



## WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

**2015 Senate Bill 344**

**Senate Substitute Amendment 1**

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*Contact:* Dan Schmidt, Principal Analyst, 267-7251

### **2015 SENATE BILL 344**

Under current law, in certain specific circumstances, a person may obtain title to real property by possessing property that belongs to another individual for a certain statutorily specified period of time. In the case of adverse possession that is not founded on a written instrument, that period is 20 years of uninterrupted possession. When the adverse possession is founded on a written instrument, such as a title, the period is 10 years of uninterrupted possession. If the adverse possession is founded on a recorded title claim and the possessing individual has paid real estate taxes on the property, the period of uninterrupted possession is seven years.

Under current law, a person may also establish adverse use, or prescriptive rights to continued use of real property, by continuously and adversely using the real property of another for 20 years or more.

Senate Bill 344 provides that current law only applies where the required period of adverse possession has occurred prior to the effective date of the bill and generally limits future adverse possession unless one or more of the following exceptions applies:

1. A court cannot identify or locate the record title holder of the real estate or the record title holder's successor in interest in the real estate.
2. A principal building, or any part of a principal building, has been located on the real estate for at least the requisite number of years of uninterrupted adverse possession required to obtain title to the real estate.

If adverse possession is established under the second exception, the person who establishes title under adverse possession must pay the fair market value of the real estate to

which title is gained, the fair market value of the diminished value of the former title holder's remaining real estate that is due to the adverse possession, and the appropriate real estate taxes for the period of adverse possession.

### **SENATE SUBSTITUTE AMENDMENT 1**

The substitute amendment generally retains current law regarding adverse possession and adverse use, but establishes a new procedure whereby a record title holder may interrupt an adverse possession or use and may restart the period of adverse possession or use.

#### **Interruption by Affidavit**

The substitute amendment provides that a record title holder may interrupt the adverse possession or use of his or her real estate by doing all of the following:

1. Recording, in the office of the register of deeds for the county in which the record title holder's parcel is located, an affidavit of interruption along with a survey of the record title holder's parcel that was certified no earlier than five years before the date of recording.
2. Providing notice of the recorded affidavit of interruption in accordance with the required notice provisions of the substitute amendment.
3. Recording proof that notice was provided, in accordance with the required notice provisions of the substitute amendment, in the office of the register of deeds for the county in which the record title holder's parcel is located.
4. If notice is provided by certified mail, recording on the neighbor's abutting parcel, within 90 days of the date the neighbor received the notice, a notice of the recorded affidavit of interruption that includes a copy of the recorded affidavit of interruption, including the attached survey and a legal description of the neighbor's abutting parcel and of the record title holder's parcel.

#### **Affidavit of Interruption**

Under the amendment, an affidavit of interruption must, at a minimum, contain the following:

1. A legal description of the parcel of land that contains the real estate that is being adversely possessed or adversely used.
2. A statement that the person executing the affidavit is the record title holder of the parcel.
3. A general description of the adverse possession or adverse use that the record title holder intends to interrupt by recording the affidavit.

4. A statement that the adverse possession or adverse use of real estate is interrupted and that a new period of adverse possession or adverse use may begin the day after the affidavit is recorded.
5. A statement that the record title holder will provide notice as required under the notice provisions of the substitute amendment.

### **Notice of Interruption**

The substitute amendment requires that specific notice be given by the record title holder in order to interrupt an adverse possession or use. The record title holder may notify an adverse possessor by one of the following three methods:

1. If the record title holder knows, or has reason to believe, that the person who is adversely possessing or adversely using the record title holder's real estate is a neighbor, the record title holder must provide notice to the neighbor by sending all of the following by certified mail, return receipt requested, to the neighbor's address, as listed on the tax roll:
  - a. A copy of the recorded affidavit of interruption, including the attached survey.
  - b. A notice of the record title holder's intent to, within 90 days of the date the notice is received, record a notice of the affidavit of interruption on the neighbor's real estate that abuts the record title holder's parcel.
2. If the record title holder knows the identity of the person who is adversely possessing or adversely using the record title holder's real estate and the person is not a neighbor, the record title holder must provide notice to the person by sending the person a copy of the recorded affidavit of interruption, including the attached survey, by certified mail, return receipt requested, to the person's last-known address.
3. If the person who is adversely possessing or adversely using the record title holder's real estate is unknown to the record title holder at the time the affidavit of interruption is recorded, the record title holder must provide notice by publishing a class 1 notice under ch. 985, Stats., in the official newspaper of the county in which the record title holder recorded the affidavit of interruption. The published notice must include all of the following:
  - a. A statement that the record title holder recorded an affidavit of interruption.
  - b. The recording information for the recorded affidavit of interruption.
  - c. The street or physical address for the parcel on which the affidavit of interruption was recorded.

Under each notice method above, the record title holder must include a reference to the relevant statutory notice sections created by the substitute amendment. If a certified mailing of

notice is returned to the title holder as undeliverable, the title holder must provide published notice as described in item 3, above.

### **Miscellaneous Provisions**

The substitute amendment requires registers of deeds to record all affidavits of interruption, notices of affidavits of interruption, and proofs of notice in the general real estate records index. The substitute amendment clarifies that an affidavit of interruption may not be construed as an admission by the record title holder that the real estate is being possessed adversely and that an affidavit of interruption is not evidence that a person's possession or use of the record title holder's real estate is adverse to the record title holder. Finally, the substitute amendment states that the procedure for interrupting adverse possession or use is not exclusive, which appears to indicate that other methods for resolving adverse possession or use under current law remain in effect.

### **BILL HISTORY**

Senate Substitute Amendment 1 to Senate Bill 344 was recommended for adoption and Senate Bill 344 was recommended for passage, as amended, by the Senate Committee on Government Operations on February 4, 2016, each by a vote of Ayes, 5; Noes, 0.

DWS:ksm