

Suggested statutory modifications to address taxation of buildings, improvements and fixtures as real property pursuant to Wis. Stat. § 70.17(3)

May 5, 2025

2023 Wisconsin Act 12 accomplished, among other things, the elimination of the personal property tax in Wisconsin. The Act created s. 70.17(3) to provide that buildings, improvements, and fixtures, which had formerly been considered “personal property” and taxed accordingly, were now considered “real property” and subject to the same real estate taxes as parcels of land.

While the intent of this portion of Act 12 seems rather simplistic (treating personal property as real property), Act 12’s implementation has proven challenging. All of the statutes impacting the description, identification of ownership interest, official recording and entry of buildings, improvements, and fixtures on the tax rolls lacked the specificity necessary to provide property listers, assessors, registers of deeds, treasurers, and other professionals guidance.

For months, stakeholders representing the groups impacted by the process for implementing the elimination of the personal property tax have been meeting with representatives of the Department of Revenue to prepare proposed amendments to the relevant statutes. Below is the resulting recommendation and request.

On behalf of all of the groups involved in the process, we thank you for your consideration of these amendments. Should any questions arise as to the reasons behind the recommendations, the stakeholders are ready, willing and able to assist. All of the stakeholders recognize the importance of providing adequate statutory guidance in this area to assist not only state and local governments in performing their functions, but also private parties in engaging in the transactions surrounding buildings, improvements, and fixtures.

The requested amendments follow.

1. Amend Wis. Stat. s. 70.17(1) in part to read:

(1) Except as provided under sub (3), real property shall be entered in the name of the ***land*** owner, if known to the assessor, otherwise to the occupant thereof if ascertainable, and otherwise without any name, and shall include a full legal description which shall have been recorded in the office of the register of deeds of the county wherein the property is located. The person holding the contract or certificate of sale of any real property contracted to be sold by the state, but not conveyed, shall be deemed the owner for such purpose. The undivided real estate of any deceased person may be entered to the heirs of such person without designating them by name. The real estate of an incorporated company shall be entered in the same manner as that of an individual.

<i>Note to Drafter:</i> This separates out the requirements associated with real property and the requirements associated with building, improvements, and fixtures.
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2. Amend Wis. Stat. s. 70.17(3) in part to read:

(3) Beginning with the property tax assessments as of January 1, 2024, manufactured and mobile homes, not otherwise exempt from taxation under s. 66.0435(3), buildings, improvements, and fixtures on leased lands, buildings, improvements, and fixtures on exempt lands, buildings, improvements, and

fixtures on forest croplands, and buildings, improvements, and fixtures on managed forest lands shall be assessed as real property. If buildings, improvements, and fixtures, but not the underlying land, are leased to a person other than the landowner or if the buildings, improvements, and fixtures are owned by a person other than the landowner, the assessor or the county real property lister under s. 70.09 shall ~~may~~ create a separate tax parcel for the buildings, improvements, and fixtures and assess the buildings, improvements, and fixtures as real property to the owner of the buildings, improvements, and fixtures upon an owner's recording a declaration of ownership interest pursuant to s. 706.054. The assessor or the county real property lister under s. 70.09 may also create a tax parcel, as provided under s. 70.27, for buildings, improvements, and fixtures on exempt lands, buildings, improvements, and fixtures on forest croplands, and buildings, improvements, and fixtures on managed forest lands and assess the buildings, improvements, and fixtures as real property to the owner of the buildings, improvements, and fixtures upon an owner's recording a declaration of ownership interest pursuant to s. 706.054. For purposes of this subsection, "buildings, improvements, and fixtures" does not include any property defined in s. 70.04.

Note to Drafter: This provides a wholly separate and distinct mechanism to create a tax parcel for buildings, improvements, and fixtures.

3. Amend Wis. Stat. s. 70.23(1) in part to read:

(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, based upon the latest records of the office of the register of deeds.

Note to Drafter: This allows the assessor to rely upon the records contained within the office of the Register of Deeds, which will contain the required records related to the ownership of buildings, improvements, and fixtures.

4. Create Wis. Stat. s. 70.23(3) to read:

(3) Any real property lister under s. 70.09(1) may perform the duties set forth in this subsection.

Note to Drafter: This provision is intended to allow a property lister to perform the functions performed by an assessor.

5. Amend Wis. Stat. s. 77.21(1m) in part to read:

(1m) "Real estate" includes, but is not limited to, buildings, improvements and fixtures; roots, vines and trees of perennial crops; stock in a cooperative building; improvements on leased land; timber; and minerals.

Note to Drafter: This definition is amended to capture the updated definition of “real property” in s. 70.03, as amended by 2023 Wisconsin Act 12.

6. Amend Wis. Stat. s. 706.001(1) in part to read:

(1) Subject to the exclusions in sub. (2), this chapter shall govern every transaction by which any interest in land or real property as defined in s. 70.03 is created, aliened, mortgaged, assigned or may be otherwise affected in law or in equity. Notwithstanding any other statute, a legal description meeting the requirements of this chapter shall be sufficient for all purposes.

Note to Drafter: This update is necessary to capture both the obligation to record buildings, improvements, and fixtures and the authority for the Register of Deeds to make the recordings. In addition, the intent of the last sentence is to override any provision in chap. 75 that may arguably require a specific form of legal description in order for a county treasurer to obtain a tax certificate or otherwise proceed with tax foreclosure on a “parcel” that is for buildings, improvements and fixtures (see, e.g., ss. 74.57(4)(b)1, 75.12(2) and 75.521(3)(am)1.)

7. Amend Wis. Stat. s. 706.01(7r) in part to read:

(7r) Except for a description of solely a building, improvement or fixture, “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.

If the description relates solely to a building, improvement or fixture, “legal description” means a description of the building, improvement or fixture identified on the form prepared by the department, which shall include a legal description of the parcel of real estate upon which the building, improvement, or fixture is physically located.

Note to Drafter: The intent with this provision is to create a different definition of “legal description” as it relates to real estate and buildings, improvements, and fixtures. The “department” referenced in the amendment is the Department of Revenue, which may necessitate the addition of a definition in s. 706.01.

8. Create Wis. Stat. s. 706.054 to read:

Declaration or conveyances of interest in buildings, improvements and fixtures. The register of deeds shall record all declarations of ownership interest in buildings, improvements or fixtures in the index maintained under s. 59.43(9). The register of deeds shall record all conveyances of ownership interest in buildings, improvements or fixtures in the index maintained under s. 59.43(9).

Note to Drafter: This provision is needed to provide the Register of Deeds with the authority to record the documents establishing an ownership interest in building, improvements, and fixtures.

9. Amend Wis. Stat. s. 706.02(1) in part to read:

- (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
 - (bm) Identifies the buildings, improvements and fixtures if a Declaration of Ownership has been recorded under s. 706.054; 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.

<p><i>Note to Drafter:</i> The provision recognizes the Declaration of Ownership form and requires the filing of such form in order to transfer buildings, improvements and fixtures.</p>
