

By Sean Griffiee and Connie Haslam

Stay Within the Bounds

With continued population growth in the central Puget Sound region and increasing property values, infill development has become common in many areas. Frequently, the developer and surrounding property owners must resolve conflicts regarding boundaries, views and access. The proper resolution of such disputes often requires an examination of Washington law in the area of adverse possession and related doctrines.

At its core, adverse possession allows a non-owner to acquire ownership of real property by taking possession of the land without a response from the true owner for a period of 10 years. The possession must be (1) exclusive, (2) actual and uninterrupted, (3) open and notorious, and (4) hostile in the sense that the use is not with the legal owner's permission. Where the land is vacant and the claimant pays property taxes under color of title, the period can be even shorter—7 years.

The acts that a court may consider sufficient to support an adverse possession claim depend on the type of property at issue. For example, in a case involving Hood Canal vacation property, the Washington Court of Appeals found that seasonal use of the property was sufficient for the party claiming adverse possession to gain ownership because the claimant was using it on the same part-time basis that the true owners would use it. More typical cases in Washington involve the construction of buildings, fences, or other permanent structures on a portion of a neighbor's property.

For urban property owners a related doctrine called "mutual recognition and acquiescence in a common boundary," may be even more problematic. If neighboring property owners do not have a proper survey and instead mutually agree that a fence line,

wall or other clear boundary marker will define the property line, the legal boundary can shift to the marked line after 10 years.

Even without an express agreement, a party may show that the adjoining landowners have in good faith and by their conduct recognized and accepted the designated line as the true boundary line.



In cases where a claimant relies on conduct alone, however, the facts must be compelling for a court to conclude the boundary has changed.

For real estate owners, these laws require vigilance. It is important to know and maintain the true boundaries of your land and to take appropriate action when others encroach. Where neighbors need accommodation for driveways, landscaping or the placement of structures beyond the true boundary, an easement or license should be prepared to show that the use is merely an accommodation with carefully defined limits.

Did You Know?

In Washington state the number of homes sold for \$1 million or more increased 238% from 2000 to 2005.

Are You Giving Your Residential Tenants All Notices Required by Law?

Both new residential landlords and those who have been landlords for decades may not be aware of all tenant notices required by local, state and federal law. Some of the most commonly overlooked notices include:

Health Hazards of Indoor Mold. In 2005, the state legislature added a new requirement to a landlord's notice obligations. A landlord must provide both new and existing residential tenants with information from Washington's Department of Health about the health hazards of indoor mold and the steps tenants should take to control mold growth. The information may be provided in written form individually to each tenant, or it may be posted in a public location on the property. Landlords may obtain the required information directly from the Department of Health's website (www.doh.wa.gov/ehp/ts/IAQ/mold-notification.htm) or may request that the Department mail the information to them in a printed format.

Fire Safety and Protection Information. Washington law also requires a landlord to provide each tenant with a written notice disclosing fire safety and protection information and specifically notifying the tenant that the unit is equipped with a smoke detection device. The notice must inform the tenant that it is the tenant's responsibility to maintain the smoke detection device in proper operating condition and that there are penalties if the tenant fails to do so. If the rental unit is in a multi-family building, the notice also must disclose additional information, such as whether the building has a fire sprinkler system and whether the building has a smoking policy.

Lead-Based Paint. If a residential building was built before 1978, federal law requires a landlord to disclose information about the presence of known lead-based paint on the premises to tenants. A landlord also must provide tenants with a federally-approved pamphlet on lead-poisoning prevention.

Seattle's Required Notices. In addition to the notices required by state and federal law, Seattle has its own requirements. For example, landlords in Seattle must give tenants a summary prepared by the City Department of Construction and Land Use describing the respective rights, obligations and remedies of landlords and tenants under certain Seattle ordinances. Landlords in Seattle are also required to provide tenants with the most recent summary of the Residential Landlord-Tenant Act prepared by Washington's Office of the Attorney General.

It is always good practice for landlords to provide a checklist in the lease agreement of all required notices and to have tenants initial next to the name of each notice to show receipt of it.

Formalities Matter

As a general rule, to be enforceable in Washington leases must be in writing, contain essential terms, be signed by the parties, and include a full legal description of the leased premises. Leases with a term of more than one year must be acknowledged before a notary public.

For further information feel free to call any of the lawyers in Helsell Fetterman's real estate law group.

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