

ADVERSE POSSESSION OR “SQUATTER’S RIGHTS” IN THE PROVINCE OF ALBERTA

Even if it is your land, over time, it may become somebody else’s. This is the effect of the law of adverse possession.

Adverse possession arises when somebody occupies the land of another. This can occur in many situations, including a mistakenly placed fence line, a misplaced building or even an adverse possessor simply occupying otherwise vacant land – it could even be a person living on the land you own but don’t make it out to very often.

The key point is that it is possible for an adverse possessor to attain an interest in the registered owner’s land just by occupying it. The key is the occupier possessing the land for long enough (10 years in Alberta).

The penalty for non-use of land is tantamount to private expropriation by a squatter without compensation.

For the adverse possession to be effective to get title:

- a) The true owner must be out of possession of the lands;
- b) The claimant must be in use and occupation of the claimed lands;
- c) The claimant’s use and occupation must be exclusive, continuous, open, visible and notorious for a period of 10 years; and
- d) The belief, ignorance, mistake, or intention of the claimant is immaterial.

The main ways to deal with an adverse possessor within the 10 years is to:

- a) Re-enter the property in order to recover possession;
- b) Get an acknowledgement of title from the person in possession of the property (such as an encroachment agreement; or
- c) Take legal proceedings to recover the property.

There must be more than mere entry. An entry must be accompanied by an overt act or acts which objectively show the intention to recover the land then and there. The acts of the defendant should be unequivocal.

Part of being able to assert your rights is knowing they are being violated. As such, owners must continually monitor the lands and property boundaries. This is especially important on otherwise vacant lands.

Examples of acts held to constitute adverse possession:

- Erecting fences or maintaining a garden
- Building a house, barn, or fishing hut
- Regular use as parking space