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QUIET TITLE ACTIONS

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I. Initiating a Quiet Title Action

A. What is a "Quiet Title" Action?

Quieting title is a legal procedure to establish an individual's right to ownership of real property against one or more adverse claimants. Such an action can be a "quasi-in-rem" proceeding (against one or more specific individuals) or a true "in rem" proceeding (against the whole world, claimants known and unknown). In effect, a "quiet title" action is a form of declaratory judgment in which the Court is declaring the rights of the parties in respect to the property in question.[1]

An action to quiet title is a lawsuit filed to establish ownership of real property (which can be defined generally as land and the improvements affixed to that land). The plaintiff in a quiet title action seeks a court order that (a) establishes the plaintiff's dominant title rights and/or (b) prevents the respondent(s) from making any subsequent claim to the property.

A quiet title action also is called a suit to remove a cloud in title. A cloud is any claim or potential claim to ownership of the property. The cloud can be a claim of full ownership of the property or a claim of partial ownership, such as a lien in an amount that does not exceed the value of the property or an easement that purports to give the respondent the right to use the property in some fashion. Said differently, a title to real property is clouded if the plaintiff, as the buyer or recipient of real property, might have

[1] The use of equitable causes of action, such as rescission or reformation, effectively to quiet title is outside the scope of this presentation.

to defend his/her full ownership of the property in court against some party in the future. A landowner may bring a quiet title action regardless of whether the respondent is asserting a present right to gain possession of the premises.

B. Ground for Quiet Title Actions

1. Adverse Possession.

The common law, which many states have codified, recognizes adverse possession as a way to acquire title to property. Adverse possession is a method of acquiring title to real estate, accomplished by an open, visible, and exclusive possession uninterruptedly for a set period of time which changes by jurisdiction. Many states also recognize the right to acquire a right-of-way or other easement by continuous, uninterrupted use of someone else's land for a set period of time. Under the common law, this period of time was twenty (20) years.[2]

The essential elements of an adverse possession sufficient to create title to land in a claimant are that the owner is ousted of possession and kept out uninterruptedly for the requisite period of time by an open, visible, and exclusive possession by the claimant, under a claim of right, with the intention of using the property as his own, and without the owner's consent. The possession must be hostile and under a claim of right, actual, open, notorious, exclusive, continuous, and uninterrupted.[3] In some states, the period of possession required to establish title by adverse possession also varies according to specified circumstances and requirements.[4]

As a general rule, property held by municipal and quasi-municipal corporations cannot be acquired by adverse possession. This rule applies even if the property has not

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[2] See, e.g., Chevy Chase Land Co. of Montgomery County, Md. v. U.S., 37 Fed. Cl. 545 (1997), cert. denied, 531 U.S. 957 (2000) (applying Maryland law); McGeechan v. Sherwood, 2000 ME 188, 760 A.2d 1068 (Me. 2000); City of Deadwood v. Summit, Inc., 2000 SD 29, 607 N.W.2d 22 (S.D. 2000). However, see also B. Fernandez & Bros. v. Ayllon, 266 U.S. 144 (1924); J & M Land Co. v. First Union Nat. Bank, 166 N.J. 493, 766 A.2d 1110 (2001), (30 or 60 years for woodland or uncultivated tracts); Fairbanks North Star Borough v. Lakeview Enterprises, Inc., 897 P.2d 47 (Alaska 1995) (10 years); Gordon v. Simmons, 136 Ky. 273, 124 S.W. 306 (1910); Moore v. Hoffman, 327 Mo. 852,(1931); DelSesto v. Lewis, 754 A.2d 91 (R.I. 2000) (10 years); Chittenden v. Waterbury Center Community Church, Inc., 168 Vt. 478, 726 A.2d 20 (1998) (15 years); ITT Rayonier, Inc. v. Bell, 112 Wash. 2d 754, 774 P.2d 6 (1989) (10 years); Hovendick v. Ruby, 10 P.3d 1119 (Wyo. 2000) (10 years).

[3] Goodman v. Quadrato, 142 Conn. 398 (1954).

