

## Prescriptive Easement

During this trial, you have heard the term “prescriptive easement.” In order to prove a prescriptive easement, PLF must show that, for a period of at least twenty uninterrupted years, the following things were more likely true than not true:

1. PLF actually used the land for [identify specific purpose];<sup>1</sup>
2. PLF openly and obviously used the land;
3. PLF used the land in a way that was adverse to the DFT; and
4. DFT did not give PLF permission to use the land <sup>2</sup>

PLF does not have to prove that [his/her/its] use of the property was exclusive or that [he/she/it] claimed a legal right to ownership.<sup>3</sup>

I will now explain to you what each of these four things means.

*< From model instruction on Adverse Possession, copy and insert instructions on actual use, open and obvious use, adverse use, and lack of permission >*

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<sup>1</sup> *M.P.M. Builders v. Dwyer*, 442 Mass. 87, 92–93 (2004).

<sup>2</sup> G.L. c. 187, § 2; *White v. Hartigan*, 464 Mass. 400, 413 (2013); *Ryan v. Stavros*, 348 Mass. 251, 263 (1964); *Holmes v. Johnson*, 324 Mass. 450, 453 (1949); *Rotman v. White*, 74 Mass. App. Ct. 586, 589 (2009); *Houghton v. Johnson*, 71 Mass. App. Ct. 825, 835–836 (2008); *Stone v. Perkins*, 59 Mass. App. Ct. 265, 266 (2003); *Boston Seaman’s Friend Soc’y, Inc. v. Rifkin Mgmt., Inc.*, 19 Mass. App. Ct. 248, 251 (1985).

<sup>3</sup> *Brooks, Gill & Co. v. Landmark Props., 217 Ltd. P’ship*, 23 Mass. App. Ct. 528, 531 n.1 (1987).

DFT may terminate the easement by explicitly preventing or blocking PLF’s from using the easement. Or DFT may terminate the easement by posting a notice on the property for six straight days or serving a copy of the notice upon the plaintiff. G.L. c. 187, § 3; *Ryan v. Stavros*, 348 Mass. 251, 263–64 (1964); *Rotman v. White*, 74 Mass. App. Ct. 586, 589 (2009); *Houghton v. Johnson*, 71 Mass. App. Ct. 825, 842 (2008); *Brown v. Sneider*, 9 Mass. App. Ct. 329, 331–332 (1980).