



Adversity in Action: Understanding Adverse Possession

WENDY LATHROP, PLS, CFM
CADASTRAL CONSULTING, LLC

Same or different?

- ▶ Deed line
- ▶ Ownership line
- ▶ Occupation line
- ▶ Property line
- ▶ Boundary line

Title, defined

"Title is the means whereby the owner of lands has the ***most possession*** of his property. The union of all the elements which constitute ***ownership....***"

(Black's Law Dictionary)

Ownership, defined

“Collection of rights to use and enjoy property, including right to transmit it to others...The entirety of the powers of use and disposal allowed by law....The right of one or more persons to possess and use a thing to the exclusion of others....”

(Black's Law Dictionary)

Possession, defined

".... A person who knowingly has direct ***physical control*** over a thing, at a given time, is then in ***actual*** possession of it.

“[One] who, although not in actual possession, knowingly has both ***the power and the intention*** at a given time to exercise dominion or control over a thing, either directly or through another person or persons, is then in ***constructive*** possession of it...”

(Black's Law Dictionary)

Forms of possession

- ▶ Bare or Naked
- ▶ Actual
- ▶ Constructive
- ▶ Peaceable
- ▶ Adverse

Seisin, disseisin, & adverse possession



What makes possession “adverse”?

- ▶ Open
- ▶ Notorious
- ▶ Hostile
- ▶ Exclusive
- ▶ Continuous for statutory period
- ▶ Color of title
- ▶ Taxes

Actions for Recovery of Real Property Interests in VT

- **12 VSA §501.** Recovery of lands
- **12 VSA §502.** Entry into houses or lands
- **12 VSA §503.** Covenant of seisin
- **12 VSA §504.** Covenant of warranty
- **12 VSA §551.** Minority, insanity or imprisonment

Limitation of Actions in VT

12 VSA § 501. Recovery of lands

Except as otherwise provided in 32 V.S.A. § 5263, an action for the recovery of lands, or the possession thereof, shall not be maintained, unless commenced within **15 years** after the cause of action first accrues to ***the plaintiff or those under whom he or she claims.***

Adverse possession ≠ Parol agreement

Adverse possession ≠ Practical location

Cases involving a boundary agreement generally require three elements:

- (1) a dispute or uncertainty regarding the location of the boundary;
- (2) an oral or implied agreement settling the matter; and
- (3) possession to or recognition of the line by the parties for some period of time.

Adverse Possession ≠ Trespass

Trespass: “An unlawful interference with one’s person, property or rights.”

Trespass to land: “... every unauthorized and direct breach of the boundaries of another’s land...”

Trespasser: “A person who enters on the property of another without any right, lawful authority, or an express or implied invitation or license.”

- *Black’s Law Dictionary*

13 VSA § 3705. Unlawful trespass

(a)(1) A person shall be imprisoned for not more than three months or fined not more than \$500.00, or both, if, without legal authority or the consent of the person in **lawful possession**, he or she enters or remains on any land or in any place as to which notice against trespass is given by:

(A) actual communication by the person in lawful possession...

(B) signs or placards [giving] reasonable notice; or

(C) in the case of abandoned property....

Why Torts matter (Trespass is one)

- ▶ **Definition:**

- ▶ “A private or civil wrong or injury, other than breach of contract, for which the court will provide a remedy in the form of an action for damages...”

