



Profitable Mineral Management Breakfast Series

Co-Sponsored By:

Person, Whitworth, Borchers and Morales, LLP

- Date:** **June 07, 2016**
- Topic:** **“Using Adverse Possession to Clean Up Your Title Mess”**
- Location:** **San Antonio Petroleum Club**
8620 N New Braunfels, Suite 700
San Antonio, TX 78217-6363
P 210.824.9014
F 210.829.5443
- Time:** 7:30 AM Breakfast
8:00 AM Presenter
8:50 AM Questions & Answers
- Introduction:** **E.O. (Trey) Scott, III, Trinity Mineral Management, Ltd.**
- Presenter:** **Keith W. Franklin,**
Person, Whitworth, Borchers & Morales, LLP
“Using Adverse Possession to Clean Up Your Title Mess”
- Upcoming:** **Jul 05: Trey Scott**
Lease Compliance Audits: Dinosaurs to Dollars and
Dollars to Details
- Aug 02: To Be Announced**
- Sept 06: To Be Announced**

Title Issues Inside your Fence Line?

How Texas adverse possession law can be used to clear up ownership questions on land and minerals.



Presented by:
Keith W. Franklin

Trinity Breakfast Seminar
San Antonio Petroleum Club
Tuesday, June 7, 2016

How does a title issue arise?



BLANCHARD, WALKER, O'QUIN & ROBERTS

LEON O'QUIN
ROBERT ROBERTS, JR.
CLARA M. TORRES
MARLIN BRIDGEMAN, JR.
WYNDY H. WALLMAN, JR.
GILBERT L. HEDRICK
ROBERT ROBERTS III
NELLAN S. JACOBS
JOSEPH M. MILLEN
JOHN T. COLLIER
J. EDWINSON PIERSON, JR.
JERALD L. PERLMAN

FIRST NATIONAL BANK BUILDING
POST OFFICE DRAWER 1126
SHREVEPORT, LOUISIANA 71103
TELEPHONE (504) 424-3233
December 28, 1973

2/17/8

NEWTON C. BLANCHARD, (1892)
ELIAS GOLDSTEIN, (1922)
HENRY C. WALKER, JR., (1922)
ARTHUR O'QUIN, (1972)

Bodcaw Company
1300 Mercantile Dallas Building
Dallas, Texas

Lease IA-2200 - C. N. WALTON
Lease IA-2200A - J. E. WALTON
Lease IA-2200B - J. C. WALTON
Lease IA-2200C - MYRTLE BLANKENSHIP
BIENVILLE PARISH, LOUISIANA
Opinion No. 3 - Division Order Title Opinion

Gentlemen:

Title has been examined to the following described property located in Bienville Parish, Louisiana, to-wit:

The Northwest Quarter of Southeast Quarter (NW 1/4 of SE 1/4) of Section 21, Township 14 North, Range 5 West, LESS AND EXCEPT five (5) acres in the form of a square in the Northwest corner thereof and also LESS AND EXCEPT eight (8) acres described as commencing 155 yards East of the Northwest corner of said forty and run thence East 249.8 yards, thence South 155 yards, thence West 249.8 yards, thence North 155 yards to the point of beginning, BIENVILLE PARISH, LOUISIANA,

for the purpose of rendering a division order title opinion for payment of production from the Franks-Logan Walton A-1 Well, Danville Field, Bienville Parish, Louisiana.

EXAMINED AND FURNISHED

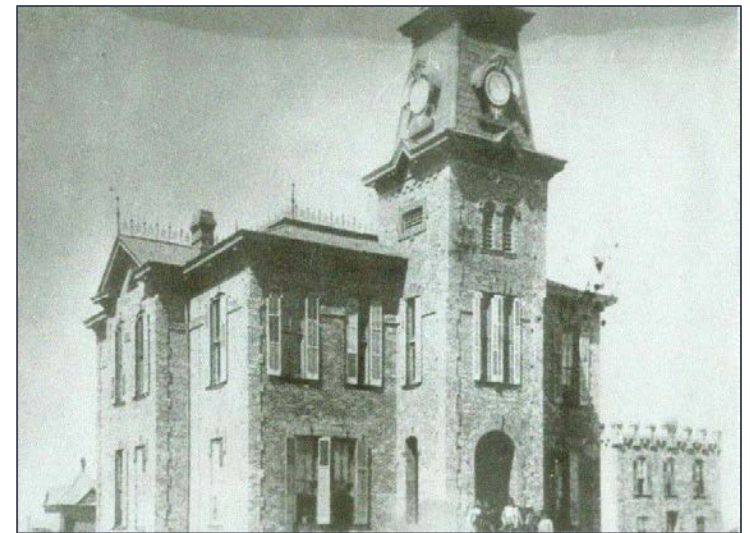
- (1) Search of the Records of Bienville Parish, Louisiana, on the basis of chain sheet furnished by Bienville Abstract Company which shows patent information and then the chain of title for a period of more than thirty (30) years prior to February 15, 1973.
- (2) All curative information, documents and instruments which have heretofore been furnished to us

What is adverse possession?

