

# Adverse Possession of Realty Abandoned in Foreclosure

Copyright © 7. April 2011 by [Bob Hurt](#), 727 669 5511

## Table of Contents

Introduction.....	2
AP Facts Media, Legislature, and Law Enforcers Ignore .....	2
What An APer Does for the Abandoner.....	4
Does Equity Entitle APers to Compensation? .....	4
Disposition of Abandoner's Chattel .....	5
Penalties Attend AP of Realty Abandoned in Foreclosure .....	6
Should APers Challenge Foreclosure Plaintiffs? .....	6
AP of Foreclosure Realty Resembles Dumpster Diving.....	7
New Common Law about AP .....	7
Review of the Benefits of Adverse Possession.....	8
Adverse Possession Operates As A Civil Right .....	8
Black's Law Dictionary, Eight Edition, defines it this way: .....	8
Florida Adverse Possession Law and Defense .....	8
Who Benefits from Adverse Possession? Everybody.....	8
How Does Everyone Benefit from Adverse Possession? .....	9
Sheriffs Arrest Adverse Possessors In Spite of Benefits .....	11
Relevant Law References.....	11
Florida Constitution .....	11
Florida Rules of Civil Procedure .....	14
Florida Statutes .....	14
Chapter 16 - Attorney General.....	14
Chapter 66 – Ejectment.....	15
Chapter 82 – Forcible Entry and Unlawful Detainer .....	18
Chapter 86 – Declaratory Judgment.....	21
Chapter 95 – Limitations regarding Adverse Possessions .....	21
Chapter 760 – Civil Rights.....	25
Chapter 776 - Use of Deadly Force .....	25

## Introduction

Adverse Possession (“AP”) has taken a toe-hold in America as a means of finding cost-effective residences for the homeless while foreclosure plaintiffs dawdle in courts increasingly aware of mortgage and appraisal fraud. This article deals with both the paradoxical attack on APers by media and sheriffs, and with worthy questions regarding AP.

These days “APers” take adverse possession of realty belonging partially or wholly to “abandoneers,” homeowners who abandoned the realty because they face foreclosure and know they will lose the realty as a consequence of the foreclosure action. Abandoneers quit because they believe they owe money they cannot pay or do not want to pay to foreclosure plaintiffs. Because of the collapse of realty values which the typical foreclosure plaintiff caused through predatory lending to people they knew could not repay the loan, some abandoneers quit strategically. They lost all their equity and the realty no longer has a value sufficient to sell it and fully discharge the debt with the proceeds. So, millions upon millions of residences lie vacant around America.

Sheriffs in numerous counties across Florida, ostensibly acting as agents for the foreclosure plaintiffs, have arrested APers, falsely accusing them of such crimes as fraud, theft, breaking and entering, and trespass. Since only the owners can file a trespass complaint, obviously sheriff deputies have stirred up abandoneers with false alarms such as "the occupant can damage your abandoned house, and leave you liable." Troubled abandoneers then ask the sheriff to remove the APer with a trespass complaint.

## AP Facts Media, Legislature, and Law Enforcers Ignore

Never mind that AP constitutes a purely civil matter. The sheriffs want to make it a criminal matter, and they do, with false arrests. Even Florida legislators have chimed in by proposing crazy legislation to toughen AP procedures while providing benefit to no one. They and the mainstream news media seem to have ignored some salient facts:

1. The APer has the right under common law and statutory law to occupy abandoned realty BECAUSE the abandoneer abandoned it.
2. Once the APer has occupied the abandoned realty for a month, the APer has statutory protection under both ejectment laws (see Florida Statutes chapterd 66, 82, and 83 (Part II)) and the castle doctrine (see Florida Statute 776.013 and 776.032) - it becomes a civil matter till the judge grants writ of possession to the abandoneer who may then ask the sheriff to give proper notice then remove the occupant by force if necessary.
3. AP actually benefits everyone: occupant, facilitator/landlord, sheriff, abandoneer, foreclosure plaintiff, community, home owner association, tax collector, property appraiser. No one loses except to the extent a REAL criminal vandalizes or loots the AP realty.
4. The mortgage requires the owner to maintain the property, whether abandoned or not, and by abandoning it, the abandoneer acts irresponsibly, exposing the realty to invasion by thieves, vandals, drug dealers, mischievous youths, and ne'er-do-wells. From the standard Fannie Mae mortgage:

"7. **Preservation**, Maintenance and Protection of the Property; Inspections. Borrower shall not destroy, damage or impair the Property, allow the Property to deteriorate or commit waste on the Property. Whether or not Borrower is residing in the Property, Borrower shall maintain the Property in order to prevent the Property from deteriorating or decreasing in value due to its condition. Unless it is determined pursuant to Section 5 that repair or restoration is not economically feasible, Borrower shall promptly repair the Property if damaged to avoid further deterioration or damage. If insurance or condemnation proceeds are paid in connection with damage to, or the taking of, the Property, Borrower shall be responsible for repairing or restoring the Property only if Lender has released proceeds for such purposes. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. If the insurance or condemnation proceeds are not sufficient to repair or restore the Property, Borrower is not relieved of Borrowers obligation for the completion of such repair or restoration.

"Lender or its agent may make reasonable entries upon and inspections of the Property. If it has reasonable cause, Lender may inspect the interior of the improvements on the Property. Lender shall give Borrower notice at the time of or prior to such an interior inspection specifying such reasonable cause."

5. Since APers generally seek a place to live or a method of getting needy families into a place to live AFFORDABLY, the multi-county sheriff attack on adverse possessors who take possession of realty abandoned in foreclosure obviously has a political motive. Members of the media apparently endorse the motive, for they never write anything good about APers, and try to make them and occupants of AP houses look like evil cheats and opportunists.
6. It should go without my saying that people who had to work for the money to buy a house naturally want to protect it and maintain it. Further, they lose this careful attitude when faced with certain foreclosure and its associated forced sale fo the realty to repay their debt. This principle also applies to renters, in general. They tend to take worse care of their homes than do people who had to buy the homes because they don't have to bear the brunt of long term maintenance. In other words, homeowners secure in their ownership exercise a higher quality of responsibility over the dwelling than do renters.
7. What does this say about abandoneers who abandon their realty in foreclosure? In their desperation and destitution, they have behaved irresponsibly toward the realty, and at the same toward the community and their obligation to the mortgagee. In the final analysis, Apers take over their responsibility of maintenance of the realty, and compensate for the dereliction of abandoneers.

The foregoing proves that I believe APers do a favor for the world in general, even though in isolated cases some occupants might not take good care of the property.

## **What An APer Does for the Abandoner**

Given the benefit of APers to the house, the occupant, the community, the foreclosure plaintiff, and the government, let us turn our attention to their obligations to the APer.

The APer goes to considerable effort and expense taking and holding AP of the realty:

1. Learning the law of AP
2. Finding the abandoned realty
3. Verifying the Lis Pendens in the county records
4. Filing notice of AP with the county property appraiser
5. Changing the locks on the house
6. Cleaning up and disposing of the trash to make the place occupiable
7. Mowing the grass and tending to landscaping
8. Repairing damaged items in the house, including plumbing, electrical facilities, and air conditioning/heating.
9. Furnishing the house with basic appliances as necessary
10. Dealing with inquisitive neighbors/relatives of the previous occupant
11. Occupying or finding a new occupant for the house (includes advertising and movein)
12. Putting utilities in a new name.
13. Answering the occupant's questions and complaints
14. Keeping meticulous records for use in defending the AP
15. Risking or suffering arrest and jailing, plus bail and legal defense for bogus charges of theft, grand theft, burglary, fraud, scheme to defraud, swindle, breaking and entering, criminal mischief, and trespass.
16. Tolerating humiliation by the news media
17. Tolerating harassment or the threat of it by law enforcers.
18. Dealing with the possible jealousy and animosity from the abandoner, particularly after the sheriff stirs up the abandoner with accusations of trespass and damaging the realty.

## **Does Equity Entitle APers to Compensation?**

The APer has done all this to the benefit of the abandoner by performing functions for which the abandoner had responsibility under the mortgage agreement, Therefore, equity entitles the APer to  
Adverse Possession of Realty Abandoned in Foreclosure

compensation, does it not?

By rights the government should penalize the abandoner under the law for abandoning property, as it does a driver for abandoning a car on the highway. The law gives towing companies the right to impose a lien against the vehicle for the towing expense.

Let us look at some calculations for equity's sake:

Potential “rental” income of an AP realty  
minus  
out-of-pocket cost  
plus labor  
plus reasonable management cost-effective  
plus reasonable profit margin  
plus legal fees and court costs  
equals reasonably owed to abandoner if anything

This will probably turn out as a losing proposition because of legal costs and the fact that a renter will move into an AP property ONLY because of cheap rent.

