

1973 Senate Bill 116

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CHAPTER 189, Laws of 1973

AN ACT to repeal 269.19, 269.20, 280.08 and chapters 275, 276, 279, 281, except 281.02 (1), and 297 (title); to renumber 281.02 (1), 297.01 to 297.23, chapter 278 and 893.10; to amend 75.63 (2), 263.01, 272.31 (2), 280.01 and 285.10; and to create 272.195, chapters 810 to 814, 816.102, chapter 818 (title), 818.01 and 818.03 of the statutes, relating to real property actions.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 75.63 (2) of the statutes is amended to read:

75.63 (2) ~~In case~~ If the title to any such lands shall be adjudged to be in such original owner or party claiming title through or under him they shall be deemed to be and shall be subject to taxation during the time the same were held by the state in like manner as if they had not been conveyed to or held by it, and the taxes for such period shall be levied and assessed upon such lands and collected in like manner as other taxes upon real estate. In all such actions the court shall enter an order requiring the plaintiff therein, within a reasonable time to be fixed in the order, to comply with the ~~provisions of this section~~ by payment of the taxes, charges and interest as provided herein, and in default of compliance therewith the court shall dismiss the action. Nothing herein contained shall be construed as amending or repealing ~~any of the provisions of sections s. 75.26, 75.27, or 75.61 or 275.15.~~

SECTION 2. 263.01 of the statutes is amended to read:

263.01 Forms. The forms of pleading in civil actions in courts of record and the rules by which the sufficiency of the pleadings are determined are prescribed by ~~chapters chs. 260 to 297~~ 296, 421 to 427 and 810 to 818.

SECTION 3. 269.19 and 269.20 of the statutes are repealed.

SECTION 4. 272.195 of the statutes is created to read:

272.195 Levy on real property; how made. Levy of execution on real property is made by indorsing on the execution a description of the property on which the levy was made, and filing a copy of the execution, so indorsed, in the office of the register of deeds.

SECTION 5. 272.31 (2) of the statutes is amended to read:

272.31 (2) A copy of ~~such the~~ notice of sale shall be printed each week for 6 successive weeks in a newspaper of the county prior to the date of sale.

SECTION 6. Chapters 275 and 276 of the statutes are repealed.

SECTION 7. Chapter 278 of the statutes is renumbered chapter 816.

SECTION 8. 285.10 of the statutes is amended to read:

285.10 State party defendant; judgment. The state may be made a party defendant in any action ~~to quiet title under the provisions of s. 281.01 for a declaration of interests under s. 811.01~~ or between other parties, when necessary to the proper determination of their rights. The complaint shall set forth with particularity the nature of the interest or lien of the state. But no judgment for the recovery of money or personal property or costs shall be rendered in any such action against the state.

SECTION 9. Chapter 279 of the statutes is repealed.

SECTION 10. 280.01 of the statutes is amended to read:

280.01 ~~Any person may maintain an action to recover damages for and to abate a private nuisance or any~~ Any person, county, city, village or town may maintain an action to recover damages or to abate a public nuisance from which injuries peculiar to the complainant are suffered, so far as necessary to protect the complainant's rights and to obtain an injunction to prevent the same.

SECTION 11. 280.08 of the statutes is repealed.

SECTION 12. Chapter 281 of the statutes, except 281.02 (1), is repealed.

SECTION 13. 281.02 (1) of the statutes is renumbered 893.10 (2).

SECTION 14. Chapter 297 (title) of the statutes is repealed.

SECTION 15. 297.01 to 297.23 of the statutes are renumbered 816.51 to 816.72.

SECTION 16. Chapters 810 to 814 of the statutes are created to read:

CHAPTER 810

REAL PROPERTY ACTIONS; GENERAL PROVISIONS

810.01 Definition of interest in real property. As used in chs. 810 to 816 "interest in real property" includes estates in, powers (as provided in ch. 702) over, and all present and future rights to, title to, or interests in real property, including, without limitation by enumeration, security interests and liens on land, easements, profits, rights of appointees under powers, rights under covenants running with the land, powers of termination, dower, curtesy and homestead; the interest may be such as was formerly designated legal or equitable; the interest may be surface, subsurface, suprasurface, riparian or littoral; but "interest" does not include interests held only as a member of the public nor does it include licenses.

810.02 Titles applicable. Except as otherwise provided in chs. 810 to 816, the general rules of practice and procedure in Titles XXIV and XXV shall apply to actions and proceedings under chs. 810 to 816.

810.03 Real property remedies. (1) Any person having an interest in real property may bring an action relating to that interest, in which he may demand the following remedies singly, or in any combination, or in combination with other remedies not listed, unless the use of a remedy is denied in a specified situation:

- (a) Declaration of interest.
- (b) Extinguishment or foreclosure of interest of another.
- (c) Partition of interest.
- (d) Enforcement of interest.
- (e) Judicial rescission of contract.
- (f) Specific performance of contract or covenant.
- (g) Judicial sale of property and allocation of proceeds.
- (h) Restitution.
- (i) Judicial conveyance of interest.
- (j) Possession.
- (k) Immediate physical possession.
- (L) Restraint of another's use of, or activities on, or encroachment upon land in which plaintiff has an interest.
- (m) Restraint of another's use of, activities on, or disposition of land in which plaintiff has no interest; but the use, activity or disposition affect plaintiff's interest.
- (n) Restraint of interference with rights in, on or to land.
- (o) Damages.

