

THIS LAND IS MY LAND...OR IS IT?

THE RISK OF ADVERSE POSSESSION IN ALBERTA

BY ALEX KENNEDY

Many people assume that when they buy a piece of land, they own that land, and it cannot be taken away from them unless they fail to pay their debts. Unfortunately, that is not true. One way that land rights can be lost is through expropriation. But another way is through adverse possession, otherwise known as ‘squatter’s rights’.

Alberta is one of the few provinces in Canada that continues to recognize adverse possession. There are good philosophical reasons for this, but we have yet to meet a client who was interested in a discussion of the philosophy of real property law when facing the prospect of losing some part of their land.

In Alberta, adverse possession generally requires (among other things) that the person wishing to take the land in question must have openly and exclusively occupied it for at least ten years even though they did not own it. One of the most common ways this occurs is with a misplaced fence – a fence that is not on the correct boundary between two parcels may create an adverse possession and allow the owner of one of the parcels to “expand” up to the fence. That said, even farming, grazing animals, or cutting down trees up to an unmarked boundary could be enough to establish the necessary possession.

From another point of view, the party seeking adverse possession may feel that they have been treated unfairly. The landowner may have purchased the parcel in question based on presumed boundaries marked by fences or landscaping, only to discover that a new survey has disclosed that they are not entitled to what they thought.

In many situations, landowners are knowingly allowing neighbours or others to use their land free of charge. Even in these informal situations, it is important to have a written document outlining that both parties accept the boundary between the parcels, and that there is a permitted use. The arrangement can be formalized by registering an easement that would prevent future adverse possession. Adverse possession of an easement is not permitted in Alberta.

If you think that some of your land is at risk for adverse possession, or if you feel that a survey does not include all of the land you thought you purchased, you should contact a lawyer as soon as possible. Adverse possession is highly time-sensitive, and the sooner you take steps to protect your rights, the better.

If you are purchasing a property, it is worth investing in a full Survey or a Real Property Report, depending on the kind of parcel you are buying. A new purchase can reset the clock on the 10 year period, although it may not, depending on the facts. If, for example, you find a fence on your property does not match the boundary line, it is important to know right away so that you can address it – ten years passes fast!

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This handout is intended to give general information only. We recommend you contact a lawyer for specific legal advice.