

Introduced by Senator WrightFebruary 22, 2013

An act to add Chapter 2.5 (commencing with Section 1134.1) to Title 4 of Part 4 of Division 2 of the Civil Code, and to add Section 325.5 to the Code of Civil Procedure, relating to adverse possession.

LEGISLATIVE COUNSEL'S DIGEST

SB 608, as introduced, Wright. Adverse possession: public entity properties.

Existing law sets forth the grounds for a claim of title by adverse possession. Existing law also requires that a person claiming title in an action for adverse possession show that the land has been occupied and claimed for the period of 5 years continuously, and the party or person, their predecessors and grantors have paid all taxes, as provided.

This bill would provide that a nonpublic entity has no right under the doctrine of adverse possession to possess, occupy, or own public property or claim a public property by adverse possession. The bill would prohibit a public entity, as defined, from selling real property or conveying a durable interest in real property, except by official action and if leased, such that the public entity maintains a reversionary interest in the property conveyed. The bill would provide that any sale or conveyance made or claimed in violation of its provisions may be voided by any party to the conveyance.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. (a) The Legislature finds and declares that the
2 protection of the public’s fundamental right to preserve its interest
3 in public property is a matter of statewide concern.

4 (b) The Legislature finds and declares both the following:

5 (1) Transparency of the process by which public lands are sold
6 or leased to private parties by public entities is essential to the
7 preservation of the public’s interest in public property.

8 (2) The right of the public entity to reclaim possession of public
9 land upon the termination, cessation, or expiration of a private
10 party’s legal right to possess such lands, or if public land is claimed
11 by adverse possession is absolute.

12 SEC. 2. Chapter 2.5 (commencing with Section 1134.1) is
13 added to Title 4 of Part 4 of Division 2 of the Civil Code, to read:

14

15 CHAPTER 2.5. PUBLIC ENTITY REAL PROPERTY TRANSFERS

16

17 1134.1. For the purpose of this chapter:

18 (a) “Durable interest in real property” means any interest or
19 right of possession in real property created by a public entity upon
20 its conveyance, or the modification of a conveyance, to a party
21 that does not have an ownership interest in the real property
22 conveyed, and includes interests created by leases, franchises,
23 charters, compacts, options, and other agreements that assign
24 property thereto.

25 (b) “Public entity” includes the state, any political subdivision
26 thereof, a city, county, or city and county, and any other state body
27 or agency, or any other local public agency, or subdivision thereof.

28 1134.2. (a) (1) A public entity shall not sell real property or
29 convey a durable interest in real property, or modify that interest,
30 except by official action taken in a manner that complies with the
31 law, including those laws that apply to property and contracts
32 generally, and, if leased, such that the public entity maintains a
33 reversionary interest in the property conveyed.

34 (2) Notwithstanding the creation of an option agreement or other
35 contingent interest that conforms to all of the terms of this section,
36 no conveyance may authorize private possession of real property
37 which exceeds the date on which the public entity’s reversionary
38 interest vests.

1 (b) Records of sales of real property or conveyances, or
2 modifications thereof, of a durable interest in real property by a
3 public entity to any third party, including records in the possession
4 of a public entity that is not the lessor or holder of the public's
5 reversionary interest, shall be open to public inspection pursuant
6 to the California Public Records Act (Chapter 3.5 (commencing
7 with Section 6250) of Division 7 of Title 1 of the Government
8 Code), except as specified by that act.

9 (c) A sale of real property or conveyance of a durable interest
10 in real property, or modifications of a conveyance thereof, shall
11 be of no force or effect unless it is approved by a public entity in
12 a manner that satisfies all of the following:

13 (1) The sale or conveyance complies with all appropriate statutes
14 or ordinances that authorize and govern the public entity's ability
15 to sell or convey interests in public property to other public entities
16 or to nonpublic entities.

17 (2) The sale or conveyance is set forth, in its entirety, in a written
18 instrument at the time of the public entity's approval of the sale
19 or creation of a third-party interest.

