

**CRIMINALIZING SQUATTING: SHOULD THE UNITED STATES
ADOPT A LAW SIMILAR TO THE UNITED KINGDOM'S LEGAL AID,
SENTENCING AND PUNISHMENT OF OFFENDERS ACT?**

Rachel Dyckman¹

TABLE OF CONTENTS

I. INTRODUCTION	326
II. LEGAL BACKGROUND	328
A. Adverse Possession.....	328
B. Squatting.....	332
III. SQUATTING IN THE UNITED STATES	330
IV. SQUATTING IN THE UNITED KINGDOM	331
A. History and Development of Squatting in the United Kingdom.....	331
B. Criminalizing Squatting: The Legal Aid, Sentencing and Punishment of Offenders Act 2012.....	332
V. PROBLEMS WITH LASPOA	334
A. LASPOA Only Applies to Residential Buildings	334
B. LASPOA Does Not Apply to Landlord-Tenant Situations	335
C. LASPOA Requires a Showing of <i>Mens Rea</i>	336
D. LASPOA Runs Contrary to Adverse Possession Rights	337
1. Adverse Possession & The Land Registration Act 2002	337
2. Bakewell Land Management Ltd. v. Brandwood.....	338
3. Smith v. Land Registry.....	340
4. Best v. Chief Land Registrar	341
E. LASPOA May Infringe on Human Rights	344
VI. HOW TO IMPLEMENT A CRIMINALIZATION OF SQUATTING STATUTE IN THE UNITED STATES	345
A. Apply LASPOA to Commercial Buildings.....	345
B. Apply LASPOA to "Holdover" Situations with Landlord-Tenants	346
C. Encourage Adverse Possession while Explicitly Upholding and Enforcing LASPOA	346
D. Work Jointly with Local Authorities and Homeless Shelters to Promote Human Welfare	347
VII. CONCLUSION	347

¹ J.D. Candidate, 2018, James E. Rogers College of Law, University of Arizona. Thank you to the board members of the *Arizona Journal of International and Comparative Law* for their assistance with this Note. Special thanks to my amazing supervisors at the Town of Marana, Frank, Jane, Libby, and Luke, for inspiring me to dive into this topic.

I. INTRODUCTION

Imagine investing in a summer home in a nearby state; you furnish it, keep belongings there, and enjoy living there a few months out of the year. Now, imagine coming back to your summer home only to discover that the locks have been changed and numerous strangers are living in your home. This was the reality for Crystal Taylor; she had to wait a week and half before squatters finally vacated her home—but not without leaving a mess and damaging her personal belongings.² Now imagine that you are a real estate agent. You are showing a home to new buyers when you notice that the lock box is missing, strangers are living inside, and that they apparently have a copy of their “lease” to show you. This is the reality that Sandra Forbes encountered; after taping eviction papers on the doors, she had to file civil proceedings just to evict the squatters.³

On the other hand, imagine that you just lost your job and it is becoming more difficult to pay rent. The house down the street has been vacant for years—most likely owned by some big bank. Now imagine that you move in to that house, pay for all new locks, put the utilities in your name, pay off the back taxes, and fix up the property expecting to own the home someday. This is Mr. Hayes’ reality; he is now trying to legally own the property that he had been squatting in.⁴ Or lastly, imagine that your previous next-door neighbor abandoned his home in the housing market crash. Mosquitos have now overrun the pool, the yard is filled with trash and weeds, and the house is beginning to depreciate the rest of the neighborhood. You desperately want someone to move in to take care of the property so it is no longer an eyesore to the neighborhood. This is the reality of the Brightmoor neighborhood of Detroit, where residents actually advertised for a squatter to move in to take care of a forgotten property.⁵

After the 2012 housing market crash left millions of homes vacant and abandoned across the nation, the United States has seen a spur of squatters taking refuge in empty homes and office buildings.⁶ Squatting, and the “ancient legal

² *Woman Returns from Vacation and Says Found up to 10 'Squatters' Living in Her Home*, YAHOO! NEWS (Aug. 29, 2016), <https://www.yahoo.com/news/woman-returns-vacation-says-found-200700127.html> [hereinafter *Squatters Living in Home*].

³ Simone De Alba, *Fair Oaks Homeowners Desperate to Get Alleged Squatter Out of Their House*, FOX 40 (May 5, 2016, 10:44 PM), <http://fox40.com/2016/05/05/fair-oaks-homeowners-desperate-to-get-alleged-squatter-out-of-their-house/>.

⁴ Mark Naymik, *Homeless man pays property taxes after moving into abandoned Cleveland home to fulfill homesteading dream*, CLEVELAND (Feb. 21, 2014, 7:13 AM), http://www.cleveland.com/naymik/index.ssf/2014/02/homeless_man_pays_property_tax.html.

⁵ Patrick Clark, *What Detroit Needs Now: More Squatters*, BLOOMBERG (Aug. 23, 2016, 4:00 AM), <http://www.bloomberg.com/news/articles/2016-08-23/what-detroit-needs-now-more-squatters>.

⁶ See generally Ian Lovett, *Squatters See a New Frontier in the Empty Homes of Las Vegas*, NY TIMES (May, 14, 2016) <http://www.nytimes.com/2016/05/15/us/las-vegas-squatters-housing-collapse.html>.

doctrine” of adverse possession,⁷ allows an individual to take title to property that is not originally his.⁸ To do so, the unwelcomed guest—the squatter—“without a grant of permission, uses the property as the true owner of the property would” and “uses the property claiming the right to do so.”⁹ After the squatter possesses the property for the length of the statutory period and demonstrates that the possession was continuous, exclusive, hostile, and open and notorious, the squatter may then take legal title to the property through adverse possession laws.¹⁰

Although a stereotypical picture of a person breaking into a residential home may surface upon hearing the word “squatter,” there are actually numerous different types of adverse possession cases. The most typical is where one property owner inadvertently builds a fence or uses a portion of a neighboring property owner’s land.¹¹ Yet, as evidenced by the frustrating cases of Crystal Taylor¹² and Sandra Forbes,¹³ adverse possession cases can quickly become heated and emotional when a squatter *intentionally* moves into a house and starts taking the necessary steps to possess the home.¹⁴

While some squatters are simply homeless families seeking shelter, other squatters are bringing crime and running counterfeit operations in the abandoned homes.¹⁵ Media outlets have highlighted the drama-filled stories of squatters claiming possession over million-dollar homes, refusing to leave when the true property owner returns, and creating a burden on the property owner to evict them.¹⁶ Yet, the news stories spotlight an even more important issue: how should the United States handle squatters? Squatters’ rights bring up essential human rights issues of addressing homelessness, renovating vacant buildings, and promoting the effective use of property. At the same time, squatters trespass onto another party’s land, typically damage property while breaking in, and then burden the true property owner when they refuse to leave the property.

In 2012, the United Kingdom created a new offense of squatting in residential buildings through the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPOA).¹⁷ Effective as of September 2012,¹⁸ LASPOA

⁷ Jessica Shrestha, *Hey! That's My Land! Understanding Adverse Possession*, 83 WIS. L. 10, 10 (2010).

