

New American Dream: Book I

**How to Legally Claim
Abandoned Real Estate
via Title by Prescription
or Adverse Possession**

A Legal Self-Help Guide

Preview Edition – not for resale

- **definitions for hundreds of legal terms from federally recommended law dictionaries**
- **standing case rulings**
- **California *and* Federal Statutes**
- **relevant laws, doctrines, and procedures**

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Dedication

*This book is dedicated to honest, kind, compassionate people
who have no place to live sustainably...*

*To all those who long for a place to stick seeds in the ground
and lay your head down at night without having to pay rent....*

*To those who want to grow enough food
to feed yourself, your family, and share with friends and community...*

*To those who long and strive for freedom,
and desire just as much for their fellow (hu)man...*

*To those who seek to share the land with the plants and animals
rather than replacing their homes with artifice and industry...*

*May you find the home you need
and the peace you long for.*

This book was not created to show people
how to scoop up real estate and sell it or rent it out.

It was created to help people break free from that paradigm.

Let. Freedom. Reign.

References:

Black's Law Dictionary *Deluxe Tenth Edition* by Henry Campbell Black, Editor in Chief Bryan A. Garner. ISBN: 978-0-314-61300-4

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Ballantine's Law Dictionary *with Pronunciations* Third Edition by James A. Ballantine (*James Arthur 1871-1949*). Edited by William S. Anderson. © 1969 by THE LAWYER'S CO-OPERATIVE PUBLISHING COMPANY. Library of Congress Catalog Card No. 68-30931

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Ballantine's Law Dictionary *Legal Assistant Edition* by Jack Ballantine (*James Arthur 1871-1949*). Doctored by Jack G. Handler, J.D. © 1994 Delmar by Thomson Learning. ISBN 0-8273-4874-6.

Cited throughout this book: ☾

Barron's Law Dictionary *3d Ed.* by Steven H. Hifis. (1975, 1984, 1991). ISBN 0-8120-4633-1. – ISBN 0-8120-4628-5.

Black's Law Dictionary *Sixth "Centennial" Edition* (1891-1991) by Henry Campbell Black, M.A.. West Publishing's *Publisher's Editorial Staff*, ISBN-0-314-76271-X.

Corpus Juris Secundum ("C.J.S.") A CONTEMPORARY STATEMENT OF AMERICAN LAW AS DERIVED FROM REPORTED CASES AND LEGISLATION, Volume 2 © 2003 West. THOMPSON – WEST.

Additional references are notated throughout the publication.

How to Use This Book

This book consists of a compilation of nearly every legal term directly pertaining to *acquiring title to real property* via *occupancy* as opposed to through *purchase*. Generally these procedures are known as *title by prescription* or *adverse possession* depending on the circumstances. For legal terms not found in this book *and* for additional information on how to apply these terms, see www.ReUniteTheStates.org.

Initial chapters are presented chronologically based on the *procedure* one would follow when identifying, acquiring possession of, then *claiming* an abandoned property:

- **identifying** – see *presumed dereliction* on page 6;
- **acquiring possession** – see *right of entry* on page 14;
- **claiming** – see *claim of right* on page 14.

Legal terms are presented based on:

- the order of their applicability in regard to procedure, or
- the order in which they appear. Many terms first appear within definitions of other legal terms. Such terms are **highlighted** when they first appear, and definitions are usually found shortly thereafter. To indicate category, many terms and their definitions are indented below the definition in which they first appear.

It is highly recommended to read each entire chapter more than once so as not to miss any nuance within each definition!

California and federal statutes pertaining to definitions and/or procedures cited throughout this book are found beginning on page 83.

The table of contents is found on the next page, and an index is located in the back of the book.

Note: This is a companion book for Robbed by Kern County Sheriff's Deputies by Alexandra Wilson, available on www.WildWillpower.org.

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**§ 1 – Adverse Possession;
a procedure for acquiring Absolute Title
to Real Property**

adverse possession – 1. The enjoyment of real property with a claim of right when that enjoyment is opposed to another person’s claim and is continuous, exclusive, hostile, open, and notorious. —aka *adverse dominion*, though not considered an unlawful form of adverse dominion.

2. The doctrine by which title to real property is acquired as a result of such use or enjoyment over a specified period of time. ☒

1. The act of occupying real property in an “open, notorious, and hostile manner,” under a claim of right, contrary to the interests of the true owner. Such possession over a period of years is a method for acquiring title. ☒

A title acquired by adverse possession is a title in fee simple, and is as perfect a title as one by deed from the original owner or by patent or grant from the government. *Thornely v Andrews*, 40 Wash 580, 82 P 899. ☒

fee simple – 1. An interest in land that, being the broadest property interest allowed by law, endures until the current holder dies without heirs. — aka *fee*; *fee simple absolute*; *estate in fee simple*; *tenancy in fee fee-simple title*; *exclusive ownership*; *feudum simplex*; *estate in fee*. ☒

1. The largest estate in land known to the law and implying absolute dominion over the land; an estate of inheritance clear of any condition, limitation, or restriction, to particular heirs. 28 Am J2d Est § 10. ☒

1. A person may acquire title to real property by adverse possession continued long enough to raise a presumption of a lost grant and ripen into a title by prescription, or for a period required by statute. Idaho— *DeChambeau v Estate of Smith*, 132 Idaho 568, 976 P.2d 922 (1999).; Ill. —*Klingel v Kehrer*, 81 Ill. App. 3d 431, 36 Ill. Dec. 719, 401 N.E.2d 560 (5th Dist. 1980).; Ind. – *Kline v Kramer*, 179 Ind. App. 592, 386 N.E.2d 982 (3d Dist. 1979).; Iowa —*Johnson v. Kaster*, 637 N.W.2d 174 (Iowa 2001).; Me. —*Striedel v. Charles-Key-Leaman Partnership*, 1999 ME 984 (Me. 1999).

