

Handbook of Florida Fence and Property Law: Adverse Possession¹

Michael T. Olexa and Joshua A. Cossey²

Foreword

With approximately 19,000 livestock farms in the state, along with horse farms, orange groves, soybeans, sugarcane, cotton, peanuts, and many other agricultural and livestock facilities, livestock and farming have a significant impact on Florida's economy. Florida's agricultural economy has been required to co-exist with rapid population and commercial growth in the state over the last twenty-five years. Conflicts between these interests bring to prominence issues such as the rights and responsibilities of adjoining landowners, farmers, and property owners in general. Due to the added importance placed on these areas of real property, the legal aspects of fences in the state of Florida have taken on significant importance.

This handbook is designed to inform property owners of their rights and responsibilities in terms of their duty to fence. Discussed areas include a property owner's responsibility to fence when livestock is kept on the property, the rights of adjoining landowners to fence, the placement of fences, encroachments, boundary lines, easements, contracts, nuisances, and a

landowner's responsibilities towards persons who enter his property.

This handbook should provide a basic overview of many rights and responsibilities that farmers and farmland owners have under Florida's fencing and property law. Readers may value this handbook because it informs them about these rights and responsibilities. However, the reader should be aware that because the laws, administrative rulings, and court decisions on which this booklet is based are subject to constant revision, portions of this booklet could become outdated at any time. This handbook should not be viewed as a comprehensive guide to fencing and property laws. Additionally, many details of cited laws are left out due to space limitations. This handbook should not be seen as a statement of legal opinion or advice by the authors on any of the legal issues discussed within. This handbook is not a replacement for personal legal advice, but is only a guide to inform the public on issues relating to fencing and property laws in Florida. For these reasons, the use of these materials by any person constitutes an agreement to hold the authors, the Institute of Food and Agricultural Sciences, the

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 2. Michael T. Olexa, Professor, Food and Resource Economics Department, and Director, UF/IFAS Agricultural Law Center, Florida Cooperative Extension Service, Institute of Food and Agricultural Sciences, University of Florida, Gainesville, FL; and Joshua A. Cossey, third-year law student, Levin College of Law, University of Florida, Gainesville, FL.

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What is adverse possession?

Unlike boundary by agreement and boundary by acquiescence, adverse possession not only applies to encroachments by adjoining landowners but also to the ownership rights of any piece of land. Adverse possession occurs when a person loses title to his property because another person has occupied the land for at least seven years, resulting in overlapping legal descriptions. In addition to the seven-year requirement, in order for an individual to adversely possess another's land, the individual must also possess the land in an open, notorious, and visible manner such that it conflicts with the owner's right to the property. Thus, A cannot adversely possess B's land if A has B's permission to be on B's land. Furthermore, A must possess the land continuously for a period of seven years and the possession must be exclusive to the use of others and the owner. It is important to note that since B has legal title to the land, A must clearly prove the requirements for adverse possession (see *Downing v. Bird*, 100 So. 2d 57 [Fla. 1958]; 2 Fla. Jur. 2d Adverse Possession sections 8–36). In addition to these basic requirements for adverse possession, Florida law requires that an adverse possessor occupy the land for at least seven years and meet either of the two following requirements: adverse possession under color of title or adverse possession without color of title.

Adverse possession under color of title (Fla. Stat. section 95.16)

An adverse possessor can claim property under color of title if he meets the following two conditions:

1. The adverse possessor must show that the claim of title to the land is based on a recorded written document (even if faulty). The adverse possessor must genuinely believe this document to be the correct claim of title (see *Bonifay v. Dickson*, 459 So. 2d 1089 [1st DCA 1984]; 2 Fla. Jur. Adverse Possession section 10; *Seton v. Swann*, 650 So. 2d 35 [Fla. 1995]).
2. The adverse possessor must show possession of the property by doing one of the following to the land for at least seven years:
 - Cultivating or making improvements.
 - Protecting by a substantial enclosure (usually a fence).
 - If not enclosed, using the land for the supply of food or fencing timber for husbandry or the ordinary use of the occupant.
 - Partly improving a portion of a recognized lot or single farm, making the unimproved part, if in the custom of the area, considered occupied.

Adverse possession without color of title (Fla. Stat. section 95.18)

When an individual continuously occupies a property for seven consecutive years, lacking any legal document to support a claim to the land's title, he may establish adverse possession by: filing a return with the county appraisers within one year of entry onto the property, and paying all taxes and liens assessed during possession of the property.

The property is considered possessed only if the individual:

- Cultivated or improved the land, or

- Protected the land by a substantial enclosure, which is usually a fence (see *Mullins v. Culbert*, 898 So.2d 1149 [Fla. 2005]). Tax deed alone is insufficient to establish adverse possession or color of title (see *Bentz v. McDaniel*, 872 So. 2d 978).

Summary

The requirements for adverse possession are very strict. The person claiming adverse possession must possess the land openly, notoriously, and in a visible manner such that it is in conflict with the owner's right to the property. In addition, this person must either have some sort of title on which to base claim of title or the person must have paid property taxes on the land claimed to be adversely possessed. Of final note, the person must possess the land continuously and exclusively for at a period of at least seven years.

Further Information

Circular 1242, Handbook of Florida Fence
and Property Law
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