Chapter 15

Quiet Title Actions:
Tools to Address Select Appalachian Title Defects

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1 The authors express their appreciation to Allison J. Farrell and Adam K. Curtis for
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§ 15.01 Introduction and Scope.

The development of advanced hydrofracturing technology has revived and revolutionized the oil and gas industry in Appalachia. As acquisitions, dispositions, drilling, production, and marketing of oil, natural gas liquids and natural gas from shale formations surged, the region experienced parallel radical increases in the value of its potentially productive real estate. Shale developers from non-Appalachian states began to encounter the reality of Appalachian title — a reality far different than many developers had encountered in other productive basins.

As the Appalachian shale plays mature, the industry has developed a sophisticated understanding of Appalachian title. Aggressive efforts by expert landmen to cure identified title defects have resolved many issues to the satisfaction of the varying risk tolerances of their employers. Of course, not all title defects can be resolved through traditional land techniques such as obtaining corrected or supplemental leases, investigation to determine and to document essential facts, quitclaims, etc. When traditional curative techniques cannot succeed, the most common curative tool recommended is the pursuit of quiet title actions.

This chapter will explore core issues and differences in quiet title actions as title curative tools in the Appalachian states of Ohio, Pennsylvania and West Virginia. The focus will be upon analysis of quiet title actions as tools for prospective use in addressing select title defects and not in providing a historic survey of the use of quiet title actions generally prior to the Appalachian shale revolution. The age of most historic quiet title precedent, the volume and the unique nature of the title issues driven by the current development is certain to require the evolution of an Appalachian title jurisprudence that, while certain to consider and to evolve from prior precedent, is not tied in lockstep to the past.

The text of the chapter will provide an introduction and overview of the essential elements and concepts related to Appalachian quiet title actions. Detailed conclusions of the state of quiet title law as of the date of
this chapter (August, 2013) in the states of Ohio, Pennsylvania and West Virginia is included in the comparative table that constitutes the last pages of the chapter.

§ 15.02. **Why Appalachian Title Is Unique.**

Many experienced mid-continent operators suffer cultural shock when first exposed to Appalachian title. Why that should be — given the long and deep industry experience of the most active Appalachian developers — is not intuitive. It is important, however, to identify the root differences encountered between Appalachian and mid-continent title as a starting point in analyzing the facility of quiet title actions as remedies for select Appalachian title difficulties.

The first factor that differentiates Appalachian from mid-continent and Western title is simply the age of the Appalachian states considered in this chapter. Two states (Pennsylvania and West Virginia) founded their laws and their concepts of title by direct import of English Common Law and many ancient English statutes. Ohio, on the other hand, was formed later in time, out of the “Northwest Territories,” and founded its law upon a very different jurisprudence. The lengthy periods in which Appalachian land has been in private ownership and subjected to human frailty in conveyancing, subdivision, maintenance, transfers upon death and other triggers to title defect opportunities have created fertile ground for the development of numerous and unique title defects.

West Virginia began as a part of Virginia. Virginia was first chartered in 1606. West Virginia seceded from Virginia with final ratification of its decision to do so occurring on April 11, 1862 and was admitted as one of the United States of America on June 20, 1863. West Virginia’s jurisprudence and property concepts were thus formed as part of an original British colony, as part of the State of Virginia and as an independent state over 257 years.

Pennsylvania began as a proprietorship of William Penn by grant of British King Charles II in 1683. The proprietorship grew by purchase and interstate conflict to its present configuration over its first centuries. Due to defects in the maps used to define the charter, Pennsylvania’s northern bor-
der was long contested by Connecticut, its southern border was contested by Maryland and its southwestern borders were contested by Virginia.

West Virginia and Pennsylvania, predictably, are among the American states that most closely follow law based upon 17th century British jurisprudence. The fingerprints of that history exist in these states’ legal terminology and core analytical defaults. An interesting artifact is that, while Ohio generally makes substantially less reference to British precedent, Ohio is the only Appalachian state that continues the ancient common law concept of dower into the twenty-first century!

Given the age of all three Appalachian states, one would not be unreasonable to anticipate that all possible issues of title law have been long resolved in each. Unfortunately, that anticipation would not be subject to realization. West Virginia and Pennsylvania, and to a somewhat lesser extent Ohio, all have large areas of acreage outside historic population centers and have long suffered inconvenient accessibility. Hundreds of thousands of acres of such lands exist in Appalachia. The result of location and limited accessibility was small value attributable for those lands. With small value, observance of the proper formalities of conveyancing and proper documentation of the passage of title upon death was simply not pursued over many decades. In addition, few owners or claimants chose to litigate title to such lands.

With the advent of shale development, lands in those historically low value properties demonstrating the most challenging title in the nation have suddenly attained substantial value. Ownership is now perceived to be the key to potential great wealth. Litigating adverse claims to ownership is no longer viewed as an activity beyond the value of the subject land. Only now are many unique and challenging title issues being litigated. The day of the simple, in-artfully prepared and prosecuted quiet title action is over in Appalachia as is the day of accepting old quiet title judgments to be valid without careful scrutiny of the underlying proceedings.

