

## **Squatting: Lifting the Heavy Burden to Evict Unwanted Company**

Shannon Dunn McCarthy

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### **ABSTRACT**

In the later part of 2012, news and media outlets gave widespread attention to the fact that people were living rent-free in homes across the United States while the property owners were left with the burden of evicting the unwanted company in order to gain rightful possession to their property. These stories were not isolated to low income areas. News broadcasts shed light on squatters making camp in high-end realty valued in the millions. At the same time, news outlets in the United Kingdom were reporting on the squatting topic, but with a different angle—a recent law criminalizing squatting. In the United States, we were left with the question “How is this legal?” The answer was clear across the pond: “It’s not.”

### **AUTHOR**

Juris Doctor Candidate, May 2014, University of Massachusetts School of Law–Dartmouth. Most importantly, I would like to thank my father, Paul, for actually listening and taking to heart my explanation of my Note requirement. One night after watching a news story on squatting he said, “That can’t be legal. You should write that Note of yours on this.” This Note seeks to do just that. I also want to thank my mother, Debbie, and my family for their love and support throughout law school. I want to extend my sincere thanks to former UMass Law Review Editor-in-Chief Steven Zoni (2012–13) for helping me in the Note-writing process and to the current Editor-in-Chief Kurt Hagstrom for his help during the editing and publication process. Finally, I want to thank my fiancé Kevin Resnick for at least pretending to listen to me when I talked about this Note, and I want to thank Lily and Hailey for keeping a smile on my face throughout law school.

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## I. INTRODUCTION: A BRIEF HISTORY OF SQUATTING AND THE CURRENT SQUATTING PREDICAMENT

Squattting occurs when a person wrongfully settles on the real property of another without permission.<sup>1</sup> Squattting was encouraged by the United States government during the early 1800s as a means to bolster land settlement in the western part of the country.<sup>2</sup> Statutes referred to as “Squatter’s Rights”<sup>3</sup> or “preemption laws” provided incentives to squatters by granting preemptive rights to them over others seeking to purchase the land.<sup>4</sup> The Federal Homesteading Act of 1862 continued to support squattting on public tracts of land in order to develop the western frontier.<sup>5</sup> This Act allowed a squatter to acquire legal title to the land<sup>6</sup> when the squatter was successful in inhabiting and cultivating the land provided the squatter paid for the land being possessed.<sup>7</sup>

In medieval Britain, the only remedy available to remove a squatter in possession of land was to do so by force.<sup>8</sup> Today, modern statutes in the United States do not permit removal by force.<sup>9</sup> Local police are often unable to assist property owners wishing to eject a

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<sup>1</sup> BLACK’S LAW DICTIONARY 1533 (9th ed. 2009).

<sup>2</sup> Jessica Intrator, Note, *From Squatter to Settler: Applying the Lessons of Nineteenth Century U.S. Public Land Policy to Twenty-First Century Land Struggles in Brazil*, 38 ECOLOGY L.Q. 179, 183 (2011).

<sup>3</sup> Black’s Law Dictionary defines “Squatter’s Rights” as “[t]he right to acquire title to real property by adverse possession, or by preemption of public lands.” BLACK’S LAW DICTIONARY 1534 (9th ed. 2009).

<sup>4</sup> Intrator, *supra* note 2, at 205–06; *see also* Eduardo Moisés Peñalver & Sonia K. Katyal, *Property Outlaws*, 155 U. PA. L. REV. 1095, 1107 (2007) (noting that squatters were not initially granted outright protection when settling onto Western land as settlers had to “demand” preemptive rights be recognized by the government).

<sup>5</sup> An Act to Secure Homesteads to Settlers on the Public Domain, 12 Stat. 392-94 (1862) (codified as amended at 43 U.S.C.A. §§ 161-302 (1986)) (repealed 1988); *see also* Christine L. Wilson, Note, *Urban Homesteading: A Compromise Between Squatters and the Law*, 35 N.Y.L. SCH. L. REV. 709, 711 (1990).

<sup>6</sup> Intrator, *supra* note 2, at 206–07.

<sup>7</sup> Preemption Act, ch. 16, § 10, 5 Stat. 453 (1841).

<sup>8</sup> 10-87 THOMPSON ON REAL PROPERTY § 87.01 (David A. Thomas ed., 1994). Peaceable entry was required by statute after 13815 Ric. II. Stat. 1. C VII.

<sup>9</sup> *See, e.g.*, MASS. GEN. LAWS ch. 184 § 18 (2011).

squatter.<sup>10</sup> Squatting is usually resolved in a civil action, and police are often unwilling to interfere.<sup>11</sup> Repossession by self-help is an impractical option and potentially subjects the ouster to civil liability.<sup>12</sup> The legal remedy to remove a squatter is similar to the process for removing a holdover tenant—file a civil action commonly referred to as a summary proceeding.<sup>13</sup> Every state has some form of summary process available allowing a property owner to legally remove a squatter,<sup>14</sup> but these proceedings are not without their critics.<sup>15</sup>

Recent news stories about squatters across the country focus concerns on so-called “squatter’s rights,” which in effect burden homeowners with time and expense to remove a squatter living in their home.<sup>16</sup> One of the most highly publicized squatting controversies was that of Heidi Peterson. Peterson returned to her Detroit home in October 2012 to find the locks on the doors changed, work performed to the plumbing, appliances replaced, and even new curtains.<sup>17</sup> The

<sup>10</sup> See Aaron Kase, *Squatters Refuse to Leave Colorado Family’s House*, LAWYERS.COM BLOG (Aug. 16, 2012), <http://blogs.lawyers.com/2012/08/squatters-refuse-to-vacate-colorado-family-house/> (describing the story of homeowners who sought help from the police, but when the squatters offered an official-looking document, the police did not remove the squatters); see also *Trask v. Chicago*, 246 Fed. App’x. 385 (7th Cir. 2007) (noting a situation where police officers refused to remove a squatter even though the homeowner had a valid court order).

<sup>11</sup> See Brian Sullivan, *Invasion of the House Snatchers*, 99 A.B.A. J. 71, 71 (2013).

<sup>12</sup> See, e.g., N.Y. REAL PROP. ACTS. LAW § 853 (McKinney 2008); MASS. GEN. LAWS ch. 184 § 18 (2011).

<sup>13</sup> See RESTATEMENT (SECOND) OF PROP.: LANDLORD AND TENANT § 12.1 (1977).

<sup>14</sup> JESSE DUKEMINIER ET AL., PROPERTY 467 (7th ed. 2010) [hereinafter DUKEMINIER].

<sup>15</sup> See Randy G. Gerchick, Comment, *No Easy Way Out: Making the Summary Eviction Process a Fairer and More Efficient Alternative to Landlord Self-Help*, 41 UCLA L. REV. 759, 784–85 (1994) (stating that during a summary eviction proceeding, a landlord “may have to wait several months before regaining possession, may spend hundreds or thousands of dollars on legal fees and may sometimes lose even more in unpaid rents.”).

<sup>16</sup> See Timothy M. Iannettoni et al., “Squatters’” Rights in Detroit: A Legal Analysis, MICHIGAN COMMUNITY RESOURCES 1, 2 (2011), [http://www.mygrandmontrosedale.org/pdfs/Squatters\\_Rights.pdf](http://www.mygrandmontrosedale.org/pdfs/Squatters_Rights.pdf).

<sup>17</sup> See Taryn Asher, *Forced to Live Alongside Squatter in Detroit House, Woman Says*, MY FOX DETROIT (Oct. 11, 2012, 11:38 AM), <http://www.myfoxdetroit.com/story/19779374/forced-to-live-with-squatter-in-my-detroit-house-woman-says>; Heidi Peterson, *Detroit Homeowner, Finds Squatter in House*, HUFFINGTON POST (Oct. 11, 2012), [http://www.huffingtonpost.com/2012/10/11/detroit-homeowner-finds-s\\_n\\_1958254.html](http://www.huffingtonpost.com/2012/10/11/detroit-homeowner-finds-s_n_1958254.html) [these websites hereinafter

squatter would become Peterson's new roommate.<sup>18</sup> According to neighbors, the squatter had been living in the house for a few months, as Peterson had been away from her Detroit home for about a year.<sup>19</sup> Peterson and her one-year-old child had nowhere else to go, forcing the two to cozy up with the squatter until the squatter left on her own or until Peterson was able to remove the squatter through summary process.<sup>20</sup>

Heidi Peterson is not the only person with a squatting story to tell.<sup>21</sup> Tabloid media outlets published stories in 2012 detailing the exploits of squatters.<sup>22</sup> The national attention to squatters surpassed a fifteen minutes-of-fame run, with more stories published in 2013.<sup>23</sup>

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*Peterson's Story*]. Note that in this case there is some indication that the squatter may have been a prior tenant or may have been staying under some color of property rehabilitation.

<sup>18</sup> *Peterson's Story*, *supra* note 17.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.* Luckily for Heidi Peterson, her squatter left shortly after all the media attention. *Wacky Story: Squatter Finally Moves Out of Detroit's Home*, DEADLINE DETROIT (Oct. 17, 2012), [http://www.deadlinedetroit.com/articles/2274/wacky\\_story\\_squatter\\_finally\\_moves\\_out\\_of\\_detroiters\\_home](http://www.deadlinedetroit.com/articles/2274/wacky_story_squatter_finally_moves_out_of_detroiters_home); *see also* Sullivan, *supra* note 11, at 71 (noting that because Peterson's situation was a civil matter, "the police were pretty much powerless to intervene").

<sup>21</sup> *See, e.g.,* Denise M. Bonilla, *North Babylon Residents: Squatters Have Moved In*, NEWSDAY (Sept. 10, 2013), <http://www.newsday.com/long-island/towns/north-babylon-residents-squatters-have-moved-in-1.6049221> (detailing the complaints of more than 100 residents voicing their concerns that squatters have been living in foreclosed or abandoned homes, causing safety concerns for the residents).

<sup>22</sup> *See, e.g.,* *Family Fights to Reclaim Their Home After They Say Squatters Moved In*, INSIDE EDITION (Sept. 25, 2012), <http://www.insideedition.com/headlines/5101-family-fights-to-reclaim-their-home-after-they-say-squatters-moved-in>; *Randy Quaid, Wife Released After Squatter Arrests*, ACCESS HOLLYWOOD (Sept. 20, 2010), [http://www.accesshollywood.com/randy-quaid-wife-released-on-bail-after-felony-squatter-arrests\\_article\\_37165](http://www.accesshollywood.com/randy-quaid-wife-released-on-bail-after-felony-squatter-arrests_article_37165); *Joe Jackson Squatter*, TMZ (July 25, 2012), <http://www.tMZ.com/2012/07/25/joe-jackson-squatter-michael-jackson-estate-encino-home/>; *Diddy's House Squatter Sentenced, Said He Enjoyed Himself*, EXTRA (July 6, 2012), <http://www.extratv.com/2012/07/06/diddys-house-squatter-sentenced-said-he-enjoyed-himself/>.

