

How to 'steal' real estate without going to jail

CONSUMER NOTEBOOK



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INMAN NEWS FEATURES

A few weeks ago, I received a fascinating e-mail from San Francisco. The writer noticed an abandoned house in his neighborhood. He has tried to contact the owner about buying it. But his letters are unanswered.

The writer checked with the local tax collector and learned the property taxes haven't been paid. He asked me if he could pay those property taxes and then file a lien against the house.

The answer is he can pay the property taxes. Tax collectors welcome payments from anyone. But a volunteer taxpayer is not entitled to file a lien against the house's title.

That e-mail made me realize it is time to write again about how to legally steal real estate without going to jail. Always a popular topic, every realty owner should know how to steal

real estate at little or no cost.

Why theft of real estate is legal.

When most states adopted English common law in the 1800s and early 1900s (except the great state of Louisiana which still follows the french Napoleonic Code), we thereby accepted the laws of adverse possession.

Sometimes called "squatter's rights," adverse possession has the common law purposes of (1) keeping property in use and (2) collecting property taxes from each parcel.

There are two legal methods of stealing real estate without buying it and without going to jail. One allows acquiring title to the entire property. The other involves obtaining permanent use of part of a property.

1 - Steal the entire title by adverse possession.

As I suggested to the San Francisco e-mailer, if he is unable to locate the owner of that vacant house, he might want to acquire title by adverse possession.

To do that, he must occupy the property by "open, notorious, hostile, continuous and exclusive (not shared with anyone else) possession." In addition, the property taxes must be paid for the number of years required by state law.

California has the shortest adverse possession time of just five years. But Texas requires 30 years. Other states are in between. A local real estate attorney can provide the number of

adverse possession years for the state that interests you.

But adverse possession is not available against property owned by government agencies, public utilities, and railroads.

If you can keep a secret, just between us, let me tell you about one of my best friends. He is a real estate thief.

As the owner of an adjoining parcel, he had his eye on buying a neighboring vacant property owned by an out-of-state corporation. But the corporation demanded an outrageous price. So my friend had the neighboring property paved for a parking lot and he is earning income from it. He's also paying the property taxes. After the required number of years of adverse possession, he will sue the owner in a quiet title action to obtain the title by adverse possession.

Adverse possession usually occurs with rural properties where the owner neglects to periodically inspect for adverse possession. But, as the above examples show, even urban properties can be stolen by adverse possession.

The most famous adverse possession court decision is *Stevens v. Tobin* (251 Cal.Rptr. 587) from the California Supreme Court. Thomas W. Stevens argued he adversely occupied for 15 years the San Francisco apartment building at 1899 Oak Street, in the famous Haight-Ashbury District. When Stevens sued the legal owner in a quiet title lawsuit, he

proved open, notorious, hostile, exclusive and continuous possession. But the California Supreme Court ruled Stevens was unable to prove he paid the property taxes. He lost.

2 - Steal partial use of a property at no cost with a prescriptive easement.

If you don't want to acquire an entire property, but you just want partial use of it, a prescriptive easement is what you need. Examples include a driveway, path, or perhaps a garden area, on an adjoining property.

The same adverse possession open, notorious (that means obvious), hostile, time, and continuous use requirements apply. But you need not pay any property taxes to acquire a prescriptive easement. The use need not be exclusive; it can be shared with the property owner or even with another hostile prescriptive easement user.

For example, suppose you frequently drive over your neighbor's property, but he tells you to stop. You ignore him and continue driving over his land. If you continue doing so without interruption for the minimum time required where the property is located, you will eventually acquire rights to a prescriptive easement. However, if your neighbor blocks your access with a fence, which you tear down, your prescriptive period starts running again.

If you are the owner of a prop-

erty that is being used by a neighbor without your permission, it is to your advantage to prevent him from acquiring a permanent prescriptive easement. One way to prevent a prescriptive easement from arising on your property is to grant permissive use. Just in case of future trouble, be sure to document your permission, such as with a certified letter to the user of part of your property.

Another way to stop a prescriptive easement from arising is to periodically block the hostile use. To illustrate, years ago I was a summer student at Stanford Law School. One Sunday morning, when I wanted to drive into adjacent Palo Alto, my short trip was blocked by the police who erected a street barricade. The polite police officer explained Stanford does this every summer for a few hours to prevent anyone from acquiring a permanent prescriptive easement to use that Stanford-owned street.

Permissive use will prevent theft of your property.

If you know someone is using all or part of your property, but you don't care, usually the best way to prevent that person from acquiring title by adverse possession or a permanent prescriptive easement is to grant permissive use.

For example, have you noticed signs or plaques posted on a property such as "Permission to pass over this property is revocable at any time." In most states, the

property owner can also record revocable permissive use to prevent adverse possession or a prescriptive easement from arising.

The best time to steal free real estate.

If you are a real estate thief who wants to steal valuable property at very low cost, the easiest method is to adversely possess a property owned by a deceased person. When a property owner dies without close relatives or friends who know what real estate the deceased owned, it is relatively easy for squatters to move into vacant property and begin adverse possession.

Even if you have a will and a living trust, to prevent adverse possession be sure your relatives, friends and charity beneficiaries know what real estate you own.

Conclusion.

Adverse possession and prescriptive easements are the two legal methods of stealing ownership or partial possession of real estate. State laws allowing adverse possession and prescriptive easements are intended to keep property in productive use, with property taxes paid. For more details, please consult a real estate attorney in the state where your property is located.

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