

THIS CHAPTER REPEALED AS OF JULY 1, 1971.

## CHAPTER 291

## UNLAWFUL DETAINER

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**291.01 Proceedings to remove tenant, etc., holding over.** In the following cases any tenant or lessee at will, or by sufferance, or for any part of a year, or for one or more years of any real property, including a specific or undivided portion of a house or other dwelling, and the assigns, undertenants or legal representatives of such tenant or lessee may be removed therefrom in the manner prescribed in this chapter, except that nothing herein contained shall affect the provisions of section 234.19:

(1) When such person holds possession after the expiration of the term by lapse of time or after such tenancy at will or sufferance has been terminated by either party in the manner provided in sections 234.03 and 234.04, and without the permission of the landlord.

(2) When such person holds over without such permission after any default in the payment of rent pursuant to the agreement under which he holds and at least 3 days' notice in writing, requiring in the alternative the payment of the rent or the possession of the premises, has been served in behalf of the person entitled to such rent on the person in possession of the premises as prescribed in s. 262.06 for the service of a summons, and such notice may be served by the lessor or any person in his behalf. In case the service cannot be made upon the tenant in compliance with s. 262.06, then such notice may be served on a competent person at least 14 years of age residing on the premises if one can be found, and if not then such notice may be served by affixing same in a conspicuous part of the premises, where it may be conveniently read for at least 10 days before an action is brought for the removal of such tenant under this section.

(3) When such person holds over without such permission, contrary to any other conditions or covenants of the agreement under which he holds, after at least 3 days' notice requiring the delivery of the possession of the premises has been served, as above required, on the person holding such possession.

Cross References: See 234.19 for provision excluding certain long-term leases from applicability of ch 291.

See 291.15 for provision for stay of proceedings after judgment for removal.

**291.02 Removal after foreclosure and of renter.** In the following cases any person who holds possession of real property after demand of the possession thereof has been made, and the assigns, tenants or representatives of such person may be removed in like manner:

(1) When the property has been duly sold upon the foreclosure of a mortgage under the provisions of chapter 297, which was executed by such person or any person under whom he claims by title subsequent to the date of the recording of such mortgage, and the title under such foreclosure has been duly perfected.

(2) When such person occupies or holds the property under an agreement with the owner to occupy and cultivate the same upon shares or for a share of the crops and the time fixed in the agreement for such occupancy has expired.

**291.03 Forcible entry, etc., forbidden.** No person shall make any entry into real property but in cases where entry is given by law, and in such cases not with strong hand nor with a multitude of people, but only in a peaceable manner. Any person who shall make such unlawful or forcible entry and detain the same, or who, having peaceably entered upon any property, forcibly holds the possession thereof, may be removed therefrom and fined in the manner provided in this chapter.

**291.04 Limitation of section 291.01.** Section 291.01 shall not extend to any person who has or shall have continued in possession three years after the termination of the time for which the premises were demised or let to him or those under whom he claims, or to any person who continues in possession three years, quietly and peaceably by disseisin.

**291.05 Action, how commenced.** The plaintiff shall file with the county court a complaint signed by him, his agent or attorney, giving a description of the premises of which possession is claimed, stating the facts which au-

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thorize the removal of the defendant, naming him and praying for his removal. The provisions of ch. 299 with respect to pleading and practice apply.

**291.10 Treble damages.** If the plaintiff shall recover in any action brought under the provisions of this chapter, except when brought for the nonpayment of rent, he shall be entitled to recover treble damages, with costs of suit, against the person found guilty, in a separate action, for any injury he shall have sustained by reason of any unlawful or forcible entry or detainer, or for holding any unlawful possession of the premises by such defendant.

**291.11 Appeal; stay of proceedings.** If either party is aggrieved by the judgment rendered in such action he may appeal within 10 days to the circuit court or other court having jurisdiction of such appeal, but no such appeal by a defendant shall stay proceedings on such judgment unless the appellant, within said 10 days, executes and files with the court his undertaking to the plaintiff, with 2 or more sureties, to be approved by the court to the effect that the appellant will pay all costs of such appeal which may be awarded against him, and abide the order of the court therein, and pay all rent and other damages justly accruing to the plaintiff during the pendency of such appeal. Upon taking the appeal and filing the undertaking all further proceedings in the case are

stayed and the appellate court shall thereafter issue all needful writs and processes to carry out any judgment which may be rendered thereon in such appellate court.

**291.13 Proceedings if writ of restitution issued.** If a writ of restitution is issued previous to the taking of any appeal by which proceedings are stayed, the court shall forthwith give the appellant a certificate of the allowance of such appeal, and upon the service of such certificate upon the officer having such writ the officer shall forthwith cease all further proceedings thereon; and if such writ has not been completely executed the defendant shall remain in possession of the premises until the appeal is determined.

**291.15 Stay of proceedings by tenant.** When a final judgment is rendered in favor of the plaintiff in any action, brought against a person for holding over after default in the payment of rent in the appellate court, he may stay all proceedings on the judgment by paying all rent due at the date of the judgment and the costs of the action after judgment in the appellate court, with the clerk, his undertaking to the plaintiff, with sureties the clerk approves, to the effect that he will pay the rent and costs within 10 days; at the expiration of which time a writ of restitution may issue unless he produces to the clerk satisfactory evidence of payment.