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The Michigan State University Extension Service has a web page that contains information regarding oil and gas leasing, mineral rights and other related informational topics at http://msue.anr.msu.edu/program/info/oil_and_gas

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The Michigan Dormant Mineral Act and Retaining Severed Oil and Gas Rights

By: Kevin V.B. Schumacher, Attorney At Law, Lansing, Michigan

Oil and gas are treated as part of the ownership of land. While oil and gas interests are a part of land ownership, the oil and gas interest itself can be separated from the ownership of the land. It is possible that you own your land, but not own the oil and gas underneath it. When this occurs the oil and gas is typically referred to as having been “severed” from the land. The oil and gas can at some point in the future be reunited with the surface land ownership. Severance of the oil and gas typically occurs when the real property is conveyed and the seller reserves or excepts from the conveyance some or all of the oil and gas rights. Mineral deeds can also be used to accomplish severance. Careful review of each instrument in your title history is required to determine oil and gas ownership. It is not uncommon for disputes to arise as to who actually owns the oil and gas rights under a particular tract of land.

If your property has had the oil and gas severed, you need to familiarize yourself with the Michigan Dormant Mineral Act. The [Dormant Minerals Act](#) is a Michigan law that causes severed oil and gas rights to be abandoned (lost) if the owner allows more than 20 years to pass without doing one of the following:

1. Recording at the register of deed’s office a sale, lease, mortgage or transfer of the severed interest.

2. Issuance of a drilling permit for the lands involved
3. Actual production or removal of oil and gas from the severed holdings
4. Use of the interest for underground gas storage
5. Recording a claim of interest with the county Register of Deeds.

This is a “use it or lose it” law. What qualifies as a “sale, lease, mortgage or transfer” is often the subject of litigation between the owners. A warranty deed, quit claim deed and mineral deed can typically qualify as a “sale,” but the language employed in the drafting of the deed is critical to the outcome of ownership. What about a recorded judgment from the family court (divorce) or probate court (inheritance)? It is not uncommon for someone to retain a portion of the mineral rights when a property is sold and not realize that they have to take action to prevent abandonment of their severed mineral interest. At the time of death, if the person that retained the mineral rights has not mentioned them in a will or trust, the beneficiaries may not know they even exist! The language employed by the courts (and the lawyers representing the parties) is often determinative of the outcome of severed mineral ownership. If the severed mineral owner fails to timely preserve its interest, the severed interest reverts to the surface owner holding the property on the date of the reversion. When the 20 year Dormant Mineral Act clock starts and stops and what constitutes a qualifying preservation action or recorded instrument is fertile ground for creative lawyers, especially if oil is found on the property.

If you are the owner of severed oil and gas rights, to be safe, err on the conservative side and pick the earliest possible date when the rights were severed and then make sure that at least once every 20 years you record something at the register of deeds to prevent abandonment of your interest. An attorney with oil and gas experience should be consulted to calculate when the 20 year period starts and ends. The most common preservation approach (and probably the cheapest) is the filing of an [affidavit of claim of mineral interest](#) with the register of deeds.

Introduction to Quiet Title Actions

By: Kevin V.B. Schumacher, Attorney At Law, Lansing, Michigan

It is not unusual for someone to own the surface and someone else own the oil and gas rights. What if the surface owner’s goal is to own both the surface and 100% of the mineral rights, but cannot locate the other mineral owner(s)? This is where a Quiet Title action might be an option.

What is a Quiet Title Action? An action to **quiet title** is a lawsuit brought in the circuit court for the county where the property is located. The party that claims to be the owner files a complaint asking the court to establish a party’s title to real property, against anyone and everyone, and thus “**quiet**” any challenges or claims to the title.

Can it be done quietly? Quiet is something of a misnomer. The lawsuit is of course part of the public record, but it is basically a dispute between parties A and B who have competing claims to

ownership. The Quiet Title action “quiets” any other claim(s) of ownership so the ownership is legally established.

How is a Quiet Title action commenced?

You need to provide your lawyer with the legal description of your property. This usually is a section-town-range or subdivision plat description. The easiest place to locate this is on your deed. The quiet title lawsuit is started by filing a complaint with the circuit court in the county where your property is located. The circuit court is part of the Michigan Court System and each county has a circuit court (or shares a circuit with a neighboring county in less populated counties). The complaint identifies you as the owner and also identifies anybody else who claims ownership of the property. You have to describe the type of interest you own (“I got the property by deed and am the legal owner”). You have to describe the type of interest the competing owners claim (“Party B reserved 50% of the mineral rights when they sold the property to us 15 years ago”).

