



State of Wisconsin
2015 - 2016 LEGISLATURE

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**SENATE SUBSTITUTE AMENDMENT 1,
TO SENATE BILL 344**

February 3, 2016 - Offered by Senator KAPENGA.

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

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

3 **SECTION 1.** 893.305 of the statutes is created to read:

4 **893.305 Affidavit of interruption; adverse possession and prescriptive**
5 **use. (1) DEFINITIONS.** In this section:

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

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

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

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

4 (a) Recording, in the office of the register of deeds for the county in which the
5 record title holder's parcel is located, an affidavit of interruption along with a survey
6 of the record title holder's parcel that was certified no earlier than 5 years before the
7 date of recording.

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

10 (c) Recording proof that notice was provided in accordance with sub. (4) in the
11 office of the register of deeds for the county in which the record title holder's parcel
12 is located.

13 (d) If notice is provided under sub. (4) (a), recording on the neighbor's abutting
14 parcel, within 90 days of the date the neighbor received the notice, a notice of the
15 recorded affidavit of interruption that includes a copy of the recorded affidavit of
16 interruption, including the attached survey. A notice of the recorded affidavit under
17 this paragraph shall include a legal description of the neighbor's abutting parcel and
18 of the record title holder's parcel.

19 **(3) AFFIDAVIT OF INTERRUPTION.** A record title holder shall include in an affidavit
20 to interrupt adverse possession of real estate under s. 893.25, 893.26, 893.27, or
21 893.29 or adverse use of real estate under s. 893.28 (1) at least all of the following:

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

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

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

3 (d) A statement that the adverse possession or adverse use of real estate
4 described in par. (c) is interrupted and that a new period of adverse possession or
5 adverse use may begin the day after the affidavit is recorded.

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

8 **(4) NOTICE.** (a) If the record title holder knows, or has reason to believe, that
9 the person who is adversely possessing or adversely using the record title holder's
10 real estate is a neighbor, the record title holder shall provide notice to the neighbor
11 by sending all of the following by certified mail, return receipt requested, to the
12 neighbor's address, as listed on the tax roll:

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

15 2. A notice of the record title holder's intent to, within 90 days of the date the
16 notice is received, record a notice of the affidavit of interruption on the neighbor's real
17 estate that abuts the record title holder's parcel. Notice under this subdivision shall
18 include a reference to this section.

19 (b) If the record title holder knows the identity of the person who is adversely
20 possessing or adversely using the record title holder's real estate and the person is
21 not a neighbor, the record title holder shall provide notice to the person by sending
22 the person a copy of the recorded affidavit of interruption, including the attached
23 survey, by certified mail, return receipt requested, to the person's last-known
24 address. Notice provided under this paragraph shall include a reference to this
25 section.

1 (c) If the person who is adversely possessing or adversely using the record title
2 holder's real estate is unknown to the record title holder at the time the affidavit of
3 interruption is recorded, the record title holder shall provide notice by publishing a
4 class 1 notice under ch. 985 in the official newspaper of the county in which the record
5 title holder recorded the affidavit of interruption. The published notice shall include
6 all of the following:

- 7 1. A statement that the record title holder recorded an affidavit of interruption.
- 8 2. The recording information for the recorded affidavit of interruption.
- 9 3. The street or physical address for the parcel on which the affidavit of
10 interruption was recorded.
- 11 4. A reference to this section.

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

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

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

