

Adverse Possession Under Virginia Law: A Primer

Description

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A. In Virginia, a party claiming adverse possession must prove actual, hostile, exclusive, visible, and continuous possession, under a claim of right [or color of title], for the statutory period of 15 years. • *Grappo v. Blanks*, 241 Va. 58, 61 (1991); *Heath v. Est. of Heath*, No.1276-22-2, 2024 Va. App. LEXIS 221 (Va. Ct. App. Apr. 23, 2024); *Fort Lewis Mt. Co., LLC v. W. Va. Water Auth.*, No. CL22-1345, 2024 Va. Cir. LEXIS 96 (Roanoke Cnty. July 3, 2024); *Fianna Invs.. LLC v. Two Fat Witches. LLC*, No. CL233840, 2025 Va. Cir. LEXIS 112 (Loudoun Cnty. Jan. 27, 2025); *Everett v. Parson*, No. 0995232, 2024 Va. App. LEXIS 395 (Va. Ct. App. July 16, 2024); *Pretty Lake 5757 LLC v. City of Norfolk*, 114 Va. Cir. 325 (Norfolk Cnty. 2024). • A claimant has the burden of proving all the elements of adverse possession by clear and convincing evidence. • *Grappo*, 241 Va. at 62; *Pretty Lake 5757 LLC*, 114 Va. at 332. • The doctrine of adverse possession in Virginia has a long history, • and • [m] any cases are fact-specific • such that • their resolution may turn on only one or two of the elements of adverse possession. • *Ouatannens v. Tyrrell*, 268 Va. 360, 365 (2004).

B. Actual Possession

1. Actual possession is satisfied by showing that the claimant used and occupied the property, by actions such as fencing it. *Helms v. Manspile*, 277 Va. 1, 78 (2009). Possession is hostile if the claimant is possessing the property under a claim of right and adverse to the rights of the true owner. Furthermore, permission by the owner negates hostility. *Horn v. Webb*, 302 Va. 70, 79 (2023). Possession is exclusive when it is not in common with others. *Helms*, 277 Va. at 78. Visible possession is demonstrated by showing that possession was • so obvious that the true owner may be presumed to know about it. • kl at 7. Continuous possession is met if the possession continues without interruption for the statutory period. kl; *Fort Lewis Mt. Co., LLC*, 2024 Va. Cir. LEXIS 96.
2. Actual possession must be an entry that amounts to ouster of true owner. *Nowlin v Reynolds*, 66 Va. (25 Gratt.) 137 (1874).
3. Constructive possession alone does not suffice. *Woody v. Abrams*, 160 Va. 683 (1933).
4. What constitutes actual possession
 - Most commonly, occupancy, involving use or enjoyment, residence, cultivation, enclosure and improvement;
 - Enclosure by fence, cultivation, clearing or any other plainly visible and notorious manifestation of sole, exclusive possession, *bona fide* claim of title against that of all other persons. *Roller v. Armentrout*, 118 Va. 173 (1915) (dweller living in house on enclosed tract of land, having and using outbuildings, fruit trees, and a garden, cultivating part of the tract, and grazing entire tract had adverse possession of entire tract);
 - Temporary and sporadic cutting of timber does not suffice. *Lennig's Ex'r v. White*, 1 Va. Dec. 873, 20 S.E. 831 (1894); but see *Taylor's Devises v. Burn-sides*, 42 Va. 165, 192 (1844) (• Take, for example, the case of a town resident, who, claiming title to a lot or

tract of woodland in the vicinity, openly, notoriously and habitually cuts and hauls from it his necessary supplies of fuel; or in like manner makes it a source of revenue, by sales of firewood or timberâ?|. There cannot be stronger instances of actual possession than these, and other like cases which might be stated: but they can serve only for the purpose of illustration.â?•);

- o **Neither does occasional grazing of cattle. Whealton & Wisherd v. Doughty. 112 Va. 649 (1911);**
- o **Blakey v. The Unknown Heirs, Devisees, Assigns, and Successors in Title of Ada Rebecca Price, Whose Names and Last Known Addresses are Un-known, Who are Made Parties Defendant by the General Description of Parties Unknown, Case No. CL23001257-00 (Judge William H. Shaw, III) (Gloucester Cnty. Cir. Ct.1 Jan. 5, 2024)** (â??Since 2003, Blakey has used and maintained roadways, cut down trees, mowed and landscaped, improved, used and possessed the Subject Property as his principal residence in an open, notorious, exclusive, non-permissive way under a color of title or claim of right, and he has paid real estate taxes and insured the Subject Propertyâ?• â?|. â??Pursuant to Count One of the Complaint, Blakey acquired the Subject Property from the Parties Unknown, if any there should be, by adverse possession, and the Parties Unknown have been ousted from title as a result, and they have lost any interest they may have held in and to the Subject Property as heirs at law of Ada Rebecca Price â??

