Navigating Article 15 Actions in Property Disputes

A presentation for the New York State Association of Professional Land Surveyors

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Three learning objectives

1. Understand the purpose and scope of RPAPL Article 15 "Quiet Title" actions in resolving property ownership disputes.
2. Identify key procedural aspects of initiating and conducting a quiet title action, including necessary parties and required documentation.
3. Recognize special considerations and recent legal developments affecting quiet title actions and property disputes in New York.

Outline

I. Common Title Concerns

A. Boundary issues. One of the most critical aspects of any transaction is ensuring that the property that you are purchasing is the property that you intend on purchasing. This is why obtaining a survey or a boundary retracement is critical prior to the purchase. Even if the conditions on the ground (i.e., fences, lines of occupation or maintenance, etc.) indicate that the boundary line is elsewhere, courts often will rely on the description in the deeds as manifested through a survey as controlling on where the boundaries are located. *Riggs v. Benning*, 290 A.D.2d 716, 718, 736 N.Y.S.2d 474, 476 (N.Y. App. Div. 2002) (rejecting argument that a painted line and postings reflected the true boundary and, instead, relying on the deeds and a confirmatory survey to control the location of the boundary). In other words, deeds will be the default to control on the intentions of the parties as to where boundary lines are located. *See*, *e.g.*, *Matter of In re Estate of Flaherty*, 65 A.D.3d 745, 746-47, 883 N.Y.S.2d 812, 814 (N.Y. App. Div. 2009); N.Y. Real Prop. Law § 240 (Consol. 2025); 43A N.Y. Jur. 2d Deeds § 219 (2020).

B. Retained rights. Retained rights issues arise when the grantor reserves a continued right or excepts some property from the transaction. When there is a reservation, the fee title passes to the grantee subject to the rights reserved to the grantor, which can be either already existing or created by the deed that includes the reservation. *Peters v. Smolian*, 49 Misc. 3d 408, 419, 12 N.Y.S.3d 824, 835 (N.Y. Sup. Ct., June 25, 2015) (citing 5–51 Warren's Weed, New York Real Property § 51.02 (2014)); *see also Luce v. Hassett*, 1 A.D.2d 917, 917, 149 N.Y.S.2d 533, 534 (N.Y. App. Div. 1956). On the other hand, an exception operates to withdraw or exclude some part of the property that would otherwise be conveyed under the general property description. *Beardslee v. New Berlin*

Light & Power Co., 207 N.Y. 34, 39-40 (N.Y. 1912); *Restatement of the Law – Property* § 473 (1944) (updated June 2021). Use of the word "exception" can create a reservation in favor of the grantor if this intent is apparent from the other language of the instrument. *See Beardslee*, 207 N.Y. at 39. The exact words "excepting" or "reserving" are not always used, and courts have held that the phrase "subject to" also can create a reservation. More specifically, courts have held that the phrase "subject to" can be construed to reserve an easement. 49 N.Y. Jur. 2d Easements § 33 (citing *Dagrosa v. Calabro*, 105 N.Y.S.2d 178 (N.Y. Sup. Ct., Queens Cnty., April 30, 1951); *Barber v. City of New Rochelle*, 99 N.Y.S.2d 393 (N.Y. Sup. Ct., Westchester Cnty., July 21, 1950)); *Jakobson v. Chestnut Hill Properties, Inc*., 106 Misc.2d 918, 436 N.Y.S.2d 806, 810 (N.Y. Sup. Ct., Nassau Cnty., Feb. 26, 1981), *overruled on other grounds in Matter of Marchand v. New York State Dept. of Envtl. Conserv.*, 19 N.Y.3d 616, 950 N.Y.S.2d 496, 497 (N.Y. 2012); *Shortt v. Bleier*, 193 A.D.2d 1099, 1099, 598 N.Y.S.2d 632, 633 (N.Y. App. Div. 1993); *Circuit City Stores, Inc. v. Muss*, 151 A.D.2d 714, 543 N.Y.S.2d 147 (N.Y. App. Div. 1989); *Hurd v. Lis*, 92 A.D.2d 653, 654, 460 N.Y.S.2d 173, 174 (N.Y. App. Div. 1983); *Matter of J-T Associates v. Hudson River-Black River Regulating Dist*., 175 A.D.2d 438, 439, 572 N.Y.S.2d 122, 124 (N.Y. App. Div. 1991).

