

QUIET TITLE ACTIONS – A PRACTICAL GUIDE¹

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Sioux City, Iowa

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Quiet title action. A proceeding to establish the plaintiff's title to land by bringing into court an adverse claimant and there compelling him [or her] either to establish his [or her] claim or be forever after estopped from asserting it. BLACK'S LAW DICTIONARY, 1249 (6th ed. 1990).

Action to quiet title. One in which plaintiff asserts his [or her] own estate and declares generally that defendant claims some estate in the land, without defining it, and avers that the claim is without foundation, and calls on defendant to set forth the nature of his [or her] claim, so that it may be determined by decree. It differs from a 'suit to remove cloud,' in that plaintiff therein declares on his [or her] own title, and also avers the source and nature of defendant's claim, points out its defect, and prays that it may be declared void as a cloud on plaintiff's estate. It embraces every sort of a claim whereby the plaintiff might be deprived of his [or her] property or his [or her] title clouded or its value depreciated, or whereby the plaintiff might be incommoded or damnified by assertion of an outstanding title already held or to grow out of the adverse pretension. Id. at 31 (citation omitted).

I. Parties.

A. Plaintiff.

- 1. Any person having or claiming an interest in real property may bring an action to determine and quiet the title of such property. Iowa Code § 649.1.²
- 2. The Plaintiff need not actually have possession of the real property in question. Id.

¹ The author wishes to express his sincere appreciation to Kelly K. Salker who assisted in the preparation of these materials.

² Iowa Code Chapter 649 (Quieting Title) is attached to these materials.

B. Defendants.

1. Known claimants.
2. All other unknown claimants.
3. All persons unknown claiming any right, title or interest to the real property.
4. All heirs, spouses, assigns, grantees, legatees, devisees, and beneficiaries of each and all of the Defendants named in the caption.

II. Guardian Ad Litem.

- A. A Guardian Ad Litem must be appointed for claimants who may be minors, who may be under a disability, or who may be otherwise incompetent.
- B. A Guardian Ad Litem must be appointed, even if no such persons are known to the Plaintiff.

IN THE IOWA DISTRICT COURT IN AND FOR _____ COUNTY

_____,
Plaintiff,

v.

[Known Defendant]; All unknown heirs of
[Known Defendant]; and all other unknown
claimants and all persons unknown claiming
any right, title
or interest in and to:

[LEGAL DESCRIPTION OF PROPERTY]

and all heirs, spouses, assigns, grantees,
legatees, devisees, and beneficiaries of
each and all of the defendants named above,

Defendants.

Case No. _____

MOTION FOR APPOINTMENT
OF GUARDIAN AD LITEM

COMES NOW Plaintiff in the above-captioned matter, by and through its counsel of
record, and states the following in support of this Motion for Appointment of Guardian Ad
Litem:

1. There may be unknown Defendants in this action who may be minors, under a
disability, or otherwise incompetent, although there are none who are known to Plaintiff at this
time.

2. It is advisable to appoint a Guardian Ad Litem to represent such unknown
Defendants who may be minors, under disability, or otherwise incompetent, if any, to represent
and appear for them in such case.

3. Such unknown Defendants who are minors, who may be under disability, or who may be otherwise incompetent have been duly served with an Original Notice by publication and this Court has jurisdiction to appoint a Guardian Ad Litem for them at this time.

4. The undersigned has contacted _____, attorney at law, who has indicated he/she is willing to serve as Guardian Ad Litem in this matter.

5. Attached hereto as Exhibit A is a Proposed Order Re: Motion for Appointment of Guardian Ad Litem.

WHEREFORE, Plaintiff prays the court appoint _____ Guardian Ad Litem to represent and appear for any unknown Defendant who may be a minor or under a disability or who may be otherwise incompetent, if any there may be. In the alternative, Plaintiff prays the court set this matter for hearing.

Respectfully submitted,

[LAW FIRM]

By: _____

ATTORNEYS FOR PLAINTIFF

Original filed.

Copy to:

CERTIFICATE OF SERVICE

I certify that on _____,
2004, a copy hereof was mailed/
hand delivered/faxed to the
attorney(s) for each interested party.

