

**Chapter 7.28**  
**EJECTMENT, QUIETING TITLE**

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**NOTES:**

*Forcible and unlawful entry, detainer: Chapters 59.12, 59.16 RCW.*

*Liens: Title 60 RCW.*

*Real property: Title 64 RCW.*

*Rent default, less than forty dollars: Chapter 59.08 RCW.*

*Tenancies: Chapter 59.04 RCW.*

**7.28.010 Who may maintain actions—Service on nonresident defendant.**

Any person having a valid subsisting interest in real property, and a right to the possession thereof, may recover the same by action in the superior court of the proper county, to be brought against the tenant in possession; if there is no such tenant, then against the person claiming the title or some interest therein, and may have judgment in such action quieting or removing a cloud from plaintiff’s title; an action to quiet title may be brought by the known heirs of any deceased person, or of any person presumed in law to be deceased, or by the successors in interest of such known heirs against the unknown heirs of such deceased person or against such person presumed to be deceased and his unknown heirs, and if it shall be made to appear in such action that the plaintiffs are heirs of the deceased person, or the person presumed in law to be deceased, or the successors

in interest of such heirs, and have been in possession of the real property involved in such action for ten years preceding the time of the commencement of such action, and that during said time no person other than the plaintiff in the action or his grantors has claimed or asserted any right or title or interest in said property, the court may adjudge and decree the plaintiff or plaintiffs in such action to be the owners of such real property, free from all claims of any unknown heirs of such deceased person, or person presumed in law to be deceased; and an action to quiet title may be maintained by any person in the actual possession of real property against the unknown heirs of a person known to be dead, or against any person where it is not known whether such person is dead or not, and against the unknown heirs of such person, and if it shall thereafter transpire that such person was at the time of commencing such action dead the judgment or decree in such action shall be as binding and conclusive on the heirs of such person as though they had been known and named; and in all actions, under this section, to quiet or remove a cloud from the title to real property, if the defendant be absent or a nonresident of this state, or cannot, after due diligence, be found within the state, or conceals himself to avoid the service of summons, service may be made upon such defendant by publication of summons as provided by law; and the court may appoint a trustee for such absent or nonresident defendant, to make or cancel any deed or conveyance of whatsoever nature, or do any other act to carry into effect the judgment or the decree of the court. [1911 c 83 § 1; 1890 c 72 § 1; Code 1881 § 536; 1879 p 134 § 1; 1877 p 112 § 540; 1869 p 128 § 488; 1854 p 205 § 398; RRS § 785. Formerly RCW 7.28.010, 7.28.020, 7.28.030 and 7.28.040.]

**NOTES:**

*Process, publication, etc.: Chapter 4.28 RCW.*

*Publication of legal notices: Chapter 65.16 RCW.*

**7.28.050 Limitation of actions for recovery of real property—Adverse possession under title deducible of record.**

That all actions brought for the recovery of any lands, tenements or hereditaments of which any person may be possessed by actual, open and notorious possession for seven successive years, having a connected title in law or equity deducible of record from this state or the United States, or from any public officer, or other person authorized by the laws of this state to sell such land for the nonpayment of taxes, or from any sheriff, marshal or other person authorized to sell such land on execution or under any order, judgment or decree of any court of record, shall be brought within seven years next after possession being taken as aforesaid, but when the possessor shall acquire title after taking such possession, the limitation shall begin to run from the time of acquiring title. [1893 c 11 § 1; RRS § 786.]

**7.28.060 Rights inhere to heirs, devisees and assigns.**

The heirs, devisees and assigns of the person having such title and possession shall have the same benefit of RCW 7.28.050 as the person from whom the possession is derived. [1893 c 11 § 2; RRS § 787.]

**7.28.070 Adverse possession under claim and color of title—Payment of taxes.**

Every person in actual, open and notorious possession of lands or tenements under claim and color of title, made in good faith, and who shall for seven successive years continue in possession, and shall also during said time pay all taxes legally assessed on such lands or tenements, shall be held and adjudged to be the legal owner of said lands or tenements, to the extent and according to the purport of his or her paper title. All persons holding under such possession, by purchase, devise or descent, before said seven years shall have expired, and who shall continue such possession and continue to pay the taxes as aforesaid, so as to complete the possession and payment of taxes for the term aforesaid, shall be entitled to the benefit of this section. [1893 c 11 § 3; RRS § 788.]

