ADVERSE POSSESSION
HOW TO PROTECT YOUR PROPERTY

Women in Ag Webinar
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Ancient Legal Doctrine
What we know as Squatters Rights
Still very common in Maryland
Most prevalent for large tracts of land such as wooded areas and farms
Many people with large tracts of land are unsure of the exact location of their property lines. They may think it is a tree line or a boundary used by neighbors but this may not be the case.
This confusion can result in a building built across property lines or neighbor mistakenly fencing in another’s property.
Let’s imagine that you and your neighbor are confused about your property lines and this causes your neighbor to fence land that is actually part of your farm. Your neighbor proceeds to use the property as if it is his own and the mistake is not discovered until a survey is done when his child takes over the farm 21 years later.

Based on the facts in this example your neighbor has a viable claim to own that section of your property enclosed by the fence through the legal doctrine of adverse possession.

Even though the property was included in your deed and you paid for the land and have paid taxes on the land, you just lost that acreage to your neighbor.
Adverse Possession

- How to prevent?
- We must first understand what is needed to establish a claim based on AP
- For a claim of adverse possession to be successful, the person making the claim must show possession of the land for the required period of 20 years, and that such possession must be actual, open, notorious, exclusive, hostile, under claim of title or ownership, and continuous.
Adverse Possession

- Hostile
- Exclusive
- Actual
- Continuous
- Open and notorious
Adverse Possession
Actual, Open and Notorious Use

- To be actual, open, and notorious the use must include some demonstrative indications of use such as mowing the grass, erecting a building or fence, or planting crops.
- The use must be of the variety that would put the true owner on notice that the land is being adversely possessed if he or she happened to walk or drive by the land.
- Verbal or written actual notice to the owner is not required; the actions of the adverse possessor are sufficient to deliver notice to the true owner.
To use land “exclusively” does not require that you guard the acreage day and night nor does it require that you never let any other persons onto the acreage. Rather, it means that you use the land as your own and in the way that a true owner would use it.

There is a presumption that the true owner is in possession of the land, and to overcome this presumption, a possessor must show that he or she intends to excludes the true owner.

This intent to exclude must be shown by actual visible means so that the true owner has notice.
To use the land in a “hostile” way means to use it without permission of the true owner.

When there is no evidence of permission, and the possessor proves the other elements of adverse possession, a presumption arises that the possession was hostile.

If the true owner can show that possession was pursuant to his or her permission, the presumption of hostility is rebutted and the claim is defeated.
For example, if you want to install an orchard partially on your neighbor’s property and you seek his approval before beginning the project, the planting of the orchard cannot form the basis of an adverse possession claim because it was done with express permission.

To use land “under claim of title or ownership” simply means that you use the land as if you had actual title to the property. So if you actually thought you had a deed to the area where you wanted to install the orchard, to act “under claim of title or ownership,” you would proceed to install the orchard instead of first seeking your neighbor’s permission before you commenced the project.
Adverse Possession

- Hostile
- Exclusive
- Actual
- Continuous
- Open and notorious
The burden of proving the elements on adverse possession is on the person making the claim and the determination of whether the claim is sufficient is a fact-specific inquiry. This means that every situation is analyzed by the courts and depends on the facts of the situation.

The Maryland Courts have held that “something more than ‘mere occasional use of land’ is needed,” but the type of use depends on the character and location of the land.

The type of usage necessary to adversely possess a parcel in a residential subdivision is much different than the type of usage necessary to adversely possess a piece of rural property.
In Blickenstaff v. Bromley, the Maryland Court of Appeals found that the Blickenstaffs, who were claiming title by adverse possession to a small parcel of scrubbly, brush land adjacent to a farm, met the legal standard for adverse possession through their actions of clearing brush, cutting bean poles, felling large trees, and planting and maintaining a flower bed on the property for the requisite 20 year time period.

By contrast, in Barchowsky v. Silver Farms, Inc., the Maryland Court of Special Appeals held that the mere occasional use of a lane for walking, horseback riding, picking up branches and chasing off trespassers was insufficient to be the exclusive, open, and notorious type of use necessary to sustain a claim of adverse possession.
How to Prove the 20-Year Statutory Period?

