

**IN THE SUPREME COURT OF OHIO**

LELAND EISENBARTH, *et al.*,

Plaintiffs-Appellants,

v.

DEAN REUSSER, *et al.*,

Defendants-Appellees,

Ohio Supreme Court Case No. 2014-1767

On Appeal from the Monroe County Court of Appeals, Seventh District Court of Appeals

Court of Appeals Case No. 13 MO 10

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**MERIT BRIEF OF *AMICI CURIAE* JEFFCO RESOURCES, INC., MARK AND KATHY RASTETTER, DOUGLAS HENDERSON, DJURO AND VESNA KOVACIC, BRETT AND KIM TRISSEL, JOHN YASKANICH, BARBARA L. MILLER, JEFFREY V. MILLER, JERILYN E. CHRISTENSEN AND KJELD F. CHRISTENSEN, CO-TRUSTEES OF THE KJELD F. CHRISTENSEN REVOCABLE TRUST DATED SEPTEMBER 25, 2012, AND THE JERILYN E. CHRISTENSEN REVOCABLE TRUST DATED SEPTEMBER 25, 2012, RALPH AND SHARLEY GREER, ANTONIO AND CONNIE SIDOTI; AND AARON ESCOTT**

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## STATEMENT OF INTEREST

Amici Curiae, Counsel for Amici Curiae Jeffco Resources, Inc., Mark and Kathy Rastetter, Douglas Henderson, Djuro and Vesna Kovacic, Brett and Kim Trissel, John Yaskanich, Barbara L. Miller, Jeffrey V. Miller, Jerilyn E. Christensen and Kjeld F. Christensen, Co-Trustees of The Kjeld F. Christensen Revocable Trust Dated September 25, 2012, and The Jerilyn E. Christensen Revocable Trust Dated September 25, 2012, Ralph and Sharley Greer, Antonio and Connie Sidoti; and Aaron Escott, submit this Amicus Brief in support of Petitioners, Keith Eisenbarth, Leland Eisenbarth, and Michael Eisenbarth, on Propositions of Law No. I.

Amici Curiae are Ohio residents and real property owners who will be directly affected by the Court's interpretation of R.C. 5301.56 (in effect prior to June, 30, 2006) ("1989 DMA"). Amici Curiae own over 9,000 acres of real property located in the State of Ohio, including Belmont, Carroll, Guernsey, Harrison, and Jefferson Counties, portions of which were previously subject to severances of oil, gas, and/or other mineral rights. They, like many other landowners throughout the State of Ohio, have obtained vested ownership rights in previously severed mineral rights through the inaction of the previous holders of those rights; in many cases such inaction can span multiple generations and decades. Amici Curiae have a vested interest in preserving their ownership of mineral rights which were previously abandoned and vested under the 1989 DMA.

As discussed more fully below, the 1989 DMA was adopted on March 22, 1989, in order to promote the efficient production and exploration of Ohio's natural resources, including oil, gas, and related hydrocarbons, promote title simplicity by re-unifying old unused interests, which over time can become splintered and fractionalize, in a readily identifiable surface owner, and provide title certainty that if certain statutorily specified events did not occur within a certain

time frame, then the interest was abandoned and vested in the surface owner. It promoted these policy goals by placing minimal obligations upon those individuals who owned severed mineral rights, i.e., those mineral rights not owned by the surface owners of the affected surface estates, in order to preserve those interests, including merely filing a claim to preserve once every 20 years. The only reasonable method for promoting these policy goals was to have the law operated prospectively and in perpetuity.

### **STATEMENT OF THE CASE AND FACTS**

This case involves a reservation of a one-half (1/2) interest oil, gas, and other minerals (“Reservation”). The Reservation was created through a deed recorded on February 3, 1954. From that date until 2009, the holders of the Reservation did not convey, transfer, use, or otherwise take any action related to the Reservation. Thus, the holders of the Reservation allowed it remain dormant for approximately 55 years. Appellees claim to be the heirs and/or successors of the original holders of the Reservation. At no time between 1954 and 2009, were Appellees conveyed any right in the Reservation of record.

During that fifty-five-year period (1954-2009), the Appellees and/or their predecessors failed to take a single action to use the Reservation. The Appellees can identify only one event that they claim preserves the Reservation: an oil and gas lease executed by the surface owners of the real property at issue, and recorded January 23, 1974 (“1974 Lease”). Even assuming arguendo the 1974 Lease was a preserving event, there was an additional 32 years of inactivity from 1974 through 2006 under the 1989 DMA during which time the Reservation was abandoned and vested with the Appellants.

