



2015 SENATE BILL 344

October 19, 2015 – Introduced by Senators KAPENGA and HARSDORF, cosponsored by Representatives CRAIG, BALLWEG, BORN, GANNON, KNODL, MURPHY, A. OTT, SANFELIPPO, SKOWRONSKI, WEATHERSTON and TAUCHEN. Referred to Committee on Government Operations and Consumer Protection.

1 **AN ACT** *to create* 893.25 (3), 893.26 (6), 893.27 (3), 893.29 (3) and 893.295 of the
2 statutes; **relating to:** limiting adverse possession of real property.

Analysis by the Legislative Reference Bureau

Under this bill, a person may only obtain title to real property by adverse possession if: 1) a court is unable to identify or locate the record title owner or the record title owner's successor in interest; or 2) a principal building has been located on the real property for at least the required number of years of uninterrupted adverse possession.

Under current law, adverse possession is a method by which a person may obtain title to real property by possessing property that belongs to another. Under current law, to adversely possess land, a person must take actual, physical possession of real property in a manner that is hostile, open and notorious, and exclusive to the record title holder. To obtain title by adverse possession, a person must continuously adversely possess property for at least 20 years. However, shorter periods of ten years and seven years apply in certain circumstances, such as possession based on a recorded document and the payment of real estate taxes. There is also an additional requirement if the real property being adversely possessed belongs to the state or a political subdivision, in which case the adverse possession must also be based upon a continuously maintained fence line that has been mutually agreed upon by the current landowners.

Under the bill, a person may only obtain title to real property by adverse possession if the required period of continuous adverse possession, whether 20, 10, or 7 years, occurred before the effective date of the bill. However, the bill provides

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two exceptions to this limitation of adverse possession. The first exception applies if a court is unable to identify or locate the record title owner or the record title owner's successor in interest to real estate that has been adversely possessed. The second exception applies if a principal building, or any part of a principal building, has been located on the real estate for the required period of adverse possession (20, 10, or 7 years). If a person establishes title under this second exception, the bill requires the person to pay to the previous title holder the fair market value of the real estate that is adversely possessed, the fair market value of any diminution in value to the title holder's remaining real estate that is attributable to the adverse possession, and reimbursement for real estate taxes paid by the previous title holder during the required period of adverse possession.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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

1 **SECTION 1.** 893.25 (3) of the statutes is created to read:

2 893.25 (3) Except as provided in s. 893.295, sub. (1) applies only if the 20 years
3 of uninterrupted adverse possession of real estate occurred before the effective date
4 of this subsection [LRB inserts date].

5 **SECTION 2.** 893.26 (6) of the statutes is created to read:

6 893.26 (6) Except as provided in s. 893.295, sub. (1) applies only if the 10 years
7 of uninterrupted adverse possession of real estate occurred before the effective date
8 of this subsection [LRB inserts date].

9 **SECTION 3.** 893.27 (3) of the statutes is created to read:

10 893.27 (3) Except as provided in s. 893.295, sub. (1) applies only if the 7 years
11 of uninterrupted adverse possession of real estate occurred before the effective date
12 of this subsection [LRB inserts date].

13 **SECTION 4.** 893.29 (3) of the statutes is created to read:

14 893.29 (3) Except as provided in s. 893.295, with respect to obtaining title by
15 adverse possession, sub. (1) applies only if the more than 20 years of uninterrupted

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1 adverse possession of real estate occurred before the effective date of this subsection
2 [LRB inserts date].

3 **SECTION 5.** 893.295 of the statutes is created to read:

4 **893.295 Limitations to adverse possession; exceptions.** (1) In this
5 section, “principal building” means the main building or structure on a single lot or
6 parcel of land and includes any attached garage or attached porch.

7 (2) The requirement under ss. 893.25 (3), 893.26 (6), 893.27 (3), and 893.29 (3)
8 that the requisite number of years of uninterrupted adverse possession of real estate
9 must have occurred before the effective date of this section [LRB inserts date],
10 does not apply to uninterrupted adverse possession of real estate if any of the
11 following applies:

12 (a) A court cannot identify or locate the record title holder of the real estate or
13 the record title holder’s successor in interest in the real estate.

14 (b) A principal building, or any part of a principal building, has been located
15 on the real estate for at least the requisite number of years of uninterrupted adverse
16 possession required to obtain title to the real estate under s. 893.25, 893.26, 893.27,
17 or 893.29, whichever is applicable. The exception under this paragraph applies only
18 to the real estate underlying the principal building and up to 10 feet extending
19 beyond the perimeter of the principal building.

20 (3) A person who establishes title to real estate by adverse possession under
21 s. 893.25, 893.26, 893.27, or 893.29 as the result of the exception under sub. (2) (b)
22 shall pay the former title holder of the real estate all of the following:

23 (a) The fair market value of the real estate to which the person establishes title
24 by adverse possession.

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1 (b) The fair market value of any diminution in value to the former title holder's
2 remaining real estate that is attributable to the adverse possession.

3 (c) 1. If the adverse possession is under s. 893.25, the total amount of real estate
4 taxes, or other taxes levied, or payments required, in lieu of real estate taxes that the
5 former title holder paid during the 20 years immediately preceding the date on which
6 title is established by adverse possession.

7 2. If the adverse possession is under s. 893.26, the total amount of real estate
8 taxes, or other taxes levied, or payments required, in lieu of real estate taxes that the
9 former title holder paid during the 10 years immediately preceding the date on which
10 title is established by adverse possession.

11 (END)