

Adverse possession.

By Lorren Wilson

How many times have we heard the stories, usually from a grandparent or elderly relative, of how land that was “really theirs” has been taken away. The stories usually describe how they never possessed the “physical” packet of title deeds to the land, but always states that they lived on the land and used it to the exclusion of all others for the duration of their lives. They tell us that they always thought of and treated the land as their own. Stories such as these, if found to be true, may form the basis of a claim of adverse possession commonly known as “squatters rights”. This article will discuss some of the facts, which have to be established in order for a person to maintain a successful claim of title to land acquired by adverse possession.

Simply put, in order for a person to acquire title to land by adverse possession, the “true owner” of the land must either:

1. have been dispossessed of the land, or
2. discontinued his possession of the land, and
3. the “squatter” must have been in adverse possession of the land for the required period of time before the action to remove him from the land has been brought.

People seeking to prevent a claim of adverse possession against their land, or seeking to establish a valid claim for adverse possession, should seek professional legal advice. However, before attending the meeting it may help if some of the issues mentioned below are taken into consideration. By attending armed with the answers to these questions and clearly setting out the facts of your situation, your meeting may be shorter, more effective and ultimately less expensive.

Where are the title deeds to the land in dispute?

Your lawyer will wish to examine the title deeds to establish the identity of the person who has “paper

title” to the land. Establishing paper title to the land is important because in absence of evidence to the contrary, the person with “paper title” is deemed to be in possession of the land.

Identify the person in “actual” possession of the land.

If the person who has “paper title” to the land actually lives on the land then maintaining a successful claim of adverse possession against him will be very difficult at best.

If, however, the person claiming adverse possession can demonstrate that they have “actual” possession of the land then the basis of a claim begins to emerge. It is important to note, mere possession of the land is not enough, the person claiming adverse possession must demonstrate an appropriate degree of physical control over the land. He must provide evidence of things such as habitation, cultivation, or even building and storing fish pots.

Has the person claiming adverse possession demonstrated a clear ‘intention’ to possess the land?

In addition to demonstrating possession of the land, the “squatter” must demonstrate a clear intention to possess the land. The intention to possess or animus possidendi has been defined as the “intention of excluding the owner as well as other people”.

How long has the person claiming adverse possession been in possession of the land?

Before attending the meeting with your lawyer visit the Bermuda Laws online website at www.bermulalaws.bm. As the name suggests, this website hosts the Revised Laws of Bermuda. Search the site for the Limitation Act 1984 sections 16 and 18. For

those of you without Internet access, visit the Bermuda National Library where hard copies of the Revised Laws of Bermuda may be found. The Limitation Act 1984 is located in title 8 item 42. If you discover a reference to twenty years odds are your research has been successful.

Claims of adverse possession have been a fruitful source of litigation in Bermuda over the years. As with most matters concerning ownership to land, each situation has to be judged on its own unique facts. Addressing your mind to these and other issues prior to meeting with your lawyer should assist in making the visit short, efficient and productive.

This article contains information of a general nature and should not be relied upon as a substitute for professional legal advice given with respect to a particular factual situation.

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