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## Judiciary Committee

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### HB 1829

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

**Brief Description:** Establishing an honest belief requirement for adverse possession claims.

**Sponsors:** Representatives Goodman and Rodne.

#### Brief Summary of Bill

- Creates an affirmative defense for the record owner of real property against an adverse possession claim that the person who commenced possession of the property did not have an honest belief that he or she was the rightful owner and entitled to possession of the property.

**Hearing Date:** 2/10/15

**Staff:** Edie Adams (786-7180).

#### Background:

Adverse possession is a legal doctrine that allows a party who possesses real property without permission to establish a claim to the title of the real property against the record owner if certain conditions are met. For a person 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 from both statutory and common law. Adverse possession claims often arise as a defense to actions for ejectment or to quiet title to a parcel of land.

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 necessary length of possession to seven years. Under the "payment-of-taxes" statute, an adverse possessor may gain title in seven years if, in addition to meeting the usual common-law requirements, he or she has color of title, has paid all taxes on

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the land for seven successive years, and has a good faith belief that he or she has title to the property.

Under the common law, a person claiming title to real property by adverse possession has the burden of proving the possession to be: (1) open and notorious, meaning that possession is visible and discoverable to the true owner; (2) actual and uninterrupted, requiring sufficient physical possession or use of the land for the entire period; (3) exclusive, meaning that possession is not shared with the owner; and (4) hostile, meaning that the possession is objectionable to the owner considering the character of possession and location of the land.

Courts do not consider the adverse possessor's good faith belief, or lack thereof, that he or she owns the land. The basic test of adverse possession is whether the party claiming adverse possession exercised dominion over the land in a manner consistent with the actions a true owner would take, regardless of the claimant's subjective belief about his or her true interest in the land.

**Summary of Bill:**

In an action asserting ownership to real property acquired by adverse possession, the record owner of the real property has an affirmative defense that the person commencing possession of the real property did not have an honest belief at the time of commencing the possession that he or she was the rightful owner and entitled to possession of the real property.

A person asserting ownership of real property by adverse possession has a rebuttable presumption that the person, or the person's predecessor in interest, commenced possession of the property with an honest belief that he or she was the rightful owner and entitled to possession of the real property.

**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.