

Squatters' rights?

Discerning fact from fiction in "adverse possession" horror stories

A little legal knowledge can sometimes become a very frightening thing.

Many laypersons have heard accounts, for instance, of "squatters" acquiring legal title to real property, through a doctrine known as "adverse possession," simply because no one objected to the squatters' presence for decades. Those stories settle placidly in a hearer's long-term memory, but they can roar back if she obtains a boundary survey and realizes that she actually owns a swath of land that an adjoining landowner has for decades fenced off, mowed, tended, and otherwise treated as his own.

Has the adjoining owner acquired the area in dispute by "adverse possession?"

Smart Business spoke with William Maffucci, a real-estate litigator with Semanoff Ormsby Greenberg & Torchia, LLC, to find out.

CAN SOMEONE REALLY OBTAIN TITLE TO A PROPERTY JUST BY OCCUPYING IT OR CONTINUOUSLY?

Not exactly. The possession of property for a prescribed (or 'prescription') period, often about 21 years, is just one of several requirements to acquire title through adverse possession. The use must also be continuous, conspicuous, and exclusive. And it must be hostile, which means the party in possession is acting as if he were the owner, not a tenant or someone who is occupying the property with the owner's permission.

However, a party claiming adverse possession need not reside on the property. A party's continuous use of a property, even without the party frequently occupying it, can sometimes constitute the 'possession' required by the doctrine.

William Maffucci

Attorney
Semanoff Ormsby Greenberg & Torchia, LLC

267.620.1901
wmaffucci@sogtlaw.com



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CAN A CLAIMANT ACQUIRE ONLY PART OF A PROPERTY BY ADVERSE POSSESSION?

Theoretically, yes, if the claimant is the archetypal 'squatter.' But when the area in dispute is along a boundary, the claimant is rarely a squatter. He's usually just the adjoining owner.

In most states boundary disputes must be resolved through 'boundary retracement' principles as applied by professional land surveyors. In Pennsylvania, boundary disputes can sometimes be resolved in a different way: by proving that the adjoining owners have, through their continuous actions, jointly recognized a specific boundary for a sufficient period of time. The boundary so recognized, called a 'consentable line,' can become the legal boundary even if it conflicts with the boundary described in the parties' deeds.

WHY DON'T THE LAND DESCRIPTIONS IN THE DEEDS ALWAYS CONTROL?

When the doctrines of adverse possession and consentable line were developed, many deeds were not recorded. And surveying equipment and conveyancing conventions were crude, so conflicts between two surveys were common. Resort to the doctrines was often necessary to resolve those conflicts.

Although most deeds nowadays are recorded, few of them use boundary

descriptions based on new surveys. Instead they incorporate the legal descriptions that appeared in the previous deed or deeds, sometimes extending back a century or more.

IS IT NECESSARY FOR A PROPERTY OWNER TO FILE A LAWSUIT TO PREVENT A CLAIM OF ADVERSE POSSESSION?

There is another option for an owner who knows that the occupancy or use has not yet continued for the prescriptive period: delivering a written notice that the owner is aware of the occupancy or use, that the owner claims ownership of the area at issue, but that the owner grants 'permission' for the occupancy or use. Such 'permission' contradicts the claim that the use is 'adverse,' and it prevents the user from claiming that the parties' recognition of a specify boundary was 'consensual.'

But there's a risk to this approach. The recipient of the notice might respond that he doesn't need 'permission' because he owns (or so he claims) the property in dispute. Upon receiving such a response, the first party should assume that the 'permission' notice was ineffective. To prevent the adjoining owner from acquiring title by adverse possession, she should sue him, before the prescriptive period is complete, to regain possession of the property in dispute. ●