Adverse possession is the open and hostile possession of land under a claim of title to the exclusion of the true owner, which, if continued for a period prescribed by state, ripens into an actual title. Me. — *Colquhoun v. Webber*, 684 A.2d 405 (Me. 1996).; N.D. — *Cranston v Winders*, 238 N.W.2d 647 (N.D. 1976).

Title by adverse possession may be established either pursuant to common law or statutory provisions. Me. —*Colquhoun v. Webber*, 684 A.2d 405 (Me. 1996).

Adverse possession is based on possession which is hostile to the true title owner. Iowa — *Johnson v. Kaster*, 637 N.W.2d 174 (Iowa 2001).

The basis of title by adverse possession is the failure of the true owner to institute suit for the recovery of the land within the period designated by the statute of limitations. N.J. — *Mannillo v. Gorski*, 54 N.J. 378, 255 A.2d 258 (1969).; N.Y. — *Reiter v. Landon Homes, Inc.*, 56 Misc. 2d 168, 538, 295 N.Y.S.2d 103 (2d Dep’t 1968).

Adverse possession becomes a perfect title on the theory that the true owner has by their own fault and neglect failed to assert their right against the hostile holding. **Ala. — *Prestwood v. Hunt*, 285 Ala. 525, 234 So. 2d 545 (1970).**

Establishment of title by adverse possession is based on theory that the owner has abandoned the land to the adverse possessor. **Fla. — *Downing v. Bird*, 100 So. 2d 57 (Fla. 1958).**

Title to property by adverse possession may be acquired by the application of an equitable estoppel. **Fla. — *King. v. Carden*, 237 So. 2d 26 (Fla. Dist. Ct. App. 1st Dist. 1970).**

The goal of the doctrine of adverse possession is the final settlement of titles. **Ill. — *Klingel v. Kehrer*, 81 Ill. App. 3d 431, 36 Ill. Dec. 719, 401 N.E.2d 560 (5th Dist. 1980).; W.Va. — *Soman v. Murchpy Fabrication & Erection Co.*, 160 W. Va. 84, 232 S.E.2d 524 (1977).; Wyo. — *Big Horn County Com'rs v. Hinckley*, 593 P.2d 573 (Wyo. 1979).**

1. A method of acquisition of title to real property by possession for a statutory period under certain conditions. ***Lowery v. Garfield County*, 122 Mont. 571, 208 P.2d 478, 486.**

It has been described as the statutory method of acquiring title to land by limitation. ***Field v. Sosby*, Tex. Civ. App., 226 S.W.2d 484, 486.**

Because of the statute of limitations on the bringing of actions for the recovery of land, title can be acquired to real property by adverse possession. In order to establish title in this manner, there must be proof of nonpermissive use which is actual, open, notorious, exclusive and adverse for the statutorily prescribed period. ***Ryan v. Stavros*, 348 Mass. 251, 203 N.E.2d 85.**

State statutes differ with respect to the required length of possession from an upper limit of 20 years to a lower one of 5 years, with even more extreme time periods covering certain special cases. There may be different periods of time even within a single state, depending on whether or not the adverse possessor has color of title and/or whether or not taxes have been paid. In some cases a longer possession is required against public entities than against individuals.

Adverse possession depends on intent of occupant to claim and hold real property in opposition to all the world, ***Sertic v. Roberts*, 171 Or. 121, 136 P.2d 248**; and also embodies the idea that owner of or persons interested in property have knowledge of the assertion of ownership by the occupant, ***Field v. Sosby*, Tex. Civ. App., 226 S.W.2d 484, 486.**

Adverse possession consists of actual possession with intent to hold solely for possessor to exclusion of others and is denoted by exercise of acts of dominion over land including making of ordinary use and taking of ordinary profits of which land is susceptible in its present state. ***U.S. v. Chatham*, D.C.N.C., 208 F.Supp. 220, 226.**¹

¹ *Corpus Juris Secundum* ("C.J.S.") A CONTEMPORARY STATEMENT OF AMERICAN LAW AS DERIVED FROM REPORTED CASES AND LEGISLATION, Volume 2

**§ 2 – Real Property is considered Abandoned,
and a Record Owner's rights relinquished,
via the Doctrine of Presumed Dereliction;
the Title goes dormant**

presumed dereliction – 1. The doctrine that a thing is presumed to have been abandoned when it so appears by acts or circumstances, as when it is thrown away in any public place where it cannot be taken up, or where another is suffered to possess it without contradiction, or where possessory acts have long been abstained from. *Rhodes v Whitehead*, 27 Tex 304. ☹

dereliction – 1. The state of a building that is run-down and dilapidated. ☹

1. Abandonment of property; abandoned property. 56 Am J1st Wat § 476. ☹

derelict – 1. Forsaken; abandoned; cast away <derelict property>.

2. (Of a building) in bad condition from long disuse; rundown and dilapidated. ☹

1. Abandoned; deserted; uninhabited. ☹

dilapidation – 1. Gradual ruin or decay through misuse or neglect; especially damage to a building resulting from acts of either commission or omission. * A dilapidation may give rise to liability if it constitutes an act of waste, a breach of contract, or a statutory violation. – *dilapidate*, vb. – *dilapidator*, n. ☹

res derelicta – 1. A thing thrown away or forsaken by its owner; abandoned property. ☹

1. Abandoned property; property from which the mind has withdrawn affection, and which has thus fallen back into the natural state of *res nullius*, the property of no one, and is again susceptible of becoming the property of the occupant. *Rhodes v Whitehead*, 27 Tex 304. ☹

1. Abandoned property – the literal translation of the term is “derelict thing” (i.e. derelict property). ☹

res nullius – 1. [Latin: “thing of no one”] A thing that belongs to no one; an ownerless chattel.

