

By Senator Dockery

15-01042-11

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1 A bill to be entitled
2 An act relating to adverse possession; amending s.
3 95.18, F.S.; specifying that occupation and
4 maintenance of property satisfies the requirements for
5 possession for purposes of gaining title to property
6 via adverse possession without color of title;
7 requiring a person seeking property by adverse
8 possession to use a uniform adverse possession return
9 provided by the Department of Revenue; requiring the
10 property appraiser to notify the owner of record of an
11 adverse possession claim; requiring that a person
12 claiming adverse possession attest to the truthfulness
13 of the information provided in the return under
14 penalty of perjury; authorizing the Department of
15 Revenue to adopt emergency rules; requiring that the
16 property appraiser add certain information related to
17 the adverse possession claim to the parcel information
18 on the tax roll and prescribing conditions for removal
19 of that information; prescribing procedures and
20 requirements for adverse possession claims against a
21 portion of an identified parcel or against property to
22 which the property appraiser has not assigned a parcel
23 number; requiring the property appraiser to include a
24 notation of an adverse possession filing in any
25 searchable property database maintained by the
26 property appraiser; amending s. 197.212, F.S.;
27 excluding property subject to adverse possession
28 claims without color of title from provisions
29 authorizing the tax collector not to send a tax notice

15-01042-11

20111142

30 for minimum tax bills; creating s. 197.3335, F.S.;

31 requiring the tax collector to determine whether a

32 duplicate tax payment is made by an adverse possessor;

33 providing for priority of tax payments made by an

34 owner of record who is subject to an adverse

35 possession claim; providing for a refund of tax

36 payments under certain conditions; providing for

37 retroactive application of certain provisions

38 governing procedures for administering a claim of

39 adverse possession and establishing tax priority for

40 owners of record; providing an effective date.

41

42 Be It Enacted by the Legislature of the State of Florida:

43

44 Section 1. Section 95.18, Florida Statutes, is amended to

45 read:

46 95.18 Real property actions; adverse possession without

47 color of title.—

48 (1) When the occupant has, or those under whom the occupant

49 claims have, been in actual continued occupation of real

50 property for 7 years under a claim of title exclusive of any

51 other right, but not founded on a written instrument, judgment,

52 or decree, the property actually occupied is ~~shall be~~ held

53 adversely if the person claiming adverse possession made a

54 return, as required under subsection (3), of the property by

55 proper legal description to the property appraiser of the county

56 where it is located within 1 year after entering into possession

57 and has subsequently paid, subject to s. 197.3335, all taxes and

58 matured installments of special improvement liens levied against

15-01042-11

20111142__

59 the property by the state, county, and municipality.

60 (2) For the purpose of this section, property is ~~shall be~~
61 deemed to be possessed if the property has been ~~in the following~~
62 ~~eases only:~~

63 (a) ~~When it has been~~ Protected by substantial enclosure;~~-~~

64 (b) ~~When it has been usually~~ Cultivated or improved in a
65 usual manner; or-

66 (c) Occupied and maintained.

67 (3) A person claiming adverse possession under this section
68 must make a return of the property by providing to the property
69 appraiser a uniform return on a form provided by the Department
70 of Revenue. The return must include all of the following:

71 (a) The name and address of the person claiming adverse
72 possession.

73 (b) The date that the person claiming adverse possession
74 entered into possession of the property.

75 (c) A full and complete legal description of the property
76 that is subject to the adverse possession claim.

77 (d) A notarized attestation clause that states:

78 UNDER PENALTY OF PERJURY, I DECLARE THAT I HAVE READ
79 THE FOREGOING RETURN AND THAT THE FACTS STATED IN IT
80 ARE TRUE AND CORRECT.

81 (e) A description of the use of the property by the person
82 claiming adverse possession.

83 (f) A receipt to be completed by the property appraiser.

84
85 The property appraiser shall refuse to accept a return if it
86 does not comply with this subsection. The executive director of
87 the Department of Revenue is authorized, and all conditions are

15-01042-11

20111142

88 deemed met, to adopt emergency rules under ss. 120.536(1) and
89 120.54(4) for the purpose of implementing this subsection. The
90 emergency rules shall remain in effect for 6 months after
91 adoption and may be renewed during the pendency of procedures to
92 adopt rules addressing the subject of the emergency rules.

93 (4) Upon the submission of a return, the property appraiser
94 shall:

95 (a) Send, via regular mail, a copy of the return to the
96 owner of record of the property that is subject to the adverse
97 possession claim, as identified by the property appraiser's
98 records.

99 (b) Inform the owner of record that, under s. 197.3335, any
100 tax payment made by the owner of record before April 1 following
101 the year in which the tax is assessed will have priority over
102 any tax payment made by an adverse possessor.

103 (c) Add a notation at the beginning of the first line of
104 the legal description on the tax roll that an adverse possession
105 claim has been submitted.

106 (d) Maintain the return in the property appraiser's
107 records.

108 (5) (a) If a person makes a claim of adverse possession
109 under this section against a portion of a parcel of property
110 identified by a unique parcel identification number in the
111 property appraiser's records:

112 1. The person claiming adverse possession shall include in
113 the return submitted under subsection (3) a full and complete
114 legal description of the property sufficient to enable the
115 property appraiser to identify the portion of the property
116 subject to the adverse possession claim.