<sup>23</sup> *Clever Squatter Stakes Claim to Mansion*, INSIDE EDITION (Jan. 25, 2013), <http://www.insideedition.com/headlines/5710-clever-squatter-stakes-claim-to-mansion>; *see also* *State Law Allows Squatter to Own Vacant Home*, KTVU (Apr. 25, 2013), <http://www.ktvu.com/news/news/special-reports/man-takes-over-vacant-home-under-state-law-without/nXYPP/> (detailing the story of a

The media attention to recent squatting stories extended past entertainment television and even landed in the text of the TIME NewsFeed.<sup>24</sup> TIME NewsFeed published a story in January 2013 about a squatter, self-nicknamed Loki the “Norse God of Mischief,” took advantage of squatting laws when he made camp in a \$2.5 million mansion in Florida.<sup>25</sup> From these news stories, it appears that the laws pertaining to squatters, trespassers, adverse possessors, and holdover tenants have become so interchanged that the only thing that is clear may be that the laws in these areas are decidedly ambiguous.

This Note argues that to resolve the confusion surrounding squatting and the rights of a valid property owner, states should adopt a criminal statute that provides a valid owner immediate relief and penalizes the squatter.

Part II of this Note provides general background in adverse possession and squatting law. Part III compares policy considerations for squatting laws, which provide legal protections for squatters instead of the valid owners of the property. Part IV details the current remedial measures for owners of real property seeking to evict their unwanted squatters, focusing on fiscal and temporal concerns of property owners. This part also provides a general analysis of state laws pertaining to squatters. Part V argues for reforming the squatting laws of the United States in order to protect the valid owners of real property. This section contends that policy considerations derived from House and Senate reports recommending the enactment of the Anticybersquatting Consumer Protection Act should be applied to new anti-squatting laws. In addition, this section explores the recent criminalization of squatting in the United Kingdom. Finally, Part VI recommends a “model statute” for state legislatures to criminalize squatting in the United States. This part also includes recommendations for accompanying text to be sent to police, judges, prosecutors, and those tasked with enforcing the new criminal squatting law.

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squatter turned claimed homeowner who now legally owns the home by adverse possession).

<sup>24</sup> Charlie Campbell, *Cheap Digs: Squatter Claims Ownership of \$2.5 Million Florida Mansion*, TIMES NEWSFEED (Jan. 28, 2013), <http://newsfeed.time.com/2013/01/28/cheap-digs-squatter-claims-ownership-of-2-5-million-florida-mansion/>.

<sup>25</sup> *Clever Squatter Stakes Claim to Mansion*, INSIDE EDITION (Jan. 25, 2013), <http://www.insideedition.com/headlines/5710-clever-squatter-stakes-claim-to-mansion>.

## II. BACKGROUND

### A. General Background in Adverse Possession, Squatting, and Trespass Laws in the United States

Identifying a squatter may not be an easy task. The homeowner may claim the person is a trespasser, while the squatter may assert that he or she is an adverse possessor. These assertions are at odds with each other: one is a criminal, while the other is a rightful claimant to property.<sup>26</sup> Discussing adverse possession and trespass helps define what the squatter really is—a squatter. This section discusses adverse possession, squatting, and trespass law to provide a general background in some of the issues that may arise when attempting to determine if a squatter is a wrongdoer or a lawful possessor.

#### 1. Adverse Possession

A general understanding of adverse possession and its history will help explain why a squatter can claim the legal right to possess another's property. "Loki," the squatter in the Florida mansion, defended his stay at the home claiming a right through adverse possession.<sup>27</sup> Adverse possession is "an ancient legal doctrine."<sup>28</sup> It has been called the "law of the landless"<sup>29</sup> and the law for the "have nots."<sup>30</sup> An adverse possessor, without a grant of permission, uses the property as the true owner of the property would.<sup>31</sup> The adverse possessor continuously uses the property claiming the right to do so.<sup>32</sup>

Black's Law Dictionary defines adverse possession as "[t]he enjoyment of real property with a claim of right when that enjoyment is opposed to another person's claim and is continuous, exclusive,

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<sup>26</sup> See Neil Cobb, *Property Outlaws: Squatting, Land Use and Criminal Trespass*, 2 CRIM. L. REV. 114, 115 (2012).

<sup>27</sup> Campbell, *supra* note 24.

<sup>28</sup> Jessica J. Shrestha, *Hey! That's My Land! Understanding Adverse Possession*, 83 WIS. LAW. 10, 10 (2010).

<sup>29</sup> THOMPSON, *supra* note 8, at § 87.01.

<sup>30</sup> *Id.*; see also Henry Ballantine, *Title by Adverse Possession*, 32 HARV. L. REV. 135, 135 (1918) (stating that at first blush, receiving title through adverse possession sounds like "title by theft or robbery, a primitive method of accruing land without paying for it").

<sup>31</sup> THOMPSON, *supra* note 8, at § 87.01.

<sup>32</sup> *Id.*

hostile, open, and notorious.”<sup>33</sup> Courts have generally applied the common law understanding of adverse possession, which vests title to real property in a claimant who satisfies the elements of openness and hostility for the length of the statutory period.<sup>34</sup>

Adverse possession is a “synthesis of statutory and decision law.”<sup>35</sup> All American states currently have adverse possession laws on the books.<sup>36</sup> Every jurisdiction fixes “the period of time beyond which the owner of land can no longer bring an action, or undertake self-help.”<sup>37</sup> The states vary with respect to the statute of limitations for requiring the true owner of the property to take action to recover land.<sup>38</sup> At a minimum, in states like California and Idaho, a person must have adversely possessed the land for five continuous years to obtain valid title.<sup>39</sup> Iowa requires the possession to last forty years before recognizing a transfer of title.<sup>40</sup> For “Loki” to acquire title to the mansion in Florida his stay would need to last seven years.<sup>41</sup> An occupant successful in a claim of adverse possession acquires a transfer of interest in the property despite lack of consent or with the protest of the valid owner of title to the property.<sup>42</sup> Hence, the original trespass by the possessor ripens into a claim to a property right when the owner permits continued trespass for the length of the statute of limitations.<sup>43</sup>

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<sup>33</sup> BLACK’S LAW DICTIONARY 62 (9th ed. 2009); *see also* THOMPSON, *supra* note 8, at § 87.01.

<sup>34</sup> Note, *Developments in the Law—Statutes of Limitations*, 63 HARV. L. REV. 1177, 1177 (1950).

<sup>35</sup> POWELL ON REAL PROPERTY § 91.01 (Michael A. Wolf gen. ed., 2009).

<sup>36</sup> THOMPSON, *supra* note 8, at § 87.01; *see also* Jennie Morawetz, *No Room for Squatters: Alaska’s Adverse Possession Law*, 28 ALASKA L. REV. 341, 344 (2011).

<sup>37</sup> POWELL, *supra* note 35, at § 91.01.

<sup>38</sup> *See* Morawetz, *supra* note 36, at 344 n.18 (statutes range from five to forty years).

<sup>39</sup> THOMPSON, *supra* note 8, at § 87.01. However, some states set shorter periods of time for the statute of limitations in actions for adverse possession if certain circumstances apply. *See, e.g.*, TEX. CIV. PRAC. & REM. CODE § 16.024 (2012) (providing a three year statute of limitations if the possessor claims title or color of title).

<sup>40</sup> THOMPSON, *supra* note 8, at § 87.01; *see also* IOWA CODE § 614.31 (2012).

<sup>41</sup> FLA. STAT. §§ 95.12, 14, 18 (2013).

<sup>42</sup> *Id.*

<sup>43</sup> THOMPSON, *supra* note 8, at § 87.01.

Statutes of limitations impose a specific length of time as a precondition that a person needs to meet in order to assert title through adverse possession. But what about the time in-between? Is a person still an adverse possessor during the time prior to meeting the statute of limitations, even though the length of their stay has yet to satisfy statutory requirements? A squatter may believe he or she has the right to assert adverse possession long before the statute of limitations has run its course.<sup>44</sup> States recognize a party's right to property after a certain amount of years—five to forty<sup>45</sup>—but adverse possession and statutes of limitations tell little about the claims of wrongful squatting occur in this “in-between” phase.

## 2. Squatting

There may be some difficulty in defining “squatting” or a “squatter.” One theory suggests that without an “honest” claim of title, states may not recognize a claim for adverse possession even if the statutory period for continuous, exclusive, hostile, open, and notorious has been met.<sup>46</sup> A person deemed a squatter does not satisfy the requirements to obtain title by adverse possession.<sup>47</sup> In contrast to a claim of adverse possession, it is unlikely for a squatter to satisfy the statutory requirement for possessing land over the course of the necessary years.<sup>48</sup> Squatters have experienced difficulty in asserting a claim for adverse possession because of the difficulty in establishing the continuity requirement or lack of standing.<sup>49</sup> Despite status as a squatter, squatters and their lawyers have argued for rights based on adverse possession.<sup>50</sup> In these cases, it may be more accurate to refer

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<sup>44</sup> See Anne Geggis, *Bank Takes Back Mansion from Squatter*, SUN SENTINEL (Feb. 7, 2013), [http://articles.sun-sentinel.com/2013-02-07/news/fl-loki-boy-out-20130207\\_1\\_adverse-possession-boca-police-police-chief-dan-alexander](http://articles.sun-sentinel.com/2013-02-07/news/fl-loki-boy-out-20130207_1_adverse-possession-boca-police-police-chief-dan-alexander) (stating that after the story of “Loki” the Florida squatter went international, copycats filed adverse possession notices).

<sup>45</sup> Absent a claim or intent to acquire title, a squatter who enters land to occupy and possess cannot acquire title under adverse possession laws. See 8 S.C. JUR. ADVERSE POSSESSION § 20.

<sup>46</sup> See, e.g., *Carpenter v. Ruperto*, 315 N.W.2d 782 (Iowa 1982) (finding adverse possessor must establish good-faith claim of right).

<sup>47</sup> DUKEMINIER, *supra* note 14, at 132.

<sup>48</sup> Carol Necole Brown & Serena M. Williams, *Rethinking Adverse Possession: An Essay on Ownership and Possession*, 60 SYRACUSE L. REV. 583, 599 (2010).

<sup>49</sup> Gregory M. Duhl, *Property and Custom: Allocating Space in Public Places*, 79 TEMP. L. REV. 199, 244 (2006).

<sup>50</sup> *Id.*

to a person occupying property as a squatter instead of an adverse possessor.<sup>51</sup>

There are more than one billion squatters scattered across the globe.<sup>52</sup> The term “squatter” is used in various forms; there are many different types of squatters.<sup>53</sup> Lord Denning, a celebrated English judge,<sup>54</sup> defined a “squatter” as:

[O]ne who, without any color of right, enters on an unoccupied house or land, intending to stay there as long as he can. He may seek to justify or excuse his conduct. He may say he was homeless and that this house or land was standing empty. But this plea is of no avail in law.<sup>55</sup>

“Color of right” refers to a claim that possession of the land is justified.<sup>56</sup> Entry onto land without an honest claim of right “is but a trespass and can never ripen into prescriptive title.”<sup>57</sup> It is likely that in the case of a squatter, the person may only be seeking temporary housing, instead of seeking to stay on the land for the statutory requisite for adverse possession.<sup>58</sup> Also, a person who enters land lawfully, or with permission, is not a squatter.<sup>59</sup>

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<sup>51</sup> *Hannah v. Kenny*, 83 S.E. 2d 1, 5 (Ga. 1954).

