

Land ownership through adverse possession

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In Thailand, individuals or entities that are eligible to hold ownership of land under the Land Code can acquire it by means of purchase, hire-purchase, gift or inheritance. But there is one more way to obtain ownership of landed property, which does not require consent from the previous owner: adverse possession, colloquially known as "squatters' rights".

The difference between ownership and mere possession is that in the latter case, a person is exercising intentional control over a property, without necessarily being the legal owner. An example of possession would be if you borrowed your friend's car for a weekend trip; you are in possession of the car during that trip, but your friend still remains the owner of the car.

Adverse possession occurs when a third party acquires the title to a legal owner's real property without the legal owner receiving any compensation or engaging in any contract. The third party acquires ownership rights by holding the property for a specific period of time, in a manner that conflicts with the original owner's rights. This common-law concept of obtaining ownership through possession, known in ancient Roman law as "usucapio", has found its way into the laws of many civil-law countries, including Thailand's Civil and Commercial Code (CCC).

Section 1382 of the CCC provides a basis for the concept of adverse possession. It states that a person acquires ownership of immovable property if the person has, for an uninterrupted period of 10 years, peacefully and openly possessed the property belonging to another with the intention of being its owner.

There are four key requirements to obtain land ownership by adverse possession.

- First, the property must belong to another person. Therefore, if the property in question is a plot of land, for another person to obtain ownership through adverse possession, the previous owner must have been registered as the owner of the land in the land title deed (called a "chanote" in Thailand).

In circumstances where the adverse possessor was in possession of the land before the owner was registered in the land title deed, the Thai Supreme Court has ruled that this period prior to registration is not taken into account and the 10-year period only starts from the date the title deed was issued.

- Second, the possessor must have possessed the land in an open and peaceful manner. This requires actual possession, through acts such as erecting a fence around the land, constructing buildings, and cultivating or improving the land in any manner that is open and obvious in a way that would be noticeable to the registered owner on occasional visits.

A person who uses intimidation or force to obtain or retain possession of the land is not eligible for ownership under CCC section 1382, since such possession is not peaceful.

- Third, the possession must continue uninterrupted for at least 10 years. However, according to section 1384, if the possessor loses holding of the property involuntarily, the possession shall not be deemed interrupted so long as possession is recovered or an action is instituted within one year from the date of the loss.

- Finally, the possessor must have taken possession of the property with the intention to be its owner. This requirement precludes rightful possessors from acquiring ownership of the land through adverse possession. This would include lessees of the land or employees who may have been hired by the land owner to cultivate the land.

An interesting aspect of this law is that while an adverse possessor must intend to become the owner of the land, there is no requirement of good faith and he does not need to believe he has any right to possess and own the land.

As long as he has the intention to own the land while being in factual possession of it for 10 years, he can obtain ownership through adverse possession under this law without having to compensate the previous owner. This is true even if he encroaches on the land in bad faith and knows that the land is already owned by another person; the previous registered owner would still lose ownership of the land.

According to section 1383, this would even be the case if ownership of the property was acquired based on a criminal offence; after expiration of the prescription period for the offence, or after expiration of the 10-year period, whichever is longer, the offender or a transferee in bad faith would obtain legal ownership of the land.

The most effective way for registered land property owners to prevent loss of ownership to an adverse possessor is to put up a fence around the property. In case land owners notice any unauthorised dwellers on their land, they should immediately report this to the police or file a complaint for eviction with the appropriate court.