

CHAPTER 847

MISCELLANEOUS REAL ESTATE ACTIONS

847.01 Action by settler on public lands
 847.03 Removal of restrictions
 847.05 Actions between cotenants

847.07 Correction of description in conveyance
 847.09 Discharge of mortgage or lien by court

847.01 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.

History: 1973 c. 189; Sup Ct Order, 67 W (2d) 768

847.03 Removal of restrictions. (1) If all or part of the area of any city block is affected by restrictive deed provisions, restrictive covenants or agreements, if the first restriction affecting the property has existed for 30 years or more and if 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 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.

History: 1973 c. 189; Sup Ct Order, 67 W (2d) 768; 1977 c. 449

847.05 Actions between cotenants. One joint tenant or tenant in common and his executors or administrators may maintain an action for money had and received against his cotenant for receiving more than his just proportion of the rents or profits of the estate owned by them as joint tenants or tenants in common.

History: Sup Ct Order, 67 W (2d) 768.

Rental payments may be due where the conduct of one cotenant results in the ouster of the other. *Heyse v. Heyse*, 47 W (2d) 27, 176 NW (2d) 316.

847.07 Correction of description in conveyance. The circuit court of any county in which a conveyance of real estate has been recorded may make an order correcting the description in the conveyances on proof being made to the satisfaction of the court that the conveyance contains an erroneous description, not intended by the parties thereto; or if the description is ambiguous and does not clearly or fully describe the premises intended to be conveyed, if the grantor therein is dead, a nonresident of the state, a corporation which has ceased to exist or an administrator, executor, guardian, trustee or other person authorized to convey and has been discharged from his or her trust and the person to whom it was made, his or her heirs, legal representatives or assigns have been in the quiet, undisturbed and peaceable possession of the premises intended to be conveyed from the date of the conveyance. This section does not prevent an action for the reformation of any

MISCELLANEOUS REAL ESTATE ACTIONS 847.09

conveyance, and if in any doubt, the court shall direct the action to be brought.

History: Sup Ct Order, 67 W (2d) 768; 1977 c. 449.

847.09 Discharge of mortgage or lien by court. The circuit court of any county in which a mortgage, lien or charge is recorded may make an order discharging the mortgage, lien or charge of record on proof being made to the satisfaction of the court that the mortgage, lien or charge has been fully paid or satisfied and that the mortgagee or the owner of the lien or charge or his or her assignee is a corporation which has ceased to exist or which has no officer

or agent in this state competent to discharge the same of record or that the mortgagee or the owner of the lien or charge or his or her assignee is a nonresident of the county where the mortgage, lien or charge is recorded, or is deceased, and in such case, that there is no administrator of the estate under the authority of this state. The register of deeds shall record the order or a copy thereof, certified by the clerk under the seal of the court, and the record shall have the same effect as the record of discharge by a mortgagee or owner of a lien or charge duly executed and acknowledged.

History: Sup Ct Order, 67 W (2d) 768; 1977 c. 449.