20 (3) If applicable, the sale or conveyance is approved by
21 resolution or other action in a manner that complies with the
22 Bagley-Keene Open Meeting Act (Article 9 (commencing with
23 Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of
24 the Government Code) or the Ralph M. Brown Act (Chapter 9
25 (commencing with Section 54950) of Part 1 of Division 2 of Title
26 5 of the Government Code).

27 (d) A conveyance, or modification thereof, of any durable
28 interest in real property by a public entity to a nonpublic entity
29 shall be effective, and possession of that real property by a
30 nonpublic entity allowed, if the public entity and nonpublic entity
31 have reached a legally binding agreement or understanding of
32 conveyance, or modification thereof, that complies with the
33 applicable requirements of contract formation or modification set
34 forth in Part 2 (commencing with Section 1549) of Division 3 of
35 the Civil Code and that specifies the duration of the possession in
36 writing and identifies the public entity's reversionary interest.

37 1134.3. (a) Notwithstanding Section 1134.2, any durable
38 interest in real property that is conveyed by a public entity on a
39 month-to-month term or for an unspecified duration such that
40 possession does not exceed one year may be considered lawfully

1 conveyed pursuant to this chapter if the conveyance satisfies the
2 requirements of this section.

3 (b) A public entity may convey a durable interest in real property
4 pursuant to the ministerial application of a policy, regulation, or
5 guideline previously adopted by the conveying public entity which
6 contains all of the following:

7 (1) A description of the nature of operations, physical extent,
8 or metes and bounds of the interest or interests in real property or
9 properties subject to the policy, regulation, or guideline.

10 (2) The maximum duration of the possession allowed under the
11 policy, regulation or guideline. A conveyance pursuant to a
12 policies, regulation, or guideline that fails to limit duration of
13 possession, or that permits possession of an unlimited duration, is
14 not valid.

15 (3) The rates, schedule of rates, or the basis upon which an
16 establishment of rates on a case-by-case basis may be set by an
17 administrator and which shall be charged in conjunction with the
18 conveyance.

19 (4) Findings sufficient to show that the conveyance meets the
20 requirements for an express contract set forth in Part 2
21 (commencing with Section 1549) of Division 3 of the Civil Code.

22 (5) The public official or officials responsible for administering
23 the provisions of the policy, regulation, or guideline and the manner
24 in which the limitations on possession of the property conveyed
25 shall be enforced.

26 (c) A conveyance subject to subdivision (a) that is subsequently
27 modified shall comply with Section 1134.2.

28 1134.4. (a) A sale or conveyance made or claimed in violation
29 of any of the Sections 1134.2 or 1134.3 may be voided at the
30 instance of any party pursuant to an action authorized by Section
31 526a of the Code of Civil Procedure. No such sale or conveyance
32 may be voided because of a violation of subdivision (b) of Section
33 1134.2 by a public entity subsequent to sale or conveyance,
34 provided that all other requirements governing the sale or
35 conveyance under that section have been satisfied.

36 (b) An action under this section brought by a nonpublic entity
37 shall be commenced after the plaintiff has discovered, or in the
38 exercise of reasonable care should have discovered, a violation
39 described in subdivision (a), pursuant to the applicable statute of

1 limitations as described in Chapter 2 (commencing with Section
2 315) of Title 2 of Part 2 of the Code of Civil Procedure.

3 SEC. 3. Section 325.5 is added to the Code of Civil Procedure,
4 to read:

5 325.5. (a) For purposes of this section, “public entity” includes
6 the state, any political subdivision thereof, a city, county, or city
7 and county, and any other state body or agency, or any other local
8 public agency, or subdivision thereof.

9 (b) A nonpublic entity has no right under the doctrine of adverse
10 possession to possess, occupy, or own public property, nor may
11 public real property be alienated by the passage of time alone.

12 (c) A nonpublic entity shall not claim a public property by
13 adverse possession nor may a nonpublic entity claim that a public
14 entity has allowed real property be alienated indirectly through
15 the passage of time.

16 (d) An action filed by a public entity challenging nonpublic
17 entity’s claim to public property under the doctrine of adverse
18 possession is not subject to any statute of limitations.