the work on the project be competitively bid and let to private companies. OAG 2-11.

This section empowers a county board to enter into contracts with certain public entities to construct and maintain streets and highways. On its face, this section has no application to leasing gravel rights. OAG 1-20.

83.04 Highway construction by county; noncontract work; payments. (1) All highway improvements made by the county highway committee shall be by contract, unless the committee determines that some other method would better serve the public interest. The manner of advertising for bids and the forms of bids, contracts and bonds shall be substantially those used by the department. In letting a contract the county highway committee acts for the county.

(2) If it is deemed inadvisable to let a contract for highway construction, the county highway committee may direct the county highway commissioner to proceed with the construction as noncontract work, and the commissioner may, under the supervision of the committee, employ and purchase the necessary labor and materials.

(3) During construction the work and materials shall be inspected by the county highway commissioner or by inspectors employed by the commissioner with the approval of the county highway committee. Upon the completion of any highway job by or for the county on the county aid system or for which county aid has been granted the work shall be inspected by the county highway commissioner, and if found in conformity with plans and specifications, the commissioner shall so find and notify the county highway committee and the county clerk thereof and that the improvement has been accepted.

(4) Upon contract construction final payment shall not be made until the work has been accepted as complete by the county highway commissioner. In case of noncontract work payment shall be made monthly upon verified, detailed, statements and payrolls prepared by the county highway commissioner and approved and allowed by the county highway committee, and all payments shall be made by orders on the county treasurer in the ordinary form signed by the chairperson of the county board and

the county clerk, unless the county has adopted some different method of making disbursements, in which event it shall be according to such method and all orders shall be drawn upon and paid out of the fund provided for such construction. Said statements and payrolls shall be filed with the county clerk.

(5) When final payment has been made upon any highway improvement, any funds remaining in the county treasurer's hands which were provided by any subdivision of the county for that particular improvement, shall be placed together with the county's balance available for that job to the credit of such subdivision of the county, and shall be used to increase the funds available for the next construction job in said subdivision, and any such balance in the bridge fund may be transferred to the road fund or vice versa by the town or village board with the approval of the county highway committee.

(6) No order shall be drawn on the county road or bridge fund in excess of the funds available for the particular improvement for which drawn, without the authority of the county board or the county highway committee.

History: 1977 c. 29 s. 1654 (8) (c); 1983 a. 192 s. 303 (2); 1985 a. 223 s. 5; 1991 a. 316.

Projects involving county highway contracts entered into by the county highway committee or the county highway commissioner under ss. 83.035 and 83.04 (1) are exempt from county competitive bidding requirements. OAG 5-09.

83.05 Improving streets over 18 feet wide. (1) When a portion of the system of county aid highways in any city is to be improved, and the funds from the city and county are available therefor, the city may determine that the roadways shall be paved to a greater width than 18 feet. If it so decides, the city may determine the type of improvement, the width, and all other features of the construction, subject to the approval of the county highway committee. And said committee shall fix the amount per linear foot of the improvement to be paid by the county. The city shall then improve the street in the manner provided generally for making street improvements. The work shall be done under the supervision of the city, but subject to the inspection of the county highway commissioner.

(2) Upon the completion of the work the county's share of the cost shall be paid to the contractor as though the county had been an immediate party to the contract. Unless specifically authorized by the county, the payment by the county shall not exceed the cost of 22 feet of the width of the pavement, as well as a portion of the costs of grading, draining, and appertaining structures. The balance of the expense of the improvement shall be borne by the city, and shall be provided in the manner in which expense of street improvement is ordinarily met. Assessments of benefits may be made by the city against abutting property in the manner provided where the improvement is done solely at the expense of the city, but such assessments of benefits shall not exceed the difference between the cost of the improvement and the amount contributed thereto by the county.

(3) The provisions of subs. (1) and (2) shall apply to villages and towns subject to the approval of the county board.

History: 1993 a. 246, 248.

83.06 Maintenance of county aid highways. All streets and highways improved with county aid under this chapter shall be maintained by the towns, cities and villages in which they lie but this provision shall not diminish or otherwise affect the duty of the county with respect to any street or highway which is a portion of the county trunk highway system, nor the powers of the county conferred by s. 83.03 (1) and (2) or s. 83.035.

83.065 County road and bridge fund; tax levy. The county board shall annually levy a tax of not more than 2 mills on the dollar, in addition to all other taxes, and the proceeds shall be known as the "County Road and Bridge Fund". Expenditures from said fund shall be made only for the purposes of constructing and maintaining highways and bridges under this chapter and for purchasing, operating, renting and repairing machinery, quarries and gravel pits used in such construction and maintenance.

83.07 Acquisition of lands, quarries, gravel pits; relocation; eminent domain. (1) The county highway committee or town board may acquire any lands or interest therein needed to carry out the provisions of this chapter. Whenever the county highway committee or town board is unable to acquire the same by purchase at a reasonable price such property may be acquired by condemnation under ch. 32.

(1a) The county highway committee or town board may purchase or accept donations of remnants of tracts or parcels of land remaining at the time or after it has acquired portions of the tracts or parcels by purchase or condemnation where in the judgment of the county highway committee or town board the acquisition of the remnant would assist in rendering just compensation to a landowner, a part of whose lands have been taken for highway purposes, and would serve to minimize the overall cost of the taking by the public.

(2) In case the county highway committee or town board deems it desirable to acquire any lands or the right to take stone, gravel, clay or other material, from private lands for use in the execution of the committee's or board's duty, or to acquire the right of access to any lands, or the right of drainage across any lands, the committee or board may purchase or condemn such lands or right and take title thereto in the name of the county or town, and the cost thereof shall be paid out of the highway improvement funds.

(3) When lands are acquired under this section to relocate or straighten any highway or to provide easier curves at highway intersections, and tracts not more than 2 acres in area remain separated from the main body of land from which they are acquired, the county highway committee or town board may, if it deems the acquisition of such minor tracts advisable or necessary to beautify the highway or to protect public travel, acquire such minor tracts in the name of the county or the town. Tracts in excess of 2 acres of like character may be acquired by agreement.

(4) In case the county highway committee or the town board is unable to acquire needed lands or rights by contract, such committee or board may acquire the same in the name of the county or town by eminent domain, as provided in ch. 32.

History: 1997 a. 253.

83.08 Acquisition of lands and interest therein. (1) (a) The county highway committee may acquire by gift, devise, purchase or condemnation any lands or interests in lands for the improvement, maintenance, relocation or change of any county aid or other highway or street or any bridge on a county aid or other highway or street that the county is empowered to improve or aid in improving or to maintain. The county highway committee may purchase or accept donations of remnants of tracts or parcels of land remaining at the time or after it has acquired portions of those tracts or parcels by purchase or condemnation where in the judgment of the committee the acquisition of the remnant would assist in rendering just compensation to a landowner, a part of whose lands have been taken for highway purposes, and would serve to minimize the overall cost of the taking by the public.

(b) Whenever the county highway committee considers it necessary to acquire any lands or interests in land for any purpose described in par. (a), it shall so order. The order or a separate map or plat shall show the old and new locations and the lands or in-

terests required. The committee shall file a copy of the order and map with the county clerk or, in lieu of filing a copy of the order and map, may file or record a plat in accordance with s. 84.095. The committee shall attempt to obtain easements or title in fee simple by conveyance of the lands or interests required, at a price, including damages, considered reasonable by the committee. The instrument of conveyance shall name the county as grantee and shall be filed with the county clerk and recorded in the office of the register of deeds.

(2) If any of the needed lands or interests therein cannot be purchased expeditiously for a price deemed reasonable by the committee, the committee may acquire the same by condemnation under ch. 32.

(3) The cost of land and rights so acquired, including any damages allowed and other expenses connected therewith, shall be paid out of available improvement or maintenance funds.

(4) Subject to s. 84.09 (3) (c) and to the approval of the department, the county board is authorized and empowered to sell at public sale, or to sell at private sale for fair market value to an owner of adjacent property, property, owned by the county in fee for highway purposes, when the county board shall determine that such property is no longer necessary for the county's use for highway purposes. The funds derived from such sale shall be deposited in the county highway fund and the expense incurred in connection with the sale shall be paid from that fund. However, approval of the department is not required where county funds only have been used.

History: 1977 c. 29 s. 1654 (8) (c); 1985 a. 223 s. 5; 1997 a. 253, 282; 1999 a. 32; 2003 a. 212, 327.

Absent express language to the contrary, courts presume that the grantor of land to be used for roadways intended to convey only an easement. A deed using the term "right of way" should be construed as conveying an easement unless the instrument, considered as a whole, indicates that the parties intended the passage of fee title. Berger v. Town of New Denmark, 2012 WI App 26, 339 Wis. 2d 336, 810 N.W.2d 833, 11-1807.

83.09 Emergency repairs of county trunk highways. Whenever a flood or other casualty renders any county trunk highway dangerous for travel, the town chairperson may immediately close it and notify the county highway commissioner thereof, and the commissioner shall promptly make repairs necessary to render the highway safe for travel. If sufficient funds are not available in the county maintenance fund, the commissioner may, with the consent of the chairperson of the county board or of the county highway committee, make the necessary repairs, and the cost thereof shall be paid as soon as funds are available.

History: 1983 a. 192 s. 303 (2); 1989 a. 56 s. 258; 2003 a. 214.

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

83.11 Marking section and quarter section corners in highways. Any county board may provide that section and quarter section corners in any highway constructed in whole or in part with county funds may be marked with suitable permanent monuments or markers; and the expense of putting in and maintaining such markers shall be paid out of the county road and bridge fund or other county fund as may be determined by the county board.

83.12 Cattle passes. As a part of any highway improvement or as a separate project under this chapter, cattle passes across highways may be constructed at places determined by the county highway committee to be necessary and practical.

83.13 Guideboards. The county board may erect and maintain guideboards on county aid and county trunk highways which are not part of the state trunk highway system, the cost to be paid out of such fund as the board shall direct.

83.14 County aid on town and village initiative. (1) Any town meeting or village board may vote a tax of not less than $500 to improve a designated portion of a county aid highway and may accept cash donations for such purposes, and when accepted subsequent proceedings shall be the same as if a tax of like amount had been voted. Highways in villages shall not be eligible to improvement under this section wherever the buildings fronting the highways average more than one to each 60 lineal feet of highway. The tax shall not exceed 2 mills on the dollar on the taxable property but every town and village may vote $500, and such tax shall be paid to the county treasurer when the county taxes are paid. If the total cost of the improvement approved by the town meeting or village board exceeds the amount which it is permitted by this subsection to raise by taxation in the current year, it may vote a tax of not to exceed the same amount for the succeeding year or years.

(2) When the tax has been voted the town or village board shall petition the county board at its next annual meeting to appropriate at least an equal amount as the county's share of the cost of the proposed improvement. The petition shall designate the highway to be improved and state the character of the improvement and the amount which has been voted therefor.

(3) The county board shall thereupon appropriate for the improvement a sum equal to or greater than the amount voted therefor by the town or village; and shall raise the same by tax on all the taxable property of the county.

(4) No county shall be required to appropriate in any year over $2,000 for work in any town or village.

(5) The improvement shall be performed, supervised and paid for and accepted in the same manner as other county aid work.

(6) Construction shall not begin until the funds to pay for the same are in the county treasury and the plans and specifications have been approved by the county highway committee. After any town has voted the tax such town may borrow money for such improvement in anticipation of the tax levy and the appropriation to be made by the county board, and pay the same into the county treasury as an advance, after which construction may proceed. The county shall reimburse the town for such advance when the necessary funds become available.

(7) Towns and villages may take the initiative in the improvement of county aid highways by issuing bonds and the funds produced by such bond issue shall be handled and expended as though raised by taxation. If the county has not appropriated a sum at least equal to the funds raised by the town or village or to the proceeds of the town or village bonds advanced to the county for such improvements, the town or village board may petition the county pursuant to sub. (2) for an amount equal to one-half of such funds or of the principal maturing on such bonds in each year and the county shall appropriate its share as provided in sub. (3), subject to the limitation in sub. (4), until the county has appropriated an amount equal to the amount raised by the town or village or to the proceeds of the bonds thus advanced. This procedure may also be used to repay funds borrowed and advanced by a town or village for such improvements, as provided in sub. (6).

(8) The county clerk shall, on or before January 1 of each year, file with the department a written statement setting forth the petitions granted by the county board and the improvements determined upon under s. 83.03, the location, character and con-

templated cost of each improvement, and the amount to be paid by the county and town or village for making each improvement.

History: 1977 c. 29 s. 1654 (8) (c); 1977 c. 272; 1985 a. 223 s. 5.

83.15 Aid by county for state line bridge or highway. The county board of any county bounded in part by a river, or by a highway, either of which is also a state boundary line may aid any municipality of such county in the construction of a bridge across such river or any part thereof, or in the reconstruction of the highway including its bridges by an appropriation therefor not exceeding one-third of the cost of such bridge or of such highway.

83.16 County may contract with foreign county. The board of supervisors of any county in this state bordering on any stream or highway which is the boundary line between such county and a county in another state is authorized in conjunction with the board of supervisors of such adjoining county in such other state, to construct and maintain a bridge or bridges across such river at a place or places within the limits of such county or reconstruct such highway including its bridges as may be agreed upon by the respective boards of supervisors, whenever said board of supervisors deems it necessary, and to enter into a contract with such board of supervisors of the adjoining county of such other state for the construction, maintenance and repair of such bridges or highway.

83.17 County may assume compensation liability; agreements with localities. Whenever a county contributes funds to a highway project undertaken by a town, village or city in the county or a city, town or village has its highways maintained by the county with local funds, the county through its county highway committee may assume the liability under ch. 102 of the town, village or city to any employee on such project, and may by agreement with the governing body of the town, village or city provide for the amount the town, village or city shall pay to the county for the assumption of such liability. The action of the county highway committee shall remain in effect until the county board by resolution disapproves of the action.

History: 1975 c. 147 s. 54; 1979 c. 89.

83.18 Entry on lands. For constructing or maintaining any highway by the county, the county highway committee or commissioner shall possess all of the powers to acquire and enter lands conferred upon town boards by s. 82.03 (2) and (5).

History: 1985 a. 29 s. 3202 (56); 2003 a. 214.

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

83.19 Temporary highways and detours. When any highway which is maintained or to be maintained by the county shall be practically impassable or be dangerous to travel or when it shall be deemed necessary on account of construction or repair work thereon or for other reasons to suspend travel upon any part of such highway, the county highway commissioner may lay out and open temporary highways for the accommodation of public travel through any lands, and the county highway commissioner shall possess the powers conferred by s. 82.35 upon town boards. Said powers shall be exercised by the county highway commissioner in like manner and the procedure shall be the same except that the contract and orders and claim for damages and other papers relating to the matter shall be filed with the county clerk, and claims for damages shall be acted upon by the county board in the manner provided by s. 893.80.

History: 1977 c. 285 s. 12; 1979 c. 323 s. 33; 1991 a. 316; 2003 a. 214.

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

83.20 Highways, lighting. Any county may provide for lighting of improved highways maintained by the county or the construction of which has been aided by the county or state, and of bridges located thereon.

83.42 Rustic roads system. (1) PURPOSE. In order to create and preserve rustic and scenic roads for vehicular, bicycle, electric scooter, electric personal assistive mobility device, and pedestrian travel in unhurried, quiet and leisurely enjoyment; to protect and preserve recreational driving, culture, beauty, trees, vegetation and wildlife by establishing protective standards of rustic road design, access, speed, maintenance and identification, which will promote a continuous system of rustic roads and scenic easements for the public health and welfare; a state system of rustic roads is created.

(2) DEFINITIONS. In this section:

(a) "Board" means the rustic roads board in the department.

(b) "Municipality" means a city, village or town.

(3) DESIGNATION AS A RUSTIC ROAD. Any county highway committee or the governing body of any municipality may apply to the board for the designation of any highway under its jurisdiction as a rustic road. The board shall approve or deny the application for designation of a highway as a rustic road submitted under this subsection.

(4) WITHDRAWAL OF HIGHWAYS FROM RUSTIC ROADS SYSTEM. After holding a public hearing, any county highway committee, or the governing body of any municipality, which has jurisdiction over a rustic road may apply to the board for the removal of a highway from the rustic roads system. The board shall approve or deny the application for removal of the highway from its designation as a rustic road.

(5) JOINT JURISDICTION OF HIGHWAYS. Highways under the joint jurisdiction of 2 or more municipalities or a municipality and a county or 2 or more counties may not be designated rustic roads or be withdrawn from the rustic roads system until after approval by:

(a) The governing bodies of all affected municipalities; and

(b) The county highway committees of all affected counties; and

(c) The board.

(7) LOCAL AUTHORITY. The county highway committees, the municipalities and the counties shall have the same authority over rustic roads as they possess over other highways under their jurisdiction except as otherwise provided in this section.

(8) AIDS. State aids for rustic roads shall be determined in accordance with the general transportation aids provisions of s. 86.30.

(8m) RUSTIC ROAD MARKING SIGNS; STATE PAYMENT. The department shall pay the costs of furnishing and installing rustic roads marking signs on officially designated rustic roads from the appropriation under s. 20.395 (3) (eq).

(9) RULES AND STANDARDS. The board shall promulgate rules and establish standards for the maintenance, identification, construction, use and preservation of the rustic roads system.

History: 1973 c. 142; 1979 c. 100, 154, 355; 1981 c. 20 s. 2202 (51) (c); 1983 a. 55; 1985 a. 223 s. 5; 1991 a. 39; 1995 a. 338; 2001 a. 90; 2019 a. 11.

Cross-reference: See also ch. Trans-RR 1, Wis. adm. code.

pality, interstate agency, state agency or an officer or agent of a state agency, federal agency, department or instrumentality.

(bm) "Recovered material" means a material that is recovered or derived from solid waste.

(2) The department shall use or encourage the use of the maximum possible amount of recovered material, including glass, wastepaper, pavement and high-volume industrial waste as surfacing material, structural material, landscaping material and fill for all highway improvements, consistent with standard engineering practices. The department shall specify the proportion of recovered material that may be used in various types of highway improvements.

(3) (a) Notwithstanding chs. 160, 281 to 285 and 289 to 299, no person is required to take or pay for any remedial or corrective action as a result of environmental pollution resulting from the use of high-volume industrial waste in a highway improvement project if all of the following apply:

1. The high-volume industrial waste is incorporated into the highway improvement in accordance with the policies, guidelines and rules applicable to the highway improvement at the time of the design of the improvement and at the time of certification under subd. 2.

2. The department of natural resources certifies to the department of transportation, before the time that the department of transportation advertises for bids for the improvement, that the high-volume industrial waste intended to be used and the design for the use of the high-volume industrial waste comply with all applicable state requirements or standards administered by the department of natural resources.

(b) The exemption under par. (a) extends to the transportation of high-volume industrial waste to or from the site of a highway improvement and to the storage of high-volume industrial waste at the site of a highway improvement. The exemption provided under par. (a) continues to apply after the date of certification by the department of natural resources under par. (a) 2., notwithstanding the occurrence of any of the following:

1. Statutes or rules are amended that would impose greater responsibilities on the department of transportation.

2. Alterations due to construction, maintenance, utility installation or other activities by the department of transportation or approved by the department of transportation after the completion of the highway improvement affect the high-volume industrial waste at the site of the highway improvement.

(c) The department of transportation and the department of natural resources may enter into agreements establishing standard lists of high-volume industrial waste that may be used in highway improvements and designs for the use of high-volume industrial waste in highway improvements that comply with rules of the department of natural resources applicable at the time of the design of the highway improvement in order to simplify certification under par. (a) 2. to the greatest extent possible.

(d) 1. Except as provided in subd. 3., no state agency may commence an action or proceeding under federal law to require remedial action or to recover the costs of remedying environmental pollution related to the use of high-volume industrial waste in a highway improvement certified under par. (a) 2.

2. Except as provided in subd. 3., no person may commence an action under state law to require remedial action or to recover the costs of remedying environmental pollution related to the use of high-volume industrial waste in a highway improvement certified under par. (a) 2.

3. If the department of transportation is named as a defendant or a respondent in an action or proceeding under federal law to require remedial action, or to recover the costs of remedying environmental pollution, related to the use of high-volume industrial waste in a highway improvement that satisfies the requirements under par. (a), the department of transportation may do any of the following:

a. Commence an action or proceeding under federal or state law to require remedial action, or to recover the costs of remedying environmental pollution, related to the use of high-volume industrial waste in that highway improvement.

b. Commence an action or proceeding to enforce any stipulation, agreement or judgment resulting from an action or proceeding described in this subdivision.

History: 1987 a. 27, 110; 1987 a. 403 s. 106; Stats. 1987 s. 84.078; 1989 a. 335; 1995 a. 27, 227.

84.08 Franchises. No franchise or permit granted by any town or village or city to any corporation to use any state trunk highway shall become effective unless such franchise or permit has been approved by the department. The order of the department shall provide for or approve the method by which the work authorized by the franchise or permit is to be done or by which the highway is to be restored to its former condition.

History: 1977 c. 29 s. 1654 (8) (a).

84.09 Acquisition of lands and interests therein. (1) The department may acquire by gift, devise, purchase or condemnation any lands for establishing, laying out, widening, enlarging, extending, constructing, reconstructing, improving and maintaining highways and other transportation related facilities, or interests in lands in and about and along and leading to any or all of the same; and after establishment, layout and completion of such improvements, the department may, subject to any prior action under s. 13.48 (14) (am) or 16.848 (1), convey such lands thus acquired and not necessary for such improvements, with reservations concerning the future use and occupation of such lands so as to protect such public works and improvements and their environs and to preserve the view, appearance, light, air and usefulness of such public works. Whenever the department deems it necessary to acquire any such lands or interests therein for any transportation related purpose, it shall so order and in such order or on a map or plat show the old and new locations and the lands and interests required, and shall file a copy of the order and map with the county clerk and county highway committee of each county in which such lands or interests are required or, in lieu of filing a copy of the order and map, may file or record a plat in accordance with s. 84.095. For the purposes of this section the department may acquire private or public lands or interests in such lands. When so provided in the department's order, such land shall be acquired in fee simple. Unless it elects to proceed under sub. (3), the department shall endeavor to obtain easements or title in fee simple by conveyance of the lands or interests required at a price, including any damages, deemed reasonable by the department. The instrument of conveyance shall name the state as grantee and shall be recorded in the office of the register of deeds. The purchase or acquisition of lands or interests therein under this section is excepted and exempt from s. 20.914 (1). The department may purchase or accept donations of remnants of tracts or parcels of land existing at the time or after it has acquired portions of such tracts or parcels by purchase or condemnation for transportation purposes where in the judgment of the department such action would assist in making whole the landowner, a part of whose lands have been taken for transportation purposes and would serve to minimize the overall costs of such taking by the public.

(2) If any of the needed lands or interests therein cannot be purchased expeditiously for a price deemed reasonable by the department, the department may acquire the same by condemnation under ch. 32.

(3) (a) The department may order that all or certain parts of

the required land or interests therein be acquired by the county highway committee. When so ordered, the committee and the department shall appraise and agree on the maximum price, including damages, considered reasonable for the lands or interests to be so acquired. The committee shall endeavor to obtain easements or title in fee simple by conveyance of the lands or interests required, as directed in the department's order. The instrument of conveyance shall name the county as grantee, shall be subject to approval by the department, and shall be recorded in the office of the register of deeds and filed with the department. If the needed lands or interests therein cannot be purchased expeditiously within the appraised price, the county highway committee may acquire them by condemnation under ch. 32.

(b) Any property of whatever nature acquired in the name of the county pursuant to this section or any predecessor shall be conveyed to the state without charge by the county highway committee and county clerk in the name of the county when so ordered by the department.

(c) The county highway committee when so ordered by the department is authorized and empowered to sell and shall sell at public or private sale, subject to such conditions and terms authorized by the department, any and all buildings, structures, or parts thereof, and any other fixtures or personalty acquired in the name of the county under this section or any predecessor. Any instrument in the name of the county, transferring title to the property mentioned in the foregoing sentence, shall be executed by the county highway committee and the county clerk. The proceeds from such sale shall be deposited with the state in the appropriate transportation fund and the expense incurred in connection with such sale shall be paid from such fund.

(d) Section 59.52 (6) (c) shall not apply to any conveyance or transfer made under this section.

(3m) The department may order that all or certain parts of the required land or interest therein be acquired for the department by a board, commission or department of the city, village or town within whose limits the land is located. The city board or city, village or town commission or department shall be created or selected by the common council, village board or town board subject to the approval of the department. When so ordered, the board, commission or department created or selected and the department shall appraise and agree on the maximum price, including damages, considered reasonable for the lands or interests to be so acquired. The city, village or town board, commission or department shall endeavor to obtain easements or title in fee simple by conveyance of the lands or interests required, as directed in the department's order. The instrument of conveyance shall name the state as grantee and shall be recorded in the office of the register of deeds. If the needed lands or interests therein cannot be purchased expeditiously within the appraised price, the city, village or town board, commission or department may, subject to approval by the department, acquire them by condemnation in the name of the state under ch. 32. The city, village or town attorney may act as counsel in any proceedings brought under authority of this subsection. Special counsel may be employed with the consent of the governor and the secretary. The city, village or town, upon agreement with the department, may pay for the land or interests acquired from city, village or town funds made available for such purpose or not otherwise appropriated, as an advance subject to reimbursement by the department or as part of the city's, village's or town's contribution toward the cost of the improvement.

(4) The cost of the lands and interests acquired and damages allowed pursuant to this section, expenses incidental thereto, expenses of the county highway committee incurred in performing duties under this section and the county highway committee's customary per diem, or a per diem not to exceed the lawful rate permitted for members of county boards if the highway committee members receive an annual salary, are paid out of the available improvement or maintenance funds. Members of a highway committee who receive an annual salary shall be entitled to the per diem paid, as compensation for their services, in addition to their annual salary fixed pursuant to s. 59.10 (3) (i).

(5) (a) Subject to pars. (b) and (c) and any prior action under s. 13.48 (14) (am) or 16.848 (1), and subject to the approval of the governor, the department may sell at public or private sale property of whatever nature owned by the state and under the jurisdiction of the department when the department determines that the property is no longer necessary for the state's use for transportation purposes and, if real property, the real property is not the subject of a petition under s. 16.310 (2). The department shall present to the governor a full and complete report of the property to be sold, the reason for the sale, and the minimum price for which the same should be sold, together with an application for the governor's approval of the sale. The governor shall thereupon make such investigation as he or she may deem necessary and approve or disapprove the application. Upon such approval and receipt of the full purchase price, the department shall by appropriate deed or other instrument transfer the property to the purchaser. The approval of the governor is not required for public or private sale of property having an appraised value at the time of sale of not more than $15,000, for the transfer of surplus state real property to the department of administration under s. 16.310, or for the transfer of surplus state personal property to the department of tourism under sub. (5s). The funds derived from sales under this subsection shall be deposited in the transportation fund, and the expense incurred by the department in connection with the sale shall be paid from such fund.

(b) Subject to the approval of the governor in the manner, scope, and form specified in par. (a), with respect to the sale of property acquired by the department for a project that is completed after May 25, 2006, the department shall, and with respect to the sale of property acquired by the department for a project that is completed before May 25, 2006, the department may offer for sale or transfer ownership of the property that the department determines is no longer necessary for the state's use for transportation purposes, if the property is not the subject of a petition under s. 16.310 (2). This disposition process shall take place within 24 months of the completion of the transportation project for which the property was acquired. Except as provided in par. (c) 3., the department shall offer limited and general marketable properties at appraised value, as determined by a state-certified or licensed appraiser, for not less than 12 months. If the department does not sell the property at or above its appraised value, the department shall offer the property for sale by means of sealed bids or public auction. For the purposes of this paragraph, a project is completed when final payment is made under the contract for the project.

(c) 1. Subject to any prior action under s. 13.48 (14) (am) or 16.848 (1), prior to conducting a public sale on a generally marketable surplus land parcel under par. (b), the department shall contact the county, municipality, and the local school district where the land parcel is located and the department of natural resources to solicit interest in acquiring the parcel for public use. Upon notification from the department, the county, municipality, local school district, and department of natural resources must respond to the department, stating their interest in the land for public use, within 60 days. Failure to respond within 60 days constitutes noninterest in the land parcel.

2. Except as provided in subd. 2m. and subject to any prior action under s. 13.48 (14) (am) or 16.848 (1), if a county, a municipality, a local school district, or the department of natural resources expresses interest in acquiring the land for public use, the

department shall offer the county, municipality, local school district, or department of natural resources the property at its appraised value if all of the following are true:

a. The county, municipality, local school district, or department of natural resources provides a plan to the department identifying the proposed public use for the land parcel and the acreage involved in the public use.

b. The public use would benefit a cross-section of the population.

c. The land parcel will not be purchased for the generation of profit either through the sale price or its long-term intended public use.

2m. If a county, municipality, or a local school district expresses interest in acquiring the land for public use related to transportation or infrastructure, the department may, subject to any prior action under s. 13.48 (14) (am) or 16.848 (1), offer the county, municipality, or the local school district the property, for less than the appraised value of the property, if all of the following are true:

a. The county, municipality, or local school district provides a plan to the department identifying the proposed use of the property for transportation or infrastructure purposes.

b. The county, municipality, or local school district agrees to a permanent restriction on the use of the land for the purpose identified.

3. If the conditions of subd. 2. are met, the department shall transfer ownership of the land parcel to the county, municipality, local school district, or department of natural resources upon receipt of the appraised value of the land parcel. If the conditions of subd. 2m. are met, the department shall transfer ownership of the land parcel to the county, municipality, or local school district upon receipt of the agreed purchase price of the land parcel. Ownership of the land parcel shall be transferred contingent upon the public use identified under subd. 2., and shall remain in the ownership of the public entity preserving the public use.

(5m) Subject to the approval of the governor in the manner, scope, and form provided by sub. (5) (a), and subject to any prior action under s. 13.48 (14) (am) or 16.848 (1), the department may convey lands or interests therein acquired pursuant to this section and improvements installed thereon to municipalities within whose limits such lands or interests therein are located. The conveyance of said lands or interests therein and improvements shall restrict the use of the premises by the municipality to the uses for which they were acquired, except that said lands or interests therein declared by the department to be excess may be so conveyed without restrictions as to use. This subsection shall apply only to the sale of property acquired by the department for a project that is completed before May 25, 2006. The department may sell property that is acquired by the department for a project that is completed after May 25, 2006, to a municipality under sub. (5) (c), as applicable.

(5r) In lieu of the sale or conveyance of property under sub. (5) or (5m), the department may, subject to the approval of the governor, donate real property that is adjacent to the veterans memorial site located at The Highground in Clark County and owned by the state and under the jurisdiction of the department to the Wisconsin Vietnam Veterans Memorial Project, Inc., for the purpose of the veterans memorial site located at The Highground in Clark County for the purpose of a memorial hall specified in s. 70.11 (9). The department may donate property under this subsection only when the department determines that the property is no longer necessary for the state's use for transportation purposes and is not the subject of a petition under s. 16.310 (2) and is transferred with a restriction that the donee may not subsequently transfer the real property to any person except to this state, which shall not be charged for any improvements thereon. Such restriction shall be recorded in the office of the register of deeds in the county in which the property is located. The department shall present to the governor a full and complete report of the property to be donated, the reason for the donation, and the minimum price for which the property could likely be sold under sub. (5), together with an application for the governor's approval of the donation. The governor shall thereupon make such investigation as he or she considers necessary and approve or disapprove the application. Upon such approval, the department shall by appropriate deed or other instrument transfer the property to the donee. The approval of the governor is not required for donation of property having an appraised value at the time of donation of not more than $15,000. Any expense incurred by the department in connection with the donation shall be paid from the transportation fund.

(5s) In lieu of the sale or conveyance of personal property under sub. (5), the department of transportation may, upon the request of the department of tourism, transfer to the department of tourism, at no cost, personal property that is owned by the state and under the jurisdiction of the department of transportation and that the department of transportation has determined is no longer necessary for the state's use for highway purposes.

(6) Subject to any prior action under s. 13.48 (14) (am) or 16.848 (1), lands held by any other state department or independent agency may, with the approval of the governor, be conveyed to the department in the manner prescribed by statute and, if none is prescribed, then by a conveyance authorized by appropriate order or resolution of the head of the department or independent agency concerned.

(7) When transportation funds or federal aid are involved in financing an expressway project under s. 59.84, the department, proceeding under the general authority in this section, may order that all or certain parts of the required land or interests therein shall be acquired by the county board or its designated standing committee. When so ordered, the county board or its designated standing committee and the department shall appraise and agree on the maximum price, including all damages recoverable in condemnation proceedings, considered reasonable for the lands or interests to be so acquired. The county board or its designated standing committee shall endeavor to obtain easements or title in fee simple by conveyance of the lands or interests required, to the county or the state as grantee, all as directed in the department's order. The instrument of conveyance shall be subject to approval by the department, and shall be recorded in the office of the register of deeds and filed with the department. If the needed lands or interests therein cannot be purchased expeditiously within the agreed appraised price, the county board or its designated standing committee may acquire them by condemnation under ch. 32, but any award by the county board or its designated standing committee in excess of the agreed appraisal price shall be subject to review by the department. For the purposes and in the manner provided in s. 59.84 (2) (d) 1., when so directed in the department's order, the county board or its designated standing committee may acquire remnants, and with the approval of the department the county board may dispose of remnants and may improve, use, maintain or lease lands and interests acquired and held in trust for the state until they are actually needed for expressway construction. The net proceeds of the sales or rentals shall be remitted to the state or retained and used for expressway purposes when so directed by the department.

(8) (a) In this subsection, "surplus land" means land under the jurisdiction of the department which is unused and not needed for department operations or included in the department's plan for construction or development.

(b) Biennially, beginning on January 1, 1984, the department

shall submit to the state building commission and the joint committee on finance an inventory of surplus land containing a general description of the location and an estimated value of each parcel. For each inventory submitted after May 25, 2006, the inventory shall contain a report including the estimated marketable value totals, by marketable type, of the land parcels, the net gain and net sale of surplus properties in the previous 2-year period, and a summary of the 5 most recent reports submitted under this paragraph.

History: 1971 c. 40; 1973 c. 118 s. 7; 1977 c. 29 ss. 936, 1654 (1), (8) (a), (b); 1977 c. 272, 418; 1979 c. 310; 1983 a. 27; 1991 a. 39; 1993 a. 246; 1995 a. 201, 406; 1997 a. 27, 35, 282; 1999 a. 83, 186; 2003 a. 33, 211, 327; 2005 a. 25, 392; 2007 a. 20; 2011 a. 32; 2013 a. 20.

Federal law required consideration and minimization of impact on lands containing Indian artifacts in designing a highway project but did not specifically require mitigation. Condemnation for mitigation outside the highway right-of-way was not authorized by this section. Mitton v. DOT, 184 Wis. 2d 738, 516 N.W.2d 709 (1994).

Neither the interest of a potential purchaser of property for sale under sub. (5) nor the general public's interest in such sales are within the zone of interests the statute is intended to protect. As such, a potential purchaser does not have standing to bring an action based on a violation of the procedures under sub. (5). Chenequa Land Conservancy, Inc. v. Village of Hartland, 2004 WI App 144, 275 Wis. 2d 533, 685 N.W.2d 573, 03-2486.

The commission has the power to condemn lands of one property owner to provide a public access road to another property owner who would otherwise be landlocked. 61 Atty. Gen. 36.

The highway commission may properly engage in hardship acquisitions under this section without the filing of an environmental impact statement under either federal or state law but must in such instances comply with the requirements of this section and s. 32.25 (1). 62 Atty. Gen. 200.

84.093 Cooperative acquisition of rights-of-way. (1) The department, acting in the public interest, may contract with a public utility, as defined in s. 196.01 (5), or with a rural electric cooperative association, as described in s. 32.02 (10), for the receipt or furnishing of services, or the joint exercise of any power or duty required or authorized by law, relating to the acquisition, development or maintenance of rights-of-way to be used jointly by the department and a public utility or rural electric cooperative association. If parties to a contract under this section have varying powers or duties under the law, each may act under the contract to the extent of its lawful powers and duties. This section shall be interpreted liberally in favor of cooperative action between the department and a public utility or rural electric cooperative association.