Subsequently, Appellees, for the first time in more than five decades, claimed ownership of the Reservation, filing a claim to preserve on February 19, 2009. However, Appellees, and

Appellees predecessors-in-title, had previously failed to take any action for in excess of 20 years under the 1989 DMA.

At the close of discovery, the parties submitted competing motions for summary judgment. The trial court granted the Appellees' motion for summary judgment and denied the Appellants' motion for summary judgment. On July 3, 2014, Appellants timely filed their notice of appeal with the Seventh District Court of Appeals. On August 28, 2014, the appellate court affirmed the trial court's decision and held that: (1) an oil and gas lease is a title transaction for purposes of the 1989 DMA and that the 1974 lease, which was not executed by the then-owners of the Reservation and to which those owners were not parties, preserved the Reservation; (2) that the 1989 DMA utilized a "fixed" review period, i.e. March 22, 1969 to March 22, 1989.; and (3) that an owner of a severed, partial mineral interest, without the right to lease the same, is entitled to upfront signing bonus payments associated with a lease executed by the mineral co-tenant who possesses the executive rights.

### **ARGUMENT IN SUPPORT OF PROPOSITIONS OF LAW**

- I. **PROPOSITION OF LAW NO. I: The 1989 DMA was prospective in nature and operated to have a severed oil and gas interest "deemed abandoned and vested in the owner of the surface" if none of the savings events enumerated in ORC §5301.56(B) occurred in the twenty (20) year period immediately preceding any date in which the 1989 DMA was in effect.**

In the 1980's, due to the great number of forgotten and abandoned mineral interests, the legislative body acted. To promote the production of natural resources, title simplicity, and title certainty, the Ohio Legislature passed the 1989 DMA. The 1989 DMA is a statewide, uniform system to ensure that oil, gas, and other mineral rights do not remain dormant through years of inaction. This statute requires mineral owners to follow simple, minimal steps to preserve their mineral interests. The goal is to provide clarity and simplicity to chains of title containing long-

ignored and unused mineral interests and reservations by reunifying these interests back into the readily identifiable surface chain of title.

The Seventh District Court of Appeals held the 1974 Lease preserved the Reservation despite the lack of any savings event for over thirty-two (32) years, from January 24, 1974 through June 29, 2006, under the 1989 DMA. Amici Curiae submit that such a result violates the 1989 DMA's express text.

To retain an otherwise dormant mineral interest, one of the following must occur "within the preceding twenty years":

1. The mineral interest must have been subject to a title transaction that has been filed or recorded with the county recorder's office in the county in which the property is located;
2. The holder of the mineral interest obtained actual withdrawal or production of minerals from the mineral interest, i.e. from lands specifically associated with the mineral interest;
3. The mineral interest has been used in underground storage;
4. A drilling permit has been issued to the holder;
5. An appropriate claim to preserve has been filed with the county recorder's office;  
or
6. A separate tax identification number has been issued to the severed mineral interest.

R.C. 5301.56(B)(1)(c)(i)-(vi).

The Seventh District Court of Appeals decided the General Assembly, by use of the phrase "within the preceding twenty years," intended to arbitrarily subject only those severed mineral interests created prior to March 22, 1969, to abandonment if they were not preserved by an enumerated savings event between March 22, 1969 and March 22, 1992. *Eisenbarth v. Reusser*, 7th Dist. Monroe No. 13 MO 10, 2014-Ohio-3792 (Aug. 28, 2014). The court held that

if a severed interest was subjected to a savings event during that initial twenty-year period, it was forever preserved. *Id.* This creates the dubious and absurd result that a severed mineral interest created on March 21, 1969, was subject to abandonment if not otherwise preserved by a savings event under the 1989 DMA, but that a severed mineral interest created the very next day, March 22, 1969, could never be subject to abandonment. Further, the decision undercuts the very purpose of the 1989 DMA, to abandon and vest dormant mineral interests with the surface owner of the real estate if, as in this case, no savings events under the statute had occurred for 32 years.

