

## Memorandum 79-36

Subject: Study H-500 - Quiet Title Actions (Comments on Tentative Recommendation)

The Commission's tentative recommendation relating to quiet title actions was distributed for comment to title companies and other interested persons in May 1979. A copy of the tentative recommendation is attached. The purpose of the tentative recommendation is to provide a direct in rem quiet title action as a means of enhancing marketability of title without having to use devices such as partition or adverse possession actions to obtain an in rem decree.

The only comment on this tentative recommendation that we have received is from Mr. Garrett Elmore, attached as Exhibit 1. Mr. Elmore served as the Commission's consultant in preparing the partition statute, which enables an in rem quiet title decree. The points raised by Mr. Elmore are analyzed below in the order in which he raises them. We hope to approve the tentative recommendation to print and for submission to the Legislature as a final recommendation, after making such changes as appear to be necessary.

Foreclosure of Valid Interests

An in rem decree requires the joinder of "all persons, known and unknown, having or claiming any right, title, or interest in the property." To accomplish joinder, known persons are actually served and unknown persons are served by posting and publication. Inherent in this process is the likelihood that persons served as unknown persons will never receive notice of the proceeding, and that valid interests in the property might be foreclosed. Cases have upheld the constitutionality of in rem procedures against due process challenges if reasonably diligent efforts are made to ascertain and locate all known persons, through tracing of records and inspection of the property.

The Commission's quiet title draft conforms to constitutional requirements. Section 763.010 permits the court to order service on unknown persons by publication if "it appears to the satisfaction of the court that the plaintiff has used reasonable diligence to ascertain the identity and residence of and to serve summons on the persons named as unknown defendants." Mr. Elmore suggests that greater statutory defini-

tion of what persons are "known" for the purposes of the in rem decree is important, referring to Gerhard v. Stephens, 68 Cal.2d 864, 442 P.2d 692, 69 Cal. Rptr. 612 (1968). In Gerhard the court pointed out "the general rule that a party in the actual possession of real property cannot be regarded as an 'unknown' person so as to be bound by a decree based upon published service." 68 Cal.2d at 908. The court also pointed out that reasonable diligence to ascertain known claimants does not require that a plaintiff must "pursue every missing link in the chains of title or trace every stray deed recorded since the first volume of deeds. Such a requirement would defeat the intent of the Legislature to permit a party occupying and using the property for a given period to obtain a marketable title." 68 Cal.2d at 909.

In view of these observations, the staff believes it would be useful to make clear in the statute that persons in possession must be actually served. The determination of what constitutes reasonable diligence must be left to the trier of fact in the circumstances of each case. The staff would add to Section 763.010 the following provision:

(c) Nothing in this section authorizes service by publication upon any person named as an unknown defendant who is in open and actual possession of the property.

Comment. Subdivision (c) codifies case law. See, e.g., Gerhard v. Stephens, 68 Cal.2d 864, 908, 442 P.2d 692, \_\_\_, 69 Cal. Rptr. 612, \_\_\_ (1968); Manuel v. Kiser, 94 Cal. App.2d 540, 545, 210 P.2d 918, \_\_\_ (1949).

Mr. Elmore also has a number of other suggestions to help ensure adequacy of the notice to the defendants. He would permit the court to require an abstract of title and to appoint a referee to investigate the "reasonable diligence" exercised by the plaintiff in seeking out unknown defendants. Based upon the partition statute, such provisions would read:

762.040. The court shall upon its own motion or upon motion of any party make such orders ~~for joinder of additional parties~~ as are necessary or proper :

(a) For joinder of additional parties.

(b) Requiring the plaintiff to procure a title report and designate a place where it shall be kept for inspection, use, and copying by the parties .

Comment. Subdivision (a) of Section 762.040 is comparable to a portion of Section 872.520(c) (partition).

Subdivision (b) is drawn from Section 872.220 (partition). It may be particularly useful where defendants are joined as unknown persons.

