

**SB**

**286**



February 25, 1998

**HAND DELIVERED**

The Honorable Rick Halford  
The State Senate  
State Capitol, Room 121  
Juneau, Alaska 99801-1182

Re: Senate Bill 286 -- Adverse Possession

Dear Senator Halford:

Thank you for your interest in Senate Bill 286, Adverse Possession. I value the opportunity to discuss this legislation with you and your staff and appreciate your thoughts on this important piece of legislation. At the Senate Resources Committee hearing for Senate Bill 286, on Friday, February 20th, various members of this Committee expressed some concern over this bill and it was held in committee to address these concerns.

As you requested, enclosed for your review is a table showing a detailed listing of each state, with the statutory citation and the number of years required for adverse possession (the "prescriptive period"). A brief summary of this analysis follows:

- Fifty percent (50%) of the states have time periods in excess of 10 years, with some as high as 30 years but most requiring between 15 and 20 years.
- There are 14 states that have a 10-year period for adverse possession, and 11 states having time periods of less than 10 years.

Sealaska is prepared to work with you and your staff to address the issues and concerns expressed during the hearing.

Thank you again for your interest in Senate Bill 286. If there are any questions, please contact me.

Sincerely,

SEALASKA CORPORATION

*Richard P. Harris*

Richard P. Harris  
Senior Vice President

The Honorable Rick Halford  
February 25, 1998  
Page 2

Enc.: As noted

cc w/ enc.: Senator Jerry Mackie ✓  
David Gray, Senator Mackie's Office

STATE	CITATION	PRESCRIPTIVE PERIOD
Alabama	6-2-33	10 Years
Alaska		10 Years
Arizona	12-526	10 Years
Arkansas	18-61-101	7 Years
California	Code Civil Procedure §§ 318/321	5 Years
Colorado	38-41-101	18 Years
Connecticut	52-575	15 Years
Delaware	10 § 7901	20 Years
Florida	95.12	7 Years
Georgia	44-5-163 44-5-164	20 Years (Color of Title 7 Years)
Hawaii	657-31	20 Years
Idaho	5-203	5 Years
Illinois	735 5/13-101	20 Years
Indiana	34-1-2-2	20 Years
Iowa	614.17A	10 Years
Kentucky	413.010	15 Years
Kansas	60-503	15 Years
Louisiana	C.C. 3486	30 Years
Maine	Ch. 723 § 6651	4 Years
Maryland	CJ § 5-103	20 Years
Massachusetts	Ch. 26 § 21	20 Years
Michigan	600.5801(4)	15 Years
Minnesota	541-02	15 Years
Mississippi	15-1-13	10 Years
Missouri	516.010	10 Years
Montana	70-19-401	5 Years

Nebraska	25-202	10 Years
Nevada	11.080 & .100	5 Years
New Hampshire	Vol. 4-C. 508:2	20 Years
New Mexico	37-1-22	10 Years
New York	RPAL § 501	10 Years
North Carolina	1-40	20 Years
North Dakota	28-01-04	20 Years
Ohio	2305-04	21 Years
Oklahoma	12 § 93	15 Years
Oregon	12.050	10 Years
Pennsylvania	42 PCSA § 5530	21 Years
Rhode Island	34-7-1	10 Years
South Carolina	15-67-210	10 Years
South Dakota	15-3-2/3	20 Years
Tennessee	28-2-103	7 Years
Texas	CP&R § 16.025	5 Years
Utah	78-12-7	7 Years
Vermont	12 § 501	15 Years
Virginia	8.01-236	15 Years
West Virginia	55-2-1	10 Years
Washington	7.28.050	7 Years
Wisconsin	893.25	20 Years
Wyoming	1-3-103	10 Years
Washington D.C.	§ 12-301 (1)	15 Years

***Issue: Limiting the Grounds for Taking Property  
Under the Doctrine of Adverse Possession***

***Description of the Issue:*** Under current Alaska law, a squatter, acting in bad faith, can take another person's property, without paying compensation, by possessing that property in an open and hostile manner for 10 years. This is the doctrine of "adverse possession," which was born in the Middle Ages and serves no modern social purpose. The issue here is whether Alaska should limit the doctrine to only those cases where: (i) a person can make a good faith claim of title under some written instrument; or (ii) there is a good faith error regarding property boundaries.

