

OPPORTUNITY KNOCKING

A Landlord/Tenant
Advocate Newsletter ISSUE 1

HUTCHISON & STEFFEN
ATTORNEYS

Adverse Possession: Squatters vs. Property Owners

In the Las Vegas real estate market, there are over 13,000 homes and condominiums for sale. Of those listed, over 8,000 have not received any offers. Additionally, there are typically around 9,000 residential homes in varying stages of foreclosure. With thousands of residences vacant, sometimes homeowners visit their properties to find people living within the property and claiming to be legitimate tenants, even holding what appears to be a valid lease. These squatters claim the right to occupy the property by elaborate schemes at times, but all with the purpose to sell their claim as genuine.

Law enforcement can evict "trespassers," but even after a clarification of the definition of trespassing in Assembly bill 286 from the 2009 Legislative Session, it is still difficult for an on-site determination of the legality of disputed property leases. Law enforcement has taken the position that any dispute over the validity of a lease is a civil matter, leaving the issue in the hands of the property owner.

What is it?

What is a squatter? There is a difference between a delinquent renter and a squatter. A renter is required to pay rent and is subject to terms of a lease agreement with the landlord. If there is a problem between the renter and the landlord, such as the renter falling behind on rent payments or otherwise becoming delinquent, constables may evict the renter, who may also be subject to civil proceedings. A squatter is someone who does not belong in the property and does not have any sort of legal agreement with the property owner. A squatter has no right to occupy the property and is trespassing. A squatter is often adversely possessing the property with hopes to one day become the legal owner. So, what can a property owner do to avoid this situation and what should be the response if it happens?

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John T. Steffen / Partner

We'd like to introduce you to Hutchison & Steffen's attorneys practicing in the Firm's Landlord/Tenant Practice Group. Opportunity Knocking is a periodic newsletter designed to keep readers informed on a comprehensive array of landlord/tenant issues. The Firm has one of the largest and most active landlord/tenant practices in Nevada. John T. Steffen and other Firm attorneys are recognized as leaders in the field.

John is co-founder and managing partner of Hutchison & Steffen and an AV-rated attorney by Martindale-Hubbell®. He practices primarily in the areas of landlord/tenant law and business and commercial litigation. John is well versed on Nevada landlord/tenant law and is called upon regularly to participate in landlord/tenant educational seminars and programs.

John and other attorneys at Hutchison & Steffen advise and counsel, and if needed, litigate on behalf of owners/landlords on matters, including commercial and residential evictions related to nuisance, lease violations, abandonment, breach of contract, and non-payment of rent. To learn more, please call me at 702.385.2500. ■

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Avoidance

Although law enforcement will spend time trying to identify potential squatters, it can be difficult for officers to know whether a person is presenting a genuine lease agreement or a forgery. As a property owner, it is easier to avoid the issue altogether. When a family leaves town for a trip, they should take steps to create the appearance that someone is home and attending to the property. Similar steps can be effective in deterring would-be squatters from selecting a potential residence. For example, arranging newspapers and mail to be collected, lights to be turned on, and vehicles occasionally parked in the driveway can give the appearance of occupancy. Additionally, a routine inspection of an owner's properties to inspect for broken locks, windows, or doors to ensure that the property is secure can be an effective preventative measure against casual entry.

Requirements for Adverse Possession of Property

Although it may seem unfair to allow a squatter the opportunity to take possession of property that the squatter does not own, the law of adverse possession may afford an avenue for a squatter to do just that. But, it is actually quite difficult to satisfy the legal requirements. There are five basic requirements necessary to adversely possess property. These include:

- 1)** Actual possession – the squatter must enter and occupy the property. Usually, a trespasser does not have to be physically present on the property at all times to meet the actual possession requirement.
- 2)** Exclusive possession – the true owner and ALL other people are unable to use the property being adversely possessed.
- 3)** "Open and notorious" possession – the adverse possessor utilizes the property in an obvious manner giving actual or constructive notice to the true



owner. Actual notice amounts to delivering notice directly to the owner, either by mail or orally, while constructive notice is given when the adverse possessor's acts are so visible and obvious that a reasonable property owner would have reason to know of the squatter's presence.

4) Adverse or hostile possession – the squatter occupies the property without the true owner's permission, with intent to remain in possession.

5) Continuous possession – A squatter has to possess the property for the entire time period required by the law. In Nevada, that is five years (assuming they have paid all applicable property taxes). It is important to note that if the squatter leaves the property for a time, that absence may be enough to end her occupancy and she would have to restart the time period.

Solutions

First, if you believe there is a squatter living on your property, contact law enforcement and let them do the investigative work. Second, determine the available remedies – based on the nature of the squatter, both criminal and civil remedies may be available. Hutchison & Steffen has years of commercial and residential legal counsel experience in real property and landlord/tenant law. Our lawyers know how to assist you in protecting your property from those who seek to deprive you of your property rights. ■

AREAS OF PRACTICE

Hutchison & Steffen is an AV-Rated, full-service law firm practicing in the following areas:

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ASSET PROTECTION & BUSINESS PLANNING
BANKING
BUSINESS LAW & COMMERCIAL LITIGATION
CONDEMNATION LAW

CONSTITUTIONAL LAW
CONSTRUCTION LAW
CORPORATE & COMMERCIAL LAW
ELECTION LAW & GOVERNMENT ETHICS
EMPLOYMENT LAW
FAMILY LAW
HEALTHCARE PROFESSIONALS ADVOCACY

INSURANCE LITIGATION
LANDLORD/TENANT
PERSONAL INJURY
PROFESSIONAL LIABILITY DEFENSE
REAL ESTATE LAW
TAX AUDITS & LITIGATION
TRUST & PROBATE LITIGATION