

Can a claim of a private prescriptive easement be made after the post 2003 amendments to Alaska's adverse possession statutes?

See Dault v. Shaw 2013 – “If Shaw's claim depended on a period of use after the 2003 effective date of the amended statutes, substantial questions would exist as to whether and how they should be applied to prescriptive easement claims.¹⁰ FN 10 “See Minutes, House Jud. Comm., Hearing on S.B. 93, 23d Leg., 1st Sess. At 1428 (May 18, 2003) (testimony of Ronald Baird, real estate attorney) (suggesting amendments would extinguish “private prescriptive rights”).”

See Loewen v. SOA/DNR et al. – 9/19/16 Memorandum Decision and Order: “In 2003, the Alaska Legislature limited claims for adverse possession to cases in which the claimant either had color of title, or a good faith but mistaken belief that the claimant owned the land in question.⁹ These amendments, however, do not apply to claims for prescriptive easements.¹⁰ As a result, both before and after the 2003 amendments, a prescriptive easement is created after ten years of continuous, uninterrupted, adverse, open and notorious use.”

See Recent Developments in Alaska's Adverse Possession Law, 1/28/2018 Landye Bennett Blumstein, LLP – “In Loewen, the Court concluded as a matter of law that the 2003 amendments do not apply to prescriptive easements. This conclusion is contrary to some practitioners' understanding of the law, and thus it is important to note that the Superior Court's decision in Loewen is not binding on other courts in the state.”

See No Room for Squatters – Alaskas Adverse Possession Law – “It was almost certainly the goal of the legislature to curtail, if not abolish, private prescriptive easements. If the courts afford record owners the protections of section 09.10.030(b) where private easements are concerned, the ability to create easements by prescription will be drastically curtailed, which could result in users having to pay record owners for easement right.”

“Easements were considered “use” interests in land, not possessory interests.”