

CHAPTER 5. No. 7.

REAL PROPERTY LIMITATION.

AN ORDINANCE RELATING TO THE LIMITATION OF REAL PROPERTY ACTIONS.

Ordinance
Ch. 5. No. 7-
1940.

[26th July, 1846.]

Commence-
ment.

1. This Ordinance may be cited as the Real Property Limitation Ordinance.

Short title.

2. (1) In this Ordinance—

Interpre-
tation.

“land” includes messuages and all other immoveable property and corporeal hereditaments whatsoever, and also any share, estate, or interest in them or any of them;

“person” includes a class of creditors or other persons;

“rent” includes all annuities and periodical sums of money charged upon and payable out of any land.

(2) The person through whom another person is said to claim means any person by, through, under, or by the act of whom the person claiming became entitled to the estate or interest claimed, as heir, issue in tail, tenant by the courtesy, tenant in dower, successor, special or general occupant, executor, administrator, legatee, husband, assignee, appointee, devisee, or otherwise.

3. No person shall make an entry or distress, or bring an action to recover any land or rent, but within sixteen years next after the time at which the right to make such entry or distress, or to bring such action, shall have first accrued to some person through whom he claims, or if such right shall

No land or
rent to be
recovered
but within
16 years
after right of
action
accrued.

not have accrued to any person through whom he claims, then within sixteen years next after the time at which the right to make such entry or distress, or to bring such action, shall have first accrued to the person making or bringing the same.

When the
right shall be
deemed to
have accrued

4. The right to make an entry or distress, or bring an action to recover any land or rent, shall be deemed to have first accrued at such time as is hereinafter mentioned, that is to say:—

(a) when the person claiming such land or rent, or some person through whom he claims, shall, in respect of the estate or interest claimed, have been in possession or receipt of the profits of such land, or in receipt of such rent, and shall, while entitled thereto, have been dispossessed, or have discontinued such possession or receipt, then such right shall be deemed to have first accrued at the time of such dispossession or discontinuance of possession, or at the last time at which any such profits or rent were or was so received;

(b) when the person claiming such land or rent shall claim the estate or interest of some deceased person who shall have continued in such possession or receipt in respect of the same estate or interest until the time of his death, and shall have been the last person entitled to such estate or interest who shall have been in such possession or receipt, then such right shall be deemed to have first accrued at the time of such death;

com (c) when the person claiming such land or rent shall claim in respect of an estate or interest in possession, granted, appointed, or otherwise assured by any instrument (other than a will) to him, or some person through whom he claims, by a person being in respect of the same estate or interest in the possession or receipt of the profits of the land, or in the receipt of the rent, and no person entitled under such instrument shall have been in such possession or receipt, then such right shall be deemed to have first accrued at the time at which the person claiming as aforesaid, or the person through whom he claims, became entitled to such possession or receipt by virtue of such instrument;

(d) when the estate or interest claimed shall have

been an estate or interest in reversion or remainder, or other future estate or interest, and no person shall have obtained the possession or receipt of the profits of such land or the receipt of such rent in respect of such estate or interest, then such right shall be deemed to have first accrued at the time at which such estate or interest became an estate or interest in possession;

(e) when the person claiming such land or rent, or the person through whom he claims, shall have become entitled by reason of any forfeiture or breach of condition, then such right shall be deemed to have first accrued when such forfeiture was incurred or such condition was broken.

5. When any right to make an entry or distress, or to bring an action to recover any land or rent, by reason of any forfeiture or breach of condition, shall have first accrued in respect of any estate or interest in reversion or remainder, and the land or rent shall not have been recovered by virtue of such right, the right to make an entry or distress or bring an action to recover such land or rent shall be deemed to have first accrued in respect of such estate or interest at the time when the same shall have become an estate or interest in possession, as if no such forfeiture or breach of condition had happened.

Entry or
distress on
breach of
condition

6. The right to make an entry or distress, or to bring an action to recover any land or rent, shall be deemed to have first accrued, in respect of an estate or interest in reversion, at the time at which the same shall have become an estate or interest in possession by the determination of any estate or estates in respect of which such land shall have been held, or the profits thereof or such rent shall have been received, notwithstanding the person claiming such land, or some person through whom he claims, shall, at any time previously to the creation of the estate or estates which shall have determined, have been in possession or receipt of the profits of such land, or in receipt of such rent.

Reversioner
to have a
new right.

7. For the purposes of this Ordinance, an administrator claiming the estate or interest of the deceased person of whose goods and effects he shall be appointed administrator shall be deemed to claim as if there had been no interval of

Rights of
admini-
strator.

time between the death of such deceased person and the grant of the letters of administration.

Tenant at will.

