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September 30, 2009

Honorable Frank Dermody, Chair  
House Urban Affairs Committee  
PA House of Representatives  
Irvis Office Building, Room 202  
Harrisburg, PA 17120-2033

Re: Reforming PA Adverse Possession Law to Combat Urban Blight

Dear State Representative Dermody:

Regional Housing Legal Services is a statewide nonprofit law firm with expertise in affordable, sustainable housing and its related components — community and economic development, utility matters and preservation of home ownership. RHLS provides innovative project and policy solutions that help create sustainable communities offering decent, safe and affordable housing for lower-income Pennsylvanians. I am testifying in support of the neighborhood revitalization efforts undertaken by RHLS' community-based non-profit organization clients.

Thank you for the opportunity to testify regarding HB 1322. Modernization of the statute of limitations on Adverse Possession will help preserve occupancy of single family homes vulnerable to abandonment. In addition to preventing the blight of vacant and abandoned residential properties, it will also preserve stable neighborhoods and strengthen the real estate tax base in urban areas in Pennsylvania.

Enclosed are my testimony, a 2004 report regarding proposals to reform the PA statute of limitations on Adverse Possession to combat urban blight, and summaries of sample adverse possession cases from 2003 and 2009.

Respectfully yours,

Judy F. Berkman  
Managing Attorney

JFB/m  
Enclosures

cc: Mark S. Schwartz, Executive Director, RHLS  
Jon Castelli, Executive Director, House Urban Affairs Committee

**Reforming the Statute of Limitations for Adverse Possession  
of Single Family Occupied Property**

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September 30, 2009

*What is Adverse Possession?*

Adverse possession is a legal process which:

- enables someone who is in physical possession of real estate,
- to claim title to the property,
- if the record owner fails to take action to exert control over the property after a certain period of time, currently 21 years, and
- provided the person in possession meets the legal criteria to prove adverse possession in court in an Action to Quiet Title.

Because a goal of adverse possession law is to make it difficult for an adverse possessor to gain control over land, a successful adverse possession action must be able to demonstrate that possession is:

- actual possession (used and occupied),
- open (or visible) and notorious (for anyone to see),
- distinct and exclusive (superior to others' claims),
- hostile (without the owner's permission), and
- continuous (for over 21 years).

In Pennsylvania, it is legally possible to bring an adverse possession action in a court of law simply on the basis on long-term occupancy of a property, but many adverse possession actions rely on possession in combination with the concept of having "color of title." Color of title means that the adverse possessor has a plausible, good faith reason to believe that his/her occupancy or use of the property is based upon some rightful ownership of the property. Plausible claims to title, which may merit a shorter statute of limitations, might include:

- defective and unfiled deeds, which the grantee did not initially know were defective or unfiled,
- inheritance from someone unrelated by blood under a Will that was never probated, or
- some other agreement between one who seemed to have full, rightful control of the property and the person bringing the action or his/her successors in interest.

### *Evaluating the Impact of the Current Law*

The present statute of limitations is antiquated with respect to single family homes occupied by persons who meet the criteria of adverse possession, but cannot wait twenty-one (21) years to make capital improvements or make payment agreements for real estate taxes. Shortening the statute of limitations for adverse possession to ten (10) years for single family occupied homes on one acre of land or less should:

- Protect lawful property owners and their due process rights, so it should be phased in over time so that current record owners' property rights are not infringed.
- Enable those who may have a significant interest in a home, but who lack clear title, to gain full legal control over the property.

This is vital in that only those with a good title can exercise all of the benefits of home ownership, including the ability for the person claiming title to:

- qualify for grants and loans for repairs and weatherization, so as to maintain and improve the home.
- sell or lease the home.
- access home equity to pay for education, health care, start a business, etc.

Also, if the occupant has record title, local governments can be enabled to hold a clearly identifiable person responsible for:

- maintenance and proper use of the home so that adjacent owners may have the quiet enjoyment of their property.
- payment of real estate taxes, which can be further encouraged in the event the reformed law on adverse possession provides a shorter statute of limitations for occupants who pay real estate taxes over a period of seven (7) consecutive years.

### *Alternatives are inadequate to keep occupants in homes abandoned by their owners*

Potential alternatives to reform of the law on adverse possession, such as tax sales for delinquent real estate tax or eminent domain, would likely result in ouster of the occupants from their homes. The occupants would not likely be successful bidders at tax sales, nor would they be beneficiaries of a condemnation for a public purpose.

Other alternatives, such as the Uniform Marketable Title Act, provide exceptions for persons in physical possession of real estate, so that those occupants in physical possession would still need a legal process like adverse possession to gain legal title.

## *Conclusion*

Pennsylvania's long statute of limitations for adverse possession is protecting "owners" of single family properties that have been, in fact, abandoned, and preventing others with plausible claims to rightful ownership from pursuing these claims and gaining a marketable title to the property. The unanticipated effects of the present adverse possession statute of limitations are most graphically seen in poor disinvested communities because low, and frequently declining, property values makes property abandonment a reasonable alternative to waiting the required twenty-one (21) years before commencing an adverse possession action. These abandoned properties, all too frequently, then become costly burdens to local government through tax sales, adverse impacts on values of neighboring properties, and/or the need to demolish an imminently dangerous structure. In this way, the current lengthy statute of limitations on adverse possession claims for occupied single family homes contributes to the blight of abandoned property.

Shortening the length of the statute of limitations on adverse possession for single family occupied homes on one acre or less of land would benefit occupants who could meet the burden of proof for all the traditional elements of a claim for adverse possession. The only reform anticipated is the length of time of the statute of limitations.

