

# Fact Sheet

## Title: Accretion, Reliction & Quiet Title Action

### **What is Accretion / Reliction?**

Sometimes a land survey involving coastal or shoreline areas will show that there is now more upland area than what was shown on the original survey. The extra land may be the result of fill material deposited by man or the result of natural processes. The act of fill fixes the boundary at the historical location and negates any future claim to subsequent accretion. **Accretion** is the gradual and imperceptible addition of land to a parcel by the natural deposition of water borne sediments. It is the slow increase in one's land occurring grain by grain. **Reliction**, which is the uncovering of submerged land by the recession of water, is legally treated as accretion even though the process is different. In 1982, the Alaska Supreme Court ruled in *Honsinger v. State of Alaska* that **glacio-isostatic uplift** is a form of reliction and therefore subject to common-law doctrine of accretion. The court also stated "*accretion and reliction, although physically different processes, are subject to the same rule regarding title, i.e., benefit inures to shoreline owner.*"

### **What is the legal significance of accretions?**

Land abutting navigable water (see state policy on navigability fact sheet) has riparian rights. **Riparian rights** are – (1) rights to the water itself or its use and (2) rights incident to the land that may include ownership of, or use of the bed, or rights to acquire additional land formed by water action (accretions). One of the most valuable of these rights is continuing access to the water. By common law, accretions belong to the owner of the uplands to which the accretion attached in order that a riparian owner may retain his riparian rights. Riparian boundaries are ambulatory boundaries, in that they move as the water moves, under the legal principal that a riparian owner should not be denied the right to have free access to the water. However ownership of accretions is held under a cloud of title because the owner cannot show how clear or marketable title was acquired. The State of Alaska as the owner of the abutting submerged lands could possibly have an adverse claim. For example, the state asserts ownership of tide and submerged land that has been artificially filled below the mean high water line of tidal water or the ordinary high water mark of non-tidal water bodies.

### **What is a cloud on title?**

A cloud on title is a claim or encumbrance on title to land that, if valid, will affect the owner's title and prevent him from fully enjoying all the rights and benefits of land ownership. **Clouded title** is title that is subject to an adverse claim of ownership because there is no patent, deed or other written transfer that clearly establishes ownership. Transfer of title may also be an issue.

### **How is the cloud on title removed?**

A cloud on title is cleared up by going through a process known as a **Quiet Title Action** in which the claimant petitions the Alaska Superior Court to make a judicial determination to establish ownership and ascertain the boundary in accordance with AS 09.45.010 and AS 09.45.020.

### **What is a Quiet Title Action?**

A quiet title action is a legal process that removes an adverse claim or cloud on the title of property to establish ownership in accordance with **AS 09.45.010. Action to quiet title**. This is usually a friendly lawsuit, handled by the attorney for the plaintiff and the attorney for the defendants, not requiring a jury trial. The State of Alaska as owner of the beds of navigable water is always named as a defendant along with any party in the chain of title. Sometimes adjacent landowners are also named as defendants. Generally, the lawsuit consists of the attorneys for the parties negotiating resolution of the claim based on historical information. Upon reaching agreement, the judge for the Superior Court issues an order resolving the issue in favor of the plaintiff. Final resolution is when the court issues a Clerk's Deed or Deed of the Clerk of the Court to the plaintiff awarding good or marketable title. The plaintiff is required to provide a survey done by a registered land surveyor and a plat that has been approved by the local platting authority. In the unorganized borough DNR is the platting authority.

### **How does the Quiet Title process work?**

Generally speaking, the process is as follows:

- Plaintiff has a surveyor prepare an exhibit identifying the area being claimed.
- Plaintiff's attorney files a **Complaint For Quiet Title** in Superior Court.

- Court issues a **Summons to Defendant**, State of Alaska, requiring that the state file an answer to the complaint within 40 days.
- The Attorney General's Office (AGO) and DNR'S Survey Unit investigate the claim. The investigation includes a review of some or all of the following: Title documents, record survey plats, historical data, navigability determinations and aerial photography. An on-site field inspection may also be performed.
- Survey Unit makes recommendation requiring certain stipulations to AGO.
- The AGO files an answer containing the stipulations with the court.
- Court issues a **Stipulation For Entry Of Judgment** that has been agreed to by the parties.
- Plaintiff's surveyor surveys and plats the claim in accordance with the stipulations and DNR'S surveying and platting requirements 11 AAC 53.
- A Certificate to Plat or Litigation Report, prepared by a title company, is required to be submitted when the plat is submitted for DNR review.
- After approval by DNR and the platting authority the plat is filed in the Recorder's Office.
- Plaintiff's attorney serves upon the State of Alaska, Attorney General' Office, a proposed **Findings of Fact and Conclusions of Law**, a proposed **Final Judgment**, and a proposed **Clerk's Deed**.
- Upon the state's review and approval, plaintiff's attorney files the above documents with the court.
- The Clerk of the Court issues a **Clerk's Deed**, based on the recorded plat, quieting title in favor of the plaintiff.

### ***Why go through the process?***

The purpose of going through the process is to remove the cloud and acquire clear marketable title that is free from encumbrance or limitation. Frequently, the quiet title process is driven by a financial institution that will not loan money on property unless the title is clear. Title companies often will not issue a title insurance policy that insures against a cloud on title. The title policy will cite the cloud as an exception to the policy. The Clerk's Deed will clear up the title and satisfy their concerns.

### ***Where can I get more information?***

Additional information is available at the DNR offices listed below.

Division of Mining, Land & Water  
550 West 7<sup>th</sup> Ave., Suite 650  
Anchorage, AK 99501  
Telephone: 907-269-8523

DNR Public Information Center  
550 West 7<sup>th</sup> Ave, Suite 1260  
Anchorage, AK 99501  
Telephone: 907-269-8400  
Fax: 907-269-8901  
TDD: 907-269-8411

DNR Public Information Center  
3700 Airport Way  
Fairbanks, AK 99709  
Telephone: 907-451-2705  
Fax: 907-451-2706  
TDD: 907-451-2770

Division of Mining, Land & Water  
Southeast Regional Office  
400 Willoughby Avenue 4<sup>th</sup> Floor  
Juneau, AK 99801  
Telephone: 907-465-3400  
Fax: 907-586-2954

### ***How long does the process take?***

The time frame is dependant upon the actions or lack of action by the plaintiff, the plaintiff's attorney and surveyor, the local platting authority, and the court system. By law, the state has 40 days to respond to a complaint for quiet title once it has been filed with the court unless the state's attorney files for an extension. It should be expected that the entire process will take a minimum of six months even if it is pursued aggressively.