



## **Adverse Possession - *Usucapião* (or "Squatter's rights")**

***Usucapião*** (adverse possession), from the Latin *usucapio*: "to acquire by the use", is a form of acquisition of the rights of movable or immovable property in function of having used that asset for a certain length of time, continuously and unquestionably, as if the holder were the real owner. In English Common Law, the equivalent of *usucapião* is referred to as "adverse possession".

*Usucapião* is a legal entity that facilitates legitimate processes of property registries that, for various reasons, were never formally legalised. There are many cases of people who cannot register a property. They may want to sell but do not know the article of registration or the land description. Alternatively, *usucapião* can be useful in cases where someone has verbally acquired a property but failed to sign a deed or formally regularise the transaction. In these instances, possession by *usucapião* may provide an answer.

For example, the heirs of a rural property fail to take possession and the land is left abandoned. In recent years, a neighbour has cultivated the parcel without interruption as if it were his own. The neighbour requests a Notary to sign a notarial justification and three witnesses testify as proof of occupancy. The deed is subsequently published in the local newspaper and, after 30 days have elapsed with no complaint, the neighbour becomes the legitimate owner of the land.

### ***Usucapião* in the Civil Code**

The Portuguese Civil Code defines *Usucapião* in Article 1287° as the possession of the right of ownership or other real rights of enjoyment, maintained for a certain period of time, allowing the holder, unless otherwise stipulated, to acquire the ownership rights corresponding to its use. For *usucapião* to be recognized, it is necessary to observe certain requirements specified in law.



## **Good Faith**

Ownership must be by public deed and uncontested. When parties are assumed to be acting according to the covenant of good faith and fair dealings, then it is accepted that neither party will do anything to destroy the rights of the other party, or attempt to interfere with the benefits of the other party when entering into the contract. When bad faith is presumed, one party intends to supplant the other party's rights.

## **Immovable possession requirements**

If there is a title of acquisition and its registration, control takes place when possession is in good faith and has lasted ten years, counting from the date of filing. If possession is coercive, it must have lasted at least fifteen years from the same date.

When there is no document registering the acquisition of title but a log of mere possession exists, possession can take place if the holding has lasted five years, counting from the date of registration, and is in good faith; or if tenure has lasted for ten years from the same date in the case of bad faith.

When there is no registration of the title or mere possession, the *usucapião* can only happen after fifteen years in good faith possession, and twenty years, in possession of bad faith.

## **Requirements for the use of movable property**

When there is a title of acquisition and registration of movable property, the possession occurs after two years when in good faith, or four years in the event of bad faith. If there is no registration, the ownership occurs when tenure has lasted ten years, regardless of the owner's good faith and the existence of title. Regarding the use of things not subject to registration, transfer of ownership can occur when the possession, in good faith and founded in just title, has lasted three years, or when the holding, regardless of good faith and title, has lasted six years.