

TITLE 58
PUBLIC LANDS

CHAPTER 8
TOWN SITES

58-801. ENTRY OF TOWN SITES. It is the duty of the corporate authorities of any city or incorporated town, or a judge of the district court within any county in which is situated any unincorporated town, to enter at the proper land office of the United States such quantity of land as the inhabitants of such city or town may be entitled to claim, in the aggregate, according to the population, in the manner required by the laws of the United States and the regulations prescribed by the secretary of the interior of the United States, and make and sign all necessary declaratory statements, certificates and affidavits, or other instruments requisite to carry into effect this chapter and chapter 8 of [title 32](#) of the Revised Statutes of the United States, and to make proof, when required of the facts necessary to establish the claim of such inhabitants to the lands so granted by the laws of congress.

[(58-801) 1874, p. 698, sec. 1; R.S., sec. 2200; am. 1905, p. 84, sec. 1; reen. R.C. & C.L., sec. 2147; C.S., sec. 3764; I.C.A., sec. 56-701; am. 1975, ch. 214, sec. 1, p. 594.]

58-802. CONVEYANCE -- HOW EXECUTED. Any such corporate authorities, or judge, holding the title to any such lands in trust, as declared in said acts of congress, must, by a good and sufficient conveyance, grant and convey the title to each and every block, lot, share or parcel of the same to the person entitled thereto, according to his rights or interest in the same as they exist, in law or equity, at the time of the entry of such lands, and when any parcel or share of such lands is occupied or possessed by one or more persons, claiming the same by grant, lease or sale, the respective rights and interests of such persons, in relation to each other in the same, are not changed or impaired by any such conveyance. Every conveyance, by such corporate authorities or judge, pursuant to the provisions of this chapter, must be executed and acknowledged as to admit the same to be recorded, and if made previous to the issuing of the patent for such lands, it must contain a covenant that the grantor will, after the issuing of such patent, execute, acknowledge and deliver to the grantee, his heirs or assigns, such further conveyance as may be or become necessary to fully vest and perfect the title to the lands therein described in the grantee, his heirs or assigns.

[(58-802) 1874, p. 698, sec. 2; R.S., sec. 2201; am. 1905, p. 84, sec. 1; reen. R.C. & C.L., sec. 2147; C.S., sec. 3764; I.C.A., 56-701; am. 1975, ch. 214, sec. 1, p. 594.]

58-803. NOTICE OF ENTRY. At any time after the entry of such lands, and before three (3) months from the date of the receipt of a patent therefor, the corporate authorities or judge entering the same, must give public notice of such entry by posting the notice thereof in at least three (3) public places in said town, and by publishing such notice in a newspaper printed and published in the county in which such town is situated, or in case there is no such newspaper, then in some newspaper printed and published at the seat of government; such notice must be published once in each week for at least three (3) successive weeks, and must contain the name of the town and an ac-

curate description of the lands so entered as the same are described in the certificate of entry, duplicate receipt for the purchase money thereof issued at the time of entry, or in the patent in case patent has issued.

[58-803, 1874, p.698, sec. 3; R.S., sec. 2202; am. 1905, p.84, sec.2; reen. R.C. & C.L., sec. 2149; C.S., sec. 3766; I.C.A., sec. 56-703.]

58-804. CLAIMS FOR LOTS. Every person, association or company claiming to be entitled to such lands, or to any block, lot, share or parcel thereof, must, within sixty (60) days after the first publication of such notice, in person or by duly authorized agent or attorney, sign a statement in writing containing an accurate description of the particular parcel or parts in which he claims to have an interest, and the specified right, interest or estate therein, which he claims to be entitled to receive, also a brief statement of the facts upon which such right, interest or estate depends for its validity, and deliver the same to such corporate authorities or judge, and all persons failing to sign and deliver such statement, within the time specified in this section, are, as against any claimant, forever barred the right of claiming or recovering such lands, or any interest therein. In case any lots, pieces or parcels of land remain unclaimed and unconveyed at the end of said sixty (60) days, all such lots shall revert to and become the property of such town.

[(58-804) 1874, p. 698, sec. 4; R.S., sec. 2203; am. 1905, p. 84, sec. 3; reen. R.C. & C.L., sec. 2150; C.S., sec. 3767; I.C.A., sec. 56-704.]

