

By the Committees on Community Affairs; and 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;
21 prescribing procedures and requirements for adverse
22 possession claims against a portion of an identified
23 parcel or against property to which the property
24 appraiser has not assigned a parcel number; requiring
25 the property appraiser to include a notation of an
26 adverse possession filing in any searchable property
27 database maintained by the property appraiser;
28 amending s. 197.212, F.S.; excluding property subject
29 to adverse possession claims without color of title

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30 from provisions authorizing the tax collector not to
31 send a tax notice for minimum tax bills; creating s.
32 197.3335, F.S.; requiring the tax collector to
33 determine whether a duplicate tax payment is made by
34 an adverse possessor; providing for priority of tax
35 payments made by an owner of record who is subject to
36 an adverse possession claim; providing for a refund of
37 tax payments under certain conditions; providing for
38 retroactive application of certain provisions
39 governing procedures for administering a claim of
40 adverse possession and establishing tax priority for
41 owners of record; providing an effective date.

42
43 Be It Enacted by the Legislature of the State of Florida:

44
45 Section 1. Section 95.18, Florida Statutes, is amended to
46 read:

47 95.18 Real property actions; adverse possession without
48 color of title.—

49 (1) When the occupant has, or those under whom the occupant
50 claims have, been in actual continued occupation of real
51 property for 7 years under a claim of title exclusive of any
52 other right, but not founded on a written instrument, judgment,
53 or decree, the property actually occupied shall be held
54 adversely if the person claiming adverse possession made a
55 return, as required under subsection (3), of the property by
56 proper legal description to the property appraiser of the county
57 where it is located within 1 year after entering into possession
58 and has subsequently paid, subject to s. 197.3335, all taxes and

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59 matured installments of special improvement liens levied against
60 the property by the state, county, and municipality.

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

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

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

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

66 (3) A person claiming adverse possession under this section
67 must make a return of the property as required under subsection
68 (1) by providing to the property appraiser a uniform return
69 developed by the Department of Revenue. The return must include:

70 (a) The name and address of the person claiming adverse
71 possession;

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

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

76 (d) A notarized attestation clause that states:

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

78 THE FOREGOING RETURN AND THAT THE FACTS STATED IN IT

79 ARE TRUE AND CORRECT.;

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

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

83
84 The property appraiser shall refuse to accept a return if it
85 does not comply with this subsection. The executive director of
86 the Department of Revenue is authorized, and all conditions are
87 deemed met, to adopt emergency rules under ss. 120.536(1) and

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88 120.54(4) for the purpose of implementing this subsection. The
89 emergency rules shall remain in effect for 6 months after
90 adoption and may be renewed during the pendency of procedures to
91 adopt rules addressing the subject of the emergency rules.

92 (4) Upon the submission of a return, the property appraiser
93 shall:

94 (a) Send, via regular mail, a copy of the return to the
95 owner of record of the property that is subject to the adverse
96 possession claim, as identified by the property appraiser's
97 records.

98 (b) Inform the owner of record that, under s. 197.3335, any
99 tax payment made by the owner of record prior to April 1
100 following the year in which the tax is assessed will have
101 priority over any tax payment made by an adverse possessor.

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

105 (d) Maintain the return in the property appraiser's
106 records.

107 (5) If a person makes a claim of adverse possession under
108 this section against a portion of a parcel of property
109 identified by a unique parcel identification number in the
110 property appraiser's records:

111 (a)1. The person claiming adverse possession shall include
112 in the return submitted under subsection (3) a full and complete
113 legal description of the property sufficient to enable the
114 property appraiser to identify the portion of the property
115 subject to the adverse possession claim.

116 2. The property appraiser may refuse to accept a return if

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117 the portion of the property subject to the claim cannot be
118 identified by the legal description provided in the return, and
119 the person claiming adverse possession shall obtain a survey of
120 the portion of the property subject to the claim to submit with
121 the return.

122 (b) Upon the submission of the return, the property
123 appraiser shall follow the procedures under subsection (4), and
124 may not create a unique parcel identification number for the
125 portion of property subject to the claim.

126 (c) The property appraiser shall assign a fair and just
127 value to the portion of the property as provided in s. 193.011,
128 and provide this value to the tax collector to facilitate tax
129 payment under s. 197.3335(3).

130 (6) If a person makes a claim of adverse possession under
131 this section against property to which the property appraiser
132 has not assigned a parcel identification number:

133 (a)1. The person claiming adverse possession shall include
134 in the return submitted under subsection (3) a full and complete
135 legal description of the property sufficient to enable the
136 property appraiser to identify the property subject to the
137 adverse possession claim.