- ▶ **Elements of tort action**

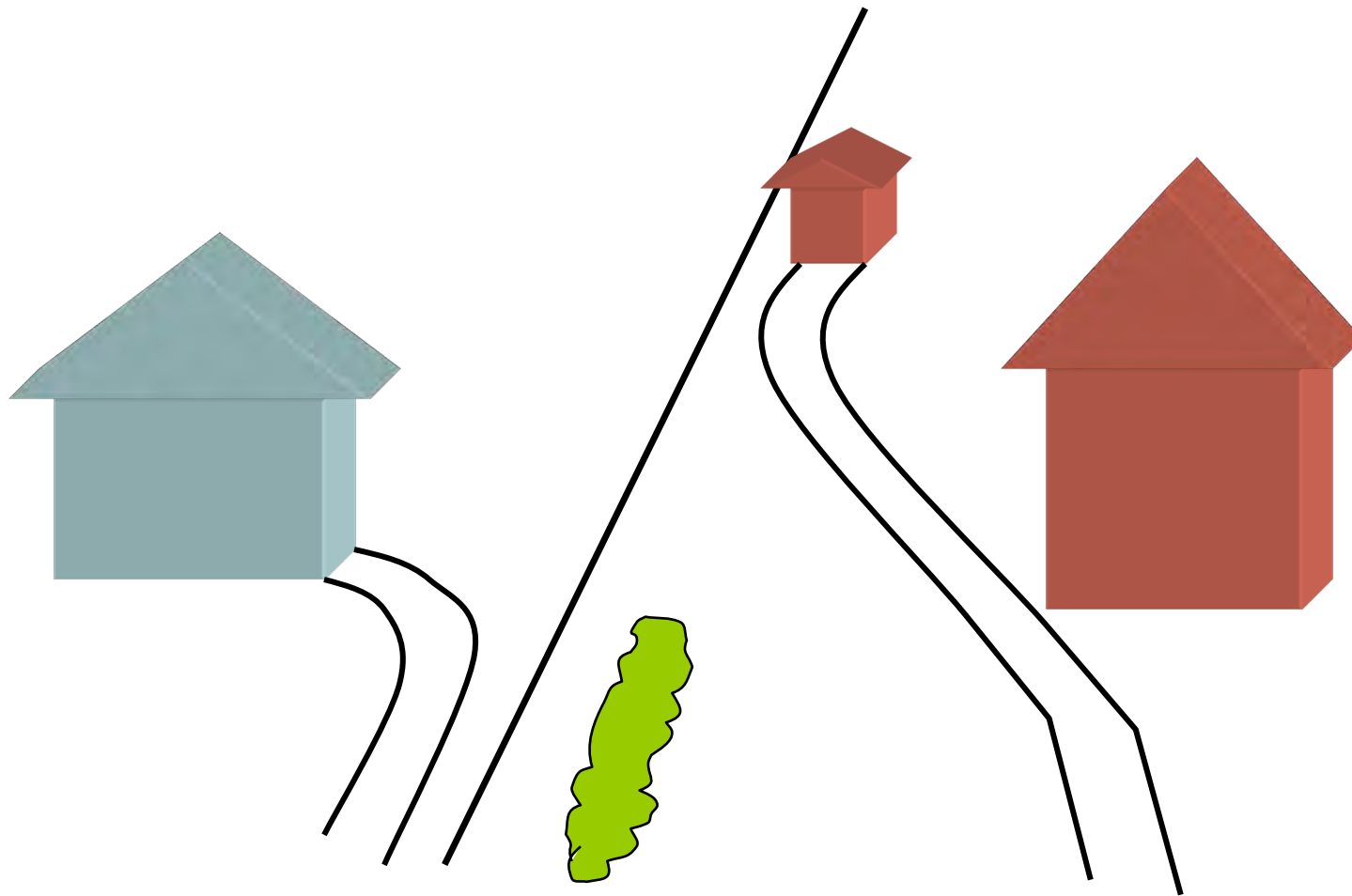
- ▶ Existence of a legal duty from defendant to plaintiff
- ▶ Breach of duty, and
- ▶ Damages as a proximate result

