

Adverse Possession and 'Squatters' Rights' **When title can be obtained (or lost) to land adversely possessed**

Introduction

It has long been the case that where one person occupies land which is not their own, without the owner's consent, treating that land as their own for a defined number of years, there is a procedure whereby they can be registered as the owner of the land to the exclusion of the title holder. The Land Registration Act 2002 ('the LRA 2002'), which came into force on 13 October 2003, changed the procedure for making applications for adverse possession, and it remains essential that landowners, and those considering whether they have a right to be registered with title to property they have adversely possessed, are aware of the circumstances under which adverse possession applications can be made.

Old or New Regime?

In general, applications for title to registered land by adverse possession must now be made under the procedure set out in the LRA 2002.

However, where it can be shown that there was at least 12 years' adverse possession before 13 October 2003, an application can still be made under the previous rules. The previous rules will also apply where the land is unregistered.

This guide deals with applications under the LRA 2002, but if you think the 'old regime' may apply, we are able to advise in that regard.

What is Adverse Possession?

There are many principles, developed by case law, as to what will properly constitute adverse possession, but an applicant will generally have to show two things:

1. Factual possession of the land in question, i.e. exclusively and physically controlling the land. Typical acts of

possession include fencing the land, cultivating and maintaining it;

2. Intention to possess the land. This means that the applicant should have not merely been occupying the land by mistake, but must have intended to occupy it to the exclusion of all others;

In all cases, to adversely possess, the applicant cannot have been occupying the land with the permission of the owner (e.g. by a tenancy or licence over it). There are also special cases where an adverse possession application cannot be made, listed in the LRA 2002.

The Procedure

If the applicant has adversely possessed the land for at least ten years, an application can be made to the Land Registry to be registered as the legal owner of that land, in place of the current registered proprietor.

A statutory declaration or statement of truth needs to be prepared to support the application, which would set out the background of the matter and explain how the land was

possessed over the period in question. Evidence is usually included and referred to in the statement and there are also several vital declarations which must be made. In the application, the applicant must specify on what grounds they will oppose an objection if one is made (i.e. which of the three conditions they would rely on (see below)).

They will also give notice of the application to the current registered owner and any other persons noted on the title. If the application is not opposed, the applicant will be registered with title to the land.

The current registered owner can write to the Land Registry objecting to the application, and can also insist that it be dealt with in accordance with a specific process laid down in the LRA 2002. That process includes an obligation on the applicant to show one of three conditions, being that:

- i. it would be unconscionable to dispossess the applicant because the registered proprietor encouraged or

allowed the applicant to believe they owned the land and that the applicant relied on this to their detriment;

- ii. the applicant is entitled for some other reason to be registered as proprietor (for instance because they are entitled to it under a will);
- iii. the applicant has been in possession of land adjacent to their own under a mistaken but reasonable belief that they owned it, the boundary was not determined by the Land Registry and the estate to which the application relates was registered more than a year before the application.

The applicant must have indicated which of these conditions they wished to rely on in their original application.

If the Land Registry considers that the applicant has potentially shown on of the three conditions, and if the parties cannot come to an agreement, the matter may be referred to an adjudicator, to decide the matter.

Further Applications

If, the application is rejected because a counter-notice was given and none of the three conditions were met, the registered proprietor of the land may choose to bring proceedings against the applicant to recover possession of the land.

However, if two years pass after the rejection of the application and nothing has been done, the applicant will be able to reapply to be registered as owner and will, upon that application, be successful unless:

1. The applicant is a defendant in proceedings for possession;
2. There has been a judgement for possession

given against the applicant in the last two years; or

3. The applicant has been evicted pursuant to a judgement for possession.

Our litigation team has experience in making applications (both under the new and old regimes) and defending applications on behalf of registered proprietors, and can advise you whether we think land you possess or land owned by you but possessed by another may be the subject of an adverse possession application.

We can provide specialist advice in all property disputes and would be happy to speak with you without commitment to see if we could help you, whatever your problem.

Please call Martin Stevens, Darren Thorneycroft or Marcus Self on 01233 625711 for more information, or email them on ms@hallettandco.co.uk.