

CHAPTER 840**REAL PROPERTY ACTIONS; GENERAL PROVISIONS**

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840.01 Definition of interest in real property. As used in chs. 840 to 846:

(1) Except as provided in sub. (2), “interest in real property” includes estates in, powers under ch. 702 over, present and future rights to, title to, and 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 and homestead rights. The interest may be an interest that was formerly designated legal or equitable. The interest may be surface, subsurface, suprasurface, riparian or littoral.

(2) “Interest in real property” does not include interests held only as a member of the public nor does it include licenses.

History: 1973 c. 189; Sup. Ct. Order, 67 Wis. 2d 585, 767 (1975), 782; Stats. 1975 s. 840.01; 1983 a. 186; 1999 a. 85.

In an action for unreasonable interference with an easement, it was reasonable for the court to order the defendant landowner to place a fence post at least 2 feet away from a right-of-way as interference to easements can be caused even if objects do not physically touch the right-of-way. *Hunter v. McDonald*, 78 Wis. 2d 338, 254 N.W.2d 282 (1978).

A municipality’s regulatory power to condemn, assess, tax, and zone property within its boundaries is not an “interest in real property” under this section. *Village of Hobart v. Oneida Tribe of Indians of Wisconsin*, 2007 WI App 180, 303 Wis. 2d 761, 736 N.W.2d 896, 06–2639.

840.02 Chapters applicable. Except as otherwise provided in chs. 840 to 846, the general rules of practice and procedure in chs. 750 to 758 and 801 to 847 shall apply to actions and proceedings under chs. 840 to 846.

History: 1973 c. 189; Sup. Ct. Order, 67 Wis. 2d 585, 767, 782 (1975); Stats. 1975 s. 840.02; 1979 c. 89; 1981 c. 314.

840.03 Real property remedies. (1) Any person having an interest in real property may bring an action relating to that interest, in which the person 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.

History: 1973 c. 189; Sup. Ct. Order, 67 Wis. 2d 585, 767 (1975); Stats. 1975 s. 840.03; 1993 a. 486.

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

History: 1973 c. 189; Sup. Ct. Order, 67 Wis. 2d 585, 767 (1975); Stats. 1975 s. 840.035.

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

History: 1973 c. 189; Sup. Ct. Order, 67 Wis. 2d 585, 767 (1975); Stats. 1975 s. 840.04.

840.05 Joinder. Any action proper under s. 840.03 may be brought in rem or in personam according to appropriate statutes for obtaining jurisdiction. Actions in rem and in personam may be joined.

History: 1973 c. 189; Sup. Ct. Order, 67 Wis. 2d 585, 767, 782 (1975); Stats. 1975 s. 840.05.

840.06 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.

History: 1973 c. 189; Sup. Ct. Order, 67 Wis. 2d 585, 767 (1975); Stats. 1975 s. 840.06.

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

History: 1973 c. 189; Sup. Ct. Order, 67 Wis. 2d 585, 767 (1975); Stats. 1975 s. 840.07.

This section does not require a hearing to produce the necessary evidence to support the court’s findings and conclusions. *Geneva National Community Association, Inc. v. Friedman*, 228 Wis. 2d 572, 598 N.W.2d 600 (Ct. App. 1999), 98–1010.

840.10 Lis pendens; who may file; effect when void; discharge. (1) (a) 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 present for filing or recording 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 the defendant shall present for filing or recording a lis pendens. From the time of filing or recording 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 the purchaser or encumbrancer were a party thereto. In any such action in which a lis pendens has been filed or recorded, if the party who presents for filing or recording the lis pendens fails for one year after the

filing or recording 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 present for filing or recording a lis pendens until 20 days after the lis pendens has been filed or recorded.

(b) A lis pendens that is prepared by a member of the State Bar of Wisconsin need not be authenticated.

(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. 811.22 for discharging an attachment or by s. 806.19 (1) (a) for satisfying a judgment. 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.