58-805. APPOINTMENT OF APPRAISERS. The corporate authorities of such town, in case the same be incorporated, or otherwise, the judge, shall appoint, by order, resolution or ordinance, a board of appraisers, to consist of three (3) freeholders or householders of such town, who shall have no interest in such unclaimed or unconveyed lots or parcels of land, or the improvements thereof. Each of said appraisers shall take an oath to faithfully discharge his duties as such appraiser, and shall file such oath in the office of the clerk of such municipality or county before commencing his duties as such appraiser. In case such appraisers should fail or neglect to make appraisements hereinafter specified and file the same with said clerk for a period of more than ten (10) days after their appointment, then said judge or corporate authorities may appoint a new board of appraisers for the purposes herein provided. It shall be the duty of such authorities to appoint such appraisers within thirty (30) days after the time has expired for persons to present claims for lots, pieces or parcels of land in such town.

[(58-805) 1905, p. 84, sec. 4; am. R.C., sec. 2151; reen. C.L., sec. 2151; C.S., sec. 3768; I.C.A., sec. 56-705; am. 1975, ch. 214, sec. 2, p. 594.]

58-806. APPRAISEMENT OF UNCLAIMED LOTS. Said appraisers shall appraise all lots, pieces or parcels of land, unclaimed or not conveyed by virtue of any law, in such town, at their just and full cash value, and file their written appraisal thereof with said clerk. Said appraisal shall contain a description of each lot, piece or parcel of land so appraised, and a statement of the cash value of the same. Said appraiser shall make a separate statement of the value of such lots, pieces and parcels of land without improvements, and the value of such improvements, and the aggregate value of

both. There shall be attached to such appraisement a written affidavit of said appraisers verifying each statement of such appraisement and alleging that each of such lots and parcels of land is appraised at its just and full value. This appraisement shall be required only in cases where the time has expired by law for claimants to file their statements.

[(58-806) 1905, p. 84, sec. 5; reen. R.C. & C.L., sec. 2152; C.S., sec. 3769; I.C.A., sec. 56-706.]

58-807. NOTICE OF SALE. The mayor or president of the board of trustees, or judge, as the case may be, shall, upon the filing of such appraisements, give notice signed in his official capacity of the time and place of sale of such lots and parcels of land by an advertisement published once a week for three (3) successive weeks in some newspaper published in the county where such town is situated, or, if no newspaper is published in said county, then in the paper published nearest such town. Such sale shall be advertised to be made at some public place in said town, and to be sold at some specified time between the hours of sunrise and sunset.

[(58-807) 1905, p. 84, sec. 6; am. R.C., sec. 2153; reen. C.L., sec. 2153; C.S., sec. 3770; I.C.A., sec. 56-707; am. 1975, ch. 214, sec. 3, p. 594.]

58-808. CONDUCT OF SALE -- REAPPRAISEMENT AND RESALE. Such lots or parcels of land shall be sold at public vendue to the highest bidder for cash, and shall be offered for sale singly, unless a greater price can be obtained by selling several lots or parcels of land together, in which case several lots or parcels can be sold together after an attempt has been first made to sell the same singly. Such sale may be continued, if necessary, from day to day, for a period not to exceed three (3) days at any one (1) sale. In case all said lands are not sold at the first sale, the sale of the remaining lands shall be advertised as many times as may be necessary to sell said lands, and all sales subsequent to the first sale shall be advertised and conducted the same as the first sale, provided, however, that the judge or corporate authorities may, when petitioned by a majority of the landowners in such town site, withhold from public sale and dedicate to public use such parcels of such town site as are appropriate for public use. No lot or parcel of land shall be sold at less than its appraised value. A new appraisement may be had of all lands remaining unsold: provided, that such new appraisement shall not be made oftener than once every three (3) months. Such new appraisement shall be made by a new board of appraisers, to be appointed in the same manner as the first board of appraisers were appointed, or by the old board of appraisers.

[(58-808) 1905, p. 84, sec. 7; am. R.C., sec. 2154; reen. C.L., sec. 2154; C.S., sec. 3771; I.C.A., sec. 56-708; am. 1975, ch. 214, sec. 4, p. 594.]

58-809. PURCHASE BY ENTRYMAN. In all cases where, subsequent to the time provided by law for persons to claim lots on such town site, any person may have entered thereon and improved any lots belonging to such town, such person, after the report of said board of appraisers, and prior to public sale, may purchase any such lots from the judge or corporate authorities of such town for cash, at the appraised values of such lots, pieces or parcels

of land, inclusive of improvements, unless there shall be adverse claimants to any such lots, in which case the respective rights of such claimants shall be determined as hereinafter provided.

