

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. *Jendrzjek v. Tschopp-Durch-Camastral*, 755 F. Supp. 1162 (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. The 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., Inc. 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 ss. 893.23 and 893.80 creates a statute of limitations equal to 3 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

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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 retracable 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 section, 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.

Acquiescence pertains to property lines vis-à-vis neighboring property owners. Acquiescence to a property boundary, however, cannot alter the location of a section corner on a government survey. Boerst v. Henn, 2010 WI App 80, \_\_\_ Wis. 2d \_\_\_, 784 N.W.2d 736, 09–1559.

Hey! That’s my land! Understanding Adverse Possession. Shrestha. Wis. Law. March 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 Kelly v. Morfeld, 222 Wis. 2d 413, 588 N.W.2d 79 (Ct. App. 1998), 97–3443.

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

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

When evidence is presented as to the extent of occupancy of only a portion of land, only that portion may be awarded in adverse possession proceedings. Droegge 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 (1997), 96–0570.

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

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

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

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

Adverse possession requires adverse intent, an element not present when property owners are innocently mistaken about property boundaries. As a result, courts have developed the doctrine of acquiescence, which substitutes mutual acquiescence for adverse or hostile intent. Acquiescence does not apply only to ambiguous deeds. An unambiguous deed does not trump mistaken boundary lines after the statutory period. Boerst v. Henn, 2010 WI App 80, \_\_\_ Wis. 2d \_\_\_, 784 N.W.2d 736, 09–1559.

Hey! That’s my land! Understanding Adverse Possession. Shrestha. Wis. Law. March 2010.

**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 10 years was created. *New v. Stock*, 49 Wis. 2d 469, 182 N.W.2d 276 (1971).

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

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

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

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

Adverse possession requires adverse intent, an element not present when property owners are innocently mistaken about property boundaries. As a result, courts have developed the doctrine of acquiescence, which substitutes mutual acquiescence for adverse or hostile intent. Acquiescence does not apply only to ambiguous deeds. An unambiguous deed does not trump mistaken boundary lines after the statutory period. *Boerst v. Henn*, 2010 WI App 80, \_\_\_ Wis. 2d \_\_\_, 784 N.W.2d 736, 09-1559.

Hey! That's my land! Understanding Adverse Possession. Shrestha. Wis. Law. March 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]

Hey! That's my land! Understanding Adverse Possession. Shrestha. Wis. Law. March 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 10 years by the utility established the prescriptive right to continue the use. *Williams v. American Transmission Company, LLC*, 2007 WI App 246, 306 Wis. 2d 181, 742 N.W.2d 882, 07-0052.

**893.29 No adverse possession against the state or political subdivisions.** (1) 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, prescription or user under s. 893.25, 893.26, 893.27 or 893.28 unless the adverse possession, prescription or user continues uninterrupted for more than 20 years and is based upon a

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continuously maintained fence line which has been mutually agreed upon by the current landowners.

**(2m)** Subsection (1) does not affect title to or interest in real property obtained by adverse possession, prescription or user under s. 893.25, 893.26, 893.27 or 893.28 before April 29, 1998.

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

**Judicial Council Committee's Note, 1979:** This section is based on present s. 893.10 (1), but the period for adverse possession against the state is reduced from 40 to 30 [20] years. The previous provision presumably applied to the property of political subdivisions of the state, but this has been made express in this section. Note that regardless of which of ss. 893.25 to 893.28 apply against a private owner, this section requires 30 [20] years for the obtaining of any rights in public land.

Because of the 30-year [20-year] period, adverse possession of the kind described in the 20-year statute is sufficient so that recording and good faith affect only the type of possession required and the amount of land possessed (see s. 893.26 (3) and (4)). Payment of taxes is irrelevant. [Bill 326–A]

Adverse possession provisions have prospective application only. Possession must be taken after the provision goes into effect. *Petropoulos v. City of West Allis*, 148 Wis. 2d 762, 436 N.W.2d 880 (Ct. App. 1989).

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

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

**History:** 1979 c. 323.

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

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

**893.31 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, which 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 description of the real estate affected and of the instrument or transaction or event on which the claim or defense is founded, with its date and the volume and page of its recording, if it is recorded, and a statement of the claims made. 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 which 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.

**(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 any interest in a conservation easement under s. 700.40.

NOTE: See note following s. 700.40.

(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.

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

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

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

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

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

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

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

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

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

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

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

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

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

The label of the documents here — "access easement agreement" — and the fact that each was signed by both parties did not transform the grants of easement into contracts subject to contract law. The plaintiffs alleged that a driveway could not be built on the easements described in the agreements because of a wetland delineation and sought a modification of the easements. This claim for relief was an action to enforce the recorded easements, albeit a modified version, and was therefore governed by s. 893.33 (6), not the contract statute, s. 893.43.

**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 (1) (c), (2) (c) or (3) (b).

History: 1993 a. 139.

**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]

**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 land surveyor 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.

