

## Memorandum 79-11

Subject: Study H-500 - Quiet Title Actions (Staff draft of tentative recommendation)

The Commission was authorized in 1978 to study whether the law relating to quiet title actions should be revised. The impetus for this authority was a suggestion received from a number of attorneys that the existing quiet title statute is seriously defective in failing to provide for an in rem quiet title decree. The Commission's 1977 Annual Report states:

Code of Civil Procedure Section 738 provides for an action to quiet title to property that is in personam in nature--the judgment in the action does not have in rem effect. In rem effect can only be achieved through the device of quiet title relief in an adverse possession action, which permits naming and serving deceased and unknown claimants. This cumbersome and inconvenient arrangement has been criticized. Recent legislation in other property litigation fields such as partition and eminent domain has enabled judgments in those fields to have an in rem effect. A study should be made to determine whether in rem effect in quiet title actions, and other changes in the law relating to quiet title, are desirable. [14 Cal. L. Revision Comm'n Reports 22 (1977) (footnotes omitted).]

The staff has prepared a draft of a tentative recommendation to provide an in rem quiet title decree. The draft is drawn partly from the existing quiet title statutes and partly from other California statutes providing an in rem decree (particularly those drafted by the Commission--eminent domain and partition).

One of the California statutes providing an in rem decree is Code of Civil Procedure Sections 749 and 749.1, which provides an in rem quiet title decree based upon adverse possession for 10- and 20-year periods, notwithstanding the fact that the basic adverse possession period is five years, and a quasi-in-rem quiet title decree is available on that basis. There appears to be no sound reason for this discrepancy. See excerpt from Willemsen, Improving California's Quiet Title Laws, 21 Hastings L.J. 835, 838-44 (1970), attached as Exhibit 1 (pink). The staff draft eliminates the 10- and 20-year periods, thus

enabling an in rem quiet title decree based on adverse possession if the statutory five-year period is satisfied.

If the Commission approves the staff draft, we will distribute it for comment to the title insurers and other persons interested in real property law.

Respectfully submitted,

Nathaniel Sterling  
Assistant Executive Secretary

## EXHIBIT 1

**In Rem Action Based Upon Five Years Adverse Possession and Payment of Taxes**

The statutes creating the in rem quiet title actions—sections 749 and 749.1 of the Code of Civil Procedure—require, respectively, 20 years adverse possession with five years of tax payments, or 10 years of tax payments. California Civil Code section 1007, however, states that “[o]ccupancy for the period prescribed by the Code of Civil Procedure as sufficient to bar any action for the recovery of the property confers a title thereto, denominated a title by prescription, which is sufficient against all . . . .” The “period prescribed by the Code of Civil Procedure” is plainly not the 10 or 20 year occupations of the in rem statutes, which were not in existence when section 1007 was enacted,<sup>11</sup> but the five year statute of limitations on an action of ejectment contained in Code of Civil Procedure section 318.<sup>12</sup> And in contrast to the in rem quiet title sections, but in harmony with sections 318 and 1007, the in personam action to quiet title<sup>13</sup> requires only five years adverse possession with payment of taxes.<sup>14</sup>

The result of the inconsistencies outlined above is that an adverse possessor, after completing five years possession with payment of taxes, enters a state of limbo. Although Civil Code section 1007, if it means what it plainly says, gives the adverse possessor good title, the adverse possessor does not have record title, and until he completes five to fifteen more years of possession, he cannot bring an in rem action to acquire record title. If his problem is some specific adverse claim asserted by a known claimant, an action and decree in personam may satisfy the title insurance company or whomever the plaintiff needs to satisfy.

---

11. CAL. CIV. CODE § 1007 dates from 1872. CAL. CODE CIV. PROC. § 749 was enacted in 1901, Cal. Stats. 1901, ch. 183, § 1, at 579. Section 749.1 was added in 1949, Cal. Stats. 1949, ch. 1025, § 1, at 1886.

12. *Bashore v. Mooney*, 4 Cal. App. 276, 281, 87 P. 553, 555-56 (1906); see note 9 *supra*.

13. CAL. CODE CIV. PROC. § 738.

14. *Mings v. Compton City School Dist.*, 129 Cal. App. 413, 418, 18 P.2d 967, 969 (1933).

In such a case, the plaintiff merely foregoes the bonus of extra protection against claims by unknown claimants. If, however, the cloud on the title is one in which unknown claimants may have an interest, then the adverse possessor is locked into the property. For at least five years he cannot sell or develop the land, and is likely to have difficulty borrowing against it.

This problem may confront the new owner who has acquired possession by gift, inheritance, or intrafamily conveyance—or title without title insurance. To obtain an in rem quiet title decree after he has held possession and paid taxes for five years, he must still prove the adverse possession and tax payments of his predecessors. Proof of possession is a matter of availability of witnesses and, for land not completely utilized, of proving compliance with Code of Civil Procedure sections 323 and 325.<sup>15</sup> Proof of tax payments may be even more difficult. Although the county records will show that taxes were assessed, to whom assessed, and the fact of payment, they may not show who actually paid the taxes. Furthermore, there appears in the cases no presumption or inference that payment of taxes was by the person to whom the tax was assessed. To the contrary, the cases state categorically that adverse possession cannot be proved by inference, but that each essential element must be proved by convincing evidence.<sup>16</sup> If plaintiff's predecessor saved his tax receipts and they are available to the plaintiff, there is adequate proof; if not, it may be impossible to find anyone with personal knowledge of the facts. A sympathetic judge,

---

15. CAL. CODE CIV. PROC. § 323 provides: "For the purpose of constituting an adverse possession by any person claiming a title founded upon a written instrument, or a judgment or decree, land is deemed to have been possessed and occupied in the following cases:

"1. Where it has been usually cultivated or improved;

"2. Where it has been protected by a substantial inclosure;

"3. Where, although not inclosed, it has been used for the supply of fuel, or of fencing timber for the purposes of husbandry, or for pasturage, or for the ordinary use of the occupant;

"4. Where a known farm or single lot has been partly improved, the portion of such farm or lot that may have been left not cleared, or not inclosed according to the usual course and custom of the adjoining country, shall be deemed to have been occupied for the same length of time as the part improved and cultivated."

CAL. CODE CIV. PROC. § 325 provides, in part: "For the purpose of constituting an adverse possession by a person claiming title, not founded upon a written instrument, judgment, or decree, land is deemed to have been possessed and occupied in the following cases only:

"*First*—Where it has been protected by a substantial inclosure.

"*Second*—Where it has been usually cultivated or improved."

16. *Weller v. Chavarria*, 233 Cal. App. 2d 234, 242, 43 Cal. Rptr. 364, 370 (1965); *cf. Hart v. All Persons*, 26 Cal. App. 664, 673, 148 P. 236, 240-41 (1915).

a well-coached witness, and carefully framed leading questions may solve the problem. Otherwise, the plaintiff may have to wait another five years before selling, developing, or encumbering the land.<sup>17</sup>

The obvious solution to this problem is legislation permitting an in rem quiet title action after five years adverse possession and tax payments. Yet when a solution is this obvious, a second look is in order to see what reasons might justify the asymmetry of the statutes. Hostility toward adverse possessors and solicitude for true owners may explain the matter.<sup>18</sup> This emotional response, however, overlooks the logic of the situation. With a few exceptions, which will be discussed shortly, five years adverse possession will as effectively bar the previous owner as would 10 or 20 years. Under the present law, the "true owner," after his land has been adversely possessed for five years, is left with a paper title he can neither sell nor enforce in possession. What he can do, and all he can do, is compel the possessor to pay him a fraction of the land value for the privilege of selling or developing the land five years earlier. My sympathies in this situation are with the possessor; surely the statutory purpose was not to permit or encourage such nuisance-value consolitums.<sup>19</sup>

It has also been suggested that 10 or 20 years possession is more likely to give the true owner notice than five years possession.<sup>20</sup> But if the owner does not discover the possession within five years, assuming the possession was open and notorious, discovery later will do him

---

17. It does not seem at all likely that the appellate courts will reduce the strict requirement of proof in quiet title actions. A problem of this character reaches appellate courts only in a context of contested litigation, probably involving a conflict of evidence whether tax payments were made by the adverse possessor or by the claimant. In rejecting inferential proof in this type of contested action, the courts reacted naturally and, I think, correctly, to the case at hand.

18. L. SIMES & C. TAYLOR, *IMPROVEMENT OF CONVEYANCING BY LEGISLATION* 365 (1960), explains the California statutes as follows: "[T]he 5-year ordinary period is regarded as too short to permit it to serve as the basis of a conclusive title determination procedure in which service by publication is permitted. A more orthodox limitations period is required. The provisions are typical of a good many existing in various jurisdictions in which the equivalent of 'substantive limitations' is incorporated directly into the provisions made for quieting or determining titles. In other words, limitations or limitation-like provisions are placed directly in the context in which they usually become important—in a suit to establish, untangle, or promote the marketability of titles." This argument might justify a longer limitation period were it not for the fact that adverse possession is used primarily as a method of clearing meritorious titles, not as a method of stealing land. It does not justify a statutory inconsistency the effect of which is to render legally sound titles temporarily unmarketable.

19. See Ballantine, *supra* note 8, at 140.

20. 38 S. CAL. L. REV. 608, 611 (1965).

little good; his right to recover possession is barred by the five year limitation of section 318. If we simply want the owner to know he has lost his land, service of the quiet title summons is much quicker than continued unobserved possession.

When a claim is not yet barred by the five year limitation period, an *in rem* action against the claimant involves a risk, in view of the liberal notice and publication requirements, that the claimant may be unjustly deprived of his interest. Can the present statutory inconsistency be justified by those exceptional cases in which five years adverse possession, with payment of taxes, do not bar the owner's claim? An examination of such cases shows that the statutes are not written with a view toward protecting exceptional claimants. A claimant under a disability—infancy, imprisonment or the like, as specified in Code of Civil Procedure section 328<sup>21</sup>—may bring an action of ejectment to recover possession long after the five year period has run. Section 328 specifies a maximum period of disability of 20 years, and since the claimant would then have five years in which to bring suit, 25 years adverse possession is needed to bar such claims.<sup>22</sup> If protection of disabled claimants is the statutory goal, however, the 20 year period of Code of Civil Procedure section 749 is five years too short. Likewise, the 10 and 10 alternative of Code of Civil Procedure section 749.1 makes no

---

21. CAL. CODE CIV. PROC. § 328 provides: "If a person entitled to commence an action for the recovery of real property, or for the recovery of the possession thereof, or to make any entry or defense founded on the title to real property, or to rents or services out of the same, is, at the time such title first descends or accrues, either:

"1. Under the age of majority;

"2. Insane;

"3. Imprisoned on a criminal charge, or in execution upon conviction of a criminal offense, for a term less than life;

"The time, not exceeding twenty years, during which such disability continues is not deemed any portion of the time in this chapter limited for the commencement of such action, or the making of such entry or defense, but such action may be commenced, or entry or defense made, within the period of five years after such disability shall cease, or after the death of the person entitled, who shall die under such disability; but such action shall not be commenced, or entry or defense made, after that period."

