

Information about Quiet Title Actions, Lawsuits, and Claims

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California Law Digest

I. Outline of the Laws of Quiet Title in California

1. PURPOSE OF THE QUIET TITLE CAUSE OF ACTION-

Why file the lawsuit ?

When two or more persons have adverse claims to the same property, any of the claimants may initiate a quiet title action. The purpose of the action is to eliminate the adverse claim and to establish perfect or “quiet” the disputed title in the name of the claimant.

The action is available to clear title against any kind of interest or adverse claim. A “claim” includes any legal or equitable right, title, estate, lien, or interest in property or any cloud on title. See Cal. C.C.P. Section 760.010. The action may be brought to establish any kind of title or interest in real or personal property, whether legal or equitable- including a leasehold interest, an equitable interest in land, an easement or license on the land, a claim of title through adverse possession.

An adverse claimant is one who asserts an ownership interest in the property, or anyone who interferes with the plaintiff’s enjoyment of the property, renders title to the property uninsurable, or otherwise decreases the value of the property.

The quiet title action is different from an action to remove a cloud on title by the cancellation of an instrument or for reformation. See Rocha v. Rocha 197 Cal. 396, 402, 240 P. 1010 (1925). (cite statute).

2. SITUATIONS CONSTITUTING ADVERSE CLAIM OR CLOUD ON TITLE-

What are some of the unique situations where quiet title actions are filed ?

Quiet title actions have been used in many multiple situations including the following (not nearly an exhaustive list):

Marks v. Whitney, 6 Cal. 3d 251, 261, 262, 98 Cal. Rptr. 790, 491 P.2d 374 (1971) (boundary dispute about tidelands are burdened by a public easement).

Holzer v. Read, 216 Cal. 119, 123, 13 P.2d 697 (1932) (dispute over location of proper boundary line).

Bank of America Nat. Trust & Sav. Ass’n v. Town of Atherton, 60 Cal. App. 2d 268, 272, 273, 140 P.2d 678 (1st Dist. 1943) (to have declared void a zoning ordinance)

Moe v. Gier 116 Cal. App. 403, 408, 2 P.2d 852 (1st Dist. 1931) (to cancel deed restrictions).

Other specialized California and federal quiet title statutory situations include-

Cal. Code of Civil Procedure Sections 751.50:

751.50. If the boundaries of land owned either by public or by private entities have been disturbed by earth movements such as, but not limited to, slides, subsidence, lateral or vertical displacements or similar disasters caused by man, or by earthquake or other acts of God, so that such lands are in a location different from that at which they were located prior to the disaster, an action in rem may be brought to equitably reestablish boundaries and to quiet title to land within the boundaries so reestablished.

Cal. Code of Civil Procedure 770.020:

770.020. If property is acquired or stands of record in the name of a person who heretofore or hereafter transfers the property under a name other than or different from the name in which the property is acquired or stands of record, a proceeding is authorized to adjudicate and determine the identity of the person in whose name the property is acquired or stands of record and the person who transfers the property.

Cal. Code of Civil Procedure 772.030:

772.030. (a) If a mining rights lease, including a community lease, exists for the production of oil, gas, or other hydrocarbons, and a right of entry or occupation provided by the lease encumbers all or part of the surface or surface zone of the leasehold lands, any person who owns a fee interest in the surface of the leasehold lands may bring an action in the superior court to terminate the right of entry or occupation as to all or some described portion of the surface and surface zone of the leasehold lands in which the person owns an interest.

Cal. Code of Civil Procedure Sections 801.1 to 801:

An action may be brought to determine adverse interests in, liens or clouds upon title to real property arising out of any public improvement assessment or any bond issued to represent such assessment where the lien of such assessment or bond is presumed to have been extinguished under the provisions of Section 2911 of the Civil Code, or to determine adverse interests in, liens or clouds upon title to real property by reason of any certificate issued on sale made to satisfy any public improvement assessment or bond where such sale was made more than four years prior to the commencement of the action and no deed pursuant thereto has been issued prior to the commencement of the action or prior to January 1, 1951, whichever is the later.

