

MINNESOTA • REVENUE

DATE: April 30, 2008
TO: Pam Hameister, Olmsted County
FROM: Bill Lonergan
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SUBJECT: Mortgage Registry Tax - Affidavit of Lost Mortgage.

Facts: Original mortgage is lost prior to recording and rather than re-draft the mortgage the lender chooses to file an "Affidavit of Lost Mortgage" with a copy of the original mortgage as an attachment.

Question: Is the attached mortgage subject to Mortgage Registry Tax.

Conclusion: Yes.

Minn. Stat. § 287.10 states that mortgage tax must be paid in order for a mortgage to serve as valid notice of a claim against real property in Minnesota. In this case, the recording of the attached copy, although not the preferred method, does provide some form of notice to the public.

In summary, it seems reasonable to presume, unless provided facts to the contrary, that the intent of the filing is to serve notice of some claim, which can only be accomplished by the payment of tax.

For further discussion, please call.

BOUNDARY ISSUES

- I. Record Title ("It's my property by my deed")
- II. Exception (Adverse possession)
 - a. Policy: Land be occupied, be made productive and taxes on property be paid
 - b. Statute of Repose: Intended to prevent litigating and to quiet title to land that has remained unoccupied by the actual owner for a long period of time
- III. Increase in cases
 - a. Land prices
 - b. Surveys
 - c. Americans' obsession with property ownership
- IV. Minnesota Statute 541.02
 - a. Exception must be brought within 15 years of possession
 - b. Payment of real estate taxes at least five consecutive years during time of being seized or occupied

Exception for payment of taxes

1. Boundary line dispute
 2. Actions concerning lands included between the government or platted line and the line established by such adverse possession
 3. To lands not assessed for taxation (separate tract)
- V. Five essential requirements for adverse possession
- a. Actual, Open, Hostile, Continuous and Exclusive
 - b. Words of art, application depends on the facts of each case

(1) ACTUAL – The possessory acts required depend on a character of property, its location and purposes for which it is ordinarily fitted or adapted

(2) OPEN – Notice to owner by the nature and circumstances of the possession claiming ownership

(3) HOSTILE – Doesn't mean a personal animosity; can be among friends or family relationship

(4) CONTINUOUS – The possession must last for fifteen consecutive years by successive or a single occupant (lacking)

(5) EXCLUSIVE – The property must be held to the exclusion of all others. This depends on character of the property's location and the purpose for which it is used

All of the above are based on objective evidence not subjective intent

VI. Without Permission

- a. A landowner has the burden to show permission. Mere acquiescence does not defeat adverse possession

VII. Public Entities

- a. Impossible to have adverse possession against public body, county, state, public utility. However, adverse possession is not defeated by acquisition of property by governmental body whereby adverse possession has previously been established

VIII. Prescriptive Easement

- a. Same elements as adverse possession except for exclusivity. Classic example: Driveway

IX. Boundary by practical location

- a. A location relied upon and acquiesced in for a sufficient length of time to bar entry under statute of limitations
- b. A line expressly agreed upon between the parties claiming the land on both sides thereof and afterward acquiesced in, or
- c. The parties whose rights are to be barred silently looked on, with knowledge of the true line, while the other party encroaches upon it or subjected himself to expense in regard to the land where he would not have had the line been in dispute

SUMMARY:

Whether one obtains rights by adverse possession, prescriptive easement or boundary by practical location, depend on the facts of each case. It is important to obtain as much information and documentation as possible as to past use

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