[4] See, e.g., Braue v. Fleck, 23 N.J. 1, 127 A.2d 1 (1956); Sashinger v. Wynn, 571 So. 2d 1065 (Ala. 1990) (10 years with payment of taxes and color of title; 20 without those factors).

been irrevocably dedicated to public use. It applies to property owned by counties, municipalities, towns, school districts and universities, irrigation districts, and flood management districts. A municipality does not lose this protection merely by not using property if it intends to use it for public development in the future.[5] Furthermore, some jurisdictions distinguish between property that is held in a governmental capacity and that which is owned by a governmental unit in its proprietary capacity. In these jurisdictions, the general rule is that land or property of a municipality that is not held for a public use, but is held in a proprietary or business capacity, may be acquired by adverse possession, unless there is a statute that establishes a different rule.[6]

Whatever the period required in the particular jurisdiction and under the particular circumstances, title by adverse possession cannot be acquired unless it is shown that the adverse possession continued for that specific period.[7] Failure to possess for the prescribed period is fatal to a quiet title claim.

2. Boundary Disputes.

Disputed deeds between adjoining property owners concerning the description of the properties oftentimes turn into issues of title as well as boundary. Where a purported property owner can show superior title to the property he will generally prevail against the adjacent property owner's claim.[8] For example, in Parks v Stepp,[9] two neighbors disputed the placement of the boundary line separating their tracts. The chain of title established that in 1978, a sales contract and plat map describing the north tract was recorded. The deed transferring the northern tract was recorded on April 22, 1985. The deed transferring the southern tract was recorded a few weeks earlier on April 6, 1985.[10] The legal descriptions establishing the boundary between the northern and southern tract did not match. The court looked to which deed was recorded first. Because the plat for

[5] 3 Am. Jur. 2d *Adverse Possession* § 270.
[6] Id. at § 271.
[7] See, e.g., Lawse v. Glaha, 253 Iowa 1040, 114 N.W.2d 900 (1962); Berglund v. Sisler, 210 Neb. 258, 313 N.W.2d 679 (1981); In re Harlem River Drive, City of New York, 307 N.Y. 447, 121 N.E.2d 414 (1954); Collins v. Smith, 1962 OK 128, 372 P.2d 878 (Okla. 1962).
[8] See Parks v. Stepp, 260 Ga. App. 431, 579 S.E.2d 874 (2003).
[9] 260 Ga. App. 431, 579 S.E.2d 874 (2003).
[10] Id. at 433.

the northern tract was recorded first, the Georgia Court of Appeals held that its legal description prevailed.[11]

For an effective conveyance of land by deed, the deed typically must describe the land to be conveyed, including the parcel's outer perimeter. If a deed has no description of the land, or an insufficient or void description, it will not be operative to convey the land or as color of title. Where the boundary line can be accurately determined from within the four corners of the deed by the proper application of the legal rules of construction, parol evidence cannot be resorted to by a party to vary the boundary.

A boundary can be defined by a statement in words, either written, oral or by diagram. The purpose of a legal description is to enable any party to physically locate the boundaries of the tract by the description alone. An instrument containing an incomplete or insufficient description of the land is void and thus has no effect. Legal descriptions reference boundary lines of the property by noting natural and artificial monuments (or landmarks), courses and distances of the boundary lines, as well as other descriptive factors such as roads, streets, and street numbers. Although natural monuments are preferable over artificial ones, any monument will prevail over courses and distances.

For a description to be legally adequate in a deed, certain elements must be included. If such elements are omitted or improperly included, the description will not suffice. The description must name the state and county in which the land is located.[12] The metes and bounds given in a legal description must be specific and definite and not vague or incomplete.[13] However, a perfect legal description is not required for a valid deed – all that is required is that the description furnishes a key to the identification of the land.[14]

3. Conflicting Surveys.

If neighbors determine that their surveys conflict with one another, the surveyors should start by reviewing the chain of title. It may be that a call or transfer was missed

[11] Id.
[12] Boatright v. Tyre, 112 Ga. App. 179, 144 S.E.2d 471 (1965).
[13] See Herrington v. The Church of the Lord Jesus Christ, 222 Ga. 542, 150 S.E.2d 805 (1966).
[14] CDM Custom Homes, Inc. v. Windham, 280 Ga. App. 728, 634 S.E.2d 780 (2006).

somewhere in the chain of title and is causing the current problem. The surveyors may be able to work together to resolve the conflict before litigation ensues.