Once you file the lawsuit, a summons is issued which commands the competing owners to file a response to your complaint within a certain time period. The time frame for answering varies based on how the summons and complaint are served (by mail or in person) and whether the defendant is located in Michigan or outside of Michigan. Consult a lawyer immediately upon being served to make sure you file a timely response to the summons and complaint. It is good practice for the party filing a lawsuit concerning title to property to file a “lis pendens” with the register of deeds. A lis pendens is a public notice that there is a dispute going on in the court over ownership of a specific tract of property. Tracking down all the parties who claim an interest in property can sometimes be a task (think of 20 grandchildren spread over 15 states who haven’t lived in Michigan in more than 20 years). Attorneys frequently employ “skip tracing” to track them down and sometimes have to hire private investigators to do so. The courts also have rules for “alternate” or “substitute” service that is designed to give parties notice. This is sometimes done by publishing a notice in the local newspaper. If a properly served defendant fails to timely respond to the complaint, the court can issue a default against that party (you snooze you lose!).

Your complaint has to refer to the documents that establish your title to the property. Most attorneys attach a copy of the deed or other instrument that documents their ownership. The competing owners get the same opportunity: they get to respond to your complaint and frequently will file a counter-complaint asserting that they have a superior claim to title. Sometimes the facts are simple and the parties are able to agree on a set of facts. When that happens, quiet title actions are frequently argued in front of the judge with little or no need for witness testimony. In other cases, the parties do not agree when events occurred or whether or not documents were properly executed or recorded. When parties don’t agree on facts, the court usually provides for “discovery” which is a process that parties use to ask each other questions. The answers are under oath and subject to the penalty of perjury. The questions can be written (interrogatories) or the parties may want to depose you (ask you questions face to face). Parties

are also allowed to ask for the production of documents and to actually go on the land in question (inspection). Once discovery is complete, the case is set for trial before the judge.

Once a decision is made by the court, the loser has to vacate the property. If the losing party doesn't voluntarily leave, the court can issue a writ (order) of possession. Frequently there are also questions of damages when the property changes hands as a result of the court's decision. If the winning party had possession all along, then the damages are likely nominal. If the winning party did not have possession of the property before the lawsuit, then they can claim damages for the six years preceding the filing of suit. The fight over damages involves the general value of the property during the previous six years. If the other side received oil and gas royalty payments during the preceding six years, going after the lost oil and gas revenues should be given serious consideration. The losing party that was previously in possession can claim an offset for the value of improvements made to the property (pole barn constructed on the property), but can't recover if the improvements were made in bad faith. If the oil company did not obtain a lease from the eventual winner, the issue of mineral trespass should be explored. But, that's a different article.

Kevin V.B. Schumacher maintains a statewide law practice. He is a member of Glassen Rhead McLean Campbell & Schumacher. Schumacher served as Corporate Counsel for Dart Energy Corporation and represented the company and its affiliates in all aspects of oil and gas exploration and production from 1988 through 1994. Since 1994, he has been in private practice focusing on oil and gas, bankruptcy and civil litigation. He has served as an adjunct professor of oil and gas law for Thomas M. Cooley Law School. Schumacher is a member of the State Bar of Michigan, Ingham County Bar Association, Eastern and Western Districts of Michigan and the Michigan Oil and Gas Association and serves on its Legal and Legislative Committee. If you have any questions about this article, Kevin can be reached at Schumacher@glassenrhead.com or 517-482-3800.

Please Share Your Oil and Gas Experiences

The editor is very interested in hearing both your positive and negative experiences dealing with oil and gas leasing or production. All information is kept confidential and is combined with data from other landowners to analyze the effectiveness of the educational effort. Report your experiences to the editor by phone at 231-873-2129 or talleycu@anr.msu.edu e-mail.

This newsletter is intended for landowners and other members of the public with interest in the oil and gas industry. If you would like to be added to the e-mail list to receive this newsletter, please contact the editor. You can also contact your local county MSU Extension Office to obtain copies of the newsletter and other free oil and gas leasing information.