Clearly, the APer should have entitlement to some compensation from the abandoner or mortgagee for taking such good care fo the realty. Of course that does not address questions such as whether the APer put a lot of money into the realty that the abandoner would not have even if the abandoner had stayed in the place.

## **Disposition of Abandoner's Chattel**

Another question arising from AP: disposition of chattel, junk, trash, and garbage the abandoner left behind in the abandoned realty. What obligation does the APer have regarding all that stuff? Should the APer show some civic responsibility by sorting through the trash, setting aside the apparent valuables, and keeping them safe for some time for the abandoner to pick them up? Should the APer stow them indefinitely? Did the abandoner have reasonable expectation that the valuables would remain safe in an abandoned house? Should anyone consider such an expectation “reasonable?” How does one define “trash.” Should the government penalize the APer for disposing of all such chattel without notice to the abandoner? If the APer keeps such chattel as the APer's own, does that or should that constitute theft?

Also, by what standard should society consider a home abandoned and its contents up for grabs? Suppose the abandoner removed all the furniture and other chattels except for a big screen TV in

perfect working condition. Does the APer have the right to sell it and pocket the money? Or to keep it and claim it as the APer's personal property?

What if the abandoneer took all the furnishings out of the living and dining room, but left the bedroom furnishings? Did the abandoneer abandon the house with those bedrooms of furnishings?

How should an APer distinguish between a house fully abandoned and a house only partly abandoned? And what of owners who furnish and occupy the realty seasonally? Perhaps an owner could come to visit and live in the property 6 months in a season of 5 years, renting a houseful of furnishings just during those 6 months. Should an APer take possession of such a place after the owner leaves for the season?

## **Penalties Attend AP of Realty Abandoned in Foreclosure**

In the end, adverse possession ALWAYS has to do with exercising partial or complete possessory dominion over property which some other entity, person, or group owns partially or fully. See Florida Statutes Chapter 95 for more details. The possession by an APer signifies intent to take ultimate total ownership of the area possessed. The watchful abandoneer should look upon it as an act of aggression and take immediate steps (or steps within the statutory time limitation) to challenge it through the law. The abandoneer who does not do it timely will forever lose the right to dispossess the APer.

These days, regarding AP of realty abandoned because of foreclosure, the APer should expect only temporary possession. Ultimately the foreclosure plaintiff will win the foreclosure action and force a sheriff's sale of the realty to pay the debt. The court will award a writ of possession, and the sheriff will remove whoever occupies the realty so that the new "rightful owner" may possess it.

Furthermore, the court will award attorney fees, court costs, and other costs such as to repair damage to the realty, requiring the APer to pay. Should the APer, knowing this will happen, file a mechanic's or other lien against the property in the amount of provable costs, labor, and management for maintaining the realty? The court might disallow it, or might offset it by reasonable rental value. However, I see no reason why not to record the lien and demand equitable compensation.

## **Should APers Challenge Foreclosure Plaintiffs?**

Most abandoneers miss a fabulous opportunity for obtaining free and clear title by challenging the plethora of frauds underlying the realty purchase and mortgage loan. Even after foreclosure and sale of the realty, the foreclosure victim could, with skill,, get the court to vacate its judgment upon presentation of evidence of the fraud which, had the court known it, would have deprived the plaintiff of standing to foreclose, and would have provided the foreclosure victim with the grounds to sue for fraud and quiet title, and win treble damages as a consequence.

Some question exists as to whether APers can intervene in the foreclosure litigation as parties in interest. In point of fact, the foreclosure does two things:

1. Drives the abandoneer out of the realty

2. Provides the APer possibility of entry into and possession of the Realty
3. Gives the APer possible standing to challenge the foreclosure because consummation of the foreclosure would result in the Sheriff's ejecting the APer from the realty.

Florida Rule of Civil Procedure 1.230 provides for interventions by interested parties.

## **AP of Foreclosure Realty Resembles Dumpster Diving**

Should not the APer take advantage of the abandoner's cowardice by obtaining a quitclaim deed from the abandoner? As a new party in interest, shouldn't the APer prosecute the fraud claims and reap the rewards, a house free and clear?

With this question in mind, one cannot help but ponder the strength of adverse possession in providing the basis for a real claim of title in the abandoned realty. The abandoner has done the equivalent of tossing the realty into a dumpster, leaving it up for grabs by any dumpster diver seeing its value. That alone provides a valid basis for claim of right of ownership, and to defend the realty itself from encroachment by a greedy and unjust foreclosure plaintiff.

Suppose the realty purchase and mortgage have underlying fraud against the borrower/buyer. Honest observers of related legal strife will conclude that at least 90% of single family homes in America, particularly in Florida, certainly do have such underlying fraud. Does it therefore not stand to reason that the APer has as much reason, right, and interest as anyone to challenge the fraud and seek clear title to the realty?

## **New Common Law about AP**

The Florida Supreme Court has ruled that the legislature cannot remove a common law right without providing a suitable statutory replacement. The court also ruled that since it made common law, it can change common law to suit the needs of an evolving society.

Right now the sheriffs want to attack and suppress Apers. The legislature seems poised to introduce new laws that make AP more cumbersome, needlessly. At the same time, Florida has 1.6 million vacant residences, and hundreds of thousands of families have suffered loss of their homes to fraudulent foreclosure. Does it not make sense that the Supreme Court might, given the logic and the opportunity, change the adverse possession common law to make it easier for people to take AP of realty abandoned in foreclosure? Would that not ease the stress on hordes of families impoverished by the financial crisis created by the very culprits seeking to foreclose?

Ponder these pesky questions while you doze off to sleep tonight., and think about the millions who don't even own a bed to sleep in.

# **Review of the Benefits of Adverse Possession**

## ***Adverse Possession Operates As A Civil Right***

Adverse Possession means exercising possessory dominion over realty you don't own. Possessory dominion means enjoying the use of the realty, and maintaining, improving, and paying taxes, Home Owner Association dues, and special levies on it.

### ***Black's Law Dictionary, Eight Edition, defines it this way:***

adverse possession. 1. The use or enjoyment of real property with a claim of right when that use or enjoyment is continuous, exclusive, hostile, open, and notorious. • In Louisiana, it is the detention or enjoyment of a corporeal thing with the intent to hold it as one's own. La. Civ. Code art. 3421. — Also termed adverse dominion. Cf. PRESCRIPTION(5). [Cases: Adverse Possession 1–95. C.J.S. Adverse Possession §§ 2–225, 263–299, 327–338; Conflict of Laws § 76.]

Adverse Possession operates as a civil right under the laws of every state, and it puts disputes over possessory dominion in civil, not criminal, jurisdiction.

## ***Florida Adverse Possession Law and Defense***

The governing statutes in Florida: 95.12-95.281 (principally 95.16 and 95.18) and chapter 82. After exercising adverse possession for the statutory period (seven years in Florida), the adverse possessor achieves full possessory right of the realty, even though title belongs to the owner of record. An adverse possessor must then sue for quiet title. The court will grant it if the adverse possessor fully complied with the relevant law.

Florida Statutes 760.51 and 16.57 provide an avenue to relief and remedy for violation of the associated right plus the right to due process of law and privacy guaranteed by Florida Constitution in Article I Sections 9 and 23. Florida Statute 86.091 and Civil Procedure Rule 1.071 provide for declaratory judgments as to adverse possessory rights and challenge to the unconstitutionality of sheriff's arrests of adverse possessors on trumped up charge of theft, fraud, and the like.

