



## Update on Adverse Possession Involving Ouster

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The potential acquisition of rights in land owned by another through long term use, more commonly known as adverse possession, is the frequent subject of legal disputes. While the elements that must be satisfied to sustain a claim of adverse possession are well known, the manner in which these elements may be satisfied is not always as clear. This is especially true in the case of land owned by co-tenants: multiple individuals jointly owning a piece of real estate and having equal and co-extensive rights of possession, use and alienation. In this context, Massachusetts courts require that the adversely possessing co-tenant "oust" his fellow co-tenants in order to sustain a claim for adverse possession. Although Massachusetts cases have repeatedly analyzed the concept of ouster, the facts necessary to satisfy this requirement remain elusive.

Recently, the Massachusetts Land Court provided further clarification to the issue of ouster by identifying what constitutes ouster in a case where the adversely possessing co-tenant's predecessor in title entered the property without a deed and where the collective possession totaled less than thirty years in *Pepe v. DeSanctis*, No. 309219, 2007 WL 1954435 (Mass. Land Ct. July 6, 2007). This decision established that the lack of a deed or the possession of land for less than thirty years

did not automatically prevent a finding of ouster by a co-tenant. Pepe involved a dispute between the plaintiff, the current "owner" of residential property in East Boston, and the Defendants, a surviving son of the original owners and the estate of another son. See id., at \*1, 3-5. The Defendants claimed an interest in the property arising from the estate of Santina DeSanctis, an estate that was probated in the late 1970s. See id. The Defendants did not claim an interest in the property until August 2004. See id., at \*5-6. One of the Plaintiff's predecessors in title, Joseph DeSanctis ("Mr. DeSanctis"), did not enter the property by deed. Rather, Mr. DeSanctis' exclusive right to the property was acknowledged by his co-tenants, his brothers, during the probate of their mother's' estate. See id., at \*3-6. In addition, the court found that the Plaintiff and his predecessors in title had adversely possessed the property for nearly twenty five years prior to the Defendants asserting any claim to the property. See id.

The Pepe decision sheds some light on the case law concerning adverse ouster. In Pepe, the court clearly ruled that that "[a]n exclusive, uninterrupted period of thirty years generally suffices, but a period of as little as twenty years may also establish ouster depending upon the circumstances." See id., at \*5. The court determined that the Plaintiff and his predecessors in title "always acted as if they owned the property outright. The defendants thought the property was [the Plaintiff's predecessor in title] (indeed, they assented to his sole ownership when they signed the First and Final Account in the Probate & Family court proceedings), they *never* went to the property except as invited guests, and they *never* asserted an ownership claim until nearly twenty five years after the Probate & Family Court judgment." See id., at \*6. The court concluded that the acts of ownership of the

Plaintiff and his predecessors in title "coupled with the defendants' knowledge for more than twenty years that those acts were done under a claim of sole ownership, ousts the defendants' claims as a matter of law." See id.

This case re-enforces the idea that the existing case law concerning ouster is not meant to be interpreted as establishing a "bright line" rule. Instead, the Pepe decision emphasizes that the central focus of an ouster analysis should be the nature of the possession in question as well as the length of possession. Moreover, this decision clearly stated that the absence of entrance by deed or possession for less than thirty years did not prevent a finding of ouster in this case. The presence of other equally exclusive acts of ownership such as assented to probate accounts combined with , at a minimum, nearly twenty-five years of possession were sufficient to oust the Plaintiff's co-tenants. Thus, as seen in Pepe, an individual may oust his cotenants, put them on notice of his claim to sole ownership, even though those acts occur over a period of less than thirty years.

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