

A
Compendium On
ADVERSE POSSESSION IN THE STATE OF
MASSACHUSETTS
AND ITS
APPLICATION TO MUNICIPAL LAND

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ABSTRACT

Research conducted will result in a final report intended to be published with the Massachusetts Association of Land Surveyors and Civil Engineers (MALSCE). This report looks to address common practice for surveyors in the state of Massachusetts as it relates to adverse possession and the state adherences pertaining to these laws. The research aims to provide clarity to surveyors within the state on the challenging question of municipal land and how our profession should address these conflicts on a statewide level. The research additionally aims to provide land surveyors with an insightful comparative analysis between adverse possession laws and eminent domain situations.

DEDICATION

To my mother, who had it not been for her guidance, support and insightful wisdom, I would not be fortunate enough to stand where I am professionally, and continue to grow with bright eyes and open ears. In birthday tradition:

***Make** all your wishes come true*

ACKNOWLEDGEMENTS

The efforts of this report would not be made possible without the help of Professor Hermansen and the University of Maine. Both the depth of knowledge provided through lectures and meetings as well as the structure provided to succeed in formulating this paper have created a harmonious work environment to produce a report which I hope exerts brevity while demonstrating its values to the industry. Thank you to The University for providing opportunities far and few in our industry of land surveying to broaden the horizon of surveyors and continue to raise the bar on our level of integrity and accountability within the profession.

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I: INTRODUCTION

A typical challenge in land ownership is the struggle of identifying the limits of what is truly owned. While resources exist to clarify these regions in more straight-forward examples, exceptional cases exist that lead to confusion and, commonly, dispute. The laws of adverse possession often become clouded in the so-called gray area of property rights. While not necessarily expected to the same extent as lawyers, land surveyors are still tasked with comprehending these laws and identifying potential cases in the field as they arise, and just as importantly, where exceptions eliminate these concerns. The ability of the land surveyor to comprehend the statutes and regulations of adverse possession, particularly in understanding the regulations applicable to municipal land are vital for the industry. While clarity of the law may never be absolute, establishing general comprehension allows the surveyor to provide assured decision-making and communication to mitigate dispute and aid the land owner.

II: ELEMENTS OF ADVERSE POSSESSION IN MASSACHUSETTS

To effectively meet the criteria of Adverse possession, the court will look to assess a handful of elements, all of which must be satisfied in order to establish a clear and convincing case.

“Actual, adverse and exclusive possession, so open and notorious that it may be presumed to have been known to the rightful owner”¹

2.1 ACTUAL

In order to achieve adverse possession, the act of occupancy must be done through actual possession of the land as opposed to merely showing color of title² or paying taxes on a property.

¹ *Poignard v. Smith*, 23 Mass. 172, 6 Pick. 172, 178 (1828)

² *Norton v. West*, 8 Mass. App. Ct. 348, 394 N.E.2d 1125, (1979)

Demonstrating actual possession differs from case to case and determination of activities meeting such adverse requirements is inherently fact specific³. For example, when the land in question is determined as woodland area, it is generally required that the occupant “establish that the land [be] enclosed or reduced to cultivation.”⁴

2.2 OPEN & NOTORIOUS

Adverse possession will only meet compliance if “the nature of the occupancy and use... be such as to place the lawful owner on notice that another person is in occupancy of the land, under an apparent claim of right”⁵. Notice to the usage does not make exception to negligence and unawareness. It is made clear in ruling that “there is no requirement that the true owner be given explicit notice”⁶

Open, notorious use can be demonstrated through plans recorded at the registry. While not appearing visually open when compared to occupation of land, it can be argued that

“[a]n assessor's plan, which shows the particular lot in connection with all neighboring lands, affords a definite and accurate description. It is easily found. It is open to public inspection at reasonable times under rational limitations. ... As a practical matter it affords quite as certain and accessible information to anybody in interest as does a plan in the registry of deeds.”⁷

Establishing open usage of the land does not equate to intentional mal-use of the property, merely that the land is evidently being used.

Utility services in an adverse possession claim tend to have more ambiguity as they relate to open usage due to their subsurface nature. Evidence in this case must be proven by above ground structures being present such as a utility pole or manhole structure that can be clearly identified.⁸

³ *LaChance v. First Natl. Bank & Trust Co.*, 301 Mass. 488, 490, 17 N.E.2d 685 (1938).

