

Quiet Title Claim



Quiet Title Claim

A Claim or **action to quiet title** is a lawsuit brought in a court having jurisdiction over land disputes, in order to establish a party's title to real property against anyone and everyone, and thus "quiet" any challenges or claims to the title. The basic element is a complaint that the ownership (title) of a parcel of land or other real property is defective in some fashion, typically where title to the property is ambiguous. A typical ground for complaint includes the **fraudulent conveyance of a property, perhaps by a forged deed or other documents, or the borrower/victim was under coercion, adverse possession, Fraud or Deception or simply to remove a lien or other encumbrance, etc. .**

We will focus on the issues as it could relate to foreclosure defense and a Homeowner taking an "offensive approach" to defending their legal rights of ownership.

A **quiet title claim** is also called a quiet title suit to remove a cloud. A cloud is any claim or potential claim to ownership of the property. I.e.: a Foreclosure Action. The cloud can be a claim of full ownership of the property or a claim of partial ownership, such as a lien in an amount that does not exceed the value of the property. A title to real property is clouded if the plaintiff, as the buyer or recipient of real estate, might have to defend her full ownership of the property in court against some party in the future. A landowner may bring a quiet title action regardless of whether the respondent is asserting a present right to gain possession of the premises.

If the court finds that the party petitioning for quiet title actually owns the title, the court will grant a quiet title judgment, providing that the party has legal and good title. A quiet title judgment may and should then be recorded in the county recorder's office.

An action for quiet title or remove a cloud on the title serves to cure and perfect legal title to real property. The action is an equitable remedy and often falls within the jurisdiction of the circuit courts. The two major classifications of quiet title actions are (1) quasi in rem actions, and (2) actions to quiet tax titles.

The law on quiet title actions varies from state to state. Some states have quiet title statutes. Other states allow courts to fashion most of the laws regarding quiet title actions. Under the COMMON LAW, a plaintiff must be in possession of the property to bring a quiet title action, but many state statutes do not require actual possession by the plaintiff.

Quiet Title Claim as a Foreclosure Offense

The impact in foreclosure OFFENSE is that the loan has been assigned, sold and transferred multiple times and broken up into thousands of pieces along with many others that were intermingled in portfolios, sometimes with cross guarantees from one portfolio to another.

This process was initiated before the first payment was due on the mortgage loan and before the borrower came to know the real facts of the loan withheld from him, therefore the true owner, against whom rescission could be claimed, became unknown to the homeowner/borrower. The quiet title action sues all "John Does" identified as all possible persons having an ownership interest in the mortgage lien on the subject property. The allegation is made that while the victim/borrower has been notified of a transaction, the victim/borrower; petitioner has not been advised of who the entities or people are who own this interest.

Believe it or not, In some states possession is not applicable. In some states only the person who holds legal title to the real estate may file a quiet title action, but in other states anyone with satisfactory interest in the property may bring a quiet title action. Generally, a person who has sold the property does not have sufficient interest. When a landowner owns property subject to a mortgage, the landowner may bring a quiet title action in states where the mortgagor retains title to the property. If the mortgagee keeps the title until the mortgage is paid, the mortgagee, not the landowner, would have to bring the action.

The general rule in a quiet title action is that the plaintiff may be successful only on the strength of his own claim to the real estate, and not on the weakness of the respondent's claim. The plaintiff bears the burden of proving that he owns the title to the property. A plaintiff may have less than a fee simple, or less than full ownership, and maintain an action to quiet title. So long as the plaintiff's interest is valid and the respondent's interest is not, the plaintiff will be successful in removing the cloud (the respondent's claim) from the title to the property.

In many states there is a statutory recognition to the power of a court of equity to consider actions to determine title, quiet it to the rightful owner, and grant incidental relief. They provide for removing clouds from titles in proceedings that may be brought by any person or corporation, whether or not in actual possession, that claims legal or equitable title to real estate against any person or corporation that, although not in actual possession, either has or appears to have or claim an adverse legal or equitable estate, interest, or claim in the real estate.

Relief may be granted even though the title has not been litigated at law and despite the existence of only one litigant to each side of the controversy. Relief is also provided even though the adverse claim, estate, or interest is void on its face or requires evidence extrinsic to the claim itself to establish its validity. Actions may be brought in the name of the current owner or prior owners who may have warranted the title involved. Source: Roger H Staley J.D.

Quasi in rem refers to a legal action which mainly involves property rights, but partly involves personal rights as well. A quasi in rem action determines the rights of a person in a thing. It deals with the rights of specific individuals in a thing, rather than the rights of the world in a thing.

For example, foreclosing a mortgage is a quasi in rem action because it seeks not to determine the rights of the world in a piece of property, but rather the rights between the lender and the borrower. There might be others who could have interests too. Generally, a quasi in rem action tries to secure a preexisting claim in the property, or extinguish someone else's. In some cases, it may be used to substitute for personal jurisdiction, where a defendant's property is applied to satisfy a claim that is unrelated to property.

Attorneys often become involved with serious title problems before they discover that a quiet title action is necessary. This is sometimes considered an unwelcome by-product of the attorney's real property practice. Regardless of whether attorneys drift into the litigation in this manner or know at the time of first contact with a client that a quiet title action is needed, it is extremely important for attorneys to advise their clients as early as possible regarding the extent and cost of title litigation.

