

Department of Legislative Services
Maryland General Assembly
2016 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

Senate Bill 509

(Senator Waugh)

Judicial Proceedings

Environment and Transportation

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.

Jurisdiction/Practice

An action to quiet title must be brought in the circuit court for the county where the property or any part of the property is located. In such an action, the court is deemed to have obtained possession and control of the property for the purposes of the action. The bill does not limit any authority the court may have to grant any equitable relief that may be proper under the circumstances.

The Maryland Rules apply to actions under the bill, except to the extent they are inconsistent with the bill's provisions.

Complaint and Answer

At the time a complaint is filed, the plaintiff must send each "holder" that is not named as a party in the action a copy of the complaint with exhibits and a statement that (1) the holder is not a party in the proceeding and any judgment in the proceeding will not affect any claim of the holder and (2) if the holder elects to appear in the proceeding, the holder will appear as a defendant and be bound by any judgment entered in the proceeding. A "holder" is the mortgagee, trustee, beneficiary, nominee, or assignee of record, if any, of a "security instrument" (defined as a recorded mortgage or deed of trust or an assignment of a mortgage or deed of trust). The complaint and statement must be sent by certified mail, return receipt requested, and by first-class mail to the holder at (1) the address that is set forth in the security instrument for the holder's receipt of notices or (2) the last known address of the holder, if no address for the holder's receipt of notice is set forth in the security instrument.

Both a complaint and an answer to a complaint must be verified. The bill sets forth the required contents of the pleadings.

Parties

The plaintiff must name as defendants the persons having adverse claims to the title of the plaintiff that are of record or known to the plaintiff or reasonably apparent from an inspection of the property against which a determination is sought. If the plaintiff admits the validity of any adverse claim, the plaintiff must state the admission in the complaint. 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, in the answer, the defendant disclaims any interest in the title of the property or allows judgment to be taken without answer, the plaintiff may not recover costs for the quiet title action.

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.

The court on its own motion, or on motion of any party, may issue any appropriate order to join any additional parties to the action that are necessary and proper. Any person who has a claim to the property described in a complaint may appear in the proceeding.

The court on its own motion, or on motion of any party, may also issue any appropriate order to require the plaintiff to procure a title report, supported by specified documentation, for the appropriate period as determined by the court, but at least 60 years, and to designate a place where the title report must be kept for inspection, use, and copying by the parties.

The court on its own motion, or on the motion of any party, may issue an order for appointment of an attorney to protect the interest of any party to the same extent and effect as provided in the Maryland Rules with respect to individuals not in being.

Service by Publication/Posting

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.

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, within 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 file proof that the summons has been served, posted, and published as required in the order. When providing service by publication, the publication must use the legal description of the property, along with its street address, or other common designation, if any.

Determination of Title/Judgment

In all cases, the plaintiff must submit evidence at a hearing before the court establishing the plaintiff's title, and the court may hear or take any evidence offered respecting the claims of any defendant, other than claims to which the plaintiff admitted validity in the complaint.

A judgment in an action under the bill must be recorded in the land records of the county in which any portion of the property is located. The clerk is required to index the judgment in accordance with existing law governing indexing of instruments, with the parties against

whom judgment is entered listed as the grantor of the property, and the party in whose favor the judgment is entered listed as the grantee.

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 action was commenced, as specified.

A judgment does not affect a claim of any person who was not a party to the action, if, at the time the action was commenced, (1) the claim was of record or (2) the claim was actually known to the plaintiff or would have been reasonably apparent from an inspection of the property.

The bill does not limit the rights of a *bona fide* 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 entered under the provisions of the bill, whether based on lack of actual notice to a party or otherwise, may not impair the rights of a purchaser or *encumbrancer for value* who acts in reliance on the judgment without knowledge of any defects or irregularities in the judgment or proceedings.

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 interests.

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: SB 837 of 2015, a similar bill, received a hearing in the Senate Judicial Proceedings Committee, but no further action was taken. Its cross file, HB 1129, passed the House as amended and was referred to the Senate Judicial Proceedings Committee, where no further action was taken.

Cross File: HB 920 (Delegates O'Donnell and Dumais) - Environment and Transportation.

Information Source(s): Judiciary (Administrative Office of the Courts), State Department of Assessments and Taxation, Maryland Land Title Association, Department of Legislative Services

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