

**CHAPTER 32-17**  
**ACTIONS TO QUIET TITLE AND DETERMINE CLAIMS TO REAL ESTATE**

**32-17-01. Action to determine adverse claims.**

An action may be maintained by any person having an estate or an interest in, or lien or encumbrance upon, real property, whether in or out of possession thereof and whether such property is vacant or unoccupied, against any person claiming an estate or interest in, or lien or encumbrance upon, the same, for the purpose of determining such adverse estate, interest, lien, or encumbrance.

**32-17-02. Use and occupation - Waste - Pleading - Possession.**

A recovery may be had in the action by any party against a defendant personally served or who has appeared, or against the plaintiff, for the value of the use and occupation of the premises and for the value of the property wasted or removed therefrom, in the case of a vendor holding over, or a trespasser, as well as in a case in which the relation of vendor and vendee has existed. If such recovery is desired by the plaintiff, the plaintiff shall allege the fact, stating particularly the value of the use and occupation, the value of the property wasted or removed, and the value of the real property aside from the waste or removal, and shall demand appropriate relief in the complaint. A recovery of possession also may be had by the plaintiff or any defendant asking for affirmative relief.

**32-17-03. Joinder of plaintiffs.**

Any two or more persons having an estate or interest in, or lien or encumbrance upon, real property, under a common source of title, whether holding as tenants in common, joint tenants, copartners, or in severalty, may unite in an action against any person claiming an adverse estate or interest therein, or lien or encumbrance thereon, for the purpose of determining such adverse claim, or establishing such common source of title, or declaring the same to be held in trust, or of removing a cloud upon the same.

**32-17-04. Complaint form - Description of property.**

In an action for the determination of adverse claims, the property must be described in the complaint with such certainty as to enable an officer upon execution to identify it. In other respects the complaint, exclusive of the venue, title, subscription, and verification, may be substantially in the following form, the blanks being properly filled:

The plaintiff for claim for relief shows to the court that the plaintiff has an estate or interest in, or a lien or encumbrance upon, as the case may be, the following described real property, situated in the above-named county and state, to wit:

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That the defendants claim certain estates or interests in, or liens or encumbrances upon, the same, as the case may be, adverse to the plaintiff. (Here allege the facts concerning use and occupation and value thereof, and any property wasted or removed and the value thereof, if pertinent. Where the state is named as a party defendant, the complaint must state the interest the state or its agencies or departments might have in the property; or in the alternative state that the complainant is not aware of any specific interest that the state might have in the property.)

Wherefore, the plaintiff prays:

1. That the defendants be required to set forth all their adverse claims to the property above described, and that the validity, superiority, and priority thereof be determined.
2. That the same be adjudged null and void, and that they be decreed to have no estate or interest in, or lien or encumbrance upon, said property.
3. That this title be quieted as to such claim, and that defendants be forever debarred and enjoined from further asserting the same.
4. That the plaintiff recover possession of the premises described, if possession is desired.

5. That the plaintiff recover \_\_\_\_\_ dollars as the value of the use and occupation and value of property wasted and removed therefrom.
6. That the plaintiff have such other general relief as may be just, together with costs and disbursements.

**32-17-05. Joinder of defendants.**

In an action to determine adverse claims, all persons appearing of record to have estates or interests in, or liens or encumbrances upon, the property, and all persons in possession, may be joined as defendants, and all others may be joined by inserting in the title of the action the following: "All other persons unknown claiming any estate or interest in, or lien or encumbrance upon, the property described in the complaint".

**32-17-06. Who joined as unknown persons.**

All persons having or claiming an estate or interest in, or lien or encumbrance upon, the property described in the complaint, whether as heirs, devisees, legatees, or personal representative of a deceased person, or under any other title or interest, and not in possession, nor appearing of record in the office of the recorder, the clerk of the district court, or the county auditor of the county in which the land is situated, to have such claim, title, or interest therein, may be proceeded against as persons unknown, and any order, judgment, or decree entered in the action shall be valid and binding on such unknown persons whether of age or minors, and on those claiming under them.

**32-17-07. Service on unknown defendants - How made - Affidavit for publication.**

Service of the summons in an action may be had upon all unknown persons defendant by publication in the manner provided by law for service by publication upon defendants whose residence is unknown, but as to such unknown persons defendant the affidavit for publication shall be required to state in substance the following facts: That the interests of such unknown persons defendant in the land described in the complaint are not shown of record in the office of the recorder, the clerk of the district court, or the county auditor of the county in which such land lies, and the affiant does not know and is unable to ascertain the names, residences, or post-office addresses of any of the persons who are proceeded against as unknown persons defendant. The affidavit or complaint shall show further that the relief sought in the action consists wholly or partly in excluding the defendants from any interest in or lien upon specific real property in this state, and where jurisdiction is sought to be obtained against unknown persons under the provisions of this section, the summons shall state where the complaint is or will be filed, and there shall be subjoined to the summons as published a notice signed by the plaintiff's attorney containing a description of the land to which such action relates. Unknown corporations and limited liability companies claiming interests are included within the word "persons" as used in this chapter.

