



**Champion Advocacy
Associates**

March 12, 2024

The Honorable Robert Craven, Sr.
Chairman, House Committee on Judiciary
State House
Providence, RI 02903

Re: H.7750, An Act Relating to Property –By Possession and Prescription

Dear Chairman Craven and Committee Members:

The Rhode Island Mortgage Bankers Association (“RIMBA”) respectfully oppose the foregoing bill. H.7750 would repeal Section 34-7-4 of the Rhode Island General Laws and permit individuals to claim rights of footway by adverse possession. Section 34-7-4 is an integral part of Chapter 34-7 and has been part of the General Laws since at least 1896 and likely since 1711, when the first statutes addressing adverse possession were passed by the colonial legislature. RIMBA opposes passage of H.7750 as it would increase the likelihood of easement claims that would adversely affect the value of real property securing loans made by its members.

Apart from the potential adverse impact on property values, adoption of H.7750 is bad public policy. Adverse possession is essentially the law permitting a third party to acquire title over another’s land by trespass. So long as the trespass is open, notorious, hostile to the title of the true owner, continuous, exclusive and under claim of right and continues for the statutory period of 10 years, the trespass can ripen into title in the trespasser. It is a concept put into the law to aid in quieting title and permit the efficient utilization of property, but it is founded in feudal concepts of acquiring title by conquest and retention of title by force. A lord sent his knights to patrol the boundaries of his property annually to ensure that those in possession were paying tribute to the lord – or they were evicted by force. Colonial Rhode Island struggled with multiple title claims because of the overlapping charters of Connecticut and Massachusetts, and Rhode Island adopted a shorter period to achieve adverse possession – 10 years versus the more typical 20 year period used in other states – to help address the issue. But the concept is nevertheless the same – the trespasser has been in possession for a sufficient period of time to claim rights in the property of another without compensation.

Section 34-7-4 reflects a balancing of the interests in the factual determinations required to establish an easement by adverse possession. Since use to ripen into title must be open, notorious, hostile to the title of the true owner, continuous, exclusive and under claim of right, mere use of another’s land by foot is not viewed as sufficient use to enable the user to gain legally enforceable easement rights. It is often seasonal, incidental, and not continuous. *See Daniels v. Burke*, 81 R.I. 103 (1953). That incidental use is insufficient by statute is with good reason. If an individual can gain legal rights over land by merely walking across it, a landowner

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The Honorable Robert Craven, Sr.
Chair, House Committee on Judiciary
March 12, 2024
Page 2

faced with a trespasser must take action that is not required under current law. Rather than ignoring what appears to be a trivial infringement on the landowner's property rights, it now becomes necessary to confront the trespasser and eject them from the land, and if the trespasser does not voluntarily comply, then the landowner must file a complaint with the police to protect the landowner's rights. All of this can lead to unnecessary breaches of the peace and unnecessary police involvement, all to the increase in municipal expense. Landowner's may resort to other means of protecting their property rights, including construction of walls or other barriers that make traversing property difficult. Although the proposers of this bill may view it as a means of providing access to the shoreline, make no mistake that its passage will reward trespassing and will ensure significant, fact intensive litigation over the coming years.

For the foregoing reasons, RIMBA opposes adoption of H.7750.

Sincerely,



Lenette Forry-Menard

Rhode Island Mortgage Bankers Association