REFORMING PENNSYLVANIA LAW  
ON  
ADVERSE POSSESSION  
TO  
COMBAT URBAN BLIGHT

May 20, 2004

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# Reforming Pennsylvania Adverse Possession Law to Combat Urban Blight

## *Introduction*

Adverse possession is a legal process which enables someone who is in physical possession of a real estate get title to that property if the record owner fails to take action to exert control over the property after a certain period of time. In Pennsylvania, a person claiming title to real estate through adverse possession must meet the Pennsylvania common law standards which require the person bringing the action to be in, actual, continued, visible notorious, distinct and hostile," possession of the property for twenty-one (21) years.<sup>1</sup>

This report is principally about the statute of limitations that has been established by the Commonwealth of Pennsylvania in order for the owner of record to claim a property against one in adverse possession and the need to reform this standard for residential properties in urban areas. This report does not call for reform of the other well-established standards required to pursue a claim of title by adverse possession, as these standards are well-established law in Pennsylvania and elsewhere.

Adverse possession law in Pennsylvania has its origins in British common law<sup>2</sup> and Pennsylvania's rich colonial and immediate post-colonial history. Pennsylvania legislatures met twice during the 18<sup>th</sup> century, in 1705 and again in 1785, to pass legislation governing adverse possession. Adverse possession law makes it difficult, but possible, for those with a long-established claim to a piece of property by sheer possession to gain title to that property. Through adverse possession a property that has been essentially abandoned by the owner of record can be re-titled in the name of another who has a long-standing relationship to that property.

In 18<sup>th</sup> century Pennsylvania it was the intent of the General Assembly to make it difficult for adverse possession suits to be brought, generally, and particularly by settlers in western Pennsylvania (any place west of Lancaster) against the great land barons of the Commonwealth who owned vast unpopulated tracts of land. In this regard, Pennsylvania was not alone. A review of other states (see Appendix A) that were English colonies and adopted the English common law approach to adverse possession, indicates that long adverse possession time frames were not uncommon (e.g. see New Jersey and several New England states) unless more recent legislative action was taken (e.g. New York).

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<sup>1</sup> *Moser v. Granquist*, 362, 66 A 2<sup>d</sup> 267 (1949). Also see; *Ladner on Conveyancing in Pennsylvania*, revised 4<sup>th</sup> edition, Clark, Ladner, Fortenbaugh & Young, editors; John Makdisi, principal editor (Philadelphia), Section 4.03, p.3. In addition to the factors articulated in *Moser* Ladner emphasizes the requirement that the claim must also be "exclusive."

<sup>2</sup> Adverse possession in England is now twelve (12) years, with a right to apply to be registered as the owner after ten (10) years. Land Registration Act of 2002, which followed Law Commission Report 254 *Land Registration for the Twenty-First Century*. The statute of limitations for adverse possession in England had previously been reduced in 1874 from twenty (20) years to twelve (12) years. The current statute of limitations for adverse possession against "crown" property is thirty (30) years in England, but there is no adverse possession against land owned by the Commonwealth of Pennsylvania.

Conversely, states that were settled later, principally in the west and to some extent in the south, have shorter statute of limitations for initiating an ejectment action against an adverse possessor, because in these states the public policy goal was to encourage rapid settlement.

Because a goal of adverse possession law is to make it difficult for an adverse possessor to gain control over land, a successful adverse possession action must be able to demonstrate that through hostile (in the sense of without another owner's permission) possession (in the sense of use or occupancy) that is open and notorious (in the sense that anyone, including those who might claim a more valid title to the property can see that the plaintiff was using the property), the plaintiff has developed a claim to the subject property that may be superior to all others. Moreover, these standards must be fulfilled on a continuous basis for an extended period of time, in Pennsylvania, for twenty-one (21) years. Only after these factors can be shown to have existed will a court consider the question of who should have title.

In Pennsylvania, it is legally possible to bring an adverse possession action in a court of law simply on the basis on long-term occupancy of a property, but many adverse possession actions rely on possession in combination with the concept of having "color of title." In Pennsylvania, color of title means that the adverse possessor has a plausible, good faith reason to believe that their occupancy or use of the property is based upon some rightful ownership of the property in question.<sup>3</sup> Simply occupying or using property does not satisfy the color of title requirement absent a plausible reason for that person to believe that the use or occupancy of the property was lawful. Plausible reasons might include defective and unfiled deeds, which the person bringing the action did not initially know were defective or unfiled, inheritance under a Will that was never probated, or some other agreement between one who seemed to have full, rightful control of the property and the person bringing the action or his/her successors in interest.

Adverse possession law was, and remains, particularly important in more rural locations where one might inadvertently, or with premeditation, occupy a piece of property without the rightful owner noticing. For example, a misaligned fence in a field or forest might result in the farming or harvesting of trees by one property owner when the land is actually owned by an adjacent owner. In such an instance an incorrectly demarcated property boundary might go unnoticed for years. Thus, even when the Pennsylvania General Assembly revisited aspects of adverse possession law during the 1970's (the last time the legislature examined adverse possession law) the twenty-one (21) year requirement was retained.

### *Evaluating the Impact of the Current Law*

This evaluation of the law on adverse possession is limited to how the present antiquated statute of limitations affects urban, lower income, residential neighborhoods. Specifically, the concern is that adverse possession law should:

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<sup>3</sup> McCall v. Neely, 3 Watts 69, 72 (1834).

