

Publications

Oil and Gas Alert: New Procedural Step Added in Ohio to the Lease Forfeiture Statute, Dormant Mineral Act

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A new Ohio House Bill (HB 72) adds a requirement that a lessor or surface owner record a “notice of failure to file” in connection with the statutory procedures used to

1. forfeit an oil and gas lease; and
2. abandon mineral interests to a surface owner.

HB 72 focuses on the modernization of the county recorders’ offices and appears innocuous. However, it includes a new step to the procedures relating to the oil and gas lease forfeiture statute (Ohio Revised Code 5301.332) and to the Dormant Mineral Act (Ohio Revised Code 5301.56). As such, surface owners, lessors, lessees, operators, lawyers, landmen and the like should be aware of the additional step and incorporate it into their practices.

Ohio Governor John Kasich has signed the bill and it becomes effective January 29, 2014.

Notice of Failure to File—*Oil and Gas Lease Forfeiture Statute*

Expired non-producing oil and gas leases can be removed from the public record if a lessor can establish that no production is occurring and that the lease has been breached or has expired. A lessor seeking to remove an oil and gas lease follows a prescribed statutory procedure. This procedure includes a lessor serving a notice to a lessee (or its assignees) and then recording an affidavit of forfeiture of the lease with the county recorder.

The lessee then has 60 days to give notice to the lessor (or person who filed the original affidavit of forfeiture) and record an affidavit that states that the lease has not been forfeited. If the lessee does not give such notice to the lessor, prior to HB 72, the lessor needed to “cause the county recorder to” marginally note on the recorded lease that the lease was cancelled. However, after HB 72 becomes effective, if the lessee fails to give such notice to the lessor, the lessor shall record “a

notice of failure to file.”

The notice of failure to file shall contain:

1. a statement that the person filing the notice is the lessor or the lessor’s successors or assigns;
2. the document number or volume and page of the lease record where the oil and gas lease is recorded;
3. a general description of the land; and
4. the statement: “This lease cancelled pursuant to affidavit of forfeiture recorded as Document Number... or Office Record/Lease Vol. ... Page...”

Notice of Failure to File—*Dormant Mineral Act*

A severed mineral interest can be deemed abandoned and reunited with the surface estate in certain circumstances under Ohio’s Dormant Mineral Act. In order to have a mineral interest declared abandoned, a surface owner must follow the statutory procedure. This procedure involves a surface owner serving a notice of intent upon the mineral interest holder and then recording an affidavit of abandonment which states, among other items, the facts that create an abandonment of the mineral interest.

Upon notice of an affidavit of abandonment, the mineral interest holder has up to 60 days to record an instrument designed to prevent the mineral interest from being abandoned. Should the mineral interest holder fail to timely record an instrument, prior to HB 72, the surface owner needed to “cause the county recorder” to memorialize the record on which the severed interest is based that such interest was abandoned. However, under HB 72, if a mineral interest holder fails to record such an instrument, the surface owner shall record a “notice of failure to file.”

The notice of failure to file shall contain:

1. a statement that the person filing the notice is the owner of the surface estate;
2. a description of the surface of the land that is subject to the mineral interest; and
3. the statement: “This mineral interest abandoned pursuant to affidavit of abandonment filed in volume... page...”

The mineral interest immediately vests with the surface owner at the time the notice of failure to file is recorded.

For additional information on HB 72 and the new requirements, please contact Sheila Nolan Gartland at sngartland@vorys.com or 614.464.8225.