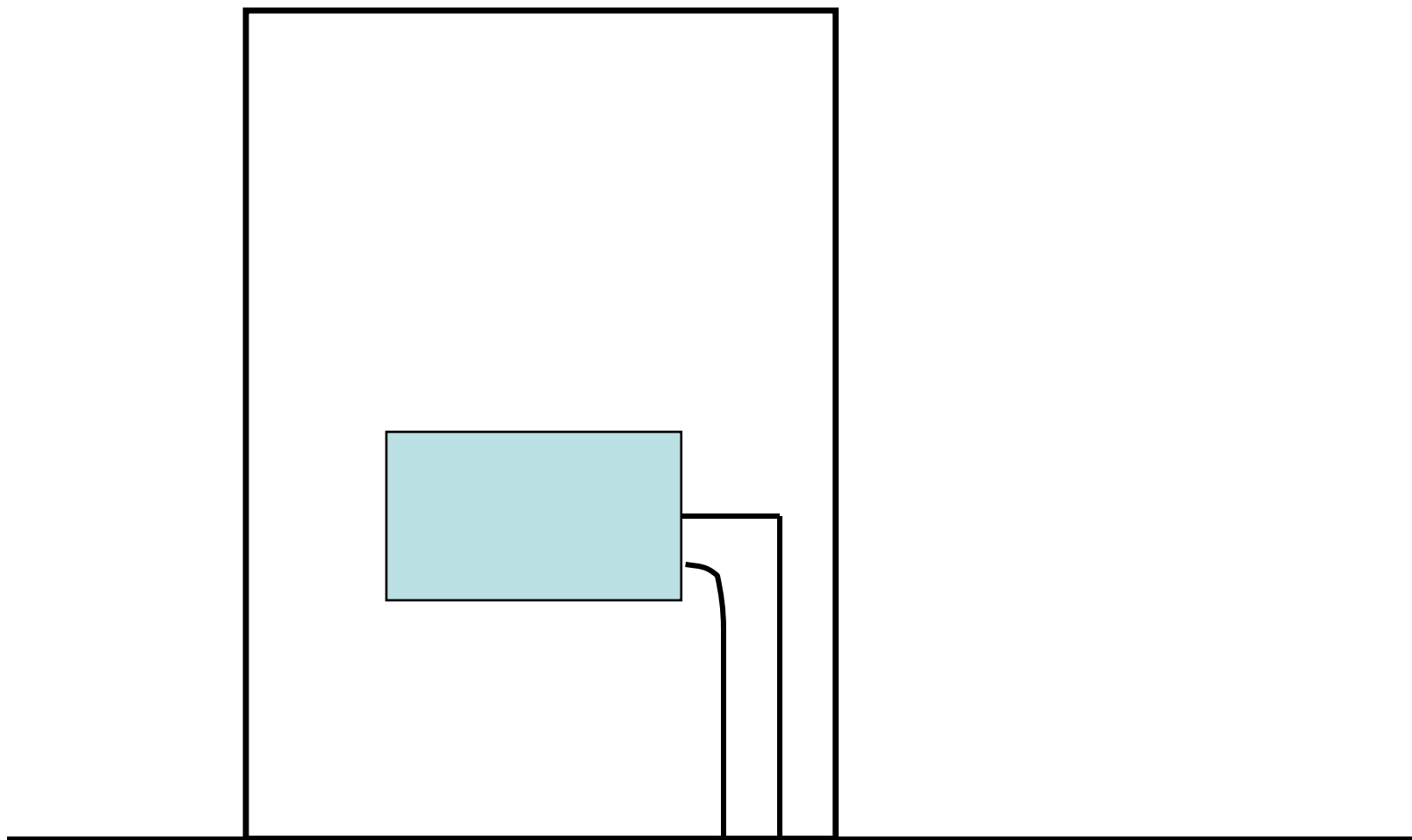
27 VSA § 4. Right of entry for survey

In cases wherein the title to lands, tenements, or hereditaments may come in question, or in order to establish boundaries between abutting parcels, a licensed surveyor with the necessary assistants employed by any of the parties to such disputed title, may enter ... for the purpose of running doubtful or disputed lines and locating or searching for monuments, establishing temporary monuments and ascertaining and deciding the location of the lines and monuments of a survey...