1. The property of no one. ☹

Excerpt from John George Phillimore's Private Law Among the Romans (1863):

“*Res nullius*. Such as belonged to the first occupier. They are of two kinds. Such as never have belonged to anyone, and such as have ceased to belong to the former owner.”²

2 John George Phillimore, Private Law Among the Romans 18 (1863)

abandonment of property - 1. Intentional and absolute **relinquishment** of property without reference to any particular person or for any particular purpose. **1 Am J2d Aband § 1; 3 Am J2d Adv P § 77.**

Abandoned property is that to which the owner has voluntarily relinquished all right, title, claim, and possession with the intention of terminating his ownership, but without vesting it in any other person, and with no intention of reclaiming possession or resuming ownership and enjoyment in the future. **1 Am J2d Aband § 1.**

Abandonment is the relinquishment of a right or property with the intention of not reclaiming it or reassuming its ownership or enjoyment. **Ellis v Brown(CA6 Ky) 177 F2d 677, 13 ALR2d 945.** ☹

1. The act, by an owner of property, of voluntarily giving up possession and control of the property with no intention of reclaiming it. Both real property and personal property may be abandoned. Copyrights, inventions, and patents may be abandoned if the owner permits a public use of them. ☹

abandoned property - 1. Property that the owner voluntarily **surrenders**, relinquishes, or disclaims. ☹

1. Property to which an owner has voluntarily relinquished all right, title, claim, and possession with the intention of terminating ownership, but without vesting it in any other person and with the intention of not reclaiming future possession or resuming ownership, possession, or enjoyment. **1 Am J2d Aband § 1.** ☹

1. Property of which the owner has voluntarily given up possession and control, and which she has no intention of reclaiming. ☹

abandonment – 1. The relinquishing of or departing from a homestead, etc., with the present, definite, and permanent intention of never returning or regaining possession. ☹

1. The act of voluntarily and totally relinquishing a right or property with no thought of reclaiming it or giving or selling it to anyone else. ☹

relinquishment – 1. The abandonment of a right or thing. – *relinquish*, *vb.* ☹

1. An abandonment; a yielding up of all claim to a thing. ☹

surrender – 1. The giving up of a right or claim. ☹

1. Yielding possession. ☹

release – 1. The relinquishment or concession of a right, title, or claim. ☹

extinguishment – 1. The cessation or cancellation of some right or interest. ☹

renunciation of property – 1. A dereliction. An abandonment of property.

Renunciation or dereliction of property requires both the intention to abandon and external action. This is true of property at sea as well as on land. Even the title of the owner to property lying at the bottom of the sea is not necessarily divested. *Murphy v Dunham* (DC Mich) 38 F 503.

There must be voluntary intention to abandon, or evidence from which such intention may be presumed. *Belcher Oil Co. v Griffin* (CA5 Fla) 97 F2d 425. ☹

renunciation – 1. The express or tacit abandonment of a right without transferring it to another. ☹

1. A definite giving up or casting off of something. A legal act by which a person abandons a right acquired, but without transferring it to another. *Johnston's Estate*, 186 Wis 599, 203 SW 376.

A method of discharging a negotiable instrument consisting of the holder's express disclaimer of rights in the instrument. 11 Am J2d B & N § 948.

The refusal of a person designated trustee to act as such. 15 Am J2d Char § 40. ☹

1. In law, an act by which a person abandons or waives a right, but without transferring it to another.

2. Under the Uniform Commercial Code, the expressed willingness not to enforce an instrument by a person entitled to enforce it. ☹

renounce – 1. To give up or abandon formally (a right or interest); to disclaim <renounce an inheritance>. ☹

1. To **waive** or relinquish; as, to renounce a right. ☹

1. To waive, particularly a right; to relinquish; to disclaim; to abjure. ☹

waive – 1. To abandon, renounce, or surrender (a claim, privilege, right, etc.); to give up (a right or claim) voluntarily. * Ordinarily, to waive a right one must do it knowingly – with knowledge of the relevant facts.

2. To refrain from insisting on (a strict rule, formality, etc.); to forgo. – *waivable*, *adj.* – *waivability*, *n.* ☹

1. To throw away; to relinquish voluntarily that right which one might have enforced by choice. See *Anglo-Nevada Assur. Corp. v Nadeau*, 90 Cal 393, 27 P 302.

To make or effect a **waiver**. ☹

1. To voluntarily relinquish or renounce a right one knows one has and could have enforced. ☹

waiver – 1. The loss of a right to make a claim or argument because it was not raised at the right time or because its maker otherwise did not follow necessary

rules. * A waiver in this sense can be inadvertent. ☉

1. The intentional relinquishment of a known *right, claim, or privilege*. *Phillips v Lagaly (CA10 Okla) 214 F2d 527, 50 ALR2d 626; Smith v Smith, 235 Minn 412, 51 NW2d 276, 32 ALR2d 1135.*

2. A voluntary and intentional relinquishment of a known and existing right, or such conduct as warrants an inference of the relinquishment of such right. An election to dispense with something of value or to forego some advantage which one might, at his option, have demanded. **29A Am J Rev ed Ins § 1009.**

Waiver presupposes a full knowledge of a right existing, and an intentional surrender or relinquishment of that right. It contemplates something done designedly or knowingly, which modifies or or changes existing rights or varies or changes the terms and provisions of a contract. It is the voluntary surrender of a right. *Sovereign Camp, W.W. V Newsom, 142 Ark 132, 219 SW 759, 14 ALR 903.*

To establish a waiver, there must be shown an act or omission on the part of the one charged with the waiver fairly evidencing an intention permanently to surrender the right alleged to have been waived. *Dunbar v Farnum, 109 Vt 313, 196 A 237, 114 ALR 996.* ☹

1. The intentional relinquishment or renunciation of a right, claim, or privilege a person knows he has.

Excerpt from *Bank v. Truck Ins. Exchange, 51 F.3d 736 (7th Cir. 1995)*:

“Waiver’ is often used as a synonym for ‘forfeiture,’ as when the failure to present a ground in the district court is deemed to ‘waive’ the ground in the court of appeals.”

implied waiver – 1. A waiver evidenced by a party's decisive, unequivocal conduct reasonably inferring the intent to waive. ☉