**7.28.080 Color of title to vacant and unoccupied land.**

Every person having color of title made in good faith to vacant and unoccupied land, who shall pay all taxes legally assessed thereon for seven successive years, he or she shall be deemed and adjudged to be the legal owner of said vacant and unoccupied land to the extent and according to the purport of his or her paper title. All persons holding under such taxpayer, by purchase, devise or descent, before said seven years shall have expired, and who shall continue to pay the taxes as aforesaid, so as to complete the payment of said taxes for the term aforesaid, shall be entitled to the benefit of this section: PROVIDED, HOWEVER, If any person having a better paper title to said vacant and unoccupied land shall, during the said term of seven years, pay the taxes as assessed on said land for any one or more years of said term of seven years, then and in that case such taxpayer, his heirs or assigns, shall not be entitled to the benefit of this section. [1893 c 11 § 4; RRS § 789.]

**7.28.085 Adverse possession—Forest land—Additional requirements—Exceptions.**

(1) In any action seeking to establish an adverse claimant as the legal owner of a fee or other interest in forest land based on a claim of adverse possession, and in any defense to an action brought by the holder of record title for recovery of title to or possession of a fee or other interest in forest land where such defense is based on a claim of adverse possession, the adverse claimant shall not be deemed to have established open and notorious possession of the forest lands at issue unless, as a minimum requirement, the adverse claimant establishes by clear and convincing evidence that the adverse claimant has made or erected substantial improvements, which improvements have remained entirely or partially on such lands for at least ten years. If the interests of justice so require, the making, erecting, and continuous presence of substantial improvements on the lands at issue, in the absence of additional acts by the adverse claimant, may be found insufficient to establish open and notorious possession.

(2) This section shall not apply to any adverse claimant who establishes by clear and convincing evidence that the adverse claimant occupied the lands at issue and made continuous

use thereof for at least ten years in good faith reliance on location stakes or other boundary markers set by a registered land surveyor purporting to establish the boundaries of property to which the adverse claimant has record title.

(3) For purposes of this section:

(a) "Adverse claimant" means any person, other than the holder of record title, occupying the lands at issue together with any prior occupants of the land in privity with such person by purchase, devise, or descent [descent];

(b) "Claim of adverse possession" does not include a claim asserted under RCW 7.28.050, 7.28.070, or 7.28.080;

(c) "Forest land" has the meaning given in \*RCW 84.33.100; and

(d) "Substantial improvement" means a permanent or semipermanent structure or enclosure for which the costs of construction exceeded fifty thousand dollars.

(4) This section shall not apply to any adverse claimant who, before June 11, 1998, acquired title to the lands in question by adverse possession under the law then in effect.

(5) This section shall not apply to any adverse claimant who seeks to assert a claim or defense of adverse possession in an action against any person who, at the time such action is commenced, owns less than twenty acres of forest land in the state of Washington. [1998 c 57 § 1.]

**NOTES:**

\*Reviser's note: RCW 84.33.100 was repealed by 2001 c 249 § 16.

**7.28.090 Adverse possession—Public lands—Adverse title in infants, etc.**

RCW 7.28.070 and 7.28.080 shall not extend to lands or tenements owned by the United States or this state, nor to school lands, nor to lands held for any public purpose. Nor shall they extend to lands or tenements when there shall be an adverse title to such lands or tenements, and the holder of such adverse title is a person under eighteen years of age, or incompetent within the meaning of RCW 11.88.010: PROVIDED, Such persons as aforesaid shall commence an action to recover such lands or tenements so possessed as aforesaid, within three years after the several disabilities herein enumerated shall cease to exist, and shall prosecute such action to judgment, or in case of vacant and unoccupied land shall, within the time last aforesaid, pay to the person or persons who have paid the same for his or her betterments, and the taxes, with interest on said taxes at the legal rate per annum that have been paid on said vacant and unimproved land. [1977 ex.s. c 80 § 7; 1971 ex.s. c 292 § 7; 1893 c 11 § 5; RRS § 790.]

