

San Diego Market Focus

Users, keepers: Adverse Possession vs. Prescriptive Easement

Adverse possession, sometimes called “squatter’s rights,” has the common-law purposes of keeping property in use and collecting property taxes from each parcel.

It also opens the door to two legal methods of “stealing” real estate. One allows acquiring title to the entire property. The other involves obtaining permanent use of part of a property.

To acquire title of a vacant house, you must occupy the property by “open, notorious, hostile, continuous and exclusive (not shared with anyone else) possession.”

In addition, you must pay property taxes for the number of years required by state law.

California has the shortest adverse possession time: five years. Texas requires 30 years, with other states in between. Adverse possession is not useable against property owned by government agencies, public utilities and railroads.

Adverse possession usually occurs with rural properties whose owners don’t check to see if anyone is living on them. But even urban properties can be acquired.

A friend, for example, had his eye on buying a vacant parcel adjoining his property. It was owned by an out-of-state corporation, which demanded an outrageous price.

So my friend had the property paved as a parking lot and is earning income from it. He’s also paying the property taxes.

After the required number of years, he will sue the owner in a quiet-title action to obtain the title by adverse possession.

The most famous adverse possession court decision is *Stevens vs. Tobin* (251 Cal.Rptr.587) from the California Supreme Court. Thomas W. Stevens argued that he adversely occupied for 15 years the San Francisco apartment building at 1899 Oak St., in the Haight-Ashbury district.

When Stevens sued the legal owner in a quiet-title lawsuit, he proved open, notorious, hostile exclusive and continuous possession.

But the California Supreme Court ruled that Stevens was unable to prove he paid the property taxes. He lost.

If you don’t want to acquire an entire property but want just partial use of it, a prescriptive easement is what you need. Examples include a driveway,

path or perhaps a garden on an adjoining property. The same requirements of adverse possession apply: open, notorious (that means obvious), hostile and continuous use over a specified time. But you need not pay any property taxes to acquire a prescriptive easement.

The use need not be exclusive; it can be shared with the property owner or even with another hostile prescriptive easement user. For example, suppose you frequently drive over your neighbor’s property, but he tells you to stop. You ignore him and continue driving over his land.

If you continue doing so without interruption for the minimum time required, you will eventually acquire rights to a prescriptive easement. If your neighbor blocks your access with a fence, which you tear down, your prescriptive period starts running again.

“If you are the owner of a property that is being used by a neighbor without your permission, it is to your advantage to prevent him from acquiring a permanent prescriptive easement.”

If you are the owner of a property that is being used by a neighbor without your permission, it is to your advantage to prevent him from acquiring a permanent prescriptive easement. One way to avoid this is to grant permissive use. Just in case of future trouble, be sure to document your permission, such as with a certified letter to the user of part of your property. Another way to stop a prescriptive easement from arising is to periodically block the hostile use. For example, one Sunday morning years ago when I was a summer student at Stanford Law School, I wanted to drive into adjacent Palo Alto. My short trip was blocked by the police, who erected a street barricade. The polite officer explained Stanford does this every summer for a few hours to prevent anyone from acquiring a permanent prescriptive easement to use that Stanford-owned street.

If you know someone is using all or part of your property but you don’t care, usually the best way to prevent that person from acquiring title by adverse prescriptive easement is to grant permissive use. For example, an owner who does not object to the use of his or her property can post signs saying, “Permission to pass over this property is revocable at any time.” In most states, the owner can also record revocable permissive use to prevent adverse possession or a prescriptive easement from arising.

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