Someone else might own your land if they use it long enough

A little-known rule of law says that if you use someone else's land for a long enough period of time, you can actually acquire legal title to it.

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This rule is called "adverse possession." In order to claim adverse possession, a person must use someone else's property openly and obviously, without the owner's permission, to the exclusion of the owner, and continuously for a period of years. And they must change it in some way – such as building a fence, cutting trees, or mowing – as opposed to just walking on it.

In a recent case, a vacant lot on a resort island on Lake Erie was owned by a real estate investment company that became defunct. For years afterward, three families whose property bordered the lot used it as their own. They cleared paths across the lot, used it to access a beach, harvested firewood there, rode bicycles and motorcycles on it, and otherwise treated it as common property.

An Ohio appeals court ruled that as a result, they could claim ownership of the lot.

This rule might seem unfair. However, its original purpose was to prevent disputes over land ownership. The idea was the no one should be allowed to upset everyone's settled idea of who owns what by suddenly showing up with documents from 100 years ago that nobody knew about.

You can think of adverse possession as a kind of "statute of limitations" on claiming property rights.

The fact that this rule exists means that it's important to be vigilant about asserting your property interests. Suppose you have a neighbor who builds a fence that encroaches onto your land. Or suppose you own some woods, and a neighboring family or business regularly uses part of the woods as its own. You might not want to make trouble by complaining or suing them for trespassing, but in certain cases, if you don't act to preserve your rights, you might find that the land your neighbors are using no longer belongs to you.

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Congress makes major changes to mortgages

Sweeping changes to the way home mortgages are structured and approved have been passed by Congress and signed into law by President Obama.

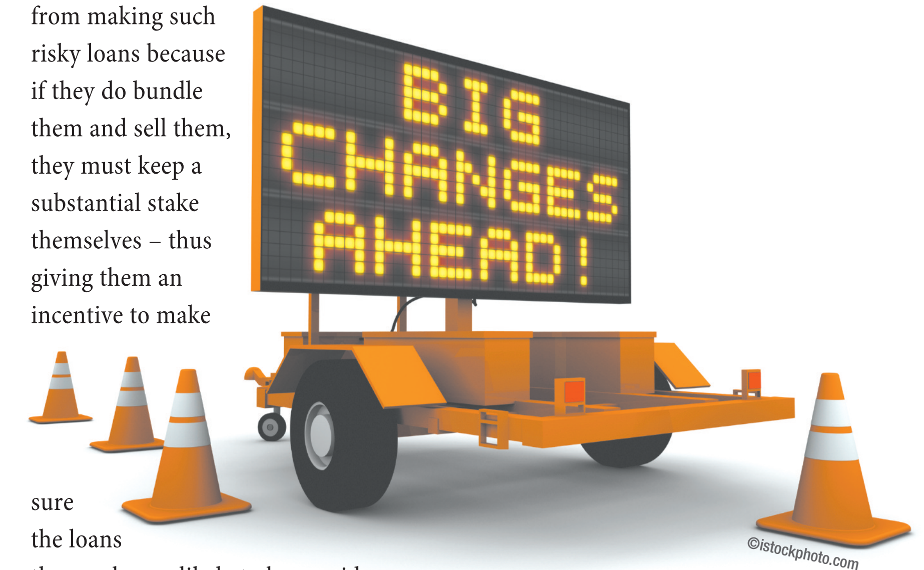
The changes are included in the recent financial regulatory reform law. Although the main goal of the law is to change the way Wall Street banks are regulated, a large section of it is aimed at mortgage reform.

Here's a brief summary of the most important changes:

• One of the key goals is to reduce the number of "risky" mortgages that led to the recent housing bubble, such as mortgages that don't require full documentation of the borrower's income, mortgages that have "balloon" payments (large one-time payments at some point in the future), and "option ARM" mortgages that keep initial costs low by allowing borrowers to defer payments of principal and interest.

During the recent housing run-up, many banks made these loans without much regard for the potential consequences to borrowers, because they could bundle them and then sell them to investors.

Under the new law, lenders are discouraged from making such risky loans because if they do bundle them and sell them, they must keep a substantial stake themselves – thus giving them an incentive to make sure the loans they make are likely to be repaid.