§ 15.03. The Quiet Title Action.

Defective title is known by various names in various states and regions. In some cases, defects are called “clouds” and the quiet title action is stated
to be an action to “remove” a “cloud” from title. In other states, defects are simply referred to as “defects” or by specific names for specific types of defects and quiet tile actions are commonly considered to “cure” specified defects. Despite the name for the most common title curative proceeding, defective title is nowhere known as “noisy title.” The common perception of the source of the name “quiet title” is that a result of a final court order establishing title in a defined person is to “quiet” or silence the claims of all others.

A “quiet title” action is simply a suit to determine ownership to land and interests in land. Quiet title actions can be brought against individuals, business entities and virtually any entity claiming any rights to title to real property. Quiet title actions have become expensive and time consuming. In many cases quiet title actions are the only curative process through which adverse claims by identified and unidentifiable claimants to record title can be resolved. As will be discussed in greater detail later in this chapter, many quiet title actions produce judgments that are subject to challenge due to pleading or procedural issues not adequately addressed in the litigation giving rise to the claim. These defective actions are a unique challenge to mineral title examiners; a good example of such a challenging fact situation is an order from a court stating that title to Blackacre is in Tom while the record giving rise to that court order is defective, in many cases constitutionally defective, leaving potential residual claims in Jim, who died in 1833, and his heirs.

Pennsylvania quiet title actions are actions at law, not equity.2 They are proceedings in which the filing party seeks to present evidence from the county’s title records (and in some cases, other sources) sufficient in quan-

2 Kister v. Commonwealth, 77 Pa. Commw. 430, 434 (Pa. Commw. Ct. 1983); See also Roberts v. Estate of Pursley, 700 A.2d 475, 478 (Pa. Super. Ct. 1997); Tennant’s Heirs v. Fretts, 68 S.E. 387 (W. Va. 1910) (“Equity has jurisdiction, at the suit of an owner of land who is in possession thereof under a good legal title, to remove a cloud from his title by a decree cancelling and expunging from the records of the county in which the land is situate a void deed, or writing, constituting a cloud upon, or menace to, his title.”); W.C. McBride, Inc. v. Murphy, 145 N.E. 855, 856 (Ohio 1924) (“An action to quiet title . . . is equitable in character and has been considered as an action in chancery.”)
tity and quality to persuade a court that the filing party’s title is superior to that of any and all other claimants. A quiet title plaintiff cannot prevail by simply proving the deficiencies in the other party’s title. The plaintiff can only prevail by proving the plaintiff’s own title by affirmative evidence that satisfies the civil burden of proof.3

Quiet title suits grow out of the common law. The states considered in this chapter have each adopted a form of codification of the process. West Virginia and Ohio each have a statute governing the process.4 Pennsylvania continues the procedure as a common law form of action, now aggregated with all other common law forms of action in a single form called simply “civil” actions, and regulates procedure through Supreme Court adopted rules.5

§ 15.04. Qualified Plaintiffs.

In all three states considered in this chapter, the right to appear as a plaintiff in a quiet title action is subject to all of the general qualification rules for plaintiffs in other civil actions (e.g. legal competence, true party in interest status, etc.) plus a few special standards unique to quiet title proceedings arising from ancient common law roots. The most common of those is the requirement that the plaintiff be in possession of the land or interest in land at issue.6 However, the Supreme Court of Appeals of West Virginia held in Tate v. United Fuel Gas Co.:

[i]t was formerly the rule that a plaintiff in a suit brought to remove cloud on title must own the title and be in possession.
But possession is no longer necessary in this jurisdiction. A

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5 Pa. R.C.P. 1061, et seq.
circuit court has jurisdiction ‘in equity to remove any cloud on title to real property, or any part thereof, or any estate, right or interest therein, and to determine questions of title with respect thereto, without requiring allegations or proof of actual possession of the same.’

For persons seeking a determination of title to land or interests in land not in their possession, each state has a separate proceeding commonly known as “ejectment.” Combining claims under both approaches would have been inconsistent at common law but is now permitted in modern practice.

It is not essential for a quiet title plaintiff to assert complete or perfect title to the subject land. The Plaintiff must only assert a real interest in the property that has greater quality than the title of any competing title claimant. In a properly prosecuted and tried quiet title action, however, it must be recognized that a plaintiff will only achieve a judgment in favor of his/her/its title to the extent of the title interest pleaded and proved.

§ 15.05. Qualifying Defendants.

Persons or entities claiming or shown by public record to be entitled to claim interests in real property that are inconsistent with the title claimed by a plaintiff are proper target defendants of a quiet title action. As with

9 Plauchak v. Boling, 653 A.2d 671, 674 (Pa. Super. Ct.) (“It is procedurally improper to simultaneously commence both an action in Ejectment and an action to quiet title regarding the same parcel of real estate.”).
plaintiffs, of course, targeted defendants must meet the qualifications generally applicable to the legal capacity to participate in civil litigation in each state. Thus, a mere squatter neither making or holding of record any claim of right or claim to adverse possession is not a proper target of a quiet title action. Such persons are proper targets for ejectment actions only.¹³ The class of proper defendants includes not only parties claiming various interests of ownership in the real property but also persons claiming liens, mortgages and other encumbrances upon real property.

