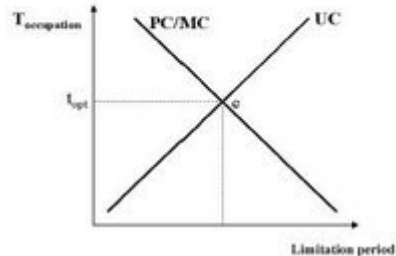


Possessory Title Explained

Figure 1



By Brian Madigan LL.B.

A “possessory title” is a title to property which is not evidenced by the registered chain of title. So, you can’t simply go to the registry office and look up the name of the owner.

The Land Registrar maintains the abstract noting ownership whether the property is registered in the Registry system or Land Titles. The difficulty is that the abstract may not show the name of the true owner. The true owner of the property may have acquired possessory rights to the property by occupation of the lands. This true owner may not have had their claim to entitlement of the property recognized by the Land Registrar or the Courts.

Ownership can be acquired in most common law jurisdictions through “adverse possession” of the property. If the Torrens system (Land Titles) is in place, this opportunity for acquisition has probably been eliminated in the enabling legislation.

At common law, an individual could assert possessory rights to property where the possession or occupation of the lands were:

- 1) open.
- 2) continuous,
- 3) undisputed

for a requisite number of years. In Ontario at the present time, the period is 10 years.

So, the occupation needs to be in the **open**. It cannot be concealed, temporary, not particularly visible. Courts have used the terms “notorious” and “flagrant” in this regard to support the notion that nothing here is happening in secret.

The occupation must be **continuous**, no breaks, no interruptions of any kind,

one full decade without interruption.

The occupation cannot be the matter of a **dispute**. There cannot be litigation. Anything along these lines would require the period to start all over again. Further, **permission** would prevent the occupation from being adverse. So, once again the 10 year period would have to start all over again.

If someone claims a “possessory title, then they could simply register a Transfer/Deed in the Registry system, but, in Land Titles it would be necessary to make application to the Land Registrar. If accepted the Land Registrar would note that the new owner had a “possessory title”. For some purposes this may not be sufficient.

A Court would have the power to make an Order vesting the title in the name of a person claiming a possessory title. This would resolve the issue for once and for all. However, most of the time, the Court will simply issue an interim Order dealing with the title and noting the possessory interest.

So, with respect to possessory title, it is important to remember that there are several stages:

- 1) a period, short of 10 years, when the rights are being acquired
- 2) a period following 10 years, when the claim may be made,
- 3) the assertion of a claim and registration of an instrument in the Land Registry Office offering evidence of ownership by possessory title,
- 4) the issuance of an Interim Order confirming “possessory title”,
- 5) a Final Order confirming “possessory title”.

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