There is also at least some authority suggesting that a senior survey will prevail over a junior survey. "The general rule is that where lines of senior and junior surveys conflict the lines of the senior survey control, particularly where the junior is bounded with express reference to the elder. So, if the field notes of the surveys conflict those of the senior survey control."[15] The age of the survey alone, however, does not determine which survey a court must accept. Instead, the trier of fact should focus on the accuracy of the survey.[16]

B. Statutory Versus Common Law Quiet Title Actions

The law on quiet title actions varies from state to state. Many states have quiet title statutes. However, other jurisdictions allow courts to fashion the law regarding quiet title actions. Under the common law, a plaintiff must be in possession of the property to bring a quiet title action, but many state statutes do not require actual possession by the plaintiff. In other states, possession is not relevant. In some states, only the person who holds legal title to the real estate may file a quiet title action, but in other states anyone with sufficient interest in the property may bring a quiet title action. Generally, a person who has sold the property does not have sufficient interest. When a landowner owns property subject to a mortgage, the landowner may bring a quiet title action in states where the mortgagor retains title to the property. If the mortgagee keeps the title until the mortgage is paid, the mortgagee, not the landowner, would have to bring the action.

The general rule under either approach in a quiet title action is that the plaintiff may succeed only on the strength of his own claim to the real estate, and not on the weakness of the respondent's claim. The plaintiff bears the burden of proving that he owns the title to the property. A plaintiff may have less than a full fee simple ownership and still maintain an action to quiet title. The general foundational requirement is that the plaintiff's interest be valid while the respondent's competing interest is not.

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[15] 11 C.J.S. *Boundaries* §63 (2008).
[16] Id.

C. Procedural Requirements for Quiet Title Actions

1. Proper Jurisdiction

Depending on your state, a quiet title action may need to be brought in a specific court for the county in which the real property is located. Federal court jurisdiction typically is limited in quiet title actions because of the federal question and/or diversity bases for federal jurisdiction often are not satisfied. Once the action is before the court, the court has complete power to determine title issues. Failure to bring the action in the proper court renders any judgment thereon invalid for lack of jurisdiction.

2. Statute of Limitations Issues

Perhaps more than any other procedural area in quiet title actions, determining the appropriate statute of limitations, or when the appropriate limitations period begins running, can be quite problematic. First, there may be a general statutory period for commencing a quiet title action under a state's specific statutory regime, such as 4, 5, or even 15 years. However, that statute of limitations will commence until such time as the event vesting title in the petitioner has occurred – in adverse possession cases that may be 20 years after beginning open notorious possession.

Moreover, the character of the land itself or the identity of the parties involved, may determine the statute of limitations, or the date from which the limitations period accrues, regardless of the state's general statute. For instance, The Quiet Title Act, 28 U.S.C. 2409a, *et seq.*, limits the period in which parties may file quiet title actions against the United States to a period of twelve (12) years the date that the plaintiff or his predecessor in interest knew or should have known of the claim of the United States. In Nevada, under NRS 11.060, quiet title actions for recovery of mining property must be brought within two (2) years of taking possession. In Wallace v. I.R.S., No. 11cv0978 (S.D. Cal. Oct. 4, 2011), the Court held that the claim to quiet title on property in an estate does not begin running until the estate tax is assessed. One can quickly see that knowing the general statutory limitations period may not be enough. The nature of the property and the other claimants and/or title holders involved must be considered to determine if a quiet title action is timely.

