

# NO ROOM FOR SQUATTERS: ALASKA'S ADVERSE POSSESSION LAW

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## ABSTRACT

*In 2003, the Alaska Legislature dramatically changed Alaska's adverse possession law. Alaska's new law curtails the application of adverse possession in a way that is more stringent than any other state's law. This Note summarizes Alaska's adverse possession law prior to 2003 and discusses how it was changed in 2003 by the passage of Senate Bill 93. The Note then explores some implications of the new law: the ability to extinguish but not create private easements by prescription, the importance of recording, and the potential for a "good faith squatter" to lose land she believes is hers.*

## INTRODUCTION

On April 16, 2003, the Alaska Senate Judiciary Committee met to discuss Senate Bill 93, the goal of which was to "repeal the Doctrine of Adverse Possession in the case of 'bad faith' trespassers, giving private property owner's [sic] security in knowing their property cannot be taken by squatters."<sup>1</sup> The traditional doctrine of adverse possession allows adverse possessors to gain title to property possessed in a continuous, exclusive, open, notorious, and hostile manner<sup>2</sup> for a certain

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1. *Sponsor Statement for CS for SB 93 (JUD)*, ALASKA STATE LEGISLATURE'S MAJORITY ORG., [http://www.akrepublicans.org/wagoner/23/spst/wago\\_sb093.php](http://www.akrepublicans.org/wagoner/23/spst/wago_sb093.php) (May 9, 2003) [hereinafter *Sponsor Statement*].

2. The specific requirements vary by statute, *see, e.g.*, KAN. STAT. ANN. § 60-503 (2009) (listing open, exclusive, and continuous as requirements), and common law, *see, e.g.*, *Moore v. Stills*, 307 S.W.3d 71, 77-78 (Ky. 2010) (stating that adverse possession is "an amalgam of statutory and common law" and that for the statute of limitations to transfer title to an adverse possessor in Kentucky the common law requirements of hostile, actual, exclusive, continuous, open, and notorious must be met).

number of years.<sup>3</sup> The doctrine has over 800 years of common law history,<sup>4</sup> and it had over 100 years of history in Alaska prior to 2003.<sup>5</sup> Nevertheless, Jon Tillinghast—legal counsel for Sealaska Corporation, the author of Senate Bill 93—boldly declared to the Senate Judiciary Committee, “Justice Brandeis said that states serve as laboratories for improvement of our laws. . . . Alaska is the first state to take a hard look at . . . whether [adverse possession] serves any continuing social utility.”<sup>6</sup> The house and senate had no trouble deciding that, at least in the case of “bad faith squatters,” adverse possession served no continuing utility,<sup>7</sup> and the Governor signed Senate Bill 93 into law on July 17, 2003.<sup>8</sup>

Prior to 2003, the Alaska Supreme Court’s adverse possession jurisprudence took Alaska’s unique circumstances into account in a way that was perhaps more favorable to adverse possessors than to record owners. For example, the Alaska Supreme Court has stated that the exclusivity and continuity of an adverse possession are determined in light of the character of the land in question and how an average owner would use the land.<sup>9</sup> In the rural areas that constitute the vast majority of Alaska, the court has held that the continuity requirement may be met when the use is seasonal,<sup>10</sup> and the exclusivity requirement may be met even though the adverse possessor allowed clamdiggers to use the property.<sup>11</sup> Likewise, the court has held that lesser acts than would be required in urban areas may be sufficient to establish open possession in rural areas.<sup>12</sup> Practically speaking, these lesser requirements may have made it easier for adverse possessors to gain title to rural land in Alaska. In addition, by focusing on the conduct of the adverse possessor, the court may have overlooked the fact that a record owner’s use of the land

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3. The number of years is set out in state statutes of limitation. See discussion *infra* Part II.

4. See discussion *infra* Part I.

5. See discussion *infra* Part II.A.

6. *S.B. 93-Adverse Possession*, ALASKA S. JUDICIARY COMM. MINUTES, 23rd Leg. (Apr. 16, 2003) [hereinafter *4/16/03 Minutes*] (statement of Jon Tillinghast, legal counsel for Sealaska Corporation).

7. The vote in the senate was 15-5. ALASKA S. JOURNAL, 23rd Leg., 1st Sess. 1281 (May 9, 2003). The vote in the house was 28-5, with seven members not voting. ALASKA H. JOURNAL, 23rd Leg., 1st Sess. 1924 (May 19, 2003).

8. ALASKA S. JOURNAL, 23rd Leg., 1st Sess. 1841 (Aug. 20, 2003).

9. *Nome 2000 v. Fagerstrom*, 799 P.2d 304, 309 (Alaska 1990).

10. *Vezey v. Green*, 35 P.3d 14, 21 (Alaska 2001).

11. *Peters v. Juneau-Douglas Girl Scout Council*, 519 P.2d 826, 831 (Alaska 1974).

12. *Shilts v. Young*, 567 P.2d 769, 776 (Alaska 1977).

also depends on its character.<sup>13</sup> Although it is not at all clear that prior to 2003 bad faith squatters were running rampantly around rural Alaska taking advantage of Alaska's adverse possession law,<sup>14</sup> the Alaska Legislature felt a need to provide record owners with additional protections. With Senate Bill 93, the legislature sought to remove "the harsh burden of policing . . . large expansive lands to insure [sic] that a squatter has not taken up residency."<sup>15</sup>

The statutory revisions in Senate Bill 93 effected sweeping changes to Alaska's adverse possession law. However, these changes have gone relatively unnoticed.<sup>16</sup> Moreover, the Alaska Supreme Court has not yet had the opportunity to define the exact contours of the revised statutes, so it is still unclear how the changes will play out in practice. This Note is an attempt to clarify Alaska's adverse possession law and to point out some of the possible implications of the 2003 revisions. It begins by briefly examining the historical roots of adverse possession. Because much of Alaska's pre-2003 adverse possession law will still be relevant under the revised statutes, Part II critically examines Alaska's adverse possession law as it existed prior to 2003. Part III discusses the 2003 revisions, and Part IV examines some of the implications of those revisions.

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13. See Alan Romero, *Rural Property Law*, 112 W. VA. L. REV. 765, 783-84 (2010) ("[S]ome courts seem to recognize how certain rural qualities may affect the possessor's conduct, but overlook or disregard how those same qualities may likewise affect the title owner's conduct.").

14. None of the reported Alaska Supreme Court adverse possession decisions have involved an adverse possessor who went onto someone else's land without any belief in ownership with the goal of gaining title. This fact was noted by attorney Ronald L. Baird in a House Judiciary Committee meeting. Baird argued the squatter that Senate Bill 93 contemplated was "mythical." See *S.B. 93-Adverse Possession*, ALASKA H. JUDICIARY COMM. MINUTES, 23rd Leg. (May 18, 2003) [hereinafter *5/18/03 Minutes II*] (statement of Ronald L. Baird, attorney at law).

15. *S.B. 93-Adverse Possession*, ALASKA S. LABOR & COMMERCE COMM. MINUTES, 23rd Leg. (Mar. 11, 2003) [hereinafter *3/11/03 Minutes*] (statement of Amy Seitz, staff to Senator Wagoner). More recently the legislature passed an act providing that "land use allowed by a landowner for a recreational activity without charge may not form the basis of a claim for adverse possession, prescriptive easement, or a similar claim." *Recreating and Recreational Areas-Landowners-Immunity, Liability for Misconduct, Claims, and Use Easements*, 2008 Alaska Sess. Laws ch. 116 (codified at ALASKA STAT. § 09.65.202(e) (2010)). The only exception is actions brought under section 09.45.052(d) of the Alaska Statutes, *id.*, which is discussed in Part III.B, *infra*.

16. This Author is aware of no law review articles and only one newspaper article discussing the revisions.

## I. A BRIEF HISTORY OF ADVERSE POSSESSION AND ITS JUSTIFICATIONS

The traditional adverse possession doctrine has its roots in early English statutes of limitations that barred actions to recover possession of land after a certain amount of time had passed.<sup>17</sup> Today, all American states have statutes of limitation requiring that actions to recover land be brought within a certain amount of time.<sup>18</sup> Most American statutes of limitation do not expressly state that the former owner can lose title to an adverse possessor after the running of the statute.<sup>19</sup> However, courts have construed the statutes to transfer perfect title to adverse possessors.<sup>20</sup> The ability to gain title via adverse possession originated at a time when title and possession were inseparable.<sup>21</sup> Consequently, to show an adverse possession was sufficient to be equated with ownership, and thus that the true owner had a cause of action against the adverse possessor throughout the statutory period, a modern adverse possessor must generally prove her possession was actual, adverse, open and notorious, exclusive, continuous, and uninterrupted for the statutory period.<sup>22</sup>

Traditional justifications for the doctrine of adverse possession include barring “stale” claims, punishing owners for their neglect, encouraging the development of land, and quieting title.<sup>23</sup> The Alaska Supreme Court has stated:

[T]he adverse possession statutes keep stale cases out of the courts . . . . They exist because of a belief “that title to land should not long be in doubt, that society will benefit from someone’s making use of land the owner leaves idle, and that

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17. 3 THOMAS E. ATKINSON ET AL., AMERICAN LAW OF PROPERTY § 15.1 (A. James Casner ed., 1952). Statutes of limitation existed in England as early as the thirteenth century. *Id.*

18. See 10 BUDDY O. H. HERRING ET AL., THOMPSON ON REAL PROPERTY, SECOND THOMAS EDITION § 87.01 (David A. Thomas ed., 1995) (listing statutes of limitation for all fifty states). The statutory periods range from five years to forty years. *Id.*

19. 3 AMERICAN LAW OF PROPERTY, *supra* note 17, § 15.1.

