Split Estates and Ohio’s Dormant Mineral Act

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Split Estates:
Severed Mineral Interests

• Grant or Convey Mineral Interests to a Third Party

• Reservation or Exception: Grantor retains mineral rights.

• CAN’T reserve or except to a third party “stranger to the deed”
  — X to Y, reserving unto Z
  — X to Y, reserving unto X
Why A Mineral Lapse Statute?
Constitutional Issues


Indiana Lapse Statute

- “Any interest in coal, oil and gas, and other minerals, shall, if unused for a period of 20 years, be extinguished, unless a statement of claim is filed in accordance with section 5 hereof, and the ownership shall revert to the then owner of the interest out of which it was carved.”
- Two-year grace period.
- “Use” – production, attempted production, and payments of rent, royalties, and/or taxes.
Lapse is “abandonment.”

“It is the owner’s failure to make any use of the property – and not the State’s action – that causes the lapse of the property right; there is no ‘taking’ that requires compensation.”

Due Process does not require notice.

Mineral owners had “no constitutional right to be advised that the 20-year period of nonuse was about to expire.”
Dormant Mineral Acts: Common Approaches

• Abandonment
• Nonuse
• Recording
• Trust for unknown mineral owners
• Escheat
Ohio’s Dormant Mineral Act:
Ohio Revised Code Section 5301.56

• Enacted as part of the Marketable Title Act (Sections 5301.47-56)
• Passed in 1989, amended in 2006
• Legislative purpose is to simplify and facilitate land title transactions by allowing persons to rely on a record chain of title, and the statute will be liberally construed for that purpose. (Section 5301.55).
Exceptions...

Dormant Mineral Act does not apply to:

1) Interests held by the United States, this state, or any political subdivision, body politic, or agency of the United States or this state

2) Coal or in mining or other rights pertinent to or exercisable in connection with an interest in coal

3) Applies only to fee interests in mineral interests
Ohio’s Dormant Mineral Act

Basic Structure: Use it or Lose it.

- Recorded Title Transaction
- Actual Production
- Underground Storage
- Drilling Permit
- RC 5301.56(C) Claim to Preserve
- Separate Tax Parcel Number
Dormant Mineral Act Procedure

1. **Surface Owner Provides Notice to Mineral Owner**
   - By direct service or publication.
   - 20-year look-back period begins

2. **Mineral Owner Has 60 Days to Respond**
   - Must file a “claim to preserve” or an appropriate affidavit.

3. **If Mineral Owner Does Not Respond**
   - Surface Owner files an “Affidavit of Abandonment”
   - Title vests with Surface Estate.
Unsettled Issues

- Definition of “Title Transaction”
- Does the Dormant Mineral Act supersede the Marketable Title Act?
- Required “Due Diligence”
- Notice of Preservation as a “Cure”
Thank You

For Additional Information:

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