

**2013 HOUSE JUDICIARY**

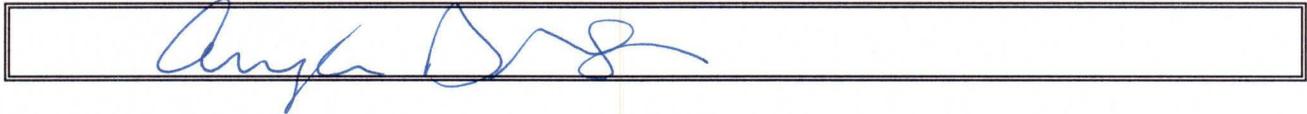
**HB 1377**

# 2013 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee  
Prairie Room, State Capitol

HB 1377  
January 29, 2013  
Job 17942

Conference Committee



## Explanation or reason for introduction of bill/resolution:

Adverse possession

## Minutes:

*Testimony 1, 2*

**Chairman Koppelman** opened the hearing.

**Rep Kylie Oversen** introduced the bill and testified (Testimony 1).

**Rep Klemin:** How were these sections selected and others were omitted?

**Rep Oversen:** This bill was drafted before I arrived. I was only asked to sponsor it.

**Rocky Fritz** (3:04) testified in support of the bill.

**Bill Newman, State Bar Association of North Dakota** (10:01) testified in opposition to the bill.

**Dan Kuntz, attorney with MDU Resources Group** (23:19) testified in opposition to the bill.

**John Olson, Ottertail Power Company** (32:38) testified in opposition to the bill.

**Harlen Fugelston, ND Association of Rural Electric Cooperatives** (33:04) testified in opposition to the bill.

**Sandy Tabor, Lignite Energy Council** (35:13) testified in opposition to the bill.

**Ron Ness, North Dakota Petroleum Council** (37:04) testified in opposition to the bill.

**Rep Larson** provided and summarized the written testimony from Claus Lembke, President of the Blue Lake Association (Testimony 2).

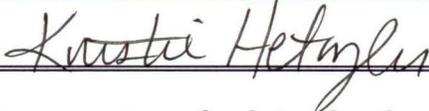
**Chairman** closed the hearing.

# 2013 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee  
Prairie Room, State Capitol

HB 1377  
January 30, 2013  
Job 17965

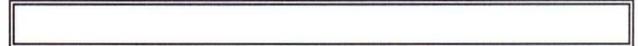
Conference Committee



## Explanation or reason for introduction of bill/resolution:

Adverse possession.

## Minutes:



**Chairman Koppelman:** Opens. Testimony we heard as that this is everywhere, what are other states doing?

**Rep Hanson:** I got the feeling we were ready for action on it? Motions Do Not Pass.

**Rep Steiner:** Second.

Discussion:

**Rep Klemin:** Discussing testimony. Agrees do not pass.

**Rep Kretschmar:** Summarizes the history of the code. Agrees with do not pass.

**Rep Bradandt:** How many personal disputes have risen because of adverse possession?

**Rep Klemin:** I don't think there is an answer to that question. Boundary line and fence line disputes.

**Rep Hanson:** From the realtor side, it is very rare.

**Chairman Koppelman:** Apparently if you start using your neighbors land, theoretically, if the neighbor doesn't object or say you can, perhaps you go into court after a period of time and say now it's my land and the neighbor would not be compensated for it, that is the piece I wandered about.

**(Speaker unknown):** If it's permissive, it's not adverse; you have to have some fact.

**Rep Kretschmar:** Most of the cases I have been involved with were easements, boundary disputes, usually farm land, not adverse possession.

**Rep Karls:** I felt bad when the man said I didn't know about adverse possession, my brother did.

Do Not Pass recommendation.

**Yes:** 14

**No:** 0

**Absent:** 0

**Carried by:** Rep Kretschmar.

**Chairman Koppelman:** Closes.

Date: 1-30-13  
Roll Call Vote #: 1

**2013 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. HB 1377**

House Judiciary Committee

Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken:  Do Pass  Do Not Pass  Amended  Adopt Amendment  
 Rerefer to Appropriations  Reconsider

Motion Made By Rep. Hanson Seconded By Rep. Steiner

Representatives	Yes	No	Representatives	Yes	No
Chairman Kim Koppelman	/		Rep. Lois Delmore	/	
Vice Chairman Lawrence Klemin	/		Rep. Ben Hanson	/	
Rep. Randy Boehning	/		Rep. Kathy Hogan	/	
Rep. Roger Brabandt	/				
Rep. Karen Karls	/				
Rep. William Kretschmar	/				
Rep. Diane Larson	/				
Rep. Andrew Maragos	/				
Rep. Gary Paur	/				
Rep. Vicky Steiner	/				
Rep. Nathan Toman	/				

Total (Yes) 14 No 0

Absent 0

Floor Assignment Rep. Kretschmar

If the vote is on an amendment, briefly indicate intent:

**REPORT OF STANDING COMMITTEE**

**HB 1377: Judiciary Committee (Rep. K. Koppelman, Chairman) recommends DO NOT PASS (14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1377 was placed on the Eleventh order on the calendar.**

**2013 TESTIMONY**

**HB 1377**

Testimony- HB 1377  
Representative Kylie Oversen  
House Judiciary Committee

Mr. Chairmen and members of the committee- My name is Kylie Oversen; I represent District 42 in Grand Forks. I am here today to speak to you in support of HB 1377.

