

**TESTIMONY OF  
THE PENNSYLVANIA BAR ASSOCIATION**

**ON**

**PENNSYLVANIA HOUSE BILL 1322, Printer's No. 1582**

**SEPTEMBER 30, 2009**

Good morning Chairman Dermody, Minority Chairman Perzel, and Members of the Urban Affairs Committee. Thank you for providing the Pennsylvania Bar Association with the opportunity to appear before the Committee today. I am Louis M. Kodumal, Assistant Secretary for the Section of Real Property, Probate & Trust of the Pennsylvania Bar Association. My colleague is Arnold B. Kogan, the Section's Vice-Chair. Our written testimony also reflects commentary and research offered by William C. Mackrides, Section Chairman, Brett M. Woodburn, Section Treasurer, and Frederic W. Clark, a past Section Chair.

House Bill 1322 proposes amending Title 42 (Judiciary and Judicial Procedure) of the Pennsylvania Consolidated Statutes by adding a new Section (5527.1) that reduces the existing 21 year requirement to 10 years to establish ownership by adverse possession for real property on which there is an occupied single family dwelling on a lot of one acre or less where the unimproved land is incidental to the residence. However, HB 1322 goes on to reduce the time period further if certain specified circumstances are present (emphasis added):

If the person in actual possession of the real property possesses the property under **claim and color of title** made in **good faith** and **shall have been in continuous possession for three successive years**, the action must be commenced within three years.

If the person in actual possession of the real property shall have been in **continuous possession for seven successive years** and **shall have paid all taxes legally assessed on the real property during that time**, the action must be commenced within seven years.

As a starting point, it would be useful to summarize adverse possession law as it currently exists in Pennsylvania.

## **I. BACKGROUND**

Adverse possession is the acquisition of title to real property by possession of the property rather than by transfer of record title. The possession must be actual, continuous,

exclusive, visible, notorious, distinct and hostile. Each one of those words has been defined over the years by the courts of Pennsylvania and elsewhere (see attached **Exhibit “1”**). As the Superior Court has stated:

The words **visible and notorious possession** mean that the claim of ownership must be evidenced by conduct sufficient to place a reasonable person on notice that his or her land is being held by the claimant as his own. To constitute **distinct and exclusive possession**, it need only be a type of possession which would characterize an owner's use. Further, in order for adverse possession to ripen into title, it is necessary to show that such possession has been **continuous and uninterrupted for the full statutory period**. In this Commonwealth, **the statutory period is twenty-one years**. The law does not require that the claimant remain continuously on the land and perform acts of ownership from day to day. The word "**hostile**," as an element of adverse possession does not mean ‘ill will’ or ‘hostility,’ but implies an assertion of ownership rights adverse to that of the true owner and all others...”<sup>1</sup>

The Superior Court, quoting the Supreme Court, emphasized the sound reasons why the doctrine has been so well-established under law:

“In order to give title under the statute of limitations, the possession of the disseisor must not only be actual, but it must be visible, notorious, distinct, hostile, and continued for the period of twenty-one years: Hawk v. Senseman, 6 Ser. & R. 21; Adams v. Robinson, [6 Pa. 271] 6 Barr 271. This doctrine has been so constantly repeated by our Courts, and so generally acted upon by the people, that it has become a rule of property which cannot be changed without a manifest disregard of the principle of *stare decisis*, producing in its result an alarming violation of the right of property, and a disastrous disturbance of the quiet of the community.”<sup>2</sup>

The policy underlying adverse possession is succinctly described in LADNER ON CONVEYANCING IN PENNSYLVANIA, § 4.01 (Rev. 4<sup>th</sup> ed. 2006):

Adverse possession is nothing more than the taking of another’s property for one’s use. The acquisition of title in this manner is possible because of the policy of the law that one who has been in possession for a long time and has improved and maintained the property, perhaps at great expense or labor, should be secure. Conversely, an owner who sits idly by for an unreasonably long time, while someone takes possession and improves the land, should not be heard to object or claim title when witnesses may have died or removed. . . .

The statutory provision for adverse possession now appears in 42 Pa.C.S § 5530, which is a form of a statute of limitations barring claims against the adverse possessor after 21 years by those claiming record title. The 21 year time period dates back in Pennsylvania to 1785,<sup>3</sup> and before that to English law.