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• The law requires lenders to make a good faith effort to ensure that borrowers have the ability to repay a loan. In many cases, borrowers who are given a loan they can't afford will have the ability to sue the lender and to use this fact as a defense against foreclosure proceedings.

• The law also regulates the way that mortgage brokers and loan officers are paid. In the past, these employees were sometimes given extra

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compensation if they "steered" borrowers into riskier loans, such as option ARMs or subprime loans. Under the new law, they cannot be paid extra based on getting a borrower to agree to a particular type of loan.

The law also bans "yield spread premiums," in which a lender compensates a broker for persuading a borrower to accept a higher interest rate.

- Prepayment penalties – fees that a lender charges if a borrower pays off a mortgage early – will be limited under the law. They will be prohibited for adjustable-rate mortgages and riskier types of mortgages, and phased out over time for standard fixed-rate mortgages.
- Mortgage agreements can no longer require that the parties go to arbitration rather than to court if there's a dispute. (However, once a dispute arises, the parties can agree to submit it to arbitration if they want.)
- Lenders who offer hybrid adjustable-rate mortgages must notify the borrower six months before the loan resets or adjusts to a variable rate, providing an estimate of the new rate and the new monthly payment and suggesting options for avoiding the change, such as refinancing.
- Generally, loan servicers must credit payments to the borrower's account as of the date of receipt. They cannot "sit on" a payment for several days and then use the delay to impose a fee or report negative information to a credit bureau.
- "Negative amortization" loans (in which the payments are so low that the total amount the borrower owes actually increases over time) are prohibited unless the lender makes certain disclosures. A first-time homebuyer can't obtain such a loan unless he or she first visits a government-approved loan counselor.
- A number of provisions concern appraisals, including mandating fair compensation of appraisers (in order to ensure quality work) and regulating lenders who invest in appraisal companies so they can get a cut of the fee. The law does not allow borrowers who switch lenders to force the new lender to accept their prior appraisal rather than paying for a new one, but it does allow regulators to adopt such a rule, and it may well be adopted over the next year or so.

Overall, the goal of the new law is to prevent another housing bubble and resulting financial crisis. This is obviously a good idea. However, there's no question the law will make it somewhat harder for at least some borrowers to obtain a mortgage. "Standard" fixed- and adjustable-rate mortgages will remain available, but loans with more flexible terms will be harder to find.

Another issue is that the stricter standards for documentation of income and verification of a borrower's ability to pay will make it harder for people to qualify for a mortgage if they don't have a steady stream of income such as a salary. For instance, owners of small businesses, people who rely heavily on seasonal income, and salespeople who work on commission could find it harder to qualify for a mortgage.

It's also possible that the fees and rates for obtaining a mortgage could go up as banks pass along the costs of complying with the law, although that remains to be seen.

Owners of small businesses, people who rely heavily on seasonal income, and salespeople who work on commission could find it harder to qualify for a mortgage.

City orders townhouse owners to remove their top floor

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Here's a real estate owner's nightmare: After a couple built a brand new sixth floor atop their five-story townhouse, the city ordered them to remove the whole thing. The building, on Manhattan's Upper West Side, was within a "landmark" district. The city's Landmark Preservation Commission decided that the addition didn't comply with the city's landmark rules, and ordered it removed.

The addition included a kitchen, dining room and terrace, and was designed to turn the fifth-floor rental unit into a duplex.

The owners said they had no idea the addition ran afoul of the rules, and noted that the city's building department had issued a permit for it. The building department said the architect should have mentioned in his application that the building was in a landmark area. But the architect said he checked the department's landmark database and

