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## **Dormant Mineral Statutes: Reuniting The Mineral Interest With The Surface Of The Property In The New Era Of Advancing Technology**

It is commonly known that the separate ownership of the minerals underlying private land may be created by severance. A severance of mineral interests occurs where all or a portion of mineral interests are owned separately from the ownership of surface land. A severance often occurs when the surface owner reserves the minerals to himself when he sells all or a portion of his property. A severance also occurs when a person who owns both the surface of the property and the underlying minerals conveys all or a portion of the minerals to another owner.

Oftentimes, severance of the minerals from the surface ownership occurred years, if not decades, ago. Now with renewed interest in reducing our dependence on foreign oil, and increased exploration for domestic sources of oil and natural gas, surface landowners have a renewed interest in reacquiring the minerals underlying their property and generating additional sources of income for their ranch or farm.

Recent advances in technology have made minerals more valuable and accessible than in years past. That same technology has created more of an impact on the land in the way of surface damage.

With the exception of “dormant minerals,” a title examination can often identify the owner or owners of the minerals underlying the surface of your property. “Dormant minerals,” however, are those minerals whose owners are either missing or unknown.

For the landowner seeking to reacquire the minerals underlying his surface property, dormant minerals raise difficult questions. Generally speaking, an interest in land or minerals cannot be abandoned or eliminated by non-use. However, it is not uncommon for heirs or successors of mineral owners to forget or ignore a mineral interest that has appeared to be worthless or without value for so many years. On occasion, the heirs or successors may

not even know or realize they own a mineral estate underlying someone else's property.

Thus, identifying the owners of dormant minerals can be difficult and expensive. Even if some of the mineral owners are willing to sell their minerals to the surface landowner for a reasonable price, it can be difficult — if not impossible — to locate or identify smaller divisions or percentage of mineral ownership.

In order to address the increasing problems associated with dormant minerals, some states have enacted legislation to facilitate the termination of dormant mineral interests and provide some helpful relief for those surface landowners seeking to reacquire the minerals underlying their property. Consider the following state laws:

In California, a mineral interest is dormant if no production, exploration or development has occurred within the past twenty years. In addition, a landowner can seek to terminate a mineral interest if the minerals have not been reserved or transferred during the past twenty years. A landowner can only terminate a mineral interest through a legal action brought in the county where the land is located.

In Kansas, a mineral interest will lapse if there has been no production, exploration or development during the past twenty

years. Furthermore, a mineral interest will lapse if taxes are not paid on the mineral interest by its owner for a period of twenty years. If a mineral interest is unused for twenty years, the landowner must publish notice as required by the statute to succeed ownership of the mineral interest.

In Louisiana, a mineral interest shall be extinguished if it goes unused for a period of ten years.

In Nebraska, a landowner may reacquire mineral rights if there has been no production, exploration, development, conveyance, leasing or payment of taxes on the mineral interest during the past twenty-three years. For the landowner to acquire the mineral interests, he must bring a legal action in the county in which the land is located.

In North Dakota, a landowner may bring an action to quiet title in the county where the land is located if there has been no production, exploration, development or payment of taxes on the mineral interest during the past twenty years.

In Oklahoma, a mineral interest may be sold at auction if it goes unused for a period of fifteen years. While the landowner does not automatically become the owner of the minerals upon abandonment, the surface landowner must be notified of the sale or auction of the mineral interest.

In Oregon, a mineral interest may be extinguished by the landowner unless the holder of the mineral interest acquired the mineral interest within the previous thirty years. The holder of the mineral interest may also protect their interest by submitting a statement of claim in the manner set forth by statute within the last thirty years. To extinguish an existing mineral interest, the landowner must publish notice of the lapse in the newspaper for the statutorily required time and manner.

In South Dakota, a landowner may reacquire mineral rights if there has been no production, exploration, development, conveyance, leasing or payment of taxes on the mineral interest during the past twenty-three years. For the landowner to acquire the mineral interests, he must give notice to the holder of the mineral interest in the manner provided by statute.

Finally, in Washington, a landowner may reacquire mineral rights if there has been no production, exploration, development, conveyance, leasing or payment of taxes on the mineral interest during the past twenty years. For the landowner to acquire the mineral interests, he must give notice to the holder of the mineral interest in the manner provided by statute.

No legislation concerning dormant minerals has been enacted

by the legislature in Arizona, Colorado, Idaho, Montana, Nevada, New Mexico, Utah, Texas or Wyoming. Each statute should be reviewed carefully prior to taking any action to reclaim or reacquire the mineral interests underlying your property.

In 1982, the constitutionality of the Indiana Dormant Mineral Interests Act was upheld by the United States Supreme Court. The Indiana statute provided that a surface landowner may extinguish dormant mineral interests after twenty years of non-use. The statute was self-executing and the landowner was not required to obtain a court order. According to the Supreme Court, each state maintains the right to enact legislation which makes the retention of a property right — such as mineral interests — contingent on an affirmative act.

In summary, in certain states, a landowner may reclaim ownership of the mineral rights underlying his property, so long as the minerals have remained “unused” for a certain period of time. Of course, the landowner must comply with the procedures provided by each statute in order to reacquire those minerals.

As the value of oil and natural gas continues to rise, ownership of mineral rights will become a valuable commodity. In order to best protect their surface property rights, and secure income for themselves,

landowners would be wise to research the ownership of the minerals underlying their property. Owners of mineral rights are generally entitled to reasonable use of the surface land in order to explore, produce and develop the mineral estate. Consequently, by reacquiring those mineral rights in states that allow it, the landowner can eliminate the right of others to reasonable use of his land and condition whether and under what circumstances mineral exploration may occur on his property, if at all.

For additional information, please contact the Budd-Falen Law Offices, LLC.