

SENATE, No. 1061

STATE OF NEW JERSEY 218th LEGISLATURE

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Sponsored by:

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District 1 (Atlantic, Cape May and Cumberland)

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SYNOPSIS

Concerns time frames for establishing or enforcing property rights related to adverse possession.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 1/29/2019)

1 AN ACT concerning certain property rights, supplementing Title 2A
2 of the New Jersey Statutes and repealing parts of the statutory
3 law.

4
5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7
8 1. The Legislature finds that:

9 a. The 2012 severe storm, named Hurricane Sandy, has
10 damaged many properties along the New Jersey shore and other
11 low-lying areas, and repair and reconstruction of these properties is
12 essential to the economic health of the State;

13 b. Some of these properties have been subject to State tidelands
14 claims and those claims make it difficult for the property owners to
15 obtain mortgage financing necessary to repair their properties;

16 c. Property owners in some instances purchased and developed
17 their property before the State made its claims and had no way of
18 knowing that their property would be subject to tidelands claims;

19 d. Notwithstanding the State claims, the properties remained on
20 the property tax rolls and the owners paid taxes as owners of the
21 properties for many years;

22 e. It is necessary to provide a remedy for some of these
23 property owners to establish their right to quiet enjoyment of their
24 property and to make necessary repairs; and

25 f. Allowing some property owners to establish their
26 unencumbered ownership is right as a matter of simple equity and
27 advantageous to the New Jersey economy.

28
29 2. Except as provided in sections 3 and 4 of
30 P.L. , c. (C.) (pending before the Legislature as this bill), if a
31 person, for 20 years, has possessed real estate, all claims that may
32 be made by any person for the recovery of the real estate shall be
33 barred from any claim of right and that person shall have good title
34 in the real estate provided that during that period the possession has
35 been:

36 a. actual, open and notorious, of a kind that would notify others
37 of the claim to the property;

38 b. inconsistent with ownership of the property by others; and

39 c. continued uninterruptedly for the requisite period by the
40 person and the person's predecessors by occupancy, descent,
41 conveyance or otherwise.

42
43 3. P.L. , c. (C.) (pending before the Legislature) shall
44 not, except as provided in section 4 of this act, limit the estate,
45 right, title or interest of, or bar any claim or action by:

46 a. The State, any agency thereof, or any political subdivision of
47 the State, including, but not limited to, its instrumentalities and
48 independent authorities, or any county or municipality, or any

1 agency or authority of a county or municipality, with respect to real
2 property or any estate, right, title or interest therein, that was at any
3 time used or intended to be used for a public or transportation,
4 environmental, recreational, governmental, educational, charitable,
5 institutional or other similar purpose or held in public trust, whether
6 such use be at the time of acquisition or sometime thereafter; or

7 b. A public utility, as the same is defined in R.S.48:2-13, with
8 respect to real property or any estate, right, title or interest therein,
9 used or intended to be used, for the provisions of utility service to
10 the public including, but not limited to, federally regulated common
11 carriers.

12

13 4. If a person, for 40 years, has possessed real estate that was
14 tidal-flowed prior to that period and not tidal-flowed at any time
15 thereafter, the State shall be barred from any claim of riparian rights
16 and the person shall have good title in the real estate, provided that:

17 a. the possession is actual, open and notorious, of a kind that
18 would notify others of the claim to the property;

19 b. the possession is inconsistent with ownership of the property
20 by others;

21 c. the possession has continued uninterruptedly for the
22 requisite period by the person and the person's predecessors by
23 occupancy, descent, conveyance or otherwise;

24 d. the possession has been based on an instrument or
25 instruments recorded as provided by law that describe the property;
26 and

27 e. all real estate taxes and other assessments on the property
28 have been paid.

29

30 5. The period of possession of real estate required by
31 P.L. , c. (C.) (pending before the Legislature as this bill)
32 shall include possession by the person and all others with whom the
33 person is in privity.

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35 6. N.J.S.2A:14-6, N.J.S.2A:14-7, N.J.S.2A:14-8, N.J.S.2A:14-
36 30 and N.J.S.2A:14-31 are repealed.

37

38 7. Sections 2 and 6 of this act shall take effect on the second
39 anniversary following the date of enactment and shall apply to
40 periods of possession of real estate occurring prior to the effective
41 date, on the effective date, and after the effective date of this act.
42 Sections 1, 3, 4 and 5 of this act shall take effect immediately.

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STATEMENT

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47 This bill establishes a statutory scheme for adverse possession by
48 repealing conflicting statutes and establishing a 20-year adverse

1 possession period. The bill is also intended to clarify certain case
2 law concerning publicly owned property and to protect the rights of
3 owners of certain property that was tidal-flowed more than 40 years
4 ago.

