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CHAPTER 67.

 RECOVERY OF REAL PROPERTY

ARTICLE 1.

 GENERAL PROVISIONS

**SECTION 15‑67‑10.** Persons who may bring action to determine adverse claim.

Any person in possession of real property, by himself or his tenant, or any person having or claiming title to vacant or unoccupied real property may bring an action against any person who claims or who may or could claim an estate or interest therein or a lien thereon adverse to him for the purpose of determining such adverse claim and the rights of the parties, respectively.

**SECTION 15‑67‑20.** Plaintiff limited to one action for recovery of real property.

The plaintiff in actions for recovery of real property or the recovery of the possession of real property is limited to one action for recovery.

**SECTION 15‑67‑30.** Propriety of service by publication; personal service out of State shall be sufficient.

When any action is commenced to determine adverse claims, publication of the summons may be made and service upon parties outside of the State and unknown claimants obtained in the following manner. When the sheriff of the county in which the action is brought shall have duly determined that the defendant cannot be found therein, and an affidavit of the plaintiff or his attorney shall have been filed with the clerk stating that a cause of action exists to determine adverse claims to certain property within the county, and that he believes the defendant or defendants, naming them, is not a resident of the State or cannot be found therein and either (a) that he has mailed a copy of the summons, by registered mail, to the defendant at his place of residence or (b) that such residence is not known to him, service of the summons may be made upon the defendant by three weeks’ public notice thereof in the manner provided by law for publication of summons in civil actions. Personal service of such summons without the State, made after order for publication, proved by the affidavit of the person making such service made before an authorized officer having a seal, shall have the same effect as the publication of the summons herein provided.

**SECTION 15‑67‑40.** Service on unknown parties; notice of lis pendens.

In any action brought to determine adverse claims to real property within this State the plaintiff may insert in the title thereof, in addition to the names of such persons as are known or appear of record to have some right, title, interest, estate or lien in or on the real property in controversy, the following: “Also all other persons unknown, claiming any right, title, estate, interest in or lien upon the real estate described in the complaint herein.” Service of the summons may be had upon all such unknown persons defendant by publication in the same manner as against nonresident defendants, upon the filing of an affidavit of the plaintiff, his agent or attorney, stating the existence of a cause of action to try adverse claims within this State. The plaintiff shall before commencement of such publication file with the clerk of the court a notice of the pendency of the action, a copy of which shall be published in the same newspaper with and immediately following the summons.

**SECTION 15‑67‑50.** Appearance of unknown parties; subsequent defense by minors.

All such unknown persons so served shall have the same right to appear and defend before and after judgment as would named defendants upon whom service is made by publication, and any order or judgment in the action shall be binding upon those who have been served or who shall appear and defend, whether they be of age or minors, and, if they be minors when judgment is rendered, they may be allowed to defend at any time within three years after coming of age.

**SECTION 15‑67‑60.** Reference to master; determining claims of nonresidents or minors.

In all actions brought under this article the court, or a judge thereof, shall refer the action to a master or special referee to take the testimony as to the plaintiff’s claim or title and as to all the facts and circumstances unless the testimony shall be taken in open court and carefully inquire as to the existence of claim by and residence of all nonresidents. If it shall appear to the court or judge that there probably exists a bona fide claim or lien on the part of any such nonresident or minor, whose name and whereabouts can be ascertained, no decree adjudicating the rights of such minor or affecting or quieting the title as against him or her shall be rendered unless personal service upon him or her outside of the State after order for publication shall first be made and proved as provided in Section 15‑67‑30.

**SECTION 15‑67‑70.** Effect of judgment; persons bound.

Any judgment entered in an action to try adverse claims shall be binding upon all of the defendants joined in the action. When unknown owners and claimants are joined as defendants it shall be binding upon any and all persons or parties having or claiming, or who might or could claim, an interest in or lien upon the property adverse to the plaintiff who have been served or who shall appear and defend, whether residents of this State or nonresidents.