⁴ *Young v. Freeman*, 2009 Mass. Super. LEXIS 336

⁵ *Ibid.*

⁶ *Lawrence v. Town of Concord*, 439 Mass. 416, 788 N.E.2d 546 (Mass. 2003)

⁷ *Larsen v. Dillenschneider*, 235 Mass. 56, 57, 126 N.E. 363 (1920).

⁸ *Foot v. Bauman*, 333 Mass. 214, 129 N.E.2d 916, 1955 Mass. LEXIS 555, 55 A.L.R.2d 1139 (Supreme Judicial Court of Massachusetts November 8, 1955, Decided)

2.3 EXCLUSIVE

For a case of adverse possession to benefit a claimant, the individual must demonstrate “complete control of the property.”⁹ Exclusivity implies that no other parties, including the legal owner being adversely affected, are accessing the area in question. Any evidence of the area in question being shared will invalidate the claim.

2.4 CONTINUOUS

Adverse possession requires that the use of the property is demonstrated as a continuous use and not one of sporadic¹⁰ nature. Seasonal or repetitive yet sparse action’s raise debate but will generally be ruled as inadequate in meeting the continuous nature of adverse possession.¹¹ Accordingly, even the “clearing of the land of all trees, on a single occasion, is inadequately continuous to satisfy the requirements for adverse possession.”¹²

If there are signs of abandonment, or long stretches of non-usage, a claim may be considered moot for that period of time.

2.4 ADVERSE/HOSTILE

Hostile use in the way of adverse possession does not necessarily imply a violent or physical altercation but rather non-permissive use of the land which negatively impacts the real owner. The term generally used to address this action is known as disseisin.¹³

2.5 DURATION

With durations varying from state to state, Massachusetts requires a statutory period of 20 years in order to achieve adverse possession.¹⁴ In order to put an end to time being counted towards the possession, the landowner being adversely effected must openly oust the person occupying the land. An ousting will reset the 20 year count back

⁹ Cole, George M. *Surveyor Reference Manual*. PPI, Professional Publications, Inc, 2019.

¹⁰ *Daley v. Swampscott*, 11 Mass. App. Ct. 822, 421 N.E.2d 78, (1981)

¹¹ *Hooper v. Town of Rockport*, (4 LCR 162)(1996)

¹² *Young v. Freeman*, (2009 Mass. Super. LEXIS 336)

¹³ *Cook v. Babcock*, (65 Mass. 206) (1853)

¹⁴ MGL c. 260, § 31

to the beginning. Dismissal of these rules can be found when “there is evidence of fraud on the part of the adverse possessor.”¹⁵

The duration of time can be further extended beyond that of a single occupant through the rules of privity and tacking.

2.5.1 PRIVITY

Privity is a term considered when there is “some relation between the successive users of such a nature that the use by the earlier user can fairly be said to be made for the later user”¹⁶ An adverse possession claim can still be considered if “several periods of successive adverse use by different persons [have been made] provided there is privity between the persons making the successive uses.”¹⁷

2.5.2 TACKING

To meet the twenty year requirement of adverse possession that the state of Massachusetts requires¹⁸, a method referred to as tacking may be applied. Tacking allows the claimant of adverse possession to *tack* on the amount of years in which they personally alongside their predecessors in title “together held possession”¹⁹. Through tacking, even if the claimant may not have occupied the land for the necessary time period to adhere to adverse possession, if the claimant is able to include their predecessors occupation “to form the twenty years necessary for acquisition of title by adverse possession”²⁰, the adherence to the element of duration may stand.

The use of tacking must be continuous and will not allow for possessors to *leap-frog* over an ownership in which possession was not retained or was permissive.²¹

¹⁵ *Lawrence v. Town of Concord*, 439 Mass. 416, 788 N.E.2d 546 (Mass. 2003)

¹⁶ *Ryan v. Stavros*, 348 Mass. 251, 203 N.E.2d 85, (1964)

¹⁷ *Ibid.*

¹⁸ MGL c. 260, § 31

¹⁹ *Wishart v. McKnight*, 184 Mass. 283, 68 N.E. 237, (1903)

²⁰ *Kershaw v. Zecchini*, 342 Mass. 318, 173 N.E.2d 624, (1961)

²¹ *Giombetti Clue Props., LLC v. Difronzo*, 22 LCR 501, 2014 Mass. LCR LEXIS 167 (Massachusetts Land Court November 7, 2014, Decided).

With regards to rental situations, in the case of a tenant on a property, “the adverse possession...may be tacked to that of the landlord”²² for as long as they have been in possession.

