

BILL ANALYSIS

Senate Research Center

S.B. 1249
By: West
State Affairs
6/12/2017
Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Property that informally passes from one generation to another, absent a will or other formal means of conveyance, is sometimes referred to as "heirship property." This informal transfer of possession of real property can cause hardships for property owners, particularly when the property is encumbered by multiple cotenant interests. Interested parties are concerned that heirship property owners are unable to secure resources to improve or sell their property because proof of title in fee simple is required to complete such a transaction.

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

S.B. 1249 seeks to build upon existing laws regarding adverse possession to provide a mechanism for certain cotenant heirs to adversely possess and obtain title in fee simple to their real property in an effort to enable the heirs to sell the property, obtain home improvement loans, or realize other benefits of real property ownership.

S.B. 1249 amends current law relating to adverse possession of real property by a cotenant heir against other cotenant heirs.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subchapter B, Chapter 16, Civil Practice and Remedies Code, by adding Section 16.0265, as follows:

Sec. 16.0265. ADVERSE POSSESSION BY COTENANT HEIR: 15-YEAR COMBINED LIMITATIONS PERIOD. (a) Defines "cotenant heir."

(b) Authorizes one or more cotenant heirs of real property to 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 the affidavits required by Subsection (c):

(1) 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; and

(2) 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, such as the right to rental payments from a possessing cotenant heir, 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.

(c) Requires the cotenant heir or heirs claiming adverse possession, to make a claim of adverse possession against a cotenant heir under this section, to complete certain actions.

(d) Authorizes the affidavits required by Subsection (c) to be filed separately or combined into a single instrument. Requires that the affidavit of adverse possession include certain information.

(e) 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 under this section not later than the fifth anniversary of the date a right of adverse possession is asserted by the filing of the affidavits required by Subsection (c).

(f) Provides that if a controverting affidavit or judgment is not filed before the fifth anniversary of the date the affidavits required by Subsection (c) are filed and no notice described by Subsection (b)(2)(D) (relating to certain actions by other cotenant heirs determining whether cotenant heirs are authorized to acquire interests by adverse possession) was filed in the 10-year period preceding the filing of the affidavits under Subsection (c), title vests in the adversely possessing cotenant heir or heirs in the manner provided by Section 16.030 (Title Through Adverse Possession), precluding all claims by other cotenant heirs.

(g) 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 required by Subsection (c) if certain criteria are met.

(h) Provides that without a title instrument, peaceable and adverse possession is limited in this section to 160 acres, including improvements, unless the number of acres actually enclosed exceeds 160 acres. Provides that if the number of enclosed acres exceeds 160 acres, peaceable and adverse possession extends to the real property actually enclosed.

(i) Provides that 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.

SECTION 2. Effective date: September 1, 2017.