

ADVERSE POSSESSION

Adverse possession is the occupation of land to which another person has title with the intention of possessing it as one's own. The possessor may or may not know that he/she is not the title owner. The possessor just has to claim it as his/her own.

May be referred to as "Squatter's Rights."

The possession must be open, notorious and visible. In other words, either the owner knows of the possession; the possessor's conduct makes it obvious that he/she is possessing the property; or the possessor has let everyone he/she meets in the community that the property is his/hers. If the use is public, it gives the actual owner the opportunity to see the use, and assert his/her ownership rights. If the use is secret, the owner does not have the opportunity to exclude the trespasser.

The possession must be hostile to the owner's interests. The owner did not grant the possessor a "license" or "lease".

The possession must be continuous. Seasonal use may suffice, as long as that is appropriate for the property and the seasonal use is continuous.

And the possession must meet the applicable period of time for possessing the property. In New York State, that is ten years.

To establish a claim of adverse possession, the following five elements must be proved: Possession must be (1) hostile and under claim of right; (2) actual; (3) open and notorious; (4) exclusive; and (5) continuous for the required period. *Belotti v. Bickhardt*, 228 NY 296, 302 (1920); *see also Van Valkenburgh v. Lutz*, 304 NY 95, 99 (1952); *Spiegel v. Ferraro*, 73 NY2d 622, 624 (1989); *Ray v. Beacon Hudson Mtn. Corp.*, 88 NY2d 154, 159 (1996).

"To establish a claim of adverse possession, the occupation of the property must be (1) hostile and under a claim of right (i.e., a reasonable basis for the belief that the subject property belongs to a particular party), (2) actual, (3) open and notorious, (4) exclusive, and (5) continuous for the statutory period (at least 10 years)." *Estate of Becker v. Murtagh*, 19 NY3d 75, 81 (2012); *see RPAPL 501; Walling v. Przybylo*, 7 NY3d 228, 232 (2006). "So long as the use is open, notorious and continuous for the 10-year period, hostility will [generally] be presumed." *2 N. St. Corp. v. Getty Saugerties Corp.*, 68 AD3d 1392, 1393, 892 NYS 2d 217 (3d Dept. 2009) (citations omitted). The presumption of hostility may not apply, however, "where there is a close and cooperative relationship between the record owner and the person claiming title through adverse possession." *Estate of Becker v. Murtagh*, 19 NY3d at 82. To put it differently, permissive use "may be inferred from a history of `neighborly cooperation and accommodation.'" *McKeag v. Finley*, 93 AD2d 925, 927 (2012), quoting *Allen v. Mastrianni*, 2 AD3d 1023, 1024 (2003).

Adverse possession must be proven by clear and convincing evidence. *Ray v. Beacon Hudson Mtn. Corp.*, 88 NY2d 154, 159 (1996).

A party who cannot establish adverse possession is responsible to the record owner for any damages that he or she caused by reason of the trespass. *See CSC Acquisition-NY, Inc. v. 404 County Rd. 39A, Inc.*, 96 AD3d 986 (2012); *Skyview Motel, LLC v. Wald*, 82 AD3d 1081 (2011).

NYS Real Property Actions and Proceedings Article 5

§ 501. **Adverse possession; defined.** For the purposes of this article:

1. Adverse possessor. A person or entity is an "adverse possessor" of real property when the person or entity occupies real property of another person or entity with or without knowledge of the other's superior ownership rights, in a manner that would give the owner a cause of action for ejection.

2. Acquisition of title. An adverse possessor gains title to the occupied real property upon the expiration of the statute of limitations for an action to recover real property pursuant to subdivision (a) of section [212] of the civil practice law and rules, provided that the occupancy, as described in sections [512] and [522] of this article, has been adverse, under claim of right, open and notorious, continuous, exclusive, and actual.

3. Claim of right. A claim of right means a reasonable basis for the belief that the property belongs to the adverse possessor or property owner, as the case may be. Notwithstanding any other provision of this article, claim of right shall not be required if the owner or owners of the real property throughout the statutory period cannot be ascertained in the records of the county clerk, or the register of the county, of the county where such real property is situated, and located by reasonable means.

§511. **Adverse possession under written instrument or judgment.** Where the occupant or those under whom the occupant claims entered into the possession of the premises under claim of right, exclusive of any other right, founding the claim upon a written instrument, as being a conveyance of the premises in question, or upon the decree or judgment of a competent court, and there has been a continued occupation and possession of the premises included in the instrument, decree or judgment, or of some part thereof, for ten years, under the same claim, the premises so included are deemed to have been held adversely; except that when they consist of a tract divided into lots, the possession of one lot is not deemed a possession of any other lot.

§512. **Essentials of adverse possession under written instrument or judgment.** For the purpose of constituting an adverse possession, founded upon a written instrument or a judgment or decree, land is deemed to have been possessed and occupied in any of the following cases:

1. Where there has been acts sufficiently open to put a reasonably diligent owner on notice.

2. Where it has been protected by a substantial enclosure, except as provided in subdivision one of section [543] of this article.

3. Where, although not enclosed, it has been used for the supply of fuel or of fencing timber, either for the purposes of husbandry or for the ordinary use of the occupant.

Where a known farm or a single lot has been partly improved, the portion of the farm or lot that has been left not cleared or not enclosed, according to the usual course and custom of the adjoining country, is deemed to have been occupied for the same length of time as the part improved and cultivated.

§522. **Essentials of adverse possession not under written instrument or judgment.** For the purpose of constituting an adverse possession not founded upon a written instrument or a judgment or decree, land is deemed to have been possessed and occupied in either of the following cases, and no others:

1. Where there have been acts sufficiently open to put a reasonably diligent owner on notice.
2. Where it has been protected by a substantial enclosure, except as provided in subdivision one of section [543] of this article.

§543. **Adverse possession; how affected by acts across a boundary line.** 1. Notwithstanding any other provision of this article, the existence of de minimus non-structural encroachments including, but not limited to, fences, hedges, shrubbery, plantings, sheds and non-structural walls, shall be deemed to be permissive and non-adverse.

2. Notwithstanding any other provision of this article, the acts of lawn mowing or similar maintenance across the boundary line of an adjoining landowner's property shall be deemed permissive and non-adverse.

NYS Civil Practice Law and Rules

§ 212(a): **Possession necessary to recover real property.** An action to recover real property or its possession cannot be commenced unless the plaintiff, or his predecessor in interest, was seized or possessed of the premises within ten years before the commencement of the action.

Why is it recognized in the law, particularly since it could be considered a type of theft? One reason is that it allows the property to be used, rather than sit neglected and underdeveloped.

"Adverse possession, although not a favored method of procuring title, is a recognized one. It is a necessary means of clearing disputed titles and the courts adopt it and enforce it, because, when adverse possession is carefully and fully proven, it is a means of settling disputed titles and this is desirable" *Belotti v Bickhardt*, 228 NY 296, 308 (1920); *see generally Hindley v. Manhattan Ry. Co.*, 185 NY 335, 355-356 (1906).