In addition to the disabilities specified in section 328, statutes of limitations are tolled during active military service, or by fraudulent concealment of the cause of action. See M. OGDEN, CALIFORNIA REAL PROPERTY LAW 839 (1956) [hereinafter cited as OGDEN].

22. Under rare circumstances more than 25 years could be required. Periods during which an action is stayed by injunction, or the claimant is on active military service, are not counted toward the 20 year maximum disability period. CAL. CODE CIV. PROC. §§ 354, 356. If the claimant died before the statute ran, his representative would have six months after death in which to bring the action. *Id.* § 353.

sense at all; five additional yearly tax payments have no effect on the period of disability under section 328.

Another claimant whose claim may survive five years adverse possession is the holder of a future interest. If, for example, a fee is divided between a life tenant and remainderman, the statute of limitations will not begin to run against the remainderman until the life tenant dies.<sup>23</sup> The requirements of sections 749 and 749.1, however, bear no relation to the protection of persons holding future interests. A rational quiet title statute cannot serve this end; the possessor cannot be denied a quiet title for the lifetime of all who might assert claims, plus 21 years. And, depending in part on the constitutionality and interpretation of Civil Code section 715.8, there may exist claims to future interests that could not be barred by adverse possession for hundreds of years.<sup>24</sup>

It is possible that a claimant could avoid the five year limitation by casting his action in a form other than that provided in section 318, which is drawn in terms of a statute of limitations on the common law action of ejectment. At one time, in the case of *Brusie v. Gates*,<sup>25</sup> the California Supreme Court stated that actions to quiet title were not subject to the limitations of section 318. The reasons given by the court, in my opinion, derive from the court's implicit assumption that quiet title actions are equitable in character,<sup>26</sup> and thus immune from statutes of limitations. Fortunately, subsequent court decisions have ignored the *Brusie* dictum, and have established that a dispossessed owner cannot quiet title after five years adverse possession is proved against him.<sup>27</sup>

Most other alternative forms of action have limitations of less than five years.<sup>28</sup> An action for fraud, however, can be brought within three years from discovery.<sup>29</sup> Section 338(4) of the Code of Civil Procedure speaks of actions "for relief on the ground of fraud" without specifying the nature of the relief; section 318 speaks of the remedy of recovery of real property without discussing the right to this remedy. On linguistic analysis, both should apply to an action to rescind a fraudulent transfer of real property. The courts, however, assumed that a

23. *Pryor v. Winter*, 147 Cal. 554, 82 P. 202 (1905).

24. See text accompanying notes 101-06 *infra*.

25. 80 Cal. 462, 465, 22 P. 284, 285 (1889) (dictum).

26. A quiet title action is equitable where there is no prayer for possession. *Thomson v. Thomson*, 7 Cal. 2d 671, 681, 62 P.2d 358, 362 (1936); *Title & Doc. Restoration Co. v. Kerrigan*, 150 Cal. 289, 309, 88 P. 356, 359 (1907); *Dills v. Delira Corp.*, 145 Cal. App. 2d 124, 130, 302 P.2d 397, 401 (1956).

27. *Haney v. Kinevan*, 73 Cal. App. 2d 343, 166 P.2d 361 (1946); see *South Tule Independent Ditch Co. v. King*, 144 Cal. 450, 455, 77 P. 1032, 1034 (1904).

28. See CAL. CODE CIV. PROC. §§ 335-49¾.

29. *Id.* § 338(4).

choice between the two was necessary and, after a confusing array of decisions, chose section 338(4). In *Leeper v. Beltrami*,<sup>30</sup> this choice barred a claimant who had brought his action within the five year period of section 318, but had failed to give prompt notice of rescission. The implication of *Leeper*, however, is that a defrauded claimant who discovered the fraud more than five years later could still, with prompt notice of rescission, successfully bring an action to recover possession. *Leeper* thus creates a third class of claimants whose claims may survive five years adverse possession; however, the present quiet title requirements find little more justification as a basis for protecting defrauded vendors. Neither five, ten, nor twenty years adverse possession will give secure title against a claimant fraudulently dispossessed but still unaware of his cause of action. The more years that pass, the less the likelihood that such undiscovered claims will be asserted; but, in all probability, five years would be sufficient for the majority of these claims. Again, the 10 year alternative of section 749.1, conditioned upon five years additional tax payments, has no relevance to the protection of this class of claimant.

This review of the various claims—those of persons under disability, holders of future interests, and defrauded vendors—that may survive five years adverse possession reveals no justification for the 10 or 20 year periods imposed by sections 749.1 and 749, respectively. Neither 10 nor 20 years is sufficient to bar with certainty any of these three types of claims, while conditioning the 10 year period upon five additional tax payments makes no sense with respect to any of these claims. Moreover, the procedural requirements of quiet title actions afford considerable protection to such claims. Claimants of record cannot be sued and served as “unknown persons,” but must be named and served specifically—this is the clear implication of the statutes<sup>31</sup> and is probably a constitutional requirement as well.<sup>32</sup> Thus, the danger that the liberal notice requirements of an in rem action will lead to judgments foreclosing still viable interests is obviated where the interest, and its present owners, appear of record.<sup>33</sup>

I think it is fair to conclude that the claims protected by the 10

---

30. 53 Cal. 2d 195, 347 P.2d 12, 1 Cal. Rptr. 12 (1959).

31. See text accompanying note 62 *infra*.

32. See text accompanying note 63 *infra*.

33. If the interest does not appear of record, it can be destroyed by sale to a bona fide purchaser. See CAL. CIV. CODE § 1214. This, however, is not the case where the interest is recorded but the owner of record is not the present owner. Unrecorded interests, of course, do not generally cloud titles, but recorded interests whose present owners are unknown are a common problem.

and 20 year requirements are trivial in number, that the protection afforded is arbitrary and haphazard, and that the quiet title statutes can be brought into alignment with the five year limitations of Civil Procedure sections 318 and 325 without noticeable harm.

STAFF DRAFT

## TENTATIVE RECOMMENDATION

relating to

## QUIET TITLE ACTIONS

The California quiet title provisions<sup>1</sup> are descendants of the ancient procedures of chancery--the bill to remove a cloud on title, the bill of peace, and the bill quia timet--to determine conflicting claims to real property.<sup>2</sup> These equitable writs operated in personam to resolve disputes between individuals, and not to clear title to land as against the whole world.<sup>3</sup> As a consequence of this heritage, the basic California quiet title statute provides for a quasi-in-rem determination of title as between particular parties; it does not permit a general decree having in rem effect and binding all persons.<sup>4</sup>

There are a number of special California statutes that enable a person to obtain an in rem quiet title decree. If the person has acquired tax-deeded property or property through a public improvement assessment foreclosure, an in rem decree is available.<sup>5</sup> If the person seeks to partition property or claims title by adverse possession, an in rem decree is available.<sup>6</sup> If public land records are destroyed or

- 
1. Code Civ. Proc. §§ 738, 739.
  2. Finnegan, Problems and Procedures in Quiet Title Actions, 26 Neb. L. Rev. 485, 486-88 (9147).
  3. Comment, Enhancing the Marketability of Land: The Suit to Quiet Title, 68 Yale L.J. 1245, 1266-67 (1959).
  4. Comment, The Case for an In Rem Quiet Title Decree, 38 So. Cal. L. Rev. 608, 609-10 (1965).
  5. Rev. & Tax. Code §§ 3950-3972 (tax-deeded property); Code Civ. Proc. §§ 801.1-801.15 (titles affected by public improvement assessments). See also Rev. & Tax. Code §§ 3591-3617 (action by state to quiet title to tax-deeded property).
  6. Code Civ. Proc. §§ 749-749.1 (adverse possession), 872.010-874.240 (partition).

boundaries are disturbed by an earthquake or if property is taken by eminent domain, an in rem decree is available.<sup>7</sup> But, for the ordinary property owner who acquired title by deed and who seeks to establish or clear the title, there is no general in rem quiet title relief.<sup>8</sup>

There is a demonstrated need for a general quiet title statute that permits an in rem decree binding all persons to ensure full marketability of land.<sup>9</sup> Public records are inadequate to locate all potential adverse claimants. Some interests may be unrecorded; other interests may be difficult to find in the records. Even if recorded and located, documents may offer little aid in discovering the identity or location of persons whose interests the document purports to create or protect. The existing quasi-in-rem decree based on a determination of title as between particular parties is insufficient to cure unmarketable titles and establish functional marketability. The California statute should be amended to provide for a general in rem quiet title decree.

There are models for an in rem quiet title action in the special statutes already enacted in California that provide an in rem decree while protecting the interests of unknown persons.<sup>10</sup> The major features of a general in rem quiet title statute are outlined below.

- 
7. Code Civ. Proc. §§ 751.01-751.28 (Destroyed Land Records Relief Act), 751.50-751.65 (Cullen Earthquake Act), 1230.010-1273.030 (Eminent Domain Law).
  8. Partition proceedings are sometimes used to obtain a decree constituting essentially a judgment in rem quieting title against all persons, but this procedure is unsatisfactory since some title insurers will not insure title on this basis. See 2 A. Bowman, Ogden's Revision California Real Property Law § 27.57, at 1357 (1975).
  9. See, e.g., Willemsen, Improving California's Quiet Title Laws, 21 Hastings L.J. 835 (1970); Comment, The Case for an In Rem Quiet Title Decree, 38 So. Cal. L. Rev. 608 (1965); Comment, Enhancing the Marketability of Land: The Suit to Quiet Title, 68 Yale L.J. 1245 (1959).
  10. The first of the special statutes, the McEnerney Act (1906 Cal. Stats. Ex. Sess. Ch. 59, p.78), enacted in the wake of the 1906 San Francisco earthquake, set the basic statutory scheme. The constitutionality of the act was upheld in Title and Document Restoration Co. v. Kerrigan, 150 Cal. 289, 88 P. 356 (1906).

