

Title by Adverse Possession & Easement by Prescription

Adverse possession is commonly known as squatter's rights. It is a legal doctrine that allows a person to acquire ownership of the property of another. Adverse possession involves the taking away of property rights by operation of law. Thus, while not typically a local government matter,¹ it is a significant issue of fundamental importance.

Through recent amendments to Title 42,² a person may gain title to real property by adverse possession after 10 years (or in some cases, 21 years) of actual, continuous, exclusive, visible, notorious, distinct and hostile possession of the property when certain additional criteria are met. Moreover, court opinions have provided criteria for establishing each of these elements,³ and a person who claims title to property through adverse possession is held to strict requirements of proof. Thus, mere possession of the land by a claimant is not sufficient to confer title under this doctrine. In order to acquire title after 10 years (as opposed to 21 years), a person must file an action in quiet title and provide notice to the owner or owners of record. The owner or owners of record have the opportunity to respond to the action of ejectment, but if there is no response within one year the court may enter judgment granting the title by adverse possession.

As title to land may be acquired by adverse possession, an easement upon land may be acquired under the doctrine of prescription. A 21-year period is required in order to establish an easement by prescriptive use.⁴ The other required elements for an easement by prescription are similar, but not identical, to those required to obtain ownership by adverse possession. For example, in establishing a prescriptive easement, a claimant's use does not have to be "exclusive"; other people, even the true owner, may also be using a right-of-way upon which the claimant asserts a prescriptive easement. The proof of the element of continuity also is different in the case of a prescriptive easement. Generalizing, it may be said that the requirement of continuous use for establishing a prescriptive easement is not as rigorous as the continuous possession requirement for adverse possession.⁵

¹ See discussion on next page entitled, "Adverse Possession and Prescription and Government Property."

² 42 Pa.C.S. 5527.1 (enacted by Act 34 of 2018).

³ While an exhaustive discussion of this topic is beyond the scope of this article, reference is made to *Flannery v. Stump*, 786 A.2d 255 (Pa. Super. 2001). For a comprehensive discussion of adverse possession, the following secondary source provides helpful information: 7 Summ. Pa. Jur. 2d Property Ch. 13 (2d ed.) (June 2020 update) (relating to adverse possession).

⁴ Adverse possession most often is relied upon to assert complete ownership or fee title to property. On the other hand, prescription is relied upon to acquire an easement (such as a right-of-way) to use another's land, not to acquire title to it. Moreover, in the case of a prescriptive easement, it is not necessary to establish "possession" of another's land, but rather it is the "use" of the land that is important.

⁵ "[A]dverse possession, unlike prescription, requires exclusivity [O]ne claiming an easement by prescription need not show an exclusive and distinct use Another factor for establishing a prescriptive easement that is somewhat less stringent than that required for adverse possession is the 'continuous use' of the property. In establishing a prescriptive easement, constant use need not be demonstrated in order to establish the continuity of the use. Rather, 'continuity is established if the evidence shows a settled course of conduct indicating an attitude of mind on the part

Adverse Possession and Prescription and Government Property

A person may not utilize adverse possession to acquire title to property owned by the federal or state governments. In the case of property owned by political subdivisions, except school districts which for purposes of adverse possession are considered agents of the state, title can be acquired by adverse possession so long as the land in question was not devoted to public use anytime during the 21-year prescriptive period. However, when a county holds tax delinquent land as a trustee in connection with a tax sale, the prescriptive period does not run during the time the land is held by the county since the land was devoted to a public use during that time period.⁶ Another example of how a municipality may lose an interest in property involves land or an interest therein that was dedicated to a municipality for use as a public street. If the municipality fails to open or accept the street within twenty-one years, it will lose its ability to open the street without the approval of a majority of abutting owners.⁷

of the user or users that the use is the exercise of a property right.” *Newell Rod and Gun Club, Inc. v. Bauer*, 597 A.2d 667, 670 (Pa. Super. 1991) (citations omitted).

⁶ See *Lysicki v. Montour School Dist.*, 701 A.2d 630, 632 (Pa. Cmwlth. 1997) and *Torch v. Constantino*, 323 A.2d 278 (Pa. Super. 1974); see also 22 Standard Pennsylvania Practice 2d § 120:203 (2020).

⁷ See Unused Streets, Lanes and Alleys, Act 192 of 1889, § 1 (36 P.S. § 1961), and Borough Code, 8 Pa.C.S. § 1724; see also *Estojak v. Mazza*, 522 Pa. 353 (1989) (even though the municipality fails to accept or open dedicated street in subdivision or plan within 21 years, the owners of property within plan or subdivision retain private rights of easement by implication over unopened streets).