

73-29-204 Quiet title action.

- (1)
 - (a) A person, including the division, may file a quiet title action in accordance with Title 78B, Chapter 6, Part 13, Quiet Title, to obtain a judicial declaration of the existence of a right to public recreational access under Section 73-29-203.
 - (b) The division may intervene in a quiet title action filed in accordance with Subsection (1).
 - (c) The division may not be compelled to:
 - (i) file a quiet title action; or
 - (ii) join a quiet title action filed by another person.
- (2) The claimant in a quiet title action under Subsection (1) shall:
 - (a) name the property owner of record as a party; and
 - (b) notify the division of the suit by certified mail no later than 20 days after the day on which the quiet title action is filed.
- (3) Within five days after receiving notice in accordance with Subsection (2)(b), the division shall post notice of a quiet title action under this section on its Internet website.
- (4) A quiet title action under this section shall be commenced within four years after the day on which a period of prescriptive use ceases.
- (5) The burden of proof for a quiet title action under this section is on the claimant to prove the existence of a right to public recreational access or floating access under Section 73-29-203 by clear and convincing evidence.
- (6) A quiet title action under this section is limited to a declaration concerning the property and property owner joined in the action.
- (7)
 - (a) Multiple claimants and multiple property owners may be included in a quiet title action concerning public water common to the property owners.
 - (b) In a case with multiple property owners, the court shall make a separate finding concerning each property owner included in the action.
- (8) A final judgment on the merits that a piece of private property is not subject to public recreational access:
 - (a) is binding; and
 - (b) may not be challenged in subsequent litigation.
- (9) The court may award attorney fees and costs in an action under this section if the court finds that the losing party's arguments lack a reasonable basis in law or fact.

Enacted by Chapter 410, 2010 General Session