***Discussion of the Issue:*** If a person, in bad faith (indeed, with an intent to steal another person's land), enters onto remote private property and builds a squatter's cabin, or some other rudimentary improvement, the thief can claim ownership of the land he has invaded after living there for 10 years. The squatter will owe no compensation to the private landowner whose property he took.

This is the doctrine of "adverse possession," and it is the product of the Dark Ages, when a person only "owned" land if he possessed it, and when ownership could be achieved by force.

Obviously, civilized society views the original premise on which this doctrine was founded as abhorrent. And so a new justification has been woven. This one argues that at least a squatter makes productive use of land. And, the argument continues, it is better that the land be given to a productive squatter, rather than left with the person who paid for it.

That is poor environmental policy. It is also classic Marxist theory--that is, the busy laborer having the right to take the idle capitalist's land. And it has little currency here in Alaska. Here, ANCSA corporations and other private landowners hold large tracts of remote wilderness that are difficult to patrol, and which neither can nor should be developed all at once. To nonetheless penalize these landowners for failing to undertake the massive and wasteful expense of constantly policing their long-term investment serves no valid policy function.

Legislation may be introduced in the 1998 session to deny squatters the ability to take other peoples' property. Instead, the doctrine of "adverse possession" would be limited to two circumstances where the person claiming under the doctrine might have some equity on his side;

- ◆ 1<sup>st</sup>, when a person has a competing deed or other written instrument of conveyance, and that person, in good faith reliance on that competing document, occupies the property for at least 20 years; and
- ◆ 2<sup>nd</sup>, where a neighboring landowner makes a good faith mistake about the actual boundary of his property, and mistakenly occupies some adjoining property--again for at least 20 years.

In either case, the person claiming under "adverse possession" would owe compensation to the property's actual owner, both for the value of the land taken and a fair rental for the period of adverse possession.

The legislation would apply to all claims of adverse possession except those that became "vested" before the law was changed--*i.e.*, where a squatter had already openly occupied property for the 10 now-required years.

**Recommendation:** The doctrine of adverse possession undermines the system of recording titles on which modern commerce depends. The doctrine also spawns litigation. The strict limitations on the doctrine described above would signal Alaska's commitment to protect private property rights, as well as discourage litigation and promote certainty in our legal title system. The recommendation here is to support legislation that would limit the doctrine in the manner described in this paper.

SENATE BILL NO. 286

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - SECOND SESSION

BY SENATOR MACKIE

A BILL

FOR AN ACT ENTITLED

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

4

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

6

7 \* Section 1. AS 09.10.030 is amended to read:

8

Sec. 09.10.030. Actions to recover real property in 20 [10] Years.

9

A person may not bring an action for the recovery of real property, or for the  
10 recovery of the possession of it unless the action is commenced within 20 [10] years. An  
11 action may not be maintained under this section [FOR THE RECOVERY] unless it  
12 appears that the plaintiff, an ancestor, a predecessor, or the grantor of the plaintiff was  
13 seized or possessed of the premises in question within 20 [10] years before the  
14 commencement of the action.

15 \* Sec. 2. AS 09.45.052 is amended to read:

16

Sec. 09.45.052. Adverse Possession Under Color of Title. (a) The

17

uninterrupted adverse notorious possession of real property under color and claim of title  
18 for seven years or more is conclusively presumed to give title to the property, except as  
19 against the state or the United States, only if, by clear and convincing evidence, the  
20 possessor proves that the possession was uninterrupted, adverse, and notorious and

1 occurred under reasonable and good faith color and claim of title; and the possessor  
2 paid all taxes due on the property during the entire period of the possession. [FOR  
3 THE PURPOSE OF THIS SECTION, LAND THAT IS IN THE TRUST  
4 ESTABLISHED BY THE ALASKA MENTAL HEALTH ENABLING ACT OF 1956,  
5 P.L. 84-830, 70 STAT. 709, IS LAND OWNED BY THE STATE.]

