

SPECIAL ALERT!



COUNSEL'S CORNER

*Adverse Possession Claimants Enter North Texas Residential Markets***

I learned of the problem last July. That was when the Dallas Morning News reported that an individual moved into a vacant Flower Mound property worth \$340,000 and attempted to claim ownership. Kenneth Robinson paid nothing for the property. Robinson did not agree to pay off the existing mortgage. Robinson did not agree to pay rent, repair the property, “stage” the property for buyers, care for the property or make any other agreement. Robinson merely noticed the property was vacant, and moved in.

The DMN article gives some context for Robinson’s legal position.

Kenneth Robinson evidently noticed that the Waterford Park Estates property had been vacant for about a year. It seems that the owner may have lost interest in it, and then the owner’s lender filed bankruptcy in 2009. Perhaps the owner had no equity in it and elected to allow foreclosure – *toss the lender the keys so to speak* – but those facts are not given in the article. Maybe the owner assumed that the lender would foreclose quickly and was surprised that they did not and instead had their own financial difficulties which led to their bankruptcy.

But those facts were also not provided, so we can only guess why the owner vacated and the lender did not foreclose.

A few months ago Robinson moved his pool table into the dining room, installed his washer and dryer, and placed his bed and office equipment into the home. He turned on the utilities. And then he called the locksmith to change the locks. And hand him the new keys.

The neighbors expressed their unhappiness to Robinson in a meeting at the property. Robinson responded by calling the police. “I didn’t file charges against them” he reportedly said.

Ken Robinson Sr. did however file an “Affidavit of Adverse Possession” with the Denton County Clerk. I obtained a copy. In the Affidavit Robinson states “. . . I am claiming ownership of the above described property peaceably.”

Obviously a mere claim of ownership does not so easily defeat the true owner’s rights. Yet this is troubling because Texas adverse possession laws (sometimes called “squatter’s rights”) are complex and can be used to at least cause expensive problems to the true owner.

But wait – there’s more. Recently the Fort Worth Star-Telegram reported on similar filings in Tarrant County. Paul Roper filed virtually the same Affidavit with respect to Mansfield property, then Anthony Brown signed an identical Affidavit. Also for Mansfield property. Those two Affidavits of Adverse Possession – Roper and Brown – were filed on the same date with the Tarrant County Clerk. Same time too.

This ultimately led the Tarrant County District Attorney to instruct the Tarrant County Clerk to stop recording the Affidavits. Meanwhile, predictably, litigation has started.

Under Texas law, an individual can properly claim ownership if s/he occupies the property for a term of years. There are other requirements. The occupancy must be open, notorious, hostile and adverse to the true owner. Payment of real estate taxes can greatly help the “squatter’s” claim, but it is not a strict requirement.

Property owners and lenders need to be aware of this sticky problem, particularly if the owners and lenders are non-resident in Texas and trust others to check on their properties. The risk is reduced if occupants use property pursuant to written Leases. If, however, an occupant repudiates the Lease but continues to occupy the property, then that occupant might also attempt to file a “squatter’s claim” of adverse possession.

Lessons learned:

1. Check your properties constantly. Owners need to know your tenants and know who is in occupancy at all times. Lenders need to know their owners.
2. Check the local Deed Records constantly. You might find that an Affidavit of Adverse Possession has been filed. Or a tax lien. Judgment lien. Mechanic’s lien. Deed of Trust lien. There can be any number of surprises and the time to deal with them is now, before they ripen into a much larger problem.
3. Check your Leases constantly. Be sure that you have a complete (that means all exhibits, schedules, attachments, amendments and renewals) fully-signed Lease and Guaranty on file for each tenant.

** Full disclosure. Content for this article came from the Dallas Morning News, Fort Worth Star-Telegram, Denton County Clerk and Tarrant County Clerk. To my knowledge no allegations have been proven in a Court of Law and consequently, they are only allegations.

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