Obviously there are procedural and time considerations involved in statutory quiet title actions as well as non-statutory jurisdiction and alternative actions to settle title questions such as the possibility of ejectment

**_ejectment : a lawsuit brought to remove a party who is occupying real property. This is not the same as an unlawful detainer (eviction) suit against a non-paying or unsatisfactory tenant. It is against someone who has tried to claim title to the property*

Quiet Title and Rescission as another Possible Foreclosure Offense

Consider this as an offensive procedure, the Quiet title Action is based upon the supposition that the lender assigned or transferred or sold the mortgage a note right after the closing on your contract. Logically then the person to whom you would address your TILA, fraud, and deceptive and unfair practices claim would be addressed to the new owner of the mortgage and note. The problem is: with the securitization of mortgages into trusts and Mortgage Backed Securities, Who really owns the note? If your Forensic Loan Audit done properly, and a certified Qualified Written Request (QWR) was executed, the documents requested are usually ignored by the servicers and everyone else the QWR was sent.

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Forensic Loan Audit

We know from the Forensic Loan Audit that there are TILA and other fraudulent violations, then the victim/ borrower/petitioner wishes to rescind. All the hard work to determine the true owners have led the Petitioner to determine that there may be thousands of entities or owners, none of whom have been disclosed despite attempts to secure said information (contained in the Forensic Loan Audit and QWR).

Quiet Title can an operation of law after rescission. In essence the reverse of a traditional foreclosure where the owner of the property forecloses the claim on the people against whom he has filed suit claiming the property free and clear of all encumbrances.

Quiet Title Service Of Process Is By Publication

To initiate an action to quiet title, the property owner must do all of the following in their local Court:

1. Identify the legal description of the property to be "quieted".
2. Name any entity who might have an interest in the described property as a defendant to the lawsuit, and include supporting facts why they have a claim
3. Best Efforts to provide Notice must be given to all potentially interested parties.

A possible scenario an attorney could face is the court might demand that the mortgage servicing company be named as nominal Defendant or Respondent. In this scenario, the mortgage servicing company has only one job: to produce information and proof of ownership of the loan. It is doubtful that anyone, least of all the mortgage servicer can satisfy this condition.

Since the demands for proof of ownership can not be shown by the other side, a default judgment can and should be entered, the borrower stops paying the mortgage. There would then be a recorded judgment relieving his property of any mortgage lien and offsetting the note with the refunds and damages due to the homeowner thus satisfying the entire principal of the note and awarding attorney fees to the homeowner who filed the Quiet Title Claim.

A quiet title claim is a claim brought by a plaintiff to establish his or her claim or right to land by forcing an adverse claimant to prove their claim or be prohibited from ever bringing a claim.

Quiet Title Claim and Qualified Written Requests

Keep in mind, the Lenders/ Servicers have 20 business days per the Real Estate Settlement Procedures Act (RESPA) to respond to the written request at 60 business days to try and settle this matter. In the event the Lender does not act within the timeframe's listed above, you may file "Documented Mortgage Complaints" to all appropriate local, state and federal regulatory agencies, as the servicer would be in serious default!

A "Quiet Title" cause of action is a type of lawsuit claim that is filed by a litigant in order to decide who has the superior right or claim to title a parcel of real property. The purpose of the quiet title action is to establish who has superior legal or equitable title, and to establish title against adverse claims.

The definition from Black's law dictionary is " A proceeding to establish the plaintiff's title to land by bringing into court, an adverse claimant and the compelling him either to establish his claim or be forever after estopped from asserting it. "

Quiet title cases arise in many different fact situations.

The most common situations are as follows:

- 1) The true owner was the victim of a fraud by a forgery of a title instrument. Or adverse possession, This typically involves the forgery of a deed that is recorded in the County. The quiet title action is filed to restore the title to the true owner.
- 2) There is a tax defaulted property that has been purchased at a tax sale, 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 the property.

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[Sample Forensic Mortgage Compliance Audit](#)

Our loan audit and its supportive findings provides a common ground where all parties can understand such violations that are evident along with proposed observations of preliminary suspect whereby a valid motion or demand for further discovery presents itself with clarity. Position your clients in an offensive position to where proper remediation is scalable. The U.S. Lender Audit provides you with the evidence and support you can trust to help your clients seek better modification terms, restructuring of new terms, principal or rate reduction, or continued discovery. With the greatest potential to alleviate "normal modification" setbacks and re-occurrence of default, **qualified and objective evidence** helps **simplify negotiations and stay** using the information and support provided by U.S. Lender Audit.

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In Closing there are many other factual situations that pertain to quiet title actions. In each of these situations, the burden of proof is on the plaintiff to prove his or her case. The burden of proof is on the defendant to prove his defense. In the quiet title lawsuit, the plaintiff usually files a *lis pendens*. The *lis pendens* is a notice that is recorded in the County where the real property is located. The notice is served on all parties to the lawsuit, and is file in the Court where the action is pending.

The key is that Quiet Title Claim and the resulting actions are always decided by judges, and are not tried by juries. and this is where US Lender Audit litigation support can help you in case management and structure, allowing you, the attorney more time to litigate and WIN!

The other importance of the mortgage audit findings is that it may be the grounds to help move a non-judicial foreclosure action (currently in 29 states; if necessary, into jurisdiction, which can STOP FORECLOSURE in its tracks. More importantly, borrowers regardless of financial hardship and payment history now have the chance for a better position to negotiate new terms or loan settlement. Violations found in a loan audit can help place the borrower in the offense! U.S. Lender Audit helps legal professionals navigate through the process with our learning channels, which we find critical for those legal advisors that are looking to make the audit solution part of their business practice. Information is only as good as the ones that know how best to use it. Let U.S. Lender Audit demonstrate our unparalleled litigation support for your firm today! Contact us now to get started with a private consultation or orientation from our team of specialists.

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