

VETO MESSAGE:

VETO MESSAGE - No. 153

TO THE SENATE:

I am returning herewith, without my approval, the following bill:

Senate Bill Number 5364-A, entitled:

"AN ACT to amend the real property actions and proceedings law, in relation to adverse possession"

NOT APPROVED

Adverse possession is a legal mechanism, rooted in English common law, whereby title to real property can be transferred from the true owner to the actual possessor of property. In essence, it is a statute of limitations on actions by a true owner of a property to eject someone who has taken possession of the property. If a true owner fails to timely assert his or her right to exclusive possession of the property, then that right is extinguished. As a general rule, New York law requires owners to bring an action for ejectment of a possessor within 10 years of when their cause of action accrues.

The doctrine of adverse possession is an essential mechanism for resolving disputes regarding title to property. In many instances, an individual who purchased property in good faith may believe that he or she is the rightful owner of the property, and may openly occupy and improve the property for many years. As a result, it is appropriate to place time limits on the ability of others to claim that they are the "true" owner of the property. Indeed, given the frequency with which property is sold and transferred, the imposition of strict time limits on the ability of owners to seek to eject possessors of property is the only way to give homeowners throughout New York State the comfort of knowing that their homes cannot be taken away from them. At the same time, the doctrine gives the "true" owners of property a clear deadline within which to assert their claims to property. Thus, the doctrine of adverse possession allows for efficient resolution of property ownership disputes and, as with other statutes of limitations, safeguards against the loss of evidence over time.

This bill would amend New York's adverse possession statutes to provide that a possessor's actual knowledge of the true ownership of property will bar a claim of title by adverse possession. Although at first blush this would seem to be a logical improvement to the law, in reality this change would have a radical impact on New York's adverse possession laws, and both the Real Property Law Section of the New York State Bar Association and the Property Rights Foundation of America have urged that this bill be vetoed.

New York law currently prescribes observable conduct that gives notice to a true owner that someone is adversely possessing property, and gives the true owner 10 years to eject the adverse possessor. This bill, though, shifts the focus of these laws from the owner's notice that the

property is being occupied by someone else, to the possessor's knowledge that a third party may have an ownership interest in the property. In doing so, the bill adds an element for measuring this statute of limitations that will often be unknown and unknowable to a true owner. As a result, it will often be impossible for a true owner to know whether the statute of limitations has run.

This bill could have significant adverse consequences for New York property owners. The addition of a "knowledge" element to the statute of limitations would likely result in extensive litigation of virtually every adverse possession claim, and thus would undermine the certainty that the statute of limitations was established to provide. The protections against future litigation that a statute of limitations affords will be unavailable for this class of title claims, which could also impact the availability and cost of title insurance.

Statutes of limitation are intended, in part, to protect against dissipation of evidence over time, but this protection would be unavailable in adverse possession cases. Thus, if this bill becomes law, a homeowner could be sued by a third party who claims to be the "true" owner of the property, and could assert that the homeowner was told this in a conversation that occurred 25 years earlier. The homeowner would be placed in the untenable position of having to recall a decades-old conversation, or to find other witnesses to dispute what was said, long after their memories have faded, or indeed long after they have passed away. A failure to do so could result in the individual losing the home that he or she has lived in for decades.

While I understand the Legislature's desire to protect innocent property owners from the "theft" of their property by knowing adverse possessors, this bill misconstrues the purpose and operation of our adverse possession laws. I cannot approve a bill that undermines this statute of limitations and thus leaves property ownership rights so uncertain.

The bill is disapproved.

(signed) ELIOT SPITZER
