

## CHAPTER 561

## ACTION IN DAMAGES FOR NUISANCE, TRESPASS, OR WASTE

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**561.01 NUISANCE; ACTION.** Anything which is injurious to health, or indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property, is a nuisance. An action may be brought by any person whose property is injuriously affected or whose personal enjoyment is lessened by the nuisance, and by the judgment the nuisance may be enjoined or abated, as well as damages recovered.

[R. L. s. 4446] (9580)

**561.02 MALICIOUSLY MAINTAINED STRUCTURE.** Any fence, or any other structure, maliciously erected or maintained for the purpose of annoying the owners or occupants of adjoining property shall be deemed a private nuisance.

[1907 c. 387 s. 1] (9581)

**561.03 REMEDIES.** Any such owner or occupant injured, either in his comfort or in the enjoyment of his estate by such fence, or any other structure, may have an action of tort for the damage sustained thereby and may have such nuisance abated.

[1907 c. 387 s. 2] (9582)

**561.04 TRESPASS; TREBLE DAMAGES.** Whoever without lawful authority cuts down or carries off any wood, underwood, tree, or timber, or girdles or otherwise injures any tree, timber, or shrub, on the land of another person, or in the street or highway in front of any person's house, village, or city lot, or cultivated grounds, or on the commons or public grounds of any city or town, or in the street or highway in front thereof, is liable in a civil action to the owner of such land, or to such city or town, for treble the amount of damages which may be assessed therefor, unless upon the trial it appears that the trespass was casual or involuntary, or that the defendant had probable cause to believe that the land on which the trespass was committed was his own, or that of the person in whose service or by whose direction the act was done, in which case judgment shall be given for only the single damages assessed. This section shall not authorize the recovery of more than the just value of timber taken from uncultivated woodland for the repair of a public highway or bridge upon or adjoining the land.

[R. L. s. 4449] (9585)

**561.05 DOMESTIC ANIMALS SHALL NOT RUN AT LARGE; TRESPASS.** It shall be unlawful for any person or persons to allow any cattle, horses, mules, sheep, swine, or other domestic animals, or any domestic fowls, of which they are the owners, or at which they have the control, to run at large, or upon the lands of another within any city or village in this state. Permitting such running at large, or upon the lands of others, shall be and constitute a trespass.

[1921 c. 319 s. 1] (1386)

**561.06 VIOLATIONS.** Every such trespass and each and every violation of any of the provisions of sections 561.05 to 561.09 shall be and constitute a misdemeanor; and, upon conviction thereof, the person so offending shall be punished by a fine not exceeding \$100.

[1921 c. 319 s. 2] (1387)

**561.07 ANIMALS MAY BE IMPOUNDED.** Any person may, and every sheriff, constable and police officer shall, distrain and impound all such animals and fowls so running at large or trespassing, and when so impounded such proceedings

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shall be had relative to the animals and fowls so impounded as are or shall be provided by the general laws of this state relating to the impounding of animals.

[1921 c. 319 s. 3] (1388)

**561.08 OWNER OF PROPERTY MAY DISTRAIN.** The owner or occupant of lands in any city or village may distrain any of such animals or fowls doing damage on such lands, and thereupon such proceedings as to these animals or fowls and the disposition thereof and the damage done thereby as are or shall be provided by the general laws of this state relating to the distraining by the owner or occupant of lands, of any beast doing damage thereon, the disposition of the beast distrained, and the appraisal of the damages, and the collection thereof.

[1921 c. 319 s. 4] (1389)

**561.09 OWNER OF ANIMALS LIABLE FOR TRESPASS.** In case the owner or occupant of lands shall not distrain the animals or fowls doing damage as provided herein, then any person who shall knowingly permit the running at large or trespass of any such domestic animal or fowl within any city or village, shall be liable to the person aggrieved for treble the damages sustained by him, to be recovered in a civil action.

[1921 c. 319 s. 5] (1390)

**561.10 TRESPASS AFTER EXECUTION OR FORECLOSURE SALE.** When real property is sold on execution or under judgment or mortgage, the purchaser thereof, or any person who has succeeded to his interest, after his estate becomes absolute, may recover damages for injury to the property by the tenant in possession after the sale, and before possession is delivered under the conveyance.