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

7 (c) The court shall quiet title to property in favor of the possessor on proof of an  
8 adverse possession claim under (a) of this section and on proof of payment by the  
9 possessor to the owner of record of: (1) the appraised value of the property; (2) the fair  
10 rental value of the property during the period of adverse possession; (3) damages incurred  
11 by the owner of record as a result of the adverse possession or loss of the property; and  
12 (4) prejudgment interest on amounts required to be paid to the owner of record under (1) -  
13 (3) of this subsection.

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

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

24 \* Sec. 4. APPLICABILITY (a) AS 09.10.030, as amended in sec. 1 of this Act, applies  
25 only to actions that have not been barred before the effective date of this Act by AS 09.  
26 10.030.30 as it read before the effective date of this Act.

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

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

## SENATE BILL NO. 286

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - SECOND SESSION

BY SENATOR MACKIE

Introduced: 2/10/98

Referred: Resources, Judiciary

## A BILL

## FOR AN ACT ENTITLED

1 "An Act relating to actions to quiet title \*, eject a person from, or recover real  
 2 property or the possession of it, and to acquisition of real property by adverse  
 3 possession; and 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 20 [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 notorious  
 11 and occurred under reasonable and good faith color and claim of title;

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

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

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

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

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

25 (2) the possessor proves that

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

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

1 (C) the possessor took reasonable measures to ascertain the  
2 actual boundary between the property claimed by adverse possession and  
3 the adjacent property. [FOR THE PURPOSE OF THIS SECTION, LAND  
4 THAT IS IN THE TRUST ESTABLISHED BY THE ALASKA MENTAL  
5 HEALTH ENABLING ACT OF 1956, P.L. 84-830, 70 STAT. 709, IS LAND  
6 OWNED BY THE STATE.]

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

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

11 (1) the appraised value of the property;

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

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

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

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

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

28 \* Sec. 4. APPLICABILITY. (a) AS 09.10.030, as amended in sec. 1 of this Act, applies  
29 only to actions that have not been barred before the effective date of this Act by AS 09.10.030  
30 as it read before the effective date of this Act.

31 (b) AS 09.45.052 as it read before the effective date of this Act applies to adverse

1 possession claims if the person claiming the property has completed at least seven years of  
2 uninterrupted adverse notorious possession under color and claim of title before the effective  
3 date of this Act.

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

*Legislation to Limit the Circumstances Under Which  
A Person May Divest a Landowner of Title to Its Land  
Under the Doctrine of Adverse Possession:*

*A Rationale and Section-by-Section Analysis*

*I. Rationale*

*A. Overview of the Legislation*

"Adverse possession" is the doctrine under which a person--even a squatter acting in bad faith--can take another person's property without compensation by simply possessing it, in an open and hostile way, for a certain period of years. It is a doctrine born in the Middle Ages under circumstances that have little applicability to 20<sup>th</sup> Century Alaska, and it offends Alaska's abiding respect for private property ownership.

The enclosed legislation would limit the availability of this doctrine to two narrow circumstances where the rule may have some arguable policy justification: (1) where a person has, in good faith, occupied property under color of title for 20 years; and (2) where a property owner occupies property adjacent to his own land under a reasonable, good-faith error over the actual boundaries of his property.

In both instances, the adverse possessor would be required to pay the property's legal owner both full market value for the property taken, as well as any consequential damages.

Beyond these two limited circumstances, "adverse possession" is a doctrine inimical to the concept of private property ownership. And it imposes a particularly harsh burden on private landowners in Alaska who, because of the doctrine, are often

charged with the impossible task of policing large remote landholdings to assure themselves that no squatter has taken residence.

That burden is an economic waste, and serves no valid public policy. As a result, beyond the limited circumstances mentioned, the concept of taking another's land by "adverse possession" ought to be abolished in Alaska.