763.010. (b) If upon affidavit it appears to the satisfaction of the court that the plaintiff has used reasonable diligence to ascertain the identity and residence of and to serve summons on the persons named as unknown defendants and persons joined as testate or intestate successors of a person known or believed to be dead, the court shall order service by publication pursuant to Section 415.50 and and provisions of this article. The court may, in its discretion, appoint a referee to investigate whether the plaintiff has used reasonable diligence and to ascertain the identity and residence of persons sought to be served by publication, and the court may rely on the report of the referee instead of the affidavit of the plaintiff in making the order for service by publication.

Comment. Subdivision (b) also authorizes the court to appoint a referee to investigate the facts on behalf of the court where service by publication is sought. The authority provided is a specific instance of the general authority contained in Section 638(1).

Whether the plaintiff has used reasonable diligence to ascertain the location and identity of known and unknown defendants is a matter to be determined by the trier of fact under the circumstances of the particular case. See, e.g., *Gerhard v. Stephens*, 68 Cal.2d 864, 908-10, 442 P.2d 692, \_\_\_, 69 Cal. Rptr. 612, \_\_\_ (1968).

The staff recommends that these provisions be adopted.

Mr. Elmore further suggests that the statute make provision for awarding attorney's fees and apportioning costs, as in partition. The staff would be reluctant to abandon the general rules as to attorney's fees and costs here. Mr. Elmore's concern appears to be with liens, encumbrances, and other minor interests forced to appear and defend in an in rem action, rather than with foreclosure of valid interests without notice. The staff suggests a more direct approach to take care of these interests: permit the plaintiff to obtain an in rem decree while specifically admitting or accepting the validity of specified interests in the property. In this way only those interests in which there is a real issue will be litigated. This can be done by the following revisions:

761.020. The complaint shall be verified and shall include all of the following:

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

762.060. (a) In addition to the persons required to be named as defendants in the action, the plaintiff may name 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 the plaintiff's title, or any cloud upon plaintiff's title," naming them in that manner.

(b) If the plaintiff admits the validity of any adverse claim, the complaint shall so state.

Comment. Subdivision (b) adds express authority to admit by pleadings the validity of an adverse claim, thereby enabling an action to determine title as against all persons, known and unknown, with specified exceptions. This will avoid the need to litigate interests accepted as valid to which the plaintiff's title is subject. See Section 764.010.

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, other than claims the validity of which is admitted by the plaintiff in the complaint. The court shall render judgment in accordance with the evidence and the law.

Section 764.060 provides a relatively short period of 180 days during which a quiet title judgment may be set aside. The purpose of the short period is to enhance the marketability of the property. Mr. Elmore would like to see the general provisions of Section 473.5 apply. Section 473.5 permits a motion to set aside a judgment for up to two years after entry where the judgment was based on default due to lack of actual notice. The concern here is that where valid interests are foreclosed by an in rem action in which service was made by publication, 180 days is not a reasonable time for the holder of the foreclosed interest to become aware of the judgment and take action to remedy the situation. The policy question is: Which deserves greater protection--marketability of title or the possibility that there is an unknown valid claim that has been foreclosed? The Commission should decide this policy question. The staff believes the two can be reconciled by permitting challenges for the longer period while protecting the rights of bona fide transferees, damages being the appropriate remedy. Section 764.060(b) does this to a limited extent. The staff would replace Section 764.060 by a broader provision:

764.060. The relief granted in an action or proceeding directly or collaterally attacking the judgment in the action, whether based on lack of actual notice to a party or otherwise, shall not impair the rights of a bona fide purchaser or encumbrancer for value of the property.

Comment. Section 764.060 is intended to enhance the marketability of property as to which an in rem quiet title decree has been rendered. An action or proceeding directly or collaterally attacking the judgment in the action may not affect the rights of bona fide purchasers of the property; the plaintiff in the action or proceeding may be relegated to a damage remedy. Section 764.060 does not prescribe limitations periods for direct or collateral attack on a quiet title judgment. Such periods are governed by other law. See, e.g., Sections 473, 473.5.