1. A waiver shown by the acts and conduct of the parties from which the intention to waive reasonably may be inferred. **56 Am J1st Waiver § 17.**

A waiver implied as a reasonable inference from the act or silence of the party who has the power to waive. *Roumage v Mechanics' Fire Ins. Co. 13 NJL 110.* ☹

1. 1. A waiver inferred from the conduct of the parties. ☹

Excerpt from **28 Am. Jur. 2D Estoppel and Waiver § 160, at 846-46 (1966)**:

“An implied waiver may arise where a person has pursued such a course of conduct as to evidence an intention to waive a right, or where his conduct is inconsistent with any other intention than to waive it.”

dormant title – 1. A title in real property held in **abeyance**. ☞

1. A title to real estate held in abeyance, unasserted. ☹

1. An unclaimed title to real estate. Ω

abeyance – 1. *Property*. A lapse in **succession** during which no person is vested with title. — **abeyant**. *adj.* ☞

1. An estate in fee is in abeyance where there is no person **in esse** in whom it may vest and abide, although the law considers it as always potentially existing and ready to vest when a proper person in whom it may vest appears. **28 Am J2d Est § 10**. ☹

1. A state of inactivity or suspension. Ω

Excerpt from Richard Burn's A New Law Dictionary (1792):

“*Abeyance, from the French buyer, to expect, is that which is in expectation, remembrance, and intendment of law. By a principle of law, in every land there is a fee simple in somebody, or else it is in abeyance; that is, though for the present it be in no man, yet it is in expectancy belonging to him that is next to enjoy the land.*”³

succession – 1. The acquisition of rights or property by inheritance under the laws of descent and distribution. — **succeed**, *vb.* ☞

1. The passing of property in possession or enjoyment, present or future, and dispositions of property by will, deed, or laws of descent, by reason whereof any person shall become entitled in possession or expectancy to property upon the death of any other person. **Wright v Blakeslee, 101 US 174, 25 L Ed 1048**.

The word is one of technical meaning in the law and signifies the taking of property by inheritance or will from the state of a decedent, or by operation of law; and it is a word which clearly excludes those who take by deed, grant, gift, or any form of purchase or contract. **Quarles v Clayton, 87 Tenn 308, 10 SW 505**. ☹

1. The passing of the property of a decedent by will or by inheritance (intestate succession), as opposed to taking title by deed, grant, gift, or contract.

2. Succeeding to the rights of another. Ω

vacant succession – 1. A succession that fails either because there are no known heirs or because the heirs have renounced the estate.

2. An estate that has suffered such a failure. ☞

in esse – 1. Alive; living; in being. ☹

buying and selling in dormant titles – 1. In some jurisdictions such transactions are prohibited by the common law. In others, statutes forbid the transfer to a stranger of the title to land in adverse possession of another. **14 Am J2d Champ § 11**. ☹

3 1 Richard Burn, A New Law Dictionary 4 (1792)

vacant and unoccupied building – A building in which no one is living or residing and which is empty for all practical purposes. **29A Am J Rev ed ins § 907.** ☹

vacant – 1. Empty, unoccupied <a vacant office>. * Courts have sometimes distinguished *vacant* from *unoccupied*, holding that *vacant* means completely empty while *unoccupied* means not routinely characterized by the presence of human beings.

2. Absolutely free, unclaimed, and unoccupied <vacant land>.

3. (Of an estate) abandoned; having no heir or claimant. The term implies either abandonment or nonoccupancy for any purpose. ☹

vacancy – 1. The quality, state, or condition of being unoccupied, especially in reference to an office, post, or piece of property.

2. The time during which an office, post, or piece of property is not occupied.

3. An unoccupied office, post, or piece of property; an empty place. ☹

vacate – 1. To surrender occupancy or possession; to move out or leave. ☹

1. To annul or set aside. To cease the occupancy of premises, leaving them empty.

To vacate, in its English form, has acquired an active sense through a long period of transition, by popular usage and in consequence of its early adoption as a technical and legal term, although it was originally used only as a passive verb. To leave empty; to cease from occupying; to annul; to make void, express the different meanings which it has acquired.

Originally it meant to be empty, void or vacant; to be void of, free from, or without; to lack or want a thing. **Walsh v Commonwealth, 89 Pa 419.** ☹

1. As applied to land or premises, to quit, depart, or leave. ☹

improvidence – 1. A lack of foresight and care in the management of property, especially as grounds for removing an estate administrator. ☹

1. Carelessness, indifference, prodigality, wastefulness, or negligence in reference to the care, management, and preservation of property. **Re Davis' Estate, 10 Mont 228, 25 P 105.** ☹

**§ 3 – Citizens may Claim a Right of Entry
to enter onto and take Possession of
Abandoned Property,
thereby becoming Beneficial Owners
having Equitable Title thereto**

claim – 1. The assertion of an existing right; any right to payment or to an equitable remedy, even if contingent or provisional.

2. An interest or remedy recognized at law; the means by which a person can obtain a privilege, possession, or enjoyment of a right or thing. ☉

1. Something demanded as a matter of right. Ω

claim of right – 1. An entry upon land with the intent to claim the land and to hold it; the intention of the disseisor to appropriate and use land as his own to the exclusion of all others, irrespective of any semblance or shadow of actual title or right. *Guaranty Title & Trust Corp. v United States*, 265 US 200, 204, 68 L Ed 636, 638, 44 S Ct 252. ☉

1. In property law, “that claimant is in possession as owner with intent to claim the land as his own and not in recognition of or subordination to the record title owner,” 624 P. 2d 747, 748.⁴

right – 1. The **interest**, claim, or ownership that one has in tangible or intangible property. ☉

1. In the purely legal sense, a just or valid claim recognized or granted by the law and enforced by the law. It is important to note that the law arms every legal right with a matching legal remedy. Ω

substantive right – 1. A right that can be protected or enforced by law; a right of substance rather than form.

legal right – 1. A right created or recognized by law. The breach of a legal right is usually remediable by monetary damages.