(2) The indication of the form and kind of judgment in a chapter dealing with a particular remedy shall not limit the availability of any other remedies appropriate to a particular situation.

810.035 Provisional remedies. Provisional remedies may be granted as appropriate.

810.04 Possession. No remedy shall be denied on the ground that the plaintiff is not in possession unless a statute specifically requires possession.

810.05 Joinder. (1) Any action proper under s. 810.03 may be brought in rem or in personam according to appropriate statutes for obtaining jurisdiction.

(2) Actions in rem and in personam may be joined.

(3) Actions involving interests in the same property may be joined regardless of s. 263.04.

(4) Persons having or claiming interests adverse to a plaintiff may be joined as defendants or may intervene.

810.06 Joinder of additional interest-holders. If the court orders that the owner of an interest is a necessary party to an action, the action may not be dismissed, but the plaintiff shall be given leave to join the missing person as plaintiff or defendant.

810.07 Default judgments. No default judgment may be granted unless evidence supporting the court's findings and conclusions is in the record.

810.10 Lis pendens; who may file; effect when void; discharge. (1) In an action where relief is demanded affecting described real property which relief might confirm or change interests in the real property, after the filing of the complaint the plaintiff shall file in the office of the register of deeds of each county where any part thereof is situated, a lis pendens containing the names of the parties, the object of the action and a description of the land in that county affected thereby. In any action if the defendant asks relief on a counterclaim or cross-complaint, which contains a legal description of the real estate and seeks such relief, after the filing of the counterclaim or cross-complaint he shall file a lis pendens. From the time of such filing every purchaser or encumbrancer whose conveyance or encumbrance is not recorded or filed shall be deemed a subsequent purchaser or encumbrancer and shall be bound by the proceedings in the action to the same extent and in the same manner as if he were a party thereto. In any such action in which a lis pendens has been filed, if the party filing the same fails for one year after the filing thereof to serve and file proof of service of the summons or the counterclaim or cross-complaint on one or more of the adverse parties, the lis pendens shall be void, and upon motion and proof the court may order it discharged. Judgment shall not be entered in favor of the party required to file lis pendens until 20 days after the lis pendens has been filed.

(2) Proceedings for acquiring land by right of eminent domain are actions within the provisions of this section and notice of the pendency thereof may be filed at any time, except as otherwise provided by statute.

(3) The lis pendens may be discharged upon the condition and in the manner provided by s. 266.22 for discharging an attachment or by s. 270.87 for satisfying a judgment or as provided in s. 816.14 (3). An instrument filed before May 1, 1951, but in accordance with this subsection shall be a discharge of the lis pendens described therein.

(4) This section applies to all courts in this state, including United States district courts.

810.11 Highways; parks; record of order. (1) Every person who makes an application to any court, county board, common council, or village or town board for laying out, widening, vacating or extending any street, alley, water channel, park, highway or other public place shall, at or prior to the time of filing the same with the proper officer, file a notice of the pendency of such application, containing his name and a brief statement of the object thereof and a map and description of the land to be affected thereby in the office of the register of deeds of each county in which any such land is situated. Neglect to comply with these provisions shall render all proceedings based upon such application void, but no order vacating, or proceedings for the vacation of, any street, alley, water channel, park, highway or other public place, made or had before May 25, 1905, shall be void solely by reason of the failure to file such notice of the pendency of such application, map and description.

(2) No final order, judgment or decree or final resolution or order taking or affecting such land, based upon any application therefor, shall have any effect or be notice to any subsequent purchaser or encumbrancer unless a certified copy thereof, giving a full and accurate description of the land affected thereby, and accompanied with a map showing the location thereof, is recorded in the office of the register of deeds of the county in which the land is situated. A resolution or order made by any such body, whereby any land shall be taken or affected without an application having been made therefor, shall have no effect and shall not be notice to any subsequent purchaser or encumbrancer unless such resolution or order is recorded.

810.12 Survey may be ordered. In all actions relating to real property the court may by order give any party thereto leave to make any survey of any premises affected by such action, or of any boundary line of such premises, or between the lands of any of the parties and the lands of other persons, when satisfied that such survey is necessary or expedient to enable either party to prepare his pleadings in the action. The order for such survey shall specify the premises or boundary lines to be surveyed, and a copy thereof shall be served upon the owner or occupant before any entry is made to make such survey. After such service the party obtaining such order may, with the necessary surveyors and assistants, enter the premises specified in such order at any reasonable time and make such survey without being liable to any action therefor except for injury or damages unnecessarily caused thereby.