In many cases, the defects or clouds sought to be quieted or removed involve current holders of interests through long lost chains of title. Due to the age of the states under consideration and the historic low value of much rural land in those states, satisfactory record vesting of title into identifiable parties is often ancient.

§ 15.06. Jurisdiction and Venue.

In each of the Appalachian states under consideration, jurisdiction to consider quiet title actions lies in each state’s court of general civil jurisdiction.¹⁴ The law of each state sets the proper venue for quiet title actions to lie in the county in which the real property affected is located.¹⁵ If general diversity jurisdiction requirements can also be met, quiet title actions may also be filed in a federal court servicing the location of the property.¹⁶

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¹³ Siskos v. Britz, 790 A.2d 1000, 1006 (2002) (“Ejectment is an action filed by a plaintiff who does not possess the land but has the right to possess it, against a defendant who has actual possession.”).
§ 15.07. Pleadings.

Quiet title actions are commenced by complaint. Responses to complaints are commonly titled as “Answers” and each state has a detailed code concerning the titling, sequencing and limitation of pleadings. There are marked differences in the pleading standards that must be met to state an actionable claim in each of the states under consideration. Pennsylvania remains a fact pleading state and plaintiffs must assert facts, not legal conclusions, which, if proven, will entitle them to the requested relief. West Virginia and Ohio have each adopted the more liberal federal “notice” pleading standard which only requires that a complaint reasonably communicate the plaintiff’s claim.

Pennsylvania’s “fact” pleading standard requires that defendants aver facts, not mere “denials” or legal conclusions that squarely and completely meet every fact asserted in each paragraph of a complaint. Simple “denied” responses are actually, by rule, full admissions of the facts alleged by the Plaintiff.

It is important to note, however, that the once bright line between fact and notice pleading had become less distinct as the result of the United States Supreme Court decision in Bell Atlantic Corp. v. Twombly which has imposed an, as of yet, incompletely delineated minimum factual content for a “notice” pleading to give sufficient “notice.” As Twombly becomes further and further analyzed, defined or, perhaps, rejected, by state courts, it is essential that persons seeking to review the evolving state of pleading law in the jurisdiction of filing before preparing any pleading. Only foolish litigators assume that federal pleading decisions will be applied by a state

simply because that state has adopted the Federal Rules of Civil Procedure as its procedural code. See, e.g., the Supreme Court of Tennessee, at Nashville’s decision in *Webb v. Nashville Area Habitat for Humanity, Inc.*

Whether a pleading is required to be in a fact or notice basis, the pleading must be based on the averment of a cognizable legal theory that entitles the Plaintiff as a matter of law and fact to the judgment sought. A surprising number of quiet title action complaints are filed asserting no facts or theories under which a court can properly grant the judgment requested. An unfortunate number of these defective actions actually produce defective judgments because of the unfortunate informality into which quiet title practice has fallen over the years, as will be more fully noted herein.

§ 15.08. Service of Process.

The states under consideration each have definitive rules for serving process upon named and locatable defendants. As noted above, quiet title actions differ from general civil litigation in that the actual current identity and location of persons currently holding adverse interests in real property may not only not be known to the plaintiff but may not be ascertainable by the plaintiff. It must be remembered that service of process is not a mere grant of notice. Rather it is the act that renders the defendant subject to personal jurisdiction in the issuing court. Real property interests that devolve from ancient record vestings without the benefit of subsequent direct or collateral filings in the public records not only transfer by operation of law, unintentional transfers and unknown and unlocatable probate documents from known to unknown persons by the simple passage of time, they also tend to become fractionalized to ever increasing degrees.

Among the Appalachian states under consideration, only Ohio has a relatively modern approach to addressing the unidentifiable and unlocat-

able owner problem. In 1961, Ohio adopted a Marketable Title Statute that requires that ownership in certain interests in real property to be periodically registered under penalty of forfeiture. In 1989, Ohio also adopted legislation that seeks to destroy outstanding severed oil, gas and mineral interests in the absence of various actions that must be taken by owners of those interests to preserve them. Unfortunately, Ohio courts have not fully developed definitive jurisprudence establishing how these various statutes affect title. The result is that for conservative and risk-averse landowners and purchasers, Ohio’s various statutes remain simply additional bases for quiet title actions.

Thus, quiet title actions in all of the subject states will necessarily often involve parties the names of which cannot be known and the locations of which cannot be identified. Each state has provided a method to serve unnamed and unlocated quiet title defendants by publication. Common elements of all service by publication systems include both:

- a requirement that the plaintiff conduct a good faith due diligence search; and
- a certification (under oath) of the conduct of the good faith, due diligence search and the negative results thereof.

