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- **ALSO WRITE AND CALL your local City Council, State Assembly, and State Senate Representatives** in support of community gardens (call the Coalition offices for names and addresses). Send a copy of your letter to your local newspaper and, for our records, PLEASE mail or fax a copy to:

### NYC COALITION FOR THE PRESERVATION OF THE GARDENS

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Office Hours: 10:00am-6:00pm Monday - Thursday

*We welcome response, suggestions and contributions for future columns.*

## HOW CAN ADVERSE POSSESSION PRESERVE OUR GARDENS?

by **Rafael Bueno**

Adverse Possession is the legal term that refers to the transfer of land ownership where a title or deed agreement has not been made between two parties, namely the holder of a deed and the occupant, or user of the land. In such a case, the user or occupant of the land becomes an advisory against the deed owner by claiming to have proprietary rights by possession or use.

For an Adverse Possession claim to have validity it needs to fulfill five requirements: it must be done openly, notoriously, continuously, exclusively and peacefully.

*Openly* means the occupant must have access to the land as the owner would, not by jumping over a fence or going through a hole in the fence.

*Notorious* means that it is openly known to the public that the occupants are in possession of the property. More specifically, the deed holder must be able to know (by simple observation) that someone(s) has taken possession of the property without his/her authorization. Also, any persons or entities with an interest in that land, including potential buyers, must be able to see that someone is in use or possession of that land, and must contest for it.

The use must be *continuous*, not sporadic, in order to eventually become right to title.

*Exclusive* means that the occupants, or adverse possessors, must be able to exclude, prevent or deny access to the land, via fence, gate, lock or similar contrivance.

To be valid, an adverse possession claim must be established in a *peaceful* manner, not by violence, murder, war or military invasion. For the essence of the Adverse Possession Doctrine is to further Justice in the transfer of land ownership where there is no deed or the title is in question.

Many states have established a statutory time to establish transfer of title for land held under adverse possession. In New York, the state automatically recognizes the claim in ten years. This has been the subject of some misunderstanding. This does not mean that a claim must be established for that time. Rather, the validity of an AP claim is established by the five principles as outlined above. A court of law, judge or jury can use its discretionary equity powers to convey title of ownership prior to the statutory period. Indeed under Common Law, the APer has right to proceed in any manner as an owner in respect (of) use, development, enhancement and protection of the property.

Furthermore, the adverse possessor has the right to proceed and sue in Court, even prior to the statutory period, against any transgressor, squatter or trespasser the APer has right to Due Process of Law, as established by the 5th Amendment of the Constitution that reads "Nor shall any State deprive any person of Life, Liberty or Property without Due Process of Law, nor deny to any person within its jurisdiction the equal protection of the Laws."

The Chico Mendez case, in which community gardener went to court to prevent a developer from building a condominium, failed to assert the proprietary rights of the long-time gardeners who had united all five principles of Adverse Possession. They created the garden to abate a nuisance on a lot harboring rats, crime, etc., which gave them the justification necessary to occupy the site.

AP is an ancient legal premise based on Natural Law whose existence is necessary to preserve civil society. It prevents the underutilization of resources, and provides a just manner in which people without access to property may acquire fallow land.

Gardeners have the right to claim ownership, to Due Process of Law, and to counterclaim for damages when dispossessed or deprived of property and investments. The movement for the creation and preservation of gardens is seeking legal minds that are willing to engage the issue of proprietary rights, and to secure a bright green, healthy future for the City of New York.

See also [www.panix.com/blackout/~casa.html](http://www.panix.com/blackout/~casa.html) for further reference.