

CHAPTER 739

WASTE AND TRESPASS TO REAL ESTATE

SUBCHAPTER 1

WASTE

§7501. Remedy if tenant commits waste

If a tenant in dower, by curtesy, for life or for years commits or suffers any waste on the premises, the person having the next immediate estate of inheritance may recover the place wasted and the damages done to the premises in an action against him. An heir may recover in the same action for waste done in his own time and in the time of his ancestor.

§7502. Damages

Any issue of fact shall be tried by a jury, with or without a view of the premises, as the court orders. The jury that inquires of the waste shall assess the damages.

§7503. Action by remainderman or reversioner

The remainderman or reversioner for life or for years only or in fee simple or fee tail, after an intervening estate for life, may maintain such action and recover the damages which he has suffered by the waste.

§7504. Death of tenant

Such action may be originally commenced against the executors or administrators of the tenant, or if commenced against him, it may be prosecuted against them after his death.

§7505. No waste by part owner without notice

If any joint tenant or tenant in common of undivided lands cuts down, destroys or carries away trees, timber, wood or underwood, standing or lying on such lands, or digs up or carries away ore, stone or other valuable thing found thereon, or commits strip or waste, without first giving 30 days' notice in writing under his hand to all other persons or to their agents or attorneys, and to mortgagors and mortgagees if any there are interested therein, of his intention to enter upon and improve the land; which notice to such persons interested as are unknown, or whose residence is unknown or who are out of the State may be published in the state paper 3 times, the first publication to be 40 days before such entry; or if he does any such acts pending a process for partition of the premises, he shall forfeit 3 times the amount of damages. Any one or more of the cotenants, without naming the others, may sue for and recover their proportion of such damages.

§7506. Single damages only

If the jury finds that the defendant in such action has good reason to believe himself the owner of the land in severalty, or that he and those under whom he claims had been in exclusive possession thereof, claiming it as their own, for 3 years next before the acts complained of were committed, only single damages shall be recovered.

§7507. Injunctions

If a defendant in an action to recover possession of real estate or a person whose real estate is attached in a civil action commits any act of waste thereon, or threatens or makes preparations to do so, the Superior Court may issue an injunction to stay such waste; but notice shall first be given to the adverse party to appear and answer, unless the applicant files a bond with sufficient sureties to respond

to all damages and costs. The court may enforce obedience by such process as may be employed in other cases and dissolve it when deemed proper.

SUBCHAPTER 2

TRESPASS

§7551. Treble damages for waste pending action

If, during the pendency of an action for the recovery of land, the tenant commits strip or waste by cutting, felling or destroying wood, timber, trees or poles standing thereon, he shall pay to the aggrieved party treble damages, to be recovered in a civil action.

§7551-A. Definitions

(REPEALED)

SECTION HISTORY

PL 1983, c. 362, §1 (NEW). PL 1995, c. 450, §1 (RP).

§7551-B. Trespass damages

1. Prohibition. A person who intentionally enters the land of another without permission and causes damage to property is liable to the owner in a civil action if the person:

A. Damages or throws down any fence, bar or gate; leaves a gate open; breaks glass; damages any road, drainage ditch, culvert, bridge, sign or paint marking; or does other damage to any structure on property not that person's own; or [PL 1995, c. 585, §1 (NEW).]

B. Throws, drops, deposits, discards, dumps or otherwise disposes of litter, as defined in Title 17, section 2263, subsection 2, in any manner or amount, on property not that person's own. [PL 1995, c. 585, §1 (NEW).]

[PL 1995, c. 585, §1 (NEW).]

2. Liability. If the damage to the property is caused intentionally, the person is liable to the owner for 2 times the owner's actual damages plus any additional costs recoverable under subsection 3, paragraphs B and C. If the damage to the property is not caused intentionally, the person is liable to the owner for the owner's actual damages plus any additional costs recoverable under subsection 3, paragraphs B and C.

[PL 1995, c. 585, §1 (NEW).]

3. Damages recoverable. The owner's damages include:

A. Actual damages, as measured by subsection 4; [PL 1995, c. 585, §1 (NEW).]

B. Costs the owner may incur if the damage results in a violation of any federal, state or local law or ordinance and, as a result, the owner becomes the subject of an enforcement proceeding. These costs include attorney's fees, costs and the value of the owner's time spent on involvement in the enforcement proceeding; and [PL 1995, c. 585, §1 (NEW).]

