ASSEMBLY, No. 2939

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED FEBRUARY 20, 2020

Sponsored by:
Assemblyman JAY WEBBER
District 26 (Essex, Morris and Passaic)

SYNOPSIS

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

CURRENT VERSION OF TEXT

As introduced.

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

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

1. The Legislature finds that:

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

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

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

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

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

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

2. Except as provided in sections 3 and 4 of P.L. , c. (C.) (pending before the Legislature as this bill), 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 right and that person shall have good title in the real estate provided that during that period the possession has been:

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

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

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

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

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined <u>thus</u> is new matter.

a. The State, any agency thereof, or any political subdivision of the State, including, but not limited to, its instrumentalities and independent authorities, or any county or municipality, or any agency or authority of a county or municipality, with respect to real property or any estate, right, title or interest therein, that was at any time used or intended to be used for a public or transportation, environmental, recreational, governmental, educational, charitable, institutional or other similar purpose or held in public trust, whether such use be at the time of acquisition or sometime thereafter; or

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

4. 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 that:

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

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

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

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

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

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

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

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

STATEMENT

This bill establishes a statutory scheme for adverse possession by repealing conflicting statutes and establishing a 20-year adverse possession period. The bill is also intended to clarify certain case law concerning publicly owned property and to protect the rights of owners of certain property that was tidal-flowed more than 40 years ago.

ADVERSE POSSESSION: Under the current statutes governing adverse possession, N.J.S.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. However, two other statutes seem to conflict with N.J.S.2A:14-30 and 2A:14-31. Under the provisions of N.J.S.2A:14-6, 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 N.J.S.2A:14-7, every action for real estate must be commenced within 20 years after the cause of action accrues. In J & M Land Co. v. First Union Nat'l Bank, 166 N.J. 493 (2001), the plaintiff had 39 years' possession of a tract of uncultivated land that actually belonged to First Union Bank, an adjoining landowner. When J & M sought a court declaration that it had acquired the land through adverse possession, the court turned it down, ruling that the 60-year period of adverse possession under N.J.S.2A:14-31 applies, and not the 20-year time period for bringing real estate actions under N.J.S.2A:14-7.

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

The bill provides that under certain circumstances 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 right and that person shall have good title in the real estate. This provision would apply only if possession was:

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

PUBLICLY-OWNED OR PUBLIC UTILITY PROPERTY: Notwithstanding the newly established 20-year adverse possession

period, the bill provides that adverse possession does not apply to real property held by the State of New Jersey, or any agency or subdivision thereof, so long as the property is dedicated to or used or intended to be used for a public or transportation, environmental, recreational, governmental, educational, charitable, institutional or other similar purpose or held in public trust. In Devins v. Borough of Bogota, 124 N.J. 570 (1991), the court held that municipally-owned property that is neither dedicated to nor used for a public purpose is subject to acquisition by adverse possession. The State and its subdivisions, however, have numerous properties that are not in active public use but are being held for future public use such as the expansion of existing facilities or for highway or rail purposes. If these properties are subject to adverse possession claims, not only could the State lose valuable property but public projects may also be jeopardized.

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

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

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

FURTHER PROVISIONS:

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

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

The effective date provides for a transition to the new adverse possession provisions as follows: Sections 1 and 4 (tidal-flowed lands) would take effect *immediately* as would sections 3 (publicly-owned and public utility property) and 5 (privity). Sections 2 (20-

year adverse possession period) and 6 (repealing existing statutes) would take effect on the *second anniversary following the date of enactment* and would apply to periods of possession of real estate occurring prior to the effective date, on the effective date, and after the effective date.