

CHAPTER 844

INTERFERENCE WITH INTEREST; PHYSICAL INJURY

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844.01 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 the person's 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.

History: 1973 c. 189; Sup. Ct. Order, 67 Wis. 2d 585, 767 (1975); Stats. 1975 s. 844.01; 1993 a. 486.

Cross-reference: See s. 840.01 for the definition of "interest in real property."

This section creates no rights or duties. It is not a basis for injunctive relief to abate an interference with property. *Shanak v. City of Waupaca*, 185 Wis. 2d 568, 518 N.W.2d 310 (Ct. App. 1994).

Any remedies fashioned under this section may be applied to a private nuisance dispute if the circumstances warrant. *Schultz v. Trascher*, 2002 WI App 4, 249 Wis. 2d 722, 640 N.W.2d 130, 00-3182.

844.05 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 the purchaser 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 any 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 the person's possession, use and enjoy the same without being liable to an action of waste therefor, as follows:

(a) The person 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, the person may make necessary repairs thereto, but the person shall make no alterations in the form or structure thereof so as to impair or lessen their value.

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

(d) The person 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, the person may take the necessary firewood therefrom for the use of the person or the person's family.

History: 1973 c. 189; Sup. Ct. Order, 67 Wis. 2d 585, 767 (1975); Stats. 1975 s. 844.05; 1981 c. 314; 1993 a. 486.

Waste may be defined as unreasonable conduct by an owner of a possessory estate that results in physical damage to real estate and substantial diminution in the value of estates in which others have an interest. *Pleasure Time, Inc. v. Kuss*, 78 Wis. 2d 373, 254 N.W.2d 463 (1973).

844.06 Waste; liability. (1) TENANT LIABLE AFTER GRANTING ESTATE. Any tenant who lets or grants the tenant's 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, the tenant committing waste shall be subject to an action at the suit of the tenant's cotenant or cotenants.

History: 1973 c. 189; Sup. Ct. Order, 67 Wis. 2d 585, 767 (1975); Stats. 1975 s. 844.06; 1993 a. 486.

844.10 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.

History: 1973 c. 189; Sup. Ct. Order, 67 Wis. 2d 585, 767 (1975); Stats. 1975 s. 844.10.

That a fence is less than 6 feet in height does not preclude a finding that it is a private nuisance. *Schultz v. Trascher*, 2002 WI App 4, 249 Wis. 2d 722, 640 N.W.2d 130, 00-3182.

844.15 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 the person with the right to possession 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.

History: 1973 c. 189; Sup. Ct. Order, 67 Wis. 2d 585, 767 (1975); Stats. 1975 s. 844.15; 1993 a. 486.

844.16 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.

History: 1973 c. 189; Sup. Ct. Order, 67 Wis. 2d 585, 767 (1975); Stats. 1975 s. 844.16.

844.17 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 the plaintiff's interest is insufficient to entitle the plaintiff to the relief demanded.

History: 1973 c. 189; Sup. Ct. Order, 67 Wis. 2d 585, 767 (1975); Stats. 1975 s. 844.17; 1993 a. 486.

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

History: 1973 c. 189; Sup. Ct. Order, 67 Wis. 2d 585, 767 (1975); Stats. 1975 s. 844.18; 1993 a. 486.

844.19 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.

History: 1973 c. 189; Sup. Ct. Order, 67 Wis. 2d 585, 767 (1975); Stats. 1975 s. 844.19.

844.20 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.

History: 1973 c. 189; Sup. Ct. Order, 67 Wis. 2d 585, 767 (1975); Stats. 1975 s. 844.20.

844.21 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. 844.20 (2) ordering abatement for such time as may be necessary, not exceeding 6 months, to give the defendant an opportunity to remove the nuisance, structure or encroachment upon the defendant's 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.

History: 1973 c. 189; Sup. Ct. Order, 67 Wis. 2d 585, 767, 783 (1975); Stats. 1975 s. 844.21; 1993 a. 486.

844.22 Obstruction of solar or wind energy system.

Any structure that is constructed or vegetative growth that occurs on adjoining or nearby property after a solar energy system, as defined in s. 13.48 (2) (h) 1. g., or a wind energy system, as defined in s. 66.0403 (1) (m), is installed on any property, that interferes with the functioning of the solar or wind energy system, is considered to be a private nuisance.

History: 1993 a. 414; 1999 a. 150 s. 672.

NOTE: 1993 Wis. Act 414, which creates this section, contains extensive explanatory notes. See also *Prah v. Maretti*, 108 Wis. 2d 223, 321 N.W.2d 182 (1982).