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What Does A Quiet Title Action in California Entail?

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Quiet title action is brought to determine who the real owner of a property is or who possesses what interests in the property. This article explores in some depth some of the requisite legal procedures to be followed in a quiet title action as well as some of the issues to be mindful of in mounting an incisive title action suit.

SOME LEGAL BACKGROUND

Usually, plaintiff in a quiet title action should predicate its case on the strength of its own case as opposed to predicating the case on the weakness on the opposing party. This latter statement does not necessarily mean a plaintiff in a quiet title action should have a perfect ownership record. It is then understood that Plaintiff needs to allege some interest in the property AND that the defendant asserts a claim in the same real property adverse to the plaintiff. Accordingly, the court decides who has what interest in the property, if any.

FRAUD AS A BASIS IN QUIET TITLE ACTION

A quiet title action may often be pleaded with general allegation. Nonetheless, there is an important exception to such general rule. The exception involves alleging fraud in obtaining title by defendant. In fact, if fraud is alleged as the underlying reason for quiet title, the fraud allegations must be pleaded with specificity.

As importantly, a complaint consisting of 2 or more causes of action one dealing with quiet title action and others involving fraud and undue influence, STILL alleges one count of FRAUD and needs to be pleaded with specificity. This means such complaint overcomes summary judgment or falls victim to a summary judgment, based on the specificity or lack thereof the fraud allegations.



Accordingly:

- If Defendant holds title to property as a result of a fraudulent deed, the proper cause of action would be cancellation of deed or rescission, probably.
- If Defendant holds title to property as a result of a mistaken deed, the proper cause of action would be rescission of deed, probably.

CLOUD OF TITLE

It is important to first define clouding of title. When a title to a property is marred by the existence of another instrument, then it is stated that the instrument clouds the title. Such instrument could be a fraudulent deed.

In general, to constitute a cloud on title, the instrument **MUST** on its face be valid. Examples of being valid on its face include: when defendant fraudulently obtained the executed deed from plaintiff and recorded such fraudulently obtained executed deed in county recorder's office.

It should be noted that there is a stark contrast between an action for quiet title and an action to remove cloud of title. In fact, a quiet title action seeks to determine who owns what in a piece of property i.e. to resolve adverse interests in the disputed real property.

On the other hand, a cloud of title action seeks to cancel an instrument dangerous to the interests of plaintiff in the real property.

Nonetheless, a quiet title statute, **GENERALLY**, may be used to remove a cloud on title. Courts, often, grant equitable injunctive relief to prevent clouding of titles. It is generally established that if courts have the power to cancel instruments clouding the title, then, ipso facto the courts have the ability to prevent clouding of titles.

COMPLAINT IN A QUIET TITLE ACTION

The complaint in a quiet title action, first of all, **MUST** be verified. Verification, essentially, is a form of affidavit by Plaintiff asserting under the penalty of perjury that:

- The Plaintiff is **REALLY** the Plaintiff in the action.
- The Plaintiff has really read the Complaint and other documents, if any, attached to the complaint and the Plaintiff is familiar with their contents.
- The Plaintiff is informed and believes the information contained in such documents are true.

In addition, the Complaint for a Quiet Title Action must include the following, among others:

1. A Description of the Property subject of the Quiet Title Action
2. A Basis for Asserting Title to Property and Title of the Property.
3. A Description of the Adverse Claims to the Property against which a Determination is Sought.



4. A Date As to When Determination of the Title is Sought. This Means if the Determination of the Title Is Sought as of a date Different from the Date of Filing the complaint, then the Complaint MUST Include a Statement of Reasons as to why Such Determination as of a Different Date Is Sought.

5. A Prayer, Asking, the Court for Determination of Such title against Adverse Claimants.

LIS PENDENS

Lis Pendens is another word for notice of pendency of an action. A person who claims a right to real property, may file a lis pendense action. A real property claim refers to the cause or causes of action that would affect:

- Title To a Specific Piece of Property
- Right To Possession of Real Property
- Right To Use of an Easement in the Complaint

From the time Lis Pendens is recorded AND indexed, a buyer, transferrer or creditor of a real property is deemed to have constructive notice of the lis pendense. It should be noted that merely filing a complaint involving a real property, does not foist notice on buyer, transferrer or creditor. There must be a Lis Pendens filed AND INDEXED. In fact, constructive notice is not construed only upon recording a Lis Pendens. Indexing a Lis Pendens is when accords the claimant the privilege of constructive notice.

As importantly, Lis Pendens imparts constructive notice ONLY to SUBSEQUENT buyers and encumbrances. Hence, Lis Pendens does not affect any interest in the property that was recorded prior to recording and indexing of the particular Lis Pendens.

Interestingly, even if the Lis Pendens is not recorded, if the subsequent buyers and creditors have ACTUAL KNOWLEDGE of the pending of an action, their subsequent acquired interest is junior to the interest of the claimant who filed an action but not recorded a Lis Pendens.

CONTENTS OF LIS PENDENS FORM

1. MUST Contain the Names of All Parties to the Action
2. MUST Contain a Description of the Real Property At Issue
3. MUST Be Signed by the Attorney OR Claimant (Not Represented by an Attorney) MUST Sign and Obtain Approval from Judge
4. MUST the Lis Pendens be SERVED on All Those the Real Property Claim Is Adverse To AND To ALL Owners of Record of the Real Property
5. MUST Be Recorded in the County Where ALL or PART of the real Party is Situated.
6. MUST Be Recorded in the Court Where the Action Is Pending Following the Recordation of the Lis Pendens in the County Recorder's Office.



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DISCLAIMER

This Article NEITHER Supplants NOR Supplements the Breadth or Depth of Such Rarefied Topic. In Fact, This Article, ONLY Provides a Rather Rudimentary Synopsis of Such Esoteric Subject Matter. If You have any Questions, You May Contact Mr. Doron Eghbali.

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