



STATE OF NEW JERSEY

**NJLRC**

NEW JERSEY LAW REVISION COMMISSION

Draft Final Report  
Relating to

## **Adverse Possession**

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**Adverse Possession**

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## Introduction

This report recommends a new statute to clarify the law concerning adverse possession and promote the stability of land titles in light of the New Jersey Supreme Court's decision in *J & M Land Co. v. First Union Bank*, 166 N.J. 493 (2001). That case held that under the current statutes governing adverse possession, 2A:14-30 and 2A:14-31, a possessor is vested with title to real estate after 30 years' actual possession of the real estate, unless the property consists of woodlands or uncultivated tracts. Title vests to the possessor of woodlands or uncultivated tracts after 60 years' possession. Two other statutes seem to conflict with 2A:14-30 and 2A:14-31. Section 2A:14-6 provides that every person with any right or title of entry into real estate must make such entry within 20 years after the right or title accrues; under 2A:14-7, every action for real estate must be commenced within 20 years after the cause of action accrues. The Supreme Court noted that the Legislature might choose to clarify the matter by enacting appropriate legislation. 166 N.J. at 521.

Another statute, 2A:14-8, appears to establish a 20-year statute of limitation for State's claims to real estate. This statute can be read to make adverse possession easier to establish against the State than against a private party. This reading conflicts with the common law principle that, in general, adverse possession is not available against the State. See *Devins v. Borough of Bogota*, 124 N.J. 570, 575-579 (1991)

The Commission addresses these problems by recommending the repeal of 2A:14-30, 2A:14-31, 2A:14-6, 2A:14-7 and 2A:14-8 and enacting a statute that provides that title may be acquired by an adverse possessor after 20 years in most cases. Under this statute, once the applicable time period has expired, the record owner is not merely barred from attempting to recover possession; his title is extinguished and title is vested in the adverse possessor. This provision would bring New Jersey's statutory scheme in line with that of most other states, in which the relevant time period for adverse possession is 20 years or less.

The Commission proposal also deals with the problem of the use of adverse possession against governmental entities. First, the statute codifies the holding of *Devins v. Borough of Bogota*, 124 N.J. 570 (1991) as to local government property. In that case, the Court held that municipal property not dedicated to a public purpose was subject to adverse possession. The case involved a lot that the municipality had taken for non-payment of taxes. Nothing in the holding suggests that property that the municipality is using or intends to use for a public purpose is not exempt from adverse possession. The provision proposed by the Commission adopts that distinction and protects public property held for any public purpose.

In general, the Commission proposal also follows the common law rule exempting State property from the effect of adverse possession. However, one exception is made for riparian lands. The provision allows persons who meet the requirements for adverse possession for thirty years and, in addition, have record title to their property and have paid taxes on that property to establish good title to the property. These requirements are more onerous than those ordinarily imposed for adverse possession, but they allow property owners who acquired property relying on a chain of title and who have paid taxes in the same way as other owners to establish ownership free of the State's tidelands claims.

### **Proposed Adverse Possession Provision**

a. If a person, for 20 years, has possessed real estate, all claims that may be made by any person for the recovery of the real estate shall be barred from any claim of riparian rights and that person shall have good title in the real estate, except as otherwise set forth in subsections (b) or (c), provided the possession is:

~~A person who has possessed real estate for twenty years shall have complete right and title in the real estate and all claims that may be made or actions commenced by any person whatsoever for the recovery of the real estate shall be barred.~~

~~b. To satisfy this section, possession must be:~~

~~(1) actual, open and notorious, of a kind that would notify others of the claim to the property;~~

~~(2) under a claim of right to the property that is inconsistent with a claim of ownership of the property by others; and~~

~~(3) continued uninterruptedly for the requisite period by the person and the person's predecessors by occupancy, descent, conveyance or otherwise.~~

~~b. This section shall not limit the right or title of, or bar any claim or action by:~~

~~(1) the State or any agency or authority of the State except as provided by subsection (c); or~~

~~(2) a county or municipality or any agency or authority of a county or municipality in regard to lands held for, or dedicated to, a public use.~~

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

(1) the conditions of subsections (a)(1), (2) and (3) are met;

(2) the person's possession is based on an instrument or instruments recorded as provided by law that describe the property, and

(3) the person has been assessed real estate taxes on the property and all taxes assessed have been paid.

d. A person shall be deemed in possession of real estate both for the period of the person's own possession and for the period of possession of any others with whom the person is in privity.

#### COMMENT

Subsections (a) and (b) state the general rule for adverse possession. Subsection (a) establishes the period for adverse possession at 20 years and applies that period both as a basis for good title in the possessor and a statute of limitations for actions by others claiming the land. Subsection (b) restates the rules (now partly statutory and partly common-law) for the kind of possession that establishes adverse possession. The wording of subsections (b)(1) and (b)(2) is derived from case law. See, *Baker v. Normanoch Ass'n* 25 N.J. 407, 420 (1957). Subsection (b)(3) continues the statutory requirement that the possession be continuous and adds the common law principle that periods of adverse possession by successive owners may be aggregated.

Subsection (c)(1) exempts local governmental property dedicated to public use from adverse possession. See, *Devins v. Borough of Bogota*, 124 N.J. 570 (1991). Subsection (c)(2) provides a general exemption for State property, but that exemption is subject to the exception in subsection (d). That provision allows a person to establish title free of riparian land claims by the State on land that has been free of tidal-flow for 40 years if he not only meets the requirements for adverse possession (for a period of 40 years, rather than 20) but also shows that his title has been recorded for thirty years and he has paid taxes on the property.