

# Alaska King Crab

**adn.com**

Anchorage Daily News

Print Page

Close Window

## Senate passes bill to stop 'legal thievery' of property SQUATTERS: Measure would stop them from gaining title to land.

The Associated Press

*(Published: May 14, 2003)*

KENAI -- The Alaska Senate has passed a bill that would wipe the 800-year-old common law doctrine of adverse possession from Alaska law.

Senate Bill 93, sponsored by Sen. Tom Wagoner, R-Kenai, repeals Alaska's adverse possession law. The doctrine, which first was established in the Middle Ages, could allow squatters on private property to legally assume ownership of that property under certain well-defined conditions.

Wagoner said it is a doctrine the state should abandon.

"Our law, right now, allows a person who has no claim of ownership to squat on someone else's property and, as a result of their illegal trespass, the squatter could actually secure title to the property they are squatting on," Wagoner said. "That is simply legal thievery -- to me, that is offensive and it needs to stop."

For the doctrine of adverse possession to apply in Alaska, a squatter would have to live on someone's property for an uninterrupted period, seven to 10 years, depending on other factors.

Wagoner said earlier in the session that some owners of Alaska property might be vulnerable to such takeovers.

"In Alaska especially, many people buy large parcels of land. Often that land is very remote and this doctrine puts undue hardships upon those landowners to police their property," he said.

There are some exceptions in the bill. Wagoner said boundary disputes would continue to be settled through adverse possession.

Also, the doctrine could apply in maintaining public services, such as highways, roads or trails in which the public has a vested interest, as well as when, for periods of 10 years or more, the land has been used for gaining easements for utility purposes.

Senate Bill 93 now heads to the House.

Print Page

Close Window

Copyright © 2003 The Anchorage Daily News ([www.adn.com](http://www.adn.com))

## FACTS ABOUT ADVERSE POSSESSION AND PRESCRIPTION

- The law of adverse possession is a set of rules based on statutory and common law applied by Alaska courts mainly to resolve boundary disputes between owners of adjacent property both of whom have at least some valid recorded title.<sup>1</sup>
- Under this law, the party in such disputes who has continuously used land in a manner clearly visible to the other party for a period of many years is favored over the party who does nothing and delays for the same period to bring that party's claim to court.<sup>2</sup>
- The law serves three purposes: 1) discouraging old claims from clogging the courts, 2) conforming the recorded title with actual, accepted land use patterns, and 3) protecting third parties who may have reasonably relied on appearances of ownership.<sup>3</sup>
- The law aids other persons who have acted reasonably but without benefit of legal advice such as relying on an oral gift from ones grandparents or on a mistake about legal documents.<sup>4</sup>
- The Alaska Supreme Court has approved use of the law in favor of a pure squatter (someone without any recorded document to any land) in only one case where a 71 year old Tlingit man had used land for 55 years by the time of trial.<sup>5</sup>
- A special rule of adverse possession called color of title applies when the land use is preceded by some written document conveying the land even if the document is invalid. Such a document shortens the required period the land must be used and defines the land to be acquired under the law.<sup>6</sup> This special rule is not affected by the proposed legislation but is not sufficient to govern all situations, like the ones described above, where adverse possession properly resolves cases.
- All states currently follow the law of adverse possession. One variation is in the required period for the land use to exist ranging from 5 to 40 years with Alaska's 10 years being most common (16 states).<sup>7</sup> The other variation concerns which states recognize the special rule for color of title (15 states).
- There are no courts, judges or scholars in any state who are calling for repeal of the law of adverse possession.<sup>8</sup>
- Government land and the vast majority of native corporation land is already exempt from the law under state<sup>9</sup> and federal statutes<sup>10</sup>. Government land is exempt because citizens should not be punished by the neglect of public servants and public resources should not be unknowingly appropriated.<sup>11</sup> Native corporation land loses its exemption only when it is developed as by lease or sale to other parties or by subdivision.<sup>12</sup>
- Adverse possession gives a person ownership of land. A special rule of adverse possession called prescription, awards a limited right to use land for a specific purpose such as roads and utilities when the requirements of adverse possession are met.<sup>13</sup> The courts have relied on prescription to resolve access issues involving the state<sup>14</sup>, local government<sup>15</sup>, and private owners.<sup>16</sup> At a very minimum, prescription should be preserved for government and utilities.