IN THE IOWA DISTRICT COURT IN AND FOR _____ COUNTY

<p>_____,</p> <p>Plaintiff,</p> <p>v.</p> <p>[Known Defendant]; All unknown heirs of [Known Defendant]; and all other unknown claimants and all persons unknown claiming any right, title or interest in and to:</p> <p>[LEGAL DESCRIPTION OF PROPERTY]</p> <p>and all heirs, spouses, assigns, grantees, legatees, devisees, and beneficiaries of each and all of the defendants named above,</p> <p>Defendants.</p>	<p>Case No. _____</p> <p>PROPOSED ORDER RE: MOTION FOR APPOINTMENT OF GUARDIAN AD LITEM</p>
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NOW on this ____ day of _____, _____, Plaintiff's Motion for Appointment of Guardian Ad Litem having been presented to the Court, and the Court having reviewed said Motion and the file, the Court hereby **FINDS** a Guardian Ad Litem should be appointed for all Defendants who are minors, under any legal disability, or otherwise incompetent, if any such Defendants there may be.

IT IS THEREFORE ORDERED that _____, attorney at law, be and the same hereby is appointed to serve as Guardian Ad Litem for all Defendants who are minors, under legal disability, or otherwise incompetent, if any there may be and such Defendants in the above-captioned matter.

IT IS FURTHER ORDERED that the Clerk of Court shall send a copy of this Order to each of the parties named herein.

IT IS SO ORDERED.

Judge, _____ Judicial District

III. Original Notice.

A. Iowa Code Section 649.3 provides the Original Notice must:

1. Accurately describe the real property.
2. Generally explain the nature and extent of the Plaintiff's claim.
3. Be served on the Defendants.
 - a. Personal Service; or
 - b. Service by Publication.
 - (1) The Plaintiff or the Plaintiff's attorney must file an Affidavit that personal service cannot be had on Defendant in Iowa prior to delivering the Original Notice to Publisher. Iowa R. Civ. P. 1.310(10).
 - (2) The Plaintiff must send a copy of the Original Notice by ordinary mail to the Defendant at the Defendant's last known mailing address where Defendant is known (unless the Plaintiff or the Plaintiff's attorney files an Affidavit stating that no mailing address is known and that diligent inquiry has been made to ascertain such address). Id. at 1.311(1).
 - (3) Such copy of the Original Notice shall be mailed not less than twenty (20) days before the date set for motion or answer. Id. at 1.311(2).
 - (4) Proof of mailing by Affidavit must be filed before entry of the Decree. Id. at 1.311(3).
 - (5) In its Decree or prior thereto, the Court shall make a finding that the address to which such copy was mailed is the last known mailing address or no address is known after diligent inquiry. Id. at 1.311(3).
 - (6) The Original Notice must be published once each week for three (3) consecutive weeks in newspaper of general circulation in county where the Petition is filed. Id. at 1.313.

TIP: Review the actual publication carefully for errors the first time it is published.

IN THE IOWA DISTRICT COURT IN AND FOR _____ COUNTY

<p>_____,</p> <p>Plaintiff,</p> <p>v.</p> <p>[Known Defendant]; All unknown heirs of [Known Defendant]; and all other unknown claimants and all persons unknown claiming any right, title or interest in and to:</p> <p>[LEGAL DESCRIPTION OF PROPERTY]</p> <p>and all heirs, spouses, assigns, grantees, legatees, devisees, and beneficiaries of each and all of the defendants named above,</p> <p>Defendants.</p>	<p>Case No. _____</p> <p>ORIGINAL NOTICE</p>
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To the Aforementioned Defendants:

You are hereby notified that Plaintiff's Petition is now on file in the office of the clerk of the above court, stating in substance that Plaintiff owns in fee simple the property described therein situated in _____ County, Iowa, and described as follows:

[LEGAL DESCRIPTION]

Such ownership is claimed by reason of facts fully stated in the Petition, which also alleges Defendants claim some interest therein, but their claims are without right and constitute a cloud on the title, which Plaintiff desires to remove. The Petition prays Plaintiff's title to the premises be established as an absolute title in fee simple, and quieted and confirmed against all Defendants, each of whom be forever barred and estopped from having or claiming any right, title, lien or interest in the property; and for costs and such other and further relief as the court deems just and equitable under the circumstances.

A copy of Plaintiff's Petition is attached hereto. Plaintiff's attorney is

_____.

You are further notified that unless, within 20 days after service of this Original Notice upon you, you serve, and within a reasonable time thereafter file, a motion or answer, in the Iowa District Court in and for _____ County, at the county courthouse in _____, Iowa, judgment by default will be rendered against you for the relief demanded in the Petition.

(SEAL)

Clerk of the Above Court

County Courthouse
_____, Iowa

NOTE: The attorney who is expected to represent the defendant should be promptly advised by defendant of the service of this notice.

If you require the assistance of auxiliary aids or services to participate in court because of a disability, immediately call your district ADA coordinator at 712-279-6616 (If you are hearing impaired, call Relay Iowa TTY at 1-800-735-2942).