Cal. Revenue and Taxation Code Section 3727:

(Whenever property has been purchased at tax sale, the purchaser or any other person claiming through the purchaser may bring suit to quiet title to all or any portion of the property and prosecute it to final judgment.)

Revenue and Taxation Code Section 4113:

(Whenever tax-defaulted property is redeemed, the redemptioner or any other person claiming through the redemptioner may bring suit to quiet title to all or any portion of the property and prosecute it to final judgment)

Revenue and Taxation Code Sections 3950:

Whenever tax-defaulted property has been purchased at tax sale, including purchases made under Chapter 8 (commencing with Section 3771), and all subsequent taxes levied and payable have been paid, the purchaser, or any person claiming through the purchaser, may bring an action to determine adverse claims to or clouds upon that property. The complaint shall be verified and shall aver the matters above enumerated.

Cal. Public Resources Code Sections 6461 to 6465:

6461. Any person or persons claiming any interest in or to real property which is alleged to be claimed by the State of California to be situated in the former bed of a navigable river or stream in this State, may bring suit against the State of California, in accordance with law in any court of competent jurisdiction of the State, to quiet title to such property and may prosecute the action to final judgment. If the judgment be given against the State in such suit, no costs shall be recovered against the State.

6462. Service of summons in any such suit shall be upon the Chairman of the State Lands Commission and Attorney General and it shall be the duty of the Attorney General to represent the State in such suit.

6463. Any person or persons claiming title under a patent of tideland, issued by the State of California, may bring suit against the State, or against the State with others, in accordance with law in any court of competent jurisdiction of the State, to quiet title or otherwise determine the validity of such patent or establish boundaries of the land granted thereby or both, and may prosecute the action to final judgment. Service of summons on the State in any such suit shall be made in the manner provided in Section 6462 of this code. If judgment is given against the State in any such action or proceeding, no costs shall be recovered from the State thereunder.

6464. Any person or persons claiming title to land adjoining tide or submerged land, herein called "adjoining land," under a patent issued by the United States of America or the State of California, may bring suit against the State, or against the State with others, in accordance with law in any court of competent jurisdiction of the State, to fix and determine the boundary between said adjoining land and the tide or submerged land which it adjoins, and may prosecute the action to final judgment. Service of summons on the State in any such suit shall be made in the manner as provided in Section 6462 of this code. If judgment is given against the State in any such action or proceeding, no costs shall be recovered from the State thereunder.

6465. The complaint in any action pursuant to this chapter shall, on request, contain a plat of the property to which the action relates which shows the location of the property in relation to a monument in a survey of record.

28 U.S.C.A. Sections 1346(f):

The district courts shall have exclusive original jurisdiction of civil actions under section [2409a](#) to quiet title to an estate or interest in real property in which an interest is claimed by the United States.

28 U.S.C. 2409:

(a) The United States may be named as a party defendant in a civil action under this section to adjudicate a disputed title to real property in which the United States claims an interest, other than a security interest or water rights. This section does not apply to trust or restricted Indian lands, nor does it apply to or affect actions which may be or could have been brought under sections [1346](#), [1347](#), [1491](#), or [2410](#) of this title, sections 7424, 7425, or 7426 of the Internal Revenue Code of 1986, as amended ([26 U.S.C. 7424](#), [7425](#), and [7426](#)), or section 208 of the Act of July 10, 1952 ([43 U.S.C. 666](#)).

3. RECORDATION OF LIS PENDENS-

Do you need to record a lis pendens if you are a plaintiff who files the lawsuit ?

A plaintiff commencing a quiet title action must immediately record a lis pendens with the county recorder of the county in which the subject property is located. See California Code of Civil Procedure Section 761.010 (b). The lis pendens lets the world know that the claimant is asserting an interest in the real property, and that any transferee would take title subject to a lawsuit. After the lis pendens is recorded, the document is filed in the Courthouse. The specific statutes pertaining to lis pendens are governed by Cal. Code of Civil Procedure 405-405.50, and should be strictly followed.

