

Acquiring ownership to land by possession – is possession really nine-tenths of the law?



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Stephanie Hepburn, a Senior Associate in our rural disputes team, examines the laws surrounding ownership by possession, including the legal options available when someone wants to claim ownership of seemingly ownerless land.

It is often said that possession is nine-tenths of the law - but is it? In this article, we will look at when it may be possible to acquire title to land through possession and dispel the myth that possession alone of any area of land for a period of 10 years acquires an unchallengeable title – the “finders-keepers” principle is indeed only nine-tenths of the law.

Ownerless property

How do you acquire a right of prescriptive possession to land when the true owner can't be found? It's possible for another person to grant you a right to an area of land even though they don't have title to it. This is known in Scots law as an *a non domino* disposition. Making an application to Registers of Scotland for acceptance of an *a non domino* disposition is known as a “prescriptive claimant application” and there are a number of steps which must be followed. The application presented needs to be right first time or else it will face rejection.

Possession for one year

The first requirement before Registers of Scotland will accept an *a non domino* application is that the grantee (i.e. the person an *a non domino* disposition is in favour of) must already have possessed the land for at least one year. The possession requirement is also fulfilled if the granter of the disposition has possessed, or a combination of possession by both. This one-year period is not to be confused with subsequent possession for 10 years to acquire the right, which we will touch upon below. This one-year period is more like an entry qualification.

Notification to the true owner

Secondly, the person who appears to be the true owner must be notified. The purpose behind notification is really to satisfy Registers of Scotland that you have taken steps to identify the true owner, and you have attempted to contact them - this ensures that purely speculative applications are not accepted. Notification will be made to the proprietor if you can identify someone. If there is no proprietor, or you can't identify them, then you should notify any person who appears to be able to take steps to complete title. This may be a successor where there has been a death, or if there is no such person, you must notify the Crown.

Keeper's notification

The Keeper of the Registers of Scotland also has to do their own notification – this is essentially to protect against any fraud. If someone objects, that is the end of the matter. The Keeper is not required to assess the basis of the objection and this is because the person objecting has been identified as the appropriate person to notify in the first place and that person is not required to give any reason for their objection.

10-year possession

When the Keeper accepts the application, they will mark the resulting entry in the title sheet as “provisional”. The rights which the applicant will acquire are provisional until sufficient possession for 10 years has taken place. The possession must be openly, peaceably and without any judicial interruption. Taking possession by force doesn't count. The 10-year period is calculated either from the beginning of possession or the registration of an *a non domino* disposition, whichever is the latter, so the one-



year entry qualification referred to above does not count towards the 10 years' prescriptive possession.

It is only if all these requirements are met that ownership can be acquired to "ownerless" land by possession.

Ardnamurchan Estates Limited v Michael Macgregor and Karen Macgregor

The courts recently looked at *a non domino* dispositions in the case of *Ardnamurchan Estates Limited v Michael Macgregor and Karen Macgregor* earlier this year. In 1994, Mr and Mrs Macgregor disposed land at Glenborrie from themselves to themselves (*a non domino*), presented the disposition to the Register of Sasines and occupied the land. In 2018, Ardnamurchan Estates asked the court to reduce the 1994 disposition and find that it was in fact the Estate and not the Macgregors that was the heritable proprietor. The matter at issue was whether there was an underlying *ex facie* valid title. The court found that a disposition from one party to himself was invalid on the face of it. It could not be the foundation to a prescriptive period of possession – even though the Macgregors had possessed for well over 10 years, they could not acquire ownership by granting a right from themselves, to themselves. Better then to ask a third party to grant you the right *a non domino*, register the disposition, follow the steps above and possess the land.

For more information, or to receive tailored advice, please contact Stephanie Hepburn in our rural disputes team at stephanie.hepburn@shepwedd.com.

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