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To

Mason's Minnesota Statutes 1927

(1927 to 1940)

(Superseding Mason's 1931, 1934, 1936 and 1938 Supplements)

Containing the text of the acts of the 1929, 1931, 1933, 1935, 1937 and 1939 General Sessions, and the 1933-34, 1935-36, 1936 and 1937 Special Sessions of the Legislature, both new and amendatory, and notes showing repeals, together with annotations from the various courts, state and federal, and the opinions of the Attorney General, construing the constitution, statutes, charters and court rules of Minnesota together with digest of all common law decisions.

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street on a street plat made by and adopted by the commission. The city council may, however, accept any street not shown on or not corresponding with a street on an approved subdivision plat or an approved street plat, provided the ordinance accepting such street be first submitted to the planning commission for its approval and, if approved by the commission, be enacted or passed by not less than a majority of the entire membership of the council, or, if disapproved by the commission, be enacted or passed by not less than two-thirds of the entire membership of the city council. (Act Mar. 29, 1933, c. 93, §9.)

§8246-11. Building restrictions.—From and after the time when the planning commission shall have adopted a major street plan of the territory within its subdivision jurisdiction or part thereof, no building shall be erected on any lot within such territory or part, nor shall a building permit be issued therefor unless the street giving access to the lot upon which such building is proposed to be placed (a) shall have been accepted or opened as or shall otherwise have received the legal status of a public street prior to that time, or unless such street (b) corresponds with a street shown on the city plan or with a street on a subdivision plat approved by the planning commission, or with a street accepted by the city council, after submission to the planning commission, by the favorable vote required in Section 9 of this act. Any building erected in violation of this section shall be deemed an unlawful structure, and the building inspector or other appropriate official may cause it to be vacated and have it removed. (Act Mar. 29, 1933, c. 93, §10.)

§8246-12. Inconsistent acts repealed.—Platting control by the planning commission, as provided in this act, shall be exclusive within the territorial jurisdiction, and all statutory control over plats or subdivisions of land granted by other statutes, insofar as inconsistent with the provision of this act, are hereby repealed. (Act Mar. 29, 1933, c. 93, §11.)

§8246-13. May appeal to District Court.—Any person or persons jointly or severally aggrieved by any decision of the planning commission concerning such plat, or any officer, department, board or bureau of the municipality, may present to the district court a petition, duly verified, setting forth that such decision is illegal, in whole or in part, specifying the grounds of the illegality. Such petition must be presented to the court within thirty days after the filing of the decision in the office of the planning commission.

Upon the presentation of such petition, the court may allow a writ of certiorari directed to the planning commission to review such decision of the planning commission and shall prescribe therein the time within which a return thereto must be made and served upon the relator's attorney, which shall not be less than ten days and may be extended by the court. The allowance of the writ shall stay proceedings upon the decision appealed from.

The planning commission shall not be required to return the original papers acted upon by it, but it shall be sufficient to return certified or sworn copies thereof or of such portions thereof as may be called for by such writ. The return must conclusively set forth such other facts as may be pertinent and material to show the grounds of the decision appealed from and must be verified.

If, upon the hearing, it shall appear to the court that testimony is necessary for the proper disposition of the matter, it may take evidence or appoint a referee to take such evidence as it may direct and report the same to the court with his findings of fact and conclusions of law, which shall constitute a part of the proceedings upon which the determination of the court shall be made. The court may reverse or affirm, wholly or partly, or may modify the decision brought up for review.

Costs shall not be allowed against the commission, unless it shall appear to the court that it acted with gross negligence or in bad faith or with malice in making the decision appealed from.

All issues in any proceeding under this section shall have preference over all other civil actions and proceedings. (Act Mar. 20, 1933, c. 93, §12.)

Sec. 13 of Act Mar. 20, 1933, cited, provides that the act shall take effect from its passage.

CHAPTER 65
Registration of Title

REGISTRATION


§8248. Registered land—Adverse possession. One obtaining new certificate under Torrens Act after purchase at mechanic's lien foreclosure had good title as against parties in possession who were not or were not the defendants though they were claiming under unrecorded transfer from the record owner and his transferees; and a judgment, in an action to which the mechanic's lien claimant or his successor was not made a party and of which the records contained no notice did not affect the title. 174M522, 218NW246.

