

HOUSE BILL REPORT

HB 1572

As Reported By House Committee On:

Government Reform & Land Use

Title: An act relating to quieting title.

Brief Description: Exempting certain lands from adverse possession claims.

Sponsors: Representatives Reams, Romero, Wolfe, Sullivan and Blalock.

Brief History:

Committee Activity:

Government Reform & Land Use: 2/19/97, 3/3/97 [DPS].

HOUSE COMMITTEE ON GOVERNMENT REFORM & LAND USE

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 9 members: Representatives Reams, Chairman; Cairnes, Vice Chairman; Sherstad, Vice Chairman; Romero, Ranking Minority Member; Lantz, Assistant Ranking Minority Member; Bush; Gardner; Mielke and Mulliken.

Minority Report: Without recommendation. Signed by 1 member: Representative Thompson.

Staff: Kimberly Klaiber (786-7156).

Background:

1. Adverse possession overview

In general, the holder of legal title is presumed to have possession of the property in question. The party claiming to have "adversely possessed" certain property has the burden of establishing the existence of each element of an adverse possession claim. The elements of an adverse possession claim have been developed over the years in the courts and by statute.

. *Common Law*

A common law claim of adverse possession requires use of property for 10 years that is open and notorious, actual and uninterrupted, exclusive, hostile, and under a claim

of right made in good faith. Property use is open and notorious when the *true owner* has actual notice of the adverse use throughout the statutory period or the person claiming adverse possession uses the land so that any *reasonable person* would assume that the claimant is the owner. "Hostile" use occurs where the claimant treats the land as his or her own as against the world throughout the statutory period.

In addition to the common law adverse possession doctrine, existing law provides for two other types of adverse possession claims. Both of these statutory adverse possession claims require the claimant to possess a written instrument purporting to confer title and to have paid taxes on the property in question for seven years.

. *Statutory Law*

First, if a person has *actual, open, and notorious* possession of lands or tenements under *claim and color of title made in good faith*, and the person pays all taxes legally assessed on the lands, and has done all these things for a period of *seven* successive years, that person is deemed to be the legal owner. Second, if a person has *color of title made in good faith to vacant and unoccupied land*, and that person pays all taxes legally assessed on the land for seven successive years, that person is deemed to be the legal owner. A person has color of title if he or she has an instrument lending the appearance of title, when in reality there is no title at all, or an instrument that appears to pass title, and that was relied upon as passing title, but which actually failed to do so.

. **Lands that cannot be adversely possessed**

Washington law prohibits two categories of lands from adverse possession claims.

a. *Lands held for public purpose*

There can be no adverse possession claims against lands or tenements owned by the federal or state government, school lands, or any other lands held for *any public purpose*. Lands categorized as "held for public purpose" generally require the government to have *title* to, not just equitable interest in, the land in question.

b. *Lands held by minors and incompetent persons*

Lands owned by minors (under 18) and incompetent persons (defined as "incapacitated") are exempt from claims of adverse possession. If another person has attempted to adversely possess lands owned by a minor or incompetent person, the minor or incompetent person must, within three years of attaining age of majority or ceasing to be incapacitated, commence an action to enforce their ownership rights.

Summary of Substitute Bill: Lands held for public purpose cannot be adversely possessed under either the statutory definition of adverse possession nor under common law adverse possession principles. The definition of "lands held for any public purpose" includes, but is not limited to, plat greenbelts and open space areas dedicated to a *bona fide* homeowner's association or a public agency, which precludes adverse possession of greenbelt/open space areas.

Substitute Bill Compared to Original Bill: Plat greenbelts and open space areas dedicated to a bona fide homeowner's association or a public agency cannot be adversely possessed under either statutory or common law adverse possession. The original bill provided the exemption from adverse possession only under the statutory definition of adverse possession. Technical changes and clarifying language are added.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date of Substitute Bill: Ninety days after adjournment of session in which bill is passed.

Testimony For: Under current law, greenbelts are not immune from adverse possession claims, and as a consequence, people start using these areas as their own private property. People know what the boundaries to their property are and should not be allowed to encroach on common areas. It is unfair to make communities patrol the streets to make sure people are not improperly extending walls that surround their property to encompass more area.

Testimony Against: There are not that many disputes about property boundaries, and a legislative fix is not necessary. When open space is not enforced, people should not be penalized for encroachment.– Public policy has always acknowledged squatters' rights.–

Testified: Representative Cairnes, prime sponsor (pro); Mark Erickson, attorney, city of Olympia (pro); Dennis Adams, real estate developer (pro); Jane Laclergue, Holiday Hills Neighborhood Association (pro); Sue Gordon, homeowner (con); and John Riley, Washington State Bar Association, Real Property Section (con).