2. A right historically recognized by common-law courts.

1. A claim recognizable in an action brought in a court or before an administrative agency; a right recognized by the law. Ω

right of entry – 1. The right of taking or resuming possession of land or other real property in a peaceable manner.

2. The right to go into another’s real property for a special purpose without committing trespass. ☉

1. The right to possession of land. Ω

entry – The act, right, or privilege of entering real property. – aka *entry onto land*.

lawful entry – The entry onto real property by a person not in possession, under a claim or color of right and without force or fraud.

⁴ Barron's Law Dictionary 3d Ed. By Steven H. Hifis. (1975, 1984, 1991). ISBN 0-8120-4633-1. – ISBN 0-8120-4628-5.

open entry – A conspicuous entry onto real property to take possession; and entry that is neither clandestine nor carried out by secret artifice or stratagem and that (by law in some states) is accomplished in the presence of two witnesses.

occupatio – A mode of acquisition by which a person obtains absolute title by first possessing a thing that previously belonged to no one.

occupare – To seize or take possession of (property); to enter (land) upon a vacant possession. ☉

vacantia bona – 1. Goods which no one claimed and which by the law of nature belonged to the first occupant or finder. ☹

occupatile – Property that has been left by its rightful owner and is now possessed by another.

procedural right – 1. A right that derives from legal or administrative procedure; a right that helps in the protection or enforcement of a substantive right. ☉

unenumerated rights – 1. A right retained by the people but not explicitly mentioned in the Bill of Rights. * The Ninth Amendment to the U.S. Constitution states: “The enumeration to the Constitution of certain rights shall not be construed to deny or disparage others retained by the people.”

1. A right inferred from another legal right that is expressly stated in a statute or at common law. – aka **implied right**; **penumbral right**; **background right**. ☉

Excerpt from Leonard W. Levy's *Unenumerated Rights*” in Encyclopedia of the American Constitution (1st Supp., Leonard W. Levy ed., 1991):

“Without doubt, the Ninth Amendment and its problem of identifying unenumerated rights continue to bedevil interpreters, on and off the bench. Courts do continue to discover rights that have no textual existence and might be considered unenumerated.... Judges have composed rights great and small, including the *Miranda* rules.... or the right against the invasion of an expectation of privacy.”⁵

right of property – 1. The right to freely use, enjoy, and dispose of property without restrictions other than those imposed by the law. ☹

right of possession – 1. The right to hold, use, occupy, or otherwise enjoy a given property. ☉

1. A person’s right to occupy and enjoy property. See *2 Bl Comm 196*. ☹

⁵ “*Unenumerated Rights*” by Leonard W. Levy, Encyclopedia of the American Constitution 557 (1st Supp., Leonard W. Levy ed., 1991)

claim of ownership – 1. The possession of a piece of property with the intention of claiming it in hostility to the true owner.

2. A party's manifest intention to take over land, regardless of title or right. – aka *claim of right; claim of title*. ☉

1. The claim of a right or a claim of title to enter lands with the intent of claiming and holding it. ⁶

beneficial owner – 1. One recognized in equity as the owner of something because use and title belong to that person, even though legal title may belong to someone else. — aka *equitable owner*. ☉

1. A person who has equitable title to property but not legal title. Ω

claim of title - 1. The entry and occupation of land with the intent to hold it as the claimant's own against the world, irrespective of any shadow or color of right or title as a foundation of his claim. **Anno: 2 ALR 1457.**

title – 1. The union of all elements (ownership, possession, and custody) constituting the legal right to control and dispose of property; the legal link between a person who owns property and the property itself <no one has title to that land>. ☉

1. The legal estate in fee, clear of all valid claims, liens, and encumbrances whatsoever, or expressed differently, the ownership of land without any rightful participation by any other person in any part of it. *Porter v Noyes, 2 Me 22.*

The union of all the elements which constitute ownership, at common law divided into possession, right of possession and right of property, the last two now, however, being considered essentially the same. *Carrol v Newark, 108 NJ 323, 158 A 485, 79 ALR 509.*

The foundation of ownership; the basis of a person's right or the extent of his interest. The means whereby an owner is enabled to maintain or assert his possession and enjoyment. **42 Am J1st Prop § 36.**

The right of an owner considered with reference either in the manner in which the property has been acquired or its capacity of being effectually transferred. **42 Am J1st Prop § 36.** ☉

1. The rights of an owner with respect to property, real or personal, i.e., possession and the right of possession. Ω

Excerpt from Kent McNeil's *Common Law Aboriginal Title* (1989):

“Though employed in various ways, [title] is generally used to describe either the manner in which a right to real property is acquired, or the right itself. In the first sense, it refers to the conditions necessary to acquire a valid claim to land; in the second, it refers to the legal consequences of such conditions. These two senses are not only interrelated, but inseparable: given the requisite conditions, the legal consequences or rights follow as of course; given the rights, conditions necessary for the creation of those rights must have been satisfied. Thus, when the word ‘title’ is used in one sense, the other sense is necessarily implied.”

⁶ Black's Law Dictionary 2d Ed., “CLAIM OF OWNERSHIP”: <https://thelawdictionary.org/claim-of-ownership/>

beneficially entitled – Having title legally or having it equitably, so as to reap the benefits of ownership. *People v McCormick*, 208 Ill 437, 70 NE 350. ☹

equitable title – 1. A title that indicates a **beneficial interest** in property and that gives the holder the right to acquire formal **legal title**. ☹

1. A title which is recognized as ownership in equity, whatever cognizance may be taken of it at law. *56 Am J1st V & P § 356*.