Under existing law, title is quieted as of the date the complaint is filed. Section 761.020(d) permits the plaintiff to seek a declaration of rights as of a specified date. This implements suggestions of several commentators that it would be useful to allow such a procedure where the concern is with some point earlier in the chain of title, and not with subsequent events. Mr. Elmore has problems with this provision. He asks what happens if a defendant cross-complains seeking a determination of rights as of a different date. The staff sees no problem here--the court will have to make two determinations of rights, one pursuant to the complaint and one pursuant to the cross-complaint, for each date as of which a determination of rights is sought. Mr. Elmore also is concerned about long-established claims and minor claims being subjected to the quiet title action. If the Commission adopts the suggestion above to permit the plaintiff to admit the validity of claims, this problem would also be resolved.

#### Separation of In Rem Provisions

Mr. Elmore points out that as drafted, the quiet title provisions appear to encourage in rem actions, whereas in most cases a quasi-in-rem action would be more appropriate and preferable. He suggests that the availability of both types of actions should be made distinct, perhaps by creating separate chapters on in rem and quasi-in-rem actions. The staff believes this can be accomplished by the following revisions:

761.020. The complaint shall be verified and shall include all of the following:

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

Comment. Subdivision (c) ~~recognizes that the~~ requires the naming of the specific adverse claims as to which the plaintiff seeks to quiet title. The plaintiff may also 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 , including pleading 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).

762.010. The plaintiff shall name as defendants in the action the persons having adverse claims ~~that are of record or known to the plaintiff or reasonably apparent from an inspection of the property to the title of the plaintiff as to which a determination is sought .~~

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. For joinder requirements where the name or interest of the defendant is unknown or where the defendant is deceased, see Sections 762.020 and 762.030. ~~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. This provision is drawn from Section 872.510 (partition). For the effect of failure to join holders of interests actually known to the plaintiff or reasonably apparent from an inspection of the property, see Section 764.050. For joinder of unknown persons, see Section 762.060.~~

762.060. (c) In an action under this section, the plaintiff shall name as defendants the persons having adverse claims that are of record or known to the plaintiff or reasonably apparent from an inspection of the property.

Comment. Subdivision (c) 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. This provision is drawn from Section 872.510 (partition). For the effect of failure to join holders of interests actually known to the plaintiff or reasonably apparent from an inspection of the property, see Section 764.050.

#### Transition Provisions

Mr. Elmore suggests that transition provisions would be useful. Since we are not making major changes in procedures, other than authorizing the new in rem proceeding, it would be possible to apply either old law or new law to actions pending at the time the new act becomes effective. However, there may be minor procedural changes, such as in

the contents of the complaint, manner of service, etc., so the staff suggests that for simplicity old law should continue to govern actions commenced prior to the effective date and new law should govern actions commenced after the effective date.

Actions commenced on or after the effective date of this act are governed by this act. Actions commenced before the effective date of this act are governed by the applicable law in effect prior to the effective date.

#### Preservation of Case Law

Mr. Elmore is concerned that the recodification of the quiet title provisions might be construed to overrule a line of cases that permits the court to require the plaintiff to do equity as a condition to quieting title in the plaintiff. The staff has no objection to adding the following provision to Section 760.040 (jurisdiction of court):

(c) Nothing in this chapter shall be deemed to limit any authority the court may have to grant such equitable relief as may be proper under the circumstances of the case.

Comment. Subdivision (c) makes clear that the recodification of the quiet title provisions in this chapter does not impair any equitable powers of the court. Cf. 3 B. Witkin, California Procedure Pleading § 534 (2d ed. 1971) (plaintiff's offer to do equity).

Mr. Elmore is also concerned about possible loss of case law interpretations of the law. To the extent the law is changed, the relevance of case law is diminished. To the extent the law is the same, the relevance of case law is preserved. This is a continuing concern with all the Commission's recommendations. We state in our Annual Report that, "While the Commission endeavors in the Comment to explain any changes in the law made by the section, the Commission does not claim that every inconsistent case is noted in the Comment, nor can it anticipate judicial conclusions as to the significance of existing case authorities." The staff does not believe we can do any more than this. We do plan to add a reference to the Gerhard case on interpretation of "reasonable diligence" under Section 763.010.