**SECTION 15‑67‑80.** Costs.

If the defendant in his answer disclaim any interest in the property or suffer judgment to be taken against him without answer the plaintiff cannot recover costs. But if the summons has been served upon the defendant personally and it is made to appear that, after the accrual of the cause of action and before commencement thereof, the plaintiff demanded in writing of the defendant and the defendant neglected to execute within a reasonable time thereafter a good and sufficient quitclaim deed of the property described in the complaint, upon tender of such deed ready for execution, the plaintiff shall nevertheless recover his costs.

**SECTION 15‑67‑90.** Time limitation upon reopening matter.

No judgment or decree quieting title to land or determining the title thereto, or adverse claims therein, shall be adjudged invalid or set aside for any reason, unless the action or proceeding to vacate or set aside such judgment or decree shall be commenced or application for leave to defend be made within three years from the time of filing for record a certified copy of such judgment or decree in the office of the clerk of court of the county in which the lands affected by such judgment or decree are situated or, in case of minors, within three years after coming of age.

**SECTION 15‑67‑100.** Right to jury trial unchanged.

Nothing in this article shall be construed or held to change the existing law in reference to trials by jury in all actions of trespass to try titles, trespass quare clausum fregit or ejectment or other action to recover possession of real estate.

ARTICLE 3.

 POSSESSION AND ADVERSE POSSESSION

**SECTION 15‑67‑210.** Presumption of possession; when occupation deemed under legal title.

In every action for the recovery of real property or the possession thereof the person establishing a legal title to the premises shall be presumed to have been possessed thereof within the time required by law. The occupation of such premises by any other person shall be deemed to have been under and in subordination to the legal title unless it appear that such premises have been held and possessed adversely to such legal title for ten years before the commencement of such action.

**SECTION 15‑67‑220.** Effect of occupation under written instrument or court decree or judgment.

Whenever it shall appear (a)that the occupant or those under whom he claims entered into the possession of premises under claim of title, exclusive of any other right, founding such claim upon a written instrument as being a conveyance of the premises in question or upon the decree or judgment of a competent court and (b) that there has been a continued occupation and possession of the premises, or of some part of such premises, included in such instrument, decree or judgment under such claim for ten years, the premises so included shall be deemed to have been held adversely, except that when the premises so included consist of a tract divided into lots, the possession of one lot shall not be deemed a possession of any other lot of the same tract.

**SECTION 15‑67‑230.** What constitutes adverse possession under written instrument or court decree or judgment.

For the purpose of constituting an adverse possession by any person claiming a title founded upon a written instrument or a judgment or decree, land shall be deemed to have been possessed and occupied in the following cases:

(1) When it has been usually cultivated or improved;

(2) When it has been protected by a substantial enclosure;

(3) When, although not enclosed, it has been used for the supply of fuel or of fencing timber, for the purposes of husbandry or for the ordinary use of the occupant; and

(4) When a known farm or a single lot has been partly improved the portion of such farm or lot that may have been left not cleared or not enclosed, according to the usual course and custom of the adjoining country, shall be deemed to have been occupied for the same length of time as the part improved and cultivated.

**SECTION 15‑67‑240.** Premises held adversely but not under written instrument or court judgment or decree.

When it shall appear that there has been an actual continued occupation of premises under a claim of title, exclusive of any other right but not founded upon a written instrument or a judgment or decree, the premises so actually occupied, and no other, shall be deemed to have been held adversely.

**SECTION 15‑67‑250.** What constitutes adverse possession under claim of title not under written instrument or court judgment or decree.

For the purpose of constituting an adverse possession by a person claiming title not founded upon a written instrument or a judgment or decree, land shall be deemed to have been possessed in the following cases only:

(1) When it has been protected by a substantial enclosure; and

(2) When it has been usually cultivated or improved.