810.16 Land sold, where; limitation on sheriff; effect of deed. (1) Real property adjudged to be sold must be sold in the county where the premises or some part thereof are situated, by the sheriff of that county.

(2) The sheriff shall not purchase at such sale, or be interested directly or indirectly in any purchase; all sales made contrary to this prohibition are void.

(3) A deed executed by the sheriff upon such sale shall be effectual to pass the title, rights and interest of the parties in the premises adjudged to be sold and of all purchasers or encumbrancers thereof whose conveyance or encumbrance is made, executed, recorded, perfected or obtained subsequent to the filing of the notice of the pendency of the action in which such real property is adjudged to be sold, unless the judgment otherwise directs.

810.17 Judicial sale; report if sheriff incapacitated. If the sheriff who made a sale of land dies, departs from the state or becomes otherwise incapacitated to report or to execute the deed, such report may be made by the undersheriff, a deputy sheriff, or by any party to the action, by affidavit; and such deed may be executed by the clerk on ex parte order of the court.

810.18 Deeds by sheriffs' successors. In all cases where any sale has been made or is hereafter made by any sheriff under or in pursuance of any order, judgment or

decree of any court and the sheriff did not, or does not, before the expiration of his term of office, execute a deed to carry the sale into effect, the deed may be executed by the successor of the sheriff in office at the time of the application for the deed, and any deed so executed by any successor of the sheriff making the sale while in office shall have the same effect as though it had been executed by the sheriff making the sale.

CHAPTER 811

DECLARATION OF INTEREST IN REAL PROPERTY

811.01 Declaration of interest. (1) Any person claiming an interest in real property may maintain an action against any person claiming a conflicting interest, and may demand a declaration of interests.

(2) Subsection (1) does not apply to lessee's interests in leases of one year or less.

811.02 Complaint. The complaint shall describe the real property, the interest of the plaintiff, how the plaintiff acquired his interest, the interest of each person claiming an interest known to be adverse to the plaintiff, including unborn and unknown persons, and demand that the interest of the plaintiff be established against adverse claims.

811.03 Defendants. Persons claiming interests adverse to the plaintiff which interests the plaintiff wants affected by the judgment shall be named as defendants; other persons with interests in the described property may be named as defendants.

811.04 Answer. The answer shall indicate the nature and derivation of defendant's interest. If the defendant, by answer, disclaims any interest in the described property or in plaintiff's claimed interest, no further answer is necessary.

811.06 Costs. No costs shall be taxed against a defendant who does not contest the claim of the plaintiff; such defendant may recover costs unless the court otherwise orders.

811.10 Judgment. (1) The judgment shall declare the interests of the parties. The judgment or a certified copy may be recorded in the office of the register of deeds of each county in which the land lies.

(2) As to parties not contesting, judgment may be rendered on motion based on the verified complaint and proof of service of the summons, and proof of the facts as to interests.

CHAPTER 812

PARTITION OF INTERESTS IN REAL PROPERTY

812.01 Definitions. As used in this chapter:

(1) "Interest in real property" in addition to the interests described in s. 810.01, includes rights and interests in water power, structures for the use of water power and structures for the utilization of riparian rights. Interests of vendees under land contracts are excluded.

(2) "Lien" includes encumbrance.

812.02 Partition; plaintiffs. (1) A person having an interest in real property jointly or in common with others may sue for judgment partitioning such interest unless an action for partition is prohibited elsewhere in the statutes or by agreement between the parties for a period not to exceed 30 years.

(2) The plaintiff in his complaint may demand judgment of partition and, in the alternative, if partition is impossible, judicial sale of the land or interest, and division of the proceeds.

812.03 Partition when state part owner; service of process. If any lands are held by the state and by individuals as tenants in common, proceedings for the partition thereof may be had against the state in the same manner as against individuals, and the like orders and judgments shall be had therein, and the proportion of the costs and expenses of such partition, adjudged to be paid by the state, shall be certified by the attorney general and paid out of the state treasury on the warrant of the department of administration. The summons and all notices required to be served shall be served on the attorney general, who shall appear in behalf of the state and attend to its interest.

812.04 Defendants. Any cotenant not joined as a plaintiff must be joined as a defendant; if a judgment affecting the interest of any tenant, lienholder or person in physical possession is demanded, such person must be joined as a defendant.

812.05 Pleadings. (1) The complaint shall describe the lands to be partitioned and the interests of all parties as far as the same are known to the plaintiff. If a lienholder is made a defendant, his lien shall be described.

(2) If the complaint does not demand partition of all the lands owned by the parties any of them may have the complaint amended so as to affect all the lands so owned.

812.06 Water power referee. In an action concerning declaration or partition of rights to water power, the court may appoint a referee and empower him to examine into any matters complained of, and upon reasonable notice to the owners or occupants of water power to enter upon and take control of the mills, machinery, flumes, gates, wheels and other appurtenances of such water power and to exercise such reasonable control of the same for such reasonable time and in such reasonable manner as will enable him to ascertain the respective rights of the parties and to determine the manner of using, applying and preserving the same.