- Tool to clear up title discrepancies
- Landowners can't sit on property rights
- Land is a finite resource
- Rewards those who make productive use of land

History of adverse possession

- Ancient Roman law
- Old English common law
- Republic of Texas



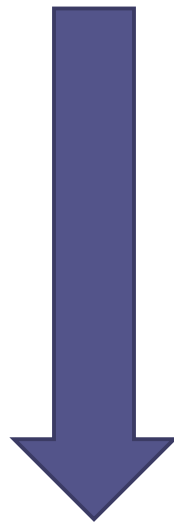
Texas adverse possession today

- “Adverse possession” means an actual and visible appropriation of real property, commenced and continued under a claim of right that is inconsistent with and is hostile to the claim of another person.
 - [TEX. CIV. PRAC. & REM. CODE § 16.021\(1\)](#).
- “Peaceable possession” means possession of real property that is continuous and is not interrupted by an adverse suit to recover the property.
 - [TEX. CIV. PRAC. & REM. CODE § 16.021\(3\)](#).

Texas statutes of limitation

- 3-year
- 5-year
- 10-year
- 25-year

MOST RIGID



LEAST RIGID

3-year statute

- “A person must bring suit to recover real property held by another in peaceable and adverse possession under title or color of title not later than three years after the day the cause of action accrues.”
 - [TEX. CIV. PRAC. & REM. CODE § 16.024.](#)
- “Title” means a regular chain of transfers of real property from or under the sovereignty of the soil.
 - [TEX. CIV. PRAC. & REM. CODE § 16.021\(4\).](#)
- “Color of title” means a consecutive chain of transfers to the person in possession that is not regular because of a muniment that is not properly recorded or is only in writing or because of a similar defect that does not want of intrinsic fairness or honesty; or is based on a certificate of headright, land warrant, or land scrip.
 - [TEX. CIV. PRAC. & REM. CODE § 16.021\(4\).](#)

5-year statute

- “A person must bring suit not later than five years after the day the cause of action accrues to recover real property held in peaceable and adverse possession by another who:
 - (1) cultivates, uses, or enjoys the property;
 - (2) pays applicable taxes on the property; and
 - (3) claims the property under a duly registered deed.”
- TEX. CIV. PRAC. & REM. CODE § 16.025.

10-year statute

- “A person must bring suit not later than 10 years after the day the cause of action accrues to recover real property held in peaceable and adverse possession by another who cultivates, uses, or enjoys the property.”
 - [TEX. CIV. PRAC. & REM. CODE § 16.026\(a\)](#).
- “Without a title instrument, peaceable and adverse possession is limited in this section to 160 acres, including improvements, unless the number of acres actually enclosed exceeds 160. If the number of enclosed acres exceeds 160 acres, peaceable and adverse possession extends to the real property actually enclosed.”
 - [TEX. CIV. PRAC. & REM. CODE § 16.026\(b\)](#).
- “Peaceable possession of real property held under a duly registered deed or other memorandum of title that fixes the boundaries of the possessor's claim extends to the boundaries specified in the instrument.”
 - [TEX. CIV. PRAC. & REM. CODE § 16.026\(c\)](#).