5. Possession of Part Can Be Possession of Whole

- o Actual possession of part of a tract of land under a *bona fide* claim and col-or of title to the whole tract equals possession of the whole tract. *Baldwin v. Mathena*, 171 Va. 94 (1938);
- o *Maynard v. Hibble*, 244 Va. 94 (1992) (under color of title describing entire parcel, possession of field being portion of parcel was possession of whole parcel)

6. Wild and Uncultivated Land

- o The evidence needed to establish adverse possession by claim of right de-pends on the character of the land in dispute. *Craig-Giles Iron Co. v. Wick-line*, 126 Va. 223 (1919). â??In a settled and cultivated region an actual occu-pancy and pernancy of the profits may be requisite; whilst in the wilderness a possession less definite might suffice â?| â??. kl at 236 (emphasis added).
- o In order for a claimant to establish a claim of adverse possession to wild and uncultivated land, it is only necessary for the claimant to change the condition of a relatively small portion of such land. *Graves v. Grandstaff*, 9 Va. Cir. 513 (Shenandoah Cnty. 1982). In *Graves*, the plaintiffs claimed title by adverse possession to two tracts of mountain land in Shenandoah County, Virginia, consisting of approximately 110 acres in total. kl at 513. The court acknowledged that because the property was wild and unculti-vated land, it was â??inadvisableâ?• and â??virtually impossibleâ?• for the claimant to have changed the character of the entire property, and decided the issue on whether it found that the property as a whole was â??under the essential controlâ?• of the claimant. kl at 517. Ultimately, the Court held that â??[w]hile in a settled and cultivated area, a greater degree of possession might be necessary,â?• id, at 516, the facts and circumstances established by the plain-tiffs proved that they â??made a sufficient change in condition of the land ap-propriate to this kind of land to clearly and unequivocally give notice to the world that they held both tracts adversely to all parties, including the true owners,â?• regardless of the fact that â??they did not change the condition of a large portion of either of these tracts.â?• kl at 517.
- o In *NTS/Virginia Development Company v. Goodwin Brothers*, No. CL0722 (**Spotsylvania Cnty.** 2009), the Honorable Judge David H. Beck ruled that where the plaintiff developer

was developing the platted 2,657-acre Fawn Lake subdivision in phases but had done little or nothing on a 48-acre area in the rear of the subdivision, NTS acquired title to a 48-acre area by adverse possession based on Graves and other authorities.

C. Exclusive Possession

1. Even when there are multiple users of an easement, a claimant's use may still be exclusive when each user independently asserts his right to enjoy the roadway for himself, that use may be exclusive, even though other persons assert similar rights for themselves. • *Ward v. Harper*, 234 Va. 68, 71 (1987); see *Burks Bros. of Va. v. Jones*, 232 Va. 238, 246 (1986); *Pettus v. Keeling*, 232 Va. 483, 486 (1987).
2. *Providence Forge Fishing & Hunting Club v. Miller Mfg. Co.*, 117 Va. 129 (1915) (fish-ing and hunting on pond, renting boats to others to fish and hunt on pond, and instructing agent not to permit others to boat or fish on pond without permission *not* sufficient to vest title by adverse possession against adjacent owner who also used pond for boating and fishing)
3. See *Nowlin v. Reynolds*, 66 Va. at 144 (whether deed purporting to convey title to property recorded or not immaterial to validity as deed between parties, exclusive possession under such title adverse not only against grantor of deed, but against all others.)

D. Open and Notorious Possession

1. Because title by adverse possession is based in part on the laches of the true owner, possession must be visible and of sufficient notoriety that the true owner may be presumed to know about it. *Grappo v. Blanks*, 241 Va. 58 (requirement is satisfied when possession is so obvious that true owner may be presumed to know about it)
2. However, proof of actual knowledge on the part of the true owner is not generally required. *Boggs v. Bright*, 222 F. 714 (E.D. Va. 1915), *rev'd on other grounds*, sub nom, *Higgenbotham v. Briggs*, 234 F.253 (4th Cir. 1916).

E. Hostile Possession

1. Hostile possession is defined as possession under a claim of right and adverse to the right of the true owner. • *Ouatannens v. Tyrrell*, 268 Va. at 372 (quoting *Grappo v. Blanks*, 241 Va. at 62; *Tidwell v. Goldsmith*, 85 Va. App. 152, 168 (2025)). When used in the context of adverse possession, the term *claim of right* ... mean[s] a possessor's intention to appropriate and use the land as his own to the exclusion of all others. • *Grappo*, 241 Va. at 62. To establish hostile possession, the possessor must profess, through words or actions, a belief that [s]he is entitled to use the land and prevent others from using it in a manner that precludes the legal owner from exercising his rights over the property. If possession is hostile, the legal owner and the possessor cannot simultaneously exercise control over the land. Thus, permission negates hostile possession. *Ouatannens*, 268 Va. at 372; *Everett*, 2024 Va. App. LEXIS 395, at *5.
2. *Field v. Pellegrino*, CL22000753-00 (**Goochland Cnty. Cir. Ct.** Apr. 25, 2023) (Judge Timothy K. Sanner) (The Court declared that the plaintiffs acquired the property by adverse possession and were the sole owners of the property, and that the defendants were clearly and undeniably barred by Virginia Code § 8.01-236 from making a claim to the subject property.)