**A. The 1989 DMA operated on a “rolling” basis to automatically abandon a mineral interest that remained dormant for 20 years.**

The plain language of the 1989 DMA and its express purpose—to ease and facilitate land transactions and promote the reasonable and efficient use of minerals—require a holding that the statute operated on a perpetual, prospective basis. In spite of these facts, the Seventh District Court of Appeals determined that the 1989 DMA required a “fixed” look-back period measured from the date of enactment. *Eisenbarth*, 2014-Ohio-3792. The *Eisenbarth* decision was predicated on the interpretation of the phrase “preceding twenty years” in defining the applicable look-back period. The court concluded that “the statute is ambiguous as to whether the look-back period is anything but fixed.” *Eisenbarth*, 2014-Ohio-3792, at ¶ 48. However, the plain language of the 1989 DMA unambiguously requires owners of severed mineral interests to take occasional action to preserve their interests. Even if the statute’s language proves ambiguous, the explicit legislative history of the statute supports the use of continuous review periods, i.e. the severed mineral owners were required to continuously (every twenty years) preserve their interests through action.

1. *The plain language of the 1989 DMA provides for continuous twenty-year review periods.*

In the construction of statutes the purpose in every instance is to ascertain and give effect to the legislative intent. *Weaver v. Edwin Shaw Hosp.*, 104 Ohio St.3d 390, 393, 819 N.E.2d 1079, 1082 (2004). If such intent is clearly expressed therein, the statute may not be restricted, constricted, qualified, or narrowed. *Id.* Courts must evaluate statutes as a whole and give effect to any word and clause in it. This Court avoids adopting a construction of a statute that would “result in circumventing the evident purpose of the enactment,” and “must also construe statutes to avoid unreasonable or absurd results.” *State ex. Rel. Cincinnati Post v. Cincinnati*, 76 Ohio St.3d 540, 543, 668 N.E.2d 903 (1996) (internal citations omitted). “The General Assembly will not be presumed to have intended to enact a law producing unreasonable or absurd consequences. It is the duty of the courts, if the language of a statute fairly permits or unless restrained by the clear language thereof, so to construe the statute as to avoid such a result.” *State ex rel. Cooper v. Savord*, 153 Ohio St. 367, 92 N.E.2d 390, paragraph one of the syllabus (1950).

Nothing in the statute purports to limit its application to a single day. The plain language of the 1989 DMA provides for continuous twenty-year abandonment periods, just as the Marketable Title Act provides for continuous forty-year extinguishment periods. R.C. 5301.56 (D)(1) provides:

A mineral interest may be preserved indefinitely from being deemed abandoned under division (B)(1) by the occurrence of any of the circumstances described in division (B)(1)(c) of this section, including but not limited to, **successive** filings of claims to preserve mineral interests under division (C) of this section.

(Emphasis added). The General Assembly, by the express language of the 1989 DMA, stated that their intent was to require *continuous* or *successive* actions by severed mineral holders. It would make little sense for the legislature to pass a law focused on encouraging mineral development

and not have it apply in the future. A contrary finding would mean the General Assembly intended to subject only those mineral interests created before March 22, 1969, for example March 21, 1969, to abandonment, but intended to indefinitely protect a severed mineral interest created only one day later, on March 22, 1969, creating an absurd result. Such a choice would not be supported by any reasonable basis and instead, relies upon the selection of an arbitrary date.

In *Eisenbarth*, the Honorable Mary DeGenaro found that the use of a fixed period violates the express terms of the 1989 DMA:

The provision in R.C. 5301.56(D)(1) delineating the process for preserving severed mineral rights for successive terms signals the General Assembly's intention that in order to preserve that interest, **every 20 years a savings event must occur or the holder must file a claim to preserve, in order to retain their interest for another 20 years.**

2014-Ohio-3792, ¶ 124 (DeGenaro, J., concurring in judgment only) (emphasis added). In analyzing the plain language of the 1989 DMA, the Belmont County Court of Common Pleas, in *Albanese v. Batman*, stated:

A static twenty (20) year look back period would have no need for a provision calling for indefinite preservation of mineral interest through successive filings of preservation claims. Based upon the same, this Court finds the 1989 Dormant Mineral Act to provide for a “rolling look back period.”

This Court finds this determination to be consistent with the comments set forth in the Ohio Legislative Service Commission Report relating to the 1989 Enactment of R.C. 5301.56. The Commission therein stated:

Under the act, an interest could be preserved indefinitely from deemed abandonment by the occurrence of any of the four listed categories of exceptional circumstances within **each** preceding 20 year period.

