

on the ground, and shall post a copy of such plat, together with a notice of such application for a patent, in a conspicuous place on the land embraced in such plat previous to the filing of the application for a patent, and shall file an affidavit of at least two persons that such notice has been duly posted, and shall file a copy of the notice in such land office, and shall thereupon be entitled to a patent for the land, in the manner following: The register of the land office, upon the filing of such application, plat, field notes, notices, and affidavits, shall publish a notice that such application has been made, for the period of sixty days, in a newspaper to be by him designated as published nearest to such claim; and he shall also post such notice in his office for the same period. The claimant at the time of filing this application, or at any time thereafter, within the sixty days of publication, shall file with the register a certificate of the Director of the Bureau of Land Management that \$500 worth of labor has been expended or improvements made upon the claim by himself or grantors; that the plat is correct, with such further description by such reference to natural objects or permanent monuments as shall identify the claim, and furnish an accurate description, to be incorporated in the patent. At the expiration of the sixty days of publication the claimant shall file his affidavit, showing that the plat and notice have been posted in a conspicuous place on the claim during such period of publication. If no adverse claim shall have been filed with the register of the proper land office at the expiration of the sixty days of publication, it shall be assumed that the applicant is entitled to a patent, upon the payment to the proper officer of \$5 per acre, and that no adverse claim exists; and thereafter no objection from third parties to the issuance of a patent shall be heard, except it be shown that the applicant has failed to comply with the terms of sections 21, 22 to 24, 26 to 28, 29, 30, 33 to 48, 50 to 52, 71 to 76 of this title and section 661 of title 43. Where the claimant for a patent is not a resident of or within the land district wherein the vein, lode, ledge, or deposit sought to be patented is located, the application for patent and the affidavits required to be made in this section by the claimant for such patent may be made by his, her, or its authorized agent, where said agent is conversant with the facts sought to be established by said affidavits.

(R.S. §2325; Jan. 22, 1880, ch. 9, §1, 21 Stat. 61; Mar. 3, 1925, ch. 462, 43 Stat. 1144, 1145; 1946 Reorg. Plan No. 3, §403, eff. July 16, 1946, 11 F.R. 7876, 60 Stat. 1100.)

#### REFERENCES IN TEXT

Sections 21, 22 to 24, 26 to 28, 29, 30, 33 to 48, 50 to 52, 71 to 76 of this title and section 661 of title 43, referred to in text, were in the original "this chapter", meaning chapter 6 of title 32 of the Revised Statutes, consisting of R.S. §§2318 to 2352.

#### CODIFICATION

R.S. §2325 derived from act May 10, 1872, ch. 152, §6, 17 Stat. 92.

#### AMENDMENTS

1925—Act Mar. 3, 1925, affected words, in first sentence of text, now reading "United States supervisor of

surveys," and words, in next to last sentence of text, now reading "register of the proper land office." Those words formerly read "United States surveyor general" and "register and receiver of the proper land office," respectively. This act abolished the office of surveyor general, and transferred to and consolidated with the Field Surveying Service, under the jurisdiction of the U.S. Supervisor of Surveys, the administration, equipment, etc., of such office, and consolidated the offices and functions of the register and receiver.

#### TRANSFER OF FUNCTIONS

Director of the Bureau of Land Management substituted for United States Supervisor of Surveys wherever appearing. In the establishment of The Bureau of Land Management by Reorg. Plan No. 3 of 1946, §403, eff. July 16, 1946, 11 F.R. 7876, 60 Stat. 1100, set out in the Appendix to Title 5, Government Organization and Employees, the office of Supervisor of Surveys was abolished and the functions and powers were transferred to the Secretary of the Interior, to be performed by such officers or agencies of the Department as might be designated by the Secretary. Under that authority, the functions and powers formerly exercised by the Supervisor of Surveys were delegated to the Chief Cadastral Engineer, subject to the supervision of the Director of the Bureau of Land Management. In the general reorganization and realignment of functions of the Bureau, the office of the Chief Cadastral Engineer was abolished, and the functions of that office have been delegated to the Director of the Bureau of Land Management. See 43 C.F.R. §9180.0-3(a)(1).

Office of register of district land office abolished and all functions of register transferred to Secretary of the Interior, or to officers and agencies of Department of the Interior as Secretary may designate, by Reorg. Plan No. 3 of 1946, §403, set out in the Appendix to Title 5.

See also Transfer of Functions note set out under section 1 of this title.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 24, 33, 37, 38, 39, 40, 42, 46, 47, 48, 49, 102, 541b of this title; title 16 section 460mm-1; title 25 section 640d-10; title 43 sections 1712, 1714, 1732.

### **§30. Adverse claims; oath of claimants; requisites; waiver; stay of land office proceedings; judicial determination of right of possession; successful claimants' filing of judgment roll, certificate of labor, and description of claim in land office, and acreage and fee payments; issuance of patents for entire or partial claims upon certification of land office proceedings and judgment roll; alienation of patent title**