A vast majority of quiet title actions follow this pattern:

- a complaint is filed;
- an affidavit of diligent search is filed together with a request for the court to authorize service by publication;
- an order is entered authorizing service by publication without judicial review of the quality of the underlying search;
- the publication is made;

e. the mandatory waiting period expires;

f. a motion is made by the plaintiff for entry of judgment in plaintiff’s favor upon default of the defendants to answer the complaint as required by law;

g. the court simply unquestioningly enters the requested judgment;

h. any post judgment notice requirements are satisfied by the plaintiff (usually by the same method used for original process);

i. the appeal period related to the issuance of the judgment expires;

j. (a step too often overlooked) – knowledgeable plaintiffs make certain that the existence of the final judgment is properly indexed in the county land records; and

k. the plaintiff (and others claiming under plaintiff in perpetuity) proceeds to deal with the subject real property as owner in reliance upon the judgment.

In many cases, reliance upon an ancient order no longer subject to appeal is a reasonable course of action. Historically, this has been the most common course of conduct and has rarely been proven to have been imprudent.

The unique nature of Appalachian title, the radically changed value of Appalachian land in energy productive regions, and the increased attention of a sophisticated mineral bar has resulted in a new focus upon the legal and constitutional validity of many Appalachian quiet title judgments.

Strict compliance with the provisions of service by publication systems is required to assure any potential for a judgment entered in a quiet title action to be secure from legal and constitutional challenge. Too often, cases arise years after a quiet title judgment is entered in which it is discovered that the plaintiff in the underlying action did not comply with the applicable service by publication system and the validity of the ensuing judgment is subjected to question — long after intervening interest holders have ex-
pended funds in unquestioning reliance upon the defective quiet title judgment. In 2013, a Pennsylvania court overturned a 1988 quiet title judgment because the search giving rise to the service by publication was patently inadequate.³⁰

It is thus apparent that prudent title examiners and oil and gas developers cannot simply choose to rely upon apparently final quiet title orders that appear to resolve substantial title issues. Prudence requires an evaluation of whether the quiet title action was based upon meritorious claims cognizable under local law as the basis to terminate outstanding real property interests. Even more important, however, is the need for a careful evaluation of the bases upon which service of process by publication was obtained and how that service was, in fact, executed. It must be remembered that service issues have the potential to raise both jurisdictional and constitutional issues that may not be resolved by the mere passage of time.

§ 15.09. Judgments By Default.

Due to the nature of many of the issues resolved through quiet title actions, the dominant resolution of those cases is by entry of a judgment in favor of the plaintiff upon default of defendants (who were allegedly “served” by adequate publication) to appear, to answer and to defend. As a consequence, great laxness can be seen not only in the drafting of quiet title complaints but also in the drafting of default judgment decrees. The bar needs to recognize that many attorneys view quiet title actions as justifying little care; many judges trust the bar to submit competent pleadings, certifications and orders. In the absence of a defense, such judges are inclined to simply sign the orders presented in the form presented. The exercise of great care in analyzing quiet title cases, drafting quiet title complaints, assuring compliance with all actual and substituted service proceedings and the drafting of final judgments upon default is required of all attorneys engaged in this practice area.

While the goal of any quiet title action should be absolute clarity and finality, the actual results in too many cases provide neither. In some cases,
the final orders do not specifically define a specific judicial resolution of the individual claims in the complaint leaving later evaluators of the efficacy of the judgment with uncertainty. In other cases, the final order far exceeds any relief that can be supported by the allegations of the complaint. Again, later evaluators of the action cannot be certain of the scope of relief actually afforded or of the finality of the proceeding should a truly aggrieved counter-party seek to have the judgment opened on jurisdictional or constitutional grounds or to litigate the proper scope of relief that the underlying proceeding could rationally be argued to provide.

The rubric to greater potential for clarity and finality is simple:

a. Find and apply clearly applicable law;
b. Plead clearly with clear ties to the applicable law;
c. Seek the broadest resolution possible under the applicable law and facts but do not overreach;
d. Strictly comply with any alternative service device permitted under state law and document that compliance well;
e. Make final orders properly and expressly responsive to the pleading and include clear findings on all essential issues; and 
f. Do not overreach what has been pleaded (or the law) in final orders.

§ 15.10. Trial.

This chapter is not intended to be a trial manual for quiet title actions. There are, however, many unique attributes to quiet title action trials that the authors believe will justify consideration for those not experienced in such matters.

The first important difference between quiet title actions and other civil actions is that quiet title actions are tried and decided by the court sitting without a jury. Although generally considered to be an action at law, quiet title actions also sound in equity because they often result in in personam orders barring defendants from pursuing claims resolved adversely to them in the proceeding.
An especially useful tool in Pennsylvania is the existence of a statute that enables the use of special affidavits in support of title that have a unique potential evidentiary status.

In all of the states under consideration, the “ancient documents” exception to the hearsay rule is often valuable in the trial of quiet title actions. 31

§ 15.11. Appeals — Collateral Attacks.

In Ohio and Pennsylvania, quiet title judgments are appealable as of right to an intermediate appellate court.32 In West Virginia, there are only discretionary appeals to the state’s Supreme Court of Appeals.33 There is no functional difference in the analysis and processing of quiet title matter appeals from the standard considerations applicable to other civil appeals.

