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YOUR HOME

Adverse Possession: Mind Your Property

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EARLIER this year, the [New York State](#) Legislature passed a bill that would bar a claim of adverse possession, a centuries-old doctrine that allows a person to claim title to property that he or she has used for a specific period of years, if the person making the claim had “actual knowledge” that the property was owned by someone else.



Tom Bloom

The bill was vetoed in August by Gov. [Eliot Spitzer](#), who said that while “at first blush” the bill “would seem to be a logical improvement to the law,” in reality the change would result in “extensive litigation of virtually every adverse possession claim.” The Legislature’s action and the governor’s veto highlighted the harsh realities of adverse possession.

“Adverse possession is a legal theory whose time has come and gone,” said Lucas A. Ferrara, a [Manhattan](#) real estate lawyer. “There is little in the law as it stands now to stop the unscrupulous from claiming title to property they know full well is not theirs. And it obviously penalizes the absentee owner.” Under the current law, as articulated by the Court of Appeals in June 2006 in the case of *Walling v. Przybylo*, a claim of adverse possession can be made if an individual “openly, notoriously and exclusively” uses someone else’s property continuously for 10 years, believing he has the right to do so.

One of the main issues in the case was whether a person could assert a valid claim if he knew he did not own the property. The court ruled that even if a person knew the property he was using was not his, he could indeed make a claim of adverse possession, provided the time period and the other elements were met. Adam Leitman Bailey, another Manhattan real estate lawyer, said that by passing its adverse possession bill, the Legislature essentially attempted to overturn the Court of Appeals decision by barring adverse possession if the adverse possessor knew the property was owned by someone else.

Terrence A. Oved, also a Manhattan lawyer, said, “This has practical and potentially devastating consequences for unsuspecting landowners.” He noted that many people who own land in rural areas rarely visit it and more rarely walk the property lines, even if they know where the lines are.

Having the land surveyed will determine the property lines, and markers like fences and “no trespassing” signs can be placed on the boundaries.

If an encroachment is discovered, one way to defeat an adverse possession claim is to give written permission to the adverse possessor to use the land. “If permission has been given, the adverse possessor cannot assert that his use of the property was hostile,” Mr. Oved said. This was one of the tests in the Court of Appeals decision. Alternatively, he said, a landowner can demand that the encroachment be removed immediately and can sue if necessary.

Mr. Ferrara said one disturbing element of adverse possession is that the true owner pays taxes on property being used by someone else. “It’s unfair,” he said, “and it’s un-American.”