



Prescriptive rights by adverse user

[Wis. Stat. s. 893.28](#) provides for acquiring a land right through *prescriptive rights via adverse user*. Before WisDOT will recognize if a utility company has a land right, the following factors needed to be considered:

- Is the utility facility owner a domestic corporation, foreign corporation, or a unit of government
- Utility facility type
- Date the utility facility was installed
- The length of time the utility facility occupied the property
 - The minimum length a utility facility needs to occupy the land before being eligible to obtain a prescriptive right is either 10 years or 20 years. The length of time is dependent on the utility facility owner type, land owner type, and the date the utility facility was installed
- Is the property privately or publicly owned
- The version of the law at the time the utility company was eligible to obtain a prescriptive right must be followed

There have been many different versions of the *prescriptive rights by adverse user* statute. The version of the statute at the time the utility company became eligible to obtain a prescriptive right needs to be followed. Below is a list of said statutes:

- [1979 c. 323, Published May 19th, 1980 \(act took effect on July 1st, 1980\)](#)
- [1983 a. 178, Published March 27th, 1984 \(act took effect on March 28th, 1984\)](#)
- [1997 a. 108, Published April 28th, 1998 \(act took effect on April 29th, 1998\)](#)
- [2015 a. 219, Published March 2nd, 2016 \(act took effect on March 3rd, 2016\)](#)
- [2017 a 368, Published April 1st, 2019 \(act took effect on April 1st, 2017\) – CURRENT LAW](#)

Adverse possession vs. prescriptive right

A *prescriptive right* is different than *adverse possession*. In Wisconsin, if a person is in uninterrupted adverse possession of real estate for a certain period of time, that person may commence a legal action to establish title to that real estate. WisDOT will not recognize or determine if a utility company established title to real estate via adverse possession. This decision is made in the courts and will be reflected in the title search. The burden of proof to establish title via adverse possession is more rigorous than establishing a prescriptive right. Because of this, WisDOT will recognize a prescriptive right without a legal action. Obtaining a prescriptive right means a utility company has gained the right to continued use of the land their utility facility occupies. If the utility company removes their facility they no longer have a right at that location. A prescriptive right **does not** give the utility company title to the land their facility occupies. WisDOT will recognize a utility company has a land right via *prescriptive rights by adverse user* if the statute requirements are met and the utility company provides proof that the utility facility has been in place for the required amount of time (10 or 20 years).



Requirements for WisDOT to recognize a domestic corporation has established a prescriptive right on private land

- The domestic corporation is organized to furnish the following facilities (*note that sewer and water are not part of this list*):
 - Communication
 - Electricity
 - Gas
 - Petroleum
 - Steam
- Utility facility needs to have occupied the land uninterruptedly for at least 10 years

SUMMARY OF LAW CHANGES

[1979 c. 323, Published May 19th, 1980 \(act took effect on July 1st, 1980\)](#)

- States domestic corporation can obtain a prescriptive right if the following is met:
 - The domestic corporation is organized to furnish telegraph or telephone service or transmit heat, power or electric current to the public or for public purposes, or a cooperative association organized under ch. 185 to furnish telegraph or telephone service or transmit heat, power or electric current to its members
 - The facility needs to have occupied the land uninterruptedly for at least 10 years

[1983 a. 178, Published March 27th, 1984 \(act took effect on March 28th, 1984\)](#)

- No changes affect this topic

[1997 a. 108, Published April 28th, 1998 \(act took effect on April 29th, 1998\)](#)

- No changes affect this topic

[2015 a. 291, Published March 2nd, 2016 \(act took effect on March 3rd, 2016\)](#)

- States domestic corporation can obtain a prescriptive right if the following is met:
 - The domestic corporation is organized to furnish telegraph or telecommunications service or transmit heat, power or electric current to the public or for public purposes, by a cooperative association organized under ch. 185 or 193 to furnish telegraph or telecommunications service, or by a cooperative organized under ch. 185 to transmit heat, power or electric current to its members
 - The facility needs to have occupied the land uninterruptedly for at least 10 years



Requirements for WisDOT to recognize a foreign corporation has established a prescriptive right on **private** land

- Utility facility needs to have occupied the land uninterrupted for at least 20 years

