

The TBM Newsletter of the NHLSA

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Photo by Carolyn Guerdet

Sunrise At Hampton Beach

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"Well done is better than well said."

~ Poor Richard's Almaack,
1737 (Ben Franklin)

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What Is Quieting Title?

By: Paul Alfano Esq.



“A petition to quiet title quiets title as against the world with respect to the land at issue.” Sorenson v. Wilson, 124 N.H. 751, 757 (1984). Because human beings write title opinions, conclusions may differ. When they do, a person claiming an interest in real estate may ask the Superior Court to confirm to “the world” the existence of that interest. The probate court has similar authority for real estate subject to the jurisdiction of that court.

Sometimes the need to bring a quiet title action is triggered by a title examiner for a buyer or lender. Someone puts money on the line when title transfers by deed or mortgage, thus buyers and lenders can, and likely should, be particularly cautious. Even if lots in a subdivision have transferred multiple times, the person responsible for ensuring and insuring clear title must be comfortable.

Put another way, title insurance companies assess risk, and sometimes they agree to “insure over” problems without resolving them. Another title insurance company in a future transaction may come to a different conclusion.

Examples of the need to quiet title

- Tax deeds. Municipalities are in the business of collecting taxes, not trading real estate, and do not have the same motivation as owners, buyers, or lenders to examine titles closely. RSA 80:39 and 78 create a ten-year time limit by which someone may challenge a tax deed, but questions may remain as to what the deed conveyed.
- Parcels can mysteriously appear or disappear. Real estate near municipal boundaries seem ripe for this magic trick.
- People sometimes try to make easements disappear by neglecting to reference them in future deeds or other recorded instruments. “Not so fast!” sayeth the courts and the legislature (RSA 477:26), but omitting an easement can be enough to require court action to confirm the easement still exists.
- Highways have a funny way of sticking around a long time and for springing into existence without municipal action, making their existence or non-existence ripe for dispute.
- Even where people agree an easement exists, they may not agree on the location, width, or scope. Can the easement be used to benefit an abutting parcel? Can the benefitted land be subdivided, thus potentially increasing the number of cars passing over the land burdened by the easement?
- Adverse possession and prescription are claims, or theories. Acquiring title via adverse possession or prescriptive rights require a court order following a quiet title action.

Statutes

The applicable Superior Court statutes are RSA 498:5-a, 5-b, 5-c and 5-d. RSA 498 5-e deals with mineral rights, and RSA 547:11-c grants the probate court its powers.

Standing – who can bring a quiet title action

To bring a quiet title action RSA 498:5-a, a claimant must find and name a party with a property interest adverse to theirs. Carlson v. Latvian Lutheran Exile Church, 170 N.H. 299 (2017). Adverse interests may include an encroachment, easement, joint ownership, life estate, a lien or any other interest in the real estate.

Parties

It is good practice to name anyone having any interest in the real estate. A plaintiff has the burden of proving good title as against all other parties whose rights may be affected by the court’s decree. Sorenson v. Wilson, 124 N.H. 751, 758 (1984). Parties not named will not be bound by the court’s judgment. Porter v. Coco, 154 N.H. 353 (2006). Some parties may not contest the action and can be dropped from the action, but naming them ensures the order will bind them.

If the plaintiff cannot locate or identify someone who may have an interest in the property, the court may require additional notice (by publication, for example) or the appointment of a guardian ad litem to represent the interests of the unknown persons. The guardian ad litem’s work may include a title search. The court may require the plaintiff to pay the cost of the guardian ad litem, but a guardian ad litem may add integrity to the court’s order should someone try to challenge it.

Decree

The end result will be a court order, or decree, to be recorded in the registry of deeds.

The role of surveyors

A visual depiction of land helps all concerned, from the judge to people reading the eventual decree in the registry of deeds. Of course, a survey likely is *the* key document for disputed boundaries or easements. Surveyors also can testify to the chain of title. There is nothing quite like having your work challenged, and much more could be said about “best practices” for serving as an expert witness. Perhaps expert testimony would be a good topic for a future article.

Deciding who owns what is not a mathematical equation. Thorough research and judgment are required. Professionals may come to different conclusions and courts exist to resolve those differences.

Paul Alfano is the owner of the Concord law firm, Alfano Law Office PLLC., and an Honorary member of NHLSA. Paul has written for and presented cases for NHLSA on many occasions.

Mystery Item #5: is another Stan Prescott flea market yard sale find. Kind of lethal looking whatever it is.



Young Surveyors News

By Emily Hayes

The Young Surveyors had another good meeting at Northwoods Brewery in July. We focused on the GPS on Benchmarks project and the NH Construction Career Days coming up on September 22nd & 23rd. We would like to offer our services regarding the GPS on BM's initiative. Do you or your company have any raw GPS observations that are 4 hours or longer? Was the setup on a disk? Has it not been shared with OPUS yet? If so, please reach out to us! We will do the legwork for getting the necessary documentation and submit it to NGS. We are also in the works of coming up with a giveaway for those who participate. Stay tuned!

Our fundraising efforts for the NH Construction Career Days have started off quite well, we are already up to \$500!! A huge thank you for those who have already contributed! At this time, we are still looking for a couple of firms to donate a person and equipment for one or both days. The more kids we can reach and get interested in what we do, the better.

We meet the 2nd Tuesday of the month at 5pm. August 9th we will be at Paddy's Grill in Portsmouth and September 13th we will be at Cheers in Concord. Reach out to us anytime at nhsayoungsurveyors@gmail.com.



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