## ***Who Benefits from Adverse Possession? Everybody***

Many benefits accrue from adverse possession to:

- owners who have abandoned their homes,
- foreclosure plaintiffs,
- the realty itself,
- the community,
- the municipality and county, and
- the adverse possessor or the occupant of the abandoned home

## ***How Does Everyone Benefit from Adverse Possession?***

1. **Loving Care.** A family who lives in the Realty dwelling treats it like their home, caring for it as they would their own in the hope that someday it will become theirs permanently.
  2. **Mold and Mildew.** Adverse possessors typically keep the air conditioning system running summer and winter. This prevents dangerous buildup of mold and mildew that excessive humidity would cause if the A/C didn't operate for extended time. As you know, mold constitutes a serious danger to health.
  3. **Pestilence.** Adverse possessors typically keep the dwelling free of termites, roaches, bedbugs, spiders, centipedes, rodents and other vermin that constitute a health hazard to humans and that actually damage the dwelling, often necessitating costly repairs.
  4. **Druggies.** Adverse possessors prevent drug dealers, marijuana grower, cocaine/crack/crystal meth addicts and other ne'er-do-wells from partying in and damaging the dwelling from neglect.
  5. **Thieves.** An unoccupied house often falls prey to thieves who steal appliances, plumbing fixtures, doors, window coverings, copper wiring and plumbing, and flooring. It costs the owner a fortune to replace these and put the house in condition suitable for selling it. Adverse possessors prevent thieves from stealing those things.
  6. **Vandals.** Vandals and street thugs often see an unoccupied dwelling as a target of opportunity; they break windows, destroy carpets, urinate or defecate on the floors, break holes in walls, destroy the roof, turn on the water and let water from stopped up sinks flood the floor, jam metal and other objects down into the plumbing, break toilet and sink porcelain, and so on. Cleanup and repair can cost the owner a small fortune. Adverse possessors keep such damage from happening by increasing the vandals' risk of capture.
  7. **Freezes and Hurricanes.** Adverse possessors typically mind the effect of the weather on plumbing and windows. They install protective coverings to prevent violent storms from breaking windows. They wrap water pipes or let outside faucets drip during freezes to keep them from bursting. An unoccupied house gets no such respectful care, and related repairs can become costly.
  8. **Maintenance.** Residential realty always need routine maintenance such as lawn-mowing, hedge-trimming, edging, filling in of holes dug by dogs and other creatures, painting, landscaping, fixing broken windows, and so on..An occupant will typically do all this work, but the owner must pay to have others do it if no occupant lives there.
  9. **HOA Dues.** Adverse possessors must pay Home Owner Association (HOA) dues. The owner must pay them if no adverse possessor lives there. But typically, HOAs lose precious money critical to their operation when people in mortgage foreclosure abandon the homes. Such people stop paying HOA dues and that hurts the community overall, putting the burden of HOA support on the remaining residents.
  10. **Taxes.** Adverse possessors must pay property taxes. The owner must pay them if no adverse possessor lives there. Owners in foreclosure who abandon their realty STOP paying property taxes. Unless the foreclosure plaintiff pays them, the County Tax Collector must go through the trouble of
- Adverse Possession of Realty Abandoned in Foreclosure

filing a tax lien and auctioning tax lien certificates. An adverse possessor saves the County money by paying the taxes.

11. **Property Management.** Managing all the above constitutes a significant enterprise of work and attention to duty for the adverse possessor. The associated management fees would similarly tax the rightful owner. The adverse possessor saves the rightful owner from having to pay that cost. The rightful owner wouldn't pay them anyway, and that means the realty would become run-down and ugly.

12. **Property Values.** Because of the above realities, abandoned residential realty invites wanton damage and undesirable lurkers, makes the neighborhood look deserted and unattractive, and reduces the curb appeal of the community. Therefore, people will not want to live there. That will diminish property values in the community in general.

13. **7-Year Savings.** Adverse possessors can pay taxes, homeowner dues, repair, and maintenance costs for up to 7 years, and the rightful owner can, just before the statute of limitations expires, obtain a writ of possession or ejectment from the court, whereupon the sheriff will give notice and remove the adverse possessor. Thus, adverse possession poses no risk to the rightful owner who doesn't sleep on his rights beyond 7 years.

14. **Restored Realty Prices.** The adverse possessors can end up leaving the Realty AFTER values have returned to their normally ridiculously high values because more people will have jobs and the ability to buy realty.

15. **Litigation Risk.** It costs an enormous amount of money to litigate against people with respect to questions of Realty ownership and title. Adverse possessors save the rightful owner much of that cost because they admit that they don't have ownership rights until after seven years. On the other hand, an adverse possessor might have profound knowledge of mortgages, lending practices, securitization, and the recent Financial Crisis Inquiry Commission Report's details about abuse of authority and duty in both government and the lending and securities industries. Such an adverse possessor could assist the prior owner of record in challenging REAL titular interest in the Realty. It could easily cost \$100,000 or more in legal fees, and put the foreclosure plaintiff or new owner of record at risk of disgorgement and treble damages, and possibly exorbitant punitive damages in favor of the prior owner of record. Thus the right adverse possessor could have courage to use the courts to attack fraud in the appraisal, loan, mortgage, assignments, securitization, and sale of bonds, and thereby wrest rightful title deservedly from crooked foreclosure plaintiffs. Any harm to crooked foreclosure plaintiffs helps the people of the state.

16. **Everybody Wins.** Adverse possessors keep the property in good shape, pay taxes and HOA dues, keep the community safer than otherwise, and help to increase property values. I imagine that rightful owners of common sense will see adverse possessors as a boon, not a bane, to the rightful owner, to the adverse possessor's family, to the municipality, to the neighborhood, to the courts, and to law enforcers.

17. **Check the Numbers.** Examination of home maintenance and cost records typically will reveal that adverse possessors can save the rightful owner and foreclosure plaintiffs an enormous amount of worry and money without putting them you at risk of losing the realty permanently or having to spend

substantially on ownership costs.

**18. About Possessions Left Behind.** A homeowner who abandons the realty and leaves behind precious possessions does so foolishly. That exposes the possessions to loss by theft and vandalism. Owners have the legal duty to protect their possessions, and locking the doors on an abandoned house does not constitute such protection. The conscientious adverse possessor, while disposing of junk left behind, might recognize some items as valuable and keep them safe for the rightful owner, but has no legal duty to do so.

**19. Homes for the Homeless.** The 2010 Census report revealed that Florida has 1.6 million (18%) vacant dwellings. Many of these fall into the category of "abandoned." The people from those vacant dwellings have to live somewhere. Most went to live with friends, relatives, or in homeless shelters, government subsidized housing, in sleazy motels, or in campers. In these places, families cannot easily provide the security they could give in their own homes. Adverse Possession provides a means to house these people without expense to government.

### ***Sheriffs Arrest Adverse Possessors In Spite of Benefits***

As insane as it seems, and in spite of the obvious benefits above, some county sheriffs try to destroy adverse possessors by arresting them for trespass, burglary, breaking and entering, fraud, and theft. This does immense harm to everyone above who benefits from adverse possession, particularly the adverse possessor and the county budget for law enforcement. When will the sheriffs every come to understand that the constitutions and laws acknowledge and protect adverse possession as a civil right?

## **Relevant Law References**

### ***Florida Constitution***

SECTION 1. Political power.—All political power is inherent in the people. The enunciation herein of certain rights shall not be construed to deny or impair others retained by the people.

SECTION 2. Basic rights.—All natural persons, female and male alike, are equal before the law and have inalienable rights, among which are the right to enjoy and defend life and liberty, to pursue happiness, to be rewarded for industry, and to acquire, possess and protect property; except that the ownership, inheritance, disposition and possession of real property by aliens ineligible for citizenship may be regulated or prohibited by law. No person shall be deprived of any right because of race, religion, national origin, or physical disability.

History.—Am. S.J.R. 917, 1974; adopted 1974; Am. proposed by Constitution Revision Commission, Revision No. 9, 1998, filed with the Secretary of State May 5, 1998; adopted 1998.

SECTION 9. Due process.—No person shall be deprived of life, liberty or property without due process of law, or be twice put in jeopardy for the same offense, or be compelled in any criminal matter to be a witness against oneself.

History.—Am. proposed by Constitution Revision Commission, Revision No. 13, 1998, filed with the Secretary of State May 5, 1998; adopted 1998.

SECTION 12. Searches and seizures.—The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures, and against the unreasonable interception of private communications by any means, shall not be violated. No warrant shall be issued except upon probable cause, supported by affidavit, particularly describing the place or places to be searched, the person or persons, thing or things to be seized, the communication to be intercepted, and the nature of evidence to be obtained. This right shall be construed in conformity with the 4th Amendment to the United States Constitution, as interpreted by the United States Supreme Court. Articles or information obtained in violation of this right shall not be admissible in evidence if such articles or information would be inadmissible under decisions of the United States Supreme Court construing the 4th Amendment to the United States Constitution.

History.—Am. H.J.R. 31-H, 1982; adopted 1982.

SECTION 13. Habeas corpus.—The writ of habeas corpus shall be grantable of right, freely and without cost. It shall be returnable without delay, and shall never be suspended unless, in case of rebellion or invasion, suspension is essential to the public safety.

SECTION 16. Rights of accused and of victims.—

(a) In all criminal prosecutions the accused shall, upon demand, be informed of the nature and cause of the accusation, and shall be furnished a copy of the charges, and shall have the right to have compulsory process for witnesses, to confront at trial adverse witnesses, to be heard in person, by counsel or both, and to have a speedy and public trial by impartial jury in the county where the crime was committed. If the county is not known, the indictment or information may charge venue in two or more counties conjunctively and proof that the crime was committed in that area shall be sufficient; but before pleading the accused may elect in which of those counties the trial will take place. Venue for prosecution of crimes committed beyond the boundaries of the state shall be fixed by law.

