

SECOND REGULAR SESSION

# HOUSE BILL NO. 1603

## 95TH GENERAL ASSEMBLY

---

INTRODUCED BY REPRESENTATIVES SCAVUZZO (Sponsor), HARRIS AND TALBOY (Co-sponsors).

3964L.011

D. ADAM CRUMBLISS, Chief Clerk

---

### AN ACT

To amend chapter 442, RSMo, by adding thereto one new section relating to adverse possession.

---

*Be it enacted by the General Assembly of the state of Missouri, as follows:*

Section A. Chapter 442, RSMo, is amended by adding thereto one new section, to be  
2 known as section 442.072, to read as follows:

**442.072. 1. (1) In order to prevail on a claim asserting fee simple title to real  
2 property by adverse possession in any civil action filed on or after January 1, 2011, the  
3 person asserting the claim shall prove each element of the claim by clear and convincing  
4 evidence.**

**(2) In addition to any other requirements specified by law, in any action for a claim  
5 for fee simple title to real property by adverse possession for which fee simple title vests on  
6 or after January 1, 2011, in favor of the adverse possessor and against the owner of record  
7 of the real property under subdivision (1) of this subsection, a person shall acquire fee  
8 simple title to real property by adverse possession only upon satisfaction of each of the  
9 following conditions:**

**(a) The person presents evidence to satisfy all of the elements for a claim for  
11 adverse possession required under common law of Missouri; and**

**(b) Either the person claiming by adverse possession or a predecessor in interest  
13 of such person had a good faith belief that the person in possession of the property of the  
14 owner of record was the actual owner of the property and the belief was reasonable under  
15 the particular circumstances.**

**2. Notwithstanding any other provision, the provisions of subsections 1 and 3 of this  
17 section shall be limited to claims of adverse possession for the purpose of establishing fee  
18**

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

19 simple title to real property and shall not apply to the creation, establishment, proof, or  
20 judicial confirmation or delineation of easements by prescription, implication, prior use,  
21 estoppel, or otherwise, nor shall the provisions of subsections 1 and 3 of this section apply  
22 to claims or defenses for equitable relief under the common law doctrine of relative  
23 hardships, or claims or defenses governed by any other statute of limitations specified  
24 under state law. Nothing in this section shall be construed to include any elements of a  
25 claim for adverse possession that are not otherwise applicable to the creation,  
26 establishment, proof, or judicial confirmation or delineations of easements by prescription,  
27 implication, prior use, estoppel, or otherwise are made applicable under this section.

28       3. (1) Where the person asserting a claim of fee simple title to real property by  
29 adverse possession prevails on such claim and if the court determines in its discretion that  
30 an award of compensation is fair and equitable under the circumstances, the court may,  
31 after an evidentiary hearing separately conducted after entry of the order awarding title  
32 to the adverse possessor, award to the party losing title to the adverse possessor:

33       (a) Damages to compensate the party losing title to the adverse possessor for the  
34 loss of the property measured by the actual value of the property as determined by the  
35 county assessor as of the most recent valuation for property tax purposes. If the property  
36 lost has not been separately taxed or assessed from the remainder of the property of the  
37 party losing title to the adverse possessor, the court shall equitably apportion the actual  
38 value of the property to the portion of the owner's property lost by adverse possession,  
39 including taking into account the nature and character of the property lost and of the  
40 remainder;

41       (b) An amount to reimburse the party losing title to the adverse possessor for all  
42 or part of the property taxes and other assessments levied against and paid by the party  
43 losing title to the adverse possessor for the period commencing eighteen years prior to the  
44 commencement of the adverse possession action and expiring on the date of the award or  
45 entry of final judgment, whichever is later. If the property lost has not been separately  
46 taxed or assessed from the remainder of the property of the party losing title to the adverse  
47 possessor, such reimbursement shall equitably apportion the amount of the reimbursement  
48 to the portion of the owner's property lost by adverse possession, including taking into  
49 account the nature and character of the property lost and of the remainder. The amount  
50 of the award shall bear interest at the statutory rate from the dates on which the party  
51 losing title to the adverse possessor made payment of the reimbursement taxes and  
52 assessments.

53       (2) At any hearing conducted under this subsection or in the event that adverse  
54 possession is claimed solely as a defense to an action for damages based upon a claim of

55 trespass, forcible entry, forcible detainer, or similar affirmative claims by another against  
56 the adverse possessor, and not to seek an award of legal title against the claimant, the  
57 burden of proof shall be by a preponderance of the evidence. If the defendant is claiming  
58 adverse possession solely as a defense to an action and not to seek an award of legal title,  
59 the defendant shall so state in a pleading filed by the defendant within ninety days after  
60 filing an answer or within such longer period as granted by the court in the court's  
61 discretion, and any such statement shall bind the defendant in the action.

✓