CHAPTER THIRTEEN

CONDEMNATION AND ADVERSE POSSESSION

CONDEMNATION

The power of eminent domain may be exercised to acquire any interest in land, as well as a right over land, such as an easement, but the taking must be for a public purpose and not merely for a private benefit. The act or process by which this power is exercised is called condemnation.

The power to condemn may be exercised by public bodies, such as the United States government, the state government where the property is located, counties and municipalities, as well as public utilities and railroads. The party seeking to acquire the land is the condemnor; the owner is the condemnee.

The use of this power is subject to two important conditions:

- The use to which the property is devoted must be a public one; and
- Just compensation must be paid. Just compensation means the fair market value of the land at the time of the taking of the land.

Prior to commencing suit, the condemnor is required to enter into negotiations with the condemnee. If the negotiations are successful it will result in the filing of a deed in lieu of condemnation in favor of the condemnor, subject to liens of record unless they are released. If negotiations are not successful, the condemnor must file a notice of Lis Pendens and file suit in the Superior Court, Law Division.

The procedure is as follows: The complaint asks for the appointment of three condemnation commissioners who hold hearings and determine the amount of compensation to be paid. The decision of the commissioners is then reported to the Superior Court, and either or both parties have the right to appeal the amount of the award. If no appeal is taken, the commissioners' report is the equivalent of a final judgment of the court. Title will vest in the condemnor when the commissioners' report is recorded in the county clerk's or registrar's office, and the award is paid. If there are several parties of interest, the award is apportioned among them according to their respective claims.

Where there is a partial taking of property under the state's power of eminent domain, any loss in value to the owner's remaining property would necessitate the additional compensation of severance damages. These damages are compensable where the partial taking lowers the highest and best use or otherwise limits the use of the remainder of the property. The amount of these damages would be determined by the before and after method, or a determination of the value of the land before the condemnation, and a revaluation of its worth after the condemnation.

When the fee title of property is condemned for public use, the general rule is that the previous owner retains no reversionary or other interests in the realty. After proper abandonment by the government agency, the land can be disposed of with no limitations as to the rights of the former owner. However, in the case of condemnation for an easement, the title to the fee remains with the landowner, and after abandonment of the public use the original owner, his heirs or assigns still own the land, free from the public use.

Kelo v. City of New London. This was a 2005 U.S. Supreme Court decision involving the use of eminent domain to transfer land from one private owner to another to further economic development. The case arose from the condemnation by New London, Connecticut, of privately owned real property so that it could be used as part of an economic development plan. The Court held that the general benefits a community enjoyed from economic growth qualified such redevelopment plans as a permissible "public use" under the Takings Clause of the Fifth Amendment. Public reaction to the decision was not favorable. Prior to Kelo only eight states specifically prohibited the use of eminent domain for economic development except to eliminate blight. By July, 2007, 42 states had enacted some type of reform legislation in reference to the decision.

Inverse Condemnation. Inverse condemnation occurs when the property owner attempts to force a governmental unit to purchase his/her property, claiming that an action of a governmental
body has destroyed or reduced the value of the property, even though there was no official exercise of the right of eminent domain and no compensation offered or paid to the property owner. An example of inverse condemnation is when a governmental body announces plans for a new highway, but postpones acquiring the properties needed for the right-of-way. A property owner in the path of the planned highway could contend that the announcement has made it impossible to sell the property for private use and sue to force condemnation.

**ADVERSE POSSESSION**

As noted earlier, an abstract of title shows the chain of title from the original grant or government patent down to the present owner. What it may not show is title to real property that has been acquired through adverse possession. This is a title acquired by a person who has taken possession of the land without permission and has remained in possession for a specified number of years.

There are conflicting statutes regarding the statutory period for claiming title by Adverse Possession and Prescriptive Easements in New Jersey. NJSA 2A:14-6 & 7 bars rights of entry after 20 years have elapsed. On the other hand, NJSA 2A:14-30 cites the relevant time periods as 30 years for improved real estate and 60 years for woodlands and uncultivated tracts. A person may have entered the property with no legal right whatsoever, but after the statutory period, and the fulfillment of other requirements, he may acquire good title to the land, and not even the previous owner of good title can evict him.

The mere possession of land for the prescribed period alone is not enough to acquire title. The other requirements for title by adverse possession are that it be open, exclusive, continuous, uninterrupted, visible and notorious.

**Open.** Possession must have been visible and could not be hidden. For example, possession of a cave under an owner's land of which the owner is not aware would not meet this requirement.

**Exclusive.** The property may have been used only by the claimant or others having a direct connection to him and not by the public in general.

**Continuous and Uninterrupted.** For adverse possession to ripen into actual title, the term of possession must be continuous and unbroken for the statutory period. If the occupant were to abandon the property for a period of time, possession would automatically be restored to the true owners, and the occupant would have to begin the adverse possession period over again.

The requirement of continuity of possession may be broken during the statutory period by:

- re-entry into possession by the true owner;
- the commencement of an action in ejectment or to quiet title by the true owner; or
- acts on the part of the claimant that admit to the superior title of the true owner (e.g., the adverse possessor accepts a lease from the owner).

