

Department of Legislative Services
Maryland General Assembly
2015 Session

FISCAL AND POLICY NOTE
Revised

House Bill 1129 (Delegates O'Donnell and Dumais)

Environment and Transportation

Judicial Proceedings

Real Property - Actions to Quiet Title

This bill establishes rules of practice and procedure for actions to “quiet” title (that is, to determine the validity of adverse claims or other clouds on title) to real property and requires an action to quiet title under existing law to be maintained in accordance with the bill’s provisions.

Fiscal Summary

State Effect: The bill is not expected to materially impact State finances.

Local Effect: Any increase in the workload of the circuit courts is not expected to be substantial and can likely be handled with existing resources.

Small Business Effect: Minimal.

Analysis

Bill Summary: An action may be brought under the bill to establish title against adverse claims to real property. “Claim” is defined to include a legal or equitable right, title, estate, lien, or interest in property or a cloud on the title to property. “Property” means real property or any interest in or appurtenant to real property, including fixtures. “Holder of a security interest” is defined to include a trustee, beneficiary, nominee, or assignee of record, if any, of a recorded deed of trust, or a mortgagee of a recorded mortgage. A “security instrument” includes the recorded mortgage or deed of trust, or the recorded assignment of such an instrument.

In addition, in an action or proceeding in which quieting title to property is in issue, the court may, on motion of any party, require that the issue be resolved in accordance with the bill to the extent practicable.

Jurisdiction/Venue/Practice

The bill specifies that the circuit courts have jurisdiction over actions to quiet title. In such an action, the court has complete jurisdiction over the parties and the property and is deemed to have obtained possession and control of the property for the purposes of the action with complete jurisdiction to render a judgment. The bill does not limit any authority the court may have to grant any equitable relief that may be proper under the circumstances.

Subject to the power of the court to transfer actions, the proper county for the trial of an action under the bill is the county in which the property, or any part of the property, is located.

The statutes and rules governing practice in civil actions generally apply to actions under the bill, except to the extent they are inconsistent with the bill's provisions.

Complaint and Answer/Lis Pendens

An action under the bill is commenced by filing a complaint with the court. The filing of a complaint creates notice of the pendency of the action with respect to property described in the complaint (*lis pendens*) and located within the county where the action is pending, as specified in the Maryland Rules. To the extent that the property is located in a county other than the county where the action is pending, the plaintiff must record a notice of the pendency of the action in the land records of each county in which any portion of the property described in the complaint is located in accordance with the Maryland Rules.

Both a complaint and an answer to a complaint must be verified. The bill sets forth the required contents of the pleadings. A defendant may seek judgment to establish quiet title by filing a cross-complaint.

Notice to Holders of a Security Interest

When a complaint for a quiet title action is filed, the plaintiff must also send notice to each holder of a security interest that is not named as a party in the complaint. The notice must include a copy of the complaint with exhibits and a statement that (1) the property may be subject to claims of the holder of the security interest; (2) the holder of the security interest is not a party and any judgment will not affect any claim that the holder of the security interest may have in the property; and (3) if the holder of the security interest elects to

appear in the proceeding, the holder of the security interest will appear as a defendant and be bound by any judgment.

The notice must be sent by certified mail, return receipt requested, as well as by first-class mail, to each holder of a security interest, as specified.

The plaintiff must file an affidavit with the court acknowledging that the plaintiff sent all required notices. The failure of a holder of a security interest to receive the required notice does not affect any judgment entered in the proceeding or any claim of a holder of a security interest who was not made a defendant.

Parties

The plaintiff must name as defendants the persons, known or unknown, having adverse claims to the title of the plaintiff against which a determination is sought. If the name of a person required to be named as a defendant is not known to the plaintiff, or 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 upon specified conditions, the plaintiff must state those facts in the complaint.

If a person required to be named as a defendant is dead and the plaintiff knows of a personal representative, the personal representative must be joined as a defendant. 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, the plaintiff must state those facts in an affidavit filed with the complaint. The bill specifies how persons who are unknown, dead, or believed to be dead must be named in a complaint. A person named and served as an unknown defendant has the same rights that are provided to all other defendants named and served, and the action must proceed against unknown defendants in the same manner as against other defendants named and served, and with the same effect.

In addition, the plaintiff must name as defendants the persons having adverse claims that are of record or known to the plaintiff or are reasonably apparent from a property inspection.

The court on its own motion may, and on motion of any party must, issue any appropriate order to join any additional parties to the action as appropriate. Any person who has a claim to the property described in a complaint may appear in the proceeding. The person must appear as a defendant, whether or not the person is named as a defendant in the complaint.

The court on its own motion may, and on the motion of any party must, issue any orders for appointment of trustees or other fiduciary agents that appear necessary to protect the interest of any party.