20. See, e.g., *Davis v. Mills*, 194 U.S. 451, 457 (1904) (“The lapse of time limited by such statutes not only bars the remedy, but it extinguishes the right, and vests a perfect title in the adverse holder.” (quoting *Leffingwell v. Warren*, 67 U.S. 599, 605 (1862))).

21. 10 THOMPSON ON REAL PROPERTY, *supra* note 18, § 87.04.

22. *Id.*; 3 AMERICAN LAW OF PROPERTY, *supra* note 17, § 15.3. The specific requirements vary by state. See *supra* note 2.

23. CHARLES C. CALLAHAN, ADVERSE POSSESSION 83–96 (1961).

third persons who come to regard the occupant as owner may be protected.”<sup>24</sup>

Some modern scholars have suggested that the doctrine of adverse possession should be reformed because many of these traditional rationales are no longer relevant.<sup>25</sup> Others have criticized adverse possession on the ground that it encourages the development—“and thus environmental degradation—of wild lands,”<sup>26</sup> a concern particularly applicable to Alaska. Finally, in response to concerns about the potential inequity of adverse possession, a few legislatures in other states have taken steps to curb its application.<sup>27</sup> However, none have been quite so bold as the Alaska Legislature.

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24. Alaska Nat'l Bank v. Linck, 559 P.2d 1049, 1054 (Alaska 1977) (quoting William B. Stoebuck, *The Law of Adverse Possession in Washington*, 35 WASH. L. REV. 53, 53 (1960)). Along the same lines, in *Dillingham Commercial Company v. City of Dillingham*, the court stated that the rationale for adverse possession statutes is the utility in promptly ending controversies “and in stabilizing long continued property uses.” 705 P.2d 410, 416 (Alaska 1985).

25. See, e.g., Lee Anne Fennell, *Efficient Trespass: The Case for “Bad Faith” Adverse Possession*, 100 NW. U. L. REV. 1037, 1040-41 (2006) (stating that adverse possession is now best suited to the niche goal of transferring land to parties that value it more than the owners); Jeffrey Evans Stake, *The Uneasy Case for Adverse Possession*, 89 GEO. L.J. 2419, 2471-73 (2001) (suggesting reform of adverse possession law based on a loss-aversion rationale because “[r]ationales that easily justified the ancient English doctrine of adverse possession have been undermined”).

26. See, e.g., John G. Sprankling, *An Environmental Critique of Adverse Possession*, 79 CORNELL L. REV. 816, 816 (1994). Sprankling also argued that American courts tended to make it easier to adversely possess wild lands than developed lands. Instead of requiring that adverse possessors do acts that would afford the true owner constructive notice, the courts instead require only that adverse possessors “use the land in the same manner that a reasonable owner would, in light of its nature, character and location.” *Id.* at 825-31. The Alaska Supreme Court has used this language in its opinions. See *infra* note 65 and accompanying text.

27. See, e.g., 2008 Colo. Sess. Laws 688 (codified at COLO. REV. STAT. § 38-41-101 (2010)) (amending Colorado’s adverse possession statute to require a heightened burden of proof on adverse possessors, to require adverse possessors to prove a good faith belief in ownership, and to give courts the discretion to award damages to the person losing title); 1989 Or. Laws ch. 1069 (codified at OR. REV. STAT. § 105.620 (2009)) (amending Oregon’s adverse possession statute to require an honest belief in ownership).

## II. ADVERSE POSSESSION LAW IN ALASKA BEFORE 2003

### A. The Statutes Prior to 2003

Alaska has two statutes governing adverse possession. Portions of these statutes existed before the 2003 amendments and were unchanged by the 2003 amendments. These portions read as follows:

Sec. 09.10.030. Actions to recover real property.

(a) [A] person may not bring an action for the recovery of real property or for the recovery of the possession of it unless the action is commenced within 10 years. An action may not be maintained . . . for the recovery unless it appears that the plaintiff, an ancestor, a predecessor, or the grantor of the plaintiff was seized or possessed of the premises in question within 10 years before the commencement of the action.<sup>28</sup>

Sec. 09.45.052. Adverse Possession.

(a) The uninterrupted adverse notorious possession of real property under color and claim of title for seven years or more . . . is conclusively presumed to give title to the property except as against the state or the United States.<sup>29</sup>

The language of section 09.10.030(a) of the Alaska Statutes, as set forth above, became part of Alaska's laws in 1884 when the Alaska Organic Act made the "general laws" of Oregon applicable to Alaska.<sup>30</sup> The statutory language remained the same after Alaska became an official territory in 1912<sup>31</sup> and after Alaska became a state in 1959.<sup>32</sup> The

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28. ALASKA STAT. § 09.10.030(a) (2010).

29. *Id.* § 09.45.052(a).

30. An Act Providing for a Civil Government for Alaska, ch. 53, § 7, 23 Stat. 24, 25-26 (1884). This Act incorporated Oregon's statute of limitations. *See* HILL'S ANN. LAWS OF OR., ch. I, tit. II, § 4 (1887), which is identical to ALASKA STAT. § 09.10.030(a). In addition, the Alaska Organic Act incorporated Oregon adverse possession law based on this statute of limitations. *See* Pioneer Mining Co. v. Pac. Coal Co., 4 Alaska 463, 477 (1912) (noting in an adverse possession case that Alaska adopted Oregon court decisions rendered prior to the adoption of Oregon's laws in the Alaska Code). Over sixty years after the Alaska Organic Act was passed, the Ninth Circuit noted that Alaska's statute was copied from Oregon and relied on Oregon precedent to recognize the adverse possession doctrine of "tacking." *Ringstad v. Grannis*, 171 F.2d 170, 174 (9th Cir. 1948).

31. *See* COMPILED LAWS OF THE TERRITORY OF ALASKA, tit. XIII, ch. 2, § 836 (1913).

32. *See* ALASKA STAT. § 09.10.030 (1962).

language of section 09.45.052(a) of the Alaska Statutes has a similarly long history in Alaska,<sup>33</sup> though it did not come from Oregon.<sup>34</sup>

Courts have construed these two statutes to give adverse possessors title to privately owned land<sup>35</sup> when the land is occupied for the statutory period under certain conditions.<sup>36</sup> An adverse possessor can tack her adverse possession to that of a predecessor as long as there is privity.<sup>37</sup> Privity exists when there is “continuous possession by mutual consent.”<sup>38</sup> Unlike many other states, Alaska does not have a statute that tolls the running of the statute of limitations when the true owner is a minor or under a disability when the adverse possessor enters the land.<sup>39</sup> Also, although the Alaska Supreme Court has not previously addressed the issue, it would likely hold—as most states have—that the statutory period does not begin to run against the holder of a future interest until the future interest becomes possessory.<sup>40</sup>

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33. Congress enacted the language of section 09.45.052 in 1900. *See* An Act Making Further Provision for a Civil Government for Alaska, and for Other Purposes, ch. 786, § 98, 31 Stat. 321, 493 (1900), which is verbatim identical to the portion of section 09.45.052(a) written above.

34. *Compare* CARTER’S ANN. LAWS OF ALASKA, tit. II, ch. 2, § 4 (1900) (noting that the predecessor to section 09.10.030(a) came from the laws of Oregon), *with* tit. II, ch. 100, § 1042 (not tracing the predecessor of 09.45.052(a) to the laws of Oregon).

35. Statutes generally exempt government owned property from adverse possession. *See* ALASKA STAT. § 29.71.010 (2010) (no adverse possession against a municipality); *id.* § 38.95.010 (no adverse possession against the state); *see also* United States v. Vasarajs, 908 F.2d 443, 446 n.4 (9th Cir. 1990) (generally no adverse possession against the federal government). Some scholars have pointed out the discrepancy in allowing government entities to adversely possess against private individuals but not allowing private individuals to adversely possess against the government. *See, e.g.,* Andrew Dick, *Making Sense Out of Nonsense: A Response to Adverse Possession by Governmental Entities*, 7 NEV. L.J. 348, 350-51 (2006). This discrepancy was used by Senator Wagoner to argue in favor of Senate Bill 93. *See Sponsor Statement, supra* note 1 (“Under existing law, a person is prohibited from taking government property by adverse possession. SB 93 simply accords some equal dignity and protection to private ownership rights.”).

36. These conditions are discussed in Parts II.B.2 & 3, *infra*.

37. Hubbard v. Curtiss, 684 P.2d 842, 849 (Alaska 1984).

38. Penn v. Ivey, 615 P.2d 1, 4 (Alaska 1980).

39. For an example of another state’s statute, see TEX. CIV. PRAC. & REM. CODE ANN. § 16.022 (West 2010).

40. 1 AMERICAN LAW OF PROPERTY, *supra* note 17, § 4.113. The reason for this rule is that the owner of a future interest has no present right to possession and so has no cause of action against the adverse possessor. *Id.*

## B. The Alaska Supreme Court's Pre-2003 Adverse Possession Jurisprudence

### 1. Section 09.10.030(a)

On its face, section 09.10.030(a) of the Alaska Statutes lists two requirements plaintiffs must meet in order to file suit to recover real property: (1) the plaintiff must file suit within ten years, and (2) the plaintiff or his predecessor in interest must have been "seized or possessed" of the land sometime during the ten years preceding the filing of the lawsuit. Requirement one is fairly straightforward, but requirement two poses the question of what is meant by "seized or possessed." Seisin is an ancient concept rooted in English feudal law.<sup>41</sup> In the thirteenth century, seisin was synonymous with possession.<sup>42</sup> Over time the concepts of seisin and possession were separated,<sup>43</sup> and seisin came to refer to ownership of a freehold estate.<sup>44</sup> Lessees merely had possession, not seisin.<sup>45</sup> Easements were considered "use" interests in land, not possessory interests.<sup>46</sup>

The only insight into how the Alaska Supreme Court interprets the phrase "seized or possessed" is contained in the 1977 case *Shilts v. Young*.<sup>47</sup> In *Shilts*, the trial court had equated seisin with physical possession.<sup>48</sup> The Alaska Supreme Court stated:

It is not necessary for a titleholder to be in physical possession of land for any period of time in order to assert his rights. [Section 09.10.030 of the Alaska Statutes] states in part that an action for recovery of real property may not be maintained unless the plaintiff or his predecessor was "seized or possessed of the premises in question within 10 years before the commencement of the action." The statute uses the term "seized" in the sense of having legal title.<sup>49</sup>

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41. 2 THOMPSON ON REAL PROPERTY, *supra* note 18, § 17.01(b).