#### Tolling Limitation Periods for Disability

Mr. Elmore points out that existing law tolls limitation periods during which persons under disability such as minors and incompetent persons may bring actions relating to title by adverse possession. This is inconsistent with Section 764.060, which purports to strictly limit

the period during which a quiet title decree is subject to challenge. If the Commission accepts the revision of Section 764.060 suggested above by the staff to simply protect bona fide purchasers and preserve existing time periods, the apparent inconsistency will be eliminated. As to the more general question of whether the adverse possession statutes are in need of revision, the staff believes they are. However, that is beyond the scope of this recommendation, which is intended as strictly procedural. Perhaps we can review the substantive aspects of the adverse possession provisions in connection with our broader study of marketable title, which we hope to discuss next month.

#### Termination of Oil and Gas Leases

Mr. Elmore notes that Civil Code Section 794 provides an expeditious means of clearing title to property subject to an expired oil or gas lease and suggests that the provision be cross-referenced in some manner. The staff plans to add the following references in the Comment to Section 760.030 (remedy cumulative): "For special actions and proceedings to clear title, see Sections 770.010-770.080 (identity of person in chain of title), 771.010-771.020 (land dedicated for public improvement), and 772.010-772.060 (right of entry or occupation of surface lands under oil or gas lease). See also Civil Code § 794 (quitclaim of expired oil, gas, or mineral lease)."

#### Deferred Operative Date

Mr. Elmore asks whether the new act is to have a deferred operative date. In light of the relatively minor procedural changes the new act will make and in light of the intent of the new act to authorize a proceeding not now generally available, the staff believes the new act should take effect at the normal time, which would be January 1 following the year of enactment, and sees no need to provide a deferred operative date.

#### Conforming Changes

Mr. Elmore asks whether there is to be a search of the codes for conforming changes. We have made a limited search and the conforming changes that appear to us to be necessary are set out in the yellow sheets following the text of the proposed statute. Mr. Elmore's particular concern is with Civil Code Section 1006. This section appears



on the first yellow page (page 17 of the tentative recommendation) with our proposed conforming revisions indicated.

Respectfully submitted,

Nathaniel Sterling  
Assistant Executive Secretary

## EXHIBIT 1

GARRETT H. ELMORE

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(415) 347-5665

August 18, 1979

John H. DeMouilly  
California Law Revision Commission  
Stanford, Ca. 94305

Re: Quiet Title Actions-Tentative Recommendation-May, 1979

Dear Mr. DeMouilly:

Following are certain personal comments and thoughts on the above recommendation. They are submitted in my individual capacity. They are not based on any claimed expertise or on in-depth study. However, I did have experience in times past with McEnerney, CCP 749, 738 and clearing title to a section of land of small value with about eight undivided ownerships, for an oil and gas lease. I have now read the Hastings and Yale law review articles and reviewed some of the California cases, including Gerhard v. Stephens (1965) 68 Cal. 2d 864.

As you know, I was consultant in the partition revision. But, as pointed out below, quiet title is a broader remedy with greater potential for mischief. Moreover, I do not feel bound by everything in the recent partition statute.

Policy.

1) It is my belief the Recommendation goes too far in acceptance of the arguments of commentators for an in rem proceeding to provide "marketable title" (whatever that is). It will be a source of mischief in closing out valid interests. California is a litigious state with a certain potential for taking advantage of what the law permits. Further, marketable title advocates seem to ignore the inconvenience and expense which may result to persons holding valid interests when compelled to respond to an in rem proceeding brought at the whim of an owner of property or an interest therein. The existence of an in rem remedy (and lack of prominence of the CCP 738 quasi in rem remedy-see 2), infra) would seem to increase the incidence of bringing in all parties, including undisputed encumbrancers and lessees. There is no provision for attorney and other expenses for such persons and one would be difficult to write.

In sum, it is submitted the "marketable title" argument

as presented in the law review articles gives only one side of the picture, i. e., the position of an owner or claimed adverse possessors who, in person or by predecessors, has neglected to perfect record title or to remove clouds and suddenly wants to clear title to consummate a transaction.

