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Wisconsin Law Update: Interrupting Adverse Possession and Adverse Use

Effective March 3, 2016, a new Wisconsin law provides that a record titleholder may interrupt adverse possession or prescriptive use of the titleholder's property by recording an "affidavit of interruption" with the register of deeds' office for the county in which the property is located.¹ The new law has been codified in Section § 893.305 of the Wisconsin Statutes. This interruption "restarts" the clock on adverse possession or adverse use claims, and such interruption is intended to stop adverse possession or adverse use claims from accruing to the required statutory possession period.²

Under Wisconsin law, adverse possession rights may accrue if a person, who in connection with his or her predecessors, adversely possesses real estate for 20 years when such adverse possession is not founded on a written instrument,³ 10 years when such adverse possession is founded on a written instrument⁴ or 7 years when such adverse possession is founded on a recorded title claim and payment of taxes.⁵ Additionally, Wis. Stat. § 893.28 provides that prescriptive easement rights may accrue if adverse use of another's property continues for 20 years. Under each of these scenarios the adverse possessor's possession or use of the property must be hostile or inconsistent with the exercise of the titleholder's rights and continuous, visible, open and notorious.⁶ Additionally, adverse possession requires that the property be occupied by a substantial enclosure or that it be "cultivated" or improved.⁷

In order to comply with the new Wis. Stat. § 893.05, an affidavit of interruption must be recorded in the office of the register of deeds of the county where the property is located together with a survey in a form specified in the Statute that is certified no earlier than five years before the date of recording.⁸ The record titleholder must also provide the notice required under the Statute, typically to the neighbor who is adversely possessing or using the real estate, or by publishing a Class 1 notice if the adverse possessor or user is unknown. The affidavit of interruption must include: (i) the legal description of the parcel that contains the property being adversely possessed or adversely used; (ii) a statement that the person executing the affidavit is the record owner; (iii) a description of the adverse possession or use that the record titleholder is looking to disrupt; (iv) a statement that adverse possession or adverse use is disrupted and that a new period of adverse possession may begin the day after the affidavit is recorded; and (v) a statement that the record titleholder will provide notice pursuant to section 893.305(4) of the Wisconsin Statutes.⁹

It is important to note that the effect of the affidavit of interruption is to interrupt the period of adverse possession or adverse use of the record titleholder's property, but it does not, on its own, prevent any future adverse possession or adverse use claims from accruing. Additionally, if adverse possession or adverse use rights have already accrued for the required statutory period, then the affidavit of interruption will not terminate those rights. However, a title holder should not be concerned that an affidavit of interruption will be construed as an admission of an adverse possession claim because the Statute explicitly states that an affidavit of interruption will not be construed as an admission by the titleholder that the property is being adversely possessed

or used.¹⁰ The Statute also provides that the affidavit of interruption is not an exclusive procedure, which indicates that other methods for resolving adverse possession or adverse use claims still exist and may be used simultaneously or in addition to the affidavit of interruption process.¹¹

How title companies and courts will interpret affidavits of interruption is not yet known because the Statute is so new. It will be interesting to see how the Statute is interpreted and whether it will effectively be used to thwart adverse possession or prescriptive use claims in the future.

If you have any questions regarding the above or possible use of such an affidavit, please feel free to contact Carolina Rodriguez-Hatt, Carol Muratore or any other member of the Godfrey & Kahn Real Estate Practice Group.

¹ Wis. Stat. § 893.305

² *Id.*

³ Wis. Stat. § 893.25

⁴ Wis. Stat. § 893.26

⁵ Wis. Stat. § 893.27

⁶ Wis. Stat. § 893.25; *Wilcox v. Estate of Hines*, 355 Wis. 2d 1 at 20, (2014);

Ludke v. Egan, 87 Wis. 2d 221 at 230 (1979)

⁷ *Id.*

⁸ Wis. Stat. § 893.305 (2)(a)

⁹ Wis. Stat. § 893.305(3)

¹⁰ Wis. Stat. § 893.305(7)(a)

¹¹ Wis. Stat. § 893.305(8)

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