

Adverse Possession of Land

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The concept of “adverse possession” of land seems contrary to every aspect and benefit we typically associate with land ownership. It seems somewhat illogical that you can own a tract of land, and then have that tract taken from you. Consequently, adverse possession is often misunderstood and discussed without full knowledge of the requirements of the claim.

The general idea behind adverse possession may be guided by the idea that land should be in the hands of a person who is going to use it for productive purposes, but it has become more common in regards to boundary disputes. When fences are replaced, many times a survey is not completed, and the old fence is not bulldozed out or otherwise removed.

It is just as likely for a fence to be erected a few feet away from the old fence. This is typically not a concern to the present owners who understand the added expense of paying for a bulldozer operator and a surveyor to help remove the fence and find the original boundary line. If this happens every so many years, the fence can be far removed from its original boundary line.

A claim of adverse possession is not easily proven. When an action starts in court, the parties are asking the court to “quiet title” to the disputed real estate. In proving that title has transferred by adverse possession, a claimant must provide evidence that shows each element of an adverse possession claim is met. A person who believes he now has title to land via adverse possession in Missouri must show that his possession of the property has been: (1) continuous and uninterrupted for ten

years; (2) open and notorious; (3) actual; (4) hostile and under a “claim of title”; and (5) exclusive.

The ten year requirement is the most easily understood. However, the person’s use during that period must be constant and uninterrupted. Intermittent use of the land is not sufficient. The “open” and “hostile” elements are related in that a person must show that he was using the land openly. He was not hiding his use from the true owner or the public. Additionally, he used the land in a manner that violated the rights of the true owner or was otherwise contradictory or defiant of the true owner’s ownership.

The claimant must also show that he actually used the land and that his use was exclusive for the 10 year period. This does not mean that the claimant must be on the property at all times, but he must exercise exclusive control over the property at all times. If during one year the true owner farms the land, or hunts on the land during the fall, the claimant will be hard pressed to show that his use was exclusive

It is easy to think of an adverse possessor as one who is intentionally taking land. However, there is no requirement that the person actually intend to adversely possess the property. Often, the claim arises simply because the person has possessed the property, with no ill intent towards the rights of the adjoining landowner.

Adverse possession can also be accomplished by “tacking” whereby the present owner who has owned the land less than 10 years may still be able to claim title because the previous owner also possessed the land adversely. Though the recorded deed may reflect that the claimant is not the actual owner, he may nonetheless acquire title to it.

Adverse possession is looked upon with some disdain by many landowners. However, it can be a great remedy for others. Many people buy the land and rely

upon the seller's representations of the location of boundary lines. In so relying, they may maintain the land by bush-hogging, or build a house upon it. They may also lease it out, pay taxes or purchase insurance for the benefit of the land. They may have repaired fences along a busy highway, saving the parties from liability claims. In performing these activities, they have invested substantial funds in making the land more productive and valuable.

On the other hand, the record owner has not seen the land in years, or did not even know it was his because it was separated from his tract by a creek or highway. In that time, the land would have become overrun with trees, weeds, and briars, having little economic value for producing crops or enjoying the land. It appears that at least in this area of the law, the old saying "possession is nine-tenths of the law" carries some weight.