812.07 Findings and conclusions; referee. On default and proof or after trial of issues, the court shall by findings of fact and conclusions of law determine the rights of the parties. If the basis for partition is clear, the court may enter judgment partitioning the interests. If the basis for partition is not clear, the court shall appoint a referee to report either a basis for partition, or the conclusion that partition is prejudicial to the parties.

812.08 Platting. If the court determines that the interests of the parties will be promoted by surveying or platting the premises or any part thereof, it shall, by order, direct the plaintiff or the referee to survey or to make and acknowledge a plat of such premises or a designated part thereof or both; which plat, when made, approved by the court and recorded shall have the same effect and validity as if made by the parties pursuant to ch. 236. When such plat is so made, approved and recorded, partition or sale if ordered may be made in accordance therewith.

812.09 Referee's expenses. The referee's expenses, including those of a surveyor and assistants, shall be subject to the approval of the court and, with the compensation allowed by the court for his services, shall be paid by the plaintiff and allowed as part of the costs to be taxed.

812.10 Referee's report; partition not prejudicial. (1) If the referee determines that partition can be made without prejudice to the owners, he shall submit to the court his findings, indicating how partition is to be made. In making partition the referee shall divide the real estate and allot the several portions to the respective parties,

quality and quantity relatively considered, according to the respective rights and interests of the parties as declared in the court's findings and conclusions.

(2) If the land is subject to a life estate, that fact shall be noted, and the partition of the remainder at the termination of the life estate indicated. The partition of any lands not subject to the life estate shall also be indicated.

812.11 Referee's report; partition prejudicial. (1) If the referee determines that partition cannot be made without prejudice to the owners, he shall so report to the court, recommending sale.

(2) If, under sub. (1), all or part of the property is subject to a life estate, and after the life estate is valued according to s. 879.65, the life tenant and the owners whose interests are being partitioned all file in court an agreement or agreements, executed so as to be entitled to record, stating that the life tenant be paid such value from the proceeds of sale, the referee shall so report to the court, recommending sale clear of such life estate.

(3) If, under sub. (1), all or part of the property is subject to a life estate, but the owner of the life estate fails to file the written consent mentioned in sub. (2), or from minority or other incapacity cannot do so, the referee shall recommend sale of the portion, if any, not subject to the life estate, or may recommend sale subject to the life estate.

(4) The referee may recommend sale subject to interests of tenants and lienholders.

812.12 Hearing on report. Notice of a hearing on the referee's report shall be given to all parties who have appeared.

812.13 Report may be set aside. On good cause shown the court may set aside the report and refer the case to a new referee, who shall proceed as hereinbefore directed.

812.14 Judgment of partition. (1) If the court has determined that partition is proper under s. 812.07 or on adoption by the court of a report recommending partition without sale, the court may order or render judgment of partition which shall be conclusive on all the parties to the action and their legal representatives and on all persons claiming or to claim from such parties or persons or any of them, subsequent to the filing of the notice of the pendency of the action.

(2) Such judgment shall not affect the interests of lienholders or tenants, except that if a tenant obtained a lease from less than all of the cotenant owners, his lease shall be extinguished by the judgment, and he shall have judgment for damages against the cotenant who granted the lease.

(3) If partition is adjudged, existing liens shall not be affected or impaired, except that a lien upon an undivided interest or estate shall thereafter be a charge only on the share assigned to the party against whom it exists, which share shall be charged with its just proportion of the costs in preference to such lien.

(4) If partition is adjudged, and if it appears that it cannot be made equal between the parties without prejudice to the rights or interests of some of them, the court may provide in its judgment that compensation be made by one party to the other for equality of partition, according to the equity of the case; and where any party has with the knowledge or assent of the others or any of them, made improvements upon lands partitioned, the portion of such lands upon which such improvements have been made may be allotted to such party without computing in their value the value of such improvements.

(5) A copy of the judgment shall be recorded in each county in which any part of the premises are situated, and the expense of such copy and record shall be taxed in the costs.

812.15 Judicial conveyance. If partition is decreed, and a party or parties refuse to convey to effect the partition, the court's judgment shall serve as the conveyance of interests described therein.

812.16 Costs and charges. The judgment shall adjudge that each of the parties, other than the plaintiff, pay a proportion of the costs of the proceedings, to be ascertained by the court; and the proportion of such costs adjudged to be paid by the unknown owners shall be adjudged to be a charge upon the part remaining undivided. Execution may issue for such costs as in other cases and may be levied upon the property of the parties respectively charged therewith, and a sale of the premises allotted to such unknown owner, upon such execution, shall be as valid as if he had been named in the proceedings and in such execution. If the complaint is dismissed or the action discontinued, the plaintiff shall be adjudged to pay costs as in other cases. He shall also pay the costs when the defendant does not appear, unless the complaint asks partition or sale of all the lands owned by the parties of which partition may be had or unless the defendant is personally served in the action.