**NOTES:**

**Purpose—Intent—Severability—1977 ex.s. c 80:** See notes following RCW 4.16.190.

**Severability—1971 ex.s. c 292:** See note following RCW 26.28.010.

**7.28.100 Construction.**

That the provisions of RCW 7.28.050 through 7.28.100 shall be liberally construed for the purposes set forth in those sections. [1893 c 11 § 6; RRS § 791.]

**7.28.110 Substitution of landlord in action against tenant.**

A defendant who is in actual possession may, for answer, plead that he is in possession only as a tenant of another, naming him and his place of residence, and thereupon the landlord, if he applies therefor, shall be made defendant in place of the tenant, and the action shall proceed in all respects as if originally commenced against him. If the landlord does not apply to be made defendant within the time the tenant is allowed to answer, thereafter he shall not be allowed to, but he shall be made defendant if the plaintiff require it. If the landlord be made defendant on motion of the plaintiff he shall be required to appear and answer within ten days from notice of the pendency of the action and the order making him defendant, or such further notice as the court or judge thereof may prescribe. [Code 1881 § 537; 1877 p 112 § 541; 1869 p 128 § 489; RRS § 792.]

**7.28.120 Pleadings—Superior title prevails.**

The plaintiff in such action shall set forth in his complaint the nature of his estate, claim or title to the property, and the defendant may set up a legal or equitable defense to plaintiff's claims; and the superior title, whether legal or equitable, shall prevail. The property shall be described with such certainty as to enable the possession thereof to be delivered if a recovery be had. [Code 1881 § 538; 1879 p 134 § 2; 1877 p 113 § 542; 1869 p 128 § 490; RRS § 793.]

**7.28.130 Defendant must plead nature of his estate or right to possession.**

The defendant shall not be allowed to give in evidence any estate in himself or another in the property, or any license or right to the possession thereof unless the same be pleaded in his answer. If so pleaded, the nature and duration of such estate, or license or right to the possession, shall be set forth with the certainty and particularity required in a complaint. If the defendant does not defend for the whole of the property, he shall specify for what particular part he does defend. In an action against a tenant, the judgment shall be conclusive against a landlord who has been made defendant in place of the tenant, to the same extent as if the action had been originally commenced against him. [Code 1881 § 539; 1877 p 113 § 543; 1869 p 129 § 491; RRS § 794.]

**7.28.140 Verdict of jury.**

The jury by their verdict shall find as follows:

(1) If the verdict be for the plaintiff, that he is entitled to the possession of the property described in the complaint, or some part thereof, or some undivided share or interest in either, and the nature and duration of his estate in such property, part thereof, or undivided share or interest, in either, as the case may be.

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(2) If the verdict be for the defendant, that the plaintiff is not entitled to the possession of the property described in the complaint, or to such part thereof as the defendant defends for, and the estate in such property or part thereof, or license, or right to the possession of either established on the trial by the defendant, if any, in effect as the same is required to be pleaded. [Code 1881 § 540; 1877 p 113 § 544; 1869 p 129 § 492; RRS § 795.]

**NOTES:**

*Rules of court: CR 49.*

*General, special verdicts: RCW 4.44.410 through 4.44.440.*

### **7.28.150 Damages—Limitation—Permanent improvements.**

The plaintiff shall only be entitled to recover damages for withholding the property for the term of six years next preceding the commencement of the action, and for any period that may elapse from such commencement, to the time of giving a verdict therein, exclusive of the use of permanent improvements made by the defendant. When permanent improvements have been made upon the property by the defendant, or those under whom he claims holding under color of title adversely to the claim of the plaintiff, in good faith, the value thereof at the time of trial shall be allowed as a setoff against such damages. [Code 1881 § 541; 1877 p 113 § 545; 1869 p 129 § 493; RRS § 796.]