42. *Id.*; 1 HERBERT THORNDIKE TIFFANY & BASIL JONES, THE LAW OF REAL PROPERTY § 20 (3d ed. 1939).

43. See 2 THOMPSON ON REAL PROPERTY, *supra* note 18, § 17.01(b) (detailing the historical understanding of seisin and possession).

44. *Id.*; 1 TIFFANY & JONES, *supra* note 42, § 20. Freehold estates include fee simple estates and life estates. 1 TIFFANY & JONES, *supra* note 42, § 25.

45. 1 TIFFANY & JONES, *supra* note 42, § 20; 4 THOMPSON ON REAL PROPERTY, *supra* note 18, § 39.04.

46. 7 THOMPSON ON REAL PROPERTY, *supra* note 18, § 60.02(c). Real covenants and equitable servitudes are also considered non-possessory interests in land. *Id.* vol. 4, § 39.04.

47. 567 P.2d 769 (Alaska 1977).

48. See *id.* at 775 n.22.

49. *Id.*



In *Shilts*, the Alaska Supreme Court was most likely recognizing the concept of “constructive seisin” – the idea that a record owner of a fee estate need not have actual possession in order to have seisin. Although *Shilts* had not been in physical possession of the property in question within the last ten years,<sup>50</sup> he had record title.<sup>51</sup> Consequently, he had a right to possession and so was constructively seized.<sup>52</sup> The concept of constructive seisin has long been recognized in American property law,<sup>53</sup> and the U.S. Supreme Court has suggested the concept might be particularly applicable to remote pieces of property<sup>54</sup> such as the one at issue in *Shilts*.<sup>55</sup> The cases cited by the Alaska Supreme Court in *Shilts* in support of its statement that the term “seized” means “having legal title” indicate that the court was recognizing the concept of constructive seisin.<sup>56</sup> However, although the court most likely adopted the more plausible interpretation of section 09.10.030(a) – that “seized” refers to owners of freehold estates and “possessed” refers to owners of leasehold estates – it is possible to read *Shilts* as equating seisin with ownership of any interest in land.<sup>57</sup> But, since the phrase “seized or possessed” in

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50. See *id.* at 771, 775 n.22.

51. *Id.* at 775 n.22.

52. See *id.*; see also *infra* note 56 and accompanying text.

53. See, e.g., *Whitehead v. Foley*, 28 Tex. 268, 268 (1866) (stating that in America there is generally no difference between actual and constructive seisin and that conveyance by deed “carries the legal seisin, and gives constructive possession to the grantee”). In *Whitehead*, the Texas Supreme Court used the terms “seizin in deed” and “seizin in law,” see *id.*, which refer to actual seisin and constructive seisin, respectively. BLACK’S LAW DICTIONARY 1480 (9th ed. 2009).

54. See *Green v. Litter*, 12 U.S. 229, 249 (1814) (holding the grantee of a conveyance of wild or vacant lands has constructive seisin).

55. See *Shilts*, 567 P.2d at 771.

56. The court cited *Williams v. Swango*, 7 N.E.2d 306 (Ill. 1937), and *Beneficial Life Insurance Company v. Wakamatsu*, 270 P.2d 830 (Idaho 1954). *Shilts*, 567 P.2d at 775 n.22. Both cases suggest that the court was recognizing that the legal owner of a freehold estate has a right to possession and therefore need not have actual possession in order to have seisin. See *Beneficial Life*, 270 P.2d at 834 (“[S]eizin generally follows the legal title . . . .”); *Williams*, 7 N.E.2d at 309 (holding holder of a reversionary interest did not have constructive seisin because she did not have an immediate right to possession). The court also cited *Carley v. Davis*, 452 P.2d 772 (Okla. 1969). *Shilts*, 567 P.2d at 775 n.22. However, it is unclear to this Author how *Carley* supports the proposition for which the Alaska Supreme Court cited it.

57. Some modern commentators have suggested that in modern statutes, seisin is usually synonymous with ownership. See, e.g., CORNELIUS J. MOYNIHAN & SHELDON F. KURTZ, INTRODUCTION TO THE LAW OF REAL PROPERTY 31 (3d ed. 2002). As an example, Moynihan and Kurtz cited *Dial v. Dial*, 38 N.E.2d 43 (Ill. 1941). MOYNIHAN & KURTZ, *supra*, at 31. In *Dial*, the Illinois Supreme Court held that in the Probate Act, the Illinois Legislature “did not use the word ‘seized’ in

section 09.10.030(a) dates back to at least 1884,<sup>58</sup> there is a strong argument that the intended meaning at the time the statutory language was adopted was for “seized” to refer to owners of freehold estates and for “possessed” to refer to owners of leasehold estates.

To summarize, section 09.10.030(a) imposes requirements on plaintiffs who wish to file suit to recover property from an adverse possessor. First, the plaintiff must have had title to a freehold estate in the land (i.e. seisin) or have possessed the land as a lessee within the ten years prior to the filing of the suit. Second, the plaintiff must file the suit within ten years after the date on which the adverse possession began. If the plaintiff does not file suit within ten years, then the plaintiff’s suit is barred, and the adverse possessor may be able to gain title to the property.

## 2. *The Common Law Elements of Adverse Possession*

In order for the statute of limitations contained in section 09.10.030(a) to transfer title to an adverse possessor, the adverse possessor must have occupied the land in a continuous, open and notorious, exclusive, and hostile manner for ten years or more, during which time the true owner cannot have filed a lawsuit or done something else to interrupt the adverse possession.<sup>59</sup> An adverse possessor can file a lawsuit under section 09.10.030(a) without reference to another statute,<sup>60</sup> such as the quiet title statute.<sup>61</sup>

In one of its earliest adverse possession decisions, the Alaska Supreme Court stated, “[T]he main purpose of nearly all the [adverse possession] requirements is essentially the same, that is, to put the record owner on notice of the existence of an adverse claimant.”<sup>62</sup> The court has also suggested that a purpose of the requirements is to overcome the presumption that the possession was with the true owner’s permission and in subordination to his title, or in other words,

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its technical sense, but meant thereby the same as if it had used the word ‘owned.’” 38 N.E.2d at 48.

58. See *supra* note 30 and accompanying text.

59. See *Alaska Nat’l Bank v. Linck*, 559 P.2d 1049, 1052 (Alaska 1977) (“An interruption of possession caused by the record owner . . . tolls the running of the statute of limitations.”); *Peters v. Juneau-Douglas Girl Scout Council*, 519 P.2d 826, 830 & n.13 (Alaska 1974) (listing the elements of continuous, open, notorious, exclusive, and hostile and noting that section 09.10.030(a) provides “the method by which a claimant may establish a new title by adverse possession”).

60. See *McGill v. Wahl*, 839 P.2d 393, 396 (Alaska 1992) (treating the plaintiff’s suit “as one brought under the statute of limitations”).

61. ALASKA STAT. § 09.45.010 (2010).

62. *Peters*, 519 P.2d at 830.

to prove that the possession was truly “adverse.”<sup>63</sup> An adverse possessor must prove by clear and convincing evidence that his possession met the requirements.<sup>64</sup> However, in analyzing whether an adverse possessor met the requirements, courts consider “the character of the property” and whether the adverse possessor used it “as ‘an average owner of similar property would use and enjoy it.’”<sup>65</sup> In adverse possession cases involving undeveloped, wild land—a substantial portion of the land in Alaska—the Alaska Supreme Court has not been stringent in determining the degree of possession sufficient to meet the adverse possession requirements,<sup>66</sup> despite the fact that leniently interpreting the elements does not further the goal of putting the record owner on notice.<sup>67</sup>

In *Nome 2000 v. Fagerstrom*, the Alaska Supreme Court stated: “The first three conditions—continuity, notoriety and exclusivity—describe the physical requirements of the [adverse possession] doctrine.”<sup>68</sup> To establish continuity, an adverse possessor must show that he used the land in question for ten years “as an average owner of similar property would use it.”<sup>69</sup> Alaska’s geography and climate make many pieces of property unsuitable for winter use, so seasonal use may be sufficient to establish continuity.<sup>70</sup> If the record owner or a third party physically interrupts the possession, continuity is destroyed.<sup>71</sup>

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63. See *Ayers v. Day & Night Fuel Co.*, 451 P.2d 579, 581 (Alaska 1969).

64. *Curran v. Mount*, 657 P.2d 389, 391–92 (Alaska 1982).

65. See *Alaska Nat’l Bank v. Linck*, 559 P.2d 1049, 1052 (Alaska 1977) (quoting 3 AMERICAN LAW OF PROPERTY, *supra* note 17, §15.3).

