It's Just Not Your Land

Walter and Rosemary Spallane are fortunate. They own about four acres on the beautiful southern end of Burden Lake.

The Spallanes didn’t inherit the land. They worked for it. They sweated and scrapped and saved for it.

Walt was a union ironworker. Rosemary mostly stayed home to raise three children. They’re blue-collar, hard-working people, and proudly so.

The Spallanes are in their seventies now. They’ve earned the right to an easy retirement. Buy their peace of mind has been assaulted by a bitter and unexpected court battle that’s making them anxious and draining their finances.

See, there’s a seasonal lakeside camp within view of the Spallanes’ home. And the extended family that owns that camp has filed a claim on a piece of the Spallanes’ property. The family headed by Catherine M. Bergmann says the land should be theirs.

Now, understand this: The Bergmanns do not own the triangular sliver of land, which is near their camp and includes about 30 feet of lake frontage.

I repeat: They do not own the land

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They simply claim that it should be theirs, because they have used it since buying the adjacent property in 1971.

You might think such a claim would be giggled out of court. But New York law does allow for so-called adverse possession claims — and if you’re a property owner, you’d should be acquainted with this “use it or lose it” aspect of law.

The Spallanes, after all, didn’t imagine this would happen, not after decades of ownership and tax payments.

The family, which bought the property and home in 1976, let the Bergmanns use the land in the summer, they say, because it just seemed like the neighborly thing to do. It was a verbal agreement, they say.

“We wanted them to keep in their minds that we own it, but you can use it,” said Walter Spallane Jr., who is Walt and Rosemary’s 47-year-old son. “That’s the way it has always been.”

For decades, the arrangement seemingly worked well.

But about three years ago, Walt Jr. explored the possibility of building a house on Spallane-owned land behind the Bergmann camp. Shortly after, the Bergmanns filed the adverse possession lawsuit in Rensselaer County Supreme Court.

I wasn't able to talk to members of the Bergmann family, who mostly live in Rensselaer County. That's probably because Paul Davenport, their attorney, advised them against talking to me.

Davenport agreed to an interview, though. And he conceded — and I apologize for overstressing this point — that the Bergmanns do not own the land.

But they always thought they owned it, Davenport claimed, and were surprised to learn a few years ago that they didn't.

"Both sides have strong feelings," the attorney said. "That's what lawsuits are for, to resolve these things."

OK, I'm not a lawyer, and I don't know if the Bergmanns have a solid adverse-possession claim from a court's perspective. But from my perspective, nearly all modern-day claims for adverse possession are, to use a bit of legalese, absolute hooey.

It should be simple: If you don't own land, then you don't own it.

If you want the land, then buy it. Just about every piece of property is for sale, if you offer enough.

And if you think you own the land, and it turns out you don't? Tough luck.

These are simple principles, and you'd think they'd be supported by law, especially in a state with such high property taxes.

Actually, lawmakers in 2008 made adverse possession much harder. Prior to the changes, simply mowing somebody's lawn for 10 years might be enough for a successful claim. But the Legislature wanted to prevent sneaky acquisition, so it significantly raised the standard.

"Now it has to go above and beyond simple maintenance," said Graig Zappia, a real estate attorney at Tully Rinckey in Colonie.

Zappia said the law now requires more obvious and continuous symbols of ownership — like a shed or garage that goes unchallenged for 10 years — for a successful adverse possession case.

But the Spallanes' situation suggests lawmakers didn't go far enough, if only because the cost of a defense against adverse possession is so exorbitant that some property owners simply decline to fight.

"This thing is milking me," said an exasperated and frustrated Walt Spallane Sr., who has already paid $20,000 defending the Bergmanns' claim.

With the actual trial still a long way off, his lawyer tells him the total bill could top $50,000.

Whoa. That's serious cash — and a serious tent in the Spallanes' retirement fund.

With that in mind, I wish you could see the disputed parcel. It's small — at about 90 feet long, barely enough for a good game of catch. And it looks to me like the Bergmanns, with half an acre of additional land on Burden Lake, could enjoy their camp just fine without it.

Of course, it might be also easy for the Spallanes to just walk away, to give up and cede ownership.

But the land didn't easily come to them. They worked and struggled for it. So as a matter of principle, they're not going to give it up without a fight.And why should they?

They own it — at least for now.