Where an adverse claim is filed during the period of publication, it shall be upon oath of the person or persons making the same, and shall show the nature, boundaries, and extent of such adverse claim, and all proceedings, except the publication of notice and making and filing of the affidavit thereof, shall be stayed until the controversy shall have been settled or decided by a court of competent jurisdiction, or the adverse claim waived. It shall be the duty of the adverse claimant, within thirty days after filing his claim, to commence proceedings in a court of competent jurisdiction, to determine the question of the right of possession, and prosecute the same with reasonable diligence to final judgment; and a failure so to do shall be a waiver of his adverse claim. After such judgment shall have been rendered, the party enti-

tled to the possession of the claim, or any portion thereof, may, without giving further notice, file a certified copy of the judgment roll with the register of the land office, together with the certificate of the Director of the Bureau of Land Management that the requisite amount of labor has been expended or improvements made thereon, and the description required in other cases, and shall pay to the register \$5 per acre for his claim, together with the proper fees, whereupon the whole proceedings and the judgment roll shall be certified by the register to the Director of the Bureau of Land Management, and a patent shall issue thereon for the claim, or such portion thereof as the applicant shall appear, from the decision of the court, to rightly possess. If it appears from the decision of the court that several parties are entitled to separate and different portions of the claim, each party may pay for his portion of the claim, with the proper fees, and file the certificate and description by the Director of the Bureau of Land Management whereupon the register shall certify the proceedings and judgment roll to the Director of the Bureau of Land Management, as in the preceding case, and patents shall issue to the several parties according to their respective rights. Nothing herein contained shall be construed to prevent the alienation of the title conveyed by a patent for a mining claim to any person whatever.

(R.S. §2326; Mar. 3, 1925, ch. 462, 43 Stat. 1144, 1145; 1946 Reorg. Plan No. 3, §403, eff. July 16, 1946, 11 F.R. 7876, 60 Stat. 1100.)

#### CODIFICATION

R.S. §2326 derived from act May 10, 1872, ch. 152, §7, 17 Stat. 93.

#### AMENDMENTS

1925—Act Mar. 3, 1925, affected words, in third and fourth sentences of text, now reading “United States supervisor of surveys”, and words, in third sentence of text, now reading “pay to the register \$5 per acre.” Such words formerly read “surveyor-general”, and “pay to the receiver five dollars per acre”, respectively. Such act is treated more fully in notes under section 29 of this title.

#### TRANSFER OF FUNCTIONS

Director of the Bureau of Land Management substituted for United States Supervisor of Surveys following the words “certificate of the” in sentence beginning “After such judgment” and following the words “description by the” in sentence beginning “If it appears”. In the establishment of the Bureau of Land Management by Reorg. Plan No. 3 of 1946, §403, eff. July 16, 1946, 11 F.R. 7876, 60 Stat. 1100, set out in the Appendix to Title 5, Government Organization and Employees, the office of Supervisor of Surveys was abolished and the functions and powers were transferred to the Secretary of the Interior, to be performed by such officers or agencies of the Department as might be designated by the Secretary. Under that authority, the functions and powers formerly exercised by the Supervisor of Surveys were delegated to the Chief Cadastral Engineer, subject to the supervision of the Director of the Bureau of Land Management. In the general reorganization and realignment of functions of the Bureau, the office of the Chief Cadastral Engineer was abolished, and the functions of that office have been delegated to the Director of the Bureau of Land Management. See 43 C.F.R. §9180.0-3(a)(1).

“Director of the Bureau of Land Management” was substituted for “Commissioner of the General Land Of-

ice” following the words “register to the” in sentence beginning “After such judgment” and in sentence beginning “If it appears” following the words “judgment roll to the” on authority of Reorg. Plan No. 3 of 1946, set §403, set out in the Appendix to Title 5. Section 403 of Reorg. Plan No. 3 of 1946, abolished the office of the Commissioner of the General Land Office and consolidated the functions of the General Land Office with the Grazing Service to form the Bureau of Land Management.

Office of register of district land office abolished and all functions of register transferred to Secretary of the Interior, or to officers and agencies of Department of the Interior as Secretary may designate, by Reorg. Plan No. 3 of 1946, §403, set out in the Appendix to Title 5.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 24, 29, 33, 37, 38, 39, 40, 42, 46, 47, 48, 49, 102, 541b of this title; title 16 section 460mm-1; title 25 section 640d-10; title 43 sections 1712, 1714, 1732.

### § 31. Oath: agent or attorney in fact, beyond district of claim

The adverse claim required by section 30 of this title may be verified by the oath of any duly authorized agent or attorney in fact of the adverse claimant cognizant of the facts stated; and the adverse claimant, if residing or at the time being beyond the limits of the district wherein the claim is situated, may make oath to the adverse claim before the clerk of any court of record of the United States or of the State or Territory where the adverse claimant may then be, or before any notary public of such State or Territory.

(Apr. 26, 1882, ch. 106, §1, 22 Stat. 49.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 16 section 460mm-1.

### § 32. Findings by jury; costs

If, in any action brought pursuant to section 30 of this title, title to the ground in controversy shall not be established by either party, the jury shall so find, and judgment shall be entered according to the verdict. In such case costs shall not be allowed to either party, and the claimant shall not proceed in the land office or be entitled to a patent for the ground in controversy until he shall have perfected his title.

(Mar. 3, 1881, ch. 140, 21 Stat. 505.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 16 section 460mm-1.

### § 33. Existing rights

All patents for mining claims upon veins or lodes issued prior to May 10, 1872, shall convey all the rights and privileges conferred by sections 21, 22 to 24, 26 to 28, 29, 30, 33 to 48, 50 to 52, 71 to 76 of this title and section 661 of title 43 where no adverse rights existed on the 10th day of May, 1872.

(R.S. §2328.)

#### REFERENCES IN TEXT

Sections 21, 22 to 24, 26 to 28, 29, 30, 33 to 48, 50 to 52, 71 to 76 of this title and section 661 of title 43, referred to in text, were in the original “this chapter”, meaning