[R. L. s. 4450] (9586)

**561.11 CULTIVATION OF LANDS SOLD UNDER MORTGAGE FORECLOSURES OR EXECUTION; PETITIONS.** Where any mortgage upon farm lands has been foreclosed or farm lands have been sold upon execution and the period of redemption shall expire between April fifteenth and October first of any year and it is made to appear to the court that these lands may not be farmed or cultivated during that year, the mortgagor, or the owner in possession of the mortgaged premises or any one claiming under such mortgagor, or any one liable for the mortgage debt at the time of the making of the application, may apply to the district court of the county wherein such foreclosure proceedings were held, or are pending, by filing in the court, a verified petition setting forth the claims of the applicant of his interest in the land or in the crops that may be raised thereon in the year in which the period of redemption expires and setting forth that the land can not be farmed or cultivated during that year except under order of the court and that he is unable to redeem the lands at the time the year for redemption will expire, and offering to farm and cultivate the land during that year upon such terms as the court shall find to be just and equitable.

[1937 c. 408 s. 1] (9584-1)

**561.12 SERVICE OF NOTICE OF PETITION; HEARING.** Such petition and notice of motion for hearing thereon shall be served as now provided for the service of a summons in a civil action upon the mortgagee or execution creditor if he is the owner of the sheriff certificate of sale of record and upon each creditor of the mortgagor holding a lien of record upon the mortgaged premises; if this certificate has been transferred of record, then upon the owner of the sheriff certificate of redemption or execution sale appearing of record. If the owner of record is the original mortgagee or the execution creditor, then service may be made by registered mail upon such mortgagee or execution creditor or upon his attorney foreclosing the mortgage or the attorney whose name appears on the execution as attorney for the execution creditor in the case of an execution sale.

The hearing upon the motion shall be not less than ten, nor more than 20, days after the service of such notice of motion.

[1937 c. 408 s. 2] (9584-2)

**561.13 DISTRICT COURT TO HAVE JURISDICTION.** When service has been made, as provided in section 561.12, of such notice and petition before the time

for redemption has expired, the district court of the county in which the lands are situated shall have jurisdiction and equitable power to provide for the cultivation of the lands during that year, as herein provided, upon such terms as the court shall find to be just and equitable, and prevent irreparable loss to the parties interested.

[1937 c. 408 s. 3] (9584-3)

**561.14 COURT TO DETERMINE FAIR RENTAL VALUE.** Upon such hearing, if the court shall find that the allegations of the petition are true and that the lands may not be farmed or cultivated during the year in which the period of redemption expires, the court shall determine the fair rental value of the premises from the time the period of redemption expires until the first day of October in that year, assuming that the land is farmed in a good and husbandlike manner, and what rent or share shall be paid to the holder of the sheriff certificate of foreclosure sale or execution sale during the extended period and provide for the giving of security by the applicant or tenant for the payment of such rents or share of the crops or income from the lands, and the court may require the parties to execute a lease to carry out the order of the court, the lease by its terms to expire on October first, of the year in which made; but the tenant shall have a reasonable time thereafter to remove from the land his crops grown thereon and other articles of personal property owned by him.

[1937 c. 408 s. 4] (9584-4)

**561.15 COURT MAY GRANT CERTAIN RIGHTS; PLOWING.** The court may further grant to the owner of the sheriff certificate of redemption or certificate of execution sale, the right to plow upon the premises after the crops have been removed or should have been removed from the premises.

[1937 c. 408 s. 5] (9584-5)

**561.16 APPLICATION OF SECTIONS 561.11 TO 561.15.** Sections 561.11 to 561.15 shall not be construed as extending the period of redemption but as granting relief in equity to the interested parties and to prevent irreparable loss and to fully compensate the owner of the sheriff certificate for the use and occupation of the lands granted pursuant to such sections.

[1937 c. 408 s. 6] (9584-6)

**561.17 ACTION FOR WASTE.** If a guardian, tenant for life or years, joint tenant, or tenant in common, of real property, commits waste thereon, any person injured by the waste may bring an action against him therefor, in which there may be judgment for treble damages, forfeiture of the estate of the party offending, and eviction from the property. Judgment of forfeiture and eviction can only be given in favor of the person entitled to the reversion, against the tenant in possession when the injury to the estate in reversion is adjudged in the action to be equal to the value of the tenant's estate or unexpired term, or to have been done in malice.

[R. L. s. 4447] (9583)

**561.18 WASTE PENDING YEAR FOR REDEMPTION; INJUNCTION.** When real property is sold upon execution or under judgment or mortgage, until the expiration of the time allowed for redemption, the court may restrain the commission of waste on the property, by order granted, with or without notice, on application of the purchaser or his assigns holding the certificate of sale; but it is not waste for the person in possession of the property at the time of sale, or entitled to the possession afterwards, during the time allowed for redemption, to continue to use it in the same manner in which it was previously used, or to use it in the ordinary course of husbandry, or to make the necessary repairs of the buildings thereon, or to use wood or timber on the property therefor, or for the repair of fences or for fuel for his family, while he occupies the property.

[R. L. s. 4448] (9584)