2.8 REGISTERED LAND (LAND COURT)

The State of Massachusetts is a Land Court State. The purpose of Land court is to “bind the land and quiet the title thereto and...be conclusive upon and against all persons whether named in the proceedings or not, subject to few and immaterial exceptions.”²³

A more rigorous process than the typical recording, Land Court allows for an “exclusive, original jurisdiction over the registration of title to real property and over all matters”²⁴ looking to manage “disputes concerning such title subsequent to registration.”²⁵ While an owner in Massachusetts still has the ability to record their land through the registry without filing with Land Court, the benefits of the latter prove beneficial in defining “real property”²⁶ and preventing disputes of adverse possession.

Once a parcel has been registered through the Massachusetts Land Court, “No title... or easement or other right therein, in derogation of the title of the registered owner, shall be acquired by prescription or adverse possession.”²⁷ The ability of the Court to exercise superintendency authority²⁸ provides the land owner with an added level of security in knowing that their established property cannot be acquired without quitclaim/purchase.

Along with the benefit of avoiding an adverse possession claim on property, registered land will additionally reject the implication for a “right of way by necessity”.²⁹

²² *Holmes v. Turner's Falls Lumber Co.*, 150 Mass. 535, 23 N.E. 305, 1890 Mass. LEXIS 327 (Supreme Judicial Court of Massachusetts January 4, 1890, Decided)

²³ *Tyler v. Judges of Court of Registration*, (175 Mass. 71)

²⁴ “Land Court Registered Land Resources.” *Mass. Gov*, www.mass.gov/guides/land-court-registered-land-resources.

²⁵ *Ibid.*

²⁶ *Ibid.*

²⁷ MGL c. 185, § 53

²⁸ “Land Court Registered Land Resources.” *Mass. Gov*, www.mass.gov/guides/land-court-registered-land-resources.

²⁹ MGL c. 185, § 53

III: BURDEN OF PROOF FOR ADVERSE POSSESSION

3.1 CLAIMANTS BURDEN

Acquisition of title through adverse possession is a fact, to be proved by the one asserting the title.³⁰ Adverse possession cases are structured as to benefit the person adversely possessed unless proof of adverse possession can be proven beyond a reasonable doubt, that is, to have “abiding conviction, to a moral certainty, that the charge is true.”³¹ To effectively defend a case of adverse possession, all the aforementioned elements must be satisfied by the occupant. If any of these elements are left in doubt, the claimant cannot prevail.³² The burden of proof extends to all of the necessary elements of such possession and includes the obligation to show that it is actual, open, continuous, and under a claim of right or title.³³

A commonly assumed counter-argument by the member who was adversely possessed is to claim a lack of knowledge as to what is in their rightful possession. An owner's knowledge of its interest is not an element of proof of a claim of adverse possession, and an owner's lack of knowledge of ownership is not a defense to such a claim.³⁴ Neither mutual mistake nor unilateral misunderstanding concerning boundary location, examples of ignorance of ownership, will defeat claim of adverse possession.³⁵

In the case of a once hospitable relationship between neighbors, it is prudent that the adverse claimant “show by clear evidence that the use has shifted at some point from permissive to adverse, so as to put the owner on clear notice that he should take steps to protect his rights.”³⁶

³⁰ *Holmes v. Johnson*, (324 Mass. 450) (1949)

³¹ MGL, Instructions 2.180 *Proof beyond a Reasonable Doubt*

³² *Holmes v. Johnson*, (324 Mass. 450) (1949)

³³ *Ibid.*

³⁴ *Lawrence v. Town of Concord*, 439 Mass. 416, 788 N.E.2d 546 (Mass. 2003)

³⁵ *Ibid.*

³⁶ *Ibid.*

IV: LAWS ON MUNICIPAL LAND

4.1 ADVERSE POSSESSION ON MUNICIPAL LAND

Within the state of Massachusetts, the law states “no person shall acquire any rights by prescription or adverse possession in any lands or rights in lands held in the name of the commonwealth.”³⁷ To further establish this law, the state senate filed a docket in 2009 stating the following:

“No possession, no matter how long it is continuous, open, notorious, exclusive or adverse, of any land, water, water rights, easements, or other property whatsoever dedicated to or owned by the Commonwealth or any county, city, town, public, quasi-public, municipal or quasi-municipal, corporation, division or political subdivision, shall ever ripen into any title against the said Commonwealth or any county, city, town, public, quasi-public, municipal or quasi-municipal, corporation, division or political subdivision.”³⁸