The general statute should permit the holder of any interest in property to quiet title as against any or all adverse claimants, as of any time prior to the lawsuit. The plaintiff should name as defendants all persons unknown claiming any adverse interest, as well as known claimants and persons having interests of record. In case a known claimant or person having an interest of record is dead, the heirs and devisees should be named as defendants. To ensure the greatest likelihood of notice to unknown persons and to heirs and devisees, the plaintiff should use reasonable diligence to identify, locate, and serve them before the court authorizes service by publication. Where publication is authorized, recording a lis pendens and posting the property should also be required. The court should be authorized to appoint a guardian ad litem where appropriate to safeguard the interests of unknown defendants. The judgment should not be entered by default, but the plaintiff should be required to prove title. Once these requirements are satisfied, the judgment quieting title should be given in rem effect and should be binding on all persons made parties to the action. The limitations period for a direct or collateral attack on the judgment should be relatively short, and the rights of bona fide purchasers and encumbrancers under the judgment quieting title should be protected.

In addition to these features of a general in rem quiet title statute, a particular problem of the adverse possession quiet title provisions should be addressed. A person claiming title by adverse possession who satisfies the basic statutory adverse possession requirements may maintain an action under existing California statutes for a quasi-in-rem decree of title.<sup>11</sup> In addition, the California statutes offer an in rem decree to a person who has adversely possessed for an additional five to 15 years.<sup>12</sup> The consequence of this scheme is that, while an adverse possessor can obtain good title after five years, the title is not fully marketable until the lapse of an additional five to

---

11. Code Civ. Proc. §§ 318-328 (adverse possession), 738 (quiet title); *Mings v. Compton City School Dist.*, 129 Cal. App. 413, 418, 18 P.2d 967, 969 (1933).

12. Code Civ. Proc. §§ 749, 749.1.

15 years. There is no apparent reason for this discrepancy.<sup>13</sup> An in rem decree should be authorized without a further period of delay if the basic substantive requirements for title by adverse possession are satisfied.

---

100/937

The Commission's recommendations would be effectuated by enactment of the following measure:

An act to amend Sections 1006 and 2931a of the Civil Code, to amend the heading of Chapter 3 (commencing with Section 738) of, to renumber Chapter 4A (commencing with Section 801.1) of, to add Chapter 4 (commencing with Section 760.010) to, and to add Chapter 4.5 (commencing with Section 770.010) to, Title 10 of Part 2 of, and to repeal Sections 738, 738.5, 739, 748.5, 749, 749.1, 750, 751, 751.1, 751.3, and 751a of, the Code of Civil Procedure, relating to actions to quiet title.

The people of the State of California do enact as follows:

100/943

QUIET TITLE

Code of Civil Procedure §§ 760.010-764.070 (added)

SEC. . Chapter 4 (commencing with Section 760.010) is added to Title 10 of Part 2 of the Code of Civil Procedure, to read:

CHAPTER 4. QUIET TITLE

Article 1. General Provisions

§ 760.010. Definitions

760.010. As used in this title:

(a) "Claim" includes a legal or equitable right, title, estate, lien, or interest in property or cloud upon title.

(b) "Property" includes real property, and to the extent applicable, personal property.

---

13. Willemsen, Improving California's Quiet Title Laws, 21 Hastings L.J. 835, 838-44 (1970).

Comment. Subdivision (a) of Section 760.010 makes clear that the term "claim" as used in this chapter is intended in the broadest possible sense. The definition of "property" in subdivision (b) reflects the fact that title to personal as well as real property may be determined under this chapter. See Section 760.020.

69/418

§ 760.020. Scope of chapter

760.020. An action may be brought under this chapter to establish title to and determine adverse claims to real or personal property or any interest therein.

Comment. Section 760.020 supersedes the first portions of former Sections 738, 749, and 749.1. This chapter does not limit the interests that may be determined or the persons against whom they may be quieted; it is intended to provide the broadest possible forum for clearing title to the fee or any other interest in property.

The ability to quiet title as to both real and personal property may be useful in cases involving land and fixtures, as well as in cases involving personal property alone.

101/165

§ 760.030. Remedy cumulative

760.030. The remedy provided in this chapter is cumulative and not exclusive of any other remedy, form or right of action, or proceeding provided by law for establishing or quieting title to property.

Comment. Section 760.030 continues the substance of the third paragraph of former Section 751 and the first portion of the third paragraph of former Section 751.1. Other proceedings that may be available to clear title to property include actions concerning real property titles affected by public improvement assessments (Sections 801.1-801.15), actions under the Destroyed Land Records Relief Act and Cullen Earthquake Act (Sections 751.01-751.28 and 751.50-751.65), partition actions (Sections 872.010-874.240), actions to quiet title to tax-deeded property (Revenue & Taxation Code Sections 3591-3617 and 3950-3972), actions to remove a cloud on title (Civil Code Section 3412), and declaratory relief actions (Code of Civil Procedure Section 1060).

69/417

§ 760.040. Jurisdiction of court

760.040. (a) The superior court has jurisdiction of actions under this chapter.

(b) The court has complete jurisdiction over the parties to the action and the property described in the complaint, and is deemed to have obtained possession and control of the property for the purposes of the action with complete jurisdiction to render the judgment provided in this chapter.

Comment. Subdivision (a) of Section 760.040 is an exception to the rule of Section 86 conferring limited jurisdiction on municipal and justice courts to determine title to personal property. It is consistent with the general rule that determinations involving title to property are within the jurisdiction of the superior court. See, e.g., Sections 872.110 (partition), 1250.010 (Eminent Domain Law).

Subdivision (b) is comparable to Sections 751.11 (Destroyed Land Records Relief Law) and 751.55 (Cullen Earthquake Act).

101/144

§ 760.050. Venue

760.050. Subject to the power of the court to transfer actions, the proper county for the trial of actions under this chapter is:

(a) Where the subject of the action is real property or real and personal property, the county in which the real property, or some part thereof, is located.

(b) Where the subject of the action is personal property, the county in which the personal property is principally located at the commencement of the action or in which the defendants, or any of them, reside at the commencement of the action.

Comment. Section 760.050 is consistent with the general venue provisions of Section 392; it is comparable to Section 872.110 (venue in partition). See Section 872.110 and Comment thereto.

100/945

§ 760.060. Rules of practice

760.060. The statutes and rules governing practice in civil actions generally apply to actions under this chapter except where they are inconsistent with the provisions of this chapter.

Comment. Section 760.060 is comparable to Sections 751.17 (Destroyed Land Records Relief Law) and 872.030 (partition).

Article 2. Commencement of Action

§ 761.010. Commencement of action

761.010. (a) An action under this chapter is commenced by filing a complaint with the court.

(b) Immediately upon commencement of the action, the plaintiff shall file a notice of the pendency of the action in the office of the county recorder of each county in which any real property described in the complaint is located.

Comment. Subdivision (a) of Section 761.010 is comparable to Section 1250.110 (Eminent Domain Law).

Subdivision (b) supersedes the fifth paragraph of former Sections 749 and 749.1, which provided a 10-day period within which to file. The contents of the lis pendens are prescribed in Section 409. Failure to file the lis pendens may result in subsequent bona fide purchasers and encumbrancers of record at the time the judgment is recorded not being bound by the quiet title judgment. See Section 764.040 (persons not bound by judgment).

045/221

§ 761.020. Complaint

761.020. The complaint shall be verified and shall include:

(a) A description of the property that is the subject of the action. In the case of tangible personal property, the description shall include its usual location. In the case of real property, the description shall include both its legal description and its street address or common designation, if any.

(b) The title of the plaintiff as to which a determination under this chapter is sought and the basis of the title. If the title is based upon adverse possession, the complaint shall allege the specific facts constituting the adverse possession.

(c) The adverse claims to the title of the plaintiff. If the plaintiff seeks a determination as against all adverse claims, known and unknown, the complaint shall so state.

(d) The date as of which the determination is sought.

(e) A prayer for the determination of the title of the plaintiff and the adverse claims.

Comment. Section 761.020 continues the substance of the second sentence of the first paragraph and supersedes a portion of the fourth paragraph of former Sections 749 and 749.1, which required a verified complaint and a statement of facts upon which the plaintiff's title is based.

Under subdivision (a), the description of the property must be sufficiently precise to enable the defendants to identify the property. Nothing in this subdivision precludes the joinder of several properties or of real and personal property in one action, where appropriate.

Subdivision (b) does not require that the plaintiff claim a fee or other freehold interest in the property; any interest is sufficient. This is consistent with former Section 738 and the cases thereunder. See, e.g., 3 B. Witkin, California Procedure, Pleading § 522, at 2173 (2d ed. 1971). For provisions relating to title by adverse possession, see Sections 318-328. The 20- and 10-year limitations on establishing title by adverse possession formerly found in Sections 749 and 749.1 are not continued; they are inconsistent with the general adverse possession requirements. See discussion in Willemsen, Improving California's Quiet Title Laws, 21 Hastings L.J. 835, 838-844 (1970).

Subdivision (c) recognizes that the plaintiff may seek to give the quiet title an in rem effect under this chapter. The plaintiff's title in such a case need not be based on adverse possession as under former Sections 749 and 749.1. This chapter includes special provisions to effectuate the in rem aspects of the quiet title action. See Sections 762.060-762.070 (unknown defendants), 763.010-763.040 (service of process), 764.010-764.050 (judgment).

Subdivision (d) is intended to permit a title determination as of a date prior to the date of the action. This implements suggestions in L. Simes and C. Taylor, The Improvement of Conveyancing by Legislation xxii (1960), and Willemsen, Improving California's Quiet Title Laws, 21 Hastings L.J. 835, 853 (1970).

045/062

§ 761.030. Answer

761.030. (a) The answer shall be verified and shall set forth:

(1) Any claim the defendant has.

(2) Any facts tending to controvert such material allegations of the complaint as the defendant does not wish to be taken as true.

(b) If the defendant disclaims in the answer any claim, or suffers judgment to be taken without answer, the plaintiff shall not recover costs.

Comment. Subdivision (a) of Section 761.030 is comparable to subdivisions (a) and (b) of Section 872.410 (partition). The verification requirement is a specific application of Section 446 (when complaint is verified, answer must be verified).

Subdivision (b) continues the substance of former Section 739. It provides an express exception to Section 1032 (costs in superior court).

045/196

Article 3. Defendants

§ 762.010. Necessary defendants

762.010. The plaintiff shall name as defendants in the action all persons having adverse claims that are of record or known to the plaintiff or reasonably apparent from an inspection of the property.

Comment. Section 762.010 states the rule for joinder of known adverse claimants. Failure to join these persons will result in a judgment that does not bind them. See Sections 764.040 and 764.050. This continues the substance of the first portion of the second paragraph and supersedes a portion of the fourth paragraph of former Sections 749 and 749.1, and extends the joinder requirement to claimants reasonably apparent from an inspection of the property. For joinder of unknown persons, see Section 762.060.

