



Squatters' Rights and Adverse Possession in Real Estate

BY JANET HOWARD

Under New York Consolidated Laws, Real Property Actions and Proceedings Law - RPA § 501; and for the purposes of this article:

Adverse possessor is a person or entity and is an "adverse possessor" of real property when the person or entity occupies real property of another person or entity with or without knowledge of the other's superior ownership rights, in a manner that would give the owner a cause of action for ejectment.

Acquisition of title is when an adverse possessor gains title to the occupied real property upon the expiration of the statute of limitations for an action to recover real property pursuant to subdivision (a) of section two hundred twelve of the civil practice law and rules, provided that the occupancy, as described in sections five hundred twelve and five hundred twenty-two of this article, has been ad-

verse, under claim of right, open and notorious, continuous, exclusive, and actual.

Claim of right means a reasonable basis for the belief that the property belongs to the adverse possessor or property owner, as the case may be. Notwithstanding any other provision of this article, claim of right shall not be required if the owner or owners of the real property throughout the statutory period cannot be ascertained in the records of the county clerk, or the register of the county, of the county where such real property is situated, and located by reasonable means.

The best way to explain squatters' rights and adverse possession is with an example, and it has hap-



pened in real life. First, it's important to remember that these types of real estate laws are state-specific, so you need to check the laws in your state of interest. The example here is of the most accepted laws regarding squatters' rights and adverse possession.

You have long-term objectives, and you buy a 40-acre parcel of unimproved land in a beautiful area, but pretty remote. You found



it on vacation, and you didn't anticipate going back to that area often, if at all for the next few years. You're sitting on this investment, knowing that over time it appreciates in value, so it's a nest egg for your future retirement home.

You had some neighbors in that area, but the few living there were several miles away. You did become acquainted and asked them to look in on your property from time to time. You have no idea whether they've done that or not, but you have other things in your life demanding your attention, so the land investment sits in the background

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Why Your House Is Not Selling

Home sales in August 2019 spiked 10.8% from 2018, marking the largest year-over-year increase for a single month since 2018, according to a Redfin report. The supply of homes for sale, however, fell 5.7% year over year, representing the biggest decline since April 2018.

So if it's such a hot seller's market and other properties in your city are selling fast, why isn't your home selling fast? While it's true that even in a seller's market some houses linger on the market longer than others, there may be other factors involved.

On average, if your home hasn't gotten a contract after six showings, say real estate experts, it's time to reexamine the property for weaknesses. Here are some reasons why your home is not selling.

Pricing and Location

A well-priced home will sell regardless of its condition, may be a general rule of thumb — but even a properly priced home that's in poor condition will have a tough time in a bad location, such as near an airport. That's when it's important to pay extra attention to updating, cleaning and curb appeal.

Bad Odors

It should go without saying, but bad odors in a home from pets or smoking



will always turn off prospective buyers so you should do all you can to mitigate these smells. Hiring a professional carpet cleaner and a commercial home cleaner can help.

Light and Architecture

A lack of natural light due and poor architecture, such as low ceilings and awkward room layouts that can't be easily renovated can make homes hard to sell. These problems can be addressed by renovating yourself — but you are not likely to recover a lot of the cost.

Environmental and Structural

Issues such as mold, asbestos and other toxic hazards will likely rear their ugly heads during the home inspection process, as will structural issues such as a cracked foundation or wiring and plumbing problems. It's best to treat these issues before they wreck a potential sales by having an expert examine your home before putting it on the market.

Dated Decor, Poor Staging

One of the standard rules of selling is that buyers have to be able to imagine their own furniture in a home. If you have older or dated furniture or modern furniture that might only appeal to limited tastes, buyers will often turn away. You don't get a second chance to make a first impression, so it's wise to invest in a professional staging company to allow buyers their vision while showing off the home in a tasteful way.

Upkeep and Cooperation

Selling a home is hard, stressful work, and sometimes owners who have homes on the market for a while tend to tire of the constant showings and the pressure to keep the home spotless at all times.

That said, it's necessary to make sure your home sells as quickly as possible. You can do everything right, but if you're an uncooperative seller — refusing to vacate the property for showings or not securing unruly animals — you'll make the process even harder.

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When to Refinance



as the magic number. According to Nerd Wallet, interest rates on a 30-year fixed mortgage peaked most recently in November 2018 at 5.09%. As of October 2019, it was down to 3.96%. This means that a homeowner who got a loan near the 5% mark might benefit from a refinance and could save more than \$53,000 on interest over 30 years on a \$250,000 mortgage.

Payment

We can all agree that saving on our monthly bills sounds great. If your refinancing goal is to lower your payment, however, you must include any lender fees that must be paid out of pocket or fees that will be rolled into the new loan in your calculations. On a \$250,000 loan, refinancing from 5% to 4% can save the borrower nearly \$150 a month. But this will be reduced by any out-of-pocket or financed fees. Be sure to consider all of the financial impacts that will come with refinancing the loan. It's likely you will still save money, but you want the full picture before signing on the line.

