

Colorado Adverse Possession Law

Legal Viewpoint

By Jeffrey Kelley, Esq.

Recently, a reader asked me to comment on Colorado's law of adverse possession (or "squatter's rights"): why it even exists, and if it is actually "legal stealing?" First off, this is a complicated area of the law that serves an important purpose, originally rooted in Roman law and later adopted by English common law to protect those possessing land from later being ejected by the "owner," who had disused or neglected the property over time. A contentious method of acquiring property, the doctrine of adverse possession has evolved from the middle ages when land was conquered and held for a sufficient time period to create indisputable ownership, to current laws intended to promote fairness, certainty and finality of property ownership. As with other causes of action, such as in contract or tort, it was believed that asserting ownership in land should also be regulated by periods of time, typically commencing upon the possession of the disputed land. The reader's second point was the importance of a 2007 Boulder case that caused the Colorado Legislature to amend Colorado's adverse possession law, creating additional standards and requirements for claimants who filed claims of adverse possession after July 1, 2008. The Boulder case was also very contentious and highly scrutinized, but ultimately raised awareness of the impact this law has on property owners and why changes were needed.

What is Adverse Possession and how do you Prove It?

In short, a claimant (disseisor) may assert title interest in real property when he has been in possession of the property, and such possession is **actual, open and notorious** (so as to constitute reasonable notice to the owner), **hostile and exclusive** (meaning with owner's permission), **and continuous** for the time prescribed by the state law. Colorado statutes define this statutory period as being 18 years, or 7 years if the adverse possessor, under a good faith claim and **color of title**, was paying taxes on the possessed real property. Each of these elements must be proven, and each has its challenges, but one of the most seemingly obvious but often difficult to prove, is whether the adverse claimant can prove the **actual, open and notorious** use of the property. Possession of the property must be such that the record owner of the property can **visually observe** that an adverse party is claiming possession of the subject property—i.e., the claimant's use must be open and notorious. Several examples of "open and notorious possession" include fencing, installing a shed, cultivating plants, or other uses of land that would imply actual ownership. Adverse possession cannot be secret or hidden from the record owner. Other elements are also equally important, such as possible "tacking" of various ownership interests together to equal 18 years of possession, and its exclusive use – not shared with the record owner. Each case is different and some elements may not be proven if prior owners are unavailable, or other evidence is simply gone. Procedurally, the adverse possessor must bring a quiet title action in court seeking actual record title to the disputed property. The burden of proof is on the person seeking adverse possession, so the record owner enjoys an initial presumption against adverse possession.

What Happened in Boulder?

In 2007, a Boulder case gained notoriety and came under intense public scrutiny when Richard McLean, a retired district court judge and former Boulder Mayor, and his wife, Edith Stevens, sought adverse possession of a portion of an adjoining lot owned by Don and Susie Kirlin. The dispute started when McLean and Stevens obtained a restraining order against the Kirlin's to stop them from building a fence along the dividing line between their properties. McLean and Stevens claimed they had become the "de facto" owners of a portion of one of the Kirlin's vacant lots because they continually crossed it to access their backyard for 25 years and had never been asked to stop. Hence, their use was actual, open and notorious for the requisite time period required by law. The Court ultimately awarded McLean and Stevens about one-third of the Kirlin's lot. Strong public outcry and protests criticizing the fairness of this decision caught the attention of the Colorado General Assembly, and the law was changed. Some felt McLean's former appointments may have given him an unfair advantage, but most importantly the uncompensated "taking" of their neighbor's property was argued to be unfair.

Adverse Possession Law Changed

The Colorado "Land Grab" Bill was, signed into law effective July 1, 2008. The new law required that an adverse possessor believe in "good faith" that the land is actually his or her own, and the burden of proof was raised from a "preponderance of the evidence" to "clear and convincing," and gave judges the discretion to make successful claimants pay for any land they are awarded. Therefore, even a "victorious" plaintiff may now be ordered to pay damages to the losing party not only for the value of the property, but also reimbursement for property taxes and assessments on the property for the prior eighteen years.

The moral of the story is that land owners or prospective owners of property must be on the lookout for potential encroachments by driveways, decks, sheds, unconfirmed boundary lines, fences and of course, the "informal" but continual use of a portion of property by third parties. If one thinks their property is being used in such a manner, possibly a formal action should be taken sooner rather than later, such as creating a formal agreement as to the use of the property. Or in the alternative, demand that such use stops or take other action to protect rights and property. Such awareness and action may prevent the loss of property ownership as may later be determined by a judge. In conclusion, adverse possession continues to be a law needed to resolve disputed property claims.

Do you have a legal question? Send your questions to attorney Jeff Kelley (Jeff@klfpc.com). Appointments for in person legal counsel are available in both Black Hawk and Denver offices.

Note: While every effort has been made to ensure the accuracy of this information, it is not intended to provide legal advice as individual situations will differ and require full analysis by an attorney.