C. Reasonable attorney's fees for preparing the claim and bringing the court action under this section plus costs. [PL 1995, c. 585, §1 (NEW).]

[PL 1995, c. 585, §1 (NEW).]

4. Measure of damages. For damage to property under subsection 1, paragraph A, the owner's damages may be measured either by the replacement value of the damaged property or by the cost of repairing the damaged property. For damages for disposing of litter, the owner's damages include the

direct costs associated with properly disposing of the litter, including obtaining permits, and the costs associated with any site remediation work undertaken as a result of the litter.

[PL 1995, c. 585, §1 (NEW).]

5. Other actions barred. A recovery from a defendant under this section bars an action to recover damages under section 7552 from that defendant for the same specific damage.

[PL 1995, c. 585, §1 (NEW).]

SECTION HISTORY

PL 1995, c. 585, §1 (NEW).

§7552. Injury to land, forest products or agricultural products

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Agricultural product" means crops produced and livestock raised as a result of cultivating the soil and harvesting. Agricultural products include, but are not limited to, vegetables, fruit, forages, grain, nuts, berries, flowers, ornamental plants, nursery crops, milk, dairy products, eggs, domestic livestock and other products in varying degrees of preparation. Agricultural products also include the soil amendments and by-products that are used in cultivation. [PL 1995, c. 450, §2 (NEW).]

B. "Christmas tree" and "evergreen boughs" have the same meanings as provided in Title 12, section 8841. [PL 1995, c. 450, §2 (NEW).]

C. "Forest products" means logs, pulpwood, veneer, bolt wood, wood chips, stud wood, poles, pilings, biomass, fuel wood, Christmas trees, maple syrup, nursery products used for ornamental purposes, wreaths, evergreen boughs or cones or other seed products. [PL 1995, c. 450, §2 (NEW).]

D. When there is damage to public property, the term "owner" may include a suitable official authorized to act on behalf of the public entity.

For damage to a monument or mark under subsection 2, paragraph C, "owner" may include the entity for whose benefit the monument or mark is maintained. [PL 1995, c. 450, §2 (NEW).]

E. "Professional services" may include:

(1) The damage estimate of a licensed professional forester;

(2) A boundary survey;

(3) A title opinion; and

(4) Attorney's fees for preparing the claim and bringing a court action. [PL 1995, c. 450, §2 (NEW).]

[PL 1995, c. 450, §2 (NEW).]

2. Prohibitions. Without permission of the owner a person may not:

A. Cut down, destroy, damage or carry away any forest product, ornamental or fruit tree, agricultural product, stones, gravel, ore, goods or property of any kind from land not that person's own; or [PL 1995, c. 585, §3 (AMD).]

B. [PL 1995, c. 585, §3 (RP).]

C. Disturb, remove or destroy any lawfully established transit point, reference point, stake, plug, hub, guardstake, bench mark, pipe, iron, concrete post, stone post or other monument of any railroad, highway, public utility or other engineering location or survey or any such monument marking the bounds of public or private property. [PL 1995, c. 450, §2 (NEW).]

[PL 1995, c. 585, §3 (AMD).]

3. Measure of damages. This subsection governs the measurement of damages resulting from a violation of subsection 2.

A. When agricultural or forest products have been destroyed or carried away, the owner may recover as damages either the value of the lost products themselves or the diminution in value of the real estate as a whole resulting from the violation, whichever is greater. [PL 1997, c. 214, §1 (AMD).]

B. For lost trees the owner may choose to claim:

- (1) The market value of the lost trees;
- (2) The diminution in value of the real estate as a whole resulting from the violation;
- (3) The forfeiture amounts determined in Title 17, section 2510, subsections 2 and 3;
- (4) If the lost trees are ornamental or fruit trees, the costs of replacing, replanting and restoring the trees with trees of comparable size and the same or equivalent species and the actual costs for cleanup of damage caused during the cutting; or
- (5) If the lost trees are located within 400 feet of a dwelling, the costs of replacing, replanting and restoring the trees with trees of comparable size and the same or equivalent species and the actual costs for cleanup of damage caused during the cutting.

In addition, the owner's damages for lost trees that are not ornamental or fruit trees or trees located within 400 feet of a dwelling may include the costs for regeneration of the stand in accordance with Title 12, section 8869.

