

# Florida Adverse Possession Strategy

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*How to Take Adverse Possession of Realty and Stay Out of Jail*  
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This document discusses a strategy for alleviating America’s and Florida’s homeless problem through adverse possession free of undue interference from law enforcers.

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## Introduction

Adverse possession (AP), revealed in Florida statutes chapter 95, specifically 95.16 and 95.18) has become a hot topic in Florida. The sheriffs seem unable to see AP as a civil right. Those in some counties arrest adverse possessors (APers) for related crimes like grand theft, burglary, criminal mischief, breaking and entering, and trespass. Most people who take AP of a house cannot afford the legal problems stemming from such an arrest.

Foreclosure defense lawyer Randy Reder of Tampa seems to loathe adverse possession. He has better knowledge of law than I do. He recently wrote me:

A person claiming an interest by virtue of adverse possession has to adversely possess (basically trespass) for seven years and pay the taxes. So for those seven years the party in possession is a trespasser, a criminal who could be arrested. Even if an owner to property abandons it, that does not give anyone any rights to it. After the seven years, the person claiming adverse possession does not automatically get it. He or she then has to file a complaint with the court and obtain a court's judgment.

A claim for adverse possession can easily be defeated by the owner making it known that it is alright with him that they are in possession. Such acquiescence removes the element of possession being adverse.

I wrote back:

Thanks, Randy. Makes sense that an owner has right to property, but if the law gives a year to file notice of AP and a 7 year window of opportunity to get ownership, doesn't that mean the Legislature gives the APer a pass on trespass, in other words, makes it a civil and not a criminal matter?

Also, does the APer HAVE to provide the tax money, or do the taxes merely have to get paid? Obviously after a year of nonpayment if the tax collector files a tax lien and auctions a certificate, the cert holder can force a sale to get paid in the 3rd year. So what difference does it make WHO pays the tax so long as it gets paid?

Do you know of any case law on any of these or the below points?

He responded:

No, it's still criminal. Yes the APer has to pay the taxes. If someone else pays the taxes and gets a tax deed, they become the owner and are entitled to enforce a writ of possession five days after the tax deed sale. Yes there is case law on this, but it would be time consuming for me to research it and spell it all out.

## Can Government Make Adverse Possession a Crime?

Clearly, I shall have to research this matter, or use somebody else's research. You see, I refuse to believe AP has any criminal element. The government cannot lawfully make a civil right into a crime. Nor can the government lawfully block every practical avenue for exercising a civil right by making it into a crime or by some other device or artifice.

Government operatives must see existing laws as harmonious with one another. Thus, for example, a person who moves into someone's abandoned house thereby trespasses. However, a person who takes adverse possession of the same house in accordance with law thereby exercises a right inherited from English law. For the trespass, the sheriff may remove the trespasser. For AP, the sheriff may not remove the trespasser unless a court issues the owner a writ of possession. And, expectably, the court will issue that writ if petitioned by the owner.

Likewise, one commits grand theft by depriving an owner of the exercise of possessory dominion over the owner's realty; the sheriff may remove the interloper in shackles. However one commits no crime by taking adverse possession of realty which the owner abandoned; the sheriff on his own initiative must leave the APer alone, even if requested by the owner to eject the adverse possessor. The owner may remove the APer only through the sheriff acting under authority of a writ of possession issued by a court. And in this latter case, the APer has the right to receive notice of the action and to speak in his own interest on the matter to the judge in court. So goes my theory.

## Abandonment Puts Realty in a Dumpster

Now the following seems axiomatic:

“No Person can sell a thing he does not own, unless as the duly authorized agent of the owner. **Nemo Dat Quod Non Habet.**”

*Barnard v. Norwich & W.R. Co.*, 2F. Cas. 841, 845 (Cir. Ct. D. Mass. 1876).

However, if an owner abandoned the realty, that owner has effectively said “I don't want it any more and I'll have nothing to do with it.” In such a case the doctrine of “finders keepers” should apply. Thus, one who takes AP of that abandoned realty should have the right to claim not only possessory dominion, but also out-and-out *de facto* ownership of the realty. And so the doctrine of “losers weepers” should apply.

