



Members Brief

An informational brief prepared by the LSC staff for members and staff of the Ohio General Assembly

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Trespassers

This *Members Brief* discusses property owners and their rights related to trespassers – sometimes referred to as “squatters.” It looks first to the basic process of removing trespassers, and then examines the elements of adverse possession.

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Overview

In Ohio, trespassing is a criminal offense.¹ A trespasser may also be civilly liable for damages that result from the trespass. In most cases, removing a trespasser (sometimes referred to as a “squatter”) from private property is as easy as asking them to leave, either directly or by involving local law enforcement. However, there are times when a squatter will refuse to leave the premises or cause significant damage to the property before their presence is discovered. Property owners find it most difficult to remove squatters from land that is left vacant or abandoned for an extended period of time.²

Ohio law does not permit a property owner to conduct a “citizen arrest” of any person, including a squatter, unless that person committed a felony.³ Furthermore, a property owner cannot use force against a squatter, except to defend themselves or another person from imminent serious harm. Notably, if a squatter unlawfully enters a person’s residence or vehicle, the “castle doctrine” presumes that the person is a serious imminent danger. But the castle doctrine does not apply to other real estate holdings, such as rental properties.⁴

So what is a property owner to do about stubborn squatters? Generally, if a trespasser refuses to leave private property, the appropriate course of action is to obtain a writ of execution through a Forcible Entry and Detainer action. Such an action is fairly straightforward and highly effective, but some property owners have asserted that it is overly burdensome and time consuming, particularly when it comes to expelling squatters who are not currently, and have never been proper tenants. Nonetheless, allowing a squatter to occupy property they do not own or rent for an extended period of time can have risks for a property owner. In rare cases, squatters who have occupied property as their own for 21 or more years have obtained title through a common law doctrine known as adverse possession. However, adverse possession cases are not often successful in modern times – the bar for proving the required elements is high.

This brief details the procedures for a Forcible Entry and Detainer action and the elements that must be proved to acquire ownership to property by adverse possession. It also briefly discusses a recently enacted law in Florida that creates an expedited procedure by which owners of residential property may expel squatters.

Forcible Entry and Detainer Law

The Forcible Entry and Detainer Law prescribes detailed procedural steps and specific time requirements to expel persons from real property. It includes a modified procedure if the property owner is a landlord and has actual knowledge or reason to believe that a tenant breached the tenant’s obligations by committing, or consenting to another person committing, a drug offense on the premises. Different procedures apply relating to tenants who are deployed

¹ R.C. 2911.21.

² See “[Cleveland Landlord Shines a Light on the Impact of Squatters](#),” by Colton Molesky, February 2, 2024, which is available on the Cleveland 19 News website: cleveland19.com.

³ R.C. 2935.04.

⁴ R.C. 2901.05 and 2901.09.

on active duty.⁵ However, landlord-tenant protections are available only to persons “entitled under a rental agreement to the use and occupancy of residential premises to the exclusion of others.” Ohio courts do not generally extend such protections to persons, like squatters, who do not have a lease agreement.⁶ For that reason, only the main Forcible Entry and Detainer procedures are described below.

General timeline

Notice to Vacate	•At least 3 days before commencing action; extended, 30-day notice applies to tenants.
Complaint	•Must be in writing, describe the premises, and set forth the reason for eviction.
Summons	•Served in a form specified by law by ordinary mail. Personal service or certified mail required upon request of defendant.
Hearing	•Scheduled in accordance with court rules at least 7 days after service of summons.
Continuance	•By discretion of court, but generally no more than 8 days.
Judgment	•If judge or jury determines complaint is true, the court must enter a judgment for restitution of the premises and costs.
Writ of Execution	•Within 10 days after receiving, the sheriff, police officer, constable, or bailiff must restore plaintiff to possession.

Notice to vacate

At least three days before commencing the action, the property owner must notify the squatter to leave the premises. The notice can be accomplished by certified mail, by handing a copy of the notice to the squatter, or by leaving it at the premises from which the squatter is sought to be evicted.⁷ A longer, 30-day notice period is required in the case of a landlord who seeks to evict a tenant from residential property.⁸ As such, some attorneys advise property owners to allow a full 30-days’ notice to avoid altogether the question of whether the squatter qualifies as a tenant. However, we did not find any Ohio case law that suggests that a trespasser with no history of living lawfully on the property would qualify for the extended, landlord-tenant notice period.

⁵ R.C. 1923.02(A)(6), 1923.051, 1923.062, 5321.04(A)(9), 5321.05(A)(9), and 5321.17(C).

⁶ R.C. 5321.01; *Tillimon v. Timmons*, 2016-Ohio-7424, 72 N.E.3d 1153, ¶ 23-24 (6th Dist.).

⁷ R.C. 1923.04.

⁸ R.C. 5321.11.

