

by *Ilyce_Glink*

Q: When we purchased a farm 13 years ago, we assumed the existing fence was the boundary line. The farm next to us was sold last year. That's when we found out that our neighbor had been using a portion of our land. The beginning of the neighbor's driveway is on our land. A developer bought the neighboring farm and is having the land annexed into the city. The developer claims the portion of our land is actually his because it was used that way for over 30 years. My question is, since the land was sold as a parcel to be surveyed, and it's being annexed into the city, does he have squatter's rights? A: It may well be that your former neighbor owned land that you now realize was part of your property. For the last 13 years, you believed the boundary line of your land was at the fence line. However, if you'd done a proper survey 13 years ago, you would have known the actual boundary. There's a concept in law called adverse possession. Adverse possession allows one party to become the owner of someone else's property if they use the property in an open manner and contrary to the rightful owner's rights. If the neighbor pays real estate taxes, uses the land and keeps it as his own for a certain period of time - as many as 21 years in some states, fewer in others - that person is allowed to keep the land forever as his own. It's unclear, however, whether the circumstances you outline in your letter rise to the level of adverse possession. Your neighbor must have used the land as his own. By your own admission, your neighbor did so. You didn't even know you owned this land. If the new owner and the prior owners used the land in the same manner, they could claim they own it. However, the new owners will have to prove that they, and the prior owners, used the land without your permission, did not hide that fact, and used the land uninterrupted for the last 20 years. If, as they claim, they have used this land for 30 years, you might be out of luck. But don't give up hope. Consult an attorney with experience in adverse possession cases and find out how to poke holes in your neighbor's claim. If there's a document of record that granted your neighbor permission to use the land in question, that could defeat the claim. If the prior owner of your own property gave the neighbor permission to use the land and can verify granting such permission, then it's only been in the last 13 years that the neighbor has had a claim of adverse possession. This is not the required minimum number of years in most states. Finally, did the neighbor pay property taxes on the parcel in question, or have you been paying taxes on the land? These are the issues you need to cover with your real estate attorney. Q: What happens when you sell an investment property at a loss? Can the loss be claimed on your federal or state income taxes? On an income tax return, can you deduct rental and management company fees? A: How rental properties affect income taxes can be tricky. As a general rule, costs relating to the ownership, maintenance and leasing of your property offset any income from the property. If you have costs that exceed your income, you have a loss. If real estate is your full-time profession, you can fully deduct the loss from your income taxes. If you're not in real estate, you'll be limited in the amount of money you can deduct as a loss from your income taxes. Consult an accountant to help you sort out all of your expenses and determine the loss from your investment property. © 2006 by Ilyce R. Glink and Samuel J. Tamkin. Distributed by Tribune Media Services.

Bend Oregon, Central Oregon, Bend Weekly

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