IN THE IOWA DISTRICT COURT IN AND FOR _____ COUNTY

<p>_____,</p> <p>Plaintiff,</p> <p>v.</p> <p>[Known Defendant]; All unknown heirs of [Known Defendant]; and all other unknown claimants and all persons unknown claiming any right, title or interest in and to:</p> <p>[LEGAL DESCRIPTION OF PROPERTY]</p> <p>and all heirs, spouses, assigns, grantees, legatees, devisees, and beneficiaries of each and all of the defendants named above,</p> <p>Defendants.</p>	<p>Case No. _____</p> <p>AFFIDAVIT OF NO KNOWN MAILING ADDRESS</p>
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STATE OF IOWA)
)ss:
COUNTY OF _____)

I, _____, being first duly sworn, state I am the attorney for
_____, Plaintiff in the above-captioned matter, and I am
familiar with the facts of this case. I further state the names, addresses and residences of all of
the defendants in this case, except those specifically listed in the Petition, are unknown to
Plaintiff, although Plaintiff has sought diligently to learn them,

and no mailing address of any of said defendants is known and that diligent inquiry has been made to ascertain such addresses.

Subscribed and sworn to before me by _____ this
_____ day of _____, 2004.

Notary Public in and for the State of Iowa

IN THE IOWA DISTRICT COURT IN AND FOR _____ COUNTY

_____,

Plaintiff,

v.

[Known Defendant]; All unknown heirs of
[Known Defendant]; and all other unknown
claimants and all persons unknown claiming
any right, title
or interest in and to:

[LEGAL DESCRIPTION OF PROPERTY]

and all heirs, spouses, assigns, grantees,
legatees, devisees, and beneficiaries of
each and all of the defendants named above,

Defendants.

Case No. _____

AFFIDAVIT FOR SERVICE
BY PUBLICATION

STATE OF IOWA)
)ss:
COUNTY OF _____)

I, _____, being first duly sworn, state I am the _____ of
_____, the Plaintiff in the above-captioned matter, and I am
familiar with the facts of this case. I further state that service of the Original Notice in this action
cannot be had within the State of Iowa upon the unknown heirs of _____ or
upon all unknown claimants and all other persons unknown claiming any right, title or interest in
or to the real estate, which is the subject of this action; that no address for such unknown heirs of
_____ or unknown claimants and all persons claiming such interest is

known to the Plaintiff or its attorneys, and no address has been learned by any of them despite diligent inquiry.

Subscribed and sworn to before me by _____ this
_____ day of _____, 2004.

Notary Public in and for the State of Iowa

IN THE IOWA DISTRICT COURT IN AND FOR _____ COUNTY

_____,

Plaintiff,

v.

[Known Defendant]; All unknown heirs of
[Known Defendant]; and all other unknown
claimants and all persons unknown claiming
any right, title or interest in and to:

[LEGAL DESCRIPTION OF PROPERTY]

and all heirs, spouses, assigns, grantees,
legatees, devisees, and beneficiaries of
each and all of the defendants named above,

Defendants.

Case No. _____

AFFIDAVIT FOR SERVICE
BY MAIL

STATE OF IOWA)
)ss:
COUNTY OF _____)

I, _____, being first duly sworn, state I am the attorney for
_____, Plaintiff in the above-captioned matter. I further state on
the _____ day of _____, 2004, I personally mailed an Original Notice in the
above-captioned matter, a true copy of which is attached hereto and by this reference made a part
hereof in its entirety, by U.S. Mail, postage prepaid thereon to each person at the last known post
office address as indicated below:

[ADDRESSEE INFORMATION]

Subscribed and sworn to before me by _____ this
_____ day of _____, 2004.

Notary Public in and for the State of Iowa

IN THE IOWA DISTRICT COURT IN AND FOR _____ COUNTY

<p>_____,</p> <p>Plaintiff,</p> <p>v.</p> <p>[Known Defendant]; All unknown heirs of [Known Defendant]; and all other unknown claimants and all persons unknown claiming any right, title or interest in and to:</p> <p>[LEGAL DESCRIPTION OF PROPERTY]</p> <p>and all heirs, spouses, assigns, grantees, legatees, devisees, and beneficiaries of each and all of the defendants named above,</p> <p>Defendants.</p>	<p>Case No. _____</p> <p>AFFIDAVIT OF NONMILITARY SERVICE</p>
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STATE OF IOWA)
)ss:
COUNTY OF _____)

The undersigned, being first duly sworn, deposes and says:

1. My name is _____.
2. I am the _____ of _____, the Plaintiff in the
above-captioned matter.
3. I know of no defendant to this case who is or was within the past six (6) months
prior to commencement of this action, in the military service of the United States of America in
the prosecution of any war, or who is or has been ordered to report for induction under the
provisions of the Selective Training and Service Act of 1940 as amended, nor have they been

ordered to report for service as a member of the Enlisted Reserve Corps, nor are said defendants entitled to any of the privileges under the provision of the said Soldiers' and Sailors' Civil Relief Act of 1940, or amendments thereto, as I verily believe.