66. See, e.g., *Nome 2000 v. Fagerstrom*, 799 P.2d 304, 309–10 (Alaska 1990) (holding seasonal subsistence and recreational use of land sufficient to establish title by adverse possession); *Linck*, 559 P.2d at 1053 (“We cannot expect the possessor of uninhabited and forested land to do what the possessor of urban residential land would do before we charge the record owner with notice.”); cf. Grantland M. Clapacs, Note, “*When in Nome . . .*: Custom, Culture and the Objective Standard in Alaskan Adverse Possession Law, 11 ALASKA L. REV. 301, 304 (1994) (arguing that the Alaska Supreme Court’s decision in *Nome v. Fagerstrom* “lowered the standard for determining the elements of adverse possession too greatly”).

67. See *Romero*, *supra* note 13, at 787 (“If adverse possession of undeveloped rural land may be less intensive . . . record owners of such rural land would have to be more diligent in monitoring their property . . . . Furthermore, even greater effort may be required when the land is forested, remote, or otherwise difficult to monitor.”).

68. 799 P.2d at 309.

69. *Id.*

70. *Vezey v. Green*, 35 P.3d 14, 21 (Alaska 2001).

71. *Linck*, 559 P.2d at 1052. In a prescriptive easement case, the Alaska Supreme Court stated that interrupting the possession and negating continuity would usually require physically blocking access to an easement. *McDonald v. Harris*, 978 P.2d 81, 83 (Alaska 1999). Presumably, a similar physical act would

Similar to continuity, exclusivity is determined by considering how an average owner would use the land in question, so complete exclusivity is not required.<sup>72</sup> For example, in *Peters v. Juneau-Douglas Girl Scout Council*, Peters successfully gained title through adverse possession by making regular use of the property in question; in allowing clamdiggers to use the property, he “was merely acting as any other hospitable landowner might.”<sup>73</sup> The main purpose of the exclusivity requirement seems to be to prove that the adverse possessor was doing something to distinguish himself as an “owner” rather than someone acting in common with the general public.<sup>74</sup>

Practically speaking, openness and notoriety are the same thing; a fact the Alaska Supreme Court has implicitly recognized by conflating the two requirements.<sup>75</sup> “The function of the [open and notorious] requirement is to afford the true owner an opportunity for notice. . . . [A]ctual notice is not required; the true owner is charged with knowing what a reasonably diligent owner would have known.”<sup>76</sup> The possession must be “reasonably visible”<sup>77</sup> so that “if the owner visits property, he [will] be put on notice and be able to assert his rights.”<sup>78</sup> The Alaska Supreme Court favors the use of the word “notorious” over the word “open.”<sup>79</sup> However, the use of the word “notorious” is misleading.<sup>80</sup>

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be required in an adverse possession case. Of course, the record owner could also interrupt the continuity by bringing a lawsuit within ten years.

72. *Peters v. Juneau-Douglas Girl Scout Council*, 519 P.2d 826, 831 (Alaska 1974).

73. *Id.* at 828, 830–31. *See also Vezey*, 35 P.3d at 22 (allowing relatives to take small quantities of rock from property did not destroy exclusivity); *Nome 2000*, 799 P.2d at 310 (allowing others to pick berries and fish on remote parcel of land did not destroy exclusivity).

74. *See Peters*, 519 P.2d at 830 (“An owner would have no reason to believe that a person was making a claim of ownership inconsistent with his own if that person’s possession was not exclusive, but in participation with the owner or with general public.”); *see also Clapacs*, *supra* note 66, at 312–13 (suggesting that exclusivity works in conjunction with hostility to provide evidence that the adverse possessor “intends to appropriate the land”).

75. *See, e.g., Vezey*, 35 P.3d at 20, 22 (listing “open and notorious” as an element of adverse possession and then analyzing it as a single requirement).

76. *Nome 2000*, 799 P.2d at 309 n.7. If the true owner has actual notice, then the notoriety requirement is met. *See Vezey*, 35 P.3d at 22.

77. *Bentley Family Trust v. Lynx Enters., Inc.*, 658 P.2d 761, 766 (Alaska 1983).

78. *Alaska Nat’l Bank v. Linck*, 559 P.2d 1049, 1053 (Alaska 1977).

79. *See, e.g., Vezey*, 35 P.3d at 20, 22 (analyzing the “open and notorious” requirement as the “notoriety” requirement). The preference for the word notoriety could be due to the use of the term in section 09.45.052(a) of the Alaska Statutes and the conflating of the standards for section 09.10.030(a) and section 09.45.052(a) cases. *See ALASKA STAT. § 09.45.052(a)* (2010); text accompanying notes 100–112, *infra*.

There is in fact no requirement that the adverse possession be well-known; rather, community repute is relevant to whether there was enough evidence of possession to charge the true owner with inquiry notice.<sup>81</sup> Community repute of ownership without physical evidence of possession is not sufficient to establish adverse possession.<sup>82</sup> Consequently, it is more accurate to state that the possession must be open, or “reasonably visible,” rather than “notorious.”

As with exclusivity and continuity, the same acts are not required to establish open possession of rural or uninhabited lands as for urban lots.<sup>83</sup> In a rural area, an adverse possessor who planted a garden, erected a barricade, posted a sign prohibiting hunting, granted an easement, and picked up litter maintained sufficiently open possession to charge the true owner with notice.<sup>84</sup> Another rural adverse possessor met the open requirement by building a picnic area, parking a camper trailer, building an outhouse and fish rack, planting trees, and constructing a reindeer shelter.<sup>85</sup> However, a would-be adverse possessor who flew over a piece of rural land several times a year and went onto the property at least once per year to walk the boundaries did not meet the requirement.<sup>86</sup> In more urban settings, filling a slough with tailings and using it for parking automobiles, constructing a trailer court,<sup>87</sup> and building a fence for a driveway<sup>88</sup> were each sufficiently open to establish title by adverse possession. However, a would-be adverse possessor who rototilled, seeded, and mowed a portion of lawn and used part of it as a volleyball court did not meet the “open” requirement.<sup>89</sup>

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80. *Webster's New World Dictionary* defines “notorious” as “well-known” or “publicly discussed.” WEBSTER'S NEW WORLD DICTIONARY 928 (Victoria Neufeldt and David B. Guralnik eds., 3d College ed. 1988).

81. *See Linck*, 559 P.2d at 1053. If the community had notice, the record owner probably should also have had notice. However, it is possible to imagine a scenario in which an adverse possessor builds a cabin in the middle of a large parcel of rural land and lives there for ten years. In this case, the record owner would almost certainly be charged with notice, regardless of whether anyone else in the area knew of the adverse possession.

82. *Shilts v. Young*, 567 P.2d 769, 776 (Alaska 1977). Of course, community repute that someone is asserting a right to a piece of land would likely originate from physical evidence of possession.

83. *Id.*

84. *Linck*, 559 P.2d at 1051, 1053.

85. *Nome 2000 v. Fagerstrom*, 799 P.2d 304, 307-08, 310 (Alaska 1990).

86. *Shilts*, 567 P.2d at 772, 777.

87. *Bentley Family Trust v. Lynx Enters., Inc.*, 658 P.2d 761, 766, 768 (Alaska 1983).

88. *Penn v. Ivey*, 615 P.2d 1, 3-4 (Alaska 1980).

89. *Tenala, Ltd. v. Fowler*, 921 P.2d 1114, 1121-22 (Alaska 1996).

The final adverse possession requirement, hostility, is an objective requirement that the adverse possessor act as if he owns the land.<sup>90</sup> Whether the adverse possessor actually believes he owns the land and his good or bad faith are irrelevant.<sup>91</sup> By treating the land as an owner would, the adverse possessor's possession is sufficiently hostile to overcome the presumption that he possessed the land in subordination to the true owner's title.<sup>92</sup> Absent evidence of permission,<sup>93</sup> the same evidence that establishes that the adverse possessor occupied land with the exclusivity, continuity, and openness of an average owner of similar land will generally also establish that "the adverse possessor held the land in such a way that his interest in the property was incompatible with the record owner's interest."<sup>94</sup> One notable exception is a tenant at sufferance, who must perform some distinct act, other than nonpayment of rent, to establish hostility.<sup>95</sup> On the other end of the spectrum, in the case of a parol gift of land, a donee's claim to the property is presumptively hostile to that of the donor.<sup>96</sup>

If the continuity, exclusivity, openness, and hostility elements are met, then title to the extent of land "actually possessed" for the statutory period automatically vests in the adverse possessor.<sup>97</sup> In *Vezey v. Green*, the Alaska Supreme Court stated: "Evidence of actual possession must be sufficient to alert a reasonably diligent owner to the possessor's exercise of dominion and control."<sup>98</sup> Since this is essentially a restatement of the purpose of the adverse possession elements,<sup>99</sup> it

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90. *Peters v. Juneau-Douglas Girl Scout Council*, 519 P.2d 826, 832 (Alaska 1974).

91. *Id.*; see also *Nome 2000 v. Fagerstrom*, 799 P.2d 304, 310 (noting that whether the defendants had a traditional Alaska Native mindset toward land ownership was irrelevant to determining whether the defendants objectively acted as if they owned the land).

92. *Hamerly v. Denton*, 359 P.2d 121, 126 (Alaska 1961).

93. Permission requires more than acquiescence of the true owner; it requires "acknowledgment by the possessor that he holds in subordination to the owner's title." *Hubbard v. Curtiss*, 684 P.2d 842, 848 (Alaska 1984).

94. *Glover v. Glover*, 92 P.3d 387, 392 (Alaska 2004); see also *Nome 2000*, 799 P.2d at 310 (indicating that since the acts that established continuity, exclusivity, and notoriety of the defendant's possession were "consistent with ownership" and since the plaintiff offered no proof that the defendant acted with anyone's permission, the defendant met the hostility requirement).

