

FINAL BILL REPORT

ESHB 1026

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Synopsis as Enacted

Brief Description: Changing provisions relating to adverse possession claims.

Sponsors: House Committee on Judiciary (originally sponsored by Representatives Rolfes, Orcutt, Carlyle, Blake, Angel and McCune).

House Committee on Judiciary
Senate Committee on Judiciary

Background:

The doctrine of adverse possession allows a person who without permission physically possesses another's land to make a legal claim against the title holder in order to gain title to the property. For a person to make a successful claim, he or she must have sufficiently possessed the property for a set period of time and meet several additional conditions stemming both from common law and state statutes. Adverse possession claims often arise as a defense to actions for ejectment or to quiet title to a parcel.

Statutes of Limitations. Washington law generally requires plaintiffs or their predecessors to have possessed the land at issue for at least 10 years before an adverse possession action is commenced. In certain situations, state statutes reduce the length of possession necessary. The "payment-of-taxes" statute allows an adverse possessor to gain title in only seven years if, in addition to meeting the usual common-law requirements, he or she has "color of title," has paid all taxes on the land for seven successive years, and has a "good faith" belief that he or she has title. The less-commonly used "connected-title" statute reduces the period to seven years for a possessor who has a title to the land traceable to a public deed.

Common-Law Elements. Judicial decisions generally require an adverse possession to be: (1) open and notorious, such that possession is visible and discoverable to the true owner; (2) actual and uninterrupted, requiring sufficient physical possession or use of the land over a continuous, specified length of time; (3) exclusive, or not shared with the true owner; and (4) hostile, or objectionable to the owner of the land considering the character of possession and locale of the property. Courts presume the holder of legal title to the land has possession, so the party claiming to have adversely possessed the property has the burden of establishing the existence of each element for the requisite period. In Washington, courts do not take account of the adverse possessor's good faith belief, or lack thereof, that he or she owns the land.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Costs and Fees. Adverse possession claimants generally are not required to pay defending parties' legal costs or attorneys' fees. When a landlocked property owner wants to acquire access through a private condemnation of a way of necessity, however, the owner must pay attorneys' fees incurred by the other parties, and for the value of the easement granted.

Summary:

A party who prevails against the holder of recorded title at the time an adverse possession action is filed, or against a later purchaser of the title, may be required to reimburse that holder or purchaser for part or all of any taxes and assessments on the property that the losing party paid during the period of adverse possession. The court also may require the prevailing party to pay to the county treasurer part or all of any taxes and assessments levied on the property after the filing of the claim that are due and remain unpaid at the time of judgment. If the court orders payment or reimbursement of taxes and assessments, the court must decide how to allocate the taxes and assessment based on all the facts and in a way that appears equitable and just.

The court may award costs and reasonable attorneys' fees to the prevailing party in an action asserting title to real property by adverse possession if the court determines that an award is equitable and just.

This act applies to adverse possession actions filed on or after July 1, 2012.

Votes on Final Passage:

House	95	1	
Senate	48	0	(Senate amended)
House			(House refused to concur)
Senate	47	0	(Senate amended)
House	96	1	(House concurred)

Effective: July 22, 2011