

§ 1-42. Possession follows legal title; severance of surface and subsurface rights.

In every action for the recovery or possession of real property, or damages for a trespass on such possession, the person establishing a legal title to the premises is presumed to have been possessed thereof within the time required by law; and the occupation of such premises by any other person is deemed to have been under, and in subordination to, the legal title, unless it appears that the premises have been held and possessed adversely to the legal title for the time prescribed by law before the commencement of the action. Provided that a record chain of title to the premises for a period of thirty years next preceding the commencement of the action, together with the identification of the lands described therein, shall be prima facie evidence of possession thereof within the time required by law.

In all controversies and litigation wherein it shall be made to appear from the public records that there has been at some previous time a separation or severance between the surface and the subsurface rights, title or properties of an area, no holder or claimant of the subsurface title or rights therein shall be entitled to evidence or prove any use of the surface, by himself or by his predecessors in title or of lessees or agents, as adverse possession against the holder of said surface rights or title; and likewise no holder or claimant of the surface rights shall be entitled to evidence or prove any use of the subsurface rights, by himself, or by his predecessors in title or of lessees or agents, as adverse possession against the holder of said subsurface rights, unless, in either case, at the time of beginning such allegedly adverse use and in each year of the same, said party or his predecessor in title so using shall have placed or caused to be placed upon the records of the register of deeds of the county wherein such property lies and in a book therein kept or provided for such purposes, a brief notice of intended use giving (i) the date of beginning or recommencing of the operation or use, (ii) a brief description of the property involved but sufficiently adequate to make said property readily locatable therefrom, (iii) the name and, if known, the address of the claimant of the right under which the operation or use is to be carried on or made and (iv) the deed or other instrument, if any, under which the right to conduct such operation or to make such use is claimed or to which it is to be attached. (C.C.P., s. 25; Code, s. 146; Rev., s. 386; C.S., s. 432; 1945, c. 869; 1959, c. 469; 1965, c. 1094.)