

PROPERTY CODE

TITLE 4. ACTIONS AND REMEDIES

CHAPTER 22. TRESPASS TO TRY TITLE

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 22.001. TRESPASS TO TRY TITLE. (a) A trespass to try title action is the method of determining title to lands, tenements, or other real property.

(b) The action of ejectment is not available in this state. Acts 1983, 68th Leg., p. 3509, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 22.002. TITLE SUFFICIENT TO MAINTAIN ACTION. A headright certificate, land scrip, bounty warrant, or other evidence of legal right to located and surveyed land is sufficient title to maintain a trespass to try title action.

Acts 1983, 68th Leg., p. 3509, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 22.003. FINAL JUDGMENT CONCLUSIVE. A final judgment that establishes title or right to possession in an action to recover real property is conclusive against the party from whom the property is recovered and against a person claiming the property through that party by a title that arises after the action is initiated.

Acts 1983, 68th Leg., p. 3509, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 22.004. EFFECT OF FORMER LAW. This chapter does not affect rights that existed before the introduction of the common law in this state. Those rights are defined by the principles of the law in effect at the time the rights accrued.

Acts 1983, 68th Leg., p. 3509, ch. 576, Sec. 1, eff. Jan. 1, 1984.

SUBCHAPTER B. JUDGMENT AND DAMAGES

Sec. 22.021. CLAIM FOR IMPROVEMENTS. (a) A defendant in a trespass to try title action who is not the rightful owner of the property, but who has possessed the property in good faith and made

permanent and valuable improvements to it, is either:

(1) entitled to recover the amount by which the estimated value of the defendant's improvements exceeds the estimated value of the defendant's use and occupation of and waste or other injury to the property; or

(2) liable for the amount by which the value of the use and occupation of and waste and other injury to the property exceeds the value of the improvements and for costs.

(b) In estimating values of improvements or of use and occupation:

(1) improvements are valued at the time of trial, but only to the extent that the improvements increased the value of the property; and

(2) use and occupation is valued for the time before the date the action was filed that the defendant was in possession of the property, but excluding the value resulting from the improvements made by the defendant or those under whom the defendant claims.

(c) The defendant who makes a claim for improvements must plead:

(1) that the defendant and those under whom the defendant claims have had good faith adverse possession of the property in controversy for at least one year before the date the action began;

(2) that they or the defendant made permanent and valuable improvements to the property while in possession;

(3) the grounds for the claim;

(4) the identity of the improvements; and

(5) the value of each improvement.

(d) The defendant is not liable for damages under this section for injuries or for the value of the use and occupation more than two years before the date the action was filed, and the defendant is not liable for damages or for the value of the use and occupation in excess of the value of the improvements.

Acts 1983, 68th Leg., p. 3509, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 22.022. WRIT OF POSSESSION. If in a trespass to try

title action the plaintiff obtains a judgment for the contested property, but the defendant obtains a judgment for the value of the defendant's improvements in excess of the defendant's liability for use, occupation, and damages, the court may not issue a writ of possession until the first anniversary of the judgment unless the plaintiff pays to the clerk of the court for the benefit of the defendant the amount of the judgment in favor of the defendant plus interest.

Acts 1983, 68th Leg., p. 3510, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 22.023. FAILURE TO PAY. (a) If after a trespass to try title action a plaintiff does not pay a judgment awarded to a defendant, plus accrued interest, before the first anniversary of the judgment and if the defendant, before the sixth month after the first anniversary of the judgment, pays the value of the property, less the value of the defendant's improvements, to the clerk of the court for the benefit of the plaintiff, the plaintiff may not obtain a writ of possession or maintain any proceeding against the defendant or the defendant's heirs or assigns for the property awarded to the plaintiff in the trespass to try title action.

(b) If an eligible defendant does not exercise the option under this section, a plaintiff may apply for a writ of possession as in other cases.

Acts 1983, 68th Leg., p. 3511, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 22.024. PAYMENTS INTO COURT. If a party in a trespass to try title action makes a payment to the clerk of a court under this subchapter, the clerk shall enter a dated memorandum of the payment on the page of the record on which the judgment was entered. The clerk shall pay the money on demand to the person entitled to the payment, who shall indicate receipt of the payment by dating and signing the record on the same page on which the judgment was entered.

Acts 1983, 68th Leg., p. 3511, ch. 576, Sec. 1, eff. Jan. 1, 1984.

#### SUBCHAPTER C. REMOVAL OF IMPROVEMENTS

Sec. 22.041. PLEA FOR REMOVAL OF IMPROVEMENTS. (a) A defendant in a trespass to try title action who is not the rightful owner of the property in controversy may remove improvements made to the property if:

(1) the defendant, and those under whom the defendant claims, possessed the property, and made permanent and valuable improvements to it, without intent to defraud; and

(2) the improvements can be removed without substantial and permanent damage to the property.

(b) The pleadings of a defendant who seeks to remove improvements must contain:

(1) a statement that the defendant, and those under whom the defendant claims, adversely possessed the property, and made permanent and valuable improvements to it, without intent to defraud;

(2) a statement identifying the improvements; and

(3) an offer to provide a surety bond in an amount and conditioned as required by this section.

(c) Before removing the improvements, the defendant must post a surety bond in an amount determined by the court, conditioned on the removal of the improvements in a manner that substantially restores the property to the condition it was in before the improvements were made.

Acts 1983, 68th Leg., p. 3511, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 22.042. REFEREE. A court that authorizes a defendant in a trespass to try title action to remove improvements shall appoint a referee to supervise the removal. The court may require the referee to make reports to the court concerning the removal.

Acts 1983, 68th Leg., p. 3512, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 22.043. RETAINED JURISDICTION. A court that authorizes a defendant in a trespass to try title action to remove improvements retains jurisdiction of the action until the court makes a final disposition of the case and a final determination of the rights, duties, and liabilities of the parties and sureties.

Acts 1983, 68th Leg., p. 3512, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 22.044. CONDITION FOR REMOVAL. Before a court in a trespass to try title action authorizes a defendant to remove improvements, the court may require the defendant to satisfy a money judgment in favor of the plaintiff that arises out of a claim of the plaintiff in the action.

Acts 1983, 68th Leg., p. 3512, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 22.045. CUMULATIVE REMEDIES. The remedy of removing improvements may be pleaded as an alternative to all other remedies at law or in equity.

Acts 1983, 68th Leg., p. 3513, ch. 576, Sec. 1, eff. Jan. 1, 1984.