25-year statute

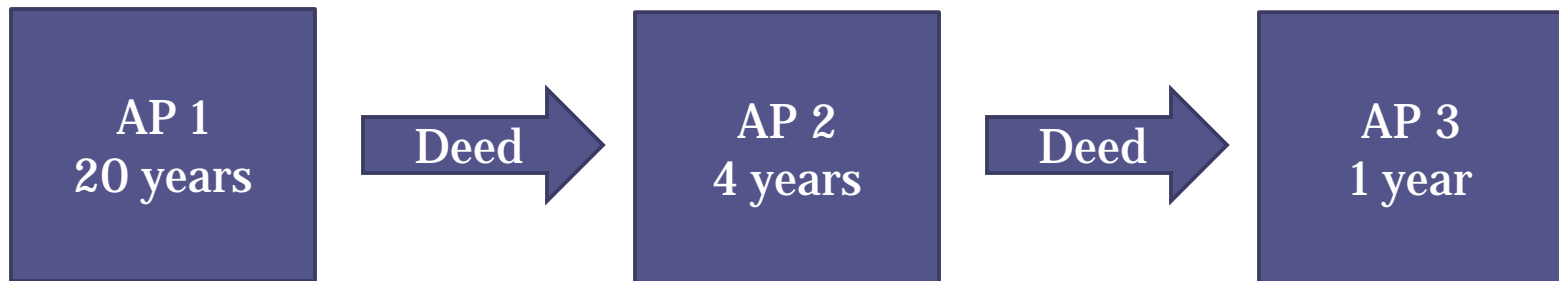
- “A person, regardless of whether the person is or has been under a legal disability, must bring suit not later than 25 years after the day the cause of action accrues to recover real property held in peaceable and adverse possession by another who cultivates, uses, or enjoys the property.”
 - **TEX. CIV. PRAC. & REM. CODE § 16.026(a).**
- “For the purposes of this subchapter, a person is under a legal disability if the person is:
 - (1) younger than 18 years of age, regardless of whether the person is married;
 - (2) of unsound mind; or
 - (3) serving in the United States Armed Forces during time of war.”
 - **TEX. CIV. PRAC. & REM. CODE § 16.022.**

25-year statute continued...

- “A person, regardless of whether the person is or has been under a legal disability, may not maintain an action for the recovery of real property held for 25 years before the commencement of the action in peaceable and adverse possession by another who holds the property in good faith and under a deed or other instrument purporting to convey the property that is recorded in the deed records of the county where any part of the real property is located.”
 - [TEX. CIV. PRAC. & REM. CODE § 16.028\(a\)](#).
- “Adverse possession of any part of the real property held under a recorded deed or other recorded instrument that purports to convey the property extends to and includes all of the property described in the instrument, even though the instrument is void on its face or in fact.”
 - [TEX. CIV. PRAC. & REM. CODE § 16.028\(b\)](#).
- “A person who holds real property and claims title under this section has a good and marketable title to the property regardless of a disability arising at any time in the adverse claimant or a person claiming under the adverse claimant.”
 - [TEX. CIV. PRAC. & REM. CODE § 16.028\(c\)](#).

Tacking of successive interests

- “To satisfy a limitations period, peaceable and adverse possession does not need to continue in the same person, but there must be privity of estate between each holder and his successor.”
 - **TEX. CIV. PRAC. & REM. CODE § 16.023.**



=25 years of adverse possession for AP 3

Title through adverse possession

- “If an action for the recovery of real property is barred under this chapter, the person who holds the property in peaceable and adverse possession has full title, precluding all claims.”
 - [TEX. CIV. PRAC. & REM. CODE § 16.030\(a\)](#).
- “A person may not acquire through adverse possession any right or title to real property dedicated to public use.”
 - [TEX. CIV. PRAC. & REM. CODE § 16.030\(b\)](#).

Scenario 1: Pre-severance

- Generally, adverse possessor of land acquires title to both surface and minerals.
- If severance, possession of surface alone is insufficient to adversely possess minerals.
- Severance may be done by oil & gas lease, deed, or judgment.