The fact that many quiet title orders are issued without actual participation by the defendant(s), however, raises a unique issue related to overturning defective judgments. In such cases, there is rarely a record that will support a successful direct appeal. There are only pleadings, motions and an order in the trial court record. As a result, the most frequently used technique to address claims of quiet title proceeding defects is to move to “open” the judgment in the trial court. Each state has a defined proceeding to accomplish that goal.34 The burden to succeed is not insubstantial because courts, as well as parties, seek finality from the judicial process. As noted above, however, many of the defects one finds in quiet title proceedings are jurisdictional or constitutional, thus giving collateral attacks in these cases a much greater potential for success.

33 W. Va. Const. Art. VIII, § 3 (Westlaw 2013). See also, Harrow v. Ohio River R. Co., 18 S.E. 926 (W. Va. 1894) (“The remedy by writ of certiorari, given by chapter 110 of the Code, to review the judgment of a justice, is not given as a matter of right, but is awarded by the court, or judge, for cause, on proper case shown.”).
34 Pa. R.C.P. 2959 (Westlaw 2013); W. Va. R. Civ. P. 60(b) (Westlaw 2013); Ohio R. Civ. P. 60(B) (Westlaw 2013).
§ 15.12. Conclusions.

Humanity has demonstrated a remarkable ability to destroy certainty in land titles and the cumulative damage is predictably greatest in states with the longest histories of private land ownership. The Appalachian states are among America’s oldest and feature among the most pervasive and unique title issues to be found anywhere.

There are many different tools that can be used to address title defects including, corrective or supplemental conveyances, quit claims, amended documents, affidavits, etc. The majority of those tools are only useful, however, within time periods in which living persons have knowledge of the facts surrounding the title issue under consideration. For most defects of greater age, the quiet title action is the most common tool of choice.

Quiet title actions are rooted in the ancient common law and have continued life in Appalachia through modern statutes and court rules. Quiet title actions can be powerful and effective in addressing many title defects. Quiet title actions are not universally useful, however. Generally it is essential for there to exist a legally cognizable theory upon which a plaintiff can prevail in terminating a real property interest held of record by an adverse defendant. Mere desire for title is not such a theory.

The unique fact that traditionally a majority of quiet title actions have been prosecuted against persons who cannot be identified or located has created a special concern for the validity of many actions that end in judgments entered upon default of a defendant to appear, to answer or to defend. The anticipation of an almost certain “easy” victory appears to have lessened the rigor with which the bar and the bench have processed quiet title actions. Complaints are frequently filed with little or no actual legal basis for the desired relief. Searches to actually identify and to locate necessary parties defendant can too often be proven to have been less than thorough. Pre-order judicial review of quiet title pleadings and process appears to have become very light in some courts.

A result is that persons seeking to place large investments in oil, gas and mineral properties must avoid the temptation to simply accept quiet title judgments as certain and final determinations of complex title issues. As the value of Appalachian land grows with the expanding discovery
of new and valuable energy resources, the finality of defective quiet title orders can be anticipated to come into increasing question. Recent case activity indicates that some Appalachian courts may be ready to permit jurisdictional and constitutional rights of parties not properly subjected to alternative service procedures to trump the law’s general goal of finality of decision. Prudence requires that all quiet title action proceedings upon which title vesting is determined be examined for legal competence and procedural compliance as part of modern oil, gas and mineral title searches. Judgments based upon proceedings lacking either legal competence or procedural compliance must be noted as potentially unreliable so that developers can make reasonable business risk decisions as to operational locations and other important issues without undertaking additional or collateral corrective action to perfect title more certainly.

Appalachia’s new wealth and increasing land values have truly refocused public, industry and private landowner attention upon this most ancient of title curative tools. One can hope that refocus will improve the quality of future quiet title proceedings while assisting parties in avoiding formerly unrecognized risks arising from defective proceedings from the past.
§ 15.13. Appendix.


| Statute providing for quiet title actions | Ohio Revised Code Section 5303.01: “An action may be brought by a person in possession of real property, by himself or tenant, against any person who claims an interest therein adverse to him, for the purpose of determining such adverse interest. Such action may be brought also by a person out of possession, having, or claiming to have, an interest in remainder or reversion in real property, against any person who claims to have an interest therein, adverse to him, for the purpose of determining the interests of the parties therein.” |
| Local rules for each jurisdiction | Local rules for each jurisdiction |
| Who may institute a Quiet Title Action? | Ohio Revised Code Section 5303.01: “An action may be brought by a person in possession of real property, by himself or tenant, against any person who claims an interest therein adverse to him, for the purpose of determining such adverse interest. Such action may be brought also by a person out of possession, having, or claiming to have, an interest in remainder or reversion in real property, against any person who claims to have an interest therein, adverse to him, for the purpose of determining the interests of the parties therein.” |
| What defects may be cured by a Quiet Title? | An owner of an interest in minerals or mineral land, including gas and oil rights, thus may maintain a bill to quiet title. Likewise, where the term of a grant of the right to produce oil and gas has expired and the lessee still claims a right to drill under such grant, the lessor has a right to have his or her title quieted as against such claim on the ground that the term of the grant has expired and without returning the sum paid as consideration for the grant. Detlor v. Holland, 57 Ohio St. 492, 49 N.E. 690 (1898). Even where the lessee surrenders the lease, the landowner may be entitled to a judgment quieting title to the property. Lansinger v. United Petroleum Corp., 14 Ohio App. 3d 398, 471 N.E.2d 869 (11th Dist. Portage County 1984) (holding that when real property owners leased their land to an oil company for a primary term of 10 years and a second term for as long as oil or gas was produced, and at the end of 10 years, the company had not drilled a well which was producing oil or gas as required by the lease and surrendered the lease to the landowner, a trial court did not err in quieting title when the landowners sought a declaratory judgment that the oil company and a potential assignee of the lease had no interest in their land). |
What defects are expressly not subject to cure by Quiet Title through statute / rule / court opinion?

