

**Second Regular Session
Sixty-sixth General Assembly
STATE OF COLORADO**

INTRODUCED

LLS NO. 08-0529.01 Bob Lackner

HOUSE BILL 08-1148

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A BILL FOR AN ACT

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

Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments that may be subsequently adopted.)

On or after the effective date of the act, in addition to any other requirements specified in current law, specifies that a person may acquire fee simple title to real property by adverse possession only upon satisfaction of each of the following conditions:

- The person and any predecessors in interest of the person, as applicable, have satisfied all of the elements of a claim

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

- for adverse possession required at common law.
● The person claiming by adverse possession, or the person's predecessor in interest, had a good faith belief that the person was the actual owner of the property, and the belief was reasonable under the circumstances.

In order to prevail on a claim asserting a claim of title to real property by adverse possession, requires the person asserting the claim to prove each of the elements of the claim by clear and convincing evidence.

Exempts certain provisions of the act from a claim for adverse possession for the purpose of establishing a prescriptive easement.

Prohibits a person from maintaining an adverse possession claim under circumstances where the claim would deprive certain charitable organizations of title to undeveloped land.

Where the person asserting a claim of title to real property by adverse possession prevails on such claim, authorizes the court to determine, based upon the facts and circumstances of the case, whether to award the nonprevailing party an amount representing the fair market value of the property that is the subject of the claim as well as an amount representing any property taxes or other assessments levied on the subject property the nonprevailing party has paid from the commencement of the limitation period.

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

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

5 **38-41-101. Limitation of eighteen years.** (3) (a) ON OR AFTER
6 JULY 1, 2008, IN ADDITION TO ANY OTHER REQUIREMENTS SPECIFIED IN
7 THIS PART 1, A PERSON MAY ACQUIRE FEE SIMPLE TITLE TO REAL PROPERTY
8 BY ADVERSE POSSESSION ONLY UPON SATISFACTION OF EACH OF THE
9 FOLLOWING CONDITIONS:

10 (I) THE PERSON AND ANY PREDECESSORS IN INTEREST OF THE
11 PERSON, AS APPLICABLE, HAVE SATISFIED ALL OF THE ELEMENTS OF A
12 CLAIM FOR ADVERSE POSSESSION REQUIRED AT COMMON LAW.

13 (II) THE PERSON CLAIMING BY ADVERSE POSSESSION, OR THE

1 PERSON'S PREDECESSORS IN INTEREST, HAD A GOOD FAITH BELIEF THAT
2 THE PERSON WAS THE ACTUAL OWNER OF THE PROPERTY AND THE BELIEF
3 WAS REASONABLE UNDER THE PARTICULAR CIRCUMSTANCES.

4 (b) IN ORDER TO PREVAIL ON A CLAIM ASSERTING A CLAIM OF TITLE
5 TO REAL PROPERTY BY ADVERSE POSSESSION, THE PERSON ASSERTING THE
6 CLAIM SHALL PROVE EACH OF THE ELEMENTS OF THE CLAIM BY CLEAR AND
7 CONVINCING EVIDENCE.

8 (4) NOTWITHSTANDING ANY OTHER PROVISION IN THIS SECTION:

9 (a) THE PROVISIONS OF SUBPARAGRAPH (II) OF PARAGRAPH (a) OF
10 SUBSECTION (3) OF THIS SECTION SHALL NOT APPLY TO A CLAIM FOR
11 ADVERSE POSSESSION FOR THE PURPOSE OF ESTABLISHING A PRESCRIPTIVE
12 EASEMENT; AND

13 (b) NO PERSON MAY MAINTAIN A CLAIM OF TITLE TO REAL
14 PROPERTY BY ADVERSE POSSESSION UNDER CIRCUMSTANCES WHERE THE
15 CLAIM WOULD DEPRIVE A CHARITABLE ORGANIZATION FORMED UNDER
16 SECTION 501 (c) (3) OF THE FEDERAL "INTERNAL REVENUE CODE OF
17 1986", AS AMENDED, OF TITLE TO UNDEVELOPED LAND.

18 (5) WHERE THE PERSON ASSERTING A CLAIM OF TITLE TO REAL
19 PROPERTY BY ADVERSE POSSESSION PREVAILS ON SUCH CLAIM, THE COURT
20 MAY DETERMINE, BASED UPON THE FACTS AND CIRCUMSTANCES OF THE
21 CASE, WHETHER TO AWARD THE NONPREVAILING PARTY AN AMOUNT
22 REPRESENTING THE FAIR MARKET VALUE OF THE PROPERTY THAT IS THE
23 SUBJECT OF THE CLAIM AS WELL AS AN AMOUNT REPRESENTING ANY
24 PROPERTY TAXES OR OTHER ASSESSMENTS LEVIED ON THE SUBJECT
25 PROPERTY THE NONPREVAILING PARTY HAS PAID FROM THE
26 COMMENCEMENT OF THE LIMITATION PERIOD.

27 **SECTION 2. Effective date - applicability.** This act shall take

1 effect July 1, 2008, and shall apply to rights that accrue on or after said
2 date.

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