<sup>52</sup> See ROBERT NEUWIRTH, *SHADOW CITIES: A BILLION SQUATTERS, A NEW URBAN WORLD* (Routledge 2004). *Contra* ANDERS CORR, *NO TRESPASSING! SQUATTING, RENT STRIKES, AND LAND STRUGGLES WORLDWIDE* 10 (1999) (suggesting that the actual amount of squatters is difficult to estimate because those in the best position to know of an actual figure, the government, have reasons to hide the facts because “illegal takeovers of productive assets mar this image of economic stability”).

<sup>53</sup> See Brian Gardiner, *Squatter’s Rights and Adverse Possession: A Search for Equitable Application of Property Laws*, 8 IND. INT’L & COMP. L. REV. 119, 121 n.9 (1997).

<sup>54</sup> Clare Dyer, *Lord Denning, Controversial ‘People’s Judge’, Dies Aged 100*, THE GUARDIAN (Mar. 5, 1999), <http://www.guardian.co.uk/uk/1999/mar/06/claredyer1> (describing Lord Denning as “the most celebrated English Judge of the 20th century”).

<sup>55</sup> *Walls v. Giuliani*, 916 F. Supp. 214, 217 (E.D.N.Y. 1996) (quoting *McPhail v. Persons Unknown*, 1 Ch. 447, 456B (1973) (Denning, J.)).

<sup>56</sup> See generally 3 TEX. PRAC. GUIDE REAL TRANS. § 16:9.

<sup>57</sup> *Halpern v. Lacy Inv. Corp.*, 379 S.E.2d 519, 520 (Ga. 1989).

<sup>58</sup> The term “squat” by definition means “to sit or hunch down in a temporary manner.” See CORR, *supra* note 52, at 8.

<sup>59</sup> See *Walls*, 916 F. Supp. at 221.

Black's Law Dictionary defines a "squatter" as "[a] person who settles on property without any legal claim or title."<sup>60</sup> Squatting in the United States has long been a response of the landless as a means to gain shelter from unutilized property.<sup>61</sup> Squatting has evolved from the settlement of the western frontier to "unsettled wilderness" in inner cities.<sup>62</sup> One of the primary motives of a squatter is to use the abandoned land as residential accommodation.<sup>63</sup> Many squatters are simply seeking shelter in otherwise abandoned property.

### 3. Trespass

The obvious question may be to ask why the squatter is not a trespasser. If a person is not an adverse possessor, it may be assumed that the squatter has no rights to be on the property and thus should be charged for trespassing. A trespasser enters and occupies the land of another unlawfully and without consent.<sup>64</sup> In the squatter context, the person's trespass may end after the initial entry. This seemed to be the case for the squatter in the Florida mansion. One story reported that "[p]olice initially told neighbors that because no one had seen [Loki] break in," the case was to be handled as a civil matter.<sup>65</sup>

Under adverse possession laws, the otherwise would-be criminal trespasser is converted to the rightful holder of title resulting in ownership of the land.<sup>66</sup> In some cases, and prior to the running of the statute of limitations, the valid owner of real property can seek to remove an adverse possessor as a trespasser.<sup>67</sup> At the same time however, adverse possession can also deprive "the owner of his right to evict the trespasser."<sup>68</sup> Despite a homeowner's right to remove the trespasser during the statutory period, a court may grant legal title to the possessor—regardless of the person's original status as a

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<sup>60</sup> BLACK'S LAW DICTIONARY 1533 (9th ed. 2009).

<sup>61</sup> David L. Rosendorf, *Homelessness and the Uses of Theory: An Analysis of Economic and Personality Theories of Property in the Context of Voting Rights and Squatting Rights*, 45 U. MIAMI L. REV. 701, 722 (1990–1991).

<sup>62</sup> *Id.* at 722–23.

<sup>63</sup> Cobb, *supra* note 26, at 115.

<sup>64</sup> *Id.* at 114.

<sup>65</sup> Geggis, *supra* note 44.

<sup>66</sup> Peñalver & Katyal, *supra* note 4, at 1169.

<sup>67</sup> Brown & Williams, *supra* note 48, at 598.

<sup>68</sup> See Todd Barnet, *The Uniform Registered State Land and Adverse Possession Reform Act, A Proposal For Reform of the United States Real Property Law*, 12 BUFF. ENVTL. L.J. 1, 1 (2004).

trespasser—once the statute of limitations has run.<sup>69</sup> Although adverse possession transforms a trespasser into the rightful owner of the property, not all squatters possess land to claim a legal right to the property.<sup>70</sup>

One attorney recounted an experience he had trying to assist his clients in removing squatters from a building. The attorney first advised his clients to immediately contact the police.<sup>71</sup> Two days later, the attorney found himself at the police station, equipped with a letter from the City District Attorney’s Office confirming the occupants were not tenants.<sup>72</sup> The attorney reported that the police captain “sympathized” with the situation, but the captain was reluctant to take action to remove the squatters.<sup>73</sup> At the suggestion of the police, the attorney went to the clients’ building with the company of about sixty police officers to remove the squatters.<sup>74</sup> The attorney had to then report to the police station to file and sign a citizen’s arrest warrant.<sup>75</sup> Instead of police arresting the squatters for trespass, the attorney had to do it.

Although a person possessing land can be both a trespasser and a squatter, not all possessors are charged with or faced civil liability for trespassing.<sup>76</sup> Persons in possession of land have been determined to be both trespassers and squatters.<sup>77</sup> Many state laws treat trespassers and squatters under the same statutes.<sup>78</sup> Because the underlying

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<sup>69</sup> *Id.*

<sup>70</sup> *Infra* Part II.B.

<sup>71</sup> Austin Stewart, *Squatters’ Rights?*, 45 *ADVOCATE (IDAHO)* 11, 11 (2002).

<sup>72</sup> *Id.*

<sup>73</sup> *Id.*

<sup>74</sup> *Id.*

<sup>75</sup> *Id.*

<sup>76</sup> *De Villar v. New York*, 628 F. Supp. 80, 83 (S.D.N.Y. 1986) (recognizing the squatters as subjected to criminal trespass but no charges were filed for trespass); *see also Judge Bounces Alleged Squatter from Courtroom*, *KNOX NEWS* (July 4, 2013), <http://www.knoxnews.com/news/2013/jul/04/judge-bounces-alleged-squatter-from-courtroom/> (detailing a women accused of squatting in a vacant \$3 million dollar mansion who was charged with “aggravated burglary”).

<sup>77</sup> *See, e.g., Villar*, 628 F. Supp. at 83. States have treated trespassers and squatters as being covered by some of the same laws. *See, e.g.,* 2 *ILLINOIS REAL PROPERTY* § 15:35; TPM MA-CLE 9-1 § 9.7 PROCEDURES FOR ELIMINATING TRESPASSERS AND SQUATTERS.

<sup>78</sup> *See, e.g.,* 2 *ILLINOIS REAL PROPERTY* § 15:35; TPM MA-CLE 9-1 § 9.7 PROCEDURES FOR ELIMINATING TRESPASSERS AND SQUATTERS.

principle in an action against a squatter is that the squatter is “unlawfully trespassing on and remaining in the possession of the realty,”<sup>79</sup> by measuring the continuity or length of stay by the person on the property, a trespasser can be distinguished from a squatter.<sup>80</sup> In each situation, neither the squatter nor the trespasser has the legal authority or right to enter onto the land.<sup>81</sup> A person’s initial entry onto the land may be a trespass, but their continued stay may transform the person into a squatter once the person decides to remain therein.

Where a possessor is subject to squatting and trespass laws,<sup>82</sup> there may not be any legal bar to arresting a squatter for criminal trespass or to finding the person liable for civil trespass.<sup>83</sup> To avoid civil and criminal liability, a squatter is likely to offer the police some form of documentation claiming a right to be on the property.<sup>84</sup> The legal differences between squatting and trespassing and the applications of the laws have resulted in unclear understanding among owners of property and even among legal scholars.<sup>85</sup>

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<sup>79</sup> 89 N.Y. JUR. 2D REAL PROPERTY—POSSESSORY ACTIONS § 78 (2010).

<sup>80</sup> *Id.*

<sup>81</sup> *Id.*

<sup>82</sup> *Id.* (“The [New York statutory] provisions for civil summary proceedings to remove squatters from possession of real property do not prevent the arrest of squatters for criminal trespass or bar a threat to do so”).

<sup>83</sup> *See, e.g.,* De Villar v. New York, 628 F. Supp. 80, 83 (S.D.N.Y. 1986); Whiting v. Maryland, 160 Md. App. 285 (2004); *see also* *Judge Bounces Alleged Squatter from Courtroom*, KNOX NEWS (July 4, 2013), <http://www.knoxnews.com/news/2013/jul/04/judge-bounces-alleged-squatter-from-courtroom/>.

<sup>84</sup> For example, in Texas a person can fill out an “Affidavit of Adverse Possession” to present to the police. *See* David J. Willis, *Adverse Possession in Texas*, <http://lonestarlandlaw.com/Adverse.html> (last visited Nov. 20, 2013); *see also* Martha Neil, *Squatters Add to Mortgage Lender’s Woes; Eviction from \$3.3M Listing a Civil Matter*, ABA JOURNAL (June 14, 2010), [http://www.abajournal.com/news/article/squatters\\_add\\_to\\_mortgage\\_lenders\\_woes\\_eviction\\_from\\_3.3\\_m\\_listing\\_a\\_civil\\_m/](http://www.abajournal.com/news/article/squatters_add_to_mortgage_lenders_woes_eviction_from_3.3_m_listing_a_civil_m/) (noting a situation in which the local police would not remove the squatter because the person “presented a document to support their claim of legal residence”).

<sup>85</sup> When asked what the difference is between a squatter, a trespasser, and an adverse possessor by the UMass Law Review on Twitter, Brian Garner, editor of Black’s Law Dictionary, tweeted back, “Definition of ‘squatter’ that’s not a trespasser or an adverse possessor? One who sits awkwardly.”

## B. Types of Squatters

Squatting is a “growing phenomenon on the cusp of the 21st century.”<sup>86</sup> It may be surprising how many types of land relationships can create a “squatter” out of a person. An “owner squatter” has ownership to the physical structure housing the person, but not the land.<sup>87</sup> A squatter can cross into the commercial sphere by occupying land used for a business without paying rent or taxes.<sup>88</sup> A squatter can even have a “squatter tenant” who pays rent to the original squatter.<sup>89</sup> Squatters have created a political movement retaliating against the “unequal distribution of wealth” and acting upon the “large number of unhoused people and abandoned housing.”<sup>90</sup> Squatters were part of the “Occupy” movement, staying on public and private land.<sup>91</sup>

Squatters can be persons unable to afford housing or establish shelter, resorting to vacant buildings as a means of survival.<sup>92</sup> Law-abiding citizens have established communities of squatters.<sup>93</sup> Squatters can also be “illegal occupants.”<sup>94</sup> Squatting is not limited to possessing real property.<sup>95</sup> Footpaths in Great Britain, air waves, the television spectrum, and domain names have been subjected to squatters and squatters’ movement.<sup>96</sup>

Squatters are often confused with holdover tenants. In a holdover situation, a tenant remains in possession of a leased property after the termination of the tenancy.<sup>97</sup> Landlord-tenant law provides an understanding of how the law treats squatters,<sup>98</sup> specifically those in a “squatter holdover” situation. However, not all squatting cases involve

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<sup>86</sup> CORR, *supra* note 52, at 1.