[(58-809) 1905, p. 84, sec. 8; reen. R.C. & C.L., sec. 2155; C.S. sec. 3772; I.C.A., sec. 56-709; am. 1975, ch. 214, sec. 5, p. 594.]

58-810. PROCEEDS OF SALE. The proceeds received from such sales shall be disposed of as follows:

1. They shall be applied to pay the expenses of said sale.
2. To discharge any outstanding claims incurred in entering the town site of said town.
3. The surplus, if any, shall be a special fund, to be held by such judge or corporate authorities, to be used in making public improvements in such town.

[(58-810) 1905, p. 84, sec. 9; reen. R.C. & C.L., sec. 2156; C.S., sec. 3773; I.C.A., sec. 56-710; am. 1975, ch. 214, sec. 6, p. 594.]

58-811. SUITS TO DETERMINE ADVERSE CLAIMS. In case there shall be adverse claimants to such lands, or to any part, parcel or share thereof, either party may bring a suit against the adverse claimant or claimants, in the district court of the judicial district, in the county in which the land shall be situated: provided, that no judge of the district court who has been an adverse claimant, directly or indirectly, of any portion of the lands embraced within such town, or who is a party to any action brought to determine the right to a conveyance of any portion of the lands within such town, shall entertain, hear or determine any action brought to determine any such claims, by or between any parties whomsoever; but in all such cases, if the cause shall be pending in a district court, the judge thereof shall order all papers, with a transcript of the record in said cause, to be transmitted to another judicial district, as in cases of change of venue: provided, that the laws applicable to a change of venue shall apply to actions brought under this chapter. Suits shall be brought against adverse claimants as defendants, and it shall not be necessary to make the district judge or corporate authorities parties thereto. The complaint must show what interest or estate in the lands in controversy the plaintiff claims.

[(58-811) 1874, p. 698, sec. 5; R.S., sec. 2204; am. 1905, p. 84, sec. 10; reen. R.C. & C.L., sec. 2157; C.S., sec. 3774; I.C.A., sec. 56-711.]

58-812. FIRST SETTLER ENTITLED TO LAND. Upon the trial in such action either party may give in evidence the statement mentioned in this chapter, deposited by the other, or by the person under whom he claims, with the corporate authorities or judge holding the title to the lands in controversy therein, and the person who made the first claim to, and settlement upon such lands, either in person or by agent, servant or tenant, or those claiming under him, must in such actions be deemed to have the right to such lands, provided there has been no abandonment thereof since such settlement.

[(58-812) 1874, p. 698, sec. 6; R.S., sec. 2205; reen. R.C. & C.L., sec. 2158; C.S., sec. 3775; I.C.A., sec. 56-712.]

58-813. NOTICE TO COMMENCE SUIT. In case suits shall not be brought for the purpose of settling or determining any controversy to any such lands by either of the adverse claimants, within sixty (60) days after the expiration of the time for filing the statement as provided in section [58-804](#)[, Idaho Code], it shall be the duty of the judge or corporate authorities to give notice to the adverse claimant last filing his claim, or if there be more than one adverse claim filed, then to the last adverse claimant, directing him to commence his action against the other claimants as defendants to determine their respective rights to said lands, within twenty (20) days from service of notice on him, and in case such adverse claimant neglects or refuses to commence the action within the time specified, he shall be deemed to have waived and relinquished all right, title, interest and estate in the lands so in controversy, and be forever barred from asserting or claiming any right, title, interest or estate therein. Such notice may be served by the sheriff of the county in which said town is situated, or by any person over the age of twenty-one (21) years, and proof of such service may be made as in case of summons issued out of the district court. If the person or sheriff to whom said notice is given to serve, shows by affidavit or return that such adverse claimant can not be found in the county in which said lands are situated, service of such notice shall be by publication thereof for three (3) weeks in some newspaper published in the county where the lands are situated, and if no paper be published in said county, then by posting such notice in three (3) public places in the town where the lands are situate, and in addition thereto said notice shall be mailed to such adverse claimant at his residence or usual place of abode. In case there be more than one adverse claimant, and the last neglect or refuse to commence his action after service of notice as aforesaid, said judge or corporate authority shall serve like notice on the last adverse claimant until all have been notified as aforesaid. The provisions of this section shall apply to, and have the same effect of notice and forfeiture as against any adverse claimants to, lands and lots in town sites heretofore entered under said act of congress, after notice shall have been served as aforesaid.