A lessor cannot, after delivery of a properly certified lease under which the lessee operated for a term of a specified number of years, maintain a cross action to quiet title on the ground that his or her acknowledgment was defective. Logan Gas Co. v. Keith, 117 Ohio St. 206, 5 Ohio L. Abs. 422, 158 N.E. 184, 58 A.L.R. 600 (1927).

An allegation that the defendant is a member of and acting in the furtherance of an unlawful and fraudulent conspiracy in restraint of trade, designed to create and perpetuate a monopoly in the business of producing, transporting, and manufacturing petroleum and its products in violation of the statutes of Ohio, does not constitute sufficient ground for quieting title to lands in which the defendant claims the right to drill. Steele v. Ohio Oil Co., 34 Ohio C.D. 460, 1912 WL 838 (Ohio Cir. Ct. 1912).

Cannot claim quiet title against a life estate, unless attempt was made to convey life estate. See Holt v. Lamb, 17 Ohio St 374 (1867); Carpenter v. Denoon, 29 Ohio St. 379, 1876 WL 95 (1876).

Are Quiet Title actions legal or equitable?

It is well settled law in Ohio that an action to quiet title is equitable in nature, and should only be available when there is no adequate remedy at law. W.C. McBride, Inc. v. Murphy, 145 N.E. 855 (Ohio 1924); McClure v. Fischer Attached Homes, 882 N.E.2d 61 (Ohio 2007); Meehan v. Mortg. Elec. Registration Sys., Inc., No. 1:11CV363, 2011 WL 3360193 (N.D. Ohio Aug. 3, 2011).

Can Quiet Title Actions be combined with other proceedings (money damages / trespass / ejectment, etc.?)

Yes

Quiet Title Trials by judge / jury / mixed

Both, Judge and Jury:

1. Jury: It is possible that there may be a right to a jury for those quiet title actions which are similar to the old form of ejectment. See Ohio Revised Code Sections 5303.11 et seq.

2. Judge: An action to quiet title is equitable in nature, therefore, the court may quiet title only when there is no adequate remedy at law. Typically, this would be done by a judge. McClure v. Fischer Attached Homes, 882 N.E. 2d 61 (Com. Pl. 2007).
## Where must/may Quiet Title be brought?

**Court of Equity**

## Statute of limitations applicable to Quiet Title

**Ohio Rev. Code Ann. § 2305.04 (West)**

An action to recover the title to or possession of real property shall be brought within twenty-one years after the cause of action accrued, but if a person entitled to bring the action is, at the time the cause of action accrues, within the age of minority or of unsound mind, the person, after the expiration of 21 years from the time the cause of action accrues, may bring the action within ten years after the disability is removed.

The courts have consistently stated that O.R.C. 2305.04 is the statute of limitations governing quiet title actions. *See*, *e.g.*, *Matheson v. Morog* (Feb. 2, 2001 6th Dist.), No. E-00-017, 2001 Ohio App. LEXIS 325, *15* ("R.C. 230.04 applies to actions in ejectment and quiet title"); *McCarley v. O.O. McIntyre Park Dist.* (Feb. 11, 2000 4th Dist.), No. 99CA07, 2000 Ohio App. LEXIS 603, *12 13* ("R.C. 2305.04, which is commonly thought of as the statutory period for adverse possession, is the applicable statute of limitations for both quiet title and ejectment actions.")

## Type of pleading used to institute a Quiet Title action

According to "Ohio Jurisprudence Pleading and Practice Forms," the following pleading are available to claimants: application, declaration, complaint, petition, answer, motion, and any amendment or withdrawal of a pleading.

## Actual service options

Certified or Expressed Mail, Commercial Carrier, Personal Service, Secretary of State, and Publication

## Grounds recognized to achieve Quiet Title award

Adverse possession may be the basis for an action for the recovery of real property. *See Gill v. Fletcher* (1906), 74 Ohio St. 295, 78 N.E. 433.

