

CS FOR SENATE BILL NO. 309(L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SECOND LEGISLATURE - SECOND SESSION

BY THE SENATE LABOR AND COMMERCE COMMITTEE

Offered: 4/12/02

Referred: Judiciary

Sponsor(s): SENATOR THERRIAULT

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to actions to quiet title to, eject a person from, or recover real property
2 or the possession of it, and to acquisition of real property by adverse possession; and
3 providing for an effective date."

4 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

5 * **Section 1.** AS 09.10.030 is amended to read:

6 **Sec. 09.10.030. Actions to recover real property [IN 10 YEARS].** **(a)**
7 **Except as provided in (b) of this section, a** [A] person may not bring an action for
8 the recovery of real property, or for the recovery of the possession of it unless the
9 action is commenced within 10 years.

10 **(b) An action may be brought at any time by a person whose ownership**
11 **interest in real property is recorded under AS 40.17 to**

12 **(1) quiet title to that real property; or**

13 **(2) eject a person from that real property.**

14 **(c)** An action may not be maintained **under this section** [FOR THE

1 RECOVERY] unless it appears that the plaintiff, an ancestor, a predecessor, or the
 2 grantor of the plaintiff was seized or possessed of the premises in question **at some**
 3 **time** [WITHIN 10 YEARS] before the commencement of the action.

4 * **Sec. 2.** AS 09.45.052(a) is amended to read:

5 (a) The uninterrupted adverse notorious possession of real property [UNDER
 6 COLOR AND CLAIM OF TITLE] for **10** [SEVEN] years or more is conclusively
 7 presumed to give title to the property, except as against the state or the United States,
 8 **only if, by clear and convincing evidence,**

9 **(1) the possessor proves that**

10 **(A) the possession was uninterrupted, adverse, and**
 11 **notorious and occurred under reasonable and good faith color and claim**
 12 **of title;**

13 **(B) the possessor paid all taxes due on the property during**
 14 **the entire period of the possession;**

15 **(C) an instrument under which the possessor claimed title**
 16 **was recorded at the time the possessor's claim of title began;**

17 **(D) the possessor sought and obtained, in the possessor's**
 18 **name, all permits, licenses, or authorizations necessary for the possessor's**
 19 **use or development of the property;**

20 **(E) during the period of possession, the possessor obtained**
 21 **any surveys of the property or plats that a reasonable landowner would**
 22 **have obtained; and**

23 **(F) during the period of possession, the possessor provided**
 24 **notice that the property was private by posting to the extent that a**
 25 **reasonable landowner would have provided the notice; or**

26 **(2) the possessor proves that**

27 **(A) the possessor owns property adjacent to the property**
 28 **claimed by adverse possession;**

29 **(B) during the entire period of possession, the possessor and**
 30 **any predecessor, ancestor, or grantor of the possessor, reasonably and in**
 31 **good faith believed that the property claimed by adverse possession was**

1 within the boundaries of the adjacent property; and

2 (C) the possessor took reasonable measures to ascertain the
 3 actual boundary between the property claimed by adverse possession and
 4 the adjacent property. [FOR THE PURPOSE OF THIS SECTION, LAND

5 THAT IS IN THE TRUST ESTABLISHED BY THE ALASKA MENTAL
 6 HEALTH ENABLING ACT OF 1956, P.L. 84-830, 70 STAT. 709, IS LAND
 7 OWNED BY THE STATE.]

8 * **Sec. 3.** AS 09.45.052 is amended by adding new subsections to read:

9 (c) The court shall quiet title to property in favor of the possessor on proof of
 10 an adverse possession claim under (a) of this section and on proof of payment by the
 11 possessor to the owner of record of

12 (1) the appraised value of the property;

13 (2) the fair rental value of the property during the period of adverse
 14 possession;

15 (3) damages incurred by the owner of record as a result of the adverse
 16 possession or loss of the property; and

17 (4) prejudgment interest on amounts required to be paid to the owner
 18 of record under (1) - (3) of this subsection.

19 (d) For purposes of determining the amount of payment under (c) of this
 20 section, the cost of appraising the property shall be borne by the possessor claiming
 21 the property. If more than one person has an ownership or security interest in the
 22 property, the court may apportion the payment in any manner required by agreement,
 23 law, or equity. If the possessor fails to make the payment within the period of time set
 24 by the court, the court shall quiet title to the property claimed by adverse possession in
 25 favor of the record owner.

26 (e) For the purpose of this section, land that is in the trust established by the
 27 Alaska Mental Health Enabling Act of 1956, P.L. 84 - 830, 70 Stat. 709, is land owned
 28 by the state.

29 * **Sec. 4.** The uncodified law of the State of Alaska is amended by adding a new section to
 30 read:

31 APPLICABILITY. (a) AS 09.10.030, as amended in sec. 1 of this Act, applies only

1 to actions that have not been barred before the effective date of this Act by AS 09.10.030 as it
2 read before the effective date of this Act.

3 (b) AS 09.45.052 as it read before the effective date of this Act applies to adverse
4 possession claims if the person claiming the property has completed at least seven years of
5 uninterrupted adverse notorious possession under color and claim of title before the effective
6 date of this Act.

7 * **Sec. 5.** This Act takes effect immediately under AS 01.10.070(c).