812.17 Interlocutory judgment of sale. (1) If the court finds that the land or any portion thereof is so situated that partition cannot be made without prejudice to the owners, and there are no tenants or lienholders, it may order the sheriff to sell the premises so situated at public auction.

(2) If a lienholder or tenant consents to sale of his interest or is unknown, the value of his interest shall be paid to him or set aside for him from the proceeds of the sale before any distribution is made to the partitioning cotenants.

(3) If there are tenants or lienholders who do not consent to sale, the court may order such sale subject to the lien or tenant's interest.

(4) If a nonconsenting tenant derived his interest from less than all of the cotenant owners, a sale may be ordered without his consent, and his interest sold; the value of his interest shall be paid to him from the proceeds of sale owing to his lessor.

812.18 Notice and method of sale. The sheriff shall give notice of such sale for the time and in the manner required for sales of real estate on execution. The terms of sale shall be made known at the time thereof, and if the premises consist of distinct lots or parcels they shall be sold separately.

812.19 Report; confirmation of sale; final judgment. (1) The sheriff shall promptly report the sale to the court, with a description of the land sold to each purchaser, the name of such purchaser and the price bid by him.

(2) If the sale is confirmed, final judgment shall direct the sheriff to execute conveyances pursuant thereto and also direct the application of the proceeds of such sale. The judgment shall order the issuance of a writ of assistance as necessary.

812.20 Sheriff's deed. Any purchaser receiving a deed from the sheriff or other officer conducting such sale, shall be vested with all the estate, title and interest of all the parties to the action and those claiming under them, to the real estate sold, as indicated in the final judgment of sale.

812.21 Costs, how paid. Unless the court otherwise directs, the costs of every party to the action, with reasonable attorney's fees to be allowed by the court upon notice served personally or by mail, on the parties who are known to be residents of

this state, must be deducted from the proceeds of the sale and paid to his attorney; but the court may direct the costs of any trial, reference or other proceeding in the action to be paid out of the share of any party in such proceeds or may render judgment against any party therefor.

812.22 Distribution of proceeds of sale. The proceeds of every sale shall be brought into court by the sheriff with his report, and after deducting costs, shall be divided according to provisions of the judgment, or by order of the court among the parties in proportion to their respective rights.

812.23 Distribution; cancellation of liens. When the amount of the liens upon any undivided shares has been ascertained, the court shall order a distribution of the money pertaining to such shares to be made among the lien creditors according to the priority thereof, respectively; and the clerk of the court shall procure satisfaction thereof to be acknowledged as required by law and cause such lien to be duly satisfied of record, and the expenses thereof shall be paid out of the money realized on the sale of the share which was subject to the lien.

812.24 Proceedings not to affect whom. The proceedings to ascertain and settle the amount of liens, as herein provided, shall not affect any other party in such action nor delay the paying over or investing the moneys to or for the benefit of any party upon whose interest there does not appear to be any existing lien.

812.25 Incompetent's share. The share of any ward shall be paid to the general guardian of his estate, except under s. 880.04 (2).

812.26 Investment of share of absentee. When a party whose interest has been sold is absent from the state, without legal representatives in this state and has not appeared in the action, or is unknown, or not named in the proceedings, the court shall direct his share to be invested in securities, at interest, for his benefit until claimed by him or his legal representatives.

812.27 Security to refund. The court may require any party, before he receives any share of the moneys arising from such sales, to give security to the satisfaction of such court to refund his share, with interest thereon, in case it thereafter appears that such party was not entitled thereto.

812.28 Securities, how taken. When any security is directed to be taken by the court or any investment to be made, or any security taken by a sheriff on the sale of any real estate, as heretofore directed, except where provision is made for taking the same in the name of any known owner, the bonds, mortgages or other evidences thereof shall be taken in the name of the clerk of the court in whose office the original complaint was filed and his successors in office, who shall hold the same by virtue of his office and shall deliver them to his successor.

812.29 Receipt and application of payments; account. Such clerk shall receive the interest or principal of any sums as they become due and apply or reinvest the same according to the circumstances of the case, as the court directs, and shall, once every year, render to the court an account in writing and on oath of all moneys received by him and of the application thereof.

812.30 Collection of sum invested. Any person interested in any investment under this chapter may, with the leave of the court, prosecute an action to enforce the same in the name of the clerk.

812.31 Statute of limitations not affected. This chapter shall not authorize the revival or prosecution of any claim to lands which would otherwise be barred by the statute of limitations or by the acquiescence of any party having any such claim.

CHAPTER 813
ACTIONS FOR POSSESSION OF REAL PROPERTY;
DAMAGES FOR WITHHOLDING

813.01 Action for possession. A person claiming an interest in real property and the right, before the time of judgment in the action, to possession of that property, may bring an action for possession except that no such action may be brought to enforce a security interest in real property.

813.02 Effect of conveyance. No action for possession of real property shall be barred or delayed by reason of any alienation or conveyance by a defendant to any other person after the commencement of the action; no action for damages for withholding rents and profits shall be barred or delayed by reason of defendant's alienation or conveyance to any person before or after the commencement of the action.

