

BILL ANALYSIS

S.B. 108
By: West
Judiciary & Civil Jurisprudence
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Property that has been informally passed from one generation to another, absent a will or other formal documentation, is sometimes referred to as "heirship property." Informal possession of real property can cause hardships for property owners, particularly when there are multiple cotenant interests. Concerns have been raised that many informal property owners are unable to secure resources to make improvements or sell the property because proof of fee simple or legal title is required to complete the transaction.

Interested parties observe that although existing adverse possession statutes provide a mechanism for individuals to obtain title under certain circumstances, that mechanism cannot be used with respect to heirship property because of the requirement that the adverse possession be to the exclusion of other cotenant heirs. The parties explain that this situation prohibits cotenant heirs, who have obtained ownership through the rules of intestate succession, from utilizing existing adverse possession statutes to obtain fee simple title.

S.B. 108 seeks to build upon existing adverse possession practices and common real property law by providing a mechanism for certain cotenant heirs to adversely possess and obtain title to their property in an effort to enable such individuals to sell the property, obtain home improvement loans, or realize other benefits of property ownership.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

S.B. 108 amends the Civil Practice and Remedies Code to authorize one or more cotenant heirs of real property to acquire the interests of other cotenant heirs in the property by adverse possession if, for a continuous, uninterrupted 10-year period immediately preceding the filing of an affidavit of heirship and an affidavit of adverse possession, the possessing cotenant heir or heirs hold the property in peaceable and exclusive possession; cultivate, use, or enjoy the property; and pay all property taxes on the property not later than two years after the date the taxes become due. The bill includes as conditions to such acquisition that, during the same period, no other cotenant heir has 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, 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 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.

S.B. 108 requires the cotenant heir or heirs claiming adverse possession, in order to make such a claim against another cotenant heir, to file in the deed records of the county in which the real

property is located an affidavit of heirship and an affidavit of adverse possession, publish notice of the claim in a newspaper of general circulation in the county in which the property is located for the four consecutive weeks immediately following the date the affidavits are filed, and provide written notice of the claim to the last known addresses of all other cotenant heirs by certified mail, return receipt requested. The bill authorizes the required affidavits to be filed separately or combined into a single instrument and sets out the required contents of the affidavit of adverse possession.

S.B. 108 establishes the deadline by which a cotenant heir must file a controverting affidavit or bring suit to recover the cotenant heir's interest in real property adversely possessed by another cotenant heir, sets out conditions under which title vests in the adversely possessing cotenant heir or heirs, precluding all claims by other cotenant heirs, and sets out conditions under which 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 may conclusively rely on the affidavit of heirship and affidavit of adverse possession.

S.B. 108 limits peaceable and adverse possession without a title instrument to 160 acres, including improvements, unless the number of acres actually enclosed exceeds 160 acres, in which case peaceable and adverse possession extends to the real property actually enclosed. The bill extends 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 to the boundaries specified in the instrument.

EFFECTIVE DATE

September 1, 2013.