F. Claim of Right

1. In *Grappo v. Blanks*, 241 Va. 58, 62 (1991), the Supreme Court of Virginia explained the term “claim of right”: “When used in the context of adverse possession, the terms *claim of right*, *claim of title*, and *claim of ownership* are synonymous. They mean a possessor’s intention to appropriate and use the land as his own to the exclusion of all others. That intention need not be expressed but may be implied by a claimant’s conduct. Actual occupation, use, and improvement of the property by the claimant, as if he were in fact the owner, is conduct that can prove a claim of right” (citation omitted); *Heath*, 224 Va. App. LEXIS 221, at *7; *Helms*, 277 Va. at 78. In other words, a possessor takes under a claim of right that which he occupies, cultivates, encloses, or from which he otherwise excludes the owner. *Walton v. Rosson*, 216 Va. 732, 736 (1976). Conduct, that is unequivocal and inconsistent with any other reasonable inference may show a claim of right. *Kim v. Douval Corp.*, 259 Va. 752, 758 (2000). For instance, occupation or property improvement by the possessor as though he were the owner may show a claim of right. The existence of a personal item on someone else’s private property, and periodic access for use of the item does not establish a hostile intent to take the private property under a claim of right. *Sims v. Copper*, 278, 133 Va. 278, 28788 (1922) (determining that there was no adverse possession where the possessor’s actions were equally consistent with a claim of ownership under a recoverable license, and there was only a claim to the buildings but not the land; further, ownership of improvements is evidence of the absence of a claim of right.) *Fort Lewis Mt. Co.*, 2024 Va. Cir. LEXIS 96.
2. In *Grappo*, 241 Va. at 62, the Supreme Court provided some explanation for the term “claim of right”: “When used in the context of adverse possession, the terms *claim of right*, *claim of title*, and *claim of ownership* are synonymous. They mean a possessor’s intention to appropriate and use the land as his own to the exclusion of all others. That intention need not be expressed but may be implied by a claimant’s conduct. Actual occupation, use, and improvement of the property by the claimant, as if he were in fact the owner, is conduct that can prove a claim of right.” See also *Douval Corp.*, 259 Va. at 757 (“It is well-established that a claimant’s possession is hostile if it is under a claim of right and adverse to the right of the true owner.”)
3. *Ouatannens*, 268 Va. at 364 (“occupation, use and improvement of the property can prove a *claim of right*. Occupation, use and improvement may also prove *actual possession*. Similarly, occupation, use, and improvement may also be used to establish *exclusivity and visibility*”) (emphasis added) (citations omitted).
4. “To establish claim of right as a requisite element of adverse possession [by a party in possession against the record owner] it is not necessary that the party in possession should have expressly declared his intention to hold the property as his own, nor need his claim thereto be a rightful or well-founded one. That his acts and conduct clearly indicate a claim of ownership is enough, and it may be sufficient even though the disseisor has knowledge of a better title.” *Marion Inv. Co.*, 171 Va. at 182. The actual occupation, use, and improvement of the premises by the claimant, as if he were in fact the owner thereof, without payment of rent, or recognition of title in another, or disavowal of title in himself, will be sufficient to raise a presumption of his entry and holding as absolute owner, and, unless rebutted, will establish the fact of a claim of right.” *Id.*,
5. “A mere naked possession without claim of right, that is the intention to use the land as his own to the exclusion of all others, can never ripen into a good title.” *Radford Veneer Corp. v. Jones*, 143 Va. 124, 128 (1925).
6. An adverse possession claimant is entitled to a presumption of an adverse claim of right.
 - This is useful when seeking a default judgment

- Burden of proof of adversity may be carried by presumption
- 7. Similarly, possession that begins as permissive never ripens into adverse possession
- 8. Nevertheless, the claim of right need not be expressed. A claim of right can be inferred from unequivocal conduct that is inconsistent with any other reasonable inference. *Douval Corp.*, 259 Va. 756-57.

G. Color of Title

1. Defined as something that has the appearance of title, but is in fact not title
 - Any written instrument that purports to convey title to land, that defines the extent of the claim to the land, but is defective or invalid, is color of title. See *Sharp v. Shenandoah Furnace Co.*, 100 Va. 27 (1901)
 - The significance is that under color of title, the limit of the parcel claimed is determined by the description contained in the title document.
2. Adverse possession under color of title for the statutory period will ripen into valid title. *Marion Inv. Co.*, 171 Va. 170.
3. Requirements for color of title
 - Must identify the land with sufficient certainty that the boundaries of the parcel may be determined by application of rules governing construction of deeds. *Blacksburg Mining & Mfg. Co. v. Bell*, 125 Va. 565 (1919)
4. Sample cases
 - Deed void for defects apparent on its face. *W.M. Ritter Lumber Co. v. Edwards*, 171 Va. 185 (1938)
 - Invalid and void tax deed. *Yellow Poplar Lumber Co. v. Thompson's Heirs*, 108 Va. 612 (1908)

