

## **Adverse Possession**

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Most people are unaware that buying land is not the only way to gain legal title to it: one may also obtain the land of another through adverse possession. Adverse possession rewards those who make productive use of land while punishing owners of record who sleep on their rights by failing to keep themselves informed of actions occurring on their property. The basic principle is that if someone enters onto land he does not own, uses the land as a true owner would to the exclusion of others, and does so for a period of time set by statute (either 7 or 10 years), then legal title is vested in him and will defeat the original owner's trespass or quiet title action.

Adverse possession has five general elements that the adverse possessor or claimant must prove by clear and convincing evidence. First, the claimant must make actual use of the land, that is, he must use it as a true owner would given the character of the land and the uses to which it can be put. For example, building structures on the land, cultivating it, or using it seasonally may all suffice depending on the circumstances. Second, the claimant's use of the land must be open and notorious. The law requires open use of the land so that its true owner, if she is observant, has an opportunity to observe the claimant and take steps to remove him from her land. Making use of the land only at night, for example, or using it but then running away each time the true owner returns, would not constitute open and notorious use. Third, the claimant's use must be continuous, meaning only that the claimant must use the land for the full 7 or 10 years as an average owner of similar property would. Because of Alaska's unique geography and climate, seasonal use can suffice as continuous use. Fourth, the claimant's use must be exclusive such that no one enters or uses the land but with his permission.

Finally, the claimant's use must be hostile, an element that is not as combative as it sounds. Hostility simply means that the claimant acted as the land's true owner and did not have the true owner's permission to use the land. Two hostility standards apply in Alaska depending on when the adverse possessor's claim arose. Claimants asserting that they have acquired title before 2003 benefit from a more expansive definition of hostility because they can acquire title to land that they know is not theirs. But in 2003 Alaska's Legislature amended the adverse possession statute to require that a claimant have "a good faith but mistaken belief" that he owned the land in question. A claimant with such a belief must satisfy the elements described above for a period of 10 years before he may acquire title. A shorter period of time – 7 years – has always applied, and still applies, to claimants who have "color or claim of title," a term of art that simply means the claimant has a legally defective document purporting to convey land to him.

When a claimant asserts color of title, he may only gain title to those lands described in the defective instrument. By contrast, a claimant without color of title acquires title to those lands he has physically occupied for the required 10 years. Lands owned by the State or by the United States may not be adversely possessed.

Adverse possession is an old doctrine that favors those who use land productively even when the land does not belong to them. Owners of land in remote locations should take care to periodically

visit their land and ensure that no one has put it to use in their absence: filing a quiet title or trespass action before the claimant has occupied the land for the required 7 or 10 years will generally be successful. But if this period of time has elapsed, your title to the land may be called into question. The law of adverse possession is a factually specific inquiry that depends on the claimant's intent, his actual actions, and the character of the land in question. The following Alaska Supreme Court cases provide a representative sample of these principles in action and were relied upon to write this article:

Cowan v. Yeisley, 255 P.3d 966 (Alaska 2011); Vezey v. Green, 35 P.3d 14 (Alaska 2001); Peters v. Juneau-Douglas Girl Scout Council, 519 P.2d 826 (Alaska 1974).

The following Alaska Statutes govern adverse possession: AS 09.10.030; AS 09.45.010; AS 09.45.052.