



WYOMING LEGISLATIVE SERVICE OFFICE

Research Memo

06 RM 039R

Date: August 15, 2006

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Re: Adverse Possession Background

QUESTION

Provide background information about “adverse possession” in Wyoming and other select states.

ANSWER

The doctrine of adverse possession¹ is comprised of several elements that may vary from situation to situation, therefore likely resulting in different outcomes in different cases. Without clear direction regarding the specific elements of adverse possession desired for clarification, it is difficult to provide an in depth review. This memo addresses general requirements. There are specific elements that must be met in order to claim adverse possession of real property. Wyoming’s adverse possession law is set forth in W.S. 1-3-103 and 104. Wyoming requires a statutory time period (prescriptive period) of 10 years, ie real property must be held by a possessor for a period of 10 years without interruption and without permission of the actual titleholder. In addition, the actual titleholder must not bring an action for recovery within a 10 year period. Other general considerations are discussed below. In the event an actual titleholder is under a disability (discussed below), Wyoming’s adverse possession law allows for an additional 10 year period for an actual titleholder to bring an action for recovery after any disability has been lifted. A chart provided by the National Conference of State Legislatures (NCSL) about adverse possession laws and basic requirements for all fifty states is included as Attachment A². The information is somewhat dated, but serves to illustrate the range of requirements legislatures (and courts) have elected to impose.³

BASIC ELEMENTS OF ADVERSE POSSESSION

American Jurisprudence (Am Jur) is a set of published treatises that provide broad information on a variety of legal subjects, and is well established and widely used in the legal field. 3 Am Jur 2d, Sections 1 through 312 provides a wealth of information about adverse possession and its elements and requisites. However, only a rudimentary discussion of the main elements of adverse possession will be addressed in this memo.

¹ It is worth noting that adverse possession is not a doctrine that addresses only property ownership between citizens of the state, but also addresses the State of Wyoming’s ability to use adverse possession to build such public necessities as roads.

² Not all information provided about the fifty states’ adverse possession laws provided by NCSL is restricted to statutory provisions. Some provisions are based on case law.

³ This information has not been reviewed and confirmed by LSO staff.

Generally, a possessor must have been in actual, open, visible, notorious, exclusive hostile and under a claim of right or color of title, continuous, and hostile (possession not permitted by actual title holder) possession of the property⁴ for a specified period of time. Possession may pass from one possessor to another through “tacking,” or adding one term of possession by a previous possessor to a subsequent possessor’s term of possession to meet the necessary statutory time limitation within which the actual titleholder may bring an action to recover the property.

Other elements may be considered as well, including use of the property in question, payment of taxes, claim of right or color of title (both on the part of the adverse possessor), easement considerations, and whether or not the actual title holder is under a disability. According to Am Jur, a person under a disability is someone who may be mentally incompetent, aged, or be a minor, for example. If an actual titleholder is under a disability, according to Am Jur, additional time is provided for such a person, after the disability has been lifted, to seek recovery of property after the prescriptive time has run.

ADVERSE POSSESSION REQUIREMENTS IN WYOMING

Wyoming’s statutes are fairly quiet on the topic of adverse possession. A review of many of Wyoming’s court rulings reveal elements of adverse possession are addressed through the courts and not statutory prescription. This is further born out when reviewing Wyoming’s adverse possession statutes. To date, two requirements for adverse possession have been codified in Wyoming’s statutes:

W.S. 1-3-103 addresses the time period within which the recovery of title of property must be sought:

1-3-103. Recovery of real property; generally.

An action for the recovery of the title or possession of lands, tenements or hereditaments can only be brought within ten (10) years after the cause of such action accrues.

W.S. 1-4-104 addresses the time period within which a person under legal disability may bring an action for recovery of real property:

1-3-104. Recovery of real property; legal disability.

Any person entitled to bring an action for the recovery of real property who is under any legal disability when the cause of action accrues may bring his action within ten (10) years after the disability is removed.

Although not a requirement, W.S. 34-1-112 provides that grants and conveyances of property are not considered void simply because of a claim of adverse possession:

34-1-112. Claim of adverse possession not to invalidate conveyance.

No grant or conveyance of lands or interest therein shall be void, for the reason that at the time of the execution thereof, such land shall be in the actual possession of another, claiming adversely.

There have been many court cases over the years that have addressed adverse possession and its various requirements in Wyoming⁵. As a limited illustration of how Wyoming’s courts have ruled on adverse possession, two selected cases are briefly discussed. Many other rulings in this area exist; however, this discussion is intended to illustrate the type of reasoning the Supreme Court has used, not a thorough review

⁴ In this case, and throughout this memo, “property” is intended to mean “real property” only.