## 893.37 LIMITATIONS

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.

## 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.

**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., 48.357 (5m) (a), 48.363 (2), 938.183 (4), 938.355 (2) (b) 4., 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.

**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 Fraudulent transfers.** An action with respect to a fraudulent transfer or obligation under ch. 242 shall be barred unless the action is commenced:

**(1)** Under s. 242.04 (1) (a), within 4 years after the transfer is made or the obligation is incurred or, if later, within 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), within 4 years after the transfer is made or the obligation is incurred.

**(3)** Under s. 242.05 (2), within one year after the transfer is made or the obligation is incurred.

**History:** 1987 a. 192.

**893.43 Action on contract.** 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.

**History:** 1979 c. 323.

**Judicial Council Committee’s Note, 1979:** This section is previous s. 893.19 (3) renumbered for more logical placement in restructured ch. 893. [Bill 326–A]

A bonus plan to compensate for increased profits is a contract. *Younger v. Rose-nov Paper & Supply Co.* 51 Wis. 2d 619, 188 N.W.2d 507 (1971).

An action to recover benefits under a pension plan is an action to enforce a contract, not an action for wages. *Estate of Schroeder v. Gateway Transportation Co., Inc.* 53 Wis. 2d 59, 191 N.W.2d 860 (1971).

An action for personal injuries resulting from medical malpractice, although based on contract, is subject to the 3–year limitation for injuries to the person. *Estate of Kohls v. Brah*, 57 Wis. 2d 141, 203 N.W.2d 666 (1973).

An action by an insured against an insurance agent for failing to procure requested coverage is not an action against the insurer on the policy, but is an action resting upon the agent’s contract with the insured to procure the insurance coverage agreed upon subject to the statute of limitations for contract. *Estate of Ensz v. Brown Insurance Agency, Inc.* 66 Wis. 2d 193, 223 N.W.2d 903 (1974).

A cause of action for contribution is based upon a contract implied by law and must be brought within 6 years after one joint tortfeasor has paid more than his or her share. *Hartford Fire Insurance Co. v. Osborn Plumbing*, 66 Wis. 2d 454, 225 N.W.2d 628 (1973).

When an employer deducted a “hypothetical tax factor” from salaries of its overseas employees so as to equalize compensation of its employees worldwide, an action to recover amounts so deducted had to be brought within the limitation period on wage claims, and not the period on other contract claims. *Sussmann v. Gleisner*, 80 Wis. 2d 435, 259 N.W.2d 114 (1977).

If the object of a disputed contract is the end product or fruit of human labor rather than the labor per se, s. 893.19 (3) [now s. 893.43], applies rather than s. 893.21 (5) [now s. 893.44]. *Rupp v. O’Connor*, 81 Wis. 2d 436, 261 N.W.2d 815 (1978).

Partial payment of an obligation made prior to the running of the statute of limitations tolls the statute and sets it running from the date of payment. *St. Mary’s Hospital Medical Center v. Tarkenton*, 103 Wis. 2d 422, 309 N.W.2d 14 (Ct. App. 1981).

A breach of a roofing contract occurred when the faulty roof was completed, not when the building was completed. *State v. Holland Plastics Co.* 111 Wis. 2d 497, 331 N.W.2d 320 (1983).

An unjust enrichment claim accrues when a cohabitational relationship terminates. The court does not determine what statute of limitations, if any, applies. *Watts (Bisch-off) v. Watts*, 152 Wis. 2d 370, 448 N.W.2d 292 (Ct. App. 1989).

A contract cause of action accrues at the time of the breach. The discovery rule is inapplicable. *CLL Associates v. Arrowhead Pacific*, 174 Wis. 2d 604, 497 N.W.2d 115 (1993).

This section applies to actions for the recovery of sales commissions. *Erdman v. Jovoco, Inc.* 181 Wis. 2d 736, 512 N.W.2d 487 (1994).

A party’s deficient performance of a contract does not give rise to a tort claim. There must be a duty independent of the contract for a cause of action in tort. *Atkinson v. Everbrite, Inc.* 224 Wis. 2d 724, 592 N.W.2d 299 (Ct. App. 1999), 98–1806.

For actions seeking coverage under an underinsured motorist policy, the statute of limitations begins to run from the date of loss, which is the date on which a final resolution is reached in the underlying claim against the tortfeasor, be it through denial of that claim, settlement, judgment, execution of releases, or other form of resolution, whichever is the latest. *Yocherer v. Farmers Insurance Exchange*, 2002 WI 41, 252 Wis. 2d 114, 643 N.W.2d 457, 00–0944.

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 s. 893.33 (6), not the contract statute, s. 893.43.

An unconscionability of contract claim is governed by this section. *Dairyland Power Coop. v. Amax Inc.* 700 F. Supp. 979 (1986).

**893.44 Compensation for personal service. (1)** Any action to recover unpaid salary, wages or other compensation for professional services, except actions to recover fees for professional