(b) Victims of crime or their lawful representatives, including the next of kin of homicide victims, are entitled to the right to be informed, to be present, and to be heard when relevant, at all crucial stages of criminal proceedings, to the extent that these rights do not interfere with the constitutional rights of the accused.

History.—Am. S.J.R. 135, 1987; adopted 1988; Am. proposed by Constitution Revision Commission, Revision No. 13, 1998, filed with the Secretary of State May 5, 1998; adopted 1998.

SECTION 17. Excessive punishments.—Excessive fines, cruel and unusual punishment, attainder, forfeiture of estate, indefinite imprisonment, and unreasonable detention of witnesses are forbidden. The death penalty is an authorized punishment for capital crimes designated by the legislature. The prohibition against cruel or unusual punishment, and the prohibition against cruel and unusual punishment, shall be construed in conformity with decisions of the United States Supreme Court which interpret the prohibition against cruel and unusual punishment provided in the Eighth Amendment to the United States Constitution. Any method of execution shall be allowed, unless prohibited by the

United States Constitution. Methods of execution may be designated by the legislature, and a change in any method of execution may be applied retroactively. A sentence of death shall not be reduced on the basis that a method of execution is invalid. In any case in which an execution method is declared invalid, the death sentence shall remain in force until the sentence can be lawfully executed by any valid method. This section shall apply retroactively.

History.—Am. H.J.R. 3505, 1998; adopted 1998; Am. H.J.R. 951, 2001; adopted 2002.

SECTION 21. Access to courts.—The courts shall be open to every person for redress of any injury, and justice shall be administered without sale, denial or delay.

SECTION 22. Trial by jury.—The right of trial by jury shall be secure to all and remain inviolate. The qualifications and the number of jurors, not fewer than six, shall be fixed by law.

SECTION 23. Right of privacy.—Every natural person has the right to be let alone and free from governmental intrusion into the person's private life except as otherwise provided herein. This section shall not be construed to limit the public's right of access to public records and meetings as provided by law.

History.—Added, C.S. for H.J.R. 387, 1980; adopted 1980; Am. proposed by Constitution Revision Commission, Revision No. 13, 1998, filed with the Secretary of State May 5, 1998; adopted 1998.

SECTION 24. Access to public records and meetings.—

(a) Every person has the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution. This section specifically includes the legislative, executive, and judicial branches of government and each agency or department created thereunder; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution.

(b) All meetings of any collegial public body of the executive branch of state government or of any collegial public body of a county, municipality, school district, or special district, at which official acts are to be taken or at which public business of such body is to be transacted or discussed, shall be open and noticed to the public and meetings of the legislature shall be open and noticed as provided in Article III, Section 4(e), except with respect to meetings exempted pursuant to this section or specifically closed by this Constitution.

(c) This section shall be self-executing. The legislature, however, may provide by general law passed by a two-thirds vote of each house for the exemption of records from the requirements of subsection (a) and the exemption of meetings from the requirements of subsection (b), provided that such law shall state with specificity the public necessity justifying the exemption and shall be no broader than necessary to accomplish the stated purpose of the law. The legislature shall enact laws governing the enforcement of this section, including the maintenance, control, destruction, disposal, and disposition of records made public by this section, except that each house of the legislature may adopt rules

governing the enforcement of this section in relation to records of the legislative branch. Laws enacted pursuant to this subsection shall contain only exemptions from the requirements of subsections (a) or (b) and provisions governing the enforcement of this section, and shall relate to one subject.

(d) All laws that are in effect on July 1, 1993 that limit public access to records or meetings shall remain in force, and such laws apply to records of the legislative and judicial branches, until they are repealed. Rules of court that are in effect on the date of adoption of this section that limit access to records shall remain in effect until they are repealed.

History.—Added, C.S. for C.S. for H.J.R.'s 1727, 863, 2035, 1992; adopted 1992; Am. S.J.R. 1284, 2002; adopted 2002.

## ***Florida Rules of Civil Procedure***

### **RULE 1.230. INTERVENTIONS**

Anyone claiming an interest in pending litigation may at any time be permitted to assert a right by intervention, but the intervention shall be in subordination to, and in recognition of, the propriety of the main proceeding, unless otherwise ordered by the court in its discretion.

### **RULE 1.071 CONSTITUTIONAL CHALLENGE TO STATE STATUTE OR COUNTY OR MUNICIPAL CHARTER, ORDINANCE, OR FRANCHISE; NOTICE BY PARTY**

A party that files a pleading, written motion, or other paper drawing into question the constitutionality of a state statute or a county or municipal charter, ordinance, or franchise must promptly

(a) file a notice of constitutional question stating the question and identifying the paper that raises it; and

(b) serve the notice and the pleading, written motion, or other paper drawing into question the constitutionality of a state statute or a county or municipal charter, ordinance, or franchise on the Attorney General or the state attorney of the judicial circuit in which the action is pending, by either certified or registered mail.

Service of the notice and pleading, written motion, or other paper does not require joinder of the Attorney General or the state attorney as a party to the action.

-----

## ***Florida Statutes***

### **Chapter 16 - Attorney General**

16.01 Residence, office, and duties of Attorney General.—The Attorney General:

Adverse Possession of Realty Abandoned in Foreclosure

Page 14

- (1) Shall reside at the seat of government and shall keep his or her office in the capitol.
- (2) Shall perform the duties prescribed by the Constitution of this state and also perform such other duties appropriate to his or her office as may from time to time be required of the Attorney General by law or by resolution of the Legislature.
- (3) Notwithstanding any other provision of law, shall, on the written requisition of the Governor, a member of the Cabinet, the head of a department in the executive branch of state government, the Speaker of the House of Representatives, the President of the Senate, the Minority Leader of the House of Representatives, or the Minority Leader of the Senate, and may, upon the written requisition of a member of the Legislature, other state officer, or officer of a county, municipality, other unit of local government, or political subdivision, give an official opinion and legal advice in writing on any question of law relating to the official duties of the requesting officer.
- (4) Shall appear in and attend to, in behalf of the state, all suits or prosecutions, civil or criminal or in equity, in which the state may be a party, or in anywise interested, in the Supreme Court and district courts of appeal of this state.
- (5) Shall appear in and attend to such suits or prosecutions in any other of the courts of this state or in any courts of any other state or of the United States. This subsection is not intended to authorize the joinder of the Attorney General as a party in such suits or prosecutions.
- (6) Shall act as co-counsel of record in capital collateral proceedings.
- (7) Shall have and perform all powers and duties incident or usual to such office.
- (8) Shall make and keep in his or her office a record of all his or her official acts and proceedings, containing copies of all official opinions, reports, and correspondence, and also keep and preserve in the office all official letters and communications to him or her and cause a registry and index thereof to be made and kept, all of which official papers and records shall be subject to the inspection of the Governor of the state and to the disposition of the Legislature by act or resolution thereof.
- (9) May periodically publish a report of his or her official opinions and may prepare and publish an index or consolidated index or indexes of opinions.

## **Chapter 66 – Ejectment**

66.011 Common-law ejectment abolished.

66.021 Procedure.

66.031 Verdict and judgment.

66.041 Betterment, petition.

66.051 Betterment, answer.

66.061 Betterment, trial and verdict.

66.071 Betterment, judgment for plaintiff.

66.081 Betterment, judgment for defendant.

66.091 Betterment, payment by plaintiff.

66.101 Betterment, payment by defendant.

66.011 Common-law ejectment abolished. In ejectment it is not necessary to have any fictitious parties. Plaintiff may bring action directly against the party in possession or claiming adversely. History. s. 1, ch. 999, 1859; RS 1511; GS 1966; RGS 3234; CGL 5040; s. 21, ch. 67-254. Note. Former s. 70.01.

66.021 Procedure.

(1) LANDLORD NOT A DEFENDANT. When it appears before trial that a defendant in ejectment is in possession as a tenant and that his or her landlord is not a party, the landlord shall be made a party before further proceeding unless otherwise ordered by the court.

(2) DEFENSE MAY BE LIMITED. A defendant in an action of ejectment may limit his or her defense to a part of the property mentioned in the complaint, describing such part with reasonable certainty.

(3) WRIT OF POSSESSION; EXECUTION TO BE JOINT OR SEVERAL. When plaintiff recovers in ejectment, he or she may have one writ for possession, damages and costs or, if the plaintiff elects, have separate writs for possession and damages.

(4) CHAIN OF TITLE. Plaintiff with his or her complaint and defendant with his or her answer shall serve a statement setting forth chronologically the chain of title on which he or she will rely at trial. If any part of the chain of title is recorded, the statement shall set forth the names of the grantors and the grantees and the book and page of the record thereof; if an unrecorded instrument is relied on, a copy shall be attached. The court may require the original to be submitted to the opposite party for inspection. If the party relies on a claim or right without color of title, the statement shall specify how and when the claim originated and the facts on which the claim is based. If defendant and plaintiff claim under a common source, the statement need not deraign title before the common source.

