

By: Lozano, Schubert

H.B. No. 2544

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 acquire 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) This section applies only to the acquisition of an
interest of other cotenant heirs in the surface estate of real
property by adverse possession.

(c) 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 (d):

(1) the possessing cotenant heir or heirs:

(A) hold the property in peaceable and exclusive
possession;

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

2 (C) pay all property taxes on the property not
3 later than two years after the date the taxes become due; and

4 (2) no other cotenant heir has:

5 (A) contributed to the property's taxes or
6 maintenance;

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

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

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

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

20 (d) To make a claim of adverse possession against a cotenant
21 heir under this section, the cotenant heir or heirs claiming
22 adverse possession must:

23 (1) file in the deed records of the county in which the
24 real property is located an affidavit of heirship in the form
25 prescribed by Section 203.002, Estates Code, and an affidavit of
26 adverse possession that complies with the requirements of
27 Subsection (e);

1 (2) publish notice of the claim in a newspaper of
2 general circulation in the county in which the property is located
3 for the four consecutive weeks immediately following the date the
4 affidavits required by Subdivision (1) are filed; and

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

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

11 (1) a legal description of the property that is the
12 subject of the adverse possession;

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

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

20 (4) an attestation of payment by the affiant or
21 affiants of all property taxes on the property as provided by
22 Subsection (c) during the 10 years preceding the filing of the
23 affidavit; and

24 (5) an attestation that there has been no action
25 described by Subsection (c)(2) by another cotenant heir during the
26 10 years preceding the filing of the affidavit.

27 (f) A cotenant heir must file a controverting affidavit or

1 bring suit to recover the cotenant heir's interest in real property
2 adversely possessed by another cotenant heir under this section not
3 later than the fifth anniversary of the date a right of adverse
4 possession is asserted by the filing of the affidavits described by
5 Subsection (d).

6 (g) If a controverting affidavit or judgment is not filed
7 before the fifth anniversary of the date the affidavits described
8 by Subsection (d) are filed and no notice described by Subsection
9 (c)(2)(D) was filed in the 10-year period preceding the filing of
10 the affidavits under Subsection (d), title vests in the adversely
11 possessing cotenant heir or heirs in the manner provided by Section
12 16.030, precluding all claims by other cotenant heirs.

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

18 (1) the affidavits have been filed of record for the
19 period prescribed by Subsection (f); and

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

22 (i) Peaceable possession of real property held under a duly
23 registered deed or other memorandum of title that fixes the
24 boundaries of the possessor's claim extends to the boundaries
25 specified in the instrument.

26 SECTION 2. Section 16.0265, Civil Practice and Remedies
27 Code, as added by this Act, applies only to a cotenant heir who

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1 acquires an undivided ownership interest in real property on the
2 death of a person who dies on or after September 1, 2015.

3 SECTION 3. This Act takes effect September 1, 2015.