If one owner has continuously used another’s property for the 20-year statutory period, that element of adverse possession is satisfied.

But what if the current owner has only owned the property for 15 years; can a claim for adverse possession be made?

When no single adverse possessor has held the property for the statutory period, successive periods of adverse possession may be tacked together to meet the required time frame.
Tacking will only be permitted when the time periods to be tacked or combined consist of the use from the previous owner and the next successive owner of the property without a break in use.

When successive owner receives the property, the property being adversely possessed must either be included in his deed or be adjacent to the property he is receiving and described as being part of the property.

For example, let’s say Owner A uses a portion of property between his barn and a hedge row for 18 years and then sells his farm to Owner B. In so doing, Owner A explains to Owner B that the farm includes the area between the barn and the hedge row. When Owner B discovers 3 years later that the property line for the farm actually ends at the barn, he will be able to tack the years of adverse possession of Owner A onto his years of adverse possession to meet the statutory period.
Adverse Possession
How Title To Land Is Acquired

- If you believe you have the basis for an adverse possession claim to property, you must file a lawsuit in the Circuit Court in the county in which the property is located and ask that the court “quiet the title” to this property.

- “Quieting title” means that the court decides the lawful owner of the property. Once a court has ruled in your favor, you can amend your deed to include the adversely possessed property.
What if you discover that for the last 10 years your neighbor has been planting a row of crops on your farmland? What should you do?

To prevent an adverse possession claim, you must assert your claim as the true owner to this land either through physical reentry or by taking some action to reinstate your possession.

This means either demanding that the planting ceases or establishing a leasing relationship with your neighbor.

What if you discover that your neighbor’s barn is built partially on your property? Perhaps the location of the barn doesn’t actually bother you but you don’t want to risk your neighbor asserting a claim for adverse possession which could reduce your total acreage.

One easy solution would be to send your neighbor notice that his barn is on your property by permission. This action is evidence that his use of your property isn’t hostile but rather done with your express permission.
An easement is a non-possessory interest in real property; put another way, it is the right to use another’s property without actually owning the property.

A prescriptive easement is basically adverse possession of a right-of-way and arises when “a party makes an adverse, exclusive, and uninterrupted use of another’s real property for twenty years.”

When a person has used a right of way openly, continuously, and without explanation for 20 years, the Maryland Courts have held it is fair to presume the use is adverse.

The same legal concepts which apply to adverse possession apply to easements by prescription, in that the true owner must take proactive steps to stop the adverse use of a right-of-way or else the use can form the basis of a claim for an easement by prescription.

Although disallowing a neighboring farmer to use a right-of-way may not seem like the “neighborly” way to act, once a prescriptive easement has been acquired, the easement will run with the land and can have serious repercussions on the future development potential and land value.
Easement by Prescription

Diagram showing Abel's property and Baker's property with Abel's easement by prescription marked.
**Easement by Prescription**


  Son who had lived on farm as a minor brought action against farm's current owners, claiming prescriptive easement for right-of-way across farm.

  Court of Appeals found a presumption of adverse use does not arise in favor of a person when that person begins to live jointly with and on his or her parents' property as a minor and then continues to live on the property along with his or her parents as an adult unless there is clear and convincing evidence that such a person was residing there (or using a particular right-of-way) against his or her parents' will.

  Court overturned 2 lower courts and found that to rule otherwise could create serious problems for elderly farmers who have farmed their lands including their children in their farming operations and in their family life.

  Such a farmer's ability to sell his land, could be, under the positions taken by the lower courts, severely compromised by children who allege that they have lived with their parents not by permission, but by mere acquiescence.
Adverse Possession

- Don’t let your property boundaries be effected by inattention or inaction!
- Know you’re the actual locations of your property lines and make sure no one else is using your property in a way that could form a claim for AP or an easement by prescription.
- If your property is being used, take action to stop the clock from running.
Thanks
Any Questions?

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