Moreover, as pointed out below, the purpose seems to require draconian measures to limit the rights of persons having valid interests who are not served except by publication and who have no actual notice of the proceeding which will often cut off their rights. The Yale article frankly recognizes that some rights will be cut off. It suggests an indemnity fund (provided for by the Torrens Act and of doubtful viability). It also refers to constitutional procedural due process questions under the principles of the Mullane decisions of the United States Supreme Court.

It is therefore suggested that the present text be re-examined to insert provisions that give greater protection to the interests required to implead or as to which a quiet title decree is sought. Consideration should be given to (i) giving the court discretion to require an abstract of title (see partition statute), (ii) permitting the court (in express terms) to appoint a referee to examine into and report upon such matters as proof of claims upon encumbrances and liens and facts as to exercise of "reasonable diligence" to learn identity and whereabouts of persons having record interests or other "known" interests, so reliance will not have to be placed solely on the affidavit allegations, (iii) working out some format so that the court makes attorney's fee awards (see partition statute), (iv) appropriate provisions as to costs and expenses (see partition statute), (v), certainly as to time limits and format, let general law provisions apply (CCP 473, 473.5) as in the partition statute, and (vi) eliminating the provisions that plaintiff may seek determination of title as of a particular date, unless it is worked out better (example: can a defendant cross complain seeking determination as of the present time and override the plaintiff; example, suppose both or all claimants derive title from a common grantor and one is not concerned with earlier interests such as easements or encumbrances of ancient date). Should the prior date, for example, be limited to one within the preceding 20 or 10 years, so that minor defendants will not have to sit through evidence which does not concern them or stipulate on some basis?

In citing other in rem statutes, the Recommendation in my belief does not sufficiently note that these statutes are "special" statutes. They are available in limited circumstances, except possibly CCP 749, 749.1 could be classified as "general" statutes. The sometime use of the partition statute as a quiet title statute only seems to me to be unsound. With enactment of a general in rem statute in California to establish title, it is believed the problems of valid interests cut off will multiply and, if the procedure is too simplified the burden on the courts and judges will increase.

In *Gerhard v. Stephens* (1965) 68 Cal. 2d 864 the California Supreme Court refused to give effect to two prior All Persons quiet title decrees to wipe out the interests of successors to a corporate oil and gas lease having an interest of record. The decision narrowly interpreted CCP 749 et seq., when the interests were of record, even preceding the cut off time expressed in CCP 749. (The property apparently became producing oil property in later years.)

2) It is my belief that the present text does not sufficiently distinguish, and encourage, quasi in rem actions. This is perhaps a matter of drafting style, since such actions seem clearly permitted. The concern is that practitioners will be encouraged to file All Persons suits as a matter of routine, when there is no practical necessity therefor. It does not seem likely that in the near future at least purchasers and lenders will forego title insurance and rely instead upon an in rem decree (compare Yale article indicating that such a result might be possible).

It is believed that one part might be Quasi In Rem Actions and another part In Rem Actions.

The present quasi in rem action is understood and is adequate for many situations where the purpose is to resolve disputes between existing known parties and not to "clear" title as a whole. The suggestions supra for added protections and safeguard provisions, with expense and attorney's fee provisions, do not apply. In sum, the two types of proceedings should be clearly provided for.

3) It is my belief that transitional provisions should be carefully framed. Example: If existing sections are repealed, what is the effect upon pending actions throughout the state (numerous)? If as suggested in (2) the quasi in rem and in rem procedures are clearly distinguished, it would be easier to draw transition provisions.

4) The Recommendation does not in statute or by comment indicate the extent to which existing California interpretations are intended to be continued. A primary source of concern is the line of cases requiring the party obtaining affirmative relief to "do equity," in the form of paying off a mortgage foreclosure of which is barred by the statute of limitations. Other examples: certain outlawed liens ( I believe), reimbursement for certain expenditures for the upkeep of the property. The Yale article, for example, condemns such forms of decree as "hostile" to quiet title actions. The writer personally believes the California "equity" approach is fairer. But the intent for continuation or non continuation should be stated in some fashion. Preferably it would take the form of wording as to permissible forms of judgment or "nothing herein shall preclude the court from... (etc.). Note: In a revision of stays on appeal, the State Bar committee changed wording somewhat and raised a very substantial question as to stays in probate distributions which had been settled by earlier Supreme Court decision. Corrective amendments were later necessary. Another example of importance: Is it intended to retain the Gerhard construction that owners of record interests are "known" owners and reasonable diligence is required, though what is reasonable diligence turns in part on the time when the interest was shown of record?