H. Continuous Use and Possession

1. Any break in possession, however slight, restores the seisen of the true owner
2. Once an adverse claimant vacates the premises, the true owner, by reason of his legal title, is regarded as in constructive possession, and the adverse period of the claimant ends. *United States v. Tobias*, 899 F.2d 1375 (4th Cir.1990)
3. Possession is continuous only if it exists without interruption for the statutory period. *Grappo*, 241 Va. at 62.
4. Tacking
 - To prove the requisite adverse period, Virginia recognizes the doctrine of tacking. *Scott v. Burwell's Bay Improvement Ass'n*, 281 Va. 704, 71213 (2011). The doctrine of tacking allows claimants to combine successive occupations or use by adverse claimants to establish the requisite fifteen years. J.Q, For example, the sale of property during the fifteen year possessory period does not restart the fifteen year adverse possession period provided that the land remains sufficiently invaded by the possessor and the invaded ownership interest continuously has a person (or succession of persons) properly situated to defend it for the entire possessory period. • *Ho v. Rahman*, 79 Va. App. 677, 69496 (2024). However, the party asserting tacking must prove by clear and convincing evidence when all of the elements of adverse possession were first established, including hostility. Claimants may not include predecessors' actions that were by right, permission or agreement. Furthermore, tacking is not permitted simply because the prior occupants carried on activities similar to the activities of the claimant. Rather, to successfully assert

tacking, the claimant must show that the prior occupants were asserting the same claims to possession. Scott, 281 Va. at 71213; Fort Lewis Mt. Co., 2024 Va. Cir. LEXIS 96.

- The possession of trees may not be tacked to the possession of the surface of the land. Yellow Poplar Lumber Co., 108 Va. at 624.

I. 15-Year Statute of Limitations

The doctrine of adverse possession is predicated upon the statute of limitations. The acquisition of title by adverse possession and the statute of limitations for ejectment are inextricably linked. The 15-year period necessary to hold property for adverse possession is equal to the 15-year statute of limitations barring suits for recovery of real property. The 15-year statutory period for adverse possession does not begin to run against the owner until there is a necessity cast upon him to protect his property. In an adverse possession claim where the claimant's possession was originally in privity with the owner, a clear, positive, and continued disclaimer and disavowal of title and assertion of an adverse right brought home to the owner is indispensable before any foundation can be laid for the operation of the statute of limitations. *Fianna Invs., LLC v. Two Fat Witches, LLC*, No. CL233840, 2025 Va. Cir. LEXIS 120, at *2 (Loudoun Cnty. Mar. 3, 2025).

1. The purpose of the fifteen year period of adverse possession is to quiet titles to land. *Ho*, 79 Va. App. at 69293. The period of adverse possession begins to run when "the adverse possessor sufficiently invades the true owner's property interest, such that the owner can protect his title by appropriate proceedings." *Fort Lewis Mt. Co.*, 2024 Va. Cir. LEXIS 96, at *6. In other words, the possessory period begins to run when the owner has the right to eject the adverse possessor.
2. Virginia Code § 8.01-230 (an "accrual" statute) provides, in pertinent part, "[i]n every action for which a limitation period is prescribed, the right of action shall be deemed to accrue and the prescribed limitation period shall begin to run from the date the injury is sustained in the case of injury to the person or damage to property, and not when the resulting damage is discovered" (emphasis added); See also *Caperton v. Gregory*, 52 Va. (11 Gratt.) 505 (1854) (son's taking and holding of land of his father, claiming title to it under lost will, was adverse to other heirs, and statute of limitation began to run at time of taking possession.). Specifically, Virginia Code § 8.01236 (a "time limitations" statute) provides, in relevant part, that "[n]o person shall make an entry on, or bring an action to recover, any land unless within fifteen years next after the time at which the right to make such entry or bring such action shall have first accrued to such person or to some other person through whom he claims" (emphasis added).
3. Va. Code § 8.01235 governs when a party must raise a statute of limitations defense. It states, in pertinent part, that "[a]n objection that an action is not commenced within the limitation period prescribed by law can only be raised as an affirmative defense specifically set forth in a responsive pleading." Va. Code § 8.01235; *Pretty Lake 5757 LLC*, 114 Va. at 340.
4. In *Ho v. Rahman*, 79 Va. App. 677, 691 (2024) the Court of Appeals reasoned as follows: "The doctrine of adverse possession is predicated upon the statutes of limitations which, in effect, provide that an uninterrupted occupancy of lands by a person who has in fact no title thereto, for a certain number of years, shall operate to extinguish the title of the true owner thereto, and vest a right to the premises absolutely in the occupier." *Ferguson v. Stokes*, 287 Va. 446, 451 (2014) (quoting *McClanahan's Adm'r v. Norfolk & W. Ry. Co.*, 122 Va. 705, 714-15 (1918)). "The effect of adverse occupancy is the vesting in an adverse occupant a new, independent and indefeasible title one paramount to and good against that of all other per-

