Title Through Adverse Possession

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Foster Swift Commercial Litigation News
July 14, 2015

In Michigan, property can be acquired or lost through adverse possession. If you believe you have acquired title to a property or are concerned about losing it, consultation with an attorney may help clear things up and empower you to make wise decisions going forward. This article addresses some points one may wish to consider when speaking with an attorney about protecting a currently held piece of property or filing an action to obtain marketable title.

WHAT IS ADVERSE POSSESSION?

Adverse possession is the occupation of land to which another person has title with the intention of possessing it as one’s own. An example of an adverse possession case could be a property owner who has built a fence on a neighbor’s property. Many years later when one of the neighbors has a survey done, the error is discovered. Other examples are garages or cement drives that cross boundaries.

The encroaching neighbor is, in essence, a trespasser who, after a period of time and under circumstances set by the law of the state where the land is situated, could become the owner of the land. Possession of the land is considered adverse because the owner could bring an action against the trespasser.

WHAT IS THE LAW IN MICHIGAN?

Each state has its own laws regarding who has ownership of the land under adverse possession. In Michigan, possession must be actual, visible, open, notorious, exclusive, hostile, continuous, and uninterrupted for the statutory period of 15 years. It is important to note that the term ‘hostile’ is a term of art in the law of adverse possession and does not imply ill will. It simply means that the owner did not give the neighbor permission to use the property and the use of the land is inconsistent with the rights of the owner.
Assuming the essential elements have been established, one actually gains title by adverse possession when the period of limitation expires, not when an action regarding the title to the property is brought. However, until an adverse possessor obtains the necessary judicial decree, there is no record that the adverse possessor actually satisfied the elements of adverse possession. So, in order to obtain a record title or marketable title, the adverse possessor must file a lawsuit in court.

Adverse possession decisions are based on the facts in each case and the nature of the premises. Examples of some relevant considerations include:

- Whether the property at issue contains significant acreage or simply a narrow strip of land
- Whether it is located in a rural area or in the city
- Whether or not the property is developed
- Who is maintaining the property
- Whether or not it contains a home, cottage or other structures
- What conduct was engaged in by the former property owners

A quiet title action where a claim for adverse possession is alleged is an *in rem* proceeding, and is brought in the circuit court where the property in question is located. Conducting a title search, obtaining a legal description and survey of the property at issue are generally considered to be some of the best practices prior to initiating a claim for adverse possession. Topics for discussion with your attorney should also generally include the past and present possession and use of the property, along with an overview of the relevant statutes and court rules, such as MCL 600.2932, MCL 600.5801 and MCR 3.411.