<sup>87</sup> Gardiner, *supra* note 53, at 121 n.9 (citing BLACK’S LAW DICTIONARY 1403 (6th ed. 1990)).

<sup>88</sup> *Id.*

<sup>89</sup> *Id.*

<sup>90</sup> Wilson, *supra* note 5, at 714–15.

<sup>91</sup> Caroline Delaney, *Tackling Protestors in England and Wales*, 16 No. 2 IBA REAL EST. 22 (2012).

<sup>92</sup> Duhl, *supra* note 49, at 241.

<sup>93</sup> *Id.* at 242.

<sup>94</sup> N.Y. REAL PROP. ACTS. LAW § 713 (McKinney 2008).

<sup>95</sup> CORR, *supra* note 52, at 2.

<sup>96</sup> *Id.*

<sup>97</sup> DUKEMINIER, *supra* note 14, at 427.

<sup>98</sup> See *Walls v. Giuliani*, 916 F. Supp. 214, 218 (E.D.N.Y. 1996) (discussing landlord-tenant law and squatting).

landlord-tenant relationships, and many squatters are simply squatting in residential housing.<sup>99</sup>

Not all squatters occupy privately owned property. Traditional and historical squatting began in the United States by occupants settling onto public land under the ownership of the government.<sup>100</sup> However, while nineteenth century law permitted and in fact encouraged squatting in the western territories, a person may not adversely possess against the federal government.<sup>101</sup> The deepening of the recent economic and housing crisis has been blamed for increased squatting on city and state owned property.<sup>102</sup> This raises comparisons to squatters in the United States during the Great Depression.<sup>103</sup> The housing crisis made “the controversial act of squatting” an inevitable resort.<sup>104</sup> In New York for example, a vast number of squatters are living in abandoned city-owned buildings.<sup>105</sup>

In addition to squatting on city or state property, foreclosed homes owned by banks have also been the subject of squatting.<sup>106</sup> Some squatters, like “Loki,” fit this category of “squatting” because the foreclosed home was owned by Bank of America.<sup>107</sup> Others are akin to the landlord-tenant situation; many occupants whose homes have been foreclosed upon are staying tight in their houses.<sup>108</sup> These persons are

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<sup>99</sup> See *supra* notes 86–97 and accompanying text.

<sup>100</sup> *Intrator*, *supra* note 2, at 181; *United States v. Oglesby*, 163 F. Supp. 203, 205 (W.D. Ark. 1958) (“Where title to land is in the United States, no title to such lands by prescription or adverse possession can be acquired under the legislation of a state” (quoting 2 C.J.S. *Adverse Possession* § 12 (1956))).

<sup>101</sup> Lindsey L. Tonsager, *Increasing E-Quality in Rural America: U.S. Spectrum Policy and Adverse Possession*, 90 MINN. L. REV. 1506, 1525 (2006). See 2 C.J.S. *Adverse Possession* § 12 (2005).

<sup>102</sup> *Wilson*, *supra* note 5, at 710.

<sup>103</sup> *Id.*

<sup>104</sup> Eric Hirsch & Peter Wood, *Squatting in New York City: Justification and Strategy*, 16 N.Y.U. REV. L. & SOC. CHANGE 605, 606 (1987–1988).

<sup>105</sup> *Id.* at 613; see *De Villar v. New York*, 628 F. Supp. 80, 83 (S.D.N.Y. 1986) (noting squatters that brought an action against the city when squatting in city-owned buildings).

<sup>106</sup> See, e.g., Greg Johnson, *High-End Squatter Guilty of Trespass*, KIRKLAND PATCH (June 21, 2012), <http://kirkland.patch.com/articles/high-end-squatter-guilty-of-trespass>.

<sup>107</sup> See *Campbell*, *supra* note 34.

<sup>108</sup> See, e.g., Chris Roberts, *After Foreclosure, Woman Breaks Back into, Squats*, NBC BAY AREA (May 20, 2011), <http://www.nbcbayarea.com/news/local/After->

legally trespassers and are, in fact, squatting on bank owned property.<sup>109</sup> Like homeowners, banks are given the same legal rights to eject an occupant from the property, which, as mentioned, would require the bank to file a civil action for summary proceeding.<sup>110</sup> Like homeowners, banks are faced with the “extra hurdle” of civil litigation to regain possession when squatters occupy vacant homes due to foreclosures.<sup>111</sup>

### C. Sources Promoting Squatting

A simple entry of “how to ‘squat’ real property” in any online search engine provides a seemingly endless myriad of suggested web pages and websites.<sup>112</sup> From blogs and news articles to images and videos, these sites provide easy access<sup>113</sup> for the “looking-to-be-squatter” to learn the ins and outs of squatting. Even “Wikihow” provides a “how to” for squatting abandoned property, cataloging eleven steps as the “solution to your housing needs” and as a “great way to avoid paying rent,”<sup>114</sup> risk included.<sup>115</sup> The suggested steps include knowing the laws of the area, forming a group, finding a place to squat and securing it, and making nice with the neighbors.<sup>116</sup> Step eight tells the reader to clean up the abandoned property because, after all, “this is your home.”<sup>117</sup> The website does not stop there; “Tips” and “Warnings” are available on the page as well, ending with the common

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Foreclosure-Woman-Breaks-Back-into-Squats-In-Empty-Bank-Owned-Home-122332484.html.

<sup>109</sup> See Neil, *supra* note 84.

<sup>110</sup> See Kimberly Miller, *Bank Files to Evict Mansion Squatter*, THE SEATTLE TIMES (Jan. 26, 2013), [http://seattletimes.com/html/nationworld/2020222725\\_mansionsquatterxml.html](http://seattletimes.com/html/nationworld/2020222725_mansionsquatterxml.html).

<sup>111</sup> See Neil, *supra* note 84.

<sup>112</sup> For example, Google found about 480,000 results in only .38 seconds. See GOOGLE, <http://www.google.com/> (last visited Jan. 28, 2013).

<sup>113</sup> Many poor Americans access the internet at public libraries. See, e.g., Matthew Lasar, *Almost Half of Poor Americans Go to the Library for Internet*, ARSTECHNICA (Mar. 25, 2010), <http://arstechnica.com/tech-policy/2010/03/almost-half-of-poor-americans-go-to-the-library-for-internet/>.

<sup>114</sup> WIKIHOW, <http://www.wikihow.com/Squat-in-Abandoned-Property> (last visited Feb. 25, 2013).

<sup>115</sup> See Wilson, *supra* note 5, at 716–17 (noting that squatters create the “ever-present potential for arrest” and the “financial contributions” made by the squatter to the property).

<sup>116</sup> WIKIHOW, *supra* note 114.

<sup>117</sup> *Id.*

end-all clause of “consult an attorney.”<sup>118</sup> Additionally, a “Squatter’s Handbook”<sup>119</sup> is available on the web, put together by a group called “Self Help Housing,” suggesting squatters become an organized unit to help support other squatters from eviction.<sup>120</sup> These websites encourage and promote the act of squatting.<sup>121</sup>

Online sources are not alone in promoting squatting or advocating for squatter’s rights. Proponents of rights favoring the squatter suggest a compromise between the law and inadequate housing concerns.<sup>122</sup> Concerns for cities affected by the housing crisis focus on the right of cities to “experiment with solutions”<sup>123</sup> to promote quality of life with “high respect” for the public welfare.<sup>124</sup> Proponents suggest squatting as a justification and strategy to combat the low-income housing crisis.<sup>125</sup> In fact, an organized squatting movement in New York initiated by the Association of Community Organizations for Reform Now (ACORN) resulted in illegal squatting becoming a legal homesteading program.<sup>126</sup> Proponents of laws favoring the squatter focus attention on policy suggesting that the court should “take a more active role in recognizing the rights of squatters who move into abandoned buildings.”<sup>127</sup> However, proponents may already have

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<sup>118</sup> *Id.*

<sup>119</sup> SQUATTER’S HANDBOOK—ONLINE, <http://archiv.squat.net/squatbook1/index.html> (last visited Nov. 11, 2013).

<sup>120</sup> Hirsch & Wood, *supra* note 104, at 612 (noting that squatting without support of local groups is “not a winning strategy”).

<sup>121</sup> Some videos, aptly titled “Squat-the-lot,” are based in the United Kingdom which show groups of people encouraging squatting on abandoned property. See YOUTUBE, *Squatting the Lot- A Guide to Getting a Home for Yourself*, [http://www.youtube.com/watch?v=XMIC0\\_4O6XU](http://www.youtube.com/watch?v=XMIC0_4O6XU) (last visited Feb. 25, 2013). The online videos ask “why not” squat property, and some even suggest squatting in your own home as a means to squat against your lender. See YOUTUBE, *House Squatting*, <http://www.youtube.com/watch?v=c-pw5jlJ0IE> (last visited Feb. 25, 2013); see also YOUTUBE, *Squat in Your Own Home- Macy Kaptur 3*, <http://www.youtube.com/watch?v=ikVWta33xmU> (last visited Feb. 25, 2013).

<sup>122</sup> Wilson, *supra* note 5, at 710.

<sup>123</sup> *Id.* at 730 (quoting *Young v. American Mini Theatres*, 427 U.S. 50, 71 (1976)).

<sup>124</sup> *Id.* (quoting *Young*, 427 U.S. at 72).

<sup>125</sup> CORR, *supra* note 52, at 16.

<sup>126</sup> Hirsch & Wood, *supra* note 104, at 618.

<sup>127</sup> Wilson, *supra* note 5, at 731; see also EDUARDO MOISÉS PEÑALVER & SONIA K. KATYAL, *PROPERTY OUTLAWS: HOW SQUATTERS, PIRATES, AND PROTESTERS IMPROVE THE LAW OF OWNERSHIP* 18 (2010).

much of what they seek considering the existing policy favoring squatters and the current remedies for eviction which place burdens on the rightful owner of the property with fiscal barriers and time constraints.

### III. ADVERSE POSSESSION AND SQUATTING POLICY

This section highlights policy considerations for adverse possession and squatting laws. Adverse possession and squatting law policy underscore claims that the law favors the wrongdoer instead of the property owner. Justifications and policies for adverse possession can rationalize why some squatters believe their actions are lawful.<sup>128</sup>

Policy objectives for adverse possession and squatting laws are two-fold; both the valid owner and the possessor claim entitlement to the property.<sup>129</sup> Although adverse possession is “an anomalous instance of maturing a wrong into a right,”<sup>130</sup> or is “like taking title by theft or robbery,”<sup>131</sup> American property law favors the policy of granting title to the possessor. The theory of adverse possession has been justified on moral and economic grounds.<sup>132</sup> This section will discuss justifications based on expectation, abandonment, and clarity of title to land.

