



Reservation Language

- “Reserving for themselves the coal, petroleum oil and all other mineral substances in and upon said premises, with the right to enter upon, mine and carry away the same, doing no other damage than may be necessarily in such mining and removal of the same to the grantors.” (1866)

Reservation Language

- “Also reserving a one half interest in all mineral in and underlying the above described Land be the same more or less, but subject to all legal highways.” (1930)
- Does this include leasing/executory rights?
- This is a 64 acre piece of property.
- ½ of 64 not 32!

Reservation Language

- “The grantors reserve for themselves and their heirs the 1/8th of the oil and gas and other minerals and leasing rights to the above described 70 acres with the privilege to enter on and drill or mine for same free from harassment or hindrance from the above named grantee or his heirs or assigns.” (1968)
- Is this just 1/8th or is it the mineral rights including the landowner's traditional royalty?

Reservation Language

- Eight Family Members, Eight Deeds (1990)
 - “Being an undivided one-eighth (1/8th) interest in and to the following.”
 - “Reserving unto Grantor herein a 1/64th interest of oil and gas royalty, being 1/64th of the 1/8th of oil and gas produced from the premises.”



Ohio Dormant Minerals Act

- **Ohio Revised Code (“R.C.”) 5301.56**
 - Basic Purpose: Reunite “dormant,” severed mineral estate with the surface estate.
 - Note: the DMA (R.C. 5301.56) is *part of* the MTA.
- **Enacted as part of the MTA (R.C. 5301.47-5301.56)**
 - Passed in 1989
 - Amended in 2006 (adding notice and savings clause)



6

Ohio Dormant Minerals Act

- **1989 Version of the DMA**
 - Allegedly a “use it or lose it” statute: if the mineral-interest owners did not “use” their mineral rights during a 20-year time period, they vested in the surface owner—the surface owner would say they vested *automatically*.
- **2006 Version of the DMA**
 - Must send notice to mineral interest holders, heirs and assigns.
 - Statute has savings clause to file claim to preserve after notice is received



7

Ohio Dormant Minerals Act

- **Savings Events**
 - The oil and gas mineral interest has been the “subject of” a recorded “title transaction,” which refers to any “transaction affecting title to any interest in land, including title by will or descent,” as well as warranty deed, quit claim deed or mortgage.
 - There has been actual production or withdrawal of oil and gas by the holder of the mineral interest.
 - The mineral interest has been used in underground gas storage.
 - A drilling or mining permit has been issued to the holder of the mineral interest
 - A statutorily compliant affidavit to preserve the mineral interest has been filed.
 - A separately listed tax parcel number has been created for the mineral interest by the county auditor.



8

Ohio Dormant Minerals Act

Unsettled Issues

- Definition of “Title Transaction”
- 1989 v. 2006 versions of the Act
- Required “Due Diligence” for notice
- 20-year look-back under the 1989 version
- Notice of Preservation as a “Cure” (R.C. 5301.47(H))



9

Ohio Dormant Minerals Act (2006 version)

▪ Stopping the DMA Process

- Mineral interest holder must file in the county recorder’s office *one* of the following documents within 60 days of service or publication of the notice: (i) a claim to preserve the mineral interest pursuant to RC 5301.56(C); or (ii) an affidavit that identifies an event described in RC 5301.56(B) that has occurred within the 20 years preceding the date of service or publication.
- A successful claim preserving mineral interests preserves the rights of *all* holders of the mineral interest, not just the person(s) recording the affidavit.



10

Questions?

Flite Freimann
ffreimann@bricker.com

BRICKER & ECKLER LLP

Shale Resource Center
www.bricker.com/shale

Shale Blog
www.shaleohio.com



11