## Requirements to be able to serve by publication


## Perceived % served by actual service / publication

75%/25%

## Approximate cost range — uncontested

Approximately $5,000 - $10,000

## Approximate cost range — contested

Approximately $20,000 - $30,000
### QUIET TITLE ACTIONS

<table>
<thead>
<tr>
<th><strong>Minimum time to judgment — uncontested (filing — final judgment — appeal period expired)</strong></th>
<th>Approximately 6 months</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Is expert testimony permitted?</strong></td>
<td>Yes.</td>
</tr>
<tr>
<td>It has long been established that the testimony of surveyors as expert witnesses may properly be received by a court. <em>Glass v. Dryden</em>, 248 N.E.2d 54, 57 (Ohio 1969) (&quot;the trial court was entitled to consider the testimony of any expert upon a question involving technical skill and experience in a controversy over a disputed lot line&quot;); <em>Zipf v. Dalgarn</em>, 151 N.E. 174 (Ohio 1926) (permitting expert testimony of civil engineers in case concerning adverse possession); <em>Sellman v. Schaaf</em>, supra (permitting testimony of surveyors as expert witnesses in action to quiet title); <em>Kramp v. Toledo Edison</em>, supra (permitting surveyor to testify in action for trespass).</td>
<td></td>
</tr>
<tr>
<td><strong>Are affidavits on substantive fact issues permitted?</strong></td>
<td>Ohio Rev. Code Ann. § 5301.252 Affidavits on Facts Relating to Title:</td>
</tr>
<tr>
<td>(A) An affidavit stating facts relating to the matters set forth under division (B) of this section that may affect the title to real estate in this state, made by any person having knowledge of the facts or competent to testify concerning them in open court, may be recorded in the office of the county recorder in the county in which the real estate is situated. When so recorded, such affidavit, or a certified copy, shall be evidence of the facts stated, insofar as such facts affect title to real estate.</td>
<td></td>
</tr>
<tr>
<td><strong>Are ancient document exceptions to hearsay recognized? What is the period to merit “ancient” status? Does that apply to ancient “affidavits”?</strong></td>
<td>Yes — Ohio Rules of Evidence: Rule 803(16)</td>
</tr>
<tr>
<td>20 years</td>
<td></td>
</tr>
<tr>
<td><strong>Can defectively served Quiet Title actions be overturned by collateral attack after standard appeal periods have expired?</strong></td>
<td>A judgment without proper service is void and may be collaterally attacked at any time. <em>See Deutsche Bank Nat’l Trust Co., Appellee v. Boswell</em>; Freeman, Appellant, 192 Ohio App. 3d 374 (2011).</td>
</tr>
<tr>
<td><strong>First level appeal court</strong></td>
<td>Court of Appeals</td>
</tr>
</tbody>
</table>
## Summary of Major Provisions of the Quiet Title Law of the Commonwealth of Pennsylvania

<table>
<thead>
<tr>
<th>Statute providing for Quiet Title actions</th>
<th>Pa. R.C.P. 1061 et seq.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Court rules implementing statute</td>
<td>Pa. R.C.P. 1061 et seq.</td>
</tr>
<tr>
<td>Who may institute a Quiet Title action?</td>
<td>Any person with a right, lien, title, or interest in the land</td>
</tr>
<tr>
<td>What defects may be cured by a Quiet Title action?</td>
<td>Extinguishing any cloud on title</td>
</tr>
<tr>
<td>What defects are expressly not subject to cure by Quiet Title through statute/ rule/ court opinion?</td>
<td>None</td>
</tr>
<tr>
<td>Are Quiet Title actions legal or equitable?</td>
<td>Legal</td>
</tr>
<tr>
<td>Can Quiet Title actions be combined with other proceedings (money damages / trespass / ejectment, etc.?)</td>
<td>Yes</td>
</tr>
<tr>
<td>Quiet Title trials by judge / jury / mixed</td>
<td>Judge — Pa. R.C.P. 1067</td>
</tr>
<tr>
<td>Where must/may Quiet Title be brought?</td>
<td>In the County Court of Common Pleas — Pa. R.C.P. 1062; or State Board of Property for certain claims against the Commonwealth — See 71 P.S. § 991 et seq.</td>
</tr>
<tr>
<td>Statute of limitations applicable to Quiet Title</td>
<td>21 years — 42 Pa. C.S. § 5530.</td>
</tr>
<tr>
<td>Type of pleading used to institute a Quiet Title action</td>
<td>In the County Court of Common Pleas Complaint — Pa. R.C.P. 1061</td>
</tr>
<tr>
<td>Actual service options</td>
<td>Personal Service in Commonwealth — Pa. R.C.P. 410; alternative service — Pa. R.C.P. 410, 430</td>
</tr>
<tr>
<td>Grounds recognized to achieve Quiet Title award</td>
<td>Adverse Possession; Record Title</td>
</tr>
<tr>
<td>Requirements to be able to serve by publication</td>
<td>Affidavit indicating a diligent search for the defendant — Pa. R.C.P. 430</td>
</tr>
<tr>
<td>Perceived % served by actual service/publication</td>
<td>Low</td>
</tr>
<tr>
<td>Approximate cost — uncontested</td>
<td>$8,000.00</td>
</tr>
<tr>
<td>Approximate cost range — contested</td>
<td>$8,000.00-$100,000.00</td>
</tr>
<tr>
<td>Minimum time to judgment — uncontested (filing — final judgment — appeal period expired)</td>
<td>30-90 days.</td>
</tr>
<tr>
<td>Is expert testimony permitted?</td>
<td>Yes, on issues of fact — Pa. R.E. 702</td>
</tr>
<tr>
<td>Are affidavits on substantive fact issues permitted?</td>
<td>Yes, depending on availability of hearsay exceptions as applicable</td>
</tr>
<tr>
<td>Are ancient document exceptions to hearsay recognized? What is the period to merit “ancient” status? Does that apply to ancient “affidavits?”</td>
<td>Yes, ancient document exception to hearsay applies if the document is greater than thirty years old — Pa. R.E. 803(16); other potential exceptions include family records - 803(13); records of documents affecting an interest in real property — 803(14); statements in documents affecting an interest in property 803(15)</td>
</tr>
<tr>
<td>Can defectively served Quiet Title actions be overturned by collateral attack after standard appeal periods have expired?</td>
<td>Yes</td>
</tr>
<tr>
<td>First Level Appeal Court</td>
<td>Pennsylvania Superior Court or Commonwealth Court for Board of Property Appeals</td>
</tr>
</tbody>
</table>