(5) TESTING SUFFICIENCY. If either party wants to test the legal sufficiency of any instrument or court proceeding in the chain of title of the opposite party, the party shall do so before trial by motion setting up his or her objections with a copy of the instrument or court proceedings attached. The motion shall be disposed of before trial. If either party determines that he or she will be unable to maintain his or her claim by reason of the order, that party may so state in the record and final judgment shall be entered for the opposite party.

History. s. 21, ch. 67-254; s. 348, ch. 95-147.

66.031 Verdict and judgment.

(1) VERDICT. A verdict for plaintiff shall state the quantity of the estate of plaintiff, and describe the land by metes and bounds, lot number or other certain description.

(2) JUDGMENT. The judgment awarding possession shall state the quantity of the estate and give a description of the land recovered in like manner.

History. ss. 1, 2, ch. 3244, 1881; RS 1515; GS 1970; RGS 3238; CGL 5046; s. 21, ch. 67-254.

Note.Former s. 70.05.

66.041 Betterment, petition. If a judgment of eviction is rendered against defendant, within 60 days thereafter, or if he or she has appealed, within 20 days after filing the mandate affirming the judgment, defendant may file in the court in which the judgment was rendered a petition setting forth that:

(1) Defendant had been in possession and that he or she or those under whom defendant validly derived had permanently improved the value of the property in controversy before commencement of the action in which judgment was rendered;

(2) Defendant or those under whom defendant validly derives held the property at the time of such improvement under an apparently good legal or equitable title derived from the English, Spanish, or United States Governments or this state; or under a legal or equitable title plain and connected on the records of a public office or public offices; or under purchase at a regular sale made by an executor, administrator, guardian or other person by order of court; and

(3) When defendant made the improvements or purchased the property improved, he or she believed the title which he or she held or purchased to the land thus improved to be a good and valid title. The petition shall demand that the value of the improvements be assessed and compensation awarded to defendant therefor.

History.RS 1516; GS 1971; RGS 3239; CGL 5047; s. 2, ch. 29737, 1955; s. 21, ch. 67-254; s. 349, ch. 95-147.

Note.Former s. 70.06.

66.051 Betterment, answer. The plaintiff in the judgment of eviction may file written defenses to the petition within 20 days after service of the petition.

History.RS 1517; GS 1972; RGS 3240; CGL 5048; s. 14, ch. 29737, 1955; s. 21, ch. 67-254.

Note.Former s. 70.07.

66.061 Betterment, trial and verdict. If an answer is filed, trial shall be on the issues made. If no answer is filed, trial shall be ex parte, but defendant is required to prove every allegation of the petition. If the jury (or if a jury is waived, the court) finds in favor of defendant, it shall assess:

(1) The value of the land at the time of the assessment, irrespective of the improvements put upon the land by defendant or those under whom he or she derives, and if any, the injury done to the land by defendant or those under whom he or she derives.

(2) The value of the permanent improvements at the time of the assessment.

(3) The injury, if any, done to the land by defendant or those under whom he or she derives.

(4) The value of the use of the land by defendant between the time of the judgment in ejectment and the time of the assessment or if defendant has been evicted from or has surrendered the premises, from the time of the judgment to the time of the surrender or eviction. The findings shall be specified separately on each of these matters.

History.RS 1518; GS 1973; RGS 3241; CGL 5049; s. 2, ch. 29737, 1955; s. 21, ch. 67-254; s. 350, ch. 95-147.

Note.Former s. 70.08.

66.071 Betterment, judgment for plaintiff. On rendition of the verdict the clerk shall ascertain whether

the balance of the last three assessments (that is, of the value of the improvements, the extent of the injury and the value of the use of land), is in favor of plaintiff or defendant and ascertain the amount of the balance; if the verdict is in favor of plaintiff, judgment shall be rendered against defendant for costs, whether the balance of the assessments is in favor of plaintiff or defendant; but if the balance of the assessments is in favor of plaintiff, he or she shall have a judgment for costs in addition to the judgment for the balance.

History.RS 1519; GS 1974; RGS 3242; CGL 5050; s. 21, ch. 67-254; s. 351, ch. 95-147.

Note.Former s. 70.09.

66.081 Betterment, judgment for defendant. If the verdict is in favor of defendant and the balance of assessments is also in defendant's favor, a judgment for costs shall be entered against plaintiff, and a further judgment that unless plaintiff pays or secures as hereinafter provided the amount of the balance of assessments against him or her within 20 days, defendant may pay or secure to plaintiff the value of the land as assessed.

History.RS 1520; GS 1975; RGS 3243; CGL 5051; s. 21, ch. 67-254; s. 352, ch. 95-147.

Note.Former s. 70.10.

66.091 Betterment, payment by plaintiff. The plaintiff may pay the balance in cash or may give defendant a bond with surety to be approved by the clerk, conditioned to pay said balance in two equal annual installments, with interest at 6 percent per annum to defendant. If plaintiff shall pay the sum within 20 days, or if the payment of the bond is received, satisfaction of the judgment shall be entered and all rights conferred on defendant by the judgment terminate.

History.RS 1521; GS 1976; RGS 3244; CGL 5052; s. 21, ch. 67-254.

Note.Former s. 70.11.

66.101 Betterment, payment by defendant. If plaintiff does not pay or secure the sum within 20 days, within 20 days thereafter defendant may pay to plaintiff the value of the land as assessed or give plaintiff a bond with surety, to be approved by the clerk, conditioned to pay plaintiff the value in two equal annual installments, with 6 percent interest; or if plaintiff fails to pay the bond given by him or her when it becomes due, for 20 days after the expiration of the time fixed in the bond for payment, defendant shall again have the privilege of paying to plaintiff in cash the value of the land assessed. On the payment of the sum to plaintiff at any of the times hereinbefore mentioned, title to the land shall vest in defendant and plaintiff or those holding under him or her shall give defendant a deed to the land, tenements, hereditaments, and appurtenances, and if defendant has been evicted from or has surrendered the property, it shall be restored to him or her by order of court on motion.

History.RS 1522; GS 1977; RGS 3245; CGL 5053; s. 21, ch. 67-254; s. 353, ch. 95-147.

Note.Former s. 70.12.

-----

## **Chapter 82 – Forcible Entry and Unlawful Detainer**

82.01 Unlawful entry and forcible entry defined.

Adverse Possession of Realty Abandoned in Foreclosure

82.02 Unlawful entry and unlawful detention defined.

82.03 Remedy for unlawful entry and forcible entry.

82.04 Remedy for unlawful detention.

82.05 Questions involved in this proceeding.

82.061 Process.

82.071 Trial; evidence as to damages.

82.081 Trial; form of verdict.

82.091 Judgment and execution.

82.101 Effect of judgment.

82.01 Unlawful entry and forcible entry defined. No person shall enter into any lands or tenements except when entry is given by law, nor shall any person, when entry is given by law, enter with strong hand or with multitude of people, but only in a peaceable, easy and open manner.

History.s. 1, ch. 1630, 1868; RS 1687; GS 2152; RGS 3456; CGL 5309; s. 33, ch. 67-254.

82.02 Unlawful entry and unlawful detention defined.

(1) No person who enters without consent in a peaceable, easy and open manner into any lands or tenements shall hold them afterwards against the consent of the party entitled to possession.

(2) This section shall not apply with regard to residential tenancies.

History.s. 2, ch. 1630, 1868; RS 1688; GS 2153; RGS 3457; CGL 5310; s. 33, ch. 67-254; s. 13, ch. 73-330; s. 19, ch. 77-104.

82.03 Remedy for unlawful entry and forcible entry. If any person enters or has entered into lands or tenements when entry is not given by law, or if any person enters or has entered into any lands or tenements with strong hand or with multitude of people, even when entry is given by law, the party turned out or deprived of possession by the unlawful or forcible entry, by whatever right or title the party held possession, or whatever estate the party held or claimed in the lands or tenements of which he or she was so dispossessed, is entitled to the summary procedure under s. 51.011 within 3 years thereafter.

History.s. 3, ch. 1630, 1868; RS 1689; GS 2154; RGS 3458; CGL 5311; s. 33, ch. 67-254; s. 423, ch. 95-147.

82.04 Remedy for unlawful detention.

(1) If any person enters or has entered in a peaceable manner into any lands or tenements when the entry is lawful and after the expiration of the persons right continues to hold them against the consent of the party entitled to possession, the party so entitled to possession is entitled to the summary procedure under s. 51.011, at any time within 3 years after the possession has been withheld from the party against his or her consent.

(2) This section shall not apply with regard to residential tenancies.