95. *Glover*, 92 P.3d at 393-94.

96. *Vezey v. Green*, 35 P.3d 14, 24 (Alaska 2001). Similarly, in color of title cases brought under section 09.45.052(a), discussed in Part II.B.3, *infra*, the possession of a grantee is presumptively hostile to his grantor. *Hubbard*, 684 P.2d at 848.

97. See *Hubbard*, 684 P.2d at 849; *Bentley Family Trust v. Lynx Enters., Inc.*, 658 P.2d 761, 768 (Alaska 1983).

98. 35 P.3d at 25.

99. See *supra* text accompanying note 59.

stands to reason that the adverse possessor gets title to the extent of land to which all the elements apply, although natural boundaries may also be relevant.<sup>100</sup>

3. *Section 09.45.052(a) and Color of Title*

Unlike section 09.10.030(a), section 09.45.052(a) specifically lists requirements an adverse possessor must meet in order to gain title by adverse possession. The statute says that “[t]he uninterrupted adverse notorious possession of real property under color and claim of title for seven years or more . . . is conclusively presumed to give title.”<sup>101</sup> Reading the statute literally, to gain title under section 09.45.052(a) an adverse possessor must prove: (1) color of title, (2) continuity, (3) hostility, and (4) notoriety.<sup>102</sup> The word “conclusively” implies that these are the only elements that must be met, so unlike claims based on section 09.10.030(a), exclusivity is not required.<sup>103</sup>

In one of its earliest color of title decisions, *Alaska National Bank v. Linck*, the Alaska Supreme Court stated:

[The three adjectives in section 09.45.052(a)] represent the three concepts underlying the law of adverse possession: (1) the possession must have been continuous and uninterrupted; (2) the possessor must have acted as if he were the owner and not merely one acting with the permission of the owner; and (3) the possession must have been reasonably visible to the record owner.”<sup>104</sup>

This statement simply elaborates on the meanings of the three adjectives. The possession must be continuous, which implies uninterrupted.<sup>105</sup> It must be hostile, which means the possessor must have acted as if he were the owner.<sup>106</sup> Finally, it must be notorious, or

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100. *Vezey*, 35 P.3d at 24.

101. ALASKA STAT. § 09.45.052(a) (2010).

102. Continuous is synonymous with uninterrupted, and hostile is synonymous with adverse. See *Alaska Nat'l Bank v. Linck*, 559 P.2d 1049, 1052–53 (Alaska 1977) (interpreting “continuous” and “uninterrupted” as the same requirement and “adverse” and “hostile” as the same requirement).

103. The Alaska Supreme Court has stated that it “presume[s] . . . every word in [a] statute was intentionally included, and must be given some effect.” *Municipality of Anchorage v. Suzuki*, 41 P.3d 147, 151 (Alaska 2002). Furthermore, each word in a statute should be interpreted according to its “common and approved usage.” ALASKA STAT. § 01.10.040 (2010). Employing these rules of construction, giving effect to the word “conclusively” means that exclusivity need not be proved to prevail under section 09.45.052(a).

104. 559 P.2d at 1052.

105. See *supra* note 71 and accompanying text.

106. See *supra* notes 90–96 and accompanying text.

open, which means reasonably visible to the record owner.<sup>107</sup> Exclusivity is not part of this statement, and in *Linck* exclusivity did not enter into the court's analysis.<sup>108</sup> Moreover, the court has implicitly recognized that the test presented above does not include exclusivity by using it to decide cases involving prescriptive easements, which do not require exclusivity.<sup>109</sup>

Unfortunately, two of the court's decisions subsequent to *Linck* muddied this important distinction between section 09.45.052(a) and section 09.10.030(a). In a case decided just a few months after *Linck*, the court stated that the plaintiff adverse possessor was required to prove "open, notorious, continuous, *exclusive* and hostile possession" under either statute.<sup>110</sup> A few years later, the court suggested that adverse possessors must satisfy the same requirements under either statute and then used the *Linck* test for a section 09.10.030(a) case.<sup>111</sup> Although several later cases seemed to once again recognize the distinction based on the "exclusivity" element,<sup>112</sup> a very recent Alaska Supreme Court decision stated that plaintiffs must prove the same elements under both statutes.<sup>113</sup> The Alaska Supreme Court should explicitly recognize that unlike claims based on section 09.10.030(a), claims based on section 09.45.052(a) do not require exclusivity.

For section 09.45.052(a) to apply, the adverse possessor must have color of title. Three conditions establish color of title: (1) the adverse possessor has a written document purporting to transfer title to him; (2) the written document accurately describes the land claimed by the adverse possessor; and (3) the adverse possession was in good faith.<sup>114</sup> An adverse possessor meets the good faith requirement if he had "an honest belief based on reasonable grounds that he had valid title to the land *when he entered it.*"<sup>115</sup> If the adverse possessor has color of title for

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107. See *supra* notes 75-77 and accompanying text.

108. See 559 P.2d at 1050-54.

109. See, e.g., *Interior Trails Pres. Coal. v. Swope*, 115 P.3d 527, 529-30 (Alaska 2005).

110. *Shilts v. Young*, 567 P.2d 769, 773 (Alaska 1977) (emphasis added).

111. *Bentley Family Trust v. Lynx Enters., Inc.*, 658 P.2d 761, 764-65 (Alaska 1983).

112. See, e.g., *Vezev v. Green*, 35 P.3d 14, 20 (Alaska 2001) (using the elements of continuous, open, exclusive, and hostile to decide a section 09.10.030(a) case); *Snook v. Bowers*, 12 P.3d 771, 779-84 (Alaska 2000) (using the *Linck* test to decide a section 09.45.052(a) case).

113. See *Cowan v. Yeisley*, 255 P.3d 966, 972 (Alaska 2011).

114. *Snook*, 12 P.3d at 780. It is worth nothing that a certificate of sale from a tax sale does not serve as color of title. The possessor needs the tax deed, issued after the owner's right of redemption has expired, in order to have color of title. *Wells v. Noey*, 380 P.2d 876, 879 (Alaska 1963).

115. *Snook*, 12 P.3d at 781.



the entire statutory period,<sup>116</sup> then the continuous, hostile, and open adverse possession need only be for a period of seven years in order to transfer title to the adverse possessor.<sup>117</sup> The Alaska Supreme Court has stated that the rationale for the shortened prescriptive period “is most logically attributable to a belief that a person holding land under color of title will be more likely to make improvements and otherwise commit himself to that land.”<sup>118</sup> When land is successfully adversely possessed under color of title, the written evidence of color of title, rather than the area physically possessed by the adverse possessor, determines the extent of the land to which title is acquired.<sup>119</sup>

#### 4. Prescriptive Easements

The law of prescriptive easements is nearly identical to the law of adverse possession, except that prescriptive easements are based on use rather than full possession.<sup>120</sup> At the end of the prescriptive period, the adverse user gets an easement rather than full title.<sup>121</sup> In Alaska, section 09.10.030(a) has been relied on as authorizing courts to establish prescriptive easements,<sup>122</sup> and the test for prescriptive easements is essentially identical to the *Linck* test for color of title cases.<sup>123</sup> To establish an easement by prescription: (1) the use must be continuous, (2) the user must act as if she owns an easement and not as if she is using the land with the permission of the fee owner (i.e. the use must be “hostile”), and (3) the use must be reasonably visible to the fee owner (i.e. the use must be “open”).<sup>124</sup> Exclusivity is not a requirement to establish a prescriptive easement.<sup>125</sup> However, the Alaska Supreme Court has suggested that a

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116. See *Wells*, 380 P.2d at 877–79 (holding Noey did not get title after seven years of possession because he did not have color of title during the first two years).

117. ALASKA STAT. § 09.45.052(a) (2010).

118. *Lott v. Muldoon Rd. Baptist Church, Inc.*, 466 P.2d 815, 818 (Alaska 1970).

119. *Id.* at 817–18. An exception to this rule occurs when the record owner is in actual possession of part of the property. *Ault v. State*, 688 P.2d 951, 955–56 (Alaska 1984).

120. *McDonald v. Harris*, 978 P.2d 81, 83 (Alaska 1999); 7 THOMPSON ON REAL PROPERTY, *supra* note 18, § 60.03(b)(6)(i).

121. 7 THOMPSON ON REAL PROPERTY, *supra* note 18, § 60.03(b)(6)(i).

122. *McGill v. Wahl*, 839 P.2d 393, 396 (Alaska 1992).

123. Compare *id.*, with *supra* text accompanying note 102.

124. See *McGill*, 839 P.2d at 397.

125. *Id.* at 398. In *McGill v. Wahl*, the court misleadingly noted that exclusivity is relevant to determining whether the use was “under a claim of right.” *Id.* “Claim of right” is not a separate element that must be proved in order to establish an easement by prescription. See *Nelson v. Green Constr. Co.*, 515 P.2d 1225, 1228 n.15 (Alaska 1973) (indicating that claim of right refers to whether an

use might be so shared that it would be impossible to determine that a prescriptive easement existed in a single individual.<sup>126</sup> In this case, a public prescriptive easement might be created.<sup>127</sup>

The continuity, hostility, and openness requirements are interpreted similarly in the prescriptive easement context as in the adverse possession context. What counts as continuous use depends on the character of the land in question.<sup>128</sup> For example, failure to plow and use a road in winter in Fairbanks would not necessarily negate continuity.<sup>129</sup> The hostility requirement is met and the presumption of permission is overcome if the user “contemplates uninterrupted future use”<sup>130</sup> and acts “as if he were claiming a permanent right to the easement.”<sup>131</sup> Finally, the openness requirement is met if the use would have been noticed by a duly alert fee owner.<sup>132</sup> If the fee owner knew of the use, then the adverse possessor must be able to show that the fee owner did not grant permission.<sup>133</sup>

In 1985, the Alaska Supreme Court held that public easements can also be created by prescription.<sup>134</sup> The requirements to establish a public prescriptive easement are the same as for private prescriptive easements.<sup>135</sup> “The only difference is that a public prescriptive easement requires qualifying use by the public, while a private prescriptive

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adverse possession is hostile enough to overcome the presumption of permission).