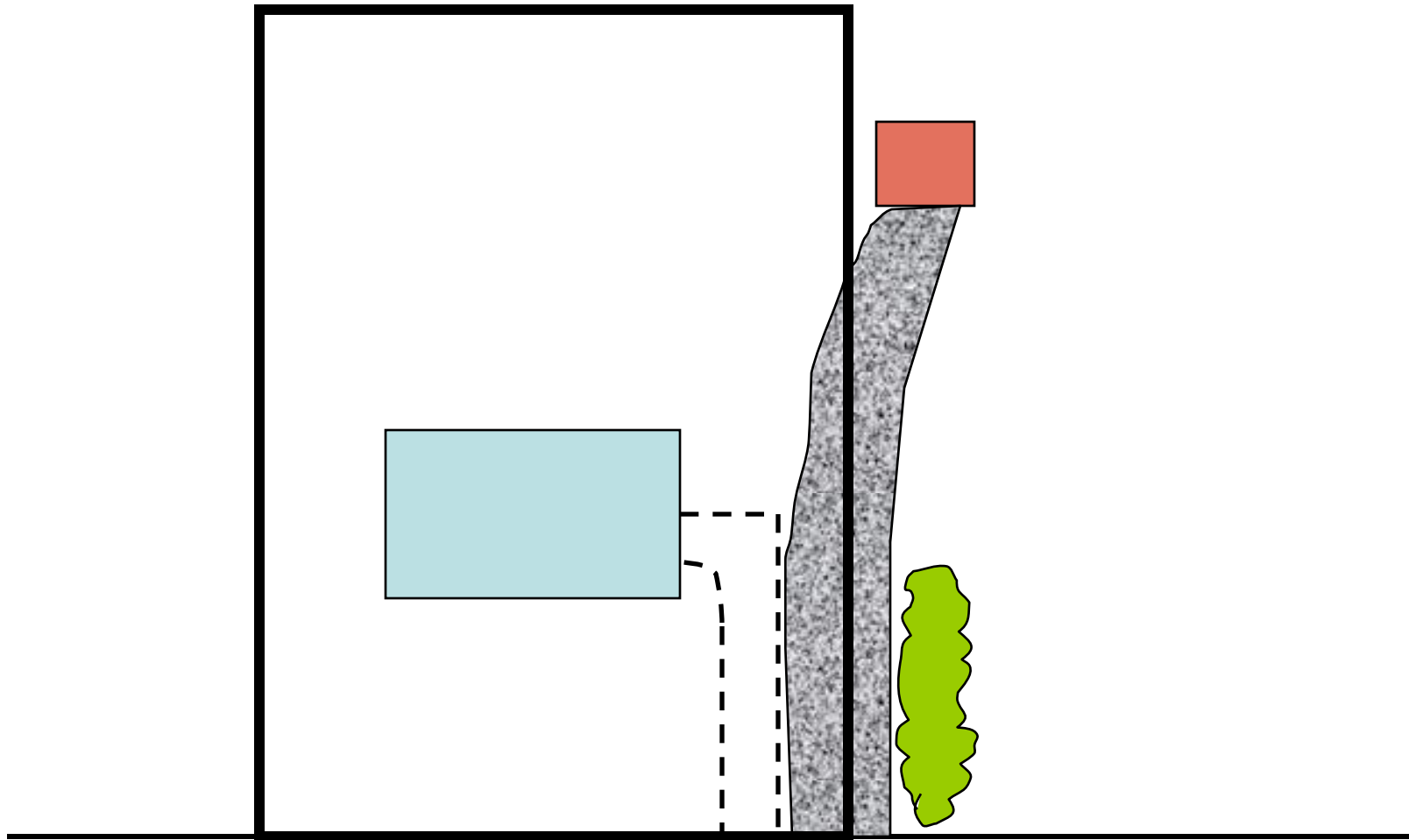
Prescription ≠ Adverse Possession

- ▶ Open
- ▶ Notorious
- ▶ Exclusive
- ▶ Continuous for statutory period
- ▶ Under claim of right
- ▶ For **use**, not ownership





EGLANTINE ROAD (50' ROW)