⁸ Brian Gardiner, *Squatters' Rights and Adverse Possession: A Search for Equitable Application of Property Laws*, 8 INT'L & COMP. L. REV. 119, 120–21 (1997).

⁹ Shannon Dunn McCarthy, *Squatting: Lifting the Heavy Burden to Evict Unwanted Company*, 9 U. MASS. L. REV. 156, 162 (2014).

¹⁰ See Gardiner, *supra* note 8, at 122.

¹¹ Shrestha, *supra* note 7, at 10.

¹² *Squatters Living in Home*, *supra* note 2.

¹³ De Alba, *supra* note 3.

¹⁴ See Shrestha, *supra* note 7.

¹⁵ See Lovett, *supra* note 6.

¹⁶ *Clever Squatter Stakes Claim to Mansion*, INSIDE EDITION (Jan. 25, 2013), <http://www.insideedition.com/headlines/5710-clever-squatter-stakes-claim-to-mansion>.

¹⁷ Mark Pawlowski, *Criminal Squatting and Adverse Possession: A Case of Interpretative Logic*, 24 NOTTINGHAM L. J. 129, 129 (2015).

¹⁸ *Id.*

endeavors to “enhance the protection given to home owners when faced with stubborn squatters”¹⁹ by allowing police to intervene, arrest squatters, and later criminally prosecute them for trespass.²⁰ Praised by homeowners, but criticized by human rights advocates, LASPOA has been considered as a possible solution to the United States’ squatter problem.

This Note analyzes the effects and consequences of LASPOA, and argues that its direct application would *not* be effective in the United States. However, this Note will highlight possible changes to the law in order for a LASPOA-like law to be successful in combatting the United States’ squatter problem.

Part II of this Note defines and delineates the differences of adverse possession and squatting. Part III then examines the current squatter problem in the United States, and the remedies that are available to homeowners when attempting to evict a squatter. Part IV examines the history of squatting in the United Kingdom, and how the United Kingdom arrived at criminalizing squatting today. Part V analyzes the effects of LASPOA and addresses several problems in the law. Lastly, Part VI recommends how the United States could create and enact a law similar to LASPOA that would effectively address and ameliorate the country’s squatter problem.

II. LEGAL BACKGROUND

Because this Note specifically focuses on squatters’ rights, it is important to distinguish between the interchangeable delineations between an adverse possessor and a squatter. Although used frequently together, these two characterizations are “at odds with each other: one is a criminal, while the other is a rightful claimant to property.”²¹ This section explores the legal background surrounding adverse possession and squatters to help answer some questions that may arise when determining whether an individual is a criminal or a rightful claimant to property.

A. Adverse Possession

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, hostile, open and notorious.”²² In other words, an adverse possessor uses a piece of property continuously and exclusively as if he was the true owner, and claims that he has the right, despite not having permission to do so. Thus, under common law, the adverse possessor must prove that he has satisfied *each* of the four elements—continuous, exclusive, hostile, and

¹⁹ Martin Dixon, *Criminal Squatting and Adverse Possession: The Best Solution?*, 2014 J. HOUSING L. 94, 94.

²⁰ McCarthy, *supra* note 9, at 186–87.

²¹ *Id.* at 162.

²² *Id.* at 162–63 (quoting BLACK'S LAW DICTIONARY 62 (9th ed. 2009)).

open and notorious—for the *entire* length of the statutory period.²³ Moreover, since there is a presumption that the true owner is already in possession of the property, an adverse possessor must show intent to exclude the true owner.²⁴ Depending on the jurisdiction, the statutory period for a claim of right under adverse possession may vary from 5–25 years.²⁵

It is important to note that, in order to have a valid claim of right to the property, the adverse possessor should have a good-faith belief that he has a right to the property.²⁶ A claim of right “refers to a claim that possession of the land is justified;” thus, if a squatter enters onto another’s land *without* “an honest claim of right,” it can only ever be a trespass and could never become a prescriptive title.²⁷

Acquiring title to property by adverse possession becomes fruitful when the statute of limitations expires.²⁸ Therefore, a successful adverse possessor obtains “a transfer of interest in the property despite lack of consent or with the protest of the valid owner of title to the property.”²⁹ In other words, when the true property owner permits a trespass to continue for the length of the statute of the limitations, the original trespass by the adverse possessor ripens into an actual claim to the property.³⁰

B. Squatting

In contrast to adverse possession, Black's Law Dictionary defines a squatter as “[a] person who settles on property *without* any legal claim or title.”³¹ Squatting is a strategy used by unhoused people in order to take possession of abandoned property, such as housing, office buildings, and land.³² There are generally three factors associated with increased squatting: (1) rising home prices; (2) a high proportion of empty homes; and (3) an increase in the homeless population.³³ However, unlike an adverse possessor, a squatter does not fulfill the requirements to be able to successfully take title to the property.³⁴ Typically, because squatters target abandoned or foreclosed properties and try to stay there as long as possible, squatters do not fulfill the statutory time period or continuity

²³ EDWARD E. CHASE & JULIA PATTERSON FORRESTER, PROPERTY LAW: CASES, MATERIALS AND QUESTIONS 70–72 (2d ed. 2010); McCarthy, *supra* note 9, at 163.

²⁴ Shrestha, *supra* note 7.

²⁵ McCarthy, *supra* note 9, at 163.

²⁶ *Id.* at 164.

²⁷ *Id.*

²⁸ See CHASE & FORRESTER, *supra* note 24, at 87–89.

²⁹ McCarthy, *supra* note 9, at 163.

³⁰ *Id.*

³¹ *Id.* at 166 (emphasis added).

³² Christine L. Wilson, *Urban Homesteading: A Compromise Between Squatters and the Law*, 35 N.Y.L. SCH. L. REV. 709, 716 (1990).

³³ Caroline McClatchey, *Squatters: Who Are They and Why Do They Squat?*, BBC NEWS MAGAZINE (July 6, 2011), <http://www.bbc.com/news/magazine-14030336>.

³⁴ McCarthy, *supra* note 9, at 164.

requirements for an adverse possession claim.³⁵ Most notably, though, squatters generally do not have a valid claim of right to satisfy adverse possession, as they understand that they are trespassing on an abandoned or empty property.³⁶

III. SQUATTING IN THE UNITED STATES

Although originally derived from English law, the doctrine of adverse possession developed and flourished in colonial America.³⁷ “In fact, some scholars argue that the very foundation of private ownership of real property in the United States—the acquisition of lands from the Native American tribes—was, in itself, an act of adverse possession.”³⁸ As Native American lands were taken in an “open notorious, hostile, actual, adverse, and continuous manner,” many scholars argue, “such actions served as the initial recognition of the doctrine of adverse possession in the United States.”³⁹ Furthermore, in the “foundational case” of *Johnson v. M'Intosh*, the US Supreme Court concluded that it was reasonable for the government to seize Native American lands because the tribes had not made productive use of the lands.⁴⁰ Chief Justice John Marshall even stated “that to leave the Native American tribes ‘in possession of their country, was to leave the country a wilderness.’”⁴¹ Consequently, adverse possession policies are justified by the fundamental policy of promoting the effective use of land.⁴² There is an expectation that property owners make productive use of their land and not abandon it.⁴³ It has historically been deemed better for the community and society in general to transfer the title, after a period of time, from an ineffective property user to one who develops and improves the land.⁴⁴ Thus, “[t]hroughout the early history of the United States, the doctrine of adverse possession was not only consistent with, but it also advanced and promoted, the needs and values of society as a whole.”⁴⁵

In modern times, squatting and adverse possession are still prevalent in the United States. Since the 2008 financial crisis and the subsequent housing market crash, “there have been approximately 3.7 million foreclosures across the country.”⁴⁶ Moreover, since 2012, there have been over 1.4 million additional homes that have been in the foreclosure process.⁴⁷ As a result, the “United States Government Accountability Office estimates that at least several million homes

³⁵ McCarthy, *supra* note 9, at 164.

