

ADVERSE POSSESSION CLAIMS

1. This Legal Topic Note sets out the law on the occupation of land, known as 'adverse possession' or 'squatter's rights'.

Registered and unregistered land

2. There are separate systems for proving ownership of registered and unregistered land. If the land is unregistered, the title deeds are proof of ownership. If the land is registered, ownership is proved by reference to the official record held by the Land Registry. Since 1990, when compulsory registration was introduced, all land transfers have had to be carried out through the Land Registry. Over 85 per cent of land in England and Wales is now registered.

Obtaining ownership of land by adverse possession

3. The leading case on adverse possession (*Pye v Graham* [2002].) was decided by the House of Lords (now the Supreme Court). To claim ownership of land (whether registered or unregistered, or with a known or no known owner), the squatter must be in adverse possession of the land. Adverse possession has four elements. Unless the claimant can prove all four, he will not make a successful claim of ownership. They are:
 - exclusive possession
 - intention to possess
 - no licence/agreement
 - continuous possession

Exclusive possession

4. The squatter must have exclusive, physical control of the land, dealing with it as a true owner might have been expected to deal with it and must show that no

one else has done so. The required degree of control will depend on the nature of the land and the manner in which it is used, but must be substantial and evident. All other persons must be prevented from entering or, as a minimum, only allowed to enter with express consent. On previously open ground, erecting a fence around the land is strong evidence but is neither indispensable nor conclusive. Activities such as grass cutting, amenity planting and minor tidying are helpful but not in themselves capable to showing exclusive possession.

Intention to possess

5. They must have an intention to possess to the exclusion of everyone (including the true owner) and to make that intention clear to the world. This intent can be inferred from the act of possession; mere statements of intent are considered self-serving and of little value. The claimant must have an intention to exercise custody and control of the land on his own behalf and for his own benefit, and to exclude the world at large. Mere presence on land will not in itself establish intention to possess.

Continuous Possession

6. The claimant must have possessed the land continuously for the period laid down by law. The period is 10 years for registered land and 12 years for unregistered land. Any break will mean starting afresh.

No licence / agreement

7. There can be no adverse possession where the land is occupied under a lease, tenancy, licence or other agreement, express or implied, with the true owner. Where an agreement comes to an end and the occupier "holds over" his possession, it will not normally be adverse even though the occupier does not pay rent. Any express or implied acknowledgement of the true owner's title will destroy the claim and start the 10/12 years running again.

The rules for registered and unregistered land

8. There are different rules when claiming ownership by adverse possession of registered and unregistered land.

Claiming ownership of registered land

9. A claimant can apply to the Land Registry to be registered as owner in the place of the former owner on the basis of 10 years' adverse possession. Anyone already registered as owner of the land, together with those having a legal interest in it (e.g. a mortgagee) can raise objections to the claim.
10. If no valid objection is made, the Land Registry will register the claimant as owner. If valid objections are made the application will be refused. The owner then has two years in which to take court proceedings to eject the claimant.
11. If the owner fails to take court proceedings to eject the claimant for more than two years after the Land Registry refusal and the claimant remains in adverse possession the claimant is then generally entitled to be registered as owner regardless of any objections
12. Where a claimant's application is successful, his name will be put in the Land Register as owner in the place of the former owner. He will acquire the same title as his predecessor.

Claiming ownership of unregistered land

13. A claimant can claim ownership after 12 years' adverse possession. However, to obtain a secure documented title and prevent any challenges the claimant must register the land with the Land Registry.
14. When a claimant makes an application, the Land Registry will inform anyone who appears likely to have a legal interest in the land to give them an opportunity to object.

15. If there are no successful objections, the Land Registry will normally grant the registered title. The type of title will depend on the strength of evidence produced by the claimant. If unchallengeable, an absolute title will be granted. If weaker, though still convincing, a possessory title will be granted. Possessory title is provisional, dependent on no stronger claimant coming forward. After a 12 year period without challenge, it may be converted, to absolute title if the Land Registry is satisfied the claimant is in possession of the land (see section 62(4) of the Land Registration Act 2002).

Squatters: the criminal law

16. There have been major changes in how the criminal law treats squatters. In 2012, new legislation (the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (“the 2012 Act”)) came into force which contained a criminal offence of squatting. Squatters face up to six months in prison and/or up to a £5,000 fine. However, the 2012 Act applies only to residential property, so is not relevant to most parish council property.

Other Legal Topic Notes (LTNs) relevant to this subject:

LTN	Title	Relevance
46	Registered Land	Explains the differences between registered and unregistered land

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