

**Forest Service Manual  
National Headquarters - Washington Office  
Washington, DC**

**Forest Service Manual 5500 – Landownership Title Management  
Chapter 5510 - Title Claims and Encroachments**

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**Digest:** Following is an explanation of the changes throughout the directive by section.

**5500:** This is a technical amendment that converts the format and style of this Forest Service Manual (FSM) title (previously in “Applixware”) to the new FSM template using the agency’s current corporate word processing software. Where chapters were previously organized into more than one document, they are now merged into one chapter whenever possible.

Although some minor typographical and technical errors have been corrected, this amendment contains no changes to the substantive direction in this title.

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**Chapter 5510 - Title Claims and Encroachments**

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## **5510.1 - Authority**

### **5510.11 - Real Property Quiet Title Act of October 25, 1972 (86 Stat. 1176; 28 U.S.C. 2409a)**

This act specifies the only method by which adverse claimants can challenge the United States title to real property (FSM 5511.1).

### **5510.12 - Adjustment of Land Titles Act of July 8, 1943 (also referred to as P.L. 78-120, as amended (57 Stat. 388; 7 U.S.C. 2253))**

This act provides the Secretary of Agriculture with authority to execute quitclaim deeds to certain acquired lands or interests if title is found to be insufficient or acquired in error or by inadvertence (FSM 5513.1).

### **5510.13 - Quitclaim Act of April 28, 1930 (46 Stat. 257; 43 U.S.C. 872)**

Section 6 authorizes the Secretary of Agriculture to execute a quitclaim deed for the non-Federal lands conveyed in uncompleted land exchanges for reserved National Forest or public domain lands (FSM 5513.11).

### **5510.14 - Color of Title Act of December 22, 1928, as amended (45 Stat. 1069, 43 U.S.C. 1068, 1068a, 1068b) and Related Acts**

This act and other acts cited under 43 CFR 2540 involve the Secretary of the Interior's authority to resolve claims to public land that was unreserved Federal real property and subject to the public land laws at the time the claim was initiated (FSM 5513.13a).

### **5510.15 - Federal Land Policy and Management Act of October 21, 1976 (90 Stat. 2770; 43 U.S.C. 1745, 1746)**

Section 315 authorizes the Secretary of the Interior, after consultation with any affected Federal agency, to issue a document of disclaimer of interest(s) to lands or interest in lands not owned by the United States (FSM 5513.14). Section 316 provides for correction of patents or other conveyance documents in order to eliminate errors (FSM 5513.15).

### **5510.16 - General Mining Laws Act of May 10, 1872, as amended and supplemented (30 U.S.C. 21-et seq.)**

(See FSM 2803 and FSM 5513.17).

### **5510.17 - Repealed Laws**

See FSM 5501.4.

## **5510.2 - Objectives**

(See FSM 5502).

1. Identify and inventory all known and suspected title claims and encroachments.
2. Reduce significantly the number of unresolved encroachments and the management problems associated with mineral survey fractions and abandoned or unnecessary road rights-of-way. Also see FSM 5502.

## **5510.3 - Policy**

(See FSM 5503).

1. Provide all parties with fair, uniform, and prompt treatment under the applicable law(s) and the implementing rules, regulations, and instructions.
2. Consider all claims as potentially valid until the Office of the General Counsel reviews them and determines otherwise.
3. Use civil action in cases that involve land title or that may raise bona fide title issues and use criminal action only when no bona fide title dispute exists (FSM 5335).
4. Submit all stipulations for settlement of cases in litigation to the Washington Office for approval.
5. Provide the Department of Justice with the necessary assistance to protect the United States' interest in litigation within specified time limits.

## **5510.4 - Responsibility**

(See FSM 5504).

## **5510.6 - Title Claims and Encroachments**

Title claims and the ensuing encroachments develop or exist based on numerous forms of claims or color of title, such as tax deeds, State patents, improper surveys, erroneous land descriptions, unrecorded deeds, tax sale deeds, void documents in the chain of title, riparian rights, undetected encumbrances in title docket, unauthorized occupancy under guise of the mining or other public land laws, unperfected lieu selections, misinterpretation of grant laws, such as railroad, swamp land, Spanish land grants, and aboriginal title claims to name a few.

The procedure to resolve title claims and encroachments depends on whether the title claim involves litigation against the United States or whether the United States is attempting to resolve the case through administrative action or litigation.

## **5511 - Litigation Against the United States**

The Department of Justice, with the assistance of the Office of the General Counsel, represents the United States in litigation.

The responsible Forest Service officials shall conduct investigations, prepare reports, and make recommendations following the procedures outlined in FSH 5509.11, section 12.22.

The Department of Justice shall make or direct all contact with the litigant or the litigant's representative on the case.

### **5511.1 - Litigation Authority**

The Real Property Quiet Title Act of 1972 authorizes suits against the United States to adjudicate title to real estate. The Quiet Title Act generally provides as follows:

1. The United States may be sued in a Federal Court to adjudicate disputed title to real estate.
2. The United States shall not be disturbed in its possession of real property or interest therein pending outcome of the trial and, if the decision is adverse, may elect to retain interest by paying just compensation as established by the court.
3. The act bars action if it does not begin within 12 years from the date the plaintiff or predecessor in title knew or should have known of the United States claim of title. A recorded deed or other acts of possession in the name of the United States serves as constructive notice of claim of title by the United States.
4. The act does not permit suits against the United States based on adverse possession of lands or interest in lands administered by the Secretary of Agriculture. The plaintiff may assert that adverse possession was perfected before United States acquisition.
5. The act requires the plaintiff to describe in detail the interest claimed, the basis for the claim, and the United States' interest in the property.
6. Most real property interest, except security interest, water rights, and Indian land, may be litigated under this act.

### **5511.11 - Litigation Sequence**

#### **5511.11a - Complaint Filed**

The plaintiff must properly file a complaint against the United States or its agents in a Federal District Court. On occasion, plaintiffs file complaints in State courts even though such courts lack jurisdiction to hear claims against the United States.

### **5511.11b - Complaint Served**

The Federal District Court must serve the complaint to the U.S. Attorney for the district in which the action is filed. The Court would also serve the Forest Service official or others named as the party's defendant.

### **5511.11c - Response to Complaint**

1. United States Attorney. If the United States' interest is not affected or the case is improperly filed, the U.S. Attorney shall take steps to have the action against the United States dismissed.

If the United States has been properly served and the litigation in fact affects Federal interest, the U.S. Attorney forwards the complaint to the Department of Justice.

2. Department of Justice. The Land and Natural Resources Division of Justice retains jurisdiction over all cases involving questions of title or water rights. The U.S. Attorneys have discretionary authority to handle certain emergency situations requiring immediate action.

3. Office of the General Counsel. The Office of the General Counsel, upon notice from the Department of Justice of pending litigation, asks the Forest Service to prepare a litigation report and to provide other information needed for defense of the matter.

4. Director of Lands, Washington Office. The Director of Lands, Washington Office, coordinates Forest Service actions involving title claims cases in litigation, including notifying the Regional Forester and requesting a litigation report. If the Regional Forester receives direct notification from the U.S. Attorney or Regional Attorney, the Regional Forester shall prepare the litigation report (FSH 5509.11, sec. 12.22) and notify the Washington Office, Lands Staff.

5. Regional Forester. The Regional Forester is responsible for preparation of the final report (Report FS-5400-H, Litigation Report) in consultation with the Regional Attorney. Refer to FSM 1548.1 for general format and FSH 5509.11, sec. 12.22 for specific format and contents required for title claims.

The Regional Forester may request delegated authority from the Chief to handle routine and emergency cases directly with the U.S. Attorney (FSM 5504.2).

### **5511.12 - Litigation Report**

The Department of Justice sets the due dates for litigation reports to meet filing dates established by the courts under the Federal Rules of Civil Procedures. Be sure to meet these dates. Failure to do so or to obtain a stay may result in a default judgment against the United States that grants the plaintiff the action requested.

If certain material necessary for the litigation report is not readily available, transmit the report with a notation that the missing material is to follow by supplemental report as soon as available.

#### **5511.12a - Normal Handling**

1. The Director of Lands, Washington Office with the Office of the General Counsel, Washington Office, shall review the litigation report before transmitting it to the Department of Justice.

2. The Department of Justice reviews the case and transmits it along with instructions on how to proceed in court to the assigned U.S. Attorney.

#### **5511.12b - Emergency Handling**

Occasionally, the Regional Forester sends the litigation reports directly through the Office of the General Counsel to the U.S. Attorney to expedite cases involving emergency situations. In these instances, state clearly in the cover or transmittal letter that the report does not constitute the Department's recommendations or position regarding settlement authority. State further that the Regional Forester has sent the necessary copies of the report to the Director of Lands, Washington Office, for transmittal through normal channels to the Department of Justice.

### **5512 - Administrative Action or Litigation by the United States**

Regional Foresters must take action to identify, inventory, investigate, and resolve all claims and encroachments in a planned period of time. See FSH 5509.11, chapter 10, for the procedures for handling claims and encroachments.

#### **5512.1 - Alternatives for Resolution**

The alternative(s) selected depends on interpretation, with aid of counsel, of the factual basis for the establishment of the claim or encroachment, the applicability or inapplicability of relief authorities, the demeanor of the claimant, and the complexity of the case. Normally, use the following alternatives or combinations thereof for resolving title claim and encroachment cases.

#### **5512.11 - Administrative Action**

##### **5512.11a - Negotiation**

Negotiate for removal of structure(s) or, where appropriate, abandonment of improvement(s), and site restoration for invalid claims or encroachments.

##### **5512.11b - Under Relief Authorities**

- (1) Adjustment of land titles of acquired lands.
- (2) Quitclaim Act in unconsummated general exchange cases.
- (3) Small Tracts Act sale, exchange, or interchange for encroachments, mineral survey fractions, and unused rights-of-way.



(4) Color of title claim for existing cases initiated on unreserved, unappropriated public lands.

(5) Disclaimer of interest or interests in lands not owned by United States under Federal Land Policy and Management Act .

(6) Special acts.

#### **5512.11c - Other Settlement Authorities**

(1) Land exchange (FSM 5430).

(2) Validity contests where cases involve mining claims (FSM 2810).

#### **5512.12 - Litigation**

##### **5512.12a - Civil Action**

Use civil action in all cases that involve land title or that may raise bona fide title issues and to secure removal of structure(s) or abandonment of improvement(s), site restoration, and collection of damages. A temporary restraining order may be appropriate (FSH 5509.11).

##### **5512.12b - Criminal Action**

Use criminal action only in those instances when the Regional Forester has determined that the claim is clearly not bona fide (FSM 5335) and that this action is most feasible.

#### **5513 - Relief Authorities**

Detailed direction on applicability and procedures are in FSH 5509.11, chapter 10.

##### **5513.1 - Adjustment of Land Titles Act**

This authority deals with claims to lands the United States has acquired by purchase, donation, or exchange of acquired lands. Reserved lands are exempt (FSH 5509.11, sec. 13.2).

The most common claims to acquired land that result in claim cases under Public Law 78-120 are:

1. Erroneous location of survey lines, or the inconsistency between the ground location and deed descriptions at the time of acquisition.
2. Failure to locate property lines on the ground at the time of acquisition.
3. Disclosure, after acquisition by purchase or exchange, that certain lands were included through error in description.
4. Title conveyed to the United States by deed from other than the true owner.

5. Condemnation proceedings in which lands were included through error, mistake, or inadvertence.

6. Adverse possession perfected before the United States acquired title.

#### **5513.11 - Quitclaim Act**

This act covers the reconveyance of land deeded to the United States under one of the public domain or reserved Federal land exchange authorities except lands involving forest in lieu selections under the 1897 Act.

Use this authority for exchanges not consummated after recording of the deed to the United States and for consummated exchanges creating a cloud on the title of innocent third parties (FSH 5509.11, sec. 13.3).

#### **5513.12 - Small Tracts Act**

The scope of this authority is in 36 CFR 254, Subpart C. Use this authority, where applicable, as an alternate means for settling any qualified title claim or encroachment case (FSH 5509.11, sec. 21).

#### **5513.13 - Color of Title Acts**

The Color of Title Acts apply only to unappropriated, unreserved public domain lands open to entry under the public land laws at the time of occupancy.

##### **5513.13a - Color of Title Act of 1928**

The act recognizes the following two classes of claims:

1. Class 1. Includes claims held in good faith for 20 years or more on which claimant has built valuable improvements or some part of which the claimant has cultivated.

2. Class 2. Includes claims continuously held in good faith for the period commencing not later than January 1, 1901, to the date of application (FSH 5509.11, sec. 13.4).

##### **5513.13b - Other Color of Title Authorities**

There are a number of other acts passed for specific areas, such as the Wisconsin Land Title Act of 1954 (FSH 5509.11, sec. 13.43). Process these claims through the Lands Staff, Washington Office; follow the applicable section in FSH 5509.11 and 43 CFR 2540.

#### **5513.14 - Disclaimer of Interest**

Section 315 of the Federal Land Policy and Management Act authorizes the Secretary of the Interior to issue a document of disclaimer of interest or interests in any non-Federal lands where the disclaimer would help remove a cloud on the title of such lands.

Before issuing a disclaimer, the Secretary of the Interior must consult with the Federal agency affected by an application. It is not the intent of the disclaimer to purport to convey any real property of the United States (FSH 5509.11, sec. 13.5).

#### **5513.15 - Correction of Conveyance Documents**

Section 316 of the Federal Land Policy and Management Act (43 U.S.C. 1746) authorizes the Secretary of the Interior to correct patents or documents of conveyance relating to the disposal of public lands, where necessary to eliminate errors (FSH 5509.11, sec. 13.5).

#### **5513.16 - Other Settlement Authorities**

These are additional authorities used to settle other types of claims against the United States. (FSM 5430, FSM 2720, and FSM 2810).

#### **5513.17 - Mining Claims**

Federal lands, reserved and set aside for National Forest purposes pursuant to the Creative Act of 1891, were severed from the public domain. However, the mineral lands within reserved National Forests were made subject to location and entry under the Mining Law of 1872, as amended 30 U.S.C. 21-54 et seq. by the Organic Act of 1897 (30 Stat. 36; 16 U.S.C. 482).

See FSM 2810 for a detailed explanation of the rights acquired by a mining claimant. In brief, the mining claimant may prospect, locate, and mine locatable minerals and have reasonable use of the ground surface for that purpose. The holder of a mining claim may obtain reasonable access subject to the Secretary of Agriculture's rules and regulations. Upon the discovery of a valuable mineral in commercial quantities, the claim may be eligible for a mineral patent.

See FSM 2810 for the procedures for eliminating uses of the surface, where such uses are not reasonably necessary or where the claimant is not actually involved in bona fide minerals related activities. Such use is trespass upon National Forest System lands (FSM 2803 and FSH 5509.11, sec. 14).

#### **5514 - Legislative Action**

See FSM 1510 and FSH 5509.11, sec. 14, for guidelines on legislative proposals.

#### **5515 - Property Boundaries**

See FSM 7150 and FSH 5509.11, sec. 15, for guidance on property boundaries.