4. REQUIREMENTS FOR THE QUIET TITLE LAWSUIT COMPLAINT

What needs to go in the allegations of a quiet title lawsuit ?

The lawsuit complaint must contain

- a. verification under penalty of perjury by all plaintiffs;
- b. legal description of the property and its street address or common designation;
- c. facts regarding the plaintiff's title and the basis upon which it is asserted;
- d. the adverse claims as against which a determination is sought;
- e. the date at which a determination of title is sought;
- f. statement of why the determination is sought as of this date;
- g. a prayer for determination of plaintiff's title against adverse claims;
- h. the caption of the complaint and the body of the complaint must contain language stating

See generally California Code of Civil Procedure Section 761.020.

5. RELATED CLAIMS AND CAUSES OF ACTION

Can you sue for other causes of action at the same time in the same lawsuit ?

Depending on the specific factual situation, you can sue for title by adverse possession, ejectment, fraud, cancellation of a written instrument, slander of title, partition, declaratory relief, equitable subrogation, elder abuse, breach of contract, or constructive trust. Related claims should be filed in the same lawsuit if it involves the same facts and the same parties. This is more cost effective than filing multiple lawsuits about the same set of facts.

6. FILING OF A CROSS-COMPLAINT-

Can the plaintiff be sued by the defendant within the same lawsuit that the plaintiff filed ?

One of the risks of filing a quiet title lawsuit, is that the plaintiff can get sued for the same type of cause of action or for other causes of action. Generally, a cross-complaint may be filed by a defendant at the same time that the defendant is filing the defendant's first pleading (answer, motion to strike, or demurrer) without obtaining leave of Court (or court permission). After the first pleading, the defendant must file a Motion to obtain leave of court to file a cross-complaint.

7. JURISDICTION

Which Court has subject matter jurisdiction ?

Generally speaking , the Superior Court has jurisdiction to decide quiet title actions. The only exception may be when United States is a party because an interest or estate is claimed by the United States Government- then the United States Federal Court has exclusive original jurisdiction.

8. VENUE

Which Superior Court do you file the lawsuit in ?

The quiet title action is an “in rem” action that must be brought in the jurisdiction where the property is located. For example, if the property is located in Van Nuys, California- the lawsuit is filed in the Northwest Division (Van Nuys) of the Los Angeles Superior Court. See Cal. Code of Civil Procedure Section 760.050.

9. STATUTE OF LIMITATIONS

Is there a time limit to file the quiet title cause of action ?

Generally, there is no specific statute of limitations for an action to quiet title by itself. However, because witnesses may disappear, and evidence may be unobtainable or unavailable, the lawsuit should always be filed in Superior Court as soon as possible.

The applicable period of limitations in a quiet title actions is based on the theory of relief in the underlying cause of action. Ankoanda v. Walker-Smith, 44 Cal. App. 4th 610, 52 Cal. Rptr. 2d 39 (1st Dist. 1996); Muktarian v. Barnby, 63 Cal. 2d 558, 47 Cal. Rptr. 483, 407 P.2d 659 (1965). For example, if the underlying cause of action is seeking to set aside a deed, mortgage or other conveyance and to recover possession on the ground of fraud or mistake is subject to the 3 year statute of limitations based upon Cal. Code of Civil Procedure Section 338(d), which commences to run upon plaintiff’s discovery of the facts constituting the fraud or mistake.

If one is seeking additional equitable relief such as an injunction in addition to quiet title, the doctrine of “laches” may apply as an equitable defense to the action. According to Black’s Law Dictionary, the doctrine of “laches” means that the plaintiff took an unreasonable amount of time to file the action. It sometimes involves an unreasonable or unexplained delay. It is defined as neglect to assert right or claim which, taken together with lapse of time and other circumstances, causing prejudice to the adverse party, operates as a bar in a court of equity. Laches requires an element of estoppel or neglect which has operated to prejudice the adverse party.