#### A. Expectation of the Adverse Possessor/Squatter

Protection of the possessor’s reliance interest in title is a justification when the valid owner of the property has contributed to the possessor’s expectation of entitlement.<sup>133</sup> The expectation of continued access to property allows a person who possesses and occupies a piece of land for an extended period to develop a “considerable reliance interest.”<sup>134</sup> This interest may be harmed when

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<sup>128</sup> The policy considerations related to landlord-tenant law, especially with respect to holdover tenants, are more complex as they have their roots in existing estate relationships between the possessor and title holder. Therefore, they will not be reviewed in detail in this section.

<sup>129</sup> Shrestha, *supra* note 28, at 10.

<sup>130</sup> Ballantine, *supra* note 30, at 135.

<sup>131</sup> *Id.*

<sup>132</sup> Joseph William Singer, *The Reliance Interest in Property*, 40 STAN. L. REV. 611, 666 (1988).

<sup>133</sup> *Id.* at 667.

<sup>134</sup> Thomas J. Miceli, *An Economic Theory of Adverse Possession*, 15 INT’L REV. L. & ECON. 161, 161 (1995).

the valid owner is able to reclaim title to the land at any time.<sup>135</sup> The possessor's reliance interests increase over time.<sup>136</sup> As a result, the valid owner's acquiescence to the use of the property may result in the adverse possessor becoming the more vulnerable party.<sup>137</sup>

By allowing another to take possession of property, the property owner communicates to the possessor an abandonment of the property.<sup>138</sup> Because of the owner's inaction, "it is morally wrong for the true owner to allow a relationship of dependence to be established and then to cut off the dependent party."<sup>139</sup> Allowing the possessor's reliance interest to grow over time creates the risk that the possessor will experience a heightened loss if ousted from the property.<sup>140</sup>

This logic can and has been applied to squatters. A squatter may claim the right to possess the property because of a continued stay on the property, which resulted in a reliance interest.<sup>141</sup> To support this, the squatter may claim that they have nowhere else to go or may demonstrate that they have invested their time and money in the property.<sup>142</sup>

### **B. Inaction by the Valid Owner**

A second justification for adverse possession observes that there is an expectation for valid owners to take due care of their land and not "sit back on their heels" by abandoning their property.<sup>143</sup> Granting title to the adverse possessor serves economic and social policies by discouraging owners from "sleeping" on property rights.<sup>144</sup> These same policy considerations justify an owner facing a penalty by loss of

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<sup>135</sup> *Id.*

<sup>136</sup> *See Singer, supra* note 132, at 667.

<sup>137</sup> *Id.* at 668–69.

<sup>138</sup> *Id.* at 667.

<sup>139</sup> *Id.*

<sup>140</sup> *Id.* at 668.

<sup>141</sup> *See id.* 666–67.

<sup>142</sup> *See, e.g., Peterson's Story, supra* note 17 (describing a squatter who had been living in the home for a few months and had changed the locks, replaced appliances, and had plumbing work performed on the home).

<sup>143</sup> Gardiner, *supra* note 53, at 122.

<sup>144</sup> Stevie Swanson, *Sitting on Yours Rights: Why the Statute of Limitations for Adverse Possession Should Not Protect Couch Potato Future Interest Holders*, 12 FLA. COASTAL L. REV. 305, 314 (2011); *see also* Gardiner, *supra* note 53, at 122.

their land for inefficient use of their land.<sup>145</sup> The policy behind adverse possession law is “to encourage those who diligently develop and improve the land as against those who are content to hold the bare legal title inactive[] for many years.”<sup>146</sup> These laws require action by the valid owners within a defined statute of limitations.<sup>147</sup> Changes in the availability of land in the United States have influenced the adoption of shorter statutes of limitations that benefit adverse possessors while increasing the duty of the landowner to monitor the use of the land.<sup>148</sup>

Squatters benefit from inefficient use of land. Apparent abandonment of property allows a squatter to remain on the property for an extended period. If a valid owner discontinues use of the property, a squatter may take the opportunity to occupy the abandoned property.

### C. Clear Title to Land

A third justification for adverse possession builds on the requirement that the valid owners should actively use the property. Adverse possession quiets title, provides proof of meritorious titles, and furthers the alienability of land by providing certainty in title.<sup>149</sup> This favors a policy that title to land “should not long be in doubt” when an owner of property leaves land idle and that protection may be afforded to the person who comes to occupy.<sup>150</sup> Adverse possession laws quiet title, which decreases “the often high transaction costs associated with land disputes, and allow[s] for greater economic development based on the new certainty of title.”<sup>151</sup> In the case of a squatter, a policy favoring clarity of title often places the burden on the valid owner to make sure there are no adverse claims of title to their land. A squatter in states with liberal adverse possession laws may

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<sup>145</sup> Miceli, *supra* note 134, at 161.

<sup>146</sup> GEORGE A. PINDAR, *AMERICAN REAL ESTATE LAW 475* (The Harrison Company 1976).

<sup>147</sup> Carl C. Risch, Comment, *Encouraging the Responsible Use of Land By Municipalities: The Erosion of Nullum Tempus Occurrit Regi and the Use of Adverse Possession Against Municipal Land Owners*, 99 DICK. L. REV. 197, 198 (1994).

<sup>148</sup> Gardiner, *supra* note 53, at 122.

<sup>149</sup> Ballantine, *supra* note 30, at 135.

<sup>150</sup> William B. Stoebuck, *The Law of Adverse Possession in Washington*, 35 WASH. L. REV. & ST. B. J. 53, 53 (1960).

<sup>151</sup> Gardiner, *supra* note 53, at 127.

only have to live openly and pay taxes for five years before asserting a legal claim of ownership.<sup>152</sup>

The policies behind adverse possession favor the claimant at the expense of the valid owner. A squatter may justify their possession for a number of reasons, but the justifications listed above are deeply rooted principals in American property law. With policy weighing against the valid owner, it should not be a surprise that there have been numerous accounts of squatters in the United States. The justifications do not serve as a deterrent; they encourage squatting. As such, squatting may have “mov[ed] across the normative boundary from socially unacceptable to socially acceptable.”<sup>153</sup> Some justifications of adverse possession laws “encourage ‘squatters’ to make such investments as a way of acquiring title outside the market.”<sup>154</sup> Owners of property are disfavored by adverse possession laws to the benefit of a potential squatter.

#### IV. A VERY SHORT LIST OF CURRENT REMEDIES AGAINST SQUATTERS

This section addresses current remedial measures available to homeowners to remove unwanted squatters from their property. In the context of wrongful squatting, a person may want to know how a squatter’s conduct is legal. The owner of the property likely has a different inquiry: How does a person get rid of a squatter? This may be one of the first questions a homeowner asks him or herself when they find a squatter on their property. A look at state law generally will provide some insight to the remedies available to a homeowner. This section discusses three particular remedies a homeowner may seek recourse through. Self-help, summary eviction proceedings, and criminal charges are avenues a homeowner could consider. However, these remedies also raise issues concerning financial burdens, time restraints, potential liability, and will.<sup>155</sup>

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<sup>152</sup> See Ballantine, *supra* note 30, at 135.

<sup>153</sup> Mark A. Edwards, *Acceptable Deviance and Property Rights*, 43 CONN. L. REV. 457, 499 (2010).

<sup>154</sup> Miceli, *supra* note 134, at 161.

<sup>155</sup> The remedies discussed in this Note are directed to removing a squatter, not an adverse possessor. Although analogous, squatting is a distinct issue from adverse possession. Remedies available to a homeowner removing a squatter may not be as clear as those available under adverse possession laws. See Singer, *supra* note 132, at 667 (“[T]he legal steps necessary to protect the true

### A. Self-Help

Policy that favors protection of the possessor's reliance interest takes into consideration the property owner's failure to act. "The legal steps necessary to protect the true owner's interest are relatively clear, so she could have protected her own property interests if she had wanted to do so."<sup>156</sup> A homeowner may consider whether he or she can remove the squatter on their own—that is, without the assistance of police or the judicial system. Historically, removal by force was the "sole remedy" and "if one did not do so promptly one lost the right" to the title of the land.<sup>157</sup> However, entry by force is no longer a viable option for the owner of the property.<sup>158</sup> In some states, self-help may be illegal.<sup>159</sup> Additionally, the homeowner could potentially face liability under a forcible entry and detainer statute.

Self-help, in theory, is available as a common law remedy. The common law rule allows for self-help, in the analogous situation of landlord-tenant law, where the owner is legally entitled to possession and the means of reentry are peaceable.<sup>160</sup> Although this Note addresses the types of squatters that do not fall into a landlord-tenant relationship, it appears that self-help standards apply equally to squatters.<sup>161</sup> In a jurisdiction that permits self-help, the homeowner may not use violence to remove the squatter, and may be able to trespass if the homeowner does not forcibly enter the property and if the homeowner was not told to leave.<sup>162</sup> However, case law has cast

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owner's interest are relatively clear, so she could have protected her own property interests if she had wanted to do so.").

<sup>156</sup> *Id.*

<sup>157</sup> THOMPSON, *supra* note 8, at § 87.01.

<sup>158</sup> *See generally* 21 AM. JUR. PROOF OF FACTS 2d § 567 (1980).

<sup>159</sup> *See* 14B MASS. PRAC., SUMMARY OF BASIC LAW § 12.26 (4th ed.) (stating that, in Massachusetts, a landlord's use of self-help is illegal); MASS. GEN. LAWS ch. 184 § 18 (2011) ("No person shall attempt to recover possession of land or tenements in any manner other than through an action brought" pursuant to proceedings authorized by law).

<sup>160</sup> *See* Berg v. Wiley, 264 N.W.2d 145, 148 (Minn. 1978).

<sup>161</sup> *See, e.g.,* Rudolph de Winter & Larry M. Loeb, *Practice Commentaries*, MCKINNEY CONSOL. LAWS OF N.Y.: RPAPL § 713 (2008) (stating that the "eviction of illegal occupants, or squatters, through self help means without legal process" has been reaffirmed by the New York Appellate Division).

<sup>162</sup> *See* Adam B. Badawi, *Self-Help and the Rules of Engagement*, 29 YALE J. ON REG. 1, 23 (2012).

the “peaceable” means of reentry as a standard virtually impossible to satisfy.<sup>163</sup>

In addition, the growing modern trend holds that self-help is never available to dispose of a tenant.<sup>164</sup> Most states have eliminated the ability of homeowners to use self-help in the residential housing context.<sup>165</sup> Courts and states recognize the potential threat of violence in executing self-help for eviction.<sup>166</sup> Even in the minority of states which allow self-help, concerns for preventing violence result in a heavy burden to satisfy the strict-standard of “peaceable” entry.<sup>167</sup>

Despite the jurisdiction’s recognition of a right to self-help, a homeowner may be cautioned from the use of self-help because of potential criminal and civil liability. States enacted forcible entry and detainer (“FED”) statutes that made forcibly removing the possessor a criminal offense and provided a legal remedy for the forceful removal of the possessor.<sup>168</sup> In addition to providing a remedy for the ousted, FED statutes serve to provide a deterrent for the party seeking to evict a tenant or squatter so as to avoid liability.<sup>169</sup> Although these statutes may typically be applied to the landlord-tenant context, civil liability is likely a deterrent force and a justification for police inaction.<sup>170</sup>

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<sup>163</sup> See *id.* at 148–49 (peaceable entry was not met even though the landlord was accompanied by police to change the locks in the absence of the tenant). See also *Sweeney v. Meyers*, 270 N.W. 906 (Minn. 1937) (noting a tenant who received damages for unlawful eviction when the property owner placed a padlock on the property in the absence of the tenant).