- Protect lawful property owners and their due process rights.
- Enable those who may have a significant interest in a home, but who lack clear title, to gain full legal control over the property. This is vital in that only those with a good title can exercise all of the benefits of home ownership, including the ability to finance and re-finance the property so as to maintain and improve it, sell it, or access home equity to pay for education, health care, start or invest in a business, or any other purpose for which home equity can be used.
- Enable local government and the community to hold a clearly identifiable person responsible for the maintenance and proper use of the home so that adjacent owners may have the quiet enjoyment of their property.
- Enable local governments to hold a clearly identifiable person responsible for the payment of property taxes.

A growing body of evidence suggests that Pennsylvania's long statute of limitations for adverse possession is not promoting these goals. Rather, many involved with community revitalization activities in distressed urban neighborhoods believe that current adverse possession law is protecting "owners" of properties that have been, in fact, abandoned, and preventing others with plausible claims to rightful ownership from pursuing these claims and gaining a marketable title to the property. In this way, the current long statute of limitations on adverse possession claims contributes to blight and community disinvestment.

The unanticipated effects of the present adverse possession statute of limitations are most graphically seen in poor, urban communities because low, and frequently declining, property values makes property abandonment a reasonable alternative to waiting the required twenty-one (21) years before commencing an adverse possession action. In contrast, in wealthier real estate markets, the underlying value of property creates a strong incentive for the current occupant, heirs and/or potential heirs to ensure that property is correctly titled and capable of being passed to new owners without extraordinary legal proceedings. Moreover, those living in poor communities are less likely to be able to afford proper legal counsel and are more likely to be unfamiliar with the legal processes that are needed to ensure that title is properly passed in the event of death or the need to otherwise transfer title to the property. As a result, properties in lower income communities languish in "legal limbo" for years at a time with no one having clear ownership. The property cannot be sold, nor can an occupant who lacks good title obtain the financing or grants necessary to maintain the property. In such circumstances property deteriorates with no recognizable party being able to be held accountable for the fate of the property. These properties, all too frequently, then become costly burdens to local government through tax foreclosure, adverse impacts on values of neighboring properties, and/or the need to demolish an imminently dangerous structure.



Instead of encouraging housing investment, the current statute of limitations for adverse possession tends to reinforce negative urban neighborhood economic conditions that lead to properties falling into legal limbo and quasi-abandonment.

### *The Extent of the Problem*

It is difficult to gauge the extent to which properties in Philadelphia, Pittsburgh and other cities throughout the Commonwealth are in legal limbo with the recognized owner being absent, or deceased, and the occupant of the property lacking the right to claim full title to the property in that attorneys, social service organizations and others who might handle "tangled title" problems rarely keep records on those whom they are unable to help. However, some evidence indicates that the size of the problem confronting lower income households and urban neighborhoods could be staggering.

One event which frequently triggers an unclear chain of title is the death of an owner of record who dies without a will or identifiable heir. In 1998, the Center for Mental Health Policy and Services Research within the Department of Psychiatry at University of Pennsylvania Health System led a study with the Philadelphia Corporation on Aging and the Greater Philadelphia Urban Affairs Coalition that looked at the relationship between property abandonment and the elderly; and inferentially, the problem of adverse possession.<sup>4</sup> The study surveyed 176 persons aged 60 or older who were home owners. Those surveyed were persons who attended functions at one or more of ten (10) senior centers throughout Philadelphia and as such were judged to be individuals who were "healthier, more mobile, and more connected to social networks and services than most senior citizens,"<sup>5</sup> conditions that may make it more likely that this sample of elderly Philadelphians were better prepared than a typical elderly person for the orderly transfer of their property when that eventuality arises. This study found that:

- 81% of elderly homeowners own their home outright, with no loan or mortgage on the property.
- 63% had a will; more than a third did not.
- 30% of the elderly value their home at less than \$30,000.
- 6% of the elderly no longer live in a home that they continue to own.
- 7% identified no one that they would like to have inherit their home. Of those who did identify an heir only 47% of respondents expected that heir to actually live in the home. Only 55% had done the planning necessary to legally transfer title to the home to the proposed heir.
- 5% of those who identify themselves as homeowners indicate that their name is not on the deed.

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<sup>4</sup> *Preliminary Findings of the Vacancy Prevention Committee*, The Center for Mental Health Policy and Services Research, University of Pennsylvania, et al; June 1998.

<sup>5</sup> *Ibid.* p.2.

Given that there are about 60,000 homes in Philadelphia owned by someone who is at least 65 years old,<sup>6</sup> even if only 7% of homes have an unclear title transfer after the death of the owner, more than 4,200 homes in the City have clouded future ownership!

Of course, adverse possession is not simply a problem of an elderly owner leaving a home. For example, Regional Housing Legal Services (RHLS) in Glenside, Pennsylvania, which has a project to identify and assist clients who have "tangled titles"<sup>7</sup> cites the example of an elderly renter who for 15 years occupied a home "owned" by a landlord who had entered an out-of-state mental institution. On her own, the individual paid the property taxes and maintained the home. The owner's children never showed any interest in the home. The elderly occupant needed a loan to repair the plumbing (without which the home is uninhabitable), but could get financing because the title was not in her name and the whereabouts of the owner of record was unknown.<sup>8</sup>

Another not so unusual example is the case of a non-elderly person who had a lease-purchase (installment land contract) agreement on a home. The occupant made monthly payments to the owner to cover the costs of acquisition and real estate taxes. The owner however, never paid the taxes to the City, absconded with the money and disappeared. While part of this problem is one of fraud, an adverse possession action by the purchaser could resolve the issue of title, but in this instance the purchaser has not resided in the property the requisite 21 years.<sup>9</sup>