³⁶ See *id.* at 165.

³⁷ Kristine S. Cherek, *From Trespasser to Homeowner: The Case Against Adverse Possession in the Post-Crash World*, 20 VA. J. SOC. POL'Y & L. 271, 279 (2012).

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² Cherek, *supra* note 37, at 279.

⁴³ *Id.* at 280.

⁴⁴ *Id.* at 282.

⁴⁵ *Id.* at 281.

⁴⁶ *Id.* at 298.

⁴⁷ Cherek, *supra* note 37, at 298.

currently sit vacant in large part as a result of the foreclosure crisis.⁴⁸ The large amount of vacant homes have spurred the United States' problem with squatters breaking into homes, changing the locks, and the moving in their belongings. Meanwhile, real property owners such as Crystal Taylor⁴⁹ and Sandra Forbes⁵⁰ must maneuver the legal system to remove squatters and regain their property.

IV. SQUATTING IN THE UNITED KINGDOM

A. History and Development of Squatting in the United Kingdom

As adverse possession took shape in England, the United Kingdom has seen the rise and fall of squatters and adverse possession claims. After World War II, where there was rampant destruction of buildings and widespread property vacancies, squatting was a necessity for some people.⁵¹ Individuals and families who only sought nightly shelter in residential and commercial buildings instantly became squatters. The next big spike in squatters came in the 1960s and 1970s, when the United Kingdom was in the middle of another housing crisis.⁵² Recently, the United Kingdom has seen a rise in urban squatters once again as the global recession has forced many to leave their homes and look for shelter.

SQUASH—Squatters' Action for Secure Homes—points out that the number of people on local authority housing lists has nearly doubled since 1997 to five million.⁵³ Moreover, there are an estimated 650,000 empty properties in the United Kingdom.⁵⁴ In England alone, the government estimates that there were over 200,000 empty or abandoned homes in October 2015.⁵⁵ As a result, the UK government estimates there are 20,000 squatters in the United Kingdom, but squatting groups say the real total is even greater.⁵⁶

In the United Kingdom, the notion of "squatters' rights" stems from Section 6 of the Criminal Law Act 1977.⁵⁷ Under that section, it is a criminal offense "for a person, without lawful authority, to use or threaten violence to secure entry to premises *against the will of those inside*."⁵⁸ In other words, the crime is

⁴⁸ Cherek, *supra* note 37, at 298.

⁴⁹ *Squatters Living in Home*, *supra* note 2.

⁵⁰ De Alba, *supra* note 3.

⁵¹ McClatchey, *supra* note 33.

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Table 615 All Long-Term Vacant Dwellings by Local Authority District: England*, Gov.UK (2004), https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/609298/LT_615.xls.

⁵⁶ McClatchey, *supra* note 33.

⁵⁷ Ministry of Justice, Offence of Squatting in a Residential Building, 1, 21 (Aug. 22, 2012) (Eng.), https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/220062/squatting-circular.pdf.

⁵⁸ Ministry of Justice, *supra* note 57.

committed when a person who uses or threatens violence knows that there is someone inside the premises who is opposed to the entry.⁵⁹ This includes someone inside who may be a trespasser.⁶⁰

Prior to 2012, squatting in general was treated as a civil matter where property owners were forced to prove in court that squatters have trespassed onto their property in order to evict them.⁶¹ This, of course, proved to be a frustrating, time-consuming, and costly avenue for homeowners to regain possession of their properties.

B. Criminalizing Squatting: The Legal Aid, Sentencing and Punishment of Offenders Act 2012

After hearing media-spotlighted stories of squatters taking over mansions and burdening property owners, politicians were motivated to change the way that the country dealt with squatters. On May 1, 2012, Section 144 of LASPOA received Royal Assent and became effective on September 1, 2012.⁶² Section 144 of LASPOA, which applies throughout England and Wales,⁶³ made it a new criminal offense to squat in a residential building. Moreover, a person convicted under Section 144 of LASPOA may be subject to up to 51 weeks in prison,⁶⁴ or a fine of up to 5,000 Euros.⁶⁵ Section 144 of LASPOA states that it is an offense of squatting in a *residential building*:

- (1) A person commits an offence if—
 - (a) the person is in a residential building as a trespasser having entered it as a trespasser,
 - (b) the person knows or ought to know that he or she is a trespasser, and
 - (c) the person is living in the building or intends to live there for any period.
- (2) The offence is *not* committed by a person holding over after the end of a lease or license (even if the person leaves and re-enters the building).
- (3) For the purposes of this section—

⁵⁹ Ministry of Justice, *supra* note 57.

⁶⁰ *Id.*

⁶¹ *Squatting Set to Become a Criminal Offence*, BBC News (Aug. 31, 2012), <http://www.bbc.com/news/uk-politics-19429936>.

⁶² Pawlowski, *supra* note 17, at 129.

⁶³ *Id.* Note that Scotland had already criminalized squatting. *Squatting Set to Become a Criminal Offence*, *supra* note 61.

⁶⁴ Legal Aid, Sentencing and Punishment of Offenders Act 2012 c. 10, § 144 (Eng.), <http://www.legislation.gov.uk/ukpga/2012/10/section/144/enacted> (emphasis added).

⁶⁵ Peter Ling, *Squatting Made a Criminal Offence*, L. SOC. GAZETTE (Oct. 3, 2012), <https://www.lawgazette.co.uk/law/squatting-made-a-criminal-offence/67631.article>.