Subscribed and sworn to before me by _____ this _____ day of _____, 2004.

Notary Public in and for the State of Iowa

c. Original Notice: State of Iowa.

- (1) Service must be made by serving a copy of the original notice with a copy of the petition upon the county attorney (for the county in which the real estate is located) AND by sending a copy of the original notice and petition by certified mail to the Iowa Attorney General, Des Moines, Iowa. Iowa Code Section 613.9.
- (2) The State has 30 days to appear.
- (3) Affidavit of mailing must be filed.

IN THE IOWA DISTRICT COURT IN AND FOR _____ COUNTY

<p>_____,</p> <p>Plaintiff,</p> <p>v.</p> <p>[Known Defendant]; All unknown heirs of [Known Defendant]; and all other unknown claimants and all persons unknown claiming any right, title or interest in and to:</p> <p>[LEGAL DESCRIPTION OF PROPERTY]</p> <p>and all heirs, spouses, assigns, grantees, legatees, devisees, and beneficiaries of each and all of the defendants named above,</p> <p>Defendants.</p>	<p>Case No. _____</p> <p>ORIGINAL NOTICE</p>
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TO THE STATE OF IOWA:

You are notified that a petition has been filed in the office of the clerk of this court naming you as the Defendant(s) in this action. A copy of the Petition (and any documents filed with it) is attached to this notice, stating in substance that Plaintiff owns in fee simple the property described therein situated in _____ County, Iowa and described as follows:

[LEGAL DESCRIPTION]

Such ownership is claimed by reason of facts fully stated in the Petition, which also alleges Defendant(s) claims some interest therein but its claim is without right and constitutes a cloud on the title, which Plaintiff desires to remove. The Petition prays Plaintiff's title to the premises be established as an absolute title in fee simple, and quieted and confirmed against all Defendants, each of whom be forever barred and estopped from having or claiming any right, title, lien or interest in the property; and for costs and such other and further relief as the court deems just or equitable under the circumstances.

A copy of Plaintiff's Petition is attached hereto. Plaintiff's attorney is _____

_____.

You are further notified that unless, within 30 days after service of this Original Notice upon you, you serve, and within a reasonable time thereafter file, a motion or answer, in the Iowa District Court in and for _____ County, at the county courthouse in _____, Iowa, judgment by default will be rendered against you for the relief demanded in the Petition.

(SEAL)

Clerk of the Above Court

County Courthouse
_____, Iowa

NOTE: The attorney who is expected to represent the defendant should be promptly advised by defendant of the service of this notice.

If you require the assistance of auxiliary aids or services to participate in court because of a disability, immediately call your district ADA coordinator at 712-279-6616 (If you are hearing impaired, call Relay Iowa TTY at 1-800-735-2942).

d. Original Notice: United States.

- (1) Service must be made on the United States Attorney (for the district in which the action is brought) or on an assistant United States attorney or clerical employee designated by the United States attorney in writing filed with the clerk of the court in which the action is brought AND by sending copies of the original notice and petition, by registered mail, or by certified mail, to the Attorney General of the United States at Washington, D.C.
28 U.S.C.S. Section 2410(b).
- (2) United States has 60 days to appear and answer.
28 U.S.C.S. Section 2410(b).
- (3) Affidavit of mailing must be filed.

IN THE IOWA DISTRICT COURT IN AND FOR _____ COUNTY

<p>_____,</p> <p>Plaintiff,</p> <p>v.</p> <p>[Known Defendant]; All unknown heirs of [Known Defendant]; and all other unknown claimants and all persons unknown claiming any right, title or interest in and to:</p> <p>[LEGAL DESCRIPTION OF PROPERTY]</p> <p>and all heirs, spouses, assigns, grantees, legatees, devisees, and beneficiaries of each and all of the defendants named above,</p> <p>Defendants.</p>	<p>Case No. _____</p> <p>ORIGINAL NOTICE</p>
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TO THE UNITED STATES OF AMERICA:

You are notified that a petition has been filed in the office of the clerk of this court naming you as the Defendant(s) in this action. A copy of the Petition (and any documents filed with it) is attached to this notice, stating in substance that Plaintiff owns in fee simple the property described therein situated in _____ County, Iowa and described as follows:

[LEGAL DESCRIPTION]

Such ownership is claimed by reason of facts fully stated in the Petition, which also alleges Defendant(s) claim some interest therein but its claim is without right and constitutes a cloud on the title, which Plaintiff desires to remove. The Petition prays Plaintiff's title to the premises be established as an absolute title in fee simple, and quieted and confirmed against all Defendants, each of whom be forever barred and estopped from having or claiming any right, title, lien or interest in the property; and for costs and such other and further relief as the court deems just or equitable under the circumstances.

