
Judiciary Committee

HB 1026

Title: An act relating to adverse possession.

Brief Description: Specifying procedures for adverse possession actions.

Sponsors: Representatives Rolfes, Orcutt, Carlyle, Blake, Angel and McCune.

Brief Summary of Bill

- Requires the higher "clear and convincing evidence" standard of proof for some adverse possession claims.
- Requires a person asserting a claim of adverse possession to pay legal costs and reasonable attorney fees incurred by the party defending against the claim.
- Requires the winning party in any adverse possession case to pay taxes levied on the property during the period of adverse possession that were paid by the other party or that went unpaid.

Hearing Date: 1/13/11

Staff: Parker Howell (786-5793), Edie Adams (786-7180).

Background:

The legal doctrine of adverse possession allows a person who without permission physically possesses another's land to bring a lawsuit against the "true owner" in an attempt to gain legal title to the property. For a plaintiff to bring a successful action, 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.

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.

Rationale: Adverse possession dates to early English legal history when modern ideas of title and possession of land were not clearly separated. The doctrine rests on the idea of conforming title to appearances of possession long held on the ground. An adverse possessor can be thought of having an "inchoate title" until the statute runs out, then having "perfected title."

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: (1) has "color of title" (a document that appears to convey title but does not legally do so); (2) has paid all taxes on the land for seven successive years; and (3) 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.

Burden of Proof: Plaintiffs in civil lawsuits, such as adverse possession actions, generally must prove each element of their claims by a "preponderance of the evidence," the typical burden of proof used in civil jury cases. However, some types of cases require plaintiffs to offer more persuasive proof, such as "clear and convincing evidence." According to the Washington Pattern Instructions for juries, clear and convincing evidence is "evidence that carries greater weight and is more convincing than a preponderance of the evidence." The Washington Pattern Instructions define "preponderance of the evidence" as meaning that "you must be persuaded, considering all the evidence in the case ... that the proposition on which that party has the burden of proof is more probably true than not true."

This higher standard of proof is required in some adverse possession-related actions. For example, an adverse possessor claiming ownership of "forest land" shall not have open and notorious possession unless, as a minimum, he or she establishes by clear and convincing evidence that the adverse claimant has "made or erected substantial improvements" and remained on the land for at least 10 years. Courts also require the higher "clear, cogent and convincing evidence" standard (which means the same thing as clear and convincing evidence) for the doctrine of mutual recognition and acquiescence, a theory related to adverse possession that allows a marked property boundary line to be adjusted when both parties have long considered it to lie in a certain place.

Costs and Fees: Adverse possession plaintiffs generally are not required to pay defending parties' legal costs or attorney fees. When landlocked property owners want to acquire access

through a private condemnation of a way of necessity, however, the owner must pay attorney fees incurred by the other parties, and for the value of the easement granted.

Summary of Bill:

A person asserting a claim of adverse possession must prove each element of his or her case by the higher standard of clear and convincing evidence, rather than by a preponderance of the evidence.

The person asserting adverse possession must pay costs and reasonable attorney fees of the party defending against a claim of adverse possession.

The new burden of proof and requirement to pay costs and fees do not affect adverse possession claims brought under the "connected-title" statute or the "payment-of-taxes" statute. The new requirements also do not apply to the statute governing adverse possession of "forest lands."

The winning party in any adverse possession case must pay all taxes levied on the property during the period of adverse possession that the other party paid or that remain due to the county assessor of the county where the property is located.

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

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.