045/192

§ 762.020. Where name or interest of defendant is unknown

762.020. (a) If the name of a person required to be named as a defendant is not known to the plaintiff, the plaintiff shall so state in the complaint and shall name as parties all persons unknown in the manner provided in Section 762.040.

(b) 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, the plaintiff shall so state in the complaint. If the lack of knowledge, uncertainty, or contingency is caused by a transfer to an unborn or unascertained person or class member, or by a transfer in the form of a contingent remainder, vested remainder subject to defeasance, executory interest, or similar disposition, the plaintiff shall also state in the complaint, so far as is known to the plaintiff, the name,

age, and legal disability (if any) of the person in being who would be entitled to the claim had the contingency upon which the claim depends occurred prior to the commencement of the action.

Comment. Section 762.020 is comparable to subdivisions (a) and (b) of Section 872.520 (partition).

045/193

§ 762.030. Where defendant is deceased

762.030. (a) If a person required to be named as a defendant is dead and the plaintiff knows of a personal representative, the plaintiff shall join the personal representative as a defendant.

(b) 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:

(1) The plaintiff shall state these facts in an affidavit filed with the complaint.

(2) Where it is stated in the affidavit that such person is dead, the plaintiff may join as defendants "the testate and intestate successors of \_\_\_\_\_ (naming the deceased person), deceased, and all persons claiming by, through, or under such decedent," naming them in that manner.

(3) Where it is stated in the affidavit that such person is believed to be dead, the plaintiff may join the person as a defendant, and may also join "the testate and intestate successors of \_\_\_\_\_ (naming the person) believed to be deceased, and all persons claiming by, through, or under such person," naming them in that manner.

Comment. Section 762.030 is comparable to Sections 872.530 (partition) and 1250.220(b) (Eminent Domain Law).

043/184

§ 762.040. Additional defendants

762.040. The court shall upon its own motion or upon motion of any party make such orders for joinder of additional parties and for appointment of guardians ad litem as are necessary or proper.

Comment. Section 762.040 is comparable to Section 872.520(c) (partition). The conditions under which a guardian ad litem should be appointed are prescribed in Sections 372, 373, and 373.5. It should be noted that a judgment in the action binds persons under legal disability. Section 764.030.

045/063

§ 762.050. Appearance by named and unnamed defendants

762.050. Any person who has a claim to the property described in the complaint may appear in the proceeding. Whether or not the person is named as a defendant in the complaint, the person shall appear as a defendant.

Comment. Section 762.050 is comparable to Sections 751.12 (Destroyed Land Records Relief Law) and 1250.230 (Eminent Domain Law).

043/183

§ 762.060. Joinder of "all persons unknown"

762.060. The plaintiff may name as defendants in the action, in addition to the persons required to be named as defendants, "all persons unknown, claiming any legal or equitable right, title, estate, lien, or interest in the property described in the complaint adverse to plaintiff's title, or any cloud upon plaintiff's title," naming them in that manner.

Comment. Section 762.060 continues the substance of the last portion of the second paragraph and the third paragraph of former Sections 749 and 749.1. Unlike the former provisions, Section 762.060 does not limit the availability of in rem relief to adverse possessors, but permits joinder of all persons by any plaintiff seeking clear title. See Sections 760.020 and 761.020 and Comments thereto.

045/061

§ 762.070. Rights of unknown defendants

762.070. A person named and served as an unknown defendant has the same rights as are provided by law in cases of all other defendants named and served, and the action shall proceed against unknown defendants in the same manner as against other defendants named and served, and with like effect.

Comment. Section 762.070 continues the substance of a portion of former Section 750.

Article 4. Service of Process

§ 763.010. Summons

763.010. (a) The form, content, and manner of service of summons shall be as in civil actions generally.

(b) If upon affidavit it appears to the satisfaction of the court that the plaintiff used reasonable diligence to ascertain the identity and residence of 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 shall order service by publication pursuant to Section 415.50 and the provisions of this article.

Comment. Subdivision (a) of Section 763.010 supersedes the fourth paragraph of former Sections 749 and 749.1 and the first, third, and fourth paragraphs of former Section 750. The contents of the summons is prescribed in Section 412.20. A description of the property and a statement of the object of the action are not included since the property will already be described and the relief sought will already be stated in the complaint. See Section 761.020. Service on known defendants must be made pursuant to general service provisions; publication as to known defendants is permitted only by court order if it appears upon affidavit that the defendant cannot with reasonable diligence be served in another manner. Section 415.50.

Subdivision (b) makes clear that, where unknown parties or heirs are involved, service on such parties must be by publication. This supersedes the third and a portion of the fourth paragraphs of former Section 750. The affidavit contents are drawn from Section 801.9 (real property titles affected by public improvement assessments) and Revenue and Taxation Code Section 3960 (quiet title to tax-deeded property).

045/058

§ 763.020. Requirements where service is by publication

763.020. Where the court orders service by publication, the order is subject to the following conditions:

(a) The plaintiff shall post, not later than 10 days after the date the order is made, a copy of the summons and complaint in a conspicuous place on the real property that is the subject of the action.

(b) The plaintiff shall record, if not already recorded, a notice of the pendency of the action.

(c) The publication shall describe the property that is the subject of the action. In addition to particularly describing the property, the

publication shall describe the property by giving its street address, if any, or other common designation, if any; but, if a legal description of the property is given, the validity of the publication shall not be affected by the fact that the street address or other common designation recited is erroneous or that the street address or other common designation is omitted.

Comment. Section 763.020 supersedes the second and a portion of the fourth paragraphs of former Section 750. The manner of service by publication is prescribed in the general provisions of Section 415.50.

045/064

§ 763.030. Publication as to certain defendants

763.030. (a) Where the court orders service by publication, the publication may:

(1) Name only the defendants to be served thereby.

(2) Describe only the property in which the defendants to be served thereby claim interests.

(b) Judgment against a defendant who fails to appear and answer following service under this section shall be conclusive against the defendant named in respect only to property described in the publication.

Comment. Section 763.030 supersedes the sixth paragraph of former Section 750 and is comparable to Sections 872.330 (partition) and 1250.125 (Eminent Domain Law).

045/056

§ 763.040. Proof of service

763.040. The court before hearing the case shall require proof that the summons has been served, posted, published as required, and that the notice of pendency of action has been filed.

Comment. Section 763.040 continues the substance of the second sentence of the first paragraph of former Sections 751 and 751.1.

Article 5. Judgment

§ 764.010. Proof of title and judgment

764.010. The court shall examine into and determine the plaintiff's title and the claims of all the defendants. The court shall not enter judgment by default but shall in all cases require evidence of plaintiff's title and hear such evidence as may be offered respecting the claims of any of the defendants. The court shall render judgment in accordance with the evidence and the law.

Comment. Section 764.010 continues the substance of the first sentence of the first paragraph of former Sections 751 and 751.1. It is consistent with Section 585(3) (default judgment).

101/163

§ 764.020. Construction of will

764.020. (a) If in an action under this chapter the validity or interpretation of a gift, devise, bequest, or trust, under a will or instrument purporting to be a will, whether admitted to probate or not, is involved:

(1) The will or instrument purporting to be a will is admissible in evidence.

(2) All questions concerning the validity of the gift, devise, bequest, or trust shall be finally determined in the action.

(3) If the will has been admitted to probate and the gift, devise, bequest, or trust has been interpreted by a final decree of the probate court, the interpretation is conclusive as to the proper construction thereof.

(b) Nothing in this section deprives a party of the right to a jury trial in any case where, by law, the right is now given.

Comment. Section 764.020 continues the substance of the last portion of former Section 738. For determination of title in probate proceedings, see Probate Code Sections 850-854.

§ 764.030. Persons bound by judgment

764.030. The judgment in the action is binding and conclusive on all of the following persons, regardless of any legal disability:

(a) All persons known and unknown who were parties to the action and who have any claim to the property, whether present or future, vested or contingent, legal or equitable, several or undivided.

(b) Except as provided in Section 764.050, all persons who were not parties to the action and who have any claim to the property which was not of record at the time the lis pendens was filed, or if none was filed, at the time the judgment was recorded.

(c) All persons claiming under any of the foregoing persons.

Comment. Section 764.030 supersedes the last portion of the first sentence of the fifth paragraph of former Section 750 and the first portion of the second paragraph of former Sections 751 and 751.1. It is comparable to Sections 751.15 (Destroyed Land Records Relief Law) and 874.210 (partition).

§ 764.040. Persons not bound by judgment

764.040. The judgment does not affect the claim of any person who was not a party to the action and who had a claim of record in the property or part thereof at the time the lis pendens was filed, or if none was filed, at the time the judgment was recorded.

Comment. Section 764.040 is comparable to Section 874.220 (partition).

§ 764.050. Unrecorded interests known to plaintiff

764.050. If a person having an unrecorded claim in the property or part thereof was not a party to the action but the claim was actually known to the plaintiff at any time before entry of judgment or would have been reasonably apparent from an inspection of the property, the judgment does not affect the claim of the person. Nothing in this section shall be construed to impair the rights of a bona fide purchaser or encumbrancer for value of the property.

Comment. Section 764.050 is comparable to Section 874.230 (partition). See Section 874.230 and Comment thereto.

100/969

§ 764.060. Attack on judgment

764.060. (a) Except as provided in subdivision (b), the judgment in the action is not subject to direct or collateral attack in an action or proceeding, whether based on lack of actual notice to a party or otherwise, commenced more than 180 days after the judgment is recorded, regardless of any legal disability of the party.

(b) This section does not bar a direct or collateral attack in an action or proceeding based on fraud commenced more than 180 days after the judgment is recorded, provided that the relief granted in the action or proceeding shall not impair the rights of a bona fide purchaser or encumbrancer for the value of the property.

Comment. Subdivision (a) of Section 764.060 imposes a statute of limitations applicable in all types of actions or proceedings to set aside or void the judgment. It is intended to enhance the marketability of property as to which an in rem quiet title decree has been rendered. The limitations period may not be tolled during the legal disability of a party. The limitations period is comparable to the 180-day period prescribed in Section 473.5(a)(ii) (180-day limitations period after notice to a party).

Subdivision (b) permits an action or proceeding to set aside or void the judgment brought after the expiration of the 180-day limitations period in cases of fraud. Such an action may not affect the rights of bona fide purchasers, however, and the plaintiff in such an action or proceeding may be relegated to a damage remedy.

045/074

§ 764.070. Effect on State of California and United States

764.070. Notwithstanding any other provision of this chapter, the judgment in the action is not binding or conclusive on the state or the United States unless individually joined as parties to the action.

