



**Report on  
Adverse Possession**  
逆權管有報告書

Law Reform Commission of Hong Kong  
香港法律改革委員會

The statistics shown in the table below is a rough indication of the volume of adverse possession disputes in Hong Kong.\*

以下列表所載的統計數字，大致顯示出香港涉及逆權管有的爭議數目。\*

	Urban land 市區土地			New Territories land 新界土地		
	in favour of the squatters 擅自佔地者勝訴	in favour of the paper owners 業權擁有人勝訴	Not applicable 不適用	in favour of the squatters 擅自佔地者勝訴	in favour of the paper owners 業權擁有人勝訴	Not applicable 不適用
2013 (36 cases 宗)	11		3	8	11	3
2012 (18 cases 宗)		2	3	6	5	2
2011 (15 cases 宗)	4	2		4	5	
2010 (16 cases 宗)	2	3	1	5	4	1
2009 (18 cases 宗)	1	3		2	10	2
2008 (15 cases 宗)	2	2		3	8	
2007 (10 cases 宗)		3		3	4	
2006 (11 cases 宗)	1	2		5	3	
2005 (9 cases 宗)					9	
2004 (11 cases 宗)		1		4	6	
2003 (8 cases 宗)	2	1		2	3	
2002 (13 cases 宗)	2	1		4	6	

\* The search was conducted in the "All Hong Kong cases" library of [www.lexisnexis.com](http://www.lexisnexis.com) for the relevant period. For cases which were heard by more than one level of court, for example in the Court of First Instance and then by the Court of Appeal, these are counted as two decisions. Decisions made in Chambers (eg. Application for summary judgment, striking out of defence, and entering of partial judgment) are included. The column "Not applicable" includes cases in which the squatter was also the "real owner". Examples include cases in which the paper owner was a mere trustee of the occupant/squatter; and cases in which the paper owner was unable to prove good title and had to rely on adverse possession to gain a possessory title. Also included in the "Not applicable" column are cases in which no final decision on adverse possession was made; for example, where a retrial was ordered, or where the decision was only interlocutory. There was one case in 2010 which it is uncertain from the judgment whether the land was urban or New Territories. It was assumed to be urban land. The volume of adverse possession disputes in Hong Kong that reaches the court is not large. This can be explained in part by the fact that multi-storey buildings are predominant in Hong Kong, and hence it is generally more difficult for a flat owner to establish adverse possession against another owner in the building. See also Chapter 6.

\* 我們在[www.lexisnexis.com](http://www.lexisnexis.com)的“所有香港案件”資料庫中，對有關時期進行搜索。如案件由多於一級的法庭審理（例如先由原訟法庭審理，再由上訴法庭審理），會視作兩項裁決。在內庭作出的裁決（例如簡易判決申請、剔除抗辯申請和登錄部分判決申請）亦計算在內。“不適用”的欄目包括擅自佔地者本身亦是“真正擁有人”的個案。例如業權擁有人只是佔用人/擅自佔地者的受託人，以及業權擁有人不能證明妥善的業權而須依據逆權管有以取得管有業權的案件。“不適用”的欄目亦包括法庭沒有就逆權管有作出最終裁決的案件，例如法庭下令重審或只作出非正審裁決的案件。在2010年的一宗案件中，判決並無明確顯示所涉及的土地是市區土地還是新界土地。我們假設有關於土地為市區土地。在香港，提交法庭審理的逆權管有爭議的數目不多，這部分是因為香港以多層建築物居多，而建築物內單位的業主通常較難針對同座建築物的另一名業主確立逆權管有。見之後第6章。

# Principal Recommendations

## 主要建議

1. After careful consideration of the situation in Hong Kong, including the existing possession based un-registered land regime, the land boundary problem in the New Territories, and that the existing provisions in the Limitation Ordinance on adverse possession have been held to be consistent with the Basic Law, we are of the view that the existing provisions on adverse possession should be retained since they offer a practical solution to some of the land title problems.