History.s. 4, ch. 1630, 1868; RS 1690; GS 2155; RGS 3459; CGL 5312; s. 33, ch. 67-254; s. 13, ch. 73-330; s. 19, ch. 77-104; s. 424, ch. 95-147.

82.05 Questions involved in this proceeding. No question of title, but only right of possession and damages, is involved in the action.

History.s. 20, ch. 1630, 1868; RS 1691; GS 2156; RGS 3460; CGL 5313; s. 33, ch. 67-254.

82.061Process.If no person can be found at the usual place of residence of defendant, summons may be served by posting a copy in a conspicuous place on the property, described in the complaint and summons.

History.ss. 9, 24, ch. 1630, 1868; RS 1694; GS 2159; RGS 3463; CGL 5316; s. 33, ch. 67-254.

Note.Former s. 82.08.

82.071Trial; evidence as to damages.At trial evidence shall be admitted about the monthly rental value of the premises and if plaintiff recovers, the jury shall fix the plaintiffs damages at double the rental value of the premises from the time of the unlawful or wrongful holding, but the damages in no action of detainer shall be fixed at more than rental value of the premises unless the jury is satisfied that such detention is willful and knowingly wrongful.

History.s. 14, ch. 1630, 1868; RS 1700; GS 2165; RGS 3469; CGL 5322; s. 33, ch. 67-254; s. 425, ch. 95-147.

Note.Former s. 82.14.

82.081Trial; form of verdict.

(1)IN CASES OF FORCIBLE OR UNLAWFUL ENTRY.In forcible or unlawful entry the form of verdict shall be substantially as follows:

We, the jury, find that defendant did (or did not), within 3 years next before the filing of the complaint, forcibly (or unlawfully) enter upon the real estate mentioned in the complaint and turn plaintiff out of possession; that defendant did (or did not) continue to hold possession at the date of the complaint; and we assess the damages of plaintiff at \_\_\_\_ dollars.

(2)IN CASES OF UNLAWFUL DETAINER.The form of verdict in unlawful detainer shall be substantially as follows:

We, the jury, find that the defendant did (or did not), at the time of filing the complaint, wrongfully hold possession of the real estate mentioned in the complaint against the consent of plaintiff that defendant has (or has not) so held possession thereof against the consent of plaintiff, within 3 years next before the filing of the complaint; and that plaintiff has (or has not) the right of possession in the real estate, and we assess the damage of plaintiff at \_\_\_\_ dollars.

This subsection shall not apply with regard to residential tenancies.

History.s. 13, ch. 1630, 1868; RS 1701; GS 2166; RGS 3470; CGL 5323; s. 33, ch. 67-254; s. 13, ch. 73-330; s. 19, ch. 77-104.

Note.Former s. 82.15.

82.091Judgment and execution.If the verdict is in favor of plaintiff, the court shall enter judgment that plaintiff recover possession of the property described in the complaint with his or her damages and costs, and shall award a writ of possession to be executed without delay and execution for plaintiffs damages and costs. If the verdict is for defendant, the court shall enter judgment against plaintiff

dismissing the complaint and order that defendant recover costs.

History.s. 15, ch. 1630, 1868; RS 1702; GS 2167; RGS 3471; CGL 5324; s. 33, ch. 67-254; s. 426, ch. 95-147.

Note.Former s. 82.16.

82.101Effect of judgment.No judgment rendered either for plaintiff or defendant bars any action of trespass for injury to the property or ejectment between the same parties respecting the same property. No verdict is conclusive of the facts therein found in any action of trespass or ejectment.

History.s. 20, ch. 1630, 1868; RS 1703; GS 2168; RGS 3472; CGL 5325; s. 33, ch. 67-254.

Note.Former s. 82.17.

---

## **Chapter 86 – Declaratory Judgment**

86.091 Parties.—When declaratory relief is sought, all persons may be made parties who have or claim any interest which would be affected by the declaration. No declaration shall prejudice the rights of persons not parties to the proceedings. In any proceeding concerning the validity of a county or municipal charter, ordinance, or franchise, such county or municipality shall be made a party and shall be entitled to be heard. If the statute, charter, ordinance, or franchise is alleged to be unconstitutional, the Attorney General or the state attorney of the judicial circuit in which the action is pending shall be served with a copy of the complaint and be entitled to be heard.

History.—s. 10, ch. 21820, 1943; s. 1, ch. 59-440; s. 38, ch. 67-254.

Note.—Former s. 87.10.

## **Chapter 95 – Limitations regarding Adverse Possessions**

95.12 Real property actions.—No action to recover real property or its possession shall be maintained unless the person seeking recovery or the person’s ancestor, predecessor, or grantor was seized or possessed of the property within 7 years before the commencement of the action.

History.—s. 2, ch. 1869, 1872; RS 1287; GS 1718; RGS 2932; CGL 4652; s. 8, ch. 74-382; s. 521, ch. 95-147.

95.13 Real property actions; possession by legal owner presumed.—In every action to recover real property or its possession, the person establishing legal title to the property shall be presumed to have been possessed of it within the time prescribed by law. The occupation of the property by any other person shall be in subordination to the legal title unless the property was possessed adversely to the legal title for 7 years before the commencement of the action.

History.—s. 4, ch. 1869, 1872; RS 1289; GS 1720; RGS 2934; CGL 4654; s. 9, ch. 74-382.

95.14 Real property actions; limitation upon action founded upon title.—No cause of action or defense to an action founded on the title to real property, or to rents or service from it, shall be maintained unless:

(1) The person prosecuting the action or making the defense, or under whose title the action is

prosecuted or the defense is made, or the ancestor, predecessor, or grantor of the person, was seized or possessed of the real property within 7 years before commencement of the action; or

(2) Title to the real property was derived from the United States or the state within 7 years before commencement of the action. The time under this subsection shall not begin to run until the conveyance of the title from the state or the United States.

History.—s. 3, ch. 1869, 1872; RS 1288; GS 1719; RGS 2933; CGL 4653; s. 10, ch. 74-382.

95.16 Real property actions; adverse possession under color of title.—

(1) When the occupant, or those under whom the occupant claims, entered into possession of real property under a claim of title exclusive of any other right, founding the claim on a written instrument as being a conveyance of the property, or on a decree or judgment, and has for 7 years been in continued possession of the property included in the instrument, decree, or judgment, the property is held adversely. If the property is divided into lots, the possession of one lot shall not be deemed a possession of any other lot of the same tract. Adverse possession commencing after December 31, 1945, shall not be deemed adverse possession under color of title until the instrument upon which the claim of title is founded is recorded in the office of the clerk of the circuit court of the county where the property is located.

(2) For the purpose of this section, property is deemed possessed in any of the following cases:

(a) When it has been usually cultivated or improved.

(b) When it has been protected by a substantial enclosure. All land protected by the enclosure must be included within the description of the property in the written instrument, judgment, or decree. If only a portion of the land protected by the enclosure is included within the description of the property in the written instrument, judgment, or decree, only that portion is deemed possessed.

(c) When, although not enclosed, it has been used for the supply of fuel or fencing timber for husbandry or for the ordinary use of the occupant.

(d) When a known lot or single farm has been partly improved, the part that has not been cleared or enclosed according to the usual custom of the county is to be considered as occupied for the same length of time as the part improved or cultivated.

History.—s. 5, ch. 1869, 1872; RS 1290; GS 1721; RGS 2935; CGL 4655; s. 1, ch. 19253, 1939; s. 1, ch. 22897, 1945; ss. 11, 12, ch. 74-382; s. 1, ch. 77-174; s. 1, ch. 87-194; s. 522, ch. 95-147.

95.18 Real property actions; adverse possession without color of title.—

(1) When the occupant or those under whom the occupant claims have been in actual continued occupation of real property for 7 years under a claim of title exclusive of any other right, but not founded on a written instrument, judgment, or decree, the property actually occupied shall be held adversely if the person claiming adverse possession made a return of the property by proper legal description to the property appraiser of the county where it is located within 1 year after entering into possession and has subsequently paid all taxes and matured installments of special improvement liens

levied against the property by the state, county, and municipality.

(2) For the purpose of this section, property shall be deemed to be possessed in the following cases only:

(a) When it has been protected by substantial enclosure.

(b) When it has been usually cultivated or improved.

History.—s. 7, ch. 1869, 1872; s. 6, ch. 4055, 1891; RS 1291; GS 1722; RGS 2936; CGL 4656; s. 1, ch. 19254, 1939; ss. 13, 14, ch. 74-382; s. 1, ch. 77-102; s. 523, ch. 95-147.

95.191 Limitations when tax deed holder in possession.—When the holder of a tax deed goes into actual possession of the real property described in the tax deed, no action to recover possession of the property shall be maintained by a former owner or other adverse claimant unless the action commenced is begun within 4 years after the holder of the tax deed has gone into actual possession. When the real property is adversely possessed by any person, no action shall be brought by the tax deed holder unless the action is begun within 4 years from the date of the deed.

