

Part 2

Real Property

78B-2-201 Actions by the state.

- (1) The state may not bring an action against any person for or with respect to any real property, its issues or profits, based upon the state's right or title to the real property, unless:
 - (a) the right or title to the property accrued within seven years before any action or other proceeding is commenced; or
 - (b) the state or those from whom it claims received all or a portion of the rents and profits from the real property within the immediately preceding seven years.
- (2) The statute of limitations in this section runs from the date on which the state or those from whom it claims received actual notice of the facts giving rise to the action.

Amended by Chapter 2, 2015 Special Session 1

78B-2-202 Actions by patentees or grantees from state.

A person receiving letters patent or a grant of real property from the state may not bring an action based on the patent or grant unless the state would have been able to bring an action had the patent or grant not been made.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-2-203 When letters patent or grants declared void.

When letters patent or grants of real property issued or made by the state are declared void by a court of competent jurisdiction, an action for the recovery of the property shall be brought either by the state, or by any subsequent patentee or grantee of the property, his heirs or assigns, within seven years after such determination.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-2-204 Seizure or possession within seven years necessary.

An action for the recovery or possession of real property may not be maintained, unless it appears the plaintiff, his ancestor, grantor, or predecessor owned or possessed the property in question within seven years before the commencement of the action.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-2-205 Seizure or possession within seven years -- Proviso -- Tax title.

- (1) An action for the recovery or possession of real property may not be maintained, unless the plaintiff or his predecessor owned or possessed the property within seven years before the commencement of the action.
- (2) Actions or defenses brought to recover, take possession of, quiet title, or determine the ownership of real property against the holder of a tax title to the property, may not be commenced more than four years after the date of the tax deed, conveyance, or transfer creating the tax title unless the person commencing the action or defense or his predecessor has actually occupied or been in possession of the property within four years prior to the commencement of the action or defense.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-2-206 Holder of tax title -- Limitations of action or defense -- Proviso.

An action or defense to recover, take possession of, quiet title to, or determine the ownership of real property may not be commenced against the holder of a tax title after the expiration of four years from the date of the sale, conveyance, or transfer of the tax title to any county, or directly to any other purchaser at any public or private tax sale. This section may not bar any action or defense by the owner of the legal title to the property which he or his predecessor actually occupied or possessed within four years from the commencement of an action or defense. This section may not bar any defense by a city or town to an action by the holder of a tax title, to the effect that the city or town holds a lien against the property which is equal or superior to the claim of the holder of the tax title.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-2-207 Actions or defenses founded upon title to real estate.

An action, defense, or counterclaim to an action based upon title to the property or entitlement to the rents or profits from the property shall be brought:

- (1) not later than seven years after the act on which it is based; and
- (2) by the ancestor, predecessor, or grantor of the person who owned or possessed the property for seven years before the act in Subsection (1) took place.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-2-208 Adverse possession -- Possession presumed in owner.

- (1) In an action for the recovery of real property, it is presumed that:
 - (a) the person establishing legal title to the property has been in possession of the property; and
 - (b) any occupation of the property has been under and in subordination to the legal title.
- (2) Subsection (1) may be rebutted by a showing that the property has been held and possessed adversely to the legal title for at least seven years before commencement of the action.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-2-209 Adverse possession -- Presumption -- Proviso -- Tax title.

- (1) In an action for the recovery or possession of real property, to quiet title to or determine the property's owner, the person establishing a legal title to the property is presumed to have been in possession of the property within the time required by law. The occupation of the property by any other person is considered to have been under and in subordination to the legal title, unless it appears that the property has been held and possessed adversely to the legal title for seven years before the commencement of the action.
- (2) If in any action a party establishes prima facie evidence of ownership of any real property under a tax title held by him and his predecessors for four years prior to the commencement of the action, he is presumed to be the owner of the property by adverse possession. This presumption may be rebutted if it appears that the owner of the legal title or his predecessor has actually occupied or been in possession of the property under the title or that the tax title owner and his predecessors have failed to pay all the taxes levied or assessed upon the property within the four-year period.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-2-210 Adverse possession -- Under written instrument or judgment.

- (1) Property is considered to have been adversely held if a person in possession of the property, either personally or through another:
 - (a)
 - (i) possesses a written document purporting to convey title; or
 - (ii) possesses a decree or judgment from a court of competent jurisdiction conveying title; and
 - (b) has occupied the property continuously for at least seven years.
- (2) If the property consists of a tract divided into lots, the possession of one lot is not considered a possession of any other lot in the same tract.

Amended by Chapter 141, 2023 General Session

78B-2-211 What constitutes adverse possession under written instrument.

For the purpose of constituting an adverse possession by any person claiming a title based upon a written instrument or a judgment or decree, the property is considered to have been possessed if:

- (1) it has been usually cultivated or improved;
- (2) it has been protected by a substantial enclosure;
- (3) although not enclosed, it has been used for the supply of fuel, fencing timber, for the purpose of husbandry, or for pasturage or for the ordinary use of the occupant; or
- (4) where a known farm or single lot has been partly improved, the portion of the farm or lot which may have been left not cleared or not inclosed according to the usual course and custom of the adjoining county is considered to have been occupied for the same length of time as the part improved and cultivated.

