

**Actual** - You actually acted in the manner of an owner of the property.

**Open & Notorious** - You engage in acts of possession consistent with the property at issue in a manner which was capable of being seen. (This does not mean that you must have been observed in your acts of ownership but, had the actual owner or members of the public been in a position to see you, your acts must have been observable). You need not use the property in a manner that exceeds that which would be expected of the actual owner - that is, it may be possible to claim adverse possession of a vacation property on the basis of use only during the vacation season, or to claim adverse possession of a vacant parcel of land by engaging in typical acts of maintenance for the parcel.

**Exclusive** - The adverse possessor does not occupy the land concurrent with the true owner or share possession in common with the public. One does not have to exclude others from the land in order to claim "exclusive" use, but during the statutory period the person claiming title by adverse possession must have been the only person to treat the land in the manner of an owner.

**Hostile** - Hostility exists where a person possesses the land of another intending to hold to a particular recognizable boundary regardless of the true boundary line. That is, possession is "hostile" to the title owner's interest in the property. If possession was not hostile, it may still be possible to advance a claim of ownership under a theory of "[acquiescence](#)". You cannot claim "adverse possession" if you are engaged in the permissive use of somebody else's land.

**Under Cover of Claim or Right** - Either when the person claiming the property makes the claim based upon constructive possession under color of title (e.g., there is an error in the legal description in their deed leading them to believe they own part of a neighboring property), **or** makes the claim based upon actual use and possession of the area of land at issue for the statutory period

**Continuous & Uninterrupted** - All elements of adverse possession must be met at all times through the statutory period in order for a claim to be successful. It may be possible to claim adverse possession even if there is a transfer of ownership through the principle of "tacking" - for example, a former owner's twelve years of adverse possession can be "tacked" to the present owner's eight years, for a cumulative twenty years of adverse possession.

**The Statutory Period** - The statutory period, or "statute of limitations", is the amount of time the claimant must hold the land in order to successfully claim "adverse possession".

## Common Defenses to Adverse Possession

While the following list is far from exhaustive, these defenses are very often brought in adverse possession actions:

**Permissive Use** - If the actual owner has granted the claimant permission to use the property, the claim of "adverse possession" cannot be deemed "hostile" and thus fails.

**Public Lands** - Government-owned land may be exempt from adverse possession.

**Insufficient Acts** - Although it is conceded that the claimant engaged in some use of the property, it is alleged that these acts were not sufficient to amount to acts suggesting a claim of ownership.

**Non-Exclusive Use** - Although it is conceded that the claimant engaged in some use of the property, it is alleged that others (usually the property owner) *also* used the property in a manner consistent with that of the landowner.

**Insufficient Time** - Even if various elements of adverse possession were met, it is alleged that the adverse possession did not last for the full statutory period, or that the adverse possession was interrupted by a period of non-use.