

# MARYLAND'S QUIET TITLE ACT

Jay Abarbanel – Fedder and Garten Professional Association

[jay@fedgar.com](mailto:jay@fedgar.com)

410-539-2800

# Applicable Statutes and Maryland Rules

- Md. Code Ann., Real Prop. § 14-108
  - First enacted 1955; last amended 2016
- Md. Code Ann., Real Prop. § 14-601 et. seq.
  - Enacted 2016
  - Establishes procedures for quiet title actions
  - MLTA input – requested uniform process throughout jurisdictions
  - Modeled on California law

# Types of Issues Corrected Using Quiet Title

- Missing interest/interest not properly conveyed
- Incorrect legal descriptions
- Adverse Possession
- Boundary disputes
- Executing deed without authority or in the wrong capacity
- Owner attacking validity of a lien
- Invalidating an easement or establishing easement
- Inadvertently added to title

# Is Possession of the Property Required?

- Why is it important?
  - A lender might be the plaintiff seeking to correct title to make sure its borrower owns 100% of the property thereby ensuring its deed of trust is a lien against 100% of the property.
  - Example: Bob buys property from Sam and Sally. Bob signs a deed of trust with Baltimore Bank. However, the deed conveying the property to Bob was only executed by Sam, Sally is now deceased, and no estate has been opened.
  - Baltimore Bank would like to utilize Md. Code Ann., Real Prop. § 14-610(b) which allows naming of all testate and intestate successors of a decedent

# Is Possession of the Property Required under Section 14-108?

- Md. Code Ann., Real Prop. § 14-108 – **YES**
  - Actual or constructive possession required
  - “Any person in **actual peaceable possession** of property, or, if the property is **vacant and unoccupied, in constructive and peaceable possession** of it...”
  - Porter v. Schaffer, 126 Md. App. 237, 273 (1999) (“Possession by the putative owner continues to be a distinguishing feature of an action to quiet title”)
  - Bank of New York Mellon v. Ashley, 2018 WL 1521872, \*3 (D. Md. Mar. 28, 2018) (“An attempt to assert a Maryland quiet title action, even were there diversity among the appropriate parties, would fail because it is pellucid that under Maryland law, quiet title actions may only be brought by parties in possession, either actual or constructive”)

# Is Possession of the Property Required under Section 14-108?

- Actual possession – living at the property; leasing the property; asserting control over the property through locks/access.
- Constructive possession – only available for vacant or unoccupied land
  - To establish → show purported record title along with the property being vacant or unoccupied. Wathen v. Brown, 48 Md. App. 655, 659 (1981)

# Is Possession of the Property Required under Section 14-108?

- What if there is no actual or constructive possession?
  - Ejectment under Md. Code Ann., Real Prop. § 14-108.1
  - Porter v. Schaffer, 126 Md. App. 237 (1999) (“In all other cases, ‘a person who is not in possession of property and claims title and right to possession’ may bring an action for ejectment in the circuit court, pursuant to [section] 14-108.1”).

# Is Possession of the Property Required under Section 14-601 et. seq?

- Potentially more expansive to allow a claim without possession
- Section 14-602: “An action may be brought under this subtitle to establish title **against adverse claims** to property, **including adverse claims described in § 14-108 of this title.**”
  - Implies the statute encompasses more than just Section 14-108
  - Section 14-601(b) defines “claim” as including legal or equitable right, title, estate, lien, or interest in property or a cloud on the title to property.”
  - No other mention of possession in Section 14-601 et seq.



# Is Possession of the Property Required under Section 14-601 et. seq?

- But...Estate of Zimmerman v. Blatter, 458 Md. 698, 734-36 (2018) – states that Section 14-601 et seq. is procedural and not substantive, and does create new right or obligation
  - Decided in context of whether Section 14-601, et. seq. applied retroactively

# Is Possession of the Property Required – Practice Tips

- Homeowner lawsuits – usually in possession
- Lender lawsuit, but not naming testate and intestate heirs as defendants
  - Ok to assert quiet title claim. Assert alternative claims for declaratory judgment and ejectment.
- Lender lawsuit and need to name testate and intestate heirs as defendants under Section 610
  - Some risk, but likely uncontested. Once there is a final judgment, issue no longer remains
  - Worst case – open an Estate

# Who Are Necessary Parties to a Quiet Title Action?

- Is a lender of a property owner a necessary party to a quiet title action?
- Potential conflict between the Quiet Title Act, the Maryland Rules, and case law
- Example: Neighbor 1 sues Neighbor 2, alleging that Neighbor 1 has obtained, by adverse possession, a small portion of Neighbor 2's property. Bank ABC is the beneficiary of a deed of trust against Neighbor 2's property. Is Bank ABC a necessary party?