For your reference, I have attached the statutes to be repealed by this bill. The statutes deal with the law of adverse possession. Basically, adverse possession allows an individual to acquire ownership of someone else's property by possessing it, using it, and acting as the owner of said land for an extended period of time. In North Dakota, that time is twenty years.

The complementary legal concept of adverse possession is the idea that if you have legal rights you must assert them or you may lose them. So, in cases dealing with property, if I am using your property and you do not ask me to discontinue use, the law may eventually consider me to have acquired ownership of the property.

This is a very dated and rarely used statute. However, when it has been applied, the landowner is often burdened with costly legal fees simply to prove that they indeed do own the land in question. If the individual attempting to gain ownership of the land through adverse possession prevails, they could gain ownership of property without paying an equal compensation to the landowner.

Mr. Chairmen and members of the committee, with that, I would like to hand the floor over to the individuals who wish to speak to their personal experiences with this law.

**28-01-07. Presumption against adverse possession of real estate.**

In every action for the recovery of real property or for the possession thereof, the person establishing a legal title to the premises must be presumed to have been possessed thereof within the time required by law, and the occupation of such premises by any other person must be deemed to have been under and in subordination to the legal title, unless it appears that such premises have been held and possessed adversely to such legal title for twenty years before the commencement of such action.

**28-01-08. Adverse possession when based upon written instrument.**

Whenever it appears that the occupant, or those under whom the occupant claims, entered into the possession of premises under a claim of title exclusive of any other right, founding such claim upon a written instrument as being a conveyance of the premises in question, or upon the decree or judgment of a competent court, and that there has been a continued occupation and possession of the premises included in such instrument, decree or judgment, or of some part of such premises, under such claim for twenty years, the premises so included must be deemed to have been held adversely.

**28-01-09. Acts constituting adverse possession based upon a written instrument.**

For the purpose of constituting an adverse possession by any person claiming a title founded upon a written instrument or upon a judgment or decree, land must be deemed to have been so possessed and occupied in each of the following cases:

1. When it has been usually cultivated or improved;
2. When it has been protected by a substantial enclosure;
3. When, although not enclosed, it has been used for the supply of fuel or of fencing timber for the purposes of husbandry, or the ordinary use of the occupant; or
4. When a known farm or a single lot has been partly improved, the portion of such farm or lot that may have been left not cleared or not enclosed according to the usual course and custom of the adjoining country, must be deemed to have been occupied for the same length of time as the part improved and cultivated, but when the premises consist of two or more contiguous lots, the possession of one lot may not be deemed a possession of any other of such lots.

**28-01-10. Extent of real estate affected by adverse possession not based on written instrument.**

When there has been an actual continued occupation of premises under a claim of title exclusive of any other right, but not founded upon a written instrument or upon a judgment or decree, the premises actually occupied and no other must be deemed to have been held adversely.

**28-01-11. Acts constituting adverse possession not based upon a written instrument.**

For the purpose of constituting an adverse possession by a person claiming title not founded upon a written instrument nor upon a judgment or decree, land shall be deemed to have been possessed and occupied only in the following cases:

1. When it has been protected by a substantial enclosure; or
2. When it has been usually cultivated or improved.

**28-01-12. When possession of tenant presumed to be possession of landlord.**

Whenever the relation of landlord and tenant has existed, the possession of the tenant must be deemed the possession of the landlord, until the expiration of twenty years from the termination of the tenancy, or, when there has been no written lease, until the expiration of twenty years from the time of the last payment of rent, notwithstanding that such tenant may have acquired another title or may have claimed to hold adversely to the tenant's landlord. Such presumptions may not be made after the periods herein limited.

**47-06-03. Title to real property - Adverse possession.**

A title to real property, vested in any person who has been or hereafter shall be, either alone or including those under whom that person claims, in the actual open adverse and undisputed possession of the land under such title for a period of ten years and who, either alone or including those under whom that person claims, shall have paid all taxes and assessments legally levied thereon, shall be valid in law. Possession by a county under tax deed shall not be deemed adverse. A contract for deed shall constitute color of title within the meaning of this section from and after the execution of such contract.

1-29-13

2

Hi Diane,

I may not be able to be present at today's hearing on 1377. The proposal is a repeal of this adverse possession law.

This law has helped us retain possession of an access road to a number of Cabins at Blue Lake (near Mercer by Brush Lake).

Today I am acting as the President of the Blue Lake Association.

Mr. Schock, the developer of our Lake Subdivision also owned the land on which our ½ mile access road is located. He platted and recorded

the plat including a right of way road along all of our lots. However he never dedicated that ½ mile access road.

That access road is now graveled and being maintained by the township and it has been openly and continually used by us and the public

for over 30 years. The owner has never protested or challenged us for the use of the road.

I believe that this road is eligible for Adverse Possession right. Repealing this law would take away our protection.

In my 40 plus years of Realtor experience I encountered the process of Adverse Possession only a couple of times, but it has helped in each case.

Please share this info with your committee.

Thank you!

Claus Lembke

President Blue Lake Association

Cell: 220-8628