

SENATE BILL REPORT

SB 6055

As Reported By Senate Committee On:
Judiciary, March 3, 1999

Title: An act relating to adverse possession and prescriptive easements.

Brief Description: Providing additional requirements for adverse possession claims.

Sponsors: Senators Heavey, Rossi and Zarelli.

Brief History:

Committee Activity: Judiciary: 3/3/99 [DPS].

SENATE COMMITTEE ON JUDICIARY

Majority Report: That Substitute Senate Bill No. 6055 be substituted therefor, and the substitute bill do pass.

Signed by Senators Heavey, Chair; Kline, Vice Chair; Costa, McCaslin, Roach, Thibaudeau and Zarelli.

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 is rooted in the policy that society is best served by landowners 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 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. 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. Exceptions exist for landowners who are incapacitated. Washington State has enacted statutes to protect specialized landowners, such as owners of timber lands.

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 parts of their land through adverse possession due to the actions of unscrupulous neighbors. As a result, these landowners have had the value of their land diminished.

The prescriptive use doctrine operates in a similar manner and has similar elements. By making use of another's land, the person is allowed an easement to continue using the land. This action is commonly found where there is a land locked parcel and the owner of that parcel travels back and forth across another's land. In rural areas, the general public can gain a use right to a hiking trail that crosses a private owner's land.

Summary of Substitute Bill: The statute of limitations is changed to 15 years for adverse possession and prescriptive easement claims. It also requires 15 years to pass before quiet-title actions may be brought based on adverse possession or prescriptive use rights.

A private landowner is allowed to give permission to anyone using their land without requiring the user to agree at any time during the 20-year period. A certified letter that is delivered to the user is considered conclusive evidence of permission. This cuts off the potential adverse possessor or prescriptive user from eventually gaining title or use rights without requiring the landowner to go to court.

Substitute Bill Compared to Original Bill: The original bill was not considered.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect on August 1, 1999.

Testimony For: None.

Testimony Against: None.

Testified: No one.