5 ADVERSE POSSESSION: Under the current statutes governing
6 adverse possession, N.J.S.2A:14-30 and 2A:14-31, a possessor is
7 vested with title to real estate after 30 years' actual possession of
8 the real estate, unless the property consists of woodlands or
9 uncultivated tracts. Title vests to the possessor of woodlands or
10 uncultivated tracts after 60 years' possession. However, two other
11 statutes seem to conflict with N.J.S.2A:14-30 and 2A:14-31. Under
12 the provisions of N.J.S.2A:14-6, every person with any right or
13 title of entry into real estate must make such entry within 20 years
14 after the right or title accrues; under N.J.S.2A:14-7, every action for
15 real estate must be commenced within 20 years after the cause of
16 action accrues. In J & M Land Co. v. First Union Nat'l Bank, 166
17 N.J. 493 (2001), the plaintiff had 39 years' possession of a tract of
18 uncultivated land that actually belonged to First Union Bank, an
19 adjoining landowner. When J & M sought a court declaration that it
20 had acquired the land through adverse possession, the court turned
21 it down, ruling that the 60-year period of adverse possession under
22 N.J.S.2A:14-31 applies, and not the 20-year time period for
23 bringing real estate actions under N.J.S.2A:14-7.

24 As a result of this decision, it is unclear how title is held after an
25 adverse possessor has occupied land more than 20 years but less
26 than 30 years (or, where applicable, 60 years). The Supreme Court
27 noted that the Legislature might choose to clarify the matter by
28 enacting appropriate legislation, 166 N.J. at 521, and this bill is
29 intended, in part, to provide such clarification by establishing a 20-
30 year adverse possession period.

31 The bill provides that under certain circumstances if a person, for
32 20 years, has possessed real estate, all claims that may be made by
33 any person for the recovery of the real estate shall be barred from
34 any claim of right and that person shall have good title in the real
35 estate. This provision would apply only if possession was:

- 36 • actual, open and notorious, of a kind that would notify others
37 of the claim to the property;
- 38 • inconsistent with ownership of the property by others; and
- 39 • continued uninterruptedly for the requisite period by the
40 person and the person's predecessors by occupancy, descent,
41 conveyance or otherwise.

42 PUBLICLY-OWNED OR PUBLIC UTILITY PROPERTY:
43 Notwithstanding the newly established 20-year adverse possession
44 period, the bill provides that adverse possession does not apply to
45 real property held by the State of New Jersey, or any agency or
46 subdivision thereof, so long as the property is dedicated to or used
47 or intended to be used for a public or transportation, environmental,
48 recreational, governmental, educational, charitable, institutional or

1 other similar purpose or held in public trust. In Devins v. Borough
2 of Bogota, 124 N.J. 570 (1991), the court held that municipally-
3 owned property that is neither dedicated to nor used for a public
4 purpose is subject to acquisition by adverse possession. The State
5 and its subdivisions, however, have numerous properties that are
6 not in active public use but are being held for future public use such
7 as the expansion of existing facilities or for highway or rail
8 purposes. If these properties are subject to adverse possession
9 claims, not only could the State lose valuable property but public
10 projects may also be jeopardized.

11 The bill would therefore clarify that the holding in Devins is
12 limited to properties that are not used or being held for present or
13 future public purposes, and the other purposes enumerated above,
14 limiting the ability to adversely possess publicly owned property to
15 property such as that which has been taken by foreclosure actions or
16 which has been forfeited.

17 Adverse possession would also not be applicable to a public
18 utility, with respect to real property or any estate, right, title or
19 interest therein, used or intended to be used, for the provisions of
20 utility service to the public, including, but not limited to, federally
21 regulated common carriers.

22 TIDAL-FLOWED PROPERTY: The 20-year adverse possession
23 period would also not be applicable to certain previously tidal-
24 flowed property for which the State may have a claim for rights. If a
25 person, for 40 years, had possessed such real estate, and it was
26 tidal-flowed prior to the 40-year period of possession but not tidal-
27 flowed at any time thereafter, the State's claim to the property
28 would be completely barred. Thus, previously tidal-flowed
29 property requires a greater, 40-year adverse possession period
30 against the State, instead of the 20-year period otherwise applicable
31 to claims pursuant to the bill.

32 FURTHER PROVISIONS:

33 The bill provides that the required period of possession of real
34 estate would include possession by the person and all others with
35 whom the person is in privity.

36 Also, to effectuate the changes to the State's adverse possession
37 law, the bill repeals N.J.S.2A:14-6, N.J.S.2A:14-7, N.J.S.2A:14-8,
38 N.J.S.2A:14-30 and N.J.S.2A:14-31 concerning adverse possession.

39 The effective date provides for a transition to the new adverse
40 possession provisions as follows: Sections 1 and 4 (tidal-flowed
41 lands) would take effect *immediately* as would sections 3 (publicly-
42 owned and public utility property) and 5 (privity). Sections 2 (20-
43 year adverse possession period) and 6 (repealing existing statutes)
44 would take effect on the second anniversary following the date of
45 enactment and would apply to periods of possession of real estate
46 occurring prior to the effective date, on the effective date, and after
47 the effective date.