



2007 ASSEMBLY BILL 168

March 12, 2007 - Introduced by Representatives SHERIDAN, ALBERS, BENEDICT, GUNDERSON, HAHN, JESKEWITZ, MOULTON and VAN AKKEREN, by request of Michael R. McNett. Referred to Committee on Property Rights.

1 **AN ACT** *to amend* 893.25 (1), 893.25 (2) (a), 893.26 (1), 893.26 (2) (a), 893.26 (2)
2 (c), 893.27 (1) and 893.27 (2) (b); and *to create* 893.25 (1m), 893.26 (1m) and
3 893.27 (1m) of the statutes; **relating to:** limiting adverse possession.

Analysis by the Legislative Reference Bureau

Under current law, a party who does not have actual legal title to real property, but who occupies, uses, or maintains the property for a specified, uninterrupted period of time under a claim of title may, in a court action, establish title to the property against the true legal owner of the property. This process is known as adverse possession. Generally, the adversely possessed property must be enclosed (by a fence, for example) and cultivated or improved.

If the adverse possessor's claim of title is not based on a written instrument or court judgment, the property must be adversely possessed uninterruptedly for 20 years for title to be established in the adverse possessor. If the adverse possessor's claim of title is based on a recorded written instrument or court judgment, the property must be adversely possessed uninterruptedly for ten years. If the adverse possessor's claim of title is based on a recorded written instrument or court judgment and the adverse possessor has paid the real estate taxes on the property for the entire time of adverse possession, the property must be adversely possessed uninterruptedly for seven years.

The adverse possessor need not be the same person for the entire time. The times during which property is uninterruptedly adversely possessed by any number of persons in succession are added together to reach the necessary total number of

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years. Likewise, the person who holds actual legal title to the property being adversely possessed need not be the same person for the entire time during which the property is adversely possessed.

Under this bill, the requirements for adverse possession of real property are retained except for the parties involved. The bill provides that a person may not establish title to property by adverse possession unless the person has adversely possessed the property himself or herself for the entire number of years required under the statute. In addition, a legal titleholder of property cannot lose title through adverse possession unless that person has held title to the property for the entire time that the property was adversely possessed. Thus, for example, if title to property that is being adversely possessed is transferred to another person before the full number of years have elapsed, the adverse possession time must start over against the new titleholder.

For further information see the *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 (1) of the statutes is amended to read:

2 893.25 (1) ~~An~~ Subject to sub. (1m) (a) and (b), an action for the recovery or the
3 possession of real estate and a defense or counterclaim based on title to real estate
4 are barred by uninterrupted adverse possession of 20 years, except as provided by
5 s. 893.14 and 893.29. ~~A~~ Subject to sub. (1m) (c), a person who, in connection with
6 ~~his or her predecessors in interest,~~ is in uninterrupted adverse possession of real
7 estate for 20 years, except as provided by s. 893.29, may commence an action to
8 establish title under ch. 841.

9 **SECTION 2.** 893.25 (1m) of the statutes is created to read:

10 893.25 (1m) All of the following apply to sub. (1):

11 (a) An action for the recovery or the possession of real estate that is commenced
12 on or after the effective date of this paragraph [revisor inserts date], is barred only
13 if both of the following are satisfied:

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1 1. The same person or persons adversely possessed the real estate for the full
2 20 years during which the real estate was uninterruptedly adversely possessed.

3 2. A person currently holding title to the real estate has held title for the full
4 20 years during which the real estate was uninterruptedly adversely possessed.

5 (b) A defense or counterclaim based on title to real estate that is made in an
6 action commenced on or after the effective date of this paragraph ... [revisor inserts
7 date], is barred only if the requirements under par. (a) 1. and 2. are satisfied.

8 (c) On or after the effective date of this paragraph ... [revisor inserts date], a
9 person may commence an action to establish title to real estate under ch. 841 only
10 if the requirements under par. (a) 1. and 2. are satisfied.