In such a case, the rightful owner effectively says “I authorize anyone who wishes to take possession and dispose of this realty as that possessor desires.” Abandonment constitutes such a bequeathal. And the APer should have the right to get a court to confirm it by awarding a deed to the APer. So goes my theory.

## Adverse Possession Time Limitation

Now, the AP statutes impose a time limitation, requiring the APer to file notice within a year and possess the realty notoriously (blatantly and without hiding the fact) and with hostility (not having permission of the owner), improve it, make boundaries obvious,

and pay taxes and other government fees for 7 years. This ordeal terminates the owner's right to remove the APer, who must then file a Quiet Title lawsuit to obtain title. Look at the laws for yourself:

## Adverse Possession Law in Florida

### 95.16 Real property actions; adverse possession under color of title.—

(1) When the occupant, or those under whom the occupant claims, entered into possession of real property under a claim of title exclusive of any other right, founding the claim on a written instrument as being a conveyance of the property, or on a decree or judgment, and has for 7 years been in continued possession of the property included in the instrument, decree, or judgment, the property is held adversely. If the property is divided into lots, the possession of one lot shall not be deemed a possession of any other lot of the same tract. Adverse possession commencing after December 31, 1945, shall not be deemed adverse possession under color of title until the instrument upon which the claim of title is founded is recorded in the office of the clerk of the circuit court of the county where the property is located.

(2) For the purpose of this section, property is deemed possessed in any of the following cases:

(a) When it has been usually cultivated or improved.

(b) When it has been protected by a substantial enclosure. All land protected by the enclosure must be included within the description of the property in the written instrument, judgment, or decree. If only a portion of the land protected by the enclosure is included within the description of the property in the written instrument, judgment, or decree, only that portion is deemed possessed.

(c) When, although not enclosed, it has been used for the supply of fuel or fencing timber for husbandry or for the ordinary use of the occupant.

(d) When a known lot or single farm has been partly improved, the part that has not been cleared or enclosed according to the usual custom of the county is to be considered as occupied for the same length of time as the part improved or cultivated.

### 95.18 Real property actions; adverse possession without color of title.—

(1) When the occupant or those under whom the occupant claims have been in actual continued occupation of real property for 7 years under a claim of title exclusive of any other right, but not founded on a written instrument, judgment, or decree, the property actually occupied shall be held adversely if the person claiming adverse possession made a return of the property by proper legal description to the property appraiser of the county where it is located within 1 year after entering into possession and has subsequently paid all taxes and matured installments of special improvement liens levied against the property by the state, county, and municipality.

(2) For the purpose of this section, property shall be deemed to be possessed in the following cases only:

(a) When it has been protected by substantial enclosure.

(b) When it has been usually cultivated or improved.

## Reduce the Time Limit?

The question now arises as to whether the APer can short-cut the 7 year limitation somehow. After all, why should the APer have to endure a 7-year nerve-wracking ordeal if the owner abandoned the property and essentially gave it away to whomever would adversely possess it?

I see no reason not to ask a court to award the deed prematurely, before expiration of the 7 year limitation. But I doubt that the court would grant it.

## **Tax Deed**

I can think of only one other method that does not require cooperation of the owner: tax deed. The APer could seek abandoned realty on which the owner owes unpaid tax. This will become difficult because most abandoned realty sits in some phase of foreclosure. In that case, the foreclosure plaintiff pays the tax from his own pocket or from an escrow account established on the owner's behalf and not yet depleted. However, finding such realty, the APer should take AP and buy the tax lien certificate, rather than pay the tax outright.

This makes sense strategically because the buyer of the tax lien certificate can force a tax deed sale in the third year of ownership of the certificate. At that auction, the buyer of the tax lien certificate might have the opportunity to become the sole bidder and then purchase the property for the tax owed plus the interest.

Some law enforcers foolishly think an APer must do comply with all the AP law requirements for 7 years *before* taking possession. One complained that the APer had not complied with the law because of not having yet filed a notice of AP 2 months into the AP.

