

## Adverse Possession

Many types of disputes can arise [between Colorado neighbors](#). But perhaps none is more concerning than one that could strip you of your ownership of a portion of your property. As a property owner in Colorado, you likely have two or three neighbors whose land borders yours. While it might seem surprising, those neighbors might, under rare circumstances, be able to gain legal title to pieces of your property under a legal concept called adverse possession. And while less likely, the law also allows an unknown trespasser to squat on your land and develop a claim to ownership.

To make sure that your land remains yours and that a neighbor can't claim a portion of it, you should familiarize yourself with Colorado's rules on adverse possession. There might also be times when you yourself need to assert an adverse possession claim, over land that you feel you've developed a right to use and want to continue using.

## Background on Adverse Possession Principles

[Adverse possession](#) is a legal concept that allows a trespasser—sometimes a stranger, but more often a neighbor—to gain legal title over the land of the property owner. The concept developed in long-ago Britain, but continues to be used to achieve a fair result when one owner has let a piece of land go idle or unused while another has been tending to or living on it for so long that to make the trespasser leave would actually create hardship.

Adverse possession in Colorado is controlled by statute (laws passed by the state legislature, namely [Colorado Rev. Stat. § 38-41-101](#)) as well as by the state courts.

## Colorado's Requirements for Adverse Possession

As in most states, adverse possession in Colorado is established from the nature of a trespasser's possession and the length of time the person possesses the land. A trespasser's possession must be:

- hostile (against the right of the true owner and without permission)

- actual (exercising control over the property)
- exclusive (in the possession of the trespasser alone)
- open and notorious (using the property as the real owner would, without hiding his or her occupancy)
- continuous for the period set by state statute (which is ordinarily 18 years), and
- accompanied by a good faith belief that the person possessing the property was its actual owner, which belief was reasonable under the circumstances.

Even a losing property owner isn't completely out of luck under Colorado law, however. The court can order the adverse possessor to pay damages, including compensation for the loss of the property measured by its most recent valuation for property tax purposes, and reimbursement for property taxes paid on the land.

Pretend that Fred and Jill live next to one another in Denver. There is no dividing fence or boundary between their yards. Fred builds a shed that is actually on Jill's side of the property, thinking it's his. He covers about ten square feet of earth. Jill doesn't say anything. Fred uses the shed as if it were his own for 18 years. Under the rubric described above, Fred can probably establish that he "owns" the land on which he was encroaching. Jill could have stopped Fred by asking, over those 18 years, that he remove his shed, or insisting that he sign a [rental agreement](#). But Colorado courts won't necessarily let Jill suddenly eject Fred after she sat on her rights for nearly two decades; though they might make Fred pay something for the transfer.

## **Possession of Land Under "Color of Title" Shortens the Statutory Period to Seven Years**

Normally, an adverse possessor must occupy the subject land for at least 18 years. However, there is an exception under [Colorado Rev. Stat. § 38-41-106](#). If the possessor has "color of title"—which essentially means some sort of

official government document that states that he or she is the owner—then the person needs to have only seven years of occupation. For example, if the trespasser actually paid property taxes on the land, this would qualify.

## **Bringing Action Against Trespasser to Quiet Title**

What should you do if you spot a trespasser or a neighbor encroaching on your land? Chances are, it's an innocent mistake on the person's part. Given that, your first step should be to ask the trespasser to move and to remove any structures or property that he or she placed on your land.

If the trespasser does not comply, you might be forced to consult a lawyer and bring an action to quiet title—a legal method for determining who holds title to land. In an action to quiet title, you're asking a Colorado state court judge to issue an order declaring that you, and not the trespasser, are the true owner of the land.

A quiet title order is particularly helpful if you are intending to sell your property, and will need to reassure potential buyers about its boundaries and rightful ownership.

## **No Adverse Possession Claims Against Government Land**

Land held by Colorado state and municipal government entities are generally immune from adverse possession actions. In other words, title to public lands generally can't be acquired by adverse possession as against the state of Colorado. So, if you live next to an unused stretch of Castlewood Canyon park, you won't be able to expand your backyard merely by mowing the lawn and waiting 18 years. The state of Colorado will still "own" that land.