If plaintiff’s delay in seeking to quiet title has prejudiced the adverse claimant, a quiet title action may be barred under the doctrine of laches. Muktarian v. Barnby, 63 Cal. 2d at 561, 47 CR at 485.

An action to obtain title to real property based on adverse possession must be commenced within 5 years from the end of possession of the property by plaintiff or his or her processor in interest. See Cal. Code of Civil Procedure Sections 318, 319; Leeper v. Beltrami (1959) 53 C2d 195, 212, 1 CR 12, 24. The flip side also applies.

The 5 year limitations period also limits any action seeking to recover title or possession to real property from one claiming a prescriptive easement or adverse possession. A plaintiff may sue to eject defendant or to recovery real property in defendant’s possession until defendant’s use of the property ripens into either title by adverse possession or prescriptive easement. See Cal. Code of Civil Procedure Sections 318, 321, 326. Harrison v. Welch (2004) 116 CA4th 1084, 1086, 11 CR3d 92, 94, Safwenberg v. Marquez (1975) 50 CA 3d at 301, 311-312, 123 CR at 411-412. The 5 year statute of limitations may be tolled (stops or delays from running) based on disability of person entitled to sue, pending litigation, or other factors.

There are special statute of limitations that apply to quiet title actions when the United States government has an interest in real property, or against the State governments challenging tax deeds to the states. They will not be discussed here, but you should check the specific laws on these specialized situations.

a. LEGAL STANDING OF PLAINTIFF-

Who can be a plaintiff in a quiet title action ?

The quiet title action is available to the holder of any interest in land including the owner of an easement or license, or the owner of an equitable interest, or a claimant by adverse possession.

It is not required that the plaintiff be in actual physical possession of the property at the time the action is filed. Lawrence v. Maloof, 256 Cal. App. 2d 600, 602, 603, 64 Cal. Rptr. 233 (2d Dist. 1967).

b. **REQUIRED PARTIES-**

Who has to be named as a defendant in the action ?

Obviously if a person or entity is claiming adverse title- then that person or entity must be named in the action.

c. **DEFENSES TO QUIET TITLE ACTION-**

Can the defendant win the case by presenting a defense ?

This section of the outline is under construction.

d. **REMEDIES AND RELIEF ALLOWED-**

What relief do you receive if you win the quiet title lawsuit ?

This section of the outline is under construction.

10. **TRIAL OF THE QUIET TITLE ACTION-**

Who decides the quiet title action and what happens?

In general, causes of action that are filed in Court are divided into categories constituting legal or equitable claims. Equitable claims are decided by judges. Legal claims are decided by juries. Generally, there is no right to a jury trial in a quiet title action because it is considered an "equitable action." The issue concerning legal or equitable title is decided by the judge. Ancillary issues of "law" for example pertaining to damages can be decided by a jury or the judge. If a lawsuit is bifurcated- certain claims are heard by the Court, and certain claims are heard by the jury- it make for a long and expensive process.

Generally, in the course of the trial the Courts hears, opening statements, direct evidence, cross-examination, redirect evidence, recross evidence, rebuttal testimony, and closing statements. The parties present witnesses, documents, and expert witnesses. After the closing arguments, the Court renders a decision. If the case is complex, the Court may take the matter "under submission," and send the decision out by mail.

11. **BURDEN OF PROOF IN THE QUIET TITLE ACTION-**

Who has the burden of proof in a quiet title action?

In a civil suit- the magical words "prove it" are of critical importance. Lawsuits are generally divided into two areas of analysis- first, the claims of the plaintiff, and second, the defenses presented by the defendant. Generally, at the first stage of the trial, the plaintiff has the burden of proof and the burden of producing evidence. During the defense stage of the case, the defense has the burden of proof and the burden of producing evidence to prove his defenses.

Plaintiff must recover on the strength of his or her own title, and not on the weakness of the defendant's title. This means that the burden of proof is on the plaintiff to establish his or her title by sufficient evidence. Coffin v. Odd Fellow Hall Ass'n of Modesto, 9 Cal. 2d 521, 71 P.2d 266 (1937); Devereaux v. Frazier Mountain Park & Fisheries Co., 248 Cal. App. 2d 323, 56 Cal. Rptr. 345 (5th Dist. 1967).

