



RINKE NOONAN

attorneys at law

Firmly Committed.



RINKE NOONAN

attorneys at law

What Happens in Adverse Possession Lawsuits

Why are they so long and expensive?

Presented by Ben Bohnsack

Firmly Committed.



Pre-suit Considerations

- Determine character and amount of land in dispute.
 - Agricultural, residential, commercial, timber.
 - What is the value? Is it worth fighting for?
 - Necessity-based reasons:
Encroachments that can't be changed without great expense.
 - Structures, well, septic, etc.
 - “Sentimental” reasons: Family farms, hunting land, lake cabins.

Firmly Committed.



Pre-suit Resolution Strategy

- Assess client's position and advise on likely outcome.
 - Adverse possession cases are uniquely suited to predict results early on in the dispute.
- Advise on costs of litigation.
 - Do litigation costs exceed the value of the land in dispute?
- Determine how “adverse” the parties really are.



More Pre-suit Considerations

- Jump straight to lawsuit or attempt resolution without court involvement?
- Have landowners work it out directly or get lawyers involved?
 - People don't like dealing with lawyers
- Don't get too optimistic and spend lots of time and money on the hope that the dispute resolves.



Should We Mediate Early?

- Pros:
 - Saves time and money if you settle.
 - Might salvage neighborly relationship.
 - Control over outcome.
 - Flexibility and creativity in the resolution.
- Cons:
 - Everyone thinks they can win their case in the beginning.
 - Spent money for nothing if you don't settle.



Starting the Lawsuit

- Summons and Complaint – What theories to include?
 - Adverse possession claim.
 - Trespass.
 - Money damage claim? Trespass to trees?
 - Boundary by practical location.
 - Prescriptive easement.
 - Quiet title.
 - Statutory action to determine boundary lines.



Discovery

- Written discovery tools:
 - Interrogatories, e.g. questions to the other side.
 - Requests for production of documents: pictures, surveys, correspondence, anything related to a damage claim.
- Other discovery tools:
 - Site inspections of disputed boundary.
 - Depositions: Find out what each person is going to say.



Discovery Subjects

- Historical usage of disputed property on both sides.
- Dates improvements were constructed.
- Fences – when built?
- Historical imagery.
- What do prior owners know?



More Discovery

- What sort of interaction between owners?
 - Permissive use?
 - Agreement on boundary?
 - Estoppel issues, e.g. watching neighbor building fence, knowing it is in the wrong location.
 - Self-help activity giving rise to damage claim?



Motion Practice

- Injunctive relief related to who can use the land pending final adjudication by the court.
- Discovery disputes – requested information not being provided.
- Dispositive motions – asking the court to eliminate all or part of the other side's case.
 - Damage claims, scope of relief sought, etc.

Firmly Committed.



Alternative Dispute Resolution

- Alternative Dispute Resolution (ADR) is required in every civil case.
- Mediation is used 99% of the time.

Firmly Committed.

Firmly Committed.



Mediation After Discovery is Completed

- Pros:
 - The facts have been fleshed out; people know the strengths and weaknesses of their case.
 - “Wear-down” factor: Clients grow weary of time and expense of process.
 - Harder to refuse settlement with trial looming.
- Cons:
 - People become entrenched in positions.
 - “I’ve spent too much already, might as well see it through to the end.”



Trial

- Expensive. 1-2 days of preparation needed for each day in trial.
- Adverse possession cases are court trials, not jury trials.
- Lots of post-trial work to submit proposed findings to the Judge.
- Possibilities for appeal if you don't like the result.



Time and Expense

- Time: Typically 1 year from the date you start the case until it is taken to trial.
 - Time can be impacted by outside factors such as seasonal issues.
- Cost: Varies wildly depending on issues involved and attitude of client, but difficult to take a case through trial for less than \$25,000. Probably more.

Firmly Committed.



Questions?

Firmly Committed.

Firmly Committed.