History.—s. 64, ch. 4322, 1895; GS 591; s. 61, ch. 5596, 1907; RGS 794; s. 2, ch. 12409, 1927; CGL 1020; ss. 1, 2, ch. 69-55; s. 1, ch. 72-268; s. 28, ch. 73-332; s. 1, ch. 77-174.

Note.—Former ss. 196.06, 197.725, 197.286.

95.192 Limitation upon acting against tax deeds.—

(1) When a tax deed has been issued to any person under s. 197.552 for 4 years, no action shall be brought by the former owner of the property or any claimant under the former owner.

(2) When a tax deed is issued conveying or attempting to convey real property before a patent has been issued thereon by the United States, or before a conveyance by the state, and thereafter a patent by the United States or a conveyance by the state is issued to the person to whom the property was assessed or a claimant under him or her, and the tax deed grantee or a claimant under the tax deed grantee has paid the taxes for 4 successive years at any time after the issuance of the patent or conveyance, the patentee, or grantee, and any claimant under the patentee or grantee shall be presumed to have abandoned the property and any right, title, and interest in it. Upon such abandonment, the tax deed grantee and any claimant under the tax deed grantee is the legal owner of the property described by the tax deed.

(3) This statute applies whether the tax deed grantee or any claimant under the tax deed grantee has been in actual possession of the property described in the tax deed or not. If a tax deed has been issued to property in the actual possession of the legal owner and the legal owner or any claimant under him or her continues in actual possession 1 year after issuance of the tax deed and before an action to eject him or her is begun, subsections (1) and (2) shall not apply.

History.—s. 27, ch. 73-332; s. 201, ch. 85-342; s. 524, ch. 95-147.

95.21 Adverse possession against lands purchased at sales made by executors.—The title of any purchaser, or the purchaser's assigns, who has held possession for 3 years of any real or personal

property purchased at a sale made by an executor, administrator, or guardian shall not be questioned because of any irregularity in the conveyance or any insufficiency or irregularity in the court proceedings authorizing the sale, whether jurisdictional or not, nor shall it be questioned because the sale is made without court approval or confirmation or under a will or codicil. The title shall not be questioned at any time by anyone who has received the money to which he or she was entitled from the sale. This section shall not bar an action for fraud or an action against the executor, administrator, or guardian for personal liability to any heir, distributee, or ward.

History.—s. 1, ch. 3134, 1879; RS 1293; GS 1724; RGS 2938; CGL 4658; s. 1, ch. 20954, 1941; s. 3, ch. 22897, 1945; s. 15, ch. 74-382; s. 1, ch. 77-174; s. 525, ch. 95-147.

95.22 Limitation upon claims by remaining heirs, when deed made by one or more.—

- (1) When any person owning real property or any interest in it dies and a conveyance is made by one or more of the person's heirs or devisees, purporting to convey, either singly or in the aggregate, the entire interest of the decedent in the property or any part of it, then no person shall claim or recover the property conveyed after 7 years from the date of recording the conveyance in the county where the property is located.
- (2) This section shall not apply to persons whose names appear of record as devisees under the will or as the heirs in proceedings brought to determine their identity in the office of the judge administering the estate of decedent.

History.—s. 1, ch. 10168, 1925; CGL 4659; s. 14, ch. 20954, 1941; s. 15, ch. 73-334; s. 16, ch. 74-382; s. 526, ch. 95-147.

95.231 Limitations where deed or will on record.—

- (1) Five years after the recording of a deed or the probate of a will purporting to convey real property, from which it appears that the person owning the property attempted to convey or devise it, the deed or will shall be held to authorize the conveyance or devise of, or to convey or devise, the fee simple title to the real property, or any interest in it, of the person signing the instrument, as if there had been no lack of seal or seals, witness or witnesses, defect in acknowledgment or relinquishment of dower, in the absence of fraud, adverse possession, or pending litigation. The instrument shall be admissible in evidence.
- (2) After 20 years from the recording of a deed or the probate of a will purporting to convey real property, no person shall assert any claim to the property against the claimants under the deed or will or their successors in title.
- (3) This law is cumulative to all laws on the subject matter.

History.—ss. 1, 2, ch. 10171, 1925; CGL 4660, 4661; ss. 1-4, ch. 21790, 1943; s. 35, ch. 69-216; s. 17, ch. 74-382.

Note.—Former ss. 95.23, 95.26.

## **Chapter 760 – Civil Rights**

760.51 Violations of constitutional rights, civil action by the Attorney General; civil penalty.—

(1) Whenever any person, whether or not acting under color of law, interferes by threats, intimidation, or coercion, or attempts to interfere by threats, intimidation, or coercion, with the exercise or enjoyment by any other person of rights secured by the State Constitution or laws of this state, the Attorney General may bring a civil or administrative action for damages, and for injunctive or other appropriate relief for violations of the rights secured. Any damages recovered under this section shall accrue to the injured person. The civil action shall be brought in the name of the state and may be brought on behalf of the injured person. The Attorney General is entitled to an award of reasonable attorney's fees and costs if the Department of Legal Affairs prevails in an action brought under this section.

(2) Any person who interferes by threats, intimidation, or coercion, or attempts to interfere by threats, intimidation, or coercion, with the exercise or enjoyment by any other person of rights secured by the State Constitution or laws of this state is liable for a civil penalty of not more than \$10,000 for each violation. This penalty may be recovered in any action brought under this section by the Attorney General. A civil penalty so collected shall accrue to the state and shall be deposited as received into the General Revenue Fund unallocated.

History.—s. 4, ch. 91-74.

## **Chapter 776 - Use of Deadly Force**

776.012 Use of force in defense of person. A person is justified in using force, except deadly force, against another when and to the extent that the person reasonably believes that such conduct is necessary to defend himself or herself or another against the others imminent use of unlawful force.

However, a person is justified in the use of deadly force and does not have a duty to retreat if:

(1) He or she reasonably believes that such force is necessary to prevent imminent death or great bodily harm to himself or herself or another or to prevent the imminent commission of a forcible felony; or

(2) Under those circumstances permitted pursuant to s. 776.013.

History. s. 13, ch. 74-383; s. 1188, ch. 97-102; s. 2, ch. 2005-27.

776.013 Home protection; use of deadly force; presumption of fear of death or great bodily harm.

(1) A person is presumed to have held a reasonable fear of imminent peril of death or great bodily harm to himself or herself or another when using defensive force that is intended or likely to cause death or great bodily harm to another if:

(a) The person against whom the defensive force was used was in the process of unlawfully and forcefully entering, or had unlawfully and forcibly entered, a dwelling, residence, or occupied vehicle, or if that person had removed or was attempting to remove another against that persons will from the dwelling, residence, or occupied vehicle; and

(b) The person who uses defensive force knew or had reason to believe that an unlawful and forcible entry or unlawful and forcible act was occurring or had occurred.

(2)The presumption set forth in subsection (1) does not apply if:

(a)The person against whom the defensive force is used has the right to be in or is a lawful resident of the dwelling, residence, or vehicle, such as an owner, lessee, or titleholder, and there is not an injunction for protection from domestic violence or a written pretrial supervision order of no contact against that person; or

(b)The person or persons sought to be removed is a child or grandchild, or is otherwise in the lawful custody or under the lawful guardianship of, the person against whom the defensive force is used; or

(c)The person who uses defensive force is engaged in an unlawful activity or is using the dwelling, residence, or occupied vehicle to further an unlawful activity; or

(d)The person against whom the defensive force is used is a law enforcement officer, as defined in s. 943.10(14), who enters or attempts to enter a dwelling, residence, or vehicle in the performance of his or her official duties and the officer identified himself or herself in accordance with any applicable law or the person using force knew or reasonably should have known that the person entering or attempting to enter was a law enforcement officer.

(3)A person who is not engaged in an unlawful activity and who is attacked in any other place where he or she has a right to be has no duty to retreat and has the right to stand his or her ground and meet force with force, including deadly force if he or she reasonably believes it is necessary to do so to prevent death or great bodily harm to himself or herself or another or to prevent the commission of a forcible felony.

(4)A person who unlawfully and by force enters or attempts to enter a persons dwelling, residence, or occupied vehicle is presumed to be doing so with the intent to commit an unlawful act involving force or violence.

(5)As used in this section, the term:

(a)Dwelling means a building or conveyance of any kind, including any attached porch, whether the building or conveyance is temporary or permanent, mobile or immobile, which has a roof over it, including a tent, and is designed to be occupied by people lodging therein at night.

(b)Residence means a dwelling in which a person resides either temporarily or permanently or is visiting as an invited guest.

