

TO:

FROM:

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SUBJECT:

Elements of Adverse Possession

The elements of the doctrine of adverse possession in Wisconsin are recorded in the Code of Civil Procedure (Wiscon. Const. Part 45, Art. III). The law includes actions concerning real or personal property. Under the code, there is possession when presumed: occupation is considered under the legal title except when it is adverse. In every action taken for obtaining a real property or possession of the same, an individual establishing legal ownership of a property is supposed to have been in possession within the required time stipulated by the law. The occupation of the property in question by any other party must be under a legal title except in a case where the property has been possessed or held adversely to the legal title for a period of five years. Under this law, the five-year period must be the duration before the commencement of the action.

The second element is occupation under judgment or written instrument when considered adverse. This can only be applied when it appears that the person occupying the property or the people whom he claims to be occupying it obtained the possession by claiming the title excluding other right (Wiscon. Const. Part 45, Art. III). If the claim is found under a written instrument used to convey that the property in question or some part of it had been held adversely, the law can be applied. However, the property should be free from tract divided into lots because the possession of one lot cannot be deemed a possession of any part in the same tract.

Under the written instruments, judgment, or decree, adverse possession has various different cases for constituting the law to any person claiming title. The cases include where a land has been usually improved or cultivated, where there is protection of the land by substantial enclosure, where it has been used for economic purpose, such as the supply of fuel, and where a known part of it has been improved. When land is used for supplying fuel, fencing in order to practice husbandry and pasturage among other uses, the third case still applies (Wiscon. Const. Part 45, Art. III).

The third element deals with the premises occupied under the claim of a title that is supposed to be held adversely. In a case where it appears that an individual has continued occupying land under a claim of title, without the existence of other rights, but not under a written instrument, the decree of judgment of the actually occupied land is considered to be held adversely according to this law. There are few exemptions where the case of unwritten agreement can be applied. If a person claims title is not founded upon judgment, decree of written document, then a substantial closer must protect it, and the land must be usually cultivated or improved (Wiscon. Const. Part 45, Art. III).

Squatter's Rights

A squatter is also known as an adverse possessor. A squatter's right is the right to claim adverse possession, which can only be obtained once all the state requirements are satisfied, and the legal steps to perfect the claim are taken. An example of this right is a case where a property was abandoned, and an individual "squatted" in it for a period required by the law, and then the

squatter can gain possession. Any temporal removal or abandonment during the period denies a squatter the benefit of possessing (Squatters Rights Law & Legal Definition, n.d).

Tacking

Tacking is a process where a person in adverse possession of a property decides to add more periods of possession to the periods of a prior adverse possessor (Squatters Rights Law & Legal Definition, n.d). It is only allowed when there is no time lapse between the end of a possession and the beginning of occupancy by another party. In order to apply this principle, possession by the prior occupant is required to be diverse. A is the right owner of Blackacre. Y moved to Blackacre in 1980 under a circumstance that is in favor of an adverse possession claim. In 1998, Y retakes the land and kicks W out of the land. The same continues with X and W, where each kicks out the other after every 9 years. In 2010, X and Z's heirs raise adverse claims. Even though both X and Y's lines held the property for many years, A still remains the rightful owner.

Color of Title

The land law requires that all titles used to establish claims of ownership are valid. Under the color of title, the validity of a title determines right ownership of a property (Squatters Rights Law & Legal Definition, n.d). An individual can have color of title to a property; a document needed to evidence that a title is considered invalid. One cannot show ownership when there is a defect in the title. If, for example, Annette provides John with a deed to a land that he does not have the right ownership, John can consider the land under color of title.

Quiet Title

Quiet title action is the lawsuit filed in order to have ownership of a property. A plaintiff in this case can seek a court order that prevents a respondent from expressing claims on the same property in question. Because real estate changes hands quite often, quiet title action protects the one who has title to the property. For example, quiet title becomes essential if a seller agrees to sell his property to a buyer but dies before finalizing the sale (Revised Statutes of the State of Wisconsin, 1878). Assuming that the seller gave the same property to somebody else of his own will, both the holder and the buyer can file a suit to quiet title because they both have a valid claim to the property.

References

Revised Statutes of the State of Wisconsin, Passed at the Extra Session of the Legislature, Commencing June 4, 1878, and Approved June 7, 1878: To Which Are Prefixed the Constitutions of the United States and the State of Wisconsin: with an Appendix Containing Certain Acts of Congress Required to Be Published Therein. Madison, WI: David Atwood. Print.

Squatters Rights Law & Legal Definition. (n.d.). *Legal Definitions Legal Terms Dictionary.*

Retrieved September 25, 2013, from <http://definitions.uslegal.com/s/squatters-rights/>

Wiscon. Const. Pt 45, Art. III. Subchapter III: Actions concerning real or personal property.

Retrieved from <https://docs.legis.wisconsin.gov/statutes/statutes/893/III/24>