

1-1 By: West S.B. No. 473
1-2 (In the Senate - Filed February 1, 2011; February 28, 2011,
1-3 read first time and referred to Committee on Jurisprudence;
1-4 March 23, 2011, reported adversely, with favorable committee
1-5 substitute by the following vote: Yeas 6, Nays 0; March 23, 2011,
1-6 sent to printer.)

1-7 A BILL TO BE ENTITLED
1-8 AN ACT

1-9 relating to adverse possession of real property by a cotenant heir
1-10 against other cotenant heirs.

1-11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-12 SECTION 1. Subchapter B, Chapter 16, Civil Practice and
1-13 Remedies Code, is amended by adding Section 16.0265 to read as
1-14 follows:

1-15 Sec. 16.0265. ADVERSE POSSESSION BY COTENANT HEIR: 15-YEAR
1-16 COMBINED LIMITATIONS PERIOD. (a) In this section, "cotenant heir"
1-17 means one of two or more persons who simultaneously acquire
1-18 identical, undivided ownership interests in, and rights to
1-19 possession of, the same real property by operation of the
1-20 applicable intestate succession laws of this state or a successor
1-21 in interest of one of those persons.

1-22 (b) One or more cotenant heirs of real property may acquire
1-23 the interests of other cotenant heirs in the property by adverse
1-24 possession under this section if, for a continuous, uninterrupted
1-25 10-year period immediately preceding the filing of an affidavit
1-26 under Subsection (c):

1-27 (1) the possessing cotenant heir or heirs:

1-28 (A) hold the property in peaceable and exclusive
1-29 possession;

1-30 (B) cultivate, use, or enjoy the property; and

1-31 (C) pay all property taxes on the property not
1-32 later than two years after the date the taxes become due; and

1-33 (2) no other cotenant heir has:

1-34 (A) contributed to the property's taxes or
1-35 maintenance;

1-36 (B) challenged a possessing cotenant heir's
1-37 exclusive possession of the property;

1-38 (C) asserted any other claim against a possessing
1-39 cotenant heir in connection with the property, such as the right to
1-40 rental payments from a possessing cotenant heir;

1-41 (D) acted to preserve the cotenant heir's
1-42 interest in the property by filing notice of the cotenant heir's
1-43 claimed interest in the deed records of the county in which the
1-44 property is located; or

1-45 (E) entered into a written agreement with the
1-46 possessing cotenant heir under which the possessing cotenant heir
1-47 is allowed to possess the property but the other cotenant heir does
1-48 not forfeit that heir's ownership interest.

1-49 (c) To make a claim of adverse possession against a cotenant
1-50 heir under this section, the cotenant heir or heirs claiming
1-51 adverse possession must file in the deed records of the county in
1-52 which the real property is located an affidavit of heirship in the
1-53 form prescribed by Section 52A, Texas Probate Code, and an
1-54 affidavit of adverse possession. The affidavits may be filed
1-55 separately or combined into a single instrument. The affidavit of
1-56 adverse possession must include:

1-57 (1) a legal description of the property that is the
1-58 subject of the adverse possession;

1-59 (2) an attestation that each affiant is a cotenant
1-60 heir of the property who has been in peaceable and exclusive
1-61 possession of the property for a continuous, uninterrupted period
1-62 during the 10 years preceding the filing of the affidavit;

1-63 (3) an attestation of cultivation, use, or enjoyment
1-64 of the property by each affiant during the 10 years preceding the

2-1 filing of the affidavit;

2-2 (4) evidence of payment by the affiant or affiants of
 2-3 all property taxes on the property as provided by Subsection (b)
 2-4 during the 10 years preceding the filing of the affidavit; and

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

2-8 (d) A cotenant heir must file a controverting affidavit or
 2-9 bring suit to recover the cotenant heir's interest in real property
 2-10 adversely possessed by another cotenant heir under this section not
 2-11 later than the fifth anniversary of the date a right of adverse
 2-12 possession is asserted by the filing of the affidavits described by
 2-13 Subsection (c).

2-14 (e) If a controverting affidavit or judgment is not filed
 2-15 before the fifth anniversary of the date the affidavits described
 2-16 by Subsection (c) are filed and no notice described by Subsection
 2-17 (b)(2)(D) was filed in the 10-year period preceding the filing of
 2-18 the affidavits under Subsection (c), title vests in the adversely
 2-19 possessing cotenant heir or heirs in the manner provided by Section
 2-20 16.030, precluding all claims by other cotenant heirs.

2-21 (f) A bona fide lender for value without notice accepting a
 2-22 voluntary lien against the real property to secure the adversely
 2-23 possessing cotenant heir's indebtedness or a bona fide purchaser
 2-24 for value without notice may conclusively rely on the affidavits
 2-25 described by Subsection (c) if:

2-26 (1) the affidavits have been filed of record for the
 2-27 period prescribed by Subsection (d); and

2-28 (2) a controverting affidavit or judgment has not been
 2-29 filed during that period.

2-30 (g) Without a title instrument, peaceable and adverse
 2-31 possession is limited in this section to 160 acres, including
 2-32 improvements, unless the number of acres actually enclosed exceeds
 2-33 160 acres. If the number of enclosed acres exceeds 160 acres,
 2-34 peaceable and adverse possession extends to the real property
 2-35 actually enclosed.

2-36 (h) Peaceable possession of real property held under a duly
 2-37 registered deed or other memorandum of title that fixes the
 2-38 boundaries of the possessor's claim extends to the boundaries
 2-39 specified in the instrument.

2-40 SECTION 2. This Act takes effect September 1, 2011.

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