3. Requirements for the Complaint/Petition

Generally, a complaint/petition to quiet title must be verified (i.e., sworn as true by affidavit) and should (often times must) contain all of the following information: (1) a description of the property that is the subject of the action. This must include both the legal description and the street address or common designation, if any; (2) the method of vesting of title in the plaintiff. (So, for example, if the complaint is based on adverse possession, the complaint must allege the specific facts constituting the adverse possession); (3) the adverse claims to plaintiff's title; (4) the date as of which the determination is sought. (If the determination is sought as of a date other than the date the complaint is filed, the complaint must include a statement of the reasons why a determination as of that date is sought); and (5) a prayer for the determination of plaintiff's title against the adverse claims.[17]

4. Parties

For an in-rem proceeding, such as claiming ownership rights as to the world through adverse possession, the plaintiff/petitioner must name as the defendant(s)/respondent(s), any and all persons known or unknown claiming an interest in the property. For a quasi-in-rem proceeding, such as extinguishing a defective easement or license, that is a contest for title rights between a limited number of specific individuals, the complaint may name just those individuals.[18] Be advised that any person who claims an interest in the property can join in the action, whether or not named as a defendant. Under either scenario, it is a sound practice to hire a title company to perform a title search immediately upon gaining an ownership claim to a property in order to determine all of the appropriate parties to your action. A title search will reveal any formal indicia of other ownership claims, liens or other encumbrances associated with the

[17] See, e.g., Briosos v. Wells Fargo Bank, 737 F.Supp.2d 1018 (N.D. Cal. 2010).

[18] Courts themselves often offer conflicting statements about the proper characterization of quiet title actions. See, e.g., 40235 Washington St. Corp. v. Lusardi, 976 F.2d 587, 589 (9th Cir. 1992) ("A quiet title action is a proceeding in rem."); Nevada v. United States, 463 U.S. 110, 143–44, 103 S.Ct. 2906, 77 L.Ed.2d 509 (1983) ("[Q]uiet title actions are in personam actions"); Humble Oil & Ref. Co. v. Sun Oil Co., 191 F.2d 705, 718 (5th Cir.1951) ("Suits to quiet title may be characterized as quasi in rem").

title. However, of course, if, for example, there are competing adverse possession claims, a title search may not reveal the identity of the other potential claimant.

5. Notice Of Pending Action (Lis Pendens)

In many states, a lis pendens, sometimes called a "notice of pendency of action," is required in any quiet title action. A lis pendens, also known in some jurisdictions as "Notice of Pendency of Action" or "Notice of Commencement of Action", is a legal document which serves to provide constructive notice pursuant to state law that a legal action (lawsuit) has been commenced in which an interest in certain real property is being claimed or asserted in the action. The literal translation of lis pendens is "a pending suit," And, the property that is described for the purpose of invoking the doctrine must be at the very essence of the controversy between the litigants."[19]

A lis pendens is not a lien on property, but rather a notice that a possible interest is being claimed in certain real property. The filing or recordation of a lis pendens in the public records establishes constructive notice from the date of recording to subsequent purchasers, encumbrancers, creditors, and other third parties that a lawsuit is pending that involves an interest in the subject real property or may affect title to the subject property. The recording of a lis pendens establishes the priority of the claim of interest in the land. When there is a lis pendens of record, anyone acquiring an interest in the subject property is subject to and will be bound by the outcome of the pending lawsuit. A lis pendens must contain certain statutorily required information including the parties to the action and the specific description of the property involved.

Of course, there is at least one major consideration to keep in mind when filing a lis pendens – it often will draw a counterclaim of slander of title in the underlying lawsuit. Slander of title is a claim involving real estate in which one person or entity falsely claims to own another entity's property. Thus, if you are seeking to quiet title through a contested adverse possession, you likely can expect the title holders of record to assert not only defenses to your claim but offensive claims as well.

[19] 51 Am.Jur.2d *Lis Pendens* § 19.

6. Trial

Depending on your state, an action to quiet title may be considered an equitable action. This means that there may be no right to a jury trial. Quieting title is generally an equitable claim, and equitable defenses, such as laches, unclean hands, etc., may be asserted against it. However, at least in some jurisdictions, if the plaintiff is out of possession and seeks to recover possession by a quiet title action, the action is a legal one and the jury trial right attaches.[20]

7. Judgment

A judgment in an action to quiet title is binding and conclusive on all persons known or unknown who were parties to the litigation and who have a claim to the property.[21] The judgment will not affect title of a person who was not a party to the action if their claim was of record or if the claim was actually known, or should reasonably have been known, to the plaintiff. This interpretation of the limited preclusive effect of a judgment is why you must seek to include all parties possible in the lawsuit.