126. See *McGill*, 839 P.2d at 398. In *McGill* the court stated, “We are not so persuaded that the . . . use of the roadway was so shared as to overcome the presumption that the easement existed. [The adverse users] were the primary and only consistent users of the roadway.” *Id.* A later case took this to mean that the adverse user must be the primary user and that third parties can only be occasional users. See *McDonald v. Harris*, 978 P.2d 81, 84 (Alaska 1999). Such an interpretation seems at odds with the lack of an exclusivity requirement. A better interpretation is probably that if a use is so shared, a public, rather than private, prescriptive easement might be created. See *infra* note 127.

127. See *Swift v. Kniffen*, 706 P.2d 296, 304–05 (Alaska 1985) (suggesting the plaintiffs might want to ask for leave to amend their complaint to include a public prescriptive easement claim because the disputed roadway was used by several neighbors as well as members of the public).

128. *McDonald*, 978 P.2d at 83.

129. See *Swift*, 706 P.2d at 303.

130. *Weidner v. State*, 860 P.2d 1205, 1210 (Alaska 1993).

131. *Swift*, 706 P.2d at 303.

132. *McDonald*, 978 P.2d at 85.

133. *Swift*, 706 P.2d at 304.

134. *Dillingham Commercial Co. v. City of Dillingham*, 705 P.2d 410, 416 (Alaska 1985).

135. See Daniel W. Beardsley, *Public Prescriptive Rights across Private Lands*, ASLPS STANDARDS AND PRACTICE MANUAL 1 (1994), available at <http://www.alaskapls.org/standards/prescription.pdf> (“[T]he requirements to establish a public prescriptive easement are essentially the same as private easements.”).

easement requires qualifying use only by the private party.”<sup>136</sup> Although a public prescriptive easement gives the public at large the right to use the easement, the public may only use the easement “for those types of uses that led to its establishment” and “closely related ancillary uses.”<sup>137</sup> For example, in *Price v. Eastham*, the court held that when a public prescriptive easement was established for snowmachine use, other types of users—such as hunters and berry-pickers—could not use the easement without independently satisfying the public prescriptive easement requirements.<sup>138</sup>

### III. THE 2003 STATUTORY REVISIONS

#### A. The Passage of Senate Bill 93

In 2003, at the request of Sealaska Corporation,<sup>139</sup> Alaska Senator Thomas H. Wagoner introduced Senate Bill 93 in order to “repeal the Doctrine of Adverse Possession in the case of ‘bad faith’ trespassers.”<sup>140</sup> The *Anchorage Daily News* quoted Senator Wagoner as stating:

Our law, right now, allows a person who has no claim of ownership to squat on someone else’s property and, as a result of their illegal trespass, the squatter could actually secure title to the property they are squatting on. That is simply legal thievery – to me, that is offensive and it needs to stop.”<sup>141</sup>

In his sponsor statement, Senator Wagoner suggested that adverse possession was a relic of the Middle Ages that served no purpose in present day Alaska.<sup>142</sup>

Shortly after the introduction of Senate Bill 93, in a meeting of the Senate Labor and Commerce Standing Committee, Russell Dick, then the Natural Resources Manager for Sealaska Corporation, discussed how Senate Bill 93 would benefit Sealaska. He noted that Sealaska owns

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136. *Interior Trails Pres. Coal. v. Swope*, 115 P.3d 527, 529 (Alaska 2005).

137. *Price v. Eastham*, 254 P.3d 1121, 1126 (Alaska 2011).

138. *Id.* at 1127.

139. *4/16/03 Minutes*, *supra* note 6 (statement of Sen. Wagoner). Sealaska authored Senate Bill 93. *Id.* (statement of Jon Tillinghast). Its specific motivation may have been a lengthy legal proceeding initiated to have a trespasser evicted from Sealaska land. *See 3/11/03 Minutes*, *supra* note 15 (statement of Russell Dick, former Resources Manager of Sealaska).

140. *Sponsor Statement*, *supra* note 1.

141. *Senate Passes Bill to Stop ‘Legal Thievery of Property,’* ANCHORAGE DAILY NEWS, May 14, 2003, at B9.

142. *See Sponsor Statement*, *supra* note 1 (“Adverse Possession was born some 800 years ago during the Middle Ages, but incredibly still applies in the State of Alaska.”).

hundreds of thousands of acres of land in southeast Alaska and that policing that land was a substantial burden.<sup>143</sup> Mr. Dick also noted that, unlike Sealaska, private landowners might have very limited financial resources to devote to policing their land.<sup>144</sup> Amy Seitz, staff of Senator Wagoner, suggested that adverse possession law was antiquated and that it was unfair for private landowners to be subject to adverse possession law when government entities are not.<sup>145</sup>

Pete Putzier, Assistant Attorney General, objected to the bill on the grounds that it would impose undue hardship on the Department of Transportation and Public Facilities, which he claimed frequently relied on adverse possession to clear title to roads in order to get federal money for road improvement projects.<sup>146</sup> In addition, two interested citizens said that while they supported doing away with “squatters’ rights,” they were concerned that the bill would eliminate prescriptive easements, which they believed served important purposes.<sup>147</sup>

As Senate Bill 93 worked its way through various committee meetings, concerns about private easements and rights-of-way were often at the forefront of the discussions over whether adverse possession still served any useful purpose. A land surveyor expressed concern that many people in the Fairbanks Northstar Borough use driveways that pass over someone else’s property, and they rely on adverse possession to acquire rights to those driveways<sup>148</sup>—a concern echoed by Attorney Ronald L. Baird.<sup>149</sup> Surveyor Jim Colver expressed concern about the private roads, trails, and driveways that provide access to patents, fishing holes, cabins, and homes.<sup>150</sup> Nevertheless, the only major changes made to Senate Bill 93 as introduced were to add exceptions dealing with good faith boundary disputes, acquisition of prescriptive

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143. 3/11/03 *Minutes*, *supra* note 15 (statement of Russell Dick). It is likely that not all of Sealaska’s land was subject to adverse possession claims. Land conveyed by the federal government to a Native individual or corporation pursuant to the Alaska Native Claims Settlement Act is exempt from adverse possession claims so long as it is undeveloped, not leased, and not sold. 43 U.S.C. § 1636(d)(1)(A)(i) (2006).

144. 3/11/03 *Minutes*, *supra* note 15 (statement of Russell Dick).

145. *Id.* (statement of Amy Seitz). Statutes generally bar adverse possession of government land. *See supra* note 35.

146. 3/11/03 *Minutes*, *supra* note 15 (statement of Pete Putzier).

147. *Id.* (statements of Millie Martin and Shirley Schollenberg).

148. 4/16/03 *Minutes*, *supra* note 6 (statement of Tom Scarborough).

149. *Comm. Minutes on S.B. 93, ALASKA H. JUDICIARY STANDING COMM. MINUTES*, 23rd Leg. (May 18, 2003) [hereinafter 5/18/03 *Minutes I*] (statement of Ronald L. Baird).

150. 5/18/03 *Minutes II*, *supra* note 14 (statement of Jim Colver).

easements by utilities, and state adverse possession of land for public transportation and access.<sup>151</sup>

## B. The Changes to Sections 09.10.030 and 09.45.052

Following the passage of Senate Bill 93 in 2003, section 09.10.030 of the Alaska Statutes was changed to read as follows:

Sec. 09.10.030. Actions to recover real property in 10 years.

(a) *Except as provided in (b) of this section, a person may not bring an action for the recovery of real property or for the recovery of the possession of it unless the action is commenced within 10 years. An action may not be maintained under this subsection for the recovery unless it appears that the plaintiff, an ancestor, a predecessor, or the grantor of the plaintiff was seized or possessed of the premises in question within 10 years before the commencement of the action.*

(b) *An action may be brought at any time by a person who was seized or possessed of the real property in question at some time before the commencement of the action or whose grantor or predecessor was seized or possessed of the real property in question at some time before commencement of the action, and whose ownership interest in the real property is recorded under AS 40.17, in order to*

(1) *quiet title to that real property; or*

(2) *eject a person from that real property.*<sup>152</sup>

Section 09.10.030(b) applies to record owners whose ownership interests are properly recorded in the Department of Natural Resources recorder's office in the recording district where the land is located.<sup>153</sup> It is available to a record owner in an action against an adverse possessor so long as the record owner's cause of action was not barred by section 09.10.030(a) as it read before July 17, 2003.<sup>154</sup> In other words, if the adverse possessor had possessed for ten years by July 17, 2003, then the record owner would have no recourse, since title would have automatically transferred to the adverse possessor at the end of the statutory period.<sup>155</sup> However, if the adverse possessor hit the ten-year

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151. Compare S.B. 93, 23rd Leg. (as introduced, Feb. 28, 2003), with 2003 Alaska Sess. Laws ch. 147.

