

State of Wisconsin



2015 Senate Bill 344

Date of enactment: **March 1, 2016**
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2015 WISCONSIN ACT 200

AN ACT *to create* 893.305 of the statutes; **relating to:** an affidavit of interruption of adverse possession or use of real estate.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 893.305 of the statutes is created to read:
893.305 Affidavit of interruption; adverse possession and prescriptive use. (1) **DEFINITIONS.** In this section:

(a) "Affidavit of interruption" means an affidavit that satisfies the requirements under sub. (3).

(b) "Neighbor" means a person who holds record title to real estate abutting the record title holder's real estate.

(c) "Survey" means a property survey that complies with ch. A-E 7, Wis. Adm. Code, and that contains a certification by a professional land surveyor that the survey shows all visible encroachments on the surveyed land.

(2) **INTERRUPTION BY AFFIDAVIT.** A record title holder may interrupt adverse possession of real estate under s. 893.25, 893.26, 893.27, or 893.29 and adverse use of real estate under s. 893.28 (1) by doing all of the following:

(a) 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 5 years before the date of recording.

(b) Providing notice of the recorded affidavit of interruption in accordance with sub. (4).

(c) Recording proof that notice was provided in accordance with sub. (4) in the office of the register of

deeds for the county in which the record title holder's parcel is located.

(d) If notice is provided under sub. (4) (a), 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. A notice of the recorded affidavit under this paragraph shall include a legal description of the neighbor's abutting parcel and of the record title holder's parcel.

(3) **AFFIDAVIT OF INTERRUPTION.** A record title holder shall include in an affidavit to interrupt adverse possession of real estate under s. 893.25, 893.26, 893.27, or 893.29 or adverse use of real estate under s. 893.28 (1) at least all of the following:

(a) A legal description of the parcel of land that contains the real estate that is being adversely possessed or adversely used, as described in par. (c).

(b) A statement that the person executing the affidavit is the record title holder of the parcel.

(c) A general description of the adverse possession or adverse use that the record title holder intends to interrupt by recording the affidavit.

(d) A statement that the adverse possession or adverse use of real estate described in par. (c) is interrupted and that a new period of adverse possession or

* Section 991.11, WISCONSIN STATUTES: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication."

adverse use may begin the day after the affidavit is recorded.

(e) A statement that the record title holder will provide notice as required under sub. (4).

(4) NOTICE. (a) 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 shall 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:

1. A copy of the recorded affidavit of interruption, including the attached survey.

2. 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. Notice under this subdivision shall include a reference to this section.

(b) 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 shall 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. Notice provided under this paragraph shall include a reference to this section.

(c) 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 shall provide notice by publishing a class 1 notice under ch. 985 in the official newspaper of the county in which the record title holder recorded the affidavit of interruption. The published notice shall include all of the following:

1. A statement that the record title holder recorded an affidavit of interruption.

2. The recording information for the recorded affidavit of interruption.

3. The street or physical address for the parcel on which the affidavit of interruption was recorded.

4. A reference to this section.

(d) If certified mail sent by a record title holder under par. (a) or (b) is returned to the record title holder as undeliverable, the record title holder shall provide notice by publication under par. (c).

(5) EFFECT OF RECORD. If a record title holder complies with sub. (2), any period of uninterrupted adverse possession under s. 893.25, 893.26, 893.27, or 893.29 of real estate described in the affidavit of interruption and any period of continuous adverse use under s. 893.28 (1) of real estate described in the affidavit of interruption are interrupted on the date on which the affidavit of interruption is recorded on the record title holder's parcel, as required under sub. (2) (a). A new period of adverse possession or continuous adverse use may begin after the date on which the affidavit of interruption is recorded on the record title holder's parcel.

(6) ENTITLED TO RECORD. The register of deeds shall record affidavits of interruption, proofs of notice under sub. (2) (c), and notices of affidavits of interruption under sub. (2) (d) in the index maintained under s. 59.43 (9).

(7) CONSTRUCTION. (a) An affidavit of interruption recorded under this section may not be construed as an admission by the record title holder that the real estate is being possessed adversely, as defined under s. 893.25, 893.26, 893.27, or 893.29, or is being used adversely under s. 893.28 (1).

(b) An affidavit of interruption under this section 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.

(8) OTHER PROCEDURES. The procedure for interrupting adverse possession or adverse use set forth in this section is not exclusive.