### ***B. The Origins and Purpose of the "Adverse Possession" Doctrine***

#### ***1. The Doctrine's Original Rationale--Possession was Equated with Ownership***

"Adverse possession" is a doctrine that rewards possession of land at the expense of the landowner. Not surprisingly, then, the doctrine has its roots in the feudal concept of "seizin." In the early Middle Ages, "ownership" of land was proven not by title or deed, but rather by actual possession. If a person was forcefully expelled from his property, the trespasser became the land's new "owner," and the dispossessed person could regain "ownership" only by himself resorting to force. <sup>1/</sup>

Gradually, the dispossessed "owner" was given a legal remedy to regain possession--a remedy which, by virtue of a statute issued under Henry VIII, must be exercised within 60 years of dispossession. Thus was borne the thought that a person could recover his land from an "adverse possessor," but only if he acted within a specific period of time. <sup>2/</sup>

---

<sup>1/</sup> 5 George W. Thompson, *Commentaries on the Modern Law of Real Property* (1979) ("Commentaries") at 573-76.

<sup>2/</sup> *Commentaries, supra* at 574-76. Actually, "adverse possession" rules can be traced further back, to the Code of Hammurabi, which provided, in part, that:

*If a captain or a soldier has neglected his field, his garden and his house, instead of working them; and another takes his field, his garden and his house, and works them for three years;*

Remember, though, that in those days possession--or "seizin"--~~was~~ title. Therefore, by giving the "adverse possessor"--or "disseizor"--the opportunity to bar the person he dispossessed from reclaiming his property after 60 years, feudal courts were, in their minds, doing no injustice to the prior occupant, since that occupant had lost the basis for his claim of "ownership" when he was forcibly dispossessed.

## *2. A New Rationale--Possession was the Best Proof of Ownership*

Gradually, English common law came to recognize the concept of conveying and holding land by deed. "Title" became something different from, and superior to, mere "possession." And so the doctrine of "adverse possession" needed a new rationale.

The virtue of "seizin," of course, was that it was obvious who is "seized" of a particular piece of property--the person living on it. "Title," conversely, was the source of considerable dispute, since there then existed no reliable, centralized recording system to resolve conflicting claims of "title." As a result:

*In an era of comparatively scarce land, decentralized records and crude surveying techniques, lengthy possession may have been the best possible proof of ownership.*

<sup>3/</sup> Thus, while possession no longer equated with ownership, possession remained the best evidence of "title," and so the doctrine of adverse possession continued to serve some worthwhile purpose. "Ultimately, the 1623 Statute of Limitations required that

---

*if he returns and desires to till his field, his garden, and his house, they shall not be given to him. He that has taken and worked them shall continue to use them.*

*The Hammurabi Code and the Sinaitic Legislation* at 32-33 (Chilperic Edwards ed., 1904).

<sup>3/</sup> Sprankling, *An Environmental Critique of Adverse Possession*, 79 Cornell Law Rev. 816, 822 ("Critique") (1994).

suits to recover possession of land be brought within twenty years. The Statute recited that this limit was necessary for 'quieting men's estates, and avoiding of suits...' <sup>4/</sup>

### 3. *The New American Purpose--Social Engineering*

In James I's England, if a person owned land, he probably lived on it. <sup>5/</sup> Even by the 16<sup>th</sup> century, there was precious little wild land in England that a person might own, but not make productive use of. <sup>6/</sup>

This was not true in North America, where vast tracts of wilderness might lie in private ownership. Here, the assumption that ownership was reliably proven by physical possession did not hold true:

*Transplanted to the abundant, sparsely populated wild lands of North America, however, the assumptions of the [doctrine of adverse possession] ...failed. The terrain was too hostile, the forests too impenetrable and the distances too vast for most owners to reside upon or even to inspect their properties regularly. More importantly, possession of land in the English sense, characterized by residence, cultivation or improvement, was often impractical. The minor acts, greatly separated in time, that characterized land use in wilderness areas were unlikely to afford constructive notice to the owner who did inspect occasionally.*

*Critique, supra* at 823. "Adverse possession," then, needed a new purpose, and found one in our 19<sup>th</sup> century urge to settle the West. The modern doctrine "developed when much of the continental United States was unsurveyed wilderness," and our courts and legislatures resultantly "adopted a public policy that as much land should be put to use as

---

<sup>4/</sup> *Critique, supra* at 823.

<sup>5/</sup> James I promulgated the 1623 statute just quoted.