813.03 Complaint, what to allege. The complaint shall describe the property, allege the plaintiff's interest in the property, allege his right to possession stating the reasons therefor, state the time at which he is entitled to possession, allege that the defendant unlawfully withholds possession, demand possession, and if damages are demanded, state the amount.

813.04 Future interests. Any recovery of possession against a tenant for life shall be subject to the rights of persons having future interests in the property, unless such persons were joined as parties.

813.05 Defendants; separate trials. (1) If the property is occupied, or if any person is in physical possession, or if any person is exercising acts of ownership on the property, such occupant or possessor shall be made a defendant.

(2) The court may award a separate trial to any defendant; in a joint trial, several judgments may be rendered.

813.06 Death of parties. (1) If any plaintiff dies before judgment, his heir or devisee, or his personal representative for the benefit of the heir, devisee or creditors, may prosecute in place of the plaintiff.

(2) If there are several defendants and any dies before judgment, the action may be prosecuted against the surviving defendants to bar such interests as they claim.

(3) The surviving plaintiffs may prosecute the action to vindicate their interests.

813.07 Defenses: legal; equitable. Any defense, whether formerly denominated legal or equitable, may be pleaded as a defense.

813.08 Defense; condemnation; how pleaded. If the defendant is entitled to have the lands described in the complaint or any part thereof condemned for public use, the defendant shall set forth the facts and the purpose for which the lands are required. If no proceedings for condemnation have been instituted and the defendant is authorized to condemn such lands and intends to condemn, the court may stay proceedings until the defendant can, with due diligence, institute and complete condemnation proceedings; if the plaintiff is entitled to judgment, he shall have costs.

813.09 Counterclaim for improvements. In any action brought for a declaration of right to possession or to recover possession of real property or to remove claimed encroachments, a defendant in addition to defending against plaintiff's claim may by counterclaim allege that he or a person under whom he claims, while holding adversely by color of title asserted in good faith, has made permanent and valuable improvements on or by permanent and valuable building has encroached on such

property and may demand the value to the plaintiff of such improvements and taxes paid. The plaintiff may amend his complaint to set off against such claim for improvements and taxes any claim for rents and profits enjoyed by the defendant or those under whom he claims during any period occurring prior to and terminating 6 years before the commencement of such action and which he might have recovered but for the limitation of s. 813.13 (1).

813.10 Counterclaim that plaintiff be required to sell land to defendant. In an action in which the plaintiff demands the relief specified in s. 813.09, and in which the defendant makes the allegations specified in that section and in addition alleges that the building is partly on plaintiff's land and partly on land in which the plaintiff has no interest and that the portion of the building built or encroaching on plaintiff's land cannot be removed or separated from the remaining portion without serious injury to both parts, the defendant may demand judgment that the plaintiff be required to sell him the land on which such building stands or encroaches, together with such additional land as may be necessary or equitable in the circumstances.

813.11 Plaintiff's proof; possession. To obtain a judgment for possession it is enough for the plaintiff to prove a right to possession at a time before judgment.

813.12 Plaintiff's proof; ouster. If the action for recovery of possession is brought by a tenant in common or a joint tenant against a cotenant, the plaintiff must prove that the defendant ousted him or did some other act amounting to a total denial of his right as cotenant.

813.13 Damages. (1) **WITHHOLDING RENTS AND PROFITS.** Damages for the withholding of rents and profits are limited to those accruing in the 6 years before the commencement of the action. In estimating such damages the value of the use of any improvements made by the defendant or those under whom he claims shall not be allowed.

(2) **DEFENDANT BUILT OR ENCROACHED ON PLAINTIFF'S PROPERTY.** If the defendant counterclaims under s. 813.09, the value of improvements shall be determined as of the time of trial; the defendant may recover the proportionate amount paid for taxes; for the payment of such amounts the defendant shall have a lien on the property.

(3) **DEFENDANT'S BUILDING CANNOT BE REMOVED WITHOUT LOSS.** If the defendant counterclaims under s. 813.10, the value of plaintiff's land to be sold to the defendant shall be determined at the time when its value was highest between the time of defendant's encroachment or taking of possession and the time of trial; value may be determined either in regard to the separate parcel, or in connection with other lands owned by the plaintiff; the plaintiff shall also recover damages for detention including any lost rent; value to the plaintiff shall not include improvements made by the defendant or those under whom he claims.

813.14 Judgment. (1) The judgment shall award the relief, legal or equitable, to which the plaintiff is entitled. Specifically, and without limitation, the defendant may be enjoined from remaining on the property, be required to remove structures or encroachments which interfere with plaintiff's right to possession, or the sheriff may be ordered to abate structures or encroachments. If the plaintiff in his complaint demanded the physical ouster of persons on the premises, and if the plaintiff proves his right to immediate physical possession of the land, the judgment may provide that the plaintiff be given immediate physical possession.

