

Courtside Newsletter

Informing Real Estate Brokers, Association members, and local Businesses for over thirty years.

RECENT DEVELOPMENTS

The National Association of REALTORS® (NAR) requested that John Giardinelli be part of a work group to analyze the proper role of attorneys in the enforcement of the Code of Ethics and the proper role of attorneys in arbitration hearings. John is looking forward to working with attorneys from around the United States and with the excellent attorneys at NAR.

CALENDAR

C.A.R. Business Meetings

Date: May 4 – 7, 2011
Location: Sacramento, California

Please visit C.A.R.'s website for registration and details!
www.car.org

MLS Rules & Regulations / Data Integrity (Traffic School)

Date: May 13, 2011
Time: 9:00 a.m. – 11:30 a.m.
Location: The Pacific West Association of REALTORS®

Please contact the Pacific West Association of REALTORS® to sign up!

Brown Bag - Seminar

Date: May 18, 2011
Time: 11:30 a.m. – 1:00 p.m.
Location: Southwest Riverside County Association of REALTORS®

Please contact the Southwest Riverside County Association of REALTORS® to sign up!

Important Dates:

Earth Day: Friday, April 22nd
Easter: Sunday, April 24th.

New California Law Raises Bar on Establishing Ownership Through Adverse Possession

BY: RYAN D. MILLER
RIVERSIDE COUNTY OFFICE



California Assembly Bill 1684 became law January 1, 2011. AB 1684 amended California Code of Civil Procedure §325 to change the requirements for title to pass via adverse possession.

Adverse possession is accomplished when a party acquires ownership to another's real property, without compensation, by holding the property for a specified period of time in a manner that conflicts with the true owner's rights. For example, Party A owns an undeveloped acre of real property, but does not visit it often. Party B puts a mobilehome on Party A's acre, moves in, and claims it as his own. After occupying Party A's acre uninterrupted for the amount of time specified by law and paying taxes on the property, Party B becomes the owner of the property.

The legal theory of adverse possession stems from old English law, when real property was the ultimate asset. Due in part to the fact that land was so important, adverse possession encouraged owners not to waste their land and to use it for its highest and best purpose.

If you thought that adverse possession is just a dated legal theory discussed by law professors, you would be wrong. Adverse possession is most commonly asserted in property line disputes, where Neighbor A claims ownership of the land of Neighbor B because it is on Neighbor A's side of the fence and has been for the statutorily required amount of time. However, there have also

been cases where a party simply moves in, plants a tree and claims to fulfill all of the requirements for adverse possession.

Prior to AB 1684 adverse possession was established by adhering to the standards set forth in the previous version of California Code of Civil Procedure §§321-326 and Civil Code §1007. Those code sections essentially required that a party must occupy the real property hostilely, openly, exclusively, and continuously for a period of five years and pay the property taxes on the land.

"Hostile possession" does not mean ill will or actual enmity, but rather is actual occupation or possession of the real property, without the permission of anyone claiming title, and claiming ownership (either express or implied). (The opposite would be a lease or other possession that recognizes or is subordinate to the true owner.)

"Open Possession" means undisguised and conspicuous possession of real property that is generally known or recognized.

"Exclusive possession" means that the person possessing the land must be the only one occupying the property – he can't share possession with strangers or the owner. Furthermore, an adverse possessor cannot give up the use of the property and then return

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return to it and count the time that it was abandoned, as that would not be continuous possession for the required time period.

The problem under the old standard was proving the five-year continuous occupancy of the land. This was especially problematic when all of the taxes that were due were paid in a lump sum payoff at the end of the statutorily required time for possession.

AB 1684 amends California Code of Civil Procedure §325 by requiring that the adverse possessor *timely* pay all taxes associated with ownership of the real property. This requirement makes it more difficult for a cheating adverse possessor to claim ownership by paying back taxes when they were not actually occupying the property.

A related legal theory on which to acquire the use of another's land is that of prescriptive easement. A prescriptive easement is the right to use the land of another after adverse use (hostile,

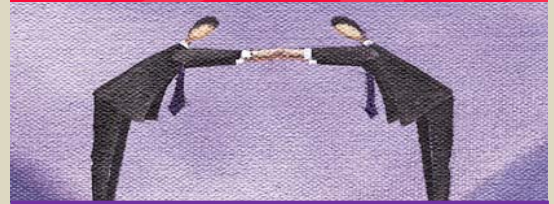
continuous, and open) for a statutorily prescribed number of years. The difference between adverse possession and prescriptive easements is that the use does not need to be exclusive to establish a prescriptive easement. When complete control of the land cannot be established, instead of gaining ownership of the land, an easement is granted.

Though the legal theories behind prescriptive easements and adverse possession come from another time, these doctrines continue to arise in real property disputes. Even though AB 1684 brought a needed change to ensure compliance with the requirements of adverse possession, parties involved in real estate transactions must still be wary of these doctrines. It is a common mistake to wrongfully believe that a fence line and a property line are the same. The last thing any real estate buyer wants is to buy a lawsuit.

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BUSINESS CORNER

“We want to help.”



BUSINESS TIPS

TIPS FOR CORPORATE DIRECTORS AND OFFICERS TO AVOID LIABILITY FOR BREACHES OF THEIR DUTIES

1. Directors and Officers must act in good faith.
 - That generally means being honest.
2. Directors and Officers must refrain from self-dealing and usurping corporate opportunities.
 - A director/officer may not take an opportunity that is in the corporation's line of work that the corporation is able to undertake unless the corporation refuses the opportunity.
3. Decisions made on an informed basis will be protected by the “business judgment rule.”
 - If a director/officer is unfamiliar with the natural results of a decision, someone should be hired to give their opinion before the director/officer makes a decision.

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New Law: Post-Foreclosure Protection for Tenants

RULE: Until January 1, 2013, a purchaser of a foreclosed home that wants to remove tenants must attach a cover sheet to any notice of termination of tenancy indicating the tenant's rights if it is within the first year after the foreclosure sale.

Exceptions:

- The tenancy is terminated pursuant to Section 1161;
- The new owner and tenant executed a rental agreement or lease; or
- The Tenant was not a tenant at the time of the foreclosure.

April is Tax Season and the IRS is Cracking Down

According to an article on Bankrate.com, the IRS has begun taking the enforcement portion of its job seriously. With that in mind, certain things on tax returns are going to act as red flags to auditors. Those include, but are certainly not limited to, the following:

- Higher incomes;
- Income other than basic wages;
- Home businesses;
- Non-cash charitable deductions;
- Large business “entertainment” and meal deductions;
- Excessive auto usage for business purposes;

- Losses from an activity that could be construed as a hobby rather than a legitimate business transaction;
- Large casualty losses; and,
- Unreported income, such as investment returns.

According to the article, the work you put into preparing your return will pay off in the even of an audit. In other words, keeps good records and you will be better able to back up what your tax return says.

To view the full article, go to bankrate.com/finance/taxes/red-flags-that-tempt-the-tax-auditor-1.aspx

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