Scenario 1: Pre-severance

Surface estate

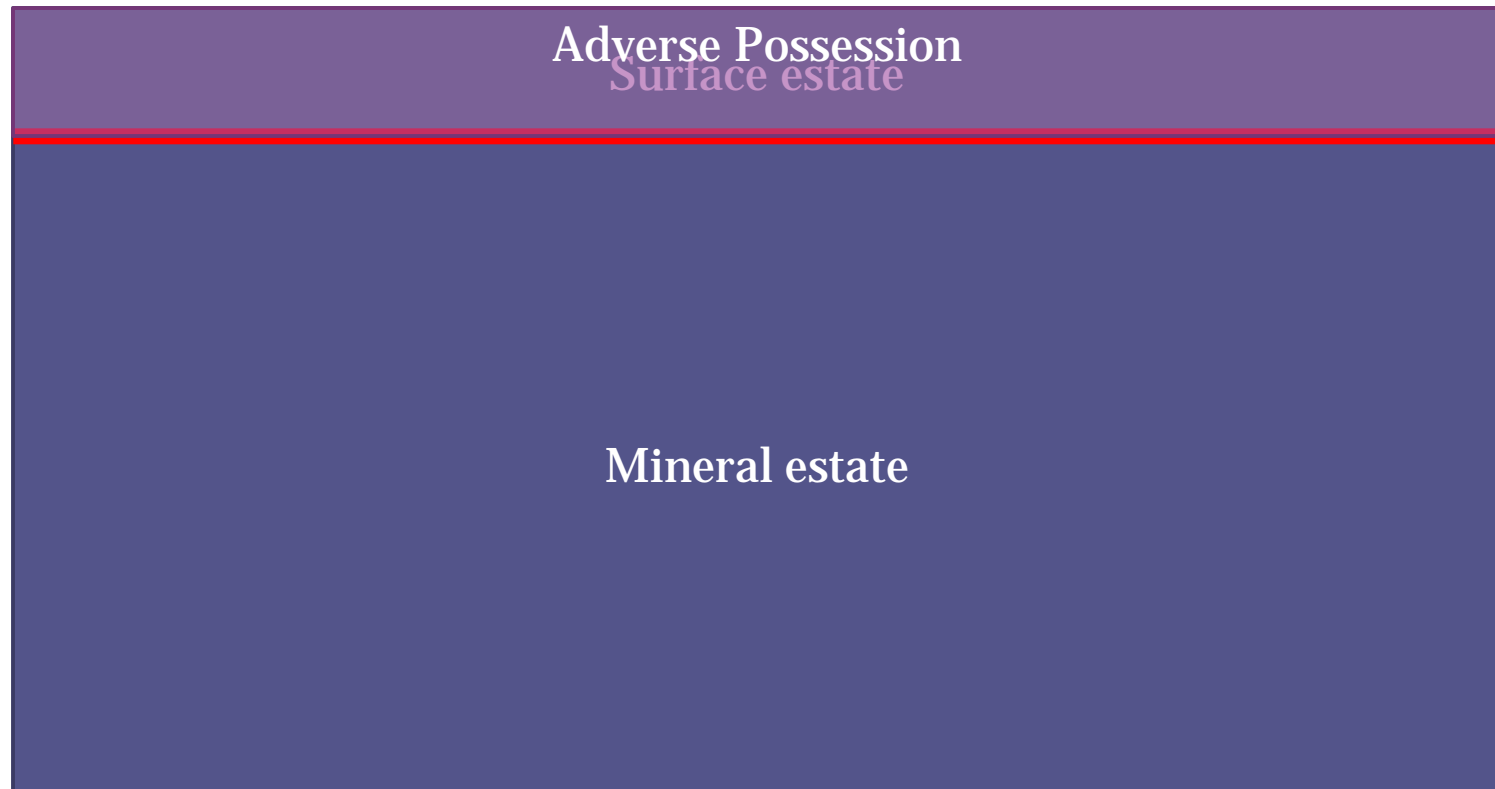
Adverse Possession

Mineral estate

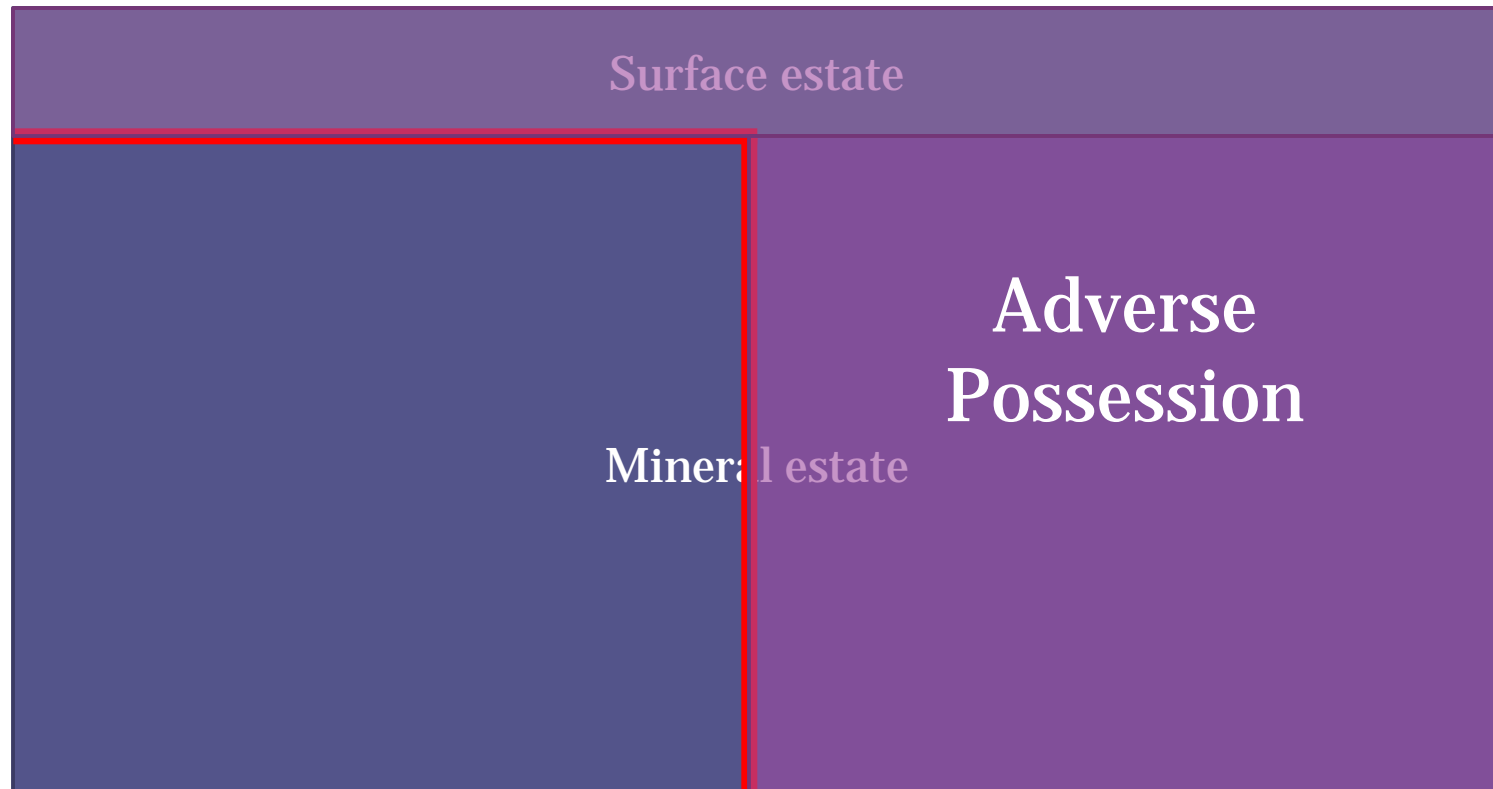
Scenario 2: Post-severance

- “Once severance occurs, possession of the surface alone will not constitute adverse possession of minerals.”
- “[I]n order to mature title by limitations to a mineral estate, actual possession of the minerals must occur.”
- “In the case of oil and gas, that means drilling and production of oil or gas.”
 - *Natural Gas Pipeline Co. of America v. Pool*, 124 S.W.3d 188, 193 (Tex. 2003).

Scenario 2: Post-severance



Scenario 3: Post-partial severance



Scenario 4: Cotenancy

- Two or more owners of undivided interests in property
- AP must prove “ouster” of cotenant
- “[U]nequivocal, unmistakable, and hostile acts the possessor took to disseize other cotenants.”
 - *BP America Production Co. v. Marshall*, 342 S.W.3d 59, 70 (Tex. 2011).
- “[A]ctual notice of repudiation is not required. Rather, notice can be inferred, or there can be constructive notice.”
 - *Natural Gas Pipeline Co. of America v. Pool*, 124 S.W.3d 188, 194 (Tex. 2003).
- “[L]ong-continued use . . . permit[s] the jury to infer notice of a repudiation”
 - *Tex-Wis Co. v. Johnson*, 534 S.W.2d 895 , 899 (Tex. 1976).

Scenario 5: “Grazing only” use

- Designed vs. casual enclosure
- Modifications sufficient to convert casual enclosure to designed
- If evidence of use other than grazing, the “grazing only” exception does not apply, eliminating the need for proof of designed enclosure.
 - *Fish v. Bannister*, 759 S.W.2d 714, 720 (Tex. App.—San Antonio 1988, no writ).

Trespass-to-Try-Title

- “A trespass to try title action is the method of determining title to lands, tenements, or other real property.”
 - [TEX. PROP. CODE § 22.001](#).
- To prevail in a trespass-to-try-title action, a plaintiff must usually (1) prove a regular chain of conveyances from the sovereign, (2) establish superior title out of a common source, (3) prove title by limitations, or (4) prove title by prior possession coupled with proof that possession was not abandoned.
 - [Martin v. Amerman](#), 133 S.W.3d 262, 265 (Tex. 2004).

