

By Senator Bogdanoff

25-00955-11

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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 satisfies requirements for  
5           possession for purposes of gaining title to property  
6           via adverse possession without color of title;  
7           requiring a person seeking property by adverse  
8           possession to use a uniform adverse possession return  
9           provided by the Department of Revenue; requiring the  
10          property appraiser to notify the owner of record of an  
11          adverse possession claim; requiring a person claiming  
12          adverse possession to attest to the truthfulness of  
13          the information provided in the return under penalty  
14          of perjury; authorizing the Department of Revenue to  
15          adopt emergency rules; requiring that the property  
16          appraiser add certain information related to the  
17          adverse possession claim to the parcel information on  
18          the tax roll and prescribing conditions for removal of  
19          that information; prescribing procedures and  
20          requirements for adverse possession claims against a  
21          portion of an identified parcel or against property to  
22          which the property appraiser has not assigned a parcel  
23          number; requiring the property appraiser to include a  
24          notation of an adverse possession filing in any  
25          searchable property database maintained by the  
26          property appraiser; amending s. 197.212, F.S.;  
27          excluding property subject to adverse possession  
28          claims without color of title from provisions  
29          authorizing the tax collector not to send a tax notice

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30 for minimum tax bills; creating s. 197.3335, F.S.;

31 requiring the tax collector to determine whether a

32 duplicate tax payment is made by an adverse possessor;

33 providing for priority of tax payments made by an

34 owner of record who is subject to an adverse

35 possession claim; providing for a refund of tax

36 payments under certain conditions; providing for

37 retroactive application of certain provisions

38 governing procedures for administering a claim of

39 adverse possession and establishing tax priority for

40 owners of record; providing an effective date.

41

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

43

44 Section 1. Section 95.18, Florida Statutes, is amended to

45 read:

46 95.18 Real property actions; adverse possession without

47 color of title.—

48 (1) When the occupant has, or those under whom the occupant

49 claims have, been in actual continued occupation of real

50 property for 7 years under a claim of title exclusive of any

51 other right, but not founded on a written instrument, judgment,

52 or decree, the property actually occupied is ~~shall be~~ held

53 adversely if the person claiming adverse possession made a

54 return, as required under subsection (3), of the property by

55 proper legal description to the property appraiser of the county

56 where it is located within 1 year after entering into possession

57 and has subsequently paid, subject to s. 197.3335, all taxes and

58 matured installments of special improvement liens levied against

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59 the property by the state, county, and municipality.

60 (2) For the purpose of this section, property is ~~shall be~~  
61 deemed to be possessed if the property has been ~~in the following~~  
62 ~~eases only:~~

63 (a) ~~When it has been~~ Protected by substantial enclosure;~~-~~

64 (b) ~~When it has been usually~~ Cultivated or improved in a  
65 usual manner; or-

66 (c) Occupied and maintained.

67 (3) A person claiming adverse possession under this section  
68 must make a return of the property by providing to the property  
69 appraiser a uniform return on a form provided by the Department  
70 of Revenue. The return must include all of the following:

71 (a) The name and address of the person claiming adverse  
72 possession.

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

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

77 (d) A notarized attestation clause that states:  
78 UNDER PENALTY OF PERJURY, I DECLARE THAT I HAVE READ  
79 THE FOREGOING RETURN AND THAT THE FACTS STATED IN IT  
80 ARE TRUE AND CORRECT.

81 (e) A description of the use of the property by the person  
82 claiming adverse possession.

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

84

85 The property appraiser shall refuse to accept a return if it  
86 does not comply with this subsection. The executive director of  
87 the Department of Revenue is authorized, and all conditions are

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88 deemed met, to adopt emergency rules under ss. 120.536(1) and  
89 120.54(4) for the purpose of implementing this subsection. The  
90 emergency rules shall remain in effect for 6 months after  
91 adoption and may be renewed during the pendency of procedures to  
92 adopt rules addressing the subject of the emergency rules.

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

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

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

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

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

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

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

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117       2. The property appraiser may refuse to accept the return  
118 if the portion of the property subject to the claim cannot be  
119 identified by the legal description provided in the return, and  
120 the person claiming adverse possession must obtain a survey of  
121 the portion of the property subject to the claim in order to  
122 submit the return.

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

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

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

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

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

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

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146 1. Assign a parcel identification number to the property  
147 and assign a fair and just value to the property as provided in  
148 s. 193.011;

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

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

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

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

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

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

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

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175       (8) The property appraiser shall include a clear and  
176 obvious notation in the legal description of the parcel  
177 information of any public searchable property database  
178 maintained by the property appraiser that an adverse possession  
179 return has been submitted to the property appraiser for a  
180 particular parcel.

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

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

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

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

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

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204       (2) If a person claiming adverse possession under s. 95.18  
205 pays an annual tax assessment on a parcel of property before the  
206 assessment is paid by the owner of record, and the owner of  
207 record subsequently makes a payment of that same annual tax  
208 assessment before 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.

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 s. 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, 2011, 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.