Amended by Chapter 146, 2009 General Session

78B-2-212 Adverse possession -- Under claim not founded on written instrument or judgment.

Where it appears that there has been an actual continued occupation of land under claim of title, exclusive of any other right, but not founded upon a written instrument, judgment or decree, the land actually occupied and no other, is considered to have been held adversely.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-2-213 What constitutes adverse possession not under written instrument.

Land is considered to be possessed and occupied adversely by a person claiming title not founded upon a written instrument, judgment, or decree in the following cases only, where:

- (1) it has been protected by a substantial enclosure;
- (2) it has been usually cultivated or improved; or
- (3) labor or money amounting to the sum of \$5 per acre has been expended upon dams, canals, embankments, aqueducts, or otherwise for the purpose of irrigating the land.

Amended by Chapter 33, 2016 General Session

78B-2-214 Adverse possession -- Continuous -- Seven years -- Taxes paid.

Adverse possession may not be established unless it is shown that the land has been occupied and claimed continuously for seven years, and that the party and the party's predecessors and grantors have paid all taxes which have been levied and assessed upon the land according to law.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-2-215 Adverse possession -- Payment of taxes -- Proviso -- Tax title.

Payment of all the taxes levied and assessed upon the real property for a period of not less than four years by the holder of a tax title to the real property or his predecessors is sufficient to satisfy the requirements of this chapter regarding the payment of taxes necessary to establish adverse possession.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-2-216 Adverse possession of certain real property.

(1) As used in this section:

- (a) "Government entity" means a town, city, county, metropolitan water district, or special district.
- (b) "Water facility" means any improvement or structure used, or intended to be used, to divert, convey, store, measure, or treat water.

(2) Except as provided in Subsection (3), a person may not acquire by adverse possession, prescriptive use, or acquiescence any right in or title to any real property:

- (a) held by a government entity; and
- (b) designated for any present or future public use, including:
 - (i) a street;
 - (ii) a lane;
 - (iii) an avenue;
 - (iv) an alley;
 - (v) a park;
 - (vi) a public square;
 - (vii) a water facility; or
 - (viii) a water conveyance right-of-way or water conveyance corridor.

(3) Notwithstanding Subsection (2) and subject to Subsection (4), a person may acquire title if:

- (a) a government entity sold, disposed of, or conveyed the right in, or title to, the real property to a purchaser for valuable consideration; and
- (b) the purchaser or the purchaser's grantees or successors in interest have been in exclusive, continuous, and adverse possession of the real property for at least seven consecutive years after the day on which the real property was sold, disposed of, or conveyed as described in Subsection (3)(a).

(4) A person who acquires title under Subsection (3) is subject to all other applicable provisions of law.

Amended by Chapter 16, 2023 General Session

78B-2-217 Adverse possession -- Possession of tenant considered possession of landlord.

When a landlord and tenant relationship exists between persons, the possession of the tenant is considered the possession of the landlord until the expiration of seven years after the termination

of the tenancy, or, if there has been no written lease, until seven years from the time of the last payment of rent.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-2-218 Adverse possession -- Possession not affected by descent cast.

The right of a person to the possession of real property is not impaired or affected by a descent cast in consequence of the death of a person in possession of the property.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-2-219 Adverse possession -- Action to redeem mortgage of real property.

An action to redeem a mortgage of real property, with or without an account of rents and profits, may not be brought by the mortgagor, or those claiming under him, against the mortgagee in possession, or those claiming under him, unless an adverse possession of the mortgaged premises for seven years after breach of some condition of the mortgage has been continuously maintained by the mortgagor or those claiming under him.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-2-220 Redemption when more than one mortgagor.

If there is more than one mortgagor, or more than one person claiming under a mortgagor, some of whom are not entitled to maintain an action under the provisions of this article, any one of them who is entitled to maintain an action may redeem a divided or undivided part of the mortgaged premises as his interest may appear, and have an accounting for a part of the rents and profits proportionate to his interest in the mortgaged premises, on payment of a part of the mortgage money, bearing the same proportion to the whole of the money as the value of his divided or undivided interest in the premises bears to the whole of the premises.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-2-221 Actions to recover estate sold by guardian.

An action for the recovery of an estate sold by a guardian shall be brought by the ward, or any person claiming under the ward, within three years after the termination of the guardianship.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-2-222 Actions to recover estate sold by executor or administrator.

An action for the recovery of an estate sold by an executor or administrator in the course of a probate proceeding shall be maintained by an heir or other person claiming under the decedent within three years after the sale. An action to set aside the sale shall be instituted and maintained within three years from the discovery of the fraud or other lawful grounds upon which the action is based.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-2-223 Minority or disability prevents running of period.

Sections 78B-2-221 and 78B-2-222 shall not apply to minors or others under any legal disability to sue at the time when the right of action first accrues. Section 78B-2-224 shall apply in those circumstances.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-2-224 Disabilities -- Time tolled.

