Real Estate Matters - ask the real estate lawyer

by Ilyce_Glink

Several months ago, we ran a column about a case involving adverse possession. We thought we'd run a few of the responses in today's column. To read more responses, or to contribute your own anecdotes, please go to www.thinkglink.com/forum.READER: As a trial lawyer, I've probably had 50 adverse possession cases, on one side or the other. I also used to teach real estate finance and every few years one of my students would enhance their property holdings by adversely possessing someone else's property. The adverse possession rules are worth knowing for any serious real estate investor.This is also a big area for legal malpractice since so many lawyers tend to do the absolute wrong thing when consulted by a client complaining of a neighbor encroaching on their property.As the name implies, one of the things a trespasser has to show in order to acquire title by means of adverse possession is that his occupancy was adverse to that of the titled owner.All too often, when a landowner complains to his lawyer that someone is trespassing on his property, the lawyer writes a letter telling the trespasser to get off the property or a suit will be filed. This is the wrong thing to do, as it merely helps the trespasser in establishing the required "adversity."What the lawyer (or landowner) should do is send the trespasser a letter thanking him for taking care of the property and advising that the license to use the property is henceforth revoked (or demand payment of rent if the trespasser wishes to continue staying where he is). If done properly, such a letter is quite helpful in destroying that required element of "adversity," thereby saving the landowner's property.There are some exceptions to the adverse possession rules. You can't adversely possess against public lands or land owned by a government or against certain public utilities. READER: I just read your column about having to adversely possess land for 21 years in order to own it. Be mindful that in California there is an added requirement of having to pay any taxes invoiced, but the period is only five years, and you don't have to pay any other expenses.COMMENT: Our thanks to everyone who wrote about this topic.Adverse possession is the legal term used when a person takes real estate to be his/her own without the consent of the rightful owner. Some states do require the person claiming ownership to a property that he/she knows might not be theirs - or is, in fact, not theirs - to pay the real estate taxes on that land.While adverse possession is hard to prove in urban areas, it can be done. If a home in a city was abandoned and a stranger moved into the home, treated it as his own, paid the real estate taxes and the rightful owner never came around, the stranger would be entitled to keep the home after a certain period of time. In traditional cases, that time period could be up to 21 years. (Some states may require a lesser period of time.)The whole idea behind adverse possession is to let time work in favor of the people who are actually caring for and occupying a piece of land. Just as jewelry and other items of personal property may be lost and unclaimed, the same holds true for land. For example, a person can die owning a piece of land far from where the person lived, and no relatives know about the property. That land sits abandoned until one day someone makes a claim to it. If a relative subsequently finds out about the land, the relative can claim it and kick the trespasser out. But if the trespasser stays put, there's a chance he'll be able to keep the land.The law has incorporated the concept of adverse possession in order to clean up "lost" parcels of land and keep the record-keeping on land clean.That doesn't mean you can move into your neighbor's house when they leave on vacation. That's still a crime. But if a property is abandoned and no one is paying the real estate taxes or taking care of it, the property could be lost by the rightful owner.If you own land, make sure you pay any taxes due, keep a watch on it and kick off any trespasser.(Samuel J. Tamkin is a Chicago-based real estate attorney. Ilyce R. Glink's latest book is 100 Questions Every First-Time Home Buyer Should Ask. If you have questions for them, write: Real Estate Matters Syndicate, PO Box 366, Glencoe, IL 60022 or contact them through Ilyce's website www.thinkglink.com)Â© 2007 by Ilyce R. Glink and Samuel J. Tamkin. Distributed by Tribune Media Services.