<sup>6/</sup> By 1696, only 16% of England's land were uncultivated forest lands. *Critique, supra* at 822, n. 25.

possible.”<sup>7/</sup> Under the new theory of adverse possession, the squatter was to be rewarded for making use of wild land, even at the expense of the person who owned it:

*Beginning in the nineteenth century, American courts serving the ideology of economic expansion reformulated adverse possession in the pursuit of national productivity. These courts transformed the doctrine from a mechanism designed to protect the title of the true owner against false claims into a tool designed to transfer title to wild lands from the idle true owner to the industrious adverse possessor.*

*Critique, supra* at §21 (emphasis original).

The American justification for the doctrine also took on something of a Marxist tint. Vast expanses of public lands were conveyed to large, absentee landlords--principally, the railroads. As pioneers struck west and inadvertently homesteaded then-or-future railroad land, Western state legislators, and courts, concluded that disputed land should belong to the worker rather than the absentee capitalist:

*By 1803 more than ninety percent of the nation consisted of sparsely populated, publicly owned wild lands. The broad federal policy toward these wild lands was to transfer them into private ownership, initially through sale. Because the government had never been able to enforce its theoretical ban against squatting on these lands, sales often resulted in conflicts between new absentee owners holding legal title and actual settlers who had already placed the land in productive use.*

*Critique, supra* at 843. For this reason, the periods necessary to establish title by “adverse possession” tended to shrink as one proceeds westward--from the old 20-year English rule still prevalent in the original colonies, to as little as five years in many western states. *See Attachment A.*

---

<sup>7/</sup> *Seddon v. Harpster*, 403 So. 2<sup>nd</sup> 409, 413 (Florida 1981).

*C. Adverse Possession in 20<sup>th</sup> Century Alaska--A Doctrine Without a Reason*

To this day, some courts, including the Alaska Supreme Court, maintain that the doctrine of adverse possession serves a useful public purpose because "society will benefit from someone's making use of land the owner leaves idle." <sup>\*/</sup>

One might argue that there is considerable "idle" land in Alaska's *public* domain. However, in Alaska as elsewhere, neither the state nor federal government can be divested of title through adverse possession. AS 09.45.052(a). And Alaska has precious little "idle" private land.

The largest private landowners in Alaska are the Native corporations established under the Alaska Native Claims Settlement Act. Those lands were conveyed both in settlement of Alaska Natives' aboriginal claims, and to meet the "real economic and social needs of Natives." ANCSA, §1. ANCSA lands, then, and every acre of them, serve an important legal, social and economic purpose. They are not, any of them, "idle" in that sense.

Congress, in fact, has recognized that fact, and has accordingly extended ANCSA lands some protection from adverse possession claims as long as they remain undeveloped. 43 U.S.C. §1636(d). But ANCSA corporations often acquire other remote lands for future resource development purposes, as will other private landowners as time goes by. To the extent that these lands are not developed, it is because development now would be an economic waste, and there is no sound public policy that should prevent a private landowner from investing those lands for future generations.

---

<sup>\*/</sup> *Tenala, Ltd. v. Fowler*, \_\_\_ P.2<sup>nd</sup> \_\_\_, Slip Op. 4376 at 16 (August 2, 1996).

The last remaining modern justification for adverse possession is that it "keep[s] stale causes out of court." *Tenala, Ltd. v. Fowler, supra* at 16. But, in fact, it does just the opposite. Adverse possession cases involve untrustworthy testimony about who possessed what 10 or 20 years ago; conversely, and "considering current methods of record storage on microfiche, computer disks and data tapes," claims based on record ownership will never grow stale.<sup>9/</sup>

Similarly, allowing adverse possession claims promotes litigation, while limiting them discourages it. This because:

*Bright line standards generally deter litigation...The record title standard draws an exceedingly bright line: the holder of record title always prevails. In contrast, adverse possession as applied to wild lands is an indeterminate, murky standard under which results can rarely be predicted with certainty.*

*Critique, supra* at 878. The fact of the matter, as Florida's Supreme Court observed, is that "[w]ith modern technology and computerized transactions our society is now more capable of accurately establishing legal interest to property through paper title than through possession." *Seddon v. Harpster*, 493 So.2<sup>nd</sup> at 414.

