

# Adverse Possession in Pennsylvania



A long-time trespasser may gain ownership of land by using it with no documented challenge for 21 years. Landowners can avoid this threat with some good, basic practices.

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## Introduction

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In Pennsylvania, a claim of adverse possession gives a trespasser legal title to property if they can prove actual, continuous, exclusive, visible, notorious, distinct, and hostile possession of property for (in most cases) 21 years.<sup>1</sup> One motivating factor behind the continued legality of adverse possession is that it ensures land does not lay dormant: it incentivizes property owners to timely assert their ownership rights and, if they fail to do so, allocates real property to those who put it to use.<sup>2</sup> Land, buildings, and even rooms within buildings can be obtained through adverse possession.<sup>3</sup>

Property owned by the federal and state government is immune to adverse possession, but property owned by political subdivisions is not, unless the land is “devoted to public use”<sup>4</sup> or held in furtherance of a governmental function.<sup>5</sup>

While adverse possession claims pose a risk for any conservation organization or trail group who owns property (whether in fee simple or by easement), there are practical approaches to avoiding disputes:

- First, understand your property boundaries. While descriptions in deeds and easement agreements provide a starting point, this is best accomplished with

assistance from a professional surveyor who can stake out visible boundary markers on your property.

- Second, if the property interest is a trail or conservation easement, understand what activities are inconsistent with the purposes of the easement or effectively encroach on that easement.
- Finally, regularly monitor the property and assert your property rights to avoid encroachment. Regular monitoring will inform you of potential or actual encroachment and provide an opportunity to take appropriate action to avoid an adverse possession dispute, whether that means granting permission for use in writing or ejecting the trespasser from the property.

For information on the strategy of granting permission to the trespasser, see the guide [Encroachment: Permitting Continued Use Without Risking Loss of Ownership](#) as well as the [Model Permission for Encroachment](#).

## The Elements Defining Adverse Possession

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For a trespasser to successfully claim adverse possession, they must prove their possession of the property was actual, continuous, exclusive, visible, notorious, distinct, and hostile.

### Actual, Visible, Notorious, and Exclusive

Actual possession varies according to the circumstances,<sup>6</sup> but essentially the trespasser must treat the land as if it were their own in a way that is “consistent with the nature of the property.”<sup>7</sup> For example, actual possession may be established by cultivating the land,<sup>8</sup> making improvements, maintaining a fenced-in lawn,<sup>9</sup> doing yardwork, planting and tending to a garden, building a shed, paying

property taxes,<sup>10</sup> or other activities signaling to a reasonable onlooker that the land is being treated by the trespasser as her own.

In the case of forested property, actual possession must additionally include extensive and systematic use.<sup>11</sup> Merely constructing roads and removing timber is only a repeated trespass rather than actual possession if there is no further cultivation or permanent improvements made to unenclosed forested land.<sup>12</sup>

Exclusive possession means that possession should be characteristic of a true owner's use to the "general exclusion of others."<sup>13</sup> The trespasser cannot share possession with the true owner or third parties.<sup>14</sup> Essentially, actual, visible, notorious and exclusive possession must be exercised in plain sight in a way that is obvious enough to put a reasonable person on notice their land is being actually possessed and giving them an opportunity to assert their property rights.<sup>15</sup>

## Continuous

Possession must be continuous and uninterrupted for 21 years,<sup>16</sup> except for adverse possession of a single family home on less than one-half acre where possession need only be continuous and uninterrupted for 10 years.<sup>17</sup> In all cases however, possession must be more than sporadic or occasional, but rather consistent with how the record owner (meaning the true owner whose name appears on the recorded deed to the property) would use the property. For example, if the property was a summer cabin, continuous possession would be achieved by using the cabin every summer for the statutory period without interruption by the true owner. Continuous possession can be supported by testimony from neighbors or other third parties witnessing the possession. An adverse possessor may "tack" or add the time of their possession with that of a predecessor to meet the statutory period, but only if there is privity between them, i.e., the disputed property is described in the document conveying the land.<sup>18</sup> Continuity can be broken by abandonment (i.e. the trespasser discontinues treating the property as their own), adverse possession by a third party,<sup>19</sup> the true owner asserting their property rights against the trespasser, or if the true owner gives the trespasser permission to occupy the property.

