

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Judiciary

**BILL:** CS/SB 1166

**INTRODUCER:** Judiciary Committee and Senator Bradley

**SUBJECT:** Adverse Possession

**DATE:** April 17, 2013      **REVISED:** \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Shankle	Cibula	JU	<b>Fav/CS</b>
2.			BI	
3.				
4.				
5.				
6.				

**Please see Section VIII. for Additional Information:**

- |                              |                                     |   |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes        |
| B. AMENDMENTS.....           | <input type="checkbox"/>            | Technical amendments were recommended   |
|                              | <input type="checkbox"/>            | Amendments were recommended             |
|                              | <input type="checkbox"/>            | Significant amendments were recommended |

**I. Summary:**

CS/SB 1166 addresses the problem of individuals squatting illegally on property without disrupting the legitimate purposes of adverse possession. The bill modifies the laws on adverse possession to:

- Require any person to pay at least 2-years of real estate taxes on the property before attempting to file a claim for “adverse possession” on the property.
- Revise the form of returns filed for an adverse possession claim with the property appraiser so it will prominently state that filing the form does not entitle a claimant to immediate possession of the property.
- Subjects a person to criminal penalties for trespassing if the person attempts to occupy or occupies a structure on the basis of adverse possession while the property is under a “stay period” in a pending action for foreclosure.
- Subjects a person to criminal penalties for theft if the person attempts to occupy or occupies a structure on the basis of adverse possession while the property is under a “stay period” in a pending action for foreclosure and then offers the property for lease to another.

This bill substantially amends section 95.18, Florida Statutes.

## II. Present Situation:

### Adverse Possession in Florida

Adverse possession is defined as “[a] method of acquisition of title to real property by possession for a statutory period under certain conditions.”<sup>1</sup> The doctrine of adverse possession “dates back at least to sixteenth century England and has been an element of American law since the country’s founding.”<sup>2</sup> The first adverse possession statute appeared in the United States in North Carolina in 1715.<sup>3</sup>

In Florida, to acquire title by adverse possession without color of title (without having a deed or other recorded document), s. 95.18, F.S., requires a claimant to:

- Show open, continuous, and hostile possession;
- Pay all taxes for a period of 7 years;
- File a return of the land for taxes with the county property appraiser;
- Protect the property by an enclosure or cultivate it; and
- Maintain and occupy the land.

To gain title to the property a person must file a return with the property appraiser within 1 year of entry onto the property, and pay all property taxes and any assessed liens during the possession of the property for 7 consecutive years.<sup>4</sup> The return must include the name and address of the adverse possessor, the date that the person claims to have entered into possession of the property, a legal description of the property and a notarized attestation clause that the adverse possessor affirms that the facts in the return are true.<sup>5</sup> The adverse possessor may demonstrate possession of the property by showing that that he or she:

- Protected the property by a substantial enclosure;
- Cultivated or improved the property; or
- Occupied and maintained the property.<sup>6</sup>

The property appraiser must also notify the owner of record of the filing of the return for adverse possession.<sup>7</sup>

Florida also provides for an additional method of acquiring property through adverse possession if they are making a claim on property under color of title. An adverse possessor may claim property under color of title if he or she can demonstrate that the claim to title is derived from a recorded written document and that he or she has been in possession of the property for at least 7

---

<sup>1</sup> BLACK'S LAW DICTIONARY 53 (6th ed. 1990).

<sup>2</sup> Alexandra B. Klass, *Adverse Possession and Conservation: Expanding Traditional Notions of Use and Possession*, 77 U. COLO. L. REV. 283, 286 (Spring 2006).

<sup>3</sup> Brian Gardiner, *Squatters' Rights and Adverse Possession: A Search for Equitable Application of Property Laws*, 8 IND. INT'L & COMP. L. REV. 119, 129 (1997).

<sup>4</sup> Section 95.18(1), F.S.

<sup>5</sup> Section 95.18(3), F.S.

<sup>6</sup> Section 95.18(2), F.S.

