

CHAPTER 564

EASEMENTS

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564.1 Adverse possession — “use” as evidence.

In all actions hereafter brought, in which title to any easement in real estate shall be claimed by virtue of adverse possession thereof for the period of ten years, the use of the same shall not be admitted as evidence that the party claimed the easement as the party’s right, but the fact of adverse possession shall be established by evidence distinct from and independent of its use, and that the party against whom the claim is made had express notice thereof; and these provisions shall apply to public as well as private claims.

[C73, §2031; C97, §3004; C24, 27, 31, 35, 39, §10175; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §564.1]

564.2 Light and air.

Whoever has erected, or may erect, any house or other building near the land of another person, with windows overlooking such land, shall not, by the mere continuance of such windows, acquire any easement of light or air, so as to prevent the erection of any building on such land.

[C73, §2032; C97, §3005; C24, 27, 31, 35, 39, §10176; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §564.2]

564.3 Pedestrian rights-of-way or easements.

An easement or right-of-way for pedestrian traffic shall not be acquired by prescription or adverse use for any length of time except when claimed in connection with an easement or right-of-way to permit passage of public or private vehicular traffic.

[C73, §2033; C97, §3006; C24, 27, 31, 35, 39, §10177; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §564.3]

2008 Acts, ch 1031, §62

564.4 Notice to prevent acquisition.

When any person is in the use of a way, privilege, or other easement in the land of another, the owner of the land in such case may give notice in writing to the person claiming or using the way, privilege, or easement of the owner’s intention to dispute any right arising from such claim or use.

[C73, §2034; C97, §3007; C24, 27, 31, 35, 39, §10178; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §564.4]

564.5 Effect of notice.

Said notice, when served and recorded as hereinafter provided, shall be an interruption of such use, and prevent the acquiring of any right thereto by the continuance thereof.

[C73, §2034; C97, §3007; C24, 27, 31, 35, 39, §10179; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §564.5]

564.6 Notice, service and record.

Said notice, signed by the owner of the land, the owner’s agent, or guardian, may be served in the same manner as in a civil action, upon the party, the party’s agent, or guardian, if within this state, otherwise on the tenant or occupant, if there be any, and it, with the return

thereof, shall be recorded within three months thereafter in the recorder's office of the county in which the land is situated.

[C73, §2034; C97, §3007; C24, 27, 31, 35, 39, §10180; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §564.6]

[P] Manner of service, R.C.P. 1.302 – 1.315

564.7 Evidence.

A certified copy of such record of said notice and the officer's return thereon shall be evidence of the notice and the service thereof.

[C73, §2034; C97, §3007; C24, 27, 31, 35, 39, §10181; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §564.7]

564.8 Action to establish.

When notice is given to prevent the acquisition of a right to a way or other easement, it shall be considered so far a disturbance thereof as to enable the party claiming to bring an action for disturbing the same in order to try such right, and if the plaintiff in the action prevails, the plaintiff shall recover costs.

[C73, §2035; C97, §3008; C24, 27, 31, 35, 39, §10182; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §564.8]