⁵ These rulings are referenced in the annotations of W.S. 1-3-103.

of all types of disputes. The most recent of those cases was a ruling handed down in June 2006 by the Wyoming Supreme Court. In *Murdock v. Zier*, 2006 WY 80, the court affirmed the decision of the district court, which found Mr. Zier had gained title of a parcel of land by adverse possession in 1992. However, the Supreme Court upheld the decision on different grounds. Mr. Zier purchased a tract of land in 1991, and later discovered in 1998 that the true boundary line was indeed part of the Murdocks' tract of land. Mr. Zier offered to purchase the parcel of land, but was declined by the Murdocks. According to court record, no further action was taken until 2004. The district court ruled title to this parcel was granted to Mr. Zier through adverse possession for the time period of 1992 to 2004, twelve (12) years after Mr. Zier took possession of the tract of land, including the parcel in question. Although the Wyoming Supreme Court affirmed this decision, its basis was different. It ruled that because the disputed parcel of land had also been used and held by the previous owner of Mr. Zier's tract of land, that "tacking" had occurred, such that adverse possession was actually manifest in 1992.

Another Wyoming Supreme Court case decided in 1986 deals with an oral agreement that moved the actual boundary of the two properties to accommodate a necessary easement for the owners of the northern half of the land to access a road. In *Miller v. Stovall*, 717 P.2d 798 (Wyo. 1986), an oral agreement (never reduced to written note or memorandum) from the Davidsons (then the owners of the southern half, later owned by the Millers) in 1950 had granted to the Hendricksons (then the owners of the northern half, later owned by Ms. Stovall) an easement across the southern portion of the tract of land in exchange for an additional sixty feet of the northern half of the tract. The evidence indicated that when the oral agreement was made, there was never any dispute as to where the actual boundary would have been had the oral agreement not been made. The trial court found that no agreement existed, and in addition, that the appellants (Millers) could not claim "tacking" to perfect adverse possession because the property was not held hostilely. The Supreme Court affirmed the trial court's decision, stating:

In the present case there is no dispute that the only access to the north half of the tract is by crossing the south half retained by the grantors. In fact, it is clear that every occupant of the north half has used the drive over which appellee was granted her easement. The grant of this easement was proper, not in recognition of the alleged oral agreement, but rather in recognition of the implied intent of the grantors, the Davidsons.

The trial court's finding that the alleged oral agreement did not exist is supported by sufficient evidence. We cannot say the court's finding that the Davidsons did not hold the land hostilely was clearly erroneous. Nor have appellants shown that they are entitled to the disputed area under any equitable doctrine.

ADVERSE POSSESSION REQUIREMENTS IN SURROUNDING STATES

Codifying adverse possession requirements is a legislative choice. The typical common law time limitation for bringing an action under adverse possession is 20 years, according to Am Jur. However, Wyoming has codified 10 years as the time limitation for bringing an action under adverse possession. According to information provided by NCSL, the states surrounding Wyoming have somewhat differing requirements for adverse possession:

- ✓ Colorado (Colo. Rev. Stat. 38-41-101 through 212) - prescriptive period is 18 years of uninterrupted possession; the non-title holder must have Color of Title (possessor believes he or she is the actual title holder); must have paid the taxes on the property for 7 years; and the disability extension is 2 years after the disability is lifted.
- ✓ Idaho (Idaho Code 5-203 through 213) – prescriptive period is 20 years of uninterrupted possession; the non-title holder must have Color of Title; must have paid the taxes on the property for 5 years; land must be cultivated or improved for 5 years; and the disability extension is 20 years after the

disability is lifted.

- ✓ Montana (Mont. Code Ann. 70-19-401 through 421) – prescriptive period is 5 years of uninterrupted possession; the non-title holder must have Color of Title; must have paid taxes on the property for 5 years; and the disability extension is 5 years after the disability is lifted.
- ✓ Nebraska (Neb. Rev. Stat. 25-202 and 213) – prescriptive period is 10 years of uninterrupted possession, and the disability extension is 10 years after the disability is lifted.
- ✓ South Dakota (S.D. Codified Laws 15-3-1 through 19) – prescriptive period is 20 years of uninterrupted possession; the non-title holder must have Color of Title; must have paid taxes on the property for 10 years; the disability extension is 10 years after disability is lifted; and improvement or cultivation of land is one way to possess the land⁶.
- ✓ Utah (Utah Code Ann. 78-12-7 through 12; Utah Code Ann. 78-12-20 and 21) – prescriptive period is 7 years of uninterrupted possession; the non-title holder must hold property under Color of Title; must have paid taxes for 7 years; must have cultivated or improved land for 7 years.

Other states' statutory provisions may be reviewed on Attachment A.

If you need anything further please contact LSO Research at 777-7881.

⁶ Many state statutes include protecting the land by a substantial enclosure as indicative of ownership, and is considered another mechanism through which to possess land.