



WISCONSIN LEGISLATIVE COUNCIL ACT MEMO

2015 Wisconsin Act 200
[2015 Senate Bill 344]

**Affidavits of Interruption of
Adverse Possession**

CURRENT LAW

Under current law, in certain specific circumstances, a person may obtain title to real property by possessing property that belongs to another individual for a certain statutorily specified period of time. In the case of adverse possession that is not founded on a written instrument, that period is 20 years of uninterrupted possession. When the adverse possession is founded on a written instrument, such as a title, the period is 10 years of uninterrupted possession. If the adverse possession is founded on a recorded title claim and the possessing individual has paid real estate taxes on the property, the period of uninterrupted possession is seven years.

Under current law, a person may also establish adverse use, or prescriptive rights to continued use of real property, by continuously and adversely using the real property of another for 20 years or more.

2015 WISCONSIN ACT 200

2015 Wisconsin Act 200 generally retains current law regarding adverse possession and adverse use, but establishes a new procedure whereby a record title holder may interrupt an adverse possession or use and may restart the period of adverse possession or use.

Interruption by Affidavit

The Act provides that a record title holder may interrupt the adverse possession or use of his or her real estate by doing all of the following:

1. Recording, in the office of the register of deeds for the county in which the record title holder's parcel is located, an affidavit of interruption along with a survey of the record

This memo provides a brief description of the Act. For more detailed information, consult the text of the law and related legislative documents at the Legislature's Web site at: <http://www.legis.wisconsin.gov>.

title holder's parcel that was certified no earlier than five years before the date of recording.

2. Providing notice of the recorded affidavit of interruption in accordance with the required notice provisions of the Act.
3. Recording proof that notice was provided, in accordance with the required notice provisions of the Act, in the office of the register of deeds for the county in which the record title holder's parcel is located.
4. If notice is provided by certified mail, recording on the neighbor's abutting parcel, within 90 days of the date the neighbor received the notice, a notice of the recorded affidavit of interruption that includes a copy of the recorded affidavit of interruption, including the attached survey and a legal description of the neighbor's abutting parcel and of the record title holder's parcel.

Affidavit of Interruption

Under the Act, an affidavit of interruption must, at a minimum, contain all of the following:

1. A legal description of the parcel of land that contains the real estate that is being adversely possessed or adversely used.
2. A statement that the person executing the affidavit is the record title holder of the parcel.
3. A general description of the adverse possession or adverse use that the record title holder intends to interrupt by recording the affidavit.
4. A statement that the adverse possession or adverse use of real estate is interrupted and that a new period of adverse possession or adverse use may begin the day after the affidavit is recorded.
5. A statement that the record title holder will provide notice as required under the notice provisions of the Act.

Notice of Interruption

The Act requires that specific notice be given by the record title holder in order to interrupt an adverse possession or use. The record title holder may notify an adverse possessor by one of the following three methods:

1. If the record title holder knows, or has reason to believe, that the person who is adversely possessing or adversely using the record title holder's real estate is a neighbor, the record title holder must provide notice to the neighbor by sending all of the following by certified mail, return receipt requested, to the neighbor's address, as listed on the tax roll:
 - a. A copy of the recorded affidavit of interruption, including the attached survey.

- b. A notice of the record title holder's intent to, within 90 days of the date the notice is received, record a notice of the affidavit of interruption on the neighbor's real estate that abuts the record title holder's parcel.
2. If the record title holder knows the identity of the person who is adversely possessing or adversely using the record title holder's real estate and the person is not a neighbor, the record title holder must provide notice to the person by sending the person a copy of the recorded affidavit of interruption, including the attached survey, by certified mail, return receipt requested, to the person's last-known address.
3. If the person who is adversely possessing or adversely using the record title holder's real estate is unknown to the record title holder at the time the affidavit of interruption is recorded, the record title holder must provide notice by publishing a class 1 notice under ch. 985, Stats., in the official newspaper of the county in which the record title holder recorded the affidavit of interruption. The published notice must include all of the following:
 - a. A statement that the record title holder recorded an affidavit of interruption.
 - b. The recording information for the recorded affidavit of interruption.
 - c. The street or physical address for the parcel on which the affidavit of interruption was recorded.

Under each notice method above, the record title holder must include a reference to the relevant statutory notice sections created by the Act. If a certified mailing of notice is returned to the title holder as undeliverable, the title holder must provide published notice as described in item 3., above.

Miscellaneous Provisions

The Act requires registers of deeds to record all affidavits of interruption, notices of affidavits of interruption, and proofs of notice in the general real estate records index. The Act clarifies that an affidavit of interruption may not be construed as an admission by the record title holder that the real estate is being possessed adversely and that an affidavit of interruption is not evidence that a person's possession or use of the record title holder's real estate is adverse to the record title holder. Finally, the Act states that the procedure for interrupting adverse possession or use is not exclusive, which appears to indicate that other methods for resolving adverse possession or use under current law remain in effect.

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