**SECTION 15‑67‑260.** Relation of landlord and tenant as affecting adverse possession.

Whenever the relation of landlord and tenant shall have existed between any persons the possession of the tenant shall be deemed the possession of the landlord until the expiration of ten years from the termination of the tenancy or, when there has been no written lease, until the expiration of ten years from the time of refusal to pay rent, notwithstanding that such tenant may have acquired another title or may have claimed to hold adversely to his landlord. But such presumptions shall not be made after the periods herein limited.

**SECTION 15‑67‑270.** Petition for license to enter adjoining property to make improvements, repairs, or maintenance; good faith effort to obtain permission; evidentiary hearing; requirements and restrictions.

(A) When an owner or lessee of real property seeks to improve, repair, or maintain his property, and the property is so situated that it is impossible to perform the improvements, repairs, or maintenance without entering adjoining property and permission to enter the adjoining property has been denied, or unreasonable conditions have been placed upon the entry, the owner or lessee seeking to make the improvements, repairs, or maintenance may petition the circuit court for a license to enter the adjoining property for the purpose of performing the improvements, repairs, or maintenance. For the purpose of this section improvement, repair, or maintenance does not include new construction on a site without a preexisting structure.

The property owner over whose property a license is sought to be granted by the court shall be joined as a party respondent to the action seeking a license and the case shall be bound by the South Carolina rules of civil procedure and shall be heard by the court sitting in equity without a jury.

(B) The petition may not be filed until after a good faith effort to obtain permission to enter the adjoining property has been made. A good faith effort to obtain permission for entry is considered to have been made if the request describes the nature and manner of the requested improvements, repairs, or maintenance, solicits specific dates for entry, and:

(1) the petitioner can present evidence of an actual request and denial of entry, or the imposition of unreasonable conditions upon entry; or

(2) if the petitioner requests entry in writing and provides notice of the respective rights of parties under this section by certified mail, return receipt requested, to the owner of record according to the tax records for the county in which the adjoining property is located, a period of forty‑five days has expired since the written requests for entry was made, and the adjoining property owner has not responded to the request in writing. The court may waive the forty‑five day period if service upon the owner of record has been accomplished and if the court finds the petitioner’s property will suffer irreparable waste from imposition of the forty‑five day period.

(C) The petition must be accompanied by affidavits or other evidence setting forth the circumstances which make the entry necessary, the dates the entry is desired, and a description of the improvements, repairs, or maintenance which will be accomplished.

(D) After an evidentiary hearing based upon a motion for immediate relief, the license may be granted if the court finds that:

(1) the entry upon the adjoining property does not irreparably or unreasonably damage the adjoining property;

(2) the grant of license is not an unreasonable encroachment or burden upon the adjoining property; and

(3) the license is reasonably necessary for the improvement or preservation of the petitioner’s property.

(E) If the court grants the license, it shall specify:

(1) the nature of the improvements, repairs, or maintenance to be accomplished;

(2) the manner in which the improvements, repairs, or maintenance will be accomplished;

(3) the dates upon which the license begins and ends;

(4) the amount of compensation to be paid to the property owner over whose property the license is granted;

(5) that the owner or lessee seeking the license must provide to any person performing improvements, repairs, or maintenance a copy of the court order setting forth the specific conditions of the license; and

(6) any other terms and conditions the court considers appropriate to minimize disruption to the adjoining owner’s or lessee’s use and enjoyment of the property over which the license is granted.

(F) Once the authorized improvements, repairs, or maintenance are commenced, they shall proceed expeditiously. The license shall terminate upon the earlier of the completion of the improvements, repairs, or maintenance set forth in the license or the expiration of the license. The licensee shall in all respects restore the adjoining land to its condition prior to entry and is liable for actual damages occurring as a result of the entry including, but not limited to, physical damage to the adjoining property and loss of revenue.

(G) The court may require that an appropriate bond or other security be posted by the licensee and shall require the licensee to provide adequate liability and workers’ compensation insurance to indemnify the adjoining property owner and lessee against claims arising from the work authorized by the license.