152. ALASKA STAT. § 09.10.030 (2010) (emphasis added).

153. ALASKA STAT. §§ 09.10.030(b), 40.17 (2010).

154. 2003 Alaska Sess. Laws ch. 147; see also *Cowan v. Yeisley*, 255 P.3d 966, 973 (Alaska 2011) (holding the changes to section 09.10.030 are not retrospective).

155. See *Cowan*, 255 P.3d at 974.

mark after July 17, 2003, then the record owner has a legal recourse against the adverse possessor.

A record owner whose land is being claimed by an adverse possessor may sue at any time to quiet title to the property<sup>156</sup> or to eject the adverse possessor from the property;<sup>157</sup> it does not matter how long the adverse possessor has been there.<sup>158</sup> Beyond recordation, the only requirement is that the record owner or her predecessor in interest must have been seized or possessed<sup>159</sup> of the property at some point before the lawsuit is filed.<sup>160</sup> So, suppose in the future Mary buys a piece of land in rural Alaska sight unseen, and she records her deed. One day she decides to visit, and she discovers that Fred and his family have built a cabin on the land and have been living there for the past fifty years. Assume that Fred did not possess for ten years prior to 2003. Because Mary owns a fee interest, she has been constructively “seized” of the land in question.<sup>161</sup> Therefore, Mary can have a court kick Fred off the property.

Section 09.45.052 provides the only exceptions under which an adverse possessor can acquire title to property good against the record owner and his successors.<sup>162</sup> Senate Bill 93 changed section 09.45.052(a) as follows:

Sec. 09.45.052. Adverse Possession.

(a) The uninterrupted adverse notorious possession of real property under color and claim of title for seven years or more, *or the uninterrupted adverse notorious possession of real property for 10 years or more because of a good faith but mistaken belief that the real property lies within the boundaries of adjacent real property owned by the adverse claimant*, is conclusively presumed to give

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156. Quiet title suits are filed under ALASKA STAT. § 09.45.010 (2010).

157. Ejectment suits are filed under ALASKA STAT. § 09.45.630 (2010).

158. Recently, the Alaska Supreme Court stated, “Although the pre-2003 [§ 09.10.030 of the Alaska Statutes] purported only to bar a remedy, this court has stated that it can be the basis for a new title. The Legislature’s 2003 revisions essentially abolished the bar on the original landowner’s remedy and were intended to prevent adverse possession under this statute.” *Cowan*, 255 P.3d at 973 n.23 (internal citations omitted).

159. See discussion *supra* Part II.B.1. Presumably “seized or possessed” means the same thing in section 09.10.030(b) as it does in subsection (a).

160. ALASKA STAT. § 09.10.030(b) (2010).

161. See discussion *supra* notes 47–58 and accompanying text.

162. See *Cowan*, 255 P.3d at 973 (“The net effect of [the 2003 revisions] was to limit Alaskans’ adverse possession claims to cases where the claimant had either color of title or a good faith but mistaken belief that the claimant owned the land in question.”).

title to the property except as against the state or the United States.<sup>163</sup>

Section 09.45.052(a) still “conclusively” gives title to adverse possessors who have color of title and uninterrupted, adversely, and notoriously possess property for at least seven years. In addition, section 09.45.052(a) now “conclusively” gives title to adverse possessors who have uninterrupted, adversely, and notoriously possessed property adjacent to their own under a good faith but mistaken belief that it lies within the boundaries of their property.<sup>164</sup> The same language that has applied to color of title cases throughout Alaska’s history now applies to good faith boundary-line mistakes. Consequently, once an adverse possessor has proven a good faith boundary mistake, for the reasons discussed in Part II.B.3, continuous, uninterrupted, and hostile are the only other elements the adverse possessor should have to prove in order to get title.

Senate Bill 93 further amended section 09.45.052 by adding a new subsection allowing public utilities to acquire prescriptive easements.<sup>165</sup> With language similar to section 09.45.052(a), section 09.45.052(c) reads: “Notwithstanding [section 09.10.030 of the Alaska Statutes], the uninterrupted adverse notorious use of real property by a public utility for utility purposes for a period of 10 years or more vests in that utility an easement in that property for that purpose.”<sup>166</sup> Although the word “conclusively” is not used, the listed elements are likely the only elements required, since exclusivity is the only other element employed by the Alaska Supreme Court,<sup>167</sup> and it is not required to establish easements by prescription.<sup>168</sup>

Finally, section 09.45.052 was amended to add a new subsection reading:

(d) Notwithstanding [section 09.10.030 of the Alaska Statutes], the uninterrupted adverse notorious use, including construction, management, operation, or maintenance, of private land for public transportation or public access purposes, including highways, streets, roads, or trails, by the public, the state, or a political subdivision of the state, for a

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163. ALASKA STAT. § 09.45.052(a) (2010) (emphasis added).

164. The most obvious example of such possession is when a landowner has long considered a fence to be located on the boundary of her property, but the actual boundary is a few feet inside the fence.

165. ALASKA STAT. § 09.45.052(c) (2010).

166. *Id.*

167. *See supra* Part II.B.2.

168. *See supra* note 125.

period of 10 years or more, vests an appropriate interest in that land in the state or a political subdivision of the state.<sup>169</sup>

Section 09.45.052(d) gives the state a right to private land when the public or state has used it continuously, adversely, and notoriously for ten years or more for public transportation or access purposes. The word “use” seems to suggest that the state would acquire an easement. However, unlike section 09.45.052(c), section 09.45.052(d) does not mention easements; rather, it says that the state will acquire “an appropriate interest,” suggesting the state could acquire an interest greater than an easement. Regardless, section 09.45.052(d) provides state agencies, such as the Department of Transportation, the ability to acquire rights to roads. In addition, subsection (d) might also provide the public with the continued ability to acquire something akin to a public prescriptive easement. In a House Judiciary Committee meeting, Jon Tillinghast, legal counsel for Sealaska Corporation, stated that “the terms ‘trails’ and ‘public access purposes’ [in section 09.45.052(d)] were used to specifically preserve the rights of the state and municipalities to acquire access across private lands in order to reach public-use areas and public trails.”<sup>170</sup> So, if members of the public used a trail on private land for “public access purposes,” such as accessing a public beach, and the use was continuous, hostile, and notorious, the state or a political subdivision of the state would acquire an interest in the land. In this case, there is no logical reason why the public would not have a continued right to use the trail.

#### IV. SOME IMPLICATIONS OF THE REVISIONS

##### A. Prescriptive Easements and the Alaska Supreme Court’s Decision in *Hansen v. Davis*

One of the biggest concerns left unaddressed as Senate Bill 93 traveled through the Alaska Legislature was how it would affect private prescriptive easements.<sup>171</sup> In 2009 the Alaska Supreme Court decided the prescriptive easement case of *Hansen v. Davis*.<sup>172</sup> The Hansens and Davises lived on adjacent lots in Ketchikan.<sup>173</sup> When the Davises bought their property in 1984, their grantor, Rodgers, reserved an easement across their lot. Rodgers never used the easement, and the Davises

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169. ALASKA STAT. § 09.45.052(d) (2010).

170. See 5/18/03 Minutes II, *supra* note 14 (statement of Jon Tillinghast).

171. See *supra* notes 146–150 and accompanying text.

172. 220 P.3d 911 (Alaska 2009).

173. *Id.* at 913.



maintained a garden in the easement for many years.<sup>174</sup> In 2006 the Hansens bought an adjacent lot, and in 2007 the Hansens purchased Rodgers's easement.<sup>175</sup> Then they disassembled the Davises' gardening materials, built a road, and began installation of water and sewer lines.<sup>176</sup> The Davises sued for trespass and damages.<sup>177</sup> In their complaint, the Davises argued that their adverse use of the easement had extinguished it.<sup>178</sup> The superior court ruled in favor of the Davises, and the Hansens appealed.<sup>179</sup>

Prior to its decision in *Hansen*, the Alaska Supreme Court had not decided whether an easement could be extinguished by prescription.<sup>180</sup> The court stated that sections 09.10.030(a) and 09.45.052 of the Alaska Statutes govern the acquisition of real property rights via adverse possession and the creation of easements by prescription. However, it stated that the statutes do not address whether easements can be extinguished by prescription.<sup>181</sup>

The Hansens argued that, in light of the 2003 amendments, extinguishing easements by prescription is contrary to the public policy of Alaska.<sup>182</sup> The court disagreed. It stated:

In amending the statutes governing adverse possession, the Alaska Legislature increased the burden that a litigant bears in proving adverse possession of another's land. But it did not eliminate adverse possession and prescriptive easement claims altogether. We find no support for such a categorical rule allowing easement holders to seek redress for violations of their rights in an easement in perpetuity. Instead, we follow the approach adopted by . . . many jurisdictions and hold that an easement can be extinguished by prescription.<sup>183</sup>

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174. *Id.*

175. *Id.*

176. *Id.* at 913-14.

177. *Id.* at 914.

178. *Id.*

179. *Id.* at 914-15.

180. *Id.* at 915.

181. *Id.* This statement is a bit puzzling, since section 09.10.030(a) no more explicitly speaks to title by adverse possession or the creation of easements by prescription than it does to the extinguishment of easements by prescription. Since the basis for the Davises' claim that the Hansens' easement had been extinguished and thus no longer burdened their land was the prescriptive period provided in section 09.10.030(a), it is not correct to consider *Hansen* as raising a purely common law issue.

182. *Hansen*, 220 P.3d at 915.

183. *Id.* at 915-16.