**32-17-08. Answer - Counterclaim.**

In an action to determine adverse claims, a defendant in the defendant's answer may deny that the plaintiff has the estate, interest, lien, or encumbrance alleged in the complaint, coupled with allegations setting forth fully and particularly the origin, nature, and extent of the defendant's own claim to the property, and, if such defendant claims a lien, the original amount secured thereby and the date of the same, and the sum remaining due thereon, whether the same has been secured in any other way or not, and if so secured, the nature and extent of such security, or the defendant likewise may set forth the defendant's rights in the property as a counterclaim and may demand affirmative relief against the plaintiff and any codefendant, and in such case the defendant also may set forth a counterclaim and recovery from a plaintiff or a codefendant for permanent improvements made by the defendant or those under whom the defendant claims, holding under color of title in good faith adversely to the plaintiff or codefendant against whom the defendant seeks a recovery. Such counterclaim shall set forth among other things the value of the land aside from the improvements thereon, and, as accurately as practicable, the improvements upon the land and the value thereof, and in such

case such defendant also may set forth as a counterclaim the defendant's demand for recovery of the value of the use and occupation of the premises and value of property wasted or removed therefrom. The answer shall be deemed served on codefendants by filing the same in the office of the clerk of court of the county where the action is pending at any time within twenty days after the service of summons on such defendant is complete. If affirmative relief is demanded against codefendants, the allegations constituting counterclaims shall be deemed controverted by all the parties, as upon a direct denial or avoidance, as the case may require, without further pleading.

**32-17-09. Reply - What it may contain - Relief.**

No reply shall be necessary on the part of the plaintiff, except when the defendant in the defendant's answer claims a lien or encumbrance upon the property which, prior to the commencement of the action, was barred by the statutes of limitation, or which shall have been discharged in bankruptcy, or which constitutes only a cloud, the plaintiff may reply setting up such defense and availing plaintiff of the benefit thereof, and in all cases in which the plaintiff has made permanent improvements on the property in good faith, while in possession under color of title, the plaintiff may recover the reasonable value thereof as against the defendant recovering the property when the reply shall allege the facts, stating particularly the value of the improvements and the value of the property, and shall demand appropriate relief. The reply shall be served on such defendant and filed with the clerk within twenty days after the service of the defendant's answer.

**32-17-10. Trial - Findings - Possession - Costs.**

The plaintiff or any defendant who has answered may bring the case on for trial as other civil actions are brought on for trial. A defendant interposing a counterclaim for purposes of trial shall be deemed plaintiff, and the plaintiff and codefendants against whom relief is sought shall be deemed defendants as to the counterclaiming defendant. The court in its decision shall find the nature and extent of the claim asserted by the various parties, and shall determine the validity, superiority, and priority of the same. Any defendant in default for want of an answer, or not appearing at the trial, or a plaintiff not appearing at the trial, shall be adjudged to have no estate or interest in, or lien or encumbrance upon, the property, and such defendant also shall be adjudged to pay the amount demanded against such defendant in any counterclaim or reply for the use and occupation of the premises, property removed therefrom, and waste committed, except in the case of a defendant served by publication and not appearing. If any counterclaim for improvements has been urged against one recovering property, the value of such improvements thereof and the value of the land aside from the improvements shall be specifically found. There likewise shall be findings on all other counterclaims urged at the trial. If possession of the premises is demanded by the plaintiff or by any defendant asking for affirmative relief, such possession shall be awarded to the party asking for possession who has the paramount claim to the property, and such party thereupon may have a writ for possession as against all other parties to the action. Costs shall be awarded to the prevailing parties against each adversary in the action by the court, except that no costs shall be allowed against a defendant not appearing.

**32-17-11. Judgment - When right fails after action brought.**

In an action for the recovery of real property, when a party shows a right to recover at the time when the action was commenced, but it appears that the party's right has terminated during the pendency of the action, the findings and judgment must be according to the facts, and the party may recover whatever such party may show such party is entitled to up to the time that the party's right terminated.