The Torrens Law intends that all titles registered thereunder shall be free from all unregistered rights or claims except those specifically named, and unregistered deeds or contracts do not affect such titles nor create any interest in the land. 173M55, 226NW201.

The act abrogates the doctrine of constructive notice, except as to matters noted on the certificate of title, but not the effect to be given to actual notice of unregistered conveyances. 175M55, 226NW201.

Possession is not notice of rights held or claimed by the occupant. 175M55, 226NW201.

Attachments and judgments properly registered take precedence over unregistered conveyances of which the court has notice. 176M55, 228NW201.

§8249. Application—Who may make.—An application for registration may be made by any of the following persons:

First—The person or persons who singly or collectively own the land. Tenants in common shall join in the application.

Second—The person or persons who singly or collectively have the power of disposing of the land.

Third—Infants and other persons under disability, by their guardian duly appointed by the proper probate court in this state.

Fourth—A corporation, by its proper officer, or by an agent duly authorized by the board of directors.

Fifth—Any executor or administrator duly appointed by the proper probate court in this state.

Sixth—A municipal corporation, by its mayor and city clerk, in the case of a city, after a resolution duly passed by its common council, so directing, and by the county auditor and chairman of the county board, in the case of a county, after a resolution passed by its county board so directing.

Seventh—Any person may make application when for at least 15 years the land has been in the adverse possession of the applicant of those through whom he claims title. (As amended Mar. 31, 1935, c. 100, §1.)

Credit unions are corporations which can legally register property under Torrens system, which it has acquired through foreclosure or otherwise. Op. Atty. Gen. (52b), May 7, 1935.
§8250. Titles which may be registered. — No lesser estate than a fee simple, and no mortgage, lien, or other charge upon land, shall be registered, unless the estate in fee simple therein is registered; but the fact that the estate or interest of the applicant is subject to any outstanding lesser estate or to a mortgage, lien, or other charge on land, shall not prevent the registration thereof and whenever a dock or harbor line has been established by Federal authority, the estate and interest of a riparian proprietor in the submerged lands lying between the original shore line and such established dock line may be registered under this act, however, if the right of the State of Minnesota in its sovereign capacity in the same, and such registration shall not in any manner affect or change the right of the state with respect to such lands. (As amended Mar. 31, 1938, c. 109, §2.)


§8251. Application, how signed and verified. — The application shall be in writing, and shall be signed and verified by the applicant, or by his agent thereunto lawfully authorized in writing. If the application is signed and verified by any agent except an officer, the signing thereof, the date of which shall be executed and acknowledged in the manner required for the execution and acknowledgment of a deed and shall be recorded with the register of deeds for the county wherein the land is situated, before the filing of the application. If the application is made by a corporation, it shall be verified by some officer of the corporation. If the applicant is married, the husband or wife of the applicant may attest thereto in writing by a duly acknowledged indorsement thereon, or by a separate instrument duly acknowledged and filed with the application, but otherwise the spouse shall be made a defendant and served with summons. (R. L. '05, §3374; G. S.'13, §6972; Feb. 20, 1936, c. 16, §1.)

Sec. 2 of Act Feb. 20, 1936, cited, provides that the act shall take effect from its passage.

§8253. Non-resident applicant—Agent. — On application for issue of a new Torrens certificate, as distinguished from an application to place land under the Registration Act, it is unnecessary for a nonresident applicant and verified by the applicant, or by his agent thereunto lawfully authorized in writing. If the application is signed and verified by any agent except an officer, the signing thereof, the date of which shall be executed and acknowledged in the manner required for the execution and acknowledgment of a deed and shall be recorded with the register of deeds for the county wherein the land is situated, before the filing of the application. If the application is made by a corporation, it shall be verified by some officer of the corporation. If the applicant is married, the husband or wife of the applicant may attest thereto in writing by a duly acknowledged indorsement thereon, or by a separate instrument duly acknowledged and filed with the application, but otherwise the spouse shall be made a defendant and served with summons. (R. L. '05, §3374; G. S.'13, §6972; Feb. 20, 1936, c. 16, §1.)


