CHAPTER 843

ACTIONS FOR POSSESSION OF REAL PROPERTY; DAMAGES FOR WITHHOLDING

843.01 Action for possession.
843.02 Effect of conveyance.
843.03 Complaint, what to allege.
843.04 Future interests.
843.05 Defendants; separate trials.
843.06 Death of parties.
843.07 Defenses: legal; equitable.
843.08 Defense; condemnation; how pleaded.
843.09 Counterclaim for improvements.
843.10 Counterclaim that plaintiff be required to sell land to defendant.
843.11 Plaintiff's proof; possession.
843.12 Plaintiff's proof; ouster.
843.13 Damages.
843.14 Judgment.
843.15 Possession under judgment; contempt.
843.16 Possession unaffected by vacating judgment.
843.17 Writ of assistance.

843.01 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.

History: 1973 c. 189; Sup. Ct. Order, 67 Wis. 2d 585, 767 (1975); Stats. 1975 s. 843.01.

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

843.02 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.

History: 1973 c. 189; Sup. Ct. Order, 67 Wis. 2d 585, 767 (1975); Stats. 1975 s. 843.02.

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

History: 1973 c. 189; Sup. Ct. Order, 67 Wis. 2d 585, 767 (1975); Stats. 1975 s. 843.03; 1993 a. 486.

843.04 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.

History: 1973 c. 189; Sup. Ct. Order, 67 Wis. 2d 585, 767 (1975); Stats. 1975 s. 843.04.

843.05 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.

History: 1973 c. 189; Sup. Ct. Order, 67 Wis. 2d 585, 767 (1975); Stats. 1975 s. 843.05.

843.06 Death of parties. (1) If any plaintiff dies before judgment, the plaintiff's heir or devisee, or the plaintiff's 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.

History: 1973 c. 189; Sup. Ct. Order, 67 Wis. 2d 585, 767 (1975); Stats. 1975 s. 843.06; 1993 a. 486.

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

History: 1973 c. 189; Sup. Ct. Order, 67 Wis. 2d 585, 767 (1975); Stats. 1975 s. 843.07.

843.08 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, the plaintiff shall have costs.

History: 1973 c. 189; Sup. Ct. Order, 67 Wis. 2d 585, 767 (1975); Stats. 1975 s. 843.08; 1993 a. 486.

843.09 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 the defendant or a person under whom the defendant 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 the plaintiff's 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 the defendant claims during any period occurring prior to and terminating 6 years before the commencement of such action and which the plaintiff might have recovered but for the limitation of s. 843.13 (1).

History: 1973 c. 189; Sup. Ct. Order, 67 Wis. 2d 585, 767, 783 (1975); Stats. 1975 s. 843.09; 1993 a. 486.

843.10 Counterclaim that plaintiff be required to sell land to defendant. In an action in which the plaintiff demands the relief specified in s. 843.09, 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 the defendant the land on which such building stands or encroaches, together with such additional land as may be necessary or equitable in the circumstances.

History: 1973 c. 189; Sup. Ct. Order, 67 Wis. 2d 585, 767, 783 (1975); Stats. 1975 s. 843.10; 1993 a. 486.

The supreme court in *Perpignani*, 139 Wis. 2d 695, plainly affirmed a forced sale in an action for possession under ch. 844 and general equitable powers. Thus, the court necessarily, albeit implicitly, decided that s. 843.10 is not the sole authority

under which a circuit court may order a forced sale. Soma v. Zurawski, 2009 WI App 124, 321 Wis. 2d 91, 772 N.W.2d 724, 08–2300.

843.11 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.

History: 1973 c. 189; Sup. Ct. Order, 67 Wis. 2d 585, 767 (1975); Stats. 1975 s. 843.11.

843.12 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 the plaintiff or did some other act amounting to a total denial of the plaintiff's right as cotenant.

History: 1973 c. 189; Sup. Ct. Order, 67 Wis. 2d 585, 767 (1975); Stats. 1975 s. 843.12; 1993 a. 486.

843.13 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 the defendant claims shall not be allowed.

(2) DEFENDANT BUILT OR ENCROACHED ON PLAINTIFF'S PROPERTY. If the defendant counterclaims under s. 843.09, 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. 843.10, 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 the defendant claims.

History: 1973 c. 189; Sup. Ct. Order, 67 Wis. 2d 585, 767, 783 (1975); Stats. 1975 s. 843.13; 1993 a. 486.

843.14 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 the plaintiff's complaint demanded the physical ouster of persons on the premises, and if the plaintiff proves the plaintiff's 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 the plaintiff's favor.

History: 1973 c. 189; Sup. Ct. Order, 67 Wis. 2d 585, 767 (1975); Stats. 1975 s. 843.14; 1993 a. 486.

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

History: 1973 c. 189; Sup. Ct. Order, 67 Wis. 2d 585, 767 (1975); Stats. 1975 s. 843.15; 1993 a. 486.

843.16 Possession unaffected by vacating judgment. If the plaintiff has taken possession by virtue of the plaintiff's 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, the defendant is entitled to judgment for immediate physical possession.

History: 1973 c. 189; Sup. Ct. Order, 67 Wis. 2d 585, 767 (1975); Stats. 1975 s. 843.16; 1993 a. 486.

843.17 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.

History: 1973 c. 189; Sup. Ct. Order, 67 Wis. 2d 585, 767 (1975); Stats. 1975 s. 843.17.