

**HOUSE OF REPRESENTATIVES
FINAL BILL ANALYSIS**

BILL #: CS/HB 903

FINAL HOUSE FLOOR ACTION:

SPONSOR(S): Civil Justice Subcommittee; Davis;
Waldman and others

117 Y's

0 N's

COMPANION BILLS: (CS/SB 1166)

GOVERNOR'S ACTION: Approved

SUMMARY ANALYSIS

CS/HB 903 passed the House on April 25, 2013, and subsequently passed the Senate on April 26, 2013. The bill limits adverse possession claims.

Adverse possession is a method of acquiring title to real property by possession of such property for a statutorily defined period of time. It may be accomplished by possession with color of title (some evidence in a recorded, but faulty, document that the occupant owns the property), or without color of title (without having a deed or other recorded document). To acquire title by adverse possession without color of title, a claimant must openly possess the real property, must protect it by an enclosure or cultivate it, must maintain and occupy the land, and must file a form "return for taxes" with the county property appraiser. The claimant must pay all taxes for a period of seven years, and must have filed a return of the land for taxes during the first year of occupation. The property appraiser must also notify the owner of record of the filing of the return for adverse possession.

This bill adds a number of requirements related to adverse possession without color of title. The bill requires that a person who files a return for taxes with the intent of claiming the property by adverse possession must pay all taxes and governmental liens on the property during the course of the possession. It also provides that occupying a structure on the property or leasing the property to another during the term of the adverse possession is a criminal act. Under the terms of the bill, taking occupancy of adversely possessed property is a misdemeanor, and leasing such property to another is punishable under laws against theft, which may be a misdemeanor or felony, based on the amount.

This bill does not appear to have a fiscal impact on state or local governments.

The bill was approved by the Governor on June 28, 2013, ch. 2013-246, L.O.F., and will become effective on July 1, 2013.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Adverse possession is a method of acquiring title to real property by possession of such land for a statutorily defined period of time. There are several means by which adverse possession of real property can lead to title to real property.

To acquire title by adverse possession without color of title (without having a deed or other recorded document), s. 95.18, F.S., provides that a claimant must:

- Show open, continuous, and hostile possession;
- Pay all taxes due for a period of seven 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.

The property appraiser must also notify the owner of record of the filing of a return for adverse possession.¹

Origins of Adverse Possession

The doctrine of adverse possession “dates back at least to sixteenth century England and has been an element of [U.S.] law since the country's founding.”² The first adverse possession statute appeared in the United States in North Carolina in 1715.³

Adverse possession is defined as “[a] method of acquisition of title to real property by possession for a statutory period under certain conditions.”⁴ Generally, an adverse possessor must establish five elements in relationship to possession of the property. The possession must be:

- Open;
- Continuous for the statutory period;
- For the entirety of the area;
- Adverse to the true owner's interests; and
- Notorious.⁵

In most jurisdictions, state statutory law prescribes the limitations period – the period within which the record owner must act to preserve his or her interests in the property – while the state's body of common law governs the nature of use and possession necessary to trigger the running of the statutory time period.⁶ As legal scholars have noted, “[a]dverse possession decisions are inherently fact-specific.”⁷ Therefore, an adverse possessor must establish “multiple elements whose tests are elastic and provide the trier of fact with flexibility and discretion.”⁸

Adverse Possession in Florida

¹ Section 95.18(3), F.S.

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

³ 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).

⁴ *Id.* at 122 (quoting BLACK'S LAW DICTIONARY 53 (6th ed. 1990)).

⁵ *Id.*

⁶ Klass, *supra* note 1, at 287.

⁷ Geoffrey P. Anderson and David M. Pittinos, Adverse Possession After House Bill 1148, 37 COLO. LAW 73, 74 (Nov. 2008).

