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Finders Keepers (Squatting's Cheaper)

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In the aftermath of the last decade's housing crisis, the antiquated notion of adverse possession has experienced a modest mainstream cultural resurgence. While the possibility of swooping in to usurp ownership of vacant, foreclosed or abandoned homes may be enticing at first blush, is it really worth the wait?

Remember That Weird Thing from Property Class?

Adverse possession was hands down the coolest, most interesting topic in property class. As is most often the case, the best way to understand adverse possession is to start at the beginning: this wacky mechanism dates back to the Code of Hammurabi, written around 2000 BCE! Adverse possession exists because the American legal system, modeled after English law, generally prefers land to be used rather than sit vacant. Put simply, adverse possession applies when a trespasser attempts to claim legal ownership of another's real property based on a history of occupying the land in an open, visible, and continuous manner for a specified period without the legal owner's permission or intervention.

Disseisor's Palace

A party claiming title by adverse possession is known as the *disseisor*, meaning one who dispossesses the property's true owner thereby depriving that owner of possession (*seisen*) of an estate in land (thus "dis-seizing" or dispossessing the original legal ownership).

To succeed on an adverse possession claim, the *disseisor* must generally prove that her possession is: (1) actual; (2) open and notorious; (3) exclusive; (4) continuous; (5) hostile (i.e., adverse).



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Note: the elements may differ among jurisdictions; some states impose additional requirements and many have enacted statutes regulating adverse possession.

The requisite period for adverse possession varies, ranging from a few years in some states to several decades in others. Many jurisdictions provide for a shortened possessory period if a claimant takes certain actions like paying the property's real estate taxes.

How It's Done

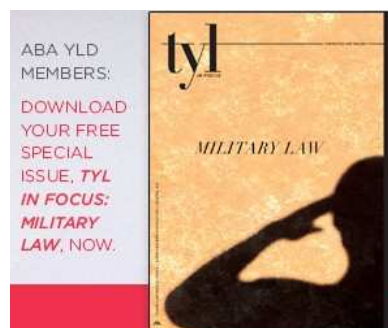
The best way to establish actual possession is to utilize the land physically as a property owner would, based on the property type, location and most common usage. To be open and notorious, the disseisor's actions must visibly change the land so it would be apparent that someone else is using the land if the titled owner visits the property. For residential property, this includes maintenance for intended use, mowing the yard, trimming trees and hedges, changing locks and repairing or replacing fixtures (e.g., swimming pool, sprinklers, or appliances)—all to the true owner's exclusion.

Courts have routinely found the "exclusive" and "continuous" elements are satisfied even when a trespasser takes possession of a vacant home initially but then rents it to a third party. The rationale being that absolute exclusivity is not required, rather the claimant must exclude all persons other than those whom she has given permission (e.g., third party tenants under a lease, whose occupation accomplishes the necessary continuity of possession).

Most states have an objective standard for satisfying the "hostility" requirement, meaning an adverse possessor's state of mind or intent is not considered. In some jurisdictions, however, an adverse possessor must innocently and mistakenly believe that she is the real property's true owner to prevail, as established by: (1) color of title wherein the claimant relies on a written instrument (e.g., a deed), which purports to give title to the real property; or (2) some other evidence that demonstrates the claimant's good faith belief that she was the real property's true owner during the statutory period. Thus, while a party who knowingly takes possession of a vacant, foreclosed or abandoned home by trespass could successfully claim adverse possession in most states, that claim would fail in others.

Easier Said Than Done

In 2012, 23-year-old Andre Barbosa moved into a swanky 7,522 square foot, five-bedroom, waterfront Boca Raton, Florida mansion valued at \$2.5 million. The property had been foreclosed on, was bank-owned, and was vacant for 18 months when Barbosa moved in. Neighbors quickly took notice of Barbosa and his friends partying and contacted police. Barbosa posted a written notice of intent to claim adverse possession to ward off police, and the bank



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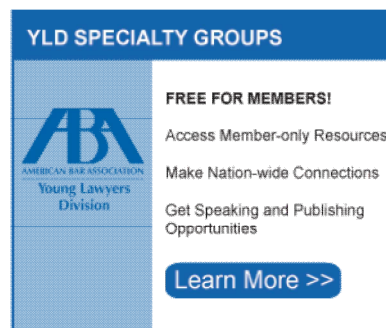
failed to initiate ejectment (eviction) proceedings. Barbosa ultimately stayed in the home for almost six weeks before authorities showed up and changed the locks while he was gone after concluding, notice of intent or not, they could still go after Barbosa for trespassing.

Good Things [Sometimes] Come To Those Who Wait

In March 2018, Vickie and Jeff Francovich were victorious in their adverse possession claim after spending more than five years paying property taxes and utilities on an abandoned house in Reno, Nevada. The 1,620 square foot house was about to go up for auction when the couple jumped at the opportunity to pay the \$6,500 in delinquent property taxes and started fixing it. Having been abandoned for 13 years, the house was dilapidated and uninhabitable due to lack of maintenance, busted pipes, pest infestation and vandalism. In five years, the Francoviches invested at least \$200,000 to make the place livable again. They replaced plumbing and windows, installed new appliances, erected a fence, landscaped the overgrown yard, cleaned and repaired the damaged interior – all the while risking the owner's return at any moment to reclaim the house. Additionally, the Francoviches rented the house to others over the years to demonstrate continuity and treatment of the property as their own. Turns out, the owner had moved to Austria in 2009 and never returned. When she did not appear in court after notice of the adverse possession claim by publication, the owner lost any claim to the house and title was transferred to the Francoviches. Today, the [house's estimated worth](#) exceeds \$500,000!

High-Risk, High Reward

Is it worth pouring money into a house you don't own and then waiting it out? Most of the time, probably not. If, however, you find the right opportunity in a jurisdiction with a relatively short time frame for adverse possession and play your cards just right, you might end up with a full house like the Francoviches.



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