Complaint

The property owner (plaintiff) may file a complaint for eviction based upon any of the grounds specified in the Forcible Entry and Detainer Law. The complaint must be in writing and particularly describe the premises. It also must set forth either: (1) an unlawful and forcible entry and detention, or (2) an unlawful and forcible detention after a peaceable or lawful entry of the premises. In other words, it must state the person to be evicted either never had the right to the premises or remained in the premises after losing the right to stay there. Eviction complaint forms generally also include a statement that the person to be evicted was given notice to vacate.⁹

Summons

After a plaintiff files the complaint, the clerk of the court must issue a summons on the action, including a claim for possession, in a statutorily specified form. Service of the summons must be at least *seven days* before the day set for trial. Service must be by ordinary mail and, if requested, personal service or certified mail. The summons must contain the following language printed in a conspicuous manner:

A complaint to evict you has been filed with this court. No person shall be evicted unless the person's right to possession has ended and no person shall be evicted in retaliation for the exercise of the person's lawful rights. If you are depositing rent with the clerk of this court you shall continue to deposit such rent until the time of the court hearing. The failure to continue to deposit such rent may result in your eviction. You may request a trial by jury. You have the right to seek legal assistance. If you cannot afford a lawyer, you may contact your local legal aid or legal service office. If none is available, you may contact your local bar association.¹⁰

Scheduling for hearing; answer

The claim for restitution of the premises must be scheduled for hearing in accordance with local court rules, but *not sooner than the seventh day* from the date service is complete. Any other claims filed with the claim for possession must be answered by the defendant *not later than 28 days* from the date service is deemed complete.¹¹

Failure to appear; continuance

If the defendant does not appear in an eviction action and the summons was properly served, the court must try the case as though the defendant were present. The Court cannot grant a continuance in an eviction action for a period longer than *eight days* unless:

⁹ R.C. 1923.05; See also [Eviction Complaint Cause 1 \(PDF\)](#) and [Eviction Complaint Cause 2 \(PDF\)](#), which can be accessed on the Forms page of the Franklin County Municipal Court's website: municipalcourt.franklincountyohio.gov/Forms.

¹⁰ R.C. 1923.06(A) to (G).

¹¹ R.C. 1923.06(H).

- The plaintiff applies for the continuance, and the defendant consents to it; or
- The defendant applies for the continuance and gives a bond to the plaintiff, with good and sufficient surety, that is approved by the court and conditioned for the payment of rent that may accrue if the plaintiff wins.¹²

Trial and judgment

Either party in an eviction action may request the case be tried by a jury. If no jury is requested, the case is tried before a judge. After hearing the evidence, if the trier of fact (the jury or judge, as applicable) concludes that the complaint is not true, the court must enter judgment against the plaintiff for costs.

If the trier of fact finds the complaint is true, the court must enter a judgment against the defendant, in favor of the plaintiff, for restitution of the premises and for costs. If the trier of fact finds the complaint is true in part, the court must enter a judgment for restitution of that part only, and the costs must be taxed as the court considers just.¹³

Writ of execution; enforcement

When a court enters a judgment of restitution in an eviction action, at the request of the plaintiff or the plaintiff's agent or attorney, that court must issue a writ of execution on the judgment in a statutorily specified form.¹⁴

Within *ten days* after receiving a writ of execution, the sheriff, police officer, constable, or bailiff must execute it by restoring the plaintiff to the possession of the premises, and must collect the costs. However, if the judgment has been appealed and if, following the filing of the appeal, a stay of execution is obtained, the judge immediately must order the officer to delay the execution. If the premises have been restored to the plaintiff, the officer must promptly place the defendant in possession of them, and return the writ to the court with the officer's proceedings and the costs taxed on it.¹⁵

Adverse possession

Overview

Adverse possession is a method by which a trespasser may gain title to real property from the actual owner of the property without paying or providing compensation to the owner. To acquire title to real property by adverse possession, an adverse user must prove, by clear and convincing evidence, that the user's possession of the property for at least 21 years has been (1) actual, (2) open and notorious, (3) hostile, (4) continuous, and (5) exclusive.¹⁶ "Clear and

¹² R.C. 1923.07 and 1923.08.

¹³ R.C. 1923.09 to 1923.11.

¹⁴ R.C. 1923.13(A).

¹⁵ R.C. 1923.14(A).