Service of Process

Generally, the form, content, and manner of service of a summons in a quiet title action is the same as in civil actions. The court is required to order service by publication and mailing if, on affidavit of the plaintiff, it appears to the court's satisfaction that the plaintiff has used reasonable diligence to ascertain the identity and residence of and to serve a 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 may also 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 plaintiff's affidavit in making the order for service by publication.

Service by publication is not authorized on any person named as an unknown defendant but who is in open and actual possession of the property.

If the court orders service by publication, the plaintiff must post, by 10 days after issuance of the order, a copy of the summons and complaint in a conspicuous place on the property. The plaintiff must also record, if not already recorded, a notice of the pendency of the action in each county in which any portion of the property is located, other than the county where the action is pending. If the court orders service by publication, the court, before hearing the case, must require proof that the summons has been served, posted, and published as required and the notice of pendency of action has been filed where required.

A judgment against a defendant who fails to appear and answer following service by publication is conclusive against the defendant only as to the property described in the publication.

Determination of Title/Judgment

The court must examine and determine the plaintiff's title against the claim of each defendant and render judgment in accordance with the evidence and the law. The court must enter judgment by requiring evidence of the plaintiff's title and specifically hearing any evidence offered respecting the claims of any and each defendant, other than claims the plaintiff has already admitted are valid in the complaint.

A judgment in an action under the bill may be recorded in the land records of the county in which any portion of the property is located. A judgment in an action under the bill is binding and conclusive, regardless of any legal disability (for example, if a party is incapacitated or is a minor), on (1) all persons known and unknown who were parties to the action and who have any claim to the property and (2) except as otherwise specified, all persons who were not parties to the action and who have any claim to the property that was not of record at the time the judgment was recorded, as specified.

A judgment does not affect a claim in the property, or any portion of it possessed by any person who was not a party to the action, if (1) the claim was of record at the time the action began or, if a portion of the property is in another county, when the judgment was recorded in the other county, as specified or (2) the claim was actually known to the plaintiff or would have been reasonably apparent from a property inspection at the time the action was commenced or, if a portion of the property is in another county, when the judgment was recorded in the other county, as specified.

The bill does not limit the rights of a purchaser or *encumbrancer for value* (for example, a mortgage lender or other secured party) when dealing with the plaintiff or the plaintiff's successors in interest. Any relief granted in an action or proceeding that challenges a judgment, whether based on lack of actual notice to a party or otherwise, may not limit the rights of a purchaser or *encumbrancer for value* who acts in reliance on the judgment.

A judgment in an action to quiet title is not binding or conclusive on (1) the State, unless individually joined as a party to the action and State law authorizes the judgment to be binding or conclusive as to its interests or (2) the United States, unless the United States is individually joined as a party to the action and federal law authorizes the judgment to be binding or conclusive as to its interest.

Current Law/Background: The purpose of an action to quiet title is to determine conflicting claims to real property or remove a cloud on title to property. However, State law does not specify the procedures to be followed in an action to quiet title.

State law does authorize the initiation of civil actions to quiet title in the circuit courts. Under § 14-108 of the Real Property Article, a person in actual possession of property or, if the property is vacant and unoccupied, in possession, either due to title or adverse possession, as specified, may maintain a suit in equity in the county where the property lies to “quiet” or remove any cloud from the title or determine any adverse claim. This action is authorized if (1) the person’s title to the property is denied or disputed, or any other person claims to own any portion of the property or hold any lien on it, regardless of whether or not the hostile outstanding claim is being actively asserted and (2) an action at law or proceeding in equity is not pending to enforce or test the validity of the title, lien, encumbrance, or other adverse claim.

A quiet title proceeding is considered *in rem* (an action against the property) or *quasi in rem* (not strictly *in rem*, but brought against the defendant personally) so long as the only relief sought is a ruling that the plaintiff has absolute ownership and right to dispose of the property, with an injunction against any contrary assertion of a claim to the property. Any person who appears on record, or claims to have a hostile outstanding right, must be made a defendant in the proceedings.

The Maryland Land Title Association reports that its members are seeing inconsistent processes used from case to case and county to county. In addition, because of the uncertainty concerning the process under existing laws, title insurance underwriters may refuse to insure the title of a person who has brought an action to quiet title.

The bill is modeled on provisions of the California Code of Civil Procedure.

Additional Information

Prior Introductions: None.

Cross File: SB 837 (Senator Waugh) - Judicial Proceedings.

Information Source(s): State Department of Assessments and Taxation, Office of the Attorney General (Consumer Protection Division), Judiciary (Administrative Office of the Courts), Department of Legislative Services

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Analysis by: Nathan W. McCurdy
and Susan H. Russell

Direct Inquiries to:
(410) 946-5510
(301) 970-5510