- (a) “building” includes any structure or part of a structure (including a temporary or moveable structure), and
 - (b) a building is “residential” if it is designed or adapted, before the time of entry, for use as a place to live.
- (4) For the purposes of this section the fact that a person derives title from a trespasser, or has the permission of a trespasser, does *not* prevent the person from being a trespasser.
- (5) A person convicted of an offence under this section is liable on summary conviction to imprisonment for a term not exceeding 51 weeks or a fine not exceeding level 5 on the standard scale (or both). . . .
- (7) For the purposes of subsection (1)(a) it is irrelevant whether the person entered the building as a trespasser *before or after* the commencement of this section.⁶⁶

Section 144 of LASPOA was purposefully designed to make it more difficult for trespassers to assert that they have rights to residential buildings, simply because their occupation of the building will be a criminal act.⁶⁷ LASPOA bestowed to police a specific power to enter the property in question and arrest the person(s) suspected of squatting in a residential building.⁶⁸

Subsection 1 delineates the requirements for police to be able to arrest a squatter under LASPOA: the squatter can only be squatting in a *residential* building to be arrested, the person must know, or ought to know, that he or she is trespassing, and the person intends to or is living on the property.⁶⁹ “This ensures that the offence does not apply to people who are in the residential building momentarily or have no intention of living there. A person who enters the front hall or porch of someone’s home to deliver junk mail, for example, might not have the permission of the property owner to do so, but he or she is not a trespasser for the purposes of this offence.”⁷⁰ Subsection 2 of the law is equally important as it specifically highlights that “holdovers,” people who are staying past an expired lease, are exempt from prosecution.⁷¹ Subsection 4 then explains that people who are in good faith not a trespasser, but received title or permission to be on the property from a trespasser are still considered squatters, and can be prosecuted.⁷² Lastly, subsection

⁶⁶ Legal Aid, Sentencing and Punishment of Offenders Act 2012, *supra* note 64, at c. 10, § 144.

⁶⁷ Ministry of Justice, *supra* note 57, at 8.

⁶⁸ *Id.*

⁶⁹ Legal Aid, Sentencing and Punishment of Offenders Act 2012, *supra* note 64, at c. 10, § 144.

⁷⁰ Ministry of Justice, *supra* note 57, at 3.

⁷¹ Legal Aid, Sentencing and Punishment of Offenders Act 2012, *supra* note 64, at c. 10, § 144.

⁷² Legal Aid, Sentencing and Punishment of Offenders Act 2012, *supra* note 64, at c. 10, § 144.

8 (not included above) “amends section 17 of the Police and Criminal Evidence Act 1984 (PACE) to give uniformed police officers the power to enter and search [the] premises for the purpose of arresting a person for the offence of squatting in a residential building.”⁷³ It is also essential to note that LASPOA applies to existing squatters who have already been squatting before the law took effect.⁷⁴ This provision was meant to “stop trespassers rushing to occupy residential buildings before the offence comes into force.”⁷⁵

Squatters convicted under Section 144 of LASPOA are additionally liable for the offenses of criminal damage, theft, or burglary if police find that doors or windows of the property have been broken to gain access inside the premises, or if items inside have been used, damaged, or removed.⁷⁶ Furthermore, squatters may also be prosecuted for the offense of “abstracting electricity” under Section 13 of the Theft Act 1968, which is committed when somebody dishonestly and without due authority causes to be wasted or diverted electricity.⁷⁷

V. PROBLEMS WITH LAPSOA

Although LASPOA appears to be a commonsense solution to the United Kingdom’s squatter problem, there are numerous unexpected outcomes of the law. The next section highlights several of the unintended results and concerns of squatters regarding the law.

A. LASPOA Only Applies to Residential Buildings

Subsection 1 of LASPOA states that the new law only covers residential buildings.⁷⁸ Residential buildings are later defined in subsection (3)(b) as “designed or adapted, *before* the time of entry, for use as a place to live.”⁷⁹ Therefore, the law creates a “loophole,” as it does not criminalize squatters who trespass on *commercial or non-residential* property, and subsequently *adapt* it for residential use.⁸⁰ For example, a squatter can modify a non-residential building by simply placing his bedding and personal effects in it—and not be arrested under

⁷³ Ministry of Justice, *supra* note 57, at 14.

⁷⁴ *Squatting Set to Become a Criminal Offence*, *supra* note 61.

⁷⁵ *Id.*

⁷⁶ Ministry of Justice, *supra* note 57, at 17.

⁷⁷ *Id.*

⁷⁸ Legal Aid, Sentencing and Punishment of Offenders Act 2012, *supra* note 64, at c. 10, § 144.

⁷⁹ *Id.* (emphasis added).

⁸⁰ *Criminalisation of Squatting: How Protection of Property Could Crumble*, THINKING LEGALLY (Sept. 13, 2012, 2:47 PM), <https://thinkinglegally.wordpress.com/2012/09/13/criminalisation-of-squatting-protection-of-property-could-crumble/> [hereinafter *Protection of Property Could Crumble*].

LASPOA—because he would not be adapting the building until *after* he entered it.⁸¹

Squatters in England have already taken advantage of this loophole. Media outlets have already reported that “squatters are targeting empty pubs, warehouses and offices after new legislation made it a criminal offence to squat a residential building, raising calls for the rules to be extended to commercial properties.”⁸² In a suburban London city, Friern Barnet, a group of squatters even took over a public library that was closed by the city’s council—and the squatters were able to because of the residential/commercial-adapting loophole.⁸³

Because LASPOA does not criminalize squatting in non-residential properties, non-residential property owners’ only remedy—other than evicting them by personal force—is through lengthy civil court proceedings, either under the standard possession procedure, or what is known as an interim possession order.⁸⁴ As a result of this problem, non-residential property owners are advocating for parliament to extend LASPOA, so that squatting in non-residential property also becomes a criminal offense.⁸⁵ However, the UK government has already commented that it is “not committed to extending the new law”⁸⁶ to non-residential buildings because squatting in residential buildings is what “the public were most concerned about.”⁸⁷ Instead of making any rash changes to LASPOA, the government is simply monitoring squatting of commercial and non-residential buildings.⁸⁸

B. LASPOA Does Not Apply to Landlord-Tenant Situations

Subsection 2 of LASPOA additionally delineates that the statute does not apply to a legitimate tenant who fell behind on rent payment, or a tenant who decided to withhold paying rent.⁸⁹ These tenants, also known as “holdovers,” leave a property owner with the only option of pursuing a prolonged eviction process⁹⁰ through the courts for the property owner to regain possession of his property.⁹⁰ Thus, because LASPOA does not apply to landlord-tenant situations, “it is likely that some squatters will argue that they have a licence from the owner of a property

⁸¹ Ministry of Justice, *supra* note 57, at 11.

⁸² Tanya Powley, *Squatters Target Commercial Buildings, Calls for Government to Extend New Anti-Squatting Law*, FINANCIAL TIMES (Nov. 4, 2012), <https://www.ft.com/content/8c5d7a00-2510-11e2-a6aa-00144feabdc0>.

⁸³ Diane Taylor, *Squatters Reopen Friern Barnet Library After Council Closes Service*, GUARDIAN (Sept. 11, 2012), <https://www.theguardian.com/books/2012/sep/11/squatters-reopen-friern-barnet-library>.

⁸⁴ Powley, *supra* note 82.

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ Ministry of Justice, *supra* note 57, at 2–3, 8.

⁹⁰ Ministry of Justice, *supra* note 57, at 2–3.

to *remain* [on the property] by virtue of the fact that they entered when squatting was not illegal per se and the owner has since been aware that they are squatting.”⁹¹ Consequently, law enforcement officers will be required to sort through past tenancy agreements to determine their legitimacy, and whether the squatter remained on the property since being delinquent on payments or trespassed onto the property without any prior permission from the true property owner.