1. Easements. "An easement is a permanent right conferred by grant or prescription, authorizing one landowner to do or maintain something on the adjoining land of another, which, although a benefit to the land of the former and a burden on the land of the latter, is not inconsistent with general ownership." *Trustees of Freehold and Commonalty v. Jessup*, 162 N.Y. 122 (N.Y. 1900). When determining what is allowed and what is not allowed under an easement, the language used to grant, reserve, or except the easement is the most important factor because it evinces the intent of the parties creating the easement. *Busch v. Harrington*, 63 A.D.3d 1333, 1335, 880 N.Y.S.2d 774 (N.Y. App. Div. 2009) ("The record demonstrates that the intent of the parties' common grantor was to provide a right of passage from the subject lots to the east (ultimately leading to a main road) with no intent, express or implied, to provide a right of passage along the paper road to the west"). The most common easements are rights of way or easements allowing access across property to another property and utility easements, such as those for sewer lines, water lines, and electrical lines.

2. Mineral rights. Generally, an unconditional conveyance of fee title also conveys title to any subsurface mineral rights. *See Marvin v. Brewster Iron Min. Co*., 55 N.Y. 538, 547-548 (1874). However, mineral rights often can be reserved or excepted from the grant, and such reservations or exceptions are enforceable. *Frank v. Fortuna Energy*, 49 A.D.3d 1294, 1994-95, 856 N.Y.S.2d 322, 323 (N.Y. App. Div. 2008). Furthermore, this language can apply broadly to "all inorganic substances, which can be taken from the land" and will only be limited if there is "qualifying words, or language, evidencing that the parties contemplated something less general than all substances legally cognizable as minerals." *White v. Miller*, 200 N.Y. 29 (N.Y. 1910). Also, a reservation or exception for mineral rights has been held to include "the right to such

access over the surface that may be reasonably necessary to carry on mining activities." *Allen v. Gouverneur Talc Co. Inc*., 247 A.D.2d 691, 668 N.Y.S.2d 755 (N.Y. App. Div. 1998).

C. Right of first refusal. A right of first refusal "requires the owner, when and if he [or she] decides to sell [the property], to offer the property first to the party holding the preemptive right so that he [or she] may meet a third-party offer or buy the property at some other price set by a previously stipulated method." *M & A Motors v. Disco Realty*, 24 A.D.3d 519, 520, 806 N.Y.S.2d 244, 246 (N.Y. App. Div. 2005) (quoting *LIN Broadcasting Corp. v. Metromedia, Inc.*, 74 N.Y.2d 54, 56, 544 N.Y.S.2d 316 (N.Y. 1989)) (internal quotations omitted). The right "does not give its holder the power to compel an unwilling owner to sell, but, instead, "[a] right of first refusal is a dormant right that is triggered when an owner decides to sell the property to a third party at an agreed-upon price." *Id*. (internal quotations omitted); *Markan Corp. v. Plane's Cayuga Vineyard*, 24 A.D.3d 1264, 1265, 806 N.Y.S.2d 829, 830 (N.Y. App. Div. 2005).

D. Option interests. Unlike a right of first refusal, an option "creates in the optionee a power to compel an unwilling seller to sell at the agreed price." *LIN Broadcasting Corp. v. Metromedia, Inc.*, 74 N.Y.2d 54, 60, 544 N.Y.S.2d 316, 319 (N.Y. 1989). An option is in essence "an offer which by contract is to be kept open." *Id*. at 60. In other words, an option is irrevocable for any time specified in the instrument creating it and generally can be exercised at any time, depending, again, on the language of the instrument creating it. *See id*.

E. How these common title concerns can be addressed before acquisition. Negotiating the title provisions of a purchase and sale agreement, option or donation agreement is critical to reducing title risks. To the extent it can, the buyer needs to have the seller or donor address title concerns ***prior*** to closing by raising title objections. The onus should be on the seller or donor to correct these title objections prior to closing so that it may deliver marketable title to the buyer.

Sample Title Provision:

4. <u>Conditions of Title</u>.

Sellers shall convey the Premises to the Buyer by a bargain and sale deed with covenant against grantors acts, conveying marketable fee simple title to the Premises, subject only to (1) a lien for nondelinquent real property taxes; (2) utility company rights, licenses and/or easements to maintain poles, lines, wires and other installations presently servicing the Premises; (3) covenants and restrictions of record, provided same does not render title to the Premises unmarketable; (4) any matters that would be disclosed by an accurate survey and inspection of the Premises; (5) all applicable zoning laws, regulations and

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ordinances; and (6) any other matter approved by Buyer in
writing.
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After reviewing the title commitment (sometimes also called a title report), counsel for the buyer will send a title objection letter to the seller's counsel that lays out the buyer's title concerns. Depending upon the agreement terms, the buyer might not be able to object to title until the end of the due diligence period. Often, however, counsel to a seller or donor will place a time limit on how long the buyer has to raise title objections after it has received the title commitment. Pay very close attention to this time period if it is a provision of the agreement. If objections to title are not raised during the applicable period, they are generally deemed waived and may not be later raised.

II. Title Insurance

A. What is Title Insurance? Insurance that protects the financial interest of the insured in the property against loss due to title defects, liens or other matters that are not excluded from the policy, up to the dollar amount of coverage which is usually the acquisition price or donation value

B. How does Title Insurance differ from other types of insurance?

   1. One-time fee for as long as you have a financial interest in the property;
   2. No deductible;
   3. Insures against past defects through the date of the policy as opposed to future defects.

C. "What happens after you submit your request for Title Insurance?"

   1. Title Examination - (Abstract, Search – History of the property) examination of the public records to determine if there are any unacceptable defects or encumbrances which may pose a potential problem with the title to the property, impact its value, or affect the intended use of the property:

   2. Title Insurance Commitment –

      a. Discloses <u>unacceptable</u> defects or encumbrances uncovered by the title examination; and

      b. Is a promise to ensure a particular piece of property as long as all stipulations listed in the Schedule B have been met.

D. "Understanding the Title Insurance Commitment "and/or "What your attorney will look for when reviewing the Title Insurance Commitment?"

   1. Schedule A – sets forth the specifics of the proposed transaction:

      a. Cover Sheet –

i. Effective date – should be a recent date – if not, you should request an update of the title report so that you are working with current information.

ii. The name of the purchaser (a/k/a insured) confirms that this is the legal name of the proposed purchaser.

iii. Amount of coverage:

- Fee Policies – Purchase Price
- CE Policies – Amount
- Donations – appraised value of the easement

iv. Type of Interest – Fee, Leasehold, Mortgage.

v. Vested owner – verifies that the party who signed the purchase agreement on behalf of the seller is in fact the owner of the property.

b. Legal Description (*i.e.*, the "Schedule A").

i. Written description of the property –confirm that this properly describes the premises to be insured;

ii. Should include any easements that benefit the property.

2. Schedule B - proposed exceptions from the Title insurance policy:

a. Section I – Requirements - sets forth the requirements that must be met before a Title Policy will be issued.

b. Section II – Exceptions from Coverage – Your attorney will determine which exceptions are acceptable and which must be cleared up prior to closing.

i. Standard Exceptions – exclusions from coverage that apply to all properties;

ii. Special Exceptions – specific to the property to be insured – which may or may not be acceptable to the purchaser.

iii. Your attorney will work with the title insurance company and seller to cure defects or satisfy title objections.

E. "HELP…the sellers do not hold clear title to a portion of the property we intend to purchase." This is a common scenario for a Quiet Title action.

III. Quiet Title Actions

A. General. Actions to quiet title exist to resolve disputes about ownership of property. The ultimate goal is to obtain a judgment resolving the dispute, which then can be filed in the same manner as a deed to establish rights to the property. "To maintain a cause of action to quiet title [to real property], a plaintiff must allege actual or constructive possession of the property and the existence of a removable cloud on the property, which is an apparent title to the property, such as in a deed or other instrument, that is actually invalid or inoperative." *Nurse v. Rios*, 160 A.D.3d 888, 888, 76 N.Y.S.3d 70, 71 (N.Y. App. Div. 2018) (quoting *Zuniga v. BAC Home Loans Servicing, L.P.*, 147 A.D.3d 882, 883, 47 N.Y.S.3d 374 (N.Y. App. Div. 2017)).

B. Common litigation scenarios. Property disputes can take many shapes and forms. Some involve inconsistent or conflicting deed language, some involve conflicting surveyor opinions about how to apply deed language in the field, etc. The action to quiet title is an omnibus mechanism that can be employed to resolve many of these disputes.

1. Battle of the surveyors. The profession of land surveying is defined as "practicing that branch of the engineering profession and applied mathematics which includes the measuring and plotting of the dimensions and areas of any portion of the earth, including all naturally placed and man or machine-made structures and objects thereon, the lengths and directions of boundary lines, the contour of the surface and the application of rules and regulations in accordance with local requirements incidental to subdivisions for the correct determination, description, conveying and recording thereof or for the establishment or reestablishment thereof." N.Y. Educ. Law § 7203 (Consol. 2025). Surveys often are evidence of who owns what property by applying the often-archaic or technical descriptive language to actual property. *Riggs v. Benning*, 290 A.D.2d 716, 718, 736 N.Y.S.2d 474, 476 (N.Y. App. Div. 2002) (relying a survey confirming ownership under deeds to control the location of a disputed boundary).

2. Deed ambiguities. Descriptions in deeds often are far from perfect, which creates a risk that deeds for adjoining properties may be ambiguous enough to give rise to an interpreted conflict by the owners of those properties. Generally, ownership must be determined strictly by reference to the language used to describe the property in the deeds. *Henshaw v. Younes*, 101 A.D.3d 1557, 1559, 957 N.Y.S.2d 501, 502 (N.Y. App. Div. 2012); *Schweitzer v. Heppner*, 212 A.D.2d 835, 838, 622 N.Y.S.2d 142 (N.Y. App. Div. 1995). However, "[t]he fact that the exact boundaries are not described in a deed does not make an instrument of conveyance from which the property can be identified void for uncertainty if it is possible by any rule of construction to ascertain what property is being conveyed. Since a description is to be considered certain if it can be made certain, parol evidence may be introduced to identify the property intended and

its exact boundaries." *Town of Brookhaven v. Dinos*, 76 A.D.2d 555, 562, 431 N.Y.S.2d 567, 572 (N.Y. App. Div. 1980). Various descriptive elements can be used to define boundaries and property ownership, including "monuments, courses and distances, adjacent lands, and area or quantity." *Id*. Courts will give certain of these elements precedence over others when resolving conflicts. The "rules of construction require that resort be had first to natural objects, second to artificial objects, third to adjacent boundaries, fourth to courses and distances and last to quantity." *Shattuck v. Laing*, 124 A.D.3d 1016, 1019, 2 N.Y.S.3d 261, 264-65 (N.Y. App. Div. 2015) (quoting *Thomas v. Brown*, 145 A.D.2d 849, 850, 535 N.Y.S.2d 836 (N.Y. App. Div. 1988)); *see also Mohonk Preserve, Inc. v. Ullrich*, 119 A.D.3d at 1131, 990 N.Y.S.2d 660 (N.Y. App. Div. 2014). "Property may also be described by reference to a map or plat." *Town of Brookhaven*, 76 A.D.2d at 562.

3. Adverse possession or prescription. "Adverse possession, although not a favored method of procuring title, is a recognized one. It is a necessary means of clearing disputed titles and the courts adopt it and enforce it, because, when adverse possession is carefully and fully proven, it is a means of settling disputed titles and this is desirable." *Walling v. Przybylo*, 7 N.Y.3d 228, 233, 818 N.Y.S.2d 816, 819 (N.Y. 2006) (quoting *Belotti v. Bickhardt*, 228 N.Y. 296, 308, 127 N.E. 239 (N.Y. 1920)).

   i. Burden. Because it is not a favored manner of establishing title, there is a higher burden to establish title by adverse possession. *Ray v. Beacon Hudson Mountain Corp*., 88 N.Y.2d 154, 159, 643 N.Y.S.2d 939, 942 (N.Y. 1996). The proponent must establish all of the elements by clear and convincing evidence. *Id*. "The clear and convincing evidence standard requires the party bearing the burden of proof to 'adduce evidence that makes it highly probable that what he or she claims is what actually happened.'" *Currie v. McTague*, 83 A.D.3d 1184, 1185, 921 N.Y.S.2d 364, 366 (N.Y. App. Div. 2011) (quoting *Krol v. Eckman*, 256 A.D.2d 945, 947, 681 N.Y.S.2d 885 (N.Y. App. Div. 1998)).

   ii. Elements. To establish a claim of title to real property by adverse possession, the proponent must prove that the possession was: (1) hostile and under claim of right; (2) actual; (3) open and notorious; (4) exclusive; and (5) continuous for the statutory period of 10 years. *5262 Kings Highway, LLC v. Nadia Development, LLC*, 121 A.D.3d 748, 749, 994 N.Y.S.2d 631, 632 (N.Y. App. Div. 2014). The requisite character of the possession will vary with 'the nature and situation of the property and the uses to which it can be applied' and must "consist of acts such as are usual in the ordinary cultivation and improvement of similar lands by thrifty owners." *Ray v. Beacon Hudson Mountain*, 88 N.Y.2d 154, 160, 643 N.Y.S.2d 939, 942-43 (N.Y. 1996). Whether these elements are met often is a fact-intensive inquiry.

a. The same elements and rules apply to a prescriptive easement. *Barra v. Norfolk Southern Ry. Co.*, 75 A.D.3d 821, 824n.3, 825n.5, 907 N.Y.S.2d 70, 74 (N.Y. App. Div. 2010).

iii. Good-faith. Jurisdictions often are divided on whether a claim for adverse possession can be defeated by an adverse possessor's knowledge that "legal title" rests in another. *Walling v. Przybylo*, 7 N.Y.3d 228, 232-33, 818 N.Y.S.2d 816, 818-19 (N.Y. 2006). In New York, the longstanding rule was that such knowledge was irrelevant to establishing adverse possession. *Id*. However, after the N.Y. Court of Appeals's 2006 decision in *Walling v. Przybylo*, the State Legislature amended the relevant statute to require that an adverse possessor possess a reasonable basis for the belief that the claimed property belongs to him or her. N.Y. Real Prop. Acts. Law § 501 (Consol. 2025); *Hogan v. Kelly*, 86 A.D.3d 590, 591-92, 927 N.Y.S.2d 157, 159 (N.Y. App. Div. 2011); *Hammond v. Baker*, 81 A.D.3d 1288, 1290, 916 N.Y.S.2d 702 (N.Y. App. Div. 2011); *Barra v. Norfolk S. Ry. Co.*, 75 A.D.3d 821, 825-26, 907 N.Y.S.2d 70 (N.Y. App. Div. 2010). This means that if you think that you have an adverse possession issue, consult your attorney before taking any action or communicating with the other party because what is done or said can be evidence that is admissible on this issue.

a. There is authority that the claim-of-right rule and the statutory amendments in New York also apply to prescriptive easements. *Barra v. Norfolk Southern Ry. Co.*, 75 A.D.3d 821, 825n.5, 907 N.Y.S.2d 70, 74 (N.Y. App. Div. 2010).

4. Mistakes & Scriveners Errors. Occasionally there is a mistake in a deed, and the legal theory to fix that mistake — if it cannot be fixed by a voluntary agreement — is reformation. A claim to reform a deed is available to correct either a mutual mistake or a unliteral mistake that is coupled with fraud. *E.g.*, *Timber Rattlesnake, LLC v. Devine*, 117 A.D.3d 1291, 1292, 986 N.Y.S.2d 278, 279 (N.Y. App. Div. 2014); *Fabi v. Hayes*, 97 A.D.3d 1049, 1050, 949 N.Y.S.2d 261, 262 (N.Y. App. Div. 2012). To succeed on a claim for reformation, a party must meet a clear-and-convincing burden of proof. *Id*. Furthermore, even if a party is not a party to the deed sought to be reformed, she or he still has standing to seek reformation if she or he either was a third-party beneficiary of the deed or is in privity with a party to the deed. *Van Wormer v. McCasland Truck Center*, 163 A.D.2d 632, 635, 558 N.Y.S.2d 683, 686 (N.Y. App. Div. 1990); *Apex Two v. Terwilliger*, 211 A.D.2d 856, 858, 621 N.Y.S.2d 197, 198 (N.Y. App. Div. 1995) (citing *Hart v. Blabey*, 287 N.Y. 257 (N.Y. 1942)).

5. Forged & Fraudulently filed deeds. It is becoming more and more frequent for bad actors to file forged instruments or to fraudulently purport to have authority to convey instruments when they have no such authority. An action to quiet title can be employed to cancel or extinguish such forged or fraudulent instruments by proving the forgery or the lack of authority to convey, respectively. *See ABN AMRO Mortg. Group v. Stephens*, 91 A.D.3d 801, 803, 939 N.Y.S.2d 70, 72 (N.Y. App. Div. 2012).

    i. Forgery. "A deed based on forgery or obtained by false pretenses is void ab initio," meaning that "it conveys nothing." *Cruz v. Cruz*, 37 A.D.3d 754, 754, 832 N.Y.S.2d 217, 218 (N.Y. App. Div. 2007); *ABN AMRO Mortg. Group*, 91 A.D.3d at 803.

    ii. Fraud in the inducement. On the other hand, if "the signature and authority for conveyance are acquired by fraudulent means," the deed is only "voidable" and remains valid until it is set aside by a court. *Faison v. Lewis*, 25 N.Y.3d 220, 224-25, 10 N.Y.S.3d 185, 188 (N.Y. 2015) ("a voidable deed, until set aside, . . . has the effect of transferring the title to the fraudulent grantee, and . . . being thus clothed with all the evidences of good title, may incumber[sic] the property to a party who becomes a purchaser in good faith") (quoting *Marden v. Dorthy*, 160 N.Y. 39, 50, 54 N.E. 726 (N.Y. 1899)). The reason for this is that a "deed containing the title holder's actual signature reflects 'the assent of the will to the use of the paper or the transfer,' although it is assent 'induced by fraud, mistake or misplaced confidence.'" *Faison*, 25 N.Y.3d at 224-25 (quoting *Marden*, 160 N.Y. at 50)). The proponent seeking to set aside the deed must prove that it was conveyed under fraudulent authority. *Lucky's Real Estate Group, LLC v. Powell*, 189 A.D.3d 1202, 1203-05, 138 N.Y.S.3d 107 (N.Y. App. Div. 2020).

        a. Bona fide purchaser or Purchaser in good faith defense. "[T]he title of a bona fide purchaser is protected unless he or she had previous notice of 'the fraudulent intent of his immediate grantor, or of the fraud rendering void the title of such grantor.'" *E.g.*, *Morris v. Adams*, 82 A.D.3d 946, 946-47, 919 N.Y.S.2d 36 (N.Y. App. Div. 2011) (quoting N.Y. Real Prop. Law § 266 (McKinney 2021)). This remains "a well-known principle of equity." N.Y. Real Prop. Law § 266, *Practice Commentary* (McKinney 2021). This defense, however, applies only to fraudulent conveyances that are voidable, rather than forged instruments that are void. *E.g.*, Morris, 82 A.D.3d at 946-47. When the alleged fraud is that the signatory for a deed was without authority from the corporate grantor, the deed is voidable and the purchaser's title will be upheld as a bona fide purchaser if the other elements are met —

i.e., payment of value and no knowledge of the fraud. *Shau Chung Hu v. Lowbet Realty Corp.*, 161 A.D.3d 986, 988, 78 N.Y.S.3d 150 (N.Y. App. Div. 2018); *Commandment Keepers Ethiopian Hebrew Congregation of Living God v. 31 Mount Morris Park*, 76 A.D.3d 465, 465, 908 N.Y.S.2d 1 (N.Y. App. Div. 2010).

b. Entity theft remains a growing problem. *See Entity Theft Requires Proof For Deed and Mortgage To Be Voided*, The Title Insurance Law Newsletter, Vol. 29, Issue 12 at 11. Entity theft is when another person creates false corporate governance documents (*e.g.*, resolutions, by-laws, operating agreements, and even certificates of incorporation or articles of formation) to convey an entity's property. *See id*.

iii. Fraud in the Factum/Execution. When a signer is fraudulently caused to sign "an instrument different from that which he understood it to be," the instrument is void. *Mix v. Neff*, 99 A.D.2d 180, 182, 473 N.Y.S.2d 31, 33 (N.Y. App. Div. 1984). "However, a party to a writing is presumed to have read and understood the document which he or she signed and, absent some impairment, cannot justifiably rely on another's representation that the words used in the relevant document mean something other than what they plainly state." *ABR Wholesalers, Inc. v. King*, 172 A.D.3d 1929, 1931, 99 N.Y.S.3d 846, 848 (App. Div. 4th Dept. 2019) (quoting (*Marine Midland Bank v Idar Gem Distribs.*, 133 AD2d 525, 526, 519 NYS2d 898 (N.Y. App. Div. 1987)). Thus, a cause of action alleging fraud in the factum generally requires that the signer be "illiterate, blind, or not a speaker of the language in which the document is written." *Countrywide Home Loans, Inc. v. Gibson*, 157 A.D.3d 853, 856, 70 N.Y.S.3d 580, 583 (N.Y. App. Div. 2018)

C. Pre-litigation

1. Locating documents. The first and most important step when preparing to address a title issue is to locate and preserve any and all relevant documents and information. This can include the identities of witnesses, witness statements, monitoring reports, deeds, easement instruments, etc.

2. Submitting title claim. One of the most important documents to locate is your title insurance policy. You should provide this as soon as possible to your attorney because any delay in submitting a claim could prejudice your rights to coverage. *See Paramount Ins. Co. v Rosedale Gardens*, 293 AD2d 235, 239-240, 743 N.Y.S.2d 59 (N.Y. App. Div. 2002). Additionally, the earlier that you submit the claim, the more coverage you will have for your attorneys' fees and litigation expenses. *See Greenwich Ins. Co. v. City of New York*, 122 A.D.3d 470, 997

N.Y.S.2d 32 (N.Y. App. Div. 2014)*; United Parcel Serv. v. Lexington Ins. Grp*., 983 F. Supp. 2d 258, 268 (S.D.N.Y. 2013).

3. Obtaining and preserving all documents, information, and witness identities. All important documents should be immediately preserved and given to your attorney. Destroying or loosing evidence cannot only impede your ability to prove your case in court, but it can also lead to sanctions against you that can favor the other side and be adverse to your rights in the case. *See generally Samaroo v. Bogopa Service Corp*., 106 A.D.3d 713, 714, 964 N.Y.S.2d 255 (N.Y. App. Div. 2013) (upholding sanctions for spoliation of evidence that included striking defendants' affirmative defenses and precluding defendants from offering testimony at trial to contradict the plaintiff's evidence).

D. Commencing litigation

1. Introduction. The litigation is commenced through the filing and service of formal commencement papers, which is usually a summons and complaint. Also, a crucial step is to file a lis pendens or notice of pendency in order to protect your interest or title during the pendency of the litigation. The action generally then proceeds into discovery where both parties can seek out evidence to prove their claims and/or defenses, including by seeking evidence from an opposing party through discovery demands or from nonparties through subpoenas. Evidence can include documents, photographs, videos, communications, and, most importantly, deposition testimony from opposing parties and/or nonparties. During the course of the litigation, there might be motions, which are formal requests for some form of relief from the Court. At the end of discovery, there may be a motion for summary judgment whereby one or more parties ask the Court to rule in its favor on entire claims or defenses because the evidence overwhelming supports those claims or defenses, thereby abrogating any need for a trial. If there is competing evidence, however, a trial will be necessary. Of course, at any point during the litigation, the parties can negotiate to settle the case, thereby ending it before any dispositive motion or trial.

2. Timeliness. Even for some claims in a quiet title action, there is a statute of limitations, which is a deadline by which a claim must be brought before the party bringing it is forever foreclosed from establishing title based on that claim.

   a. Establishing title when the opposing party occupies or is in possession of part of or all of the property. The statute of limitations is the same time that is required to establish adverse possession or a prescriptive easement, which is ten years in most states. *Slacer v. Kearney*, 151 A.D.3d 1602, 57 N.Y.S.3d 255, 257 (N.Y. App. Div. 2017) ("'[A]dverse possession for the requisite period of time . . . cuts off the true owner's remedies") (quoting *Franza v. Olin*, 73 A.D.3d 44, 47, 897 N.Y.S.2d 804 (N.Y. App. Div. 2010)).

b. Reformation. The statute of limitations for reformation generally is six years accruing from the date that the instrument sought to be reformed becomes effective, but there is a well-established exception to this accrual rule for those in possession of property under that instrument. *Wilshire Credit Corp. v. Ghostlaw*, 300 A.D.2d 971, 973, 753 N.Y.S.2d 537, 539 (N.Y. App. Div. 2002); *TEG NY LLC v. Ardenwood Estates, Inc*., 2004 WL 626802 at *6 (E.D.N.Y. 2004). In those circumstances, the accrual date is the date when the party seeking reformation has notice of an adverse claim due to the mistake. *Id*.

c. Forgery and Fraudulently filed deeds. The prevailing approach in most jurisdictions is that there is no statute of limitations to cancel or extinguish a forged deed, and such an action can always be brought regardless of when the forgery is discovered. *Faison v. Lewis*, 25 N.Y.3d 220, 222, 227, 228-29, 10 N.Y.S.3d 185 (N.Y. 2015). However, a six-year statute of limitations applies to a fraudulently filed deed, but there is a toll that extends that period for two years after the party seeking to cancel or extinguish the instrument discovers or reasonably should have discovered the fraud. *Pacchiana v. Pacchiana*, 94 A.D.2d 721, 721, 462 N.Y.S.2d 256, 257-58 (N.Y. App. Div. 1983); *see also Faison*, 25 N.Y.3d at 229. On the hand, fraud in the factum, unlike other species of fraud, is not subject to any statute of limitations and can always be brought. *Mazo v. Mazo*, 132 A.D.3d 1112, 1114, 18 N.Y.S.3d 454, 456 (N.Y. App. Div. 2015)

a. Actions to enforce easements. In many states, there is a time limit to enforce easements, which may also apply to restrictions and/or covenants in deeds. In New York, an action to enforce an easement which restricts a landowner's use of his or her property must be brought within two years of the violating use or structure. *See generally* N.Y. Real Prop. Acts. Law § 2001 (Consol. 2025); *Matter of J.B. Realty Enterprise Corp. v. City of Saratoga Springs*, 270 A.D.2d 771, 774, 704 N.Y.S.2d 742, 746 (N.Y. App. Div. 2000). On the other hand, an action alleging obstruction of a an easement must be brought within three years. *See* N.Y. C.P.L.R. § 214(4) (Consol. 2025); *Oliphant v. McCarthy*, 208 A.D.2d 1079, 1081, 617 N.Y.S.2d 555, 557 (N.Y. App. Div. 1994).

b. Actions to recover monetary damages for wrongful possession or withholding of property. In New York, the statute of limitations for this is six years, meaning you can only recover for damages incurred within the six years preceding the commencement of the action. *See generally* N.Y. Real Prop. Acts. Law § 601 (Consol. 2025); *Fagan v. McDonnell*, 115 A.D. 89, 96, 100 N.Y.S. 641, 646 (N.Y. App. Div. 1906).

3. Full disclosure. During the discovery phase of the litigation, you will need to disclose documents and usually provide deposition testimony. The standard for disclosure is all matter that is "material and necessary in the prosecution or defense of an action, regardless of the burden of proof," and this standard is construed liberally to favor broad disclosure. *E.g.*, *Gould v. Decolator*, 131 A.D.3d 445, 446-47, 15 N.Y.S.3d 138, 140 (N.Y. App. Div. 2015). The failure to make the appropriate disclosures can result in the same sanctions that can be imposed for the destruction of evidence. *Suburban Graphics Supply Corp. v. Nagle*, 5 A.D.3d 663, 665-66, 774 N.Y.S.2d 160, 162 (N.Y. App. Div. 2004) (striking pleading and holding inquest on damages); *Green v. Green*, 32 A.D.3d 898, 899-900, 821 N.Y.S.2d 243, 245 (N.Y. App. Div. 2006) (resolving issue in manner that was adverse to party failing to disclose). You can withhold certain documents or refuse to answer questions at a deposition only if the documents or information are privileged, such as the attorney-client privilege, the privilege for materials prepared in anticipation of litigation, and/or the privilege for attorney work-product.

4. Evidence. In all actions to quiet title and regardless of what side of the "v." you are on — *i.e.*, regardless of whether you are a plaintiff or a defendant — you must affirmatively prove your title to the property in dispute. *ABN AMRO Mortg. Group v. Stephens*, 91 A.D.3d 801, 803, 939 N.Y.S.2d 70, 72 (N.Y. App. Div. 2012) ("the plaintiff in an action to determine title pursuant to RPAPL article 15 'has an affirmative duty to show that title lies in it, which is not satisfied merely by pointing to weaknesses in defendants' title'") (quoting *Town of N. Hempstead v. Bonner*, 77 A.D.2d 567, 568, 429 N.Y.S.2d 739 (N.Y. App. Div. 1980)).

5. Trial. Whether or not a party is entitled to a trial by jury or is only entitled to a trial by the court — *i.e.*, a "bench trial" — often is very dependent on the particular rules of the jurisdiction. In New York, by statute, claims to quiet title can be tried before a jury, regardless of how the claim is "characterized." N.Y. C.P.L.R. § 4101(2) (Consol. 2025); *Burns v. Burns*, 148 A.D.3d 863, 863, 48 N.Y.S.3d 610, 610-11 (N.Y. App. Div. 2017); *Paciello v. Graffeo*, 8 A.D.3d 543, 543-44, 779 N.Y.S.2d 526, 527 (N.Y. App. Div. 2004). However, care must be taken because a right to a jury trial can be waived by joining other equitable claims, even though the general rule in New York is that they are not waived. *See id*. In any event, irrespective of whether or not a party is entitled to a jury trial, strategic variables may make a bench trial desirable.