(2) If the court determines that the defendant is entitled to purchase plaintiff's property, it shall so adjudge, and the amount found as the value shall be paid within 30

days after entry of judgment. Upon payment, plaintiff's interest in the property described shall vest in the defendant, and the judgment shall serve as the conveyance. If the amount is not paid in 30 days, plaintiff may have execution of the judgment in his favor.

813.15 Possession under judgment; contempt. If any party or his legal representative withholds possession of land from the party adjudged to be entitled thereto or his legal representatives, he may be punished as for a contempt.

813.16 Possession unaffected by vacating judgment. If the plaintiff has taken possession by virtue of his judgment, such possession shall not be affected by the vacation of the judgment on the ground that the defaulting defendant was incapacitated at the time of rendition of the judgment; but if the defendant thereafter recovers judgment, he is entitled to judgment for immediate physical possession.

813.17 Writ of assistance. If a judgment is for the immediate possession of real property or for possession on a specified date, the person in whose favor the judgment runs may have a writ of assistance upon application to the clerk of court.

CHAPTER 814

INTERFERENCE WITH INTEREST; PHYSICAL INJURY

814.01 Physical injury to, or interference with, real property. (1) Any person owning or claiming an interest in real property may bring an action claiming physical injury to, or interference with, the property or his interest therein; the action may be to redress past injury, to restrain further injury, to abate the source of injury, or for other appropriate relief.

(2) Physical injury includes unprivileged intrusions and encroachments; the injury may be surface, subsurface or suprasurface; the injury may arise from activities on the plaintiff's property, or from activities outside the plaintiff's property which affect plaintiff's property.

(3) Interference with an interest is any activity other than physical injury which lessens the possibility of use or enjoyment of the interest.

(4) The lessening of a security interest without physical injury is not actionable unless such lessening constitutes waste.

814.05 Waste. (1) **ACTION BY PURCHASER AT TAX OR JUDICIAL SALE.** The purchaser at any sale of real estate for taxes or at judicial sale or by virtue of a power of sale in a mortgage, may sue to restrain the commission of waste during the period before he takes possession and may, in such action or by a subsequent action, recover damages against any person for any waste committed by such person on the premises after such sale. But no person lawfully entitled to the possession of any premises so sold shall be liable to any such action for doing either of the acts authorized in sub. (2).

(2) **NO WASTE.** Any person entitled to the possession of lands sold under sub. (1) may, until the expiration of the time given by law for his possession, use and enjoy the same without being liable to an action of waste therefor, as follows:

(a) He may use and enjoy the premises sold in like manner and for the like purposes in and for which they were used and applied prior to such sale, doing no permanent injury to the freehold.

(b) If the premises sold were buildings, fences or any other structures, he may make necessary repairs thereto, but he shall make no alterations in the form or structure thereof so as to impair or lessen their value.

(c) He may use and improve the land so sold in the ordinary course of husbandry or mining, and he shall be entitled to any crop growing thereon at the expiration of the period of redemption.

(d) He may apply any wood or timber on such land to the necessary repairs of any fences, buildings or structures existing thereon at the time of such sale.

(e) If the land sold is actually occupied by such person he may take the necessary firewood therefrom for the use of himself or family.

814.06 Waste; liability. (1) **TENANT LIABLE AFTER GRANTING HIS ESTATE.** Any tenant who lets or grants his estate and still retains possession thereof and commits waste is liable for the waste.

(2) **JOINT TENANTS, LIABLE.** If one joint tenant or tenant in common commits waste of the estate held in joint tenancy or in common he shall be subject to an action at the suit of his cotenant or cotenants.

814.10 Private nuisances. Any fence, hedge or other structure in the nature of a fence unnecessarily exceeding 6 feet in height, maliciously erected or maintained for the purpose of annoying the owners or occupants of adjoining property, shall be deemed a private nuisance. However, nothing herein contained shall limit the right of a municipality to forbid the erection of a fence less than 6 feet in height.

814.15 Plaintiffs. (1) If the injury or interference is only to a particular interest, the action may be brought by the owner of that interest without joining other interest-owners as plaintiffs.

(2) A person claiming injury or interference who does not have possession, may bring an action under this chapter only by alleging that the person with the right to possession refuses to bring the action, and by alleging the efforts which have been made to induce him to bring the action. The person with right to possession shall be joined as a defendant. This subsection does not apply to actions for waste only.

814.16 Complaint. The complaint shall indicate each plaintiff's interest, the interests of all persons entitled to possession, the nature of the alleged injury and, if damages are asked, shall allege the percentages and amounts claimed by each person claiming an interest.

814.17 Defendants. (1) Any person whose activities have injured or will injure the plaintiff's property or interests may be made a defendant.

(2) A defendant may defend on the ground that the plaintiff has no interest in the property, or that his interest is insufficient to entitle him to the relief demanded.

814.18 Intervenors. Any person claiming an interest in the property described in the complaint, and claiming that he has been, or will be, injured by a defendant's activity may intervene in the action.

814.19 Damages. (1) **GENERAL.** If damages are proper, the findings or verdict shall indicate the amount of damages awardable to each person interested.