C. LASPOA Requires a Showing of *Mens Rea*

Another unexpected consequence of LASPOA is that squatters are taking advantage of the *mens rea* element. Subsection 1(b) of LASPOA states that it is not a criminal offense if the squatter does not *know or ought to know* that he or she is a trespasser.⁹² Accordingly, the offense does not apply to a person who entered onto the property with the permission of the true property owner; for example, a legitimate tenant.⁹³ In addition, LASPOA also does not apply to “someone who enters the property in *good faith* reasonably believing they had permission to do so”;⁹⁴ for example, “where a bogus letting agent encouraged an unsuspecting tenant to occupy somebody else’s property.”⁹⁵ In these circumstances, to prove a good faith belief that one was not a trespasser, it is reasonable for law enforcement to expect the tenant (or otherwise squatter) to provide proof of a tenancy agreement or past rent payments.⁹⁶

Although this provision appears reasonable, it is viewed as “odd since the latest outrage in the anti-squatter press, before the new law, was exactly about this issue, that Romanian squatters ‘have found a loophole in the law that involves producing for inspection a tenancy agreement, real or not.’”⁹⁷ Under this loophole, a squatter would simply have to produce a false tenancy agreement to demonstrate that he did not possess the *mens rea* requirement to be prosecuted under the law. Therefore, this provision makes law enforcement officers’ jobs extremely complicated and difficult, as they now have to investigate whether a produced tenancy agreement is legitimate or not.⁹⁸

In addition, the *mens rea* requirement and good-faith exception of Subsection 1(b) further creates confusion because it contradicts Subsection 4 of LASPOA. Subsection 4 specifically notes that “the fact that a person derives title from a trespasser, or has the permission of a trespasser, does *not* prevent the person

⁹¹ *Protection of Property Could Crumble*, *supra* note 80.

⁹² Legal Aid, Sentencing and Punishment of Offenders Act 2012, *supra* note 64, at c.

10, § 144.

⁹³ Ministry of Justice, *supra* note 57, at 2–3, 8.

⁹⁴ *Id.* at 3 (emphasis added).

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ *Protection of Property Could Crumble*, *supra* note 80.

⁹⁸ *Id.*

from being a trespasser.”⁹⁹ Therefore, under Subsection 4, a good-faith squatter—for example, an individual who was given a bogus tenancy agreement by a trespasser (the original squatter)—could still be prosecuted under LASPOA.¹⁰⁰ As the two subsections are at odds with one another, this creates continued courtroom debate, as courts will have to determine whether the good-faith exception in Subsection 1(b) overrides the subsequent provisions prosecuting good-faith trespassers.¹⁰¹

D. LASPOA Runs Contrary to Adverse Possession Rights

LASPOA is not a retroactive law because it does not criminalize any squatting taking place before September 2012.¹⁰² However, Subsection 7 provides that the offense applies regardless of whether the trespasser entered the property *before or after* commencement of LASPOA.¹⁰³ Although this provision is intended to stop trespassers from “rushing to occupy residential buildings before the offence comes into force,” it will also make “trespassers who have been living in the premises for many months or years prior to commencement” subject to arrest for this offense.¹⁰⁴ This brings up an essential question as to claims of adverse possession where the squatter was in possession of the property for the statutory period of ten years, and now wants to commence proceedings to take title to property.¹⁰⁵ This leads to an important issue: does the criminalization of squatting and trespass through LASPOA now preclude claims of adverse possession?

1. Adverse Possession & The Land Registration Act 2002

According to *Mulcahy v. Curramore Property Ltd.*, adverse possession in the United Kingdom requires that possession must be “open, not secret; peaceful, not by force; and adverse, not by consent of the true owner.”¹⁰⁶ The 2002 Land Registration Act (LRA) additionally outlines the process for adverse possessors to apply for registration as the proprietor of a registered estate:

- (1) [F1 Subject to paragraph 16,] a person may apply to the registrar to be registered as the proprietor of a registered estate in land if he has been in adverse possession of the estate for the period of ten years ending on the date of the application.

⁹⁹ Legal Aid, Sentencing and Punishment of Offenders Act 2012, *supra* note 64, at c. 10, § 144 (emphasis added).

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² Pawlowski, *supra* note 17, at 129.

¹⁰³ *Id.*

¹⁰⁴ Ministry of Justice, *supra* note 57, at 4.

¹⁰⁵ Pawlowski, *supra* note 17, at 129.

¹⁰⁶ *Id.*

(2) [F2 Subject to paragraph 16,] a person may also apply to the registrar to be registered as the proprietor of a registered estate in land if—

- (a) he has in the period of six months ending on the date of the application ceased to be in adverse possession of the estate because of eviction by the registered proprietor, or a person claiming under the registered proprietor,
- (b) on the day before his eviction he was entitled to make an application under sub-paragraph (1), and
- (c) the eviction was not pursuant to a judgment for possession.

(3) However, a person may not make an application under this paragraph if—

- (a) he is a defendant in proceedings which involve asserting a right to possession of the land, or
- (b) judgment for possession of the land has been given against him in the last two years.

(4) For the purposes of sub-paragraph (1), the estate need not have been registered throughout the period of adverse possession.¹⁰⁷

Accordingly, under the LRA, an adverse possessor may register to take title to the property if he has possessed the property for at least ten years, and has satisfied the five elements of possession.¹⁰⁸

2. Bakewell Land Management Ltd. v. Brandwood

While the UK High Courts have been addressing diverse issues of adverse possession for many years, and have flirted with the issue of whether a criminal or tortious act could prevent a claim of adverse possession under particular laws, in 2004, the Court began to address that specific question in a similarly related case in *Bakewell Land Management Ltd. v. Brandwood*.¹⁰⁹

In *Bakewell*, Bakewell Management was the “owner of common land that was bordered by houses belonging to the defendants.”¹¹⁰ Each of the defendants—various property owners—had been driving over the common land to reach their homes¹¹¹ for over twenty years; consequently, each defendant had an “arguable

¹⁰⁷ Land Registration Act 2002, c. 9, § 144, sch. 6 (Eng.), <http://www.legislation.gov.uk/ukpga/2002/9/schedule/6>.

¹⁰⁸ *Id.*; Pawlowski, *supra* note 17, at 129.

¹⁰⁹ See generally *Bakewell Management Limited v. Brandwood* [2004] UKHL 14 (HL) (appeal taken from Wales), [hereinafter *Bakewell v. Brandwood*].

¹¹⁰ Pawlowski, *supra* note 17, at 134.