Though, continuity is not broken by temporary interruptions in possession.<sup>20</sup> For example, continuity is not broken if a record owner posts a "no trespassing" sign on the disputed property for 24 hours but takes no further action toward reclaiming it if the adverse possessor does not leave.<sup>21</sup>

## Hostile and Adverse to the True Owner's Title

Possession that is hostile and adverse to the true owner's title<sup>22</sup> does not mean ill will, but rather an intent to defend the use of the property against the record owner.<sup>23</sup> This may be evidenced by actual, visible, notorious and exclusive possession. If the record owner gives consent, then the possession is not hostile and adverse. For example, a tenant cannot adversely possess rented property against the landlord, because the tenant has permission to occupy the premises. Intent is assessed by looking at the nature of the possession itself, and evaluating whether it is enough to put the true owner on notice. The state of mind of the trespasser is irrelevant.<sup>24</sup> The adverse possessor's interactions with the property should appear to a reasonable onlooker as if they are the true owners. Generally, if all the other elements of adverse possession are met, hostility (in the legal sense of the word) is implied.<sup>25</sup>

## Adverse Possession of Easements

A trespasser may gain *possession of land* subject to a trail or conservation easement through adverse possession, but this does not mean that the easement itself is threatened. It appears that it would take an extreme fact pattern for a trail or conservation easement to be extinguished by adverse possession.

For property rights granted by an easement (e.g. a trail easement or conservation easement), hostile possession requires use directly inconsistent with the easement to extinguish the easement by adverse possession.<sup>26</sup> In *Estojak v. Mazsa*, the Pennsylvania Supreme Court states that "[t]o extinguish an easement over (or use of) the servient tenements, the servient tenement owner must demonstrate a visible, notorious and continuous adverse and hostile use of said land which is inconsistent with the use made and rights held by the easement holder, *not merely possession which is inconsistent with another's claim*

of title.”<sup>27</sup> The Court concluded in *Estojak* that although the easement holders’ neighbors used the access easement area as an extension of their yard, by maintaining the grass and using the area for play and gatherings for more than 21 years, they never did anything to actually restrict access or even give the impression that access to the right of way was restricted (i.e. building a fence or structure, planting trees, or attempting to eject easement users)<sup>28</sup> and therefore no adverse possession occurred.<sup>29</sup> Notably, the nonuse of an easement alone, even for an extended period of time, will not extinguish the easement if the adverse possessor has not restricted access to the easement.<sup>30</sup>

Given the unusual nature of a conservation easement—a power to block uses inconsistent with its conservation objectives—is it actually possible for a conservation easement to be extinguished through adverse possession? In theory, it should not since adverse possession generally does not apply to nonpossessory interests.<sup>31</sup> However, the law in Pennsylvania is not entirely clear.<sup>32</sup> There is a lack of case law surrounding adverse possession of conservation easements, which may be attributed to the “monitoring and enforcement obligations” taken on by conservation organizations, the associated activities precluding adverse possession.<sup>33,34</sup>

## Property Held by Political Subdivisions

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Unlike property owned by the federal and state government, property held by political subdivisions<sup>35</sup> may be subject to adverse possession, with two exceptions.<sup>36</sup> The first exception is when the political subdivision acts as an agent of the commonwealth; the second is when the property is devoted to public use.<sup>37</sup> A political subdivision acts as an agent of the commonwealth when it acts pursuant to a state delegated authority to fulfill a state’s responsibility, such as a local school district providing public education,<sup>38</sup> or the construction of a highway by a city at the behest of the Commonwealth.<sup>39</sup> Whether property is devoted to public use for the purposes of immunity to adverse possession is dependent on the individual facts of each case, similar and comparable to the analysis of

whether property is being taken for public use pursuant to authority of eminent domain.<sup>40</sup>

This public use analysis must reference the facts involved in any set of circumstances, as well as the social and economic background of the case.<sup>41</sup> Courts are clear that a local government holding property for the construction of a state highway or holding tax-delinquent land for tax sale in furtherance of a governmental function to improve tax titles constitutes public use.<sup>42</sup> Generally though, *public use* means use by the public in general rather than select individuals.<sup>43</sup> Land held by local or state government as open space for the benefit of the public, such as a public park or other recreational purposes, likely qualifies as “devoted to public use” sufficient that the property is immune to adverse possession.<sup>44</sup> For example, although Pennsylvania courts have not addressed this issue directly, it seems likely that property held by local governments pursuant to statutes such as the Open Space Act<sup>45</sup> and the Project 70 Land Acquisition and Borrowing Act,<sup>46</sup> or dedicated formally or informally to the public use per the Donated and Dedicated Property Act,<sup>47</sup> are immune to adverse possession because they are held for and devoted to public use.