Another non-elderly example of how current adverse possession law acts as an impediment to neighborhood revitalization is that of an owner who, before dying, gave his home (without formal transfer of the deed) to a son who was then imprisoned on a drug conviction. The son's wife did not want the property and gave oral permission for a family, whose wife had grown up on the block, to move into the home. The family (a working couple with two children) lived in the home for nearly a decade, maintaining the home and paying the taxes. They did not have title to the property, so their efforts to obtain financing from City of Philadelphia and private lenders for additional home repairs and improvements were rebuffed, because of the lack of title. The present whereabouts of the son is unknown.<sup>10</sup>

Each of these three cases are both idiosyncratic and typical, demonstrating why reform of adverse possession statute of limitations is needed. Although the circumstances of each situation arise out of unique personal circumstances, in each instance the circumstances are ones associated with a world dramatically different than one 200 years ago, or even three decades ago, the last time the General Assembly examined adverse possession law. In each of these cases title is legally clouded as a result of changing family compositions, societal mobility and unfortunately, the fragility

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<sup>6</sup> US Bureau of the Census, 1990.

<sup>7</sup> This program is funded with a grant from the Philadelphia Office of Housing and Community Development, an indication that the City also recognizes the role that tangled titles play in promoting blight and preventing the rehabilitation of homes.

<sup>8</sup> Interview with Judy Berkman, Esq. RHLS, 11/26/01.

<sup>9</sup> *ibid.*

<sup>10</sup> *ibid.*

of many families in our modern era. In none of these typical cases is a family “squatting” on a piece of property that is being actively claimed by another, the circumstance that our 18<sup>th</sup> century adverse possession laws were designed to prevent. Instead, what we have are situations that could be resolved to the benefit of all of the families concerned, the community and local governments, if the statute of limitations for adverse possession better recognized the difference between illegally occupying rural property and the need to have clear ownership accountability for urban homes.

### *Reforming Pennsylvania’s Statute of Limitations for Adverse Possession*

There is a strong need for some modest reform and modernization of the statute of limitations governing Pennsylvania’s adverse possession law. The reforms sought are ones that would result in state law continuing to fully protect real property owners who have been less than diligent in enforcing their property rights, while enabling legitimate, potential adverse possessors to more quickly assert their claims. Furthermore, the proposed reforms will contribute to neighborhood and family stability by:

- Enabling families that pay property taxes on adversely possessed properties to gain the opportunity to claim full, clear title to the property more quickly.
- Enabling families to more quickly qualify for mortgages and other home financing, for which clear evidence of a good title is required. This is a benefit that accrues to both individual households who can improve their housing status and the broader community in which this housing investment is made.
- Enabling families to take equity out of homes to meet new family emergencies and opportunities.
- Enabling property that is not wanted by a current occupant to be sold to one who is interested in the property.
- Providing legal clarity for government and the community regarding who to hold responsible for paying property taxes and maintaining the property.

As noted earlier, Pennsylvania’s adverse possession law is among the oldest laws in the Commonwealth and much of this law has been settled for decades if not centuries. Therefore, the Coalition is recommending a very conservative approach to modifying this law. Specifically, there should be *no changes* to the standards that one has to demonstrate to the court in order to make a successful adverse possession claim. A claimant would still have to prove that possession is: 1) actual, 2) continuous, 3) visible and notorious, 4) distinct and exclusive, and, 5) hostile.<sup>11</sup>

However, it is appropriate to change the statute of limitations for adverse possession in three ways pertaining to *when* the owner of record can go to court to oust an adverse possessor who is attempting to prove the presence of the five factors noted above.

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<sup>11</sup> *Ladner on Conveyancing in Pennsylvania*, revised 4<sup>th</sup> edition, Clark, Ladner, Fortenbaugh & Young editors, John Makdisi, principal editor; George T. Bisel Company (Philadelphia) Section 4.03 p.3.

Specifically, Pennsylvania law currently found at 42 PA. C.S.A. §5530(A)(1) should be amended as follows:

- The standard period for bringing an adverse possession action should be reduced from twenty-one (21) years to ten (10) years *only on* residential properties (with four or fewer family dwelling units) *and only in* Cities of the First, Second and Third Classes, as well as towns and boroughs. This effort does not call for changing the statute of limitations on adverse possession law in less developed areas of the state or with other types of uses. However, we believe that there is significant evidence that in urban areas the current Pennsylvania statute of limitations is contributing to residential blight and abandonment and preventing those with legitimate interests in properties from pursuing those claims. The effective date should be one (1) year after the bill is signed into law.
- The period for bringing an adverse possession action on the defined residential properties in those settled residential jurisdictions should be further reduced from ten (10) years to seven (7) if the person bringing the action has evidence of regularly paying property taxes for seven (7) consecutive years. Under current Pennsylvania law the “payment of taxes are circumstances admissible as tending to support a claim of possession [but] do not in themselves work a divestiture of title.”<sup>12</sup> Under this proposal, this would continue to be the case, but the payer of taxes would be able to go to court three (3) years sooner in an effort to demonstrate that the owner has abandoned the property. However, even with this change the claimant would still have to prove that the standards set forth in *Moser v. Granquist* had been met in order to bring the adverse possession action.
- The period for bringing an adverse possession action on the defined residential properties in those settled residential jurisdictions should also be further reduced from ten (10) years to seven (7) if the person bringing the action has color of title. This provision recognizes that “color of title is slightly better or stronger than possession alone.”<sup>13</sup> As with the proposal to reduce the statute of limitations in return for the payment of taxes for seven (7) consecutive years, this change would only reduce the time period before an adverse possession action could be brought, it would not otherwise alter the *Moser* standards that have to be met in order to bring, or prevail, in such an action.

