

§ 41-89. Adverse possession by a cotenant.

(a) A cotenant without color of title may acquire title to another cotenant's interest in the property by 20 years' adverse possession as provided by G.S. 1-40, subject to the following:

- (1) Possession of the property by the cotenant is not considered adverse until there is an actual ouster or constructive ouster of the other cotenant.
- (2) If a cotenant purports to convey the whole estate, all of the following apply:
 - a. The grantee receives only the grantor's interest.
 - b. The instrument of conveyance is not color of title as against the grantor's cotenant.
 - c. Adverse possession by the grantee for 20 years is required to bar entry of the grantor's cotenant.

(b) A cotenant with color of title may acquire title to the other cotenant's interest in the property by seven years' adverse possession as provided by G.S. 1-38, subject to the following:

- (1) Possession of the property by the cotenant is not considered adverse until there is an actual ouster of the other cotenant.
- (2) If a cotenant purports to convey the whole estate, all of the following apply:
 - a. The grantee receives only the grantor's interest.
 - b. The instrument of conveyance is not color of title against the grantor's cotenant.
 - c. Seven years' adverse possession by the grantee under the deed will not ripen into title to the whole estate.
- (3) If a grantee receives a deed purporting to convey the whole estate in a judicial proceeding to sell the interest of a cotenant, including a sale for partition, a tax foreclosure, or a sale to pay debts, the deed is deemed color of title and the grantee can acquire title as against all other cotenants by seven years' adverse possession.

(c) A tenant in common claiming adverse possession must prove ouster or constructive ouster by clear and convincing evidence. (2024-47, s. 1.)