Comment. Section 764.070 continues the substance of provisions formerly located in the first portion of the second paragraph of former Sections 751 and 751.5. For statutes authorizing quiet title actions against the state, see, e.g., Pub. Res. Code §§ 6461-6465 (state lands administration), Rev. & Tax. Code § 3951 (tax-deeded property), Sts. & Hwys. Code § 9012 (refunding of bonds).

CONFORMING CHANGESCivil Code § 1006 (amended)

SEC. . Section 1006 of the Civil Code is amended to read:

1006. Occupancy for any period confers a title sufficient against all except the state and those who have title by prescription, accession, transfer, will or succession; provided, however, that the title conferred by such occupancy shall not be a sufficient interest in real property to enable the occupant or ~~his~~ the occupant's privies to commence or maintain an action to quiet title under ~~the provisions of section seven hundred thirty-eight~~ Chapter 4 (commencing with Section 760.010) of Title 10 of Part 2 of the Code of Civil Procedure ~~of this state~~ , unless such occupancy shall have ripened into title by prescription.

Comment. Section 1006 is amended to reflect the relocation of the quiet title provisions.

Civil Code § 2931a (amended)

SEC. . Section 2931a of the Civil Code is amended to read:

2931a. In all actions brought to determine conflicting claims to real property, or for partition of real property under ~~the provisions of Chapter 4, Title 10,~~ Title 10.5 (commencing with Section 872.010) of Part 2 of the Code of Civil Procedure, or to foreclose a deed of trust, mortgage, or other lien upon real property upon which exists a lien to secure the payment of taxes or other obligations, to the State of California, other than taxes upon such real property, the State of California may be made a party, and in such action the court shall have jurisdiction to determine the priority and effect of the liens described in the complaint in or upon the property, but the jurisdiction of the court in such action shall not include a determination of the validity of the tax giving rise to the lien or claim of lien. The complaint in such action shall contain a description of the lien sufficient to enable the tax or other obligation, payment of which it secures, to be identified with

certainty. Services of process in such actions shall be made upon the Secretary of State or ~~his~~ assistant, or any ~~of his deputies~~ deputy , and upon the Attorney General or any ~~of his deputies~~ deputy , and a copy of the complaint shall be delivered to the officer, board, commission, department or division or other body charged with the collection of the tax or obligation. It shall be the duty of the Attorney General to represent the state in all such actions.

Comment. Section 2931a is amended to reflect the relocation of the partition provisions. Quiet title provisions now occupy Chapter 4 (commencing with Section 760.010) of Title 10 of Part 2 of the Code of Civil Procedure.

045/077

Code of Civil Procedure §§ 738-751a (Chapter heading)

SEC. . The heading of Chapter 3 (commencing with Section 738) of Title 10 of Part 2 of the Code of Civil Procedure is amended to read:

CHAPTER 3. ACTIONS ~~TO DETERMINE CONFLICTING CLAIMS TO~~ FOR  
THE RECOVERY OF REAL PROPERTY, AND OTHER PROVISIONS  
RELATING TO ACTIONS CONCERNING REAL ~~ESTATE~~ PROPERTY

Comment. The heading of Chapter 3 is amended to reflect the relocation to Chapter 4 (commencing with Section 760) (quiet title) of provisions relating to actions to determine conflicting claims to real property.

4426

Code of Civil Procedure § 738 (repealed)

SEC. . Section 738 of the Code of Civil Procedure is repealed.

~~738.~~ An action may be brought by any person against another who claims an estate or interest in real or personal property, adverse to him, for the purpose of determining such adverse claim; provided, however, that whenever in an action to quiet title to, or to determine adverse claims to, real or personal property, the validity or interpretation of any gift, devise, bequest or trust, under any will, or instrument purporting to be a will, whether admitted to probate or not, shall be involved, such will, or instrument purporting to be a will, is admissible in evidence; and all questions concerning the validity

of any gift, devise, bequest or trust therein contained, save such as under the constitution belong exclusively to the probate jurisdiction, shall be finally determined in such action; provided, that if the said will shall have been admitted to probate and interpreted by a decree of the superior court sitting in probate which decree has become final such interpretation shall be conclusive as to the proper construction of said will, or any part thereof, so construed, in any action under this section; and provided, however, that nothing herein contained shall be construed to deprive a party of the right to a jury trial in any case where, by the law, such right is now given.

Comment. The first portion of former Section 738 is superseded by Section 760.020, which does not limit the persons against whom title may be quieted, but permits an in rem action. The substance of the last portion of former Section 738 is continued in Section 764.020.

8328

Code of Civil Procedure § 738.5 (repealed)

SEC. . Section 738.5 of the Code of Civil Procedure is repealed.

~~738.5.~~ An action may be brought against the State of California to determine whether or not an escheat has occurred as to any real property or interest therein under the provisions of "An act relating to the rights, powers and disabilities of aliens and of certain companies, associations and corporations with respect to property in this State, providing for escheats in certain cases, prescribing the procedure therein, requiring reports of certain property holdings to facilitate the enforcement of this act, prescribing penalties for violation of the provisions hereof, and repealing all acts or parts of acts inconsistent or in conflict herewith," approved by the electorate November 2, 1920, and as amended. Such an action may be commenced by any person claiming an interest in the property. The complaint shall describe the property and shall specify the instrument or instruments in the chain of title to the property which gave rise to the possibility of such escheat. The State of California shall be the sole defendant in such action and no other matter may be adjudicated except the issue of the occurrence

of an escheat. No issue shall be raised or claim made by the plaintiff in such action based upon estoppel, or failure of the State to have commenced an escheat proceeding, nor shall any statute of limitation operate to bar an adjudication in such action that the property or any interest therein has escheated to the State. A copy of the complaint and summons shall be served upon the Attorney General or his assistant, or any of his deputies, and upon the district attorney or county counsel of the county in which the property is situated, or upon their respective assistants or deputies. Such district attorney or county counsel shall perform duties similar to those required to be performed in escheat proceedings commenced by the State under the provisions of the act mentioned in this section. The Attorney General or district attorney or county counsel shall have 180 days, as a matter of right, in which to answer or otherwise plead. If at any time during the pendency of the action the Attorney General determines that under the law or the facts or both no such escheat has occurred, he may, with the consent of the State Controller, file a disclaimer in such action and thereupon judgment shall be entered against the State.

Comment. Former Section 738.5 is not continued. The Alien Land Law, which it implemented, has been repealed for more than 20 years. See 1955 Cal. Stats. chs. 316, 1550; 1957 Cal. Stats. p. cxxxvii.

69/415

Code of Civil Procedure § 739 (repealed)

SEC. . Section 739 of the Code of Civil Procedure is repealed.

739. If the defendant in such action disclaim in his answer any interest or estate in the property, or suffer judgment to be taken against him without answer, the plaintiff cannot recover costs.

Comment. The substance of former Section 739 is continued in Section 761.030(b).

Code of Civil Procedure § 748.5 (repealed)

SEC. . Section 748.5 of the Code of Civil Procedure is repealed.

~~748.5. Whenever a proposal to dedicate land for public improvement has been heretofore or hereafter made by map only, without any acceptance of the dedication having been made and recorded within 25 years thereafter, and the land has not been used for the purpose for which the dedication was proposed for a period of 25 years, and the property has been subsequently sold to a third person, after the filing of the map, and used as if free of the dedication, there is a conclusive presumption that the proposed dedication was not accepted, and in a suit to quiet title to such land naming the governmental agency to which the dedication was made by map as defendant, the decree in favor of the plaintiff shall clear the title of the proposed dedication and remove the cloud created by the proposed dedication.~~

Comment. The substance of the first portion of former Section 748.5 is continued in Section 771.010. The substance of the last portion is continued in Section 771.020.

65/186 N/Z

Code of Civil Procedure § 749 (repealed)

SEC. . Section 749 of the Code of Civil Procedure is repealed.

~~749. An action may be brought, either as a separate action, or joined with an action under Section 738 of this code, to determine the adverse claims to and clouds upon title to real property by a person who, by himself or by himself and his predecessors in interest, has been in the actual, exclusive and adverse possession of such property continuously for 20 years prior to the filing of the complaint, claiming to own the same in fee against the whole world, and who, by himself or by himself and his predecessors in interest, has paid all taxes of every kind levied or assessed against the property and which were payable during the period of five years continuously next preceding the filing of the complaint. Said action shall be commenced by the filing of a verified complaint averring the matters above set forth.~~

The said complaint may include as defendants in such action in addition to such persons as appear of record to have, all other persons who are known to the plaintiff to have, some claim or cloud on the real property described in the complaint adverse to plaintiff's ownership and other persons unknown claiming any right, title or interest or lien in such real property, or cloud upon the title of plaintiff therefor and the plaintiff may describe such unknown defendants in the complaint as follows: "also all other persons unknown, claiming any right, title or interest in the real property described in the complaint adverse to plaintiff's ownership or any cloud upon plaintiff's title thereto."

If the person or all persons having a claim or cloud on the title to said real property are unknown to plaintiff, the latter may describe them in the complaint as "all persons unknown, claiming any right, title or interest in the real property described in the complaint adverse to plaintiff's ownership or any cloud upon plaintiff's title thereto."

If any known defendant named in the complaint is a person claiming any right, title or interest in and to the real property under the plaintiff or any predecessor in interest of the plaintiff, which claim has arisen or has been created by the plaintiff or any predecessor in interest of the plaintiff, within 20 years prior to the filing of the complaint, then as to any such defendant the complaint shall contain allegations appropriate to an action under Section 738 of this code and as to any such defendant the action shall be deemed and considered brought under the provisions of Section 738 and sections pertinent thereto of this code and as to any such defendant the proceedings in the action shall be governed by the provisions of said Section 738 and said sections pertinent thereto and the provisions of Section 750 of this code shall not apply to the proceedings as to any such defendant.

Within 10 days after the filing of the complaint plaintiff shall file, or cause to be filed, in the office of the county recorder of the

county where the property is situated; a notice of the pendency of the action; containing the matters required by Section 409 of this code.

Comment. The first sentence of the first paragraph of former Section 749 is superseded by Section 760.020, which does not limit the persons by whom title may be quieted, but permits an in rem action in any case; nor does Section 760.020 impose a 20-year waiting period before a person claiming title by adverse possession may bring an action. See also Section 761.020 and Comment thereto (complaint). The substance of the second sentence of the first paragraph, requiring a verified complaint and a statement of facts upon which the plaintiff's title is based, is continued in Section 761.020.

The substance of the first portion of the second paragraph, requiring joinder of interest of record or known to the plaintiff, is continued in Section 762.010. The substance of the last portion of the second paragraph and the third paragraph is continued in Section 762.060.

The fourth paragraph, relating to action against and service on a known defendant, is superseded by Sections 761.020 (complaint), 762.010 (necessary defendants), and 763.010(a) (service of summons).

