

**To: Partner**  
**From: Associate X**  
**Re: Katniss Adverse Possession claim**

We have been asked to analyze Katniss's adverse possession claim to a cabin used by her and her father for many years.

To obtain title by adverse possession, Katniss must show that her occupancy was:

- Continuous
- Hostile
- Open and notorious
- Actual
- Exclusive
- For the statutory period

We need to research the statutory period for adverse possession in this jurisdiction, since it is currently unknown. I will note throughout the analysis where the length of the statutory period is critical to the outcome.

### **1. Was Katniss's occupancy continuous?**

The first thing Katniss must show to prevail on her adverse possession claim was that her occupancy was continuous for the statutory period.

The primary issue here is that Katniss only used the cabin part of the year – as a hunting cabin during the hunting season. Therefore, Mike may have an argument that her occupancy was not sufficiently continuous (because it wasn't year round).

However, Katniss is likely to prevail on this point, under the *Howard v. Kunto* doctrine. In that case, part-year occupancy of a summer cabin was held sufficient for "continuous" occupancy. The court there looked at two factors: How neighboring cabins were used and the degree and type of improvements made by the adverse possessors.

In this case, some of the neighboring cabins were used year-round, but others were used only during the hunting season. Although this is a closer call than in *Howard* (where *all* of the cabins were summer-only use), the court is likely to hold that Katniss's use was typical of the area, and is therefore sufficiently continuous.

Similarly, Katniss made fewer improvements than in *Howard*, but she did perform routine maintenance and fixed broken windows and leaks. Given the relatively minimal requirements of a functional hunting cabin (which doesn't require fancy permanent improvements), performing such maintenance is likely sufficient to establish on-going occupancy.

If the court agrees that her part-year occupancy was sufficient, Katniss should be able to provide evidence to show she was in occupancy, including leaving

equipment in the cabin between visits, setting fires, sleeping there overnight, and so on.

Therefore, Katniss will likely be able to satisfy the “continuous possession” element (assuming she can meet the statute of limitations in this jurisdiction).

## **2. Was Katniss’s occupancy hostile?**

Katniss must show that her occupancy was hostile to Mike’s interests to prevail on her AP claim.

This should be an easy showing for her to make, because Mike confronted her when he saw her using the cabin and both parties claimed ownership of the cabin. Prior to that, Katniss (or her father) had placed a lock on the door, clearly establishing her hostility to Mike’s ownership interests by locking him out of his own cabin.

It is somewhat unclear from the facts whether Katniss *believed* she had inherited the cabin from her father, or whether she knew he was squatting in the cabin. In either case, her interest is sufficiently hostile (see *Manillo*, where even a mistaken claim of title was held sufficient to establish “hostility”).

Therefore, Katniss will almost certainly prevail on the “hostile” element.

## **3. Was Katniss’s use open and notorious?**

Katniss must show that her use of the cabin was open and notorious, to a reasonably observant owner and/or the public at large.

For the purposes of this analysis, I will ignore Mike’s mental state, because that is being separately analyzed.

In general, Katniss’s use was sufficiently open and notorious (even if Mike never visited to see it). She left items in the cabin, slept there overnight, set fires, and put a lock on the door. Any reasonably observant owner would have noticed these activities and known to look for potential trespassers.

Therefore, Katniss is likely to prevail on this point.

## **4. Was Katniss’s use an actual trespass?**

Katniss must show that she trespassed and used the cabin as if it was her own.

She should have no problem satisfying this element, because she visited the cabin regularly during the hunting season, stayed overnight, put a lock on the door, set fires, and so on. All of these are activities that would be undertaken by an owner.

Therefore, Katniss is likely to prevail on this point.

### **5. Was her use exclusive?**

Katniss must show that she was in exclusive possession of the cabin, and it wasn't shared with the owner or with members of the public at large.

She is likely to prevail on this point, although Mike can make an argument that Kantiss's use was *not* exclusive, because she came with her father (first) and brought her friend Gale along (later).

However, the test is whether Katniss was sharing occupancy with Mike or with the public at large, not whether she brought an occasional guest. (The reason for this requirement is to avoid confusion about who acquires title once the statute of limitations has run.)

Because Katniss locked the cabin to keep out unwanted visitors, only came with accompanied guests, and did not share occupancy with Mike or members of the public, she will likely be able to show that her occupancy was sufficiently exclusive to satisfy the requirements of AP.

### **6. Was her occupancy for the statutory period?**

Katniss's greatest difficulty will likely be showing that her occupancy exceeded the required statutory period.

At this point, we don't know what the SOL is for AP in this jurisdiction.

Katniss can show seven years of continuous possession on her own (2030-2037). If the SOL is less than seven years, she will likely prevail on her AP claim, having satisfied all the other required elements. This would be a relatively short SOL, but not unheard of.

If, as is more likely, the SOL is longer than seven years, Katniss will have to try to add time from her father's use, via the doctrine of "tacking."

#### Tacking

Tacking is a doctrine that allows the present occupier to add time from prior occupiers, if the parties have sufficient privity of estate.

In this case, Katniss's father used the cabin for five years before he brought her along, bringing the overall period of combined occupancy to 12 years, if her tacking argument is successful.

However, Katniss's tacking argument is unlikely to succeed, because both she and her father are trespassers (not good faith purchasers) and the court (as discussed in *Howard*) disfavors allowing two trespassers to tack. (The policy rationale behind this decision is that two trespassers squatting on land back-to-back shouldn't be allowed to gain title to the land because of their combined trespasses.)

Here, the court is likely to find there's no privity of estate between Katniss and her father, because both were trespassers, not purchasers. Consequently, they're unlikely to allow Katniss to add her father's five years of occupancy to her own, limiting her claim to seven years.

If the SOL for AP in this jurisdiction is less than seven years, Katniss is likely to prevail in her AP claim and gain title to the cabin. However, if it is seven years or more, her claim is likely to fail and title will remain with Mike.