# Who Are Necessary Parties to a Quiet Title Action?

- Md. Code Ann., Real Prop. § 14-105(a) implies that a known lender is not required to be a party:
  - “At the time a complaint is filed, the plaintiff shall send each holder that is not named as a party in the action a copy of the complaint with exhibits and a statement that: (1) The holder is not a party in the proceeding and any judgment in the proceeding will not affect any claim of the holder; and (2) If the holder elects to appear in the proceeding, the holder will appear as a defendant and be bound by any judgment entered in the proceeding.”
- Md. Code Ann., Real Prop. § 14-608(a) requires all persons having adverse claims to be named as parties
  - The plaintiff shall name as defendants in an action under this subtitle the persons having **adverse claims** to the title of the plaintiff that are of record or known to the plaintiff or reasonably apparent from an inspection of the property against which a determination is sought.”
- Bank ABC would have an adverse claim to Neighbor 1’s adverse possession claim.

# Who Are Necessary Parties to a Quiet Title Action?

- Md. Code Ann., Real Prop. § 14-108(b): “...Any person who appears of record, or claims to have a hostile outstanding right, shall be made a defendant in the proceedings.”
- Jenkins v. City of College Park, 379 Md. 142 (2003) held: Section 14-108(b) “clearly mandates that, in pursuing an *in rem* proceeding to quiet title, a plaintiff *shall* name *all* persons identified by the land records as having an interest in the property or otherwise claiming an interest in the property in question.”
  - Bank ABC’s deed of trust appears of record and Bank ABC has an adverse claim

# Who Are Necessary Parties to a Quiet Title Action?

- Maryland Rule 2-211(a)(2) – joinder required “if in the person’s absence disposition of the action may impair or impede the person's ability to protect a claimed interest relating to the subject of the action or may leave persons already parties subject to a substantial risk of incurring multiple or inconsistent obligations by reason of the person's claimed interest.”
- If Bank ABC is not a party, its ability to protect its interest in Neighbor 2’s property may be impacted
- Neighbor 1 obtains favorable judgment against Neighbor 2 obtaining a portion of Neighbor 2’s property by adverse possession, but Bank ABC is not a party. In a separate lawsuit, Bank ABC litigates the same issue against Neighbor 1 and obtains a favorable judgment. Neighbor 1 is subject to inconsistent obligations/judgments.
- However – Maryland Rule 12-807 mirrors Section 14-608(a) – Therefore, the Maryland Rules are in conflict.

# Who Are Necessary Parties to a Quiet Title Action?

- Rounds v. Maryland-Nat. Capital Park & Planning Comm’n, 441 Md. 621 (2015). Held: All persons interested in a declaration are necessary parties.
  - Exception – if the person who is not a party has knowledge of the pendency of the lawsuit and refuses or neglects to appear, they are bound by the outcome of that lawsuit.
- Rounds conflicts with Md. Code Ann. Real Prop. § 14-105(a) which requires the mailed notice of the lawsuit to the lender state that “The holder is not a party in the proceeding and any judgment in the proceeding will not affect any claim of the holder.”

# Who Are Necessary Parties to a Quiet Title Action?

- Best practice – name the lender – what’s the downside?
  - Failure to add necessary parties is an issue that may be raised for the first time on appeal or *sua sponte* by appellate court. Serv. Transp., Inc. v. Hurricane Exp., Inc., 185 Md. App. 25 (2009).



# Naming Testate and Intestate Heirs and Unknown Persons as Defendants

- Prior to Quiet Title Act, if you needed to sue a deceased person where no estate was yet opened, you would have to open an estate and have a Personal Representative appointed
  - Now → Md. Code Real Prop. § 14-610(b)(1) and (2) – Can name as Defendants “the testate and intestate successors of \_\_\_\_\_ (naming the deceased person], deceased, and all persons claiming by, through, or under the decedent”.
- Prior to the Quiet Title Act, there was no rule allowing a party to name all unknown persons claiming an interest in the property
  - Now → Md. Code Real Prop. § 14-613 – Can 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 could on the plaintiff’s title to the property”.

