

Chapter 15

Quiet Title Actions: Tools to Address Select Appalachian Title Defects

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Synopsis

§ 15.01.	Introduction and Scope	596
§ 15.02.	Why Appalachian Title Is Unique	597
§ 15.03.	The Quiet Title Action.....	598
§ 15.04.	Qualified Plaintiffs.....	600
§ 15.05.	Qualifying Defendant.....	601
§ 15.06.	Jurisdiction and Venue.....	602
§ 15.07.	Pleadings	603
§ 15.08.	Service of Process.....	604
§ 15.09.	Judgments By Default	607
§ 15.10.	Trial.....	608
§ 15.11.	Appeals — Collateral Attacks.....	609
§ 15.12.	Conclusions	610
§ 15.13.	Appendix.....	612
	[1] — Summary of Major Provisions of the Quiet Title Law of the State of Ohio.....	612
	[2] — Summary of Major Provisions of the Quiet Title Law of the Commonwealth of Pennsylvania.....	616

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[3] — Summary of Major Provisions of the Quiet Title Law
of the State of West Virginia617

§ 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-