⁸ *Id.*

In Florida, there are two ways to acquire land by adverse possession, both of which are prescribed by statute.⁹ First, an individual adversely occupying property 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 seven years.¹⁰ It is irrelevant whether the recorded document is legally valid, fraudulent, or faulty. 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.¹¹

Alternatively, in the event a person occupies land continuously without color of title – i.e., without any legal document to support a claim for title – the person may seek title to the property by filing a return with the county property appraiser's office within one year of entry onto the property and paying all property taxes and any assessed liens during the possession of the property for seven consecutive years, so long as the person adhered to the statutory guidelines for proper adverse possession.¹² Similar to claims made with color of title, the adverse possessor may demonstrate possession of the property by showing that he or she made a return of intent to claim the property with the property appraiser¹³ and either:

- Protected the property by a substantial enclosure (typically a fence);
- Cultivated or improved the property; or
- Occupied and maintained the property.¹⁴

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.”¹⁵ Adverse possession is not favored, and all doubts relating to the adverse possession claim must be resolved in favor of the property owner of record.¹⁶ The adverse possessor must prove each essential element of an adverse possession claim by clear and convincing evidence.¹⁷ Therefore, the adverse possession “claim cannot be ‘established by loose, uncertain testimony which necessitates resort to mere conjecture.’”¹⁸

Abuse of the Adverse Possession Process

As a result of foreclosures, a glut of vacant homes has increased the propensity of ‘squatters’ who attempt to gain ownership through adverse possession by illegally occupying homes that have been foreclosed. There have also been instances where these foreclosed home were rented to unsuspecting tenants.

Changes and Effect of Bill

This bill amends s. 95.18, F.S., to:

⁹ *Candler Holdings Ltd. I v. Watch Omega Holdings, L.P.*, 947 So.2d 1231, 1234 (Fla. 1st DCA 2007). In addition to adverse possession, a party may gain use of adversely possessed property by acquiring a prescriptive easement upon a showing of 20 years of adverse use.

¹⁰ Section 95.16, F.S. See also *Bonifay v. Dickson*, 459 So.2d 1089 (Fla. 1st DCA 1984). The Florida Legislature, by acts now embodied in statute, reduced the period of limitations as to adverse possession to 7 years but left at 20 years the period for acquisition of easements by prescription. *Crigger v. Florida Power Corp.*, 436 So.2d 937, 945 (Fla. 5th DCA 1983).

¹¹ Section 95.16, F.S.

¹² Section 95.18(1), F.S. The 1939 Legislature added to what is now s. 95.18(1), F.S., a provision which required that an adverse possessor without color of title must file a tax return and pay the annual taxes on the property during the term of possession. Chapter 19254, s. 1, L.O.F. (1939). A 1974 amendment to the statute eliminated the requirement that taxes be paid annually. Chapter 74-382, s. 1, L.O.F.

¹³ Section 95.18(3), F.S.

¹⁴ Section 95.18(2), F.S.

¹⁵ *Candler Holdings Ltd. I*, 947 So.2d at 1234.

¹⁶ *Id.*

¹⁷ *Id.* (citing *Bailey v. Hagler*, 575 So.2d 679, 681 (Fla. 1st DCA 1991)).

¹⁸ *Id.* (quoting *Grant v. Strickland*, 385 So.2d 1123, 1125 (Fla. 1st DCA 1980)).

- Change the term "occupant" to "possessor;"
- Require that all outstanding taxes and special improvement liens be paid within one year of taking possession;
- Require that the possessor continue to pay liens and taxes for all years of possession;
- Require that the possessor acknowledge in writing that the filing of a return with the county property appraiser does not create a legal right to the property adversely possessed;
- Require that the possessor provide in writing the dates of payment of the outstanding liens and taxes;
- Provide that occupancy of the property adversely possessed is a criminal trespass under s. 810.08, F.S.¹⁹ and
- Provide that leasing the property adversely possessed is a theft under s. 812.014,²⁰ F.S.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have any impact on state revenues.

2. Expenditures:

The bill does not appear to have any impact on state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill does not appear to have any direct economic impact on the private sector.

D. FISCAL COMMENTS:

None.

¹⁹ A trespass in a structure is a misdemeanor of the second degree, punishable by up to 60 days in jail and/or by a fine of up to \$500. Sections 775.082, 775.083, F.S.

²⁰ Depending upon the value of the property, the penalty for theft under the statute can be punishable by up to 30 years imprisonment and/or a fine of up to \$10,000.