Combined, these three changes would significantly modernize Pennsylvania law by promoting a balance between retaining sufficient protection for legitimate owners and making adverse possession a tool for transferring abandoned property into the hands of households who, by their multi-year actions, have demonstrated a significant interest in a property. A modern adverse possession law will be a positive force for the elimination of blight and the revitalization of distressed properties and communities.

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<sup>12</sup> Elliot v. Moffett, 74 A. 2d 164, 365 Pa. 247, (1950)

<sup>13</sup> Ladner, Section 2.03, p.3.

### *Comparing the Statutes of Limitations for Adverse Possession in Other States*

The three law changes recommended above would be new for Pennsylvania, but, as the data below indicate, each of these recommendations have been implemented in other states.

Many states have different statutes of limitations for a variety of adverse possession circumstances. For example, in 1893, the State of Washington adopted a comprehensive approach to the issues which incorporated a distinction between urban and rural land into its adverse possession statute. Washington, like Pennsylvania, is a state that is mostly rural, with some intensely urbanized areas. In that this law has not been changed it appears that having a longer statute of limitations for rural areas, while enabling urbanized property to be subject to action more quickly, continues to work. Another distinction has been made in other states for vacant lots in urban areas. For example, Arizona also permits earlier filing of adverse possession actions when the property in question is a vacant city lot.

Pennsylvania's twenty-one (21) year statute of limitations for adverse possession for residential properties is on the longest end of the range of time limits in effect in other states. Table One, below, summarizes the statutes of limitations for the bringing of adverse possession actions used by the various states for residential properties.<sup>14</sup>

Table One  
Distribution of Statutes of Limitation Among the States<sup>15</sup>

<u>20 years or more</u>	<u>15 years</u>	<u>10 years</u>	<u>less than 10 years</u>
17 states	9 states	16 states	8 states

As Table One indicates, there is considerable variation among the states in setting the statute of limitations for adverse possession actions. States having a statute of limitations that is similar to Pennsylvania's are approximately equal in number to those having a ten (10) year period, as proposed for Pennsylvania's urban residential properties. However, in total, about two-thirds of the states have a statute of limitations that is significantly shorter than Pennsylvania's.<sup>16</sup> Of these states about half have either a ten (10) or fifteen (15) years statute of limitations and the remaining states have statutes of limitations running between three (3) and seven (7) years. Thus, despite the long history of this law, it is apparent that the states have reached little consensus regarding an appropriate statute of limitations before an adverse possession action can be brought.<sup>17</sup>

<sup>14</sup> Appendix A provides this information for each individual state and the District of Columbia.

<sup>15</sup> Colorado with an 18 year statute of limitations is omitted from this table, however the District of Columbia is included.

<sup>16</sup> In addition there are seven states with twenty year waiting periods, just slightly less than Pennsylvania's 21 year requirement. See Appendix A for a list of these states.

<sup>17</sup> The lack of more uniform statutes of limitation is reflective of the differing histories of the states and the eras in which these laws were written. As noted previously, Pennsylvania and other eastern states with older laws and colonial pasts adopted the English common law system which tended to protect landed

While back in England, the statute of limitations was reduced from twenty (20) years to twelve (12) in 1874, and was recently reduced to ten (10) years for those registering their claims in accordance with a new law adopted in 2002.<sup>18</sup> In reducing the adverse possession statute of limitations as proposed, Pennsylvania would continue to have a statute of limitations standard that is nationally familiar, while better enabling the Commonwealth to address problems in urban residential communities that its older law cannot.

Beyond simply reducing the time before an adverse possession action can be taken, new legislation that would further reduce the statute of limitations when the presence of special circumstances can be established is also appropriate.

One special circumstance that clearly indicates a commitment to a property despite unclear ownership, is the payment of property taxes. Three (3) states, listed below in Table Two, reward those who are paying property taxes, despite the unclear ownership of a property, by halving the time before an adverse possession action claim can be made.

Table Two  
States Reducing the Statute of Limitations for Filing an Adverse Possession  
Action in Response to a Claimant's Payment of Property Taxes

<u>State</u>	<u>Usual Statute of Limitations</u> (years)	<u>If Property Taxes Are Paid</u> (years)
Alabama	20	10
No. Dakota	20	10
Texas	10	5

Pennsylvania ought to join these states and adopt this approach so as to encourage the payment of property taxes by those who have claims to title of a property. It is proposed that those paying property taxes for seven (7) consecutive years be rewarded with access to the courts. This is three (3) years earlier than would otherwise be allowed in the amended statute of limitations reducing the time to ten (10) years, and corresponds to the law adopted over a hundred years ago in the State of Washington.

The third, and final, recommended change in Pennsylvania's statute of limitations for adverse possession is one that better recognizes the special circumstance of color of title. Those with "color of title" have a status that is similar to that proposed for those who have paid property taxes for seven (7) consecutive years. One having color of title is

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interests. Western states, in contrast, had a public policy goal of encouraging rapid settlement, not just ownership; hence shorter statutes of limitations are generally seen in these states. In addition, variance in statutes of limitation may also reflect a general inattention to this body of law in recent years since regardless of the length of the statute of limitations in a particular state, adverse possession law is largely "settled." However, in light of modern communication, information management and land surveying techniques including global positioning systems, satellite imaging and the availability of "on-line" public records, the protections afforded property owners who were previously regarded as simply "inattentive" would seem ripe for revisiting in several states.