The fifth paragraph, requiring a lis pendens, is superseded by Section 761.010(b).

69/424 N/Z

Code of Civil Procedure § 749.1 (repealed)

SEC. . Section 749.1 of the Code of Civil Procedure is repealed.

~~749.1. An action may be brought, either as a separate action, or joined with an action under Section 738 of this code, to determine the adverse claims to and clouds upon title to real property by a person who, by himself or by himself and his predecessors in interest, has been in the actual, exclusive and adverse possession of such property continuously for 10 years prior to the filing of the complaint, claiming to own the same in fee against the whole world, and who, by himself or by himself and his predecessors in interest, has paid all taxes of every kind levied or assessed against the property and which were payable during the period of 10 years continuously next preceding the filing of the complaint. Said action shall be commenced by the filing of a verified complaint averring the matters above set forth.~~

The said complaint may include as defendants in such action, in addition to such persons as appear of record to have, all other persons who are known to the plaintiff to have, some claim or cloud on the real

property described in the complaint adverse to plaintiff's ownership, and other persons unknown claiming any right, title, estate, interest or lien in such real property, or cloud upon the title of plaintiff thereto, and the plaintiff may describe such unknown defendants in the complaint as follows: "also all other persons unknown, claiming any right, title, estate, lien or interest in the real property described in the complaint adverse to plaintiff's ownership, or any cloud upon plaintiff's title thereto."

If the person or all persons having a claim or cloud on the title to said real property are unknown to plaintiff, the latter may describe them in the complaint as "all persons unknown, claiming any right, title, estate, lien or interest in the real property described in the complaint adverse to plaintiff's ownership, or any cloud upon plaintiff's title thereto."

If any known defendant named in the complaint is a person claiming any right, title, estate, lien or interest in and to the real property under the plaintiff or any predecessor in interest of the plaintiff, which claim has arisen, or has been created by the plaintiff or any predecessor in interest of the plaintiff, within ten years prior to the filing of the complaint, then as to any such defendant the complaint shall contain allegations appropriate to an action under Section 738 of this code, and as to any such defendant the action shall be deemed and considered brought under the provisions of Section 738 and sections pertinent thereto of this code, and as to any such defendant the proceedings in the action shall be governed by the provisions of said Section 738 and said sections pertinent thereto; and the provisions of Section 750 of this code shall not apply to the proceedings as to any such defendant.

Within ten days after the filing of the complaint, plaintiff shall file, or cause to be filed in the office of the county recorder of the county where the property is situated, a notice of the pendency of the action, containing the matters required by Section 409 of this code.

Comment. The first sentence of the first paragraph of former Section 749.1 is superseded by Section 760.020, which does not limit the persons by whom title may be quieted, but permits an in rem action in any case; nor does Section 760.020 impose a 10-year waiting period before a person claiming title by adverse possession may bring an action. See also Section 761.020 and Comment thereto (complaint). The substance of the second sentence of the first paragraph, requiring a verified complaint and a statement of facts upon which the plaintiff's title is based, is continued in Section 761.020.

The substance of the first portion of the second paragraph, requiring joinder of interest of record or known to the plaintiff, is continued in Section 762.010. The substance of the last portion of the second paragraph and the third paragraph is continued in Section 762.060.

The fourth paragraph, relating to action against and service on a known defendant, is superseded by Sections 761.020 (complaint), 762.010 (necessary defendants), and 763.010(a) (service of summons).

The fifth paragraph, requiring a lis pendens, is superseded by Section 761.010(b).

69/422 N/Z

Code of Civil Procedure § 750 (repealed)

SEC. . Section 750 of the Code of Civil Procedure is repealed.

~~750.~~ Within three years after the filing of the complaint, as required by Section 749 or 749.1, a summons shall be issued, which shall contain the matters required by Section 412.20, and in addition, a description of the property and a statement of the object of the action. In the summons the unknown defendants shall be designated as in the complaint, whether they are the sole defendants or not. If as to any defendant the action is one brought under the provisions of Section 738 and sections pertinent thereto of this code, such defendant may be named in the same summons and no separate or additional summons need be issued directed to such defendant.

Within 30 days after the issuance of the summons, the plaintiff shall post or cause to be posted a copy thereof in a conspicuous place on the property described in the complaint.

At any time after the issuance of the summons, the plaintiff, or his agent or attorney, shall make and file an affidavit wherein there shall be stated the following matters:

(a) The names of the defendants, if any, as to whom the action is brought under the provisions of Section 738 and sections pertinent

in the event that the defendant is not a resident of the State of New York at the time of the commission of the offense, the court may, in its discretion, order that the defendant be removed to the State of New York for trial.

Service of process may be made on the defendant at his residence or at his place of business, or at any other place where the defendant may be found.

Whenever a defendant is removed to the State of New York for trial, the court may, in its discretion, order that the defendant be committed to the custody of the sheriff of the State of New York, or to the custody of any other person designated by the court.

The court may, in its discretion, order that the defendant be committed to the custody of the sheriff of the State of New York, or to the custody of any other person designated by the court.

Whenever a defendant is removed to the State of New York for trial, the court may, in its discretion, order that the defendant be committed to the custody of the sheriff of the State of New York, or to the custody of any other person designated by the court.

The court may, in its discretion, order that the defendant be committed to the custody of the sheriff of the State of New York, or to the custody of any other person designated by the court.

Whenever a defendant is removed to the State of New York for trial, the court may, in its discretion, order that the defendant be committed to the custody of the sheriff of the State of New York, or to the custody of any other person designated by the court.

The court may, in its discretion, order that the defendant be committed to the custody of the sheriff of the State of New York, or to the custody of any other person designated by the court.

Whenever a defendant is removed to the State of New York for trial, the court may, in its discretion, order that the defendant be committed to the custody of the sheriff of the State of New York, or to the custody of any other person designated by the court.

The court may, in its discretion, order that the defendant be committed to the custody of the sheriff of the State of New York, or to the custody of any other person designated by the court.

Whenever a defendant is removed to the State of New York for trial, the court may, in its discretion, order that the defendant be committed to the custody of the sheriff of the State of New York, or to the custody of any other person designated by the court.

The court may, in its discretion, order that the defendant be committed to the custody of the sheriff of the State of New York, or to the custody of any other person designated by the court.

Whenever a defendant is removed to the State of New York for trial, the court may, in its discretion, order that the defendant be committed to the custody of the sheriff of the State of New York, or to the custody of any other person designated by the court.

action is brought under the provisions of Section 738, the order for such publication, made pursuant to the provisions of Section 415.50 may be made either as a part of the order for publication of summons made as to unknown defendants, or as a separate order, as the court or a judge thereof may consider proper in the particular case.

Comment. The first, third, and fourth paragraphs of former Section 750 are superseded by Section 763.010(a), which requires the summons to have the same form and content and be served in the same manner as in civil actions generally. The three-year issuance of summons requirement is superseded by Section 581a (dismissal for lack of prosecution).

The second paragraph is superseded by Section 763.020(b), which requires posting within 10 days after the court orders service by publication.

The fourth paragraph is superseded by Sections 763.010 and 763.020(c).

The substance of the first portion of the first sentence of the fifth paragraph is continued in Section 762.070. The last portion of the first sentence is superseded by Section 764.030. The last sentence of the fifth paragraph is superseded by Section 415.50(c).

The sixth paragraph is superseded by Section 763.030.

09/742 N/Z

Code of Civil Procedure § 751 (repealed)

SEC. . Section 751 of the Code of Civil Procedure is repealed.

~~751.~~ When the summons has been served as provided in the preceding section and the time for answering has expired, the court shall proceed to hear the case as in other cases and shall have jurisdiction to examine into and determine the legality of plaintiff's title and of the title and claim of all the defendants and of all unknown persons, and to that end must not enter any judgment by default, but must in all cases require evidence of plaintiff's title and possession, and hear such evidence as may be offered respecting the claims and title of any of the defendants and must thereafter direct judgment to be entered in accordance with the evidence and the law. The court before proceeding to hear the case must require proof to be made that the summons has been served and posted as hereinbefore directed and that the required notice of pendency of action has been filed.

The judgment after it has become final is conclusive against all the persons named in the summons and complaint who have been served and

against all unknown persons as stated in the complaint and summons who have been served by publication, but shall not be conclusive against the State of California or the United States. Said judgment shall have the effect of a judgment in rem except as against the State of California and the United States; and provided further, that the said judgment shall not bind or be conclusive against any person claiming any estate, title, right, possession, or lien to the property under the plaintiff or his predecessors in interest, which claim, lien, estate or right of possession has arisen or has been created by the plaintiff or his predecessors in interest within 20 years prior to the filing of the complaint, unless proceedings shall have been taken against such defendant and summons served upon him as provided with respect to actions brought under the provisions of Section 738 of this code, or unless such defendant shall have appeared voluntarily in the action.

The remedy provided in this and the two preceding sections shall be construed as cumulative and not exclusive of any other remedy, form or right of action or proceeding allowed by law.

Comment. The substance of the first sentence of the first paragraph of former Section 751 is continued in Section 764.010. The substance of the second sentence is continued in Section 763.040.

The first portion of the second paragraph is superseded by Sections 764.030 and 764.060. The last portion is not continued; the general provisions governing joinder of defendants and title by adverse possession govern. See Sections 762.010 and 318-328.

The substance of the third paragraph is continued in Section 760.030.

045/170 N/Z

Code of Civil Procedure § 751.1 (repealed)

SEC. . Section 751.1 of the Code of Civil Procedure is repealed.

~~751.1.~~ When the summons has been served as provided in Section 750 of this code and the time for answering has expired, the court shall proceed to hear the case as in other cases and shall have jurisdiction to examine into and determine the legality of plaintiff's title and of the title and claim of all the defendants and of all unknown persons, and to that end must not enter any judgment by default, but must in all cases require evidence of plaintiff's title and possession, and hear

such evidence as may be offered respecting the claims and title of any of the defendants and must thereafter direct judgment to be entered in accordance with the evidence and the law. The court before proceeding to hear the case must require proof to be made that the summons has been served and posted as hereinbefore directed and that the required notice of pendency of action has been filed.

The judgment after it has become final is conclusive against all the persons named in the summons and complaint who have been served and against all unknown persons as stated in the complaint and summons who have been served by publication, but shall not be conclusive against the State of California or the United States. Said judgment shall have the effect of a judgment in rem except as against the State of California and the United States; and provided further, that the said judgment shall not bind or be conclusive against any person claiming any estate, title, right, possession, or lien to the property under the plaintiff or his predecessors in interest, which claim, lien, estate or right of possession has arisen or has been created by the plaintiff or his predecessors in interest within ten years prior to the filing of the complaint, unless proceedings shall have been taken against such defendant and summons served upon him as provided with respect to actions brought under the provisions of Section 738 of this code, or unless such defendant shall have appeared voluntarily in the action.