Be wary of "no closing costs" loans. Typically, banks recoup their costs by charging you higher interest.

The advertisements and phone calls sound great — get a lower interest rate and save as much as hundreds of dollars a month on your mortgage payments.

But is it too good to be true? The answer: It depends. Unfortunately, your decision should be based on a complicated mix of how much of a lower interest rate you can get, how much you will be charged in fees and the term of the new loan.

The Rate

A high school education teaches us that a lower interest rate is good. How much of a reduction do you need to get in order to come out on top with a refinance? Personal finance experts tout reductions of 1% to 2%



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Term

Considering the term of your loan means thinking long term. If you took out a 30-year mortgage three years ago, when you refinance into a similar 30-year loan with a lower rate today, you are extending the number of years you have to repay the loan. You are essentially resetting a 30-year clock. This means you should think long and hard about your future plans. Do you have dreams of paying off your loan in a specific timeframe? If you pay extra amounts toward the principal each month, you might be able to shorten the repayment by several months, but this requires discipline. If the goal of refinancing is simply to pay less interest over time, consider also shortening the term of the loan when you refinance, perhaps switching to a 20-year or 15-year loan.

You also should only refinance if you in-

tend to stay in the home for the long-term. Investopedia.com offers the following formula to determine how long it will take to see savings after paying closing costs:

Divide your total closing costs for the refinance by your total annual payment savings to find the number of years you must remain in the home to break even. For example, if closing costs are \$6,000, and you will save \$2,400 annually on payments, you will need to remain in the home for 2.5 years to break even (6,000 divided by 2,400). After that, you will see true savings.

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Buying a Short Sale House

It seems like many people have heard the term “short sale,” but few know what it really is. If the idea of pursuing a short sale house intrigues you, you’re not alone. Short sales can result in bargains for buyers, but the process takes patience.

The personal financial website, Bankrate, defines a short sale this way: A short sale is when a house is sold for less than what the homeowner owes on it, and the lender or lenders don’t get all their money back. Short sales only occur with the lender’s permission when a home’s value has declined and the mortgage holder owes more than the home is worth. The homeowner not only has no equity, but in fact has negative equity.

Because the market is flooded with short sales, there’s a good chance you’ll run across more than a few anywhere in the U.S. But because the negotiations take time, many find the process — which typically takes four to six months — stressful to endure.

However, if you possess the right amount of fortitude, buyers can reap great rewards from a short sale.

It’s wise to remember than simply because a seller isn’t profiting from the sale doesn’t mean they’ll take the first offer that comes along. Bidding wars often erupt before an agent can present the seller with the best offer. Top dollar doesn’t always rule the day either, as terms and financing play an im-



portant role.

While you can wind up with a great home at below market value, there are downsides to short sales. The Federal Home Loan Mortgage Corporation, also known as Freddie Mac, outlined these pitfalls to consider before deciding to bid on a short sale:

Short sales may take longer to close. Lien-holders may need to approve the short sale and that takes time, so if buyers are on a timetable, a short sale may not be ideal.

Short sale properties are often sold on an as-is basis, meaning the sellers won’t make

any repairs to the property. The buyer may also incur higher closing costs because the approving lender usually won’t pay for any extras, like inspections.

Sellers may have to pay money at closing or agree to an unsecured debt to have the sale approved. If the seller balks, the sale may still fall through.

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Adverse Possession/

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of your life.

One day you open the mail, and there is a legal notice that someone has filed an action to take possession of your future piece of retirement heaven. You call an attorney right away, and that attorney refers you to one in the state where you bought the property. You are amazed to learn that the claim on your land is legitimate. You have no right to refute it, as the squatter has met the requirements to take away your land without any reimbursement to you.

Here Is What They Need to Do to Take Your Property

Here are the common requirements:

- 1.They must take over the use and possession of the land. It can be for their residence, a business, or both.
- 2.Their use of the land must be open and obvious. This means that they're not hiding in a ravine or bunch of trees. They need to be in plain sight.
- 3.They take exclusive possession, not sharing the land. This means no communal arrangements.
- 4.There can be NO permission from the owners in any form. If you had knowledge of someone staying on your land and did nothing about it, you may still lose it to adverse possession.
- 5.Their possession of your land must be continuous for the legally specified years.

These are a lot of hoops to jump through, but it happens more than you may think. What is sad is that it's not that difficult to avoid this situation. If when you purchased this parcel you had contracted with someone, perhaps a neighbor or a real estate agent, to check your land every year or two, you could have avoided losing your retirement home.

Simply by having someone go out and travel over the entire property taking photos to document no squatters, you would have covered your legal requirements to void their claim. However, if they find someone living or doing business on the property, have them inform you immediately. You can then retain an attorney to have them evicted. These checks are well worth the investment.