<sup>18</sup> See FN 2 *supra*.

already recognized in Pennsylvania law as possessing a higher level of claim than one who is simply the possessor of the property.<sup>19</sup> This revision of the law is appropriate to enable those with color of title to bring adverse possession actions more rapidly than those who lack color of title. As Table Three, below, indicates, the concept of rewarding those with color of title with quicker access to the courts is an approach that eight (8) states have already taken.

Table Three  
States Reducing the Statute of Limitations for Filing an Adverse Possession Action in Response to a Claim of Color of Title

<u>State</u>	<u>Usual Waiting Period</u> (years)	<u>If Color of Title Claim is Made</u> <sup>20</sup> (years)
Alabama	20	10
Alaska	10	7
Arizona	10	3
Georgia	20	7
Louisiana	30	10
Michigan	15	10
Texas <sup>21</sup>	10	3
Wisconsin	20	10

As Table Three indicates, although little consensus among the eight (8) states exists regarding how to define a color of title claim, each state recognizes a color of title claim as intrinsically superior to a mere possession claim by significantly shortening the statute of limitations. In part, some of this lack of consensus regarding how to evaluate a color of title claim is simply a reflection of the differing basic approach to bringing adverse possession actions among the states, as reflected in Table One. However, the standard of what constitutes color of title among the states also varies. In some states having color of title means having a deed that proved to be unknowingly defective or that was recorded improperly, whereas in other states a variety of evidence can be brought before the court as evidence of color of title. In Pennsylvania, the standard for color of title is fairly broad and thus our approach to assisting a possessor claiming color of title is relatively conservative. The proposal reducing the statute of limitations from ten (10) years to seven (7) years based upon a color of title claim is also appropriate to achieve the purpose of reducing blight and rewarding those occupants of homes who have a claim to title already recognized as superior to others' claims in Pennsylvania.

<sup>19</sup> Ladner, Section 2.03, p.3.

<sup>20</sup> color of title is defined by state law and law from state to state can and does vary.

<sup>21</sup> Interestingly, Texas, rewards a color of title claim differently than one pressing a claim based upon payment of taxes; with a 5 year statute of limitations for payment of taxes, but a 3 year statute of limitations for a color of title claim. Of the states that recognize each of these special circumstances, Texas is the only state that values these special circumstances differently from each other.

In addition to the eleven (11) states that recognize either the payment of taxes *or* possession under color of title by reducing the adverse possession statute of limitations, five (5) states reduce the statute of limitations if the possessor has paid the taxes on the property *and* has a claim of color of title. Table Four, below, indicates these states.

Table Four  
States Reducing the Statute of Limitations for Filing an Adverse  
Possession Action in Response to a Claim of Color of Title  
**and** a Claim of Having Paid the Property Taxes on the Property

<u>State</u>	<u>General Statute of Limitations</u> (years)	<u>If Dual Color of Title and Property Tax Claim is Made</u> (years)
Colorado	18	7
Illinois	20	7
So. Dakota	20	10
Washington	10	7
Wisconsin <sup>22</sup>	20	7

In total, Tables Two through Four indicate that fourteen states have one or more provisions in their adverse possession laws that reduce the statute of limitations for record owners to bring an action in court to eject an occupant claiming title under the special circumstances of payment of taxes and/or claims under color of title.

Table Five, below, in the column "General Statute of Limitations" displays the distribution of statutes of limitations for residential properties among the states as initially presented in Table One. The next column, "With Special Circumstances," indicates the distribution of statutes of limitations that exists among the states if one is able to qualify under a state special circumstance provision as outlined in Tables Two through Four. As this table shows, seven of the seventeen states with statutes of limitations of twenty (20) years or more recognize special circumstances that significantly reduce their statutes of limitations, placing these states in the ten (10) year, or less than ten (10) year, categories.

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<sup>22</sup> Wisconsin reduces the basic statute of limitations from 20 years to 10 for those having color of title, as indicated in Table Three. Wisconsin will further reduce this time to 7 years if the claimant has also paid the taxes on the property. However, payment of taxes in the absence of having color of title does not in and of itself does not reduce the time before an adverse possessor one can access the court.



Table Five  
Number of Years Before an Adverse Possession Action Can Be Brought,  
including any special circumstances that reduce the waiting period

	<u>General Statute of Limitations</u> <sup>23</sup>	<u>With Special Circumstances</u> <sup>24</sup>
20 years or more	17 states	10 states
15 years	9 states	8 states
10 years	16 states	17 states
Less than 10 years	8 states	15 states

With the inclusion of special circumstance provisions that reduce the statutes of limitations for adverse possession, it is apparent that an overwhelming majority of jurisdictions (36 of 51) have some provision for bringing an adverse possession action in ten (10) years or less.

### *Conclusion*

When the basic rules for adverse possession were established in Pennsylvania in 1785, rural life was the predominant and modern urban life and speed of travel could not have been anticipated. Now, more than 225 years later, Pennsylvania needs an adverse possession law that balances the rights of legitimate, if inattentive, property owners, particularly in rural areas, with the needs of modern urban society. Fortunately, a mechanism for addressing this problem exists. In March 1995 the Pennsylvania House of Representatives unanimously passed House Resolution 91 that established an ongoing process for examining the critical role of state law in combating blight.