(2) Any contract under this section may provide a plan for administration of the function or project, which may include provisions as to proration of the expenses involved, deposit and disbursement of funds appropriated, submission and approval of budgets and formation and letting of contracts.

History: 1997 a. 91; 1999 a. 32 s. 166.

84.095 Transportation project plats. (1) DEFINITIONS. In this section:

(a) "Parcel" means one or more pieces of land, or interests or rights in land, under the same ownership or control to be acquired or disposed of for a project and depicted on a plat.

(b) "Parcel number" means a unique number assigned to each parcel depicted on a plat.

(c) "Plat" means a map that is prepared for a project, or a part of a project. The plat shall consist of a single sheet or a detail and a title sheet.

(d) "Project" means a public transportation or transportation-related improvement project.

(e) "Project number" means a unique number assigned to the project by the department or the city, village, town or county that is undertaking the project.

(f) "Title sheet" means a sheet that includes, but is not limited to, limits of the project, location map, and identification of plat symbols and abbreviations.

(2) FILING OR RECORDING PLATS. (a) The department, or a city, village, town, or county, may submit any order or resolution relating to a project in the form of a plat for filing or recording in the office of the register of deeds in the county in which the parcel is located. The plat may include a separate title sheet and shall be filed or recorded within 20 days after the plat is signed under sub. (4) (a) 4. The register of deeds shall file or record any plat submitted under this subsection as a transportation project plat. A project authorized by an order or resolution may be described in more than one plat. Whenever a project is described in more than one plat, each plat may be submitted separately for filing or recording.

(b) 1. Plats filed or recorded under this section are for parcel or right of way delineation purposes only and do not effect a transfer or encumbrance of any title to real or personal property.

2. Submitting a plat for filing or recording under this section satisfies the requirements of ss. 32.05 (1), 83.08 (1), 84.09 (1) and 114.33 (6) with respect to filing with the county clerk or county highway committee any orders, resolutions, maps or plats for a project.

(3) AMENDING AND CORRECTING PLATS. (a) An order, resolution, or plat filed or recorded under this section may be amended or vacated only by the entity that submitted the order, resolution, or plat for filing or recording. Any amendment or vacation of an order, resolution, or plat filed or recorded under this section may be filed or recorded. The office of the register of deeds shall make suitable notations on the plat affected by an amendment or vacation that is filed or recorded. The register of deeds shall number any amendments to a plat consecutively in the order filed or recorded and shall describe each amendment using the following information to the extent the information applies:

Amendment .... (number) of transportation project plat .... (project number), recorded in volume .... (number) of transportation project plats, page .... (number), as document .... (number), on .... (date), ... (county name) register of deeds, and located in .... (quarter section, section, township and range; recorded private claim; or federal reservation).

(b) Corrections to a plat may be made only by the entity that prepared or submitted the plat for filing or recording and only if the correction does not affect the interests or rights required. Corrections to a plat shall be made by filing or recording with the register of deeds an affidavit of correction that identifies the affected plat and states the defect in or change to the plat along with the correct information. An affidavit of correction may not be used to reconfigure parcels or rights and interests required for the project. Affidavits of correction may be used to correct distances, angles, directions, bearings, chords, lot and block numbers, street names, or other scrivener errors. The register of deeds shall make suitable notations on the plat to which the affidavit refers. The record of the affidavit of correction, or a certified copy of the record, is prima facie evidence of the facts stated in the affidavit.

(4) PLAT DETAIL AND FORMAT. (a) No plat may be filed or recorded in any office of a register of deeds unless the plat includes a certification that it contains all of the following, either as part of the drawing or written elsewhere on the plat:

1. An official order or resolution of the department, city, village, town or county authorizing the project. If the plat is to be used only to delineate existing highway right-of-way, the plat must refer to a resolution or revised relocation order from a previous project. If a recorded or revised relocation order does not exist, the department may establish right-of-way.

2. The project number.

3. The plat number, the date on which the plat was prepared and the signature of the person under whose direction the plat was prepared.

4. The signature of the person authorized by the department or the city, village, town or county to sign the plat.

5. A scale, north arrow and basis of reference.

7. The coordinate reference and datum.

8. The existing and new locations of the transportation facility.

9. The delineation of each parcel. For each parcel, a description of the following shall be included:

a. The parcel number.

b. The right, title or interest in land required.

c. The area of the parcel required.

11. Reference to platted land surveys or other surveys of record and the locations of known monuments established for such surveys.

12. The locations of known public land survey monuments.

(b) In addition to the information required under par. (a), a plat for a highway project shall include the following:

1. The designation of the highway and any adjacent or intersecting streets or highways by name, number or letter.

2. A description of the reference line for the highway by bearing and distance.

3. The location of the highway reference line by bearing and distance from a boundary line of a section or from a recorded private claim or federal reservation.

4. A description of the highway right-of-way boundaries by bearing and distance.

5. The locations of existing reference lines and right-of-way lines.

(c) Notwithstanding its depiction on a plat, the boundary of a parcel extends to the boundary of the adjoining property parcel or body of water.

(d) The requirements under this section and in s. A-E 7.08, Wis. Adm. Code, entitled "U.S. public land survey monument record" in effect on January 1, 2004, contain all of the requirements for a transportation project plat.

(5) PROFESSIONAL LAND SURVEYOR'S CERTIFICATE. A plat prepared for filing or recording under this section shall include a certificate of a professional land surveyor licensed under s. 443.06 that the plat is a correct representation of the project described and that the identification and location of each parcel can be determined from the plat. This subsection does not apply to plats prepared by the department.

(6) PLAT DIMENSIONS AND MEDIA. (a) No plat may be filed or recorded in the office of a register of deeds unless the plat has a one-inch margin on all sides, and is produced on any material that is capable of clearly legible reproduction or other media that is acceptable to the register of deeds. The dimensions of the plat shall be 22 inches wide by 30 inches long. Larger plats may be used if acceptable to the register of deeds and agreeable to the agency who submitted the plat. A plat that is submitted for filing or recording shall contain a blank space at least 3 inches by 3 inches in size for use by the register of deeds.

(b) The requirements of s. 59.43 (2m) do not apply to plats submitted under this section.

(7) DESCRIPTION FOR PARCELS AND REMNANT PARCELS. (a) Whenever a plat has been filed or recorded under this section, any parcel depicted in the plat that is required for a project by conveyance or eminent domain proceedings shall be described using the following information to the extent the information applies:

Parcel .... (number) of transportation project plat .... (project number), recorded in volume .... (number) of transportation project plats, page .... (number), as document .... (number), recorded in .... (county name), Wisconsin.

(b) A description under par. (a) is a sufficient legal description for purposes of s. 32.05 or 706.05 (2m) (a).

(c) Subsequent conveyances, mortgages, and other instruments affecting title to an adjoining parcel of land and its associated rights or interests may refer to the parcel description in par. (a) as an exception to the conveyance.

(d) The plat may be used to depict remnant parcels to be disposed of or to delineate existing highway right-of-way.

(8) INDEXING OF PLATS. (a) The register of deeds shall index plats filed or recorded under this section in the manner described in s. 59.43 (12m), whether or not the county board has enacted an ordinance requiring such an index.

(b) Within 3 working days after the date on which a plat is submitted for recording under this section, the register of deeds shall assign a document number and, at the option of the register of deeds, a volume and page where the plat is recorded, and the register of deeds shall provide written notice of the recording information to the agency that submitted the plat.

(8m) SURPLUS PARCELS. The department may not divide a surplus parcel, as defined by the department, under this section.

(9) LOCAL REVIEW. No state agency, city, village, town or county may require the review or approval of a plat as a condition of filing or recording the plat if the plat is prepared in accordance with this section.

History: 1997 a. 282; 2005 a. 446; 2013 a. 358; 2017 a. 102; 2017 a. 365 s. 111.

84.10 Maintenance and operation of bridges not on state trunks. (1) The amounts allocated under s. 20.395 (3) (cq) and (eq) for the purposes described in this subsection shall be expended by the department for the maintenance and operation of bridges not on the state trunk highway system which were constructed, reconstructed, or purchased under s. 84.11 before August 9, 1989, and under s. 84.12 and free bridges located in connecting highways in 4th class cities, and towns, which have a length, not including approaches, of 300 feet or more, or a swing or lift span. Except as provided in a jurisdictional transfer agreement under s. 84.16, all matters relating to the maintenance and operation of such bridges shall be under the control of the department. Maintenance and operation shall not include the roadway lighting system and shall not include snow and ice removal and control for bridges located on connecting highways. Notwithstanding any other provision of law, the department shall designate and mark the bridge specified in s. 84.1024 in the manner and under the conditions specified in s. 84.1024. The department may arrange with any county highway committee or with any city, village or town for the operation or maintenance or both of any such bridge; and any county highway committee, city, village or town may enter into such arrangement. This subsection does not apply to sub. (2).

(2) The joint committee on finance may transfer moneys to s. 20.395 (3) (cq) from any other segregated revenue appropriations of the department for state operations from the transportation fund, upon request of the department, for the purpose of supplementing moneys allocated under s. 20.395 (3) (cq) for the rehabilitation of a local bridge for which improvement is a state responsibility and which has been posted with a weight limitation as provided in s. 349.16 (2).

History: 1971 c. 125 s. 522 (1); 1973 c. 243 s. 82; 1977 c. 29; 1979 c. 34 s. 2102 (52) (a); 1989 a. 31; 1991 a. 39; 1993 a. 246; 1997 a. 27; 2007 a. 6.

84.101 Military memorial highways and bridges. The department shall maintain all markers that designate any state trunk highway or bridge on the state trunk highway system as a memorial that is associated with the armed forces or any branch or unit of the armed forces, any specific soldier or soldiers, any armed forces award or honor, or any war or armed conflict, that is

157.067 Connection with funeral establishment prohibited. (1) In this section, "funeral establishment" has the meaning given in s. 445.01 (6), except that "funeral establishment" does not include a building or part of a building that is erected under s. 157.11 (1) for holding or conducting funeral services if dead human bodies are not embalmed, cared for, or prepared for burial or transportation, in the building.

(2) No cemetery authority may permit a funeral establishment to be located in the cemetery. No cemetery authority may have or permit an employee or agent of the cemetery to have any ownership, operation or other financial interest in a funeral establishment. Except as provided in sub. (2m), no cemetery authority or employee or agent of a cemetery may, directly or indirectly, receive or accept any commission, fee, remuneration or benefit of any kind from a funeral establishment or from an owner, employee or agent of a funeral establishment.

(2m) A cemetery authority may accept a fee or remuneration from a funeral establishment or from an owner, employee or agent of a funeral establishment if all of the following requirements are satisfied:

(a) The fee or remuneration is a payment to the cemetery authority for a burial in the cemetery authority's cemetery.

(b) The fee or remuneration payment is made on behalf of the person who is responsible for paying for the funeral establishment's services.

(c) The funeral establishment will be reimbursed for the fee or remuneration by charging the person who is responsible for paying the funeral expenses an amount that is identical to the amount of the fee or remuneration paid by the funeral establishment to the cemetery authority.

History: 1993 a. 100, 386; 2005 a. 266.

If subsidiary corporations have prohibited financial connections, their corporate structure will not save them from the prohibitions of ss. 157.067 (2) and 445.12 (6). Those statutes are not unconstitutionally vague. Cemetery Services, Inc. v. Department of Regulation and Licensing, 221 Wis. 2d 817, 586 N.W.2d 191 (Ct. App. 1998), 97-2115.

Sub. (2) and s. 445.12 (6), which prohibit the joint ownership or operation of a cemetery and a funeral home, do not violate the equal protection or due process clauses of the Wisconsin and U.S. constitutions. Porter v. State, 2018 WI 79, 382 Wis. 2d 697, 913 N.W.2d 842, 16-1599.

157.07 Platting. (1) A cemetery authority shall cause to be surveyed and platted by a professional land surveyor those portions of the lands that are from time to time required for burial, into cemetery lots, drives, and walks, and record a plat or map of the land in the office of the register of deeds.

(2) The location of the lands shall be indicated on the plat or map by bearing and distance from a boundary line of a government lot, quarter section, recorded private claim, or federal reservation in which the subdivision is located. The monumentation at the ends of the boundary line shall be described and the bearing and distance between them shown, and the plat or map shall show a small scale drawing of the section or government subdivision of the section in which the cemetery plat is situated, with the cemetery plat indicated. The plat or map shall include the certificate of the professional land surveyor containing the name of the cemetery authority, the date of the survey, the professional land surveyor's stamp or seal and signature, and the professional land surveyor's statement that the survey is true and correct to the professional land surveyor's best knowledge and belief.

(3) The plat or map shall be made on a durable white media that is 22 inches wide by 30 inches long, or on any other media that is acceptable to the register of deeds, with a permanent nonfading black image. Seals or signatures that are reproduced on images that comply with this subsection have the force and effect of original seals and signatures. When more than one sheet is used for any one plat or map, they shall be numbered consecutively and each sheet shall contain a notation showing the whole number of sheets in the plat, and its relation to the other sheets. The sheets may be provided by the county through the register of deeds on terms determined by the county board. The professional land surveyor shall leave a binding margin of one inch on all sides.

(4) The cemetery authority shall cause the plat or map to be recorded. For failure to do so, the plat shall be void, and no sale of a cemetery lot or mausoleum space may be made before the plat is recorded.

(5) The cemetery authority may vacate or replat any portion of its cemetery upon the filing of a petition with the circuit court describing the portion and setting forth the facts and reasons therefor. The court shall fix a time for hearing and direct publication of a class 3 notice, under ch. 985, and the court shall order a copy of the notice to be mailed to at least one interested person, as to each separate parcel involved, whose post-office address is known or can be ascertained with reasonable diligence, at least 20 days before such hearing. If the court finds that the proposed vacating or replatting is for the best interest of the cemetery authority and that the rights of none to whom cemetery lots have been conveyed will be injured, it shall enter an order reciting the jurisdictional facts and its findings and authorizing the vacating or replatting of the lands of the cemetery. The order shall be effective when recorded by the register of deeds.

(6) This section does not apply to a religious association or a cemetery authority of a cemetery that is affiliated with a religious association.

History: 1983 a. 473; 1989 a. 307 ss. 29, 30, 34; 1993 a. 490; 1995 a. 110; 2005 a. 41; 2013 a. 358; 2015 a. 237.

157.08 Conveyances. (1) After the plat or map is recorded under s. 157.07, the cemetery authority may sell and convey cemetery lots. Conveyances shall be signed by the chief officer of the cemetery authority, and by the secretary or clerk of the cemetery authority, if any. Before delivering the conveyance to the grantee, the cemetery authority shall enter on records kept for that purpose, the date and consideration and the name and residence of the grantee. The conveyances may be recorded with the register of deeds.

(2) (a) If a cemetery lot or mausoleum space is sold by a cemetery authority and used or intended to be used for the burial of the human remains of the purchaser or the purchaser's family members, the purchaser's interests in the ownership of, title to or right to use the cemetery lot or mausoleum space are not affected or limited by any claims or liens of other persons against the cemetery authority.

(b) Before a cemetery authority sells or encumbers any cemetery land, except for a sale described in par. (a), the cemetery authority shall notify the cemetery board in writing of the proposed sale or encumbrance. If within 90 days after the cemetery board is notified of the proposed sale or encumbrance the cemetery board notifies the cemetery authority in writing that the cemetery board objects to the sale or encumbrance the cemetery authority may not sell or encumber the cemetery land unless the cemetery board subsequently notifies the cemetery authority in writing that the objection is withdrawn. The cemetery board may object to a sale or encumbrance only if it determines that the cemetery authority will not be financially solvent or that the rights and interests of owners of cemetery lots and mausoleum spaces will not be adequately protected if the sale or encumbrance occurs. The cemetery board may, before the expiration of the 90-day period, notify the cemetery authority in writing that the cemetery board approves of the sale or encumbrance. Upon receipt of the cemetery board's written approval, the cemetery authority may sell or encumber the cemetery land and is released of any liability under this paragraph. The cemetery board shall make every effort to

make determinations under this paragraph in an expeditious manner.

(c) A preneed sales contract is enforceable against the successor in interest of the cemetery authority that made the sale.

(3) A cemetery authority may sell its personal property at its discretion.

(5) Subsections (1) and (2) (b) do not apply to a religious association or a cemetery authority of a cemetery that is affiliated with a religious association, and sub. (2) (b) does not apply to a cemetery authority that is not required to be licensed under s. 440.91 (1) or registered under s. 440.91 (1m).

History: 1977 c. 449 s. 497; 1989 a. 307; 1991 a. 269; 2005 a. 25; 2007 a. 174; 2015 a. 237.

157.10 Alienation, disposition, and use of cemetery lots and mausoleum spaces. (1) In this section, "owner" means a person named in the records of the cemetery authority who has an ownership interest in a cemetery lot or mausoleum space and a right to bury human remains in the cemetery lot or mausoleum space.

(2) (a) While any person is buried in a cemetery lot or mausoleum space, the cemetery lot or mausoleum space shall be inalienable, without the consent of the cemetery authority, and on the death of the last owner, full ownership of the cemetery lot or mausoleum space shall descend as follows:

1. To the owner's surviving spouse or domestic partner under ch. 770.

2. If there is no living member of the class designated in subd. 1., to that owner's children, including by adoption.

3. If there is no living member of the class designated in subd. 1. or 2., to the owner's grandchildren, including by adoption.

4. If there is no living member of the class designated in subd. 1., 2., or 3., to the cemetery authority for the cemetery in which the cemetery lot or mausoleum space is located.

(b) A cemetery lot or mausoleum space is not part of a decedent's net estate for purposes of s. 852.01.

(3) If ownership of a cemetery lot or mausoleum space descends to the cemetery authority under sub. (2) (a), the cemetery authority shall comply with s. 157.115 (2) (c) to (h) for any grave in the cemetery lot or mausoleum space in which human remains are not buried.

(4) Any one or more persons under sub. (2) (a) 1. to 3. may, only with the consent of the cemetery authority, convey to any other person under sub. (2) (a) 1. to 3. his or her interest in the cemetery lot or mausoleum space.

(5) No human remains may be buried in a cemetery lot or mausoleum space except the human remains of an owner of the cemetery lot or mausoleum space, or a relative, or the spouse of an owner, or his or her relative, except by the consent of a majority of the owners of the cemetery lot or mausoleum space.

(6) The cemetery authority shall be held harmless for any decision made by a majority of the owners of a cemetery lot or mausoleum space.

(7) A cemetery authority that is a religious association or that is the cemetery authority of a cemetery affiliated with a religious association may adopt a written policy for the disposition of cemetery lots and mausoleum spaces in a cemetery organized and operated by, or affiliated with, the religious association that is different from sub. (2) (a).

History: 1989 a. 307; 2015 a. 237.

157.11 Improvement and care of cemetery lots and grounds. (1) FENCE; FUNERAL BUILDING. A cemetery authority may enclose the grounds of its cemetery with a suitable fence, and may erect thereon a building for funeral services.

(2) REGULATIONS. The cemetery authority may make regulations for management and care of the cemetery. No person may plant, in the cemetery, trees or shrubs, nor erect wooden fences or structures or offensive or dangerous structures or monuments, nor maintain them if planted or erected in violation of the regulations. The cemetery authority may require any person owning or controlling a cemetery lot to do anything necessary to comply with the regulations by giving reasonable personal notice in writing if the person is a resident of the state, otherwise by publishing a class 1 notice, under ch. 985, in the county. If the person fails to comply within 20 days thereafter, the cemetery authority may cause it to be done and recover from the person the expense. The cemetery authority may also impose a forfeiture not exceeding $100 for violation of the regulations posted in 3 conspicuous places in the cemetery, recoverable under ch. 778. Each employee and agent of the cemetery authority shall have constable powers in enforcing the regulations.

(3) CONTRACTS. The cemetery authority may contract with persons who own or are interested in a cemetery lot for its care. The contract shall be in writing, may provide that the cemetery lot shall be forever exempt from taxes, assessments or charges for its care and the care and preservation of the grounds, shall express the duty of the cemetery authority, be recorded in a book kept for that purpose, and be effective when the consideration is paid or secured.

(4) ASSOCIATIONS OF RELATIVES. Persons owning a cemetery lot or having relatives buried in a cemetery may incorporate an association to hold and occupy a previously constituted cemetery, and to preserve and care for the same. Section 157.062 shall apply to the association. Nothing in this subsection shall give rights of burial. A municipality may lease a municipal cemetery to a cemetery association for preservation and may contract to permit the association to use cemetery funds therefor. Such leases and contracts may be revoked at will by the municipal board.

(5) SUM REQUIRED. The cemetery authority shall annually fix the sum necessary for the care of cemetery lots and care and improvement of the cemetery, or to produce a sufficient income for those purposes.

(7) ASSESSMENTS. (a) The cemetery authority may annually assess upon the cemetery lots amounts not to exceed the amounts reasonably required for actual and necessary costs for cleaning and care of cemetery lots and care and improvement of the cemetery. Notice of the assessment, along with a copy of this section, shall be mailed to each owner or person having charge of a cemetery lot, at the owner's or person's last-known post-office address, directing payment to the cemetery authority within 30 days and specifying that such assessments are a personal liability of the owner or person.

(b) The cemetery authority may fix and determine the sum reasonably necessary for the care of the grave or cemetery lot in reasonable and uniform amounts, which amounts shall be subject to the approval of the court, and may collect those amounts as part of the funeral expenses.

(c) Before ordering distribution of the estate of a deceased person, the court shall order paid any assessment under this section, or the sum so fixed for the care of the cemetery lot or grave of the deceased.

(d) When uniform care of a cemetery lot has been given for 2 consecutive years or more, for which assessments are unpaid, after notice as provided in sub. (2), right to burial is forfeited until delinquent assessments are paid. When uniform care has been given for 5 consecutive years or more and the assessments are un-

CHAPTER 236

PLATTING LANDS AND RECORDING AND VACATING PLATS

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SUBCHAPTER I

PRELIMINARY PROVISIONS

236.01 Purpose of chapter. The purpose of this chapter is to regulate the subdivision of land to promote public health, safety and general welfare; to further the orderly layout and use of land; to prevent the overcrowding of land; to lessen congestion in the streets and highways; to provide for adequate light and air; to facilitate adequate provision for water, sewerage and other public requirements; to provide for proper ingress and egress; and to promote proper monumenting of land subdivided and conveyancing by accurate legal description. The approvals to be obtained by the subdivider as required in this chapter shall be based on requirements designed to accomplish the aforesaid purposes.

This chapter authorizes a municipality to reject a preliminary plat under its extraterritorial jurisdictional authority based upon a subdivision ordinance that considers the plat's proposed use. Wood v. City of Madison, 2003 WI 24, 260 Wis. 2d 71, 659 N.W.2d 31, 01-1206.

236.015 Applicability of chapter. This chapter does not apply to transportation project plats that conform to s. 84.095.

History: 1997 a. 282.

236.02 Definitions. In this chapter, unless the context or subject matter clearly requires otherwise:

(1) "Alley" means a public or private right-of-way shown on a plat, which provides secondary access to a lot, block or parcel of land.

(2) "Copy" means a true and accurate copy of all sheets of the original subdivision plat. Such copy shall be on durable white matte finished paper with legible dark lines and lettering.

(2m) "Correction instrument" means an instrument drafted by a professional land surveyor that complies with the requirements of s. 236.295 and that, upon recording, corrects a subdivision plat or a certified survey map.

(3) "County planning agency" means a rural county planning agency authorized by s. 27.019, a county park commission authorized by s. 27.02 except that in a county with a county executive or county administrator, the county park manager appointed under s. 27.03 (2), a county zoning agency authorized by s. 59.69 or any agency created by the county board and authorized by statute to plan land use.

(4) "Department" means the department of administration.

(5) "Extraterritorial plat approval jurisdiction" means the unincorporated area within 3 miles of the corporate limits of a first, second or third class city, or 1 1/2 miles of a fourth class city or a village.

(6) "Municipality" means an incorporated city or village.

(7) An "outlot" is a parcel of land, other than a lot or block, so designated on the plat.

(8) "Plat" is a map of a subdivision.

(9) "Preliminary plat" is a map showing the salient features of a proposed subdivision submitted to an approving authority for purposes of preliminary consideration.

(9b) "Professional land surveyor" means a professional land surveyor licensed under ch. 443.

(9c) "Record" means, with respect to a final plat or a certified survey map, to record and file the document with the register of deeds.

(9m) "Recorded private claim" means a claim of title to land based on a conveyance from a foreign government made before the land was acquired by the United States.

(11) "Replat" is the process of changing, or the map or plat which changes, the boundaries of a recorded subdivision plat or

part thereof. The legal dividing of a large block, lot or outlot within a recorded subdivision plat without changing exterior boundaries of said block, lot or outlot is not a replat.

(12) (am) Except as provided in par. (bm), "subdivision" means a division of a lot, parcel, or tract of land by the owner thereof or the owner's agent for the purpose of sale or of building development and to which any of the following applies:

1. The act of division creates 5 or more parcels or building sites of 1 1/2 acres each or less in area.

2. Five or more parcels or building sites of 1 1/2 acres each or less in area are created by successive divisions within a period of 5 years.

(bm) "Subdivision" does not include a division of land into 5 or more parcels or building sites by a certified survey map in accordance with an ordinance enacted or a resolution adopted under s. 236.34 (1) (ar) 1.

(13) "Town planning agency" means a town zoning committee appointed under s. 60.61 (4) (a) or any agency created by the town board and authorized by statute to plan land use.

History: 1979 c. 221; 1979 c. 233 s. 8; 1979 c. 248 ss. 2, 25 (4); 1979 c. 361; 1983 a. 189, 473, 532, 538; 1985 a. 29; 1987 a. 399; 1993 a. 490; 1995 a. 27 ss. 6307m, 6308, 9116 (5); 1995 a. 201; 1997 a. 27; 1999 a. 96; 2001 a. 16; 2013 a. 272, 358.

This chapter does not authorize the Department of Transportation to regulate land divisions that are not subdivisions within the meaning of sub. (12). Wisconsin Builders Ass'n v. DOT, 2005 WI App 160, 285 Wis. 2d 472, 702 N.W.2d 433, 04-2388.

Sub. (12) was not applicable to determining whether a condominium parcel met the minimum lakeshore frontage requirement of a zoning ordinance as: 1) a declaration of condominium is not a subdivision of land as defined in this chapter; and 2) even if this chapter were used by analogy the determination of lot sizes under sub. (12) refers to lot area and not lot width or lakeshore frontage. A subdivision under this chapter requires a division of land. A condominium declaration changes the form of ownership and is not a division of land. FAS, LLC v. Town of Bass Lake, 2007 WI 73, 301 Wis. 2d 321, 733 N.W.2d 287, 05-1689.

In determining lot sizes under sub. (8) [now sub. (12)], the lots may not extend across navigable waters or public easements of passage, nor include any land whose servitude is inconsistent with its integrated functional use and unified ownership. 66 Atty. Gen. 2. But see FAS, LLC v. Town of Bass Lake, 2007 WI 73, 301 Wis. 2d 321, 733 N.W.2d 287, 05-1689.

This chapter does not require a replat when the division of a lot or redivision of more than one lot does not meet the definition of a "subdivision" under this section. 67 Atty. Gen. 121.

Certified survey maps under s. 236.34 cannot substitute for subdivision surveys under sub. (8) [now sub. (12)]. Penalties under s. 236.31 apply to improper use of certified surveys. 67 Atty. Gen. 294.

236.025 Ordinary high water marks. (1) For purposes of ss. 236.15 (1) (ag) and (d) and 236.20 (2) (g), a professional land surveyor may do any of the following:

(a) Incorporate into a map, plat, or survey an ordinary high water mark that has been determined by the department of natural resources or otherwise determined pursuant to law.

(b) Approximate the ordinary high water mark and incorporate that mark into a map, plat, or survey.

(2) For purposes of sub. (1) (b), the location of the approximate ordinary high water mark shall be the point on the bank of a navigable stream or on the shore of a lake up to which the presence and action of surface water is so continuous as to leave a distinctive mark by erosion, destruction of terrestrial vegetation, or other easily recognized characteristics. If the approximate location of the ordinary high water mark is difficult to determine, a professional land surveyor may consider other points on the bank or shore for purposes of approximating the location of the ordinary high water mark.

(3) For purposes of this section, a map, plat, or survey that shows an approximate ordinary high water mark shall state on its face that the mark is shown for reference only.

History: 2013 a. 358.

236.03 Survey and plat; when required. (1) Any division of land that results in a subdivision as defined in s. 236.02 (12) (am) 1. shall be, and any other division may be, surveyed and a plat thereof approved and recorded as required by this chapter. No map or survey purporting to create divisions of land or intending to clarify metes and bounds descriptions may be recorded except as provided by this chapter.

(2) This chapter does not apply to cemetery plats made under s. 157.07 and assessors' plats made under s. 70.27, but such assessors' plats shall, except in counties having a population of 750,000 or more, comply with ss. 236.15 (1) (ac) to (g) and 236.20 (1) and (2) (a) to (e), unless waived under s. 236.20 (2) (L).

(3) Subsection (1) shall not apply to the sale or exchange of parcels of public utility or railroad right-of-way to adjoining property owners if the governing body of the municipality or town in which the property is located and the county planning agency, where such agency exists, approves such sale or exchange on the basis of applicable local ordinances or the provisions of this chapter.

History: 1983 a. 189 s. 329 (23); 1983 a. 473; 1993 a. 490; 2013 a. 272, 358; 2017 a. 207 s. 5.

The provisions of s. 236.41 relating to vacation of streets are inapplicable to assessors' plats under s. 70.27. Once properly filed and recorded, an assessor's plat becomes the operative document of record, and only sections specified in sub. (2) apply to assessors' plats. Schaetz v. Town of Scott, 222 Wis. 2d 90, 585 N.W.2d 889 (Ct. App. 1998), 98-0841.

A replat of a recorded subdivision must comply with the formal platting requirements of this chapter relating to new subdivision plats, including those relating to the survey, approval, and recording. 63 Atty. Gen. 193.

SUBCHAPTER II

APPROVAL OF PLAT

236.10 Approvals necessary. (1) To entitle a final plat of a subdivision to be recorded, it shall have the approval of the following in accordance with the provisions of s. 236.12:

(a) If within a municipality, the governing body, but if the plat is within an area, the annexation of which is being legally contested, the governing bodies of both the annexing municipality and the town from which the area has been annexed shall approve.

(b) Except as provided under s. 62.23 (7a) (am), if within the extraterritorial plat approval jurisdiction of a municipality:

1. The town board; and

2. The governing body of the municipality if, by July 1, 1958, or thereafter it adopts a subdivision ordinance or an official map under s. 62.23; and

3. Subject to sub. (1m), the county planning agency if such agency employs on a full-time basis a professional engineer, a planner or other person charged with the duty of administering zoning or other planning legislation.

(c) If outside the extraterritorial plat approval jurisdiction of a municipality:

1. The town board; and

2. Subject to sub. (1m), the county planning agency, if there is one.

(1m) (a) Except as provided in par. (b), a county planning agency under sub. (1) (b) 3. or (c) 2. has no authority to approve or object to the preliminary or final plat of a subdivision that is located in a town that has, before the preliminary plat is submitted for approval, or before the final plat is submitted for approval if no preliminary plat is submitted, 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 sub. (1) (b) 3. or (c) 2. may object to any of the following portions of a subdivision that is located in a town described in par. (a):

1. Any portion of the subdivision that is shoreland, as defined in s. 59.692 (1) (b), in the county.

2. Any portion of the subdivision that is in a 100-year floodplain in the county.

(2) Except as provided under s. 62.23 (7a) (am), if a subdivision lies within the extraterritorial plat approval jurisdiction of more than one municipality, the provisions of s. 66.0105 shall apply.

(3) The authority to approve or object to preliminary or final plats under this chapter may be delegated to a planning committee or commission of the approving governing body. Final plats dedicating streets, highways or other lands shall be approved by the governing body of the town or municipality in which such are located.

(4) Any municipality, town or county may under s. 66.0301 agree with any other municipality, town or county for the cooperative exercise of the authority to approve or review plats. A municipality, town or county may, under s. 66.0301, agree to have a regional planning commission review plats and submit an advisory recommendation with respect to their approval. A municipality, town or county may agree with a regional planning commission for the cooperative exercise of the authority to approve or review plats only as provided under s. 66.0309 (11).

(5) Any municipality may waive its right to approve plats within any portion of its extraterritorial plat approval jurisdiction by a resolution of the governing body recorded with the register of deeds incorporating a map or metes and bounds description of the area outside its corporate boundaries within which it shall approve plats. The municipality may rescind this waiver at any time by resolution of the governing body recorded with the register of deeds.

History: 1979 c. 248; 1993 a. 301; 1999 a. 150 s. 672; 2015 a. 178; 2021 a. 198; 2023 a. 264.

A city improperly included lots not within its extraterritorial plat approval jurisdiction in the city's calculation of fees assessed to a developer. Brookhill Development, Ltd. v. City of Waukesha, 103 Wis. 2d 27, 307 N.W.2d 242 (1981).

Section 236.12 (2) (a) does not restrict a town's authority to impose public improvements as conditions for plat approval during a contested annexation. When a town is legally contesting the annexation, sub. (1) (a) requires both the annexing municipality and the town from which the area has been annexed to approve a final plat in accordance with s. 236.12. KW Holdings, LLC v. Town of Windsor, 2003 WI App 9, 259 Wis. 2d 357, 656 N.W.2d 752, 02-0706.

Artificial Lakes and Land Subdivisions. Kusler. 1971 WLR 369.

236.11 Submission of plats for approval. (1) (a) Before submitting a final plat for approval, the subdivider may submit, or the approving authority may require that the subdivider submit, a preliminary plat. It shall be clearly marked "preliminary plat" and shall be in sufficient detail to determine whether the final plat will meet layout requirements. Within 90 days the approving authority, or its agent authorized to approve preliminary plats, shall take action to approve, approve conditionally, or reject the preliminary plat 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 extension thereof, constitutes an approval of the preliminary plat.

(b) If the final plat conforms substantially to the preliminary plat as approved, including any conditions of that approval, and to local plans and ordinances adopted as authorized by law, it is entitled to approval. If the final plat is not submitted within 36 months after the last required approval of the preliminary plat, any approving authority may refuse to approve the final plat or may extend the time for submission of the final plat. The final plat may, if permitted by the approving authority, constitute only that portion of the approved preliminary plat that the subdivider proposes to record at that time.

(c) A professional engineer, a planner, or another person charged with the responsibility to review plats shall provide the approving authority with his or her conclusions as to whether the final plat conforms substantially to the preliminary plat and with his or her recommendation on approval of the final plat. The conclusions and recommendation shall be made a part of the record of the proceeding at which the final plat is being considered and are not required to be submitted in writing.

(2) (a) The subdivider or subdivider's agent shall submit to the body or bodies having authority to approve plats an electronic copy of the final plat or a copy of the final plat that is capable of legible reproduction. The approving authority or authorities shall approve or reject the final plat within 60 days of its submission, unless the time is extended by agreement with the subdivider or subdivider's agent. When the approving authority is a municipality and determines to approve the plat, it shall give at least 10 days' prior written notice of its intention to the clerk of any municipality whose boundaries are within 1,000 feet of any portion of such proposed plat but failure to give such notice shall not invalidate any such plat. If a plat is rejected, the reasons therefor shall be stated in the minutes of the meeting and a copy thereof or a written statement of the reasons shall be supplied to the subdivider or subdivider's agent. If the approving authority fails to act within 60 days and the time has not been extended by agreement and if no unsatisfied objections have been filed within that period, the plat shall be deemed approved, and, upon demand, a certificate to that effect shall be made on the face of the plat by the clerk of the authority that has failed to act.

(b) The approval of the approving authority or authorities may be based on the copy submitted under par. (a) but the approval must be inscribed on the recordable plat document. Before inscribing its approval, the approving authority shall require the subdivider or subdivider's agent to certify the respects in which the recordable plat document differs from the copy, if any. An approving authority must approve all modifications in the final plat before it gives final approval to the plat. No approving authority may inscribe its final approval on a plat before the affixing of the certificate by the department under s. 236.12 (3).