Belmont County Court of Common Pleas Case No. 12 CV 0044 (Apr. 28, 2014) *affirmed in 7th Dist. Belmont No. 14 BE 22, 2014-Ohio-5517 (Dec. 12, 2014) (emphasis added); see also Sub. H.B. 223.*

- (a) *The Court of Appeals erred when it concluded that successive claims to preserve could refer to filings under the Marketable Title Act.*

The *Eisenbarth* majority ignored the plain language of the 1989 DMA by stating that R.C. 5301.56(D)(1)'s mention of successive claims to preserve could be referring to "any preservations that were filed" under the Marketable Title Act. *Eisenbarth*, 2014-Ohio-3792 at ¶ 49. This interpretation is incorrect because the 1989 DMA specifically refers to claims to preserve only under division (C) of the 1989 DMA, and the requirements of a claim to preserve under the 1989 DMA are more extensive than the requirements for a notice of preservation under the Marketable Title Act.

First, a claim to preserve identified in R.C. 5301.56(D)(1) cannot be the same as a notice of preservation under R.C. 5301.51 because R.C. 5301.56(D)(1) explicitly limits the successive filings to those made under R.C. 5301.56(C). R.C. 5301.56(D)(1) ("successive filings of claims to preserve mineral interests **under division (C) of this section.**") (Emphasis added).

Second, a claim to preserve under the 1989 DMA and a notice of preservation under the Marketable Title Act must comply with different requirements to effect preservation. A notice of preservation, in order to be valid, must comply only with the requirements in R.C. 5301.52. *See* R.C. 5301.51. That provision of the Revised Code requires the following requirements for a valid notice of preservation:

- (1) Be in the form of an affidavit;
- (2) State the nature of the claim to be preserved and the names and addresses of the persons for whose benefit the notice is being filed;

(3) Contain an accurate and full description of all land affected by the notice, which description shall be set forth in particular terms and not by general inclusions, except that if the claim is founded upon a recorded instrument, the description in the notice may be the same as that contained in such recorded instrument;

(4) State the name of each record owner of the land affected by the notice, at the time of its recording, together with the recording information of the instrument by which each record owner acquired title to the land;

(5) Be made by any person who has knowledge of the relevant facts or is competent to testify concerning them in court.

R.C. 5301.52. On the other hand, a claim to preserve filed under the 1989 DMA must additionally comply with R.C. 5301.56(C):

(C)(1) A claim to preserve a mineral interest from being deemed abandoned under division (B)(1) of this section may be filed for record by its holder. Subject to division (C)(3) of this section, the claim shall be filed and recorded in accordance with sections 317.18 to 317.201 [317.20.1] and 5301.52 of the Revised Code, and shall consist of a notice that does all of the following:

(a) States the Nature of the mineral interest claimed and any recording information upon which the claim is based;

(b) Otherwise complies with section 5301.52 of the Revised Code;

(c) States that the holder does not intend to abandon, but instead to preserve, his rights in the mineral interest.

R.C. 5301.56(C). Thus, it is clear that in order to qualify as a claim to preserve under the 1989 DMA, additional requirements above and beyond those required for a notice of preservation under the Marketable Title Act must be met.

Therefore, it is unreasonable to conclude that R.C. 5301.56(D)(1) could have been referring to notices of preservation filed under the Marketable Title Act. Instead, the General Assembly expressly limited R.C. 5301.56(D)(1) to only those successive preserving events enumerated under the 1989 DMA, without reference to the other provisions of the Marketable Title Act, generally.

(b) ***The Court of Appeals erred when it construed the 1989 DMA in the context of forfeiture rather than as an abandonment.***

The Seventh District Court of Appeals erred when it categorized the 1989 DMA as a forfeiture statute. *Eisenbarth*, 2014-Ohio-3792, ¶49 (“As forfeitures are abhorred in the law, we refuse to extend the look-back period from fixed to rolling.”). The 1989 DMA is not a forfeiture statute. It is an abandonment statute.

Important to this Court’s review of the 1989 DMA’s text is the rule of construction which mandates that a statute’s text “shall be read in context and construed according to the rules of grammar and common usage.” R.C. 1.42. The express text of the 1989 DMA mentions the word “abandon” or “abandoned” in subsections (B)(1), (B)(2), (C)(1), (C)(1)(c), and (D)(1). The only mention of the word “forfeiture” is in Subsection (D)(2) referring to a lease forfeiture under a separate code section. *See* R.C. 5301.56(D)(2) (“The filing of a claim to preserve a mineral interest under division (C) of this section does not affect the right of a lessor of an oil or gas lease to obtain its forfeiture under section 5301.332 of the revised code.”). Thus, it is clear that the General Assembly knew the difference between an abandonment statute and a forfeiture statute, but chose to expressly enact the 1989 DMA as an abandonment statute.