1. Title recognized as ownership in equity, even though it is not legal title or marketable title; title sufficient to give the party to whom it belongs the right to have the legal title transferred to him. ☹

legal title – 1. A title that evidences apparent ownership but does not necessarily signify full and complete title or a beneficial interest. ☹

1. A title under rules of law as distinguished from a title recognized in equity according to equitable principles. ☹

1. Title that evidences apparent ownership, as distinguished from equitable title, which indicates a beneficial interest. ☹

interest – 1. A legal share in something; all or part of a legal or equitable claim to or right in property. * Collectively, the word includes any aggregation of rights, privileges, powers, and immunities; distributively, it refers to any one right, privilege, power, or immunity. ☹

1. A right; a claim; a share; a title.

equitable interest – 1. An interest held by virtue of an equitable title or claimed on equitable grounds, such as the interest held by a trust beneficiary. ☹

beneficial interest – 1. A right or expectancy in something (such as a trust or an estate), as opposed to legal title to that thing. ☹

1. An expression with variable meaning, dependent on the context in which it appears.... an interest that will result in an appreciable gain to the holder. *Cox's Appeal*, 126 Me 256, 137 A 771, 53 ALR 208; an interest of value, worth, advantage, or use. *Re Duffy*, 228 Iowa 426, 292 NW 165, 128 ALR 943. ☹

expectant right – 1. A right that is **contingent** on the occurrence of some future event; a contingent right.

contingent right – 1. An entitlement that depends on the occurrence of some specified event. ☹

1. A right which depends on the performance of some condition or the happening of some event before some other event or condition happening or some event before some other event or condition happens or is performed. *16 Am J2d Const L § 421*.

holder – 1. A person who holds; a person who is in the actual or constructive possession of land. *State v Wheeler, 23 Nev 143, 44 P 430.* ☹

1. A person who has the ownership, possession, or use of any property. ☹

property interest – 1. An interest, perhaps including rights of possession and control, held by an owner, beneficiary, or remainderman in land, real estate, business, or other tangible items.

2. *Constitutional law.* A legitimate claim of entitlement to some legal or contractual benefit that cannot be taken away without due process. – aka *proprietary interest; ownership interest; interest in property.*

legally protected interest – A property interest that the law will protect against impairment or destruction, whether in law or in equity.

liberty interest – An interest protected by the due process clauses of state and federal constitutions. ☹

possessory interest – 1. The present right to control property, including the right to exclude others, by a person who is not necessarily the owner.

2. A present or future right to the exclusive use and possession of property – aka *present possessory interest; possessory estate; present estate.* ☹

1. The right to possess property. Such a right may be based upon ownership, or it may arise from an estate or any other interest. ☹

present interest – 1. A property interest in which the privilege of possession or enjoyment is present and not merely future; an interest entitling the holder to immediate possession. — aka *present estate.*

interest in the use and enjoyment of land – The pleasure, comfort, and advantage that a person may derive from the occupancy of land. * The term includes not only the interests that a person may have for residential, agricultural, commercial, industrial, and other purposes, but also interests in having the present-use value of the land unimpaired by changes in its physical condition. ☹

§ 13 - California Statutes

Note

Legal terms (including synonyms) found within statutes are underlined to indicate definitions are located within this book. See the index in the back of the book to find the page number in which the definition is located. When a synonym is underlined, the actual term that is found in the index is underlined, italicized, and written in parentheses immediately after the statute.

Notice

Although Title by Prescription and Adverse are sparsely mentioned throughout California statutes,⁷ “title by adverse possession may be established either pursuant to common law or statutory provisions.” **Me. —*Colquhoun v. Webber*, 684 A.2d 405 (Me. 1996)**. Sections of the law which do not pertain to aforementioned information are omitted from this publication.

⁷ **California Legislative Information code search:** <https://leginfo.legislature.ca.gov/faces/codes.xhtml>

Time for Commencing a Civil Action to Recover Real Property

Statutes pertaining to *recovering real property from lawful possessors* are located within in California's *Code of Civil Procedure*.

CODE OF CIVIL PROCEDURE – CCP

PART 2. OF CIVIL ACTIONS

TITLE 2. OF THE TIME OF COMMENCING CIVIL ACTIONS

CHAPTER 2. The Time of Commencing Actions for the Recovery of Real Property

318.

No action for the recovery of real property, or for the recovery of the possession thereof, can be maintained, unless it appear that the plaintiff, his ancestor, predecessor, or grantor, was seized or possessed of the property in question, within five years before the commencement of the action.

319.

No cause of action, or defense to an action, arising out of the title to real property, or to rents or profits out of the same, can be effectual, unless it appear that the person prosecuting the action, or making the defense, or under whose title the action is prosecuted, or the defense is made, or the ancestor, predecessor, or grantor of such person was seized or possessed of the premises in question within five years before the commencement of the Act in respect to which such action is prosecuted or defense made.

320.

No entry upon real estate is deemed sufficient or valid as a claim, unless an action be commenced thereupon within one year after making such entry, and within five years from the time when the right to make it descended or accrued. (*see accrual of cause of action*)

321.

In every action for the recovery of real property, or the possession thereof, the person establishing a legal title to the property is presumed to have been possessed thereof within the time required by law, and the occupation of the property by any other person is deemed to have been under and in subordination to the legal title, unless it appear that the property has been held and possessed adversely to such legal title, for five years before the commencement of the action. (*see occupancy*)

322.

When it appears that the occupant, or those under whom he claims, entered into the possession of the property under claim of title, exclusive of other right, founding such claim upon a written instrument, as being a conveyance of the property in question, or upon the decree or judgment of a competent Court, and that there has been a continued occupation and possession of the property included in such instrument, decree, or judgment, or of some part of the property, under such claim, for five years, the property so included is deemed to have been held adversely, except that when it consists of a tract divided into lots, the possession of one lot is not deemed a possession of any other lot of the same tract.

323.

For the purpose of constituting an adverse possession by any person claiming a title founded upon a written instrument, or a judgment or decree, land is deemed to have been possessed and occupied in the following cases:

1. Where it has been usually cultivated or improved;
2. Where it has been protected by a substantial inclosure;
3. Where, although not inclosed, it has been used for the supply of fuel, or of fencing timber for the purposes of husbandry, or for pasturage, or for the ordinary use of the occupant;
4. Where a known farm or single lot has been partly improved, the portion of such farm or lot that may have been left not cleared, or not inclosed according to the usual course and custom of the adjoining country, shall be deemed to have been occupied for the same length of time as the part improved and cultivated.