State legislative attention is urgently needed to modernize Pennsylvania's statute of limitation for adverse possession for residential properties (with up to four family dwelling units) in Cities of the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> classes, and towns and boroughs. As shown above, in urban areas Pennsylvania's antiquated statute of limitations has the unintended effect of denying those with a commitment to a home the possibility gaining full, clear title while simultaneously protecting the "rights" of long-dead individuals and others who have voluntarily abandoned property. The existing twenty-one (21) year statute of limitation is simply too long. While households and communities wait for twenty-one (21) long years to elapse, homes that cannot be refinanced, or sold, deteriorate, become blighted, and ultimately, become abandoned. By shortening the statute of limitations as proposed, Pennsylvania can continue to protect legitimate ownership interests while making adverse possession law a force for encouraging the maintenance of property, the payment of property taxes, and the empowerment of

<sup>23</sup> This column excludes Colorado that has an 18 year general statute of limitations, but with special circumstances reduced its statute of limitations to 7 years.

<sup>24</sup> This column excludes Wisconsin that has a 20 year general statute of limitations, but has two special circumstances standards; a 10 year standard for color of title and a 7 year standard for color of title in combination with the payment of taxes.

families who want continue residing in and revitalizing currently distressed communities. The revision of the statute of limitations for adverse possession for residential properties in urban areas should become a legislative priority of the HR 91 process within the Pennsylvania General Assembly.

## Appendix A

### Basic Statute of Limitations Before An Adverse Possession Action Can Be Brought

<u>State</u>	<u>Years</u>	<u>State</u>	<u>Years</u>
Alabama	20	Montana	5
Alaska	10	Nebraska	10
Arizona	10	Nevada	5
Arkansas	7	New Hampshire	20
California	5	New Jersey	30
Colorado	18	New Mexico	10
Connecticut	15	New York	10
Delaware	20	North Carolina	20
D.C.	15	North Dakota	20
Florida	7	Ohio	21
Georgia	20	Oklahoma	15
Hawaii	20	Oregon	10
Idaho	5	Pennsylvania	21
Illinois	20	Rhode Island	10
Indiana	10	South Carolina	10
Iowa	10	South Dakota	20
Kansas	15	Tennessee	7
Kentucky	15	Texas	10
Louisiana	30	Utah	7
Maine	20	Vermont	15
Maryland	20	Virginia	15
Massachusetts	20	Washington	10
Michigan	15	West Virginia	10
Minnesota	15	Wisconsin	20
Mississippi	10	Wyoming	10
Missouri	10		

## ADVERSE POSSESSION

### Sample Cases Requiring a Change in the Statute of Limitations in PA

December 2003

The clients with the cases summarized below would benefit from a reduction of the twenty-one (21) year statute of limitations in Pennsylvania to seven or ten years, as they would both be able to seek title to their homes using claims of adverse possession. Both clients are willing to use their names and be interviewed further regarding their claims to title to their homes.

1. Geraldine Joyner  
1435 South 18<sup>th</sup> Street  
Philadelphia, AP 19146

Submitted by Judy F. Berkman, Esquire, Regional Housing Legal Services

Geraldine Joyner has been living at 1435 South 18<sup>th</sup> Street, Philadelphia, PA since 1974. She was a tenant until the landlord disappeared in about the mid-1980's. The record owners are Helen and John Barletto who acquired the property for nominal consideration in 1949. City records show an off-site address for John Barletto at 1928 Shunk Street. At some point, Ms. Joyner was instructed to pay her rent to an attorney instead of to the realtor, Vincent Gattone. And eventually she was told to stop paying rent. It appears that she was paying rent into a fund due to the landlord's failure to make repairs.

Ms. Joyner has been making improvements to the house since the mid-1980's when the landlord disappeared, and has otherwise been acting as the owner of the house. She has all her rental records, as well as receipts for all her improvements, including putting on 2 roofs, installing a shower, repairing a ceiling that came down, and installing a new heater. She currently needs exterior repairs to the wall, and interior repairs in the kitchen and dining room resulting from the wall problem. She also needs to make a payment agreement regarding real estate taxes which are in arrears. She needs title in her name to make these repairs and reach a payment agreement.

Ms. Joyner is active in her neighborhood and is the block captain. She has tried for years to resolve the title case with help from Council President Verna's office.  
Angela Wilkins, 147 N. 59<sup>th</sup> Street, Philadelphia, PA 19139

2. Angela Williams  
147 N. 59<sup>th</sup> Street  
Philadelphia, PA 19139

Angela Wilkins has been living at 147 N. 59<sup>th</sup> Street, Philadelphia, PA 19139 (a two story

masonry row home) since October, 1992. Her then boyfriend David White and father of certain of her children was the lessee on a written one year lease. The lessor was Thelma Curenton of "Springfield Ave." Thelma Curenton appears to have been one of three co-owners, with Berry Curenton Jr. and Thomas Curenton according to BRT records.

After a few months, the owner or the owner's daughter stopped coming by to pick up the monthly rent. David White was subsequently incarcerated and at some point, has disappeared from Wilkins' life. Wilkins remained at the premises with eight children. The neighbors told Wilkins that Thelma Curenton had died, but because Wilkins did not have the landlord's address or telephone number, she never verified her death or contacted the other property owners or their possible heirs or legatees.

Over the years, Wilkins has maintained the property as best she could with limited resources. The property has been cited by L&I at least twice, once in 1993 and once in 1994 for a water service problems which Wilkins then paid to have corrected. In 1996, she paid \$1050 to install a new main roof.