¹⁶ *McClellan v. Broadsword*, 14 Ohio L. Abs. 274 (1932) and *Grace v. Koch*, 81 Ohio St.3d 577, 1998-Ohio-607.

convincing evidence” is a standard of proof higher than proof by a preponderance of the evidence; it means proof that establishes in the minds of the judge or jury a firm conviction as to the allegations sought to be proved.¹⁷

To avoid losing rights to a property to an adverse user, the actual owner must defeat one or more of the elements of adverse possession, including by bringing an action to recover the title to, or possession of, the property, within 21 years after the adverse user commences possession. If the owner has a disability at the commencement of the adverse possession, meaning the owner is under age 18 or lacks the mental capacity needed to initiate a quiet title action, the owner may bring the action within ten years after the disability is removed.¹⁸

Elements of adverse possession

Actual possession

To obtain title through adverse possession, an adverse user must demonstrate actual possession of the real estate, meaning the user must either (1) use the real property in a manner in which a legal owner would use it, or (2) show dominion and control over the claimed property. To demonstrate use of the property in the manner of a legal owner, an adverse user may work or cultivate the property, or use it as a residence. Alternatively, if the property does not lend itself to such uses, an adverse user may demonstrate actual possession by erecting a fence or other means of exclusion, thereby showing dominion and control.¹⁹ Courts are somewhat inconsistent in deciphering which activities are sufficient proof of actual possession. For example, one court held that mowing grass on land was sufficient to establish actual possession while another held that “mere maintenance of land, such as mowing grass . . .” was not sufficient proof of adverse possession.²⁰

Open and notorious

Open and notorious possession means that the possession “must be so open, visible, and notorious as to raise the presumption of notice to the world that the right of the true owner is invaded intentionally and with a purpose to assert a claim of title,” or be so obvious that if the owner remains in ignorance it is the owner’s own fault. For example, in *Fulton v. Rapp*, the 2nd District Court of Appeals held that the owner’s actual knowledge of the adverse user and the user’s obvious utilization of the property as pasture land for cattle, horses, mules, hogs, and sheep was sufficient to establish open and notorious possession.²¹

¹⁷ *Grace v. Koch and McKenna v. Boyce*, 2012-Ohio-5163 (citing *Cross v. Ledford*, 161 Ohio St. 469 (1954)).

¹⁸ R.C. 2305.04 and see *Raymond v. Cary*, 63 Ohio App.3d 342 (1989).

¹⁹ *Fulton v. Rapp*, 45 Ohio Op. 494, 98 N.E.2d 430 (1950), *McClellan v. Broadsword*, and *Huber v. Cardiff*, 2009-Ohio-3433.

²⁰ *Vaughn v. Johnston*, 2005-Ohio-942 and *Nixon v. Parker*, 2005-Ohio-2375.

²¹ *Fulton v. Rapp*.

Hostile

The hostility requirement mandates that the use of the property be opposed to the property owner's legal interests.²² The hostility of an adverse user's possession is determined objectively, rather than subjectively. That is, the adverse user need not demonstrate an intent to obtain possession from the property owner, only that they treated the property as their own. For example, an adverse user may obtain title by adverse possession to property even if they mistakenly believed they are the true owner (for example, due to an erroneous land survey).²³

Continuous

If continuity of possession is interrupted, the time prior to the interruption is not considered a part of the 21-year period required for adverse possession.²⁴ In certain circumstances, one adverse possessor may transfer their interest to another without interrupting the continuous possession.²⁵ The possession need not be daily or constant, and seasonal possession may be sufficient.²⁶

Exclusive

An adverse possessor must exclude other claimants from the property.²⁷ If others regularly maintain or make visible use of the property, or if the user shares usage with the actual owner of the property, a finding of exclusive possession is precluded.²⁸ Possession of the property does not need to be absolutely exclusive, so long as the possession is of a type that would characterize an owner's use.²⁹

Expedited procedure in Florida

It is rare for a property owner to lose title to their land to a squatter via adverse possession. However, many have asserted that it is cumbersome and expensive to formally expel a squatter through the Forcible Entry and Detainer Law. In response, Florida recently expedited process by which a property owner may expel squatters from residential real property. Under the new Florida law, rather than obtain a writ of execution from a court, the property owner may file a complaint with the county sheriff that establishes ownership of the real property and requests that all trespassers be removed. The sheriff must then "without delay" serve notice to immediately vacate the property and restore possession to the property owner. The sheriff may charge a fee to the property owner for this service.

²² *Dietrick v. Noel*, 42 Ohio St. 18 (1884).

²³ *Evanich v. Bridge*, 2008-Ohio-3820.

²⁴ *Satchell v. Doram*, 4 Ohio St. 542 (1855).

²⁵ *Zipf v. Dalgarn*, 114 Ohio St. 291 (1926).

²⁶ *Dunn v. Ransom*, 2011-Ohio-4253.

²⁷ *Dietrich v. Noel*.

²⁸ *Roll v. Bacon*, 2010-Ohio-5540 and *Morehouse v. Burgot*, 22 Ohio C.C. 174 (1901).

²⁹ *Koprivec v. Rails-To-Trails*, 153 Ohio St.3d 137 (2018).

The expedited process is not available if the trespasser is a current or former tenant, co-owner of the property, or an immediate family member of the property owner. The Florida law also establishes a civil cause of action for persons who are wrongfully removed from real property under the expedited process.³⁰

³⁰ See 2024 [Florida H.B. 621 \(PDF\)](#), which may be accessed on the Florida Senate's website: [flsenate.gov](https://www.flsenate.gov).