Nevertheless, the court ruled in favor of the Hansens.<sup>184</sup> It noted that in contrast to a typical adverse possession or user claimant, the Davises, as owners of the servient estate, already had a right to use the area burdened by the easement.<sup>185</sup> Consequently, the court held that in order to have crossed the line from permissive to hostile, the Davises' use must have "unreasonably interfere[d] with the current or prospective use of the easement by the easement holder."<sup>186</sup> The court held that the burden on servient estate owners to prove unreasonable interference is high—a rule it considered consistent with the 2003 amendments' goal of curtailing but not abolishing adverse possession.<sup>187</sup> Applying its rule to the facts, the court held that the Davises' construction of a garden was not "sufficiently adverse to commence the prescriptive period."<sup>188</sup>

Had the court considered the question in *Hansen* to be within the purview of section 09.10.030, the source of the prescriptive period, the court might have noticed that the pre-2003 version of section 09.10.030 applied, since the alleged ten-plus years of adverse use by the Davises took place prior to 2003.<sup>189</sup> An interesting question left unanswered by *Hansen* is what the result would be if the Davises established the elements necessary to extinguish the easement under the new statute. For example, suppose the Hansens record the deed granting them Rodgers's easement, but they give up trying to use the easement. In 2015, the Davises build a brick wall. Assume, *arguendo*, that the wall "unreasonably interferes" with the Hansens' use of the easement. In 2030, the Hansens decide they want to use the easement. The Hansens have never been "seized or possessed" of the easement, since one cannot be "seized or possessed" of an easement within the meaning of the statute.<sup>190</sup> Therefore, they cannot sue under section 09.10.030(b) to quiet title to the easement. Consequently, although an owner of a servient estate must meet a high burden to prove an easement has been extinguished by prescription, the easement holder should not rely on section 09.10.030(b) to protect his interest.

Another interesting question unanswered by *Hansen* is whether private easements can still be created by prescription. According to the language of section 09.10.030, practically speaking they cannot. Section

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184. *Id.* at 918.

185. *Id.* at 916.

186. *Id.* (internal citations omitted).

187. *Id.* at 917.

188. *Id.*

189. *See id.* at 913–14; *supra* notes 152–155 and accompanying text.

190. *See* discussion *supra* Part II.B.1.

09.10.030(a) was unchanged by the 2003 amendments,<sup>191</sup> and as noted by the court in *Hansen*, it is 09.10.030(a) that “constitutes a method for establishing an easement through prescription.”<sup>192</sup> Therefore, according to section 09.10.030(a), a private prescriptive easement can still be created when a use is continuous, hostile, and open.<sup>193</sup> However, section 09.10.030(b) gives the record owner recourse against the prescriptive easement holder. The record owner’s recorded interest is not in the easement itself, since the easement did not exist prior to its creation by prescription. However, the record owner’s recorded interest *is* in the “real property in question.”<sup>194</sup> If the record owner was “seized or possessed” of the property in question before the commencement of the lawsuit and her ownership interest is recorded, section 09.10.030(b) seems to provide that the record owner may sue at any time in order to quiet title to the property or eject the easement holder.

It was almost certainly the goal of the legislature to curtail, if not abolish, private prescriptive easements.<sup>195</sup> If the courts afford record owners the protections of section 09.10.030(b) where private easements are concerned, the ability to create easements by prescription will be drastically curtailed,<sup>196</sup> which could result in users having to pay record owners for easement rights. However, it is worth noting that other means of creating easements, such as by implication<sup>197</sup> or necessity,<sup>198</sup>

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191. Compare ALASKA STAT. § 09.10.030(a) (2010), with ALASKA STAT. § 09.10.030 (2002).

192. *Hansen*, 220 P.3d at 915 n.5.

193. See *supra* note 124 and accompanying text.

194. See ALASKA STAT. § 09.10.030(b) (2010).

195. If the legislature thought that the creation of prescriptive easements would be unaffected by Senate Bill 93, then there would have been no reason to preface sections 09.45.052(c) and (d) of the Alaska Statutes—permitting public prescriptive easements—with “Notwithstanding [section 09.10.030 of the Alaska Statutes].” See ALASKA STAT. § 09.10.030(c), (d) (2010); accord 4/16/03 Minutes, *supra* note 6 (statement of Jon Tillinghast) (“[F]rom now on, if one wants to drive across another person’s property, the person will have to pay for it.”); 3/11/03 Minutes, *supra* note 15 (statement of Amy Seitz) (stating a Legislative Legal and Research Services’ attorney believed prescriptive easements were included in the Senate Bill 93); see also *supra* notes 165–170 and accompanying text.

196. A person could have color of title to an easement, in which case a permanent right to the easement could be acquired under section 09.52.045(a) of the Alaska Statutes.

197. An implied easement arises when, at the time of a sale or conveyance of a portion of someone’s land, there is a quasi easement that is continuous, apparent, and reasonably necessary for the enjoyment of the land retained or conveyed. *Williams v. Fagnani*, 175 P.3d 38, 40 (Alaska 2007).

198. An easement by necessity arises when a grantor conveys a portion of his land and that land is landlocked. In such a case, an access will be created across the grantor’s land, and it will exist for as long as the necessity continues.

are unaffected by the 2003 amendments and will apply to some landowners who need access to and from their land.

### B. The Importance of Recording

To be able to rely on section 09.10.030(b), the true owner of a piece of property must record his interest. Thus, the 2003 revisions to Alaska's adverse possession statutes mean that property owners now have an additional reason to record, though neither section 09.10.030 or Alaska's recording act impose any time constraints on when an owner must record.<sup>199</sup> For example, suppose a true owner acquired his right to a piece of property via will, intestacy, or an adverse possession judicial decree issued under the old law. If he did not record his interest,<sup>200</sup> subsection (b) would not offer him any protections. This preference for recording makes some sense. One of the frequently cited purposes of adverse possession law is to clear titles to land and give third parties some assurance of who the owner of a piece of property is.<sup>201</sup> If the "true owner" can oust an adverse possessor at any time, then it makes sense to require true owners to have a recorded interest so that third parties have a means of ascertaining who the true owner is.

### C. Good Faith Squatters

The goal of the 2003 revisions was to eliminate "bad faith squatters" from having the ability to adversely possess land. In a Senate Judiciary meeting, Jon Tillinghast stated that Senate Bill 93 "only deals with bad faith adverse possession where a person has no written instrument whatsoever on which to base his claim."<sup>202</sup> In Mr. Tillinghast's view, it seems that good faith adverse possession involves

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Freightways Terminal Co. v. Indus. & Commercial Constr., Inc., 381 P.2d 977, 984 n. 16 (Alaska 1963).

199. See ALASKA STAT. § 09.10.030(b) (2010). Nothing in section 09.10.030 appears to prevent a record owner from recording his interest the day before commencing a lawsuit against an adverse possessor. See ALASKA STAT. § 09.10.030(b) (2010).

200. Nothing in Alaska's recording act prevents property owners who took via will, intestacy, or some means other than a contract for sale from recording. See ALASKA STAT. § 40.17.010, § 40.17.110 (2010). However, those who take via will or intestacy often do not record.

201. See, e.g., Alaska Nat'l Bank v. Linck, 559 P.2d 1049, 1054 (Alaska 1977) (stating that statutes of limitation and adverse possession law ensure that "title to land . . . not long be in doubt . . . and that third persons who come to regard the occupant as owner may be protected" (quoting *Stoebuck*, *supra* note 24, at 53)).

202. 4/16/03 Minutes, *supra* note 6 (statement of Jon Tillinghast).

deeds: either the adverse possessor has a deed but makes a mistake about where a boundary line is located, or he has color of title.<sup>203</sup> However, the 2003 revisions left open the possibility that some good faith adverse possessors might have no legal recourse. For example, suppose Mary buys a piece of land in an undeveloped place. She goes onto the land she believes is described in the deed, builds a cabin, and lives there for thirty years. However, Mary misread the deed, which actually describes land two parcels over from the parcel on which Mary made her home. Mary acted in good faith, but she does not have color of title to the land on which she built her cabin.<sup>204</sup> Mary also does not mistakenly believe that the property on which she is living lies within the bounds of adjacent property that she also owns. Consequently, the record owner can sue to have Mary ejected.

### CONCLUSION

There is no strong evidence that there was a pressing need for the 2003 amendments to Alaska's adverse possession law because bad faith adverse possession was out of control. Nevertheless, in recent years many commentators have argued that adverse possession should be curtailed because many of the traditional purposes of adverse possession are now served by other areas of property law, and some states have taken steps to curtail it because of perceived inequities. In limiting the scope of its adverse possession law, Alaska could have adopted one of the approaches being tried by other states, such as imposing a good faith belief-in-ownership requirement<sup>205</sup> or requiring that adverse possessors pay the property taxes.<sup>206</sup> Alternatively, it might have tried one of the approaches suggested by legal scholars, such as exempting wild lands from adverse possession.<sup>207</sup> Instead, Alaska elected to try an approach not tried by any other state. Alaska's 2003 amendments went further than any other state has gone in curtailing the application of adverse possession. Alaska is now serving as "a laboratory for the improvement of laws," and over time, Alaska's experience will likely illuminate whether there was some important

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203. *See id.*

204. *See Snook v. Bowers*, 12 P.3d 771, 780 (Alaska 2000) (holding color of title requires that the writing describe the land being adversely claimed).

205. Colorado and Oregon have such a requirement. *See supra* note 27.

206. *See, e.g.,* IDAHO CODE ANN. § 5-210 (West 2010). Jon Tillinghast of Sealaska suggested in a House Judiciary meeting that this option would not work for Alaska because much of the remote land in Alaska is not taxed. *5/18/03 Minutes I, supra* note 149 (statement of Jon Tillinghast).

207. Sprankling, *supra* note 26, at 863.

purpose for the traditional adverse possession doctrine, or whether it truly should be a relic of the past.