324.

Where it appears that there has been an actual continued occupation of land, under a claim of title, exclusive of any other right, but not founded upon a written instrument, judgment, or decree, the land so actually occupied, and no other, is deemed to have been held adversely.

325.

- (a) For the purpose of constituting an adverse possession by a person claiming title, not founded upon a written instrument, judgment, or decree, land is deemed to have been possessed and occupied in the following cases only:
- (1) Where it has been protected by a substantial enclosure.
 - (2) Where it has been usually cultivated or improved.
- (b) In no case shall adverse possession be considered established under the provision of any section of this code, unless it shall be shown that the land has been occupied and claimed for the period of five years continuously, and the party or persons, their predecessors and grantors, have timely paid all state, county, or municipal taxes that have been levied and assessed upon the land for the period of five years during which the land has been occupied and claimed. Payment of those taxes by the party or persons, their predecessors and grantors shall be established by certified records of the county tax collector.

326.

When the relation of landlord and tenant has existed between any persons, the possession of the tenant is deemed the possession of the landlord until the expiration of five years from the termination of the tenancy, or, where there has been no written lease, until the expiration of five years from the time of the last payment of rent, notwithstanding that such tenant may have acquired another title, or may have claimed to hold adversely to his landlord. But such presumptions cannot be made after the periods herein limited.

327.

The right of a person to the possession of real property is not impaired or affected by a descent cast in consequence of the death of a person in possession of such property. (*see right of possession*)

328.

If a person entitled to commence an action for the recovery of real property, or for the recovery of the possession thereof, or to make an entry or defense founded on the title to real property, or to rents or services out of the property, is, at the time title first descends or accrues, either under the age of majority or lacking legal capacity to make decisions, the time, not exceeding 20 years, during which the disability continues is not deemed a portion of the time in this chapter limited for the commencement of the action, or the making of the entry or defense, but the action may be commenced, or entry or defense made, within the period of five years after the disability shall cease, or after the death of the person entitled, who shall die under the disability. The action shall not be commenced, or entry or defense made, after that period.

328.5.

If a person entitled to commence an action for the recovery of real property, or for the recovery of the possession thereof, or to make any entry or defense founded on the title to real property, or to rents or services out of the property, is, at the time the title first descends or accrues, imprisoned on a criminal charge, or in execution upon conviction of a criminal offense, for a term less than life, the time, not exceeding two years, during which imprisonment continues is not deemed any portion of the time in this chapter limited for the commencement of the action, or the making of the entry or defense, but the action may be commenced, or entry or defense made, within the period of five years after the imprisonment ceases, or after the death of the person entitled, who dies while imprisoned; but the action shall not be commenced, or entry or defense made, after that period. ⁸

⁸ **California Legislative Information, CODE OF CIVIL PROCEDURE – PART 2. OF CIVIL ACTIONS – TITLE 2. OF THE TIME OF COMMENCING CIVIL ACTIONS – CHAPTER 2. The Time of Commencing Actions for the Recovery of Real Property:**
[https://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?
lawCode=CCP&division=&title=2.&part=2.&chapter=2.&article=](https://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?lawCode=CCP&division=&title=2.&part=2.&chapter=2.&article=)

Acquiring Property via Occupancy

Statutes pertaining to *acquiring property through occupancy* are located within California's *Civil Code*.

CIVIL CODE – CIV

DIVISION 2. PROPERTY

PART 4. ACQUISITION OF PROPERTY

TITLE 1. MODES IN WHICH PROPERTY MAY BE ACQUIRED

1000.

Property is acquired by:

1. Occupancy;
2. Accession;
3. Transfer;
4. Will; or,
5. Succession.

accession – When one party takes charge of another's property or records by a contract that both parties agree to.⁹

TITLE 2. OCCUPANCY

1006.

Occupancy for any period confers a title sufficient against all except the state and those who have title by prescription, accession, transfer, will, or succession; but the title conferred by occupancy is not a sufficient interest in real property to enable the occupant or the occupant's privies to commence or maintain an action to quiet title, unless the occupancy has ripened into title by prescription.

1007.

Occupancy for the period prescribed by the Code of Civil Procedure as sufficient to bar any action for the recovery of the property confers a title thereto, denominated a title by prescription, which is sufficient against all, but no possession by any person, firm or corporation no matter how long continued of any land, water, water right, easement, or other property whatsoever dedicated to a public use by a public utility, or dedicated to or owned by the state or any public entity, shall ever ripen into any title, interest or right against the owner thereof.¹⁰

⁹ **Black's Law Dictionary *Second Edition*, “ACCESSION”:** <https://thelawdictionary.org/accession/>

¹⁰ **California Civil Code Division 2. Property – PART 2. ACQUISITION OF PROPERTY:**

https://leginfo.ca.gov/faces/codes_displayexpandedbranch.xhtml?tocCode=CIV&division=2.&title=&part=4.&chapter=&article=

§ 14 – Federal Statutes pertaining to the aforementioned

Notice: Although *adverse possession* and *title by prescription* are sparsely mentioned throughout California statutes,¹¹ “title by adverse possession may be established either pursuant to common law or statutory provisions.” **Me. — *Colquhoun v. Webber*, 684 A.2d 405 (Me. 1996).** Sections of the law which do not pertain to aforementioned information are omitted from this publication.

