

ADVERSE POSSESSION

"Adverse possession is the acquisition of title to real property by continuous possession for the prescribed period of time. It is distinguished from prescription, which is the method of acquiring a right of use, such as an easement by using it for the same period of time." 5 California Real Estate 2d 629, et seq. (Miller & Starr, 1989). Interestingly, a person's right to acquire real property by adverse possession begins with the wrongful occupation of another person's property.

The "underlying philosophy [for the doctrine of adverse possession] is basically that land use has historically been favored over disuse, and therefore he who uses land is preferred in the law to he who does not, even though the latter is the rightful owner.' [Fn. and citation omitted] Hence our laws of real property have sanctioned certain types of otherwise unlawful taking of land belonging to someone else, while, at the same time, with respect to other types of property have generally taken a contrary course." *Warsaw v. Chicago Metallic Ceilings, Inc.*, 35 Cal.3d 564 at 575. I do not recommend that one trespass on another's property. You may be liable to the true owner for money damages for your wrongdoing.

THE FIVE BASIC REQUIREMENTS TO CLAIM TITLE TO ANOTHER'S LAND

- 1) Possession must be held either under a claim of right or color of title;
- 2) Possession must be actual, open, and notorious occupation of the property in such a manner as to constitute reasonable notice of that occupation to the record owner;
- 3) The occupation must be both exclusive and hostile to the title of the true owner;
- 4) Possession must be continuous and uninterrupted for at least five years; and
- 5) The occupier must pay all taxes assessed against the property during such five-year period.

See California Code of Civil Procedure Sections 318 et seq.

CAVEAT: Please consult an attorney for legal advice. Laws in the United States differ from one jurisdiction to another. Any law stated herein is for educational purposes only and may not apply to your particular circumstance.

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WHAT IS ADVERSE POSSESSION?

Traditional common law provided a method for someone to obtain title to land through use. The common law rules for adverse possession have been codified under both federal and state statutes. A typical statute allows a person to get title to land from the actual owner simply by using the land, out in the open for all to see. For example, your neighbor built a fence on your land with the intention of taking the property, paid property taxes, and you knew about it but did nothing. If this continued for a period of time set by state law, your neighbor may be able to claim this property as his/her own. The theory is that, by not disputing your neighbor's use of your property through a lawsuit, you, as the actual owner have abandoned your rights to the property. There are several elements needed for adverse possession to result in title:

The length of time required for adverse possession in title varies - it could be as short as a few years or could run for twenty years or more. Typically public entities must establish a longer period of possession than individuals. Some states have adopted a rule which requires the adverse possessor to pay taxes each year on the land.

The possession must be open for all to see.

The possession must be exclusive to him or her (e.g., the fence in the above example, a driveway, road, etc.)

The possession must be hostile to the actual owner of the land.

To gain title to land through adverse possession requires strict compliance with the law, but can have dramatic impact upon land ownership rights.

An encroachment could result in title to your property being transferred to an adverse possessor. Under these circumstances, you might have to bring a lawsuit for trespass in order to prevent your neighbor from getting title to your land through adverse possession.

If you own land, it is important that you do not "sleep on your rights" since you could lose ownership of the land.

http://real-estate-law.freeadvice.com/adverse_possession.htm

Adverse Possession: Basics

By Konstantine Kyros, Esq.

Adverse possession is a way of acquiring title to real property by physically occupying it for a long period of time. As strange as it may seem to the non-lawyer, you may acquire property without the consent of the actual title holder if you possess it long enough and meet the legal requirements discussed below. Also discussed below are the theories that underlie this doctrine.

In Massachusetts you must possess the property being claimed, continuously for 20 years (Mass. Gen. L. ch. 260, sec.21) To meet the requirements for adverse possession you must also show that:

- 1) You were the exclusive possessor and actually entered the property.
- 2) Your possession must be open and notorious--your possession must be seen. The possession must be appropriate to the type, size and use of the land. Enclosures, houses, cabins, payment of taxes all help establish your claim. The general idea is to give the owner reasonable notice that you are in possession and give him the opportunity to eject you.
- 3) Your possession must be adverse to the owners claim, in other words without the owners consent. If the owner has given permission for you to be on the property you can't claim the property adversely.
- 4) Your possession must be continuous (for 20 years). If your entry was only occasional you may be deemed a trespasser and not be able to claim adverse possession. However, certain seasonal or intermittent uses satisfy the continuous element if the average owner of a particular piece of property would use it in that manner (e.g. a summer home).

Continuity can also be established by adding together or "tacking" successive adverse possessors. For example if A possesses the land for 15 years and then gives it to B who possesses it for 5 years, B may then claim title by adverse possession by tacking the two claims.

Massachusetts has a special land registration system in which a question of title can be brought to the Land Court which investigates and evaluates the merits of the claim. Based on its findings the court can issue a new certificate of title. A further advantage of this procedure (to the owner) is that property registered through the land court cannot be adversely possessed.

The Theory behind Adverse Possession

The idea that one can simply acquire property by sitting on it seems very strange in a free society based upon a conception of property rights. One line of reasoning, advanced by Oliver Wendell Holmes suggests that the purpose of the doctrine is to protect the expectations of those who have used property for a long time. Richard Posner (founder of the law and economics school of thought), reasons that the purpose of adverse possession is to preserve the status quo. Posner argues that the adverse possessor has become attached to the property and losing it would be a serious loss, whereas the title holder would view the acquisition as a sudden, unexpected increase in his wealth. Therefore, Posner argues it is better (economically speaking) to allow the adverse possessor to keep the property. A somewhat related idea is that the doctrine rewards the productive use of land, while penalizing the unproductive owner who sleeps on his rights.

The other line of thought argues that adverse possession really functions to protect property rights. The doctrine protects ownership by barring stale claims and errors in the title records. The idea is that as time passes it becomes more difficult and ultimately not worthwhile to seek out every remote claim to the disputed property.

The doctrine is sort of designed to flush the system of errors. As seminal law review article states the idea is not to "reward the diligent trespasser for his wrong nor yet to penalize the negligent and dormant owner for sleeping upon his rights; the great purpose is automatically to quiet all titles which are openly and consistently asserted, to provide proof of meritorious titles, and correct errors in conveyancing." Henry Ballantine, "Title by Adverse Possession," 32 Harv. L. Rev. 135 (1918). Although the doctrine is not designed to protect wrong doers or "diligent trespassers" it does so because it is necessary to protect valid titles from various errors and the passage of time.

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