

A Quick Primer on Quiet Title Actions

by Nate Bernstein, Attorney at Law

When you have a dispute as to the state of the title of a residential or commercial real estate, or an unfriendly person or entity is making a legal or equitable claim against your title, you can file a "*quiet title*" lawsuit in the Superior Court where the property is located to resolve the claim in order to clear the title.

The claim can also be brought in conjunction with other claims, such as *fraud*, a claim for *cancellation of a written instrument*, or *declaratory relief*. In a declaratory relief action, for example, if a real estate contract is involved, the court has the power to determine the contractual rights of the parties as of a certain date, as requested in the complaint. In a quiet title lawsuit, you can also litigate a claim relating to a fraudulently executed or recorded *deed of trust mortgage* document. This is a situation where a deed of trust is fraudulently recorded without the consent of the owner of record. You can also have the court determine the legality of a transfer by *grant deed or quitclaim deed*.

In the quiet title lawsuit, the Court will determine the *state of the title* as of a particular date, and has the power to clear title. Title disputes can be adjudicated in an orderly manner without disorganized infighting or shouting matches. The court has the power to send the case to mediation, to let a mediator help resolve the dispute.

When the quiet title lawsuit is filed, you must also record a *lis pendens* at the County recorder's office. The term "lis pendens" is a Latin term for a "*pending suit*." The lis pendens informs and warns the world that a lawsuit is pending, and that any subsequent grantee, subsequent purchaser, or lender, takes title *subject to the disputed claim*. Recording the lis pendens warns all persons that until the title claim is resolved, that they are in danger of being bound by an adverse judgment. Generally, a lender will not make a mortgage loan secured by a title that is subject to a recorded lis pendens. The quiet title action is important, if an owner wants to determine that he or she has superior rights to the title of a particular parcel of real property in comparison to other adverse claimants. This action is also important for clearing the title of fraudulently recorded instruments.

Establishing a clear and marketable title is also crucial for receiving future financing, or for making a clear, marketable future transfer by trust or will. You want your heirs to inherit clear titles, not cloudy titles with gaps in the title or lawsuits pending. Clear title is also important for establishing title, as a foundation for bringing an unlawful detainer (eviction) action. If you don't have clear title, the Court may deny your eviction claim, and on that technical basis, rule for the tenant.

In reality, most quiet title lawsuits are settled after the case is filed prior to trial. Cases often settle in *mediation*, and sometimes, when the defendant fails to defend the action. Because of the potential for being sued in a quiet title lawsuit, and or due to the risk of not receiving a clear and marketable title after an escrow closes when you complete a

purchase of real property, you should always purchase title insurance from a reputable, financially solid title insurance company. Title insurance is traditionally purchased through escrow during a sale transaction. The subject of title insurance is a complex, multifaceted area of law as it involves the law of insurance, contracts, and real property. It is highly recommended to purchase title insurance if you are purchaser or a secured lender that is a party to a real estate transaction.

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