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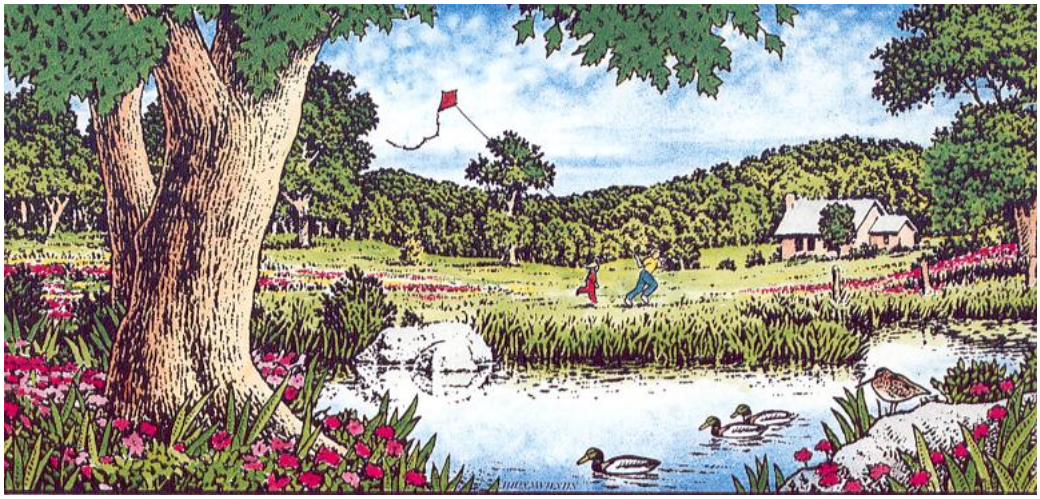

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Community Bank Law Review

Understanding The 2007 Revisions To The Arkansas Quiet Title Statutes:
What Every Bank Should Know

Jerald C. "Cliff" McKinney

Banks frequently face the problem of borrowers who want to purchase (or pledge as collateral) real property that has title flaws. The title flaws can be as minor as a fence-line dispute to as severe as multiple parties claiming title to the same property. In these cases, it is sometimes necessary to file a quiet title suit. A quiet title suit is a special type of lawsuit that asks a court to determine the rights of parties to real estate.

Unfortunately, Arkansas has an often confusing body of law for handling quiet title suits that can make these cases protracted and expensive (and can lead to them being messed-up with bad consequences). A big part of the problem is that Arkansas' quiet title statutes are ambiguous. Arkansas actually has three quiet title statutes. The first is general. Ark. Code Ann. §§ 18-60-501 through 511. The second is used when quieting title to property purchased at a public sale (*e.g.*, a tax sale, sheriff's foreclosure sale, etc.). Ark. Code Ann. §§ 18-60-601 through 610. The third, not at issue here, concerns railroads. Ark. Code Ann. §§ 18-60-701 through 708.

In 2007, the General Assembly amended both the general statute and the tax sale statute. These amendments were proposed by a "Land Bank Working Group" supported by the City of Little Rock. One of the goals of the Land Bank Working Group was to "streamline" tax sales.

The amending session law, Act 1037 of the 2007 legislative session (originally, SB 377) (the "2007 Act"), drastically changes the notice requirements in all quiet title actions. Ark. Code Ann. § 18-60-502(b). Previously, this section required the party brining the lawsuit to identify possible defendants but did not provide specifics about what was needed to accomplish this, resulting in inconsistent and uncertain requirements. Now, the statute requires the person bringing the lawsuit to search: (1) land title records in the office of the county recorder; (2) tax records in the office of the county collector; (3) tax records in the office of the county treasurer; (4) tax records in the office of the county assessor; (5) probate records in the county where the property is located; (6) voter registration records; (7) partnership records filed with the county clerk; and (8) business entity records filed with the Secretary of State.