(c)Vehicle means a conveyance of any kind, whether or not motorized, which is designed to transport people or property.

History.s. 1, ch. 2005-27.

776.031Use of force in defense of others.A person is justified in the use of force, except deadly force, against another when and to the extent that the person reasonably believes that such conduct is necessary to prevent or terminate the others trespass on, or other tortious or criminal interference with, either real property other than a dwelling or personal property, lawfully in his or her possession or in the possession of another who is a member of his or her immediate family or household or of a person whose property he or she has a legal duty to protect. However, the person is justified in the use of deadly force only if he or she reasonably believes that such force is necessary to prevent the imminent commission of a forcible felony. A person does not have a duty to retreat if the person is in a place where he or she has a right to be.

History.s. 13, ch. 74-383; s. 1189, ch. 97-102; s. 3, ch. 2005-27.

776.032 Immunity from criminal prosecution and civil action for justifiable use of force.

(1) A person who uses force as permitted in s. 776.012, s. 776.013, or s. 776.031 is justified in using such force and is immune from criminal prosecution and civil action for the use of such force, unless the person against whom force was used is a law enforcement officer, as defined in s. 943.10(14), who was acting in the performance of his or her official duties and the officer identified himself or herself in accordance with any applicable law or the person using force knew or reasonably should have known that the person was a law enforcement officer. As used in this subsection, the term criminal prosecution includes arresting, detaining in custody, and charging or prosecuting the defendant.

(2) A law enforcement agency may use standard procedures for investigating the use of force as described in subsection (1), but the agency may not arrest the person for using force unless it determines that there is probable cause that the force that was used was unlawful.

(3) The court shall award reasonable attorneys fees, court costs, compensation for loss of income, and all expenses incurred by the defendant in defense of any civil action brought by a plaintiff if the court finds that the defendant is immune from prosecution as provided in subsection (1).

History.s. 4, ch. 2005-27.

776.041 Use of force by aggressor. The justification described in the preceding sections of this chapter is not available to a person who:

(1) Is attempting to commit, committing, or escaping after the commission of, a forcible felony; or

(2) Initially provokes the use of force against himself or herself, unless:

(a) Such force is so great that the person reasonably believes that he or she is in imminent danger of death or great bodily harm and that he or she has exhausted every reasonable means to escape such danger other than the use of force which is likely to cause death or great bodily harm to the assailant; or

(b) In good faith, the person withdraws from physical contact with the assailant and indicates clearly to the assailant that he or she desires to withdraw and terminate the use of force, but the assailant continues or resumes the use of force.

History.s. 13, ch. 74-383; s. 1190, ch. 97-102.

776.05 Law enforcement officers; use of force in making an arrest. A law enforcement officer, or any person whom the officer has summoned or directed to assist him or her, need not retreat or desist from efforts to make a lawful arrest because of resistance or threatened resistance to the arrest. The officer is justified in the use of any force:

(1) Which he or she reasonably believes to be necessary to defend himself or herself or another from bodily harm while making the arrest;

(2) When necessarily committed in retaking felons who have escaped; or

(3) When necessarily committed in arresting felons fleeing from justice. However, this subsection shall not constitute a defense in any civil action for damages brought for the wrongful use of deadly force unless the use of deadly force was necessary to prevent the arrest from being defeated by such flight and, when feasible, some warning had been given, and:

(a) The officer reasonably believes that the fleeing felon poses a threat of death or serious physical harm

to the officer or others; or

(b)The officer reasonably believes that the fleeing felon has committed a crime involving the infliction or threatened infliction of serious physical harm to another person.

History.s. 13, ch. 74-383; s. 1, ch. 75-64; s. 1, ch. 87-147; s. 54, ch. 88-381; s. 1191, ch. 97-102.

776.051Use of force in resisting arrest or making an arrest or in the execution of a legal duty; prohibition.

(1)A person is not justified in the use of force to resist an arrest by a law enforcement officer, or to resist a law enforcement officer who is engaged in the execution of a legal duty, if the law enforcement officer was acting in good faith and he or she is known, or reasonably appears, to be a law enforcement officer.

(2)A law enforcement officer, or any person whom the officer has summoned or directed to assist him or her, is not justified in the use of force if the arrest or execution of a legal duty is unlawful and known by him or her to be unlawful.

History.s. 13, ch. 74-383; s. 1192, ch. 97-102; s. 1, ch. 2008-67.

776.06Deadly force.

(1)The term deadly force means force that is likely to cause death or great bodily harm and includes, but is not limited to:

(a)The firing of a firearm in the direction of the person to be arrested, even though no intent exists to kill or inflict great bodily harm; and

(b)The firing of a firearm at a vehicle in which the person to be arrested is riding.

(2)(a)The term deadly force does not include the discharge of a firearm by a law enforcement officer or correctional officer during and within the scope of his or her official duties which is loaded with a less-lethal munition. As used in this subsection, the term less-lethal munition means a projectile that is designed to stun, temporarily incapacitate, or cause temporary discomfort to a person without penetrating the persons body.

(b)A law enforcement officer or a correctional officer is not liable in any civil or criminal action arising out of the use of any less-lethal munition in good faith during and within the scope of his or her official duties.

History.s. 13, ch. 74-383; s. 1, ch. 99-272.

776.07Use of force to prevent escape.

(1)A law enforcement officer or other person who has an arrested person in his or her custody is justified in the use of any force which he or she reasonably believes to be necessary to prevent the escape of the arrested person from custody.

(2)A correctional officer or other law enforcement officer is justified in the use of force, including deadly force, which he or she reasonably believes to be necessary to prevent the escape from a penal institution of a person whom the officer reasonably believes to be lawfully detained in such institution under sentence for an offense or awaiting trial or commitment for an offense.

History.s. 13, ch. 74-383; s. 7, ch. 95-283; s. 1193, ch. 97-102.

776.08Forcible felony.Forcible felony means treason; murder; manslaughter; sexual battery; carjacking;

home-invasion robbery; robbery; burglary; arson; kidnapping; aggravated assault; aggravated battery; aggravated stalking; aircraft piracy; unlawful throwing, placing, or discharging of a destructive device or bomb; and any other felony which involves the use or threat of physical force or violence against any individual.

History.s. 13, ch. 74-383; s. 4, ch. 75-298; s. 289, ch. 79-400; s. 5, ch. 93-212; s. 10, ch. 95-195.

776.085 Defense to civil action for damages; party convicted of forcible or attempted forcible felony.

(1) It shall be a defense to any action for damages for personal injury or wrongful death, or for injury to property, that such action arose from injury sustained by a participant during the commission or attempted commission of a forcible felony. The defense authorized by this section shall be established by evidence that the participant has been convicted of such forcible felony or attempted forcible felony, or by proof of the commission of such crime or attempted crime by a preponderance of the evidence.

(2) For the purposes of this section, the term forcible felony shall have the same meaning as in s. 776.08.

(3) Any civil action in which the defense recognized by this section is raised shall be stayed by the court on the motion of the civil defendant during the pendency of any criminal action which forms the basis for the defense, unless the court finds that a conviction in the criminal action would not form a valid defense under this section.

(4) In any civil action where a party prevails based on the defense created by this section:

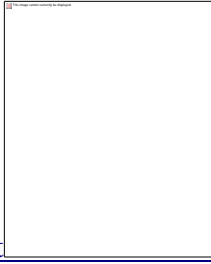
(a) The losing party, if convicted of and incarcerated for the crime or attempted crime, shall, as determined by the court, lose any privileges provided by the correctional facility, including, but not limited to:

1. Canteen purchases;
2. Telephone access;
3. Outdoor exercise;
4. Use of the library; and
5. Visitation.

(b) The court shall award a reasonable attorneys fee to be paid to the prevailing party in equal amounts by the losing party and the losing partys attorney; however, the losing partys attorney is not personally responsible if he or she has acted in good faith, based on the representations of his or her client. If the losing party is incarcerated for the crime or attempted crime and has insufficient assets to cover payment of the costs of the action and the award of fees pursuant to this paragraph, the party shall, as determined by the court, be required to pay by deduction from any payments the prisoner receives while incarcerated.

(c) If the losing party is incarcerated for the crime or attempted crime, the court shall issue a written order containing its findings and ruling pursuant to paragraphs (a) and (b) and shall direct that a certified copy be forwarded to the appropriate correctional institution or facility.

History.s. 1, ch. 87-187; s. 72, ch. 96-388.



[Bob Hurt](#) · [Bob's Blog](#)

2460 Persian Drive #70 ·

Clearwater, FL 33763

+1 (727) 669-5511

Donate to my [Law Scholarship Fund](#)

Learn civil litigation with [Jurisdictionary](#)

Subscribe to [Lawmen E-Letter](#) FREE