- sons. 1d, (quoting *McClanahan v. Adm'r*, 122 Va. at 715); see also *McClanahan v. Adm'r*, 122 Va. at 738 (a title acquired by adverse possession is a perfect title and good against all the world).
5. In *Kennedy Coal Corp. v. Buckhorn Coal Corp.*, 140 Va. 37, 60 (1924), upholding the dismissal of plaintiff's quiet title action where defendants had possessed the land in question for the statutory period under a color of title, the Court observed that "[a]nd all this time, this complainant and those under whom it seeks to claim title to the property stand silently by without a word of protest against these things and never once make any claim that their rights were being violated. The pos-sessory period will not begin to run until the interest has been sufficiently invaded and possessed to satisfy all the elements of adverse possession." Ho, 79 Va. App. at 693-94.
 6. *Parker v. Griffin*, 55 Va. Cir. 191, 192 (Shenandoah Cnty. 2001) (acknowledging that 15-year limitations period under Section 8.01-236 "establishes a fifteen-year limitations period for actions to recover any land" and noting the limitations period "applies to actions for ejectment and suits to quiet title by adverse possession"); see also *Devers v. Chateau*, 748 F.2d 902, 905-06 (4th Cir. 1984) (discussing the "15-year statute of limitations" that governs Virginia ejectment actions).
 7. *L-Wood, Inc., Southern Pine Specialists v. Kel-Wood Timber Prod. Co.*, Case Number CL 23000375-00 (**New Kent Cnty. 2023**) (Court held the Defendant and/or their predecessors-in-title, successors-in-title, or privies, were barred by the 15-year statute of limitations set forth in Virginia Code § 8.01-236, in addition to and separate and distinct from the claim of adverse possession in Count 1, based on the Defendants, or any one or more of them, having failed to make any known claim or file an action to recover any interest (e.g. ejectment), if any, in Parcel E within the 15-year period to re-enter the Property or bring an action to recover the Property).
 8. *Field v. Pellegrino*, Case Number CL 22000753-00 (**Goochland Cnty. 2023**) (Court declared that the Defendants are clearly and undeniably barred by the 15-year statute of limitations, based on, *inter alia*, the silence and inaction of the Defendants and their predecessors in title, having failed to make any known claim or file an action to recover any interest, if any, in the Property pursuant to Virginia Code § 8.01-236).
 9. *Riverview Prop. Mgmt., LLC. v. Bowens*. Case No. CL23-1417 (**Portsmouth Cnty. 2023**) (Pursuant to Count III of the Complaint, in addition to, and separate and distinct from, the claim of adverse possession in Count I and Count 11, the Defendants and/or their predecessors-in-title, successors-in-title, or privies, are barred by the 15-year statute of limitations set forth in Virginia Code § 8.01-236 based on the Defendants, or any one or more of them, having failed to make any known claim or file an action to recover any interest (e.g., ejectment), if any, in the Property within the 15-year period to re-enter the Property or bring an action to recover the Property. See Va. Code § 8.01-236).
 10. See also *Wells v. Edwards*, Case Number CL23-74 (**Mathews Cnty. 2023**).
 11. *Larry D. Wilson, sole Trustee of the Raymond L. Wilson Trust dated January 28, 2010 v. Kenner*, Case No. CL23-277 (**Lancaster Cnty. 2023**).
 12. The statute of limitations is of particular importance in the context of property questions, because of the important public interest in ensuring that the title record is clear and free from unnecessary disputes. *McClanahan v. Adm'r*, 122 Va. at 717. "The object of [statutes of limitations] is to quiet titles to land, and prevent that confusion relative thereto which would necessarily exist if no period was limited within which an entry upon lands could be made." *Ferguson v. Stokes*, 287 Va. 446, 451 (2014). In this context, "a successful plea of the statute of limitations not only defeats an ejectment action, *but also clears the way for title to be divested and conferred upon*

the adverse occupant.• u1 (emphasis added).

13. In *Martin v. Mershon*, Case Number CL 01009523-00 (James City Cnty. 2002), Judge J. Warren Stephens, sitting by designation, sustained a plea in bar of the 15year statute of limitations under Virginia CodeÂ§ 8.01-236.

J. Permissive Possession is a Bar

1. To obtain title by adverse possession, as a general rule, the possession must be adverse in its inception. *Thompson v. Camper*, 106 Va. 315 (1906)
2. Accordingly, permissive possession will *not* ripen into adverse possession. *Flem-ing v. Lockhart*, 171 Va. 127,130 (1938) (For example, a tenant cannot dispute the ownerâ??s title during the tenancy.)
3. Where the original entry on another personâ??s land was by agreement or permis-sion, in the absence of an explicit disclaimer, possession, regardless of its duration, *presumptively continues* as *it* began. This presumption may be overcome by evi-dence of an adverse holding with notice to the true owner. *Matthews v. W.T. Free-man Co., Inc.*, 191 Va. 385 (1950); see also *Alford v. Alford*, 236 Va.194 (1988)
4. In a conveyance, the grantor reserved the right to occupy the land for a period of three years. During the period of three years for which she had reserved the right of occupancy, she married the claimant. Her husband moved into the house with her and claimed title to it by adverse possession. The claimantâ??s occupancy began during the time when his wife under the reservation in her deed had the right to occupy the property. No notice was given that the husband was claiming adverse to his wifeâ??s tenancy or to the granteesâ?? rights or title. Without such notice, the oc-cupancy was permissive and the husband could not establish title to the land by adverse possession. *Hall v. Clinchfield Coal Corp.*, 161 Va.177 (1933)