<sup>164</sup> *Berg*, 264 N.W.2d at 151; see also P.A. Agabin, *Right of Landlord Legally Entitled to Possession to Dispossess Tenant Without Legal Process*, 6 A.L.R.3d 177, 186 (1966); Robert W. Barton, Comment, *Dispossession of a Tenant Without Judicial Process*, 76 DICK. L. REV. 215, 227 (1971–1972).

<sup>165</sup> See *Badawi*, *supra* note 162, at 24.

<sup>166</sup> See *Gerchick*, *supra* note 15, at 776 (citing *Wood v. Phillips*, 43 N.Y. 152, 157–58 (1870)); *Bd. of Higher Educ. v. Marcus*, 311 N.Y.S.2d 579, 584 (N.Y. Sup. Ct. 1970).

<sup>167</sup> *Gerchick*, *supra* note 15, at 782–83 (quoting *Spinks v. Taylor*, 278 S.E.2d 501, 505 (N.C. 1981) (“At any time a tenant objects to the padlocking, the self-help procedures cease and resort is made to the courts.”)).

<sup>168</sup> *Id.* at 776; see, e.g., 735 ILL. COMP. STAT. 5/9-101 (2003); OR. REV. STAT. § 105.110 (2011); TENN. CODE ANN. § 29-18-102 (2012); ARIZ. REV. STAT. ANN. § 12-1173 (2012); MONT. CODE ANN. § 70-27-203 (2011).

<sup>169</sup> See *Gerchick*, *supra* note 15, at 776.

<sup>170</sup> See *supra* note 10 and accompanying text.

## B. Summary Eviction Proceedings

Police may direct a homeowner to the court system to obtain a judicial determination in order to remove a squatter.<sup>171</sup> The homeowner would have to file suit and procure a favorable judgment in order to oust a squatter through the court system. These proceedings are typically called a “summary proceeding” or a “summary eviction proceeding.”<sup>172</sup> Summary eviction proceedings combine the dual concerns of property owners and the occupant.<sup>173</sup> Summary proceedings balance homeowner’s temporal concerns with a squatter’s need for habitable housing.<sup>174</sup> Notably, summary eviction proceedings and its requirements are “strictly enforced in favor of squatters” even though this comes with denial of justice to homeowners.<sup>175</sup>

A civil action for a summary proceeding is the “safe” route for the valid owner of property to oust a squatter. Taking this route allows the valid owner to avoid criminal sanctions or civil liability. Since a majority of courts and state legislatures have abolished property owner’s use of self-help as a remedy,<sup>176</sup> many state laws only permit removal of occupants through a judicial proceeding.<sup>177</sup> In theory, states established summary proceedings to evict possessors for cost efficiency and to provide for a much faster system than most civil proceedings.<sup>178</sup> Despite efforts, summary proceedings experience critiques.<sup>179</sup>

These proceedings are primarily used by landlords as a remedy to evict the “holdover tenant” type squatter.<sup>180</sup> However, a homeowner may seek a remedy through a summary proceeding to hopefully reduce the time it will take to remove the squatter, and specifically the costs.

<sup>171</sup> See Sullivan, *supra* note 11, at 71.

<sup>172</sup> Summary eviction proceedings are usually referred to in the landlord-tenant context. This section of the Notes discusses the civil remedy as related to a homeowner.

<sup>173</sup> See Rosemary Smith, *Locked Out: The Hidden Threat of Claim Preclusion for Tenants in Summary Process*, 15 SUFFOLK J. TRIAL & APP. ADVOC. 1, 2 (2010).

<sup>174</sup> *Id.*

<sup>175</sup> Wilson, *supra* note 5, at 726–27.

<sup>176</sup> Gerchick, *supra* note 15, at 764.

<sup>177</sup> *Id.*

<sup>178</sup> *Id.*; DUKEMINIER, *supra* note 14, at 467.

<sup>179</sup> See, e.g., Smith, *supra* note 173, at 2 (“Massachusetts has struggled to develop a satisfactory mechanism to remove a tenant from possession.”).

<sup>180</sup> See, e.g., *id.*

Summary eviction proceedings: (1) permit only a few days' notice to the tenant to bring the action; (2) allow only litigation on issues pertaining to the tenant's right of possession; (3) reduce the time available to tenants to answer the complaint and conduct discovery; and (4) place a time constraint to schedule trial near the date requested by the landlord.<sup>181</sup> Summary proceedings were intended by legislatures to be a quick and efficient remedy.<sup>182</sup>

Though the theory behind summary proceedings seeks to favor the owner of the land, the "quickness" of the proceedings is not always accomplished in practice.<sup>183</sup> "[T]ypical summary eviction procedures can be time-consuming and expensive, even if uncontested."<sup>184</sup> Because summary proceedings have their genesis in landlord-tenant law, they put the burden on the property owner to prove the possessor does not belong in the property, and the process may take several months while the property owner bears the costs of maintaining the property in addition to legal fees.<sup>185</sup> Self-help, where permitted by law, is a much less expensive option, and puts the burden on the possessor to prove after the fact that they belong in the property.<sup>186</sup>

The summary eviction process may take several months and the property owner may have to spend the high costs of legal fees.<sup>187</sup> A summary eviction proceeding may be desirable by police and homeowners, but these proceedings do not necessarily provide immediate response or removal. To regain possession, the homeowner would have to file a civil action, obtain a judgment, and have that judgment enforced. In the meantime, the homeowner may have nowhere else to go.<sup>188</sup>

### C. Criminal Charges: Trespassing

If a person is wrongfully on property, a homeowner's immediate response may be to call the police. Yet this call may be to no avail.

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<sup>181</sup> *Id.*

<sup>182</sup> DUKEMINIER, *supra* note 14, at 467.

<sup>183</sup> U.S.G.A.O., DISTRICT OF COLUMBIA: INFORMATION ON COURT ORDERED TENANT EVICTIONS 2 (Dec. 1990) (reporting an average of 114 days to remove a tenant).

<sup>184</sup> DUKEMINIER, *supra* note 14, at 468.

<sup>185</sup> Gerchick, *supra* note 15, at 785.

<sup>186</sup> *See* DUKEMINIER, *supra* note 14, at 468.

<sup>187</sup> Gerchick, *supra* note 15, at 785.

<sup>188</sup> *Peterson's Story*, *supra* note 17.

Despite the fact that the United States government and its citizens have viewed squatters as criminals,<sup>189</sup> it seems as though there is a clear absence of police action in issues involving squatters. There is seemingly a heavy list of charges a homeowner may want police to pursue; trespassing, breaking and entering, and theft are likely on that list.<sup>190</sup> The homeowner may seek a criminal charge against the squatter for his or her initial entry onto the property.

A remedy which would require police action would be to claim criminal trespass. However, an action for criminal trespass may be an unavailable remedy if the police are unwilling or unable to remove the squatter under the circumstances.<sup>191</sup> Even when a squatter is charged under a trespass statute, the deterrent force is minimal as trespass is a misdemeanor “accompanied in practice . . . by relatively light punishments.”<sup>192</sup> A squatter charged with criminal trespass could very well claim that because of the length of their possession, he is not a trespasser, but an adverse possessor with legal possession resulting in dropped charges and a continued stay by the squatter.<sup>193</sup>

## V. SOLUTIONS: TAKING ADVICE FROM CYBER LAW AND THE UNITED KINGDOM

The current remedies available to remove squatters provide an undue burden of expense and delay on the true owner of title.<sup>194</sup> The hardships are placed on the owner instead of on the wrongdoer possessing the property.<sup>195</sup> Instead of relying on adverse possession and landlord-tenant laws which do not fit the contours of squatting, American law should provide clear statutory laws criminalizing squatting.

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<sup>189</sup> Gardiner, *supra* note 54, at 121.

<sup>190</sup> See Heidi Peterson, *Woman Returns Home to Find Squatter Has Taken Over, Police Refuse to Help*, COP BLOCK (Apr. 17, 2013), <http://www.copblock.org/30201/woman-returns-home-to-find-squatter-has-taken-over-police-refuse-to-help/>. Peterson sought help from police but was told that they were not going to arrest the squatter for breaking and entering, trespassing, theft, or property damage.

<sup>191</sup> See, e.g., Neil, *supra* note 84.

<sup>192</sup> Peñalver & Katyal, *supra* note 4, at 1165; see, e.g., N.Y. PENAL LAW §140.10 (McKinney 2010).

<sup>193</sup> See 3 AMERICAN LAW OF PROPERTY, § 15.3, at 767 (A. James Casner ed. 1952).

<sup>194</sup> See Gerchick, *supra* note 15, at 785.

<sup>195</sup> See *infra* Part IV.

This section provides support for enacting a clear-cut criminal statute to address squatting concerns. First, authority is derived from Congress' swift action to provide a civil remedy to trademark owners in the case of domain name squatting—used to provide policy reasons for enacting a criminal statute. Second, this section details a recent change to squatting laws in the United Kingdom. The new criminal statute for squatters in the United Kingdom provides strong persuasive authority for granting a homeowner greater protection against a squatter.

### A. The Anticybersquatting Consumer Protection Act

This section will provide a brief analysis of cybersquatting as it pertains to domain name squatting. Although real property is not directly involved, “cybersquatting” involves registering a domain name in bad faith on the internet which is similar to a federal or state protected trademark.<sup>196</sup> The purpose of “cybersquatting” is to “squat” on a domain name forcing the trademark owner to purchase the rights associated with the domain name.<sup>197</sup> “Cybersquatting” became a serious problem in the United States by the late 1990s,<sup>198</sup> because the United States lacked specific laws to prohibit the practice.<sup>199</sup> “This practice has caused serious problems for many legitimate trademark holders who seek to establish a web presence that is readily identifiable with their trademarks.”<sup>200</sup>

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<sup>196</sup> Thomas J. Curtin, *The Name Game: Cybersquatting and Trademark Infringement on Social Media Websites*, 19 J.L. & POL'Y 353, 354 (2010); see The Anticybersquatting Consumer Protection Act, 15 U.S.C. § 1125 (d)(1)(A) (2012) (including in the statute protection for a person's name which is protected as a mark).

<sup>197</sup> Curtin, *supra* note 196, at 354. The “cybersquatters” seek to demand payment at high prices for the transfer of the right to the domain name. See *Panavision Int'l, L.P., v. Toeppen*, 141 F.3d 1316, 1318–19 (9th Cir. 1998) (owner of the domain name sought to charge the holder of the intellectual property right \$13,000 for the transfer of the right to the domain name); W. Chad Shear, 2001 U. ILL. J.L. TECH. & POL'Y 219, 219, (2001) (stating that Warner Brother was asked to pay \$350,000 for the right to two domain names and Gateway actually paid a “cybersquatter” \$100,000 for the domain name).

<sup>197</sup> Jian Xiao, *The First Wave of Cases Under The ACPA*, 17 BERKELEY TECH. L.J. 159, 159-60 (2002).