11 California Legislative Information *code search*: <https://leginfo.legislature.ca.gov/faces/codes.xhtml>

United States Code – USC
Title 18 – CRIMES AND CRIMINAL PROCEDURE
PART I – CRIMES
CHAPTER 13 – CIVIL RIGHTS

§241. Conspiracy against rights

If two or more persons conspire to injure, oppress, threaten, or intimidate any person in any State, Territory, Commonwealth, Possession, or District in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same; or

If two or more persons go in disguise on the highway, or on the premises of another, with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured-

They shall be fined under this title (see **18 USC §3571**) or imprisoned not more than ten years, or both; and if death results from the acts committed in violation of this section or if such acts include kidnapping or an attempt to kidnap, aggravated sexual abuse or an attempt to commit aggravated sexual abuse, or an attempt to kill, they shall be fined under this title or imprisoned for any term of years or for life, or both, or may be sentenced to death.¹²

§242. Deprivation of rights under color of law

Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects any person in any State, Territory, Commonwealth, Possession, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, or to different punishments, pains, or penalties, on account of such person being an alien, or by reason of his color, or race, than are prescribed for the punishment of citizens, shall be fined under this title or imprisoned not more than one year, or both; and if bodily injury results from the acts committed in violation of this section or if such acts include the use, attempted use, or threatened use of a dangerous weapon, explosives, or fire, shall be fined under this title or imprisoned not more than ten years, or both; and if death results from the acts committed in violation of this section or if such acts include kidnapping or an attempt to kidnap, aggravated sexual abuse, or an attempt to commit aggravated sexual abuse, or an attempt to kill, shall be fined under this title, or imprisoned for any term of years or for life, or both, or may be sentenced to death.¹³

¹² U.S. House of Representatives' Office of Law Revision Counsel, “United States Code – USC – Title 18 – CRIMES AND CRIMINAL PROCEDURE – PART I – CRIMES – CHAPTER 13 – CIVIL RIGHTS §241. Conspiracy against rights”: <http://uscode.house.gov/view.xhtml?req=%22conspiracy+against+rights%22&f=treesort&fq=true&num=1&hl=true&edition=prelim&granuleId=USC-prelim-title18-section241>

¹³ “ ” – §242. Deprivation of rights under color of law”: <http://uscode.house.gov/view.xhtml?req=%22deprivation+of+rights+under+color+of+law%22&f=treesort&fq=true&num=1&hl=true&edition=prelim&granuleId=USC-prelim-title18-section242>

CHAPTER 79-PERJURY

§1621. Perjury generally

Whoever-

- (1) having taken an oath before a competent tribunal, officer, or person, in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed, is true, willfully and contrary to such oath states or subscribes any material matter which he does not believe to be true; or
- (2) in any declaration, certificate, verification, or statement under penalty of perjury as permitted under section 1746 of title 28, United States Code, willfully subscribes as true any material matter which he does not believe to be true;

is guilty of perjury and shall, except as otherwise expressly provided by law, be fined under this title or imprisoned not more than five years, or both. This section is applicable whether the statement or subscription is made within or without the United States. ¹⁴

The following statute applies to the previous federal statutes wherein they reference “fined under this title”:

CHAPTER 227-SENTENCES

§3571. Sentence of fine

(a) In General.—A defendant who has been found guilty of an offense may be sentenced to pay a fine.

(b) Fines for Individuals.—Except as provided in subsection (e) of this section, an individual who has been found guilty of an offense may be fined not more than the greatest of—

- (1) the amount specified in the law setting forth the offense;
- (2) the applicable amount under subsection (d) of this section;
- (3) for a felony, not more than \$250,000;
- (4) for a misdemeanor resulting in death, not more than \$250,000;
- (5) for a Class A misdemeanor that does not result in death, not more than \$100,000;
- (6) for a Class B or C misdemeanor that does not result in death, not more than \$5,000; or
- (7) for an infraction, not more than \$5,000.

¹⁴ U.S. House of Representatives' *Office of Law Revision Counsel*, “Title 18-CRIMES AND CRIMINAL PROCEDURE – PART I-CRIMES – CHAPTER 79-PERJURY §1621. Perjury generally: <http://uscode.house.gov/view.xhtml?req=perjury&f=treesort&fq=true&num=49&hl=true&edition=prelim&granuleId=USC-prelim-title18-section1621>

(c) Fines for Organizations.—Except as provided in subsection (e) of this section, an organization that has been found guilty of an offense may be fined not more than the greatest of—

- (1) the amount specified in the law setting forth the offense;
- (2) the applicable amount under subsection (d) of this section;
- (3) for a felony, not more than \$500,000;
- (4) for a misdemeanor resulting in death, not more than \$500,000;
- (5) for a Class A misdemeanor that does not result in death, not more than \$200,000;
- (6) for a Class B or C misdemeanor that does not result in death, not more than \$10,000; and
- (7) for an infraction, not more than \$10,000.

(d) Alternative Fine Based on Gain or Loss.—If any person derives pecuniary gain from the offense, or if the offense results in pecuniary loss to a person other than the defendant, the defendant may be fined not more than the greater of twice the gross gain or twice the gross loss, unless imposition of a fine under this subsection would unduly complicate or prolong the sentencing process.

(e) Special Rule for Lower Fine Specified in Substantive Provision.—If a law setting forth an offense specifies no fine or a fine that is lower than the fine otherwise applicable under this section and such law, by specific reference, exempts the offense from the applicability of the fine otherwise applicable under this section, the defendant may not be fined more than the amount specified in the law setting forth the offense.

Title 42-THE PUBLIC HEALTH AND WELFARE

CHAPTER 21-CIVIL RIGHTS

SUBCHAPTER I-GENERALLY

§1983. Civil action for deprivation of rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.¹⁵

¹⁵ U.S. Government Publishing Office, "Title 42 – THE PUBLIC HEALTH AND WELFARE, CHAPTER 21 – CIVIL RIGHTS, SUBCHAPTER I – GENERALLY, Sec. 1983 – Civil action for deprivation of rights": www.gpo.gov/fdsys/pkg/USCODE-2010-title42/html/USCODE-2010-title42-chap21-subchapI-sec1983.htm

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Note: The first page number indicates the page in which the definition is located. Subsequent numbers indicates where the term first appears within *chapter* in which it is located (as in “Code of Civil Procedure, Part 2, Title 2, *Chapter 2*” – *not* book chapter). When a term appears in a statute, the same term may be found later in the same chapter.

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