(H) Except in the case of wilful, wanton, or reckless misconduct, the adjoining property owner or lessee upon whose property entry is authorized under this section is immune from liability from all suits, claims, and causes of action arising from the entry and work authorized by the license.

(I) The right of entry provided for in this section applies only to portions of the adjoining property including, but not limited to, driveways, patios, sidewalks, and other unimproved land. It does not authorize entry into any buildings on the adjoining property.

ARTICLE 5.

 FORCIBLE ENTRY AND DETAINER

**SECTION 15‑67‑410.** Action may be had against person wrongfully disseizing.

If any person be put out or disseized of any lands or tenements in forcible manner or put out peaceably and be afterwards holden out with strong hand, or, after such entry, any feoffment or discontinuance in any wise thereof be made to defraud and take away the right of the possessor, the party grieved in this behalf shall have an action against such disseizor.

**SECTION 15‑67‑420.** Plaintiff’s right to treble damages.

If the party grieved recover in such action and it be found by verdict or in other manner by due form of law that the party defendant entered with force into the lands and tenements or, after his entry, did hold them with force, the plaintiff shall recover treble damages against the defendant.

**SECTION 15‑67‑430.** Court of common pleas shall have jurisdiction.

The court of common pleas of the county wherein such lands and tenements may be situated may inquire by the people of the same county, as well of them that make forcible entries in lands and tenements as of them which hold such lands and tenements with force.

**SECTION 15‑67‑440.** Restitution of possession to tenants for years.

The court authorized and enabled upon inquiry to give restitution of possession unto tenants of any estate of freehold of their lands or tenements which shall be entered upon with force or from them withholden by force shall have the like and the same authority and ability, upon indictment of such forcible entries or forcible withholdings before them duly found, to give like restitution of possession unto tenants for terms of years of lands or tenements by them so holden which shall be entered upon by force or holden from them by force.

**SECTION 15‑67‑450.** Persons who have held by force three years are unaffected by this article.

They which keep their possessions with force in any lands and tenements whereof they or their ancestors or they whose estate they have in such lands and tenements have continued their possessions in such lands and tenements by three years or more shall not be endangered by force of this article.

**SECTION 15‑67‑460.** Putting party ousted in possession.

If it be found before any of them that any do contrary to this article, then the court shall cause to be reseized the lands and tenements so entered or holden as stated in this article and shall put the party so put out in full possession of the same lands and tenements so entered or holden as before.

**SECTION 15‑67‑470.** Forms and proceedings in cases of forcible entry and detainer are same as for tenants holding over.

The forms and proceedings in cases of forcible entry and detainer shall be such as are prescribed by law in cases when tenants hold over after the expiration of their leases.

ARTICLE 7.

 SUMMARY EJECTMENT OF TRESPASSERS

**SECTION 15‑67‑610.** Duty of magistrate in case of trespass.

If any person shall have gone into or shall hereafter go into possession of any lands or tenements of another without his consent or without warrant of law, the owner of the land so trespassed upon may apply to any magistrate to serve a notice on such trespasser to quit the premises, and if, after the expiration of five days from the personal service of such notice, such trespasser refuses or neglects to quit then such magistrate shall issue his warrant to any sheriff or constable requiring him forthwith to eject such trespasser, using such force as may be necessary.

**SECTION 15‑67‑620.** When warrant shall not be issued.

If the person in possession shall, before the expiration of the five days, appear before such magistrate and satisfy him that he has a bona fide color of claim to the possession of such premises and enter into bond to the person claiming the land, with good and sufficient security, to be approved by the magistrate, conditioned for the payment of all such costs and expenses as the person claiming to be the owner of the land may incur in the successful establishment of his claim and also for any damages which the owner of the land may sustain by reason of the possession being withheld from him, by any of the modes of proceeding now provided by law, the magistrate shall not issue his warrant as provided in Section 15‑67‑610.