<sup>7</sup> Section 95.18(4), F.S.

years.<sup>8</sup> In such a case whether or not the recorded document is legally valid or is fraudulent or faulty is irrelevant. To demonstrate possession, the adverse possessor must prove that he or she cultivated or improved the land, or protected the land by a substantial enclosure.<sup>9</sup>

Courts have noted that “[p]ublic policy and stability of our society . . . requires strict compliance with the appropriate statutes by those seeking ownership through adverse possession.”<sup>10</sup> The adverse possessor must prove each essential element of an adverse possession claim by clear and convincing evidence.<sup>11</sup> Therefore, the adverse possession claim cannot be “established by loose, uncertain testimony which necessitates resort to mere conjecture.”<sup>12</sup>

### **Abuse of Adverse Possession in Florida**

As a result of the housing crisis in Florida, the increased number of vacant homes under foreclosure has led to a rise in the number of individuals who squat on foreclosed property and attempt to gain title through adverse possession.<sup>13</sup> In some cases individuals are forming companies that lay claim to multiple properties. Often these individuals are not fulfilling the requirements of adverse possession, such as occupying the property in an open and notorious manner.<sup>14</sup>

### **III. Effect of Proposed Changes:**

This bill revises the procedures a person must follow and the conditions that must be satisfied to take title to property through adverse possession. Under the bill, a person must pay municipal, county, and state taxes for at least 2 years prior to filing a return with the property appraiser, giving additional time for the current owner to pay the taxes and assert control over the property.

The bill revises the form of the return filed for an adverse possession claim with the property appraiser so it will prominently state that filing the form does not entitle a claimant to immediate possession of the property.

The bill defines a “stay period” as the time during which real property sought to be adversely possessed is subject to a pending action to foreclose a mortgage or to foreclose a lien by a community association. During this stay period, the 7-year time period required for a property to be adversely possessed does not run.

In addition, the bill subjects a person to criminal penalties for trespassing for attempting to occupy or occupying a structure on the basis of adverse possession while the property is under a stay period. If that person then offers the property for lease to another, the bill subjects the person to criminal penalties for theft.

---

<sup>8</sup> Section 95.16, F.S.

<sup>9</sup> Section 95.16, F.S.

<sup>10</sup> *Candler Holdings Ltd. I v. Watch Omega Holdings, L.P.*, 947 So. 2d 1231, 1234 (Fla. 1st DCA 2007).

<sup>11</sup> *Id.* (citing *Bailey v. Hagler*, 575 So. 2d 679, 681 (Fla. 1st DCA 1991)).

<sup>12</sup> *Id.* (quoting *Grant v. Strickland*, 385 So. 2d 1123, 1125 (Fla. 1st DCA 1980)).

<sup>13</sup> Martha Brannigan, *Miami-Dade Property Appraiser Targets Squatters*, Miami Herald, April 4, 2013 available at <http://www.miamiherald.com/2013/04/02/3320065/miami-dade-property-appraiser.html>.

<sup>14</sup> *Id.*

The bill takes effect July 1, 2013.

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Additional Information:**

A. Committee Substitute – Statement of Substantial Changes:  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS/SB 1166 by Judiciary on April 15, 2013:**

The Committee Substitute replaced the text of the bill and modifies the laws on adverse possession to:

- Require any person to pay at least 2-years of real estate taxes on the property before filing a claim for adverse possession of a property.

- Revise the form of the return filed for an adverse possession claim with the property appraiser so it will prominently state that filing the form does not entitle a claimant to immediate possession of the property.
- Subjects a person to criminal penalties for trespassing if the person attempts to occupy or occupies a structure on the basis of adverse possession while the property is under a “stay period” in a pending action for foreclosure.
- Subjects a person to criminal penalties for theft if the person attempts to occupy or occupies a structure on the basis of adverse possession while the property is under a “stay period” pending action for foreclosure of the property and then offers the property for lease to another.

B. Amendments:

None.