## **II. CONCERNS**

### **A. ACCURACY OF TITLE RECORDS**

In order to protect the state of the record title and prevent fraud on future purchasers, Pennsylvania law, 68 P.S. § 81, part of a 1901 law, requires a person who has obtained title by adverse possession and then ceases actual possession of the property to record a statement of his or her acquisition by adverse possession within six months of leaving possession. This law is an important tool in maintaining the accuracy of the title records in the various offices of the Recorders of Deeds throughout Pennsylvania and should not be repealed. HB 1322 specifically repeals the 1901 law to the extent it is inconsistent, and therefore it is unclear whether 68 P.S. § 81 would survive HB 1322's enactment.

### **B. UNCERTAIN EFFECT ON PROTECTIONS GIVEN TO RECORD PROPERTY OWNERS UNDER EXISTING LAW. ALTERNATIVES FOR CONSIDERATION.**

It is also not clear whether HB1322 would reduce or eliminate the protection given to record property owners in existing case law that requires proof by the adverse possession claimant of the elements of actual, continuous, exclusive, visible, notorious, distinct, and hostile possession of the property.<sup>4</sup>

In addition, a number of states have enacted marketable title statutes that cut off claims based on defective title records, and other states such as Pennsylvania have from time-to-time enacted curative statutes to eliminate objections to older defective recordings. The UNIFORM MARKETABLE TITLE ACT adopted by the National Conference of Commissioners on Uniform

State Laws has a 30 year statutory period. Instead of revising the law on adverse possession, consideration should be given to enacting a marketable title statute in Pennsylvania that would help to reduce reliance on adverse possession as a means of clarifying ownership.

Some question the need today for adverse possession in view of modern GPS technology increasing the accuracy of surveys and whether those who merely seize vacant properties without any claim or color of title should be rewarded by terminating the rights of the record owner.<sup>5</sup> While this may not be the appropriate place to discuss the continued need for adverse possession, these concerns do raise legitimate and important reasons why it should *not be made easier* for one to acquire title to the property of another. There may be multiple, unrelated occupants of a building, not all of whom have been in occupancy throughout the holding period. HB1322 may have the unintended results of encouraging speculators to act as “squatters” who seize property from distant property owners, and increasing the potential for disputes between and among neighbors and family members as to title to real property.

### **C. RELATED CONCERNS REGARDING PROPOSED TIMEFRAMES AND COMPENSATION ISSUES AND RECENT LEGAL DEVELOPMENTS.**

The short timeframes in HB 1322— three years (under color of title), seven years (with payment of taxes), and 10 years (otherwise)—allow, and in some instances may even encourage, the taking of property of another for private uses without compensation. Article I, Section I of the Pennsylvania Constitution states clearly that we enjoy “certain inherent and indefeasible rights”, among which are those of “acquiring, possessing and protecting property”. It is likely that the different time limitations will also cause confusion, and confusion leads to inequitable consequences that are inconsistent with a mandate to protect property rights.

In addition, HB 1322’s approach appears to circumvent protections in the Property Rights Protection Act (PRPA) passed in Pennsylvania in 2006<sup>6</sup> in response to the U.S. Supreme Court’s

decision in *Kelo v. City of New London*,<sup>7</sup> holding that a city could utilize eminent domain powers for condemnation of economically distressed property, subject to compensation in accordance with constitutional mandates, as well as the rights of states to grant broader protections to private property owners. In fact, part of the PRPA addresses the same type of single family dwelling properties as described in HB 1322 with the same goal of removing blight.<sup>8</sup>

**D. BEFORE AMENDING PENNSYLVANIA’S ADVERSE POSSESSION LAW, THE LEGISLATURE SHOULD STUDY THE ADVERSE POSSESSION LAWS OF OTHER STATES AND ANY RECENT LEGISLATIVE EFFORTS TO AMEND THEM**

By way of comparison, Maryland requires a 20 year adverse possession period.<sup>9</sup> In Connecticut, an adverse possessor must establish open, visible, and exclusive possession uninterrupted for a 15 year period.<sup>10</sup> In New Jersey, 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, where title to such tracts vests after 60 years' possession.<sup>11</sup> Even New York, which has a 10 year period to establish adverse possession,<sup>12</sup> has strengthened its protection of private property rights. As of 2008, an adverse possessor can only acquire title if their occupancy exists under a “claim of right”, in addition to an adverse, open and notorious, continuous, exclusive and actual occupancy. A “claim of right” is defined as a reasonable basis for the belief that the property belongs to the adverse possessor or property owner as the case may be - thereby focusing the court’s inquiry not on a person’s belief, but upon whether or not there was a reasonable basis for it.<sup>13</sup>