Land acquired by eminent domain must serve a public purpose and, as such, is likely immune to adverse possession as well.<sup>48</sup> However, it is relevant to the analysis if a public use of condemned property may have lapsed or been abandoned.<sup>49</sup> A public use can lapse where the public use project is complete or abandoned and the property held for the purpose of the project has not been used. The holding of a condemned property once devoted to public use without any benefit to the public is no longer considered public use and is not protected by immunity to adverse possession.<sup>50</sup>

## Litigating an Adverse Possession Claim

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Title acquired by adverse possession is not an automatic right but requires court approval to legally transfer a property right. The burden of proof is on the trespasser to prove they meet the elements of adverse possession by

clear and convincing evidence.<sup>51</sup> To initiate a case, an adverse possessor must commence an action to quiet title and provide notice of the action to the record owner.<sup>52</sup> The action to quiet title must be filed in the county in which the disputed property is located<sup>53</sup> in the Court of Common Pleas.<sup>54</sup> To dispute the claim, the record owner must file a timely answer and will have one year to respond to the notice with an action in ejectment.<sup>55</sup> The action to quiet title compels the record owner to file an action in ejectment if the plaintiff is in actual possession of the property and there is a dispute as to the title. If the record owner prevails in their action in ejectment, the quiet title action filed by the adverse possessor will be thrown out.<sup>56</sup> If the record owners do not file and serve an action in ejectment within one year of the action to quiet title, then the title of the property will likely be granted to the adverse possessor.<sup>57</sup>

## Protecting Property from Adverse Possession

To avoid adverse possession claims, record owners should consult a professionally prepared survey to identify boundary lines and regularly check for encroachments on the land. Indications of occupation to watch out for include but are not limited to driveways, sheds, or other structures they did not build, gardens they did not plant, compost piles they did not heap, and landscaped or mowed areas they did not manicure.

If a record owner thinks an adverse possession claim is a possibility, it is important to confront the trespasser and develop evidence showing the elements of adverse possession were not met (e.g. there was an interruption to the trespasser's continuous possession). This might include timestamped photos of posted no trespassing signs, written correspondence with the trespasser (e.g. texts, emails,

and letters) granting permission to the trespasser to use the disputed land for an agreed upon length of time, or timestamped photos showing actual possession by building a fence along boundary lines. Essentially, it is important for the record owner to assert their property rights against the trespasser. If the trespasser ignores the confrontation, the next step is often filing an action in ejectment against the trespasser. Ultimately, it is always prudent to seek legal counsel upon suspicion of adverse possession claims to make sure all reasonable steps are taken to protect your property.

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Ryan E. Hamilton, attorney at [Fair Shake Environmental Legal Services](https://www.fairshake.com), and legal intern Emily R. Rollins authored this guide with contributions and edits by Andy Loza.

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<sup>1</sup> 42 PA. CONS. STAT. §§ 5527.1 (10 years for single family homes on less than ½ acre); § 5530 (21 years in all other instances); *Conneaut Lake Park, Inc. v. Klingensmith*, 362 Pa. 592, 594 (1949) (citing *Parks v. Pennsylvania R.R.*, 301 Pa. 475 (1930); *John v. Johns*, 244 Pa. 48 (1914); *Boyer v. Lengel*, 224 Pa. 357, (1909)).

<sup>2</sup> See *City of Philadelphia v. Galdo*, 217 A.3d 811, 820 (Pa. 2019) (citing Carl C. Risch, Comment, *Encouraging the Responsible Use of*

*Land by Municipalities: The Erosion of Nullum Tempus Occurrit Regi and the Use of Adverse Possession Against Municipal Land Owners*, 99 Dick. L. Rev. 197 (1994).

<sup>3</sup> *Neumann v. Walters*, 39 Pa. D. & C.3d 312, 316 (C.P. 1981); See also 42 PA. CONS. STAT. §5527.1(e) (Adverse possession does not apply to property “that is part of a common interest ownership

community” such as condominiums, cooperatives, and planned communities.).