K. Possession by Mistake May Ripen into Title by Adverse Possession

1. In â??narrow circumstancesâ?• mistake can negate hostility. *Ouatannens*, 268 Va. at 37274. Distinguishing between two types of mistakes the Ouattannens Court said that mistake negates hostility when the mistake is due to a mistake in location of a boundary line described in a deed, and there has been no proof of the claimantâ??s intention to occupy the land â??up to a particular and definite line on the ground.â?• u1 When a claimantâ??s possession is based *solely* on a mistaken belief that the land in question was the land described in the deed, the possession is not hostile. *Chaney v. Haynes*, 250 Va. 155, 159 (1995) (â??The essence of an adverse use is the intentional assertion of a claim hostile to the ownership right of another Use of property, under the mistaken belief of a recorded right, cannot be adverse as long as such mistake continues.â?•); *Fort Lewis Mt. Co.*, 2024 Va. Cir. LEXIS 96; *Pretty Lake 5757 LLC*, 114 Va. Cir. at 334.
2. On the other hand, the hostility requirement is generally satisfied when the claim-ant mistakenly believes that a particular â??line on the groundâ?• represents the ex-tent of his own land, and treats the land within the line on the ground in a manner that satisfies the other adverse possession requirements. *Ouatannens*, 268 Va. at 37274. When possession occurs by mistake, to determine whether the posses-sion was hostile the practical test is â??whether the positive and definite intention to claim as oneâ??s own the land up to a particular line on the ground existedâ?; â??. *Chris-tian v. Bulbeck*, 120 Va. 74,111 (1916).
3. See also *Stuart v. Meade*, 119 Va. 753 (1916) (A mere â??generalâ?• mistake, resulting in the occupation and possession of the land of another, without the intention to claim beyond the true

boundaries of the parcel, will not ripen into title under a theory of adverse possession.)

4. *Hollander v. World Mission Church*, 255 Va. 440 (1998)

- A neighbor and her predecessors in title had used a disputed strip of land under the mistaken belief that it was their property. The trial court found that the possession was not adverse because there was no intent to oust the true owner of the property. The Supreme Court of Virginia reversed, holding that because the adverse claim was based not only on the deed descriptions, but also on the belief that the property line ran to a line of woods, the possession was accompanied by the required adverse or hostile intent

5. *Quatannens v. Tyrrell*, 268 Va. 360 (2004)

- A dispute arose over a narrow strip of land between adjoining landowners. The Quatannens were mistaken about the boundary of their land, and the disputed strip of land contained a small portion of a room of their house, part of a brick walkway, part of a paved parking area, and one side of a brick archway at the front of the house. All of these existed when the Quatannens purchased the house. The Quatannens asserted a quiet title claim based on a theory of adverse possession in the trial court. The trial court ruled that the Quatannens failed to establish ownership of the disputed land by adverse possession, apparently because it concluded that the element of hostile intent was not met. The Supreme Court discussed *Hollander v. World Mission Church* at some length, ruled that mistake did not preclude a finding of hostile intent, and reversed and remanded the case for entry of judgment in favor of the Quatannens. “[T]he possessor must profess, through words or actions, a belief that he is entitled to use the land and prevent others from using it in a manner that precludes the legal owner from exercising his rights over the property.” *Id.*, at 372.

L. Title acquired by adverse possession is a new, independent, unencumbered, and indefeasible title.

1. Importantly, title acquired by adverse possession is a new, independent, unencumbered, and indefeasible title, title vested anew in the claimant and/or their predecessors-in-title. *Porter v. Wilson*, 244 Va. 366, 370 (1992) (Noblett acquired title to the property by adverse possession, which conferred upon him a new, independent, unencumbered, and indefeasible title.) (citing *McClanahan’s Adm’r*, 122 Va. at 715); *Turner Ashby Camp No. 1567 v. Cnty. of Clarke*, No. 0683224 2023 Va. App. LEXIS 271*; Va.Ct. App. May 2, 2023) (“However, *Turner Ashby Camp* misunderstands the legal status of an adverse possessor. Satisfaction of the elements of adverse possession, for a period of 15 years operate[s] to extinguish the title of the true owner thereto, and vest[s] a right to the premises absolutely in the occupier.”) (quoting *McClanahan’s Adm’r*, 122 Va. at 715. At the same time title vested anew in the claimant, conversely, the record owner, and/or his or her predecessors-in-title were necessarily divested of any such interest in the disputed property. See *McClanahan’s Adm’r*, 122 Va. at 718 (“divested by a subsequent disseisin for the statutory limitation period”).
2. In *McClanahan’s Adm’r*, the Court further reasoned as follows:
“The adverse occupant who has held for the statutory period does not stand in the position of a grantee from the former true owner, but his occupancy has, by authority of the State speaking through the statute, extinguished all other titles, and has vested in him an absolute and exclusive right to the possession. His title is not in any sense in privity with that of the former owner, and cannot be questioned either by such former owner or by any one claiming through him. To summarize our conclusions, at the risk of some repetition, which we think is justified by the importance of the question, we are of opinion that the better reason and the clear and

unmistakable result of the authorities is to the effect that a true adverse possession for the statutory period confers upon the occupant a new, independent, unincumbered, indefeasible title, a weapon of defense and offense, good alike at law and in equity in all proceedings which call in question its validity or endanger its security. In short, such a title, though not derived from the former owner, is as good as it would be possible to acquire by deed from a former owner of a perfect title, or by a grant from the Commonwealth.â?•

Id.. at 714-15. (emphasis added.)