<sup>198</sup> Joseph J. Weissman, *The Anticybersquatting Consumer Protection Act: Developments Through Its First Six Years*, 95 TRADEMARK REP. 1058, 1058 (2005).

<sup>199</sup> *Id.*

<sup>200</sup> Xiao, *supra* note 197, at 159–60.

Left without a viable remedy for trademark owners,<sup>201</sup> Congress passed The Anticybersquatting Consumer Protection Act (ACPA) in 1999, which gave trademark owners statutory protection from “cybersquatters.”<sup>202</sup> The ACPA announced civil liability to be imposed on a “cybersquatter” who registers a domain name in bad faith to profit.<sup>203</sup> Remedies under the APCA award trademark owners statutory damages, transfer rights, and attorney fees in exceptional cases.<sup>204</sup>

Congress enacted the ACPA to provide clarity to trademark owners in response to the concerns that existing laws inadequately addressed “cybersquatters.”<sup>205</sup> Congress stated that prior to the ACPA, the laws provided no clear deterrence or incentives for “cybersquatters” to cease their practices.<sup>206</sup> The ACPA statute creates a disincentive to “cybersquatting” by way of a federal statute.<sup>207</sup> Congress expressed as a need for legislation banning “cybersquatting” that the law did not expressly prohibit such action.<sup>208</sup> Congress recognized that laws pertaining to cybersquatting were unclear and “produced inconsistent judicial decisions and created extensive monitoring obligations, unnecessary legal costs, and uncertainty for. . . trademark owners[.]”<sup>209</sup>

<sup>201</sup> Weissman, *supra* note 198, at 1058 (noting that “cybersquatters had become sophisticated enough to insulate themselves from liability under the Federal Trademark Dilution Act”).

<sup>202</sup> 15 U.S.C. § 1125 (d); *see* Tenesa S. Scaturro, Note, *The Anticybersquatting Consumer Protection Act and the Uniform Domain Name Dispute Resolution Policy the First Decade: Looking Back and Adapting Forward*, 11 NEV. L.J. 877, 878 (2011).

<sup>203</sup> 15 USC § 1125 (d)(1)(A)(i). The ACPA protects the true owner by providing statutory damages ranging from \$1,000-\$100,000 per domain name. Weissman, *supra* note 198, at 1074. These damages are limited to those domain names registered after the enactment of the ACPA, but a person who registered before the enactment is not necessarily immune from statutory damages. *Id.*

<sup>204</sup> Weissman, *supra* note 198, at 1074–75; 15 USC § 1125(d)(1)(C); § 1117(a).

<sup>205</sup> Xiao, *supra* note 197, at 162.

<sup>206</sup> S. REP. NO. 106-140, at 7 (1999). In fact, Congress expressed a need for legislation banning “cybersquatting” that the laws did not expressly prohibit such action. *Id.* Further, Congress recognized that the laws pertaining to cybersquatting were unclear and “produced inconsistent judicial decisions and created extensive monitoring obligations, unnecessary legal costs, and uncertainty for. . . trademark owners[.]” *Id.*

<sup>207</sup> S. REP. NO. 106-140, at 7 (1999).

<sup>208</sup> *Id.*

<sup>209</sup> *Id.*

The federal statute sheds light on the inconsistency between protecting trademark owners and owners of real property. Congress passed the ACPA to improve the “expensive and uncertain” remedies available to the owners of the intellectual property rights.<sup>210</sup> Trademark owners receive protection instead of the “cybersquatters.”<sup>211</sup> The Act provides procedural and remedial provisions that make it easier for the trademark owner to take action against the “cybersquatter.”<sup>212</sup> Further, the ACPA eliminates the obstacles that existed under preexisting law.<sup>213</sup>

In contrast, real property laws affecting squatting fail to grant such protection to valid owners of property. The owners of real property are subject to unnecessary legal costs and delay when pursuing legal action against squatters, which is analogous to trademark owners prior to the ACPA.<sup>214</sup> State legislatures should apply the same considerations used to “clarify the rights of trademark owners”<sup>215</sup> to squatting issues arising from real property.

The real property laws affecting squatting could benefit from legislative action focusing on prevention, punishment, and remedies. Congress acted as early as 1999 to address “cybersquatting,” yet laws pertaining to squatting on real property remain unclear. The same policy concerns exist for state legislatures to enact clear-cut laws pertaining to squatting. If state legislatures enacted laws that provide clarity to real property owners, the law would produce consistent judicial decisions, and legal costs to remove squatters would be reduced.

### **B. United Kingdom Squatting Law**

Although the APCA provides policy support for enacting clear-cut laws pertaining to squatters on real property, additional support can be found in the recent law criminalizing squatting in the United Kingdom.

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<sup>210</sup> Weissman, *supra* note 198, at 1058 (quoting H.R. REP. NO. 106-412, at 6 (1999)).

<sup>211</sup> Xiao, *supra* note 197, at 162.

<sup>212</sup> *Id.* at 163; 15 USC § 1125(d) (2012).

<sup>213</sup> Zorik Pesochinsky, *Almost Famous: Preventing Username-Squatting on Social Networking Websites*, 28 CARDOZO ARTS & ENT. L.J. 223, 229 (2010).

<sup>214</sup> *See generally*, Gerchick, *supra* note 15, at 785.

<sup>215</sup> *Id.*

Prior to criminalizing squatting, the government estimated that throughout England and Wales there were 20,000 squatters.<sup>216</sup> Reports from squatting groups indicate that the true number is substantially higher.<sup>217</sup> In August of 2012, the United Kingdom enacted a law criminalizing squatting by making the crime punishable by a prison sentence, a fine of 5,000 Euros, or both.<sup>218</sup> Under prior law in the United Kingdom, homeowners needed to file an action in civil court to remove a squatter.<sup>219</sup> Police could not evict the squatters prior to the new legislation.<sup>220</sup> Evicting the squatters under the old legislation could be time consuming, expensive, and stressful to the homeowner.<sup>221</sup> According to the United Kingdom's Housing Minister Grant Shapps, by creating new legislation on squatting, the United Kingdom was "tipping the scales of justice back in favour of the homeowner and making law crystal clear: entering a property with the intention of squatting will be a criminal offence."<sup>222</sup>

Traditionally in the United Kingdom, there was a reluctance to treat certain violations of real property rights, like trespassing and squatting, as criminal offenses.<sup>223</sup> Before the new legislation, British law required a procedure for summary of eviction, similar to the procedure in the United States, in order to remove squatters.<sup>224</sup> The procedure proved to be relatively time consuming and costly for a landowner.<sup>225</sup> Similar to the system in the United States, the United

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<sup>216</sup> *Q&A: Squatting Laws*, BBC NEWS UK POLITICS (Aug. 31, 2012), <http://www.bbc.co.uk/news/uk-politics-19438903> [hereinafter *BBC News*].

<sup>217</sup> *Id.*

<sup>218</sup> LEGAL AID, SENTENCING AND PUNISHMENT OF OFFENDERS ACT 2012, Ch. 10, s. 144 (Eng.). The Act notes that this section does not apply to Scotland. However, "[s]quatting has been illegal in Scotland since the mid-19th Century. The owner of the property has the right to eject squatters without serving notice or applying to a court for an eviction order." *BBC News*, *supra* note 206.

<sup>219</sup> *BBC News*, *supra* note 206; *see also* Cobb, *supra* note 26, at 114.

<sup>220</sup> Daniel Martin, *Squatters to Face Six Months in Prison as Laws Giving Them Rights are Scrapped*, DAILY MAIL UK (Aug. 30, 2012), <http://www.dailymail.co.uk/news/article-2196058/Squatters-face-months-prison-laws-giving-rights-scrapped.html>.

<sup>221</sup> *Id.*

<sup>222</sup> *Id.*

<sup>223</sup> Cobb, *supra* note 26, at 115 (the exception being certain trespassing based offenses such as burglary).

<sup>224</sup> *See id.* at 116.

<sup>225</sup> *Id.* at 119.

Kingdom employs Forcible Entry Acts that criminalize acts by real property owners who “violently” enter their premises to remove trespassers or squatters.<sup>226</sup> The “growing confusion and controversy” regarding the laws as they pertained to squatters resulted in proposals for reform.<sup>227</sup> The political significance of squatting reemerged in the United Kingdom in media stories on squatters.<sup>228</sup> Despite opposition, the government took affirmative steps to criminalize squatting.<sup>229</sup>

The United Kingdom passed Section 144 of the Legal Aid, Sentencing and Punishment of Offenders Act effectively criminalizing squatting.<sup>230</sup> The Act criminalizes squatting in a residential building.<sup>231</sup> A person commits criminal squatting when an individual enters the property as a trespasser.<sup>232</sup> Under the Act, a person commits criminal squatting thereafter when the person lives in the building or intends to live therein for any period of time.<sup>233</sup> Section 144 does not apply to a “holdover” situation, where the tenant remains on the property after the end of the lease.<sup>234</sup>

A squatter may face additional criminal charges.<sup>235</sup> For example, offenses may be indictable if the doors and windows of the property have been broken, items have been damaged or removed, or if the squatter abstracted electricity.<sup>236</sup> Therefore, a squatter could face not only criminal charges for squatting but theft and burglary as well.<sup>237</sup>

The new squatting legislation provides an immediate remedy for homeowners in the United Kingdom. As of September 1, 2012,<sup>238</sup> a

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<sup>226</sup> *Id.* at 116.

<sup>227</sup> *Id.*

<sup>228</sup> These stories contributed to new laws criminalizing squatting. *See id.* at 118.

<sup>229</sup> *Id.* at 119.

<sup>230</sup> LEGAL AID, SENTENCING AND PUNISHMENT OF OFFENDERS ACT 2012, Ch. 10, s. 144 (Eng.).

<sup>231</sup> *Id.*

<sup>232</sup> *Id.*

<sup>233</sup> *Id.*

<sup>234</sup> *Id.*; *see also* *BBC News*, *supra* note 206; LEGAL AID, SENTENCING AND PUNISHMENT OF OFFENDERS ACT 2012, Ch. 10, s. 144 (Eng.).

<sup>235</sup> Criminal Law and Legal Policy Team, *Offence of Squatting in Residential Building*, at 4 (2012), <http://www.justice.gov.uk/downloads/legislation/bills-acts/circulars/squatting-circular.pdf>.

<sup>236</sup> *Id.*

<sup>237</sup> *Id.*

<sup>238</sup> LEGAL AID, SENTENCING AND PUNISHMENT OF OFFENDERS ACT 2012, Ch. 10, s. 144 (Eng.). The law was appointed into law effective September 1, 2012. *Id.*

homeowner's complaint to the police is sufficient for the police to take action to arrest the squatter.<sup>239</sup> The police are given lawful authority and the "specific power . . . to arrest a person who is suspected of squatting in a residential building."<sup>240</sup> The guidance issued by the Ministry of Justice informed police in the United Kingdom to not be deterred from making a lawful arrest if they see a "squatter's right" notice posted on the door.<sup>241</sup> The new criminal law increases the difficulty for squatters to assert any "squatter's rights" because their occupation of residential buildings is a criminal act.<sup>242</sup>

According to news reports, the first squatter jailed under the new law was a twenty-one year-old man who was squatting in an apartment in London—the arrest occurred only a few weeks after the law came into effect.<sup>243</sup> The Crown Prosecution Service confirmed that the man was the first to receive a custodial sentence under Section 144.<sup>244</sup> The man pleaded guilty to occupying the apartment without permission, and was sentenced to twelve weeks in prison.<sup>245</sup> Recent reports show that since squatting became a criminal offense, almost seventy suspected squatters have come before the courts.<sup>246</sup> Most of these offenders received fines, some were given conditional discharges, others were sentenced to jail for terms up to ninety days.<sup>247</sup> Reports

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<sup>239</sup> *Squatting Set to Become a Criminal Offence*, BBC NEWS UK POLITICS (Aug. 31, 2012), <http://www.bbc.co.uk/news/uk-politics-19429936>.