# Obtaining Service of Testate and Intestate Heirs and Unknown Persons as Defendants

- Service by publication and posting in accordance with Md. Rule 2-122
- Md. Code Ann., Real Prop. § 14-615 and Md. Rule 12-808(b) apply
  - Section 14-615: ““If, on affidavit of the plaintiff, 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** a summons on the persons named as unknown defendants and persons joined as testate or intestate successors of a person known or believed to be dead, the court shall order service by publication in accordance with Rule 2-122 of the Maryland Rules and the provisions of this subtitle.”
  - Md. Rule 12-808(b): “If, on affidavit of the plaintiff, it appears to the satisfaction of the court that the plaintiff has used **reasonable diligence to ascertain the identity and residence** of the persons named as unknown defendants and persons joined as testate or intestate successors of a person known or believed to be dead, the court shall order service by publication in accordance with Rule 2-122 of the Maryland Rules and the provisions of this Chapter.”

# Obtaining Service of Testate and Intestate Heirs and Unknown Persons as Defendants

- What is reasonable diligence?
  - Don't be willfully or negligently blind
  - Examine estate documents, land records, google. Obituaries, background checks

# Obtaining Service of Testate and Intestate Heirs and Unknown Persons as Defendants

- Once you identify a potential heir or unknown person, do you have to add them as a Defendant?
  - No, but no harm if you do (but could slow down the case).
  - Similar to a “class” defendant
  - Clerk issues summons to the “testate and intestate successors” or “unknown persons”
    - Conflict between Section 14-615 and Md. Rule 12-808
    - Statute requires service, Rule is silent
    - Best practice - serve that summons on any person you can identify

# Obtaining Service of Testate and Intestate Heirs and Unknown Persons as Defendants

- Due Process concerns?
- Publication and posting sufficient
- Prior to Quiet Title Act, would have to open an estate and have PR appointed.
  - Notice in estate proceedings is publication and mailing

# Is a Hearing Required To Obtain a Judgment?

- Conflict between the Quiet Title Act and the Maryland Rules
- Md. Code Real Prop. § 14-617(a): “**In all cases** the plaintiff shall submit evidence at a hearing before the court establishing the plaintiff's title and the court may hear or take any evidence offered respecting the claims of any defendant, other than claims the validity of which is admitted by the plaintiff in the complaint.”
- Md. Rule 12-810: “**In all contested cases**, the plaintiff shall submit evidence at a hearing to establish plaintiff's title. The court may receive any evidence offered supporting the claims of any defendant other than those defendants' claims admitted by the plaintiff in the complaint.”
- Summary Judgment in a contested case?
- Default judgment or summary judgment in an uncontested case?

# Is a Hearing Required To Obtain a Judgment?

- Practical experience...
  - Very rarely will have a default judgment hearing in uncontested case – usually will be ruling on a written Motion for Default Judgment
  - Have obtained summary judgment in a contested case
  - If you have names testate/intestate heirs or unknown persons as Defendants – file summary judgment if no response to the Complaint rather than going through default procedures

# Available Relief In A Quiet Title Actions

- Declaration regarding ownership of property, existence of easement, etc.
- Injunction prohibiting defendant from asserting a claim, in any action at law or otherwise, to the property



# Available Relief In A Quiet Title Actions – Sample Order

- Ordered that the Motion be **GRANTED**; and it is further
- **DECLARED** that [Plaintiff] is the sole owner of the real property known as [address] with the following legal description [insert legal]; and it is further
- **ORDERED** that the [Defendant] is enjoined from asserting any claim, at law or otherwise, relating to the use, occupancy, or possession of the Property; and it is further
- **ORDERED** that the Clerk of the Circuit Court shall accept a certified copy of this order for recording and indexing amount the Land Records for [County].

# Additional Practice Tips

- Verified Complaint - Md. Code Real Prop. § 14-606
- Verified Answer - Md. Code Real Prop. § 14-607(a)
  - Answer to include facts tending to controvert material allegations of complaint and a statement of any new matter constituting a defense - Md. Code Real Prop. § 14-607(a)(2)
- Record Notice of Lis Pendens after the Complaint is filed
  - Prior to April 1, 2022 – the Complaint itself established the Lis Pendens. Now Md. Rule 12-102 requires the recording of a Notice of Lis Pendens
- Make sure the Notice of Lis Pendens and Judgment are indexed correctly
  - Indexing should match the spelling of the record owner of the property. Greenpoint Mortg. Funding, Inc. v. Schlossberg, 290 Md. 211 (2005).