

**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: SB 1166

INTRODUCER: Senator Bradley

SUBJECT: Adverse Possession

DATE: April 12, 2013

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Shankle	Cibula	JU	<b>Pre-meeting</b>
2.			BI	
3.				
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5.				
6.				

**I. Summary:**

SB 1166 specifies additional conditions that a person must satisfy in order to take title to real property through adverse possession. Under these conditions, an adverse possessor:

- Must have actual and continued “control” of the property as opposed to occupying the property. Control is shown by either maintenance or improvement to the exterior of any structure or the land itself.
- May not enter or occupy any structure on the land until the end of the adverse possession period and after a deed has been issued to the possessor.
- Must wait until municipal, county, and state taxes have accrued for at least 2 years before filing a return with the property appraiser.
- Must provide the property appraiser with a notarized attestation from the owner affirming that the property is known to be adversely possessed.
- Must pay any mortgage or liens on the property.

Additionally, the bill prohibits an adverse possessor from applying for adverse possession for more than one property in the state at the same time.

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 years.<sup>8</sup> In such a case whether or not the recorded document is legally valid or is fraudulent or

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<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.

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

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:**

The bill specifies additional conditions that a person must satisfy in order to take title to real property through adverse possession. First the adverse possessor must have actual and continued “control” of the property as opposed to occupying the property. In order for property to be deemed adversely possessed, the adverse possessor may not enter or occupy any structure on the land until the end of the adverse possession period and after a deed has been issued to the possessor. Under the bill, control is shown by either maintenance or improvement to the exterior of any structure or the land itself.

The bill also requires that an adverse possessor wait until municipal, county, and state taxes have accrued for at least 2 years before filing a return with the property appraiser, giving additional time for the current owner to pay the taxes and assert control over the property.

When the adverse possessor files a return with the property appraiser in order to assert possession, the bill requires that a notarized attestation from the owner affirming that the property is known to be adversely possessed. This potentially results in an unintended change adverse possession law. If the owner is impossible to find or is unwilling to provide an attestation, the adverse possessor is effectively barred from ever adversely possessing the property. This provision of the bill would in effect constructively eliminate adverse possession actions. If the Legislature’s intent is to maintain adverse possession as a vehicle to acquire property, it may wish to pursue an alternative concept to that in the bill.

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<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.*

In addition to paying taxes on the property, the bill also requires the adverse possessor to pay any mortgage or liens on the property. Finally, a person may not apply for adverse possession for more than one property in the state at the same time.

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:**

The bill prohibits an adverse possessor from entering any structure until after a deed has been issued to the possessor. Under current law, a successful claim of adverse possession may not result in a deed being issued to the possessor. If no deed is issued, under the bill the possessor would still not have right to enter a structure on the property even though he or she would now be the rightful owner of the property.

Additionally the bill forbids a person from applying for adverse possession for more than one property in the state at the same time. However, the bill does not clarify if one property means one platted lot, contiguous lots, adjacent lots that are in two separate plats, all of the real property assigned a single parcel identification number, one unit in a building, one entire building of units or some other division of land.

Finally, the bill prohibits an adverse possessor from entering any structure on the property being adversely possessed but does not clarify that entry defeats a claim for adverse possession.

## **VII. Related Issues:**

The bill requires that a notarized attestation from the owner affirming that the property is known to be adversely possessed with the return that the possessor is required to file with the property appraiser. If the owner is impossible to find or is unwilling to provide an attestation, this effectively bars a person from ever adversely possessing the property. In effect this requirement eliminates adverse possession actions.

Additionally the bill requires that any lean or mortgage on the property be paid by the adverse possessor. Some liens are unrecorded and the adverse possessor may have no way of knowing of the existence of such leans, making it impossible for him or her to fulfill this requirement in some instances.

## **VIII. Additional Information:**

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

None.

### **B. Amendments:**

None.