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# Wisconsin Legislative Council

## ACT MEMO

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### 2021 Wisconsin Act 174 [2021 Senate Bill 682]

### Exception to the 40-year Recording Requirement for Certain Recorded Access Easements

Generally, under current law, an access easement must be recorded every 40 years to be the basis for a civil action to enforce the easement. 2021 Wisconsin Act 174 creates an exception to this re-recording requirement for 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. The exception only applies when at least one of the following conditions are present:

- The easement was recorded on or after January 1, 1960.
- The easement was 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.
- The easement or express reference to the easement was recorded before January 1, 1960, and it is apparent from or can be proved from physical evidence of its use at such time a person acquired the real estate subject to the easement.

Act 174 first applies retroactively to an action, defense, or counterclaim asserted before the effective date, unless a final judgment has been entered resolving the action, defense, or counterclaim. The act also first applies retroactively to an easement set forth in a recorded instrument that is entered into before, on, or after the act's effective date, unless the instrument contains provisions inconsistent with that treatment.

**Effective date:** March 13, 2022

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