

ADVERSE POSSESSION IN NOVA SCOTIA

WHAT IS ADVERSE POSSESSION IN NOVA SCOTIA?

Nova Scotia landowners should be aware of “squatters’ rights” also known by the legal term “adverse possession.” Adverse possession means that rights of land ownership can be gained through use and occupation of land that is legally owned by someone else. Once adverse possession has been proven, the landowner loses their previously held legal ownership of the land. For example, a family who has occupied their home for generations without ever having a deed to the property may be in adverse possession of the land.

A claim for adverse possession in Nova Scotia must be based on strong evidence that the person making the adverse possession application (the “claimant”) used the land in a way that was “open, notorious, exclusive, and continuous.” This use must be for at least 20 years on privately owned land and for at least 40 years on Crown land. Therefore, the claimant must meet the following requirements for adverse possession:

- 1 Open and notorious use of the land in the open for everyone (including the landowner) to see.
- 2 The claimant’s use of the land has excluded other people from using the land, including the landowner.
- 3 Continuous occupation of the land means use of the land for an uninterrupted period. Daily use is not required but it should reflect the normal use for that type of land (the same use the landowner might make of the land). The 20 or 40 year period begins to run from the time the true landowner was last on the land. The 20 or 40 years can be linked together by more than one person to make a continuous period.



HOW IS A CLAIM OF ADVERSE POSSESSION MADE?

If a person has enough evidence to establish that they have used and occupied privately owned land for 20 years or more to the exclusion of the landowner, they can ask a lawyer to register their ownership interest in the land under the *Land Registration Act*.

The acts of possession required to make a successful adverse possession claim against a landowner are very fact specific and are dependent on the circumstances and the nature of the land in issue.

If the land has been migrated to the Nova Scotia Land Registration System, the full 20 years of adverse possession must have occurred before the land was registered (there is an exception for claims of less than 20% of adjacent land). The claimant has 10 years after the migration to register the claim.

Adverse possession can also be claimed against Crown land, but the claimant must show 40 years of continuous occupation of the land. Crown land is owned by the Province of Nova Scotia and is managed by the Department of Lands and Forestry. Approximately 29% of the province is designated as Crown land.

For Crown land, the claimant can apply to the Department of Lands and Forestry. If the Department is satisfied that the evidence proves that the Crown's ownership right has been wiped out, a certificate of release is issued to let everyone know that the Crown no longer owns the land. The person then must get a lawyer to register their ownership interest in the land. Ownership claims can also be proven in court using the *Quieting Titles Act*.

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To prove adverse possession on **private** land, the claimant must show they used the land in a way that was "open, notorious, exclusive, and continuous" for **20 years**.

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To prove adverse possession on **Crown** land, the claimant must show they used the land in a way that was "open, notorious, exclusive, and continuous" for **40 years**.

HOW IS ADVERSE POSSESSION PREVENTED?

Landowners should be careful to protect their ownership. Landowners should consider the following things to help protect against adverse possession claims:



Give clear permission if allowing others to use the land. It is recommended to use a lease, license or other agreement.



Migrate the land to the Land Registration System in Nova Scotia.



Inspect the land regularly to make sure no one else is using it.

General information on adverse possession:

- ▶ www.novascotia.ca/natr/land/policyadversepossession.asp
- ▶ www.novascotia.ca/natr/land/adverse-possession.asp
- ▶ **Adverse possession on Crown land:** www.novascotia.ca/natr/land/adverse.asp

Land Titles Initiative:

The Land Titles Initiative helps residents in the communities of North Preston, East Preston, Cherry Brook/Lake Loon, Lincolnville and Sunnyville get clear title to their land at no cost. Nova Scotia Legal Aid provides services for the Land Titles Initiative.

- ▶ <https://ansa.novascotia.ca/landtitles>
- ▶ www.novascotia.ca/natr/titles-clarification
- ▶ www.nslegalaid.ca/wp-content/uploads/2019/07/PLE-OTHER-Land-Titles-Initiative-March-2019-2.pdf

Legal Aid: www.nslegalaid.ca

Legal Information: www.legalinfo.org

List of Nova Scotia lawyers: <https://members.nsbs.org/LawyerSearch>

Land Registration: www.novascotia.ca/sns/access/land/land-registry.asp

Legislation:

- ▶ **Land Registration Act:** <https://nslegislature.ca/sites/default/files/legc/statutes/land%20registration.pdf>
- ▶ **Quieting Titles Act:** <https://nslegislature.ca/sites/default/files/legc/statutes/quieting.htm>
- ▶ **Crown Lands Act:** <https://nslegislature.ca/sites/default/files/legc/statutes/crownlan.htm>
- ▶ **Real Property Limitations Act:** <https://nslegislature.ca/sites/default/files/legc/statutes/real%20property%20limitations.pdf>
- ▶ **Land Titles Clarification Act:** <https://nslegislature.ca/sites/default/files/legc/statutes/landtitl.htm>