8. When any person shall be in possession or in receipt of the profits of any land, or in receipt of any rent, as tenant at will, the right of the person entitled subject thereto, or of the person through whom he claims, to make an entry or distress, or bring an action to recover such land or rent, shall be deemed to have first accrued either at the determination of such tenancy, or at the expiration of one year next after the commencement of such tenancy, at which time such tenancy shall be deemed to have determined.

Tenant from year to year.

9. When any person shall be in possession or in receipt of the profits of any land, or in receipt of any rent, as tenant from year to year or other period, without any lease in writing, the right of the person entitled subject thereto, or of the person through whom he claims, to make an entry or distress, or to bring an action to recover such land or rent, shall be deemed to have first accrued at the determination of the first of such years or other periods, or at the last time when any rent payable in respect of such tenancy shall have been received (which shall last happen).

Accrual of right where rent of \$4.80 upwards reserved by a lease in writing shall have been wrongfully claimed.

10. When any person shall be in possession or in receipt of the profits of any land, or in receipt of any rent, by virtue of a lease in writing by which a rent amounting to the yearly sum of four dollars and eighty cents or upwards shall be reserved, and the rent reserved by such lease shall have been received by some person wrongfully claiming to be entitled to such land or rent in reversion immediately expectant on the determination of such lease, and no payment in respect of the rent reserved by such lease shall afterwards have been made to the person rightfully entitled thereto, the right of the person entitled to such land or rent subject to such lease, or of the person through whom he claims, to make an entry or distress, or to bring an action after the determination of such lease, shall be deemed to have first accrued at the time at which the rent reserved by such lease was first so received by the person wrongfully claiming as aforesaid; and no such right shall be deemed to have first accrued upon the determination of such lease to the person rightfully entitled.

11. No person shall be deemed to have been in possession of any land within the meaning of this Ordinance merely by reason of having made an entry thereon; and no continual or other claim upon or near any land shall preserve any right of making an entry or distress or of bringing an action.

Effect of entry.

12. It shall and may be lawful for any person entitled to or claiming under any mortgage whereby the legal estate in the land comprised in the mortgage shall be conveyed, to make an entry or bring an action or suit to recover such land at any time within sixteen years next after the last payment of the principal or interest money secured by such mortgage, although more than sixteen years may have elapsed since the time at which the right to make such entry or bring such action or suit shall have first accrued.

Limitation of actions by mortgagees.

13. (1) When a mortgagee claiming under or by virtue of any mortgage whereby the legal estate in the land comprised in the mortgage shall be conveyed, shall have obtained the possession or receipt of the profits of any land, or the receipt of any rent, comprised in his mortgage, the mortgagor, or any person claiming through him shall not bring a suit to redeem the mortgage but within sixteen years next after the time at which the mortgagee obtained such possession or receipt, unless in the meantime an acknowledgment of the title of the mortgagor or of his right of redemption shall have been given to the mortgagor, or some person claiming his estate, or to the agent of such mortgagor or person, in writing, signed by the mortgagee or the person claiming through him; and in such case no such suit shall be brought but within sixteen years next after the time at which such acknowledgment, or the last of such acknowledgments, if more than one, was given.

Limitation of actions by mortgagors.

(2) Where there shall be more than one mortgagor, or more than one person claiming through the mortgagor or mortgagors, such acknowledgment, if given to any of such mortgagors or persons, or his or their agent, shall be as effectual as if the same had been given to all such mortgagors or persons.

(3) Where there shall be more than one mortgagee, or more than one person claiming the estate or interest of the mortgagee or mortgagees, such acknowledgment, signed by

one or more of such mortgagees or persons, shall be effectual only as against the party or parties signing as aforesaid, and the person or persons claiming any part of the mortgage money or land or rent by, from, or under him or them, and any person or persons entitled to any estate or estates, interest or interests, to take effect after or in defeasance of his or their estate or estates, interest or interests, and shall not operate to give to the mortgagor or mortgagors a right to redeem the mortgage as against the person or persons entitled to any other undivided or divided part of the money or land or rent.

(4) Where such of the mortgagees or persons aforesaid as shall have given such acknowledgment shall be entitled to a divided part of the land or rent comprised in the mortgage, or some estate or interest therein, and not to any ascertained part of the mortgage money, the mortgagor or mortgagors shall be entitled to redeem the same divided part of the land or rent on payment, with interest, of the part of the mortgage money which shall bear the same proportion to the whole of the mortgage money as the value of such divided part of the land or rent shall bear to the value of the whole of the land or rent comprised in the mortgage.

Possession of one co-heir not to be the possession of others.

14. When any one or more of several persons entitled to any land or rent as co-heirs, joint tenants, or tenants in common, shall have been in possession or receipt of the entirety, or more than his or their undivided share or shares, of such land or of the profits thereof, or of such rent, for his or their own benefit, or for the benefit of any person or persons other than the person or persons entitled to the other share or shares of the same land or rent, such possession or receipt shall not be deemed to have been the possession or receipt of or by such last mentioned person or persons or any of them.