¹¹¹ *Bakewell v. Brandwood*, *supra* note 109, ¶ 16.

claim to have acquired an easement by prescription.”¹¹² As a result, Bakewell initiated the proceedings to prevent the defendants from establishing any rights to a prescriptive easement over the common land.¹¹³ Bakewell “argued that the defendants could not establish easements of way by prescription because driving on common land without the permission of the landowner was a criminal offence under s.193(4) of the Law of Property Act 1925.”¹¹⁴ Thus, Bakewell’s argument suggested that a criminal offense bars the right to claim a prescriptive easement. “The House of Lords, however, held that the easements could be established by prescription if the right claimed (i.e., driving over common land) *would be legal with the permission of the owner.*”¹¹⁵ In other words, the Court found that the defendants “could have been the subject of an express grant” by the property owner; this permission, in turn, would have made the defendants’ travel across the common lands completely lawful under the Act.¹¹⁶ Therefore, because Bakewell could have objected to the defendants’ use at “any time during the 20 year period either because it was tortious or because it was criminal,” its failure to do so established a prescriptive right.¹¹⁷ The Lords additionally emphasized that prescription would apply “regardless of whether the use relied on is illegal in a criminal sense or merely unlawful in the tortious sense.”¹¹⁸ As a result, the Court found that “the important requirement [to be considered] is that there should be a ‘*competent grantor, rather than any wider principle based on criminality.*’”¹¹⁹

Although the *Bakewell* case prompted the discussion on whether a criminal or tortious act could prevent a claim of adverse possession, it does not answer the question of whether criminal acts bar claims of adverse possession because it focused on whether a right to a prescriptive easement existed. Moreover, it is difficult to apply the *Bakewell* decision to adverse possession cases.¹²⁰ For instance, if it is assumed that a real property owner had given permission to a squatter to use the land, then the squatter’s possession “would not have been adverse at all and, therefore, no title could have been acquired in the first place.”¹²¹ Furthermore, an easement by prescription differs greatly from adverse possession, as it “is based on presumed consent due to long acquiescence … [and] is not destructive of the landowner’s title,” like adverse possession, because it is relying on the landowner’s title to legitimize the use.¹²² The unanswered question in the *Bakewell* decision was expanded upon in another important adverse possession case discussing whether a

¹¹² *Bakewell v. Brandwood*, *supra* note 109, ¶ 16..

¹¹³ *Id.* ¶ 13.

¹¹⁴ Pawlowski, *supra* note 17, at 134.

¹¹⁵ *Id.* (emphasis added).

¹¹⁶ *Id.*

¹¹⁷ *Bakewell v. Brandwood*, *supra* note 109, ¶ 8.

¹¹⁸ Pawlowski, *supra* note 17, at 134.

¹¹⁹ *Id.* (emphasis added).

¹²⁰ *Id.*

¹²¹ *Id.*

¹²² *Id.* at 135.

criminal offense barred an adverse possession claim—*Smith, R (on the application of) v. Land Registry (Peterborough Office)*.¹²³

3. Smith v. Land Registry

In *Smith v. Land Registry*, Smith had his caravan and other associated structures situated on an “unmetalled byway” for more than twelve years.¹²⁴ Smith’s caravan did not obstruct the byway, and he regularly maintained the hedges on the area trimmed.¹²⁵ In 2007, Smith filed an application seeking to register title by adverse possession to the land he occupies.¹²⁶ The local county council rejected the application, however, on the ground that the land was a public highway.¹²⁷ After his judicial review proceedings to challenge the council’s decision were dismissed, Smith appealed to the High Court on “whether a person may acquire the right to land forming part of the highway by means of adverse possession.”¹²⁸

On appeal, the High Court held that Smith’s adverse possession claim failed because a squatter cannot take title to a public highway.¹²⁹ The Court reasoned that the test “was whether the trespasser had used the land in a way which the legal owner might have been able to deal with it.”¹³⁰ The Court found that Smith could not prove this, “as the local authority could not itself use the land in this way, nor could it have licensed anyone to do so because any such user would have been an illegal obstruction of the highway.”¹³¹ The Court first reasoned that in order for Smith’s adverse possession claim to be successful, he must show that he “dispossessed the owner of the highway [and] that he has also dispossessed the public entitled to a right of passage over the highway as well.”¹³² After analyzing controlling precedent, the Court held there were no prior cases establishing that a squatter could take title to a highway through adverse possession.¹³³ Accordingly, the Court concluded that “there is no means in law by which, as a result of occupying land forming part of the highway, Mr. Smith or any squatter can bring to an end the public’s right of passage.”¹³⁴

The Court further noted that Smith’s caravan constituted an “unlawful obstruction of the highway, under s.137 of the Highways Act 1980.”¹³⁵ As a result,

¹²³ See generally *Smith, R (on the application of) v. Land Registry (Peterborough Office)* [2010] EWCA (Civ) 200 [2011] 1 QB 413 (Eng.) [hereinafter *Smith v. Land Registry*].

¹²⁴ *Id.* ¶ 1.

¹²⁵ *Smith v. Land Registry*, *supra* note 123, ¶ 1.

¹²⁶ *Id.*

¹²⁷ *Id.*

¹²⁸ *Id.*

¹²⁹ *Id.* at ¶ 37.

¹³⁰ Pawlowski, *supra* note 17, at 130.

¹³¹ *Id.*

¹³² *Smith v. Land Registry*, *supra* note 123, at ¶ 23.

¹³³ *Id.* at ¶ 37.

¹³⁴ *Id.* at ¶ 38.

¹³⁵ Pawlowski, *supra* note 17, at 130.

the Court highlighted that the “highway authority cannot by its acquiescence authorize an obstruction.”¹³⁶ Consequently, although the Court held that Smith’s adverse possession claim must fail due to the fact that the land is a public highway, it is notable that Court found that the illegal nature of the obstruction would additionally be “fatal to the claim.”¹³⁷

Similar to *Bakewell*, the *Smith* decision suggests that generally a criminal offense would bar a claim of adverse possession; however, the Court declined to specifically make that generalization. Therefore, *Smith* did “not necessarily conclude the matter so far as any criminal trespass of private residential land is concerned.”¹³⁸ While *Bakewell* and *Smith* skirted around how criminal offenses affect adverse possession claims, the question ultimately arose in the courts after the passage of LASPOA 2012. As Section 144 of LASPOA criminalized squatting, the case of whether a squatter could claim adverse possession over a private residence finally came before the Court of Appeal in *Best v. Chief Land Registrar*.

4. Best v. Chief Land Registrar

In *Best v. Chief Land Registrar*, the squatter, Best, had “taken possession of an empty and vandalized three-bedroom home” in East London in 1997 (prior to the passage of Section 144 of LASPOA).¹³⁹ Best did not have the legal owner’s consent to enter the property.¹⁴⁰ Yet, he had taken care of the house as if it was his own since 2001, and for the prior four years, he had done considerable work to make the house habitable once again.¹⁴¹ In 2012, “he applied to register his title to the house on the ground that he has been in adverse possession for a period of ten years.”¹⁴² However, the Chief Land Registrar immediately rejected Best’s application because he found that “time could not run for registration in view of criminality of the trespass” (since this was now after the passage of Section 144 of LASPOA).¹⁴³ Best then appealed to the High Court where Judge Ouseley reversed the automatic rejection.¹⁴⁴ The High Court reversed the previous decision and concluded that the “illegality of the trespass did *not* constitute a bar to a squatter’s claim to a possessory title.”¹⁴⁵ The Court reasoned that the *Bakewell* decision supported the notion that the “public policy interest in not allowing a person to take advantage of his own wrong may have to give way, depending on factual context, to other (countervailing) public policy interests.”¹⁴⁶ In other words, “the public

¹³⁶ *Smith v. Land Registry*, *supra* note 123, at ¶ 35.