The court may reduce the damages awarded for good cause shown when the cutting of trees was done negligently or without fault.

Public utilities, as defined in Title 35-A, section 102, and contractors performing work for public utilities are not liable for damages under this paragraph for lost trees the trimming or removal of which is necessary to provide safe and reliable service to the customers of the public utilities. [PL 2019, c. 195, §1 (AMD).]

B-1. [PL 2019, c. 195, §2 (RP).]

C. When a monument or marker has been disturbed, removed or destroyed as prohibited in subsection 2, paragraph C, the owner's damages may include the cost of engineering and surveyor services necessary to reestablish a monument or marker and its proper location. [PL 1997, c. 214, §1 (AMD).]

[PL 2019, c. 195, §§1, 2 (AMD).]

4. Damages recoverable. Damages are recoverable as follows.

A. A person who negligently or without fault violates subsection 2 is liable to the owner for 2 times the owner's damages as measured under subsection 3 or \$250, whichever is greater. [PL 1995, c. 585, §3 (AMD).]

B. A person who intentionally or knowingly violates subsection 2 is liable to the owner for 3 times the owner's damages as measured under subsection 3 or \$500, whichever is greater. [PL 1995, c. 585, §3 (AMD).]

C. In addition to the damages recoverable under paragraphs A and B, a person who violates subsection 2 is also liable to the owner for the costs the owner may incur if the violation results in a violation of any federal, state or local law or ordinance and, as a result, the owner becomes the subject of an enforcement proceeding. These costs include attorney's fees, costs and the value of the owner's time spent on involvement in the enforcement proceeding. [PL 1995, c. 585, §3 (NEW).]

D. A person who with malice violates subsection 2 is subject to punitive damages in addition to the damages under paragraphs A, B and C. [PL 2015, c. 241, §3 (NEW).]
[PL 2015, c. 241, §3 (AMD).]

5. Costs and fees. In addition to damages, interest and costs, the owner may also recover from the person who violates subsection 2 the reasonable costs of professional services necessary for determining damages and proving the claim as long as the person first has written notice or actual knowledge that a claim is being asserted.

[PL 2015, c. 241, §4 (AMD).]

6. Offer of settlement. At any time after the violation but more than 10 days before trial begins, the person who violated subsection 2 may make a written offer to settle the owner's claim.

A. For such an offer to be valid, it must by its terms remain open for at least 10 days and the owner must first be provided with liability and damage information that is:

(1) Available to the person and not reasonably available to the owner; and

(2) Necessary or pertinent to an evaluation of the owner's claim. [PL 1995, c. 450, §2 (NEW).]

B. Notwithstanding the Maine Rules of Civil Procedure, Rule 68, any offer not paid within 10 days of its acceptance is void for purposes of this subsection but may be specifically enforced by the owner, if the owner so elects. [PL 1995, c. 450, §2 (NEW).]

C. If the owner does not accept the offer, the owner may not recover any interest, costs or professional fees incurred following the date of the offer unless the owner later proves that the value of the claim, at the time the offer was made, exceeded the amount of the offer. [PL 1995, c. 450, §2 (NEW).]

[PL 1995, c. 450, §2 (NEW).]

7. Issues of fact. The court sitting without a jury shall resolve issues of fact arising under subsections 5 and 6.

[PL 1995, c. 450, §2 (NEW).]

8. Other actions barred. A recovery from a defendant under this section bars an action to recover damages under section 7551-B from that defendant for the same specific damage.

[PL 1995, c. 585, §4 (NEW).]

SECTION HISTORY

PL 1977, c. 313, §1 (AMD). PL 1983, c. 362, §2 (AMD). PL 1983, c. 507, §7 (AMD). PL 1983, c. 816, §A5 (RPR). PL 1989, c. 555, §13 (AMD). PL 1995, c. 450, §2 (RPR). PL 1995, c. 585, §§2-4 (AMD). PL 1997, c. 214, §1 (AMD). PL 1999, c. 339, §1 (AMD). PL 2015, c. 241, §§1-4 (AMD). PL 2019, c. 195, §§1, 2 (AMD).

