

A BILL TO BE ENTITLED

AN ACT

relating to adverse possession of real property by a cotenant heir against other cotenant heirs.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

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

Sec. 16.0265. ADVERSE POSSESSION BY COTENANT HEIR: 15-YEAR COMBINED LIMITATIONS PERIOD. (a) In this section, "cotenant heir" means one of two or more persons who simultaneously acquire identical, undivided ownership interests in, and rights to possession of, the same real property by operation of the applicable intestate succession laws of this state or a successor in interest of one of those persons.

(b) One or more cotenant heirs of real property may 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

1 later than two years after the date the taxes become due; and

2 (2) no other cotenant heir has:

3 (A) contributed to the property's maintenance;

4 (B) challenged a possessing cotenant heir's
5 exclusive possession of the property;

6 (C) asserted any other claim against a possessing
7 cotenant heir in connection with the property, such as the right to
8 rental payments from a possessing cotenant heir; or

9 (D) acted to preserve the cotenant heir's
10 interest in the property by filing notice of the cotenant heir's
11 claimed interest in the deed records of the county in which the
12 property is located.

13 (c) To make a claim of adverse possession against a cotenant
14 heir under this section, the cotenant heir or heirs claiming
15 adverse possession must file in the deed records of the county in
16 which the real property is located an affidavit of heirship in the
17 form prescribed by Section 52A, Texas Probate Code, and an
18 affidavit of adverse possession. The affidavits may be filed
19 separately or combined into a single instrument. The affidavit of
20 adverse possession must include:

21 (1) a legal description of the property that is the
22 subject of the adverse possession;

23 (2) an attestation that each affiant is a cotenant
24 heir of the property who has been in peaceable and exclusive
25 possession of the property for a continuous, uninterrupted period
26 during the 10 years preceding the filing of the affidavit;

27 (3) an attestation of cultivation, use, or enjoyment

1 of the property by each affiant during the 10 years preceding the
2 filing of the affidavit;

3 (4) evidence of payment by the affiant or affiants of
4 all property taxes on the property as provided by Subsection (b)
5 during the 10 years preceding the filing of the affidavit; and

6 (5) an attestation that there has been no action
7 described by Subsection (b)(2) by another cotenant heir during the
8 10 years preceding the filing of the affidavit.

9 (d) A cotenant heir must file a controverting affidavit and
10 bring suit to recover the cotenant heir's interest in real property
11 adversely possessed by another cotenant heir under this section not
12 later than the fifth anniversary of the date a right of adverse
13 possession is asserted by the filing of the affidavits described by
14 Subsection (c).

15 (e) If a controverting affidavit or judgment is not filed
16 before the fifth anniversary of the date the affidavits described
17 by Subsection (c) are filed and no notice described by Subsection
18 (b)(2)(D) was filed in the 10-year period preceding the filing of
19 the affidavits under Subsection (c), title vests in the adversely
20 possessing cotenant heir or heirs in the manner provided by Section
21 16.030, precluding all claims by other cotenant heirs.

22 (f) A bona fide lender for value without notice accepting a
23 voluntary lien against the real property to secure the adversely
24 possessing cotenant heir's indebtedness or a bona fide purchaser
25 for value without notice may conclusively rely on the affidavits
26 described by Subsection (c) if:

27 (1) the affidavits have been filed of record for the

1 period prescribed by Subsection (d); and

2 (2) a controverting affidavit or judgment has not been
3 filed during that period.

4 (g) Without a title instrument, peaceable and adverse
5 possession is limited in this section to 160 acres, including
6 improvements, unless the number of acres actually enclosed exceeds
7 160 acres. If the number of enclosed acres exceeds 160 acres,
8 peaceable and adverse possession extends to the real property
9 actually enclosed.

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

14 SECTION 2. This Act takes effect September 1, 2011.