[(58-813) 1874, p. 698, sec. 7; R.S., sec. 2206; am. 1905, p. 84, sec. 11; reen. R.C. & C.L., sec. 2159; C.S., sec. 3776; I.C.A., sec. 56-713.]

58-814. SERVICE OF SUMMONS. Whenever complaint shall be filed in any action as provided in this chapter, summons shall issue against the proper parties, and shall be served upon the proper person or persons named therein, as in other cases provided by law, or upon the agent or attorney of such person or persons who shall have filed the statements as required in section [58-804](#)[, Idaho Code]; and in case service cannot be had upon the defendant, his agent or attorney, service may be made by publication thereof as provided by law.

[(58-814) 1905, p. 84, sec. 12; reen. R.C. & C.L., sec. 2160; C.S., 3777; I.C.A., sec. 56-714.]

58-815. CONVEYANCE OF LAND IN SUIT. The corporate authorities or judge, as the case may be, shall convey said lands in accordance with the judgments entered in such actions: provided, however, in case of appeals or writs of error to the Supreme Court, such conveyance shall not be made until final determination by the decision of the Supreme Court.

[(58-815) 1905, p. 84, sec. 13; reen. R.C. & C.L., sec. 2161; C.S., sec. 3778; I.C.A., sec. 56-715; am. 1975, ch. 214, sec. 7, p. 594.]

58-816. EXPENSE OF ENTRY A CHARGE ON LAND. As soon as may be after the expiration of sixty (60) days after the first publication of the notice mentioned in section [58-803](#)[, Idaho Code], the corporate authorities or judge holding the title to the lands described in such notice must make a true statement in writing containing a true account of all moneys expended in the acquisition of the title and the administration or execution of the trust to that time, including all moneys paid for the purchase of such land, all necessary traveling expenses, all moneys paid for posting and publishing notices, and the proof thereof, all costs of surveys and platting such lands, all necessary attorneys' fees and costs of suit or actions necessarily prosecuted or defended in obtaining title to said lands, and for all other necessary and proper expenses incident to such trust, and also a true account of his time and service in the business of such trust to that time. The whole amount of such account for moneys so advanced, and reasonable charges for compensation as herein provided, is a charge upon the lands so held in trust, in favor of the trustee, and must be paid by the several claimants entitled to such lands who have filed their claims within the time mentioned in section [58-804](#), in proportion to the several quantities of shares thereof to which they are respectively entitled: provided, however, in incorporated cities or villages where the lands claimed are, owing to location, contour of surface or other causes, of different values, the city council, trustees or other legislative body of such city or village, may by ordinance fix the part or portion of the moneys so expended by such trustee and which are a charge against such lands, as herein provided, which shall be charged to each parcel of land, which shall be as near as may be in accordance with the relative values of the different parcels of land.

[(58-816) R.S., sec. 2207; am. 1905, p. 84, sec. 14; reen. R.C. & C.L., sec. 2162; C.S., sec. 3779; I.C.A., sec. 56-716.]

58-817. TENDER OF CHARGES AND FEES. Before the corporate authorities or judge holding any such lands in trust as aforesaid can be required to execute, acknowledge or deliver any conveyance thereof, or of any lot, block, parcel or share thereof, as hereinbefore mentioned, to any person claiming to be entitled to such conveyance, such person must pay or tender the sum of money chargeable upon the part thereof to be conveyed according to the statement or account mentioned in the last section, together with interest on each of the money items of such account at the rate of 24 per cent per annum from the time when the same accrued, and also such further sums as are a reasonable compensation for preparing, executing and acknowledging such conveyance, and the fees of the officer taking the acknowledgment thereof.

[(58-817) 1874, p. 698, sec. 9; am. R.S., sec. 2208; am. R.C., sec. 2163; reen. C.L., sec. 2163; C.S., sec. 3780; I.C.A., sec. 56-717.]

58-818. CONVEYANCE TO CLAIMANTS. After the expiration of sixty (60) days from the time of the first publication of the notice, the corporate authorities or judge holding the title to the lands described therein, must, upon a reasonable demand or request, and upon the payment or tender of the moneys mentioned in the last preceding section [58-817, Idaho Code], execute, acknowledge and deliver to each and every claimant, association

or company of claimants of such lands, or of any lot, block, parcel or share thereof, a conveyance thereof, according to the statement made and deposited as aforesaid: provided, that no such conveyance must be executed, acknowledged or delivered for any part, lot, block or share of such lands to which there are adverse claimants, until the controversy thereon is settled or determined in the manner hereinbefore prescribed, and whenever any such controversy is so settled or determined, the said corporate authorities or judge must, upon the like demand or request, and the like payment or tender, convey the land, or interest, or share therein, the right to which has been thus ascertained, to the person thereby determined to be entitled to the same.

