

**Second Regular Session  
Sixty-sixth General Assembly  
STATE OF COLORADO**

**ENGROSSED**

*This Version Includes All Amendments Adopted  
on Second Reading in the House of Introduction*

LLS NO. 08-0529.01 Bob Lackner

**HOUSE BILL 08-1148**

---

**HOUSE SPONSORSHIP**

**Witwer and Levy**, Balmer, Benefield, Buescher, Carroll M., Casso, Fischer, Gallegos, Gardner B., Garza-Hicks, Hodge, Jahn, Kerr A., Kerr J., King, Labuda, Lambert, Liston, Looper, Lundberg, Marostica, May M., McKinley, McNulty, Mitchell V., Peniston, Scanlan, Sonnenberg, Summers, Swalm, Vaad, and Weissmann

**SENATE SPONSORSHIP**

**Tupa**, McElhany, Schultheis, Mitchell S., Tochtrop, Spence, Boyd, Bacon, Brophy, Cadman, Gibbs, Kopp, Penry, Renfroe, Romer, Sandoval, Wiens, and Williams

---

**House Committees**  
Judiciary

**Senate Committees**

---

**A BILL FOR AN ACT**

101     **CONCERNING THE SUFFICIENCY OF THE ASSERTION OF A CLAIM FOR**  
102             **TITLE TO REAL PROPERTY BY ADVERSE POSSESSION UNDER**  
103             **COLORADO LAW.**

---

**Bill Summary**

*(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments that may be subsequently adopted.)*

On or after the effective date of the act, in addition to any other requirements specified in current law, specifies that a person may acquire fee simple title to real property by adverse possession only upon satisfaction of each of the following conditions:

!       The person and any predecessors in interest of the person, as applicable, have satisfied all of the elements of a claim

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.  
*Capital letters indicate new material to be added to existing statute.*  
*Dashes through the words indicate deletions from existing statute.*

HOUSE  
Amended 2nd Reading  
February 15, 2008

for adverse possession required at common law.

- ! The person claiming by adverse possession, or the person's predecessor in interest, had a good faith belief that the person was the actual owner of the property, and the belief was reasonable under the circumstances.

In order to prevail on a claim asserting a claim of title to real property by adverse possession, requires the person asserting the claim to prove each of the elements of the claim by clear and convincing evidence.

Exempts certain provisions of the act from a claim for adverse possession for the purpose of establishing a prescriptive easement.

Prohibits a person from maintaining an adverse possession claim under circumstances where the claim would deprive certain charitable organizations of title to undeveloped land.

Where the person asserting a claim of title to real property by adverse possession prevails on such claim, authorizes the court to determine, based upon the facts and circumstances of the case, whether to award the nonprevailing party an amount representing the fair market value of the property that is the subject of the claim as well as an amount representing any property taxes or other assessments levied on the subject property the nonprevailing party has paid from the commencement of the limitation period.

---

1 *Be it enacted by the General Assembly of the State of Colorado:*

2           **SECTION 1.** 38-41-101, Colorado Revised Statutes, is amended  
3 BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS to  
4 read:

5           **38-41-101. Limitation of eighteen years.** (3) (a) IN ADDITION  
6 TO ANY OTHER REQUIREMENTS SPECIFIED IN THIS PART 1, IN ANY ACTION  
7 FOR A CLAIM FOR FEE TITLE TO REAL PROPERTY BY ADVERSE POSSESSION  
8 FOR WHICH FEE SIMPLE TITLE VESTS ON OR AFTER JULY 1, 2008, IN FAVOR  
9 OF THE ADVERSE POSSESSOR AND AGAINST THE OWNER OF RECORD OF THE  
10 REAL PROPERTY UNDER SUBSECTION (1) OF THE SECTION, A PERSON MAY  
11 ACQUIRE FEE SIMPLE TITLE TO REAL PROPERTY BY ADVERSE POSSESSION  
12 ONLY UPON SATISFACTION OF EACH OF THE FOLLOWING CONDITIONS:

13           (I) THE PERSON PRESENTS EVIDENCE TO SATISFY ALL OF THE

1 ELEMENTS OF A CLAIM FOR ADVERSE POSSESSION REQUIRED UNDER  
2 COMMON LAW IN COLORADO.

3 (II) EITHER THE PERSON CLAIMING BY ADVERSE POSSESSION OR A  
4 PREDECESSOR IN INTEREST OF SUCH PERSON HAD A GOOD FAITH BELIEF  
5 THAT THE PERSON IN POSSESSION OF THE PROPERTY OF THE OWNER OF  
6 RECORD WAS THE ACTUAL OWNER OF THE PROPERTY AND THE BELIEF WAS  
7 REASONABLE UNDER THE PARTICULAR CIRCUMSTANCES.

8 (b) IN ORDER TO PREVAIL ON A CLAIM ASSERTING FEE SIMPLE TITLE  
9 TO REAL PROPERTY BY ADVERSE POSSESSION, THE PERSON ASSERTING THE  
10 CLAIM SHALL PROVE EACH OF THE ELEMENTS OF THE CLAIM BY CLEAR AND  
11 CONVINCING EVIDENCE.

12 (4) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION,  
13 THE PROVISIONS OF SUBSECTIONS (3) AND (5) OF THIS SECTION SHALL BE  
14 LIMITED TO CLAIMS OF ADVERSE POSSESSION FOR THE PURPOSE OF  
15 ESTABLISHING FEE SIMPLE TITLE TO REAL PROPERTY AND SHALL NOT  
16 APPLY TO THE CREATION, ESTABLISHMENT, PROOF, OR JUDICIAL  
17 CONFIRMATION OR DELINEATION OF EASEMENTS BY PRESCRIPTION,  
18 IMPLICATION, PRIOR USE, ESTOPPEL, OR OTHERWISE, NOR SHALL THE  
19 PROVISIONS OF SUBSECTIONS (3) OR (5) OF THIS SECTION APPLY TO CLAIMS  
20 OR DEFENSES FOR EQUITABLE RELIEF UNDER THE COMMON-LAW DOCTRINE  
21 OF RELATIVE HARDSHIPS, OR CLAIMS OR DEFENSES GOVERNED BY ANY  
22 OTHER STATUTE OF LIMITATIONS SPECIFIED IN THIS ARTICLE. NOTHING IN  
23 THIS SECTION SHALL BE CONSTRUED TO MEAN THAT ANY ELEMENTS OF A  
24 CLAIM FOR ADVERSE POSSESSION THAT ARE NOT OTHERWISE APPLICABLE  
25 TO THE CREATION, ESTABLISHMENT, PROOF, OR JUDICIAL CONFIRMATION  
26 OR DELINEATION OF EASEMENTS BY PRESCRIPTION, IMPLICATION, PRIOR  
27 USE, ESTOPPEL, OR OTHERWISE ARE MADE APPLICABLE PURSUANT TO THE

1 PROVISIONS OF THIS SECTION.

2 (5) WHERE THE PERSON ASSERTING A CLAIM OF FEE SIMPLE TITLE  
3 TO REAL PROPERTY BY ADVERSE POSSESSION PREVAILS ON SUCH CLAIM,  
4 AND IF THE COURT DETERMINES IN ITS DISCRETION THAT AN AWARD OF  
5 COMPENSATION IS FAIR AND EQUITABLE UNDER THE CIRCUMSTANCES, THE  
6 COURT MAY, AFTER AN EVIDENTIARY HEARING SEPARATELY CONDUCTED  
7 AFTER ENTRY OF THE ORDER AWARDING TITLE TO THE ADVERSE  
8 POSSESSOR, AWARD TO THE PARTY LOSING TITLE TO THE ADVERSE  
9 POSSESSOR:

10 (a) DAMAGES TO COMPENSATE THE PARTY LOSING TITLE TO THE  
11 ADVERSE POSSESSOR FOR THE LOSS OF THE PROPERTY MEASURED BY THE  
12 ACTUAL VALUE OF THE PROPERTY AS DETERMINED BY THE COUNTY  
13 ASSESSOR AS OF THE MOST RECENT VALUATION FOR PROPERTY TAX  
14 PURPOSES; AND

