

“SO, ABOUT YOUR RECENTLY INHERITED WEST TEXAS LAND: IS THERE A NON-LITIGATION SOLUTION TO DEFEAT THOSE CLAIMING OWNERSHIP TO YOUR LAND?”

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Cousin Terry knows that he owns some part of the Texas land and mineral rights yearly celebrated by Uncle Steve over the Thanksgiving table. Apart from Steve’s stories, Cousin Terry knew little about his property. That changed when a utility company called seeking an easement over the property and wanting to pay him handsomely for it. Cousin Terry soon discovered that other family members were already receiving payments for easements related to the same property. Worse yet, his lawyer discovered that the county deed records looked like an Old Testament genealogy. What can Cousin Terry do? More importantly, what can you do in a similar situation? As our friend Cousin Terry found out, there may be other options besides an expensive, contentious lawsuit.

The Traditional Litigation Path

After talking with close relatives, Cousin Terry quickly discovered a number of easements and alleged transfers of ownership of “his property” of which he never received notice. Title to his property had not been addressed in decades and the county deed records were a mess. After examining his options, no answer was going to be easy, quick, or cheap – and most would require litigation. This is the case because questions over the chain of title (meaning the records identifying all prior owners) or current deed to a not-so-often-occupied piece of land can quickly raise a legal issue known as “adverse possession”. Adverse possession is a claim of land ownership that is “open and hostile” to all other potential owners (legal jargon for essentially planting your flag without regard to ownership) for long enough that the claimant, by law, becomes the rightful land owner. Given the history of cattle ranching and oil and gas production in the Lone Star State, adverse possession laws in Texas have a more prominent legal legacy than in many other states. Adverse possession claims became so commonplace that the legislature passed separate statutes depending upon “possession” time of 3, 5, 10 and 25 years.

Length of Claim	Relevant Facts REQUIRED	Limitations on size of land
3 Year Claims	Actual title or document indicating title ownership and possession of the land	
5 Year Claims	Duly-registered deed, payment of taxes, enjoyment and cultivation, possession of the land	
10 Year Claim	Possession, use and cultivation of the land	Limited to 160 acres or land actually fenced by adverse possessor
25 Year Claim	Possession, use and cultivation of the land	Can claim entire property

All four time-frames require actual possession of the claimed property. More complicated proof requirements occur if the adverse possessor is a cotenant (you share equal title with them), a “stranger” to the title (they have no prior association with the previous deeds) or if the owner has been “ousted” from the property (adverse possessor actually prevented a party from entering the property).

Satisfying any adverse possession statute requires provable facts and events which likely occurred years or decades prior, with predictable memory lapses and document losses. Was a party’s use of the land so obvious and clear that you should have known they were claiming ownership? Was a party truly ousted and denied access? Did an adverse possessor actually use or cultivate the land? Uncertain facts – often difficult to prove – make litigation unattractive for almost any dispute. We recently counseled Cousin Terry to that very conclusion.

An Outside-the-Box Solution

Knowing with some certainty that neither Cousin Terry nor his close family members ever voluntarily gave up any rights regarding possession and use of their property, knowing that he was never prevented from using his property, and knowing that he was never denied access to his property, we were confident these factors would be key in defeating any adverse possession claim. But rather than Cousin Terry having to prove his ownership, could we flip the burden? Could we get the oil, gas, and pipeline owners to contact Cousin Terry directly rather than ignoring him?

The solution? Our crafted “Affidavit of Use & Possession” allowed Cousin Terry to accurately trace property ownership through the chain of title (that is, the previously known deeds) and address head-on, by sworn affidavit, the factual elements of each potential adverse possession claim. The affidavit clarified he was not denied access to the property, never gave away his interest, maintained continuous ownership and detailed support for his ownership interest – knocking down litigation-related issues. We then filed it in the county deed records and hoped for the best.

The Result?

Following the filing, new utility and pipeline companies contacted Cousin Terry. Many companies previously unaware of his ownership interest due to the convoluted title documents now circled back and acquired easements on the same price and terms as previously been paid to others holding claims of title. All of this was accomplished without any family conflict or escalation of potential conflict with other land claimants. The Affidavit of Use and Possession proved to be an excellent modern, efficient solution to an antiquated, convoluted problem. If faced with a similar issue in Texas as Cousin Terry, a comparable use and possession affidavit might be effective, assuming, of course, that you can accurately trace title and validate your use and possession of “your property” and the other factual elements. If so, your able counsel may concur that an Affidavit of Use and Possession may be a smart, economically viable option to stake your claim and protect your ongoing rights.

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