When interpreting the phrase “within the preceding twenty years,” keeping in mind that one must interpret that phrase while considering the full text, context, and purpose of the 1989 DMA, it is clear that the 1989 DMA provides for continuous twenty-year periods during which the mineral holder must take simple minimal steps to preserve his or her interest, similar to the Marketable Title Act. Additionally, contrary to a forfeiture statute, a court is required to “liberally construe” the 1989 DMA to serve the purposes of easing and facilitating mineral transactions. R.C. 5301.55. A court should not strictly construe the 1989 DMA, as the Seventh

District Court of Appeals erroneously did, which needlessly tainted the lower court's analysis of this issue.

As the 1989 DMA was part of the Marketable Title Act and was expressly intended to ease and facilitate future mineral transactions, it is reasonable to conclude that the General Assembly intended the law to operate prospectively, and in perpetuity. Additionally, because the 1989 DMA was not a forfeiture statute, but instead, was expressly a statute of abandonment, it should not be strictly construed against abandonment. The 1989 DMA places the burden to act upon the mineral right holders and provides a statutory framework for determining whether those holders have abandoned their interests. The 1989 DMA does not impose any forfeiture or taking upon mineral holders. Any assertion that the 1989 DMA is a forfeiture statute is wrong. *See State ex rel. A.A.A. Investments v. City of Columbus*, 17 Ohio St.3d 151, 152, 478 N.E. 2d 773 (1985) (holding that a statute which vests real property rights of one party, based upon that party's inaction, to another party is not a taking).

The mineral holders had ample opportunities to act to avoid abandonment, as the 1989 DMA contained a three-year grace period from March 22, 1989, to March 22, 1992, for a mineral holder to preserve their interest, including the mere filing of a claim to preserve. Thereafter, the mineral holder could simply file a claim to preserve once every 20 years to preserve his or her interest, a very minimal burden. It is the inaction of the severed mineral interest holders, not state action, which results in abandonment.

Additionally, there is no public policy against abandonment of real property rights, which go neglected and unused for decades. In fact, the public policy of Ohio, as enacted in the 1989 DMA, is the opposite. The law favors abandoning dormant, severed mineral interests. The 1989 DMA is no more repugnant than the Marketable Title Act, both of which operate to

automatically abandon and extinguish old dormant real estate interests. Further, this purpose and public policy of Ohio is to be liberally construed in favor of the surface owner. *See* R.C. 5301.55. The lower court ignored this mandate and its analysis of the 1989 DMA's review periods was erroneously constricted by this misclassification of the statute.

2. ***Even if the 1989 DMA's text is ambiguous, the stated intent was to use continuous review periods.***

Even assuming, *arguendo*, that the phrase "preceding twenty years" is ambiguous, which Amici Curiae expressly deny, the legislative intent and history of the 1989 DMA require an interpretation embracing continuous review periods. When determining legislative intent of an ambiguous statute, a court may consider the purpose of the statute, the object sought to be obtained, and the legislative history. R.C. 1.49. As the Seventh District Court of Appeals acknowledged, when seeking to determine the legislative intent behind the 1989 DMA, the court is confined to examining the legislative history of the 1989 DMA, without regard to the 2006 amendments made thereto. *Tribett v. Shepherd*, 7th Dist. Belmont No. 13 BE 22, 2014-Ohio-4320, fn. 1 (Sep. 29, 2014). Such a rule is appropriate when one considers that the members of the General Assembly in 1989 may not be the same members in 2006. *Id.*

The explicit legislative history of the 1989 DMA confirms that it was to operate on a continuous basis. (*See* S.B. 223 (As Introduced), a copy of which is attached hereto as App. Ex. 1; *see also* Fiscal Note Sub. S.B. 223, pp. 48-50, a copy of which is attached hereto as App. Ex. 2). The 1989 DMA was introduced to operate parallel to the Marketable Title Act by "terminating unused mineral interests not preserved by operations, transfers or a filing of notice of an intent to preserve interest." (App. Ex. 2, pp. 48-50). Plain and simple, the mineral rights "revert to the surface landowner if the mineral right holder does nothing to the rights for 20

years. To **extend** their rights, a mineral right holder would simply have to file an **extension** with the local county recorder.” (App. Ex. 2, p. 1) (emphasis added).