**SECTION 15‑67‑630.** Fee of magistrate and sheriff or constable.

The magistrate shall be entitled to demand and receive from the person applying for such warrant a fee of two dollars before issuing the warrant, and the sheriff or constable shall in like manner be entitled to demand and receive from such person a fee of two dollars and mileage before executing such warrant.

**SECTION 15‑67‑640.** Right to appeal; injunction; time of issuing warrant.

Either party to these proceedings shall have the right of appeal. The magistrate shall not issue his warrant until the expiration of five days after he announces his decision, and in the meantime the defendant may apply for an injunction, as in other cases, upon giving the bond required by Section 15‑67‑620, restraining the execution of such warrant pending the determination of his appeal by the circuit court.

ARTICLE 9.

 DETERMINATION WHETHER LIFE TENANT, ETC., BE ALIVE OR DEAD

**SECTION 15‑67‑710.** Remaindermen and certain others may compel production of person whose death he believes is being concealed.

Any person who shall have any claim or demand in or to any remainder, reversion or expectance in or to any estate after the death of any other person may, once a year, make affidavit of his title, that he has cause to believe that such other person is dead and that his death is concealed by his guardian, trustee, husband or any other person and apply to the court of common pleas for an order requiring such guardian, trustee, husband or other person concealing, or suspected of concealing, the death of such other person, at such time and place as the court shall direct, on due service of such order, to produce and show such person whose death is suspected to such person or persons, not exceeding two, as shall, in such order, be named by the party prosecuting such order.

**SECTION 15‑67‑720.** If such person is not produced, he is taken to be dead.

If the person proceeded against shall fail to produce such other person, according to the direction made, the court may appoint commissioners before whom such other person may be produced. If such other person cannot be produced or there should be other satisfactory proof before the commissioners of the death of such person, they shall make return of the fact on oath. Such person sought shall then be taken to be dead, and any lawful claimant of any estate held by or for such person shall be let into the possession of such estate.

**SECTION 15‑67‑730.** Proceedings on affidavit that such person is beyond limits of State.

Should it appear by affidavit that the person sought is, or lately was, at some certain place beyond the limits of this State, the court may direct the commissioners to make personal search at the place or places named if the person prosecuting such order shall provide the necessary expenses of such search. And upon return of the commissioners, duly made and filed, of their failure to view such person allegedly concealed or absent or other satisfactory proof of death, such person shall be taken to be dead and any lawful claimant of any estate held by or for such person shall be let into possession of it.

**SECTION 15‑67‑740.** Rights preserved when it afterwards appears that person sought is living.

In case it should afterwards appear that the person sought was living at the time proceedings under Sections 15‑67‑710 through 15‑67‑730 were had, such person or any person claiming title under or through such person concealed or absent may re‑enter upon his estate and may have an action of damages for the rents and profits during eviction.

**SECTION 15‑67‑750.** Guardian, husband or trustee may prove that such person was alive.

Nothing contained in Sections 15‑67‑710 through 15‑67‑730 shall prevent any guardian, husband or trustee from showing by satisfactory proof that the person sought was actually living at the time proceedings for a view of such person were commenced.

**SECTION 15‑67‑760.** Guardians and others holding estates after determination of life estate adjudged to be trespassers.

Every person who, as guardian or trustee for any infant and every other person having any estate determinable upon any life or lives who, after the determination of such particular estate or interests, without the express consent of him or them who are, or shall be, next and immediately entitled upon and after the determination of such particular estates or interests, shall hold over and continue in possession of any lands, tenements or hereditaments shall be, and are hereby, adjudged to be trespassers.

**SECTION 15‑67‑770.** Recovery of damages.

Every person, his executors or administrators, who are, or shall be, entitled to any such lands, tenements and hereditaments, upon or after the determination of such particular estates or interests, shall be entitled to recover as damages for such unlawful holding the full value of the profits received during such wrongful possession, and such recovery may be had against the person holding over or his executors or administrators.