

Handbook of Florida Fence and Property Law: Adverse Possession¹

Michael T. Olexa, Jeffery Van Treese II, and Christopher A. Hill²

Preface

With approximately 19,000 livestock farms in the state, along with horse farms, orange groves, croplands of soybeans, sugarcane, cotton, and peanuts, and many other agricultural and livestock facilities, livestock and farming have a significant impact on Florida's economy. Florida's agricultural economy has been required to co-exist with rapid population and commercial growth in the state over the last twenty-five years. Conflicts between these interests bring to prominence issues such as the rights and responsibilities of adjoining landowners, farmers, and property owners in general. Due to the added importance placed on these areas of real property, the legal aspects of fences in the state of Florida have taken on significant importance.

This handbook is designed to inform property owners of their rights and responsibilities in terms of their duty to fence. Discussed areas include a property owner's responsibility to fence when livestock is kept on the property, the rights of adjoining landowners to fence, the placement of fences, encroachments, boundary lines, easements, contracts, nuisances, and a landowner's responsibilities towards persons who enter his or her property.

This handbook is intended to provide a basic overview of the many rights and responsibilities that farmers and

farmland owners have under Florida's fencing and property law. Readers may value this handbook because it informs them about these rights and responsibilities. However, the reader should be aware that because the laws, administrative rulings, and court decisions on which this booklet is based are subject to constant revision, portions of this booklet could become outdated at any time. This handbook should not be viewed as a comprehensive guide to fencing and property laws. Additionally, many details of cited laws are left out due to space limitations. This handbook should not be seen as a statement of legal opinion or advice by the authors on any of the legal issues discussed within. This handbook is not a replacement for personal legal advice, but is only a guide to inform the public on issues relating to fencing and property laws in Florida. For these reasons, the use of these materials by any person constitutes an agreement to hold the authors, the Institute of Food and Agricultural Sciences, the Center for Agricultural and Natural Resource, and the University of Florida harmless for any liability claims, damages, or expenses that may be incurred by any person as a result of reference to or reliance on the information contained in this handbook.

Readers wishing to find further information from the Florida Statutes may access those statutes online at <http://www.leg.state.fl.us/STATUTES/>.

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2. Michael T. Olexa, Ph.D., J.D., professor, Food and Resource Economics Department, director, UF/IFAS Center for Agricultural and Natural Resource Law, and member, The Florida Bar; Jeffery Van Treese II, J.D., Ph.D., professor, Legal Studies (Department Chair) and Environmental Science, Palm Beach State College, and Attorney of Counsel, Zappolo and Farwell, P.A.; and Christopher A. Hill, law student, University of Florida, Levin College of Law; UF/IFAS Extension, Gainesville, FL 32611.

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Adverse Possession

What is adverse possession?

Unlike boundary by agreement and boundary by acquiescence, adverse possession not only applies to encroachments by adjoining landowners, but also to the ownership rights of any piece of land. Adverse possession occurs when a person loses title to his property because another person has occupied the land for at least seven years, resulting in overlapping legal descriptions. In addition to the seven-year requirement, in order for an individual to adversely possess another's land, the individual must also possess the land in an open, notorious, and visible manner such that it conflicts with the owner's right to the property. Thus, party A cannot adversely possess party B's land if A has B's permission to be on B's land. Furthermore, A must possess the land continuously for a period of seven years and the possession must be exclusive to the use of others and the owner. It is important to note that since B has legal title to the land, the requirements of adverse possession must be proved by "clear and positive proof and cannot be established by loose, uncertain testimony which necessitates resort to mere conjecture." *Downing v. Bird*, 100 So. 2d 57, 64 (Fla. 1958); *Bd. of Trustees of Internal Improvement Trust Fund of Florida v. Lee*, 934 So. 2d 612, 613 (Fla. 1st DCA 2006); 2 Fla. Jur. 2d *Adverse Possession* §§ 8-36 (2022). In addition to these basic requirements for adverse possession, Florida law requires that an adverse possessor occupy the land for at least seven years and meet either of the two following requirements: (1) adverse possession under color of title; or (2) adverse possession without color of title.

What is adverse possession under color of title? (Florida Statutes § 95.16)

An adverse possessor can claim property under color of title if they meet the following two conditions:

1. The adverse possessor must show that the claim of title to the land is based on a recorded written document (even if faulty). The adverse possessor must genuinely believe this document to be the correct claim of title. *Bonifay v. Dickson*, 459 So. 2d 1089, 1097 (Fla. 1st DCA 1984); 2 Fla. Jur. 2d *Adverse Possession* § 10 (2022).

2. The adverse possessor must show possession of the property by doing one of the following to the land for at least seven years:

- Cultivating or making improvements;
- Protecting by a substantial enclosure (usually a fence);
- If not enclosed, using the land for the supply of food or fencing timber for husbandry or the ordinary use of the occupant; OR
- Partly improving a portion of a recognized lot or single farm, making the unimproved part, if in the custom of the area, considered occupied.

Fla. Stat. § 95.16(2) (2021).

What is adverse possession without color of title? (Florida Statutes § 95.18)

When an individual continuously occupies a property for seven consecutive years, lacking any legal document to support a claim to the land's title, they may establish adverse possession by filing a return with the county appraisers within one year of entry onto the property, and paying all taxes and liens assessed during possession of the property.

But paying the taxes alone is insufficient to establish adverse possession or color of title. *Bentz v. McDaniel*, 872 So. 2d 978, 983 (Fla. 5th DCA 2004). The property is considered possessed only if the individual does one of these:

1. Cultivates or improves the land; OR
2. Protects the land by a substantial enclosure, which is usually a fence. See *Mullins v. Colbert*, 898 So. 2d 1149, 1151-52 (Fla. 5th DCA 2005).

Summary

The requirements for adverse possession are very strict: (1) the person claiming adverse possession must possess the land openly, notoriously, and in a visible manner such that it is in conflict with the owner's right to the property; (2) this person must either have some sort of title on which to base claim of title or the person must have paid property taxes on the land claimed to be adversely possessed; and (3) this person must possess the land continuously and exclusively for a period of at least seven years. It is important to note that a prospective adverse possessor may be transformed into a trespasser if asked to leave the property by its rightful owner. The term "owner" refers to the original legal owner of a property rather than the adverse possessor of a property. If a person defies an order to leave the property

(personally communicated by the owner of the property) or if the trespasser does anything to cause destruction to the property, that trespasser is guilty of a misdemeanor of the first degree. Fla. Stat. § 810.09 (2021). Furthermore, if the trespasser is armed with a firearm or other dangerous weapon during the trespass, that person is guilty of a felony in the third degree. *Id.*

Further Information

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<https://edis.ifas.ufl.edu/entity/topic/>

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