



Fraud by Usucapion

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Abstract: *Usucapion is a legal mechanism by which a person can acquire ownership of an asset through continuous, public and uninterrupted possession for a certain period of time, according to the law. However, this legal instrument can be used fraudulently to illegally obtain property that does not rightfully belong to the person invoking it. Usucapion fraud occurs when a person forges documents, simulates possession or misleads the authorities in order to obtain an asset unjustly. These actions can constitute crimes such as forgery, deception, perjury or breach of trust. In this context, it is essential that usucapion is applied correctly and that attempted fraud is identified and punished according to the law.*

Keywords: *fraud; usucapion; legal instrument; abuse*

1. Introduction

Usucapion, also known as acquisitive prescription, is a legal way of acquiring ownership or other real rights through continuous, peaceful, public and uninterrupted possession of an asset, for a period provided by law. This legal mechanism is intended to ensure the stability of the civil circuit and to protect people who, through long-term possession, have used and maintained an asset as a true owner.

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However, usucapion can be used fraudulently to illegally acquire rights over assets belonging to other persons. In such situations, those who seek to take advantage of loopholes in the law or manipulate the legal system may resort to various illicit methods, such as falsifying documents, misleading authorities or creating artificial conditions to meet the requirements of usucapion (Beleiu, 2011, p. 32).

Fraud through usucapion can have serious consequences both for the rightful owners of the assets in question and for the integrity of the legal system. They can include crimes such as forgery of official documents, use of forgery, deception, perjury or breach of trust. Thus, it is essential that judicial authorities carefully analyze requests for usucapion and sanction attempted fraud to prevent abuses and protect property rights (Bîrsan, 2013, p. 43).

2. The Concept of Usucapion and Its Purpose

Usucapion is a legal way of acquiring property through continuous, uninterrupted, public and peaceful possession of an asset, for a period established by law. This ensures the legal security of ownership and allows clarification of situations in which an asset is no longer claimed by the original owner (Baiaș, et alii., 2012, p. 30).

However, usucapion can be misused, becoming a means of defrauding the right of ownership. These frauds are committed by people who try to illegally obtain an asset through illicit means, thus affecting the rights of legitimate owners.

3. Types of Fraud through Usucapion

a) Bad faith usucapion

Usucapion assumes, in principle, a possession exercised in good faith, that is, the person invoking it must believe that he has a legitimate right to the asset. In practice, however, there are cases in which people who know that the property does not belong to them try to invoke usucapion to obtain it fraudulently.

Example: A person occupies an abandoned property, knowing that it has a legitimate owner, and after the expiration of the legal term for usucapion, tries to obtain ownership by falsifying evidence of its continuous possession.

b) Forgery of documents

To meet the conditions of usucapion, some people resort to falsifying documents, such as:

- Utility bills that falsely attest to the use of the property.
- Notarial statements from false witnesses that “confirm” uninterrupted possession.

- Fictitious rental contracts or sales deeds.

These acts may constitute forgery of official documents (art. 320 of the Penal Code) and use of forgery (art. 323 of the Criminal Code).

c) Misleading the courts and authorities

Some people try to obtain a property right through usucapion by presenting false information to the court, invoking a fictitious possession or concealing the fact that the possession was not continuous or peaceful.

This may constitute fraud (art. 244 of the Penal Code), because through a false declaration an attempt is made to obtain an undue patrimonial advantage.

d) Simulating possession

In some cases, people interested in acquiring an asset through usucapion artificially create the appearance of continuous possession. Examples of such practices include:

- Moving personal items into uninhabited property to create the impression of use.
- Taking periodic photographs of the property to support the idea of possession.
- Convincing people to give false testimony regarding the use of the property.

These actions may attract liability for perjury (art. 273 Criminal Code) and instigation of perjury.

e) Abuse of trust and usurpation

There are situations in which a person has legal access to an asset (e.g. as an administrator, tenant or caretaker) but tries to usurp it fraudulently. For example, a tenant who refuses to pay rent and after years tries to obtain the asset through usurpation.

This type of fraud can be classified as abuse of trust (art. 238 Criminal Code).

4. Legal Implications and Sanctions

Fraud by usucapion can be challenged in court by the rightful owners or by the competent authorities. If fraudulent means are found to have been used, the persons involved may be held criminally liable for:

- Forgery in official documents (art. 320 Criminal Code) – in the case of the use of false documents.
- Use of forgery (art. 323 Criminal Code) – use of forged documents to obtain a right.
- Deception (art. 244 Criminal Code) – misleading the court to obtain an asset.

- Abuse of trust (art. 238 Criminal Code) – in the case where a person legitimately owns the asset but tries to usurp it fraudulently.
- Perjury (art. 273 Criminal Code) – submitting false statements in support of usurpation.

Sanctions can range from criminal fines to prison sentences, depending on the seriousness of the acts and the damage caused.

5. Measures to Prevent and Combat Fraud by Usucaption

To prevent and combat such fraud, several measures are necessary:

- Careful verification of documents filed in usucaption files, to detect possible forgeries.
- Requesting clear evidence of possession – not only documents, but also credible and verifiable testimonies.
- Monitoring assets at risk – owners must be attentive to properties they do not use frequently, to prevent illegal occupation.
- Rapidly sanctioning fraud attempts to discourage such practices.

Fraud by usucaption represents a real danger for legitimate owners and for the legal security of property rights. By using illegal methods, malicious individuals try to obtain assets that do not belong to them, taking advantage of loopholes in the legal system or using false documents.

To combat these frauds, a rigorous verification of usucaption files, the firm application of criminal sanctions and public awareness of the associated risks are essential. Only through strict control and correct application of the law can fraudulent usucaption be prevented and property rights be protected.

6. Conclusion

Usucaption is a fundamental legal mechanism for the stability of property rights, allowing people who have possessed an asset for a long period to acquire it legally. However, the fraudulent use of usucaption can generate property conflicts and undermine trust in the legal system. Forging documents, simulating possession, misleading authorities and other illegal practices are methods by which certain people try to obtain property rights through illegitimate means.

Such frauds not only affect the injured parties, who risk losing property unjustly, but also have a negative impact on the legal order, generating instability and

uncertainty in the civil circuit. It is therefore essential that the competent authorities analyze with the utmost care applications for usucapion, identify attempted fraud and apply firm sanctions in accordance with criminal law.

In conclusion, preventing and combating fraud through usucapion is necessary to protect both property rights and the fundamental principles of justice. Only through rigorous control of documentation, verification of the authenticity of possession and correct application of the law can the legitimate use of usucapion be ensured and abuses prevented.

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