



STATE OF NORTH CAROLINA
DEPARTMENT OF TRANSPORTATION

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DATE: October 14, 2025
TO: NCDOT Division and Central Utilities Staff
FROM: Keith T. Garry, State Utilities Manager
SUBJECT: Adverse Possession Information

On August 13, 2025 the State Utilities Office held a Utilities Workshop in Raleigh for participation by all NCDOT Utilities employees. During this workshop information was shared regarding adverse possession as it relates to utility reimbursement. As a follow up to this discussion this memorandum is being provided to offer recommendations to our Utilities personnel.

The following information provides brief explanations of the elements of adverse possession and recommendations for how to establish such claims. This information is not intended to be representative of all situations and examples.

The North Carolina standard for establishment of adverse possession is set forth in *Lackey v. City of Burlington*, 287 N.C. App. 151, 882 S.E.2d 582 (2022):

"[t]o acquire title to land by adverse possession, the claimant must show actual, open, hostile, exclusive, and continuous possession of the land claimed for the prescriptive period (seven years or twenty years) under known and visible lines and boundaries." *Merrick v. Peterson*, 143 N.C. App. 656, 663, 548 S.E.2d 171, 176 (2001). The prescriptive period for a party claiming adverse possession under color of title is seven years. N.C. Gen. Stat. § 1-38 (2021). The prescriptive period for a person claiming adverse possession without color of title is twenty years. N.C. Gen. Stat. § 1-40 (2021).

The legal basis for these requirements can be broken down as follows:

1. Primary Statutory Authority

- a. N.C. Gen. Stat. § 1-40** – Claimant must have possessed the property under known and visible lines and boundaries (ex: fence, survey, demarcation, etc. visible due to maintenance difference) for 20 or more years
- b. N.C. Gen. Stat. § 1-38** – Where such a claim is made under color of title (ex: a deed), this time is reduced to 7 years

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- c. **N.C. Gen. Stat. § 1-45** – Claimants may not make adverse possession claims against the State in NCDOT right of way

2. **Case Law Elements** - if the statutorily required time period and the element of visible boundaries are satisfied, then all of the following elements of adverse possession must also be met: (1) open and notorious; (2) continuous and uninterrupted; (3) exclusive; (4) actual; and (5) hostile/adverse. Establishment of these elements may be accomplished through evidence including, but not limited to:

- a. photographs
- b. affidavits
- c. depositions
- d. witness testimony
- e. diaries
- f. historical documents

Elements, Rules and Examples of Adverse Possession

Element	Rule	How to Establish ... Or Not
Time	The claimant must have possessed the property under known and visible lines and boundaries for 20 or more years. OR If a claim is made under color of title, the claimant must have possessed the property for a period of 7 or more years.	- Evidence that the claimant has possessed the property for 20 or more years (testimony or actual evidence with indication of use or occupation for the prescribed period). - NOTE that the sale of land adversely possessed does not toll or restart the 20-year period. OR - There is evidence of “color of title,” meaning that there is a writing that adequately describes the land and purports to pass title to the occupant, but which does not actually do so, AND there is evidence of possession for 7 or more years. BUT NOT “Tacking,” or the transfer of one person’s adverse possession to another person to establish a time period, is generally impermissible. It is only allowed where a prior owner actually <i>conveys</i> their interest in the allegedly adversely possessed property.

Known & Visible Lines and Boundaries	There must be known and visible lines and boundaries that sufficiently indicate the extent of possession. OR <u>If a claim is being made under color of title, and there are NOT known and visible lines and boundaries</u>, the claimant can gain title to the disputed property IF she can establish the elements of adverse possession within the boundaries identified in her deed.	• The claimant has placed distinctive markings on trees, or has placed visible metal or boundaries boundary markers at a height of at least 18” above the ground, and there has been a map recording by a registered surveyor certifying the boundaries as shown by the map. OR • There are significant differences in the maintenance of properties that create a visible line marking the extent of a claimant’s possession (ex: consistent seeding, mowing, landscape planting, etc.).
If both of the above can be demonstrated, OR if the claim is being made under color of title with possession for seven years established, THEN to establish adverse possession the claimant must also show:		
1. Open and Notorious	The true owner must be placed on notice of an adverse claim.	• Evidence that a claimant or his agent has regularly and consistently worked on the land (ex: mowing; cutting timber) • Visible alterations to a property that can be documented or testified to (ex: planting bushes; adding a second story to a home) • A utility company has installed facilities that are visible and obvious.
2. Continuous and Uninterrupted	The claimant does <u>not</u> need to physically, continuously remain on the property; however, the evidence must warrant that actual use and occupation has extended over the required period.	• Evidence that the claimant has lived on the property or subjected it to her use (ex: planting; building; maintenance) during the requisite time period. • The utility company has constantly serviced/maintained the facilities and the facilities have never been placed out of service or abandoned.

3. Exclusive	The claimant must make exclusive use of the ordinary functions of the type of land at issue.	• Evidence must be submitted that the claimant used the land to the exclusion of all others (ex: witness testimony that no one other than claimant or yard workers have been regularly seen on the property; check for utility company fencing. • The utility company has installed a fence or barrier thus limiting access by the true owner or the general public. BUT NOT • Documentation or any evidence or acknowledgment of others' continuing rights in or use of the claimed property will defeat establishment of this element.
4. Actual	The claimant must be in actual, physical possession of the property.	• Evidence or testimony that the claimant has been seen on the land, or has altered or maintained it in a regular and significant way. BUT NOT • Any admission that the claimant never came in physical possession of the land will necessarily defeat establishment of this element.
5. Hostile /Adverse	The claimant is using the land without permission from the true owner. There need <u>not</u> be a showing of ill will or animosity but simply use by the possessor exercised so as to give notice of a claim of right. If the use is permissive, it defeats the claim.	• Evidence of use that would actually or constructively put the owner on notice of a claim (ex: paving a driveway; regular property maintenance) • If notified of encroachment, the claimant must place landowner on notice of intent to continue to possess (ex: writing a letter). While notice does not equal permission, it can be construed that way by courts. BUT NOT • Verbal or written consent from a property owner to install utility facilities is not considered hostile or adverse and defeats a claim of adverse possession. • Testimony regarding a conversation with the landowner <u>may or may not</u> suffice, as it is dependent on the court's interpretation of whether the same resulted in permissive use. • Any documented or other acknowledgment of others' continuing rights, or of any personal permissive use, will defeat the establishment of the hostility element.