4.2 RAILROAD CORPORATIONS

In addition to public land held in the name of the commonwealth, exception is made to the railway corporations, stating “No length of possession or occupancy of land, which belongs to a railroad corporation, by an owner or occupier of adjoining land shall create in him... a right to such land of the corporation.”³⁹

4.3 PRIVATE DEVELOPMENT FOR URBAN RENEWAL

When a private developer receives sale of land with intention to develop the land for urban renewal, as has been shown in the case of Washington Park by the Boston Redevelopment Authority, the judicial system recognizes “The importance to the public in the redevelopment of blighted areas and in housing construction”⁴⁰ and will set a precedent to allow this development to occur unimpeded. In the case of adverse possession, this land is treated publicly even though it may stand under private title. The law is clear that the sale of land to a private developer in an urban renewal project does not negate an urban

³⁷ MGL c. 7C, § 32

³⁸ S.B. S.2480, 186 (2009-2010), (Mass. 2009)

³⁹ MGL c. 160, § 88

⁴⁰ *Aaron v. Boston Redevelopment Auth.*, 66 Mass. App. Ct. 804, 850 N.E.2d 1105, (2006)

renewal plan's public purpose. Disposition to a private redeveloper of property acquired pursuant to a valid plan may be necessary to achieve the public purpose.⁴¹

4.4 BRIDGES AND ROADS

Adhering to the state laws which state “no person shall acquire any rights by prescription or adverse possession...in lands held in the name of the commonwealth”⁴², the same regulations are extended to public roadways and right of ways, including such public structures as bridges.

In rare yet evident examples in which public bridges are required to access otherwise non accessible properties, the removal of the bridge will not fall into the category of adverse possession even if all other elements are satisfied. Due to the public nature, the bridge “conveys no estate in land and creates no easement of access to the building by implication.”⁴³ A private right of way cannot be acquired by adverse use in travelling over a bridge while it is a public highway.

4.5 PUBLIC MAINTENANCE

Adverse possession may not be met if an action is considered to be done as an act of public service to better the region and/or community. Public services by the state, town, or commonwealth to handle public nuisances (extinguishing a fire, spraying poison ivy) on private property, even if repetitive, does not constitute adverse possession.⁴⁴

V: ALTERNATE CLAIMS BY STATE/MUNICIPAL ENTITIES

5.1 EMINENT DOMAIN

Unlike adverse possession in which all the aforementioned elements have to be met in order to claim possession, government entities have the ability to exercise their right of obtaining property for public use through eminent domain. An order of taking by eminent domain may be conducted as long as it contains “a description of the land taken

⁴¹ *Aaron v. Boston Redevelopment Auth.*, 66 Mass. App. Ct. 804, 850 N.E.2d 1105, (2006)

⁴² MGL c. 7C, § 32

⁴³ *Chelsea Yacht Club v. Mystic River Bridge Authority*, 330 Mass. 566, (1953)

⁴⁴ *Hooper v. Town of Rockport*, 4 LCR 162, (1996)

sufficiently accurate for identification,...the interest therein taken and the purpose for which such property is taken.”⁴⁵ Contrary to adverse possession, eminent domain requires the affected owner “receive a reasonable compensation”⁴⁶ for the taking of their land through the form of a paid fee. Additionally, the “possession” of the land obtained may only be used for public purposes such as roadways, bridges, public buildings and utilities, not for the benefit of private ownership enjoyment.⁴⁷

Along with government bodies exercising their power of eminent domain on the land of private land owners, “A city or town may purchase land in another town for municipal purposes”⁴⁸ as well.

Unlike eminent domain ruling, land is not considered “taken” for a fee by the state/town/commonwealth if acquired through the process of adverse possession. No compensation is necessary if adverse possession is determined.

VI: CONCLUSION

Municipal land faces different regulations from the typical adverse possession case. The benefit of lacking any negative impact as an adversely affected landowner while standing to benefit in the case of their own occupation of another’s land tilts the scales and adds an additional wrinkle to the regulations which already contain minor ambiguities. Municipal land is bountiful throughout the state of Massachusetts and it is practically inevitable that land surveyors will encounter an abutting property owned by state or municipal entities. While still garnishing a mild gray area, having land surveyors educate and adhere to the rules of construction laid out within the state regulations and judiciary practice provides a strong backbone for identifying potential issues as they arise on project sites. While never perfect, the ability to recognize, at minimum, the potential for concerns or lack thereof on a site and convey these points with conviction and clarity to clients allows for resolution to disputes before they advance beyond the land surveyor.

