Document hosted at JDSUPRA
http://www.jdsupra.com/post/documentViewer.aspx?fid=604cc5b6-51f9-469a-8ee5-b505b217491c

Legislature Modifies the Rules Governing Adverse Possession

In July, 2008 the rules governing Adverse Possession in New York were modified by Chapter 269 of the Laws of 2008. As a result of a number of judicial decisions over the last several years, which added further confusion to an already complex legal concept, the Legislature obviously felt it was time to try to add some clarity to this evolving area of the law.

The amendments to several provisions of the Real Property Actions and Proceedings Law ("RPAPL") more clearly define adverse possession (section 501) including that one may be an adverse possessor "with or without knowledge of the other's superior ownership rights." Sections 512 and 522 were changed by taking out the requirement that the property be cultivated or improved by the adverse possessor and instead inserting a provision that in order to claim adverse possession there must "have been acts sufficiently open to put a reasonably diligent owner on notice."

While disagreement over what constitutes "sufficiently open" and a "reasonably diligent owner" may cause additional litigation, the amendment to section 543 of the RPAPL may provide some relief and clarity in an area that is probably the most common cause of adverse possession claims. The new provisions of section 543 state:

"1. Notwithstanding any other provision of this article, the existence of de minimus non-structural encroachments including, but not limited to, fences, hedges, shrubbery, plantings, sheds and non-structural walls, shall be deemed permissive and non-adverse.

2. Notwithstanding any other provision of this article, the acts of lawn mowing or similar maintenance across the boundary line of an adjoining owner's property shall be deemed permissive and non-adverse."

It appears that at least the issue of a neighbor's fence or shrubs encroaching slightly onto another property has been put to rest, although no doubt there will be litigation over what constitutes a de minimus encroachment.