The remedy provided in this section and Section 749.1 shall be construed as cumulative and not exclusive of any other remedy, form or right of action or proceeding allowed by law and shall be construed as an alternative remedy to the remedy provided in Sections 749, 750, 751, and 751a and not as repealing or amending those sections.

Sections 750 and 751a shall apply to and be a part of the alternative remedy provided by this section and Section 749.1.

Comment. The substance of the first sentence of the first paragraph of former Section 751.1 is continued in Section 764.010. The substance of the second sentence is continued in Section 763.040.

The first portion of the second paragraph is superseded by Sections 764.030 and 764.060. The last portion is not continued; the general provisions governing joinder of defendants and title by adverse possession govern. See Sections 762.010 and 318-328.

The substance of the first portion of the third paragraph is continued in Section 760.030.

The last portion of the third paragraph and the fourth paragraph are not continued; they are unnecessary to Chapter 4 (commencing with Section 760.010) as drafted.

12/772 N/Z

Code of Civil Procedure § 751.3 (repealed)

SEC. . Section 751.3 of the Code of Civil Procedure is repealed.

~~751.3. (a) Whenever a mining rights lease, including a community lease, exists for the production of oil, gas, or other hydrocarbons, and a right of entry or occupation provided by the lease encumbers all or part of the surface or surface zone of the leasehold lands, any person who owns a fee interest in the surface of the leasehold lands may bring an action in the superior court to terminate the right of entry or occupation as to all or some described portion of the surface and surface zone of the leasehold lands in which such person owns an interest.~~

~~(b) The court may render a judgment or decree terminating such lessee's right of entry or occupation of the surface and surface zone, subject to such conditions as the court deems fair and equitable, if the evidence shows each of the following:~~

~~(1) The document which created the leasehold interest was originally executed more than 20 years prior to filing the action provided for in this section regardless of any amendments to such document. However, if any amendment was entered into expressly for the purpose of waiving, limiting, or rearranging surface rights of entry and occupation by the lessee, the 20-year period shall be computed as if the document was originally executed on the date of execution of such amendment.~~

~~(2) The subject land is not presently occupied by any of the following:~~

~~(i) A producing oil or gas well or well borer~~

~~(ii) A well or well bore being utilized for injection of water, gas, or other substance into geologic substrata as an aid to oil or gas production or to ameliorating subsidence.~~

(iii) A well or well bore being utilized for the disposal injection of waste oil well brine and byproduct.

(iv) A well or well bore being utilized for the production of water for use in oil field injection, waterflood, and pressure maintenance programs.

(3) Termination of the right of entry or occupation within the subject land in the manner requested by the plaintiff, or subject to such conditions as the court may impose pursuant to this section, will not significantly interfere with the right of the lessee, under the lease, to continue to conduct operations for the continued production of oil from leasehold strata beneath the surface zone in a practical and economic manner, utilizing such production techniques as will be appropriate to the leasehold area, consistent with good oilfield practice, and to gather, transport, and market such oil.

(c) The court may qualify the decree terminating the surface and surface zone right of entry or occupation so as to provide for limited surface and surface zone easements which the lessee may continue to enjoy within the subject land. A decree may be conditioned upon the relocation of pipelines, roadways, equipment, or lease facilities in such manner as will most effectively free the subject land for surface use while safeguarding continued oil and gas operations in a practical and economic manner. Any such condition of the decree shall require the plaintiff to pay the costs of the relocation. However, the plaintiff shall be entitled to a setoff against such costs to the extent of any benefit to the lessee resulting from the installation of new equipment or material. The plaintiff shall have the burden of proving any such benefit accruing to the lessee.

(d) It shall be against public policy for any oil or gas lease, at its inception, to provide for the waiver of any rights created by this section, or for such rights to be waived by amendment to any oil or gas lease within 20 years of the date of its execution by a plaintiff or his predecessor in interest.

(e) As used in this section:

(1) "Surface zone" means the zone which lies above a plane which is 500 feet below the surface of the land.

(2) "Subject land" means that area occupied by the particular described surface and surface zone for which plaintiff seeks to terminate the leasehold right of entry and occupation.

(3) "Lease facilities" means storage tanks, wash tanks, separators, heaters, and other facilities reasonably necessary for the production of oil or gas, including secondary recovery operations.

(f) No judgment rendered pursuant to this section shall change or affect the terms or operation of any valid unit agreement or valid operating agreement which comes within the provisions of Section 3301 or 3321 of the Public Resources Code.

(g) This section shall apply only to lands within a city in any county with a population exceeding 4,000,000 or with a population of more than 700,000 and less than 710,000 as determined by the 1960 Federal Decennial Census.

Comment. The substance of subdivision (a) of former Section 751.3 is continued in Section 772.030(a). The substance of subdivision (b) is continued in Section 772.040. The substance of subdivision (c) is continued in Section 772.050. The substance of subdivision (d) is continued in Section 772.060. The substance of subdivision (e) is continued in Section 772.020. The substance of subdivision (f) is continued in Section 772.030(b). The substance of subdivision (g) is continued in Section 772.010.

12/767 N/Z

Code of Civil Procedure § 751a (repealed)

SEC. . Section 751a of the Code of Civil Procedure is repealed.

751a. Whenever any person who by any conveyance, judgment or decree has received or taken, or who hereafter receives or takes, the title to, or any interest in, or lien upon real property in a certain name and thereafter has conveyed, or conveys, or has reconveyed, or reconveys, the same or any part thereof, or has satisfied, or satisfies, such lien in a name other than, or different from, the name under which title was received, or any interest or lien thereon was taken or where the estate of a decedent has been probated under a name different from

the name in which real property of such decedent stands of record, and the decree of distribution has been entered in such estate or when any right title or interest of any person in real property has been divested by a judgment or decree or otherwise under a name other than or different from the name under which title was received, the identity of such person or persons or the identity of such decedent and the person in whose name the property stands of record, may be adjudicated and determined on petition of any subsequent owner or any distributee of the estate of such decedent or the successor in interest, or said property or any part thereof or of any interest therein. As many such persons as appear of record in the chain of title to the land described in the petition may be joined in one petition or proceedings.

The petition must be filed in the superior court of the county in which the land or some part thereof is situated and shall be verified as provided in this code for verification of a complaint. The petition may be substantially entitled "In the matter of the determination of the identity of xxxxxxxx" (naming all the persons sought to be identified) and may set forth:

1. A statement of petitioner's interest in the property as owner, part owner or distributee or successor in interest or otherwise.
2. A particular description of the petitioner's property.
3. The name or names of the person or persons sought to be identified setting out the name and a reference to the record of the conveyance judgment or decree under which title was received, and the name and a reference to the record of the conveyance whereby the title was conveyed or a reference to the record of the judgment or decree or conveyance whereby the title was divested, or where an estate has been distributed setting out the name under which the estate of a decedent has been probated and the name in which real property of such decedent stands of record, and that such names were and are the names of the same person and that such conveyances or such decrees of distribution affect the title to petitioner's property.

4. A prayer that the identity of such persons be established. The clerk must thereupon set the petition for hearing by the court and the petitioner must give notice thereof by causing notices of the time and

place of hearing to be posted at the courthouse of the county where the proceeding is pending and in a conspicuous place on the property described, at least 10 days before the hearing. The special notice shall be substantially in the following form:

(Title of court and cause)

Notice is hereby given that \_\_\_\_\_ has filed a petition herein claiming to be the owner (or distributee) of the following described lands \_\_\_\_\_ (description) and praying that the identity of the following-named persons, in former conveyances (or judgments or decrees) to said lands or in decrees of distribution of said lands in probate be determined, to wit: \_\_\_\_\_ (names as J. Doe and John Doe); and that the time and place of hearing said petition has been set for \_\_\_\_\_ the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, at the hour of \_\_\_\_\_, \_\_\_\_\_ of said day at the courtroom of said court in the city of \_\_\_\_\_, county of \_\_\_\_\_, State of California.

\_\_\_\_\_  
Clerk

At any time before the date fixed for such hearing, any person interested in said property may answer said petition and deny any of the matters contained therein. At the time fixed for the hearing, or such time thereafter, as may be fixed by the court, the court must hear the proofs offered by the petitioner, and by any persons answering the same, and must make and enter a decree determining the identity of the person or persons, set out in the petition in accordance with the proofs.

An appeal may be taken by any party aggrieved.

After the said decree has become final it shall constitute prima facie evidence of the matters thereby determined and it shall be presumed that the identity of the person or persons described in the decree is such as is stated in the decree. A certified copy of said decree shall be recorded in the office of the county recorder of every county in which any part of the land is situated.

Comment. The substance of the first sentence of the first paragraph of former Section 751a is continued in Sections 770.010 and 770.020. The substance of the second sentence is continued in Section 770.050(c).

The substance of the first portion of the first sentence of the second paragraph of former Section 751a is continued in Section 770.030.

The substance of the last portion of the first sentence is continued in Section 770.050(a). The substance of the second sentence is continued in Section 770.050(b).

The substance of the first sentence of the third paragraph is continued in Section 770.060(a)-(b). The second sentence is continued in Section 770.060(c).

The substance of the first sentence of the fourth paragraph is continued in Section 770.030(b). The substance of the second sentence is continued in Section 770.070(a).

The fifth paragraph is continued in Section 770.070(b).

The substance of the first sentence of the sixth paragraph is continued in Section 770.080(a). The substance of the second sentence is continued in Section 770.080(b).

09/037

Code of Civil Procedure §§ 770.010-772.060 (added)

SEC. . Chapter 4.5 (commencing with Section 770.010) is added to Title 10 of Part 2 of the Code of Civil Procedure, to read:

CHAPTER 4.5. SPECIAL ACTIONS AND PROCEEDINGS TO CLEAR TITLE

Article 1. Identity of Person in Chain of Title

§ 770.010. Definitions

770.010. As used in this article:

(a) "Acquired" means received or taken by conveyance, judgment, decree, or otherwise.

(b) "Property" means any right, title, or interest in or lien upon real property or part thereof.

(c) "Subsequent owner" means the person to whom property is transferred whether as owner, part owner, or otherwise, or the successors in interest of the person, and includes a distributee of the estate of a decedent.

(d) "Transfer" means voluntary or involuntary transfer and includes a conveyance, reconveyance, satisfaction of a lien, or divestment by judgment, decree, or otherwise. The probate of the estate of a decedent and entry of the decree of distribution is a transfer within the meaning of this subdivision.