138 2. The property appraiser may refuse to accept a return if
139 the property subject to the claim cannot be identified by the
140 legal description provided in the return, and the person
141 claiming adverse possession shall obtain a survey of the
142 property subject to the claim to submit with the return.

143 (b) Upon submission of the return, the property appraiser
144 shall:

145 1. Assign a parcel identification number to the property

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146 and assign a fair and just value to the property as provided in
147 s. 193.011;

148 2. Add a notation at the beginning of the first line of
149 the legal description on the tax roll that an adverse possession
150 claim has been submitted; and

151 3. Maintain the return in the property appraiser's records.

152 (7) A property appraiser shall remove the notation to the
153 legal description on the tax roll that an adverse possession
154 claim has been submitted and shall remove the return from the
155 property appraiser's records if:

156 (a) The person claiming adverse possession notifies the
157 property appraiser in writing that the adverse possession claim
158 is withdrawn;

159 (b) The owner of record provides a certified copy of a
160 court order, entered after the date the return was submitted to
161 the property appraiser, establishing title in the owner of
162 record;

163 (c) The property appraiser receives a certified copy of a
164 recorded deed, filed after the date of the submission of the
165 return, from the person claiming adverse possession to the owner
166 of record transferring title of property with a legal
167 description describing the same property subject to the adverse
168 possession claim; or

169 (d) The owner of record or the tax collector provides to
170 the property appraiser a receipt demonstrating that the owner of
171 record has paid the annual tax assessment for the property
172 subject to the adverse possession claim during the period that
173 the person is claiming adverse possession.

174 (8) The property appraiser shall include a clear and

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175 obvious notation in the legal description of the parcel
176 information of any public searchable property database
177 maintained by the property appraiser that an adverse possession
178 return has been submitted to the property appraiser for a
179 particular parcel.

180 Section 2. Section 197.212, Florida Statutes, is amended to
181 read:

182 197.212 Minimum tax bill.—On the recommendation of the
183 county tax collector, the board of county commissioners may
184 adopt a resolution instructing the collector not to mail tax
185 notices to a taxpayer when the amount of taxes shown on the tax
186 notice is less than an amount up to \$30. The resolution shall
187 also instruct the property appraiser that he or she shall not
188 make an extension on the tax roll for any parcel for which the
189 tax would amount to less than an amount up to \$30. The minimum
190 tax bill so established may not exceed an amount up to \$30. This
191 section does not apply to parcels of property subject to adverse
192 possession claims under s. 95.18.

193 Section 3. Section 197.3335, Florida Statutes, is created
194 to read:

195 197.3335 Tax payments when property is subject to adverse
196 possession; refunds.—

197 (1) Upon the receipt of a subsequent payment for the same
198 annual tax assessment for a particular parcel of property, the
199 tax collector shall determine if an adverse possession return
200 has been submitted on the particular parcel. If an adverse
201 possession return has been submitted, the tax collector shall
202 comply with subsection (2).

203 (2) If a person claiming adverse possession under s. 95.18

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204 pays an annual tax assessment on a parcel of property that is
205 subject to an adverse possession claim before the assessment is
206 paid by the owner of record, and the owner of record
207 subsequently makes a payment of that same annual tax assessment
208 prior to April 1 following the year in which the tax is
209 assessed, the tax collector shall accept the payment made by the
210 owner of record and refund within 60 days any payment made by
211 the person claiming adverse possession. Such refunds do not
212 require approval from the Department of Revenue.

213 (3) For claims of adverse possession for a portion of a
214 parcel of property as provided in s. 95.18(5), the tax collector
215 may accept a tax payment, based upon the value of the property
216 assigned by the property appraiser under 95.18(5)(c), from a
217 person claiming adverse possession for the portion of the
218 property subject to the claim. If the owner of record makes a
219 payment of the annual tax assessment for the whole parcel before
220 April 1 following the year in which the tax is assessed, the tax
221 collector shall refund within 60 days any payment previously
222 made for the portion of the parcel subject to the claim by the
223 person claiming adverse possession.

224 Section 4. This act shall take effect July 1, 2010, and
225 applies to adverse possession claims in which the return was
226 submitted on or after that date, except for the procedural
227 provisions governing the property appraiser's administration of
228 adverse possession claims included in s. 95.18(4)(c) and (d) and
229 (7), Florida Statutes, and the provisions governing the payment
230 of taxes included in s. 197.3335, Florida Statutes, as created
231 by this act, which apply to adverse possession claims for which
232 the return was submitted before, on, or after that date.