

CHANGE IN OWNERSHIP (Contd.)

220.0001 Adverse Possession. Satisfaction of the five requirements for obtaining title to property by adverse possession constitutes a change in ownership as of the date all five are satisfied, even though title is confirmed subsequently by a court action. C 10/30/91.



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October 30, 1991

Re: Change in Ownership-Adverse Possession By
Richard and Bonita Green

Dear Mr. F :

This is in response to your letter of July 25, 1991, to Mr. [redacted], Assistant Chief Counsel, in which you request our opinion about the change in ownership implications of an apparent adverse possession that began more than 20 years ago. The facts given below are taken from your letter and subsequent phone conversation.

In 1965, [redacted] sold a residence located at 3365 Glen Street, Eureka, California, to [redacted] by a grant deed. Two deeds of trust were created by the Smiths in favor of [redacted].

The [redacted] separated and abandoned the property. They defaulted on their payments to Lillian Shermoen and the property purchase money lender, S [redacted]. No foreclosure action was taken.

During 1967, [redacted] and other relatives arranged for [redacted] (F [redacted] is related to I [redacted]) to move into the subject property. The Greens did so and immediately began making payments to the savings and loan association.

In 1991, you commenced a quiet title action on behalf of the Greens which is still pending. Also, Mrs. [redacted] was contacted, and she indicated that she and Mr. S [redacted] had remarried but that Mr. S [redacted] died several years ago. Mrs. [redacted] executed an Affidavit of Death of Joint Tenant and a grant deed so that her apparent position in title could be eliminated.

You contend that the present and beneficial interest in the property transferred many years ago when the Greens entered into the property, occupied it openly, notoriously, hostilely, for more than five years and adversely to the Smiths' prior title, and assumed the entire financial obligation to the savings and loan association and payment of property taxes.

Section 60 of the Revenue and Taxation Code states that:

A "change in ownership" means a transfer of a present interest in real property, including the beneficial use thereof, the value of which is substantially equal to the value of the fee interest.

Property Tax Rule 462(a), which amplifies Section 60, states that:

(1) There shall be a reappraisal of real property as of the date of a change in ownership of that property. The reappraisal will establish a new base year full value and will be enrolled on the lien date following the change in ownership.

(2) A "change in ownership" in real property occurs when there is a transfer of a present interest in the property, and a transfer of the right to beneficial use thereof, the value of which is substantially equal to the value of the fee interest. Every transfer of property qualified as a "change in ownership" shall be so regarded whether the transfer is voluntary, involuntary, by operation of law, by grant, gift, devise, inheritance, trust, contract of sale, addition or deletion of an owner, property settlement (except as provided in (1) (3) for interspousal transfers), or any other means. A change in the name of an owner of property not involving a change in the right to beneficial use is excluded from the term "transfer" as used in this section.

Property Tax Rule 462(m)(1) states that the transfer of bare legal title does not constitute a change in ownership.

To establish title by adverse possession, the users must prove that they have satisfied each and all of the following five requirements:

- (a) Possession was held either under a claim of right or color of title;
- (b) Actual, open, notorious occupation of the premises in such a manner as to constitute reasonable notice to the record owner occurred;
- (c) Occupation was both exclusive and hostile to the title of the true owner;

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- (d) Possession was uninterrupted and continued for at least five years; and
- (e) All taxes levied against the property during such five-year period were paid by them. (Dimmick v. Dimmick (1962) 58 Cal. 2d 417 at p. 421).

A claim of right is an intention to claim land against all others. Possession with the intent to claim the fee exclusive of any other right and to hold it against all comers is sufficient to put the five year statute of limitations in motion, and, at the expiration of the five years, vest in the expropriator a right under the statute that is equivalent to title. (Code of Civil Procedure §325) The statutory period begins when the possession invades the rights of the owner of the property in such a way that the owner has a right of action against the occupant. (Code of Civil Procedure §312; Sorensen v. Costa (1948) 32 Cal 2d 453).

It is arguable from the information you have provided that the Greens may have established adverse possession by entering into the property more than 20 years ago and occupying it openly, notoriously, hostilely, and adversely to the Smiths' prior title, and by assuming the entire financial obligation to the savings and loan association and paying the property taxes on the residence. Obviously, that issue is currently before the Humboldt County Superior Court in the form of the Green's quiet title action. We will not attempt to prejudge the issue.

There are no express provisions in either Revenue and Taxation Code Section 60, and following, or Property Tax Rule 462 which prescribe the change in ownership consequences of title acquired by an adverse possession. Further, there are no reported court decisions on this subject. Thus, our analysis must rest upon the basic principles set forth in section 60.

There must be a transfer of a present beneficial interest before a change in ownership occurs. The California courts have long held that an adverse possessor may establish fee title by proving the five requirements set forth above. We are satisfied that the acquisition of such a fee title constitutes a change in ownership under section 60. The question then is whether the fee title arises upon completion of the five year prescriptive period or at some other time.

In Cannon v. Stockmon (1869) 36 Cal. 535, 541, an action to recover land, the California Supreme Court stated:

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For when fee is once acquired by a five years' adverse possession it continues in the possessor till conveyed in the manner prescribed for the conveyance of titles acquired in other modes, or till lost by another adverse possession of five years. So, upon the same principle, if a fee has once vested by a five years' adverse possession, the mere fact that the party, who has thus acquired a title already perfect, afterward asserts title also under some other title subsequently acquired, would not defeat the good title already vested under the Statute of Limitations.

Thus, it appears that the courts have long held that the possessor acquires fee title upon completion of the five year period. Applying the reasoning in Cannon v. Stockmon, to the present case, if a change in ownership by adverse possession occurred, the change occurred in approximately 1972, five years after the Greens entered the property and when their beneficial fee interest vested. Thus, a 1991 action to quiet title and the 1991 execution of an Affidavit of Death of a Joint Tenant and a grant deed would, under the circumstances, only involve bare legal title and would not constitute another change in ownership.

The views expressed in this letter are, of course, advisory only and are not binding upon the assessor of any county. You may wish to consult the Humboldt County Assessor in order to confirm that the property will be assessed in a manner consistent with the conclusion stated above.

Our intention is to provide timely, courteous and helpful responses to inquiries such as yours. Suggestions that help us to accomplish this goal are appreciated.

Very truly yours,



Carl J. Bessent
Tax Counsel

CJB:jd
4062H

cc: Honorable Raymond J. Flynn
Humboldt County Assessor
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Property Transfer Supervisor
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