

SENATE BILL REPORT

SB 6317

As Reported By Senate Committee On:
Law & Justice, February 6, 1998

Title: An act relating to adverse possession.

Brief Description: Abolishing the adverse possession doctrine.

Sponsors: Senators Zarelli and Stevens.

Brief History:

Committee Activity: Law & Justice: 1/28/98, 2/6/98 [DPS, DNPS].

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: That Substitute Senate Bill No. 6317 be substituted therefor, and the substitute bill do pass.

Signed by Senators Roach, Chair; Hargrove, Long, McCaslin, Stevens and Zarelli.

Minority Report: Do not pass substitute.

Signed by Senators Johnson, Vice Chair; and Thibaudeau.

Staff: Harry Steinmetz (786-7421)

Background: Adverse possession is a process through which a person can acquire title to land and extinguish the landowner's legal title. It has existed since the days of the English common law and rooted in the policy that society is best served by land owners utilizing their land and not allowing the land to be unproductive. Thus, under the adverse possession doctrine, if landowners ignore their land while a third party enters the land and uses it, the third party can gain title to that piece of land.

Under current Washington law, initially enacted in 1854, if a third party has used a piece of land for ten years, he or she may bring an action to acquire title to that property. The use of the land must be actual, open and notorious, hostile, uninterrupted and exclusive. In short, the use must give the landowner notice that someone is using the land and the level of use must be consistent with the nature and locale of the land. Exceptions exist for landowners who are incapacitated. The state of mind of the adverse possessor is not relevant to the action to acquire title. Adverse possession can only occur between private parties.

A typical, modern day, adverse possession case involves a boundary line dispute where a neighbor has built a structure or fence over the boundary line. It has been suggested that landowners in rural areas are losing some of their land through adverse possession. As a result, these landowners are not able to develop their property because they are not able to comply with the requirements of the Growth Management Act.

Summary of Substitute Bill: The common law is modified in four ways. An absolute defense is created where the adverse claimant entered onto the land with the intent of taking title. The adverse claimant is required to show clearly distinguished boundaries on the land he is claiming through adverse possession. It is clarified that an adverse possessor who receives notice by certified mail from the landowner, before the ten-year statute has run, is using the land permissively. This will allow landowners to protect their title without going to court. The superior or appellate court is allowed to award attorney's fees to the prevailing party.

Substitute Bill Compared to Original Bill: The original bill sought to completely abolish the doctrine of adverse possession at common law; the substitute creates a defense to adverse possession, increases the showing necessary to successfully prove adverse possession and allows land owners to take steps to preserve their title without going to court.

Appropriation: None.

Fiscal Note: Not requested.

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

Testimony For: Adverse possession is nothing more than legalized stealing. It is a taking of land without any compensation to the owner. Unscrupulous neighbors are building fences with the intent of taking their neighbors' lands. Boundary disputes are turning violent and the local law enforcement are refusing to protect landowners because they see it as a civil matter. Several landowners have been forced to pay legal fees to protect land they already own. Some judges are granting adverse possession actions with very little showing. Title insurance does not cover this situation, but "clouds on the title" make it difficult sell your land.

Testimony Against: Adverse possession is an effective method of resolving boundary disputes. This bill would force a land survey with every real estate transaction, adding up to \$5,000 to the cost of that transaction. It also would create an unreasonable reliance on land surveyors. This bill will cause people to lose the value of their improvements and force some persons to tear down structures they built ten years ago, just because they were unclear of the exact location of the boundary line. Ultimately, only the lawyers and land surveyors will benefit.

Testifying: Senator Joseph Zarelli, prime sponsor; Mike Duffy; Lindsey Fry; Donald J. Lynch, Gail Edger, Steve Tubbs, WSBA, Real Estate Committee; Betty Schall, Washington Land Title Association.