The general standard of proof in civil cases is by a proof by a preponderance of the evidence.

After meeting the burden of proof by a prima facie showing that he or she has title, the plaintiff must then show that his or her interest is paramount to that of the defendant. Hines v. Hubble, 144 Cal. App. 2d 830, 301 P.2d 592 (4th Dist. 1956); Crane v. French, 39 Cal. App. 2d 642, 104 P.2d 53 (4th Dist. 1940).

When the defendant claims an equitable title or interest, the defendant has the burden of proof on these

matters. Clay v. Saute, 140 Cal. App. 2d 681, 295 P.2d 914 (4th District 1956); Pellerito v. Dragna, 41 Cal. App. 2d 85, 105 P.2d 1011 (3d Dist. 1940); Williams v. Rus h, 134 Cal. App. 554, 25 P.2d 888 (1st Dist. 1933).

The owner of legal title to property is presumed to be the owner of the full beneficial title. This presumption may be rebutted only by clear and convincing proof. See Cal. Evidence Code Section 662.

12. EFFECT OF JUDGMENT-

What is the legal effect of the judgment ?

This section of the outline is under construction.

II. State of California Codes and Statutes that Apply to Quiet Title Actions including California Code of Civil Procedure 760.010-765 .

Article 1: General Provisions

760.010. As used in this chapter:

(a) "Claim" includes a legal or equitable right, title, estate, lien, or interest in property or cloud upon title.

(b) "Property" includes real property, and to the extent applicable, personal property.

760.020. (a) An action may be brought under this chapter to establish title against adverse claims to real or personal property or any interest therein.

(b) An action may be brought under this chapter by parties to an agreement entered into pursuant to Section 6307 or 6357 of the Public Resources Code to confirm the validity of the agreement.

(c) Nothing in this section shall be construed to limit the right of members of the public to bring or participate in actions challenging the validity of agreements entered into pursuant to Section 6307 or 6357 of the Public Resources Code.

760.030. (a) The remedy provided in this chapter is cumulative and not exclusive of any other remedy, form or right of action, or proceeding provided by law for establishing or quieting title to property.

(b) In an action or proceeding in which establishing or quieting title to property is in issue the court in its discretion may, upon motion of any party, require that the issue be resolved pursuant to the provisions of this chapter to the extent practicable.

760.040. (a) The superior court has jurisdiction of actions under this chapter.

(b) The court has complete jurisdiction over the parties to the action and the property described in the complaint and is deemed to have obtained possession and control of the property for the purposes of the action with complete jurisdiction to render the judgment provided for in this chapter.

(c) Nothing in this chapter limits any authority the court may have to grant such equitable relief as may be proper under the circumstances of the case.

760.050. Subject to the power of the court to transfer actions, the proper county for the trial of an action under this chapter is:

(a) Where the subject of the action is real property or real and personal property, the county in which the real property, or some part thereof, is located.

(b) Where the subject of the action is personal property, the county in which the personal property is principally located at the commencement of the action or in which the defendants, or any of them, reside at the commencement of the action.

760.060. The statutes and rules governing practice in **civil** actions generally apply to actions under this chapter except where they are inconsistent with the provisions of this chapter.

Article 2: Commencement of Action

761.010. (a) An action under this chapter is commenced by filing a complaint with the court.

(b) Immediately upon commencement of the action, the plaintiff shall file a notice of the pendency of the action in the office of the county recorder of each county in which any real property described in the complaint is located.

761.020. The complaint shall be verified and shall include all of the following:

(a) A description of the property that is the subject of the action. In the case of tangible personal property, the description shall include its usual location. In the case of real property, the description shall include both its legal description and its street address or common designation, if any.

(b) The title of the plaintiff as to which a determination under this chapter is sought and the basis of the title. If the title is based upon adverse possession, the complaint shall allege the specific facts constituting the adverse possession.