### **III. UNDER EXISTING LAW, THERE ARE TOOLS THAT ARE BETTER SUITED TO COMBAT BLIGHT AND RESOLVE QUESTIONS OF TITLE**

#### **A. ELIMINATION OF BLIGHT**

Under the Urban Redevelopment Law (URL), Redevelopment Authorities have been tasked with the elimination of blight through the redevelopment process. These Authorities

“...exist and operate for the public purposes of the elimination of blighted areas through economically and socially sound redevelopment of such areas, as provided by this act, in conformity with the comprehensive general plan of their respective municipalities for residential, recreational, commercial, industrial or other purposes, and otherwise encouraging the provision of healthful homes, a decent living environment and adequate places of employment of the people of this Commonwealth. Such purposes are hereby declared to be public uses for which public money may be spent and private property may be acquired by the exercise of the power of eminent domain.”<sup>14</sup>

Subject to the URL’s terms, any Redevelopment Authority has the power to acquire by purchase, gift, bequest, eminent domain or otherwise, any blighted property as defined in 35 P.S. § 1712.1, either within or outside of a certified redevelopment area, and has the power to hold, clear, manage and/or dispose of said property for residential and related reuse and commercial or industrial reuse.<sup>15</sup> This power is conditioned upon the creation or existence of a blighted property review committee by ordinance of the governing body of the municipality.<sup>16</sup> The committee is made up of members as determined in the said ordinance, and must include at least one member of the governing body, a representative of the Redevelopment Authority, a representative of the appropriate planning commission, and a representative to be designated by the chief executive officer or officers from the executive branch of the government of the municipality.

Additionally, the PRPA establishes the applicable standards for taking of either a single property or multiple properties located in blighted areas through the use of eminent domain. Single, blighted properties must meet certain standards before being taken by eminent domain, including those already articulated in the URL, and extends the criteria to include properties that:

- Have defective or unusual conditions that render their title unmarketable;
- Pose environmentally hazardous conditions; and
- Present multiple conditions of blight, including having occupancy and fire code violations, unsafe access ways, are served by an unsafe street or right-of-way, have applicable municipal code violations, or are located in a redevelopment area with certain population density requirements.

In addition, last year Pennsylvania enacted the Abandoned and Blighted Property Conservatorship Act (Act 135 of 2008),<sup>17</sup> which provides for court-appointed conservators to bring residential, commercial and industrial buildings into municipal code compliance when owners fail to comply. A summary of this Act is attached as **Exhibit 2**. It is of note that the bill went through five revisions to add protections to owners before it was enacted into law.

**B. OTHER LEGAL TOOLS ARE BETTER SUITED TO RESOLVING QUESTIONS OF TITLE TO REAL PROPERTY**

Adverse possession law developed primarily for rural properties. There are existing legal remedies that are better suited to resolve questions of title to real property. The action to quiet title under Pennsylvania Rules of Civil Procedure Nos. 1061 through 1068 is designed to clean up titles issues often found with urban properties. Quiet title actions are routinely used in matters where title may be affected by antiquated liens or other issues such as where a lienholder cannot be located or will not participate in discussion or resolution (i.e. sheriff's deeds).

There are other scenarios in which an individual may have a tangled title problem which a quiet title action is used to address. These include, but are not limited to, the following:

- where any individuals are living in the home of a deceased relative whose estate was never probated (i.e., the legal process of administration of the estate of a deceased person, where claims are resolved and the deceased person's assets are distributed);
- others may have entered into a lease purchase agreement (also known as rent-to-own and installment land contracts) where they have paid all or most of the purchase price to the home to the owner but the owner has since died, disappeared or refused to convey title; and

- where an individual may be the victim of a fraudulent deed transfer whereby someone forged their name on a deed and purported to transfer title of their home out of their name.