⁴⁵ MGL c. 79, § 1

⁴⁶ Massachusetts Constitution, Article X

⁴⁷ *Benevolent & Protective Order of Elks, Lodge No. 65 v. Planning Bd. of Lawrence*, 403 Mass. 531, 531 N.E.2d 1233, (1988)

⁴⁸ *Cerel v. Framingham*, 342 Mass. 17, 171 N.E.2d 840, (1961)

BIBLIOGRAPHY

STATUTES

- MGL. c. 7C, § 32
- MGL c. 160, § 88
- MGL c. 185, § 53
- MGL c. 260, § 21
- MGL c. 260, § 22
- MGL c. 260, § 28
- MGL c. 260, § 31
- MGL c. 79, § 1
- Massachusetts Constitution, Article X
- S.B. S.2480, 186 (2009-2010), (Mass. 2009)
- MGL, Instructions 2.180 *Proof beyond a Reasonable Doubt*

APPELLATE CASES

- *Poignard v. Smith*, 23 Mass. 172, 6 Pick. 172, 178 (1828)
- *Norton v. West*, 8 Mass. App. Ct. 348, 394 N.E.2d 1125 (1979)
- *LaChance v. First Natl. Bank & Trust Co.*, 301 Mass. 488, 490, 17 N.E.2d 685 (1938).
- *Young v. Freeman*, (2009) Mass. Super. LEXIS 336
- *Lawrence v. Town of Concord*, 439 Mass. 416, 788 N.E.2d 546 (2003)
- *Larsen v. Dillenschneider*, 235 Mass. 56, 57, 126 N.E. 363 (1920).
- *Foot v. Bauman*, 333 Mass. 214, 129 N.E.2d 916, (1955)
- *Daley v. Swampscott*, 11 Mass. App. Ct. 822, 421 N.E.2d 78, (1981)
- *Hooper v. Town of Rockport*, (4 LCR 162) (1996)
- *Cook v. Babcock*, (65 Mass. 206) (1853)
- *Ryan v. Stavros*, 348 Mass. 251, 203 N.E.2d 85, (1964)
- *Wishart v. McKnight*, 184 Mass. 283, 68 N.E. 237, (1903)
- *Kershaw v. Zecchini*, 342 Mass. 318, 173 N.E.2d 624, (1961)
- *Giombetti Clue Props., LLC v. Difronzo*, 22 LCR 501, (2014)
- *Holmes v. Turner's Falls Lumber Co.*, 150 Mass. 535, 23 N.E. 305, (1890)
- *Tyler v. Judges of Court of Registration*, (175 Mass. 71), (1899)
- *Holmes v. Johnson*, (324 Mass. 450), (1949)
- *Aaron v. Boston Redevelopment Auth.*, 66 Mass. App. Ct. 804, 850 N.E.2d 1105, (2006)
- *Chelsea Yacht Club v. Mystic River Bridge Authority*, 330 Mass. 566, 116 N.E.2d 153, (1953)
- *Gentili v. Sturbridge*, No. 23-P-1414 Mass. App. Ct. Sep. 19, (2024)
- *Benevolent & Protective Order of Elks, Lodge No. 65 v. Planning Bd. of Lawrence*, 403 Mass. 531, 531 N.E.2d 1233, (1988)
- *Cerel v. Framingham*, 342 Mass. 17, 171 N.E.2d 840, (1961)

ADDITIONAL DATA SOURCES

- Land Court Registered Land Resources.” *Mass.Gov*, www.mass.gov/guides/land-court-registered-land-resources.
- Cole, George M. *Surveyor Reference Manual*. PPI, Professional Publications, Inc, 2019.

APPENDIX A: ABOUT THE AUTHOR

Schuyler is an active graduate student at The University of Maine working towards a Masters of Science in Surveying Engineering Technology. Schuyler received a Graduate Certificate in Surveying Engineering Technology from the University of Maine in 2023 and a Bachelors of Science in Civil Engineering in 2019 from the University of Vermont.

Schuyler is currently employed as a project land surveyor at Crocker Design Group in the state of Massachusetts, specializing in site plan and boundary surveys for commercial site-civil design. His current goals are achieving professional licensure in the state and becoming a project manager for the firm.