## **Why Cops Hate Adverse Possession: Jealousy**

Law enforcers and reporters seem to hate AP for no apparent reason. Reporters almost never write even vaguely positive stories about AP. And, as one APer remarked to me today:

“I think the deputies feel economic jealousy. They see low-income families moving into nice houses in nice neighborhoods, nicer than the deputies can afford, and pay only \$600 a month. It makes the deputies angry. They think to themselves ‘Oh HELL no. This is NOT going to happen. Not on MY watch. Not in MY town.’ And so they try to ruin the APer's life.”

## **Strategic Adverse Possession and Quitclaim to Fight Fraud**

I personally think it makes best sense for an APer to find a way to get the cooperation of the owner in doing a strategic AP of the realty. The owner could issue a quitclaim or warranty deed to the APer, then the APer could rent it out to the owner or another party at a low price, and then they could work alone or together to fight the foreclosure. Why? Because:

1. Virtually every single-family residential real estate purchase has appraisal fraud at its base,

2. Virtually every institutional mortgage loan transaction has predatory lending and other fraud at every level, including fraudulent or illegal transfers/assignments and robo-signing,
3. Every securitization of mortgage loans has fraud, theft, and conversion in it,
4. Every foreclosure plaintiff's action contains one or more frauds on the court.

Realistically, a properly trained and motivated foreclosure defense warrior can become a dangerous marauder of the plaintiff's financial empire and win treble compensatory damages and enormous punitive awards for exposing predatory lending and securitization fraud. At the very least they can derail the foreclosure sale of the AP realty. And if they play their cards right, their efforts can result in prosecutions of plaintiffs and their counsel for their frauds and criminal malfeasance.

Even without proper training, an APer/owner can hire experts in finding and analyzing the fraud in appraisals, mortgage loans, foreclosures, securitization, and taxation. Such experts and remorseless litigation can bring big rewards, enough to make AP's highly successful enterprise.

### **What Abandoneers Want**

Most abandoneers (owners of record who abandoned their realty) want absolutely nothing to do with the realty and intend never to return to it or have anything to do with it. Most have stopped all money flows toward maintenance, mortgage payments, insurance payments, homeowner dues, and taxes.

For the above reasons, abandoneers might gladly execute a quitclaim deed to the APer in exchange for \$100 or an agreement to share some of the proceeds of a litigation win. In general, it makes sense to have the owner's good will and cooperation as a witness. For example, an APer should strive to obtain copies of all the owner's realty purchase, loan, and foreclosure-related documents, and all maintenance records on the realty. Thus, an APer should strive to build a good relationship if any with the owner.

### **Reason to Withhold Some Information**

On the other hand, I consider it dangerous to the AP / foreclosure defense enterprise to give the owner too much information until after the APer has obtained a deed or agreement of revenue sharing from the proceeds of the foreclosure defense and fraud litigation.

### **Cash for Keys**

APers of foreclosure-abandoned realty often enjoy the boon of a cash-for-keys offer from the foreclosure plaintiff. The plaintiff wants the occupant to leave the realty without a squabble or fight within some short period of time, like 30 days. The plaintiff offers \$2,000 to \$5,000 for such a quick, hassle-free exit, leaving the house "broom clean."

An APer who rents the property to another party can agree in advance to split such a fee and move quickly to another location.

### How an Adverse Possessor Should Behave

An APer should always treat the realty with pride and respect, and encourage anyone renting it to do so. Ideally, the APer who rents the realty out should personally inspect it monthly, collect rents without fail or evict the tenant, and personally ensure the good grooming and care of the grounds and structures, including painting, lawn care, garden care, repairing damage or wear and tear. The APer should not become a reckless opportunist, but rather do good for the realty and the community, making friends with residents and assisting neighbors.

### Two Men and a Truck

The APer who rents to others should have two men and a truck available at all times to move a tenant from one house to another in the event the owner seeks an eviction. The APer should never force the owner to go through a full eviction process, but merely inform the owner of the intention, whereupon the APer should move the occupant to another AP realty.

### Everybody Wins from Adverse Possession

Finally, realize that while AP provides benefits for EVERYONE affected by or involved in it, YOU will pay the cost of it, including the cost of dealing with whatever goes wrong, like neighbors complaining to the police about you or resenting you for living in a nice house while poor (or some other prejudice), or the police might stir up trouble with the abandoneer.

