

Department of Legislative Services
Maryland General Assembly
2004 Session

FISCAL AND POLICY NOTE

Senate Bill 764

(Senator Schrader)

Judicial Proceedings

Real Property - Adverse Possession - Payment of Property Taxes

This bill requires a person claiming title to real property by adverse possession to have paid the State and local property taxes that have been imposed on the property, as an element of the adverse possession claim, for the 20-year statutory period.

Fiscal Summary

State Effect: State property tax revenues would not be materially affected.

Local Effect: Local property tax revenues would not be materially affected.

Small Business Effect: Minimal.

Analysis

Current Law: A person must either file an action for recovery of possession of real property or enter on the land within 20 years from the date that the cause of action accrues. A person bringing a claim to quiet title or remove any cloud from the title to real property acquired through adverse possession: (1) may bring a suit in equity in the county where the property is located; and (2) must meet the elements of adverse possession.

To establish title by adverse possession, the claimant must show possession of the claimed property for the 20-year statutory period. The possession must be actual and peaceable (or if the property is vacant and unoccupied, constructive and peaceable), open, notorious, exclusive, hostile, and under claim of title or ownership. The possession must

be continuous by the same person or uninterrupted by tacking together more than one person's time in adverse possession. *See Costello v. Staubitz*, 300 Md. 60, 67 (1984), *citing East Washington Railway Co. v. Brooke*, 244 Md. 287 (1966).

Background: One of the elements of establishing adverse possession under a claim of title may be payment of property taxes. *See Windsor Resort v. Mayor of Ocean City*, 71 Md. App. 476 (1987), *cert. denied sub nom*, *Mayor of Ocean City v. Windsor Resort*, 311 Md. 145 (1987).

In another typical adverse possession action, a homeowner's home addition or garage encroaches on the property of a neighbor. Neither party is aware of the encroachment. Upon finding out about the encroachment 20 years later, the homeowner or the homeowner's successor sues to quiet title through adverse possession. It is assumed in this situation that the property taxes paid by both parties would be based on actual parcel size, not accounting for the encroachment. The bill would require the homeowner to pay the property taxes on the area of the encroachment for the statutory period before maintaining the action to quiet title. It is assumed that when the homeowner paid the taxes on the area of the encroachment, the neighbor would receive some credit or refund of the taxes paid by the neighbor on the area.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): State Department of Assessments and Taxation, Montgomery County, Calvert County, Howard County, Judiciary (Administrative Office of the Courts), Department of Legislative Services

Fiscal Note History: First Reader - March 22, 2004
ncs/jr

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