

1-1 By: West S.B. No. 1249
1-2 (In the Senate - Filed March 3, 2017; March 13, 2017, read
1-3 first time and referred to Committee on State Affairs;
1-4 April 3, 2017, reported favorably by the following vote: Yeas 9,
1-5 Nays 0; April 3, 2017, sent to printer.)

1-6 COMMITTEE VOTE

1-7		Yea	Nay	Absent	PNV
1-8	Huffman	X			
1-9	Hughes	X			
1-10	Birdwell	X			
1-11	Creighton	X			
1-12	Estes	X			
1-13	Lucio	X			
1-14	Nelson	X			
1-15	Schwertner	X			
1-16	Zaffirini	X			

1-17 A BILL TO BE ENTITLED
1-18 AN ACT

1-19 relating to adverse possession of real property by a cotenant heir
1-20 against other cotenant heirs.

1-21 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-22 SECTION 1. Subchapter B, Chapter 16, Civil Practice and
1-23 Remedies Code, is amended by adding Section 16.0265 to read as
1-24 follows:

1-25 Sec. 16.0265. ADVERSE POSSESSION BY COTENANT HEIR: 15-YEAR
1-26 COMBINED LIMITATIONS PERIOD. (a) In this section, "cotenant heir"
1-27 means one of two or more persons who simultaneously acquire
1-28 identical, undivided ownership interests in, and rights to
1-29 possession of, the same real property by operation of the
1-30 applicable intestate succession laws of this state or a successor
1-31 in interest of one of those persons.

1-32 (b) One or more cotenant heirs of real property may acquire
1-33 the interests of other cotenant heirs in the property by adverse
1-34 possession under this section if, for a continuous, uninterrupted
1-35 10-year period immediately preceding the filing of the affidavits
1-36 required by Subsection (c):

1-37 (1) the possessing cotenant heir or heirs:

1-38 (A) hold the property in peaceable and exclusive
1-39 possession;

1-40 (B) cultivate, use, or enjoy the property; and

1-41 (C) pay all property taxes on the property not
1-42 later than two years after the date the taxes become due; and

1-43 (2) no other cotenant heir has:

1-44 (A) contributed to the property's taxes or
1-45 maintenance;

1-46 (B) challenged a possessing cotenant heir's
1-47 exclusive possession of the property;

1-48 (C) asserted any other claim against a possessing
1-49 cotenant heir in connection with the property, such as the right to
1-50 rental payments from a possessing cotenant heir;

1-51 (D) acted to preserve the cotenant heir's
1-52 interest in the property by filing notice of the cotenant heir's
1-53 claimed interest in the deed records of the county in which the
1-54 property is located; or

1-55 (E) entered into a written agreement with the
1-56 possessing cotenant heir under which the possessing cotenant heir
1-57 is allowed to possess the property but the other cotenant heir does
1-58 not forfeit that heir's ownership interest.

1-59 (c) To make a claim of adverse possession against a cotenant
1-60 heir under this section, the cotenant heir or heirs claiming
1-61 adverse possession must:

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

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

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

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

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

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

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

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

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

(e) A cotenant heir must 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) 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) 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, precluding all claims by other cotenant heirs.

(g) 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 may conclusively rely on the affidavits required by Subsection (c) if:

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

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

(h) 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. If the number of enclosed acres exceeds 160 acres, peaceable and adverse possession extends to the real property actually enclosed.

(i) 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. This Act takes effect September 1, 2017.

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