

SUBJECT: Allowing adverse possession of property by a cotenant heir after 15 years

COMMITTEE: Judiciary and Civil Jurisprudence — favorable, without amendment

VOTE: 5 ayes — Smithee, Laubenberg, Raymond, Schofield, Sheets

2 nays — Farrar, S. Thompson

2 absent — Clardy, Hernandez

WITNESSES: For — Aaron Day, Texas Land Title Association; Joe Maley; (*Registered, but did not testify*: Joey Park, South Texas Property Rights Association; Josh Winegarner, Texas Cattle Feeders Association; Marissa Patton, Texas Farm Bureau)

Against — None

BACKGROUND: Under the Civil Practice and Remedies Code, the doctrine of adverse possession cannot be asserted against a cotenant heir. If there is no deed or title, a person can acquire rights to real property after adversely possessing the property for 10 years, if all requirements are met.

DIGEST: HB 2544 would allow a cotenant heir to adversely possess real property against another cotenant heir after 15 years.

Definition. Under the bill, cotenant heirs would be persons who simultaneously acquired an identical, undivided ownership interest in, and the right 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.

Requirements. Cotenant heirs who were in possession of the property could acquire the interests of another cotenant heir through adverse possession if they:

- continuously possessed the property for 10 years;

- peaceably and exclusively had possession of the property;
- cultivated, used, or enjoyed the property; and
- paid all property taxes within two years of the taxes being due.

Disqualifying actions. The possessing cotenant heirs would not be able to assert adverse possession if another cotenant had:

- contributed to the property's taxes or maintenance;
- challenged a possessing heir's exclusive possession;
- asserted any other claim against a possessing heir in connection with the property, such as the right to rental payments;
- acted to preserve his or her own interest in the property by filing notice of interest in the applicable county's deed records; or
- entered into written agreements allowing the possessing heir to possess the property but not forfeiting the other heir's rights.

Claim of adverse possession. To make a claim of adverse possession, the possessing cotenant heir would have to file appropriate affidavits in the deed records of the county where the property was located, publish notice in a generally circulated newspaper in the county for a month, and send written notice by certified mail to the last known addresses of all other cotenant heirs.

Affidavits. The required affidavits could be filed separately or combined into a single document. The affidavits would have to include a legal description of property, an attestation that all requirements for adverse possession were met, and an attestation that there had been no disqualifying actions by other cotenant heirs.

Converting affidavits. In order to interrupt a claim of adverse possession by a possessing cotenant heir, another cotenant heir would have to file a controverting affidavit within five years after the cotenant heir filed the affidavits.

Rights acquired. The possessing heir would acquire the title and rights to the property, which would prevent all claims by other heirs, if the other

cotenant heirs fail to file either a notice of interest during the 10-year adverse possession period or a controverting affidavit within the five years of the possessing cotenant heir's affidavit.

A bona fide lender for value (e.g., a bank offering a mortgage) could rely on the possessing cotenant heir's affidavit if it had been filed for five years and no controverting affidavit or judgment had been filed.

Acreage. Without a title document, the possessing cotenant heir would be able to adversely possess only 160 acres. If the acreage were enclosed, the possessing tenant could adversely possess all enclosed acreage, even if it exceeded 160 acres. If there were a registered deed that fixed the boundaries of the property, the possessing cotenant's claim could extend to the boundaries specified in the deed.

The bill would take effect September 1, 2015.