

# HOUSE BILL REPORT

## HB 2584

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**As Reported By House Committee On:**  
Law & Justice

**Title:** An act relating to adverse possession.

**Brief Description:** Requiring possession for twenty years before an adverse possession claim may be brought.

**Sponsors:** Representatives Mielke, Pennington, Ogden, Boldt, Koster, Carlson, Sump, DeBolt, B. Thomas, Hatfield, Doumit, Carrell, Mulliken, Zellinsky, Alexander, Clements, Benson, Reams and Dunn.

**Brief History:**

**Committee Activity:**

Law & Justice: 1/27/98, 2/5/98 [DPS].

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### HOUSE COMMITTEE ON LAW & JUSTICE

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 8 members: Representatives Sheahan, Chairman; McDonald, Vice Chairman; Sterk, Vice Chairman; Carrell; Lambert; Mulliken; Robertson and Sherstad.

**Minority Report:** Do not pass. Signed by 5 members: Representatives Costa, Ranking Minority Member; Constantine, Assistant Ranking Minority Member; Cody; Kenney and Lantz.

**Staff:** Edie Adams (786-7180); Daniel Jablonsky (786-5793).

**Background:** Adverse possession began as a common law doctrine and established statutory roots in Washington in the late 1800s. Adverse possession allows a party possessing real property to establish a claim to the title of that real property against the true owner if certain conditions are met.

In order to establish a claim for adverse possession, there must be possession for at least 10 years that is: (1) open and notorious; (2) actual and uninterrupted; (3) exclusive; and (4) hostile. The ultimate test of adverse possession is whether the party claiming it exercised dominion over the land in a manner consistent with the actions a true owner would take. Adverse possession focuses on the nature of the possession, not the thought process of the possessor or record owner.

### Open and Notorious Use:

The open and notorious requirement of an adverse possession claim is met if: (1) the true owner had actual notice of adverse use through the statutory period; or (2) the claimant uses the land so that any reasonable person would assume that the claimant is the owner; in other words, the claimant must show that the true owner knew, or should have known, that the claimant's occupancy constituted an ownership claim.

### Continuity of Possession:

Possession, to be adverse, must have continued for the entire statutory period. If a mutual or successive relationship known as privity is established, then successive periods of occupation may be tacked or united to one another to make up the time of adverse holding.

### Hostile Possession:

For adverse possession purposes, the element of hostility does not import enmity or ill will; rather, it requires only that the claimant treat the land as his own as against the world throughout the statutory period. When a claimant does everything a person could do with a particular property, it is evidence of open hostility of claim. The adverse possessor's subjective belief in whether the land possessed is actually his own is irrelevant. Where a claimant recognizes a superior title in the true owner during the statutory period, the element of hostility or adversity is not established.

Land owned by government entities is exempted from the adverse possession doctrine. Also, where the true owner has given permission to an occupant to use land, an adverse possession claim is not allowed.

An easement by prescription is the right to use another's real property for a certain purpose, such as passage over the property, if certain elements are established. Prescriptive easements are not favored in law, because there is a presumption that when one uses another's property it is done with the owner's permission. The elements necessary for a prescriptive easement are similar to those for adverse possession and are: (1) open and notorious; (2) actual and uninterrupted; (3) exclusive; and (4) hostile. The time requirement necessary to accomplish a prescriptive easement is 10 years.

**Summary of Substitute Bill:** The statutory period of continuous possession required for a claim of adverse possession and easement by prescription is changed from 10 years to 20 years.

The prevailing party in an adverse possession proceeding is required to pay the county auditor the property taxes for the disputed parcel of land equal to the amount paid by another party or the amount owed during the period of adverse possession. The county

auditor is then responsible for reimbursing any party, other than the prevailing party, for any taxes actually paid with regard to the real property during the period of the adverse possession.

Successive periods of occupation by different occupants, for purposes of establishing the requirement for continuity of possession, are no longer allowed to be united or tacked on to each other.

A defense to adverse possession claims is created if the person claiming adverse possession originally entered onto the land with the intent to acquire property rights. Clearly identified boundary lines are added to the necessary requirements for claims of adverse possession. Written notice by certified mail asserting an awareness of trespass within the statutory period defeats a claim of adverse possession by deeming the occupation to be permissive.

**Substitute Bill Compared to Original Bill:** The substitute bill added more requirements for adverse possession claims and created a defense to adverse possession claims. Specifically, the substitute bill:

- Changed the requirement for continuity of possession by prohibiting successive periods of occupation by different occupants from being united or tacked to each other to make up the time requirement for adverse holding;
- Created a defense to adverse possession claims if the person claiming adverse possession originally entered onto the land with the intent to acquire property rights;
- Added clearly identified boundary lines to the necessary requirements for claims of adverse possession; and
- Allows written notice by certified mail asserting an awareness of trespass within the statutory period to defeat a claim of adverse possession by deeming the occupation to be permissive.

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Effective Date of Substitute Bill:** The bill contains an emergency clause and takes effect immediately.

**Testimony For:** Adverse possession allows the taking of title to private property by an individual occupying the property. Adverse possession erodes and violates private property rights. The doctrine of adverse possession is harmful to private property owners who are forced to defend their claims in court against a party occupying the land. The doctrine is out of date and should be modified to make it more difficult for one who occupies another's land to acquire title.

**Testimony Against:** The 10-year statute of limitations for actions to quiet title by adverse possession adequately protects the rights of record owners. Extending the 10-year statute to 20 years would impair the rights of parties in possession. As it currently stands, the law of adverse possession provides a workable solution to boundary disputes and a fair and equitable resolution.

**Testified:** Representative Mielke, prime sponsor; Barbara Lester (pro); Al Lester (pro); Lyndsy Frey (pro); Mike Duffy (pro); Karen Duffy (pro); Brenda Morris (pro); Bryan Wahl, Washington Association of Realtors (neutral); Donald Strutz (pro); Lori Brosius (pro); Roland Hoffer (pro); David Schneider (pro); Gail Egner (pro); Gretchen Valentine, Washington Land Title Association (con); and Steven Tubbs, Washington State Bar Association, Real Property Section (con).