Over the years, she has managed to keep water service on – the bill is still in the name of Thelma Curenton, but is sent c/o Angela Wilkins, 47 N. 59<sup>th</sup> Street. In 1996, she made a payment of \$1100 on the water bill for the premises, although, of course the bill was still in the landlord's name. The lease named the landlord as the person responsible for water service – and apparently, even though Wilkins was not named on the lease, the WRB recognized her as an USTRA tenant in 1999.

Although the lease says that the tenant will pay for gas service, the furnace never functioned – the Wilkins household heats with kerosene. She has not considered installing a new furnace: partly for financial reasons; partly because without ownership, she would not be eligible for any City low income assistance with this job; partly because she hesitates to undertake "capital" improvements for a house she does not own.

The electricity is on in Angela Wilkins' name.

From 1991 through 1996, Wilkins did not pay Real Estate Taxes for the premises. In 1997, the outstanding tax liens on the premises were sold to the Philadelphia Authority for Industrial Development (PAID) which assigned the claims to First Union National Bank as Trustee. Wilkins has been paying First Union National Bank approximately \$100 monthly to prevent a threatened Sheriff's Sale.

Ms Wilkins works at Jefferson Hospital as a medical records coordinator, making less than \$30,000 annually, a position that she obtained through the Welfare to Work program.

She has canvassed her neighbors in an effort to find someone who might be able to provide specific information about the Curenton owner(s) but has not been successful in locating them.

She currently is the head of a household unit comprised of herself and five children.



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## **Case Summaries for Prior VIP Clients<sup>1</sup> Who Had an Adverse Possession Case But For the 21-Year Requirement**

### S.J. Case

Samantha Johns is a 68-year old disabled woman who sought help from Philadelphia VIP in December 2006, in order to obtain legal title to her home. In 1985, Samantha's elderly friend, Emily, moved out of the home and, not wanting the property to become vacant, told Samantha she could stay in the house. Samantha moved into the property at that time and continues to live in and maintain the home. Emily died intestate in 1996, leaving no heirs, and no one has probated her estate. As a result, Samantha's adverse possession claim to the property began in 1996, when she no longer had permission of the legal owner (or the legal owner's estate) to reside in the property. Samantha would like to file an Action to Quiet Title to the property but has only adversely possessed the property for 12 years. Thus, she is not able to enter into a payment plan for the delinquent real estate taxes on the property and may end up losing her property to a Sheriff's sale before she reaches the requisite 21 years to assert her adverse possession claim.

### M.R. Case

Miriam Ricketts, a 70-year old woman, came into Philadelphia VIP in August 2006 seeking to obtain title to her property. The property is owned by Jeffrey Lester and Maria Lester, who were once married but then divorced, meaning that they each owned a ½ interest in the property. Jeffrey then died in 1990, leaving his 3 children as his heirs. In 1992, Miriam moved into the home and entered into a verbal lease agreement with Jeffrey's son, Javius. In 1997, Miriam and Javius entered into a written lease agreement that ended in 1998, after which time Javius stopped collecting rent and no longer communicated with Miriam. Thus, Miriam's adverse possession claim to the property began in 1998, because neither Maria nor any of the deceased owner's children asserted their ownership claim after that time. Miriam has continued to maintain the property, but she has fallen behind on the real estate taxes and was notified in late 2006 that the water company would shut off her water within a few months. Unless and until Miriam can obtain legal title to her property, she cannot enter into payment agreements for these delinquent bills and avert a Sheriff's sale of her property. Because Miriam has only adversely possessed the property for 11 years and thus cannot file an Action to Quiet Title to the property, she risks losing her property due to her inability to handle the delinquent bills.

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<sup>1</sup> The names of all clients and other parties have been changed for confidentiality purposes.

### A.S. Case

Alicia Souter is a 37-year old woman who has lived in her home for the last 17 years. At the time that she moved into the property, Alicia had been an active member of her neighborhood and knew that the owner of the property had died over 20 years ago. The abandoned property was in great disrepair and was being used as a haven for drug dealers. As a result, Alicia moved into the property and began fixing it up. Over the last 17 years, she has invested extraordinary time and effort into cleaning and repairing the property, spending over \$30,000 on it. She also led a clean-up of the rest of her block, in order to improve the entire neighborhood. Unfortunately, the real estate taxes on the property are delinquent, and the City has commenced court action to have the property sold at a Sheriff's sale. The City was very willing to stop the court action if Alicia could obtain legal title and enter into a payment plan for the delinquent taxes. However, because Alicia has not reached the requisite 21 years to assert her adverse possession claim, she cannot do so and may soon be forced to leave her home.

### P.H. Case

Patricia Harris is a 46-year old woman who has lived in her home since 1987, when she moved in as a tenant with her young children. Her children were soon diagnosed with high lead levels caused by lead paint in the home. The owner agreed to sell the home to her in exchange for her assumption of all costs associated with the lead paint abatement and a \$2,000 payment. After engaging in significant lead paint abatement and other repairs to the home and making the \$2,000 payment, Patricia attempted to contact the owner to request that he transfer title to her and discovered that he and his only son had died in quick succession a few months earlier (1991). Patricia tracked down the owner's sister, who refused to discuss the situation with her. Because of delinquent real estate taxes, the city is seeking to sell the property at Sheriff's sale, and Patricia cannot enter into a payment plan for the tax arrearage because she does not have title. She cannot file a complaint against the estate of the owner of record to enforce the sales agreement because the statute of limitations has run. And she has not reached the requisite 21 years to obtain title by adverse possession – the period started in October 1991, when owner died. Her only option is to file a quiet title action against the estate as a creditor. If the quiet title action is unsuccessful, Patricia will most likely lose her home despite having an equitable claim to the property.