15 (b) AN AMOUNT TO REIMBURSE THE PARTY LOSING TITLE TO THE  
16 ADVERSE POSSESSOR FOR ALL OR A PART OF THE PROPERTY TAXES AND  
17 OTHER ASSESSMENTS LEVIED AGAINST AND PAID BY THE PARTY LOSING  
18 TITLE TO THE ADVERSE POSSESSOR FOR THE PERIOD COMMENCING  
19 EIGHTEEN YEARS PRIOR TO THE COMMENCEMENT OF THE ADVERSE  
20 POSSESSION ACTION AND EXPIRING ON THE DATE OF THE AWARD OR ENTRY  
21 OF FINAL NONAPPEALABLE JUDGMENT, WHICHEVER IS LATER. IF THE  
22 PROPERTY LOST HAS NOT BEEN SEPARATELY TAXED OR ASSESSED FROM  
23 THE REMAINDER OF THE PROPERTY OF THE PARTY LOSING TITLE TO THE  
24 ADVERSE POSSESSOR, SUCH REIMBURSEMENT SHALL EQUITABLY  
25 APPORTION THE AMOUNT OF THE REIMBURSEMENT TO THE PORTION OF THE  
26 OWNER'S PROPERTY LOST BY ADVERSE POSSESSION, INCLUDING, AS  
27 APPROPRIATE, TAKING INTO ACCOUNT THE NATURE AND CHARACTER OF

1 THE PROPERTY LOST AND OF THE REMAINDER. THE AMOUNT OF THE  
2 AWARD SHALL BEAR INTEREST AT THE STATUTORY RATE FROM THE DATES  
3 ON WHICH THE PARTY LOSING TITLE TO THE ADVERSE POSSESSOR MADE  
4 PAYMENT OF THE REIMBURSEABLE TAXES AND ASSESSMENTS.

5 (c) AT ANY HEARING CONDUCTED UNDER THIS SUBSECTION (5), OR  
6 IN THE EVENT THAT ADVERSE POSSESSION IS CLAIMED SOLELY AS A  
7 DEFENSE TO AN ACTION FOR DAMAGES BASED UPON A CLAIM FOR  
8 TRESPASS, FORCIBLE ENTRY, FORCIBLE DETAINER, OR SIMILAR  
9 AFFIRMATIVE CLAIMS BY ANOTHER AGAINST THE ADVERSE POSSESSOR,  
10 AND NOT TO SEEK AN AWARD OF LEGAL TITLE AGAINST THE CLAIMANT,  
11 THE BURDEN OF PROOF SHALL BE BY A PREPONDERANCE OF THE EVIDENCE.  
12 IF THE DEFENDANT IS CLAIMING ADVERSE POSSESSION SOLELY AS A  
13 DEFENSE TO AN ACTION AND NOT TO SEEK AN AWARD OF LEGAL TITLE, THE  
14 DEFENDANT SHALL SO STATE IN A PLEADING FILED BY THE DEFENDANT  
15 WITHIN NINETY DAYS AFTER FILING AN ANSWER OR WITHIN SUCH LONGER  
16 PERIOD AS GRANTED BY THE COURT IN THE COURT'S DISCRETION, AND ANY  
17 SUCH STATEMENT SHALL BIND THE DEFENDANT IN THE ACTION.

18 **SECTION 2. Effective date - applicability.** This act shall take  
19 effect July 1, 2008. The provisions of section 38-41-101 (3) (b) and (5),  
20 Colorado Revised Statutes, in section 1 of this act shall apply to civil  
21 actions filed on or after said date. All other provisions of this act shall  
22 apply to claims for title to real property for which fee simple title vests in  
23 favor of the adverse possessor and against the owner of record of the real  
24 property on or after said date.

25 **SECTION 3. Safety clause.** The general assembly hereby finds,  
26 determines, and declares that this act is necessary for the immediate  
27 preservation of the public peace, health, and safety.