SUMMARY OF LAW CHANGES

[1979 c. 323, Published May 19th, 1980 \(act took effect on July 1st, 1980\)](#)

- States a person (includes foreign corporations) can obtain a prescriptive right if the following is met:
 - The facility needs to have occupied the land uninterrupted for at least 20 years

[1983 a. 178, Published March 27th, 1984 \(act takes effect on March 28th, 1984\)](#)

- No changes affect this topic

[1997 a. 108, Published April 28th, 1998 \(act takes effect on April 29th, 1998\)](#)

- No changes affect this topic

[2015 a. 291, Published March 2nd, 2016 \(act takes effect on March 3rd, 2016\)](#)

- No changes affect this topic



Requirements for WisDOT to recognize a unit of government (UOG) has established a prescriptive right on **private land**

- Utility facility needs to have occupied the land uninterruptedly for at least 20 years

SUMMARY OF LAW CHANGES

[1979 c. 323, Published May 19th, 1980 \(act took effect on July 1st, 1980\)](#)

- States any person (which includes UOG) can obtain a prescriptive right if the following is met:
 - *The facility needs to have occupied the land uninterruptedly for at least 20 years*

[1983 a. 178, Published March 27th, 1984 \(act takes effect on March 28th, 1984\)](#)

- *No changes affect this topic*

[1997 a. 108, Published April 28th, 1998 \(act takes effect on April 29th, 1998\)](#)

- *No changes affect this topic*

[2015 a. 291, Published March 2nd, 2016 \(act takes effect on March 3rd, 2016\)](#)

- *No changes affect this topic*



Requirements for WisDOT to recognize a domestic or foreign corporation has established a prescriptive right on **public land**

Public land means land owned by a unit of government (UOG)

If the UOG obtained the land prior to March 28th, 1984; WisDOT will recognize the utility has a prescriptive right if the following criteria is met:

- Utility facility needs to have occupied the land uninterruptedly for more than 20 years

If the UOG obtained the land on/or in-between the dates of March 28th, 1984 – April 28th, 1998; WisDOT will recognize the utility has a prescriptive right if the following criteria is met:

- Utility facility needs to have occupied the land uninterruptedly for more than 20 years
- The land cannot be an abandoned railroad acquired by the state
- The land cannot be road right of way

If the UOG obtained the land on/or in-between the dates of April 29th, 1998 – March 3rd, 2016; WisDOT will recognize the utility has a prescriptive right if the following criteria is met:

- Utility facility needs to have occupied the land uninterruptedly for more than 20 years
- Based upon a continuously maintained fence line which has been mutually agreed upon by the current land owners

If the UOG obtained the land after March 3rd, 2016 and the utility hadn't yet established a prescriptive right, a prescriptive right cannot be established.

SUMMARY OF LAW CHANGES

[1979 c. 323, Published May 19th, 1980 \(act takes effect on July 1st, 1980\)](#)

- States prescriptive rights can be established on property belonging to a UOG [except lands held in trust by the state under s. 24.01 (2) to (6)] if the following is met:
 - The facility needs to have occupied the land uninterruptedly for more than 20 years

[1983 a. 178, Published March 27th, 1984 \(act takes effect on March 28th, 1984\)](#)

- States that prescriptive rights cannot be established for:
 - Real property held in trust by the state under s. 24.01 (2) to (6)
 - Real property of an abandoned railroad acquired by the state under s. 85.09
 - Real property of a highway as defined in s. 340.01 (22) and including property held by the state or a political subdivision for highway purposes

[1997 a. 108, Published April 28th, 1998 \(act takes effect on April 29th, 1998\)](#)

- States that prescriptive rights cannot be established on UOG property unless the utility facility occupied the land uninterruptedly for more than 20 years and is based upon a continuously maintained fence line which has been mutually agreed upon by the current land owners

[2015 a. 291, Published March 2nd, 2016 \(act takes effect on March 3rd, 2016\)](#)

- Prescriptive rights can be established on property obtained by a UOG on or before March 3rd, 2016 if the following is met:
 - The utility facility was installed on or before March 3rd, 1996
 - The facility needs to have occupied the land uninterruptedly for more than 20 years