經審慎考慮香港的情況，包括現有的以管有為基礎的非註冊土地機制、新界土地界線問題，以及法庭已裁定《時效條例》的現有逆權管有條文符合《基本法》此一事實，我們認為現有的逆權管有條文應予保留，因為這些條文可為部分關於土地業權的問題提供實際解決方法。

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2. We recommend that the law of adverse possession should be recast under the prospective registered land system. Registration should of itself provide a means of protection against adverse possession, though it should not be an absolute protection. This is to give effect to the objective of a registered land system – that registration alone should transfer or confer title.

我們建議，逆權管有的法律應在未來的註冊土地制度之下重新訂定。註冊本身應是針對逆權管有的一種保障方式，但這保障不應是絕對的。這是為了達到註冊土地制度的目的—只有註冊才能夠轉移或賦予業權。



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3. We recommend that when a registered title regime is in place in Hong Kong, adverse possession alone should not extinguish the title to a registered estate. The rights of the registered owner should be protected. If, for example, the registered proprietor is unable to make the required decisions because of mental disability, or is unable to communicate such decisions because of mental disability or physical impairment, then a squatter's application will not be allowed. However, such protection would not be absolute. Under the proposed scheme:

我們建議，當香港設有註冊業權制度時，單憑逆權管有不應足以令註冊產業的業權終絕。註冊擁有人的權利應受到保障。舉例來說，如註冊擁有人因為精神上的無行為能力而不能作出所需的決定，或因為精神上的無行為能力或身體上的殘障而不能傳達上述決定，則擅自佔地者的申請不會獲准。不過，上述保障不會是絕對的。在建議的機制之下：

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- The squatter of registered title land will only have a right to apply for registration after 10 years' uninterrupted adverse possession.

業權已註冊的土地的擅自佔地者，只可在連續逆權管有該土地10年後才有權申請註冊。

- The registered owner will be notified of the squatter's application and will be able to object to the application.

註冊擁有人會獲通知擅自佔地者已提出申請，並可對申請提出反對。

- If the registered owner fails to file an objection within the stipulated time, then the adverse possessor will be registered.

如註冊擁有人未有在規定時間之內提出反對，逆權管有人便可獲註冊。

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- If the registered owner objects, the adverse possessor's application will fail unless he can prove either: (a) it would be unconscionable because of an equity by estoppel for the registered owner to seek to dispossess the squatter and the circumstances are such that the squatter ought to be registered as the proprietor; (b) the applicant is for some other reason entitled to be registered as the proprietor of the estate; or (c) the squatter has been in adverse possession of land adjacent to their own under the mistaken but reasonable belief that they are the owner of it.

如註冊擁有人提出反對，逆權管有人的申請便會失敗，除非他能證明以下其中一種情況：**(a)** 基於衡平法的不容反悔原則，註冊擁有人謀求剝奪擅自佔地者的管有權是不合情理的，而在該情況下，擅自佔地者理應獲註冊為擁有人；**(b)** 申請人基於其他原因有權獲註冊為業權的擁有人；或**(c)** 擅自佔地者在錯誤但合理地相信自己是毗鄰土地的擁有人的情況下已逆權管有該土地。



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- If the squatter is not evicted and remains in adverse possession for two more years, then the squatter would be entitled to make a second application, and the matter can be referred to the adjudicator for resolution.

