
Civil Rights & Judiciary Committee

HB 2140

Brief Description: Modifying laws related to adverse possession to protect legal owners of property.

Sponsors: Representatives Griffey, Couture, Jacobsen, Graham and Sandlin.

Brief Summary of Bill

- Prohibits claims to real property based on open and notorious possession when there is a properly recorded instrument in the auditor's office of the county in which the real estate is situated, the instrument establishes ownership and identifiable boundaries of the property, and the disputed claim relates to line boundaries that have been mistaken by abutting or adjacent property owners.

Hearing Date: 1/23/24

Staff: John Burzynski (786-7133).

Background:

Adverse Possession in General.

Adverse possession is a legal doctrine created at common law and codified in state statute that recognizes an interest in real property may, under certain circumstances, be lost to another who has made actual adverse use of the property for a sufficient period of time. The doctrine often arises in the context of boundary disputes between adjoining neighbors.

The Washington Supreme Court has explained that "[t]he doctrine of adverse possession arose at law, toward the aim of serving specific public policy concerns, 'that title to land should not long be in doubt, that society will benefit from someone's making use of land the owner leaves idle,

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and that third persons who come to regard the occupant as owner may be protected.'"

State law generally provides that actions for the recovery of real property or possession of real property must be brought within 10 years or the claim is barred. A claim to recover property can only be brought if the plaintiff, or their ancestor, predecessor, or grantor, was seized or possessed of the property within the 10 years prior to the action.

To establish a claim of adverse possession that bars recovery of the property, the possession at issue must be: (1) open and notorious; (2) actual and uninterrupted; (3) exclusive; and (4) hostile. Possession meeting these elements must typically exist for a period of 10 years before a person is divested of their property and loses the right to reclaim it. The person claiming adverse possession of another's land has the burden of proving each element.

Generally, a claim of adverse possession requires no showing of good faith or a mistaken belief on the claimant's part, except as noted further below for special statutory claims of adverse possession with shortened time requirements. The Washington Supreme Court has noted that "the doctrine of adverse possession was formulated at law to protect both those who knowingly appropriated the land of others, and those who honestly held the property in the belief that it was their own."

Under limited circumstances, an adverse possessor can gain title to property in a seven-year time period instead of ten years.

Adverse Possession Under Title Deducible of Record.

The time for an adverse possession claim to vest in any lands, tenements, or hereditaments is reduced to seven years when the claimant:

- is in actual, open, and notorious possession for seven successive years; and
- has a connected title to the land, in law or equity, deducible of record from Washington or the United States, or from other specified persons authorized by law to sell land for nonpayment of taxes or by execution or court order.

If the possessor acquires title after taking possession, the seven-year period begins to run from the time of acquiring title.

Adverse Possession Under Claim and Color of Title in Good Faith.

The time for an adverse possession claim to vest in any lands or tenements is reduced to seven years when the claimant:

- is in actual, open, and notorious possession of lands or tenements for seven successive years;
- takes possession under claim and color of title, made in good faith; and
- pays all legally assessed taxes on the lands or tenements for seven successive years.

Claims to adverse possession under this standard do not apply to lands or tenements owned by the United States, Washington, school lands, or lands held for any public purpose; or lands or

tenements when the holder of title is a person under 18 years of age, or a person who has been placed under guardianship or conservatorship under state law.

Exceptions for Forestland.

Claims to adverse possession of forestland require the claimant to establish, by clear and convincing evidence, that the claimant made or erected substantial improvements that remained entirely or partially on the lands for at least ten years. In the interests of justice, a court may determine the making, erecting, and continuous presence of substantial improvements on the land, in the absence of additional acts by the claimant, are insufficient to establish open and notorious possession. This heightened standard for establishing adverse possession claims to forestland does not apply if the claimant occupied the lands at issue and made continuous use of the land for at least ten years in good faith reliance on location stakes or other boundary markers set by a registered land surveyor purporting to establish the boundaries of property to which the adverse claimant has record title.

Costs and Legal Fees.

State law authorizes courts to award costs and reasonable attorneys' fees to the prevailing party in legal actions asserting title to real property by adverse possession if the court determines such an award to be equitable and just.

Construction.

The sections of state law governing adverse possession must be liberally construed for the purposes set forth in those sections.

Summary of Bill:

Adverse Possession Under Title Deducible of Record.

The section of state law governing seven-year adverse possession claims when the claimant has a connected title in law or equity deducible of record from the United States, Washington, or other specified persons, is amended to include a new subsection. Pursuant to this new subsection, a claim to property on the grounds of open and notorious possession cannot divest another person of property when:

- there is a properly recorded instrument in the auditor's office of the county in which the real estate is situated;
- the instrument establishes ownership and identifiable boundaries of the property; and,
- the disputed claim relates to line boundaries that have been mistaken by abutting or adjacent property owners.

Costs and Legal Fees.

The provision of state law authorizing courts to award costs and reasonable attorneys' fees to the prevailing party in an adverse possession claim, if the court determines such award to be equitable and just, is removed.

Construction.

The section of state law that requires all sections governing adverse possession to be liberally construed for the purposes set forth in those sections is repealed.

Appropriation: None.

Fiscal Note: Requested on January 18, 2024.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.