Adverse possession serves no useful public purpose in Alaska today, and it disserves others. Apart from its impact on private property ownership generally, and implementation of ANCSA in particular, "[a]dverse possession...erode[s] the effectiveness and utility of both recording and marketable title statutes by creating uncertainty." *Outlaws, supra* at 97.

---

<sup>9/</sup> "Outlaws of the Past: A Western Perspective on Prescription and Adverse Possession," 31 Land and Water Law Review 79, 104 (1996) ("Outlaws").

The doctrine ought to be limited to those few situations where some equity might lie in the adverse possessor's favor, and the enclosed legislation attempts to do just that.

## *II. Section-by-Section Analysis*

Section 1. There are two adverse possession statutes in Alaska. The first is AS 09.10.030. This is the squatters' statute. The adverse possessor need not occupy the property under "color of title"--that is, a deed or other conveyance. And the squatter need not even occupy the property in good faith. <sup>10/</sup> As one commentator puts it, this statute "gives title not only to one who because of good faith error occupies the land of another but also to a person who knowingly sought to appropriate another's land." <sup>11/</sup>

Under this statute, the squatter must adversely possess the property for 10 years. After that, the statute, which is framed as a statute of limitations, bars the property's owner from bringing any action against the squatter to recover his property.

Section 1 would amend this statute to provide that a landowner could recover his or her land--by a quiet title or ejectment action--at any time. <sup>12/</sup> Because of computerized land records, the land owner's claim will never, as a practical matter, grow stale.

Sections 2-3. There are several elements to Sections 2-3:

*1. Retaining adverse possession claims arising under "color of title."* AS 09.45.052 is Alaska's second adverse possession statute, and it deals with adverse possession that is based on "color of title." In other words, the adverse possessor has some deed or other document purporting (but for some reason failing) to convey title to

---

<sup>10/</sup> *Hubbard v. Curtiss*, 684 P.2<sup>nd</sup> 842, 848 (Alaska 1984).

<sup>11/</sup> 7 Richard R. Powell, *Powell on Real Property*, ¶1012(3) (1993).

<sup>12/</sup> To the extent that this statute governs other types of real property claims, the 10-year statute of limitations would be retained.

the property being possessed. Unlike the statute amended by Section 1, this statute requires good faith on the part of the possessor--in other words, an honest and reasonable belief that the possessor really owns the land. *Ault v. State*, 688 P.2<sup>nd</sup> 951, 956 (Alaska 1984).

Under subsection (a)(1), Section 2 retains "color of title" as a basis for claiming property by adverse possession, but returns the required period of possession to the common law's original 20 years.

2. *Allowing adverse possession claims to be brought for good faith boundary disputes.* A second specie of adverse possession claims that may retain some public policy justification arises when a property owner, in good faith, occupies property beyond the boundaries of property owned by that person. After 20 years' notorious and adverse possession of that property, the property owner may quiet title to the adjacent property he or she has occupied.

3. *Explicitly requiring a showing of good faith.* Section 2 makes the existing court-imposed requirement of "good faith" explicit in the statute, as Oregon did in 1989.

<sup>13/</sup>

4. *Requiring the possessor to prove entitlement to the property by "clear and convincing evidence."* Again, this requirement is already imposed by the courts. <sup>14/</sup> Section 2 would make that requirement explicit.

---

<sup>13/</sup> / ORS 105.620. As our Supreme Court has noted, "in almost all of these jurisdictions, the requirement of good faith was explicitly written into the statutes." *Lott v. Muldoon Road Baptist Church, Inc.*, 466 P.2<sup>nd</sup> 815, 818, n. 9 (Alaska 1970). The "good faith" requirement will exist whether or not this legislation is enacted; however, it is better practice for the material elements of any claim to be expressed in the statute itself.

<sup>14/</sup> / *Curran v. Mount*, 657 P.2<sup>nd</sup> 389, 391 (Alaska 1982).

5. *Requiring just compensation to the property owner.* It is one thing to allow a person to take the private property of another. It is quite another to allow the adverse possessor to do so without paying the owner, and none of the modern justifications for the doctrine of adverse possession explain the squatter's current ability to deprive property owners of land *without compensation*.