如擅自佔地者未有被逐出並繼續逆權管有土地再多兩年，則擅自佔地者會有權提出第二次申請，而有關事宜會轉交審裁官裁決。



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4. We recommend that the "implied licence" principle should be abolished, and there should be in the Limitation Ordinance (Cap 347) a provision to the effect that:

*"For the purpose of determining whether a person occupying any land is in adverse possession of the land it shall not be assumed by implication of law that his occupation is by permission of the person entitled to the land merely by virtue of the fact that his occupation is not inconsistent with the latter's present or future enjoyment of the land.*

*This provision shall not be taken as prejudicing a finding to the effect that a person's occupation of any land is by implied permission of the person entitled to the land in any case where such a finding is justified on the actual facts of the case."*

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我們建議“隱含特許”原則應予廢除，並建議應在《時效條例》(第347章)中制定一項條文，訂明：

“就裁定佔用土地的人是否正在逆權管有該土地而言，不得單憑該人的佔用與擁有人目前或未來對該土地的享用沒有抵觸這一事實，便假定該人的佔用因法律的隱含規定而得到後者准許。

如根據某宗個案的實際事實，裁斷某人對土地的佔用得到擁有人的隱含准許是有理可據的，則本條不得視為影響這項裁斷。”



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5. We are aware of the possible anomalous situation in which a dispossessed registered owner remains liable for the covenants in the Government Lease. However, we do not recommend devising a statutory presumption or assignment to the effect that the adverse possessor become liable under the covenants in the Government Lease.

我們知道，已被剝奪管有權的註冊擁有人須繼續就政府租契的契諾負上法律責任，而這種不合情理的情況是有可能出現的。然而，我們不建議制定一項法定推定或法定轉讓，使逆權管有人變成須根據政府租契的契諾而負上法律責任。



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6. We recommend that Government should be urged to step up its efforts to address the boundary problem in the New Territories. However, we are of the view that a comprehensive resurvey of the boundaries alone could not solve the problem, because persons who suffer any loss or disadvantage under the re-surveyed boundaries may not accept the new boundaries. It would appear that the land boundary problem in the New Territories is best dealt with together and in the context with the implementation of the Land Titles Ordinance.

我們建議，應促請政府加倍努力解決新界的土地界線問題。然而，我們認為單單對界線重新進行全面測量並不能解決有關問題，因為按重新測量的界線而蒙受損失或不利的人可能不會接受新的界線。在我們看來，新界的土地界線問題，最好是在《土地業權條例》的實施過程中一併解決。

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7. In relation to a mortgagee's right to take possession of a mortgaged property vis-a-vis the mortgagor, we recommend the enactment in the Limitation Ordinance (Cap 347) a provision to spell out clearly that the limitation period starts to run from the date of default of the mortgagor's obligations.

就承按人針對按揭人而取得按揭物業管有權的權利而言，我們建議在《時效條例》（第347章）中制定一項條文，以清楚說明時效期在按揭人不履行還款責任當日起開始計算。



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8. We are aware that practically speaking it is almost impossible to establish adverse possession on "Tso" land, but we do not see the need to change the law on this issue.

我們知道在實際的情況下，要在祖地確立逆權管有幾乎是不可能的，但我們看不出有需要改變關於這個問題的法律。



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9. We recommend the enactment in the Limitation Ordinance (Cap 347) a provision to the effect that willingness to pay rent by a squatter is not inconsistent with the requisite intention to possess in order to establish adverse possession.

我們建議在《時效條例》(第347章)中制定一項條文，訂明擅自佔地者願意交租與確立逆權管有所需的管有意圖並無抵觸。





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10. We recommend that there should be in the Limitation Ordinance a provision to the effect that:

*"Without prejudice to the law on the rights and obligations of landlord and tenant in relation to the land encroached upon by the tenant, the nature and extent of the estates acquired by a person who has successfully extinguished the title of another person by virtue of section 17 of the Limitation Ordinance shall not be affected by the actual or presumed intention of the person as to what estate he intends to acquire by his adverse possession."*

我們建議在《時效條例》中制定一項條文，訂明：

“就租客所據用土地而言，在不損害關於業主與租客的權利和義務的法律的原則下，任何人如憑藉《時效條例》第17條成功終絕另一人的所有權，該人所取得產業權的性質和範圍，不受該人藉逆權管有而意圖取得某項產業權的真實或推定意圖所影響。”

Thank You 謝謝