This change greatly expands the parameters of the title search, possibly to an extent greater than in any other state. Typically, a title search would entail a search of the recorder's land title records and possibly probate records. These requirements will almost certainly increase the cost of title searches. Curiously, there is no requirement to search federal records for information such as bankruptcy filings or decrees.

In addition to specifying and expanding the requirements for searching for possible defendants, the 2007 Act also addresses the efforts needed to give actual notice of the quiet title action to the defendants. Section 502(b) now requires the petitioner to send notice by certified mail to the last known address of the defendant. Also, the notice has to be sent in duplicate with one addressed to the named defendant and the other addressed to "occupant." However, the person filing the lawsuit isn't allowed to stop there. If the certified mail is returned undelivered, a second notice must be sent by regular mail. The person bringing the lawsuit must also post a notice of the pending action "conspicuously" on the property in question.

With respect to quieting title to land acquired by public sale, the 2007 Act also eliminates the previous requirement that the petitioner prove payment of taxes for the last three years, and at least two years after the expiration of the right of redemption. Now, the 2007 Act merely requires that the petitioner prove that taxes owed on the land have been paid, settled or released, which simplifies the process. Ark. Code Ann. § 18-60-606. This proof is a prerequisite for confirmation of the sale. Ark. Code Ann. § 18-60-607.

The 2007 Act is definitely a step in the right direction to simplify the Quiet Title Statute while also strengthening the procedural due process protections that potential defendants deserve. However, larger problems exist: multiple systems of record keeping, inaccurate records and inconsistency among the counties. County recorders, assessors collectors and treasurers each keep separate sets of property records, thus multiplying by four the probability of inaccuracies. My experience has been that these county level officials sometimes do not communicate effectively among each other, leaving many records inaccurate or incomplete. With modern technology and instant communication, could these records be maintained at a state level in the same way that the Secretary of State already maintains all corporate records and lien filings (other than real estate records)? Even if a statewide system is not feasible, could one master set of records be kept at the county level? In theory, the fewer sets of records that existed would result in greater government savings. Additionally, centralized filing, elimination of duplicate services and uniform systems would improve the ability of land owners to keep track of their rights and aid the principals of due process by making notification of potential defendants easier and more reliable. For instance, have you ever looked at a legal description in

the county assessor's office for non-platted property (which accounts for the vast majority of property in our state)? Most of these descriptions look something like this, "Pt. N1/2 Sec. 3 15N 12W." It is well-established by the Arkansas Supreme Court that these types of part legal descriptions are completely inadequate to convey title and render any deed relying on this sort of description completely worthless. *See Payton v. Blake*, 362 Ark. 538, 210 S.W.3d 74 (2005). Yet, our county assessors and county collectors often use them, even though a complete and accurate description of the property is sitting over in the county clerk's office. The accurate information on file with the county clerk is oftentimes not present in the offices of the assessors and collectors.

When property taxes are delinquent, the collector certifies the property to the Land Commissioner for eventual redemption (in most cases) or sale. However, the incomplete or incorrect descriptions used by the collectors and assessors may end up in the Land Commissioner's deed, rendering void the Land Commissioner's attempt to foreclose on the property. *See, e.g., Undernehr v. Sandlin*, 35 Ark. App. 207, 816, S.W.2d 635 (1991). This presents a troubling question for another discussion: if the collector's description is so defective that it cannot pass title in a tax foreclosure, is the description legally sufficient to allow for the collection of the taxes in the first place?

The problem of inconsistent practices across counties has been thrown into sharp relief by the Fayetteville Shale Play. Counties approach the assessment of mineral interests differently. Some counties do not assess at all if there is no production.

Act 1037 will assist in improving due process, and help to streamline quiet title suits in cases of public sales, but it does not help to improve the state of property records in county offices. Perhaps a commission appointed by the governor or legislature with both county and state officials could study other states' systems and recommend improvements for Arkansas.

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