

# LEGAL UPDATES

## Update 10-13-2008

You may know the problem as "squatters' rights". The legal term is "adverse possession". This happens when an "adverse" possessor of real property occupies real property of another person without his knowledge or consent, in a manner and for a time which would give the owner the right to sue for ejectment"

This issue often affects us in the residential real estate world when a buyer obtains a new survey, only to find out that the sellers' fences are off line. This usually results in closing delays, horrible stress and many questions. Questions are raised about the age of the fence, who owns it, are there gates, will the neighbors sign a friendly affidavit, etc..

The concern typically is whether the fence, by being off line, has created an "adverse possession" problem, i.e., whether the neighbor, by virtue of the fact that the fences are not where they are supposed to be, has a claim to own the strip of land he has been mowing, bushes he has been trimming, etc..

The old law created problems, because the answer was often "yes", if the neighbor mowed the lawn and claimed ownership rights properly for 10 years or more, title to that parcel was in jeopardy.

### • CHANGES AFOOT

The law was changed by Gov. Patterson, effective 7-7-08 (applies to all claims filed as of or after 7-7-08)

New law:

A. Non structural encroachments (fences, bushes, plantings, retaining walls) do not in and of themselves create adverse possession.

B. The mere act of mowing the lawn across the boundary line does not create an adverse possession risk

### **THE MORAL OF THE STORY**

Though the new laws have not been tested in Court, the intention was to prevent silly and petty disputes between neighbors over often several inches of land.

The disputes now must be real and substantive.

How will this play out? How will the title companies react to the new law? How will this affect off-line fences, shrubs and the like?

Only time will tell, but this change to an ancient and outdated statute is certainly a step in the right direction!

Any questions or problems? Please call us..