



S.B. 103

127th General Assembly
(As Introduced)

Sens. Mumper, Mason

BILL SUMMARY

- Precludes the acquisition of title to real property through adverse possession unless the person seeking title paid all taxes and special assessments due on the property while it was in that person's possession.

CONTENT AND OPERATION

What is adverse possession?

Adverse possession is a method of acquiring title to real property. It generally occurs through a ripening of hostile possession, under specified circumstances, into title by lapse of time. The courts have determined that the following elements are necessary to establish the adverse possession that will give rise to a new title: (1) open and notorious possession, (2) exclusive possession, (3) adverse and hostile possession, and (4) continuous possession for more than 21 years. See *State ex rel. A.A.A. Investments v. City of Columbus* (1985), 17 Ohio St.3d 151; *Bravard v. Curran* (2004), 155 Ohio App. 3d 713 (Butler County) (merely mowing grass or engaging in minor landscaping is insufficient in itself to establish adverse possession); see also R.C. 2305.04 (providing that an action to recover the title to or possession of real property generally must be brought within 21 years after the cause of action accrued). The doctrine of adverse possession protects one who has honestly entered and held possession in the belief that the land is the person's as well as one who knowingly appropriates the land of another for the purpose of acquiring title.

The prevailing view, shared by Ohio, is that public or governmental entities may acquire title to land by adverse possession. See *A.A.A. Investments, supra*. Similarly, the United States Supreme Court has held that the federal government can acquire property by adverse possession and that an acquisition by this means does not fall within the eminent domain provisions of the Fifth Amendment. *Stanley v. Schwalby* (1893), 147 U.S. 508.

Payment of taxes required to obtain title by adverse possession

The bill provides that in any action to establish title to real property by adverse possession, possession of the property does not establish an interest in or right to the property by the person in possession that is adverse to the interests and rights of the titled owner unless the person seeking title by adverse possession paid, in a timely manner, all taxes and special assessments that the person reasonably believed to be due on the property during the period that the person seeking title by adverse possession claims to have been in possession. This requirement is in addition to the elements that already must be proved to obtain title by adverse possession (as are explained above). Accordingly, the bill prevents acquisition of title by adverse possession unless the person made timely payments of all taxes and special assessments during the period of possession.

HISTORY

ACTION	DATE
Introduced	03-08-07

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