

By the Committee on Judiciary; and Senators Dockery and Joyner

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1 A bill to be entitled
2 An act relating to adverse possession; amending s.
3 95.18, F.S.; specifying that occupation and
4 maintenance of property can satisfy possession for
5 purposes of gaining title to property via adverse
6 possession without color of title; requiring a person
7 seeking property by adverse possession to use a
8 uniform adverse possession return developed by the
9 Department of Revenue; requiring the property
10 appraiser to notify the owner of record of an adverse
11 possession claim; prescribing what information must be
12 included in the adverse possession return; requiring a
13 person claiming adverse possession to attest to the
14 truthfulness of the information provided in the return
15 under penalty of perjury; granting emergency
16 rulemaking authority to the Department of Revenue;
17 requiring that the property appraiser add certain
18 information related to the adverse possession claim to
19 the parcel information on the tax roll and prescribing
20 conditions for removal of that information; requiring
21 the property appraiser to include a notation of an
22 adverse possession filing in any searchable property
23 database maintained by the property appraiser;
24 creating s. 197.3335, F.S.; requiring the tax
25 collector to determine whether a duplicate tax payment
26 is made by an adverse possessor; providing for
27 priority of tax payments made by an owner of record
28 who is subject to an adverse possession claim;
29 providing for a refund of tax payments under certain

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30 conditions; providing for retroactive application of
31 certain provisions governing procedures for
32 administering a claim of adverse possession; providing
33 an effective date.

34
35 Be It Enacted by the Legislature of the State of Florida:

36
37 Section 1. Section 95.18, Florida Statutes, is amended to
38 read:

39 95.18 Real property actions; adverse possession without
40 color of title.—

41 (1) When the occupant has, or those under whom the occupant
42 claims have, been in actual continued occupation of real
43 property for 7 years under a claim of title exclusive of any
44 other right, but not founded on a written instrument, judgment,
45 or decree, the property actually occupied shall be held
46 adversely if the person claiming adverse possession made a
47 return, as required under subsection (3), of the property by
48 proper legal description to the property appraiser of the county
49 where it is located within 1 year after entering into possession
50 and has subsequently paid, subject to s. 197.3335, all taxes and
51 matured installments of special improvement liens levied against
52 the property by the state, county, and municipality.

53 (2) For the purpose of this section, property shall be
54 deemed to be possessed in any of the following cases ~~only~~:

55 (a) When it has been protected by substantial enclosure.

56 (b) When it has been usually cultivated or improved.

57 (c) When it has been occupied and maintained.

58 (3) A person claiming adverse possession under this section

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59 must make a return of the property as required under subsection
60 (1) by providing to the property appraiser a uniform return
61 developed by the Department of Revenue. The return must include:

62 (a) The name and address of the person claiming adverse
63 possession;

64 (b) The date that the person claiming adverse possession
65 entered into possession of the property;

66 (c) A full and complete legal description of the property
67 that is subject to the adverse possession claim;

68 (d) A notarized attestation clause that states:

69 UNDER PENALTY OF PERJURY, I DECLARE THAT I HAVE READ

70 THE FOREGOING RETURN AND THAT THE FACTS STATED IN IT

71 ARE TRUE AND CORRECT.;

72 (e) A description of the use of the property by the person
73 claiming adverse possession; and

74 (f) A receipt to be completed by the property appraiser.

75
76 The property appraiser shall refuse to accept a return if it
77 does not comply with this subsection. The executive director of
78 the Department of Revenue is authorized, and all conditions are
79 deemed met, to adopt emergency rules under ss. 120.536(1) and
80 120.54(4) for the purpose of implementing this subsection. The
81 emergency rules shall remain in effect for 6 months after
82 adoption and may be renewed during the pendency of procedures to
83 adopt rules addressing the subject of the emergency rules.

84 (4) Upon the submission of a return, the property appraiser
85 shall:

86 (a) Send, via regular mail, a copy of the return to the
87 owner of record of the property that is subject to the adverse

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88 possession claim, as identified by the property appraiser's
89 records.

90 (b) Inform the owner of record that, under s. 197.335, any
91 tax payment made by the owner of record prior to April 1
92 following the year in which the tax is assessed will have
93 priority over any tax payment made by an adverse possessor.

94 (c) Add a notation at the beginning of the first line of
95 the legal description on the tax roll that an adverse possession
96 claim has been submitted.

97 (d) Maintain the return in the property appraiser's
98 records.

99 (5) A property appraiser shall remove the notation to the
100 legal description on the tax roll that an adverse possession
101 claim has been submitted and shall remove the return from the
102 property appraiser's records if:

103 (a) The person claiming adverse possession notifies the
104 property appraiser in writing that the adverse possession claim
105 is withdrawn;

106 (b) The owner of record provides a certified copy of a
107 court order, entered after the date the return was submitted to
108 the property appraiser, establishing title in the owner of
109 record;

110 (c) The property appraiser receives a certified copy of a
111 recorded deed, filed after the date of the submission of the
112 return, from the person claiming adverse possession to the owner
113 of record transferring title of property with a legal
114 description describing the same property subject to the adverse
115 possession claim; or

116 (d) The owner of record or the tax collector provides to

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117 the property appraiser a receipt demonstrating that the owner of
118 record has paid the annual tax assessment for the property
119 subject to the adverse possession claim during the period that
120 the person is claiming adverse possession.

121 (6) The property appraiser shall include a clear and
122 obvious notation in the legal description of the parcel
123 information of any public searchable property database
124 maintained by the property appraiser that an adverse possession
125 return has been submitted to the property appraiser for a
126 particular parcel.

127 Section 2. Section 197.3335, Florida Statutes, is created
128 to read:

129 197.3335 Tax payments when property is subject to adverse
130 possession; refunds.-

131 (1) Upon the receipt of a subsequent payment for the same
132 annual tax assessment for a particular parcel, the tax collector
133 shall determine if an adverse possession return has been
134 submitted on the particular parcel. If an adverse possession
135 return has been submitted, the tax collector shall comply with
136 subsection (2).

137 (2) If a person claiming adverse possession under s. 95.18
138 pays an annual tax assessment on a parcel of property that is
139 subject to an adverse possession claim before the assessment is
140 paid by the owner of record, and the owner of record
141 subsequently makes a payment of that same annual tax assessment
142 prior to April 1 following the year in which the tax is
143 assessed, the tax collector shall accept the payment made by the
144 owner of record and refund within 60 days any payment made by
145 the person claiming adverse possession. Such refunds do not

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146 require approval from the Department of Revenue.

147 Section 3. This act shall take effect July 1, 2010, and
148 applies to adverse possession claims in which the return was
149 submitted on or after that date, except for the procedural
150 provisions governing the property appraiser's administration of
151 adverse possession claims included in s. 95.18(4)(c) and (d) and
152 (5), Florida Statutes, as created by this act, which apply to
153 adverse possession claims for which the return was submitted
154 before, on, or after that date.