

## WHAT IS ADVERSE POSSESSION?

Adverse possession has a long history in the common law of England, Canada, and Alberta. Occupation is used to determine a person's rights to land. In today's Alberta, it involves two people: the person in actual possession of the disputed property (**the occupier**) and the registered owner of the disputed property (**the registered owner**).

It is important to note that adverse possession is only available against privately owned land. Public lands owned by the Crown are not subject to any adverse possession claims. Municipal lands and irrigation districts are also exempt from adverse possession claims.



# What is ADVERSE POSSESSION ?

## THE ESSENTIAL COMMON LAW ELEMENTS OF ADVERSE POSSESSION ARE:

- the **registered owner** must be out of possession of the disputed land,
- the **occupier** must be in use and occupation of the disputed land, and
- the **occupier's** use and occupation must be exclusive, continuous, open or visible and notorious for the requisite time period.

## MOST CLAIMS FALL WITHIN THREE CATEGORIES:

1. **CLAIMS TO RECOVER POSSESSION OF LAND:** Under the *Limitations Act*, the **registered owner** must bring a claim to recover possession of land within 10 years from the time that they are dispossessed, or within 10 years from the time the **registered owner** acquired the property as a bona fide purchaser for value – whichever is latest. If the **registered owner** fails to bring the claim within the 10-year limitation period, then the **occupier** may be entitled to retain possession of the disputed land.
2. **CLAIMS TO QUIET TITLE:** An **occupier** who is not the **registered owner** of land, but who possesses that land for more than 10 years, may be able to bring a claim against the **registered owner** to quiet title. The **occupier** must show actual possession that is exclusive, continuous, open, and notorious. A successful claim means that the **occupier** would be entitled to "quiet title" by obtaining a new title to the disputed property.
3. **CLAIMS REGARDING LASTING IMPROVEMENTS:** Under section 69 of the Law of Property Act, an **occupier** who has made a lasting improvement on land based on the mistaken belief that they owned the land can bring a claim for compensation or other related remedies. Such claims often arise where the **registered owner** is still within time to recover possession, but to allow the **registered owner** to do so may cause some injustice to an **occupier** who has spent effort or resources to improve the disputed land. In these cases, allowing the **occupier** to retain the land – while compensating the **register owner** – may be required to remedy the injustice.



## WHAT IS ALRI RECOMMENDING?

ALRI is recommending that the law of adverse possession be abolished in Alberta.

This change would prevent new claims from being brought in the future, but would not affect claims that have been resolved or filed with the court before the change comes into effect.

This change would mean that a **registered owner** of land could recover possession at any time and would not have to act within the 10-year limitation period that currently applies.

If adverse possession is abolished, claims regarding lasting improvements to wrong land under section 69 of the Law of Property Act would have a more prominent role in resolving disputes concerning possession of land. To facilitate equitable resolution of disputes, ALRI recommends that an assign of the lasting improvement should not have to prove whether the person who made the improvement believed it was their land. This change would make section 69 consistent with how courts have applied it. ALRI also recommends that section 69 claims can be brought at any time.

ALRI is also consulting on whether a claimant who obtains a judgment under section 69 of the Law of Property Act should be required to apply for subdivision approval to give effect to the judgment.

# ISSUES AND RECOMMENDATIONS

## ISSUE

Should adverse possession be abolished in Alberta?

## RECOMMENDATION

Adverse possession should be abolished in Alberta.

## ISSUE

How should the law deal with existing claims to quiet title if adverse possession is abolished?

## RECOMMENDATION

Adverse possession should be abolished retroactively so that no new claims may be brought once abolition is in force.

## ISSUE

How should the law deal with concurrent claims to quiet title and to recover possession of land if adverse possession is abolished?

## RECOMMENDATION

Where a claim to quiet title was commenced before abolition is in force, the claim should be dealt with as if the 10-year limitation period for claims to recover possession of real property continued to apply.

## ISSUE

Should a claim to recover possession of real property be excluded from the operation of the Limitations Act?

## RECOMMENDATION

Claims to recover possession of real property should be excluded from the operation of the Limitations Act.

## ISSUE

Should an assign have to prove the belief of the person who made the lasting improvement under section 69 of the Law of Property Act?

## RECOMMENDATION

An assign should not have to prove the belief of the person who made the improvement under section 69 of the Law of Property Act.

## ISSUE

Should a claim regarding a lasting improvement under section 69 of the Law of Property Act be excluded from the operation of the Limitations Act?

## RECOMMENDATION

A claim regarding a lasting improvement under section 69 of the Law of Property Act should be excluded from the operation of the Limitations Act.

## HOW CAN I SUPPORT OR OPPOSE THESE PROPOSED CHANGES?

In a consultation phase, we welcome your comments in support of these changes and your suggestions for improvement. You can contact us through email at [lawreform@ualberta.ca](mailto:lawreform@ualberta.ca), on our website at [www.alri.ualberta.ca](http://www.alri.ualberta.ca) or through our Twitter handle @ablawreform. There is also an online survey which you can access at [http://bit.ly/AP\\_Alberta](http://bit.ly/AP_Alberta).

## WHAT HAPPENS NEXT?

ALRI will consider all the comments we receive. After reviewing the comments, we will make any appropriate changes to our recommendations and publish a final report. If you would like to be notified about the final report and our other publications, you may join our mailing list at [www.alri.ualberta.ca](http://www.alri.ualberta.ca).



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