A statute of limitations may not be applied to a person's ability to bring an action during a period in which the person is:

- (1) a minor; or
- (2) mentally incompetent.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-2-225 Actions related to improvements in real property.

(1) As used in this section:

- (a) "Abandonment" means that there has been no design or construction activity on an improvement for a continuous period of at least one year.
- (b) "Action" means any claim for judicial, arbitral, or administrative relief for acts, errors, omissions, or breach of duty arising out of or related to the design, construction, or installation of an improvement, regardless of whether that action is based in tort, contract, warranty, strict liability, product liability, indemnity, contribution, or other source of law.
- (c) "Completion" means the date of substantial completion of an improvement to real property as established by the earliest of:
 - (i) a Certificate of Substantial Completion;
 - (ii) a Certificate of Occupancy issued by a governing agency; or
 - (iii) the date of first use or possession of the improvement.
- (d) "Improvement" means any building, structure, infrastructure, road, utility, or other similar man-made change, addition, modification, or alteration to real property.
- (e) "Person" means an individual, corporation, limited liability company, partnership, joint venture, association, proprietorship, or any other legal or governmental entity.
- (f) "Provider" means any person:
 - (i) contributing to, providing, or performing:
 - (A) studies, plans, specifications, drawings, designs, value engineering, cost or quantity estimates, surveys, staking, construction, installation, or labor to an improvement; or
 - (B) the review, observation, administration, management, supervision, inspections, and tests of construction for or in relation to an improvement; or
 - (ii) providing or contributing materials, products, or equipment that is incorporated into an improvement.

(2) The Legislature finds that:

- (a) exposing a provider to suits and liability for acts, errors, omissions, or breach of duty after the possibility of injury or damage has become highly remote and unexpectedly creates costs and hardships to the provider and the citizens of the state;
- (b) these costs and hardships include liability insurance costs, records storage costs, undue and unlimited liability risks during the life of both a provider and an improvement, and difficulties in defending against claims many years after completion of an improvement;
- (c) these costs and hardships constitute clear social and economic evils;

- (d) the possibility of injury and damage becomes highly remote and unexpected seven years following completion or abandonment; and
 - (e) except as provided in Subsection (7), it is in the best interests of the citizens of the state to impose the periods of limitation and repose provided in this chapter upon all causes of action by or against a provider arising out of or related to the design, construction, or installation of an improvement.
- (3)
- (a) Except as provided in Subsections (3)(b) and (c), an action by or against a provider based in contract or warranty shall be commenced within six years after the date of completion or abandonment of an improvement.
 - (b) If a provider is required by an express term of a contract or warranty to perform an obligation later than the six-year period described in Subsection (3)(a), and the provider fails to perform the obligation as required, an action for that breach of the contract or warranty shall be commenced within two years after the day on which the breach is discovered or should have been discovered.
 - (c) If a contract or warranty expressly establishes a different period of limitations than this section, the action shall be commenced within that limitations period.
- (4)
- (a) All other actions by or against a provider shall be commenced within two years from the earlier of the date of discovery of a cause of action or the date upon which a cause of action should have been discovered through reasonable diligence.
 - (b) If the cause of action is discovered or discoverable before completion or abandonment of an improvement, the two-year period begins to run upon completion or abandonment.
 - (c) Notwithstanding Subsection (4)(a), and except as provided in Subsection (4)(d), an action under this Subsection (4) may not be commenced against a provider more than nine years after completion or abandonment of an improvement.
 - (d) If an action under Subsection (4)(a) is discovered or discoverable in the eighth or ninth year of the nine-year period, a claimant shall have two years from the date of discovery to commence an action.
- (5) Subsection (4) does not apply to an action against a provider:
- (a) who has fraudulently concealed the provider's act, error, omission, or breach of duty, or the injury, damage, or other loss caused by the provider's act, error, omission, or breach of duty; or
 - (b) for a willful or intentional act, error, omission, or breach of duty.
- (6) If an individual otherwise entitled to bring an action did not commence the action within the periods prescribed by Subsections (3) and (4) solely because that individual was a minor or mentally incompetent and without a legal guardian, that individual shall have two years from the date the disability is removed to commence the action.
- (7) This section shall not apply to an action for the death of or bodily injury to an individual while engaged in the design, installation, or construction of an improvement.
- (8) This section does not apply to any action against any person in actual possession or control of the improvement as owner, tenant, or otherwise, at the time any defective or unsafe condition of the improvement proximately causes the injury for which the action is brought.
- (9) This section does not extend the period of limitation or repose otherwise prescribed by law or a valid and enforceable contract.
- (10) This section does not create or modify any claim or cause of action.
- (11) This section applies to all causes of action that accrue after May 3, 2003, notwithstanding that the improvement was completed or abandoned before May 3, 2004.

Amended by Chapter 97, 2020 General Session

78B-2-226 Boundary surveys.

An action against a surveyor for acts, errors, or omissions in the performance of a boundary survey filed pursuant to Section 17-23-17 shall be brought within five years of the date of the filing.

Renumbered and Amended by Chapter 3, 2008 General Session