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Adverse Possession

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Cooperative Extension Program

An Outreach Education Program Serving Limited Resource Individuals, Small Farmers, Families, and Communities



Adverse Possession

Alvin Wade, Associate Professor

Perhaps nothing in real estate law is so upsetting to property owners as adverse possession, which allows individuals to acquire title to land they do not own because they have openly possessed it for a statutory period of time, usually 7 to 20 years.

For title to be transferred by adverse possession, such possession must be "actual and exclusive, open and notorious, hostile, and continuous" for a statutory period of time. The phrase actual and exclusive does not require that the adverse possessor physically occupy the land at all times. Improving the land with a residence would constitute actual possession. So would clearing the land, building a fence along its boundaries or farming it.

Allowing other people to use the land without express permission would prove that the possession was not exclusive. The possessor must maintain possession in the manner of a reasonable owner. The terms open and notorious, hostile, and continuous have the same meanings in the case of adverse possession as they do in the case of a prescriptive easement.

Another important prerequisite for adverse possession in some states is that the possessor be under a "claim." This means that the adverse possessor must have a basis for believing he or she owns the real estate claimed. A tenant who takes possession of a house while acknowledging the landlord's ownership cannot adversely possess the leased property. If a claim of right is based on a written document, such as an invalid deed, the claim is said to be made under "color of title."

"Improving the land with a residence would constitute actual possession. So would clearing the land, building a fence along its boundaries or farming it."

Alvin Wade (left), Extension Associate Professor for Community Resource Development, answers questions for a local farmer during a land ownership meeting.



Some states require the possessor to have color of title to possess land adversely, while other states reduce the number of years required for continuous possession if written color of title is present. Still other states treat all claims or right in the same manner, whether or not they are based on documents.

At times, it is hard to imagine how anyone could become confused about land ownership unless a mistake has been made in the deed's property description. Adverse possession today is much more common in connection with boundary disputes than with possession of entire tracts.

This *Community Resource Development* Fact Sheet is part of a series prepared by the Cooperative Extension Program at Tennessee State University.

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