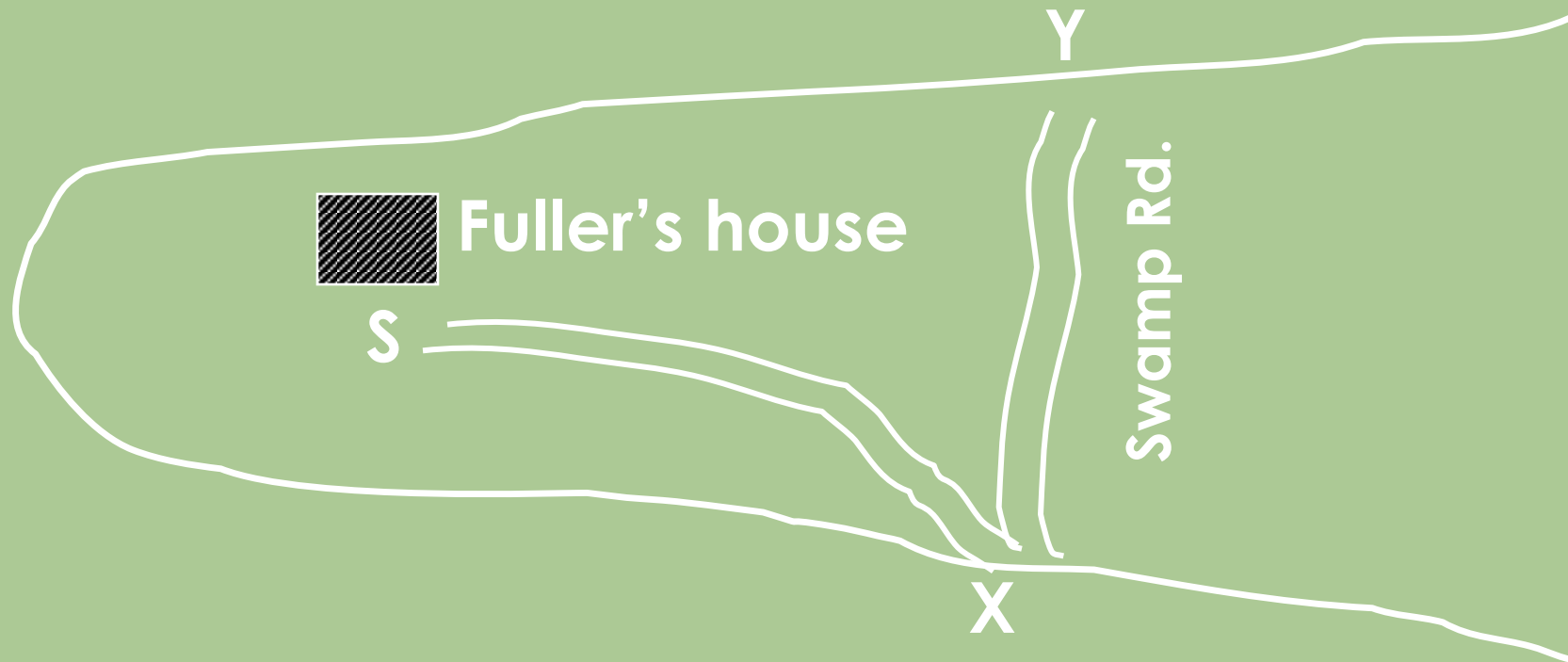


EGLANTINE ROAD (50' ROW)

Fuller v. Watkins

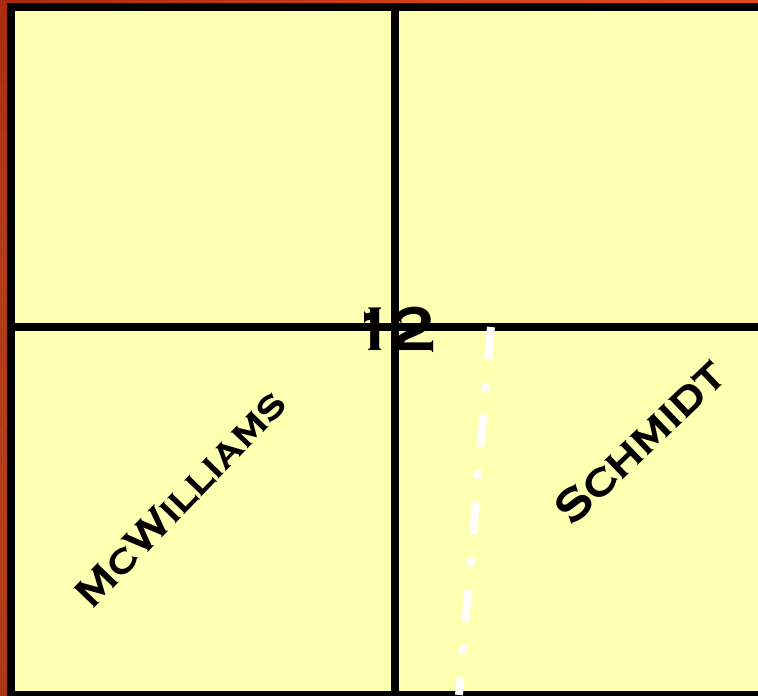
90 A 2d 444, Supreme Ct. of VT, 1952

- ▶ “A right-of-way by permission is not adverse ...and [will] not ripen into title however long continued.”



McWilliams v. Schmidt

61 SW 3d 898, Ct. of Appeals of Arkansas,
Div. IV, 2001



How adverse is “adverse”?

McWilliams’ claim to the fence
and his claim to only what he
owns are not the same.

**Sometimes a fence is just a fence, but
sometimes it's meant to be a pain**

**24 VSA §3817. Unnecessary fence; maintenance
prohibited; penalty**

A person shall not erect or maintain an unnecessary fence or other structure for the purpose of annoying the owners of adjoining property by obstructing their view or depriving them of light or air. A person who violates a provision of this section shall be fined not more than \$100.00.

How much possession is necessary?

Lessee of Ewing v. Burnet

36 U.S. 41, Supreme Ct. of the US, 1837

- ▶ This argument over a steep lot in Cincinnati is cited nation-wide when proving the extent of adverse claims over an unimproved property.