§8261. Order for summons—parties defendant. — If, in the opinion of the examiner, the applicant has a title to the land proper for registration, or if the applicant, after an adverse opinion of the examiner, elects to proceed further, the applicant shall file with the clerk a verified petition praying that a summons may be issued in said proceeding. The court shall thereupon examine all the files and records of said proceeding, and shall, by its order, direct that a summons be issued in said proceeding, containing the name and address, so far as known, of every person who is to be joined as a party to said proceeding, including all persons named in the application, or found by the court to have an interest in the land, or as having any right, title, interest or estate therein, or any lien or incumbrance upon or against the same, together with the name and address of all other persons or parties who the court finds need to be joined therein. The parties thus named in the order of the court shall be, and shall be known as, defendants.

Whenever the description in the application includes land which, according to the plat of the United States Government Survey, forms part or all of the bed of a meandered stream or lake, the State of Minnesota shall be made a party defendant; provided, however, that in all cases where decree of registration has been heretofore entered for any such land without the State of Minnesota having been joined and served with summons, it shall be deemed that title had heretofore passed to the applicant by reliction or accretion. (R. L. '05, §3383; G. S.'13, §6882; Apr. 8, 1933, c. 164.)

§8262. Form of summons—service. — The summons shall be subscribed by the clerk, and shall be directed to the defendants, and require them to appear and answer the application of the applicant, within twenty days after the service of the summons, exclusive of the day of such service. It shall be served by the manner now provided by law for the service of a summons in civil actions in the district court, except as herein otherwise provided. It shall be served upon the state by delivering a copy thereof to the attorney general, who shall serve the county attorney of the county in which the land described therein is situated, and thereupon such county attorney shall appear in such proceeding, and represent the state therein. It shall be served upon all persons who are not residents of the state or who cannot be found therein and upon "all other persons or parties unknown claiming any right, title, estate, lien or interest in the real estate described in the application herein" by publishing the same in a newspaper printed and published in the county wherein the application is filed, once each week for three consecutive weeks; provided if the order for summons or a supplemental order of the court, filed before, during or after the publication of the summons, shall so direct, the summons may be personally served upon any or more of the defendants who are non-residents of the state or who cannot be found therein, in like manner and with like effect as such service in a summons in a civil action in the district court. The clerk shall also cause at least twenty days before the entry of the decree which shall be entered in said matter, send a copy of the summons by mail to all defendants who are not residents of the state, and whose place of address is known to applicant or stated in the application, or in the order directing the issuance of the summons. The certificate of the clerk that he has mailed the summons, as herein provided, shall be conclusive evidence thereof. Other or further notice of the application for registration may be given in such manner and to such persons as the court or any judge thereof may direct. The summons shall be served at the expense of the applicant and proof of service of the summons shall be made in the same manner and in the same manner as in civil actions in the district court, and shall be substantially in the following form, namely:

SUMMONS IN APPLICATION FOR REGISTRATION OF LAND

State of Minnesota,
County of ........................................... ss.
District Court, .................................. Judicial District.

In the matter of the application of (name of applicant) to register the title to the following described real estate situated in ..................................... County, Minnesota, namely: (description of land.)

Applicant.

To (names of defendants) and "all other persons or parties unknown claiming any right, title, estate, lien or interest in the real estate described in the application herein."

Defendants.

The State of Minnesota to the Above Named Defendants:

You are hereby summoned and required to answer the application of the applicant in the above entitled proceeding and to file your answer to the said application in the office of the clerk of said court, in said county, within twenty days after service of this summons upon you exclusive of the day of such service, and, if you fail to answer the said application within the time aforesaid, the applicant in this proceeding will apply to the court for the relief demanded therein.
Witness, clerk of said court, and the seal thereof, at, in said county, this, day of, 19.

Clerk

When the summons has been served as herein provided, the court shall be deemed to have acquired jurisdiction of the subject matter of the proceeding, and of all persons whatsoever, who have, or may have, any right, title, interest or estate in the real estate described in the application, or any part thereof, which were not at the time of the entry of the decree, \( R. L. '05, \) §3384; G. S. '13, §6883; 27, c. 112, §4; Mar. 28, 1929, § 97, \( \S1. \)

Service by publication upon a nonresident in a Torrens title registration suit, and the deemed binding upon such nonresident. Nitkey v. S. (USCCA8), 87F(2d) 1110; Reh. den., 88S6.