History: 1979 c. 248; 1997 a. 332; 2009 a. 376; 2013 a. 358.

Under sub. (1) (a), a village must act within the stated time limit as to a preliminary plat, even though the plat allegedly violates the official city map. Tabling consideration of the plat within the stated time is not sufficient. State ex rel. Lozoff v. Board of Trustees, 55 Wis. 2d 64, 197 N.W.2d 798 (1972).

236.12 Procedure for approval of plats. (1) This section shall not apply to cities of the first class nor to unincorporated land in a county having a population of 750,000 or more.

(2) (ac) The subdivider or subdivider's agent shall submit an electronic copy of the preliminary or final plat, or a copy of the preliminary or final plat that is capable of clearly legible reproduction, to the department, which shall examine the plat for compliance with ss. 236.15, 236.16, 236.20, and 236.21 (1) and (2).

(ap) Within 2 days after a preliminary or final plat is submitted under par. (ac), the department shall transmit an electronic copy of the plat, or, if the department prefers, 2 legible hard copies of the plat, to each state agency authorized to object to the plat under this paragraph. If the subdivision abuts or adjoins a state trunk highway or connecting highway, the department shall transmit a copy or copies of the plat to the department of transportation so that the agency may determine whether it has any objection to the plat on the basis of its rules as provided in s. 236.13. If the subdivision is not served by a public sewer and provision for that service has not been made, the department shall transmit a copy or copies of the plat to the department of safety and professional services so that the agency may determine whether it has any objection to the plat on the basis of its rules as provided in s. 236.13. In lieu of this procedure the agencies may designate local officials to act as their agents in examining the plats for

compliance with the statutes or their rules by filing a written delegation of authority with the approving body.

(b) Within 2 days after a preliminary or final plat is submitted under par. (ac), the department shall transmit an electronic copy of the plat, or, if the department prefers, 4 legible hard copies of the plat, to the county planning agency, if the agency employs on a full-time basis a professional engineer, a planner, or other person charged with the duty of administering planning legislation and adopts a policy requiring submission so that the body may determine if it has any objection to the plat on the basis of a conflict with park, parkway, expressway, major highways, airports, drainage channels, schools, or other planned public developments. If no county planning agency exists, then 2 copies to the county park commission except that in a county with a county executive or county administrator, 2 copies to the county park manager, if the subdivision abuts a county park or parkway so that the body may determine if it has any objection to the plat on the basis of a conflict with the park or parkway development.

(3) Within 20 days after the date of receiving the copies of the plat any agency having authority to object under sub. (2) shall notify the subdivider or subdivider's agent and all other agencies having the authority to object of any objection based upon failure of the plat to comply with the statutes or rules that its examination under sub. (2) is authorized to cover, or, if there is no objection, it shall so certify on the face of a copy of the plat and return that copy to the department. After each agency and the department have certified that they have no objection or that their objections have been satisfied, the department shall so certify on the face of the plat. If an agency fails to act within 20 days from the date on which it received the copy or copies of the plat, and the department fails to act within 30 days from the date on which it received the copy of the plat, it shall be deemed that there are no objections to the plat and, upon demand, the department shall so certify on the face of the plat.

(4m) In order to facilitate approval of the final plat whenever more than one approval is required, the subdivider or subdivider's agent shall file with each approving authority a true copy of the plat that the subdivider or subdivider's agent submitted to the department.

(7) The department and the state agencies referred to in s. 236.13 (1) may charge reasonable service fees for all or part of the costs of activities and services provided by the department under this section and s. 70.27. A schedule of such fees shall be established by rule by each such agency.

History: 1973 c. 90; 1977 c. 29 s. 1654 (3), (8) (c); 1979 c. 221; 1979 c. 248 ss. 5, 25 (6); 1979 c. 355; 1985 a. 29; 1995 a. 27; 1997 a. 27; 2011 a. 32; 2013 a. 358; 2017 a. 207 s. 5; 2017 a. 364 s. 49.

A "planned public development" under sub. (2) (b) is one that a county board has adopted by ordinance. Reynolds v. Waukesha County Park & Planning Commission, 109 Wis. 2d 56, 324 N.W.2d 897 (Ct. App. 1982).

Because sub. (2) (a) grants only to a "town or municipality" within which a plat lies the authority to require public improvements as a condition of plat approval, and a county is not a municipality for purposes of this chapter, a county may not regulate the size of cul-de-sacs, the length of street blocks, and the location of town roads when the plat is located within a town. Rogers Development, Inc. v. Rock County Planning & Development Committee, 2003 WI App 113, 265 Wis. 2d 214, 666 N.W.2d 504, 02-0017.

236.13 Basis for approval. (1) Approval of the preliminary or final plat shall be conditioned upon compliance with:

(a) The provisions of this chapter.

(b) Any municipal, town, or county ordinance that is in effect when the subdivider submits a preliminary plat, or a final plat if no preliminary plat is submitted.

(d) The rules of the department of safety and professional services relating to lot size and lot elevation necessary for proper sanitary conditions in a subdivision not served by a public sewer, where provision for public sewer service has not been made.

(e) The rules of the department of transportation relating to provision for the safety of entrance upon and departure from the abutting state trunk highways or connecting highways and for the preservation of the public interest and investment in such highways.

(2) (ad) In this subsection:

1. "Binder course" means the non-surface-level course that is attached to the packed-level gravel course.

2. "Land disturbing activity" means any man-made alteration of the land surface resulting in a change in the topography or existing vegetative or nonvegetative soil cover that may result in runoff and lead to an increase in soil erosion and movement of sediment into waters of this state. "Land disturbing activity" includes clearing and grubbing, demolition, excavating, pit trench dewatering, filling, and grading activities.

3. "Total cost to complete a public improvement" includes the cost to make and install storm water facilities. "Total cost to complete a public improvement" does not include any of the following:

a. Any fees charged by the governing body of the town or municipality.

b. Land disturbing activities that are necessary to achieve the desired subgrade for public improvements.

(am) 1. a. As a further condition of approval, the governing body of the town or municipality within which the subdivision lies may require that the subdivider make and install any public improvements reasonably necessary or that the subdivider provide security to ensure that the subdivider will make those improvements within a reasonable time. The governing body may not require the subdivider to provide security at the commencement of a project in an amount that is more than 120 percent of the estimated total cost to complete the required public improvements, as determined under subd. 1d.

b. The subdivider may construct the project in such phases as the governing body of the town or municipality approves, which approval may not be unreasonably withheld. If the subdivider's project will be constructed in phases, the amount of security required by the governing body under subd. 1. a. is limited to the phase of the project that is currently being constructed. The governing body may not require that the subdivider provide any security for improvements sooner than is reasonably necessary before the commencement of the installation of the improvements.

c. If the governing body of the town or municipality requires a subdivider to provide security under subd. 1. a., the governing body may not require the subdivider to provide the security for more than 14 months after the date the public improvements for which the security is provided are substantially completed and upon substantial completion of the public improvements, the amount of the security the subdivider is required to provide may be no more than an amount equal to the total cost to complete any uncompleted public improvements plus 10 percent of the total cost of the completed public improvements.

d. This paragraph applies to all preliminary and final plats, regardless of whether submitted for approval before, on, or after August 1, 2014.

1d. The estimated total cost to complete the required public improvements under subd. 1. shall be determined as follows:

a. A governing body of the town or municipality may provide an initial estimate to the subdivider of the estimated total cost to complete the required public improvements. If the subdivider accepts the initial estimate, then the initial estimate is the estimated total cost to complete the required public improvements.

b. If the governing body of the town or municipality does not provide an initial estimate to the subdivider or the subdivider rejects the initial estimate, the subdivider shall provide the governing body with a bona fide bid from the subdivider's contractor to

complete the required public improvements in the event of a default. If the governing body accepts the subdivider's bona fide bid, the bona fide bid is the estimated total cost to complete the required public improvements.

c. If the governing body of the town or municipality rejects the subdivider's bona fide bid, the governing body shall provide the subdivider with an estimate for the cost to complete the public improvements in the event of a default. If the governing body's estimate does not exceed the subdivider's bona fide bid by more than 10 percent, the governing body's estimate is the estimated total cost to complete the required public improvements. If the governing body's estimate exceeds the subdivider's bona fide bid by 10 percent or more, the estimated total cost to complete the required public improvements is the amount agreed upon by the subdivider's engineer and the governing body's engineer.

1m. a. If the governing body of the town or municipality requires a subdivider to provide security under subd. 1. a., the governing body shall accept a performance bond or a letter of credit, or any combination thereof, at the subdivider's option, to satisfy the requirement.

b. The subdivider and the governing body of the town or municipality may agree that all or part of the requirement to provide security under subd. 1. a. may be satisfied by a performance bond provided by the subdivider's contractor that names the town or municipality as an additional obligee provided that the form of the contractor's performance bond is acceptable to the governing body of the town or municipality.

c. Unless the governing body of a town or municipality demonstrates that a bond form does not sufficiently ensure performance in the event of default, the governing body of the town or municipality shall accept a performance bond under this subdivision if the person submitting the performance bond demonstrates that the performance bond is consistent with a standard surety bond form used by a company that, on the date the bond is obtained, is listed as an acceptable surety on federal bonds in the most recent circular 570 published by the federal department of the treasury, as required under 31 CFR 223.16, and the performance bond is issued by a surety company licensed to do business in this state.

2. For purposes of subd. 1., public improvements reasonably necessary for a project or a phase of a project are considered to be substantially completed upon the installation of the asphalt or concrete binder course on roads to be dedicated or, if the required public improvements do not include a road to be dedicated, at the time that 90 percent of the public improvements by cost are completed.

3. a. With regard to public improvements to which subd. 1. applies, no town or municipality may enact an ordinance relating to the substantial completion of such a public improvement that is inconsistent with subd. 2.

b. Upon such substantial completion, any outstanding local building permits that are related to, and dependent upon, substantial completion shall be released.

c. The governing body of a town or municipality shall, upon a subdivider's request, issue a permit to commence construction of a foundation or any other noncombustible structure before substantial completion of a public improvement if all public improvements related to public safety are complete and the security requirement under subd. 1. a. has been met. The subdivider may not commence work on a building until the governing body of the town or municipality approves or issues a permit for the construction of the building.

(b) Any city or village may require as a condition for accepting the dedication of public streets, alleys or other ways, or for permitting private streets, alleys or other public ways to be placed on the official map, that designated facilities shall have been previously provided without cost to the municipality, but which are constructed according to municipal specifications and under municipal inspection, such as, without limitation because of enumeration, sewerage, water mains and laterals, storm water management or treatment facilities, grading and improvement of streets, alleys, sidewalks and other public ways, street lighting or other facilities designated by the governing body, or that a specified portion of such costs shall be paid in advance as provided in s. 66.0709.

(c) Any county, town, city or village may require as a condition of approval that the subdivider be responsible for the cost of any necessary alterations of any existing utilities which, by virtue of the platting or certified survey map, fall within the public right-of-way.

(d) As a further condition of approval, any county, town, city or village may require the dedication of easements by the subdivider for the purpose of assuring the unobstructed flow of solar or wind energy across adjacent lots in the subdivision.

(2m) As a further condition of approval when lands included in the plat lie within 500 feet of the ordinary high-water mark of any lake, any navigable stream, or any other body of navigable water or if land in the proposed plat involves lake or navigable stream shorelands referred to in s. 236.16, the department of natural resources, to prevent pollution of navigable waters, or the department of safety and professional services, to protect the public health and safety, may require assurance of adequate drainage areas for private on-site wastewater treatment systems and building setback restrictions, or provisions by the owner for public sewage disposal facilities for waters of the state, as defined in s. 281.01 (18), industrial wastes, as defined in s. 281.01 (5), and other wastes, as defined in s. 281.01 (7). The public sewage disposal facilities may consist of one or more systems as the department of natural resources or the department of safety and professional services determines on the basis of need for prevention of pollution of the waters of the state or protection of public health and safety.

(3) No approving authority or agency having the power to approve or object to plats shall condition approval upon compliance with, or base an objection upon, any requirement other than those specified in this section.

(4) Where more than one governing body or other agency has authority to approve or to object to a plat and the requirements of such bodies or agencies are conflicting, the plat shall comply with the most restrictive requirements.

(5) (a) Any person aggrieved by an objection to a plat or a failure to approve a plat may appeal therefrom as provided in s. 62.23 (7) (e) 10. a., 14. and 15., within 30 days of notification of the rejection of the plat. For the purpose of an appeal under this paragraph, the term "board of appeals" means an "approving authority". Where the failure to approve is based on an unsatisfied objection, the agency making the objection shall be made a party to the action. The court shall direct that the plat be approved if it finds that the action of the approving authority or objecting agency is arbitrary, unreasonable, or discriminatory.

(b) Notwithstanding par. (a), a decision of an approving authority on an application for an approval, as defined in s. 781.10 (1) (a), is subject to review under the procedures contained in s. 781.10.

(6) An outlot may not be used as a building site unless it is in compliance with restrictions imposed by or under this section with respect to building sites. An outlot may be conveyed regardless of whether it may be used as a building site.

History: 1977 c. 29 ss. 1384, 1654 (8) (c); 1977 c. 162; 1979 c. 221, 248; 1981 c. 289 s. 19; 1981 c. 354; 1993 a. 414; 1995 a. 27 ss. 6310, 6311, 9116 (5); 1995 a. 227; 1997 a. 27; 1999 a. 9; 1999 a. 150 s. 672; 2001 a. 30; 2007 a. 44; 2009 a. 372,

376; 2011 a. 32, 146; 2013 a. 280, 358; 2015 a. 195; 2017 a. 243; 2017 a. 364 s. 49; 2021 a. 238 s. 45; 2023 a. 16.

Local units of government may not reject a proposed plat under this section unless the plat conflicts with an existing statutory requirement or an existing written ordinance, master plan, official map, or rule under sub. (1). State ex rel. Columbia Corp. v. Town of Pacific, 92 Wis. 2d 767, 286 N.W.2d 130 (Ct. App. 1979).

Under sub. (2) (a), authority to condition plat approval on public improvements is granted solely to the governing body of the municipality in which the subdivision is located. Rice v. City of Oshkosh, 148 Wis. 2d 78, 435 N.W.2d 252 (1989).

Municipalities have no authority to impose conditions upon a subdivision that extend beyond the municipality's borders. Pedersen v. Town of Windsor, 191 Wis. 2d 664, 530 N.W.2d 427 (Ct. App. 1995).

Sub. (2) (a) does not grant a municipality the power to establish public improvement requirements without an ordinance. Pedersen v. Town of Windsor, 191 Wis. 2d 664, 530 N.W.2d 427 (Ct. App. 1995).

Sub. (1) (d) does not prevent municipalities from enacting more restrictive sewer regulations than the rules cited in that paragraph. Manthe v. Town of Windsor, 204 Wis. 2d 546, 555 N.W.2d 156 (Ct. App. 1996), 95-1312.

So long as any issues addressed in both a master plan and an official map are not contradictory, for purposes of sub. (1) (c), the master plan is consistent with the official map. A master plan is not inconsistent with an official map if the plan contains elements the map does not. Lake City Corp. v. City of Mequon, 207 Wis. 2d 155, 558 N.W.2d 100 (1997), 94-3240.

In the area of minimum lot size regulation, the power of a plan commission authorized to review plats is not limited or detracted by zoning regulations. Lake City Corp. v. City of Mequon, 207 Wis. 2d 155, 558 N.W.2d 100 (1997), 94-3240.

As sub. (5) [now sub. (5) (a)] does not expressly designate the "appealing authority" to whom appeal papers should be directed, the appellant's service of an appeal on the county planning and development department rather than on the planning and development committee, which had made the disputed decision, was not grounds for dismissal when there had been pervasive use of department personnel and stationery in the process. Weber v. Dodge County Planning & Development Department, 231 Wis. 2d 222, 604 N.W.2d 297 (Ct. App. 1999), 99-1116.

Sub. (2) (a) does not restrict a town's authority to impose public improvements as conditions for plat approval during a contested annexation. When a town is legally contesting the annexation, s. 236.10 (1) (a) requires both the annexing municipality and the town from which the area has been annexed to approve a final plat in accordance with s. 236.12. KW Holdings, LLC v. Town of Windsor, 2003 WI App 9, 259 Wis. 2d 357, 656 N.W.2d 752, 02-0706.

This chapter does not authorize the Department of Transportation to regulate land divisions that are not subdivisions within the meaning of s. 236.02 (12). Wisconsin Builders Ass'n v. DOT, 2005 WI App 160, 285 Wis. 2d 472, 702 N.W.2d 433, 04-2388.

A city's extraterritorial plat condition that allowed lots of less than 20 acres only when attached to the public sanitary sewer system had the effect of requiring a public sanitary sewer system for lot sizes smaller than 20 acres, violating the ruling of *Rice*, 148 Wis. 2d 78 (1989), that authority to condition plat approval on public improvements is granted solely to the governing body of the municipality in which the subdivision is located. Town of Delton v. Liston, 2007 WI App 120, 301 Wis. 2d 720, 731 N.W.2d 308, 06-1288.

SUBCHAPTER III

LAYOUT REQUIREMENTS

236.15 Surveying requirements. For every subdivision of land there shall be a survey meeting the following requirements:

(1) MONUMENTS. (ac) All of the monuments required in pars. (ag) to (h) shall be placed flush with the ground if practicable. Whenever placement of a monument under this subsection is required at a corner or point that falls within a street or proposed future street, the monument shall be placed in the side line of the street if practicable.

(ag) The external boundaries of a subdivision shall be monumented in the field by monuments of concrete containing a ferrous rod one-fourth inch in diameter or greater imbedded its full length, not less than 18 inches in length, not less than 4 inches square or 5 inches in diameter, and marked on the top with a cross, brass plug, iron rod, or other durable material securely embedded; or by iron rods or pipes at least 18 inches long and 2 inches in diameter weighing not less than 3.65 pounds per lineal foot. Solid round or square iron bars of equal or greater length or weight per foot may be used in lieu of pipes wherever pipes are specified in this section. These monuments shall be placed at all corners, at each end of all curves, at the point where a curve changes its radius, at all angle points in any line and at all angle points along the meander line, said points to be not less than 20 feet back from the determined or approximated ordinary high water mark.

(b) All internal boundaries and those corners and points not required to be marked by par. (ag) shall be monumented in the field by like monuments as defined in par. (ag). These monuments shall be placed at all block corners, at each end of all curves, at the point where a curve changes its radius, and at all angle points in any line.

(c) All lot, outlot, park and public access corners and the corners of land dedicated to the public shall be monumented in the field by iron pipes at least 18 inches long and one inch in diameter, weighing not less than 1.13 pounds per lineal foot, or by round or square iron bars at least 18 inches long and weighing not less than 1.13 pounds per lineal foot.

(d) The lines of lots, outlots, parks and public access and land dedicated to the public that extend to lakes or to navigable streams shall be monumented in the field by iron pipes at least 18 inches long and one inch in diameter weighing not less than 1.13 pounds per lineal foot, or by round or square iron bars at least 18 inches long and weighing not less than 1.13 pounds per lineal foot. These monuments shall be placed at the point of intersection of the lake or navigable stream lot line with a meander line established not less than 20 feet back from the determined or approximated ordinary high water mark.

(f) Any durable metal or concrete monuments may be used in lieu of iron pipes provided that they are uniform within the platted area and have a permanent magnet embedded near the top or bottom or both.

(g) In cases where strict compliance with this subsection would be unduly difficult or would not provide adequate monuments, the department may make other reasonable requirements.

(h) The governing body of the city, village or town which is required to approve the subdivision under s. 236.10 may waive the placing of monuments under pars. (b), (c) and (d) for a reasonable time on condition that the subdivider executes a surety bond to ensure that he or she will place the monuments within the time required.

(2) ACCURACY OF SURVEY. The survey shall be performed by a professional land surveyor and if the error in the latitude and departure closure of the survey or any part thereof is greater than the ratio of one in 3,000, the plat may be rejected.

History: 1979 c. 221, 248; 1979 c. 355 s. 240; 1981 c. 390; 2001 a. 16; 2013 a. 358.

All permanent survey monuments required by sub. (1) (a), (b), (c), and (d) must be placed in the field prior to submission of a final subdivision plat for state level review; provided, however, that in the event of a waiver under sub. (1) (h), the placement of all permanent monuments other than those required by sub. (1) (a) may be temporarily deferred. 59 Atty. Gen. 262.

236.16 Layout requirements. (1) MINIMUM LOT WIDTH AND AREA. In counties having a population of 40,000 or more, each lot in a residential area shall have a minimum average width of 50 feet and a minimum area of 6,000 square feet; in counties of less than 40,000, each lot in a residential area shall have a minimum average width of 60 feet and a minimum area of 7,200 square feet. In municipalities, towns and counties adopting subdivision control ordinances under s. 236.45, minimum lot width and area may be reduced to dimensions authorized under such ordinances if the lots are served by public sewers.

(2) MINIMUM STREET WIDTH. All streets shall be of the width specified on the master plan or official map or of a width at least as great as that of the existing streets if there is no master plan or official map, but no full street shall be less than 60 feet wide unless otherwise permitted by local ordinance. Widths of town roads platted after January 1, 1966, shall, however, comply with minimum standards for town roads prescribed by s. 82.50. Streets or frontage roads auxiliary to and located on the side of a full street for service to the abutting property may not after January 1, 1966, be less than 49.5 feet wide.

(3) LAKE AND NAVIGABLE STREAM SHORE PLATS; PUBLIC ACCESS. (a) All subdivisions abutting on a lake or a navigable stream shall provide public access at least 60 feet wide providing access to the water's edge so that there will be public access, which is connected to existing public roads, at not more than one-half mile intervals as measured along the lake or the navigable stream shore except where greater intervals and wider access is agreed upon by the department of natural resources and the department, and excluding shore areas where public parks or open-space streets or roads on either side of the navigable stream are provided.

(b) No public access established under this chapter may be vacated except by circuit court action as provided in s. 236.43, except that such public access may be discontinued under s. 66.1003, subject to s. 66.1006.

(c) Except as provided in par. (d), this subsection does not require any local unit of government to improve land provided for public access.

(d) All of the owners of all of the land adjacent to a public access established under par. (a) to an inland lake, as defined in s. 30.92 (1) (bk), may petition the city, village, town or county that owns the public access to construct shoreline erosion control measures. Subject to par. (e), the city, village, town or county shall construct the requested shoreline erosion control measures or request the department of natural resources to determine the need for shoreline erosion control measures. Upon receipt of a request under this paragraph from a city, village, town or county, the department of natural resources shall follow the notice and hearing procedures in s. 30.208 (3) to (5). Subject to par. (e), the city, village, town or county shall construct shoreline erosion control measures as required by the department of natural resources if the department of natural resources determines all of the following:

1. Erosion is evident along the shoreline in the vicinity of the public access.

2. The shoreline erosion control measures proposed by the owners of the property adjacent to the public access are designed according to accepted engineering practices.

3. Sufficient property owners, in addition to the owners of all property adjacent to the public access, have agreed to construct shoreline erosion control measures so that the shoreline erosion control project is likely to be effective in controlling erosion at the location of the public access and its vicinity.

4. The shoreline erosion control project is not likely to be effective in controlling erosion at the location of the public access and its vicinity if the city, village, town or county does not construct shoreline erosion control measures on the land provided for public access.

(e) A city, village, town or county may not be required to construct shoreline erosion control measures under par. (d) on land other than land provided for public access.

(f) Paragraphs (b) to (e) apply to public access that exists on, or that is established after, May 7, 1998.

(4) LAKE AND NAVIGABLE STREAM SHORE PLATS; LAND BETWEEN MEANDER LINE AND WATER'S EDGE. The lands lying between the meander line, established in accordance with s. 236.20 (2) (g), and the water's edge, and any otherwise unplattable lands which lie between a proposed subdivision and the water's edge shall be included as part of lots, outlots or public dedications in any plat abutting a lake or a navigable stream. This subsection applies not only to lands proposed to be subdivided but also to all lands under option to the subdivider or in which the subdivider holds any interest and which are contiguous to the lands proposed to be subdivided and which abut a lake or a navigable stream.

History: 1971 c. 164; 1979 c. 221; 1979 c. 248 ss. 9, 25 (2); 1997 a. 172; 2003 a. 118, 214; 2013 a. 358.

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

Cross-reference: See also ss. NR 1.91 and 1.93, Wis. adm. code.

When a strip of land was labeled on a plat "Public Access" that abutted a lake and connected to a public highway, the plat substantially met the statutory requirement of a "clear dedication to the public." While the dedication did not contain the exact formula found in s. 236.20 (4), under *Hunt*, 19 Wis. 2d 113 (1963), that is not necessary. Vande Zande v. Town of Marquette, 2008 WI App 144, 314 Wis. 2d 143, 758 N.W.2d 187, 07-2354.

Discussing the circumstances under which the statutory platting standards set forth in subs. (1), (2), and (3) and s. 236.20 (4) (d) may be waived or varied, with specific reference to the approval of island subdivision plats. 62 Atty. Gen. 315.

Each of two adjacent platted lots may not be divided for the purpose of sale or building development if the division will result in lots or parcels that do not comply with minimum lot width and area requirements established under sub. (1). Section 236.335 clearly limits the division of a lot in a recorded plat if the resulting lots or parcels do not conform to this chapter. 63 Atty. Gen. 122.

Sub. (3) does not apply to a navigable lake created by artificially enlarging a previously nonnavigable watercourse. 64 Atty. Gen. 146.

Discussing the extent to which local governments may vary the terms of subs. (1) and (2) and s. 236.20 (4) (d) by ordinance. 64 Atty. Gen. 175.

Sub. (4) aims at preventing subdividers from creating narrow, unplatted buffer zones between platted lands and water's edge, thus avoiding public access requirements. 66 Atty. Gen. 85.

236.18 Wisconsin coordinate system. (1) REQUIREMENT FOR RECORDING. (a) No plat that is referenced to a Wisconsin coordinate system under sub. (2) may be recorded unless it is based on a datum that the approving authority under s. 236.10 of the jurisdiction in which the land is located has selected by ordinance.

(b) An approving authority under s. 236.10 may select a Wisconsin coordinate system under sub. (2). If it does so, it shall notify the department, on a form provided by the department, of the selection.

(c) An approving authority may, by ordinance, select a different Wisconsin coordinate system under sub. (2) than the one previously selected under par. (b). If it does so, the approving authority shall notify the department on a form provided by the department.

(2) ALLOWABLE SYSTEMS. An approving authority under s. 236.10 may select any one of the following systems:

(a) The Wisconsin coordinate system of 1927, which is based on the North American datum of 1927.

(b) The Wisconsin coordinate system of 1983 (1986), which is based on the North American datum of 1983 (adjustment of 1986).

(c) The Wisconsin coordinate system of 1983 (1991), which is based on the North American datum of 1983 (adjustment of 1991).

(d) A county coordinate system as approved by the department of transportation or a coordinate system that is mathematically relatable to a Wisconsin coordinate system.

(3) ZONES. Each of the systems under sub. (2) includes the following zones:

(a) A north zone composed of the following counties: Ashland, Bayfield, Burnett, Douglas, Florence, Forest, Iron, Oneida, Price, Sawyer, Vilas and Washburn.

(b) A central zone composed of the following counties: Barron, Brown, Buffalo, Chippewa, Clark, Door, Dunn, Eau Claire, Jackson, Kewaunee, Langlade, Lincoln, Marathon, Marinette, Menominee, Oconto, Outagamie, Pepin, Pierce, Polk, Portage, Rusk, St. Croix, Shawano, Taylor, Trempealeau, Waupaca and Wood.

(c) A south zone composed of the following counties: Adams, Calumet, Columbia, Crawford, Dane, Dodge, Fond du Lac, Grant, Green, Green Lake, Iowa, Jefferson, Juneau, Kenosha, La Crosse, Lafayette, Manitowoc, Marquette, Milwau-

kee, Monroe, Ozaukee, Racine, Richland, Rock, Sauk, Sheboygan, Vernon, Walworth, Washington, Waukesha, Waushara and Winnebago.

(4) APPLICABLE DEFINITIONS AND SURVEY CONNECTIONS. (a) The following definitions apply to the systems under sub. (2):

1. For the Wisconsin coordinate system of 1927, the definitions provided by the national geodetic survey in U.S. coastal and geodetic survey special publication 235 (1974 edition).

2. For the Wisconsin coordinate system of 1983 (1986) and the Wisconsin coordinate system of 1983 (1991), the definitions provided by the national geodetic survey in the national oceanic and atmospheric administration manual national ocean service, national geodetic survey 5 (1989 edition).

(b) Existing positions of the systems under sub. (2) that are marked on the ground by monuments established in conformity with standards adopted by the national geodetic survey for 3rd-order work and above and the geodetic positions of which have been rigidly adjusted on the North American datum of 1927, the North American datum of 1983 (adjustment of 1986), the North American datum of 1983 (adjustment of 1991) or any later adjustment of the North American datum of 1983 may be used to establish a survey connection to the systems under sub. (2).

(5) OVERLAPPING LAND. If portions of any tract of land that is to be defined by one description in a plat are in different zones under sub. (3), the positions of all of the points on its boundaries may be referred to either of the zones but the zone to which those positions are referred and the system under sub. (2) that is used shall be named in the description and noted on the face of all maps and plats of the land.

(6) COORDINATES. (a) The plane coordinates of a point that are to be used to express the position or location of a point shall consist of 2 distances that are expressed in U.S. survey feet or meters and decimals of those feet or meters. The definitions of survey foot and meter in letter circular 1071 July 1976 national institute of standards and technology shall be used for conversion between feet and meters.

(b) For the Wisconsin coordinate system of 1927, the distances under par. (a) are the x-coordinate, which shall give the position in an east-and-west direction, and the y-coordinate, which shall give the position in a north-and-south direction.

(c) For the Wisconsin coordinate system of 1983 (1986) and the Wisconsin coordinate system of 1983 (1991), the distances are the northing, which shall give the position in a north-and-south direction and the easting, which shall give the position in an east-and-west direction.

(d) Coordinates in all of the systems under sub. (2) shall depend upon and conform to the plane rectangular coordinate values for the monumented points of the national geodetic reference system horizontal control network that are published by the national geodetic survey or by that agency's successor if those values have been computed on the basis of a system under sub. (2).

(7) USE OF TERM RESTRICTED. No person may use the term "Wisconsin coordinate system" on any map, report of a survey or other document unless the coordinates on the document are based on a system under sub. (2).

(8) DESIGNATION. Any person who prepares a plat under this section shall designate on that plat which of the systems under sub. (2) and which of the zones under sub. (3) that person has referenced.

(9) MULTIPLE DESCRIPTIONS. If a document describes a tract of land by means of the coordinates of a system under sub. (2) and by means of a reference to a subdivision, line or corner of the U.S. public land surveys, the description by means of coordinates supplements and is subordinate to the other description.

(10) RIGHT OF LENDERS AND PURCHASERS. A lender or purchaser may require a borrower or seller to provide the description required under s. 236.20.

History: 1979 c. 248 ss. 10, 25 (1); 1993 a. 16, 490; 2001 a. 16.

SUBCHAPTER IV

FINAL PLAT AND DATA

236.20 Final plat. A final plat of subdivided land shall comply with all of the following requirements:

(1) GENERAL REQUIREMENTS. All plats shall be legibly prepared and meet all of the following requirements:

(a) The plat shall have a one-inch margin on all sides. A graphic scale of not more than 100 feet to one inch shall be shown on each sheet showing layout features. When more than one sheet is used for any plat, each sheet shall be numbered consecutively and shall contain a notation giving the total number of sheets in the plat and showing the relation of that sheet to the other sheets and each sheet shall bear the subdivision and county name.

(c) For processing under s. 236.12 (2), the original copy of the final plat shall be 22 inches wide by 30 inches long and on any material that is capable of clearly legible reproduction.

(2) MAP AND ENGINEERING INFORMATION. The final plat shall show correctly on its face all of the following:

(a) The exterior boundaries of the land surveyed and divided.

(b) All monuments erected, corners, and other points established in the field in their proper places. The material of which the monuments, corners, or other points are made shall be noted at the representation thereof or by legend, except lot, outlot, and meander corners need not be shown. The legend for metal monuments shall indicate the kind of metal, the outside diameter, length, and weight per lineal foot of the monuments.

(c) The length and bearing of the exterior boundaries, the boundary lines of all blocks, public grounds, streets, and alleys, and all lot lines, except that when the lines in any tier of lots are parallel it shall be sufficient to mark the bearings of the outer lines on one tier. Easements not parallel to a boundary or lot line shall be shown by center line distance, bearing, and width or by easement boundary bearings and distances. Where easement lines are parallel to boundary or lot lines, the boundary or lot line distances and bearings are controlling. Where the exterior boundary lines show bearings or lengths that vary from those recorded in abutting plats or certified surveys there shall be the following note placed along the lines, "recorded as (show recorded bearing or length or both)."

(d) Blocks, if designated, shall be consecutively numbered, or lettered in alphabetical order. The blocks in numbered additions to subdivisions bearing the same name shall be numbered or lettered consecutively through the several additions.

(e) All lots and outlots in each block consecutively numbered within blocks and the subdivision and throughout numbered additions to the subdivision.

(f) The exact width of all easements, streets and alleys.

(g) All shore meander lines for all lakes or navigable streams that are established by the professional land surveyor in accordance with s. 236.15 (1) (d), the distances and bearings thereof, and the distance between the point of intersection of such meander lines with lot lines and the determined or approximated ordinary high water mark.

(h) The center line of all streets.

(i) A north point properly located thereon identified as referenced to a magnetic, true or other identifiable direction and re-

lated to a boundary line of a quarter section, recorded private claim or federal reservation in which the subdivision is located.

(j) The area in square feet of each lot and outlot.

(k) When a street is on a circular curve, the main chords of the right-of-way lines shall be drawn as dotted or dashed lines in their proper places. All curved lines shall show, either on the lines or in an adjoining table, the radius of the circle, the central angle subtended, the chord bearing, the chord length, and the arc length for each segment. The tangent bearing shall be shown for each end of the main chord for all nontangent circular lines. When a circular curve of 30-foot radius or less is used to round off the intersection between 2 straight lines, it shall be tangent to both straight lines. It is sufficient to show on the plat the radius of the curve and the tangent distances from the points of curvature to the point of intersection of the straight lines.

(L) When strict compliance with a provision of this section will entail undue or unnecessary difficulty or tend to render the plat or certified survey map more difficult to read, and when the information on the plat or certified survey map is sufficient for the exact retracement of the measurements and bearings or other necessary dimensions, the department or, in 1st class cities, the city engineer may waive such strict compliance.

(3) NAME, LOCATION AND POSITION. The name of the plat shall be printed thereon in prominent letters, and shall not be a duplicate of the name of any plat previously recorded in the same county or municipality. All of the following information relating to the position and location of the subdivision shall be shown on the plat:

(a) The location of the subdivision by government lot, recorded private claim, quarter-quarter section, section, township, range, and county noted immediately under the name given to the subdivision.

(b) The location of the subdivision shall be indicated by bearing and distance from a boundary line of a government lot monumented in the original survey or resurvey of Wisconsin, quarter section, recorded private claim, or federal reservation in which the subdivision is located. The monumentation at the ends of the boundary line shall be described and the bearing and distance between them shown.

(c) A small drawing of the section or governmental subdivision of the section in which the subdivision lies with the location of the subdivision indicated thereon or, if approved by the department, a location sketch showing the relationship of the subdivision to existing streets. The drawing or sketch shall be oriented on the sheet in the same direction as the main drawing.

(d) The names of adjoining streets, state highways and subdivisions shown in their proper location underscored by a dotted or dashed line.

(e) Abutting street and state highway lines of adjoining plats shown in their proper location by dotted or dashed lines. The width of these streets and highways shall be given also.

(4) ROADS AND PUBLIC SPACES. (a) The name of each road or street in the plat shall be printed on the plat.

(b) All lands dedicated to public use shall be clearly marked "Dedicated to the Public".

(c) All roads or streets shown on the plat which are not dedicated to public use shall be clearly marked "Private Road" or "Private Street" or "Private Way".

(d) Each lot within the plat must have access to a public street unless otherwise provided by local ordinance.

(5) SITE CONDITIONS AND TOPOGRAPHY. The final plat shall show all of the following:

(a) All existing buildings.

(b) All watercourses, drainage ditches and other existing features pertinent to proper subdivision.

(c) The water elevations of adjoining lakes or navigable streams at the date of the survey and the approximate high water elevations of those lakes or streams. All elevations shall be referred to some permanent established datum plane.

(6) PUBLIC TRUST INFORMATION. A final plat of a subdivision, or a certified survey map of land, to which s. 236.16 (4) applies shall show on its face the following statement:

"Any land below the ordinary high water mark of a lake or a navigable stream is subject to the public trust in navigable waters that is established under article IX, section 1, of the state constitution."

History: 1979 c. 221, 248; 1983 a. 473; 1999 a. 85; 2001 a. 16, 103, 104; 2013 a. 358.

When a strip of land was labeled on a plat "Public Access" that abutted a lake and connected to a public highway, the plat substantially met the statutory requirement of a "clear dedication to the public." While the dedication did not contain the exact formula found in sub. (4), under *Hunt*, 19 Wis. 2d 113 (1963), that is not necessary. Vande Zande v. Town of Marquette, 2008 WI App 144, 314 Wis. 2d 143, 758 N.W.2d 187, 07-2354.

Discussing the circumstances under which the statutory platting standards set forth in sub. (4) (d) and s. 236.16 (1), (2), and (3) may be waived or varied, with specific reference to the approval of island subdivision plats. 62 Atty. Gen. 315.

Discussing the extent to which local governments may vary the terms of sub. (4) (d) and s. 236.16 (1) and (2) by ordinance. 64 Atty. Gen. 175.

A proposed plat may not consist solely of outlots. 66 Atty. Gen. 238.

236.21 Certificates to accompany plat. To entitle a final plat to be recorded, the following certificates lettered or printed legibly with a black durable image or typed legibly with black ribbon shall appear on it:

(1) PROFESSIONAL LAND SURVEYOR'S CERTIFICATE OF COMPLIANCE WITH STATUTE. The certificate of the professional land surveyor who surveyed, divided, and mapped the land giving all of the following information, which shall have the same force and effect as an affidavit:

(a) By whose direction the professional land surveyor made the survey, subdivision, and plat of the land described on the plat.

(b) 1. Except as provided in subd. 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 the section, or commencing with a monument at the end of a boundary line of a recorded private claim or federal reservation in which the subdivision is located.

2. If 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.

(c) A statement that the plat is a correct representation of all the exterior boundaries of the land surveyed and the subdivision of it.

(d) A statement that the professional land surveyor has fully complied with the provisions of this chapter in surveying, dividing, and mapping the land.

(2) OWNER'S CERTIFICATE. (a) A certificate by the owner of the land in substantially the following form: "As owner I hereby certify that I caused the land described on this plat to be surveyed, divided, mapped and dedicated as represented on the plat. I also certify that this plat is required by s. 236.10 or 236.12 to be submitted to the following for approval or objection: (list of governing bodies required to approve or allowed to object to the plat)." This certificate shall be signed by the owner, the owner's

spouse, and all persons holding an interest in the fee of record or by being in possession and, if the land is mortgaged, by the mortgagee of record. These signatures shall be acknowledged in accordance with ch. 140.

(b) As a condition to approval of the plat, the municipal, town or county body required by s. 236.12 to approve the plat may require that the owner furnish an abstract of title certified to date of submission for approval or, at the option of the owner, a policy of title insurance or certificate of title from an abstract company for examination in order to ascertain whether all parties in interest have signed the owner's certificate on the plat.

(3) CERTIFICATE OF TAXES PAID. A certificate of the clerk or treasurer of the municipality or town in which the subdivision lies and a certificate of the treasurer of the county in which the subdivision lies stating that there are no unpaid taxes or unpaid special assessments on any of the lands included in the plat.

History: 1971 c. 41 s. 11; 1975 c. 94 s. 91 (3); 1975 c. 199; 1979 c. 248 ss. 18, 25 (3); 1983 a. 473; 1999 a. 85; 2001 a. 16; 2013 a. 358; 2019 a. 125.

SUBCHAPTER V

RECORDING OF PLATS

236.25 Recording a plat. (1) The subdivider shall have the final plat recorded in the office of the register of deeds of the county in which the subdivision is located.

(2) The register of deeds shall not accept a plat for record unless:

(a) It is a permanent nonfading black image on durable white media that is 22 inches wide by 30 inches long or on other media that is acceptable to the register of deeds, complies with the requirements of s. 59.43 (2m) (b) 4., and bears a department certification of no objection. Seals or signatures reproduced on images complying with this paragraph shall be given the force and effect of original signatures and seals;

(b) The plat is offered for record within 12 months after the date of the last approval of the plat and within 36 months after the first approval;

(c) The plat shows on its face all the certificates and affidavits required by ss. 236.12 (3) and 236.21;

(d) The plat shows on its face the approval of all bodies required by s. 236.10 to approve or the certificate of the clerk that the plat is deemed approved under s. 236.11 (2) (a).

(3) The recording of a plat which is not entitled to be recorded under sub. (2) shall not of itself affect the title of a purchaser of a lot covered by the plat, the donation or dedication of land made by the plat, or the validity of a description of land by reference to the plat, but it allows the purchaser a right to rescind the sale under s. 236.31.

(4) Each final plat entitled to be recorded under this section shall be bound or filed by the register of deeds into properly indexed volumes or stored electronically in a plat index. Any facsimile of the original whole record, made and prepared by the register of deeds or under his or her direction shall be deemed to be a true copy of the final plat.

(5) The register of deeds may furnish certified copies or other accurate reproductions of any plat on record in his or her office to surveyors, engineers or other interested parties at cost.

History: 1979 c. 248 ss. 19, 25 (5); 1983 a. 473; 1997 a. 332; 2001 a. 16; 2005 a. 9, 41; 2009 a. 376; 2013 a. 358; 2015 a. 48.

236.26 Notification to approving authorities. When a final plat is recorded, the register of deeds shall notify all authorities required by s. 236.10 to approve or permitted by s. 236.12 to object to the plat by mailing to the clerk of each authority written notice thereof.

History: 1981 c. 314.

236.27 Filing of copy of plat. The subdivider shall file a true copy of the final plat as a public record with the clerk of the municipality or town in which the subdivision is located.

236.28 Description of lots in recorded plat. When a subdivision plat has been recorded in accordance with s. 236.25, the lots in that plat shall be described by the name of the plat and the lot and block in the plat for all purposes, including those of assessment, taxation, devise, descent and conveyance as defined in s. 706.01 (4). Any conveyance containing such a description shall be construed to convey to the grantee all portions of vacated streets and alleys abutting such lots and belonging to the grantor unless the grantor by appropriate language indicates an intention to reserve or except them from the conveyance.

History: 1971 c. 41 s. 11; 1983 a. 189 s. 329 (26).

One who buys lots with reference to a plat that shows certain ways in common is entitled to the use, with the other lot owners, of the ways in common. Lot owners in the same subdivision whose lots are purchased with reference to the same plat are estopped to deny the use in common with other lot owners in the subdivision. The recording of the plat and conveyance of lots by the owner with reference to the plat constitutes the granting of an easement to the purchasers of lots within the subdivision to ingress and egress over private roadways in common with other lot owners, and the original proprietors and their grantees are estopped to deny the legal existence of such rights of ingress and egress. Schimmels v. Noordover, 2006 WI App 7, 288 Wis. 2d 790, 709 N.W.2d 466, 04-2794.

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. City of 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. DOT, 2015 WI App 33, 361 Wis. 2d 807, 864 N.W.2d 114, 14-1092.

236.292 Certain restrictions void. (1) All restrictions on platted land that interfere with the development of the ice age trail under s. 23.17 are void.

(2) All restrictions on platted land that prevent or unduly restrict the construction and operation of solar energy systems, as defined in s. 13.48 (2) (h) 1. g., or a wind energy system, as defined in s. 66.0403 (1) (m), are void.

History: 1991 a. 39; 1993 a. 414; 1999 a. 150 s. 672.

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.

236.295 Correction instruments. (1) Correction instruments shall be recorded in the office of the register of deeds in the county in which the plat or certified survey map is recorded and may include any of the following:

(a) Affidavits to correct distances, angles, directions, bearings, chords, block or lot numbers, street names, or other details shown on a recorded plat or certified survey map. A correction instrument may not be used to reconfigure lots or outlots.

(b) Ratifications of a recorded plat or certified survey map signed and acknowledged in accordance with ch. 140.

(c) Certificates of owners and mortgagees of record at time of recording.

(2) (a) Each affidavit in sub. (1) (a) correcting a plat or certified survey map that changes areas dedicated to the public or restrictions for the public benefit must be approved prior to recording by the governing body of the municipality or town in which the subdivision is located. The register of deeds shall include on the plat or certified survey map a notation of the document number of the affidavit or instrument and, if the affidavit or instrument is assigned a volume and page number, the volume and page where the affidavit or instrument is recorded. The record of the affidavit or instrument, or a certified copy of the record, is prima facie evidence of the facts stated in the affidavit or instrument.

(b) Notwithstanding par. (a), in a county that maintains a tract index pursuant to s. 59.43 (12m), a correction may be made by reference in the tract index to the plat or certified survey map.

History: 1971 c. 41 s. 11; 1979 c. 248; 1999 a. 85; 2001 a. 16; 2005 a. 41; 2017 a. 102; 2019 a. 125.

This section does not apply to assessors plats. 61 Atty. Gen. 25.

SUBCHAPTER VI

PENALTIES AND REMEDIES

236.30 Forfeiture for improper recording. Any person causing his or her final plat to be recorded without submitting such plat for approval as herein required, or who shall fail to present the same for record within the time prescribed after approval, shall forfeit not less than $100, nor more than $1,000 to each municipality, town or county wherein such final plat should have been submitted.

History: 1979 c. 248 s. 25 (5).

236.31 Penalties and remedies for transfer of lots without recorded plat. (1) Any subdivider or the subdivider's agent who offers or contracts to convey, or conveys, any subdivision as defined in s. 236.02 (12) or lot or parcel which lies in a subdivision as defined in s. 236.02 (12) knowing that the final plat thereof has not been recorded may be fined not more than $500 or imprisoned not more than 6 months or both; except where the preliminary or final plat of the subdivision has been filed for approval with the town or municipality in which the subdivision lies, an offer or contract to convey may be made if that offer or contract states on its face that it is contingent upon approval of the final plat and shall be void if such plat is not approved.

(2) Any municipality, town, county, or state agency with subdivision review authority may institute injunction or other appropriate action or proceeding to enjoin a violation of any provision of this chapter, an ordinance, or a rule adopted under this chapter. Any such municipality, town, or county may impose a forfeiture for violation of any such ordinance, and order an assessor's plat to be made under s. 70.27 at the expense of the subdivider or the subdivider's agent when a subdivision is created under s. 236.02 (12) (am) 2. by successive divisions.

(3) Any conveyance or contract to convey made by the subdivider or the subdivider's agent contrary to this section or involving a plat which was not entitled to be recorded under s. 236.25 (2) shall be voidable at the option of the purchaser or person contracting to purchase, his or her heirs, personal representative or trustee in insolvency or bankruptcy within one year after the execution of the document or contract; but such document or contract shall be binding on the vendor, the subdivider's assignee, heir or devisee.

History: 1979 c. 248 s. 25 (6); 1979 c. 355, 357; 1983 a. 189 s. 329 (23); 2013 a. 272.

Sub. (3) does not allow a purchaser to force a seller to violate sub. (1) and become subject to criminal penalties by doing so. Gordie Boucher Lincoln-Mercury Madison Inc. v. J & H Landfill, Inc., 172 Wis. 2d 333, 493 N.W.2d 375 (Ct. App. 1992).

Certified survey maps under s. 236.34 cannot substitute for subdivision surveys under s. 236.02 (8) [now sub. (12)]. Penalties under this section apply to improper use of certified surveys. 67 Atty. Gen. 294.

236.32 Penalty for disturbing or not placing monuments. (1m) Any of the following may be fined not more than $250 or imprisoned not more than one year in county jail for any of the following violations:

(a) Any owner, professional land surveyor, or subdivider who fails to place monuments as prescribed in this chapter when subdividing land.

(b) Any person who knowingly removes or disturbs any such monument without the permission of the governing body of the

municipality or county in which the subdivision is located or fails to report such disturbance or removal to it.

(c) Any person who fails to replace properly any monuments that have been removed or disturbed when ordered to do so by the governing body of the municipality or county in which the subdivision is located.

(2m) Each monument to which a violation under sub. (1m) applies constitutes a separate violation.

History: 2013 a. 358.

236.33 Division of land into small parcels in cities of the first class prohibited; penalty. It shall be unlawful to divide or subdivide and convey by deed or otherwise any lot in any recorded plat or any parcel or tract of unplatted land in any city of the first class so as to create a lot or parcel of land which does not have street or public highway frontage of at least 4 feet or an easement to a street or public highway of a minimum width of 4 feet but this section shall not apply to conveyances by tax deed or through the exercise of eminent domain or to such reductions in size or area as are caused by the taking of property for public purposes. This section shall not prohibit the dividing or subdividing of any lot or parcel of land in any such city where the divided or subdivided parts thereof which become joined in ownership with any other lot or parcel of land comply with the requirements of this section, if the remaining portion of such lot or parcel so divided or subdivided complies. Any person who shall make such conveyance or procure such a sale or act as agent in procuring such sale or conveyance shall be fined not less than $100 or more than $500 or imprisoned not more than 6 months or both.

236.335 Prohibited subdividing; forfeit. No lot or parcel in a recorded plat may be divided, or used if so divided, for purposes of sale or building development if the resulting lots or parcels do not conform to this chapter, to any applicable ordinance of the approving authority or to the rules of the department of safety and professional services under s. 236.13. Any person making or causing such a division to be made shall forfeit not less than $100 nor more than $500 to the approving authority, or to the state if there is a violation of this chapter or the rules of the department of safety and professional services.

History: 1979 c. 221; 1995 a. 27 s. 9130 (4); 1997 a. 3; 2007 a. 20; 2011 a. 32.

Discussing the circumstances under which lots in a recorded subdivision may be legally divided without replatting. 64 Atty. Gen. 80.

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) 3. 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. DOT, 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.

SUBCHAPTER VII

SUPPLEMENTAL PROVISIONS

236.35 Sale of lands abutting on private way outside corporate limits of municipality. (1) No person shall sell any parcel of land of one acre or less in size, located outside the corporate limits of a municipality, if it abuts on a road which has not been accepted as a public road unless the seller informs the purchaser in writing of the fact that the road is not a public road and is not required to be maintained by the town or county.

(2) Any person violating this section may be fined not more than $200 or imprisoned not more than 30 days or both.

SUBCHAPTER VIII

VACATING AND ALTERING PLATS

236.36 Replats. Except as provided in s. 70.27 (1), replat of all or any part of a recorded subdivision, if it alters areas dedicated to the public, may not be made or recorded except after proper court action, in the county in which the subdivision is located, has been taken to vacate the original plat or the specific part thereof.

A recorded subdivision may be replatted under this section without undertaking the court proceedings set forth in ss. 236.40, 236.41, and 236.42 if the replat complies with the requirements of this chapter applicable to original plats and does not alter areas dedicated to the public. 58 Atty. Gen. 145.

A replat of a recorded subdivision must comply with the formal platting requirements of this chapter relating to new subdivision plats, including those relating to the survey, approval, and recording. 63 Atty. Gen. 193.

This section permits the replat of a part of a previously recorded subdivision plat, without circuit court action, if the only areas dedicated to the public in that portion of the original subdivision being replatted were discontinued streets fully and properly vacated under s. 66.296 [now s. 66.1003]. 63 Atty. Gen. 210.

Discussing the circumstances under which lots in a recorded subdivision may be legally divided without replatting. 64 Atty. Gen. 80.

This chapter does not require a replat when the division of a lot or redivision of more than one lot does not meet the definition of a "subdivision" under this section. 67 Atty. Gen. 121.

236.40 Who may apply for vacation of plat. Any of the following may apply to the circuit court for the county in which a subdivision is located for the vacation or alteration of all or part of the recorded plat of that subdivision:

(1) The owner of the subdivision or of any lot in the subdivision.

(2) The county board if the county has acquired an interest in the subdivision or in any lot in the subdivision by tax deed.

236.41 How notice given. Notice of the application for the vacation or alteration of the plat shall be given at least 3 weeks before the application:

(1) By posting a written notice thereof in at least 2 of the most public places in the county; and

(2) By publication of a copy of the notice as a class 3 notice, under ch. 985; and

(3) By service of the notice in the manner required for service of a summons in the circuit court on the municipality or town in which the subdivision is located, and if it is located in a county having a population of 750,000 or over, on the county; and

(4) By mailing a copy of the notice to the owners of record of all the lots in the subdivision or the part of the subdivision proposed to be vacated or altered at their last-known address.

History: 2017 a. 207 s. 5.

The provisions of this section relating to vacation of streets are inapplicable to assessors' plats under s. 70.27. Once properly filed and recorded, an assessor's plat becomes the operative document of record, and only sections specified in s. 236.03 (2) apply to assessors' plats. Schaetz v. Town of Scott, 222 Wis. 2d 90, 585 N.W.2d 889 (Ct. App. 1998), 98-0841.

236.42 Hearing and order. (1) After requiring proof that the notices required by s. 236.41 have been given and after hearing all interested parties, the court may in its discretion grant an order vacating or altering the plat or any part thereof except:

(a) The court shall not vacate any alleys immediately in the rear of lots fronting on county trunk highways without the prior approval of the county board or on state trunk highways without the prior approval of the department of transportation.

(b) The court shall not vacate any parts of the plat which have been dedicated to and accepted by the public for public use except as provided in s. 236.43.

(2) The vacation or alteration of a plat shall not affect:

(a) Any restriction under s. 236.293, unless the public body having the right to enforce the restriction has in writing released or waived such restriction.

(b) Any restrictive covenant applying to any of the platted land.

History: 1977 c. 29 s. 1654 (8) (c).

236.43 Vacation or alteration of areas dedicated to the public. Parts of a plat dedicated to and accepted by the public for public use may be vacated or altered as follows:

(1) The court may vacate streets, roads or other public ways on a plat if:

(a) The plat was recorded more than 40 years previous to the filing of the application for vacation or alteration; and

(b) During all that period the areas dedicated for streets, roads or other public ways were not improved as streets, roads or other public ways; and

(c) Those areas are not necessary to reach other platted property; and

(d) All the owners of all the land in the plat or part thereof sought to be vacated and the governing body of the city, village or town in which the street, road or other public way is located have joined in the application for vacation.

(2) The court may vacate land platted as a public square upon the application of the municipality or town in which the dedicated land is located if:

(a) The plat was recorded more than 40 years previous to the filing of the application for vacation or alteration; and

(b) The land was never in fact developed or utilized by the municipality or town as a public square.

(3) The court may vacate land, in a city, county, village or town, platted as a public park or playground upon the application of the local legislative body of such city, county, village or town

where the land has never been developed by said city, county, village or town as a public park or playground.

(4) When the plat is being vacated or altered in any 2nd, 3rd or 4th class city or in any village or town which includes a street, road, alley or public walkway, said street, road, alley or public walkway may be vacated or altered by the circuit court proceeding under ss. 236.41 and 236.42 upon the following conditions:

(a) A resolution is passed by the governing body requesting such vacation or alteration.

(b) The owners of all frontage of the lots and lands abutting on the portion sought to be vacated or altered request in writing that such action be taken.

History: 1993 a. 246; 1997 a. 172; 2003 a. 286.

Cross-reference: See s. 66.1003 for other provisions for vacating streets.

Although dedicated as a street, an improvement of land as another public way may meet the requirements of sub. (1) (b). A walkway cleared and improved to be conducive to pedestrian traffic is a public way improved in accordance with sub. (1) (b). K.G.R. Partnership v. Town of East Troy, 187 Wis. 2d 376, 523 N.W.2d 120 (Ct. App. 1994).

A municipality is not an owner under sub. (1) (d). Closser v. Town of Harding, 212 Wis. 2d 561, 569 N.W.2d 338 (Ct. App. 1997), 96-3086.

Isolated improvements to provide for a scenic outlook were not improvements as a street, road, or public way under sub. (1). Closser v. Town of Harding, 212 Wis. 2d 561, 569 N.W.2d 338 (Ct. App. 1997), 96-3086.

1997 Wis. Act 172 made several things clear: 1) a local government has no obligation to improve a lake or stream access, regardless of when that access was created; 2) a lake or stream access may not be discontinued under s. 80.32 [now s. 82.19]; and 3) a lake or stream access may be vacated under this section only, and only if the governing municipality agrees. Vande Zande v. Town of Marquette, 2008 WI App 144, 314 Wis. 2d 143, 758 N.W.2d 187, 07-2354.

236.44 Recording order. The applicant for the vacation or alteration shall record in the office of the register of deeds the order vacating or altering the plat together with the plat showing the part vacated if only part of the plat is vacated or the altered plat if the plat is altered.

236.445 Discontinuance of streets by county board. Any county board may alter or discontinue any street, slip or alley in any recorded plat in any town in such county, not within any city or village, in the same manner and with like effect as provided in s. 66.1003.

History: 1999 a. 150 s. 672.

SUBCHAPTER IX

SUBDIVISION REGULATION AND REGIONAL PLANS

236.45 Local subdivision regulation. (1) DECLARATION OF LEGISLATIVE INTENT. The purpose of this section is to promote the public health, safety and general welfare of the community and the regulations authorized to be made are designed to lessen congestion in the streets and highways; to further the orderly layout and use of land; to secure safety from fire, panic and other dangers; to provide adequate light and air, including access to sunlight for solar collectors and to wind for wind energy systems; to prevent the overcrowding of land; to avoid undue concentration of population; to facilitate adequate provision for transportation, water, sewerage, schools, parks, playgrounds and other public requirements; to facilitate the further resubdivision of larger tracts into smaller parcels of land. The regulations provided for by this section shall be made with reasonable consideration, among other things, of the character of the municipality, town or county with a view of conserving the value of the buildings placed upon land, providing the best possible environment for human habitation, and for encouraging the most appropriate use of land throughout the municipality, town or county.

(2) DELEGATION OF POWER. (ac) To accomplish the purposes listed in sub. (1), any municipality, town or county that has established a planning agency may enact ordinances governing the subdivision or other division of land that are more restrictive than the provisions of this chapter, except that no ordinance may modify in a more restrictive way time limits, deadlines, notice requirements, or other provisions of this chapter that provide protections for a subdivider.

(am) Ordinances under par. (ac) may include provisions regulating divisions of land into parcels larger than 1 1/2 acres or divisions of land into less than 5 parcels, and, except as provided in s. 59.69 (4) (intro.) and subject to s. 66.1002, may prohibit the division of land in areas where such prohibition will carry out the purposes of this section. Such ordinances shall make applicable to such divisions all of the provisions of this chapter, or may provide other surveying, monumenting, mapping and approving requirements for such division. The governing body of the municipality, town, or county shall require that a plat of such division be recorded with the register of deeds and kept in a book provided for that purpose or stored electronically. "COUNTY PLAT," "MUNICIPAL PLAT," or "TOWN PLAT" 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. When so recorded, the lots included in the plat shall be described by reference to "COUNTY PLAT," "MUNICIPAL PLAT," or "TOWN PLAT," the name of the plat and the lot and block in the plat, for all purposes, including those of assessment, taxation, devise, descent, and conveyance as defined in s. 706.01 (4). Such ordinance, insofar as it may apply to divisions of less than 5 parcels, shall not apply to:

1. Transfers of interests in land by will or pursuant to court order;

2. Leases for a term not to exceed 10 years, mortgages or easements;

3. The sale or exchange of parcels of land between owners of adjoining property if additional lots are not thereby created and the lots resulting are not reduced below the minimum sizes required by this chapter or other applicable laws or ordinances;

4. Such other divisions exempted by such ordinances.

(b) This section and any ordinance adopted pursuant thereto shall be liberally construed in favor of the municipality, town or county and shall not be deemed a limitation or repeal of any requirement or power granted or appearing in this chapter or elsewhere, relating to the subdivision of lands.

(3) AREAS IN WHICH SUBDIVISION ORDINANCES APPLY. (a) An ordinance adopted hereunder by a municipality may regulate the division or subdivision of land within the extraterritorial plat approval jurisdiction of the municipality as well as land within the corporate limits of the municipality if it has the right to approve or object to plats within that area under s. 236.10 (1) (b) 2. and (2).

(b) Notwithstanding par. (a) and subs. (1) and (2), a municipality may not deny approval of a plat or certified survey map under this section or s. 236.10 or 236.13 on the basis of the proposed use of land within the extraterritorial plat approval jurisdiction of the municipality, unless the denial is based on a plan or regulations, or amendments thereto, adopted by the governing body of the municipality under s. 62.23 (7a) (c).

(4) PROCEDURE. Before adoption of a subdivision ordinance or any amendments thereto the governing body shall receive the recommendation of its planning agency and shall hold a public hearing thereon. Notice of the hearing shall be given by publication of a class 2 notice, under ch. 985. Any ordinance adopted shall be published in form suitable for public distribution.

(5) REGULATION OF FEDERAL SURPLUS LAND. With respect to any surplus lands in excess of 500 acres in area, except the Bong air base in Kenosha County, sold in this state by the federal government for private development, the department, in accor-

dance with the procedure specified in ch. 227, may regulate the subdivision or other division of such federal surplus land in any of the ways and with the same powers authorized hereunder for municipalities, towns or counties. Before promulgating such rules, the department shall first receive the recommendations of any committee appointed for that purpose by the governor.

(6) REQUIREMENTS FOR APPROVAL CONDITIONS. (ac) In this subsection, "improvement of land for public parks" means grading, landscaping, installation of utilities, construction of sidewalks, installation of playground equipment, and construction or installation of restroom facilities on land intended for public park purposes.

(am) Notwithstanding subs. (1) and (2) (ac), a municipality, town, or county may not, as a condition of approval under this chapter, impose any fees or other charges to fund the acquisition or improvement of land, infrastructure, or other real or personal property, except that a municipality or town may impose a fee or other charge to fund the acquisition or initial improvement of land for public parks if the fee or other charge is imposed under a subdivision ordinance enacted or amended in accordance with the procedures under s. 66.0617 (3) to (5) and meets the requirements under s. 66.0617 (6) to (10).

(b) Any land dedication, easement, or other public improvement or fee for the acquisition or initial improvement of land for a public park that is required by a municipality, town, or county as a condition of approval under this chapter must bear a rational relationship to a need for the land dedication, easement, or other public improvement or parkland acquisition or initial improvement fee resulting from the subdivision or other division of land and must be proportional to the need.

(c) If a subdivision ordinance of a municipality, town, or county requires, as a condition of approval under this chapter, that a subdivider dedicate land for a public park, the municipality, town, or county may offer the subdivider the option of either dedicating land consistent with the municipality's, town's, or county's park plan and comprehensive plan or paying a fee or other charge under par. (am) in lieu of the dedication. If the subdivider elects to pay a fee or other charge under this paragraph, the fee or other charge is payable by the landowner to the municipality, town, or county upon the issuance of a building permit by the municipality, town, or county. If the subdivider elects to dedicate land under this paragraph, unless the municipality, town, or county agrees otherwise, the subdivider only may dedicate land that is consistent with the municipality's, town's, or county's park plan and comprehensive plan.

History: 1979 c. 221, 248, 355; 1981 c. 354; 1983 a. 189 s. 329 (26); 2001 a. 16; 2005 a. 477; 2007 a. 44; 2009 a. 376, 399; 2015 a. 48, 391; 2017 a. 243.

This section authorizes towns to regulate minimum lot size. Town of Sun Prairie v. Storms, 110 Wis. 2d 58, 327 N.W.2d 642 (1983).

Assessment of school and park land dedication fees as a condition for rezoning and issuance of building permit was authorized. Black v. City of Waukesha, 125 Wis. 2d 254, 371 N.W.2d 389 (Ct. App. 1985).

This section does not prevent municipalities from adopting and enforcing more than one ordinance that relates to subdivisions. Manthe v. Town of Windsor, 204 Wis. 2d 546, 555 N.W.2d 156 (Ct. App. 1996), 95-1312.

A city may not condition extraterritorial plat approval on annexation. Hoepker v. City of Madison Plan Commission, 209 Wis. 2d 633, 563 N.W.2d 145 (1997), 95-2013.

It was not a violation of this section, s. 61.34, or the public purpose doctrine for a municipality to assume the dual role of subdivider of property it owned and reviewer of the plat under this chapter. Town of Beloit v. Rock County, 2001 WI App 256, 249 Wis. 2d 88, 637 N.W.2d 71, 00-1231.
Affirmed on other grounds. 2003 WI 8, 259 Wis. 2d 37, 657 N.W.2d 344, 00-1231.

A municipality has the authority under sub. (2) to impose a temporary town-wide prohibition on land division while developing a comprehensive plan under s. 66.1001. Wisconsin Realtors Ass'n v. Town of West Point, 2008 WI App 40, 309 Wis. 2d 199, 747 N.W.2d 681, 06-2761.

A city may not use its extraterritorial plat approval authority to impose land use regulation that should have been done in cooperation with neighboring towns through extraterritorial zoning. Although purporting to be a density standard, the city's 35-acre density restriction was a use prohibition, the very essence of zoning. Lake Delavan Property Co. v. City of Delavan, 2014 WI App 35, 353 Wis. 2d 173, 844 N.W.2d 632, 13-1202.

Although they often work together, zoning and subdivision regulations provide separate and distinct means of regulating the development of land. There are areas of overlap between the two powers, but there are also key differences. Subdivision control is concerned with the initial division of undeveloped land, while zoning more specifically regulates the further use of this land. State ex rel. Anderson v. Town of Newbold, 2021 WI 6, 395 Wis. 2d 351, 954 N.W.2d 323, 18-0547.

In this case, the town's ordinance set minimum lot frontage requirements for each lake within its borders. Pursuant to the *Zwiefelhofer*, 2012 WI 7, factors, the town's ordinance was not a zoning ordinance. It did not concern land use, and it did not separate compatible and incompatible land uses, which is a key purpose of a zoning ordinance. Because it was not a zoning ordinance, the restrictions on town enactment of zoning ordinances set by s. 59.692 did not apply, and the ordinance was a permissible exercise of the town's subdivision authority pursuant to this section. State ex rel. Anderson v. Town of Newbold, 2021 WI 6, 395 Wis. 2d 351, 954 N.W.2d 323, 18-0547.

A subdivision plat prepared in compliance with a local ordinance enacted under authority of this section is not required by statutes to be submitted for state level review unless such land division results in a "subdivision" as defined in s. 236.02 (8) [now s. 236.02 (12)]. 59 Atty. Gen. 262.

If subdivision regulations, adopted under this section, conflict, a plat must comply with the most restrictive requirement. 61 Atty. Gen. 289.

Discussing application of municipal and county subdivision control ordinances within the municipality's extraterritorial plat approval jurisdiction. 66 Atty. Gen. 103.

A county's minimum lot size zoning ordinance applies to parcels created by a court through division in a partition or probate action, even if such division would be exempted from a municipality's subdivision authority under sub. (2) (am) 1. A county can enact a subdivision ordinance requiring prior review of sales or exchanges of parcels between adjoining landowners in order to determine whether the division would comply with minimum lot size requirements. OAG 1-14.

236.46 County plans. (1) (a) The county planning agency may prepare plans, in such units as it may determine, for the future platting of lands within the county, but without the limits of any municipality, or for the future location of streets or highways or parkways, and the extension or widening of existing streets and highways. Before completion of these plans, the county planning agency shall fix the time and place it will hear all persons who desire to be heard upon the proposed plans, and shall give notice of that hearing as required below for the passage of the ordinance by the county board. After these hearings the county planning agency shall certify the plans to the county board, who may, after having submitted the same to the town boards of the several towns in which the lands are located and obtained the approval of the town boards, adopt by ordinance the proposed plans for future platting or for street or highway or parkway location in towns which may have approved the same, and upon approval of those towns may amend the ordinance. Before the ordinance or any amendments to the ordinance are adopted by the county board, notice shall be given by publication of a class 2 notice, under ch. 985, of a hearing at which all persons interested shall be given an opportunity to be heard at a time and place to be specified in the notice. The ordinance with any amendments as may be made shall govern the platting of all lands within the area to which it applies.

(b) In counties having a population of less than 750,000 any plan adopted under this section does not apply in the extraterritorial plat approval jurisdiction of any municipality unless that municipality by ordinance approves the same. This approval may be rescinded by ordinance.

(2) A plan adopted under this section may be any of the following:

(a) A system of arterial thoroughfares complete for each town.

(b) A system of minor streets for the complete area surrounded by any such main arterial thoroughfares and connecting therewith.

(c) The platting of lots for any area surrounded completely by any such arterial thoroughfares or any such minor streets or both.

(3) Such system of arterial thoroughfares and such system of minor streets within such system of arterial thoroughfares and such platting of lots within any such system of minor streets may be adopted by the same proceeding. For the purpose of this section a parkway may be considered either an arterial thoroughfare or a minor street if it performs the function of an arterial thor-

oughfare or minor street. A natural obstacle like a lake or river or an artificial obstacle like a railroad or town line may, where necessary, be the boundary of a plan adopted under this section instead of a street or highway or parkway.

History: 1979 c. 248; 2017 a. 207 s. 5.

SUBCHAPTER X

GENERAL PROVISIONS

236.50 Date chapter applies; curative provisions as to plats before that date. (1) (a) This chapter shall take effect upon July 1, 1956, but any plat recorded prior to December 31, 1956, may be approved and recorded in accordance with this chapter or ch. 236, 1953 stats. This chapter shall not require that any subdivision made prior to July 1, 1956, which was platted under the laws in force at that time or which did not constitute a subdivision under the laws in force at that time, be platted and the plat approved and recorded as provided in this chapter.

(b) This chapter shall not require the preparation and recording of a plat of any subdivision which has been staked out and in which sales or contracts of sales have actually been made prior to June 28, 1935, and nothing herein contained shall require the recording of a plat showing property sold or contracted for sale by metes and bounds or by reference to an unrecorded plat prior to June 28, 1935, as a condition precedent to the sale or contract of sale of the whole or part thereof.

(2) No plat which was recorded in the office of any register of deeds prior to July 1, 1956, shall be held invalid by reason of noncompliance with any statute regulating the platting of lands, in force at the time of such recording. Any unaccepted offer of donation or dedication of land attempted to be made in any such plat shall be as effectual as though all statutory requirements had been complied with unless an action to set aside such offer of donation or dedication is commenced prior to July 1, 1958.

CHAPTER 443

EXAMINING BOARD OF ARCHITECTS, LANDSCAPE ARCHITECTS, PROFESSIONAL ENGINEERS, DESIGNERS, PROFESSIONAL LAND SURVEYORS, AND REGISTERED INTERIOR DESIGNERS

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Cross-reference: See definitions in s. 440.01.

443.01 Definitions. In this chapter, unless the context provides otherwise:

(1) "Architect" means a person who is legally qualified to practice architecture.

(1m) "Construction surveying" means surveying or mapping that is performed in support of infrastructure design, in support of improvements related to private and public boundary lines, or in support of construction layout or historic preservation, and establishing any postconstruction documentation related to that surveying or mapping.

(2) "Engineer-in-training" means a person who is a graduate in an engineering curriculum of 4 years or more from a school or college approved by the professional engineer section of the examining board as of satisfactory standing, or a person who has had 4 years or more of experience in engineering work of a character satisfactory to the professional engineer section; and who, in addition, has successfully passed the examination in the fundamental engineering subjects prior to the completion of the requisite years in engineering work, as provided in s. 443.05, and who has been granted a certificate of record by the professional engineer section stating that the person has successfully passed this portion of the professional examinations.

(3) "Examining board" means the examining board of architects, landscape architects, professional engineers, designers, professional land surveyors, and registered interior designers.

(3b) "Geodetic surveying" means surveying to determine the size and shape of the earth or the precise positions of points on the surface of the earth.

(3c) "Interior alteration or interior construction project" means a project for an interior space or area within a proposed or existing building or structure, including construction, modification, renovation, rehabilitation, or historic preservation, that involves changing or altering any of the following:

(a) The design function or layout of rooms.

(b) The state of permanent fixtures or equipment.

(c) The interior space or area if the change or alteration requires verification of the compliance of the interior space or area with a building code, fire code, the federal Americans with Disabilities Act, or state or local regulations.

(d) Interior furnishings.

(e) Nonstructural elements of the interior space or area.

(3e) "Interior technical submission" means a design, drawing, specification, study, or other technical report or calculation that establishes the scope of an interior design project, including a description of standards of quality for materials, skilled labor, equipment, and construction systems, and that may be signed and sealed by a Wisconsin registered interior designer in compliance with this chapter.

(3g) "Landscape architect" means a person who practices landscape architecture.

(3r) "Landscape architecture" means the performance of a professional service involving conceptual land planning and conceptual design for integrated land development based on the analysis of environmental characteristics, operational requirements, land use or commensurate land values. "Landscape architecture" includes the investigation, selection or allocation of land or water resources for appropriate uses; the formulation of graphic or written criteria for a land planning or land construction program; the preparation, review or analysis of a master plan for land use or development; the production of a graphic land area, grading, drainage, planting or land construction plan; and the planning of a road, bridge or other structure with respect to the aesthetic requirements of the area on which it will be constructed, except that "landscape architecture" does not include any of the following:

(a) Professional services performed by a registered architect or by a person who has in effect a permit under s. 443.10 (1) (d).

(b) Professional services performed by a professional engineer or by a person who has in effect a permit under s. 443.10 (1) (d).

(c) Professional services performed by a professional land surveyor.

(d) The practice of planning as is customarily done by a regional, park, or urban planner, or by a person participating on a planning board or commission, within the scope of that practice.

(e) The practice of a natural resource professional, including a biologist, professional geologist, as defined in s. 470.01 (5), or professional soil scientist, as defined in s. 470.01 (7).

(f) The actions of a person who is under the supervision of a licensed landscape architect or an employee of a licensed landscape architect, unless the person assumes responsible charge, design, or supervision.

(g) Work performed on property by an individual who owns or has control over the property, or work performed by a person hired by an individual who owns or has control of the property.

(h) Making plans or drawings for the selection, placement, or use of plants or site features.

(5) "Practice of architecture" includes any professional ser-

vice, such as consultation, investigation, evaluation, planning, architectural and structural design, or responsible supervision of construction, in connection with the construction of any private or public buildings, structures, projects, or the equipment thereof, or addition to or alterations thereof, in which the public welfare or the safeguarding of life, health or property is concerned or involved.

(5m) (a) "Practice of interior design" means the design of interior spaces as a part of an interior alteration or interior construction project in conformity with public health, safety, and welfare requirements, including the preparation of documents relating to building code descriptions, project egress plans that require no increase in the number of exits in the space affected, space planning, finish materials, furnishings, fixtures, and equipment and the preparation of documents and interior technical submissions relating to interior construction.

(b) "Practice of interior design" does not include any of the following:

1. Services that constitute the practice of architecture or the practice of professional engineering.

2. Altering or affecting the structural system of a building, including changing the building's live or dead load on the structural system.

3. Changes to the building envelope, including exterior walls, exterior wall coverings, exterior wall openings, exterior windows and doors, architectural trim, balconies and similar projections, bay and oriel windows, roof assemblies and rooftop structures, and glass and glazing for exterior use in both vertical and sloped applications in buildings and structures.

4. Altering or affecting the mechanical, plumbing, heating, air conditioning, ventilation, electrical, vertical transportation, fire sprinkler, or fire alarm systems.

5. Changes beyond the exit access component of a means of egress system.

6. Construction that materially affects life safety systems pertaining to fire safety or the fire protection of structural elements, or alterations to smoke evacuation and compartmentalization systems or to fire-rated vertical shafts in multistory structures.

7. Changes of use to an occupancy of greater hazard as determined by the International Building Code.

8. Changes to the construction classification of the building or structure according to the International Building Code.

(6) "Practice of professional engineering" includes any professional service requiring the application of engineering principles and data, in which the public welfare or the safeguarding of life, health or property is concerned and involved, such as consultation, investigation, evaluation, planning, design, or responsible supervision of construction, alteration, or operation, in connection with any public or private utilities, structures, projects, bridges, plants and buildings, machines, equipment, processes and works. A person offers to practice professional engineering if the person by verbal claim, sign, advertisement, letterhead, card or in any other way represents himself or herself to be a professional engineer; or who through the use of some other title implies that he or she is a professional engineer; or who holds himself or herself out as able to practice professional engineering.

(6s) "Practice of professional land surveying" means any of the following:

(a) Any service comprising the establishment or reestablishment of the boundaries of one or more tracts of land or the boundaries of any of the following interests in real property:

1. The rights-of-way of roads or streets.

2. Air or subsurface property rights.

3. Public or private easements.

(b) Designing or coordinating designs for the purpose of platting or subdividing land into smaller tracts.

(c) Placing, replacing, restoring, or perpetuating monuments in or on the ground to evidence the location of a point that is necessary to establish boundaries of one or more tracts of land or the subdivision or consolidation of one or more tracts of land or to describe the boundaries of any interest in real property identified in par. (a).

(d) Preparing maps that depict any interest in real property identified in par. (a) for the purpose of establishing the boundaries of any such interest in real property.

(e) Preparing any of the following:

1. An official map established or amended under s. 62.23 (6), established or amended under the authority of s. 61.35, or adopted under s. 60.61.

2. An assessor's plat under s. 70.27.

3. A map or plat of cemetery lands under s. 157.07.

4. A subdivision plat, certified survey map, or correction instrument under ch. 236.

5. A condominium plat or correction instrument under ch. 703.

6. A project and time-share property plat under s. 707.215.

(f) Performing construction surveying or geodetic surveying in connection with any of the practices specified in pars. (a) to (e).

(7) "Professional engineer" means a person who by reason of his or her knowledge of mathematics, the physical sciences and the principles of engineering, acquired by professional education and practical experience, is qualified to engage in engineering practice as defined in sub. (6).

(7m) "Professional land surveyor" means a person who, by reason of his or her knowledge of law, mathematics, physical sciences, and measurement techniques, acquired by education and practical experience, is granted a license under this chapter to engage in the practice of professional land surveying.

(8) "Responsible supervision of construction" means a professional service, as distinguished from superintending of construction, and means the performance, or the supervision thereof, of reasonable and ordinary on-site observations to determine that the construction is in substantial compliance with the approved drawings, plans and specifications.

(9) "Wisconsin registered interior designer" means a person registered as a Wisconsin registered interior designer under this chapter.

History: 1971 c. 42, 215, 307; 1975 c. 9, 39, 199, 200, 334, 421; 1977 c. 29, 125, 418; 1979 c. 34, 98; 1979 c. 162 s. 38 (7); 1979 c. 167; 1979 c. 221 s. 780; 1979 c. 355; 1983 a. 189 ss. 274, 329 (18); 1993 a. 463, 465, 491; 1997 a. 300; 2009 a. 123; 2011 a. 146; 2013 a. 358; 2021 a. 195.

Discussing the duties of county surveyors and other land surveyors and minimum standards for property surveys. 69 Atty. Gen. 160.

443.015 Examining board to establish continuing education requirements; promulgate rules. (1) Each section of the examining board may establish continuing education requirements for renewal of a credential issued by that section under this chapter.

(1e) The rules promulgated under sub. (1) by the registered interior designer section of the examining board shall require a Wisconsin registered interior designer to complete at least 15 hours of continuing education during the 2-year period immediately preceding the renewal date specified under s. 440.08 (2) (a). At least 10 of the 15 hours shall be in subjects related to the practice of interior design that safeguard the public's health, safety, and welfare.

(1m) (a) 1. Each section of the examining board shall promulgate rules to do all of the following:

a. Allow the holder of a credential under this chapter who is at least 65 years of age or has actively maintained that credential for at least 20 years, which need not be consecutive, and who certifies that he or she has retired from and no longer engages in the practice for which he or she holds the credential to apply to the board to classify that credential as retired status.

b. Allow an individual who previously held a credential under this chapter, and failed to renew that credential prior to the renewal date, to apply to the board to renew the credential with retired status if the individual is at least 65 years of age or had actively maintained that credential for at least 20 years, which need not be consecutive, certifies that he or she has retired from and no longer engages in the practice for which he or she previously held the credential, and pays the fee under par. (d). Section 440.08 (3) (a) and (b) does not apply to the renewal of such a credential.

c. Allow the holder of a credential classified as retired status as described under subd. 1. a. or b. to apply to the appropriate section of the examining board to remove the retired status classification if he or she satisfies reinstatement requirements established by the appropriate section of the examining board by rule.

2. Rules promulgated under subd. 1. may not require a certification to be notarized.

(b) Any rules a section of the examining board promulgates under sub. (1) shall exempt a credential holder whose credential is classified as retired status under par. (a) from continuing education requirements.

(c) 1. A credential holder whose credential is classified as retired status under par. (a) may not engage in the practice for which he or she holds that credential.

2. A credential holder whose credential is classified as retired status under par. (a) may continue to use a title in connection with that credential if he or she clearly indicates to the public that he or she is retired, including by placing the abbreviation "Ret." or similar appellation after his or her title.

(d) The renewal fee for a credential holder whose credential is classified as retired status under par. (a) shall be one-half of the usual renewal fee that otherwise applies.

(2) Each section of the examining board may promulgate rules governing the professional conduct of individuals, firms, partnerships, and corporations registered, permitted, certified, or granted a certificate of authorization by that section.

History: 2007 a. 47; 2011 a. 146; 2019 a. 94; 2021 a. 195; s. 35.17 correction in (1e).

Cross-reference: See also chs. A-E 10, 13, Wis. adm. code.

443.02 Practice requirements and registration: general provisions. (1) Any person practicing or offering to practice architecture or professional engineering in this state shall comply with this chapter.

(2) No person may practice architecture, landscape architecture, or professional engineering in this state unless the person has been duly registered, is exempt under s. 443.14 or has in effect a permit under s. 443.10 (1) (d).

(3) Except as provided under s. 443.015 (1m) (c), no person may offer to practice architecture, landscape architecture, or professional engineering or use in connection with the person's name or otherwise assume, use or advertise any title or description tending to convey the impression that he or she is an architect, landscape architect, or professional engineer or advertise to furnish architectural, landscape architectural, or professional engineering services unless the person has been duly registered or has in effect a permit under s. 443.10 (1) (d).

(4) Except as provided under s. 443.015 (1m) (c), no person may engage in or offer to engage in the practice of professional land surveying in this state or use or advertise any title or description tending to convey the impression that the person is a professional land surveyor unless the person has been granted a license under this chapter to engage in the practice of professional land surveying.

(5) No person may use the title "Wisconsin registered interior designer," use any title or description that implies that he or she is a Wisconsin registered interior designer, or represent himself or herself to be a Wisconsin registered interior designer unless the person is registered as a Wisconsin registered interior designer under this chapter.

History: 1971 c. 164 s. 88; 1971 c. 215; 1975 c. 39; 1977 c. 29, 418; 1979 c. 34, 167, 355; 1993 a. 463, 465; 1997 a. 300; 1999 a. 85; 2009 a. 123; 2013 a. 358; 2019 a. 94; 2021 a. 195.

Cross-reference: See also A-E, Wis. adm. code.

443.03 Registration requirements for architects. (1) An applicant for registration as an architect shall submit as satisfactory evidence to the architect section of the examining board all of the following:

(a) That he or she has acquired a thorough knowledge of sound construction, building hygiene, architectural design and mathematics.

(b) One of the following:

1m. A diploma of graduation, or a certificate, from an architectural school or college approved by the architect section as of satisfactory standing, together with at least 2 years' practical experience of a character satisfactory to the architect section in the design and construction of buildings.

2. A specific record of 7 or more years of experience in architectural work of a character satisfactory to the architect section in the design and construction of buildings.

(2) Graduation in architecture from a school or college approved by the architect section as of satisfactory standing shall be considered as equivalent to 5 years of experience, and the completion satisfactory to the architect section of each year of work in architecture in such school or college without graduation shall be considered equivalent to one year of experience. Graduation in a course other than architecture from a school or college approved by the architect section as of satisfactory standing shall be considered as equivalent to not more than 4 years of experience.

History: 1979 c. 167; 2011 a. 146.

Cross-reference: See also ch. A-E 3, Wis. adm. code.

443.035 Registration requirements for landscape architects. The landscape architect section of the examining board shall register as a landscape architect an individual who does all of the following:

(1) Submits to the department evidence satisfactory to the landscape architect section of any of the following:

(a) That he or she has a bachelor's degree in landscape architecture, or a master's degree in landscape architecture, from a curriculum approved by the landscape architect section and has at least 2 years of practical experience in landscape architecture of a character satisfactory to the landscape architect section.

(b) That he or she has a specific record of at least 7 years of training and experience in the practice of landscape architecture including at least 2 years of courses in landscape architecture approved by the landscape architect section, and 4 years of practical experience in landscape architecture of a character satisfactory to the landscape architect section.

(2) Satisfies the applicable requirements under s. 443.09.

History: 1993 a. 465; 2011 a. 146.

Cross-reference: See also ch. A-E 9, Wis. adm. code.

443.04 Registration requirements for professional engineers. An applicant for registration as a professional engi-

neer shall submit satisfactory evidence to the professional engineer section of the examining board of all of the following:

(1m) A diploma of graduation, or a certificate, from an engineering school or college approved by the professional engineer section as of satisfactory standing in an engineering course of not less than 4 years or a diploma of graduation or degree from a technical college approved by the professional engineer section as of satisfactory standing in an engineering-related course of study of not less than 2 years.

(2m) (a) For an applicant possessing a diploma or certificate from a course of study of not less than 4 years as specified in sub. (1m), a specific record of 4 or more years of experience in engineering work of a character satisfactory to the professional engineer section and indicating that the applicant is competent to be placed in responsible charge of engineering work.

(b) For an applicant possessing a diploma or degree from a course of study of not less than 2 years as specified in sub. (1m), a specific record of 6 or more years of experience in engineering work of a character satisfactory to the professional engineer section and indicating that the applicant is competent to be placed in responsible charge of engineering work.

History: 1979 c. 167; 1983 a. 328; 1999 a. 85; 2009 a. 350; 2011 a. 146.
Cross-reference: See also ch. A-E 4, Wis. adm. code.
Discussing the authority of the examining board. 70 Atty. Gen. 156.

443.05 Certification of engineers-in-training. (1) An applicant for certification as an engineer-in-training shall submit as satisfactory evidence to the professional engineer section of the examining board one of the following:

(a) A diploma of graduation in engineering or a certificate in engineering from a school or college approved by the professional engineer section as of satisfactory standing.

(b) A specific record of 4 years or more of experience in engineering work of a character satisfactory to the professional engineer section.

(2) Graduation in engineering from a school or college approved by the professional engineer section as of satisfactory standing shall be considered as equivalent to 4 years of experience and the completion satisfactory to the professional engineer section of each year of work in engineering in such school or college without graduation shall be considered as equivalent to one year of experience. Graduation in a course other than engineering from a school or college approved by the professional engineer section as of satisfactory standing shall be considered as equivalent to 2 years of experience. No applicant may receive credit for more than 4 years of experience under this subsection.

History: 1979 c. 167; 2011 a. 146.
Cross-reference: See also ch. A-E 4, Wis. adm. code.

443.06 Licensure requirements for professional land surveyors. (1) LICENSURE, APPLICATION, QUALIFYING EXPERIENCE. (a) Application for a license to engage in the practice of professional land surveying shall be made to the professional land surveyor section of the examining board under oath, on forms provided by the department, which shall require the applicant to submit such information as the professional land surveyor section deems necessary. The professional land surveyor section may require applicants to pass written or oral examinations or both. Applicants who do not have an arrest or conviction record, subject to ss. 111.321, 111.322, and 111.335, shall be entitled to be granted a license to engage in the practice of professional land surveying when satisfactory evidence is submitted that the applicant has met one or more of the requirements of sub. (2).

(b) Each year, but not more than 4 years, of work or training completed in a curriculum in the practice of professional land surveying approved by the professional land surveyor section, or of responsible charge of teaching the practice of professional land surveying may be considered as equivalent to one year of qualifying experience in the practice of professional land surveying, and each year, but not more than 4 years, completed in a curriculum other than the practice of professional land surveying approved by the professional land surveyor section, may be considered as equivalent to one-half year of qualifying experience.

(2) REQUIREMENTS; LICENSE. The professional land surveyor section may grant a license to engage in the practice of professional land surveying to any person who has submitted to it an application, the required fees, and one or more of the following:

(am) Evidence satisfactory to the professional land surveyor section that he or she has received a bachelor's degree in a course in the practice of professional land surveying or a related field that has a duration of not less than 4 years and is approved by the professional land surveyor section, and that he or she has engaged in the practice of professional land surveying for at least 2 years and has demonstrated practice of satisfactory character that indicates that the applicant is competent to engage in the practice of professional land surveying, if the applicant has passed an oral and written or written examination administered by the professional land surveyor section.

(bm) Evidence satisfactory to the professional land surveyor section that he or she has received an associate degree in a course in the practice of professional land surveying or a related field that has a duration of not less than 2 years and is approved by the professional land surveyor section, and that he or she has engaged in the practice of professional land surveying for at least 4 years and has demonstrated practice of satisfactory character that indicates that the applicant is competent to engage in the practice of professional land surveying, if the applicant has passed an oral and written or written examination administered by the professional land surveyor section.

(cm) Evidence satisfactory to the professional land surveyor section that he or she has engaged in the practice of professional land surveying for at least 10 years and has demonstrated practice of satisfactory character that indicates that the applicant is competent to engage in the practice of professional land surveying, if the applicant has passed an oral and written or written examination administered by the professional land surveyor section. This paragraph applies to applications for licenses to engage in the practice of professional land surveying that are submitted to the professional land surveyor section after June 30, 2000 and before July 1, 2019.

(d) An unexpired certificate of registration, certificate of certification, or license as a land surveyor or to engage in the practice of professional land surveying issued to the applicant by the proper authority in any state or territory or possession of the United States or in any other country whose requirements meet or exceed the requirement for licensure in this subsection, if the applicant has passed an oral and written or written examination administered by the professional land surveyor section.

History: 1979 c. 167; 1981 c. 380; 1981 c. 391 s. 211; 1987 a. 27; 1993 a. 462; 1995 a. 27 s. 9130 (4); 1997 a. 3, 27; 2011 a. 146; 2013 a. 358.
Cross-reference: See also ch. A-E 6, Wis. adm. code.

443.07 Permit requirements: designers of engineering systems. (1) An applicant for a permit as a designer shall submit as evidence satisfactory to the designer section of the examining board one of the following to indicate that he or she is competent to be in charge of such work:

(a) A specific record of 8 years or more of experience in specialized engineering design work and the satisfactory completion of a written examination in the field or branch, as determined by the designer section, in which certification is sought.

(b) A specific record of 12 years of experience by any person

competence, in the practice of interior design as a Wisconsin registered interior designer.

(e) Any violation of the rules of professional conduct adopted and promulgated by that section of the examining board.

(f) Conviction of a felony, subject to ss. 111.321, 111.322 and 111.335, or adjudication of mental incompetency by a court of competent jurisdiction, a certified copy of the record of conviction or adjudication of incompetency to be conclusive evidence of such conviction or incompetency.

(2) The appropriate section of the examining board may reprimand a firm, partnership, or corporation holding a certificate of authorization issued under this chapter or may limit, suspend, or revoke such a certificate if any of the agents, employees, or officers of the firm, partnership, or corporation has committed any act or has been guilty of any conduct which would authorize a reprimand or a limitation, suspension, or revocation of the certificate of registration of a registrant or the certificate of record of an engineer-in-training under this chapter, unless the firm, partnership, or corporation submits evidence satisfactory to the appropriate section of the examining board that the agent, employee, or officer is not now practicing or offering to practice architecture, landscape architecture, or professional engineering in its behalf.

(3) Any person may make charges that any registrant, holder of a certificate of record as engineer-in-training or corporate holder of a certificate of authorization has committed an act for which a reprimand or limitation, suspension, or revocation of registration is authorized under sub. (1). Such charges shall be in writing, shall be sworn to by the person making them and shall be submitted to the appropriate section of the examining board. The appropriate section of the examining board may, on its own motion, make such charges. All charges, unless dismissed by the appropriate section of the examining board as unfounded or trivial, shall be heard by the appropriate section of the examining board, subject to the rules promulgated under s. 440.03 (1).

(4) If after a hearing under sub. (3), 3 members of a section of the examining board vote in favor of sustaining charges specified in sub. (3), the appropriate section of the examining board shall reprimand or limit, suspend, or revoke the certificate of registration of the registered architect, registered landscape architect, or registered professional engineer, the certificate of record of the holder of a certificate as engineer-in-training, or the certificate of authorization of a firm, partnership, or corporation.

(5) The actions of each section of the examining board under this section shall be subject to review in the manner provided in ch. 227.

(6) The appropriate section of the examining board, for reasons it considers sufficient, may reissue a certificate of registration or a certificate of record to any person, or a certificate of authorization to any firm, partnership, or corporation, whose certificate has been revoked under this section if 3 members of the section of the examining board vote in favor of such reissuance. Subject to the rules of the examining board, the appropriate section of the examining board may, upon payment of the required fee, issue a new certificate of registration, certificate of record or certificate of authorization, to replace any certificate that is revoked, lost, destroyed or mutilated.

History: 1979 c. 167; 1981 c. 334 s. 25 (1); 1993 a. 463, 465, 491; 1997 a. 237, 300; 1999 a. 32, 186; 2009 a. 123; 2011 a. 146; 2021 a. 195.

Discussing gross negligence, incompetency, or misconduct. The failure of an engineer to properly design a roof truss would not show incompetence, but the board might find gross negligence. Vivian v. Examining Board of Architects, 61 Wis. 2d 627, 213 N.W.2d 359 (1974).

443.12 Disciplinary proceedings against professional land surveyors. (1) The professional land surveyor section may reprimand a professional land surveyor, or limit, suspend, or revoke the license of any professional land surveyor, for the practice of any fraud or deceit in obtaining the license, or any gross negligence, incompetence, or misconduct in the practice of professional land surveying.

(2) Charges of fraud, deceit, gross negligence, incompetence, or misconduct may be made against any professional land surveyor by the professional land surveyor section or any person. Such charges may be made on information and belief, but shall be in writing, stating the specific acts, be signed by the complainant and be submitted to the examining board. All charges shall be heard according to the rules promulgated under s. 440.03 (1).

(3) If after a hearing 3 members vote in favor of reprimand or limiting, suspending, or revoking the license of a professional land surveyor, the professional land surveyor section shall notify the surveyor to that effect. The surveyor shall return the license to the examining board immediately on receipt of notice of a revocation. The action of the professional land surveyor section may be reviewed under ch. 227.

(4) The professional land surveyor section, for reasons it deems sufficient, may reinstate a license to engage in the practice of professional land surveying that has been revoked, if 3 members vote in favor of such reinstatement. This subsection does not apply to a license that is revoked under s. 440.12.

History: 1979 c. 167, 357; 1997 a. 237; 2013 a. 358.

443.13 Disciplinary proceedings against designers of engineering systems. (1) The designers' section of the examining board may limit, suspend, or revoke a permit or reprimand the permittee if the permittee is guilty of any of the following:

(a) Fraud or deceit in obtaining the permit.

(b) Gross negligence, incompetency, or misconduct in practice.

(c) Signing documents not prepared by the permittee or under the permittee's control.

(d) Knowingly aiding or abetting unauthorized designing of engineering systems as stated in s. 443.07 (3) by persons not granted permits under this chapter.

(e) Conviction of a felony, subject to ss. 111.321, 111.322, and 111.335, or adjudication of mental incompetency by a court of competent jurisdiction.

(2) If, after a hearing conducted under the rules promulgated under s. 440.03 (1) before the designers' section of the examining board, two-thirds of the members of the section vote in favor of sustaining the charges, the designers' section of the examining board shall reprimand the permittee or limit, suspend, or revoke the permit. The action of the designers' section of the examining board under this section is subject to review under ch. 227.

443.134 Exception for photogrammetry and construction surveying. Nothing in this chapter may be construed to prohibit a person who has not been granted a license to engage in the practice of professional land surveying under this chapter from utilizing photogrammetry or remote sensing techniques or performing topographic surveying, construction surveying, or geodetic surveying for purposes other than a boundary establishment or reestablishment specified in s. 443.01 (6s).

History: 1979 c. 167; 1981 c. 334 s. 25 (1); 2011 a. 146; 2013 a. 358.

443.14 Exempt persons. The following persons, while practicing within the scope of their respective exemptions, shall be exempt from this chapter:

(1) (a) An employee of a person holding a certificate of registration in architecture under s. 443.10 who is engaged in the practice of architecture and an employee of a person temporarily exempted from registration in architecture under this section, if the

practice of the employee does not include responsible charge of architecture practice.

(b) An employee of a person holding a certificate of registration in professional engineering under s. 443.10 who is engaged in the practice of professional engineering and an employee of a person temporarily exempted from registration in professional engineering under this section, if the practice of the employee does not include responsible charge of professional engineering practice.

(2) Officers and employees of the federal government while engaged within this state in the practice of architecture, landscape architecture or professional engineering for the federal government.

(3) A public service company and its regular employees acting in its behalf where the professional engineering services rendered are in connection with its facilities which are subject to regulation, supervision and control by a commission of this state or of the federal government.

(4) (a) Any person who practices architecture, exclusively as a regular employee of a private company or corporation, by rendering to the company or corporation architectural services in connection with its operations, so long as the person is thus actually and exclusively employed and no longer, if the company or corporation has at least one architect who is registered under this chapter in responsible charge of the company's or corporation's architectural work in this state.

(b) Any person who practices professional engineering, exclusively as a regular employee of a private company or corporation, by rendering to the company or corporation professional engineering services in connection with its operations, so long as the person is thus actually and exclusively employed and no longer, if the company or corporation has at least one professional engineer who is registered under this chapter in responsible charge of the company's or corporation's professional engineering work in this state.

(5) A person engaged in the manufacture of a product or unit, including laboratory research affiliates of the person, where the services performed are the design, assembly, manufacture, sale or installation of that product or unit. "Product or unit" does not include any building.

(6) Notwithstanding any other provision of this chapter, contractors, subcontractors or construction material or equipment suppliers are not required to register under this chapter to perform or undertake those activities which historically and customarily have been performed by them in their respective trades and specialties, including, but not limited to, the preparation and use of drawings, specifications or layouts within a construction firm or in construction operations, superintending of construction, installation and alteration of equipment, cost estimating, consultation with architects, professional engineers or owners concerning materials, equipment, methods and techniques, and investigations or consultation with respect to construction sites, provided all such activities are performed solely with respect to the performance of their work on buildings or with respect to supplies or materials furnished by them for buildings or structures or their appurtenances which are, or which are to be, erected, enlarged or materially altered in accordance with plans and specifications prepared by architects or professional engineers, or by persons exempt under subs. (1) to (5) while practicing within the scope of their exemption.

(7) This chapter does not require manufacturers or their material or equipment suppliers to register under this chapter in order to enable them to perform engineering in the design, assembly, manufacture, sale or installation of their respective products.

(8) An employee of a professional land surveyor, while doing surveying work under the supervision of the employer, if the employee is not in responsible charge of the practice of professional land surveying.

(8m) (a) Subject to par. (b), an employee or contractor of any of the following while engaged in land surveying is exempt from the provisions of this chapter:

1. The provider of a broadcast service, as defined in s. 196.01 (1m).

2. The provider of a cable service, as defined in s. 196.01 (1p).

3. A commercial mobile radio service provider, as defined in s. 196.01 (2g).

4. A public utility, as defined in s. 196.01 (5).

5. A telecommunications provider, as defined in s. 196.01 (8p).

6. A video service provider, as defined in s. 196.01 (12r).

7. A cooperative association organized under ch. 185 for the purpose of producing or furnishing heat, light, power, or water to its members only.

(b) The exemption under par. (a) applies only if the employee or contractor is engaged in services described in s. 443.01 (6s) (a) 3., (c), (d), or (f) for or on behalf of the provider or cooperative.

(9) A license shall not be required for an owner to survey his or her own land for purposes other than for sale.

(10) Any person employed by a county or this state who is engaged in the planning, design, installation or regulation of land and water conservation activities under ch. 92 or s. 281.65 and who is certified under s. 92.18.

(11) Any professional land surveyor licensed under s. 443.06 who is engaged in the planning, design, installation, or regulation of land and water conservation activities under ch. 92 or s. 281.65.

(12m) A driller who is licensed under s. 280.15 (2m), or an employee of a drilling business that is registered under s. 280.15 (1), who is engaged in well drilling, as defined in s. 280.01 (8), or heat exchange drilling, as defined in s. 280.01 (2c).

(13) A professional engineer who, while engaged in the practice of professional engineering in accordance with this chapter, collects, investigates, interprets or evaluates data relating to soil, rock, groundwater, surface water, gases or other earth conditions, or uses that data for analysis, consultation, planning, design or construction.

(14) A person who, while engaged in the practice of professional geology, hydrology or soil science as defined in s. 470.01 (2), (3) or (4), practices professional engineering, if the acts that involve the practice of professional engineering are also part of the practice of professional geology, hydrology or soil science.

(15) A person employed by the federal government who is engaged in this state in the practice of landscape architecture for the federal government.

(16) A person who performs services related to natural resources management if any map that is prepared as a part of those services contains the following statement: "This map is not a survey of the actual boundary of any property this map depicts." In this subsection, "natural resources management" includes all of the following:

(a) The management of state lands under ss. 23.09, 23.11, 27.01, and 28.04.

(b) The control of invasive species, as defined in s. 23.22 (1) (c).

(c) The cultivation or harvesting of raw forest products, as defined in s. 26.05 (1).

(d) The management of county forests under s. 28.11.

or corrected, the volume and page where the document is recorded.

(b) It is numbered consecutively and states that it is an amendment and restatement of the condominium instrument being modified or corrected.

(c) It identifies all units in the condominium.

(d) It clearly states the changes being made to the condominium instrument, amendment, or addendum it is modifying or correcting.

(3) CORRECTION INSTRUMENT. A correction instrument may be used only to correct a scrivener error on a condominium plat, including erroneous distances, angles, directions, bearings, chords, building or unit numbers, and street names.

History: 1997 a. 333; 2017 a. 333; 2021 a. 168; s. 35.17 correction in (2) (c), (d).

703.10 Bylaws. (1) BYLAWS TO GOVERN ADMINISTRATION. The administration of every condominium shall be governed by bylaws. Every unit owner shall comply strictly with the bylaws and with the rules adopted under the bylaws, as the bylaws or rules are amended from time to time, and with the covenants, conditions and restrictions set forth in the declaration or in the deed to the unit. Failure to comply with any of the bylaws, rules, covenants, conditions or restrictions is grounds for action to recover sums due, for damages or injunctive relief or both maintainable by the association or, in a proper case, by an aggrieved unit owner.

(2) REQUIRED PARTICULARS. The bylaws shall express at least the following particulars:

(a) The form of administration, indicating whether the association shall be incorporated or unincorporated, and whether, and to what extent, the duties of the association may be delegated to a board of directors, manager or otherwise, and specifying the powers, manner of selection and removal of them.

(b) The mailing address of the association.

(c) The method of calling the unit owners to assemble; the attendance necessary to constitute a quorum at any meeting of the association; the manner of notifying the unit owners of any proposed meeting; who presides at the meetings of the association, who keeps the minute book for recording the resolutions of the association and who counts votes at meetings of the association.

(d) The election by the unit owners of a board of directors of whom not more than one is a nonunit owner, the number of persons constituting the same and that the terms of at least one-third of the directors shall expire annually, the powers and duties of the board, the compensation, if any, of the directors, the method of removal from office of directors and whether or not the board may engage the services of a manager or managing agent.

(e) The manner of assessing against and collecting from unit owners their respective shares of the common expenses.

(f) The manner of borrowing money and acquiring and conveying property.

(2m) LIMITATION ON ENFORCEMENT OF CERTAIN PROVISIONS. No bylaw or rule adopted under a bylaw and no covenant, condition or restriction set forth in a declaration or deed to a unit may be applied to discriminate against an individual in a manner described in s. 106.50.

(3) PERMISSIBLE ADDITIONAL PROVISIONS. The bylaws also may contain any other provision regarding the management and operation of the condominium, including any restriction on or requirement respecting the use and maintenance of the units and the common elements.

(4) PROHIBITING VOTING BY CERTAIN UNIT OWNERS. The bylaws may contain a provision prohibiting any unit owner from voting at a meeting of the association if the association has recorded a statement of condominium lien on the person's unit and the amount necessary to release the lien has not been paid at the time of the meeting.

(5) AMENDMENT. The bylaws may be amended by the affirmative vote of unit owners having 67 percent or more of the votes. Each particular set forth in sub. (2) shall be expressed in the bylaws as amended. Following an amendment to the bylaws, the association shall promptly deliver to each unit owner a copy of the approved amendment.

(6) TITLE TO CONDOMINIUM UNITS UNAFFECTED BY BYLAWS. Title to a condominium unit is not rendered unmarketable or otherwise affected by any provision of the bylaws or by reason of any failure of the bylaws to comply with the provisions of this chapter.

History: 1977 c. 407; 1987 a. 262; 1991 a. 295; 1995 a. 27; 1999 a. 82; 2021 a. 168.

Because sub. (6) prohibits condominium bylaws from affecting the transfer of title to a condominium unit, a bylaw prohibiting the sale of any condominium unit to an owner who would not reside in the condominium unit could not be applied to prevent the confirmation of a foreclosure sale to the high bidder who admitted he would not occupy the premises. Bankers Trust Co. of California, N.A. v. Bregant, 2003 WI App 86, 261 Wis. 2d 855, 661 N.W.2d 498, 02-2085.

A condominium complex may prohibit the rental of condominium units through an amendment to the bylaws. Nothing in s. 703.09 (1) (g) or in any other section of this chapter requires that all restrictions on use must be identified in the declaration. Sub. (3) expressly authorizes the placement of additional use restrictions in condominium bylaws and does not contain limitations on the types of restrictions that can be implemented through bylaw amendments. As long as use restrictions do not conflict with the declaration or with state or federal law, they are valid and enforceable. Apple Valley Gardens Ass'n v. MacHutta, 2009 WI 28, 316 Wis. 2d 85, 763 N.W.2d 126, 07-0191.

Bankers Trust, 2003 WI App 86, reaffirmed that the proscription contained within sub. (6) is a protection of the title and is not a vehicle for a finding of impairment. Apple Valley Gardens Ass'n v. MacHutta, 2009 WI 28, 316 Wis. 2d 85, 763 N.W.2d 126, 07-0191.

703.105 Display of the United States flag and political signs. (1) No bylaw or rule may be adopted or provision included in a declaration or deed that prohibits a unit owner from respectfully displaying the United States flag.

(1m) No bylaw or rule may be adopted or provision included in a declaration or deed that prohibits a unit owner from displaying in his or her condominium a sign that supports or opposes a candidate for public office or a referendum question.

(2) Notwithstanding subs. (1) and (1m), bylaws or rules may be adopted that regulate the size and location of signs, flags and flagpoles.

History: 2003 a. 161; 2005 a. 303.

703.11 Condominium plat. (1) TO BE FILED FOR RECORD. When any condominium instruments are recorded, the declarant shall file a condominium plat to be recorded in a separate plat book maintained for condominium plats or stored electronically in the register of deeds office.

