

SUBJECT: Allowing adverse possession of property by a cotenant heir in 15 years

COMMITTEE: Judiciary and Civil Jurisprudence — favorable, without amendment

VOTE: 6 ayes — Lewis, Farrar, Farney, Gooden, Hunter, K. King

2 nays — Raymond, S. Thompson

1 absent — Hernandez Luna

SENATE VOTE: On final passage, March 27 — 30-0, on the Local and Uncontested Calendar

WITNESSES: For — Roland Love, Texas Land Title Association; Joe Maley

Against — None

BACKGROUND: Under the Civil Practice and Remedies Code, the doctrine of adverse possession cannot be asserted against a cotenant heir. If there is no deed or title, a person can acquire rights to real property after adversely possessing the property for 10 years, if all requirements are met.

DIGEST: SB 108 would allow a cotenant heir to adversely possess real property against another cotenant heir after 15 years.

Definition. The bill would define cotenant heir as a person who simultaneously acquired an identical, undivided ownership interest in, and the right to possession of, the same real property as one or more individuals. Cotenant heirs could occur through Texas' intestate (no valid will) succession laws or if a cotenant heir had a successor in interest.

Requirements. One or more cotenant heirs of real property could acquire the interests of another cotenant heir through the doctrine of adverse possession. The possessing cotenant heir would have to meet several requirements to acquire the rights of another cotenant heir. The person would have to:

- continuously possess the property for 10 years;
- peaceably and exclusively have possession of the property;
- cultivate, use, or enjoy the property; and
- pay all property taxes on the property within two years of the taxes being due.

Disqualifying actions. The possessing cotenant heir would not be able to assert adverse possession of the property if another cotenant had:

- contributed to the property's taxes or maintenance;
- challenged a possessing cotenant heir's exclusive possession of the property;
- asserted any other claim against a possessing cotenant heir in connection with the property, such as the right rental payments;
- acted to preserve their own interest in the property by filing notice of interest in the applicable county's deed records;
- entered into certain written agreements that did not forfeit their ownership rights.

Claim of adverse possession. To make a claim of adverse possession, the possessing cotenant heir would have to file the appropriate affidavit in the deed records of the county where the property was located. For a month after the affidavit was filed, the person would have to publish a notice in a newspaper that was generally circulated in the county and would have to send a written notice by certified mail to the last known addresses of all other cotenant heirs.

Affidavits. The required affidavits could be filed separately or combined into a single document. The affidavits would have to include a legal description of property, attestations that all requirements for adverse possession were met, and an attestation that there had been no disqualifying actions by other cotenant heirs.

Converting affidavits. In order to interrupt a claim of adverse possession by the possessing cotenant heir, another cotenant heir would have to file a controverting affidavit within five years of that filed by the possessing cotenant heir.

Rights acquired. The possessing cotenant heir would acquire the title and rights to the property, which would prevent all claims by other cotenant

heirs, if:

- no cotenant heir filed a notice of interest in the deed records during the ten years when the adverse possession period was accruing; and
- no controverting affidavit or judgment was filed within five years of the possessing cotenant heir's affidavit.

A bona fide lender for value (*e.g.*, a bank offering a mortgage) could rely on the possessing cotenant heir's affidavit if it had been filed for five years and no controverting affidavit or judgment had been filed.

Acreage. Without a title document, the possessing cotenant heir would only be able to adversely possess 160 acres. If the acreage were enclosed, the possessing tenant could adversely possess all enclosed acreage, even if it exceeded 160 acres. If there were a registered deed that fixed the boundaries of the property, the possessing cotenant's claim could extend to the boundaries specified in the deed.

The bill would take effect September 1, 2013.

**SUPPORTERS
SAY:**

SB 108 would allow owners to gain clarity about their title and rights to a piece of land. Large tracts of land are often passed down from generation to generation without clear title, especially among siblings and their heirs. Specifically, this is a challenge for landowners in rural areas in Texas who want to know if other individuals – perhaps distant relatives – can assert a claim to pieces of land. This bill would provide landowners with a mechanism to identify potentially interested parties or else attain full and clear title to land.

This bill would be especially helpful in the current economy. Property without clear title often cannot be sold, rented, or used as collateral to secure a loan. By allowing landowners to acquire full ownership through adverse possession, this bill would promote clarity, encourage the use and cultivation of resources, and allow the market transfer of land.

This bill would protect against the unintentional loss of property rights. The requirements for adverse possession are difficult to meet, and this bill is narrowly tailored to prevent it from being over-applied in inappropriate circumstances.

OPPONENTS
SAY:

While SB 108 could grant clarity of title to some individuals, it could cause others unintentionally to lose their rights to a piece of land.