

What are Squatters Rights?

It may be possible to make an application to become registered as the legal owner of a piece of land which you do not own but which you are 'squatting on' by claiming adverse possession of it. If the land in question is registered at the Land Registry, an application can be made to the Land Registry pursuant to the Land Registration Act 2002 which requires that the applicant, also known as a 'squatter', to prove:-

1. That the applicant has been in uninterrupted factual possession of the land for 10 years; and
2. There was an intention during that period, to possess the land.

If the land in question is not registered at the Land Registry, the period referred to in point 1 is increased to 12 years.

Factual Possession

In relation to the first limb of the test above, the possession is a question of fact and degree. This means that you must show that a sufficient degree of exclusive physical control has been exercised over the land.

In order to demonstrate the necessary degree of control, it is helpful to be able to produce photographs of the subject land over the 10 year period and describe the actions you have taken to 'possess' the land, for example, fencing it in together with adjoining land which you do own, maintaining any landscaping or resurfacing it. Where possible, evidence of any costs incurred, such as receipts, can also be used to support an application. In other words, you need to show that you have treated the land as your own, and to the exclusion of any others.

It is unlikely that temporary or singular actions, like parking cars or storing items on the land temporarily, will be sufficient.

Intention to Possess

In relation to the second limb of the test, you must show that your possession and control over the subject land was intentional, and was to the exclusion of all others. This does not mean that you necessarily need to show an intention to acquire ownership of the land, but simply that you have intentionally used and controlled the land as your own.

For example, using the land for access would not be sufficient to show the necessary 'intention', whereas treating the land as your own, by say fencing in as part of a garden or driveway, may well do.

Possible ways of defeating a claim

If your use and possession of the land is interrupted by the registered owner, even temporarily, a claim for adverse possession may be defeated. For example, if the registered owner takes back the land, say by moving your fence, then you will no longer have exclusive control or possession of it.

Use of the subject land by anybody else, not just the registered owner, may defeat your claim as it may serve to undermine your assertion that you had the necessary degree of control. However this is not necessarily the case if such other users do so only with your express permission.

For example, Butcher & Barlow recently made a successful claim for adverse possession on behalf of an applicant in respect of a piece of land at the back of a property owned by the applicant, where other adjoining landowners had in the past used the subject land as a means of access to and from their gardens. However, as the rights of way being exercised by the adjoining landowners had been expressly permitted by our client at their discretion, and documented by way of licences granted to the adjoining owners, this did not defeat the applicant's claim. In other words, the other users of the land had only been permitted to exercise their rights by express consent from the applicant, who retained control of the manner in which these could be exercised, and by whom.

From the perspective of a registered landowner concerned about the possibility of their land being acquired by adverse possession, it is possible to guard against a claim by putting up signs confirming that the applicant's use is not permitted.

Next steps to claim a right over the land

- If you have not yet occupied or used the subject land for the necessary period (10 years for registered land or 12 years for unregistered land), make sure you are gathering evidence during that time of the ways in which you have 'controlled' the land, and of your 'intention to possess', i.e. photographs of work carried out and/or receipts for fencing or resurfacing. That way, provided your possession of the land is not interrupted, you will have plenty of evidence to support an application for adverse possession and may well be successful in being granted title to that land.
- If you have occupied the land for the necessary period already (10 years for registered land or 12 years for unregistered land) and you believe you can prove the two limbs above, then it may be a good time to make an application to the Land Registry. The process for making an application is as follows:-
 - If the land is registered then once you put your application in to the Land Registry, the registrar will consider it, and if it is found to have merit, then the registrar will contact the existing registered owner to notify them of the application and the owner then has an opportunity to object to the application.
 - If the land in questions does not have registered title, then neighbouring land owners would be informed of the application and have the opportunity to object.
 - In the event that the owner or any neighbouring landowners object, the Land Registry will consider whether the objection(s) has/have any merit and may then reject or accept your claim. If the registered owner or a neighbouring landowner is successful in opposing your claim but your possession of the land then continues, you may reapply to the Land Registry 2 years later and the registrar must then transfer title to the land to you.

The content of this article was accurate as at December 2021. The law may change over time following changes in legislation or new court cases. We do not actively update our articles once they are published.

As such, the content of this article is not intended as specific legal advice but as general guidance only.

For tailored legal advice, specific to your personal situation, please contact our Team.