<sup>4</sup> *Torch v. Constantino*, 323 A.2d 278, 279 (Pa. Super. Ct. 1974).

<sup>5</sup> *Id.* at 281 (A governmental function such as for tax sales for nonpayment of taxes).

<sup>6</sup> *Glenn v. Shuey*, 595 A.2d 606, 610 (Pa. Super. Ct. 1991).

<sup>7</sup> *Parks v. Pennsylvania R.R.*, 301 Pa. 475, 482 (1930).

<sup>8</sup> *Glenn*, 595 A.2d at 611 n.5 (Pa. Super. Ct. 1991) (citing *McCaffrey v. Fisher*, 4 Watts & Serg. 181 (Pa. 1842); *Schoen v. VanHart*, 29 Pa. D & C.3d 616 (C.P. 1983); *Robin v. Brown*, 308 Pa. 123 (1932)).

<sup>9</sup> *Burns v. Mitchell*, 381 A.2d 487,489 (Pa. Super. Ct. 1977).

<sup>10</sup> *Id.* at 611 n.5 (citing *McCall v. Neely*, 3 Watts 69 (Pa. 1834)).

<sup>11</sup> *Seven Springs Farm, Inc. v. King*, 344 A.2d 641, 646 (Pa. Super. Ct. 1975) (“If such an invisible use were enough to establish actual possession, no owner of uninhabited wild lands would be safe from the encroachment of strangers against his claim to his property”) (discussing the inadequacy of removing timber, and hunting and fishing parties for establishing actual possession).

<sup>12</sup> *Id.* at 645; See also, *Recreation Land Corp. v. Hartzfeld*, 947 A.2d 771, 774 (Pa. Super. Ct. 2008) (for adverse possession of an unenclosed woodland, a person would have to show residence or cultivation of part of the tract or substantial enclosure of the woodland).

<sup>13</sup> *Glenn*, 595 A.2d at 611 (citing *Reed v. Wolyniec*, 471 A.2d 80 (Pa. Super. Ct. 1983)).

<sup>14</sup> *Conneaut Lake Park, Inc. v. Klingensmith Sterner v. Freed*, 362 Pa. 592, 595 (1949).

<sup>15</sup> *Glenn*, 595 A.2d at 611 (citing 570 A.2d 1079 (Pa. Super. Ct. 1990)).

<sup>16</sup> 42 PS. CONS. STAT. § 5530(a)(1) (for all other circumstances not covered in §5527.1)

<sup>17</sup> 42 PA. CONS. STAT. § 5527.1(a); In June 2019, a legislative amendment reduced the statutory period from twenty-one years to ten years for single-family homes that are either attached or detached from other structures, and on a parcel of land that does not exceed one-half acre in area. This amendment was aimed to help residents who have lived in and maintained their home for ten years gain clear title in situations where the legal title holder either dies or abandons the property, leaving them in a precarious legal situation. *Clear Title Law, HB 352, Passes Legislature Helping Pennsylvanians Stay in their Homes*, HOUSING ALLIANCE OF PENNSYLVANIA, <https://housingalliancepa.org/clear-title-law-hb-352-passes-legislature-helping-pennsylvanians-stay-in-their-homes/> (last visited June 1, 2020). For all other property that does not meet the description from the amendment, the statute of limitations for the purposes of adverse possession is twenty-one years.

<sup>18</sup> See *Glenn*, 595 A.2d at 612; also note, the doctrine of consentable line arises in situations where a recognized boundary such as a fence or

hedges mistakenly separates neighboring properties, and the property owners claim the land on their side of the boundary for the statutory period for adverse possession. This boundary line may be recognized in a conveyance for the purposes of tacking if the boundary was recognized by the former owners. *Zeglin v. Gahagen*, 571 Pa. 321, 324 (2002) (“Pennsylvania courts have adopted the view that succeeding owners of property are bound by the fences that were accepted and recognized by former owners even without any other privity or formal transfer of the area possessed adversely.”).

<sup>19</sup> *Reed v. Wolyniec*, 471 A.2d 80, 84 (1983) (“In order to break the continuity of possession, there must either be an abandonment or possession must be taken by one disconnected with the previous holder.”).

<sup>20</sup> *Id.* (citing 3 Am.Jur.2d Adverse Possession § 69).

