

## Adverse Possession – a Warning to Landowners

### Adverse Possession

Adverse possession claims are on the increase with recent warnings issued to farmers and landowners to check that their land is legally registered to prevent future issues. This is particularly prevalent where owners have many acres, some of which are unchecked, and have lost small sections of that land due to adverse possession laws.

Adverse possession isn't always malicious— it can happen unintentionally. For example, if someone inadvertently builds a fence one foot onto a neighbour's property and starts using the land enclosed by the fence, and nothing is done to stop them. If they are able to satisfy a number of requirements, they may be able to successfully claim adverse possession of that land.

### The Legal Position

Adverse possession allows individuals to acquire ownership of someone else's land through continuous possession / occupation for a particular period of time, even if they do not have the legal title to the land in question.

There are a number of requirements to be met to establish a claim :

1. Uninterrupted possession – the possession of the land must be continuous, exclusive and uninterrupted for a period of 10 years. There is a particular emphasis on exclusivity whereby the applicant must have exclusive control over the land without permission from the legal owner (if the land is registered).
2. Factual possession – the applicant needs to establish physical occupation / control. This can be demonstrated by installing boundaries, maintaining the area and making improvements. Evidence of this will be required to be shown in any application.
3. Adverse intent - the land must be occupied / possessed with the intention to exclude the legal owner without their permission or content.

Given that the nature of these claims vary significantly in terms of facts, location and involve a significant passage of time, each case is fact sensitive and guidance is provided by the courts in case law.

**For more information about how we can help you please contact:**

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Procedurally, if the land is registered then an applicant is required to serve a Notice of Adverse Possession on the legal owner of the land advising them of their intention to claim ownership.

After the 10 year period of adverse possession, the applicant may apply to the Land Registry to be registered as the new owner demonstrating the requirements above with supporting evidence.

This is the trigger point for protracted and potentially costly proceedings in the event negotiations fail.

Whilst there is no guarantee that an application will be successful, particularly if the land is registered correctly, it has the potential to result in stressful situations for landowners. Especially if the landowner wishes to sell or re-mortgage.

The recent warnings and increase in cases and applications highlights the importance of checking boundaries on a regular basis and ensuring the Land Registry's records reflect the actual position in the property's deeds.

Our specialist team, Complete Property Solutions, can provide advice to both applicants and landowners disputing an adverse possession claim. If you wish to discuss with us further, please contact the team on 0800 015 0340 or send details to:

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**For more information about how we can help you please contact:**