Filing suit in District Court

CAUSE NO. <u>14-11-00191-CVL</u>		
CADENHEAD RANCH LLC,	§	IN THE DISTRICT COURT
CADENHEAD OIL & GAS LP,	§	
Plaintiffs,	§	
	§	
v.	§	<u>81st</u> JUDICIAL DISTRICT
	§	
MATTIE M. EMPEY, NETTIE J. EMPEY,	§	
WILLIAM H. EMPEY; AND ALL OF THEIR	§	
UNKNOWN, AND KNOWN BUT	§	
UNFOUND, HEIRS, ADMINISTRATORS,	§	
AND ASSIGNS; THEIR UNKNOWN	§	
SPOUSES; THEIR UNKNOWN OFFICERS,	§	
SUCCESSORS, TRUSTEES, CREDITORS,	§	
AND ASSIGNS, DISSOLVED OR	§	
DORMANT CORPORATIONS; THEIR	§	
UNKNOWN EXECUTORS,	§	
ADMINISTRATORS, TRUSTEES,	§	
CREDITORS, SUCCESSORS AND ASSIGNS	§	
AS ARE OR WERE PARTNERS OR IN	§	
PARTNERSHIP; AND THEIR UNKNOWN	§	
GUARDIANS AND TRUSTEES AS ARE	§	
MINORS OR ARE IN ANYWISE UNDER	§	
LEGAL DISABILITY, KNOWN OR	§	
UNKNOWN;	§	
Defendants.	§	LA SALLE COUNTY, TEXAS

Plaintiffs' Original Petition

To the Honorable Judge of said Court:

Now come Cadenhead Ranch LLC and Cadenhead Oil & Gas LP ("Plaintiffs") and file this Plaintiffs' Original Petition against Defendants, as identified hereinbelow, and would respectfully show the Court as follows:

I. Discovery Control Plan

1. Plaintiffs plead that discovery should be conducted under a Level 3 tailored discovery control plan under Texas Rule of Civil Procedure 190.4.

Page 1 of 9

Serving the defendant(s)

- Known defendants
- Unknown defendants
- Diligent search
- Citation by publication

The S
To any sher
within the S
TO: DEFEN
JAVIER PA
and his
administrato
unknown sp
officers, su
creditors an
or dorm.
his unkn
administrato
successors a
were partne
and his unkn
trustees as a
anywise un
known or un
herein descri

You, and each of you, are hereby commanded to appear and file a written answer to the Plaintiff's Second Amended Petition with the clerk of the Court who issued this citation at or before 10:00 a.m. of the first Monday after the expiration of 42 days from the date of issuance of this citation. The suit is pending in the 81st Judicial District Court of La Salle County located at 101 Courthouse Square, Cotulla, La Salle County, Texas 78014. Plaintiffs' Second Amended Petition was filed on May 5, 2015. The suit is numbered Cause No. 13-10-00245-CVL. The attorneys for plaintiffs are Ricardo E. Morales and Keith W. Franklin of Person, Whitworth, Borchers & Morales, LLP, whose address is 602 E. Calton Road, 2nd Floor, Laredo, Texas 78041. The address of the clerk who issued this citation is La Salle County District Clerk, 101 Courthouse Square #107, Cotulla, Texas 78014.

Attorney ad litem

- “Where service has been made by publication, and no answer has been filed nor appearance entered within the prescribed time, the court shall appoint an attorney to defend the suit in behalf of the defendant”
 - [Tex. R. Civ. P. 244](#).
- Ad litem fee

Discovery

- **Abstract of title**
- **Written discovery requests**
- **Oral discovery (depositions)**

Motion for summary judgment

- Can be filed against ad litem
- No genuine issue of material fact
- Judge rules as a matter of law
- Affidavit or declaration proof, no live testimony

Trial

- **If issue of fact, factfinder must resolve it**
- **Jury or bench trial**
- **Live witness testimony**

Final judgment

- Final judgment entered setting out title to disputed property
- If ad litem, statement of evidence is necessary
 - [Tex. R. Civ. P. 244.](#)
- After final judgment entered, title to property is clear and merchantable.
- Defendants served by publication have two years to file motion for new trial.
 - [Tex. R. Civ. P. 329\(a\).](#)

Appeal

- If judgment entered against record owner, he/she has right to appeal.
- Within 30 days of final judgment (2 years for defendants cited by publication), appellant must file notice of appeal.
- Appellate court reviews finding and can either uphold or reverse trial court decision.

Thank you for listening!

- Questions?