(2) REQUIRED PARTICULARS. A condominium plat may consist of one or more sheets, shall be produced on media that is acceptable to the register of deeds, and shall contain at least the following particulars:

(a) The name of the condominium and county in which the property is located on each sheet of the plat. The name of the condominium must be unique in the county in which the condominium is located. If there is more than one sheet, each sheet shall be consecutively numbered and show the relation of that sheet number to the total number of sheets.

(am) A blank space at least 3 inches by 3 inches in size in the upper right corner on the first sheet for recording use by the register of deeds.

(b) A survey of the property described in the declaration that satisfies all of the following criteria:

1. The survey complies with minimum standards for property surveys adopted by the examining board of architects, land-

scape architects, professional engineers, designers, professional land surveyors, and registered interior designers.

2. The survey shows the location of any unit or building located or to be located on the property.

3. The survey includes a clear and concise description of the surveyed property, as described in s. 236.34 (1m) (d) 2.

NOTE: Par. (b) is shown as affected by 2021 Wis. Acts 168 and 195 and as merged by the legislative reference bureau under s. 13.92 (2) (i).

(c) Plans that show the location of each building located or to be located on the property and, if there are units in a building, that show the perimeters, approximate dimensions, approximate square footage, and location of each unit in the building. Common elements shall be shown graphically to the extent feasible.

(d) All survey maps and floor plans submitted for recording shall be legibly prepared with a binding margin of 1.5 inches on the left side and a one-inch margin on all other sides on durable white media that is 14 inches long by 22 inches wide with a permanent nonfading black image. The maps and plans shall be drawn to a convenient scale.

(3) DESIGNATION OF UNITS. Every unit shall be designated on the condominium plat by the unit number. Unit numbers may not contain more than 8 numerals and must be unique throughout the condominium.

(4) PROFESSIONAL LAND SURVEYOR'S CERTIFICATE. A condominium plat is sufficient for the purposes of this chapter if there is attached to or included in it a certificate of a professional land surveyor that the plat is a correct representation of the condominium described and the identification and location of each unit and the common elements can be determined from the plat.

(5) ADDENDUM. Except as provided in ss. 703.095 and 703.265, a condominium plat may be modified only by an addendum that is accomplished in the same manner as an amendment to the declaration under s. 703.09 (2). An addendum is effective when it is recorded in the manner described under s. 703.07 (2).

History: 1977 c. 407; 1983 a. 497; 1993 a. 463, 465, 491; 1997 a. 300, 333; 2003 a. 283; 2005 a. 9, 41; 2013 a. 358; 2015 a. 48; 2017 a. 102; 2021 a. 168, 195; s. 13.92 (2) (i).

NOTE: 2003 Wis. Act 283, which affected this section, contains extensive explanatory notes.

703.115 Local review of condominium instruments. **(1)** A county may adopt an ordinance to require the review of condominium instruments before recording by persons employed by the county of recording or by a city, village or town that is located in whole or in part in the county of recording if the ordinance does all of the following:

(a) Requires the review to be completed within 10 working days after submission of the condominium instrument and provides that, if the review is not completed within this period, the condominium instrument is approved for recording.

(b) Provides that a condominium instrument may be rejected only if it fails to comply with the applicable requirements of ss. 703.065, 703.095, 703.11 (2) (a), (am), (c) and (d) and (3), 703.275 (1m) (b) and 703.28 (1m) or if the professional land surveyor's certificate under s. 703.11 (4) is not attached to or included in the condominium plat.

(c) If the person performing the review approves the condominium instrument, requires the person to certify approval in writing, accompanied by his or her signature and title.

(2) An ordinance adopted under this section may authorize the county to charge a fee that reflects the actual cost of performing the review.

History: 1997 a. 333; 2013 a. 358; 2021 a. 168.

703.12 Description of units. A description in any deed or other instrument affecting title to any unit, including a conveyance, as defined in s. 706.01 (4), that makes reference to the letter, number, or other appropriate designation of the unit on the condominium plat, the name of the condominium as it appears in the declaration, the name of the county where the condominium is located, the document numbers assigned to the declaration, and if volume and page numbers are assigned to the declaration, the volume and page where the declaration is recorded, shall be a good and sufficient description for all purposes.

History: 1977 c. 407; 2017 a. 333; 2021 a. 168.

The requirements of ch. 236 may not be used to legally describe condominium units. 75 Atty. Gen. 94.

703.13 Percentage interests. **(1)** UNDIVIDED PERCENTAGE INTEREST IN COMMON ELEMENTS. Every unit owner owns an undivided percentage interest in the common elements equal to that set forth in the declaration. Except as specifically provided in this chapter, all common elements shall remain undivided. Except as provided in this chapter, no unit owner, nor any other person, may bring a suit for partition of the common elements and any covenant or provision in any declaration, bylaws or other instrument to the contrary is void.

(2) RIGHTS TO COMMON SURPLUSES. Common surpluses shall be disbursed as provided under s. 703.16 (1).

(3) LIABILITY FOR COMMON EXPENSES. Except for the specially assessed common expenses, the amount of all common expenses shall be assessed as provided under s. 703.16 (2).

(4) CHANGE IN PERCENTAGE INTEREST. The percentage interests shall have a permanent character and, except as specifically provided by this chapter, may not be changed without the written consent of all of the unit owners and their mortgagees. Any change shall be evidenced by an amendment and recorded among the appropriate land records. The percentage interests may not be separated from the unit to which they appertain. Any instrument, matter, circumstance, action, occurrence, or proceeding in any manner affecting a unit also shall affect, in like manner, the percentage interests appurtenant to the unit.

(5) ALTERATIONS WITHIN UNITS. (a) A unit owner may make any improvements or alterations within his or her unit that do not impair the structural integrity or lessen the support of any portion of the condominium and that do not create a nuisance substantially affecting the use and enjoyment of other units or the common elements. A unit owner may not change the exterior appearance of a unit or of any other portion of the condominium without permission of the board of directors of the association.

(b) Except to the extent prohibited by the condominium instruments, and subject to any restrictions and limitation specified therein, a unit owner acquiring an adjoining or adjoining part of an adjoining unit, may remove all or any part of any intervening partition or create doorways or other apertures therein, even if the partition may in whole or in part be a common element, if those acts do not impair the structural integrity or lessen the support of any portion of the condominium. The creation of doorways or other apertures is not deemed an alteration of boundaries.

(5m) IMPROVEMENTS TO LIMITED COMMON ELEMENTS. (a) If permitted by the condominium instruments and subject to par. (b) and to any restrictions or limitations specified in the condominium instruments, a unit owner may improve, including the enclosure of, the limited common elements appurtenant exclusively to that owner's unit if all of the following conditions are met:

1. A statement describing the improvement, including a description of the project, the materials to be used, and the project's proposed impact on the appearance of the condominium, and identifying the project contractor is submitted to the board of directors of the association.

2. The improvement will not interfere with the use and enjoyment of the units of other unit owners or the common elements or limited common elements of the condominium.

3. The improvement will not impair the structural integrity of the condominium.

4. Any change to the exterior appearance of the condominium is approved by the board of directors of the association.

(b) All costs and expenses of an improvement under this subsection and any increased costs of maintenance and repair of the limited common elements resulting from the improvement are the obligation of the unit owner. The unit owner shall protect the association and other unit owners from liens on property of the association or of other unit owners that otherwise might result from the improvement.

(6) RELOCATION OF BOUNDARIES. (a) If any condominium instruments expressly permit a relocation of boundaries between adjoining units, those boundaries may be relocated in accordance with this section and any restrictions and limitations which the condominium instruments may specify.

(b) If any unit owners of adjoining units whose mutual boundaries may be relocated desire to relocate those boundaries, the principal officer of the unit owners association, upon written application from those unit owners and after 30 days' written notice to all other unit owners, shall prepare and execute appropriate instruments.

(c) An amendment shall do all of the following:

1. Identify the units involved and state that the boundaries between those units are being relocated by agreement of the unit owners thereof.

2. Contain words of conveyance between the owners of the units identified in subd. 1.

3. If the adjoining unit owners have specified in their written application the reallocation between their units of the aggregate undivided interest in the common elements appertaining to those units, reflect that reallocation.

(cm) An amendment under par. (c) shall be adopted, at the option of the adjoining unit owners, either under s. 703.09 (2) or by the written consent of the owners of the adjoining units involved and the mortgagees of the adjoining units.

(d) If the adjoining unit owners have specified in their written application a reasonable reallocation, as determined by the board of directors, of the number of votes in the association or liabilities for future common expenses not specially assessed, appertaining to their units, modifications to the condominium instruments shall reflect those reallocations. An amendment under this paragraph shall be adopted in the manner specified in par. (cm).

(e) An addendum showing the altered boundaries and the dimensions thereof between adjoining units, and their identifying numbers or letters, shall be prepared. The addendum shall be certified as to its accuracy in compliance with this subsection by a professional land surveyor.

(f) After appropriate instruments have been prepared and executed, they shall be delivered promptly to the adjoining unit owners upon payment by them of all reasonable costs for the preparation thereof. Those instruments are effective when the adjoining unit owners have executed them and they are recorded in the name of the grantor and grantee. The recordation thereof is conclusive evidence that the relocation of boundaries did not violate any restriction or limitation in the condominium instruments.

(7) SEPARATION OF UNITS. (ac) In this subsection, "separator" means a person proposing the separation of a unit.

(am) If any condominium instruments expressly permit the separation of a unit into 2 or more units, a separation shall be made in accordance with this section and any restrictions and limitations which the condominium instruments may specify.

(b) The principal officer of the association, upon written application of a separator and after 30 days' written notice to all other unit owners, shall promptly prepare and execute appropriate instruments under this subsection.

(bm) An amendment to separate a unit into 2 or more units shall do all of the following:

1. Assign a new identifying number to each new unit created by the separation of a unit.

2. Allocate to each new unit, on a reasonable basis acceptable to the separator and the executive board, all of the undivided interest in the common element and rights to use the limited common elements and the votes in the association formerly appertaining to the separated unit.

3. Reflect a proportionate allocation to the new units of the liability for common expenses and rights to common surpluses formerly appertaining to the subdivided unit.

(c) An addendum showing the boundaries and dimensions separating the new units together with their other boundaries and their new identifying numbers or letters shall be prepared. The addendum shall be certified as to its accuracy and compliance with this subsection by a professional land surveyor.

(d) After appropriate instruments have been prepared and executed, they shall be delivered promptly to the separator upon payment by him or her of all reasonable cost for their preparation. Those instruments are effective when the separator has executed them and they are recorded in the name of the separator. The recording of the instruments is conclusive evidence that the separation did not violate any restrictions or limitation specified by the condominium instruments and that any reallocations made under this subsection were reasonable.

(8) MERGER OF UNITS. (a) If any condominium instruments expressly permit the merger of 2 or more adjoining units into one unit, a merger shall be made in accordance with this subsection and any restrictions and limitations specified in the condominium instruments.

(b) If the unit owners of adjoining units that may be merged desire to merge the units, the unit owners, after 30 days' written notice to all other unit owners, shall prepare and execute appropriate instruments under this subsection.

(bm) An amendment to the condominium instruments shall do all of the following:

1. Assign a new identifying number to the new unit created by the merger of the units.

2. Allocate to the new unit all of the undivided interest in the common elements and rights to use the limited common elements and the votes in the association formerly appertaining to the separate units.

3. Reflect an allocation to the new unit of the liability for common expenses and rights to common surpluses formerly appertaining to the separate units.

(bp) An amendment under par. (bm) shall be adopted either under s. 703.09 (2) or by the written consent of the owners of the units to be merged, the mortgagees of those units, if any, and the board of directors of the association.

(c) An addendum showing the boundaries and dimensions of the new unit together with the new identifying number or letter shall be prepared. The addendum shall be certified as to its accuracy and compliance with this subsection by a professional land surveyor.

(d) After appropriate instruments have been prepared and executed, they shall be delivered promptly to the owner or owners of the merged unit upon payment by the owner or owners of all reasonable costs for their preparation. Those instruments are effective when executed by the owner or owners of the merged unit and recorded in the office of the register of deeds of the county where the property is located. The recording of the instruments

is conclusive evidence that the merger did not violate any restriction or limitation specified by the condominium instruments and that any reallocations made under this subsection were reasonable.

History: 1977 c. 407; 1985 a. 332; 1987 a. 403; 2003 a. 283; 2013 a. 358; 2017 a. 333; 2021 a. 168.

NOTE: 2003 Wis. Act 283, which affected this section, contains extensive explanatory notes.

An amendment of a condominium declaration that changed a common area to a limited common area but did not change the owners' percentage interests in the common areas did not require unanimous approval of all owners and was valid. Any reduction in value due to the change from common area was recoverable under s. 703.09 (3) (a) by the owners whose condominium value decreased due to the change. Newport Condominium Ass'n v. Concord-Wisconsin, 205 Wis. 2d 577, 556 N.W.2d 775 (Ct. App. 1996), 95-0869.

703.14 Use of common elements. (1) The common elements may be used only for the purposes for which they were intended and, except as provided in the condominium instruments or bylaws, the common elements are subject to mutual rights of support, access, use and enjoyment by all unit owners. However, any portion of the common elements designated as limited common elements may be used only by the unit owner of the unit to which their use is limited in the condominium instruments and bylaws.

(2) The declaration or bylaws may allow any unit owner of a unit to which the use of any limited common element is restricted to grant by deed, subject to the rights of any existing mortgagee, the use of the limited common element to any other unit owner. Thereafter, the grantor has no further right to use the limited common element.

History: 1977 c. 407.

703.15 Association of unit owners. (1) LEGAL ENTITY. The affairs of every condominium shall be governed by an association that, even if unincorporated, is constituted a legal entity for all purposes. Except for matters reserved to the association members or unit owners by this chapter, the declaration, or the bylaws, all policy and operational decisions of the association, including interpretation of the condominium instruments, bylaws, rules, and other documents relating to the condominium or the association, shall be made by its board of directors. This subsection does not affect the deference accorded to, or the standard of review of, an action of the board of directors by a court.

(2) ORGANIZATION OF ASSOCIATION. (a) *Establishment; organization.* 1. Every declarant shall establish an association to govern the condominium not later than the date of the first conveyance of a unit to a purchaser. Except as provided in subd. 2., the declarant may organize the association only as a for-profit corporation; nonstock, nonprofit corporation; or unincorporated association. After the association is organized, the membership of the association shall at all times consist exclusively of all of the unit owners.

2. Beginning on March 13, 2022, a declarant may not organize an association as a for-profit corporation.

3. An association that exists on March 13, 2022, may not reorganize as a for-profit corporation.

(b) *Power and responsibility prior to establishment.* Until an association is established, a declarant has the power and responsibility to act in all instances where this chapter, any other provision of the law, or the declaration require action by the association or its officers.

(c) *Declarant control.* 1. Except as provided in par. (d), a declarant may authorize the declarant or persons designated by him or her to appoint and remove the officers of the association or to exercise the powers and responsibilities otherwise assigned by the declaration or this chapter to the association or its officers. A declaration may not authorize any declarant control of the association for a period exceeding the earlier of any of the following:

a. Ten years in the case of an expandable condominium.

b. Three years in the case of any other condominium.

c. Thirty days after the conveyance of 75 percent of the common element interest to purchasers.

2. The period of declarant control begins on the date that the first condominium unit is conveyed by a declarant to any person other than the declarant. If there is any other unit owner other than a declarant, a declaration may not be amended to increase the scope or the period of the declarant control.

(d) *Meeting to elect directors.* Prior to the conveyance of 25 percent of the common element interest to purchasers, an association shall hold a meeting and the unit owners other than the declarant shall elect at least 25 percent of the directors of the executive board. Prior to the conveyance of 50 percent of the common element interest to purchasers, an association shall hold a meeting and the unit owners other than the declarant shall elect at least 33 1/3 percent of the directors of the executive board.

(e) *Calculation of percentage.* The calculation of the percentage of common element interest conveyed to purchasers under pars. (c) and (d) shall be based on the percentage of undivided interest appertaining to each unit which has been conveyed assuming that all the units to be completed are included in the condominium.

(f) *Elections after expiration of declarant control.* Not later than 45 days after the expiration of any period of declarant control, an association shall hold a meeting and the unit owners shall elect an executive board of at least 3 directors and officers of the association. The directors and officers shall take office upon election.

(3) POWERS OF THE ASSOCIATION. (a) *Powers.* An association has the power to:

1. Adopt budgets for revenues, expenditures and reserves and levy and collect assessments for common expenses from unit owners;

2. Employ and dismiss employees and agents;

3. Sue on behalf of all unit owners; and

4. Exercise any other power conferred by the condominium instruments or bylaws.

(b) *Conditional powers.* Subject to any restrictions and limitations specified by the declaration, an association may:

1. Make contracts and incur liabilities, including borrowing funds in the name of the association in the manner specified in the bylaws under s. 703.10 (2) (f).

2. Regulate and impose charges for the use of common elements.

3. Cause additional improvements to be made as a part of the common elements.

4. Acquire, hold, encumber and convey any right, title or interest in or to real property.

5. Grant easements through or over the common elements.

6. Receive any income derived from payments, fees or charges for the use, rental or operation of the common elements.

7. Grant or withhold approval of any action by a unit owner or other person which would change the exterior appearance of the unit or of any other portion of the condominium.

8. Purchase goods and services jointly with other condominium associations or other persons.

(4) ROSTER OF UNIT OWNERS; MEETINGS OF ASSOCIATION. (a) An association shall maintain a current roster of names and addresses of every unit owner to which notice of meetings of the association shall be sent.

CHAPTER 706

CONVEYANCES OF REAL PROPERTY; RECORDING; TITLES

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

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

(a) By act or operation of law; or

(b) By will; or

(bm) By nonprobate transfer on death under s. 705.15; or

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

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

History: 1999 a. 85 ss. 135, 138; 2005 a. 206.

The doctrine of part performance is not an "operation of law" under sub. (2) (a) that excludes the application of this chapter to a transaction. Wyss v. Albee, 183 Wis. 2d 245, 515 N.W.2d 517 (Ct. App. 1994).

Transactions in which an interest in land is affected by act or operation of law are excluded from operation of this chapter under sub. (2). Dow Family, LLC v. PHH Mortgage Corp., 2014 WI 56, 354 Wis. 2d 796, 848 N.W.2d 728, 13-0221.

A bank's mortgage validly attached a lien to a vendor's interest under a land contract. Wisconsin's land recording statute is broad enough to include creation of a lien on a vendor's interest in a land contract, which includes legal title to land. Liebzeit v. Intercity State Bank, FSB, 819 F.3d 981 (2016).

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, Inc. 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 (1974).

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. Wisconsin 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 Feeds, Inc. v. Livingston Feed & Lumber, Inc., 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 conveyors' 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 Corp., 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).

706.03 Agents, officers and guardians.

(1) In this section:

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

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

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

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

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

resolution amending or revoking the same, conveyances may be executed on behalf of such corporation only in accordance with the terms thereof.

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

(4) A conveyance by a minor or an individual adjudicated incompetent in this state is effective only if executed by an authorized guardian on behalf of the minor or individual adjudicated incompetent. This restriction does not apply if the individual's adjudication of incompetency permits him or her to contract.

History: 1971 c. 228; 1975 c. 393; 1977 c. 428; 1989 a. 303; 1991 a. 16, 173; 1997 a. 140; 2005 a. 387.

When a partner's actions in a transaction on behalf of a partnership fall within the express provisions of s. 178.06 (1) [now s. 178.0301 (1)], the partner is "an agent of the partnership" and s. 178.06 (1) [now s. 178.0301 (1)] controls. When the partner's actions do not fall within those provisions, the partner "purports to act as an agent" and this section controls. Wyss v. Albee, 193 Wis. 2d 101, 532 N.W.2d 444 (1995).

If the grantor's attorney-in-fact does not have authority to exercise the power of attorney in his or her own favor, any deed that the attorney-in-fact signs to himself or herself and others is void in its entirety under sub. (1m). Lucareli v. Lucareli, 2000 WI App 133, 237 Wis. 2d 487, 614 N.W.2d 60, 99-1679.

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

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

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

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

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

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

History: 1993 a. 486.

A partnership created to deal in real estate is void unless conforming to the statute of frauds unless all parties have performed the contract, thus indicating their acquiescence in its terms. Schaefer v. Schaefer, 72 Wis. 2d 600, 241 N.W.2d 607 (1976).

In an equity action seeking the conveyance of a farm under an oral agreement, the trial court properly ordered the conveyance under sub. (3) when the tenants gave up plans to build a home on other property, planted crops on the farm, and painted the interior of the farmhouse. Krauza v. Mauritz, 78 Wis. 2d 276, 254 N.W.2d 251 (1977).

Personal services to a vendor in reliance upon an oral agreement are not enough, standing alone, to constitute part performance. Jorgensen v. Ketter, 82 Wis. 2d 80, 260 N.W.2d 665 (1978).

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

The homestead defense under s. 706.02 (1) (f) is not defeated by this section, 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).

Failure to execute a document can be cured under this section. Discussing the "unclean hands" defense. Security Pacific National Bank v. Ginkowski, 140 Wis. 2d 332, 410 N.W.2d 589 (Ct. App. 1987).

Once a deed has been properly executed and recorded, a court, in equity, may not alter the document when a party later expresses a different intent than was memorialized. Wynhoff v. Vogt, 2000 WI App 57, 233 Wis. 2d 673, 608 N.W.2d 400, 99-0103.

This section does not refer to deficiencies under s. 706.03. Triple Interest, Inc. v. Motel 6, Inc., 414 F. Supp. 589 (1976).

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.

706.055 Conveyances of mineral rights. The register of deeds shall record all conveyances of mineral interests in the index maintained under s. 59.43 (9).

History: 1977 c. 253; 2009 a. 98.

706.057 Lapse and reversion of interests in minerals.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2. If the court finds that the owner of the interest in minerals did not use the interest in minerals within the time limits specified under sub. (3) and did not record the claim under sub. (5) before the surface owner recorded the claim under sub. (6) (a) or be-

fore the claim took effect as provided under sub. (6) (b) 1. whichever is later, the court shall issue a judgment affirming the surface owner's claim.

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

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

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

Sub. (3) (a) sets forth a general rule that an interest in minerals must be used at least once every 20 years to avoid lapsing. Sub. (3) (b) creates a three-year grace period—lasting from July 1, 1984, to July 1, 1987—during which owners could use their rights and thereby prevent the automatic lapse that would have otherwise occurred under sub. (3) (a). The use of an interest in mineral rights during the three-year period does not permanently prevent that interest from lapsing. Instead, once an interest has been used during the requisite three-year period, it is again subject to sub. (3) (a) and will lapse if not used at least once every 20 years. Lakeland Area Property Owners Ass'n, U.A. v. Oneida County, 2021 WI App 19, 396 Wis. 2d 622, 957 N.W.2d 605, 20-0858.

The U.S. Supreme Court's conclusions in *Texaco*, 454 U.S. 516 (1982), compel a conclusion in this case that sub. (3) does not result in an unconstitutional taking of property without just compensation, nor does the statute violate due process for lack of notice. Similar to the statute at issue in *Texaco*, sub. (3) provides that a mineral rights owner's interest lapses if not used for 20 years and sets forth a grace period during which owners who did not use their mineral rights during the previous twenty years could take action to prevent those rights from lapsing. Lakeland Area Property Owners Ass'n, U.A. v. Oneida County, 2021 WI App 19, 396 Wis. 2d 622, 957 N.W.2d 605, 20-0858.

Due process requires that every owner of a recorded interest, including a mineral interest under this section, be provided written notice of an application for a tax deed. 74 Atty. Gen. 59.

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

706.06 Authentication. (1) Any instrument may be acknowledged, or its execution otherwise authenticated by its signators, as provided by the laws of this state; or as provided in this section or ch. 140.

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

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

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

History: 1971 c. 211; 1973 c. 243; 1979 c. 110; 1983 a. 492 s. 3; 1993 a. 486; 2001 a. 103; 2019 a. 125.

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 Ass'n v. Interstate Investment, Inc., 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. 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.

706.085 Correction instruments. (1) ENTITLED TO BE RECORDED; PURPOSES. An instrument correcting a previously recorded conveyance shall be entitled to record in accordance with s. 706.05 in the office of the register of deeds of the county in which the conveyance is recorded and shall include one or more of the following:

(a) The correction of a legal description, including a distance; angle; direction; bearing; chord; lot, block, unit, or building number or letter; appurtenant easement; section number; township name or number; municipality, county, or state name; range number or meridian; certified survey map number; or subdivision or condominium name.

(b) The addition, correction, or clarification of information other than a legal description, including any of the following information:

1. A party's name, including the spelling of the name; a first or middle name or initial; a name suffix, such as senior or junior; alternate names by which the party is known; or a description of an entity as a corporation, company, or similar identifier.

2. A party's marital status.

3. The date on which the conveyance was executed.

4. Whether the property is a homestead.

5. The tax parcel number.

6. The identity of the drafter.

7. The recording data for an instrument referenced in the conveyance.

8. The nature and purpose of the conveyance.

9. The title of the conveyance.

10. Facts relating to the acknowledgment or authentication.

(c) The addition of an acknowledgment or authentication.

(d) The disclaimer by a grantee under a deed of that party's interest in the real property that is the subject of the deed.

(e) The addition of a mortgagee's consent or subordination.

(2) EXECUTION REQUIREMENTS. (a) A correction instrument shall be acknowledged or authenticated in accordance with s. 706.06 or ch. 140. It shall recite the document number of the conveyance, the names of the grantor and grantee, and, if given on the conveyance, the volume and page where the conveyance is filed or recorded.

(b) 1. Except as otherwise provided in this paragraph, a correction instrument that is executed after May 28, 2010, may be executed by a person having personal knowledge of the circumstances of the conveyance and of the facts recited in the correction instrument, including the grantor, the grantee, the person who drafted the conveyance that is the subject of the correction instrument, or the person who acted as the settlement agent in the transaction that is the subject of the conveyance, and shall recite the basis for the person's personal knowledge. A correction instrument that was executed before May 28, 2010, is not rendered ineffective by reason of the instrument's failure to recite that the maker had the knowledge or capacity required under this subdivision.

2. A correction instrument that makes the correction under sub. (1) (e) shall be signed by the consenting party, or an heir, successor, or assignee of the party.

3. A correction instrument that adds, removes, or replaces a divisible parcel in a conveyance shall be signed by the following persons:

a. If the correction instrument supplies a lot, block, unit, or building number or letter that was omitted from a conveyance, by any party identified in subd. 1.

b. If a parcel is being added to a conveyance that also correctly conveys other land, only by the grantor.

c. If a parcel is being removed from a conveyance that also correctly conveys other land, only by the grantee.

d. If a lot or unit number or letter is being corrected and the lot or unit incorrectly recited in the conveyance is also owned by the grantor, only by the grantee.

e. If a lot, block, unit, or building number or letter is being corrected and the lot or unit incorrectly recited in the conveyance is not also owned by the grantor, by any party identified in subd. 1.

(c) A person who executes and records a correction instrument shall send notice of that fact by 1st class mail to all parties to the transaction that was the subject of the conveyance at their last-known addresses.

(3) EFFECT OF RECORD. All of the following apply to the record of a correction instrument that complies with this section, or a certified copy of the record:

(a) It is prima facie evidence of the facts stated in the instrument; is presumed to be true, subject to rebuttal; and constitutes notice to a purchaser under s. 706.09 of the facts recited in the instrument.

(b) It may be asserted by a purchaser for a valuable consideration against any person making an adverse or inconsistent claim under s. 706.09 (1) (i).

(4) PREVIOUSLY RECORDED INSTRUMENTS ARE VALID. Any instrument recorded before May 28, 2010, that purports to correct a previously recorded conveyance and that would have been a valid correction instrument under this section had this section been in effect when the instrument was recorded is hereby validated.

History: 2009 a. 348; 2017 a. 102; 2019 a. 125.

Practice Tips: Correcting Real Estate Documents. Andrew. Wis. Law. Oct. 2010.

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

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

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

(c) *Unrecorded extensions of interests expiring by lapse of*

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

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

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

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

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

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

(i) *Facts not asserted of record.* Any fact not appearing of record, but the opposite or contradiction of which appears affirmatively and expressly in a conveyance, affidavit or other instrument of record in the chain of title of the real estate affected for 5 years. Such facts may, without limitation by noninclusion, relate to age, sex, birth, death, capacity, relationship, family history, descent, heirship, names, identity of persons, marriage, marital status, homestead, possession or adverse possession, residence, service in the armed forces, conflicts and ambiguities in descriptions of land in recorded instruments, identification of any recorded plats or subdivisions, corporate authorization to convey, and the happening of any condition or event which terminates an estate or interest.

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

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

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

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

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

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

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

(a) *Public service corporations, railroads, electric cooperatives, trustees, natural gas companies, governmental units.* While owned, occupied or used by any public service corporation, any railroad corporation as defined in s. 195.02 (1), any water carrier as defined in s. 195.02 (5), any electric cooperative organized and operating on a nonprofit basis under ch. 185, any natural gas company, as defined in 15 USC 717a (6), or any trustee or receiver of any such corporation, electric cooperative, or natural gas company, or any mortgagee or trust deed trustee or receiver thereof; nor any such interest while held by the United States, the state or any political subdivision or municipal corporation thereof; or

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

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

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

(6) EFFECTIVE DATE. This section shall take effect and may be invoked by qualified purchasers without notice as defined in

sub. (2) whose interests arise on or after July 1, 1968, and by their successors in interest thereafter.

History: 1975 c. 94 s. 91 (16); 1979 c. 110; 1983 a. 186; 1987 a. 330; 1993 a. 112, 486, 496; 2005 a. 179, 387; 2009 a. 378, 379.

This section does not create or govern interests in land but deals with circumstances when a purchaser of land will be held to have notice of adverse interests. Interests arising through adverse possession or use are governed by ch. 893. Rock Lake Estates Unit Owners Ass'n v. Township of Lake Mills, 195 Wis. 2d 348, 536 N.W.2d 415 (Ct. App. 1995), 94-2488.

A purchaser of land has three sources of information from which to learn of rights to the land: 1) records in the office of the register of deeds; 2) other public records that are usually not recorded, such as judgments and liens; and 3) the land itself, to find rights that arise by virtue of possession or use. The purchaser is chargeable with knowledge of the location of the land's boundaries as against third persons. Hoey Outdoor Advertising, Inc. v. Ricci, 2002 WI App 231, 256 Wis. 2d 347, 653 N.W.2d 763, 01-2186.

Sub. (2) (b) does not require purchasers for value to find, in the absence of a proper recording, that an interest could possibly be discovered. Such a requirement would be contrary to the very purpose of the recording statutes, to ensure a clear and certain system of property conveyance. Associates Financial Services Co. of Wisconsin v. Brown, 2002 WI App 300, 258 Wis. 2d 915, 656 N.W.2d 56, 01-3416.

Sub. (1) (k) applies to easements. Turner v. Taylor, 2003 WI App 256, 268 Wis. 2d 628, 673 N.W.2d 716, 03-0705.

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 s. 706.08 (1) (a) who cannot claim priority. Bank of New Glarus v. Swartwood, 2006 WI App 224, 297 Wis. 2d 458, 725 N.W.2d 944, 05-0647.

The notice requirements in sub. (2) explain when use or occupancy gives a buyer a duty to inquire about rights held by others. Nothing in that section distinguishes between prescriptive rights and improperly recorded rights. Anderson v. Quinn, 2007 WI App 260, 306 Wis. 2d 686, 743 N.W.2d 492, 06-2462.

A condominium declaration is plainly an instrument under sub. (2) (b) in that it contains a "definite reference" to the common elements, including by legal description and plat map. In this case, the condominium association's interest in the common elements was within the property's chain of title. From review of the declaration, a subsequent quit claim deed, and existing law, a purchaser would have been aware that the declarant was without the authority to cause the association to convey the common elements to the purchaser, and then only if there was a removal instrument under s. 703.28 allowing severance of the land into a parcel separate from the condominium. Lakes of Ville Du Parc Condominium Ass'n v. City of Mequon, 2021 WI App 48, 398 Wis. 2d 770, 963 N.W.2d 146, 20-0600.

In this case, after the condominium declaration was recorded, the declarant prepared and recorded a new survey map and caused the land to be recorded in the plat index under separate parcel identification numbers (PINs). Although a subsequent purchaser claimed that his search of the plat index did not reveal the condominium association's interest in the land, the condominium association's interest was discoverable through a "reasonable search" and therefore was in the chain of title under sub. (4). As a result, the purchaser was put on record notice of the association's ownership claim, and this section did not apply to the purchaser. Lakes of Ville Du Parc Condominium Ass'n v. City of Mequon, 2021 WI App 48, 398 Wis. 2d 770, 963 N.W.2d 146, 20-0600.

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

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

History: 1983 a. 186.

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

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

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

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

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

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

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

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

Sub. (5) confirms that the rules of contract construction are to be used in interpreting the covenants of a deed. The measure of damages for breach of a covenant is the common law measure of damages for breach of warranty of title. Schorsch v. Blader, 209 Wis. 2d 401, 563 N.W.2d 538 (Ct. App. 1997), 96-1220.

A warranty deed grants a present fee simple interest. A purported reservation of a power of appointment in a warranty deed is ineffective. Powers may be reserved and lesser interests granted, but not by warranty deed. Lucareli v. Lucareli, 2000 WI App 133, 237 Wis. 2d 487, 614 N.W.2d 60, 99-1679.

Sub. (3) applies to easements. Borek Cranberry Marsh, Inc. v. Jackson County, 2010 WI 95, 328 Wis. 2d 613, 785 N.W.2d 615, 08-1144.

A necessary implication under sub. (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 sub. (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, Inc. v. Jackson County, 2010 WI 95, 328 Wis. 2d 613, 785 N.W.2d 615, 08-1144.

Performance in a "workmanlike manner" under sub. (7) requires a builder to perform work with the care and skill and provide suitable materials as contractors of reasonable prudence, skill, and judgment in similar construction would. Riverfront Lofts Condominium Owners Ass'n v. Milwaukee/Riverfront Properties Limited Partnership, 236 F. Supp. 2d 918 (2002).

For the premises not to be "reasonably adequate for their intended use and occupancy" under sub. (7), a showing of negligence is not necessary. The defect must be fundamental to the habitability of the building. A defendant must meet a high standard to establish a disclaimer of the protections of sub. (7). Riverfront Lofts Condominium Owners Ass'n v. Milwaukee/Riverfront Properties Limited Partnership, 236 F. Supp. 2d 918 (2002).

Builder-Vendor Liability for Construction Defects in Houses. Kirschnik. 55 MLR 369 (1972).

Duty to Disclose Limited to Commercial Vendors. Wamhoff. 64 MLR 547 (1981).

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

History: 1997 a. 188.

706.11 Priority of certain mortgages, trust funds. (1) Except as provided in sub. (4), when any of the following mort-

gages has been duly recorded, it shall have priority over all liens upon the mortgaged premises and the buildings and improvements thereon, except tax and special assessment liens filed after the recording of such mortgage and except liens under ss. 292.31 (8) (i) and 292.81:

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

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

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

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

2. The Wisconsin Health and Educational Facilities Authority created under ch. 231, the Wisconsin Housing and Economic Development Authority created under ch. 234, or any other authority created by state law.

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

(e) Any mortgage executed under s. 66.1103 to a trustee, as defined in s. 66.1103 (2) (n).

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

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

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

(i) Any mortgage executed to an institution chartered by the federal farm credit administration under 12 USC 2002 (a) that is part of the federal farm credit system created under 12 USC 2001 to 2279cc.

(1m) (a) In this subsection:

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

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

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

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

2. The advance is made for the reasonable protection of the mortgagee's interest, including for the payment of real property taxes, property insurance or assessments or other maintenance charges imposed under a condominium declaration or a restrictive covenant.

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

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

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

(4) Subsection (1) does not apply to a 2nd mortgage assigned to or executed to the department of veterans affairs under s. 45.80 (4) (a) 1., 1989 stats., or s. 45.37 (3), 2017 stats.