It may be expedient to allow the seizing of blighted properties without compensation and without the protection of a sufficiently long opportunity by an owner to take steps to protect his or her title, but adverse possession is not the best way – for either residents or municipalities – to combat blight. Using adverse possession to combat blight is contrary to longstanding Pennsylvania law of adverse possession, which has a long and well-established system of checks and balances for both the property owner and the possessor; protections that were just recently re-affirmed by the Superior Court of Pennsylvania.<sup>18</sup> The protections of existing law should not be removed.

#### **IV. CONCLUSION**

The Pennsylvania Bar Association opposes the reductions of the 21 year time limit for adverse possession described in HB 1322. Other tools to eliminate blight, which we understand is the impetus for HB 1322, have already been enacted, or exist through Court Rules for Civil Procedure, and ensure compensation for takings and due process in accordance with constitutional mandates. Additionally, the enactment of a marketable title statute such as the UNIFORM MARKETABLE TITLE ACT should be considered to reduce ancient title defects as has been done in many states and thus reduce the reliance upon adverse possession to clear up titles.

## EXHIBIT 1

### ELEMENTS OF ADVERSE POSSESSION

By William "Chip" Mackrides, Esquire  
MACKRIDES ASSOCIATES

#### *Actual*

One claiming title to realty by adverse possession has burden to establish when his adverse holding began. *Moser v. Granquist*, 66 A.2d 267, 362 Pa. 302 (1949).

Actual possession requires acts signifying permanent occupation of land, which are performed continuously throughout the statutory period. *Smith v. Peterman*, 263 Pa. Super. 155, 397 A.2d 793 (1978).

"Actual possession" of land for the purposes of adverse possession is dominion over the land; it is not equivalent to occupancy. *Watkins v. Watkins*, 775 A.2d 841 (Pa Super. 2001).

There is no fixed rule by which the "actual possession" of real property by an adverse possession claimant may be determined in all cases; the determination of what constitutes actual possession of property depends on the facts of each case, and to a large extent, on the character of the premises. *Watkins v. Watkins*, 775 A.2d 841 (Pa. Super. 2001).

Sporadic, temporary, or repeated acts do not constitute actual possession, regardless of how often such acts are repeated. *Inn Le'Daerda, Inc., v. Davis*, 241 Pa. Super. 150, 360 A.2d 209 (1976).

Person establishes actual possession of a woodland, for purposes of adverse possession action, by residence or cultivation of a part of the tract of land to which the woodland belongs. Rules Civ.Proc., Rule 1061(b)(1), 42 Pa.C.S.A. *Bride v. Robwood Lodge*, 713 A.2d 109 (Pa. Super. 1998).

Actual possession requires acts signifying permanent occupation of land, which are performed continuously throughout the statutory period. *Smith v. Peterman*, 263 Pa. Super. 155, 397 A.2d 793 (1978).

The doing of temporary acts upon the land without an intention to occupy it for residence, cultivation, or some other permanent use consistent with the nature of the property, does not constitute an actual possession, such as creates an ouster. *Olewine v. Messmore*, 128 Pa. 470, 18 A. 495 (1889); *Edmondson v. Dolinich*, 307 Pa. Super. 335, 453 A.2d 611 (1982); *Bigham v. Wenschhof*, 295 Pa. Super. 146, 441 A.2d 391 (1982)

Therefore, the entry upon land to hunt, fish, or boat is ordinarily not sufficient to constitute an actual possession. *Matthews v. Bagnik*, 157 Pa. Super. 115, 41 A.2d 875 (1945).

In general, therefore, the actual possession of land as required to establish adverse possession means dominion over the property. *Bride v. Robwood Lodge*, 713 A.2d 109 (Pa. Super. 1998).

### ***Exclusive and Distinct***

Exclusive possession is a prerequisite to perfecting title by adverse possession. *Henry v. Grove*, 52 A.2d 451, 356 Pa. 541 (1947).

Adverse possession, unlike prescription, requires exclusivity. *Newell Rod & Gun Club, Inc. v. Bauer*, 409 Pa. Super. 75, 597 A.2d 667 (1991), *Dunlap v. Larkin*, 342 Pa. Super. 594, 493 A.2d 750 (1985). Therefore, when the use of an area is shared with the true owner or with the general public, the possessor will not acquire fee title (however, a prescriptive easement may result).

