

MARYLAND ATTORNEY GENERAL'S OFFICE



DORMANT MINERALS INTEREST ACT QUESTIONS AND ANSWERS

1. *Does the DMIA law only apply to those with severed mineral rights?*

The Act applies only in situations where a mineral estate or mineral interest is owned by someone other than the surface owner. The Act does not affect property owners who hold all the rights to their property.

2. *Do those who own both the mineral and surface rights but have never used their mineral rights, need to do anything to retain their mineral rights?*

No.

3. *Does someone who owns only the mineral rights on a parcel but has chosen not to use those rights have to file a “notice of intent to preserve mineral interest” just this one time or repeatedly into the future? If repeatedly into the future, at what interval?*

A person who owns a mineral interest but not the surface must file a notice to preserve those rights every 20 years. If an action is filed to terminate the interest within 40 years of non-use, the mineral owner can file a notice before judgment is entered if he pays the litigation costs.

4. *Do current landowners whose deeds indicate ownership of both surface and mineral interests, have any legal recourse if historic claims are made on the mineral rights?*

If there is a dispute over ownership of the mineral rights, those rights can be settled in an action to quiet title.

5. *How far back does a mineral search need to be performed to be certain that mineral rights were not severed? Is 1872 (when Garrett County was founded) sufficient?*

How far to search depends on various circumstances, including what is discovered during the search. This question is best answered by an attorney familiar with your particular circumstances or the property in your area. However, the general rule under common law is that a mineral estate, once created, must be terminated somehow; it does not end simply because it is old or has not been used for a long period of time. The Act creates the mechanism for terminating such interests.

6. *If mineral owners do not file a “notice of intent to preserve mineral interest” before October 1, and if the surface owner does not take action to “terminate” those dormant mineral interests, can anyone else try to claim them?*

No, the mineral owner continues to hold the mineral interest even if a notice is not filed. Only the surface owner can take action to terminate the mineral interest.

7. *If a surface owner chooses to “terminate” dormant mineral interests after October 1 what would be considered a sufficient search for heirs? Public notice in county or Maryland newspaper? Private out-of-state search?*

The sufficiency of the search is generally a question of fact and depends on the circumstances of each case. Due process requires reasonable, good faith efforts to locate a defendant in an action that will affect that defendant’s property rights. Publication alone is never enough. The standards that a court will apply are contained in Maryland Rule 2-121 and 2-122.

8. *Are surface owners who assumed they owned their mineral rights and so signed gas leases and received payments, liable for repayment if they later learn they did not own the minerals?*

The answer depends on a number of circumstances, including most importantly, the terms of your agreement with the gas producers. Before entering into a gas lease, you should discuss this issue with your attorney.

9. *If a lease was signed and payments made to a surface owner who did not actually own the minerals, would this still be considered a “use” of the mineral rights?*

No, only actions taken by mineral owners or on the mineral owner’s authority are considered a “use” of the mineral interest under the statute.

10. *If mineral rights are shared by a number of heirs, can one heir lease the rights without permission of others?*

Yes, in theory, but this is unlikely to occur because the other joint owners could come forward to assert their rights against the owner who signed the lease. However, where the other joint owners are unknown or missing, it may be possible for the known owner to cooperate with the surface owner to create a trust for the others under EN §15-1206.

11. *What rights/protections does a surface owner have if the mineral owner of the same parcel decides to mine, drill or otherwise develop the mineral resources?*

Generally, ownership of a mineral interest includes some right to access the minerals, but the terms and conditions of that access are subject to many considerations, including permitting regulations, the types of uses planned or existing for the surface, and so on. Property owners should seek advice from their attorneys to see what rights they may have in a particular situation. Some states have enacted statutes that provide specific protections to surface owners, such as North Dakota’s “Surface Owner Protection Act,” N.D. Chapter 38-18.

12. *Is there any “drop-dead” date in the future after which dormant mineral rights automatically terminate and revert to the surface owner, without going through the courts?*

No.