History: 1971 c. 164; 1973 c. 208; 1975 c. 358, 409; 1979 c. 110 s. 60 (12); 1989 a. 231; 1991 a. 39, 221; 1993 a. 453; 1995 a. 27, 227; 1997 a. 27, 44; 1999 a. 150 s. 672; 2001 a. 104; 2007 a. 96; 2019 a. 9, 102.

The word "contractor" in sub. (3) includes an owner who acts as his own general contractor, and he can be held liable for conversion. Paulsen Lumber, Inc. v. Meyer, 47 Wis. 2d 621, 177 N.W.2d 884 (1970).

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

"Lien" in this section does not include a lease. Grosskopf Oil, Inc. v. Winter, 156 Wis. 2d 575, 457 N.W.2d 514 (Ct. App. 1990).

Sub. (1) (d) applies to all state banks, not just Wisconsin chartered state banks. To hold otherwise would discourage banks chartered in states other than Wisconsin from lending money to investors hoping to invest in Wisconsin projects and likely trigger the cost of capital for Wisconsin projects to rise. Lowell Management Services, Inc. v. Geneva National PQC, LLC, 2009 WI App 149, 321 Wis. 2d 589, 774 N.W.2d 811, 08-2533.

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

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

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

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

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

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

706.13 Slander of title. (1) In addition to any criminal penalty or civil remedy provided by law, any person who submits for filing, entering in the judgment and lien docket or recording, any lien, claim of lien, lis pendens, writ of attachment, financing statement or any other instrument relating to a security interest in or the title to real or personal property, and who knows or should

have known that the contents or any part of the contents of the instrument are false, a sham or frivolous, is liable in tort to any person interested in the property whose title is thereby impaired, for punitive damages of $1,000 plus any actual damages caused by the filing, entering or recording.

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

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

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

Enactment of this section did not create a cause of action nor destroy the common-law right of recovery. Schlytter v. Lesperance, 62 Wis. 2d 661, 215 N.W.2d 552 (1974).

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

The filing of a lis pendens is not privileged when there is no relationship between the filing and the underlying action. Larson v. Zilz, 151 Wis. 2d 637, 445 N.W.2d 699 (Ct. App. 1989).

To recover for slander of title, it is not necessary in all cases to prove the loss of an actual sale. The trial court must consider whether it is reasonable under the circumstances to require proof that the slander prevented a particular sale, and if not, the court must determine the degree of particularity required. Tym v. Ludwig, 196 Wis. 2d 375, 538 N.W.2d 600 (Ct. App. 1995), 94-2859.

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

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

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

706.20 Disclosure duty; immunity for providing notice about the sex offender registry. (1) Except as provided in sub. (2), an owner of an interest in real property has no duty to disclose to any person in connection with the sale, exchange, purchase or rental of the real property any information related to the fact that a particular person is required to register as a sex offender under s. 301.45 or any information about the sex offender registry under s. 301.45.

(2) If, in connection with the sale, exchange, purchase or rental of real property, a person requests of an owner of an interest in the real property information related to whether a particular person is required to register as a sex offender under s. 301.45 or any other information about the sex offender registry under s. 301.45, the owner has a duty to disclose such information, if the owner has actual knowledge of the information.

(3) Notwithstanding sub. (2), the owner is immune from liability for any act or omission related to the disclosure of information under sub. (2) if the owner in a timely manner provides to the person requesting the information written notice that the person may obtain information about the sex offender registry and persons registered with the registry by contacting the department of corrections. The notice shall include the appropriate telephone number and Internet site of the department of corrections.

History: 1999 a. 89.

706.22 Prohibition on imposing time-of-sale, purchase, or occupancy requirements. (1) DEFINITIONS. In this section:

(a) "Actions with respect to the property" include such actions as having an inspection made by an employee or agent of, or contractor with, the local governmental unit; making improvements or repairs; removing junk or debris; mowing or pruning; performing maintenance or upkeep activities; weatherproofing; upgrading electrical systems; paving; painting; repairing or replacing appliances; replacing or installing fixtures or other items; and actions relating to compliance with building codes or other property condition standards.

(b) "Local governmental unit" means any of the following:

1. A political subdivision of this state.

2. A special purpose district in this state.

3. An agency or corporation of a political subdivision or special purpose district in this state.

4. A combination or subunit of any entity under subds. 1. to 3.

5. An employee or committee of any entity under subds. 1. to 4.

(2) REQUIREMENTS TIED TO SALE, PURCHASE, OR TAKING OCCUPANCY OF PROPERTY PROHIBITED. (a) Except as provided in par. (b), no local governmental unit may by ordinance, resolution, or any other means do any of the following:

1m. Restrict the ability of an owner of real property to sell or otherwise transfer title to or refinance the property by requiring the owner or an agent of the owner to take certain actions with respect to the property or pay a related fee, to show compliance with taking certain actions with respect to the property, or to pay a fee for failing to take certain actions with respect to the property, at any of the following times:

a. Before the owner may sell, refinance, or transfer title to the property.

b. At the time of the sale or refinancing of, or the transfer of title to, the property.

c. Within a certain period of time after selling, refinancing, or transferring title to the property.

2m. Restrict the ability of a person to purchase or take title to real property by requiring the person or an agent of the person to take certain actions with respect to the property or pay a related fee, to show compliance with taking certain actions with respect to the property, or to pay a fee for failing to take certain actions with respect to the property, at any of the following times:

a. Before the person may complete the purchase of or take title to the property.

b. At the time of completing the purchase of or taking title to the property.

c. Within a certain period of time after completing the purchase of or taking title to the property.

3m. Restrict the ability of a purchaser of or transferee of title to residential real property to take occupancy of the property by requiring the purchaser or transferee or an agent of the purchaser or transferee to take certain actions with respect to the property or pay a related fee, to show compliance with taking certain actions with respect to the property, or to pay a fee for failing to take certain actions with respect to the property, at any of the following times:

a. Before the purchaser or transferee may take occupancy of the property.

b. At the time of taking occupancy of the property.

c. Within a certain period of time after taking occupancy of the property.

(b) Paragraph (a) does not do any of the following:

1. Prohibit a local governmental unit from requiring a real property owner or the owner's agent to take certain actions with

respect to the property not in connection with the purchase, sale, or refinancing of, or the transfer of title to, the property.

2. Prohibit a local governmental unit from enforcing, or otherwise affect the responsibility, authority, or ability of a local governmental unit to enforce, a federal or state requirement that does any of the things a local governmental unit is prohibited from doing under par. (a).

(3) EXISTING ORDINANCE, RESOLUTION, OR POLICY UNENFORCEABLE. (a) If a local governmental unit has in effect on July 14, 2015, an ordinance, resolution, or policy that is inconsistent with sub. (2) (a) 1m., the ordinance, resolution, or policy does not apply and may not be enforced.

(b) If a local governmental unit has in effect on March 2, 2016, an ordinance, resolution, or policy that is inconsistent with sub. (2) (a) 2m. or 3m., the ordinance, resolution, or policy does not apply and may not be enforced.

NOTE: 2015 Wis. Acts 176 and 391 each created a paragraph numbered s. 706.22 (3) (b). The language of this paragraph in both acts is identical and directed the Legislative Reference Bureau to insert the effective date of the paragraph into the statutory text. Upon the enactment of Act 176, the Legislative Reference Bureau inserted March 2, 2016, the effective date of the paragraph under that act. The creation of the same language by Act 391, effective April 28, 2016, did not change the initial effective date of the language of this paragraph.

History: 2015 a. 55, 176, 391.

State Law Preempts Municipal Property Inspection Ordinances. Finerty & Haggerty. Wis. Law. Apr. 2016.

706.25 Uniform real property electronic recording act.

(1) DEFINITIONS. In this section:

(a) "Document" means information that satisfies all of the following:

1. The information is inscribed on a tangible medium or it is stored in an electronic or other medium and is retrievable in perceivable form.

2. The information is eligible to be recorded in the land records maintained by the register of deeds.

(b) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(c) "Electronic document" means a document that is received by the register of deeds in an electronic form.

(d) "Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with a document and executed or adopted by a person with the intent to sign the document.

(e) "Paper document" means a document that is received by the register of deeds in a form that is not electronic.

(f) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government, or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(g) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(2) VALIDITY OF ELECTRONIC DOCUMENTS. (a) If a law requires, as a condition for recording, that a document be an original, be on paper or another tangible medium, or be in writing, the requirement is satisfied by an electronic document satisfying this section.

(b) If a law requires, as a condition for recording, that a document be signed, the requirement is satisfied by an electronic signature.

(c) A requirement that a document or a signature associated with a document be notarized, acknowledged, verified, witnessed, or made under oath is satisfied if the electronic signature of the person authorized to perform that act, and all other information required to be included, is attached to or logically associated with the document or signature. A physical or electronic image of a stamp, impression, or seal need not accompany an electronic signature.

(3) RECORDING OF DOCUMENTS. (a) A register of deeds may do any of the following:

1. Receive, index, store, archive, and transmit electronic documents.

2. Provide for access to, and for search and retrieval of, documents and information by electronic means.

3. Convert paper documents accepted for recording into electronic form.

4. Convert into electronic form information recorded before the register of deeds began to record electronic documents.

5. Accept electronically any fee that the register of deeds is authorized to collect.

6. Agree with other officials of a state or a political subdivision thereof, or of the United States, on procedures or processes to facilitate the electronic satisfaction of prior approvals and conditions precedent to recording and the electronic payment of fees.

(b) A register of deeds who accepts electronic documents for recording shall continue to accept paper documents as authorized by state law and shall place entries for both types of documents in the same index.

(c) A register of deeds who performs any of the functions specified in this subsection shall do so in compliance with standards established by the electronic recording council and promulgated by rule under sub. (4).

(d) Every document that a 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 section or s. 59.43 (2m), if the document is properly indexed in a public index maintained in the office of the register of deeds.

(4) ADMINISTRATION AND STANDARDS. (a) The electronic recording council shall adopt standards to implement this section. The department of administration shall promulgate by rule the standards adopted, amended, or repealed by the council under this paragraph.

(b) To keep the standards and practices of registers of deeds in this state in harmony with the standards and practices of recording offices in other jurisdictions that enact substantially this section and to keep the technology used by registers of deeds in this state compatible with technology used by recording offices in other jurisdictions that enact substantially this section, the electronic recording council, so far as is consistent with the purposes, policies, and provisions of this section, in adopting, amending, and repealing standards shall consider all of the following:

1. Standards and practices of other jurisdictions.

2. The most recent standards promulgated by national standard-setting bodies, such as the Property Records Industry Association.

3. The views of interested persons and governmental officials and entities.

4. The needs of counties of varying sizes, populations, and resources.

5. The need for security protection to ensure that electronic documents are accurate, authentic, adequately preserved, and resistant to tampering.

(c) The electronic recording council shall review the statutes related to real property and the statutes related to recording real property documents and shall recommend to the legislature any

changes in the statutes that the council finds necessary or advisable.

(5) UNIFORMITY OF APPLICATION AND CONSTRUCTION. In applying and construing this section, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

(6) RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT. (a) Except as provided in par. (b), this section modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 USC 7001, et seq.

(b) This section does not modify, limit, or supersede 15 USC 7001 (c) or authorize electronic delivery of any of the notices described in 15 USC 7003 (b).

(7) SHORT TITLE. This section may be cited as the Uniform Real Property Electronic Recording Act.

History: 2005 a. 421; 2009 a. 98.

CHAPTER 893

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

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NOTE: See the note at the end of this chapter containing indexes to statutes outside this chapter that impose time restrictions on asserting a claim or cause of action and statutes outside this chapter that govern claims against governmental entities.

SUBCHAPTER I

COMMENCEMENT, COMPUTATION, ACTION IN NON-

WISCONSIN FORUM AND MISCELLANEOUS PROVISIONS

893.01 Civil actions; objection as to time of commencing. Civil actions may be commenced only within the periods prescribed in this chapter, except when, in special cases, a different limitation is provided by statute. An objection that the action was not commenced within the time limited may only be taken by answer or motion to dismiss under s. 802.06 (2) in proper cases.

History: Sup. Ct. Order, 67 Wis. 2d 585, 770 (1975); 1979 c. 323.

Judicial Council Committee's Note, 1979: This section remains from previous ch. 893 and is revised only for purposes of textual clarity. [Bill 326-A]

Estoppel can be invoked to preclude a defense based on a statute of limitations when a defendant has been guilty of fraudulent or inequitable conduct. The conduct need not constitute actual fraud, but may be equivalent to a representation upon which the plaintiff may have relied to the plaintiff's disadvantage by not commencing the plaintiff's action within the statutory period. That conduct must have occurred before the expiration of the limitation period with no unreasonable delay by the aggrieved party after the inducement therefor has ceased to operate. State ex rel. Susedik v. Knutson, 52 Wis. 2d 593, 191 N.W.2d 23 (1971).

A court has no authority to enlarge the time in which to file a complaint. Pulchinski v. Strnad, 88 Wis. 2d 423, 276 N.W.2d 781 (1979).

When a limitation period would otherwise expire on a legal holiday, s. 990.001 (4) (b) permits the commencement of an action on the next secular day. Cuisinier v. Sattler, 88 Wis. 2d 654, 277 N.W.2d 776 (1979).

Statutes of limitations are substantive statutes and are not given retroactive effect. Betthauser v. Medical Protective Co., 172 Wis. 2d 141, 493 N.W.2d 40 (1992).

A circuit court may use its equitable powers to set aside a statute of limitations if certain enumerated circumstances are present. Williams v. Kaerek Builders, Inc., 212 Wis. 2d 150, 568 N.W.2d 313 (Ct. App. 1997), 96-2396.

The primary reason for applying equitable estoppel to bar a defendant from asserting the statute of limitations is when the conduct and representations of the defendant were so unfair and misleading as to outbalance the public's interest in setting a limitation on bringing actions. Wosinski v. Advance Cast Stone Co., 2017 WI App 51, 377 Wis. 2d 596, 901 N.W.2d 797, 14-1961.

A defendant was estopped from pleading the statute of limitations by fraudulent conduct that prevented the plaintiff from filing a timely suit. Bell v. City of Milwaukee, 746 F.2d 1205 (1984).

Remedying the Confusion Between Statutes of Limitations and Statutes of Repose in Wisconsin—A Conceptual Guide. La Fave. 88 MLR 927 (2005).

893.02 Action, when commenced. Except as provided in s. 893.415 (3), an action is commenced, within the meaning of any provision of law which limits the time for the commencement of an action, as to each defendant, when the summons naming the defendant and the complaint are filed with the court, but no action shall be deemed commenced as to any defendant upon whom service of authenticated copies of the summons and complaint has not been made within 90 days after filing.

History: Sup. Ct. Order, 67 Wis. 2d 585, 770 (1975); 1975 c. 218; 1979 c. 323; 1997 a. 187; 2003 a. 287.

Judicial Council Committee's Note, 1979: This section is previous s. 893.39 of the statutes renumbered for more logical placement in restructured ch. 893. [Bill 326-A]

In a products liability action, a new cause of action for punitive damages brought after the statute of limitations expired related back to the date of filing the original pleading. Wussow v. Commercial Mechanisms, Inc., 97 Wis. 2d 136, 293 N.W.2d 897 (1980).

An action against an unnamed defendant under s. 807.12 that was filed on the last day of a limitation period, in which amended process naming the defendant was served within 60 days after filing, was not time barred. The relation back requirements of s. 802.09 (3) were inapplicable. Lak v. Richardson-Merrell, Inc., 100 Wis. 2d 641, 302 N.W.2d 483 (1981).

Service of process did not commence an action when the plaintiff failed to file the summons and complaint. The defendant's answer did not waive the statute of limitations defense or estop the defendant from raising it after the limitation period expired. Hester v. Williams, 117 Wis. 2d 634, 345 N.W.2d 426 (1984).

A fictitiously designated defendant's right to extinction of an action does not effectively vest until 60 days after the statute of limitations runs. Lavine v. Hartford Accident & Indemnity Co., 140 Wis. 2d 434, 410 N.W.2d 623 (Ct. App. 1987).

Timely Service Abroad in Diversity Suits. La Fave. Wis. Law. Nov. 2000.

893.03 Presenting claims. The presentation of any claim, in cases where by law such presentment is required, to the circuit court shall be deemed the commencement of an action within the meaning of any law limiting the time for the commencement of an action thereon.

History: 1977 c. 449 s. 497; 1979 c. 323.

Judicial Council Committee's Note, 1979: This section is previous s. 893.41 renumbered for more logical placement in restructured ch. 893. [Bill 326-A]

A statute of limitations is not tolled by filing an action in a court completely lacking jurisdiction and later refiling in the proper court after the statute has run. Schafer v. Wegner, 78 Wis. 2d 127, 254 N.W.2d 193 (1977).

893.04 Computation of period within which action may be commenced. Unless otherwise specifically prescribed by law, a period of limitation within which an action may be commenced is computed from the time that the cause of action accrues until the action is commenced.

History: 1979 c. 323.

Judicial Council Committee's Note, 1979: Previous section 893.48 is repealed and sections 893.04 and 893.14 created for the purpose of clarity. See Denzer v. Rouse, 48 Wis. 2d 528, 180 N.W.2d 521 (1970) for a discussion of when a cause of action accrues, citing Holifield v. Setco Industries, Inc. 42 Wis. 2d 750, 168 N.W.2d 177 (1969). [Bill 326-A]

In attorney malpractice actions, as in medical malpractice cases, when the date of the negligence and the date of injury are the same, the statute of limitations runs from that date, for that is the time when the cause of action accrues. Denzer v. Rouse, 48 Wis. 2d 528, 180 N.W.2d 521 (1970).

The loss of the right to a patent is the loss of the right to exclude others, and, therefore, the injury occurred on the date that the right to the patent was lost. Boehm v. Wheeler, 65 Wis. 2d 668, 223 N.W.2d 536 (1974).

Because s. 67.11 requires moneys in a sinking fund to remain inviolate until the bonds are retired, a cause of action regarding the fund could only accrue at retirement. Joint School District No. 1 v. City of Chilton, 78 Wis. 2d 52, 253 N.W.2d 879 (1977).

A tort claim accrues when the injury is discovered or reasonably should have been discovered. This "discovery rule" applies to all tort actions other than those governed by a statutory discovery rule. Hansen v. A.H. Robins Co., 113 Wis. 2d 550, 335 N.W.2d 578 (1983).

When the plaintiff's early subjective lay person's belief that a furnace caused the injury was contradicted by examining physicians, the cause of action against the furnace company did not accrue until the plaintiff's suspicion was confirmed by later medical diagnosis. Borello v. U.S. Oil Co., 130 Wis. 2d 397, 388 N.W.2d 140 (1986).

Claimed ignorance of, and a blatant failure to follow, applicable regulations cannot be construed as reasonable diligence in discovering an injury when following the rules would have resulted in earlier discovery. Stroh Die Casting Co. v. Monsanto Co., 177 Wis. 2d 91, 502 N.W.2d 132 (Ct. App. 1993).

The day upon which a cause of action accrues is not included in computing the period of limitation. Pufahl v. Williams, 179 Wis. 2d 104, 506 N.W.2d 747 (1993).

The discovery rule does not allow a plaintiff to delay the statute of limitations until the extent of the injury is known. The statute begins to run when the plaintiff has sufficient evidence that a wrong has been committed by an identified person. Pritzlaff v. Archdiocese of Milwaukee, 194 Wis. 2d 302, 533 N.W.2d 780 (1995).

A plaintiff can rely on the discovery rule only if the plaintiff has exercised reasonable diligence. Jacobs v. Nor-Lake, Inc., 217 Wis. 2d 625, 579 N.W.2d 254 (Ct. App. 1998), 97-1740.

The discovery rule applies to statutes of limitations that limit the time to sue from the time when the action "accrues," being the time of discovery. The discovery rule does not apply to a statute of repose, a statute that specifies the time of accrual and limits the time suit can be brought from that specified date. Tomczak v. Bailey, 218 Wis. 2d 245, 578 N.W.2d 166 (1998), 95-2733.

The discovery rule does not extend to causes of action not sounding in tort. State v. Chrysler Outboard Corp., 219 Wis. 2d 130, 580 N.W.2d 203 (1998), 96-1158.

Knowing that a particular product caused an injury, an injured party cannot extend the accrual date for a cause of action against the product's manufacturer due to the subsequent discovery of possible connections between that product and another manufacturer's product in causing the injury. Baldwin v. Badger Mining Corp., 2003 WI App 95, 264 Wis. 2d 301, 663 N.W.2d 382, 02-1197.

The discovery rule permits the accrual of both survival claims and wrongful death claims to occur after the date of the decedent's death. In the absence of a legislatively created rule to the contrary, these claims accrue when there is a claim capable of present enforcement, a suable party against whom it may be enforced, and a party who has a present right to enforce it. Christ v. Exxon Mobil Corp., 2015 WI 58, 362 Wis. 2d 668, 866 N.W.2d 602, 12-1493.

Discovery occurs when the plaintiff has information that would constitute the basis for an objective belief as to the plaintiff's injury and its cause. The degree of certainty that constitutes sufficient knowledge is variable, depending on the particular facts and circumstances of the plaintiff. With corporate players, a different quantum of expertise and knowledge is in play. Wisconsin courts have recognized that ignorance is a less compelling excuse for corporate enterprises in the context of the discovery rule. KDC Foods, Inc. v. Gray, Plant, Mooty, Mooty & Bennett, P.A., 763 F.3d 743 (2014).

Computing Time in Tort Statutes of Limitation. Ghiardi. 64 MLR 575 (1981).

Computing Time in Statutes of Limitation. Ghiardi. Wis. Law. Mar. 1993.

893.05 Relation of statute of limitations to right and remedy. When the period within which an action may be commenced on a Wisconsin cause of action has expired, the right is extinguished as well as the remedy.

History: 1979 c. 323.

Judicial Council Committee's Note, 1979: This new section is a codification of Wisconsin case law. See Maryland Casualty Company v. Beleznay, 245 Wis. 390, 14 N.W.2d 177 (1944), in which it is stated at page 393: "In Wisconsin the running of the statute of limitations absolutely extinguishes the cause of action for in Wisconsin limitations are not treated as statutes of repose. The limitation of actions is a right as well as a remedy, extinguishing the right on one side and creating a right on

the other, which is as of high dignity as regards judicial remedies as any other right and it is a right which enjoys constitutional protection". [Bill 326-A]

The expiration of the limitations period extinguishes the cause of action of the potential plaintiff and it also creates a right enjoyed by the would-be defendant to insist on that statutory bar. A defendant, having acquired a right to assert the statute of limitations bar by operation of law, would suffer plain legal prejudice if a plaintiff's motion for voluntary dismissal were granted. Wojtas v. Capital Guardian Trust Co., 477 F.3d 924 (2007).

893.07 Application of foreign statutes of limitation. **(1)** If an action is brought in this state on a foreign cause of action and the foreign period of limitation which applies has expired, no action may be maintained in this state.

(2) If an action is brought in this state on a foreign cause of action and the foreign period of limitation which applies to that action has not expired, but the applicable Wisconsin period of limitation has expired, no action may be maintained in this state.

History: 1979 c. 323.

Judicial Council Committee's Note, 1979: Sub. (1) applies the provision of s. 893.05 that the running of a statute of limitations extinguishes the right as well as the remedy to a foreign cause of action on which an action is attempted to be brought in Wisconsin in a situation where the foreign period has expired. Sub. (1) changes the law of prior s. 893.205 (1), which provided that a resident of Wisconsin could sue in this state on a foreign cause of action to recover damages for injury to the person even if the foreign period of limitation had expired.

Sub. (2) applies the Wisconsin statute of limitations to a foreign cause of action if the Wisconsin period is shorter than the foreign period and the Wisconsin period has run. [Bill 326-A]

The borrowing statute was properly applied to an injury received outside of this state. A conflict of laws analysis was not appropriate. Guertin v. Harbour Assurance Co. of Bermuda, 141 Wis. 2d 622, 415 N.W.2d 831 (1987).

Section 893.16 (1) is effective to toll the running of the statute of limitations, even when under this section the plaintiff would be barred from bringing suit under applicable foreign law. Scott v. First State Insurance Co., 155 Wis. 2d 608, 456 N.W.2d 152 (1990).

This section does not borrow foreign tolling statutes. Johnson v. Johnson, 179 Wis. 2d 574, 508 N.W.2d 19 (Ct. App. 1993).

This section is applicable to actions on contracts. A claim is foreign when the final significant event giving rise to a suable event, the alleged breach, occurs outside the state. Abraham v. General Casualty Co. of Wisconsin, 217 Wis. 2d 294, 576 N.W.2d 46 (1998), 95-2918.

Sub. (1) refers to "the period of limitation," as defined by the foreign jurisdiction, that governs the case in the foreign state. Application of this rule includes a limitation period that operates as a statute of repose. Wenke v. Gehl Co., 2004 WI 103, 274 Wis. 2d 220, 682 N.W.2d 405, 01-2649.

In medical malpractice cases involving a negligent misdiagnosis that results in a latent, though continuous, injury, whether the action is "foreign" for purposes of Wisconsin's borrowing statute is determined by whether the plaintiff's first injury occurred outside of Wisconsin. When the plaintiff's place of first injury is unknowable but could have occurred within or outside of this state, the borrowing statute does not apply. Paynter v. ProAssurance Wisconsin Insurance Co., 2019 WI 65, 387 Wis. 2d 278, 929 N.W.2d 113, 17-0739.

A cause of action is foreign for purposes of the borrowing statute if the plaintiff's injury occurred outside of this state. An injury occurs where it is felt rather than where it originates. To the extent the physician in this case violated the plaintiff's right to informed consent, that injury was felt in Michigan because the plaintiff was in Michigan when the physician allegedly informed the plaintiff that his growth was not malignant and needed no further treatment. Paynter v. ProAssurance Wisconsin Insurance Co., 2019 WI 65, 387 Wis. 2d 278, 929 N.W.2d 113, 17-0739.

A tort action based on an injury received outside of this state was "foreign." Johnson v. Deltadynamics, Inc., 813 F.2d 944 (1987).

Under this section, a foreign jurisdiction's period of limitations is borrowed, but not its period of repose. Beard v. J.I. Case Co., 823 F.2d 1095 (1987).

It is a quirk of libel law that a plaintiff is generally considered to be injured wherever the defamatory writing is published. Therefore, a multistate defamation case in which at least some injury occurs within the borders of this state does not constitute a foreign cause of action for purposes of the borrowing statute. Faigin v. Doubleday Dell Publishing Group, Inc., 98 F.3d 268 (1996).

This section directs courts to apply the shortest limitation period possible to foreign causes of action, whether the applicable statute is a statute of limitations or a statute of repose. Merner v. Deere & Co., 176 F. Supp. 2d 882 (2001).

Wisconsin's Borrowing Statute: Did We Shortchange Ourselves? Endreson. 70 MLR 120 (1986).

Interpreting Wisconsin's Borrowing Statute. Wiegand. Wis. Law. May 2001.

SUBCHAPTER II

LIMITATIONS TOLLED OR EXTENDED

893.10 Actions, time for commencing. The period within which an action may be commenced shall not be considered to have expired when the court before which the action is pending is satisfied that the person originally served knowingly gave false information to the officer with intent to mislead the officer in the performance of his or her duty in the service of any summons or civil process. If the court so finds, the period of limitation is extended for one year.

History: 1979 c. 323.

Judicial Council Committee's Note, 1979: This section is previous s. 893.14 renumbered for more logical placement in restructured ch. 893. [Bill 326-A]

Many Wisconsin statutes of limitations use commencement of "an action" to set the time by which a claimant must act to timely preserve a claim. A party can possess a claim without it commencing an action, but a party cannot properly commence an action without it asserting at least one valid claim. Because a claim provides the basis for an action, a claim necessarily exists before an action is brought, and what matters for limitations purposes is whether an action is timely commenced asserting that claim. The legislative choice to refer to an "action" reflects these basic principles. Town of Burnside v. City of Independence, 2016 WI App 94, 372 Wis. 2d 802, 889 N.W.2d 186, 16-0034.

893.11 Extension of time if no person to sue. The fact that there is no person in existence who is authorized to bring an action on a cause of action at the time it accrues shall not extend the time within which, according to this chapter, an action may be commenced upon the cause of action to more than double the period otherwise prescribed by law.

History: 1979 c. 323.

Judicial Council Committee's Note, 1979: This section is previous s. 893.50 renumbered for more logical placement in restructured ch. 893 and revised for the purpose of textual clarity only. [Bill 326-A]

893.12 Advance payment of damages; limitation extended. The period fixed for the limitation for the commencement of actions, if a payment is made as described in s. 885.285 (1), shall be either the period of time remaining under the original statute of limitations or 3 years from the date of the last payment made under s. 885.285 (1), whichever is greater.

History: 1979 c. 323.

Judicial Council Committee's Note, 1979: This section is created to place the statute extending statute of limitations when there has been a settlement and advance payment of claim for damages into the subchapter of chapter 893 on extension of statute of limitations. The provisions of prior s. 885.285 (4) are contained without change in newly created s. 893.12. [Bill 326-A]

Any payment made in advance or settlement of either personal injury or property damage claims, when the plaintiff has both, extends the limitation for a personal injury claim, if it is made within the three-year limit period of s. 893.54 (1). Abraham v. Milwaukee Mutual Insurance Co., 115 Wis. 2d 678, 341 N.W.2d 414 (Ct. App. 1983).

This section does not apply to foreign causes of action. Section 893.07 (1) prevents this section from extending foreign statutes of limitations. Thimm v. Automatic Sprinkler Corp. of America, 148 Wis. 2d 332, 434 N.W.2d 842 (Ct. App. 1988).

The tolling provision applies only to the party that received a settlement or advance payment under s. 885.285. It does not apply to a stranger to the settlement. Riley v. Doe, 152 Wis. 2d 766, 449 N.W.2d 83 (Ct. App. 1989).

For a period of limitations to be extended under this section as the result of a "payment" by check, the check must be accepted and negotiated. Parr v. Milwaukee Building & Construction Trades, 177 Wis. 2d 140, 501 N.W.2d 858 (Ct. App. 1993).

To be a payment under s. 885.285 that will toll or extend the statute of limitations, a payment must be related to fault or liability. Gurney v. Heritage Mutual Insurance Co., 188 Wis. 2d 68, 523 N.W.2d 193 (Ct. App. 1994).

The waiver by the defendant medical provider in a medical malpractice action of the copayment portion of the amount due for the plaintiff's medical treatment did not constitute a payment under this section or s. 885.285. Young v. Aurora Medical Center of Washington County, Inc., 2004 WI App 71, 272 Wis. 2d 300, 679 N.W.2d 549, 03-0224.

893.13 Tolling of statutes of limitation. **(1)** In this section and ss. 893.14 and 893.15 "final disposition" means the end of the period in which an appeal may be taken from a final order or judgment of the trial court, the end of the period within which an order for rehearing can be made in the highest appellate court to which an appeal is taken, or the final order or judgment of the court to which remand from an appellate court is made, whichever is latest.

(2) A law limiting the time for commencement of an action is tolled by the commencement of the action to enforce the cause of action to which the period of limitation applies. The law limiting the time for commencement of the action is tolled for the period from the commencement of the action until the final disposition of the action.

(3) If a period of limitation is tolled under sub. (2) by the commencement of an action and the time remaining after final

disposition in which an action may be commenced is less than 30 days, the period within which the action may be commenced is extended to 30 days from the date of final disposition.

History: 1979 c. 323.

Judicial Council Committee's Note, 1979: Section 893.35 is repealed and this section created to clarify the ending of the tolled period of a statute of limitations in the various situations which can arise when an appeal is taken.

Sub. (3) would apply when, for example, an action was commenced when the period of limitation has only 5 days left to run. The running of the period of limitation is tolled for the period from commencement of the action until the day of its final disposition, such as dismissal of the action based on the pleadings. A 30-day period is then provided (rather than the 5 days left on the original period of limitation) in order to provide a reasonable time for a party to consider whether to recommence the action. [Bill 326-A]

This section does not toll the statute to allow an independent claim by an insurer. It simply insures that the joinder of constituent parts of a cause of action during the pendency of the action is not frustrated by the application of the appropriate statute of limitations. Aetna Casualty & Surety Co. v. Owen, 191 Wis. 2d 744, 530 N.W.2d 51 (Ct. App. 1995).

The filing of an action, subsequently voluntarily dismissed, tolls the statute of limitations under sub. (2) for the period specified in sub. (1) for cases in which no appeal is taken. Johnson v. County of Crawford, 195 Wis. 2d 374, 536 N.W.2d 167 (Ct. App. 1995), 95-0144.

A suit filed prior to the expiration of the 120-day period for a denial of claim under s. 893.80 is not truly commenced and does not toll the statute of limitations when filed. Colby v. Columbia County, 202 Wis. 2d 342, 550 N.W.2d 124 (1996), 93-3348.

To interpret this statute to mean that a plaintiff's timely lawsuit tolled the statute of limitations as to all other possible victims would abrogate the statute of limitations. Such an interpretation would lead to absurd results and render meaningless the statute of limitations in multiple-victim cases. Barnes v. WISCO Hotel Group, 2009 WI App 72, 318 Wis. 2d 537, 767 N.W.2d 352, 08-1884.

Aetna, 191 Wis. 2d 744 (1995), does not establish that whenever a person intervenes in a pending lawsuit, asserting claims identical to, although not constituent of, those of the original parties, the intervenor receives the benefit of tolling under sub. (2). Only a person having one of the three "constituent parts" of an original, timely cause of action under s. 803.03 (2) (a), i.e., subrogation, derivation, or assignment, may successfully intervene in a pending action without regard to the statute of limitations. Town of Burnside v. City of Independence, 2016 WI App 94, 372 Wis. 2d 802, 889 N.W.2d 186, 16-0034.

893.135 Tolling of statute of limitations for marital property agreements. Any statute of limitations applicable to an action to enforce a marital property agreement under ch. 766 is tolled as provided under s. 766.58 (13).

History: 1985 a. 37; 1987 a. 393.

893.137 Tolling of statute of limitations for certain time-share actions. Any statute of limitations affecting the right of an association organized under s. 707.30 (2) or a time-share owner, as defined in s. 707.02 (31), against a developer, as defined in s. 707.02 (11), is tolled as provided in s. 707.34 (1) (bm).

History: 1987 a. 399.

893.14 Limitation on use of a right of action as a defense or counterclaim. Unless otherwise specifically prescribed by law, the period within which a cause of action may be used as a defense or counterclaim is computed from the time of the accrual of the cause of action until the time that the plaintiff commences the action in which the defense or counterclaim is made. A law limiting the time for commencement of an action is tolled by the assertion of the defense or the commencement of the counterclaim until final disposition of the defense or counterclaim. If a period of limitation is tolled under this section and the time remaining after final disposition in which an action may be commenced is less than 30 days, the period within which the action may be commenced is extended to 30 days from the date of final disposition.

History: 1979 c. 323.

Judicial Council Committee's Note, 1979: This section is based upon previous ss. 893.48 and 893.49. The section provides, however, that a statute of limitations is tolled only from the assertion of the defense or counterclaim until the final disposition of the defense or counterclaim. Under previous s. 893.49 a statute of limitations was tolled from the commencement of the action in which the defense or counterclaim was asserted until the termination of the action. [Bill 326-A]

When an action to recover damages for injuries to the person is commenced as a counterclaim pursuant to this section, the statute of limitations established by s. 893.54 applies. The tolling of the statute of limitations under this section begins on the date the defendant files the counterclaim. The phrase "unless otherwise specifically prescribed by law" applies to counterclaims that were already barred at the time the plaintiff filed the claim; such claims are not resurrected by the plaintiff's filing. Donaldson v. West Bend Mutual Insurance Co., 2009 WI App 134, 321 Wis. 2d 244, 773 N.W.2d 470, 08-2289.

In determining whether a client exercised reasonable diligence to discover a claim against its attorney, the existence of a fiduciary relationship, rather than excusing a client entirely from its obligation to investigate, is merely one factor to be considered. Under the circumstances of this case, although a fiduciary relationship existed, the client was a sophisticated corporate actor and its president and chief executive officer harbored suspicions about the attorney's conduct for approximately one year before the transaction in question closed. Those facts gave rise to a duty to investigate, regardless of the fiduciary relationship. Sands v. Menard, 2016 WI App 76, 372 Wis. 2d 126, 887 N.W.2d 94, 12-2377.
Affirmed on other grounds. 2017 WI 110, 379 Wis. 2d 1, 904 N.W.2d 789, 12-2377.