II. Investigation Strategies

A. Burden of Proof

In many jurisdictions, a plaintiff seeking to quiet title against a person with legal title to property has the evidentiary burden of proving title by clear and convincing proof, rather than by the preponderance of evidence usually used in civil cases.[22] HOWEVER, this heightened evidentiary burden is usually removed if/when the legal title itself is disputed.[23] In those types of cases, the factual issues are generally determined by the preponderance of the evidence standard of proof.

As for the specific facts to be proved, practitioners must consult their jurisdiction's statutory or common law. The specific facts to be adduced on the record can vary depending on the type of adverse possession and the arguable color of pre-existing title. For instance, in Georgia, a party who asserts a claim of title by adverse

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[20] See, e.g., Medeiros v. Medeiros,177 Cal. App. 2d 69 (1960).
[21] See. e.g., Ford Consumer Fin. Co., Inc. v. Carlson and Breese, Inc., 611 N.W.2d 75 (Minn. Ct. App. 2000); see also California Code of Civil Procedure § 764.030.
[22] See e.g., Anderson v. McLaughlin,138 Fla. 187, 189 So. 716 (1939).
[23] See, e.g., Draszt v. Naccarato, 146 Wash. App. 536, 192 P.3d 921 (Wash. Ct. App. 2008).

possession against a cotenant has the burden of proving the common law elements of prescription AND at least one of the relevant statutory elements: (i) actual ouster; (ii) retention of exclusive possession after demand; and/or (iii) provision to cotenant of express notice of adverse possession.[24]

B. Discovery and Finding Records

Discovery in the quiet title action is extremely important. Participants should focus on the facts necessary to invalidate the claim(s) to title of the adverse party. Establishing the relevant dates is especially crucial given the discussions above about adverse possession and statutes of limitations. Most states will allow the full set of civil discovery tools to be utilized in quiet title actions, including depositions, requests for admissions, interrogatories, and request to produce documents. Most of the recent attention on quiet title discovery has focused on the requests for the "original note" being made by homeowners across the country in quiet title actions seeking to stop foreclosures by MERS as the appointees of various lenders.[25]

However, depending on the case, you may be able to find much of the discovery needed in a quiet title action via self-help remedies. Publicly available records, such as those found in your jurisdiction's relevant court or office of record for real property title, etc., typically are available on-line in a user-friendly format. Although, you may still need the assistance of title professional to prepare an abstract, obtaining the records themselves has become much easier than in the past.[26]

C. Are Legal Descriptions Mandatory?

If this question were posed on a law school exam, the best answer would be (as it often is in the real world), "it depends." Again, consult your jurisdiction's case law for your courts' interpretation of the requirements. The simplest answer is that obtaining a legal description, even if you have to pay a surveyor to create one, is never going to be a

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[24] See, O.C.G.A. § 44-6-123; see also, e.g., Williams v. Screven Wood Co., Inc., 279 Ga. 609, 619 S.E. 2d 641 (2005).

[25] See, e.g., http://blogs.wsj.com/developments/2010/10/12/little-known-mers-faces-big-challenges-in-foreclosure-battle/.

[26] For example, Florida property records are kept by the Land Appraiser's office in each county. For Broward County (Ft. Lauderdale), Florida, online searches are available by property tax id, homeowner, subdivision, etc. See http://www.bcpa.net/RecMenu.asp.

too little or a bad idea, and many jurisdictions require a true and correct legal description in the final judgment.[27] But, what if you simply cannot locate or obtain a legal description but still want to being the process to establish ownership of that property in respect to the rest of the world?

You must be able to establish a "sufficient description" of the property, often found in a quit claim or other deed, to identify the property to the court's satisfaction. So, how do you know if that description is "sufficient"? A good general rule of thumb is whether a the description is sufficiently certain (i) to allow a third party to determine what property is actually being described, conveyed, devised, etc.; and (ii) to make identification of the property practicable.[28] So, in practical terms, for instance, a Xerox copy of a plat with the property in question highlighted has been found to be sufficient.[29]