Effect of acknowledgment of title.

15. When any acknowledgment of the title of the person entitled to any land or rent shall have been given to him or his agent in writing, signed by the person in possession or in receipt of the profits of such land, or in receipt of such rent, then such possession or receipt of or by the person by whom such acknowledgment shall have been

given, shall be deemed, according to the meaning of this Ordinance, to have been the possession or receipt of or by the person to whom or to whose agent such acknowledgment shall have been given at the time of giving the same, and the right of such last mentioned person, or any person claiming through him, to make an entry or distress or bring an action to recover such land or rent shall be deemed to have first accrued at and not before the time at which such acknowledgment, or the last of such acknowledgments, if more than one, was given.

16. If at the time at which the right of any person to make an entry or distress, or bring an action to recover any land or rent, shall have first accrued as aforesaid, such person shall have been under any of the disabilities hereinafter mentioned; that is to say, infancy, or unsoundness of mind, then such person or the person claiming through him may, notwithstanding the period of sixteen years hereinbefore limited shall have expired, make an entry or distress, or bring an action to recover such land or rent, at any time within eight years next after the time at which the person to whom such right shall first have accrued as aforesaid shall have ceased to be under any such disability, or shall have died, which shall have first happened.

Persons under disability to be allowed 8 years.

17. No entry, distress, or action shall be made or brought by any person who, at the time at which his right to make an entry or distress or to bring an action to recover any land or rent shall have first accrued, shall be under any of the disabilities hereinbefore mentioned, or by any person claiming through him, but within thirty years next after the time at which such right shall have first accrued, although the person under disability at such time may have remained under one or more of such disabilities during the whole of such thirty years, or although the term of eight years from the time at which he shall have ceased to be under any such disability, or have died, shall not have expired.

But no action shall be brought beyond 30 years after right accrued.

18. When any person shall be under any of the disabilities hereinbefore mentioned at the time at which his right to make an entry or distress, or to bring an action to recover any land or rent, shall have first accrued, and shall depart

No further time to be allowed for a succession of disabilities.

this life without having ceased to be under any such disability, no time to make an entry or distress, or to bring an action to recover such land or the possession thereof, or such rent, beyond the said period of sixteen years next after the right of such person to make an entry or distress, or to bring an action to recover such land or rent, shall have first accrued, or the said period of eight years next after the time at which such person shall have died, shall be allowed by reason of any disability of any other person.

Barring of successive rights.

19. When the right of any person to make an entry or distress, or to bring an action to recover any land or rent to which he may have been entitled for an estate or interest in possession, shall have been barred by the determination of the period hereinbefore limited, which shall be applicable in such case, and such person shall, at any time during the said period, have been entitled to any other estate, interest, right, or possibility in reversion, remainder, or otherwise, in or to the same land or rent, no entry, distress, or action shall be made or brought by such person, or any person claiming through him, to recover such land or rent, in respect of such other estate, interest, right, or possibility, unless in the meantime such land or rent shall have been recovered by some person entitled to an estate, interest, or right which shall have been limited or taken effect after or in defeasance of such estate or interest in possession.

In cases of express trust, the right not to accrue until conveyance.

20. When any land or rent shall be vested in a trustee upon any express trust, the right of the *cestui que trust*, or any person claiming through him, to bring a suit against the trustee, or any person claiming through him, to recover such land or rent, shall be deemed to have first accrued, according to the meaning of this Ordinance, at and not before the time at which such land or rent shall have been conveyed to a purchaser for a valuable consideration, and shall then be deemed to have accrued only as against such purchaser and any person claiming through him.

In cases of fraud, no time shall run while fraud concealed.

21. In every case of a concealed fraud, the right of any person to bring a suit in equity for the recovery of any land or rent of which he, or any person through whom he claims, may have been deprived by such fraud, shall be deemed to have first accrued at and not before the time at which such

fraud shall, or with reasonable diligence might, have been first known or discovered: Provided that nothing in this section contained shall enable any owner of lands or rents to have a suit in equity for the recovery of such lands or rents, or for setting aside any conveyance of such lands or rents on account of fraud, against any *bonâ fide* purchaser for valuable consideration who has not assisted in the commission of such fraud, and who at the time that he made the purchase did not know and had no reason to believe that any such fraud had been committed.

22. At the determination of the period limited by this Ordinance to any person for making an entry or distress, or bringing any action or suit, the right and title of such person to the land or rent for the recovery whereof such entry, distress, action, or suit respectively might have been made or brought within such period shall be extinguished.

Extinguish-
ment of
right.

23. The receipt of the rent payable by any tenant from year to year, or other lessee, shall, as against such lessee or any person claiming under him (but subject to the lease), be deemed to be the receipt of the profits of the land for the purposes of this Ordinance.

Receipt of
rent to be
deemed
receipt of
profits.