

BILL ANALYSIS

S.B. 473
By: West
Judiciary & Civil Jurisprudence
Committee Report (Unamended)

BACKGROUND AND PURPOSE

After Hurricanes Rita, Dolly, and Ike, the Texas Department of Housing and Community Affairs and the Texas Department of Rural Affairs were responsible for the distribution of disaster assistance. One of the programs through which assistance is provided is the federal HOME Investment Partnerships Program, which requires proof of fee simple title in order to be eligible for assistance. According to studies, approximately one out of five households applying for hurricane assistance had at least one title issue. These individuals faced delays in receiving assistance and in those instances where title issues could not be resolved, the applicant was ineligible. Many times the lack of clear title resulted from heirship property, which is property that has been informally passed from one generation to the next absent a will or other formal document.

Existing adverse possession statutes provide a mechanism for individuals to obtain title under similar circumstances but they cannot be used under the heirship property scenario because of requirements that the adverse possession be to the exclusion of all others. This prohibits individuals who have obtained ownership through the rules of intestate succession from utilizing existing adverse possession statutes to obtain fee simple title. S.B. 473, which was an interim recommendation of the Senate Intergovernmental Relations Committee, is a logical expansion of existing adverse possession statutes because it builds upon existing practices and common real property law by providing a mechanism for individuals to obtain insurable title by recording an affidavit of heirship and an affidavit of possession for an acceptable amount of time. Providing individuals in Texas with a mechanism to obtain fee simple title in this manner is the only way to allow for them to receive disaster assistance under the HOME program, since there is no way in which the Texas Legislature can amend the federal requirements.

S.B. 473 amends current law relating to adverse possession of real property by a cotenant heir against other cotenant heirs.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

ANALYSIS

SECTION 1. Amends Subchapter B, Chapter 16, Civil Practice and Remedies Code, by adding Section 16.0265, as follows:

Sec. 16.0265. ADVERSE POSSESSION BY COTENANT HEIR: 15-YEAR COMBINED LIMITATIONS PERIOD. (a) Defines "cotenant heir" in this section.

(b) Authorizes one or more cotenant heirs of real property to acquire the interests of other cotenant heirs in the property by adverse possession under this section if, for a continuous, uninterrupted 10-year period immediately preceding the filing of an affidavit under Subsection (c):

- (1) the possessing cotenant heir or heirs:
 - (A) hold the property in peaceable and exclusive possession;
 - (B) cultivate, use, or enjoy the property; and
 - (C) pay all property taxes on the property not later than two years after the date the taxes become due; and
- (2) no other cotenant heir has:
 - (A) contributed to the property's taxes or maintenance;
 - (B) challenged a possessing cotenant heir's exclusive possession of the property;
 - (C) asserted any other claim against a possessing cotenant heir in connection with the property, such as the right to rental payments from a possessing cotenant heir;
 - (D) acted to preserve the cotenant heir's interest in the property by filing notice of the cotenant heir's claimed interest in the deed records of the county in which the property is located; or
 - (E) entered into a written agreement with the possessing cotenant heir under which the possessing cotenant heir is allowed to possess the property but the other cotenant heir does not forfeit that heir's ownership interest.

(c) Requires the cotenant heir or heirs claiming adverse possession, to make a claim of adverse possession against a cotenant heir under this section, to file in the deed records of the county in which the real property is located an affidavit of heirship in the form prescribed by Section 52A (Form of Affidavit of Facts Concerning Identity of Heirs), Probate Code, and an affidavit of adverse possession. Provides that the affidavits may be filed separately or combined into a single instrument. Requires that the affidavit of adverse possession include:

- (1) a legal description of the property that is the subject of the adverse possession;
- (2) an attestation that each affiant is a cotenant heir of the property who has been in peaceable and exclusive possession of the property for a continuous, uninterrupted period during the 10 years preceding the filing of the affidavit;
- (3) an attestation of cultivation, use, or enjoyment of the property by each affiant during the 10 years preceding the filing of the affidavit;
- (4) evidence of payment by the affiant or affiants of all property taxes on the property as provided by Subsection (b) during the 10 years preceding the filing of the affidavit; and
- (5) an attestation that there has been no action described by Subsection (b)(2) by another cotenant heir during the 10 years preceding the filing of the affidavit.

(d) Requires a cotenant heir to file a controverting affidavit and bring suit to recover the cotenant heir's interest in real property adversely possessed by another cotenant heir under this section not later than the fifth anniversary of the date a

right of adverse possession is asserted by the filing of the affidavits described by Subsection (c).

(e) Provides that if a controverting affidavit or judgment is not filed before the fifth anniversary of the date the affidavits described by Subsection (c) are filed and no notice described by Subsection (b)(2)(D) was filed in the 10-year period preceding the filing of the affidavits under Subsection (c), title vests in the adversely possessing cotenant heir or heirs in the manner provided by Section 16.030 (Title Through Adverse Possession), precluding all claims by other cotenant heirs.

(f) Authorizes a bona fide lender for value without notice accepting a voluntary lien against the real property to secure the adversely possessing cotenant heir's indebtedness or a bona fide purchaser for value without notice to conclusively rely on the affidavits described by Subsection (c) if the affidavits have been filed of record for the period prescribed by Subsection (d), and a controverting affidavit or judgment has not been filed during that period.

(g) Provides that without a title instrument, peaceable and adverse possession is limited in this section to 160 acres, including improvements, unless the number of acres actually enclosed exceeds 160 acres. Provides that if the number of enclosed acres exceeds 160 acres, peaceable and adverse possession extends to the real property actually enclosed.

(h) Provides that peaceable possession of real property held under a duly registered deed or other memorandum of title that fixes the boundaries of the possessor's claim extends to the boundaries specified in the instrument.

EFFECTIVE DATE

September 1, 2011.