City maintaining sewer under private land could not have its rights cut off by summons issued to "all other persons or parties unknown claiming any right, title, estate, lien or interest in the real estate described in the application herein," all the world are made parties defendant, and shall be bound by the decree. \( R. L. '05, \) §3384; G. S. '13, §6883; 27, c. 112, §4; Mar. 28, 1929, § 97, \( \S1. \)

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title thereof, without examining the instrument on file in the registrar's office and not to make such purchaser guilty of negligence as a matter of law. 151M135, 254NW246. See Dun. Dig. 8561.

8284. Indexes, etc.—Court to adopt forms.


8286. Transfer of registered land.

8287. Owner's new certificate under Torrens Act. Where sale at mechanic's lien foreclosure had good title as against parties in possession who were not made defendants; where they were obtained under unrecorded transfer from the record owner and his transferee; and where judgment was that the mechanic's lien claimant or his successor was not a party and of which the records contained no notice did not affect the title. The Torrens Law intends that all titles registered thereunder shall be free from all unregistered rights or claims except those specifically named, and unregistered deeds or contracts do not affect such titles nor create title. 173M55, 226NW221.

The act abrogates the doctrine of constructive notice, except as to matters noted on the certificate of title, but not the effect to be given to actual notice of unregistered conveyances. 173M55, 226NW221.

Attachments and judgments properly registered take precedence over unregistered conveyances, of which the creditor had no actual notice. 173M55, 226NW221.


8288a. Conveyances, etc., filed with registrar.—Etc. Intended for protection of grantees, mortgagees, whose deeds, mortgages, or interests therein have been properly recorded. 181M615, 233NW866. See Dun. Dig. 8562a.

Registrar should not register instruments other than original order and decree of registration where such instruments contain recitals of unregistered interests in land other than by reference. Op. Atty. Gen. (374j), Mar. 10, 1936.

8289. New certificate.—Interest less than fee.

8290. Instruments to have name and address.


8292. Instruments to have name and address. Registrar should not be justified in refusing to accept an instrument that contained full name and address even though it was not contained on the face of the same by order registered. 181M615, 233NW866. See Dun. Dig. 8562a.


8294. Conveyances, etc., filed with registrar.—Etc. Intended for protection of grantees, mortgagees, whose deeds, mortgages, or interests therein have been properly recorded. 181M615, 233NW866. See Dun. Dig. 8562a.

Registrar should not register instruments other than original order and decree of registration where such instruments contain recitals of unregistered interests in land other than by reference. Op. Atty. Gen. (374j), Mar. 10, 1936.

8295. New certificate.—Interest less than fee.

8296. Instruments to have name and address.


8298-1. Unregistered contract of sale—validation of later conveyance.—In any case where a vendor of land shall have sold the same under an unregistered contract for deed followed immediately by actual possessory possession thereunder by the vendee, and shall have thereafter conveyed the same by deed of conveyance and surrender of his own duplicate certificate of title to a grantee to whom a new certificate was thereupon issued, without mention, however, in said deed or in said certificates, of the previous contract for deed, it is declared that if ten years have elapsed since said conveyance during which period said vendee has remained continuously in undisturbed possession of the premises and has paid the whole of the contract price therefor, and more than ten years have elapsed since the last conveyance thereunder, then and in all such cases no action shall be brought or maintained by said vendor and said grantee, or either of them, for the recovery of the possession of said premises or for damages thereon after the passage of this act. (July 24, 1937, Sp. Ses. c. 94.)

8299. Transfer and payment of taxes. It is duty of registrar of titles to file deeds to city without endorsement of certificates showing payment of taxes, but city should first secure an order from tax commissioner for tax commissioners to enable the city to present a certificate of county auditor showing all unpaid or delinquent tax sales, and new certificate of title should
described in a certificate of title, a marriage certificate showing the subsequent marriage of any owner shown by a certificate of title to be unmarried, a certified copy of the death certificate of party listed in any certificate of title as being the spouse of the registered owner when accompanied by an affidavit satisfactory to the registrar identifying the decedent with said spouse; and in all subsequent dealings with the land covered by such certificates the registrar shall give full faith to said memorials. Provided, further, that in case of a certificate of title outstanding to two or more owners as joint tenants, upon the filing for registration of such a certificate of death and affidavit of identity of the heir or heirs described, and upon the surrender of the owner's duplicate of title, the registrar shall issue a new certificate of title for the premises to the survivor in severalty or to the survivors in joint tenancy as the case may be. Provided, further, when instruments affecting registered land have been recorded in the office of any register of deeds in this state, a certified copy thereof may be filed for registration and registered with like effect as the original instrument, if the registrar of titles shall first be satisfied that the signatures to the original are genuine. (R. L. '65, §4350; C. S. '15, §6235; Apr. 5, 1933, c. 160, §1.)