**NOTES:**

**Reviser's note:** Compare the last sentence of this section with RCW 7.28.160 through 7.28.180.

### **7.28.160 Defendant's counterclaim for permanent improvements and taxes paid.**

In an action for the recovery of real property upon which permanent improvements have been made or general or special taxes or local assessments have been paid by a defendant, or those under whom he claims, holding in good faith under color or claim of title adversely to the claim of plaintiff, the value of such improvements and the amount of such taxes or assessments with interest thereon from date of payment must be allowed as a counterclaim to the defendant. [1903 c 137 § 1; RRS § 797.]

### **7.28.170 Defendant's counterclaim for permanent improvements and taxes paid—Pleadings, issues and trial on counterclaim.**

The counterclaim shall set forth the value of the land apart from the improvements, and the nature and value of the improvements apart from the land and the amount of said taxes and assessments so paid, and the date of payment. Issues shall be joined and tried as in other actions, and the value of the land and the amount of said taxes and assessments apart from the improvements, and the value of the improvements apart from the land must be specifically found by the verdict of the jury, report of the referee, or findings of the court as the case may be. [1903 c 137 § 2; RRS § 798.]

### **7.28.180 Defendant's counterclaim for permanent improvements and taxes paid—Judgment on counterclaim—Payment.**

If the judgment be in favor of the plaintiff for the recovery of the realty, and of the defendant upon the counterclaim, the plaintiff shall be entitled to recover such damages as he may be found to have suffered through the withholding of the premises and waste committed thereupon by the defendant or those under whom he claims, but against this recovery shall be offset pro tanto the value of the permanent improvements and the amount of said taxes and assessments with interest found as above provided. Should the value of improvements or taxes or assessments with interest exceed the recovery for damages, the plaintiff, shall, within two months, pay to the defendant the difference between the two sums and upon proof, after notice, to the defendant, that this has been done, the court shall make an order declaring that fact, and that title to the improvements is vested in him. Should the plaintiff fail to make such payment, the defendant may at any time within two months after the time limited for such payment to be made, pay to the plaintiff the value of the land apart from the improvements, and the amount of the damages awarded against him, and he thereupon shall be vested with title to the land, and, after notice to the plaintiff, the court shall make an order reciting the fact and adjudging title to be in him. Should neither party make the payment above provided, within the specified time, they shall be deemed to be tenants in common of the premises, including the improvements, each holding an interest proportionate to the value of his property determined in the manner specified in RCW 7.28.170: PROVIDED, That the interest of the owner of the improvements shall be the difference between the value of the improvements and the amount of damages recovered against him by the plaintiff. [1903 c 137 § 3; RRS § 799.]

### **7.28.190 Verdict where plaintiff's right to possession expires before trial.**

If the right of the plaintiff to the possession of the property expire, after the commencement of the action and before the trial, the verdict shall be given according to the fact, and judgment shall be given only for the damages. [Code 1881 § 542; 1877 p 114 § 546; 1869 p 130 § 494; RRS § 800.]

### **7.28.200 Order for survey of property.**

The court or judge thereof, on motion, and after notice to the adverse party, may, for cause shown, grant an order allowing the party applying therefor to enter upon the property in controversy and make survey and admeasurement thereof, for the purposes of the action. [Code 1881 § 543; 1877 p 114 § 547; 1869 p 130 § 495; RRS § 801.]

### **7.28.210 Order for survey of property—Contents of order—Service.**

The order shall describe the property, and a copy thereof shall be served upon the defendant, and thereupon the party may enter upon the property and make such survey and admeasure-

ment; but if any unnecessary injury be done to the premises, he shall be liable therefor. [Code 1881 § 544; 1877 p 114 § 548; 1869 p 130 § 496; RRS § 802.]

**7.28.220 Alienation by defendant, effect of.**

An action for the recovery of the possession of real property against a person in possession, cannot be prejudiced by any alienation made by such person either before or after the commencement of the action; but if such alienation be made after the commencement of the action, and the defendant do not satisfy the judgment recovered for damages for withholding the possession, such damages may be recovered by action against the purchaser. [Code 1881 § 545; 1877 p 114 § 549; 1869 p 130 § 497; RRS § 803.]

**7.28.230 Mortgagee cannot maintain action for possession—Possession to collect mortgaged, pledged, or assigned rents and profits—Perfection of security interest.**

(1) A mortgage of any interest in real property shall not be deemed a conveyance so as to enable the owner of the mortgage to recover possession of the real property, without a foreclosure and sale according to law: PROVIDED, That nothing in this section shall be construed as any limitation upon the right of the owner of real property to mortgage, pledge or assign the rents and profits thereof, nor as prohibiting the mortgagee, pledgee or assignee of such rents and profits, or any trustee under a mortgage or trust deed either contemporaneously or upon the happening of a future event of default, from entering into possession of any real property, other than farm lands or the homestead of the mortgagor or his successor in interest, for the purpose of collecting the rents and profits thereof for application in accordance with the provisions of the mortgage or trust deed or other instrument creating the lien, nor as any limitation upon the power of a court of equity to appoint a receiver to take charge of such real property and collect such rents and profits thereof for application in accordance with the terms of such mortgage, trust deed or assignment.

(2) Until paid, the rents and profits of real property constitute real property for the purposes of mortgages, trust deeds or assignments whether or not said rents and profits have accrued. The provisions of RCW 65.08.070 as now or hereafter amended shall be applicable to such rents and profits, and such rents and profits are excluded from Article 62A.9 RCW.

(3) The recording of an assignment, mortgage, or pledge of unpaid rents and profits of real property, intended as security, in accordance with RCW 65.08.070, shall immediately perfect the security interest in the assignee, mortgagee, or pledgee and shall not require any further action by the holder of the security interest to be perfected as to any subsequent purchaser, mortgagee, or assignee. Any lien created by such assignment, mortgage, or pledge shall, when recorded, be deemed specific, perfected, and choate even if recorded prior to July 23, 1989. [1991 c 188 § 1; 1989 c 73 § 1; 1969 ex.s. c 122 § 1; Code 1881 § 546; 1877 p 114 § 550; 1869 p 130 § 498; RRS § 804.]

**7.28.240 Action between cotenants.**

In an action by a tenant in common, or a joint tenant of real property against his cotenant, the plaintiff must show, in addition to his evidence of right, that the defendant either denied the plaintiff's right or did some act amounting to such denial. [Code 1881 § 547; 1877 p 114 § 551; 1869 p 130 § 499; RRS § 805.]

**7.28.250 Action against tenant on failure to pay rent.**

When in the case of a lease of real property and the failure of tenant to pay rent, the landlord has a subsisting right to reenter for such failure; he may bring an action to recover the possession of such property, and such action is equivalent to a demand of the rent and a reentry upon the property. But if at any time before the judgment in such action, the lessee or his successor in interest as to the whole or a part of the property, pay to the plaintiff, or bring into court the amount of rent then in arrear, with interest and cost of action, and perform the other covenants or agreements on the part of the lessee, he shall be entitled to continue in the possession according to the terms of the lease. [Code 1881 § 548; 1877 p 114 § 552; 1869 p 131 § 500; No RRS.]

**NOTES:**

*Forcible entry, detainer: Chapter 59.12 RCW.*

*Rent default, less than forty dollars: Chapter 59.08 RCW.*

*Tenancies: Chapter 59.04 RCW.*

**7.28.260 Effect of judgment—Lis pendens—Vacation.**

In an action to recover possession of real property, the judgment rendered therein shall be conclusive as to the estate in such property and the right of possession thereof, so far as the same is thereby determined, upon all persons claiming by, through, or under the party against whom the judgment is rendered, by title or interest passing after the commencement of the action, if the party in whose favor the judgment is rendered shall have filed a notice of the pendency of the action as required by RCW 4.28.320. When service of the notice is made by publication, and judgment is given for failure to answer, at any time within two years from the entry thereof, the defendant or his successor in interest as to the whole or any part of the property, shall, upon application to the court or judge thereof, be entitled to an order, vacating the judgment and granting him a new trial, upon the payment of the costs of the action. [1909 c 35 § 1; Code 1881 § 549; 1877 p 114 § 553; 1869 p 131 § 501; RRS § 806.]

