

Homeowner's guide to

# Adverse Possession

PROTECT YOUR  
BOUNDARIES

Understanding Land  
series: 02



# Homeowner's Guide to Adverse Possession

## WHAT IS ADVERSE POSSESSION?

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Adverse possession is a legal process that provides a mechanism for one property owner to claim a portion of another's land as a result of longstanding use.

## ARE SOME PROPERTIES MORE SUSCEPTIBLE TO ADVERSE POSSESSION THAN OTHERS?

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Yes they are. Over the past 30 years or so, most properties in Ontario have been "moved" from the old Registry System to the new Land Titles system. This administrative move has afforded property owners many benefits, not least of which is protection against neighbours "stealing" land through adverse possession.

However, older properties whose existence predates their conversion to the Land Titles system are generally more susceptible. Furthermore rural properties with long boundaries (as opposed to standard rectangular subdivision lots) are more susceptible simply because their boundaries are longer and often not visibly marked with fences and walls.



### ASK THE BOUNDARY BOSS

**Q: Is Adverse Possession the same as Squatters Rights?**

**A:** Yes it is. "Squatter's rights" is the informal name sometimes used for adverse possession.

## HOW DOES ADVERSE POSSESSION WORK?

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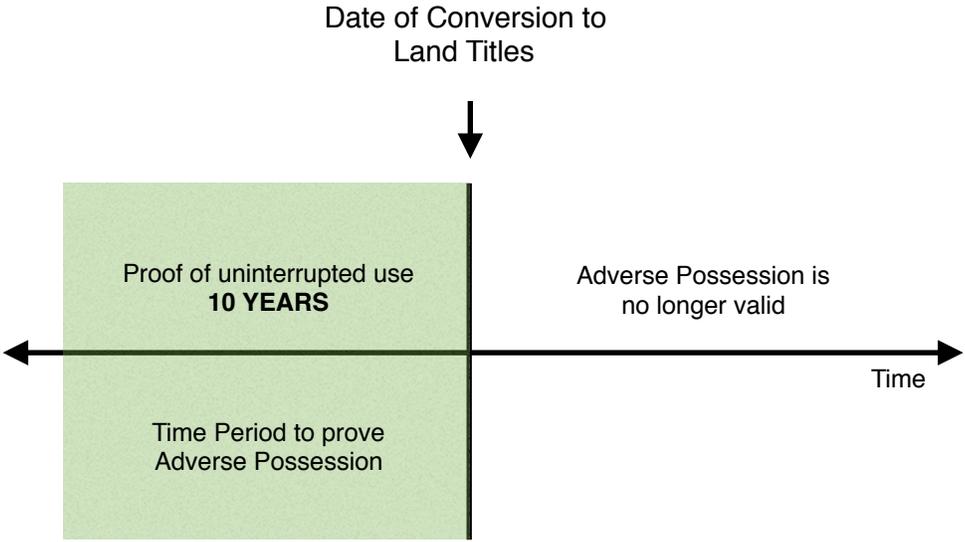
If a property was created and registered directly into the Land Titles system, then no adverse possession claims can be made against it, no matter how long a neighbour claims to have been using a piece of that property's land.



Most properties, however, originated in the old Registry System and have been subsequently migrated to the new Land Titles system.

The rules of adverse possession for these properties hinge on that date of conversion and are as follows:

- a) Once a property is converted to Land Titles, it is immune from adverse possession claims from that date forward.
- b) Anyone claiming adverse possession on that property must prove continual and uninterrupted use of the land being claimed for a period of ten years *prior to the date of conversion to Land Titles*.



*Graphic showing proof period of Adverse Possession Claim*



## BURDEN OF PROOF IS ON THE CLAIMANT

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This means that to make a claim against a property that was converted to Land Titles in 1990, the claimant must prove use of that land from at least 1980 to 1990. The burden of proof rests entirely with the claimant, and it's a heavy burden at that. The claimant has to convince a court that they have used that piece of land continuously and uninterrupted for 37 years, and at the exclusion of the rightful owner.

Generally speaking the more time elapses from the date of conversion, the tougher it becomes to make a convincing adverse possession claim.

## HOW DO I MAKE AN ADVERSE POSSESSION CLAIM?

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Contact a lawyer who specializes in land law. But before you waste your time and money, make sure you know when the property you're making a claim against was converted to Land Titles (or if it always was in LT), and that you have rock solid evidence to support your claim.

## RESOURCES

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Protect Your Boundaries (n.d.). online survey plans, tools and great information on property boundaries. Retrieved from: [www.protectyourboundaries.ca](http://www.protectyourboundaries.ca)

Weisleder, Mark (2013). [You can still lose land through squatter's rights](#). Toronto Star.

Teranet (n.d.). [Land registry system in Ontario](#). Retrieved from: [www.teranet.ca](http://www.teranet.ca)