When you're dreaming about that streamside retirement home years from now, take a moment to consider if you've taken the actions necessary to protect your ownership from squatters who are there because they know the law and are taking advantage of it.

Legal Requirements for an Adverse Possession Claim to Land

New York law requires the land to be used for at least ten years before the adverse possessor gains title. The adverse possessor's claim or use of the land must be incompatible with the owner's claim and use of the land. The adverse possessor actually be using the land as if it was his or her own.

When courts look at adverse possession claims, they apply a four-factor test. To qualify as adverse possession, the trespasser's occupation of the land must be:

- hostile
- actual
- open and notorious, and
- exclusive and continuous for a certain period of time.

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Determining Home Values

How much is a home worth? The simple answer is that a home is worth what someone is willing to pay for it. But most valuations begin with the basics to create a baseline price: the age of a home, its square footage, lot size, neighborhood and previously assessed value.

Obtaining a quick, ballpark figure is relatively easy to figure online with the help of home value estimators. These calculators work with data you can input, such as square footage, and use that to compare to similar homes nearby that have sold recently.

To obtain more specific valuations, real estate agents perform comparative market analysis, or “comps,” that involve more in-depth research than an online estimator can offer. Because agents have access to databases that include more specifics on properties in a neighborhood that have sold over the past 90 days, they can arrive at an average baseline of a property’s value.

Home prices are also based on appraisals performed by professionals and usually hired by lenders to ensure a property is selling at or above market value before lending on it.

No two homes are exactly alike, even though they may appear similar. Agents consult owners to factor in



any upgrades, renovations or customizations that may increase a home’s worth. Expensive appliance or additions don’t show up in sales records, so smart agents investigate to provide sellers and buyers a custom valuation based on these variables.

Arriving at property values is a mix of these objective and subjective factors that normally result in a formula for real estate agents to determine home prices. But “normal” is often not the case in the housing market. Imbalances between supply and demand, or vice versa, and such chal-

lenges as escalating foreclosures can present challenges to valuations.

Because sellers always believe their homes are worth more than a valuation, a higher sale price could result in it remaining on the market for too long and lead to stigma and suspicion. Going low to attract attention and generate bids may work in a hot seller’s market, according to Realtor.com, but underpricing tends to lead buyers to believe a home is worth only its list price.

Finding the “right” price can be tricky business. Diligent agents will come up with different prices, according to the website The Mortgage Reports. Different brokers, with different perspectives, may well suggest different values. The important issue for property owners is to understand why a broker suggests a particular price the site reports. After all, a home that sits on the market too long benefits no one, least of all an agent whose income depends largely upon commissions.

There are a variety of other practices that realtors use to increase values and attract buyer interest, so enlisting the help of these professionals is always solid, practical advice.

Even if you’re not interested in selling, having a grasp on what your home is worth is always a smart move.

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What Does a Real Estate Agent Do?

A real estate agent, as defined by Cambridge Dictionary, is a person whose business is to arrange the selling or renting of houses, land, offices, or buildings for their owners. While that is a technically accurate definition of a real estate agent, it doesn’t give an accurate description of what a real estate agent does every day. Each day is unique and different for a real estate agent; while this can be an appealing aspect of the real estate profession, it can also offer unique challenges or opportunities, depending on the agent’s skill set. So, just what does a real estate agent do in a typical day?

Managing Your Real Estate Business

There are a number of administrative tasks that are at the core of a well-run real estate business. A good real estate agent:

- Keeps up with local and regional market activity and industry news
- Researches active, pending, and sold listings and reviews the daily MLS Hot Sheet or Activity Report
- Completes, submits, and files paperwork, such as real estate documents, agreements, and records with the proper state agencies
- Plans and coordinates appointments, open houses, showings, and meetings with clients and other real estate agents
- Develops marketing plans for listings and creates fliers, newsletters, and other promotional collateral
- Responds to incoming emails and phone calls
- Update websites, social media profiles, and blogs

Many successful real estate agents have an assistant or office manager to assist with the day-to-day activities, allowing the salesperson or broker to focus on more direct revenue-generating activities.

You’re Not Just Selling Homes; You’re Selling Yourself

Attracting clients is crucial to a real estate agent’s success. Below are some tips to attracting new clients:

● **Market yourself.** Competition is fierce. You need to develop your niche in the local real estate market and be known as the expert in the type of work you enjoy. This will help differentiate yourself through effective marketing. Websites, postcards, television and radio spots, billboards, fliers, and blogs are all channels that can be utilized in effective real estate agent marketing plans.

● **Lead generation.** Generate leads through networking and relationship development. This starts with people you know, such as friends, family, business associates, and so on. There is little that is more valuable to a real estate agent than a thriving database of leads.

● **Everyone is a prospect.** Basically, everyone you meet is a prospective client, because everyone rents, buys, or sells a home at some point. A real estate agent’s day is often consumed by cultivating leads, as well as meeting and following up with potential buyers and sellers.

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