

Report on Public Policy Position**Name of section:**

Real Property Law Section

Contact person:

Kim Shierk

E-mail:kshierk@mnds-pll.com**Bill Number:**

[HB 5804](#) (Agema) Land use; other; adverse possession; restrict. Amends sec. 5867 of [1961 PA 236](#) (MCL [600.5867](#)) & adds sec. 5867a.

Date position was adopted:

April 17, 2010

Process used to take the ideological position:

Position adopted after discussion and vote at a scheduled meeting.

Number of members in the decision-making body:

18

Number who voted in favor and opposed to the position:

13 Voted for position

0 Voted against position

0 Abstained from vote

5 Did not vote

Position:

Oppose

Explanation of the position, including any recommended amendments:

1. Adverse possession is already a difficult claim on which to prevail, and this revision would make it almost impossible for anyone to prevail on such a claim, because the claimant will not often have paid the property taxes on the disputed land for 15 years.

2. The proposed revision would be subject to many difficulties in a boundary line dispute, which likely comprises the majority of adverse possession claims. It is often difficult to determine which party paid the taxes on the disputed strip of land because the tax record legal descriptions are often imprecise, and not intended to establish legal boundaries. The assessor may base his assessment upon the location of improvements, such as a fence, as opposed to the actual acreage in the legal description. A few other states that have required that property taxes be paid by the claimant either exempt boundary line disputes by statute, or by judicial carve-out.

3. This language would arguably allow a defendant who is delinquent in the payment of property taxes to pay those taxes after the claim is filed, thereby defeating the adverse possession claim. This problem could be remedied by replacing “maintained” with “commenced.”

4. The existing requirements to prove an adverse possession claim (open, continuous, exclusive, adverse, notorious, hostile, etc.) provide a difficult burden of proof for the claimant, and already ensure that adverse possession will be found only in clear situations so as to protect the integrity of the adverse possession doctrine.

5. The elements of a prescriptive easement claim are almost identical to an adverse possession claim. The prescriptive easement holder will not have paid taxes on the property. Therefore, it is inconsistent for the legislature to impose this additional requirement on an adverse possession claim, when it does not apply to a prescriptive easement claim.

The text of any legislation, court rule, or administrative regulation that is the subject of or referenced in this report.

<http://legislature.mi.gov/doc.aspx?2010-HB-5804>