(c) The adverse claims to the title of the plaintiff against which a determination is sought.

(d) 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 shall include a statement of the reasons why a determination as of that date is sought.

(e) A prayer for the determination of the title of the plaintiff against the adverse claims.

761.030. (a) The answer shall be verified and shall set forth:

(1) Any claim the defendant has.

(2) Any facts tending to controvert such material allegations of the complaint as the defendant does not wish to be taken as true.

(3) A statement of any new matter constituting a defense.

(b) If the defendant disclaims in the answer any claim, or suffers judgment to be taken without answer, the plaintiff shall not recover costs.

761.040. (a) The defendant may by cross-complaint seek affirmative relief in the action.

(b) If the defendant seeks a determination of title as of a date

other than the date specified in the complaint, the cross-complaint shall include the date and a statement of the reasons why a determination as of that date is sought.

Article 3: Defendants

762.010. The plaintiff shall name as defendants in the action the persons having adverse claims to the title of the plaintiff against which a determination is sought.

762.020. (a) If the name of a person required to be named as a defendant is not known to the plaintiff, the plaintiff shall so state in the complaint and shall name as parties all persons unknown in the manner provided in Section **762.060**.

(b) If the claim or the share or quantity of the claim of a person required to be named as a defendant is unknown, uncertain, or contingent, the plaintiff shall so state in the complaint. If the lack of knowledge, uncertainty, or contingency is caused by a transfer to an unborn or unascertained person or class member, or by a transfer in the form of a contingent remainder, vested remainder subject to defeasance, executory interest, or similar disposition, the plaintiff shall also state in the complaint, so far as is known to the plaintiff, the name, age, and legal disability (if any) of the person in being who would be entitled to the claim had the contingency upon which the claim depends occurred prior to the commencement of the action.

762.030. (a) If a person required to be named as a defendant is dead and the plaintiff knows of a personal representative, the plaintiff shall join the personal representative as a defendant.

(b) If a person required to be named as a defendant is dead, or is believed by the plaintiff to be dead, and the plaintiff knows of no personal representative:

(1) The plaintiff shall state these facts in an affidavit filed with the complaint.

(2) Where it is stated in the affidavit that such person is dead, the plaintiff may join as defendants "the testate and intestate successors of ____ (naming the deceased person), deceased, and all persons claiming by, through, or under such decedent," naming them in that manner.

(3) Where it is stated in the affidavit that such person is believed to be dead, the plaintiff may join the person as a defendant, and may also join "the testate and intestate successors of ____ (naming the person) believed to be deceased, and all persons claiming by, through, or under such person," naming them in that manner.

762.040. The court upon its own motion may, and upon motion of any party shall, make such orders as appear appropriate:

(a) For joinder of such additional parties as are necessary or proper.

(b) Requiring the plaintiff to procure a title report and designate a place where it shall be kept for inspection, use, and copying by the parties.

762.050. Any person who has a claim to the property described in the complaint may appear in the proceeding. Whether or not the person is named as a defendant in the complaint, the person shall appear as a defendant.

762.060. (a) In addition to the persons required to be named as defendants in the action, the plaintiff may name as defendants "all persons unknown, claiming any legal or equitable right, title, estate, lien, or interest in the property described in the complaint adverse to plaintiff's title, or any cloud upon plaintiff's title thereto," naming them in that manner.

(b) In an action under this section, the plaintiff shall name as defendants the persons having adverse claims that are of record or known to the plaintiff or reasonably apparent from an inspection of the property.

(c) If the plaintiff admits the validity of any adverse claim, the complaint shall so state.

762.070. A person named and served as an unknown defendant has the same rights as are provided by law in cases of all other defendants named and served, and the action shall proceed against unknown defendants in the same manner as against other defendants named and served, and with the same effect.

762.080. The court upon its own motion may, and upon motion of any party shall, make such orders for appointment of guardians ad litem as appear necessary to protect the interest of any party.

762.090. (a) The state may be joined as a party to an action under this chapter.

(b) This section does not constitute a change in, but is declaratory of, existing law.