<sup>240</sup> Criminal Law and Legal Policy Team, *Offence of Squatting in Residential Building*, at 6 (2012), <http://www.justice.gov.uk/downloads/legislation/bills-acts/circulars/squatting-circular.pdf>.

<sup>241</sup> *Id.* at 6.

<sup>242</sup> *Id.* at 5.

<sup>243</sup> Owen Bowcott, *First Squatter Jailed Under New Law*, THE GUARDIAN (Sept. 27, 2012), <http://www.theguardian.com/society/2012/sep/27/first-squatter-jailed-new-law>.

<sup>244</sup> *Id.*

<sup>245</sup> *Id.*

<sup>246</sup> Tom Mosely, *Squatting Law, a Year on: 69 Charged and One Jailed for 90 Days*, THE HUFFINGTON POST UK (Aug. 31, 2013), [http://www.huffingtonpost.co.uk/2013/08/30/squatting-law\\_n\\_3843266.html](http://www.huffingtonpost.co.uk/2013/08/30/squatting-law_n_3843266.html); see also Oscar Quine, *No More Squatters Rights: 69 Prosecuted in First Year That New Law Came Into Effect, CPS Data Reveals*, THE INDEPENDENT (Sept. 1, 2013), <http://www.independent.co.uk/news/uk/crime/no-more-squatters-rights-69-prosecuted-in-first-year-that-new-law-came-into-effect-cps-data-reveals-8793087.html>.

<sup>247</sup> Mosely, *supra* note 246; see also Quine, *supra* note 246.

vary as to the number of squatters arrested,<sup>248</sup> but in just a year's time, homeowners have begun to see justice.

The United States could benefit from criminalizing squatting. By criminalizing squatting, the United Kingdom demonstrated an intolerance towards individuals possessing property without the owner's consent.<sup>249</sup> Squatting in the United Kingdom is a social problem and criminalizing squatting answered demand that "something" had to occur.<sup>250</sup> Under the previous law, the police were reluctant to act, making the burden of removing the squatter fall upon the owner.<sup>251</sup> Once criminalized, the police in the United Kingdom were able to remove squatters from residential buildings without the fear of criminal liability.<sup>252</sup> Criminal punishment creates a "more powerful deterrent for squatters than the existence of civil liability."<sup>253</sup>

In addition, the criminal law in the United Kingdom reduces the expenses and delay faced by homeowners. Criminalizing squatting by making the law "crystal clear," punishes the wrongdoer, and protects the homeowner from the burdens of removing a squatter through a civil action filed in court.<sup>254</sup> Despite claims of "squatter's rights" and the need for adequate housing, the United Kingdom found that the difficulties suffered by squatters did not amount to legitimate reasons for depriving rightful owners from the use of their property.<sup>255</sup>

## VI. SUGGESTING A MODEL STATUTE

State legislatures in the United States should create laws criminalizing squatting, just like the United Kingdom.<sup>256</sup> The laws are unclear, produce inconsistent judicial decisions, and create

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<sup>248</sup> Mosely, *supra* note 246.

<sup>249</sup> Cobb, *supra* note 26, at 119.

<sup>250</sup> *Id.*

<sup>251</sup> Harry Wallop, *Squatters Take a Commercial Break*, THE TELEGRAPH (Nov. 6, 2012), <http://www.telegraph.co.uk/finance/newsbysector/constructionandproperty/9658410/Squatters-take-a-commercial-break.html>.

<sup>252</sup> In the United Kingdom, section 6 of the Criminal Law Act of 1977 made it an offense for a person without lawful authority to use or threaten violence to secure entry to a building if someone inside the premises opposes to the entry. *Id.* at 6. Section 144 gives the police the lawful authority to make an arrest. *Id.*

<sup>253</sup> *Id.*

<sup>254</sup> Martin, *supra* note 220.

<sup>255</sup> Cobb, *supra* note 26, at 119, 121.

<sup>256</sup> *See supra* Part V and accompany text.

unnecessary legal burdens to property owners.<sup>257</sup> This section provides a “model statute” and accompanying comments that state legislatures may follow in enacting a law which clearly criminalizes squatting.

The “model statute” suggests mirroring the statute enacted by the United Kingdom. The comments are based on the Senate and House reports that recommended the enactment of the Anticybersquatting Consumer Protection Act. The comments not only provide the public policy for the criminalization of squatting but they also provide the authority used in the Legal Aid, Sentencing, and Punishment of Offenders Act for the criminal squatting law in the United Kingdom.

#### A. Model Statute

The “model statute” below is intended to address squatters in residential buildings.<sup>258</sup> The statute is not intended to apply to any landlord-tenant relationship in which a holdover situation arises.<sup>259</sup> The “model statute” does not suggest sentencing length, nor does this statute suggest a minimum or maximum fine.<sup>260</sup> This “model statute” provides suggested language to define when a person has committed the act of squatting in a residential building.

The “model statute” suggests the adoption of the following language:

#### Criminal Offense of Squatting in a Residential Building

- (1) A person commits an offense under this statute if—
  - (a) the person is in a residential building without the consent or permission of the owner and the person enters the building as a trespasser;
  - (b) the person knows, or ought to know, that he or she is a trespasser; and
  - (c) the person is living or intends to live in the building for any period of time.<sup>261</sup>

<sup>257</sup> See *supra* Part V and accompany text; see also S. REP. NO. 106-140, at 7 (1999).

<sup>258</sup> See LEGAL AID, SENTENCING AND PUNISHMENT OF OFFENDERS ACT 2012, Ch. 10, s. 144 (Eng.).

<sup>259</sup> See Ch. 10, s. 144 (2).

<sup>260</sup> *Contra* Ch. 10, s. 144 (5).

<sup>261</sup> See Ch. 10, s. 144.

The statute focuses attention on the original trespass, the continued trespass by living therein, and the insignificance of the length of time the squatter remained in the building. Additional considerations need to be made by state legislatures which are beyond the scope of the language detailed above. The legislatures should consider definitions for terms such as buildings, residential, trespass, and living.<sup>262</sup>

### **B. Comments to Accompany the Model Statute**

When the United Kingdom criminalized squatting, the Ministry of Justice issued a circular.<sup>263</sup> The Ministry of Justice addressed the circular to justices and prosecutors across the United Kingdom, and copies were sent to the criminal bar societies, the Association of Chief Police Officers, and the Association of Police Authorities.<sup>264</sup> Similarly in the United States, the Senate and House issued reports recommending the APCA be enacted.<sup>265</sup> A similar detailed report should accompany the “model statute” provided above.

It would be beneficial for state legislatures to provide accompanying text with the “model statute” to serve as an informational source. A “circular,” similar to that distributed by the Ministry of Justice, can provide direction to police, judges, and prosecutors in implementing the new statute. The circular can include descriptions of when the statute applies and when it does not.<sup>266</sup> The information can distinguish a trespasser from a squatter.<sup>267</sup> The circular should also provide instructions to police officers who execute an arrest under the statute.<sup>268</sup> It should also include descriptions of

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<sup>262</sup> See Ch. 10, s. 144.

<sup>263</sup> Criminal Law and Legal Policy Team, *Offence of Squatting in Residential Building*, at 1 (2012), <http://www.justice.gov.uk/downloads/legislation/bills-acts/circulars/squatting-circular.pdf>. This circular provided details and comments to explain the scope of the act, its purpose, and its effect. *Id.*

<sup>264</sup> *Id.*

<sup>265</sup> S. REP. NO. 106-140; H.R. REP. NO. 106-412.

<sup>266</sup> For example, the circular provides that the statute does not apply to persons who entered the building with the original permission of the owner. See Criminal Law and Legal Policy Team, *Offence of Squatting in Residential Building*, at 2 (2012), <http://www.justice.gov.uk/downloads/legislation/bills-acts/circulars/squatting-circular.pdf>.

<sup>267</sup> Criminal Law and Legal Policy Team, *Offence of Squatting in Residential Building*, at 3 (2012), <http://www.justice.gov.uk/downloads/legislation/bills-acts/circulars/squatting-circular.pdf>.

<sup>268</sup> *Id.* at 6.

other criminal offenses that may accompany a squatting charge.<sup>269</sup> The circular produced by the Ministry of Justice also includes a section on “Support for Homeless and Vulnerable People” which will be a useful section for state legislatures.<sup>270</sup> Although the “model statute” is intended to be the binding authority for the criminal act of squatting, additional information comprised in a circular may be helpful for those tasked with enforcing the new law.

State legislatures should also consider issuing a report relaying the policy reasons for enacting a clear-cut law that criminalizes squatting. This report can include the legislature’s recognition that the current laws pertaining to squatters are unclear and produce inconsistent judicial decisions at the expense of homeowners.<sup>271</sup> The report should detail the reasons why homeowners need legislation to protect their property rights.<sup>272</sup> It should specify that the new statute intends to serve as a deterrent to prevent squatters from occupying and misusing residential property.<sup>273</sup> To criminalize squatting, a state legislature should adopt the “model statute,” incorporate the accompany comments, and distribute the information in a similar manner as the Ministry of Justice circular. This method proved to be successful for the United Kingdom. It resulted in the arrest and prosecution of squatters. It made clear that no “squatter’s rights” to residential buildings existed.<sup>274</sup>

## VII. CONCLUSION

Squatting does not clearly fit into the current laws in the United States. The squatter may or may not be a trespasser. Adverse possession laws likely will not resolve the issue because the squatter will not have satisfied the statute of limitations or the requisite elements to claim title. The current remedial measures for landlord-tenant relationships do not address every type of squatter. The expense and delays in removing a squatter through a civil action place an undue burden on the homeowner instead of the wrongful and illegal squatter.

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<sup>269</sup> *Id.* at 4–5.

<sup>270</sup> *Id.* at 6–7.

<sup>271</sup> See S. REP. NO. 106-140 at 7.

<sup>272</sup> See *id.* at 6; H.R. REP. NO. 106-412 at 5–7.

<sup>273</sup> See S. REP. NO. 106-140 at 7.

<sup>274</sup> Criminal Law and Legal Policy Team, *Offence of Squatting in Residential Building*, at 6 (2012), <http://www.justice.gov.uk/downloads/legislation/bills-acts/circulars/squatting-circular.pdf>.

The recent news stories detailing the accounts of squatters across the country in low-income and high-end realty brought the issue into national attention. An adjustment to American law is needed to provide clarity and to afford more consistency to protect the owner instead of the squatter.