§7552-A. Land on which 10 acres or more of wood is to be cut

Any person who authorizes the cutting of timber or wood on the person's own property, when the cutting involves an area of 10 or more acres, shall clearly mark any property lines that are within 200 feet of the area to be cut. If any such person fails to clearly mark such property lines and if the person or persons who are authorized to cut then cut timber or wood on abutting land without the authorization of the owner of that land, the person who failed to mark the person's property lines is liable in a civil action, in double damages, to that owner of the abutting land. These damages are in addition to any damages to which the owner of the abutting land may be entitled under section 7552. [PL 1995, c. 450, §3 (AMD).]

SECTION HISTORY

PL 1975, c. 253 (NEW). PL 1977, c. 313, §2 (RPR). PL 1995, c. 450, §3 (AMD).

§7553. Municipal lands and property

(REPEALED)

SECTION HISTORY

PL 1995, c. 450, §4 (RP).

§7554. Negligent interference, removal or destruction of monuments

(REPEALED)

SECTION HISTORY

PL 1995, c. 450, §4 (RP).

§7554-A. Removal or destruction of landmark boundaries by state departments

In the event that a proposed public improvement could cause removal, destruction or obliteration of any landmark set on the boundary of public or private real estate, the state department or agency initiating the public improvement shall be governed as follows. [PL 1973, c. 81 (NEW).]

1. Records. The appropriate department shall maintain records that describe the landmark and its location. The records shall be sufficient to permit reestablishment of the point of former location. The department concerned shall, upon request of the property owners, reestablish the point of former landmark location.

[PL 1973, c. 81 (NEW).]

2. Payment. The appropriate department may make reasonable payment to affected property owners for the cost of reestablishing the landmark location.

[PL 1991, c. 102 (AMD).]

3. Rules. The appropriate department shall make such rules, regulations, policies and procedures as it may determine necessary to effectuate the intent and purposes of this section. Property owners whose landmarks are affected by public improvements shall be notified of these provisions by the state department or agency concerned.

[PL 1973, c. 81 (NEW).]

SECTION HISTORY

PL 1973, c. 81 (NEW). PL 1991, c. 102 (AMD).

§7555. Improved or ornamental lands

(REPEALED)

SECTION HISTORY

PL 1995, c. 450, §4 (RP).

§7556. Salt water islands

Whoever, after notice by the owner, occupant or lessee in any of the ways provided in section 7557, trespasses upon any island within salt waters, for the purpose of shooting or hunting thereon, is liable to such owner, occupant or lessee in exemplary damages to an amount not less than \$20 nor more than \$50, in addition to all actual damage sustained by said owner, occupant or lessee, and shall forfeit to said owner, occupant or lessee \$5 for each bird of any kind shot, caught, taken or killed on such island, all to be recovered in a civil action. The possession of guns, decoys or other implements of shooting or hunting shall be presumptive evidence that the purpose of the trespass was shooting or hunting.

§7557. Notices; injury to signboards

Notices referred to in section 7556 shall be given by erecting and maintaining signboards at least one foot square in at least 2 conspicuous places on the premises, one of them near one of the usual landing places on said island, reading as follows: "All persons are forbidden to shoot or hunt on this island", with the name of the owner, occupant or lessee; or such notice may be given verbally or in writing by the owner, occupant or lessee of the island to any person and shall be binding on the person so notified, whether the signboards herein named are erected and maintained or not. Whoever tears down or in any way defaces or injures any such signboard forfeits \$100, to be recovered by the owner, occupant or lessee of such island in a civil action.

§7558. Damages and penalties

Actions to recover any of the sums or penalties named in sections 7556 and 7557 may be brought in the Superior Court or the District Court.

§7559. Imprisonment for nonpayment

Failure to pay a penalty imposed under section 7556 or 7557 is a Class E crime. [PL 1991, c. 797, §1 (RPR).]

SECTION HISTORY

PL 1991, c. 797, §1 (RPR).

§7560. Lands of deceased insolvent

If an heir or devisee of a person deceased, after the estate of the decedent is represented insolvent and before sale of the real estate for payment of debts or before all the debts are paid, removes or injures any building or any trees, except such trees as are needed for fuel or repairs, or commits any strip or waste on such estate, he shall forfeit treble the amount of damages, to be recovered by the executor or administrator in a civil action.

§7561. Liability of executors or administrators

If such executor or administrator, being heir or devisee, commits such trespass or waste, on proof thereof before the judge of probate, he shall be liable to the same extent as the heirs or devisees. In both cases, the damages, when recovered by the executor or administrator or adjudged against him by the judge of probate, shall be accounted for in the administration account.

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