Article 4: Service of Process

763.010. (a) The form, content, and manner of the service of summons shall be the same as in **civil** actions generally.

(b) If upon affidavit it appears to the satisfaction of the court that the plaintiff has used reasonable diligence to ascertain the identity and residence of and to serve summons on the persons named as unknown defendants and persons joined as testate or intestate successors of a person known or believed to be dead, the court shall order service by publication pursuant to Section 415.50 and the provisions of this article. The court may, in its discretion, appoint a referee to investigate whether the plaintiff has used reasonable diligence to ascertain the identity and residence of persons sought to be served by publication, and the court may rely on the report of the referee instead of the affidavit of the plaintiff in making the order for service by publication.

(c) Nothing in this section authorizes service by publication upon any person named as an unknown defendant who is in open and actual possession of the property.

763.020. Whenever the court orders service by publication, the order is subject to the following conditions:

(a) The plaintiff shall post, not later than 10 days after the date the order is made, a copy of the summons and complaint in a conspicuous place on the real property that is the subject of the action.

(b) The plaintiff shall record, if not already recorded, a notice of the pendency of the action.

(c) The publication shall describe the property that is the subject of the action. In addition to particularly describing the property, the publication shall describe the property by giving its street address, if any, or other common designation, if any; but, if a legal description of the property is given, the validity of the publication shall not be affected by the fact that the street address or other common designation recited is erroneous or that the street address or other common designation is omitted.

763.030. (a) Whenever the court orders service by publication, the publication may:

(1) Name only the defendants to be served thereby.

(2) Describe only the property in which the defendants to be served thereby claim interests.

(b) Judgment against a defendant who fails to appear and answer following service under this section shall be conclusive against the defendant named in respect only to property described in the publication.

763.040. Whenever the court orders service by publication, the court before hearing the case shall require proof that the summons has been served, posted, published as required, and that the notice of pendency of action has been filed.

Article 5: Judgment

764.010. The court shall examine into and determine the plaintiff's title against the claims of all the defendants. The court shall not enter judgment by default but shall in all cases require evidence of plaintiff's title and hear such evidence as may be offered respecting the claims of any of the defendants, other than claims the validity of which is admitted by the plaintiff in the complaint. The court shall render judgment in accordance with the evidence and the law.

764.020. (a) If in an action under this chapter the validity or interpretation of a gift, devise, bequest, or trust, under a will or instrument purporting to be a will, whether admitted to probate or not, is involved:

(1) The will or instrument purporting to be a will is admissible in evidence.

(2) All questions concerning the validity of the gift, devise, bequest, or trust shall be finally determined in the action.

(3) If the will has been admitted to probate and the gift, devise, bequest, or trust has been interpreted by a final decree of the probate court, the interpretation is conclusive as to the proper construction thereof.

(b) Nothing in this section deprives a party of the right to a jury trial in any case where, by law, the right is now given.

764.030. The judgment in the action is binding and conclusive on all of the following persons, regardless of any legal disability:

(a) All persons known and unknown who were parties to the action and who have any claim to the property, whether present or future, vested or contingent, legal or equitable, several or undivided.

(b) Except as provided in Section **764.045**, all persons who were not parties to the action and who have any claim to the property which was not of record at the time the lis pendens was filed or, if none was filed, at the time the judgment was recorded.

764.045. Except to the extent provided in Section 1908, the judgment does not affect a claim in the property or part thereof of any person who was not a party to the action if any of the following conditions is satisfied:

(a) The claim was of record at the time the lis pendens was filed or, if none was filed, at the time the judgment was recorded.

(b) The claim was actually known to the plaintiff or would have been reasonably apparent from an inspection of the property at the time the lis pendens was filed or, if none was filed, at the time the judgment was entered. Nothing in this subdivision shall be construed to impair the rights of a bona fide purchaser or encumbrancer for value dealing with the plaintiff or the plaintiff's successors in interest.