D. Hearsay Obstacles

At first blush, this may seem like an obvious concern, and, frankly, one that is easily remedied. As we know, unless specifically excepted or omitted by the relevant local jurisdiction's Rules of Evidence, an out of court statement offered for the truth of the matter asserted is hearsay and will be inadmissible in a quiet title action. Documents such as wildcat deeds, quit claims, assignments, maps, plats, etc. all may NOT be admissible unless you can find the proper hearsay exception or demonstrate that the statement in question does not qualify as hearsay under a specific statutory exception. Example: Documents, including entry of the levy in sheriff's file, referred to in affidavits by civil process coordinators at sheriff's office, were made and kept by coordinators in the regular course of business, and thus were admissible under the business records

[27] See, e.g., Smith v. Smith, 2011 Ark. App. 598, 385 S.W.3d 902 (2011).
[28] See e.g., Stearns Atchos Co. v. Atchison Topeka & Santa Fe Railway Co., 19 Cal. App. 3d 24 (Ct. App. 4th Dist. 1970) (holding that "[i]n pleadings to quiet title[,] it is sufficient if from the description given a competent surveyor can locate the land on the ground with or without the aid of extrinsic evidence").
[29] See Sanchez v. Carey, 409 S.W.2d 458 (Tex. Ct. App. 1966). But, cf. Grand Lodge of Georgia, Independent Order of Longfellows v. City of Thomasville, 226 Ga. 4, 172 S.E.2d 612 (1970) (holding that property description of "the first tract begins at the northwest corner of Lot 196 and runs about 8 acres to a stake" thence "north about 6 acres to a stake" was "so indefinite that it afforded no means of identifying the land").

hearsay exception to show that the levy had occurred by official seizure of the property in tax sale purchaser's quiet title action on property.[30]

Moreover, if your jurisdiction follows the Uniform or Federal Rules of Evidence, you should be aware of the powerful tool found in your equivalent of Rule 803(20) regarding the admissibility of otherwise hearsay reputation evidence regarding boundaries. A number of jurisdictions, as a development of the common-law exception to the hearsay rule for statements of matters of public interest, have adopted the Uniform Rule of Evidence 803(20), or a similar evidence rule, allowing the testimony of general reputation in the community, arising before a controversy, as to the boundaries of, or customs affecting, lands in the community. The theory behind such exception is that trustworthiness in reputation evidence may be found when the issue in controversy is such that it is likely that the topic was discussed widely in the community by persons having knowledge about the facts, and thus the community's conclusion probably is reliable.

Accordingly, such evidence must be a general consensus of opinion, not merely the opinions of a few individuals, and thus it has been held that evidence of boundaries or customs was inadmissible under Rule 803(20) because it was not shown that there was a general reputation.[31] Similarly, it has been held that evidence of reputation concerning how certain trees came to exist in a certain location was inadmissible under the Rule because it was not shown that there was a general community interest in the subject.[32] It

[30] *See, e.g., Davis v. Harpagon Co.*, LLC, 283 Ga. 539, 661 S.E.2d 545 (2009).

[31] See, e.g., Nature Conservancy v Nakila, 4 Hawaii App. 584, 671 P2d 1025 (1983) (Surmising that the defendant was going to testify regarding what the "witnesses" told her about the "use of the land," the court held that the Rule excepted from the hearsay rule evidence of reputation in a community as to customs affecting lands in the community); cf. Collier v. Stokes, 213 Ga. 464(2), 99 S.E.2d 821 (1957) (holding that evidence related to what the witness had been told by her father and a surveyor over 30 years before about the location or meaning of a certain pin was inadmissible because the evidence offered was not as to the general reputation of the pin in question or as to the witness' knowledge of the pin but, instead, was what the surveyor said about a specific pin).

[32] But see Canady v Cliff, N.C. App. LEXIS 81 (1989) (Ruling that evidence of the reputation in the community as to where a boundary was located was inadmissible because the boundaries could be determined by reference to the description in a deed, and that in such situation parol evidence is not admissible to enlarge the scope of the description).

has also been held that the Rule 803(20) exception may be applied even as to matters arising before the witness' lifetime.[33]

E. Special Problems in Title Examinations

1. Mineral Resources

Many state's title insurance companies are excepting from title insurance policies the ownership of the subsurface mineral rights, including interests in oil and gas, and the existence of any leases for the minerals on a given property. [34] In many cases, the status of mineral rights does not appear on the current property deed. Frequently, minerals are presumed to be included in the conveyance of the surface land, unless specifically excepted or reserved by deed. Mineral rights may be severed from the surface land; *i.e.*, they may be sold or transferred separate and apart from the surface land. Even if a deed does purport to convey mineral rights, the deed may be inaccurate if there are historical transfers of the mineral rights that are unknown. The only way to be sure that a deed actually conveys mineral rights is to research the chain of title to confirm the mineral rights were not previously severed and are still a part of the fee simple estate.