A copy of Plaintiff's Petition is attached hereto. Plaintiff's attorney is _____

_____.

You are further notified that unless, within 60 days after service of this Original Notice upon you, you serve, and within a reasonable time thereafter file, a motion or answer, in the Iowa District Court in and for _____ County, at the county courthouse in _____, Iowa, judgment by default will be rendered against you for the relief demanded in the Petition.

(SEAL)

Clerk of the Above Court

County Courthouse
_____, Iowa

NOTE: The attorney who is expected to represent the defendant should be promptly advised by defendant of the service of this notice.

If you require the assistance of auxiliary aids or services to participate in court because of a disability, immediately call your district ADA coordinator at 712-279-6616 (If you are hearing impaired, call Relay Iowa TTY at 1-800-735-2942).

IV. The Petition

A. Iowa Code Section 649.2 sets forth the requirements for the Petition. The Petition must:

1. Be under oath.
2. Set forth the nature and extent of the Plaintiff's estate.
3. Describe the real property.
4. State the Plaintiff is credibly informed and believes the Defendant makes or may make some claims adverse to the Plaintiff.
5. Pray for the establishment of the Plaintiff's estate.
6. Pray the Defendant be barred and forever estopped from having or claiming any right or title to the real estate adverse to the Plaintiff.

B. A Quiet Title Action is an equitable proceeding. The Plaintiff may not request a jury trial.

C. The Plaintiff bears the burden of proof and must succeed on the strength of his or her own title, and not the weakness of the Defendant's title or claim. Wilcox v. Pinney, 98 N.W.2d 720, 250 Iowa 1378 (Iowa 1959).

D. The Plaintiff makes a prima facie case if he or she has a tax deed. Bennett v. Bowers, 28 N.W.2d 618, 238 Iowa 702 (Iowa 1947).

E. Rebuttable and Conclusive Presumptions. Iowa Code Section 649.7 provides,

[i]n the proof title to real estate derived from deeds or other conveyances affecting real estate, executed prior to January 1, 1905, where it appears from recitals therein that such deeds or other conveyances have been executed in pursuance to a contract assigned by the original vendee or the vendee's assignee to the grantee in such deeds or other conveyances, the recitals thereof shall be presumptive evidence of the truth of said recitals, and of the fact of said assignment, and that such assignment was made in good faith for a valuable consideration, and no action shall be maintained by such original vendee, assignee, or any person or persons holding by, through, or under such vendee or assignee, against the grantee in said deed or other conveyance, and the grantee's grantees in the record chain of title, and said recitals shall be conclusive evidence of the fact of such

assignment and that it was made in good faith and for a valuable consideration.

TIP: The legal description of the property should appear in the caption. The Plaintiff's attorney should request his or her client to deliver the original abstract of title to the Plaintiff's attorney for updating by the abstractor and examination by said attorney. It is important to use the exact legal description from the abstract of title and not an abbreviated description from a tax statement.

On a scale of 1 to 10 with 10 being the best way to obtain the correct legal description to 1 being "hope to get by":

- Abstract of title continued to the current date by an abstractor and examined by an attorney. (10 points)
- Abstract of title not continued to the current date but it shows the instrument of conveyance to your client, or the title opinion that had been rendered at the time your client acquired the real estate. (8 points)
- Title report by the abstractor. (5 points)
- Instrument of conveyance, i.e. the warranty deed. (3 points)
- Mortgage instrument. (1 point)
- Tax Statement. (-2 points)
 - Abbreviated legal description.
 - Oftentimes not complete.
- Client (or anyone else) reading the legal description to you. (-5 points)

