



Ronald L. Richman

San Francisco,  
Shareholder

Direct Dial: 415.352.2722

Fax: 415.352.2701

Email Attorney

## Don't Turn Your Back on Your Property for Too Long, You May Lose It by Adverse Possession

By Ronald L. Richman

The California Court of Appeal cautions landowners against turning their backs on their property while neighbors openly take possession and control over it.

In *Nielsen v. Gibson* (2009) ---Cal. Rptr.3d--- the Court of Appeal held that if an absentee landowner fails to pay attention to what amounts to open and notorious use of their property by someone else, they are at risk of losing the property by adverse possession as long as the other elements for adverse possession have been met.

In December 1997, the Niensens purchased a parcel of land from the Benders in Granite Bay, California. After the purchase, the Niensens began using an adjacent lot belonging to Gayl Bender, the Benders' daughter, who was living in Ireland. During the period 1997-2006, the Niensens physically blocked off the adjacent lot from the public road, placed "no trespassing" signs in front of the road and along the property boundaries, denied permission to people attempting to access the property, irrigated the property, planted gardens, maintained and repaired the fence around the property, trimmed trees, cleared shrubs, built a go-cart track and further, paid the property taxes for this parcel.

Gayl Bender passed away in 2003. In 2006 the Niensens brought an action to quiet title against the executor of Gayl Bender's estate on the grounds that the Niensens acquired the property by adverse possession.

Adverse possession is a way for a person to acquire, or rather take away, land belonging to another. A claimant must prove the following five elements to establish title over another's land by adverse possession:

1. Possession must be by actual occupation under such circumstances as to constitute reasonable notice to the owner;
2. Possession must be hostile to the owner's title;
3. The holder must claim the property as his or her own, either under color of title, or claim of right;
4. Possession must be continuous and uninterrupted for five years;
5. The possessor must pay the taxes levied and assessed upon the property during the five-year period

The central issue in this case was whether the actual occupation by the Niensens was *so open and notorious* as to put the landowner, Gayl Bender, on notice of the adverse use. The Court held "Yes," resulting in title passing to the Neilsens. The Court found Gayl Bender's absence (and thus her failure to notice the adverse, open and notorious use of her land by another) was no excuse. The Court held that an absentee landowner simply cannot turn his or her own back on their land and hope no one attempts to make use of and take title to the land.



The Court stated that even if an absentee landowner has no actual notice of adverse, open and notorious use of his or her land by another, the landowner will nevertheless be presumed to have notice of adverse use that is "sufficiently open and notorious." The Court further held when adverse use of another's property is open and notorious "and the true owner fails to look after his interests and remains in ignorance of the claim, it is his own fault."

If you are a landowner, you are required to be vigilant and look after your property. If you are unable to look after your land, you should be sure to retain a property manager or have a reliable person inspect your land, at least once a year, take photographs and report back to you on the use and condition of your land. Failure to do so may result in the loss of your land to another's adverse, open and notorious use.

Ron Richman is the Shareholder-In-Charge of the San Francisco Office of Bullivant Houser Bailey PC. Mr. Richman specializes in real estate, construction, general and commercial litigation and counseling.