If a severance of the minerals is discovered, the title searcher not only needs to search for independent chains of title relative to the particular property but also needs to trace that document forward in time to track the relevant interest and the present owner of the mineral rights. Subsequent owners of a reserved or transferred mineral interest may truly be "needles in the haystack."

2. Tax Deed/Lien Sales

If a homeowner fails to pay the required taxes on his or her property, the county will offer the property up for sale at an auction to help generate the lost tax income. During a tax deed sale, the property is usually sold for the back tax amount plus any fees, interest charges, and court costs. Because property taxes are a small percentage of market value, investors purchasing a tax deed can acquire full property rights at a fraction of the

[33] See, e.g., Broyhill v Coppage 79 N.C. App. 221, 339 S.E.2d 32 (1986) (finding that trial court did not err in allowing witnesses to testify regarding the use of the local roadways before their lifetimes, since reputation as to customs affecting land is not excluded by the hearsay rule under Rule 803(20), and it is not limited to the lifetime of the witness.

[34] See, e.g., Ohio Marketable Title Act (Ohio Revised Code §§ 5301.47 to 5301.56).

market price. Some jurisdictions allow for a post-sale "redemption period," whereby the former owner has a specified amount of time to reclaim the property by repaying the amount bid at auction plus a penalty. For example, Texas allows a 6-month (for non-homestead, non-agricultural properties) or two-year period (homestead or agricultural properties), with a flat 25% penalty to be added to the amount paid at the sale (50% after the first year), while Tennessee allows a full year, with a 10% penalty.[35] As such, purchasers of properties at tax deed sales are cautioned not to make major improvements on the property until after the redemption period has expired, as such improvements would then become the property of the original owner.

A tax deed sale may also be used in conjunction with a tax lien sale process, whereby the lienholder (instead of a governmental agency) starts the process toward forcing a public sale of the property. In those instances the lienholder's investment (the price of the lien plus any additional costs necessary to start the tax deed sale process, such as required fees and payment of any still-unpaid taxes or buyout of other certificate holders' interests) constitutes the minimum bid; if no other bids are received at the sale then the lienholder will take title to the property subject to redemption periods (if applicable) or any lawsuit to overturn the sale.

By law, tax deed sales must be announced to the public, and are usually sold to the highest bidder. The winning bidder purchases the deed to a piece of property, becoming the new owner and obtaining all rights to the property – clear of any mortgages, liens, deeds of trust, etc. However, because title generally is transferred in a tax deed sale through a form of limited warranty or quitclaim deed (sometimes styled as Tax Deed or Sheriff's Deed), it usually is necessary to undertake a quiet title action in most states upon expiration of the redemption period to assure clean title and to obtain title insurance.

[35] Texas Tax Code § 34.21; Tenn. Code Ann. § 66-8-101.

III. Conclusion

Quiet Title actions are often proceedings of last resort when the disputing parties cannot reach an amicable or mutually satisfactory resolution to the title dispute in question. Although powerful, such actions do have limitations that must be considered. Although nominally dispositive of a title claimant's rights against all other current claimants, unlike acquisition through a deed of sale, a quiet title action will give the party seeking such relief no cause of action against previous owners of the property, unless the plaintiff in the quiet title action acquired its interest through a warranty deed and had to bring the action to settle defects that existed when the warranty deed was delivered.

Moreover, Quiet title actions also do not "clear title" completely. They are actions for the purpose of clearing a particular, known claim, title defect, or perceived defect. Quiet title actions are always subject to attack and are particularly vulnerable to jurisdictional challenges, both subject matter and personal, even years after final court decree in the action.