**32-17-12. Adjustment of cross judgments.**

If the decision of the court is in favor of one party for the recovery of the real property and in favor of another for improvements, the former shall have the option for sixty days after receiving notice that the findings are filed to pay the value of such improvements less such sums as may

be found due for use and occupation and waste, or to take judgment against the other party for the value of the land aside from the improvements, as determined by the findings, and such sums as may be found due for use and occupation and waste. If such option is not exercised in writing by such party or such party's attorney, and filed with the clerk within sixty days, the other party thereupon may exercise the option for such party in like manner. If the party entitled to the possession of the property received in lieu thereof a money judgment, the other party may be subrogated to all the former's rights therein, including all the relief that party otherwise would be entitled to under the findings, and judgment thereupon shall be entered accordingly. Until payment is made by the party recovering the land, or until tender and deposit in the office of the clerk of the court in which the action is pending, no writ for the possession of the property shall be issued.

**32-17-13. When defendant permitted to defend.**

A defendant in an action to determine adverse claims, proceeded against by name or as an unknown party, or the defendant's representative, on application and sufficient cause shown at any time before trial, must be allowed to defend on such terms as may be just, and any such defendant or defendant's representatives upon good cause shown, and on such terms as may be just, may be allowed to defend after trial and within one year after the rendition of judgment therein, but not otherwise.

**32-17-14. Both parties have right of entry.**

The court in which an action is pending for the recovery of real property or for damages for an injury thereto, or a judge thereof, on motion, upon notice by either party, for good cause shown, may grant an order allowing to such party the right to enter upon the property and make survey and measurement thereof and of any tunnels, shafts, or drifts thereon for the purpose of the action, even though entry for such purpose has to be made through other lands belonging to parties to the action.

**32-17-15. Order for entry - Service.**

The order for entry must describe the property and a copy thereof must be served on the owner or occupant, and thereupon such party may enter upon the property with necessary surveyors and assistants and make such survey and measurement, but if any unnecessary injury is done to the property such party is liable therefor.

**32-17-16. Purchaser may recover for waste.**

When real property has been sold on execution, the purchaser thereof, or any person who may have succeeded to the purchaser's interest, after the purchaser's estate becomes absolute, may recover damages for injury to the property by the tenant in possession after sale and before possession is delivered under the conveyances.

**32-17-17. Alienation not to affect action.**

An action for the recovery 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.

**32-17-18. Mining customs govern mining claims.**

In an action respecting a mining claim, proof of the customs, usages, or regulations established and in force at the bar or diggings embracing such claim must be admitted, and such customs, usages, or regulations, when not in conflict with the laws of this state and the United States, must govern the decision of the action.

**32-17-19. Court may determine heirs or devisees of deceased entrymen.**

When any person holding a homestead or tree claim under the laws of the United States shall have died before patent therefor has been issued, and, by reason of such death, a patent or final certificate afterward shall be granted to "the heirs" or to "the devisees" of such person,

the district court of the county in which the lands are situated, in a civil action brought for that purpose, may determine who are such heirs or devisees and what are their respective shares in said homestead or tree claim. Such action shall be governed by the provisions of this chapter insofar as the same may be applicable.

**32-17-20. Claimants on public land.**

Any person settled upon the public lands belonging to the United States on which settlement is not prohibited expressly by Congress, or some department of the general government, may maintain an action for any injuries done to the same, or an action to recover the possession thereof, in the same manner as if the person possessed a fee simple title to such lands.

**32-17-21. Holder of contract for purchase of land from state may sue.**

Any person who shall hold any contract from the state through the board of university and school lands, or otherwise, for the purchase of any real property within the state, may maintain any action for injuries done to the same, or an action to recover possession thereof, in the same manner as though the person possessed the fee simple title to such lands. However, in any action or proceeding by or against a railway company with reference to right of way or otherwise, the court, in any judgment which it may enter, shall protect the interest of the state in and to such real property to the extent that the value of such lands taken, at the price agreed to be paid per acre to the state therefor, shall be directed to be paid to the proper officials of the state, and, upon such payment, any claim of the state or any of its boards to such part of said property as shall be taken by the railway company shall be at an end.

**32-17-22. Waste - When actionable.**

If a guardian, tenant for life or years, joint tenant, or tenant in common, of real property, commits waste thereon, any person aggrieved by the waste may bring an action against the one committing waste therefor, and in such action there may be judgment for treble damages, forfeiture of the estate of the party offending, and eviction from the premises.

**32-17-23. When judgment of forfeiture for waste given to holder of reversion.**

Judgment of forfeiture and eviction shall not be given in favor of the person entitled to the reversion against the tenant in possession unless the injury to the estate in reversion shall be adjudged in the action to be equal to the value of the tenant's estate or unexpired term, or to have been done in malice.