IN THE IOWA DISTRICT COURT IN AND FOR _____ COUNTY

<p>_____,</p> <p>Plaintiff,</p> <p>v.</p> <p>[Known Defendant]; All unknown heirs of [Known Defendant]; and all other unknown claimants and all persons unknown claiming any right, title or interest in and to:</p> <p>[LEGAL DESCRIPTION OF PROPERTY]</p> <p>and all heirs, spouses, assigns, grantees, legatees, devisees, and beneficiaries of each and all of the defendants named above,</p> <p>Defendants.</p>	<p>Case No. _____</p> <p>PETITION TO QUIET TITLE</p>
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COMES NOW Plaintiff _____, by and through its counsel of record, and hereby states the following in support of this Petition to Quiet Title pursuant to Iowa Code Chapter 649:

1. Plaintiff is the absolute owner in fee simple of the following real property situated in _____ County, Iowa, and described as follows:

[LEGAL DESCRIPTION]

2. Plaintiff obtained ownership of the real property described above by _____ from _____, on _____, filed for record _____ in _____ in the _____ County, Iowa, Recorder's Office. *See* Exhibit A, attached hereto and by this reference incorporated herein in its entirety.

3. Counsel for Plaintiff, _____ of the law firm of _____, examined the abstract of title to the property described in Paragraph 1 herein.

4. Within the boundaries of the real property described in Paragraph 1 herein, the following real property is situated:

[LEGAL DESCRIPTION]

5. The chain of title to the real property described in Paragraph 4 herein appears to end with [person or entity] in [year].

6. Plaintiff believes _____ died intestate in _____. Plaintiff further believes _____ was single and a resident of _____ County, Iowa, at the time of his/her death. To the best of Plaintiff's knowledge, _____'s estate was not probated and his/her gross estate for federal estate tax purposes was less than the federal estate tax unified credit exemption. Plaintiff further believes _____'s parents predeceased him/her. Plaintiff further believes _____ had [number of children] at the time of his/her death, [name and residence of any children]. Pursuant to Iowa Code Section 633.219, if _____ had surviving issue at the time of his/her death, they would have been entitled to his/her interest in and to the real property described in Paragraph 4 herein. Plaintiff has made a diligent inquiry to ascertain the names and residences of _____'s issue, if any, but they remain unknown to Plaintiff.

7. Plaintiff believes [spouse], predeceased him/her in _____.

8. The unknown claimants are those persons who claim any interest in or lien upon the real property described in Paragraph 4 herein, by, through or under any named Defendant.

Such unknown claimants are unknown to Plaintiff, though it has sought diligently to learn the same.

9. None of the Defendants have in fact any right, title or interest in or to the real property described in Paragraph 4 herein or any part thereof, or any color of right, title or interest therein.

10. Plaintiff is the absolute and unqualified owner of a one hundred percent (100%) interest in the real property described in Paragraph 4 herein by virtue of the _____ referred to in Paragraph 1 herein.

11. Plaintiff is credibly informed and believes that Defendants make some claim to the premises adverse to Plaintiff's title.

12. Defendants' adverse claims are wholly without right, but constitute clouds on Plaintiff's title, which Plaintiff desires to remove.

13. More than twenty (20) days prior to the commencement of this action, Plaintiff requested Defendant _____ to execute a quit claim deed concerning the real property described in Paragraph 1, above, to Plaintiff. Plaintiff also tendered Defendant _____ One Dollar and Twenty-five Cents (\$1.25) to cover the costs of executing and delivering such quit claim deed; however, Defendant _____ has failed to properly execute such quit claim deed and return it to the undersigned.

14. Pursuant to Iowa Code Section 649.5, Plaintiff may be entitled to attorney fees in the Court's discretion. Plaintiff accordingly requests the Court award Plaintiff attorney fees.

WHEREFORE, Plaintiff prays Plaintiff's title and estate in the premises described in Paragraph 4 above be quieted and confirmed as an absolute title in fee simple; that Defendants be forever barred and estopped from having or claiming to have any right,

title, lien or interest thereto; that Plaintiff be awarded costs of this action; that Plaintiff be awarded attorney fees; and for such other relief as may be equitable and just under the circumstances.

Respectfully submitted,

[LAW FIRM]

By: _____

ATTORNEYS FOR PLAINTIFF

STATE OF IOWA)
)ss:
COUNTY OF _____)

I, _____, state that I am the _____ for
_____, Plaintiff in the above-captioned matter, that I have read the
contents of the foregoing Petition to Quiet Title, that the statements and allegations contained
therein are true and correct as I verily believe, and that I have the authority from
_____ [Plaintiff] to direct its attorneys to file such Petition on behalf of
_____ [Plaintiff].

_____ [name]
_____ [title/position]
_____ [Plaintiff]

OR

STATE OF IOWA)
)ss:
COUNTY OF _____)

I, _____, being first duly sworn on oath, depose and state that I am the
Plaintiff in the above-captioned matter; that I have read the foregoing Petition To Quiet Title to
Real Estate; and that the statements and allegations contained therein are true and correct as I
verily believe.

_____, Plaintiff

V. Costs.

- A. The Defendant shall be awarded his or her costs, if he or she appears and disclaims all right and title adverse to the Plaintiff. Iowa Code § 649.4.
- B. Except as state above, costs are in the discretion of the court. Id.

VI. Attorney Fees.

- A. Iowa Code Section 649.5 provides the Plaintiff may be awarded nominal attorney fees in addition to ordinary costs if the Plaintiff requests the Defendant execute a Quit Claim Deed to the real property.
 - 1. The request must be made twenty (20) days or more before filing Petition.
 - 2. The Plaintiff must also tender One Dollar and Twenty-five Cents (\$1.25) to the Defendant to cover the expense of the execution and delivery of the Deed.
 - 3. The Defendant must refuse or neglect to comply with the Plaintiff's request.
 - 4. The Plaintiff must be successful in the action.
- B. The Plaintiff should include the allegation that the request for a Quit Claim Deed and the money for the Defendant's expenses was sent to the Defendant in the Petition.
- C. Attorney fees awarded pursuant to Iowa Code Section 649.5 shall not exceed:
 - 1. Twenty-five Dollars (\$25.00) for a single tract of real property not exceeding forty (40) acres or a single lot in a city.
 - 2. Forty Dollars (\$40.00) for actions involving a tract exceeding forty (40) acres and not more than eighty acres.
 - 3. A reasonable fee not exceeding, proportionately, those provided for above, for actions involving two (2) or more tracts that may not be embraced in one description, or single tracts covering more than eighty acres, or two (2) or more city lots.

TIP: Send the demand for Quit Claim Deed by certified mail.

IN THE IOWA DISTRICT COURT IN AND FOR _____ COUNTY

<p>_____,</p> <p>Plaintiff,</p> <p>v.</p> <p>[Known Defendant]; All unknown heirs of [Known Defendant]; and all other unknown claimants and all persons unknown claiming any right, title or interest in and to:</p> <p>[LEGAL DESCRIPTION OF PROPERTY]</p> <p>and all heirs, spouses, assigns, grantees, legatees, devisees, and beneficiaries of each and all of the defendants named above,</p> <p>Defendants.</p>	<p>Case No. _____</p> <p>DECREE</p>
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NOW on this ____ day of _____, 2004, the above-captioned matter comes before the Court for hearing on Plaintiff's Petition to Quiet Title. Plaintiff appears in person and by his [her or its] attorney, _____. The Court, having reviewed the court file, notes [Summary Judgment or Judgment by Default] was entered as against Defendant(s) _____ on _____, 2004. All of the remaining Defendants appear by their attorney/guardian ad litem, _____. No one else appears or has filed an appearance in this matter.

After having reviewed the court file and hearing the arguments of counsel, the Court hereby **FINDS** it has jurisdiction over this matter. The Court further **FINDS**:

1. Each of the facts stated in Plaintiff's Petition is true.

2. Plaintiff is the absolute owner in fee simple of the following real property situated in _____ County, Iowa, and described as follows:

[LEGAL DESCRIPTION]

3. Plaintiff obtained ownership of the real property described above by _____ from _____ on _____, filed for record _____ in _____ in the _____ County, Iowa, Recorder's Office.

4. None of the Defendants have in fact any right, title or interest in or to the real property described in Paragraph 2 herein or any part thereof, or any color of right, title or interest therein.

5. Plaintiff is the absolute and unqualified owner of a one hundred percent (100%) interest in the real property described in Paragraph 2 herein.

6. No Defendant makes any adverse claim to Plaintiff's absolute and unqualified ownership of the real property described in Paragraph 2 herein.

7. Any claim of any Defendant would be wholly without right or merit.

8. Proper service as required by law was had upon each Defendant in the above-captioned matter.

9. Plaintiff should be awarded attorney fees in this matter.

NOW THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that Plaintiff's title and estate in the real property described in Paragraph 2, above, is established, quieted and confirmed as an absolute title in fee simple.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that each Defendant be forever barred and estopped from having or claiming to have any right, title, lien or interest to the real property described in Paragraph 2, above.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Plaintiff is
awarded attorney fees in the amount of \$ _____.


IT IS FURTHER ORDERED, ADJUDGED AND DECREED that costs are taxed to
_____.