893.15 Effect of an action in a non-Wisconsin forum on a Wisconsin cause of action. (1) In this section "a non-Wisconsin forum" means all courts, state and federal, in states other than this state and federal courts in this state.

(2) In a non-Wisconsin forum, the time of commencement or final disposition of an action is determined by the local law of the forum.

(3) A Wisconsin law limiting the time for commencement of an action on a Wisconsin cause of action is tolled from the period of commencement of the action in a non-Wisconsin forum until the time of its final disposition in that forum.

(4) Subsection (3) does not apply to an action commenced on a Wisconsin cause of action in a non-Wisconsin forum after the time when the action is barred by a law of the forum limiting the time for commencement of an action.

(5) If an action is commenced in a non-Wisconsin forum on a Wisconsin cause of action after the time when the Wisconsin period of limitation has expired but before the foreign period of limitation has expired, the action in the non-Wisconsin forum has no effect on the Wisconsin period of limitation.

History: 1979 c. 323.

Judicial Council Committee's Note, 1979: Sub. (1) defines the term "a non-Wisconsin forum". "State" is defined in s. 990.01 (40) to include the District of Columbia, Puerto Rico, and territories of the United States.

Sub. (2) determines the commencement and termination of an action in a non-Wisconsin forum by the law of that forum. "Local law" is referred to so that the non-Wisconsin court determining the commencement of an action in, for example, Illinois will use Illinois law, not including any other law which an Illinois court might use under a choice of law theory.

Sub. (3) applies the tolling effect of Wisconsin statutes to actions on Wisconsin causes of action brought in federal courts in Wisconsin and to all other courts, state and federal, in the United States.

Sub. (4) prevents the commencement of an action in a forum whose statute of limitations has run from extending the Wisconsin tolling period.

Sub. (5) prevents the maintenance of an action in a non-Wisconsin forum from extending a Wisconsin statute of limitations. [Bill 326-A]

A voluntarily dismissed federal action does not toll the Wisconsin statute of limitations. A voluntarily dismissed federal action is a nullity, having no effect on a statute of limitations. Culbert v. Ciresi, 2003 WI App 158, 266 Wis. 2d 189, 667 N.W.2d 825, 02-3320.

893.16 Person under disability. (1) If a person entitled to bring an action is, at the time the cause of action accrues, either under the age of 18 years, except for actions against health care providers; or mentally ill, the action may be commenced within 2 years after the disability ceases, except that where the disability is due to mental illness, the period of limitation prescribed in this chapter may not be extended for more than 5 years.

(2) Subsection (1) does not shorten a period of limitation otherwise prescribed.

(3) A disability does not exist, for the purposes of this section, unless it existed when the cause of action accrues.

(4) When 2 or more disabilities coexist at the time the cause of action accrues, the 2-year period specified in sub. (1) does not begin until they all are removed.

(5) This section applies only to statutes in this chapter limiting the time for commencement of an action or assertion of a defense or counterclaim except it does not apply to:

(a) Actions for the recovery of a penalty or forfeiture or against a sheriff or other officer for escape;

(b) Extend the time limited by s. 893.33, 893.41, 893.59, 893.62, 893.73 to 893.76, 893.77 (3), 893.86 or 893.91 or subch. VIII for commencement of an action or assertion of a defense or counterclaim; or

(c) A cause of action which accrues prior to July 1, 1980.

History: 1979 c. 323; 1997 a. 133.

Judicial Council Committee's Note, 1979: This section is based on present ss. 893.135, 893.33, 893.37 and 893.38. Previous ss. 893.135 and 893.33 stated that the time of disability is not counted as the running of a statute of limitation and further stated that an action could be brought within a specified time after the disability ceased. This is inherently inconsistent and is replaced in s. 893.16 by the simple provision that the action may be commenced within 2 years after the disability ceases. Changes from previous s. 893.135 are:

(a) The period within which to sue after the period of disability ends is reduced from 5 years to 2 years.

(b) The maximum extension time available to those under disability of insanity or imprisonment is limited to 5 years. This means that such individuals must sue within 5 years after the basic applicable statute of limitations would have run against one not under disability, or within 2 years after the disability ends, whichever period is shorter.

(c) The phrase in previous s. 893.135, "at the time such title shall first descend or accrue" is changed to "at the time the cause of action accrues," and this is reinforced by subsection (3). Despite appearances, this represents no change in substance because of the decision in Swearingen v. Roberts, 39 Wis. 462 (1876).

Other changes include:

(a) A specific provision provides that no limitation period is shortened by the application of this section. This represents no substantive change.

(b) In view of the 5-year extension provision reasons for excluding those imprisoned for life from the benefits of the disability provision disappear and the exclusion has been dropped.

(c) The period within which to sue provided in previous s. 893.33 has been increased from one year to 2 years.

To illustrate some of the effects of these revisions:

(a) If a statute of limitation has run on a cause of action of a minor for a personal injury the minor would have one year to commence an action after attaining age 18 under previous s. 893.33. Under s. 893.16 the minor has 2 years to commence an action after attaining age 18.

(b) If a minor has a cause of action affecting title to real estate and the statute of limitation has run the minor has 5 years to commence an action after attaining age 18 under previous s. 893.135. Under s. 893.16 the minor has 2 years to commence the action. [Bill 326-A]

Sub. (1) is effective to toll the running of a statute of limitations even when, under s. 893.07, the plaintiff would be barred from bringing suit under applicable foreign law. Scott v. First State Insurance Co., 155 Wis. 2d 608, 456 N.W.2d 152 (1990).

If a party wishes the benefit of the disability tolling statute, then the party does not get the benefit of the discovery rule. Kilaab v. Prudential Insurance Co. of America, 198 Wis. 2d 699, 543 N.W.2d 538 (Ct. App. 1995).

Injury from intentional acts of sexual assault against minors and the cause of any injury should have been discovered, as a matter of law, at the time of the assaults. A claim of repressed memory does not indefinitely toll the statute of limitations regardless of the victim's minority or the position of trust occupied by the alleged perpetrator. Doe v. Archdiocese of Milwaukee, 211 Wis. 2d 312, 565 N.W.2d 94 (1997), 94-0423.

Parents' claims for injury resulting from the sexual assault of their child accrue when the child's claims accrue, regardless of when the parents learn of their claim. Joseph W. v. Catholic Diocese of Madison, 212 Wis. 2d 925, 569 N.W.2d 795 (Ct. App. 1997), 96-2220.

Under sub. (1), "mental illness" is a mental condition that renders a person functionally unable to understand or appreciate the situation giving rise to the legal claim so that the person can assert legal rights or functionally unable to understand legal rights and appreciate the need to assert them. Legal consultation and filings are probative of a plaintiff's mental health and functional ability to appreciate and act upon the plaintiff's legal rights. Storm v. Legion Insurance Co., 2003 WI 120, 265 Wis. 2d 169, 665 N.W.2d 353, 01-1139.

Death constitutes a cessation of disability under this section. Walberg v. St. Francis Home, Inc., 2005 WI 64, 281 Wis. 2d 99, 697 N.W.2d 36, 03-2164.

This section does not apply to a negligence claim alleging injury to a developmentally disabled child caused by a health care provider. The legislature has not provided a statute of limitations for claims against health care providers alleging injury to a developmentally disabled child. Haferman v. St. Clare Healthcare Foundation, Inc., 2005 WI 171, 286 Wis. 2d 621, 707 N.W.2d 853, 03-1307.

Storm, 2003 WI 120, does not stand for the proposition that sub. (1) tolls the three-year period of limitation under s. 893.555 (2) (a) when a claimant survives one month after an injury. Rather, the *Storm* court's use of the term "toll" reflects the practical effect of sub. (1) under circumstances in which a claimant's disability never ceases. In that event, a period of limitation is never triggered by the cessation of the claimant's disability, and the underlying period of limitation can be effectively "tolled" for up to five years. In contrast, in this case in which the decedent's disability ceased upon death one month after the injury, the two-year period of limitation in sub. (1) was not triggered, and, pursuant to sub. (2), the otherwise applicable three-year period of limitation in s. 893.555 (2) (a) applied and was not tolled. Estate of Cohen v. Trinity Health Management, LLC, 2022 WI App 26, 402 Wis. 2d 220, 975 N.W.2d 293, 21-1195.

A prisoner is entitled to the tolling provision under sub. (1) when bringing a 42 USC 1983 action. Hardin v. Straub, 490 U.S. 536, 109 S. Ct. 1998, 104 L. Ed. 2d 582 (1989).

893.17 Transition; limitation if disability exists; temporary. (1) This section does not apply to a cause of action which accrues on or after July 1, 1980.

(2) Except as provided in sub. (2m), if a person entitled to commence any action for the recovery of real property or to make an entry or defense founded on the title to real property or to rents or services out of the real property is, at the time the title shall first descend or accrue, under any of the following disabilities, the time during which the disability continues is not a part of the time limited by this chapter for the commencement of the action or the making of the entry or defense:

(a) The person is under the age of 18 years.

(b) The person is insane.

(c) The person is imprisoned on a criminal charge or in execution upon conviction of a criminal offense, for a term less than for life.

(2m) An action under sub. (2) may be commenced or entry or defense made, after the time limited and within 5 years after the disability ceases or the person entitled dies, if the person dies while under the disability, but the action shall not be commenced or entry or defense made after that period.

(3) This section shall not operate to extend the time for commencing any action or assertion of a defense or counterclaim with respect to which a limitation period established in s. 893.33 has expired and does not apply to s. 893.41, 893.59, 893.62, 893.73 to 893.76, 893.77 (3), 893.86 or 893.91 or subch. VIII.

History: 1971 c. 213 s. 5; 1979 c. 323; 1999 a. 85.

Judicial Council Committee's Note, 1979: This section is previous s. 893.135 of the statutes renumbered for more logical placement into restructured ch. 893 and amended to make its disability provisions applicable only to a cause of action for recovery of real property or to make an entry or defense founded on the title to real property or to its rents or services which accrues prior to July 1, 1980. The general disability provisions in s. 893.16 applicable to all statutes of limitation in ch. 893 apply to all causes of action which accrue on or after July 1, 1980. [Bill 326-A]

893.18 Transition; persons under disability. (1) This section does not apply to a cause of action which accrues on or after July 1, 1980 or to s. 893.41, 893.59, 893.62, 893.73 to 893.76, 893.77 (3), 893.86 or 893.91 or subch. VIII.

(2) Except as provided in sub. (2m), and except in actions for the recovery of a penalty or forfeiture, actions against a sheriff or other officer for an escape, or actions for the recovery or possession of real property, if a person entitled to bring an action mentioned in this chapter was at the time the cause of action accrued under any of the following disabilities, the time of the disability is not a part of the time limited for the commencement of the action:

(a) The person is under the age of 18 years, except for actions against health care providers.

(b) The person is insane.

(c) The person is imprisoned on a criminal charge or in execution under sentence of a criminal court for a term less than life.

(2m) The period within which an action must be brought cannot be extended under sub. (2) more than 5 years by any disability, except infancy, nor can that period be so extended, in any case, longer than one year after the disability ceases.

(3) A disability does not exist, for the purpose of this section, unless it existed when the cause of action accrued.

(4) When 2 or more disabilities coexist at the time the cause of action accrues the period of limitation does not attach until they all are removed.

History: 1971 c. 213 s. 5; 1977 c. 390; 1979 c. 323; 1981 c. 314; 1999 a. 85.

Judicial Council Committee's Note, 1979: This section is previous s. 893.33 of the statutes renumbered for more logical placement in restructured ch. 893 and amended to make its disability provisions applicable only to a cause of action which accrues prior to July 1, 1980. The general disability provisions in s. 893.16 applicable to all statutes of limitation in ch. 893 apply to all causes of action which occur on or after July 1, 1980. [Bill 326-A]

Because the parents' claim arising from injury to their minor child was filed along

with the child's claim within the time period for the child's claim, the parents' claim was not barred by s. 893.54. Korth v. American Family Insurance Co., 115 Wis. 2d 326, 340 N.W.2d 494 (1983).

An estate's survival claim under s. 895.01 is not tolled by sub. (2) if the only beneficiaries of the estate are minors. Lord v. Hubbell, Inc., 210 Wis. 2d 150, 563 N.W.2d 913 (Ct. App. 1997), 96-1031.

A parent's claim for negligent infliction of emotional distress arising from the same act as the child's injury benefits from the child's tolling period. Carlson v. Tschopp-Durch-Camastral Co., 755 F. Supp. 847 (1991).

893.19 Limitation when person out of state. (1) If a person is out of this state when the cause of action accrues against the person an action may be commenced within the terms of this chapter respectively limited after the person returns or removes to this state. But the foregoing provision shall not apply to any case where, at the time the cause of action accrues, neither the party against nor the party in favor of whom the same accrues is a resident of this state; and if, after a cause of action accrues against any person, he or she departs from and resides out of this state the time of absence is not any part of the time limited for the commencement of an action; provided, that no foreign corporation which files with the department of financial institutions, or any other state official or body, pursuant to the requirements of any applicable statute of this state, an instrument appointing a registered agent as provided in ch. 180, a resident or any state official or body of this state, its attorney or agent, on whom, pursuant to such instrument or any applicable statute, service of process may be made in connection with such cause of action, is deemed a person out of this state within the meaning of this section for the period during which such appointment is effective, excluding from such period the time of absence from this state of any registered agent, resident agent or attorney so appointed who departs from and resides outside of this state.

(2) This section shall not apply to any person who, while out of this state, may be subjected to personal jurisdiction in the courts of this state on any of the grounds specified in s. 801.05.

History: 1971 c. 154; 1977 c. 176; 1979 c. 323; 1995 a. 27.

Judicial Council Committee's Note, 1979: This section is previous s. 893.30 renumbered for more logical placement in restructured ch. 893 and revised for purposes of clarity only. [Bill 326-A]

The validity of the defense that a North Carolina limitation statute barred the action was determined in light of analysis of North Carolina products liability case law. Central Mutual Insurance Co. v. H.O., Inc., 63 Wis. 2d 54, 216 N.W.2d 239 (1974).

893.20 Application to alien enemy. When a person is an alien subject or citizen of a country at war with the United States the time of the continuance of the war is not a part of the time limited for the commencement of the action.

History: 1979 c. 323.

Judicial Council Committee's Note, 1979: This section is previous s. 893.31 renumbered for more logical placement in restructured ch. 893. [Bill 326-A]

893.21 Effect of military exemption from civil process. The time during which any resident of this state has been exempt from the service of civil process on account of being in the military service of the United States or of this state, shall not be taken as any part of the time limited by law for the commencement of any civil action in favor of or against such person.

History: 1979 c. 323.

Judicial Council Committee's Note, 1979: This section is previous s. 893.32 renumbered for more logical placement in restructured ch. 893. [Bill 326-A]

893.22 Limitation in case of death. If a person entitled to bring an action dies before the expiration of the time limited for the commencement of the action and the cause of action survives, an action may be commenced by the person's representatives after the expiration of that time and within one year from the person's death. If a person against whom an action may be brought dies before the expiration of the time limited for the commencement of the action and the cause of action survives, an action may be commenced after the expiration of that time and within one year after the issuing, within this state, of letters testamentary or other letters authorizing the administration of the decedent's estate.

History: 1979 c. 323; 2001 a. 102.

Judicial Council Committee's Note, 1979: This section is previous s. 893.34 renumbered for more logical placement in restructured ch. 893 and revised for the purpose of clarity only. [Bill 326-A]

This section does not provide a one-year extension of the statute of limitations from when a creditor, or another, petitions for probate of the decedent's estate under s. 856.07. This section only applies when a person entitled to bring the action dies with an existing claim that has less than one year remaining on the period of limitations. In such cases, the period of limitations is extended for one year, which begins to run upon the person's death. Kurt Van Engel Commission Co. v. Zingale, 2005 WI App 82, 280 Wis. 2d 777, 696 N.W.2d 280, 04-1900. See also Walberg v. St. Francis Home, Inc., 2005 WI 64, 281 Wis. 2d 99, 697 N.W.2d 36, 03-2164.

893.23 When action stayed. When the commencement of an action is stayed by injunction or statutory prohibition the time of the continuance of the injunction or prohibition is not part of the time limited for the commencement of the action.

History: 1979 c. 323.

Judicial Council Committee's Note, 1979: This section is previous s. 893.36 renumbered for more logical placement in restructured ch. 893. [Bill 326-A]

The interplay between this section and s. 893.80 creates a statute of limitations equal to three years and 120 days when filing a claim under s. 893.80. Colby v. Columbia County, 202 Wis. 2d 342, 550 N.W.2d 124 (1996), 93-3348.

SUBCHAPTER III

ACTIONS CONCERNING REAL OR PERSONAL PROPERTY

Judicial Council Committee's Note, 1979: This subchapter assembles sections affecting real or personal property in a single location in ch. 893. It revises some present provisions; rearranges others; adds a 7-year limitation statute under certain circumstances and a codification of case-law relating to obtaining prescriptive rights by adverse user; and deletes several present sections considered unnecessary.

Notes following the sections of the subchapter explain the rearrangements, changes, and additions. However, specific discussion of those sections eliminated follows:

(1) Previous ss. 893.02 and 893.03 were judged duplicative of the principal operative sections and possibly confusing. Nelson v. Jacobs, 99 Wis. 547, 75 N.W. 406 (1898), appears to rely in part on these sections for the proposition that one who has adversely possessed for 20 years has marketable title which can be forced on a vendee who objects, even though not established of record. This is undesirable and contrary to current understanding; see Baldwin v. Anderson, 40 Wis. 2d 33, 161 N.W.2d 553 (1968). In addition, Zellmer v. Martin, 157 Wis. 341, 147 N.W. 371 (1914) suggests that these sections may mean that 20 years of continuous disseisin of a true owner may bar that owner even if the claiming adverse possessor has not possessed in one of the ways required by previous s. 893.09. This may be confusing, since the language of previous s. 893.09 precluded other forms of possession under the 20-year statute. Other than as here noted, ss. 893.02 and 893.03 have been rarely cited and are not significant. In view of the presumption of possession by the true owner provided by previous s. 893.05, which this subchapter retains, previous ss. 893.02 and 893.03 contributed no needed substance to the subchapter.

(2) Previous s. 893.075 was enacted as a companion to s. 700.30, which was held unconstitutional in Chicago & N.W. Transportation Co. v. Pedersen, 80 Wis. 2d 566, 259 N.W.2d 316 (1977). No new s. 700.30 has been enacted. Therefore, s. 893.075 is surplusage and repealed.

(3) The ancient doctrine of "descent cast" is no longer of practical importance, especially since the passage of the new probate code in 1971. Therefore, the need for a response to that doctrine in previous s. 893.13 has disappeared, and the section has been repealed.

(4) Previous s. 893.18 (7) limited the time within which title to real estate could be attacked based on a defect in the jurisdiction of a court of record which entered a judgment affecting the title. That section is repealed as its application is preempted by s. 706.09 (1) (g). [Bill 326-A]

893.24 Adverse possession; section lines. (1) A written instrument or judgment that declares the boundaries of real estate adversely possessed under s. 893.29, 1995 stats., or s. 893.25, 893.26 or 893.27 does not affect any section line or any section subdivision line established by the United States public land survey or any section or section subdivision line based upon it.

(2) Occupation lines that the court declares to be property lines by adverse possession under s. 893.29, 1995 stats., or s. 893.25, 893.26 or 893.27 shall, by order of the court, be described by a retraceable description providing definite and unequivocal identification of the lines or boundaries. The description shall contain data of dimensions sufficient to enable the description to be mapped and retraced and shall describe the land by government lot, recorded private claim, quarter-quarter sec-

tion, section, township, range and county, and by metes and bounds commencing with a corner marked and established by the United States public land survey or a corner of the private claim.

History: 1985 a. 247; 1997 a. 108.

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 & 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.

893.25 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 Keller 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. Meiers 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 (Ct. App. 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. & Barbara J. Steuck Living Trust v. Easley, 2010 WI App 74, 325 Wis. 2d 455, 785 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, 785 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 & 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 the true owner on inquiry as to the nature and extent of the invasion of the true owner's 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 the claimant's time of possession to that of a prior adverse possessor if the claimant is in privity with the prior adverse possessor. Discussing adverse possession of land uncovered by the recession of a body of water. 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, 785 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, 785 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 & 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 & 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 Co., 2007 WI App 246, 306 Wis. 2d 181, 742 N.W.2d 882, 07-0052.

Under the common law, a party's use of another's real property becomes a prescriptive right upon: 1) an adverse use; 2) that is visible, open, and notorious; 3) under an open claim of right; and 4) continuous for 20 years. With respect to public utilities, sub. (2) displaces the common-law adversity requirement, reduces the vesting period from 20 to ten years, and abrogates the claim-of-right requirement. Bauer v. Wisconsin Energy Corp., 2022 WI 11, 400 Wis. 2d 592, 970 N.W.2d 243, 19-2090.

A continuous use is one that is neither voluntarily abandoned by the party claiming a prescriptive right nor interrupted by an act of the landowner or a third party. A use remains continuous even when the user takes measures reasonably necessary to maintain or improve the use, so long as those measures are not inconsistent with the use's original nature and character nor more burdensome on the landowner. In this

case, the public utility's periodic repairs to its natural-gas line, which included replacing 84 feet of the line by splicing new pipe of the same diameter and material into the existing line, constituted reasonable maintenance to continue its initial purpose, not an interruption or voluntary abandonment. Bauer v. Wisconsin Energy Corp., 2022 WI 11, 400 Wis. 2d 592, 970 N.W.2d 243, 19-2090.

893.29 No adverse possession by or 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. Meiers 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 & All Related or Attached Structures, 2011 WI App 119, 336 Wis. 2d 642, 803 N.W.2d 86, 10-2076.

Under former sub. (2) (c), 1987 stats., the claimant was barred from adversely possessing any real property of a highway, including property held by the town for highway purposes. The parcel in question, although not improved as a highway, was dedicated as a street on a subdivision plat that was recorded in 1986. As such, under s. 236.29 (1), the recorded subdivision plat vested fee simple ownership of the disputed parcel in the town, which held that parcel in trust for use as a street. Under those circumstances, the disputed parcel was held by the town for highway purposes and was not subject to adverse possession. Casa De Calvo v. Town of Hudson, 2020 WI App 67, 394 Wis. 2d 342, 950 N.W.2d 939, 19-1851.

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, Inc., 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 s. 46.27 (7g), 2017 stats., and ss. 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; 2021 a. 239 s. 74.

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. Village of 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. 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, 301 Wis. 2d 521, 733 N.W.2d 921, 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.

893.34 Immunity for property owners. No suit may be brought against any property owner who, in good faith, terminates a tenancy as the result of receiving a notice from a law enforcement agency under s. 704.17 (1p) (c), (2) (c) or (3) (b).

History: 1993 a. 139; 2017 a. 317, s. 54.

893.35 Action to recover personal property. An action to recover personal property shall be commenced within 6 years after the cause of action accrues or be barred. The cause of action accrues at the time the wrongful taking or conversion occurs, or the wrongful detention begins. An action for damage for wrongful taking, conversion or detention of personal property shall be commenced within the time limited by s. 893.51.

History: 1979 c. 323.

Judicial Council Committee's Note, 1979: This section is based on previous s. 893.19 (6), without change in substance, but with some expansion of language to make clear that accrual of the cause of action is not delayed until the person bringing the action learns of the wrongful taking or detention. The limitation with respect to an action for damages is contained in s. 893.51. [Bill 326-A]

A wrongful detention claim is separate from a conversion claim. A wrongful detention claim may arise against a possessor of previously converted or wrongfully taken property. Under those facts, a wrongful detention claim is available and, for purposes of this section and s. 893.51 (1), accrues at the time the property is obtained. No demand is necessary. Mueller v. TL90108, LLC, 2020 WI 7, 390 Wis. 2d 34, 938 N.W.2d 566, 17-1962.

This section and s. 893.51 (1) are statutes of repose, not statutes of limitation. A statute of repose provides that a cause of action must be commenced within a specified amount of time after the defendant's action that allegedly led to injury, regardless of whether the plaintiff has discovered the injury or wrongdoing. With regard to a wrongful detention claim, the statutes focus on when the wrongful detention begins, not when the property owner discovers or knows of the detention. Mueller v. TL90108, LLC, 2020 WI 7, 390 Wis. 2d 34, 938 N.W.2d 566, 17-1962.

893.36 Secured livestock. (1g) In this section:

(a) "Buyer in ordinary course of business" has the meaning provided by s. 401.201 (2) (em).

(b) "Collateral" has the meaning provided by s. 409.102 (1) (cs).

(c) "Debtor" has the meaning provided by s. 409.102 (1) (gs).

(d) "Market agency" means a person regularly engaged in the business of receiving, buying or selling livestock whether on a commission basis or otherwise.

(e) "Secured party" has the meaning provided by s. 409.102 (1) (rs).

(f) "Security agreement" has the meaning provided by s. 409.102 (1) (s).

(1m) An action by a secured party to recover damages or property, based upon the sale of livestock which when sold is the secured party's collateral, against the market agency which in the ordinary course of business conducts the auction of the livestock, or against a buyer in ordinary course of business shall be commenced within 2 years after the date of sale of the livestock, or be barred, if:

(a) The debtor signs or endorses any writing arising from the transaction, including a check or draft, which states that the sale of the livestock is permitted by the secured party; and

(b) The secured party does not commence an action, within 2 years after the date of sale of the livestock against the debtor for purposes of enforcing rights under the security agreement or an obligation secured by the security agreement.

(2) This section does not apply to actions based upon a sale of livestock occurring prior to April 3, 1980, nor to an action by a secured party against its debtor. Section 893.35 or 893.51 applies to any action described in sub. (1m) if the limitation described in sub. (1m) is not applicable.

History: 1979 c. 221 ss. 837m, 2204 (33) (b); 1983 a. 189 s. 329 (24); 2001 a. 103; 2009 a. 320.

893.37 Survey. No action may be brought against an engineer or any professional land surveyor, as defined in s. 443.01 (7m), to recover damages for negligence, errors, or omission in the making of any survey nor for contribution or indemnity related to such negligence, errors, or omissions more than 6 years after the completion of a survey.

History: 1979 c. 323 s. 3; Stats. 1979 s. 893.36; 1979 c. 355 s. 228; Stats. 1979 s. 893.37; 2013 a. 358.

The discovery rule applies to statutes of limitations that limit the time to sue from the time when the action "accrues," being the time of discovery. The discovery rule does not apply to this section because it is a statute of repose, a statute that specifies the time of accrual—in this statute the time when the injury occurred—and limits the time suit can be brought from that specified date. Tomczak v. Bailey, 218 Wis. 2d 245, 578 N.W.2d 166 (1998), 95-2733.

893.38 Extension of certain approvals. (1) DEFINITIONS. In this section:

(a) "Challenged permit" means a permit or other approval to which all of the following apply:

1. The permit or other approval authorizes a construction project.

2. The application for the permit or other approval includes a description of the construction project.

3. The permit or other approval was issued by a governmental unit and becomes or remains subject to administrative, judicial, or appellate proceedings, whether or not any proceeding reversed the permit or other approval.

4. The permit or other approval has or had a finite term or duration, and the term or duration has not expired.

5. The permit or other approval is the subject of administrative, judicial, or appellate proceedings that may result in the invalidation, reconsideration, or modification of the permit or approval, provided that the proceedings or, if the proceedings are reviewing another decision, the proceedings originating the review proceedings were initiated by a person other than the holder of the permit or approval.

(b) "Challenged plat or survey" means a plat or certified survey map approval that is the subject of administrative, judicial, or appellate proceedings that may result in the invalidation, reconsideration, or modification of the approval, provided that the proceedings, or, if the proceedings are reviewing another decision, the proceedings originating the review proceedings were initiated by a person other than the holder of the approval.

(c) "Construction project" means organized improvements to real property that include the construction or redevelopment of at least one building for occupancy.

(d) "Covered approval" means a challenged permit or challenged plat or survey.

(e) "Governmental unit" means the department of natural resources, the department of transportation, a city, a village, a town, a county, or a special purpose district.

(2) AUTOMATIC EXTENSION. A person who has received a covered approval shall obtain an automatic extension of the covered approval by notifying the governmental unit that issued the covered approval of the person's decision to exercise the extension not more than 90 days nor less than 30 days before the expiration of the unextended term or duration of the covered approval. A notification under this subsection shall be in writing and shall specify the covered approval extended. This subsection does not apply to a covered approval for which an automatic extension is not allowed under applicable federal law.

(3) TERM OF EXTENSION. The term or duration of a covered approval extended under sub. (2) is an amount of time equal to 36 months plus the duration of the administrative, judicial, or appellate proceedings to which the covered approval is subject. For purposes of calculating the duration of administrative, judicial, or appellate proceedings under this subsection, proceedings begin on the date of the initial filing of the proceedings, or, if the pro-

ceedings are reviewing another decision, the proceedings originating the review proceedings and end on the date of the final order disposing of all proceedings.

(4) EFFECT OF ORDERS. A covered approval extended under sub. (2) is subject to any order concerning the covered approval that is issued in an administrative, judicial, or appellate proceeding, including a suspension, injunction, restraining order, invalidation, reconsideration, or modification.

(5) CHANGE OF LAW. Except as provided in s. 66.10015, the laws, regulations, ordinances, rules, or other properly adopted requirements that were in effect at the time the covered approval was issued shall apply to the construction project, plat, or certified survey map during the period of extension. This subsection does not apply to the extent that a governmental unit demonstrates that the application of this subsection will create an immediate threat to public health or safety.

(6) REGULATION OF SAFETY AND SANITATION. This section does not limit any state or local unit of government from requiring that property be maintained and secured in a safe and sanitary condition in compliance with applicable laws, administrative rules, or ordinances.

(7) EXCEPTIONS. This section does not apply to any of the following:

(a) A covered approval under any programmatic, regional, or nationwide general permit issued by the U.S. army corps of engineers.

(b) A covered approval that authorizes a water pollutant discharge under s. 283.31, 283.33, or 283.35 or construction or operation of a stationary source under s. 285.60.

(c) The holder of a covered approval who is determined by the issuing governmental unit to be in significant noncompliance with the conditions of the covered approval as evidenced by written notice of violation or the initiation of a formal enforcement action.

History: 2021 a. 80; 2021 a. 240 s. 30.

SUBCHAPTER IV

ACTIONS RELATING TO CONTRACTS AND COURT JUDGMENTS

893.40 Action on judgment or decree; court of record. Except as provided in ss. 846.04 (2) and (3) and 893.415, action upon a judgment or decree of a court of record of any state or of the United States shall be commenced within 20 years after the judgment or decree is entered or be barred.

History: 1979 c. 323; 1997 a. 27; 2003 a. 287.

Judicial Council Committee's Note, 1979: This section has been created to combine the provisions of repealed ss. 893.16 (1) and 893.18 (1). A substantive change from prior law results as the time period for an action upon a judgment of a court of record sitting without this state is increased from 10 years to 20 years and runs from the time of entry of a judgment. The separate statute of limitations for an action upon a sealed instrument is repealed as unnecessary. [Bill 326-A]

The defendant was prejudiced by an unreasonable 16-year delay in bringing suit; thus laches barred suit even though the applicable limitation period did not. Schafer v. Wegner, 78 Wis. 2d 127, 254 N.W.2d 193 (1977).

A request by the state or an offender to correct a clerical error in the sentence portion of a written judgment to reflect accurately an oral pronouncement of sentence is not an "action upon a judgment" under this section. State v. Prihoda, 2000 WI 123, 239 Wis. 2d 244, 618 N.W.2d 857, 98-2263.

This section clearly and unambiguously specifies that the date when a cause of action to collect past-due child support payments begins to run is the date when a judgment ordering payments is entered. State v. Hamilton, 2003 WI 50, 261 Wis. 2d 458, 661 N.W.2d 832, 01-1014.

Under the circumstances present in this case in which a statute precluded a provision in a judgment, the statute of repose could not begin to run as to that provision until the legislature changed the law such that the provision could be carried out. Johnson v. Masters, 2013 WI 43, 347 Wis. 2d 238, 830 N.W.2d 647, 11-1240.

This section did not bar an action to enforce a divorce judgment that required a party to divide the party's pension only "when and if" the pension became "available" to the party because it was impossible to judicially enforce that requirement during the first 21 years after the divorce judgment. Schwab v. Schwab, 2021 WI 67, 397 Wis. 2d 820, 961 N.W.2d 56, 19-1200.

893.41 Breach of contract to marry; action to recover property. An action to recover property procured by fraud by a party in representing that he or she intended to marry the party providing the property and not breach the contract to marry, to which s. 768.06 applies, shall be commenced within one year after the breach of the contract to marry.

History: 1979 c. 323; 1981 c. 314 s. 146.

Judicial Council Committee's Note, 1979: This section has been created to place into ch. 893 the statute of limitations for an action to recover property for an alleged breach of a contract to marry. See also note following s. 768.06. [Bill 326-A]

893.415 Action to collect support. (1) In this section, "action" means any proceeding brought before a court, whether commenced by a petition, motion, order to show cause, or other pleading.

(2) An action to collect child or family support owed under a judgment or order entered under ch. 767, or to collect child support owed under a judgment or order entered under s. 48.355 (2) (b) 4. or (4g) (a), 48.357 (5m) (a), 48.363 (2), 938.183 (4), 938.355 (2) (b) 4. or (4g) (a), 938.357 (5m) (a), 938.363 (2), or 948.22 (7), shall be commenced within 20 years after the youngest child for whom the support was ordered under the judgment or order reaches the age of 18 or, if the child is enrolled full-time in high school or its equivalent, reaches the age of 19.

(3) An action under this section is commenced when the petition, motion, order to show cause, or other pleading commencing the action is filed with the court, except that an action under this section is not commenced if proper notice of the action, as required by law or by the court, has not been provided to the respondent in the action within 90 days after the petition, motion, order to show cause, or other pleading is filed.

History: 2003 a. 287; 2015 a. 373.

893.42 Action on a judgment of court not of record. An action upon a judgment of a court not of record shall be commenced within 6 years of entry of judgment or be barred.

History: 1979 c. 323.

Judicial Council Committee's Note, 1979: This section is previous s. 893.19 (1) renumbered for more logical placement in restructured ch. 893. [Bill 326-A]

893.425 Voidable transfers and obligations. An action with respect to a transfer or obligation under ch. 242 shall be barred unless the action is commenced:

(1) Under s. 242.04 (1) (a), not later than 4 years after the transfer is made or the obligation is incurred or, if later, not later than one year after the transfer or obligation is or could reasonably have been discovered by the claimant.

(2) Under s. 242.04 (1) (b) or 242.05 (1), not later than 4 years after the transfer is made or the obligation is incurred.

(3) Under s. 242.05 (2), not later than one year after the transfer is made.

History: 1987 a. 192; 2023 a. 246.

Sub. (1) sets a one-year statute of limitations from the point at which the claimant discovers or reasonably could have discovered the fraudulent nature of the transfer or obligation. The statute of limitations test is not based on discovery of the transfer; it is based on discovery of the fraudulent nature of the transfer. Official Committee of Unsecured Creditors of Great Lakes Quick Lube LP v. Theisen, 2018 WI App 70, 384 Wis. 2d 580, 920 N.W.2d 356, 18-0333.

NOTE: The above annotation relates to the Uniform Fraudulent Transfer Act as adopted in ch. 242 prior to the revision and renaming of that chapter to the Uniform Voidable Transactions Law by 2023 Wis. Act 246.

893.43 Action on contract. (1) Except as provided in sub. (2), an action upon any contract, obligation, or liability, express or implied, including an action to recover fees for professional services, except those mentioned in s. 893.40, shall be commenced within 6 years after the cause of action accrues or be barred.

(2) An action upon a motor vehicle insurance policy described in s. 632.32 (1) shall be commenced within 3 years after