### Outline of Strategy to do AP without Trouble with Sheriffs.

- 1. Don't Move In.** If you move in before making proper legal preparations, the sheriff might arrest you.
- 2. Investigate.** Discover all you can about the realty, taxes, foreclosure pending, liens and assessments, physical characteristics (see county tax records and property appraisal records, including plat map and overhead view on line), whereabouts of the owner (such as by sending a letter and demanding address correction), reason the owner left, nature of the owner (talk to neighbors, look for police record in the county).
- 3. Analyze.** Calculate the costs of the AP and managing and defending the realty. Determine whether you want to take AP of and maintain the realty, based on your needs and goals, resources, potential trouble, costs. Show these on a balance sheet along with your available resources.
- 4. Decide.** Realize that you can turn back, but any adventure like AP can cost you jail time, bond / bail money, public scorn, official oppression, and so on. Do you

want to pay the price? Can you handle any emergencies you or others create over the phases of AP and foreclosure defense? If yes, DO IT.

5. **Inform.** The state requires that an APer file a DR452 form with the County Property Appraiser. This informs the county. You also might consider informing the sheriff and the rightful owner. If you inform the rightful owner in the correct way, the owner might simply ignore your living in the property because of the knowledge that you will care for it, improve it, and pay the taxes.
6. **Prepare to Lien.** If you inform the owner prior to move-in, let the owner know that you require payment in US minted silver coins at a reasonable labor rate for your work and out of pocket expenses to maintain and improve the realty, and that you will file a mechanic's lien against the realty.
7. **Accounting.** Keep a daily activity and expense log accurately and prodigiously, noting all out of pocket expenses, invoices paid, labor, mileage, and projects you do. You will need these to prove your expenses. Save all receipts and make an electronic record of them if possible. Do not cheat on this record.
8. **Inventory.** Take careful inventory, including photographs and notes, of the contents of the realty, including trash, remaining chattel and its condition, disposition of it, vegetation, structures, and any and all damage to the property that makes it less than ideal. Get this witnessed and notarized.
9. **Maintain.** Start any maintenance work on the property, caring for the yard, putting utilities in your name, and so on, but don't move in until 30 days have passed. This allows ejectment or eviction laws to kick in. In most jurisdictions, after someone has occupied a property for 30 days, the sheriff cannot remove them through trespass laws. Rather, the rightful owner must sue for a writ of possession and serve it on the sheriff. If you learn of such a writ court action, honor it BEFORE the court orders it. Move out and don't look back. But, file a lien for all your costs and labor time for maintenance.
10. **If You Move Out.** If you must move out because of the owner, court, or sheriff forcing you to, leave the place spotless and in excellent condition better than you found it, and photograph the result, and get an affidavit about it notarized. Then prepare a full accounting of your costs in maintenance and improvement, and file a mechanics lien against the realty with the county clerk. This can allow you to get your expenses and labor paid if the realty goes to foreclosure sale.
11. **Habeas.** File a petition for writ of habeas corpus seeking to get sheriffs to stop official oppression of adverse possessors. Sheriffs in Pasco, Polk, Hillsborough, Sarasota, and Palm Beach Counties have arrested APers, accusing them of crimes like criminal mischief, breaking and entering, grand theft, swindle, burglary, and trespass.
  - a. Habeas petitions cost nothing to file in Florida
  - b. A habeas petition can provide an entry to motions for injunctive and declaratory relief, thus lowering the cost of litigation
12. **Injunction.** Seek injunction against the sheriff arresting you for trumped up crimes because of adverse possession.
13. **Declaratory Relief.** Seek declaratory judgments on the following:
  - a. **Civil Right.** AP constitutes a civil right inherited under the English Law of Florida and acknowledged by Florida Statute, particularly 2.01, 95.16 and 95.18

