

ADVERSE POSSESSION IN NEW HAMPSHIRE

QUESTIONS AND ANSWERS FOR EASEMENT LANDOWNERS

Our easement stewardship team works with nearly 700 easement landowners, and we often find interesting encroachments along easement boundaries.

In some cases, an encroachment by an abutter may also be a third party violation of the easement. More often, the abutter's encroachment, such as a garden or foot path, is an activity permitted by the easement.

For encroachments that are not easement violations, correcting the encroachment, or allowing it to continue, is a matter for the landowner and the abutter to resolve. Landowners often have a situation where they want to allow the abutter to continue to use their property, but they are concerned about inadvertently granting "squatter's rights" or adverse possession.

Adverse possession is common law that allows a person to acquire title to real property without mutual agreement between the parties.

For example, suppose you own a large wooded lot, and in the far corner of the property your abutter incorrectly presumes some of your land is theirs. The abutter clears some trees, puts up a fence, and constructs a garden on your property. The next time you are in the back corner you notice the fence. You do not see any monuments indicating what the actual line is and assume that they installed it on their property. Years later you have the property surveyed and corner monuments installed. The new survey shows the abutter is encroaching onto your property. When you approach the abutter about the situation, the abutter may amicably agree to move the fence and stop using your property. However, if their use follows the common law prescription for adverse possession, they may have already acquired title to this portion of your land.

Adverse possession is confusing, complicated, and can often be very emotional. It is also very rare and not something most landowners will ever have to deal with. However, it is a frequently asked question, and there are simple steps you can take to

protect yourself against an adverse possession claim.

What is the standard for adverse possession in New Hampshire?

Case law in New Hampshire requires that the possessor must show **adverse, continuous, exclusive and uninterrupted use** of the land for **twenty (20) years**. Protecting yourself against an adverse possession claim is as simple as breaking any one of the five bolded requirements.

What general steps should every landowner do to protect themselves?

1. Have a survey of your property completed so you can identify all your boundaries;
2. Follow-up on any encroachments identified on the survey; and
3. Walk, identify and maintain your boundaries on a regular basis.

I gave someone permission to use my land, could they still claim adverse possession?

An adverse possession use must be a trespassory use. Being able to prove that you gave someone permission to use your land will prevent them from making an adverse possession claim.

What should landowners do if they want to permit a use on their land?

If an abutter has been using your property for a permitted use and you would like to allow him or her to continue that use, consider writing a brief license granting your permission for the abutter to use your property. In the agreement you should identify your property or the relevant boundary line, state what the permitted uses are, that you may revoke the permission at any time, and that the use must cease and each party will abide by the property line when the abutter conveys the property to any other party.

If the abutter is reluctant to sign such an agreement, mail him or her a certified letter with the same information that gives your permission to use your property. A copy of the certified letter in your file allows you to show that you know where your

property lines are and establish the fact that the abutter is not trespassing without permission.

A license or letter acknowledging use ends the adverse possession issue altogether **because if a license is granted, there is no adverse use.**

How should I handle unwanted encroachments?

If you do not want your abutter using your property, the first step would be to ask him or her to stop using your property and remove any of his or her personal property from your land. If the abutter is unwilling to comply, consult an attorney on how to resolve a trespass dispute.

How can I reset the twenty year clock back to zero?

As mentioned above, an agreement between parties stops the clock permanently. Sending a certified letter to the abutter asking him or her to cease use of your property resets the clock at zero, but in this case the clock starts running again.

Will a conservation easement prevent an adverse possession claim?

No. However, walking boundary lines and routine easement monitoring may help prevent the problem.

My neighbor just bought his property two years ago. Do I still need to be aware of an adverse possession claim?

Yes. Time accumulates for all predecessors in title as long as the use has been continuous. If your abutter can prove he is continuing a use that began eighteen years before the abutter took title, he may have satisfied the requirement for continuous, uninterrupted use for 20 years.

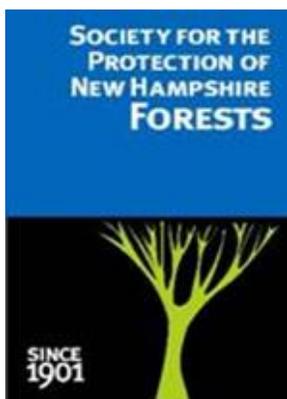
What if an abutter moved a boundary monument to benefit their property?

NH RSA 472:6 prohibits any person from committing or causing to commit the defacement, alteration of location, or removal of any stone wall, monument, or mark made for the purpose of establishing any part of a boundary. You will need to work with a surveyor and/or attorney to reestablish the monument.

Is adverse possession applicable on state owned lands?

No, NH RSA 539:6 states that no right can be acquired by adverse possession on state lands. Town houses, schoolhouses, churches, and public property are also precluded from takings via adverse possession (See NH RSA 477:34).

NOTE: This document summarizes the Forest Society's best understanding of adverse possession. This document is not legal advice and it is not the policy of the Forest Society. Landowners using this document as a first step in educating themselves about the issue of adverse possession should consult their own legal counsel for legal advice and to confirm all details in this guidance document. Revision date: February 2015.



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The Society for the Protection of New Hampshire Forests is a non-profit membership organization founded in 1901 to protect the state's most important landscapes and promote wise use of its renewable natural resources.