The actions of the claimant must give notice of a denial of the record owners' asserted right to ownership. *Lyons v. Andrews*, 226 Pa. Super. 351, 313 A.2d 313 (1973).

The exclusivity element is not destroyed merely because others passed, unobserved, over the property. It was sufficient that the claimant's possession was to the general exclusion of others and that he remonstrated with persons who, without permission, attempted to use the land. *Reed v. Wolyniec*, 323 Pa. Super. 550, 471 A.2d 80 (1983).

To constitute distinct and exclusive possession for purposes of establishing title to real property by adverse possession, claimant's possession need not be absolutely exclusive; rather, it need only be type of possession which would characterize owner's use. *Glenn v. Shuey*, 407 Pa. Super. 213595 A.2d 606 (1991).

The exclusivity element is not destroyed merely because others passed, unobserved, over the property. It was sufficient that the claimant's possession was to the general exclusion of others and that he remonstrated with persons who, without permission, attempted to use the land. *Reed v. Wolyniec*, 323 Pa. Super. 550, 471 A.2d 80 (1983).

### ***Visible, Open and Notorious***

The words "visible and notorious possession" mean that the claim of ownership by an adverse possessor must be evidenced by conduct sufficient to place a reasonable person on notice that his or her land is being held by the claimant as his own. *Watkins v. Watkins*, 775 A.2d 841 (Pa. Super. 2001).

The requirement of open and notorious use is satisfied by a showing that either the landowner against whom the use is claimed has actual knowledge of the use or has had a reasonable opportunity to learn of its existence. *Antrobus v. Slawski*, 23 Pa. D. & C.3d 568 (Bucks Cty. C.P. 1982).

### ***Hostile and Adverse***

A party claiming title to real property by adverse possession must affirmatively prove that he or she had hostile possession of the land. STD. PA. PRAC. 2D, Ch 13 § 13:7.

While the word "hostile" has been held not to mean ill will or hostility, it does imply the intent to hold title against the record title holder. *Vlachos v. Witherow*, 3 D. & C.2d 698 (Wash. Cty. C.P. 1954), *aff'd with opinion*, 383 Pa. 174, 118 A.2d 174 (1955).

Adverse possession does not require "hostility" in the sense of ill will. Rather, hostility implies an assertion of ownership rights adverse to the true owner and all others. *Brennan v. Manchester Crossings, Inc.*, 708 A.2d 815 (Pa. Super., 1998); *Schlagel v. Lombardi*, 337 Pa. Super. 83, 486 A.2d 491 (1984).

"An adverse possessor must intend to hold the land for himself, and that intention must be made manifest by his acts... He must keep his flag flying and present a hostile front to all adverse pretensions." *Fred E. Young Inc. v. Brush Mountain Ass'n*, 697 A.2d 984, 990 (Pa.Super. 1997); *Smith v. Peterman*, 263 Pa. Super. 155, 397 A.2d 793 (1978).

Where possession of land, at its inception, is permissive, adverse possession will not begin to run against the real owner until there has been some subsequent action of disseizin or open disavowal of the true owner's title. *Flannery v. Stump*, 786 A.2d 255 (Pa. Super.2001), *appeal denied* 569 Pa. 693, 803 A.2d 735, (2002).

"An adverse possessor must intend to hold the land for himself, and that intention must be made manifest by his acts... He must keep his flag flying and present a hostile front to all adverse pretensions." *Fred E. Young Inc. v. Brush Mountain Ass'n*, 697 A.2d 984, 990 (Pa.Super. 1997); *Smith v. Peterman*, 263 Pa. Super. 155, 397 A.2d 793 (1978).

***A familial relationship creates a presumption that there is no Hostility.***

Familial relationship existed between adverse possession claimant's predecessor in title and record land owner, and thus presumption existed that use of the land was not hostile, where predecessor was both the grandfather of the record land owner's late husband and the great-uncle of claimant. *Watkins v. Watkins*, 775 A.2d 841 (Pa. Super. 2001).

***Continuous***

The possession must be continuous (uninterrupted) for the statutory period. Sporadic, temporary, or repeated acts do not constitute actual possession, regardless of how often such acts are repeated. *Inn Le'Daerda, Inc., v. Davis*, 241 Pa. Super. 150, 360 A.2d 209 (1976).