5) Is there an apparent inconsistency between the proposed statute and various tolling provisions of CCP 328 (disability)? The proposed statute ignores the disability recognized by CCP 328, as to the effect of a decree. There appears no case interpreting CCP 749, 749.1 vis a vis CCP 318 et seq. and CC 1006. Arguably, a case may be made for shortening the adverse possession period as to minors and incompetents at least. This may not be within the scope of the study or may have been considered and rejected. If so, the only point suggested is that the difference be pointed out more specifically (cf. Recommendation. p 3, and under Sec. 764.060, p. 16).

6) In the case of oil and gas or mineral leases, is there need to indicate the relationship between the proposed statute and other statutes, e. g., proposed 772.010 et seq. and its predecessor-CCP 751.3, and present CC 794 (duty to quitclaim upon demand after term of lease has expired or the lease has been abandoned). It would seem some reference in the Recommendation should be made to the latter, as it is an expeditious way of removing a cloud. As to the former,

the new statute is declared cumulative; hence, no direct conflict. However, the form and occasion for relief appear in one statute and not the other. Probably, the most that can be done is to call attention in the "relief" sections Comment, to the "special" statute-limited to two counties.

7) Is there to be a deferred operative date?

8) What is the intent as to conforming changes, i. e., a search of the codes. Note, e. g., CC 1006 (which has not been conformed to present CCP 749, 749.1.

#### General Approval

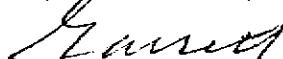
There is need for revision in this area. In my opinion, the tentative Recommendation shows careful thought and drafting, in the best tradition of the Commission.

For the reasons indicated above, it is my opinion the measure is not yet in satisfactory form. I would hope that further work and study would be done before the Commission makes its final recommendation.

In my belief, unless the bill is further refined and the report and comments expanded somewhat, it should not be pressed for enactment, at the coming session.

Quiet title, unlike partition, is a heavily used form of action. As indicated, I feel that too great emphasis has been placed on "advocacy" law review articles that represent a single point of view, hoping that a somewhat simplified solution will work. Much as I would like to agree, I cannot personally reach that conclusion.

Respectfully,



Garrett H. Elmore

P. S. I have some comments on details which I can submit after the policy questions above are (or have been decided). They are not too great, but I would like to see new wording as to known and unknown parties, permissible judgments (equitable relief) and the matter of cross complaints better covered.

G. H. E.

STATE OF CALIFORNIA  
CALIFORNIA LAW  
REVISION COMMISSION

TENTATIVE RECOMMENDATION

relating to

QUIET TITLE ACTIONS

CALIFORNIA LAW REVISION COMMISSION  
Stanford Law School  
Stanford, California 94305

Important Note: This tentative recommendation is being distributed so that interested persons will be advised of the Commission's tentative conclusions and can make their views known to the Commission. Any comments sent to the Commission will be a matter of public record unless confidentiality is requested, and will be considered when the Commission determines what recommendation, if any, it will make to the California Legislature. It is just as important to advise the Commission that you approve the tentative recommendation as it is to advise the Commission that you object to the tentative recommendation or that you believe that it needs to be revised. COMMENTS ON THIS TENTATIVE RECOMMENDATION SHOULD BE SENT TO THE COMMISSION NOT LATER THAN AUGUST 15, 1979.

The Commission often substantially revises tentative recommendations as a result of the comments it receives. Hence, this tentative recommendation is not necessarily the recommendation the Commission will submit to the Legislature.

## 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

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1. Code Civ. Proc. §§ 738, 739.
  2. Finnegan, Problems and Procedures in Quiet Title Actions, 26 Neb. L. Rev. 485, 486-88 (1947).
  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.