**NOTES:**

*Rules of court: Cf. CR 58, 60(e).*

*New trials: Chapter 4.76 RCW.*

*Vacation of judgments: Chapter 4.72 RCW.*

**7.28.270 Effect of vacation of judgment.**

If the plaintiff has taken possession of the property before the judgment is set aside and a new trial granted, as provided in RCW 7.28.260, such possession shall not be thereby affected in any way; and if judgment be given for defendant in the new tri-

al, he shall be entitled to restitution by execution in the same manner as if he were plaintiff. [Code 1881 § 550; 1877 p 115 § 554; 1869 p 131 § 502; RRS § 807.]

**NOTES:**

*Rules of court:* Cf. CR 58, 60(e).

**7.28.280 Conflicting claims, donation law, generally—  
Joinder of parties.**

In an action at law, for the recovery of the possession of real property, if either party claims the property as a donee of the United States, and under the act of congress approved September 27th, 1850, commonly called the "Donation law," or the acts amendatory thereof, such party, from the date of his settlement thereon, as provided in said act, shall be deemed to have a legal estate in fee, in such property, to continue upon condition that he perform the conditions required by such acts, which estate is unconditional and indefeasible after the performance of such conditions. In such action, if both plaintiff and defendant claim title to the same real property, by virtue of settlement, under such acts, such settlement and performance of the subsequent condition shall be prima facie presumed in favor of the party having or claiming under the elder certificate, or patent, as the case may be, unless it appears upon the face of such certificate or patent that the same is absolutely void. Any person in possession, by himself or his tenant, of real property, and any private or municipal corporation in possession by itself or its tenant of any real property, or when such real property is not in the actual possession of anyone, any person or private or municipal corporation claiming title to any real property under a patent from the United States, or during his or its claim of title to such real property under a patent from the United States for such real estate, may maintain a civil action against any person or persons, corporations or associations claiming an interest in said real property or any part thereof, or any right thereto adverse to him, them, or it, for the purpose of determining such claim, estate, or interest; and where several persons, or private or municipal corporations are in possession of, or claim as aforesaid, separate parcels of real property, and an adverse interest is claimed or claim made in or to any such parcels, by any other person, persons, corporations or associations, arising out of a question, conveyance, statute, grant, or other matter common to all such parcels of real estate, all or any portion of such persons or corporations so in possession, or claiming such parcel of real property may unite as plaintiffs in such suit to determine such adverse claim or interest against all persons, corporations or associations claiming such adverse interest. [Code 1881 § 551; 1877 p 116 § 556; 1869 p 132 § 504; RRS § § 808, 809. Formerly RCW 7.28.280 and 7.28.290.]

**7.28.300 Quieting title against outlawed mortgage or deed of trust.**

The record owner of real estate may maintain an action to quiet title against the lien of a mortgage or deed of trust on the real estate where an action to foreclose such mortgage or deed of trust would be barred by the statute of limitations, and, upon

proof sufficient to satisfy the court, may have judgment quieting title against such a lien. [1998 c 295 § 17; 1937 c 124 § 1; RRS § 785-1.]

**NOTES:**

*Limitation of actions, generally:* Chapter 4.16 RCW.

*Real estate mortgages, foreclosure:* Chapter 61.12 RCW.

**7.28.310 Quieting title to personal property.**

Any person or corporation claiming to be the owner of or interested in any tangible or intangible personal property may institute and maintain a suit against any person or corporation also claiming title to or any interest in such property for the purpose of adjudicating the title of the plaintiff to such property, or any interest therein, against any and all adverse claims; removing all such adverse claims as clouds upon the title of the plaintiff and quieting the title of the plaintiff against any and all such adverse claims. [1929 c 100 § 1; RRS § 809-1.]

**7.28.320 Possession no defense.**

The fact that any person or corporation against whom such action may be brought is in the possession of such property, or evidence of title to such property, shall not prevent the maintenance of such suit. [1929 c 100 § 2; RRS § 809-2.]