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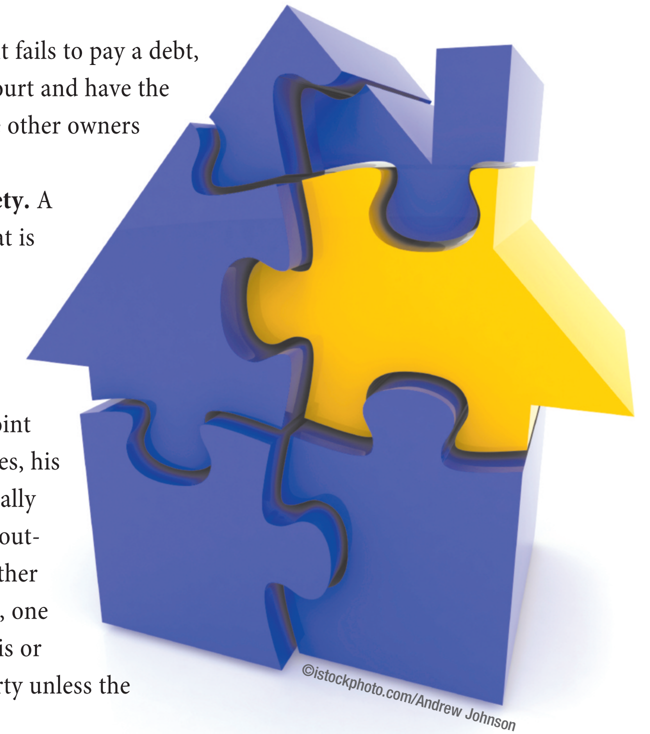
How is your real estate titled? It makes a big difference



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When two or more people own real estate, the relationship between the owners is known as a "tenancy." There are a number of different kinds of tenancy. Understanding the differences is important, because different kinds of tenancy can mean different rules for whether an interest in the property can be inherited outside of probate and whether creditors can claim the property.

Tenancy comes in three main forms: tenancy in common, joint tenancy, and tenancy by the entirety. Each form has its advantages and disadvantages.

Tenancy in common. With a tenancy in common, each owner has a percentage interest in the property and can transfer that interest however he or she wants. For instance, one tenant might own 60% of the property, another might own 35%, and a third might own the remaining 5%. The owner of the 5% can sell that interest, or leave it to someone in a will. The person who buys or inherits the land will then become a tenant in common with the other owners. The main advantage of a tenancy in common is that it allows the owners the greatest flexibility to transfer the property as they wish.

Joint tenancy. With a joint tenancy, on the other hand, each owner must have an equal ownership interest in the property. In other words, if a property has three owners, each would have a one-third interest in the property. Also, you can't leave your interest to someone in a will. If one of the joint tenants dies, his or her interest immediately ceases to exist and the remaining joint tenants own the entire property.

The advantage to joint tenancy compared to tenancy in common is that if an owner dies, his or her interest in the property passes to the other owners outside of probate.

A disadvantage to both joint tenancy and tenancy in common is that a creditor can go after a tenant's interest in the property to collect a debt. So, for example, if one tenant fails to pay a debt, the creditor can sue in court and have the property sold, even if the other owners object.

Tenancy by the entirety. A third form of tenancy that is allowed in some states, called "tenancy by the entirety," is generally available only to married couples. As with a joint tenancy, if one spouse dies, his or her interest automatically goes to the other spouse outside of probate. Unlike other kinds of tenancy, though, one spouse cannot transfer his or her interest in the property unless the other spouse agrees.

The main advantage of a tenancy by the entirety is protection against creditors. If one spouse owes a debt, a creditor can't force a sale of the property unless the other spouse agrees to the sale. A creditor can place a lien on property, which means that if the property is eventually sold, the creditor can collect from the proceeds. However, if the debtor spouse dies and the property goes to the other spouse, the creditor is out of luck because the lien will disappear and the surviving spouse will own the property with no obligation to repay the debt. (For this reason, if a couple owns a home as tenants by the entirety and they have a mortgage, both spouses have to sign the mortgage.)

In most states, if it's unclear from the deed what the form of tenancy the owners intended to have, the law will assume that they have a tenancy in common. (However, if the owners are a married couple, some states will assume they have a tenancy by the entirety.)

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the building wasn't listed there.

City preservationists argued that it was necessary that the entire addition be dismantled to avoid setting a precedent that landowners can get away with building in violation of the rules.

Many cities and towns have landmark or historic building rules, as well as complex zoning and other requirements. The moral of the story is that before you build, enlarge, or tear down anything, you should do your legal homework.

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