Section 3 requires the successful adverse possessor, as a condition of receiving title to the property, to: (1) pay for an appraisal of the property; (2) pay the record owner the appraised value of the property taken; and (3) pay any other damages that the owner may have suffered as a result of the adverse possession and loss of the property (including the rental value of the property during the period of adverse possession), as a condition of quieting title in the possessor's favor. If the adverse possessor fails to promptly do so, title will be quieted in the owner's favor.

Section 4. This section makes the new legislation applicable to any adverse possession claim that has not "vested" by the effective date of the legislation. Adverse possession claims "vest" when the adverse possessor has met the statutory requirements for the requisite number of years--under current Alaska law, 10 years (or seven years for claims under color of title).<sup>15/</sup> Serious constitutional questions would arise if the legislation purported to extinguish already-vested adverse possession claims; conversely, there would appear to be no constitutional difficulty in affecting unvested claims, since

---

<sup>15/</sup> *Markovich v. Chambers*, 857 P.2<sup>nd</sup> 906, 908 (Or. App. 1993).

**Sec. 14.40.291. Land of the University of Alaska not public domain land.**

Notwithstanding any other provision of law, university-grant land, state replacement land that becomes university-grant land on conveyance to the university, and any other land owned by the University of Alaska is not and may not be treated as state public domain land. Title or interest to land described in this section may not be acquired by adverse possession, prescription, or in any other manner except by conveyance from the university. The land is subject to condemnation for public purpose in accordance with law.

(§ 6 ch 22 SLA 1983)

**Sec. 09.45.052. Adverse possession.**

(a) The uninterrupted adverse notorious possession of real property under color and claim of title for seven years or more is conclusively presumed to give title to the property except as against the state or the United States. For the purpose of this section, land that is in the trust established by the Alaska Mental Health Enabling Act of 1956, P.L. 84-830, 70 Stat. 709, is land owned by the state.

(b) Except for an easement created by Public Land Order 1613, adverse possession will lie against property that is held by a person who holds equitable title from the United States under paragraphs 7 and 8 of Public Land Order 1613 of the Secretary of the Interior (April 7, 1958).

(§ 3.15 ch 101 SLA 1962; am § 1 ch 141 SLA 1986; am § 58 ch 66 SLA 1991)

Fs. Rick Harris

# FISCAL NOTE

STATE OF ALASKA  
1998 LEGISLATIVE SESSION

BILL NO. SB 286

Revision Date (Note if correction) \_\_\_\_\_ Dept. Affected Law  
 Title An Act relating to actions to quiet title to, eject a BRU Civil Division  
 person from, or recover real property or the possession of it ... Component Natural Resources  
 Sponsor: Senator Mackie  
 Requester Senate Resources Committee Component Serial No. 2212

### Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	*****	*****	*****	*****	*****	*****

CAPITAL EXPENDITURES						
----------------------	--	--	--	--	--	--

CHANGE IN REVENUES ( )						
------------------------	--	--	--	--	--	--

### FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
<b>TOTAL</b>	*****	*****	*****	*****	*****	*****

Estimate of any current year (FY98) cost: \_\_\_\_\_

### POSITIONS

Full-time						
Part-time						
Temporary						

### ANALYSIS: (Attach a separate page if necessary)

SB 286 would repeal the statute of limitations for quiet title actions claiming title through a recorded document, and extend the statute limitations for adverse possession (no color of title) from 7 to 20 years. Adverse possession claims against the state would still be prohibited, so the latter change will have no fiscal impact on the Department of Law. However, the potential for quiet title claims, with no statute of limitations on how soon they must be filed, increases. This will result in more litigation, as many claims now subject to the statute of limitations, would remain alive. The department cannot quantify how much new litigation would result, and must submit an indeterminate fiscal note.

Prepared by Joan M. Kasson *Joan M. Kasson*  
 Division Attorney General's Office  
 Approved by Commissioner, Bruce M. Botelho, Attorney General  
 Agency Department of Law

Phone 465-5370  
 Date 2/13/98  
 Date 2/13/98

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE

For further distribution information, call the Governor's Legislative Office