3. â?•[L]iens against the true owner were dependent on his title, that adverse possession conferred, not a derivative, but an independent paramount, title, and that therefore, when the paramount title matured by adverse possession, the former title was lost, and with it fell the lien, which was dependent upon it.â?• Va. & W. Va. Coal Co. v. Charles, 254 F. 379, 391 (4th Cir.1918) (emphasis added).
4. Accordingly, since any lien on the record ownerâ?•s title to the property is dependent on the record ownerâ?•s title, a lenderâ?•s deed of trust lien, for example, can rise no higher than the record ownerâ?•s title and fails with such record ownerâ?•s title divest-ment of the property.

M. Adverse Use and Occupation Sufficient to Raise Legal Presumption of Ownership That, Unless Rebutted, Will Establish a Claim of Right and Satisfy *Prima Facie* Case.

1. â?•To establish claim of right as a requisite element of adverse possession it is not necessary that the party in possession should have expressly declared his intention to hold the property as his own, nor need his claim thereto be a rightful or well-founded one. That his acts and conduct clearly indicate a claim of ownership is enough, and it may be sufficient even though the disseisor has knowledge of a better title. The actual occupation, use, and improvement of the premises by the claimant, as if he were in fact the owner thereof, without payment of rent, or recognition of title in another, or disavowal of title in himself, *will be sufficient to raise a presumption of his entry and holding as absolute owner, and, unless rebutted, will establish the fact of a claim of right.*â?• Marion Inv. Co., 171 Va. at 182 (emphasis added).
2. â?•In Virginia, proof of an expressed intention to claim title is not necessary.â?• Christian v. Bulbeck, 120 Va. 74,107 (1916); Haney v. Breeden, 100 Va. 781,783 (1902).
3. In Maynard v. Hibble, 244 Va. 94, 97-98 (1992). the Court held that Hibble had adversely possessed nine acres under a color of title theory because (a) Hibbleâ?•s possession of a part of that tract was possession of the whole tract described in his deed and (b) because Hibbleâ?•s other activities, including
 - o paying taxes and homeowners association fees
 - o posting the property,
 - o granting permission to hunt, and
 - o selling timber, were sufficient to establish the other required adverse possession elements.
 - o Id.,at97-98.
4. Zesinger v. Ford. Trustee, CL23001628-00 (**Williamsburg/James City Cnty. Cir. Ct.** Nov. 9, 2023) (Judge Holly B. Smith) (The Court (1) declared that the subject property was vested solely and exclusively in the plaintiffs in possession, (2) declared that the plaintiffs were the sole and exclusive owners of the property by adverse possession, and (3) declared that the defendants are barred from making a claim to the property pursuant to Virginia CodeÂ§ 8.01-236.)
5. In Walton v. Rosson, 216 Va. 732, 735 (1976), â?•actual occupation, use and improvement of the premises, without payment of rent, â?• of anotherâ?•s title or disavowal of [its] own titleâ?• raises an important legal evidentiary presumption that they have held the Property under a claim of right.

N. Adverse Possession Against Cotenants

1. A co-tenancy is “[a] tenancy with two or more coowners who have unity of possession.” Cotenancy, Black’s Law Dictionary (11th ed. 2019). “When two parties acquire property as co-tenants, one co-tenant may not rely on adverse possession to obtain exclusive fee simple title to the property unless notice, actual or constructive, is given to the other co-tenant of the intent to oust, thus making the occupying co-tenant’s possession hostile.” Harkleroad v. Linkous, 281 Va. 12, 18 (2011). “Indeed, there is a presumption against any occupancy of a co-tenant being [in] hostile possession as to the other co-tenants with whom he is in privity.” Id.,
2. In general, the possession of one cotenant is the possession of all cotenants. The possession of one cotenant, therefore, can never be adverse until there is an actual ouster of the cotenants, or some equivalent act. See Rutledge v. Rutledge, 204 Va. 522 (1963). However, when two parties acquire property as co-tenants, one co-tenant may only rely on adverse possession to obtain exclusive fee simple title to the property if notice, actual or constructive, is given to the other co-tenant of the intent to oust, thus making the occupying cotenant’s possession hostile. See Leake v. Richardson, 199 Va. 967, 979 (1958).
3. Harkleroad v. Linkous, 281 Va. 12 (2011)
 - This case provides an exception to the general rule stated above, or at least a variance, where the claimant is a stranger in title to the original cotenancy
 - Linkous and his wife bought real property at a federal tax sale in 1991. Linkous made renovations, and rented the house until sometime in 2007, when their ownership interest was questioned by prospective purchasers of the property. Linkous and his wife were unaware that Harkleroad and related parties claimed a one-half tenant in common interest in the property until 2007
 - The Linkouses had improved and maintained the property, paid the property taxes, and leased the property to tenants who had openly occupied it, for a period in excess of the statutory requirement of 15 years
 - Linkous filed a quiet title action in the trial court, and Harkleroad counter-claimed
 - Although Harkleroad argued in the trial court that one cotenant may not assert a hostile possession of the property unless the other cotenants are ousted from the property by an affirmative notice of the intent to exclude them, the trial court ruled in the Linkouses’ favor, vesting title to the entire property in them by adverse possession
 - The Supreme Court of Virginia affirmed. Key to the decision was that the Linkouses were strangers to the original co-tenancy and had taken possession of the property through a conveyance that on its face purported to give them the right to possess the whole property. Therefore, the act of the Linkouses in taking possession of the entire property was itself an ouster of the other cotenants, and no further notice was required