- b. **Right to Possess.** AP of abandoned realty constitutes the claim of right of possession of realty which the owner discarded, as one might discard a potentially valuable item into a dumpster.
- c. **Right to Title.** Because owner abandoned and discarded the AP realty, the owner thereby leaves the title to the realty open to anyone who claims it and exercises possessory dominion through AP.
- d. **Usufruct.** Such AP operates under the doctrine of usufruct, the right to make all the use and profit of a thing that can be made without injuring the substance of the thing itself.
- e. **Not Trespass.** Such AP does not constitute trespass.
- f. **Regardless of signs.** Such AP does not constitute trespass even if the realty bears prominent “no trespassing” signage.
- g. **Not Theft.** Talking AP of abandoned realty does not constitute depriving an owner of the right of possession, for the owner has shown the intent never to return to the property by abandoning it.
- h. **AP = Civil.** Filing of the notice of AP and physically taking possession of abandoned realty constitute the only two actions necessary to prove intent of AP and to move the possession from criminal to civil.
- i. **Abandonment Defined.** Abandonment means the voluntary surrender of property (or a right to property) without attempting to reclaim it or give it away. A preponderance of the following items signify abandonment of realty:
  - i. Removing virtually all reasonably valuable chattel, leaving the property empty or essentially/virtually empty -
  - ii. Leaving behind trash, junk, and/or debris (not having cleaned the house with care), in spite of leaving behind a few clothes, junk furniture, file cabinet, or boxes of personal effects.
  - iii. Removing tools, estate maintenance equipment, and vehicles from the premises.
  - iv. Filing of a lis pendens by a foreclosure plaintiff.
  - v. Leaving no word with neighbors as to whereabouts of owner or status of property
  - vi. Leaving word with anyone else of intent to abandon
  - vii. Shut off of utilities or failure to pay utility bills
  - viii. Failure to pay property tax
  - ix. Failure to pay homeowner association dues
  - x. Failure to maintain yard
  - xi. Forwarding address to another residence left at the post office
  - xii. Owner's oral or written admission of abandonment of realty.
- j. **Intervention.** APer has right to intervene in any administrative or judicial action seeking to deprive the owner of record of ownership or possessory rights in the abandoned realty, including any effort to force a foreclosure sale of the realty.
- k. **Recovery of Expense of AP.** If the Sheriff or rightful owner forces the APer from the realty, APer has right to recover from the forcing party/ies or the estate jointly or severally all costs and expenses of possessing and maintaining the AP realty, and

- l. **AP Lien.** to file a mechanic's lien against the realty with the County Clerk.
- m. **Tort and Abuse of Process.** Any law enforcer who under color of law threatens or forces removal of APer for any reason other than physically stealing or destroying valuable parts of the realty, disturbing the peace, creating a public nuisance, or who initiates contact with and connives with the owner to accuse the APer of trespass or any bogus crime, such as to imply, insinuate, or state that owner will become liable if APer damages the realty, commits a tort against the APer and violates FS 843.0855, simulating legal process under color of law.
- n. **Not B&E.** An APer does not commit Breaking and Entering or any other crime by entering the premises through locked gate, entering the house through locked door or window, scaling a protective wall or fence, or changing the locks as ncessor to take AP and exercise possessory dominion over the realty.
- o. **Not Burglary.** An APer does not commit burglary or any other crime by removing and discarding trash, debris, detritus, rubble, junk, weeds, or obtrusive, unkempt shrubbage and other vegetation.
- p. **Not Mischief, Vandalism.** An APer does not commit criminal mischief, vandalism, or any other crime by taking necessary actions to maintain and improve the realty, including erecting new structures in accordance with code and deed restrictions, painting, re-roofing, or resurfacing in accordance with deed restrictions, replacing damaged or worn items like flooring and cabinetry, suitably replacing damaged or unsightly vegetation.
- q. **Benefits All.** The APer, by taking AP and maintaining or improving the property, and paying taxes and other fees, provides a valuable, laudable benefit for the realty, neighborhood, neighbors (particularly property values), community, home owner association, county, law enforcers, state, owner, and lienholders, including the foreclosure plaintiff.
- r. **Fulfills Mortagor Obligation.** The APer of most homes abandoned in foreclosure actually fulfills obligations of the mortgagor stipulated in the mortgage security instrument regarding maintaining the realty in good condition, and this provides an enormous benefit to both the mortgagor and mortgagee.
- s. **Right to Occupy or Rent to Another.** The APer has the right to dwell on the realty or to allow any nuclear family to dwell on the AP realty, to advertise for such a family, to charge a fee for that family to dwell there, and to do so without divulging the nature of the realty as an AP realty. The APer may declare "I have the right to exercise possessory dominion over this realty, and you have the legal duty to pay my asking price for dwelling on the realty, and I have the right to evict you if you fail to pay me according to your terms of occupancy."
- t. **Right to Sell Usufruct.** The APer has the right to sell, assign, lease, rent, loan, and/or transfer the usufruct, including possessory rights in the AP realty and enjoyment of its fruits to another party, and to provide a