In order for adverse possession to ripen into title, it is necessary to show that such possession has been continuous and uninterrupted for full statutory period of 21 years. *Glenn v. Shuey*, 407 Pa.Super. 213, 595 A.2d 606(1991).

Law does not require that adverse possession claimant remain continuously on land and perform acts of ownership from day to day. *Glenn v. Shuey*, 407 Pa.Super. 213, 595 A.2d 606, (1991).

Day-to-day use is not required to satisfy the continuity element essential to creation of prescriptive rights. *Minteer v. Wolfe*, 300Pa.Super. 234, 446 A.2d 316, (1982).

A sporadic use of land, by one without title to it, will not operate to give him a title, no matter how often repeated. *Inn Le'Daerda, Inc. v. Davis*, 241 Pa.Super. 150, 360 A.2d 209(1976).

Where one claims by adverse possession or user, the burden is upon him to show continuance of such use for the full period to twenty-one years. *Major v. Knauer*, 3 Bucks 80 (1953).

Under Pennsylvania law, one who has possessed property for less than the 21 years needed to support claim of title by adverse possession may "tack" on his/her immediate predecessor's period of adverse possession, provided that there is privity between them. *In re Conner*, 302 B.R. 509 (Bkrtcy.W.D.Pa.2003).

The prior possessor's occupancy may be "tacked" as long as there is privity between the successive occupants. *Watkins v. Watkins*, 775 A.2d 841, 846-47 (Pa.Super. 2001).

Grantee cannot tack his grantor's adverse possession of land when grantor does not convey such land to him. *Glenn v. Shuey*, 407 Pa.Super. 213, 595 A.2d 606(1991).

***Where Adverse Possession is not available or has been denied or limited***

Generally, the permissive use of land nullifies the requirement of hostile possession and, therefore, defeats a claim for adverse possession. *Lehmann v. Keller*, 454 Pa. Super. 42, 684 A.2d 618 (1996); *Duncan v. Billman*, 36 Pa. D. & C.3d 454, 1985 WL 5505 (C.P. 1985).

In considering a claim by adverse possession, every presumption is in favor of possession by permission, *Johns v. Johns*, 244 Pa. 48, 90 A. 535 (1914), and a use will be presumed to be permissive in a variety of situations involving familial or fiduciary relationships. *Waltmyer v. Smith*, 383 Pa. Super. 291, 556 A.2d 912 (1989).

Neighbor's use of owner's property to reach road was not continuous and uninterrupted, and thus, prescriptive easement did not vest in neighbor, where owner protested verbally to neighbor's use of property and pursued series of overt acts to obstruct neighbor's use of alleged easement including building fences and placing obstructions on property. *Kelley v Westover*, 938 S.W.2d 235 (Ark App 1997).

One cotenant cannot claim adverse possession against another cotenant unless there is an ouster of latter. *Nevling v. Natoli*, 290 Pa.Super. 174, 434 A.2d 187(1981).

A borough cannot obtain title to land for public purposes by adverse possession due to the fact that it has the right of eminent domain. *In re Condemnation of Certain Ground in Prospect Park*, 50 Del.Co. 212 (1962).

The right of an entity holding the power of eminent domain to acquire title through adverse possession is unclear under cases decided by the courts in Pennsylvania. It has been stated that a borough has no more power to acquire land by adverse possession than has railroad or other company possessing right of eminent domain. *Sayre Land Co. v. Borough of Sayre*, 5 D. & C.2d 294 (Bradford Cty. C.P. 1955), affirmed based on opinion below, 384 Pa. 534, 121 A.2d 579, (1956). *Accord, Weidner v. LeTort Regional Authority*, 26 D. & C.3d 726, 733 (Cumberland Cty.

C.P. 1983). In *Sayre* case the court found the borough had not met the requirement for adverse possession of holding in a manner hostile to plaintiff's predecessor. And, in *Barter v. Palmerton Area School Dist.*, 399 Pa. Super. 16, 581 A.2d 652 (1990), the court held that title by adverse possession could be obtained by a school district even though the school district has the power of eminent domain. The Superior Court held that there was a just a rebuttable presumption that an entity with the power of eminent domain acquired title by use of its power. See also, Annot., *Acquisition of title to land by adverse possession by state or other governmental unit or agency*, 18 A.L.R.3d 678 (1968, updated online through 9/11/09). Act No. 2006-34 which amends the Eminent Domain Code also amends 42 Pa.C.S. § 5530 by striking section 5530(a)(3) which allowed inverse condemnation proceeding to be commenced within the 21 year period applying to adverse possession. Now the limitation is 6 years under 42 Pa.C.S. § 5527(a)(2). The act essentially allows an entity with eminent domain powers to acquire title by possession after the 6 years runs by terminating the rights of those (former property owner) who would claim against the entity.

