

CHAPTER 2011-107

Senate Bill No. 1142

An act relating to adverse possession; amending s. 95.18, F.S.; specifying that occupation and maintenance of property satisfies the requirements for possession for purposes of gaining title to property via adverse possession without color of title; requiring a person seeking property by adverse possession to use a uniform adverse possession return provided by the Department of Revenue; requiring the property appraiser to notify the owner of record of an adverse possession claim; requiring that a person claiming adverse possession attest to the truthfulness of the information provided in the return under penalty of perjury; authorizing the Department of Revenue to adopt emergency rules; requiring that the property appraiser add certain information related to the adverse possession claim to the parcel information on the tax roll and prescribing conditions for removal of that information; prescribing procedures and requirements for adverse possession claims against a portion of an identified parcel or against property to which the property appraiser has not assigned a parcel number; requiring the property appraiser to include a notation of an adverse possession filing in any searchable property database maintained by the property appraiser; amending s. 197.212, F.S.; excluding property subject to adverse possession claims without color of title from provisions authorizing the tax collector not to send a tax notice for minimum tax bills; creating s. 197.3335, F.S.; requiring the tax collector to determine whether a duplicate tax payment is made by an adverse possessor; providing for priority of tax payments made by an owner of record who is subject to an adverse possession claim; providing for a refund of tax payments under certain conditions; providing for retroactive application of certain provisions governing procedures for administering a claim of adverse possession and establishing tax priority for owners of record; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 95.18, Florida Statutes, is amended to read:

95.18 Real property actions; adverse possession without color of title.—

(1) When the occupant has, or those under whom the occupant claims have, been in actual continued occupation of real property for 7 years under a claim of title exclusive of any other right, but not founded on a written instrument, judgment, or decree, the property actually occupied is ~~shall be~~ held adversely if the person claiming adverse possession made a return, as required under subsection (3), of the property by proper legal description to the property appraiser of the county where it is located within 1 year after entering into possession and has subsequently paid, subject to s. 197.3335, all taxes and matured installments of special improvement liens levied against the property by the state, county, and municipality.

(2) For the purpose of this section, property is ~~shall be~~ deemed to be possessed if the property has been ~~in the following cases only:~~

- (a) ~~When it has been~~ Protected by substantial enclosure;
- (b) ~~When it has been usually~~ Cultivated or improved in a usual manner;
or-
- (c) Occupied and maintained.

(3) A person claiming adverse possession under this section must make a return of the property by providing to the property appraiser a uniform return on a form provided by the Department of Revenue. The return must include all of the following:

- (a) The name and address of the person claiming adverse possession.
- (b) The date that the person claiming adverse possession entered into possession of the property.
- (c) A full and complete legal description of the property that is subject to the adverse possession claim.
- (d) A notarized attestation clause that states:
UNDER PENALTY OF PERJURY, I DECLARE THAT I HAVE READ
THE FOREGOING RETURN AND THAT THE FACTS STATED IN IT
ARE TRUE AND CORRECT.
- (e) A description of the use of the property by the person claiming adverse possession.
- (f) A receipt to be completed by the property appraiser.

The property appraiser shall refuse to accept a return if it does not comply with this subsection. The executive director of the Department of Revenue is authorized, and all conditions are deemed met, to adopt emergency rules under ss. 120.536(1) and 120.54(4) for the purpose of implementing this subsection. The emergency rules shall remain in effect for 6 months after adoption and may be renewed during the pendency of procedures to adopt rules addressing the subject of the emergency rules.

- (4) Upon the submission of a return, the property appraiser shall:
 - (a) Send, via regular mail, a copy of the return to the owner of record of the property that is subject to the adverse possession claim, as identified by the property appraiser's records.
 - (b) Inform the owner of record that, under s. 197.3335, any tax payment made by the owner of record before April 1 following the year in which the tax is assessed will have priority over any tax payment made by an adverse possessor.

(c) Add a notation at the beginning of the first line of the legal description on the tax roll that an adverse possession claim has been submitted.

(d) Maintain the return in the property appraiser’s records.

(5)(a) If a person makes a claim of adverse possession under this section against a portion of a parcel of property identified by a unique parcel identification number in the property appraiser’s records:

1. The person claiming adverse possession shall include in the return submitted under subsection (3) a full and complete legal description of the property sufficient to enable the property appraiser to identify the portion of the property subject to the adverse possession claim.

2. The property appraiser may refuse to accept the return if the portion of the property subject to the claim cannot be identified by the legal description provided in the return, and the person claiming adverse possession must obtain a survey of the portion of the property subject to the claim in order to submit the return.

