

CHAPTER 190

PROPERTY

HOUSE BILL 08-1148

BY REPRESENTATIVE(S) Witwer and Levy, Balmer, Benefield, Buescher, Carroll M., Casso, Fischer, Gallegos, Gardner B., Garza-Hicks, Hodge, Jahn, Kerr A., Kerr J., King, Labuda, Lambert, Liston, Looper, Lundberg, Marostica, May M., McKinley, McNulty, Mitchell V., Peniston, Scanlan, Sonnenberg, Summers, Swalm, Vaad, Weissmann, Borodkin, Carroll T., Frangas, Massey, McFadyen, Merrifield, Middleton, Rice, Roberts, Rose, Stafford, Gardner C., and Stephens;
also SENATOR(S) Tupa, McElhany, Schultheis, Mitchell S., Tochtrop, Spence, Boyd, Bacon, Brophy, Cadman, Gibbs, Kopp, Penry, Renfroe, Romer, Sandoval, Wiens, Williams, Schwartz, Shaffer, and Ward.

AN ACT

CONCERNING THE SUFFICIENCY OF THE ASSERTION OF A CLAIM FOR TITLE TO REAL PROPERTY BY ADVERSE POSSESSION UNDER COLORADO LAW.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. 38-41-101, Colorado Revised Statutes, is amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS to read:

38-41-101. Limitation of eighteen years. (3) (a) IN ORDER TO PREVAIL ON A CLAIM ASSERTING FEE SIMPLE TITLE TO REAL PROPERTY BY ADVERSE POSSESSION IN ANY CIVIL ACTION FILED ON OR AFTER JULY 1, 2008, THE PERSON ASSERTING THE CLAIM SHALL PROVE EACH ELEMENT OF THE CLAIM BY CLEAR AND CONVINCING EVIDENCE.

(b) IN ADDITION TO ANY OTHER REQUIREMENTS SPECIFIED IN THIS PART 1, IN ANY ACTION FOR A CLAIM FOR FEE SIMPLE TITLE TO REAL PROPERTY BY ADVERSE POSSESSION FOR WHICH FEE SIMPLE TITLE VESTS ON OR AFTER JULY 1, 2008, IN FAVOR OF THE ADVERSE POSSESSOR AND AGAINST THE OWNER OF RECORD OF THE REAL PROPERTY UNDER SUBSECTION (1) OF THE SECTION, A PERSON MAY ACQUIRE FEE SIMPLE TITLE TO REAL PROPERTY BY ADVERSE POSSESSION ONLY UPON SATISFACTION OF EACH OF THE FOLLOWING CONDITIONS:

(I) THE PERSON PRESENTS EVIDENCE TO SATISFY ALL OF THE ELEMENTS OF A CLAIM FOR ADVERSE POSSESSION REQUIRED UNDER COMMON LAW IN COLORADO; AND

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

(II) EITHER THE PERSON CLAIMING BY ADVERSE POSSESSION OR A PREDECESSOR IN INTEREST OF SUCH PERSON HAD A GOOD FAITH BELIEF THAT THE PERSON IN POSSESSION OF THE PROPERTY OF THE OWNER OF RECORD WAS THE ACTUAL OWNER OF THE PROPERTY AND THE BELIEF WAS REASONABLE UNDER THE PARTICULAR CIRCUMSTANCES.

(4) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION, THE PROVISIONS OF SUBSECTIONS (3) AND (5) OF THIS SECTION SHALL BE LIMITED TO CLAIMS OF ADVERSE POSSESSION FOR THE PURPOSE OF ESTABLISHING FEE SIMPLE TITLE TO REAL PROPERTY AND SHALL NOT APPLY TO THE CREATION, ESTABLISHMENT, PROOF, OR JUDICIAL CONFIRMATION OR DELINEATION OF EASEMENTS BY PRESCRIPTION, IMPLICATION, PRIOR USE, ESTOPPEL, OR OTHERWISE, NOR SHALL THE PROVISIONS OF SUBSECTIONS (3) OR (5) OF THIS SECTION APPLY TO CLAIMS OR DEFENSES FOR EQUITABLE RELIEF UNDER THE COMMON-LAW DOCTRINE OF RELATIVE HARDSHIPS, OR CLAIMS OR DEFENSES GOVERNED BY ANY OTHER STATUTE OF LIMITATIONS SPECIFIED IN THIS ARTICLE. NOTHING IN THIS SECTION SHALL BE CONSTRUED TO MEAN THAT ANY ELEMENTS OF A CLAIM FOR ADVERSE POSSESSION THAT ARE NOT OTHERWISE APPLICABLE TO THE CREATION, ESTABLISHMENT, PROOF, OR JUDICIAL CONFIRMATION OR DELINEATION OF EASEMENTS BY PRESCRIPTION, IMPLICATION, PRIOR USE, ESTOPPEL, OR OTHERWISE ARE MADE APPLICABLE PURSUANT TO THE PROVISIONS OF THIS SECTION.