<sup>21</sup> *Id.* at 85-86.

<sup>22</sup> *Neumann v. Walters*, 39 Pa. D. & C.3d 317, 316 (C.P. 1981).

<sup>23</sup> *Tioga Coal Co. v. Supermarkets Gen. Corp.*, 519 Pa. 66, 71 (1988) (citing *Vlachos v. Witherow*, 383 Pa. 174 (1955)).

<sup>24</sup> *Id.* at 72 (1988).

<sup>25</sup> *Glenn v. Shuey*, 595 A.2d 606, 611 (Pa. Super. Ct. 1991).

<sup>26</sup> *Estojak v. Mazsa*, 522 Pa. 353 (1989).

<sup>27</sup> *Estojak*, 522 Pa. at 361 (emphasis added).

<sup>28</sup> Natural barriers that existed when the easement was created such as embankments or trees have not been recognized as a barrier to an easement for the purposes of extinguishing the easement by adverse possession. *Estojak*, 522 Pa. at 358. (determining that the existence of the natural embankment did not constitute a restriction for the purpose of extinguishing the easement when the appellants gained access to the easement by bulldozing and grading a roadway).

<sup>29</sup> *Estojak* at 364 (“[W]e sympathize with these neighbors who saw their children grow up enjoying their extended yard which they maintained continuously in a labor of love and who watched the unannounced bulldozer rip its way their yard and through their tranquility. However, the law is clear on this issue – because appellees did nothing which could remotely be deemed to be *inconsistent* with the right of ingress and egress over East Union Street until after appellants graded the roadway and did not repudiate such right of way by word or deed, the *private easement* for ingress and egress held by appellants and other landowners within the Plan was not extinguished and remains intact.”).

<sup>30</sup> *Id.* at 362. However, an easement will be deemed abandoned and thus extinguished if the owner of the easement renders the use of the easement impossible by affirmative acts, or if she “obstructs it in a manner that is inconsistent with its further enjoyment.” *Hatcher v. Chesner*, 422 Pa. 138, 143 (1966). Examples of such affirmative acts would be planting, or allowing a tree to grow on the land and obstruct the use of the easement “to a material extent” and barring a door or gate leading to the only entrance. *Id.* These affirmative acts

can be done by the current easement owner or predecessors in title. *Eagan v. Nagle*, 378 Pa. 206, 213 (1954).

<sup>31</sup> Sprankling, *supra* at 863 n. 226. (citing RICHARD R. POWELL & PATRICK J. ROHAN, *POWELL ON REAL PROPERTY* 1017 at 91-109 to 91-110 (16th ed. 1993)) (“In general, adverse possession does not apply to nonpossessory interests, that is, interests in land which create no right to possession in the holder. . . . Thus, although affirmative easements are typically vulnerable to adverse possession, covenants and restrictions are not.”).

<sup>32</sup> John G. Sprankling, *An Environmental Critique of Adverse Possession*, 79 CORNELL L. REV. 816, 855 n. 188 (1994).

<sup>33</sup> Alexandra B. Klass, *Adverse Possession and Conservation: Expanding Traditional Notions of Use and Possession*, 77 U. COLO. L. REV. 308 n.64 (2006). (“In theory, such activities could result in acquisition of some or all of the property by adverse possession as that doctrine is applied to wild lands. However, because the conservation organization has taken on the obligation of monitoring what might be remote and relatively inaccessible property, the conservation organization is in a position to prevent adverse possession of the property and thus minimize the risk of this common law doctrine to lands enrolled in conservation easements.”).

<sup>34</sup> Unlike most if not all other states, New York’s conservation easement enabling statute has a provision explicitly barring adverse possession of an easement. Robert H. Levin, “A Guided Tour of the Conservation Easement Enabling Statutes,” Land Trust Alliance, 46 (2010, updated 2014).

<sup>35</sup> Political subdivisions include counties, townships, municipalities, and boroughs. *City of Philadelphia v. Galdo*, 217 A.3d 811, 815 (2019).

<sup>36</sup> *See Evans v. Erie County*, 66 Pa. 222 (1871); The basis for the general rule of immunity emanates from the doctrine *nullum tempus occurrit regi*, meaning time does not run against the king, which has its roots in the prerogative of the Crown. Underlying the doctrine of *nullum tempus* is the vindication of public rights and the protection of public policy; *See also* 68 PA. CONS. STAT. § 88 (“Nothing contained in this act shall be construed to give any title to any lands by a claim of title adverse to that of the Commonwealth of Pennsylvania, and no claim of title adverse to the Commonwealth of Pennsylvania shall be made or recorded under the provisions of this act”).