(b) Upon submission of the return, the property appraiser shall follow the procedures under subsection (4), and may not create a unique parcel identification number for the portion of property subject to the claim.

(c) The property appraiser shall assign a fair and just value to the portion of the property, as provided in s. 193.011, and provide this value to the tax collector to facilitate tax payment under s. 197.3335(3).

(6)(a) If a person makes a claim of adverse possession under this section against property to which the property appraiser has not assigned a parcel identification number:

1. The person claiming adverse possession must include in the return submitted under subsection (3) a full and complete legal description of the property which is sufficient to enable the property appraiser to identify the property subject to the adverse possession claim.

2. The property appraiser may refuse to accept a return if the property subject to the claim cannot be identified by the legal description provided in the return, and the person claiming adverse possession must obtain a survey of the property subject to the claim in order to submit the return.

(b) Upon submission of the return, the property appraiser shall:

1. Assign a parcel identification number to the property and assign a fair and just value to the property as provided in s. 193.011;

2. Add a notation at the beginning of the first line of the legal description on the tax roll that an adverse possession claim has been submitted; and

3. Maintain the return in the property appraiser’s records.

(7) A property appraiser must remove the notation to the legal description on the tax roll that an adverse possession claim has been submitted and shall remove the return from the property appraiser's records if:

(a) The person claiming adverse possession notifies the property appraiser in writing that the adverse possession claim is withdrawn;

(b) The owner of record provides a certified copy of a court order, entered after the date the return was submitted to the property appraiser, establishing title in the owner of record;

(c) The property appraiser receives a certified copy of a recorded deed, filed after the date of the submission of the return, from the person claiming adverse possession to the owner of record transferring title of property along with a legal description describing the same property subject to the adverse possession claim; or

(d) The owner of record or the tax collector provides to the property appraiser a receipt demonstrating that the owner of record has paid the annual tax assessment for the property subject to the adverse possession claim during the period that the person is claiming adverse possession.

(8) The property appraiser shall include a clear and obvious notation in the legal description of the parcel information of any public searchable property database maintained by the property appraiser that an adverse possession return has been submitted to the property appraiser for a particular parcel.

Section 2. Section 197.212, Florida Statutes, is amended to read:

197.212 Minimum tax bill.—On the recommendation of the county tax collector, the board of county commissioners may adopt a resolution instructing the collector not to mail tax notices to a taxpayer ~~if~~ when the amount of taxes shown on the tax notice is less than an amount up to \$30. The resolution shall also instruct the property appraiser that he or she ~~may~~ shall not make an extension on the tax roll for any parcel for which the tax would amount to less than an amount up to \$30. The minimum tax bill so established may not exceed an amount up to \$30. ~~This section does not apply to a parcel of property that is subject to an adverse possession claim pursuant to s. 95.18.~~

Section 3. Section 197.3335, Florida Statutes, is created to read:

197.3335 Tax payments when property is subject to adverse possession; refunds.—

(1) Upon the receipt of a subsequent payment for the same annual tax assessment for a particular parcel of property, the tax collector must determine whether an adverse possession return has been submitted on the particular parcel. If an adverse possession return has been submitted, the tax collector must comply with subsection (2).

(2) If a person claiming adverse possession under s. 95.18 pays an annual tax assessment on a parcel of property before the assessment is paid by the owner of record, and the owner of record subsequently makes a payment of that same annual tax assessment before April 1 following the year in which the tax is assessed, the tax collector shall accept the payment made by the owner of record and refund within 60 days any payment made by the person claiming adverse possession. Such refunds do not require approval from the department.

(3) For claims of adverse possession for a portion of a parcel of property as provided in s. 95.18(5), the tax collector may accept a tax payment, based upon the value of the property assigned by the property appraiser under s. 95.18(5)(c), from a person claiming adverse possession for the portion of the property subject to the claim. If the owner of record makes a payment of the annual tax assessment for the whole parcel before April 1 following the year in which the tax is assessed, the tax collector shall refund within 60 days any payment previously made for the portion of the parcel subject to the claim by the person claiming adverse possession.

Section 4. This act shall take effect July 1, 2011, and applies to adverse possession claims in which the return was submitted on or after that date, except for the procedural provisions governing the property appraiser's administration of adverse possession claims included in s. 95.18(4)(c) and (d) and (7), Florida Statutes, and the provisions governing the payment of taxes included in s. 197.3335, Florida Statutes, as created by this act, which apply to adverse possession claims for which the return was submitted before, on, or after that date.

Approved by the Governor June 2, 2011.

Filed in Office Secretary of State June 2, 2011.