(5) (a) WHERE THE PERSON ASSERTING A CLAIM OF FEE SIMPLE TITLE TO REAL PROPERTY BY ADVERSE POSSESSION PREVAILS ON SUCH CLAIM, AND IF THE COURT DETERMINES IN ITS DISCRETION THAT AN AWARD OF COMPENSATION IS FAIR AND EQUITABLE UNDER THE CIRCUMSTANCES, THE COURT MAY, AFTER AN EVIDENTIARY HEARING SEPARATELY CONDUCTED AFTER ENTRY OF THE ORDER AWARDING TITLE TO THE ADVERSE POSSESSOR, AWARD TO THE PARTY LOSING TITLE TO THE ADVERSE POSSESSOR:

(I) DAMAGES TO COMPENSATE THE PARTY LOSING TITLE TO THE ADVERSE POSSESSOR FOR THE LOSS OF THE PROPERTY MEASURED BY THE ACTUAL VALUE OF THE PROPERTY AS DETERMINED BY THE COUNTY ASSESSOR AS OF THE MOST RECENT VALUATION FOR PROPERTY TAX PURPOSES. IF THE PROPERTY LOST HAS NOT BEEN SEPARATELY TAXED OR ASSESSED FROM THE REMAINDER OF THE PROPERTY OF THE PARTY LOSING TITLE TO THE ADVERSE POSSESSOR, THE COURT SHALL EQUITABLY APPORTION THE ACTUAL VALUE OF THE PROPERTY TO THE PORTION OF THE OWNER'S PROPERTY LOST BY ADVERSE POSSESSION INCLUDING, AS APPROPRIATE, TAKING INTO ACCOUNT THE NATURE AND CHARACTER OF THE PROPERTY LOST AND OF THE REMAINDER.

(II) AN AMOUNT TO REIMBURSE THE PARTY LOSING TITLE TO THE ADVERSE POSSESSOR FOR ALL OR A PART OF THE PROPERTY TAXES AND OTHER ASSESSMENTS LEVIED AGAINST AND PAID BY THE PARTY LOSING TITLE TO THE ADVERSE POSSESSOR FOR THE PERIOD COMMENCING EIGHTEEN YEARS PRIOR TO THE COMMENCEMENT OF THE ADVERSE POSSESSION ACTION AND EXPIRING ON THE DATE OF THE AWARD OR ENTRY OF FINAL NONAPPEALABLE JUDGMENT, WHICHEVER IS LATER. IF THE PROPERTY LOST HAS NOT BEEN SEPARATELY TAXED OR ASSESSED FROM THE REMAINDER OF THE PROPERTY OF THE PARTY LOSING TITLE TO THE ADVERSE POSSESSOR, SUCH REIMBURSEMENT SHALL EQUITABLY APPORTION THE AMOUNT OF

THE REIMBURSEMENT TO THE PORTION OF THE OWNER'S PROPERTY LOST BY ADVERSE POSSESSION, INCLUDING, AS APPROPRIATE, TAKING INTO ACCOUNT THE NATURE AND CHARACTER OF THE PROPERTY LOST AND OF THE REMAINDER. THE AMOUNT OF THE AWARD SHALL BEAR INTEREST AT THE STATUTORY RATE FROM THE DATES ON WHICH THE PARTY LOSING TITLE TO THE ADVERSE POSSESSOR MADE PAYMENT OF THE REIMBURSEABLE TAXES AND ASSESSMENTS.

(b) AT ANY HEARING CONDUCTED UNDER THIS SUBSECTION (5), OR IN THE EVENT THAT ADVERSE POSSESSION IS CLAIMED SOLELY AS A DEFENSE TO AN ACTION FOR DAMAGES BASED UPON A CLAIM FOR TRESPASS, FORCIBLE ENTRY, FORCIBLE DETAINER, OR SIMILAR AFFIRMATIVE CLAIMS BY ANOTHER AGAINST THE ADVERSE POSSESSOR, AND NOT TO SEEK AN AWARD OF LEGAL TITLE AGAINST THE CLAIMANT, THE BURDEN OF PROOF SHALL BE BY A PREPONDERANCE OF THE EVIDENCE. IF THE DEFENDANT IS CLAIMING ADVERSE POSSESSION SOLELY AS A DEFENSE TO AN ACTION AND NOT TO SEEK AN AWARD OF LEGAL TITLE, THE DEFENDANT SHALL SO STATE IN A PLEADING FILED BY THE DEFENDANT WITHIN NINETY DAYS AFTER FILING AN ANSWER OR WITHIN SUCH LONGER PERIOD AS GRANTED BY THE COURT IN THE COURT'S DISCRETION, AND ANY SUCH STATEMENT SHALL BIND THE DEFENDANT IN THE ACTION.

SECTION 2. Effective date - applicability. This act shall take effect July 1, 2008. The provisions of section 38-41-101 (3) (a), Colorado Revised Statutes, in section 1 of this act shall apply to civil actions filed on or after said date. All other provisions of this act shall apply to claims for title to real property for which fee simple title vests in favor of the adverse possessor and against the owner of record of the real property on or after said date.

SECTION 3. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: April 25, 2008