



Weekly Information Sheet 11

Real Property – Estates in Land

Interests in Land Continued

Non Possessory Interests - Defined

“Possessory Interests”, are interests in real property that either are, or will be (pre-vested interests) possessed by the holder of the property.

“Non Possessory Interests”, are interests in real property interests where the holder of such interest does not ever actually possess the property. It is the right to use land possessed by someone else.

Types Non Possessory Interests

- **Easements** - The right to use a tract of land for a specific purpose
- **Profits** - The right to enter a tract of land and take the soil or a substance of the soil
- **Covenants** - A written promise to do (or not do) something on a tract of land
- **Servitudes** – A unwritten covenant enforced by equity (for fairness)

Types of Easements

- **Affirmative** - Allows a non possessor to use land
- **Negative** - Prevents possessor from a specific use
- **Appurtenant** - Permits an adjoining landowner a specific use
- **In Gross** - Permits a use by a non adjoining landowner

Methods of Creation of Easements

- **Express grant**
- **Express reservation**
- **Implication, and**
- **Prescription.**

Special Circumstances

Easements:

- **Create a right to use land that is possessed by someone else;**
- **Can be held for a term any length; and**
- **Are subject to the statute of frauds – i.e., Need to be in writing**

(An exception to this last rule is an easement by prescription, which is an easement taken by adverse possession)

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Fixtures

Generally:

- A **“fixture”** is a chattel (a piece of personal property) that has been affixed to land, and as such has ceased being personal property, and has become part of the realty.

Common Fixtures:

- **Stoves**
- **Affixed flat screen TV's**
- **Curtain Rods**
- **Door Keys**

Challenging Items:

- **Flat Screen TV's;**
- **In Room Air Conditioners;**
- **Electrical Generators;**
- **Art Collections;**
- **Screened Yard Houses; and**
- **Satellite Dishes**
- **Basketball Units.**

With a fixture, the former chattel becomes an accessory to the land (*i.e.*, a fixture) and passes with ownership of the land. If a fixture is detached from the real estate, it once again assumes its designation as personal property.

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Adverse Possession

Generally

At the core of adverse possession is a statute of limitations.

Statutes of Limitation bar suits after some period of time after the cause of action accrues.

Under NY State Law (Section 212 (a) of the CPLR) the statute of limitations (time period for adverse possession) for an action to recover real property is 10 years.

Basic Issues

In context of actions to recover possession of real property the cause of action accrues at the time the wrongdoer enters and takes possession of the property.

A cause of action for wrongful possession differs from that for trespass.

In trespass, there is a wrongful entry, not wrongful possession.

If someone is purchases a building on top of property not owned or leased by them the owner of the land can sue the building owner for ejectment and make them take the building off the land.

The public policy reasons for the law allowing Adverse Possession include:

- Rewarding the possessor for productivity;
- Providing an incentive to encourage land productivity;
- Penalizing the original owner for sitting on his rights; and
- Promoting the quieting and settling of title.

Legal Requirements for Adverse Possession - COACHEN

- **Continuous** - *The uninterrupted possession of the land*
- **Open** – *Conduct that puts a person of ordinary prudence on notice of the claim*
- **Actual** – *Using the land as a reasonable owner would use the land*
- **Claim of Right** - *A claim of land to hold it for oneself*
- **Hostile** - *Acting with an intention to claim the land and treat it as your own.*
- **Exclusive** - *The exclusive, unshared use of the land*
- **Notorious** - *That the possession by the adverse party is well and widely known in a public manner forming a part of common knowledge in the community*

Special Circumstances

If a previous owner of a parcel of property met all the requirements of adverse possession, except for the time period to satisfy the statute of limitations, the new owner would be able to add their time of adverse possession to the previous owner's time of adverse possession. This concept is known as:

Tacking