deed memorializing the sale of rights which the receiving party may register with the County Clerk.

- u. **Register Declaratory Deed.** The APer has the right to register a declaratory deed with the County Clerk regarding the APer's own right of possession of the realty against all interlopers other than the owner of record.
  - v. **Lis Pendens.** The APer has the right to file with the County Clerk a [Lis Pendens](#) to make any prospective purchaser aware of the APer's possession of the realty.
  - w. **Sheriff Hands-Off.** If the APer provides the County Sheriff with a copy of the notice of AP, then the Sheriff shall interpret that as a "hands-off" notice and shall take it to mean the Sheriff shall the APer and occupants rights under Florida Constitution Article I Section 21 (“**Right of privacy.**—Every natural person has the right to be let alone and free from governmental intrusion into the person’s private life except as otherwise provided herein.”), and shall not harass the APer or the occupant of the AP realty, shall not inform, harass, alarm, or stir-up the rightful owner against the APer, shall defend the APer against all interlopers, and shall counsel the rightful owner to take court action under FS Chapter 82 in order to remove the APer from the property, and NOT to attempt to use a trespass complaint to effect the removal.
  - x. **Reasonable Time to Vacate.** In the alternative to the immediately preceding item, the sheriff must provide adequate opportunity, such as one to two weeks, for APer to find another residence, gather belongings, and remove them and the family in the event the rightful owner seeks to execute a trespass warning against the APer in the first 30 days of AP.
  - y. **Proper Eviction.** After 30 days of AP, whether or not the APer physically lives on the realty, the rightful owner and sheriff must resort to the means FS Chapter 82 to remove the APer.
14. **AG Opinion.** Seek the opinion of the Florida Attorney General under FS 86.091 regarding each of the above-enumerated declarations of rights. If the AG declines to opine, seek the opinion of the State Attorney.
15. **Orders.** For each of the above declarations, prepare a corresponding declaratory judgment or order and urge the judge to sign it.
16. **Move In.** After the APer knows the sheriff won’t harass or arrest the APer or occupant, the APer or occupant can move into the AP property.

### Success for One Adverse Possessor = Success for Most

If you succeed sufficiently in getting the declaratory judgments and/or injunction, the sheriff will leave you alone until the court orders your eviction. These will provide you effectively with a form of *carte blanche* to take adverse possession of realty in your judicial circuit. If you obtain a favorable AG opinion, then sheriffs all over the state will leave adverse possessors pretty much alone, so long as they don’t destroy the realty or its appurtenances or structures. If the trial court denies your motions for declaratory judgments, you may appeal the rulings. If the Court of Appeals rules in your favor, the ruling will bind lower courts and sheriffs in all the counties in the district.

### **Caveat: Verify with Case Law**

As to case law, I don't have supporting case law yet for the various points of declaratory judgment and injunction enumerated above. You could err terribly by following the suggestions in this document. I do not intend them as legal advice. You should consult an attorney knowledgeable in title law before risking jail and legal expenses over an ill-advised adverse possession. However, I believe if enough people do adverse possession, particularly in this time of record home abandonment and residential vacancies, and rampant foreclosures nationwide, society's pressure to find and occupy livable homes has reached the boiling point and may explode in the pressure cooker of the present financial crisis and the mortgage crimes that caused it.

For this, adverse possession provides the only practical solution.

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