<sup>1</sup> Six of the nine cases where the Alaska Supreme Court has approved a claim of adverse possession (not based on color of title) fall into this pattern, *Tenala Ltd. v. Fowler*, 921 P.2d 1114 (Alaska 1996)(incomplete deeds); *Name 2000 v. Fagerstrom*, 799 P.2d 304 (Alaska 1990)(native allotment claimant versus mining claimant); *Smith v. Krebs*, 768 P.2d 124 (Alaska 1989)(two valid deeds to overlapping parcels); *Bentley Family Trust, Bank of California v. Lynx Enterprises, Inc.* 658 P.2d 761 (Alaska 1983)(slough which had been partially filled); *Roberts v. Brooks*, 649 P.2d 710 (Alaska 1982)(house built across boundary when two lots owned by one owner who later conveyed lots to separate parties); *Nelson v. Green Construction Company*, 515 P.2d 1225, 1226 (Alaska 1973)(patents to overlapping homesteads). The remaining three cases are discussed in notes 4 and 5, below.

<sup>2</sup> *Tenala Ltd* at 1120.

<sup>3</sup> *Alaska National Bank v. Linck*, 559 P.2d 1049, 1054 (Alaska 1977).

<sup>4</sup> *Vezey v. Green*, 35 P.3d 14 (Alaska 2001)(gift); *Hubbard v. Curtiss*, 684 P.2d 842 (Alaska 1984)(mistake).

<sup>5</sup> *Peters v. Juneau-Douglas Girl Scout Council*, 519 P.2d 826 (1974).

<sup>6</sup> Explained in *Tenala Ltd*.

<sup>7</sup> R. Powell and M. Wolf, *Powell on Real Property*, vol. 16, sec. 91.04[1] (2000); D. Thomas, *Thompson on Real Property*, v 10, sec 87.01 (2d ed 1998)

<sup>8</sup> The law is defended in R. Posner, *Economic Analysis of the Law*, 70 (3d ed. 1986). One law professor has suggested that the law should be narrowed for environmental reasons to preserve land in its "wild" state. J. Sprankling, *An Environmental Critique of Adverse Possession*, 70 *Cornell L. Rev.* 816, 864 (1994). He has not been joined by anyone else.

<sup>9</sup> AS 38.95.010.

<sup>10</sup> 43 U.S.C. sec. 1636(d)(1)(A).

<sup>11</sup> Powell at sec. 91.11[1].

<sup>12</sup> *Snook v. Bowers*, 12 P.3d 771, 779 (Alaska 2000).

<sup>13</sup> *Tenala Ltd* at 1119; *Dillingham Commercial Co., Inc. v. City of Dillingham*, 705 P.2d 410, 416 (Alaska 1985).

<sup>14</sup> *Ault v. State*, 688 P.2d 951 (Alaska 1984).

<sup>15</sup> *City of Dillingham*.

<sup>16</sup> *McGill v. Wahl*, 839 P.2d 393 (Alaska 1992).

Joe Griffith  
General Manager

April 28, 2003

Senator Thomas Wagoner  
State Capitol, Room 427  
Juneau, Alaska 99801-1182

Re: Senate Bill 93

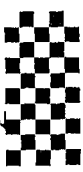
Dear Senator Wagoner:

Chugach Electric Association, Inc. is very concerned about the adverse consequences that could result from the passage of Senate Bill 93, and in particular the implications it could have on government and utilities in Alaska. This bill would significantly erode the law of adverse possession in Alaska, making Alaska unique amongst the fifty states, in order to purportedly solve a very rare situation for which protection already exists. There is continuing need for this law, as boundary issues will continue to arise based on surveys and landowner actions currently taking place, not just those which occurred in the past. The attached paper titled "Facts About Adverse Possession and Prescription" was prepared by our legal counsel. It discusses the law of adverse possession and prescription and provides legal citations. You may want to have it reviewed by legislative counsel in conjunction with the proposed bill.

