The English legal system has developed by the decisions of judges throughout the ages and will continue to develop as more cases come before the courts. This has left us with many delightfully quirky legal principles, many of which fall within the law of real property. Few are more controversial than the idea of adverse possession – that a person can gain legal title to a parcel of land (and oust the previous owner) simply by being in possession of that land for a certain period.

We provide an overview of the concerns for land owners or developers and how to deal with people who have encroached on your land.

This seems at odds with one of the fundamental principles of land registration - that the register of title should be like a mirror, reflecting all of the important details about a parcel of land so that a would-be purchaser is sure about what they are purchasing.

It is therefore important for people who deal with property to understand how adverse possession works - and if you own land, how to avoid losing it.

**What is adverse possession?**

Adverse possession (sometimes referred to as squatters' rights) is a mechanism by which a person who is not the owner of land can acquire legal title to that land by being in possession of it for a set period of time. The concept has its origins in Roman law, and part of the underlying rationale behind it comes down to the fact that land is a limited resource; if one person is not taking good care of their land and properly attending to it then someone else should be given the opportunity to do so.
This seems to some people to be rather draconian. To ensure fairness to all parties, a system of rules have been put in place to help decide when a party can oust the previous owner. There are two sets of rules governing when a successful application for adverse possession can be made - the rules which came into force for registered land with the Land Registration Act 2002 (the "Post-2002 Rules") and the rules which preceded them (and still apply today in relation to unregistered land) (the "Pre-2002 Rules").

The Pre-2002 Rules

A squatter can apply to be registered as owner if they have been in adverse possession of the land to the exclusion of all others for 12 years. However, nowadays this will only apply in circumstances where:

i. The land is unregistered; or
ii. The land is registered and period of possession relied upon ends before 13 October 2003.

The Post-2002 Rules

The Post-2002 make it much harder to bring a claim. A squatter must show that he or she (or their predecessors) have been in occupation of the subject land for at least 10 years.

However the landowner can object and require the squatter to establish one of the three criteria set out in the Land Registration Act 2002. These are:

1. Estoppel: that for some reason it would not be right (it would be 'unconscionable') for the squatter to be dispossessed and the circumstances are such that the squatter ought to be registered as proprietor - whilst this sounds like it might be easy for a squatter to meet, it is actually quite a narrow test and is not often relied upon in practice;
2. Some other right to the land: that the squatter can show they are entitled to be registered as the owner of land for some other reason - this is also very rarely used in practice and is difficult to make out; and
3. Reasonable mistake as to the boundary: that the squatter owns land adjacent to the subject land and reasonably believes that they owned the subject land.

In practice it is this third condition which is most usually relied upon by would-be claimants in order to seek to establish their claim to the land.
Other legal issues

However, a certain period of possession of the land is not enough, on its own, for a squatter to claim title. There are a wealth of cases which have developed the law surrounding adverse possession. From these cases we can draw the following key principles:

1. A squatter's possession must be truly "adverse" - they must have no right (either express or implied) to use the land;
2. A squatter needs to show both physical possession and an intention to possess the land in question;
3. A squatter needs to show that they have exercised a sufficient degree of physical control over the land and has been using it as their own. The classic demonstration of this is by enclosing the land so that others are excluded from it.
4. Under both sets of rules, it is permissible - in calculating the relevant time period - for a squatter to aggregate the period of possession of himself and any predecessor in title.

What happens next?

In either case, if the squatter believes that they have the requisite period of possession - and if that possession complies with the requirements so as to make it truly adverse - then the squatter can apply to be registered as proprietor of the land. The procedure for this differs depending upon which set of rules are being relied upon.

Top Tips to Avoid Adverse Possession Claims

Whilst the Post-2002 Rules make it harder for squatters to acquire land, here are our top tips to protect land owners from being on the receiving end of successful adverse possession claims:

- Inspect your sites regularly to make sure that there are no incursions. Keep a good record of those inspections;
- Investigate when the incursion first occurred. If necessary contact previous owners and speak with neighbouring land owners. Consider ordering historic aerial photographs (although beware - they can be of limited assistance as they only show a snapshot at a particular date and time);
- If you discover that someone has encroached on your land, take urgent steps to remove
them. This could include writing to them and/or issuing possession proceedings;

- If there is a dispute as to the boundary of the properties, consider obtaining a boundary surveyor’s report.

To discuss how best to stop the trespass contact our adverse possession experts in the property litigation team.