Continuous adverse possession by different persons may result in title being acquired by the person in possession at the end of the statutory period. This process of receiving the benefit of another's adverse possession is called tack ing.

**Open and Notorious.** Actual possession of the land must be of such a nature that the rightful owner knows about the stranger's occupancy, or would be likely to know about it if he kept himself informed about his land. Originally, knowing and intentional hostility were essential ingredients for adverse possession. Today, conscious hostility is no longer necessary. Thus, any entry that is exclusive, continuous, uninterrupted, visible and notorious, even under mistaken claim of title, will support a claim of title by adverse possession. However, there is an exception for a claim of title through adverse possession resulting from a minor encroachment along a common boundary. In this case, the true owners or their predecessors in title must have had actual knowledge of the minor encroachment for possession to be open and notorious.

Although one has satisfied all the requirements to acquire title by adverse possession, such title is not considered to be marketable title which a purchaser can be compelled to accept. Title must be established by judicial proceedings against the record owner. This is accomplished by a quiet title proceeding. After recording the decree quieting title, the adverse possessor's title becomes part of the public record.

**Limitations and Exceptions**

Among the limitations and exceptions governing acquisition of title by adverse possession are those which prevent acquiring property devoted to public use and certain government-owned property. Nor may one co-tenant obtain title in this manner against another co-tenant.

At first glance, adverse possession may appear to be very inequitable for the true owner. However, the law is recognized to encourage productive use of land which otherwise stands useless. Since the
true title to property is sometimes difficult to prove because of the absence of records and witnesses, it is often better to enable persons to acquire title through strict adherence of the laws rather than to allow the property to remain useless and under no claim of ownership.

KEY WORDS

Adverse Possession
Before and After Method
Condemnation
Condemnee
Eminent Domain

Just Compensation
 Marketable Title
Partial Taking
Quiet Title
Tacking
CHAPTER 13

REVIEW QUESTIONS
(ANSWERS ON PAGE 570)

1. "Quieting a title" most nearly means:
   (A) to obtain title by adverse possession.
   (B) to color a title.
   (C) to mortgage the property.
   (D) to settle a cloud on the title by court action.

2. To establish a claim of title of a parcel of realty by adverse possession, a claimant must hold the parcel for the required time and such possession must be:
   (A) either exclusive or in common with others, provided substantial enclosure and improvement or annual cultivation can be proved.
   (B) uninterrupted for the statutory period, with or without owner's consent.
   (C) under any circumstances, provided a claim for color of title is filed.
   (D) exclusive, continuous, uninterrupted, visible and notorious.

3. Joe, Helen and Mary Travers own a large home on a ten-acre parcel of land, all of which is needed by the state due to the creation of a new state highway. Regarding this case, all of the following statements are correct EXCEPT:
   (A) The Travers may voluntarily agree to sell the land to the state.
   (B) If the state needs the land for a public purpose, it may obtain title to it even if the Travers refuse to sell.
   (C) If the state acquires the land, the owners must be justly compensated for it.
   (D) Severance damages may be awarded.

4. Which of the following elements is NOT required for adverse possession?
   (A) The possession must be without permission.
   (B) The possession must be notorious.
   (C) The possession must be under claim of right.
   (D) The possession must be held by tacking.

5. The right of eminent domain refers to:
   (A) the right of every American citizen to own property.
   (B) an institution to condemn property pending an improvement that is for the good of the community.
   (C) an institution or individual to acquire land by grant from the government.
   (D) the government right to acquire or authorize others to acquire title for public use with just compensation.

6. A landowner can prevent an adverse claim by all of the following methods EXCEPT:
   (A) ousting the trespasser.
   (B) giving the trespasser permission to stay.
   (C) preventing trespassers from entering.
   (D) observing the trespasser.

7. Compensation usually follows a court action relating to which of the following?
   (A) Trustee's sale.
   (B) Police power.
   (C) Eminent domain.
   (D) Quiet title.

8. Adverse possession will be valid against:
   (A) the lawful owner.
   (B) the state.
   (C) the county.
   (D) the federal government.

9. An adverse possession claim may not be brought against which of the following?
   (A) Government-owned land.
   (B) Industrial property.
   (C) Agricultural land.
   (D) Commercial property.

10. A claim for adverse possession is most nearly valid where:
    (A) the person occupies the premises for the statutory period with or without the owner's consent.
    (B) the adverse possessor occupied continuously for the statutory period.
    (C) the land is state-owned.
    (D) the possessor paid just compensation.

11. Which of the following is necessary to acquire title by adverse possession?
    (A) 30 or 60 years' continuous use against the will of the owner.
    (B) Pay fair market value.
    (C) A condemnation hearing.
    (D) A color of title action.

12. The act or process of taking private property for a public purpose is called:
    (A) eminent domain.
    (B) police power.
    (C) escheat.
    (D) condemnation.

Note: Upon completion of Chapters 12 and 13 you should complete Review Quiz 2 on page 525, and compare your solutions with the Quiz Answers at the back of the book.