

RAILROAD CORRIDORS – ADVERSE POSSESSION CLAIMS



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Real Estate Title Rights

- Bundle of Sticks
- Fee Simple Absolute
- Life Estate
- Lease
- Easement v. Right of Way
- License (Revocation)
- Mortgage
- Assignment of Rents
- Fixture





Acquiring Fee Simple Title

- Warranty Deed
- Quitclaim Deed
- Trustee's Deed
- Personal Representative's Deed
- Title Insurance and Endorsements
- Grant Provisions
- Warranty Exclusions
- Adverse Possession





Acquiring Easements

- Express Easement Grant
- Easement by Necessity
- Prescriptive Easement
- Implied Easement





Elements of Adverse Possession – Fraley v. Minger, 829 N.E. 2d 476 (Ind.2005)

- Indiana Supreme Court
- Required Elements
- Common Law Concepts Examined Summary
- Formerly AVONHUCE
- CLEAR AND CONVINCING VS. PREPONDERANCE
- Tax Statute Means Something



Control Requirements

- Historic Use
- Characteristics of Land
- Normal and Customary
- Exclusive Use





≡ Facts of Fraley vs. Minger

- 1955 Purchase of 24 Acres in Ripley County
- 2.5 Adjacent Acres – Ownership Unknown
- 1963 Transfer of 2.5 Acres to Mr. Below
- 1996 Transfer of 2.5 Acres to Fraley
- Mingers Did Not Know Ownership
- 1970s Minger Children Played on Land, Rode Dirt Bikes
- 1972 Mingers Fenced the Land
- Cattle pastured by Mingers periodically
- Timber Sold by Mingers
- Visible and Exclusive Possession
- Culvert Installed by Mingers to Access Land
- No taxes Paid by Mingers



≡ Intent Requirements

- Full Ownership
- Exclude Others (Especially Legal Owner)
- Hostile
- Adverse Claim





◆ Notice Requirements

- Actual or Constructive Notice
- To Legal Owner
- Exclusive Control
- Visible & Open
- Notorious & Hostile





Duration Requirements

- Continuous
- 10 Years Adverse Possession or Fee Simple
- 20 Years Prescriptive Easement



◆ Indiana Code §32-21-7-1(a)

“Except as provided in subsection (b), in an action to establish title to real property, possession of the real property is not adverse to the owner in a manner as to establish title to the real property unless the adverse possessor pays all taxes and special assessments that the adverse possessor reasonably believes in good faith to be due on the real property during the period the adverse possessor claims to have adversely possessed the real property. However, this section does not relieve any adverse possessor from proving all the elements of title by adverse possession required by law.”



❖ Elements to Consider

- Payment of Taxes
- Are Taxes Assessed?
- Exclusions?
- Governmental Entity (I.C. § 32-21-7-2)
- Mistake by County?
- Boundary Disputes
- Fence Erection Situation



◆ Indiana Prescriptive Easements

- I.C. § 32-23-1-1
Uninterrupted Use for at Least 20 Years
- I.C. § 32-23-1-2
Owner May Give Claimant a Notice of Dispute to Interrupt Continuous Use
- Elements
 - Continuous
 - Uninterrupted
 - Under Claim of Right
 - Acquiescence of Owner (Not Permissive Use)
 - Has Easement Been Exclusive?



≡ Abandoned Rail Corridor Issues

- Preservation for Trails
- Payment of Taxes
- Removal of Tracks
- Property Management