15-01042-11

20111142

117 2. The property appraiser may refuse to accept the return
118 if the portion of the property subject to the claim cannot be
119 identified by the legal description provided in the return, and
120 the person claiming adverse possession must obtain a survey of
121 the portion of the property subject to the claim in order to
122 submit the return.

123 (b) Upon submission of the return, the property appraiser
124 shall follow the procedures under subsection (4), and may not
125 create a unique parcel identification number for the portion of
126 property subject to the claim.

127 (c) The property appraiser shall assign a fair and just
128 value to the portion of the property, as provided in s. 193.011,
129 and provide this value to the tax collector to facilitate tax
130 payment under s. 197.3335(3).

131 (6) (a) If a person makes a claim of adverse possession
132 under this section against property to which the property
133 appraiser has not assigned a parcel identification number:

134 1. The person claiming adverse possession must include in
135 the return submitted under subsection (3) a full and complete
136 legal description of the property which is sufficient to enable
137 the property appraiser to identify the property subject to the
138 adverse possession claim.

139 2. The property appraiser may refuse to accept a return if
140 the property subject to the claim cannot be identified by the
141 legal description provided in the return, and the person
142 claiming adverse possession must obtain a survey of the property
143 subject to the claim in order to submit the return.

144 (b) Upon submission of the return, the property appraiser
145 shall:

15-01042-11

20111142

146 1. Assign a parcel identification number to the property
147 and assign a fair and just value to the property as provided in
148 s. 193.011;

149 2. Add a notation at the beginning of the first line of the
150 legal description on the tax roll that an adverse possession
151 claim has been submitted; and

152 3. Maintain the return in the property appraiser's records.

153 (7) A property appraiser must remove the notation to the
154 legal description on the tax roll that an adverse possession
155 claim has been submitted and shall remove the return from the
156 property appraiser's records if:

157 (a) The person claiming adverse possession notifies the
158 property appraiser in writing that the adverse possession claim
159 is withdrawn;

160 (b) The owner of record provides a certified copy of a
161 court order, entered after the date the return was submitted to
162 the property appraiser, establishing title in the owner of
163 record;

164 (c) The property appraiser receives a certified copy of a
165 recorded deed, filed after the date of the submission of the
166 return, from the person claiming adverse possession to the owner
167 of record transferring title of property along with a legal
168 description describing the same property subject to the adverse
169 possession claim; or

170 (d) The owner of record or the tax collector provides to
171 the property appraiser a receipt demonstrating that the owner of
172 record has paid the annual tax assessment for the property
173 subject to the adverse possession claim during the period that
174 the person is claiming adverse possession.

15-01042-11

20111142

175 (8) The property appraiser shall include a clear and
176 obvious notation in the legal description of the parcel
177 information of any public searchable property database
178 maintained by the property appraiser that an adverse possession
179 return has been submitted to the property appraiser for a
180 particular parcel.

181 Section 2. Section 197.212, Florida Statutes, is amended to
182 read:

183 197.212 Minimum tax bill.—On the recommendation of the
184 county tax collector, the board of county commissioners may
185 adopt a resolution instructing the collector not to mail tax
186 notices to a taxpayer if ~~when~~ the amount of taxes shown on the
187 tax notice is less than an amount up to \$30. The resolution
188 shall also instruct the property appraiser that he or she may
189 ~~shall~~ not make an extension on the tax roll for any parcel for
190 which the tax would amount to less than an amount up to \$30. The
191 minimum tax bill so established may not exceed an amount up to
192 \$30. This section does not apply to a parcel of property that is
193 subject to an adverse possession claim pursuant to s. 95.18.

194 Section 3. Section 197.3335, Florida Statutes, is created
195 to read:

196 197.3335 Tax payments when property is subject to adverse
197 possession; refunds.—

198 (1) Upon the receipt of a subsequent payment for the same
199 annual tax assessment for a particular parcel of property, the
200 tax collector must determine whether an adverse possession
201 return has been submitted on the particular parcel. If an
202 adverse possession return has been submitted, the tax collector
203 must comply with subsection (2).

15-01042-11

20111142

204 (2) If a person claiming adverse possession under s. 95.18
205 pays an annual tax assessment on a parcel of property before the
206 assessment is paid by the owner of record, and the owner of
207 record subsequently makes a payment of that same annual tax
208 assessment before April 1 following the year in which the tax is
209 assessed, the tax collector shall accept the payment made by the
210 owner of record and refund within 60 days any payment made by
211 the person claiming adverse possession. Such refunds do not
212 require approval from the department.

213 (3) For claims of adverse possession for a portion of a
214 parcel of property as provided in s. 95.18(5), the tax collector
215 may accept a tax payment, based upon the value of the property
216 assigned by the property appraiser under s. 95.18(5)(c), from a
217 person claiming adverse possession for the portion of the
218 property subject to the claim. If the owner of record makes a
219 payment of the annual tax assessment for the whole parcel before
220 April 1 following the year in which the tax is assessed, the tax
221 collector shall refund within 60 days any payment previously
222 made for the portion of the parcel subject to the claim by the
223 person claiming adverse possession.

224 Section 4. This act shall take effect July 1, 2011, and
225 applies to adverse possession claims in which the return was
226 submitted on or after that date, except for the procedural
227 provisions governing the property appraiser's administration of
228 adverse possession claims included in s. 95.18(4)(c) and (d) and
229 (7), Florida Statutes, and the provisions governing the payment
230 of taxes included in s. 197.3335, Florida Statutes, as created
231 by this act, which apply to adverse possession claims for which
232 the return was submitted before, on, or after that date.