We urge you to reconsider this bill. At a minimum, prescriptive rights should be preserved for government and utilities. It is important that those entities maintain the ability to claim and acquire prescriptive easement rights in order to continue to protect use rights in areas where they have existed, and in the case of utilities where service has been provided, for a significant period of time. The exemption provided by section 2 of the bill (amending AS 09.45.052 by adding a new subsection) is confusing as to what it covers and is not broad enough to protect utilities like Chugach. For example, it speaks of "possession" of a public road which means exclusive use by a single person or entity. Under existing prescription law, all that is required is "use" by sufficient members of the public of land for road purposes which may not be exclusive. The current exemption is also phrased to apply to possession of rights of way or other interests in land rather than the land itself. A right of way is a type of easement which the Court awards to an appropriate entity for use of land which meets the requirements of prescription. Thus, the exemption is not broad enough to protect even the State.

Chugach Electric Association, Inc.  
5601 Minnesota Drive, P.O. Box 196300, Anchorage, Alaska 99519-6300 • (907) 563-7494 Fax (907) 562-0027 • (800) 478-7494  
www.chugachelectric.com • info@chugachelectric.com

To: JOHN BEQUERT  
451-5411



Senator Thomas Wagoner  
April 28, 2003  
Page 2

If the legislature is intent on passing legislation amending the statute, Chugach suggests the following substitute exemption to address these concerns:

(c) Notwithstanding AS 09.10.030, the uninterrupted, adverse, and notorious use, including, but not limited to, construction, operation, management or maintenance, of private land for highway, street, road, trail or utility purposes for a period of ten or more years by the public, the state, a political subdivision of the state, or a public utility shall vest an appropriate interest in land in the state, a political subdivision of the state, or a public utility as appropriate.

I look forward to discussing this matter with you.

Very truly yours,



Joe Griffin  
Chief Executive Officer

Enclosures (2)

CS FOR SENATE BILL NO. 93(L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE - FIRST SESSION

BY THE SENATE LABOR AND COMMERCE COMMITTEE

Offered: 4/2/03

Referred: Judiciary

Sponsor(s): SENATOR WAGONER

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to limitations on actions to quiet title to, eject a person from, or recover  
2 real property or the possession of it; relating to adverse possession; and providing for an  
3 effective date."

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

5 \* Section 1. AS 09.10.030 is amended to read:

6 Sec. 09.10.030. Actions to recover real property [IN 10 YEARS]. (a)  
7 Except as provided in (b) of this section, a [A] person may not bring an action for  
8 the recovery of real property [,] or for the recovery of the possession of it unless the  
9 action is commenced within 10 years.

10 (b) An action may be brought at any time by a person whose ownership  
11 interest in real property is recorded under AS 40.17 to

12 (1) quiet title to that real property; or

13 (2) eject a person from that real property.

14 (c) An action may not be maintained under this section [FOR THE

SB0093B

-1-

CSSB 93(L&C)

New Text Underlined [DELETED TEXT BRACKETED]

1 RECOVERY] unless it appears that the plaintiff, an ancestor, a predecessor, or the  
2 grantor of the plaintiff was seized or possessed of the premises in question at some  
3 time [WITHIN 10 YEARS] before the commencement of the action.

4 \* Sec. 2. AS 09.45.052 is amended by adding a new subsection to read:

5 (c) Notwithstanding AS 09.10.030, the uninterrupted adverse notorious  
6 possession by the state or a political subdivision of the state of a public transportation  
7 or public access right-of-way for a period of 10 or more years is conclusively  
8 presumed to give title to the right-of-way to the state or the political subdivision, as  
9 appropriate, except as against the United States.

10 \* Sec. 3. The uncodified law of the State of Alaska is amended by adding a new section to  
11 read:

12 APPLICABILITY. AS 09.10.030, as amended in sec. 1 of this Act, applies to actions  
13 that have not been barred before the effective date of this Act by AS 09.10.030 as it read  
14 before the effective date of this Act.

15 \* Sec. 4. This Act takes effect immediately under AS 01.10.070(c).