<sup>37</sup> *Galdo*, 217 A.3d at 821.

<sup>38</sup> *Lysicki v. Montour Sch. Dist.*, 701 A.2d 630, 632 (1997).

<sup>39</sup> *Galdo*, 217 A.3d at 815.

<sup>40</sup> *Id.* at 821.

<sup>41</sup> *Id.*

<sup>42</sup> *Id.* at 823.

<sup>43</sup> *See Se. Pa. Transp. Auth. v. Pa. Pub. Util. Comm’n.*, 505 A.2d 1046, 1049 (Pa. Cmwlth. 1986) (defining the scope of “public use” in the context of an easement obtained through prescription).

<sup>44</sup> *See Board. of Trustees. v. Trustees of Univ. of Pa.*, 96 A.123, 125 (Pa. 1915)(a government “which dedicates land that it owns in the site of a town to public use for the purpose of a park is as conclusively estopped as a private proprietor from revoking that dedication, from selling the park, from appropriating the land which it occupies to other purposes...).

<sup>45</sup> 32 PA. CONS. STAT. § 5001 (“The acquisition and resale of property interests authorized by this act are hereby declared to be for the public benefit, for the advancement of the public health, safety, morals and general welfare of the citizens of the Commonwealth, and for the promotion of sound land development by preserving suitable open space and concentrating more dense development in nearby areas.”).

<sup>46</sup> 72 P.S. §§ 3946.2 (declaration of policy); §3946.20 (“Lands acquired under the provisions of this act shall be made available for the use and enjoyment of the people without restriction based upon race, color, creed or national origin... The deeds of all lands acquired under the provisions of this act shall contain the following clause: This indenture is given to provide land for recreation, conservation and historical purposes, as said purposes are defined in the ‘Project 70 Land Acquisition and Borrowing Act,’ approved June 22, 1964, P.L. 131.”).

<sup>47</sup> 53 P.S. § 3382 (“All lands or buildings heretofore or hereafter donated to a political subdivision for use as a public facility, or dedicated to the public use or offered for dedication to such use... shall be deemed to be held by such political subdivision, as trustee, for the benefit of the public with full legal title in the said trustee”); *See also In re Downingtown*, 161 A.3d 844, 872-873 (Pa. 2017)(“under our prior determinations involving the common law public trust doctrine, a property is ‘dedicated’ to public use by a municipality whenever the municipality has both committed the property to public use and the public has accepted it for such use”).

<sup>48</sup> *Lacey v. Montgomery*, 124 A.2d 492, 497 (Pa. Super. Ct. 1956) (“Inasmuch as the power of eminent domain can be exercised only for public purpose, it follows that whatever land was condemned by appropriate legal proceedings is impressed with a public trust against which no adverse possession may run.”).

<sup>49</sup> *See Galdo*, 217 A.3d at 821 (evaluating whether parcel condemned for public use to construct highway was still devoted to public use even though City abandoned the highway project and was not physically occupying the parcel for the statutory period).

<sup>50</sup> *Galdo*, 217 A.3d at 822 (“The City cites no authority, and we have found none, to support the proposition that holding condemned property formerly devoted to a public use for resale constitutes a public use.”). However, this can be distinguished from the holding of tax-delinquent land for eventual resale because the holding is for the purpose of the public use. *Id.* at 823. Further, permitting adverse possession claims against tax-delinquent land for tax sale would hinder tax sales with tax title impediments. *Torch v. Constantino*, 323 A.2d 278, 281 (Pa. Super. Ct. 1974).

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<sup>51</sup> *Stevenson v. Stein*, 412 Pa. 478, 482 (1963).

<sup>52</sup> 42 PA. CONS. STAT. §5527.1(c)(1).

<sup>53</sup> PA. R.C.P. 1062.

<sup>54</sup> 42 PA. CONS. STAT. § 931.

<sup>55</sup> 42 PA. CONS. STAT. §5527.1(d).

<sup>56</sup> *Id.* §5527.1(d)(2)(i).

<sup>57</sup> *Id.* §5527.1(3).