O. Hostile Possession for Adverse Possession Purposes Among Co-Tenants

1. The element of hostile possession is an issue where one co-tenant or joint tenant asserts title over another tenant’s share by adverse possession. See Harkleroad v. Linkous, 281 Va. at 19 (quoting Helms, 277 Va. at 7). This gives rise to a rebuttable presumption “against any occupancy of a co-tenant being hostile possession as to other cotenants with whom he is in

- privity.â?• Harkleroad, 281 Va. at 18. However, significantly, â??this [rebuttable] presumption does not apply when a â?| stranger [in title] to the original co-tenancy takes possession of the [subject] property â?• Harkleroad, 281 Va. at 19 (citing Shenandoah Natâ??l Bank v. Burner, 166 Va. 590, 593 (1936)); Estep v. Presnell, Case No. CL21000549-00 (Buchanan Cnty. 2021).
2. In Baber v. Baber, 121 Va. 740, 759 (1917) the Supreme Court of Virginia held that a co-tenant had constructive notice of co-tenantâ??s ouster *by lapse of time* in the face of open possession even though he lived out of state. See 121 Va. at 761-63 (â??But in view of the facility of communication in modern times, â?| the presumption seems reasonable that James K. Baber within a reasonable time after the death of his father, William Baber, Sr., made inquiry in Virginia with regard to said land and that by the year 1878, or 1879 at least, was informed of what the numerous other members of the family interested with him must be taken to have known, of the no-torious disclaimer and adverse claim of title of the said John H. Baber accompany-ing his actual possession of the land aforesaid. Hence, under the circumstances of the cause before us, our conclusion is that the said James K. Baber must be taken to have had the constructive notice and knowledge aforesaid from 1878 or 1879 until his death in 1910.â?•).
 3. In Shenandoah National Bank v. Burner, the Supreme Court of Virginia likewise held that exclusive occupation of the property, payment of taxes, making improve-ments, and encumbering the property with a deed of trust was sufficient to es-tablish title by adverse possession in the co-tenant. See 166 Va. at 595 (â??Charles Burner paid the taxes, made improvements upon his land, and encumbered it as his own; he has continued in the exclusive possession from the time of his fatherâ??s death in 1919 down to the institution of this suit in 1934; a period of more than fifteen years without action or ouster.â?•). In that case, the court held that the will devising the property to the co-tenant â??constituted notice to Clinton Burner that Charles Burner was not holding this land as his cotenant; he knew that he was hold-ing it as his own in severalty, and that he did not admit any right of Clinton in the land.â?• kl No formal communication to the ousted tenant is required. See *id.* Rather â??intention to claim the land to the exclusion of the co-tenant may be shown by the acts of the claimant.â?• kl at 594.
 4. This is â??because the stranger to the original co-tenancy is not in privity with the other co-tenants and when he enters into the exclusive possession of the land, and claiming title to the whole, it is an ouster of the other co-tenants.â?• kl; see also Pres-ton v. Va. Mining Co., 107 Va. 245,248 (1907); Johnston v. Va. Coal & Iron Co., 96 Va. 158, 163 (1898);
 5. In Shalom v. Clark, 79 Va. Cir. 202, 203 (Alexandria 2009), arising out of a divorce, the court held that changing the locks to a house constituted an ouster sufficient to deny a right to claim contributions for a mortgage from the other cotenant.

I hope this primer on adverse possession has been helpful and informative. If you have a â??quick questionâ?• or comment, please do not hesitate to contact me. We are all in this together, and I am always delighted to assist a colleague in the bar.

-JLW

1 The county or city of the court in which the unpublished cases were decided are balded for ease of reference for the reader to easily identify cases which are â??localâ?• to the reader or otherwise of interest.



Jim has over 40 years of experience in a broad range of counseling, negotiation, mediation, and civil litigation focused on real estate, title insurance, mechanic's liens/ construction, local government, legal malpractice defense, and creditor's rights. Jim is an AV® Preeminent rated lawyer by Martindale-Hubbell and is the Chairman of the firm's Real Estate Claims & Title Insurance Solutions Group. He has been recognized by Best Lawyers in America from 2018-2026 in the area of Real Estate and in Litigation Construction from 2022-2026. In 2015, Jim received the Distinguished Service Award from the Virginia Land Title Association, and in 2024, he received the Traver Scholar Award from the Real Property Section of the Virginia State Bar. Jim is a member of the Boyd-Graves Conference, and was recently named by Best Lawyers in America® as the 2026 Norfolk Real Estate Law "Lawyer of the Year" in the Norfolk metropolitan area which includes the cities of Chesapeake, Hampton, Newport News, Norfolk, Portsmouth, Smithfield, Suffolk, Virginia Beach, Williamsburg, and Yorktown.

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