Sec. 2 of Act Apr. 5, 1933, provides that the act shall take effect from its passage.

In proceeding to alter registration certificate of a subsequent purchaser of land over which right of way had been granted, court was not authorized to alter it further than describing right of way in exact language used in deed conveying it. Minn. St. Bank v. M. 1895 M 560, 250 N.W. 561. See Dun. Dig. §361a.

Special proceeding. The validity of certificate of registration of title to land, injunction against trespassing on land involved in certificate is improper. 1d.

**CHAPTER 65A**

Registration of Certain Trade-Names

§8330. Record of name, mark, etc.—Duty of secretary of state—Certificate. Any person engaged in or any corporation or association whose members are engaged in manufacturing, bottling or selling soda waters, mineral or aerated waters, porter, ale, cider, ginger ale, small beer, lager beer, Weiss beer, beer, white beer, malt extract, other beverages, milk, cream, ice cream or butter in any kind of receptacle having the name of such person, corporation or association, or other mark or device printed, stamped, engraved, etched, blown, impressed, riveted or otherwise produced or permanently fixed upon the same, may file in the office of the secretary of state for record a description of the name, mark or device so used and cause such description to be printed once in each week for three successive weeks in a newspaper published in the county in which the principal place of business of such person, corporation or association is located, or if the principal place of business of such person, corporation or association is located in another state, then in the county wherein the principal office or depot within the state of Minnesota is located. It shall be the duty of the secretary of state to issue to the person, corporation or association so filing a description of such name, mark or device in his office a duly attested certificate of the record of the same for which he shall receive a fee of one dollar. Such certificate in all prosecutions under this act shall be prima facie evidence of the adoption of such name, mark or device, and of the right of the person, corporation or association named therein to adopt and use the same. (As amended Mar. 31, 1939, c. 118.)


Effect of non-compliance with statute regulating use of trade names. 16MinnLawRev824.

§8335-1. Definitions.—The word person or persons as used in this act shall mean person, persons, firms, corporations, co-partnerships, associations or agents of any of them. (Act Apr. 25, 1931, c. 356, §1.)

§8335-2. Brands to be registered.—Whoever operates a creamery, cheese factory, ice cream factory, or cream buying station, or if upon the farm or elsewhere produces milk or cream or any dairy product to be sold for human consumption or to be manufactured into any product or kind of human food, or any dealer in dairy products having in his possession any cans, ice cream containers or other receptacles shall at all times keep all buildings on the premises surrounding or adjacent thereto and all cans, pails and other receptacles, cream separators and other mechanical contrivances used in handling such dairy products or used in the production of such on the farm, in a clean and sanitary condition, and shall not use any can, cask, keg, barrel or other receptacle, used in the handling and transportation of any said products, and shall file in all the offices of the agriculture, dairy and food commissioner, without charge, upon a suitable blank to be furnished by the commissioner of agriculture, dairy and food, a description of the name or mark so used by them or either of them and the use to be made of any such can, cask, keg, barrel or other receptacle. The brand or mark so selected and used as herein provided may consist of a name, design, mark or marks, or some particular color of paint or enamel used upon the can, cask, keg, barrel or other receptacle, or any part thereof. It shall be unlawful for any person, company or corporation to adopt or use any brand or mark, which has already been designated, appropriated or obtained under the provisions of this act. It shall be unlawful for any persons other than the rightful owner thereof, or his lawful agent, having in his possession any such can, cask, keg, barrel or other receptacle marked or branded as herein provided, shall be deemed guilty of having violated the provisions of this law. Provided: Nothing in the section shall apply to transportation companies or their agents during the time that such can, cask, keg, barrel or other receptacle marked or branded as herein provided is being transported by said company or the lawful agent thereof. The fact that a purchaser of registered land in good faith relies upon a memorial entered on the certificate of registration of title by reason of fact that part of sewer system was maintained under such land. Op. Atty. Gen. (387b-11), Sept. 6, 1934.

The title of the act: "An act providing for the registration of brands on containers for dairy products: