

By: West

S.B. No. 108

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 taxes or
4 maintenance;

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

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

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

14 (E) entered into a written agreement with the
15 possessing cotenant heir under which the possessing cotenant heir
16 is allowed to possess the property but the other cotenant heir does
17 not forfeit that heir's ownership interest.

18 (c) To make a claim of adverse possession against a cotenant
19 heir under this section, the cotenant heir or heirs claiming
20 adverse possession must:

21 (1) file in the deed records of the county in which the
22 real property is located an affidavit of heirship in the form
23 prescribed by Section 52A, Texas Probate Code, and an affidavit of
24 adverse possession that complies with the requirements of
25 Subsection (d);

26 (2) publish notice of the claim in a newspaper of
27 general circulation in the county in which the property is located

1 for the four consecutive weeks immediately following the date the
2 affidavits required by Subdivision (1) are filed; and

3 (3) provide written notice of the claim to the last
4 known addresses of all other cotenant heirs by certified mail,
5 return receipt requested.

6 (d) The affidavits required by Subsection (c) may be filed
7 separately or combined into a single instrument. The affidavit of
8 adverse possession must include:

9 (1) a legal description of the property that is the
10 subject of the adverse possession;

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

15 (3) an attestation of cultivation, use, or enjoyment
16 of the property by each affiant during the 10 years preceding the
17 filing of the affidavit;

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

21 (5) an attestation that there has been no action
22 described by Subsection (b)(2) by another cotenant heir during the
23 10 years preceding the filing of the affidavit.

24 (e) A cotenant heir must file a controverting affidavit or
25 bring suit to recover the cotenant heir's interest in real property
26 adversely possessed by another cotenant heir under this section not
27 later than the fifth anniversary of the date a right of adverse

1 possession is asserted by the filing of the affidavits described by
2 Subsection (c).

3 (f) If a controverting affidavit or judgment is not filed
4 before the fifth anniversary of the date the affidavits described
5 by Subsection (c) are filed and no notice described by Subsection
6 (b)(2)(D) was filed in the 10-year period preceding the filing of
7 the affidavits under Subsection (c), title vests in the adversely
8 possessing cotenant heir or heirs in the manner provided by Section
9 16.030, precluding all claims by other cotenant heirs.

10 (g) A bona fide lender for value without notice accepting a
11 voluntary lien against the real property to secure the adversely
12 possessing cotenant heir's indebtedness or a bona fide purchaser
13 for value without notice may conclusively rely on the affidavits
14 described by Subsection (c) if:

15 (1) the affidavits have been filed of record for the
16 period prescribed by Subsection (e); and

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

19 (h) Without a title instrument, peaceable and adverse
20 possession is limited in this section to 160 acres, including
21 improvements, unless the number of acres actually enclosed exceeds
22 160 acres. If the number of enclosed acres exceeds 160 acres,
23 peaceable and adverse possession extends to the real property
24 actually enclosed.

25 (i) Peaceable possession of real property held under a duly
26 registered deed or other memorandum of title that fixes the
27 boundaries of the possessor's claim extends to the boundaries

1 specified in the instrument.

2 SECTION 2. This Act takes effect September 1, 2013.