History: 1973 c. 189; Sup. Ct. Order, 67 Wis. 2d 585, 767, 782 (1975); 1975 c. 198; Stats. 1975 s. 840.10; 1993 a. 486; 1997 a. 304; 2001 a. 103.

A motion to review a judgment on the grounds that the plaintiff failed to file an amended lis pendens was properly denied. Particularly as between the parties, failure to file a lis pendens is a minor irregularity. *Zapuchlak v. Hucal*, 82 Wis. 2d 184, 262 N.W.2d 514 (1978).

A foreign divorce action notice filed with the register of deeds of the county in which one foreign litigant owned property was a valid lis pendens. *Belleville State Bank v. Steele*, 117 Wis. 2d 563, 345 N.W.2d 405 (1984).

Sections 703.25 (3) and 840.10 (1) permit the filing of a lis pendens in an action for a money judgment against a condominium association as the judgment shall be a lien against each condominium unit although their owners are not defendants in the action. *Interlaken Service Corporation v. Interlaken Condominium Association*, 222 Wis. 2d 299, 588 N.W.2d 262 (Ct. App. 1998), 97–1107.

This section permits a lis pendens to be recorded in connection with an out-of-state suit seeking title or possession of property in Wisconsin by means of a constructive trust. *Ross v. Specialty Risk Consultants, Inc.* 2000 WI App 258, 240 Wis. 2d 23, 621 N.W.2d 669, 00–0089.

Even if a statutory lis pendens under this section is dissolved, common law lis pendens applies and a purchaser who is a party to the relevant litigation takes the property subject to the outcome of the litigation, including appeals. *Gaugert v. Duve*, 2001 WI 83, 244 Wis. 2d 691, 628 N.W.2d 861, 98–3004.

A lis pendens under sub. (1) must be maintained as long as there are pending proceedings in an action, including appellate proceedings. Once all proceedings are concluded, the court may order the lis pendens discharged consistent with sub. (3). *Zweber v. Melar Ltd., Inc.* 2004 WI App 185, 276 Wis. 2d 156, 687 N.W.2d 818, 04–0538.

This section imposes the requirement of recording a lis pendens on the plaintiff who files a complaint and on a defendant seeking relief on a counterclaim or a cross-complaint. A defendant construction lien claimant is not a plaintiff, and no cross-claim is necessary in order for a defendant construction lien claimant to obtain a determination of the amount due it and an order for sale in a lien foreclosure action. There is no logical rationale for imposing the requirements of sub. (1) (a) on a defendant construction lien claimant because it unnecessarily files a cross-claim seeking relief it is entitled to under ss. 779.09 to 779.11. *Carolina Builders Corporation v. Dietzman*, 2007 WI App 201, 304 Wis. 2d 773, 739 N.W.2d 53, 06–3180.

840.11 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 the person's 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 pur-

chaser 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.

History: 1973 c. 189; Sup. Ct. Order, 67 Wis. 2d 585, 767 (1975); Stats. 1975 s. 840.11; 1993 a. 486.

The application of this section is not limited to municipalities. *Rock Lake Estates Unit Owners Association, Inc. v. Town of Lake Mills*, 195 Wis. 2d 348, 536 N.W.2d 415 (Ct. App. 1995), 94–2488.

840.12 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 that party's 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.

History: 1973 c. 189; Sup. Ct. Order, 67 Wis. 2d 585, 767 (1975); Stats. 1975 s. 840.12; 1993 a. 486.

840.16 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.

History: 1973 c. 189; Sup. Ct. Order, 67 Wis. 2d 585, 767 (1975); Stats. 1975 s. 840.16.

840.17 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.

History: 1973 c. 189; Sup. Ct. Order, 67 Wis. 2d 585, 767 (1975); Stats. 1975 s. 840.17.

840.18 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 the sheriff's 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.

History: 1973 c. 189; Sup. Ct. Order, 67 Wis. 2d 585, 767 (1975); Stats. 1975 s. 840.18; 1993 a. 486.