Adverse possession will not lie against land held by the federal government. *Torch v. Constantino*, 227 Pa.Super. 427, 323 A.2d 278, (1974).

Whatever land is condemned is invested with a public trust against which no adverse possession may run. *Lacy v. Montgomery*, 181 Pa.Super. 640, 124 A.2d 492 (1956).

Title to a burial ground may not be obtained by adverse possession so long as the dead are buried there and the graves are marked. *Goldstein v. Heirs and Assigns of Cloyd*, 10 Chest. 60, 26 Pa. D. & C.2d 235, 11 Fiduc.Rep. 403 (1962).

Claim of title by adverse possession does not lie against Commonwealth property. *Com., Dept. of Transp. v. J. W. Bishop & Co., Inc.*, 497 Pa. 58, 439 A.2d 101(1981).

Adverse possession does not run against political subdivisions holding land for a tax sale for nonpayment of taxes. *Torch v. Constantino*, 227 Pa. Super. 427, 323 A.2d 278 (1974). This case also points out the opportunity for manipulation against the public interest by an adverse possessor.

A landowner cannot claim title by adverse possession against the Commonwealth, or even against a company which owns property or has a right of way impressed with a public use of purpose. *Hostetter v. Com.*, 367 Pa. 603, 80 A.2d 719(1951).

Title cannot be acquired against school districts by adverse possession, nor can a presumption of grant arise against them on the basis of facts which would give rise to a title by adverse possession. *Warren Borough School District v. Peck*, 39 Pa. D. & C. 689 (Warren Cty. C.P. 1941).

The casual use of a lake during a few months each year for boating and fishing cannot develop into a title to such privileges by prescription. *Loughran v. Matylewicz*, 367 Pa. 593, 81 A.2d 879, (1951).

Entry on another's land to hunt or fish or boat does not give title. *Matthews v. Bagnik*, 157 Pa.Super. 115, 41 A.2d 875(1945).

## Exhibit 2

### SUMMARY OF PENNSYLVANIA'S ABANDONED AND BLIGHTED PROPERTY CONSERVATORSHIP ACT, 68 P.S. §§ 1101—1111

#### A. Overview

1. Official Title: “An Act providing for court-appointed conservators to bring residential, commercial and industrial buildings into municipal code compliance when owners fail to comply.”
2. Effective on Feb. 26, 2009
3. As found by the General Assembly:
  - (a) “If the owner of a residential, commercial or industrial building fails to maintain the property in accordance with applicable municipal codes or standards of public welfare or safety, it is in the best interest of the Commonwealth, the municipality and the community for the court, pursuant to the provisions of this act, to appoint a conservator to make the necessary improvements before the building deteriorates further and necessitates demolition, resulting in the removal of the building from the housing supply or prohibiting future productive economic use.” 68 P.S. § 1102(6).
4. Allows a court to appoint a conservator to rehabilitate a deteriorating building
5. Allows receiver to incur debt, which may ultimately be the owner's responsibility

#### B. The act's four initial conditions for appointing a conservator include:

1. the property was not *legally* occupied for the previous 12 months
2. the property was not actively marketed for sale during the 60 days before filing the petition
3. the property is not subject to an existing foreclosure, and
4. the property was not acquired within the preceding six months.

#### C. Three of the following nine conditions must be established before a conservator will be appointed:

1. The property is a public nuisance

2. The property is in need of substantial rehabilitation and none has taken place in the previous 12 months
3. The property is unfit for human habitation, occupancy or use
4. The property is in a condition that materially increases the risk of fire
5. The property is subject to unauthorized entry, and owner failed to secure the building or the municipality has secured the building
6. The property is an attractive nuisance to children
7. The property is an attractive nuisance for illicit purposes
8. The property poses potential health and safety hazards (including from uncut vegetation and vermin), or
9. The property negatively affects the economic well-being of nearby residents and businesses.