[(58-818) 1874, p. 698, sec. 10; am. R.S., sec. 2209; reen. R.C. & C.L., sec. 2164; C.S., sec. 3781; I.C.A., sec. 56-718.]

58-819. RIGHTS OF TRUSTEE AS CLAIMANT. In case any judge or other officer who enters any such lands under the provisions of the acts of congress and thus becomes the sole trustee thereof, is possessed of, or entitled to, any part, lot, block or share thereof, according to and by virtue of the provisions of this chapter, and the same is not claimed adversely to him by any person, he is seized and possessed of the title thereto and estate therein to his own use in fee simple, absolute, free and discharged of such trust, and no conveyance other than the patent of the lands including the same is necessary to perfect his absolute title thereto. In case any such land or share therein so claimed by said judge or other officer, is claimed by any other person adversely to him, the conflicting claims must be adjusted or determined by settlement, arbitration or action as hereinbefore prescribed.

[(58-819) 1874, p. 698, sec. 11; am. R.S., sec. 2210; am. R.C., sec. 2165; reen. C.L., sec. 2165; C.S., sec. 3782; I.C.A., sec. 56-719.]

58-820. TRUSTEE HOLDS TITLE FROM ENTRY. For the purpose of determining the rights of adverse claimants to any land so entered, the corporate authorities or judge hereinbefore mentioned is deemed to possess and hold the title to such lands in trust from the time of the entry thereof.

[(58-820) 1874, p. 698, sec. 12; reen. R.S., sec. 2211; reen. R.C. & C.L., sec. 2166; C.S., sec. 3783; I.C.A., sec. 56-720.]

58-821. COSTS OF SUIT. The costs in the actions mentioned in this chapter are recoverable as in other civil actions.

[(58-821) 1874, p. 698, sec. 13; am. R.S., sec. 2212; reen. R.C. & C.L., sec. 2167; C.S., sec. 3784; I.C.A., sec. 56-721.]

58-822. CONTRACTS FOR CONVEYANCE. Every person in whom the title to any lands is vested under and by the provisions of this chapter may be compelled to specifically perform any prior valid agreement for a conveyance.

[(58-822) 1874, p. 698, sec. 14; R.S., sec. 2213; reen. R.C. & C.L., sec. 2168; C.S., sec. 3785; I.C.A., sec. 56-722.]

58-823. SUCCESSOR IN OFFICE SUCCEEDS TO TRUST. The successor in office of any judge, mayor or other officer who entered lands under said laws of the

United States, or who was trustee for the execution of the trust in that behalf, whether such officer or trustee acted under this chapter, or under any other general law, or any local or special act relating to any city or incorporated town, shall succeed to the trust, and shall have authority to execute the same as fully as his predecessor, the original trustee, might have done while in office; and when a mayor's or other trustee's deed of any block, lot, share or parcel of any such town site has been lost or can not be found, and there is no record thereof in the office of the county recorder, such successor, upon application to him in writing, duly verified, showing that no mayor's or other trustee's deed can be found to the part or parcel of such town site described in the application, and that no such deed thereto is of record in the office of the recorder of the county, and that the applicant, his ancestor, predecessor or grantor has been in the quiet, peaceable and undisturbed possession of said premises under claim of title for the full period of five (5) years next before the application, must, by good and sufficient conveyance, grant and convey the title of the premises described in the application to the applicant, which conveyance must be executed and acknowledged, and shall take and have effect as provided by section [58-802](#)[, Idaho Code], for which and the acknowledgment thereof the trustee shall be entitled to receive a fee of five dollars (\$5.00) from the applicant: provided, that in every such application for a deed under the provisions of this section, where an adverse claim to such parcel of said town site shall be made to such mayor for the same, the mayor in every such case shall remit the parties claiming deeds to the same to a court of competent jurisdiction to settle the same, and when so determined, then the said mayor shall execute such deed to the prevailing party.

[(58-823) 1874, p. 698, sec. 15; R.S., sec. 2214; am. 1890-1891, p. 201, sec. 1; reen. 1899, p. 141, sec. 1; am. R.C., sec. 2169; reen. C.L., sec. 2169; C.S., sec. 3786; I.C.A., sec. 56-723.]