764.060. The relief granted in an action or proceeding directly or collaterally attacking the judgment in the action, whether based on lack of actual notice to a party or otherwise, shall not impair the rights of a purchaser or encumbrancer for value of the property acting in reliance on the judgment without knowledge of any defects or irregularities in the judgment or the proceedings.

764.070. Notwithstanding any other provision of this chapter, the judgment in the action is not binding or conclusive on the following:

(a) The state, unless individually joined as a party to the action.

(b) The United States, unless the United States is individually joined as a party to the action and federal law authorizes judgment in the action to be binding or conclusive as to its interests.

764.080. (a) In any action brought to quiet title to land that has been subject to an agreement entered into pursuant to Section 6307 or 6357 of the Public Resources Code, at the time set for trial the court shall, at the request of any party, receive evidence on the nature of the agreement. After receiving that evidence, the court shall render a statement of decision. In the case of an agreement pursuant to Section 6357, the statement of decision shall include a recitation of the underlying facts and a determination whether the agreement meets the criteria of Section 6357 and other law applicable to the validity of boundary line agreements. In the case of an agreement pursuant to Section 6307, the statement of decision shall recite the relevant facts and shall contain a determination whether the requirements of Section 6307 of the Public Resources Code, Sections 3 and 4 of Article 10 of the California Constitution, and other applicable law have been met. If the court finds the agreement to be valid, the judgment in the action shall quiet title in the parties named in the agreement in accordance with the agreement. If the judgment is entered prior to the effective date of the agreement, the judgment shall provide that, upon the effective date, title is quieted in the parties in accordance with the agreements. However, no action may be brought pursuant to this section until the State Lands Commission has approved the agreement following a public hearing. All such actions shall be set on the trial calendar within one year from the filing of a memorandum to set, unless the court extends this time for good cause.

(b) Nothing in this section shall be construed to limit the right of members of the public to bring or participate in actions challenging the validity of agreements entered into pursuant to Section 6307 or 6357 of the Public Resources Code. Any action brought by a member of the public shall be set on the trial calendar within one year from the filing of a memorandum to set, unless the court extends this time for good cause.

ARTICLE 6- Liens and Encumbrances

765.010. A public officer or employee whose property is subject to a lien or other encumbrance in violation of Section 6223 of the Government Code may petition the superior court of the county in which the person resides or in which the property is located for an order, which may be granted ex parte, directing the lien or other encumbrance claimant to appear at a hearing before the court and show cause why the lien or other encumbrance should not be stricken and other relief provided by this article should not be granted. The court shall schedule the hearing no earlier than 14 days after the date of the order. The scheduled date of the hearing shall allow adequate time for notice of the hearing.

765.020. A petition under this article shall state the grounds upon which relief is requested, and shall be supported by the affidavit of the petitioner or the petitioner's attorney setting forth a concise statement of the facts upon which the motion is based.

The petition and affidavit shall be in substantially the form prescribed by the Judicial Council.

765.030. If the court determines that the lien or other encumbrance is in violation of Section 6223 of the Government Code, the court shall issue an order striking and releasing the lien or other encumbrance and may award costs and reasonable attorney fees to the petitioner to be paid by the lien or other encumbrance claimant. If the court determines that the lien or other encumbrance is valid, the court shall issue an order so stating and may award costs and reasonable attorney fees to the encumbrance claimant to be paid by the petitioner. The court may direct that such an order shall be recorded.

765.040. Any lien or encumbrance claimant who records or files, or directs another to record or file, a lien or other encumbrance in violation of Section 6223 of the Government Code shall be liable to the owner of the property bound by the lien or other encumbrance for a **civil** penalty of up to five thousand dollars (\$5,000).

765.050. This article does not apply to a document which acts as a claim of encumbrance by a financial institution, as defined in subdivision (a) of Section 14161 of the Penal Code or Section 481.113 of this code, or a public entity, as defined in Section 481.200 of this code.

765.060. If a lien or other encumbrance is recorded or filed in violation of Section 6223 of the Government Code, the state or local agency that employs the public officer or employee may provide counsel for the public officer or employee in an action brought pursuant to Section **765.010**.



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