

**PRESENTED AT**

2018 Oil, Gas and Mineral Law Institute

April 19 – 20, 2018  
Houston, Texas

## **Basic Causes of Action and Defenses in Litigating Land Titles**

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**TABLE OF CONTENTS**

I. INTRODUCTION ..... 1

II. TRESPASS TO TRY TITLE ..... 3

    A. Introduction ..... 3

    B. Elements ..... 5

    C. Procedure ..... 6

        1. Pleadings ..... 6

        2. Abstract of Title ..... 12

        3. Proof of Title ..... 15

        4. Regular Chain of Conveyances from the Sovereign ..... 17

        5. Superior Title from a Common Source ..... 17

        6. Title by Limitations ..... 19

        7. Prior Possession ..... 19

        8. Boundary Disputes ..... 20

    D. Remedies ..... 22

    E. Defenses and Counterclaims ..... 24

III. DECLARATORY JUDGMENTS ..... 30

    A. Introduction ..... 30

    B. Elements ..... 31

    C. Procedure ..... 36

    D. Remedies ..... 39

    E. Defenses and Counterclaims ..... 41

IV. QUIET TITLE ..... 41

    A. Introduction ..... 41

    B. Elements ..... 43

    C. Procedure ..... 45

    D. Remedies ..... 47

    E. Defenses and Counterclaims ..... 48

V. SLANDER OF TITLE ..... 50

    A. Introduction ..... 50

    B. Elements ..... 51

    C. Procedure ..... 53

    D. Remedies ..... 54

    E. Defenses and Counterclaims ..... 55

VI. CONCLUSION ..... 57

## **BASIC CAUSES OF ACTION AND DEFENSES IN LITIGATING LAND TITLES**

### **I. INTRODUCTION**

This paper is focused on four procedures which may be followed to resolve ownership and possession questions related to real property. There are many other procedures and causes of action which may be invoked that may have a material impact on ownership of real property and possession. However, at least one of these four procedures is likely to be the core proceeding for answering the question: “Who owns this land?” The four procedures reviewed are: trespass to try title, declaratory judgment, quiet title, and slander of title.

A trespass to try title action is a procedure by which rival claims to title or right of possession may be adjudicated. The plaintiff, to maintain an action in trespass to try title, must: (1) have been in possession of the property, or be entitled to immediate possession when the suit was filed; (2) have legal or equitable title; and (3) be seeking recovery of his interest in the land. Trespass to try title always puts both title and possession in issue. The defendant is the person in possession or claiming title to the property. The plaintiff has the burden of proving a *prima facie* case, which usually means plaintiff must: (1) prove a regular chain of title from the sovereign; (2) show superior title out of a common source; (3) prove title by limitations; or (4) prove title by prior possession, which was not abandoned. If the plaintiff fails to meet his burden, a take nothing judgment will place whatever title plaintiff has in the property in defendant. If the plaintiff meets his burden, defendant may raise various defenses.

If plaintiff prevails, plaintiff will recover title and possession of the property from defendant. Plaintiff may also specially plead and recover for special damages to the property and for use and occupation of the property. If defendant prevails, defendant will recover title and possession of the property from plaintiff. If defendant loses, but specially pleads and proves good faith permanent improvements to the property, defendant may “recover” for the value of the defendant’s improvements, but only as an offset against the plaintiff’s judgment for special damages to the property and for use and occupation. A defendant, if not fully reimbursed by plaintiff for the value of defendant’s improvements, has the option to acquire the property by paying to plaintiff the value of the unimproved property. In most cases, attorney’s fees are not recoverable. In summary, the primary utility of an action in trespass to try title is to resolve rival claims to title and right of possession.

The Uniform Declaratory Judgments Act creates no substantive rights and confers no additional jurisdiction. It is simply a procedural device to determine controversies within the existing jurisdiction of the court. A declaratory

judgment declares the rights and duties of the parties before the court where uncertainties and controversies have arisen. A person interested under a deed, will, or contract may have determined any question of construction or validity, which can have a significant effect in resolving issues pertaining to title to real property. However, the Uniform Declaratory Judgment Act does not supplant the trespass-to-try-title statute, which is the exclusive procedure (except as to boundary disputes) for resolving competing claims to title and possession of real property. The declaratory judgment ordinarily simply declares the rights of the parties, and it does not award damages, although (at the discretion of the court) any party may recover attorney's fees. Supplemental relief (damages, injunction, possession, etc.) may be sought at a later time, if the losing party does not comply with the rights and duties as declared. In summary, the primary utility of a declaratory judgment in resolving land title issues is to determine the rights of the parties under a written instrument.

A suit to quiet title is an equitable action for which damages are not available. If the quiet title suit is successful, the plaintiff will receive a court decree that the specific adverse claim is not valid, which will quiet title or remove that cloud from plaintiff's title. There will be no recovery for damages, interest, or attorney's fees. There will be no personal judgment. A suit to quiet title by itself will not result in the recovery of any damages, but the claim may be coupled with a tort, statutory or contractual claim, which can provide an independent basis for monetary relief. Common tort claims are conversion, trespass and slander of title. In summary, the primary utility of a suit to quiet title is to erase some specific invalid interest, which would otherwise appear to have some validity and cloud the true owner's interest in the land.

Slander of title is almost inextricably linked to quiet title, because the basis of a slander of title claim is that a prospective sale was lost because of defendant's false and disparaging claims against the true owner's interest in the property. Thus, the suit for quiet title (to erase the claim) and the suit for slander of title (to recover for the lost sale) are frequently joined. The amount of the damages is measured by the value of the lost sale minus the value of the property after the cloud is removed. In summary, the utility of a cause of action for slander of title is to recover damages for the loss of a sale attributable to false claims against the property.

There are other actions related to land, title and boundary issues. For example, the right to possession may be tried in a forcible entry and detainer action, but not title. *See, e.g., Lopez v. Sulak*, 76 S.W.3d 597 (Tex. App.—Corpus Christi 2002, no pet.); Tex Prop. Code Ann. §§ 24.001 (West, Westlaw through 1st C.S. 2017), *et seq.* Rights may be severed in a suit for partition. Tex. Prop. Code Ann. §§ 23.001 (West, Westlaw through 1st C.S. 2017), *et seq.* Dozens

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First appeared as part of the conference materials for the  
2018 Fundamentals of Oil, Gas and Mineral Law session

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