**D. Powers of the conservator:**

1. collect receivables
2. pursue any legal claims associated with the building
3. contract for repair
4. borrow money
5. enter into leases
6. secure insurance coverage
7. engage and pay legal, accounting, appraisal and other professionals
8. consult with historical commissions, and
9. exercise all authority of an owner.

**E. Upon request of a party in interest or the conservator, the court may order the termination of the conservatorship if it determines:**

1. the conditions that were the grounds for the petition and all other code violations have been abated or corrected, the obligations, expenses and improvements of the conservatorship, including all fees and expenses of the conservator, have been fully paid or provided for and the purposes of the conservatorship have been fulfilled;

2. the owner, mortgagee or lienholder has requested the conservatorship be terminated and has provided adequate assurances to the court that the conditions that constituted grounds for the petition will be promptly abated, all obligations, expenses and improvements of the conservatorship, including all fees and expenses of the conservator, have been fully paid or provided for and the purposes of the conservatorship have been fulfilled;
3. the building has been sold by the conservator and the proceeds distributed in accordance with section 9(d); or
4. the conservator has been unable, after diligent effort, to present a plan that could be approved under section 6(b)(3) or to implement a previously approved plan or, for any reason, the purposes of the conservatorship cannot be fulfilled.

68 P.S. § 1110

## Notes to the Statement of Pennsylvania Bar Association on HB 1322

---

<sup>1</sup> *Watkins v. Watkins*, 775 A.2d 841, 846 (Pa. Super. 2001) (emphasis added).

<sup>2</sup> *Flannery v. Stump*, 786 A.2d 255, 258 (Pa. Super. 2001) (citing *Hole v. Rittenhouse*, 25 Pa. 491 (1855)).

<sup>3</sup> The act of March 26, 1785, 2 Sm. L. 299, § 2.

<sup>4</sup> See PENNSYLVANIA LEGISLATOR'S MUNICIPAL DESKBOOK 139 n. 3 (3d ed. 2006), citing 22 STANDARD PENNSYLVANIA PRACTICE 2D, §§ 120:201-120:238 (2006) and 7 SUMMARY. PA. JUR. 2d, *Property* §§ 13:1-13:52 (2005).

<sup>5</sup> See Jeffrey Evans Stake, *The Uneasy Case for Adverse Possession*, 89 GEORGETOWN L.J. 2419 (Aug. 2001).

<sup>6</sup> Acts No. 34 and 35 of 2006, 26 Pa.C.S. §§ 201 *et seq.*, including prior legislation still in effect in 26 Pa.C.S. § 205.

<sup>7</sup> 546 U.S. 807, 126 S. Ct. 326 (2005).

<sup>8</sup> 26 Pa.C.S. § 205.

<sup>9</sup> MD. CODE ANN, COURTS AND JUDICIAL PROCEEDINGS § 5-103. See *Chevy Chase Land Co. of Montgomery County, Md. v. U. S.*, 37 Fed. Cl. 545 (1997), *cert. denied*, 531 U. S. 957 (2000) (applying Maryland law).

<sup>10</sup> CONN. GEN. STAT. § 52-575.

<sup>11</sup> N.J. STAT. ANN. § 2A:14-30 and 2A:14-31. See *J & M Land Co. v. First Union Bank*, 166 N.J. 493 (2001).

<sup>12</sup> N.Y. REAL PROPERTY ACTIONS AND PROCEEDINGS LAW (RPAPL), Article V.

<sup>13</sup> Effective July 7, 2008 Governor Patterson signed chapter 269 of the laws of 2008 which modified New York RPAPL Sections, 501, 512 and 522.

<sup>14</sup> 35 P.S. § 1702

<sup>15</sup> 35 P.S. Sec. 1712.1(a)

<sup>16</sup> 35 P.S. Sec. 1712.1(b)

<sup>17</sup> 68 P.S. § 1101 *et seq.*

<sup>18</sup> *Shaffer v. O'Toole*, 964 A.2d 420 (Pa. Super. 2009); *Recreation Land Corporation v. Hartzfield*, 947 A.2d 71 (Pa. Super. 2008); and *see also Flannery v. Stump*, 786 A.2d 255 (Pa. Super. 2001).