Judge, Third Judicial District

IOWA CODE CHAPTER 649

Iowa Code Annotated [Currentness](#)

Title XV. Judicial Branch and Judicial Procedures

 [Subtitle 5.](#) Special Actions ([Refs & Annos](#))

 [Chapter 649.](#) Quieting Title ([Refs & Annos](#))

➡649.1. Who may bring action

An action to determine and quiet the title of real property may be brought by anyone, whether in or out of possession, having or claiming an interest therein, against any person claiming title thereto, though not in possession.

Iowa Code Annotated [Currentness](#)

Title XV. Judicial Branch and Judicial Procedures

 [Subtitle 5.](#) Special Actions ([Refs & Annos](#))

 [Chapter 649.](#) Quieting Title ([Refs & Annos](#))

➡649.2. Petition

The petition therefor must be under oath, setting forth the nature and extent of the petitioner's estate, and describing the premises as accurately as may be, and that the petitioner is credibly informed and believes the defendant makes or may make some claims adverse to the petitioner, and praying for the establishment of the plaintiff's estate, and that the defendant be barred and forever estopped from having or claiming any right or title to the premises adverse to the plaintiff.

Iowa Code Annotated [Currentness](#)

Title XV. Judicial Branch and Judicial Procedures

 [Subtitle 5.](#) Special Actions ([Refs & Annos](#))

 [Chapter 649.](#) Quieting Title ([Refs & Annos](#))

➡649.3. Notice

The notice in such action shall accurately describe the property, and, in general terms, the nature and extent of the plaintiff's claim, and shall be served as in other cases.

Iowa Code Annotated [Currentness](#)

Title XV. Judicial Branch and Judicial Procedures

 [Subtitle 5.](#) Special Actions ([Refs & Annos](#))

 [Chapter 649.](#) Quieting Title ([Refs & Annos](#))

➡649.4. Disclaimer--costs

If the defendant appears and disclaims all right and title adverse to the plaintiff, the defendant shall recover the defendant's costs. In all other cases the costs shall be in the discretion of the court.

Iowa Code Annotated [Currentness](#)

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 [Subtitle 5.](#) Special Actions ([Refs & Annos](#))


 [Chapter 649.](#) Quieting Title ([Refs & Annos](#))

→649.5. Demand for quitclaim--attorney's fees

If a party, twenty days or more before bringing suit to quiet a title to real estate, requests of the person holding an apparent adverse interest or right therein the execution of a quitclaim deed thereto, and also tenders to the person one dollar and twenty-five cents to cover the expense of the execution and delivery of the deed, and if the person refuses or neglects to comply, the filing of a disclaimer of interest or right shall not avoid the costs in an action afterwards brought, and the court may, in its discretion, if the plaintiff succeeds, assess, in addition to the ordinary costs of court, an attorney's fee for plaintiff's attorney, not exceeding twenty-five dollars if there is but a single tract not exceeding forty acres in extent, or a single lot in a city, involved, and forty dollars, if but a single tract exceeding forty acres and not more than eighty acres. In cases in which two or more tracts are included that may not be embraced in one description, or single tracts covering more than eighty acres, or two or more city lots, a reasonable fee may be assessed, not exceeding, proportionately, those provided for in this section.

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→649.6. Equitable proceedings

In all other respects, the action contemplated in this chapter shall be conducted as other actions by equitable proceedings, so far as the same may be applicable, with the modifications prescribed.

Iowa Code Annotated [Currentness](#)

Title XV. Judicial Branch and Judicial Procedures

 [Subtitle 5.](#) Special Actions ([Refs & Annos](#))


 [Chapter 649.](#) Quieting Title ([Refs & Annos](#))

→649.7. Deeds--recitals--rebuttable and conclusive presumptions

In the proof of title to real estate derived from deeds or other conveyances affecting real estate, executed prior to January 1, 1905, where it appears from recitals therein that such deeds or other conveyances have been executed in pursuance to a contract assigned by the original vendee or the vendee's assignee to the grantee in such deeds or other conveyances, the recitals thereof shall be presumptive evidence of the truth of said recitals, and of the fact of said assignment, and that such assignment was made in good faith for a valuable consideration, and no action shall be maintained by such original vendee, assignee, or any person or persons holding by, through, or under such vendee or assignee, against the grantee in said deed or other conveyance, and the grantee's grantees in the record chain of title, and said recitals shall be conclusive evidence of the fact of such assignment and that it was made in good faith and for a valuable consideration.

Iowa Code Annotated [Currentness](#)

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 [Subtitle 5.](#) Special Actions ([Refs & Annos](#))

 [Chapter 649.](#) Quieting Title ([Refs & Annos](#))

→649.8. Construction of Act

[Section 649.7](#) shall not be construed to remove the bar of any other statute of limitations.