(2) **WASTE; DOUBLE DAMAGES.** If the injury or interference constitutes waste, the court shall give judgment for double the damages found.

(3) **MULTIPLE DAMAGES.** Multiple damages may be awarded if a statute so provides.

814.20 Judgment. (1) The judgment shall award the relief, legal or equitable, to which the plaintiff is entitled specifically, and without limitation, interference,

encroachment, physical injury or waste may be enjoined; damages may be awarded separately, or in addition.

(2) Abatement by the sheriff of any nuisance, structure or encroachment may be ordered by the judgment.

814.21 Abatement. (1) ~~WARRANT MAY BE STAYED.~~ The court, on the application of the defendant, may order a stay of execution of a judgment under s. 814.20 (2) ordering abatement for such time as may be necessary, not exceeding 6 months, to give him an opportunity to remove the nuisance, structure or encroachment upon his giving satisfactory security to do so within the time specified in the order.

(2) ~~EXPENSE OF ABATING, HOW COLLECTED.~~ The sheriff's expense of abatement pursuant to such judgment shall be collected by the officer from the defendant in the same manner as damages and costs are collected upon execution; and such officer may sell any material of any fences, buildings or other things abated as personal property is sold upon execution and apply the proceeds to pay the expenses of such abatement, paying the residue, if any, to the defendant.

SECTION 17. 816.102 of the statutes is created to read:

816.102 Abandoned premises. In an action for enforcement of a mortgage lien if the court makes an affirmative finding upon proper evidence being submitted that the mortgaged premises have been abandoned by the mortgagor and his assigns, judgment shall be entered as provided in s. 816.11 except that the sale of such mortgaged premises shall be made upon the expiration of 2 months from the date when such judgment is entered. Notice of the time and place of sale shall be given under ss. 272.31 and 816.16 within such 2-month period.

SECTION 18. 818.01 and 818.03 of the statutes are created to read:

818.01 Action by settler on public lands. A settler on the public lands of the United States, under the laws thereof may maintain an action to recover possession of the lands settled upon or claimed, or an action for injury to, or interference with such lands. Such action may not be brought unless the land claimed is staked or otherwise marked out so that its boundaries can be readily traced and the extent of the claim known and unless the plaintiff occupies the land or has made improvements thereon to the value of \$50. An action under this section, may not be brought if the land claimed exceeds 160 acres, located in one body or in different parcels, or if for 6 months next preceding the commencement of the action the plaintiff has not occupied or has neglected to cultivate the land claimed.

818.03 Removal of restrictions. (1) When all or part of the area of any city block is affected by restrictive deed provisions, restrictive covenants or agreements, and when the first restriction affecting the property has existed for 30 years or more, and when 75% or more of the area of the city block has not been developed with buildings of the type allowed by the restrictions, the owner of any part of the block may commence an action in the circuit or county court of the county where the land lies to remove the restrictive deed provisions, restrictive covenants or agreements. All adjacent property owners shall be named as defendants and shall be served with a copy of the complaint.

(2) Notice of the commencement of the action, including a description of the area affected, shall be published in the county as a class 3 notice, under ch. 985. A lis pendens shall be filed in the office of the register of deeds upon commencement of the action.

(3) The court may enter a judgment releasing the area from the effect of any restrictive deed provision, restrictive covenant or agreement contained whether the

same appears in the deed to the area or block involved or in the deed to other lands or lots. No costs may be allowed or taxed against the defendants in such action.

(4) Any property owner affected by the removal of the restrictions may petition in the action, to be allowed actual damages to compensate him for any actual damages he may sustain by such removal. No damages may flow automatically from the removal and damages shall be allowed by the court only upon a showing of actual injury. The court in granting or denying same shall take into consideration the development of the surrounding area including the commercial development in the immediate neighborhood.

SECTION 19. 893.10 of the statutes is renumbered 893.10 (1).

SECTION 20. **Cross reference changes.** In the sections listed in column A below, the cross references to the sections in column B are changed to the cross references shown in column C:

A	B	C
Statute Section	Old cross reference	New cross reference
15.251 (intro.)	276.48	812.03
66.27 (2)(b)	281.03	810.10
66.296 (6)	281.04	810.11
66.297 (1)	281.04	810.11
262.05 (7)(b)	ch. 297	ch. 816
289.09	ch. 278	ch. 816
291.02 (1)	ch. 297	ch. 816
344.17 (3)	ch. 278	ch. 816
344.36 (3)	ch. 278	ch. 816
816.06, as renumbered	278.05	816.05
816.07, as renumbered	278.06	816.06
816.08, as renumbered	278.06	816.06
816.08, as renumbered	278.07	816.07
816.10 (2), as renumbered	278.101	816.101
816.101 (2), as renumbered	278.16	816.16
816.63, as renumbered	297.11	816.61
816.64 (2), as renumbered	297.12	816.62
816.64 (2), as renumbered	297.13	816.63
816.70, as renumbered	297.04	816.54

SECTION 21. **Effective date.** This act shall take effect to actions commenced after July 1, 1974.