¹³⁷ Pawlowski, *supra* note 17, at 130.

¹³⁸ *Id.*

¹³⁹ *Id.*

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

¹⁴² Pawlowski, *supra* note 17, at 130.

¹⁴³ *Id.*

¹⁴⁴ *Id.*

¹⁴⁵ *Id.*

¹⁴⁶ *Id.*

policy advantages of adverse possession, namely, preventing the economic disadvantages of land remaining unused and unclaimed, *outweighed* the fact that the adverse possession was based on a criminal trespass.¹⁴⁷

Moreover, the Court surprisingly found that the crucial factor in *Bakewell*—the capability of the landowner to give consent—applied not only to prescriptive easement cases but to adverse possession cases as well.¹⁴⁸ The Court reasoned that it was within the power of the legal owner “to permit the adverse occupation (although she had, in fact never done so).”¹⁴⁹ Aside from public policy interests, Judge Ouseley found that Parliament only intended to criminalize squatting to address current squatter problems, and did not intend for Section 144 of LASPOA to impact current adverse possession laws.¹⁵⁰ His Lordship found that, because “[a] squatter with past criminal offences would still remain liable to prosecution” under LASPOA, there are no obvious purposes that would be served by barring all applications for adverse possession registration that were based on criminal trespass.¹⁵¹ Furthermore, Judge Ouseley concluded that the primary intended function of Section 144 of LASPOA was “to assist homeowners to evict squatters swiftly and more forcefully via the help of the criminal law and not to throw a spanner into the delicate workings of the [Land Registration Act 2002], with random effects on the operation of adverse possession, all without a backward glance.”¹⁵²

After Best received a favorable decision, the Chief Land Registrar appealed to the Court of Appeal, where the Court upheld the decision and found that Best “could rely on his adverse possession to claim title to the house even though part of his occupation was a criminal offence under s.144.”¹⁵³ However, the judges’ reasons for arriving at that conclusion were varied.

Sales, a fellow judge, followed similar reasoning to Ouseley in the lower court decision. Judge Sales found that “the law of illegality did not operate to confer a broad discretion on a court to take any illegal action by a claimant into account when deciding the extent to which such illegality impacted on the relief sought by the claimant.”¹⁵⁵ In other words, Judge Sales finally answered the underlying question and found that “there was no single rule of illegality with ‘blanket effect’ across all areas of law.”¹⁵⁶ In this case, however, the criminal offense affected statutory rights (adverse possession rights); therefore, Judge Sales found that it was necessary to consider the illegality.¹⁵⁷ Just as Judge Ouseley found, his Lordship additionally held that Section 144 of LASPOA was *not* intended to affect adverse

¹⁴⁷ Pawlowski, *supra* note 17, at 130 (emphasis added).

¹⁴⁸ *Id.* at 130–31.

¹⁴⁹ *Id.* at 131.

¹⁵⁰ See *id.*

¹⁵¹ *Id.*

¹⁵² Pawlowski, *supra* note 17, at 131.

¹⁵³ *Id.* at 132.

¹⁵⁴ *Id.*

¹⁵⁵ *Id.*

¹⁵⁶ *Id.*

¹⁵⁷ Pawlowski, *supra* note 17, at 132.

possession laws.¹⁵⁸ Rather, Section 144 was designed to “provide ‘deterrence and practical assistance’ for homeowners in removing squatters from their properties.”¹⁵⁹ In addition, Judge Sales found that the reasoning in *Bakewell* applied here.¹⁶⁰ Just like in *Bakewell*, the owner of the house could have prevented a criminal offense under Section 144 of LASPOA by “simply consenting to the squatter being in the property.”¹⁶¹ His Lordship found that this similarity to *Bakewell* “pointed strongly to the conclusion that there was no overriding policy concern associated with s.144.”¹⁶²

Contrary to Judge Sales’ reasoning, Judge Arden did not balance public policy interests, and came to the conclusion that the criminal offense of trespass from Section 144 of LASPOA did not prevent an adverse possession claim through statutory interpretation instead.¹⁶³ Judge Arden found that Parliament did not intend for a criminal offense under Section 144 of LASPOA to bar claims to adverse possession because:

- (1) the provisions for registration of adverse possession appeared in entirely different legislation from s.144 and there was no indication that s.144 should affect the operation of the adverse possession provisions; (2) it was neither essential nor sufficient for an applicant to rely on a breach of s.144 to make out his case of adverse possession and, therefore, to deprive the applicant of title may also deprive him of the benefit of conduct which has not been criminalised; (3) the approach taken by the Registrar was inconsistent with the statutory purpose of adverse possession and also s.144; (4) the Registrar’s approach would deprive the law of adverse possession of the important quality of coherence by introducing strange distinctions and bizarre results; (5) the Registrar’s act of registering the adverse possession did not condone the illegality or assist it since its primary effect was to regularise the legal position for the future; and (6) Parliament had safeguarded the interests of the legal owner by providing that title to the property by adverse possession cannot be registered unless he has had an opportunity to file an objection...¹⁶⁴

Although the Lords came to the same conclusion through different reasoning in *Best*, it is evident that Section 144 of LASPOA complicates adverse possession laws. While squatters can now be criminally prosecuted, they can

¹⁵⁸ Pawłowski, *supra* note 17, at 132.

¹⁵⁹ *Id.*

¹⁶⁰ *Id.*

¹⁶¹ *Id.* at 133.

¹⁶² Pawłowski, *supra* note 17, at 133.

¹⁶³ *Id.*

¹⁶⁴ *Id.*

nevertheless gain title to land that they criminally trespassed on if they satisfy the requirements of adverse possession.

E. LASPOA May Infringe on Human Rights

The European Convention on Human Rights (European Convention) Article 8 (1) states that “[e]veryone has the right to respect for his private and family life, his home and his correspondence.”¹⁶⁵ Squatters have recently asserted this human rights claim against Section 144 of LASPOA based on the European Convention.¹⁶⁶ Arguing that they not be prosecuted or removed from the homes they live in,¹⁶⁷ squatters assert that the “squatted home” is their legitimate home, and removing them would “be a breach of Article 8, a state interference in [their] home and family life.”¹⁶⁸ Additionally, squatters can rely on the human rights argument “to successfully resist any refusal to register his title on the ground s.144 breaches his fundamental rights to respect for his family home and peaceful enjoyment of his possession.”¹⁶⁹ Moreover, it is arguable that “the Convention and Section 3 of the Human Rights Act 1998 comes close to barring the passing of laws contravening the Convention;”¹⁷⁰ hence, “courts should interpret any laws in conformity with the Convention.”¹⁷¹ Squatters will argue to the courts “not quite to strike down the law, duly passed by Parliament, but at least to declare it inapplicable when family¹⁷² life claims can be made.”¹⁷³ In contrast to squatters’ human rights arguments against LASPOA, “CPS [Crown Prosecution Service] and police may well claim that since squatting is now criminal and the law was passed because it was ‘necessary in a democratic society’... then the police can legitimately act to prevent it, including by prosecuting [squatters].”¹⁷⁴

In *Best v. Chief Land Registrar*, Best asserted the human rights argument in his title claim for adverse possession.¹⁷⁵ In the High Court’s ruling, Judge Ouseley briefly discussed the human rights claim in dictum.¹⁷⁶ His Lordship first reasoned, “Article 8 was not engaged by a refusal to register title by adverse possession.”¹⁷⁷ In addition, Judge Ouseley found that Best did not have possession of the land “in the sense protected by the Convention; ‘he had to have possession sufficiently established to amount to a legitimate expectation of obtaining effective

¹⁶⁵ *Protection of Property Could Crumble*, *supra* note 80.