11 **SECTION 3.** 893.25 (2) (a) of the statutes is amended to read:

12 893.25 (2) (a) Only if the person possessing it, ~~in connection with his or her~~
13 ~~predecessors in interest~~, is in actual continued occupation under claim of title,
14 exclusive of any other right; and

15 **SECTION 4.** 893.26 (1) of the statutes is amended to read:

16 893.26 (1) ~~An~~ Subject to sub. (1m) (a) and (b), an action for the recovery or the
17 possession of real estate and a defense or counterclaim based upon title to real estate
18 are barred by uninterrupted adverse possession of 10 years, except as provided by
19 s. 893.14 and 893.29. ~~A~~ Subject to sub. (1m) (c), a person who in connection with
20 ~~his or her predecessors in interest~~ is in uninterrupted adverse possession of real
21 estate for 10 years, except as provided by s. 893.29, may commence an action to
22 establish title under ch. 841.

23 **SECTION 5.** 893.26 (1m) of the statutes is created to read:

24 893.26 (1m) All of the following apply to sub. (1):

ASSEMBLY BILL 168**SECTION 5**

1 (a) An action for the recovery or the possession of real estate that is commenced
2 on or after the effective date of this paragraph [revisor inserts date], is barred only
3 if both of the following are satisfied:

4 1. The same person or persons adversely possessed the real estate for the full
5 10 years during which the real estate was uninterruptedly adversely possessed.

6 2. A person currently holding title to the real estate has held title for the full
7 10 years during which the real estate was uninterruptedly adversely possessed.

8 (b) A defense or counterclaim based on title to real estate that is made in an
9 action commenced on or after the effective date of this paragraph [revisor inserts
10 date], is barred only if the requirements under par. (a) 1. and 2. are satisfied.

11 (c) On or after the effective date of this paragraph [revisor inserts date], a
12 person may commence an action to establish title to real estate under ch. 841 only
13 if the requirements under par. (a) 1. and 2. are satisfied.

14 **SECTION 6.** 893.26 (2) (a) of the statutes is amended to read:

15 893.26 (2) (a) The person possessing the real estate ~~or his or her predecessor~~
16 ~~in interest~~, originally entered into possession of the real estate under a good faith
17 claim of title, exclusive of any other right, founded upon a written instrument as a
18 conveyance of the real estate or upon a judgment of a competent court;

19 **SECTION 7.** 893.26 (2) (c) of the statutes is amended to read:

20 893.26 (2) (c) The person possessing the real estate, ~~in connection with his or~~
21 ~~her predecessors in interest~~, is in actual continued occupation of all or a material
22 portion of the real estate described in the written instrument or judgment after the
23 original entry as provided by par. (a), under claim of title, exclusive of any other right.

24 **SECTION 8.** 893.27 (1) of the statutes is amended to read:

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1 893.27 (1) ~~An~~ Subject to sub. (1m) (a) and (b), an action for the recovery or the
2 possession of real estate and a defense or counterclaim based upon title to real estate
3 are barred by uninterrupted adverse possession of 7 years, except as provided by s.
4 893.14 or 893.29. ~~A~~ Subject to sub. (1m) (c), a person who in connection with his or
5 her predecessors in interest is in uninterrupted adverse possession of real estate for
6 7 years, except as provided by s. 893.29, may commence an action to establish title
7 under ch. 841.

8 **SECTION 9.** 893.27 (1m) of the statutes is created to read:

9 893.27 (1m) All of the following apply to sub. (1):

10 (a) An action for the recovery or the possession of real estate that is commenced
11 on or after the effective date of this paragraph [revisor inserts date], is barred only
12 if both of the following are satisfied:

13 1. The same person or persons adversely possessed the real estate for the full
14 7 years during which the real estate was uninterruptedly adversely possessed.

15 2. A person currently holding title to the real estate has held title for the full
16 7 years during which the real estate was uninterruptedly adversely possessed.

17 (b) A defense or counterclaim based on title to real estate that is made in an
18 action commenced on or after the effective date of this paragraph [revisor inserts
19 date], is barred only if the requirements under par. (a) 1. and 2. are satisfied.

20 (c) On or after the effective date of this paragraph [revisor inserts date], a
21 person may commence an action to establish title to real estate under ch. 841 only
22 if the requirements under par. (a) 1. and 2. are satisfied.

23 **SECTION 10.** 893.27 (2) (b) of the statutes is amended to read:

