

BILL ANALYSIS

S.B. 1249
By: West
Judiciary & Civil Jurisprudence
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Interested parties assert the need for a statutory framework governing adverse possession when multiple individuals have an ownership interest in an adversely possessed property. S.B. 1249 seeks to establish this framework.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

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. 1249 amends the Civil Practice and Remedies Code to authorize one or more cotenant heirs of real property, defined by the bill as persons who simultaneously acquire identical, undivided ownership interests in, and rights to possession of, the same real property by operation of the applicable state intestate succession laws or a successor in interest of one of those persons, to acquire the interests of other cotenant heirs in the property by adverse possession if certain conditions are met over a continuous, uninterrupted 10-year period immediately preceding the filing of certain required affidavits of facts concerning the identity of the relevant decedent's heirs and of adverse possession.

S.B. 1249 requires the cotenant heir or heirs claiming adverse possession against a cotenant heir to file such affidavits in the deed records of the county in which the real property is located, to publish notice of the claim in a newspaper of general circulation in such county for the four consecutive weeks immediately following the date such affidavits are filed, and to 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 such affidavits to be filed separately or combined into a single instrument and sets out certain requirements for the affidavit of adverse possession.

S.B. 1249 requires a cotenant heir to file a controverting affidavit or bring suit to recover the cotenant heir's interest in real property adversely possessed by another cotenant heir not later than the fifth anniversary of the date a right of adverse possession is asserted by the filing of the affidavits of heirship and of adverse possession. The bill establishes that title vests in the adversely possessing cotenant heir or heirs, precluding all claims by other cotenant heirs, if a controverting affidavit or judgment is not filed before the fifth anniversary of the date the affidavits of heirship and of adverse possession are filed and no notice of a cotenant heir's claimed interest was filed in the deed records of the county in which the property is located in

the 10-year period preceding the filing of the affidavits of heirship and of adverse possession.

S.B. 1249 authorizes 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, to conclusively rely on the affidavits of heirship and of adverse possession if the affidavits have been filed of record for the period prescribed by the bill's provisions and if a controverting affidavit or judgment has not been filed during that period. The bill limits peaceable and adverse possession under the bill's provisions 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. 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 extends to the boundaries specified in the instrument.

EFFECTIVE DATE

September 1, 2017.