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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 and fire, 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 the time of the lawsuit or any time prior thereto. 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

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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 interim decree should be authorized without a further period of delay if the basic substantive requirements for title by adverse possession are satisfied.

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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 headings of Chapter 3 (commencing with Section 738) and 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.

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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).

§ 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 for 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).

§ 760.050. Venue

760.050. Subject to the power of the court to transfer actions, the proper county for the trial of an action 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.

§ 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 all of the following:

(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 the 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. This provision is drawn from Section 872.510 (partition). For the effect of failure to join holders of interests actually known to the plaintiff or reasonably apparent from an inspection of the property, see Section 764.050. 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 762.060.

(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 as are necessary or proper.

Comment. Section 762.040 is comparable to a portion of Section 872.520(c) (partition).

§ 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).

§ 762.060. Joinder of "all persons unknown"

762.060. In addition to the persons required to be named as defendants in the action, the plaintiff may name 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.

§ 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.

§ 762.080. Appointment of guardian ad litem

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

Comment. Section 762.080 is comparable to a portion of 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.

100/963

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 has used reasonable diligence to ascertain the identity and residence of and to serve summons on the persons named as unknown defendants and persons joined as testate or intestate successors of a person known or believed to be dead, the court 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~~ but the title conferred by ~~such~~ occupancy ~~shall not be~~ is not 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 of the Code of Civil Procedure of this state~~ , unless ~~such~~ the occupancy ~~shall have~~ has ripened into title by prescription.

Comment. Section 1006 is amended to reflect the relocation of the quiet title provisions and to make nonsubstantive drafting improvements.

045/076

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, estate, interest or lien in such real property or cloud upon the title of plaintiff there- to, and the plaintiff may describe such unknown defendants in the com- plaint 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 plain- tiff'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 plain- tiff'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 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 pro- ceedings 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 there- to, and the plaintiff may describe such unknown defendants in the com- plaint 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 plain- tiff'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 plain- tiff'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 proceed- ings 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



thereto of this code; if there is no such defendant that fact shall be stated.

(b) The names of all the defendants who have been served, if any, if there is none that fact shall be stated.

(c) The names of the defendants not served whose places of residence are known to the plaintiff and their respective places of residence.

(d) The names of the defendants not served whose place of residence is unknown to the plaintiff.

All known defendants shall be served in the manner provided by law for the service of a summons in a civil action.

Incept as otherwise provided upon the making and filing of the aforesaid affidavit the court or a judge thereof shall make an order directing the summons to be served upon all the unknown defendants as stated in the complaint and summons by publication in some daily or weekly newspaper of general circulation printed and published in the county where the property is situated; and if there be no such paper in such county, then in some adjoining county to be designated by the court or a judge thereof, which publication shall be pursuant to Section 6064 of the Government Code.

All such unknown persons so served shall have the same rights as are provided by law in cases of all other defendants named and served; and the action shall proceed against such unknown persons in the same manner as against the defendants who are named and served; and with like effect and any such unknown person who has or claims to have any right, title, estate, lien or interest in the property or cloud on the title thereto adverse to plaintiff at the time of the commencement of the action who has been duly served as aforesaid, and anyone claiming under him, shall be considered by the judgment in such action as effectually as if the action was brought against the person by his or her name and personal service of process was obtained, notwithstanding any such unknown person may be under legal disability. Service shall be deemed complete upon the completion of the publication.

In the event that service of any summons shall be required to be by publication as to any defendant, including a defendant as to whom the

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 byproducts.

(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 proceeding.

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 xxxxxxx" (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 [redacted] has filed a petition herein claiming to be the owner (or distributee) of the following described lands [redacted] (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: [redacted] (names as J. Doe and John Doe); and that the time and place of hearing said petition has been set for [redacted] the [redacted] day of [redacted], 19[redacted] at the hour of [redacted] [redacted] of said day at the courtroom of said court in the city of [redacted], county of [redacted], State of California.

**Glerk**

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 (Chapter heading)

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

CHAPTER 4A- 4.6. ACTIONS CONCERNING REAL PROPERTY TITLES

AFFECTED BY PUBLIC IMPROVEMENT ASSESSMENTS

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