

Farm Management

When property borders collide

ADVERSE possession is the process by which a person takes ownership of another's land without providing compensation for the land by holding the land for more than 21 years. The law does not favor this method of taking ownership of land for obvious reasons. Therefore, a person asserting an adverse possession claim must prove several elements to be successful. Proving these elements is difficult, thereby making a successful adverse possession claim the exception rather than the norm.

The most common situation in which adverse possession arises is when neighboring property owners discover their line fence is a few feet off the actual property line. For example, Joe and Bill have been neighbors for 25 years. Joe recently had a survey done and realized the line fence is actually three feet over onto Bill's property. Bill claims Joe must move the fence back three feet, and Joe claims he owns the three feet through adverse possession.

Proof of possession

The elements to prove an adverse possession are: 1) open and notorious possession; 2) exclusive possession; 3) adverse possession; and 4) continuous possession, all for more than 21 years. Failure of proof of any of these elements results in failure to acquire title by adverse possession.

Open and notorious possession means the land must be used out in the open so the landowner knows or should know it is being used by the other party. In the above example, Joe has been using the three feet on his side of the fence in plain sight of Bill and would therefore likely fulfill this element.

Exclusive possession requires the land in dispute to be used by only the party asserting the adverse possession. A line fence assures that only the party on his side of the fence can use the property. Joe has had exclusive possession of the three feet because Bill was prevented from using it by the fence. If no fence separated the properties, Joe could not claim exclusive possession because Bill could use the three feet of disputed land at any time. Placing a building on another's property is also a common example of exclusive possession; only the person who put up the building can use the land.

Adverse possession is the "hostile" act or intention of one person to take ownership of another's land. In essence, hostile is considered to be against the interests of the other landowner. This element of adverse possession can be defeated simply by one party giving permission to the other to use the land. In the above example, shortly after the

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fence was constructed, Bill discovered it was three feet onto his property but gave Joe permission to use his three feet. Joe can never take ownership of

the three feet because his possession was never hostile but was with permission. Permission should always be given in writing and well-documented to support claims that may be brought many years after the initial permission is given.

Continuous possession requires the person asserting the adverse posses-

sion claim to have possessed the disputed property continuously for more than 21 years. The 21 years can carry over from one landowner to the next. If Joe were to sell his property to George after the fence had been up for 10 years, George could assert an adverse possession claim against Bill after another 11 years of ownership.



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