¹⁶⁶ *Id.*

¹⁶⁷ *Id.*

¹⁶⁸ *Id.*

¹⁶⁹ Pawlowski, *supra* note 17, at 131.

¹⁷⁰ *Protection of Property Could Crumble*, *supra* note 80.

¹⁷¹ *Id.*

¹⁷² *Id.* One would expect much courtroom debate about what constitutes a “family” in these modern times.

¹⁷³ *Id.*

¹⁷⁴ *Id.*

¹⁷⁵ See Pawlowski, *supra* note 17, at 131.

¹⁷⁶ *Id.*

¹⁷⁷ *Id.*

enjoyment of a property right.”¹⁷⁸ However, here, the “system of registration of title, under the Land Registration Act 2002, precluded any such legitimate expectation arising simply through the passage of time;” therefore, Best “had no immediate right to title even after expiry of the relevant period of adverse possession.”¹⁷⁹ Lastly, the High Court noted that, even if there was any interference with Article 8 human rights, the interference “was reasonable and proportionate” to the public policy interests.¹⁸⁰ Thus, the High Court found that Best’s human rights argument failed, as there was “no incompatibility between s.144 and Article 8.”¹⁸¹

While Best’s human rights argument proved unsuccessful, there is no doubt that there will be countless claims by families asserting that Section 144 of LASPOA is an unreasonable interference in their home and family life.

VI. HOW TO IMPLEMENT A CRIMINALIZATION OF SQUATTING STATUTE IN THE UNITED STATES

As discussed previously, the United States has a long history of squatting, but has not implemented adequate laws to address the problems that squatters impose upon property owners. While the United States should continue the historic legal doctrine of adverse possession, it is also essential for it to enact laws that will ameliorate the burdens that squatters inflict on property owners. The United Kingdom’s LASPOA, while still a fairly recent law, has proven to be successful in curbing squatters. However, as outlined earlier, LASPOA has also encountered numerous problems from squatter proponents.¹⁸² Thus, the United States should not simply replicate a LASPOA-like law in the United States; rather, states should attempt to remedy the problems and loopholes that have been discovered in LASPOA in their own statutes criminalizing squatters. This section delineates several potential modifications to LASPOA that would aid in curbing loopholes, and support its successful implementation in the United States.

A. Apply LASPOA to Commercial Buildings

As discussed earlier, LASPOA only covers residential buildings that are “designed or adapted, *before* the time of entry, for use as a place to live.”¹⁸³ Consequently, the law created a loophole for squatters who trespass on commercial or non-residential property and then adapt the property for residential use.¹⁸⁴ Thus,

¹⁷⁸ Pawlowski, *supra* note 17, at 131.

¹⁷⁹ *Id.*

¹⁸⁰ *Id.*

¹⁸¹ *Id.*

¹⁸² See generally *Protection of Property Could Crumble*, *supra* note 80.

¹⁸³ See Legal Aid, Sentencing and Punishment of Offenders Act 2012, *supra* note 64, at c. 10, § 144.

¹⁸⁴ See *Protection of Property Could Crumble*, *supra* note 80.

in implementing its own squatting criminalization statute, the United States should include both commercial and residential property to eliminate the loophole. This modification would, in turn, equally protect commercial and non-residential property owners, and would additionally promote business owners to protect and monitor their property for any squatter activity.

B. Apply LASPOA to “Holdover” Situations with Landlord-Tenants

While it is important to ensure that only squatters who know or ought to know that he or she is a trespasser be arrested and prosecuted for violating LASPOA, the *mens rea* element creates another loophole for squatters who originally entered the property with the permission of the property owner but have since lost that permission. This situation is frequently seen in landlord-tenant situations where “holdovers” fall behind on rent payments or withhold rent and continue to live on the premises.¹⁸⁵ This loophole can be easily corrected by including landlord-tenant situations under the purview of the criminalization statute. In implementing its own statute, the United States should include a provision that criminalizes squatters who once had permission to be on the property but have since lost that privilege and refuse to vacate.

C. Encourage Adverse Possession while Explicitly Upholding and Enforcing LASPOA

LASPOA has also caused confusion as to how it should be applied in conjunction with adverse possession laws. While LASPOA provides that the offense of squatting applies regardless of whether the trespasser entered the property *before or after* the commencement of LASPOA,¹⁸⁶ the UK High Courts have held that LASPOA does not preclude a claim of right to adverse possession.¹⁸⁷ To eliminate misperceptions and minimize future judicial proceedings, the United States should explicitly state that prior adverse possession laws are still applicable, but that criminalizing squatting will be continuously enforced. In turn, this would encourage property owners to productively use their land, or else have it potentially adversely possessed; yet, this would still protect property owners’ rights by swiftly evicting and prosecuting burdensome squatters.

¹⁸⁵ Ministry of Justice, *supra* note 57, at 3.

¹⁸⁶ See Legal Aid, Sentencing and Punishment of Offenders Act 2012, *supra* note 64, at c. 10 § 144.

¹⁸⁷ Pawlowski, *supra* note 17, at 132.

D. Work Jointly with Local Authorities and Homeless Shelters to Promote Human Welfare

Although the human rights argument proved unsuccessful in *Best*, it is important to address concerns for human rights when considering the criminalization of squatting. While some individuals intentionally squat to possess another's property, there are other people who are squatters because their only other option is homelessness.¹⁸⁸ Consequently, a criminal squatting statute should allow law enforcement to work jointly with local housing authorities, non-profit organizations, and homeless shelters in assisting those who claim to be homeless.¹⁸⁹ Moreover, with protocols already in place before law enforcement are asked to evict squatters, law enforcement personnel will be able to work with the squatters in providing information about housing options for them.¹⁹⁰ By providing community support, the risk of a squatter returning to the same property or a different property to squat again will decrease.¹⁹¹

VII. CONCLUSION

The United Kingdom's LASPOA has proven to be an effective statute in curbing the ongoing squatter problem caused by the last financial recession. However, with several loopholes and complications exposed years after the statute has gone into effect, modification is necessary to improve its effectiveness. While the United States should look to LASPOA as a guiding model for creating and implementing its own criminal squatting statute, there are several aspects of the law that require amending. The United States will be well-equipped to tackle its ongoing squatter problem by protecting both commercial and non-residential buildings, incorporating landlord-tenant situations, expressly delineating between adverse possession laws and squatter laws, and incorporating human welfare considerations into their prospective statute.

¹⁸⁸ Ministry of Justice, *supra* note 57, at 6–7.

¹⁸⁹ *See id.*

¹⁹⁰ *See id.*

¹⁹¹ *Id.*