**[3] — Summary of Major Provisions of the Quiet Title Law of the State of West Virginia**

| Statute providing for Quiet Title actions | W. Va. Code § 51-2-2(d) |
| Who may institute a Quiet Title action? | Must have claim to title but actual possession not required |
| What defects may be cured by a Quiet Title? | Extinguish clouds on title to any estate, right, or interest in real property |
### § 15.13

<table>
<thead>
<tr>
<th>Questions</th>
<th>Answer</th>
</tr>
</thead>
<tbody>
<tr>
<td>What defects are expressly not subject to cure by Quiet Title through statute / rule / court opinion?</td>
<td>None</td>
</tr>
<tr>
<td>Statute providing for Quiet Title actions</td>
<td>Pa. R.C.P. 1061 et seq.</td>
</tr>
<tr>
<td>Are Quiet Title actions legal or equitable?</td>
<td>Equitable</td>
</tr>
<tr>
<td>Can Quiet Title actions be combined with other proceedings ($ damages / trespass / ejectment, etc.?)</td>
<td>Yes</td>
</tr>
<tr>
<td>Quiet Title trials by judge / jury / mixed</td>
<td>Judge if purely equitable</td>
</tr>
<tr>
<td>Where must / may Quiet Title be brought?</td>
<td>Circuit Court where property sits</td>
</tr>
<tr>
<td>Statute of limitations applicable to Quiet Title</td>
<td>None if QTA brought by person in possession of property. &lt;br&gt;<code>Nuttall v. McVey</code>, 60 S.E. 251 (W. Va. 1908); 10 years — W. Va. Code § 55-2-1 (adverse possession statute); Estoppel may be a bar or defense</td>
</tr>
<tr>
<td>Type of pleading used to institute a Quiet Title Action</td>
<td>Complaint</td>
</tr>
<tr>
<td>Actual service options</td>
<td>Varied — W. Va. R. Civ. P. 4; W. Va. Code § 56-3-33(a)</td>
</tr>
<tr>
<td>Grounds recognized to achieve Quiet Title award</td>
<td>Must establish legal and equitable title</td>
</tr>
<tr>
<td>Requirements to be able to serve by publication</td>
<td>Affidavit including diligent search for defendant and other circumstances — W. Va. R. Civ. P. 4(e)</td>
</tr>
<tr>
<td>Perceived % served by actual service/publication</td>
<td>Low</td>
</tr>
<tr>
<td>Approximate cost range — uncontested</td>
<td>$8,000 - $10,000</td>
</tr>
<tr>
<td>Approximate cost range — contested</td>
<td>$8,000 - $100,000</td>
</tr>
</tbody>
</table>

### Notes
- Nuttall v. McVey, 60 S.E. 251 (W. Va. 1908)
**QUIET TITLE ACTIONS**

<table>
<thead>
<tr>
<th>Question</th>
<th>Answer</th>
</tr>
</thead>
<tbody>
<tr>
<td>Minimum time to judgment — uncontested (filing — final judgment — appeal period expired)</td>
<td>30-90 days</td>
</tr>
<tr>
<td>Is expert testimony permitted?</td>
<td>Yes, W. Va. R. Evid. 702</td>
</tr>
<tr>
<td>Are affidavits on substantive fact issues permitted?</td>
<td>Yes</td>
</tr>
<tr>
<td>Are ancient document exceptions to hearsay recognized? what Is the period to merit “ancient” status? Does that apply to ancient “affidavits?”</td>
<td>Yes if the document is at least 20 years old, W. Va. R. Evid. 803(16)</td>
</tr>
<tr>
<td>Can defectively served quiet title actions be overturned by collateral attack after standard appeal periods have expired?</td>
<td>Possibly</td>
</tr>
<tr>
<td>First level appeal court</td>
<td>West Virginia Supreme Court of Appeals</td>
</tr>
</tbody>
</table>