Comment. Section 770.010 is drawn from the first sentence of the first paragraph of former Section 751a for simplicity of drafting.

§ 770.020. Proceeding authorized

770.020. If property is acquired or stands of record in the name of a person who heretofore or hereafter transfers the property under a name other than or different from the name in which the property is acquired or stands of record, a proceeding is authorized to adjudicate and determine the identity of the person in whose name the property is acquired or stands of record and the person who transfers the property.

Comment. Section 770.020 continues the substance of the first sentence of the first paragraph of former Section 751a. See also Section 770.010 (definitions).

4466

§ 770.030. Jurisdiction and venue

770.030. The proceeding shall be brought in the superior court of the county in which the property or any part thereof is situated.

Comment. Section 770.030 continues the substance of the first portion of the first sentence of the second paragraph of former Section 751a.

4270

§ 770.040. Parties and pleadings

770.040. (a) The proceeding may be brought by a subsequent owner of the property by filing a petition with the court.

(b) At any time before the date fixed for the hearing of the petition, any person interested in the property may answer the petition and deny any of the matters contained therein.

Comment. Subdivision (a) of Section 770.040 continues the substance of the last portion of the first sentence of the first paragraph of former Section 751a. See also Section 770.010 (definitions).

Subdivision (b) continues the substance of the first sentence of the fourth paragraph of former Section 751a.

3073

§ 770.050. Petition

770.050. (a) The petition shall be verified in the manner provided for verification of a complaint.

(b) The petition may be substantially entitled, "In the matter of the determination of the identity of \_\_\_\_\_" (naming all the persons sought to be identified), and may set forth:

(1) A statement of petitioner's interest in the property as subsequent owner.

(2) A particular description of the property.

(3) The name or names of the person or persons sought to be identified, setting out the name and a reference to the record of the transaction under which the property was acquired or stands of record and the name and a reference to the record of the transaction under which the property was transferred or stands of record, that the names are the names of the same person, and that the transfers affect the petitioner's title to the real property.

(4) A prayer that the identity of such persons be established.

(c) As many persons sought to be identified as appear of record in the chain of title to the property may be joined in one petition or proceeding.

Comment. Subdivision (a) of Section 770.050 continues the substance of the last portion of the first sentence of the second paragraph of former Section 751a.

Subdivision (b) continues the substance of the second sentence of the second paragraph.

Subdivision (c) continues the substance of the second sentence of the first paragraph of former Section 751a.

3072

§ 770.060. Notice of hearing

770.060. (a) Upon the filing of the petition, the clerk shall set the petition for hearing by the court.

(b) The petitioner shall give notice of the hearing by causing notices of the time and place of hearing to be posted at the courthouse of the county where the proceeding is pending and in a conspicuous place on the real property described in the petition, at least 10 days before the hearing.

(c) The special notice shall be substantially in the following form:

(Title of court and cause)

Notice is hereby given that ..... has filed a petition herein claiming to be the owner (or distributee) of the following described lands ..... (description) and praying that the identity of the following-named persons, in former conveyances (or judgments or decrees) to said lands or in decrees of distribution of said lands in probate be determined, to wit: ..... (names as J. Doe and John Doe); and that the time and place of hearing said petition has been set for ..... the .... day of ....., 19...., at the hour of ....., ....m. of said day at the courtroom of said court in the city of ....., county of ....., State of California.

.....  
Clerk

Comment. Subdivisions (a) and (b) of Section 770.060 continue the substance of the first sentence of the third paragraph of former Section 751a. Subdivision (c) continues the second sentence of the third paragraph.

3068

§ 770.070. Hearing and appeal

770.070. (a) At the time fixed for the hearing or such time thereafter as may be fixed by the court, the court shall hear the proofs offered by the petitioner and by any persons answering the petition, and shall make and enter a decree determining the identity of the person or persons set out in the petition in accordance with the proofs.

(b) An appeal may be taken by any party aggrieved.

Comment. Subdivision (a) of Section 770.070 continues the substance of the second sentence of the fourth paragraph of former Section 751a.

Subdivision (b) continues the first sentence of the fifth paragraph of former Section 751a.

3067

§ 770.080. Effect of decree

770.080. (a) After the decree has become final it constitutes prima facie evidence of the matters thereby determined and it is presumed that the identity of the person or persons described in the decree is such as is stated in the decree.

(b) A certified copy of the decree shall be recorded in the office of the county recorder of every county in which any part of the property is situated.

Comment. Subdivision (a) of Section 770.080 continues the substance of the second sentence of the sixth paragraph of former Section 751a.

Subdivision (b) continues the substance of the third sentence of the sixth paragraph of former Section 751a.

3066

Article 2. Land Dedicated for Public Improvement

§ 771.010. Presumption that dedication not accepted

771.010. If a proposal is heretofore or hereafter made to dedicate real property for public improvement, there is a conclusive presumption that the proposed dedication was not accepted if all of the following conditions are satisfied:

(a) The proposal was made by filing a map only.

(b) No acceptance of the dedication was made and recorded within 25 years after the map was filed.

(c) The real property was not used for the purpose for which the dedication was proposed within 25 years after the map was filed.

(d) The real property was sold to a third person after the map was filed and used as if free of the dedication.

Comment. Section 771.010 continues the substance of the first portion of former Section 748.5.

3063

§ 771.020. Action to clear title authorized

771.020. (a) An action is authorized to clear title to real property of a proposal to dedicate the property for public improvement if there is a conclusive presumption pursuant to Section 771.010 that the proposed dedication was not accepted.

(b) The action shall be pursuant to Chapter 4 (commencing with Section 760.010) and shall have the following features:

(1) The public entity to which the dedication was proposed shall be named as defendant.

(2) The judgment in the action shall clear the title of the proposed dedication and remove the cloud created by the proposed dedication.

Comment. Section 771.020 continues the substance of the last portion of former Section 748.5.

3062

Article 3. Right of Entry or Occupation of  
Surface Lands Under Oil or Gas Lease

§ 772.010. Scope of article

772.010. This article applies only to lands within a city in any county with a population exceeding 4,000,000, or with a population of more than 700,000 and less than 710,000 as determined by the 1960 Federal Decennial Census.

Comment. Section 772.010 continues the substance of former Section 751.3(g).

3057

§ 772.020. Definitions

772.020. As used in this article:

(a) "Surface zone" means the zone which lies above a plane which is 500 feet below the surface of the land.

(b) "Subject land" means that area occupied by the particular described surface and surface zone for which plaintiff seeks to terminate the leasehold right of entry and occupation.

(c) "Lease facilities" means storage tanks, wash tanks, separators, heaters, and other facilities reasonably necessary for the production of oil or gas, including secondary recovery operations.

Comment. Section 772.020 continues the substance of former Section 751.3(e).

26/958

§ 772.030. Action to terminate right of entry or occupation authorized

772.030. (a) If a mining rights lease, including a community lease, exists for the production of oil, gas, or other hydrocarbons, and

a right of entry or occupation provided by the lease encumbers all or part of the surface or surface zone of the leasehold lands, any person who owns a fee interest in the surface of the leasehold lands may bring an action in the superior court to terminate the right of entry or occupation as to all or some described portion of the surface and surface zone of the leasehold lands in which the person owns an interest.

(b) No judgment rendered pursuant to this article shall change or affect the terms or operation of any valid unit agreement or valid operating agreement which comes within the provisions of Section 3301 or 3321 of the Public Resources Code.

Comment. Subdivision (a) of Section 772.030 continues the substance of former Section 751.3(a). Subdivision (b) continues the substance of former Section 751.3(f).

26/957

§ 772.040. Requirements for termination

772.040. The court may render a judgment or decree terminating the lessee's right of entry or occupation of the surface and surface zone, subject to such conditions as the court deems fair and equitable, if the evidence shows each of the following:

(a) The document that created the leasehold interest was originally executed more than 20 years prior to filing the action under this article regardless of any amendments to the document. However, if any amendment was entered into expressly for the purpose of waiving, limiting, or rearranging surface rights of entry and occupation by the lessee, the 20-year period shall be computed as if the document were originally executed on the date of execution of the amendment.

(b) The subject land is not presently occupied by any of the following:

(1) A producing oil or gas well or well bore.

(2) A well or well bore being utilized for injection of water, gas, or other substance into geologic substrata as an aid to oil or gas production or to ameliorating subsidence.

(3) A well or well bore being utilized for the disposal injection of waste oil well brine and byproducts.

(4) A well or well bore being utilized for the production of water for use in oil field injection, waterflood, and pressure maintenance programs.

(c) Termination of the right of entry or occupation within the subject land in the manner requested by the plaintiff, or subject to such conditions as the court may impose pursuant to this section, will not significantly interfere with the right of the lessee, under the lease, to continue to conduct operations for the continued production of oil from leasehold strata beneath the surface zone in a practical and economic manner, utilizing such production techniques as will be appropriate to the leasehold area, consistent with good oilfield practice, and to gather, transport, and market the oil.

Comment. Section 772.040 continues the substance of former Section 751.3(b).

26/955

§ 772.050. Qualified termination

772.050. (a) The court may qualify the decree terminating the surface and surface zone right of entry or occupation so as to provide for limited surface and surface zone easements that the lessee may continue to enjoy within the subject land.

(b) A decree may be conditioned upon the relocation of pipelines, roadways, equipment, or lease facilities in such manner as will most effectively free the subject land for surface use while safeguarding continued oil and gas operations in a practical and economic manner. Any such condition of the decree shall require the plaintiff to pay the costs of the relocation. However, the plaintiff shall be entitled to a setoff against the costs to the extent of any benefit to the lessee resulting from the installation of new equipment or material. The plaintiff has the burden of proving any benefit accruing to the lessee.

Comment. Section 772.050 continues the substance of former Section 751.3(c).

§ 772.060. Waiver of rights prohibited

772.060. It is against public policy for any oil or gas lease, at its inception, to provide for the waiver of any rights created by this article, or for such rights to be waived by amendment to any oil or gas lease within 20 years of the date of its execution by a plaintiff or the plaintiff's predecessor in interest.

Comment. Section 772.060 continues the substance of former Section 751.3(d).

Code of Civil Procedure §§ 801.1-801.15 (renumbered)

SEC. . Chapter 4A (commencing with Section 801.1) of Title 10 of Part 2 of the Code of Civil Procedure is renumbered to read:

CHAPTER ~~4A~~ 4.6. ACTIONS CONCERNING REAL PROPERTY TITLES

AFFECTED BY PUBLIC IMPROVEMENT ASSESSMENTS

Comment. Former Chapter 4A is renumbered as Chapter 4.6 (commencing with Section 801.1) for consistency with the numbering of the other chapters of Title 10.