

2797A AFFIRMATIVE DEFENSE: GOOD FAITH – WIS. STAT. § 242.08

(Defendant) is not liable to (plaintiff) [on the claim for actual fraud]¹ if (defendant) proves both of the following:

Use one of the following two sets of elements:

1. That (defendant) took the property from (debtor) in good faith; and
2. That (he) (she) (it) took the property for a reasonably equivalent value.]

or

1. That (defendant) received the property from (third party), who had taken the property from (debtor) in good faith; and
2. That (third party) had taken the property for a reasonably equivalent value.]

“Good faith” means that (defendant) did not have actual or constructive notice of (plaintiff)’s rights in the (property/obligation). If you decide (defendant) had, or under the facts and circumstances should have had, such notice, then (defendant) did not take the (property) (obligation) in good faith.²

[Give Wis JI-Civil 200, Burden of Proof: Ordinary.]

NOTES

1. Use with claims under Wis. Stat. § 242.04(1)(a). Include the bracketed language if the plaintiff asserts claims for both actual and constructive fraud.

2. Chapter 242 does not expressly define the term “good faith.” However, Wis. Stat. § 242.08(4) uses the term “good-faith transferee” as an affirmative defense to the avoidance of a fraudulent conveyance.

Although the Committee was unable to locate any citable opinions specifically defining “good faith” within the context of Chapter 242, several Wisconsin recording-act cases provide useful guidance. In

Grosskopf Oil, Inc. v. Winter, 156 Wis. 2d 575, 584, 457 N.W.2d 514 (Ct. App. 1990), the court held that a purchaser or mortgagee acts in good faith when lacking notice of existing rights in the property. Similarly, in Bump v. Dahl, 26 Wis. 2d 607, 613, 133 N.W.2d 295 (1965), the Wisconsin Supreme Court characterized a good-faith purchaser as one without notice of prior interests in the land. Reinforcing this principle, Kordecki v. Rizzo, 106 Wis. 2d 713, 719–20, 317 N.W.2d 479 (1982), explicitly defined a good-faith purchaser as one “without notice, constructive or actual, of a prior conveyance.”

It is important to note that each of these cases addresses whether a subsequent purchaser or mortgagee took title “in good faith” under Wisconsin’s race-notice statutes, Wis. Stat. § 235.49 or § 706.08, thereby gaining priority over an earlier, unrecorded interest. The inquiry in these cases focuses on the three traditional sources of notice—open possession (Bump), tenant-in-possession (Grosskopf), and recorded litigation documents (Kordecki)—rather than on the existence of a prior, unrecorded conveyance.

COMMENT

This instruction and comment were approved in October 2025.

This instruction outlines a defense available to a good-faith transferee who provided value in cases involving allegations of actual fraud under the Uniform Voidable Transactions Act, as set forth in Wis. Stat. § 242.08.