The General Assembly explicitly stated that they intended mineral holders to be able to “extend” their mineral interests by one of several preserving acts, including the filing of a claim to preserve. They did not use the phrase “preserve indefinitely” when describing the abandonment and preservation mechanism. Instead, they chose to use the word “extend”, which denotes a continuing obligation to act to preserve one’s interest. The word “extend” is defined as “to cause to be longer.” *Merriam-Webster’s Collegiate Dictionary* 411 (1995). In addition, the term “extension” has been defined as “an increase in length of time.” *Merriam-Webster’s Collegiate Dictionary* 411 (1995). “Extension” has also been defined as “[a] period of additional time to take an action, make a decision, accept an offer, or complete a task.” *Black’s Law Dictionary* 622 (8th Ed.2004). The General Assembly’s use of the terms “extend” and “extension” denotes their intent to require severed mineral owners to take continuous actions and removed any doubt that those owners could indefinitely preserve through one, isolated action, such as the execution of an oil and gas lease which results in no production.

Additionally, when the 1989 DMA was originally introduced, the General Assembly stated that a mineral owner could avoid abandoning his or her interest through “**continuing occurrence** of any of the items listed in the bill” (referring to the exceptions and preserving events). (App. Ex. 1, p. 3) (emphasis added). The General Assembly did not intend for the indefinite preservation of an interest upon a single “occurrence” of any of the preserving events, but intended for the “continuing occurrence” of preserving events. (App. Ex. 1, p. 3). Thus, if the Court finds that the phrase “within the preceding twenty years” is ambiguous, it must interpret that phrase in accordance with the stated purpose of the statute and the General Assembly’s

stated intent within the law's legislative history: a mineral interest must have been subjected to continuous preserving events (an event every 20 years) and as a result, the law utilizes continuous review periods. R.C. 1.49(A), (B) , and (C).

In addition, Indiana's dormant mineral statute, which the Seventh District has addressed, actually supports the argument that the 1989 DMA uses continuous twenty-year periods. Indiana's statute provides that a severed mineral interest is abandoned if it is "unused for a period of twenty years." *Farnsworth v. Burkhardt*, 7th Dist. Monroe No. 13 MO 14, 2014-Ohio-4184, at ¶ 45 (Sep. 22, 2014). When Indiana's statute was enacted in 1971, it did not set a date for when the twenty-year review periods were to begin. That statute has been expressly interpreted as utilizing continuous twenty-year review periods. *American Land Holdings of Indiana, LLC v. Jobe*, 655 F.Supp.2d 882, 891-92 (2009) ("[T]he Court determines that the twenty-year period of non-use must have occurred beginning on or after September 3, 1951, which is twenty years prior to the effective date of the Act. \*\*\* [T]he fact that they have been used from 1955 to the present would have kept them from being extinguished by operation of the Act.") The first twenty-year period consisted of the 20 years which immediately preceded the statute's enactment. *Id.* at 891. If there was no preserving event, the dormant mineral holder had the option of filing a preservation claim. *Id.* From that point forward, the severed interest must be continuously used every 20 years. *Id.*

The 1989 DMA operates in the same manner. The statute enumerates several preserving events, akin to the uses identified in Indiana's statute. The first relevant twenty-year period is from March 22, 1969, to March 22, 1989. If nothing occurred, one must then examine the grace-period from March 22, 1989, to March 22, 1992, to determine whether a claim to preserve was filed or another preserving event occurred. If a preserving event occurred during the initial

period of time, say on June 1, 1980, then one needs to determine whether the interest was preserved again prior to June 2, 2000. If there is a twenty-year period of non-use between March 22, 1969, and June 30, 2006, then the severed mineral holder objectively intended to abandon the interest and the same is vested in the surface estate.

3. ***The pre-Eisenbarth caselaw on this issue clearly embraces the use of continuous twenty-year review periods.***

The current confusion related to the twenty-year review period appears to result from the breadth of legal analysis related to that issue in the cases addressing the 1989 DMA, including the case cited by the *Eisenbarth* court, *Riddel v. Layman*, 5th Dist. No. 94CA114, 1995 WL 498812 (July 10, 1995). Courts considering this issue prior to *Eisenbarth* had ruled in manners consistent with the particular facts relevant to *their respective case*. The difference in holdings, principally whether a court has utilized the March 22, 1969, to March 22, 1992, time period or examined each twenty-year period between March 22, 1969, and June 30, 2006, turns on the different facts in each case.

For example, in *Riddel*, the Fifth District Court of Appeals did not consider the issue of fixed or rolling review periods. Thus, the *Riddel* holding did not embrace this issue. The reserving deed in *Riddel* was executed on January 4, 1965, but not recorded until June 12, 1973. *Id.* at \*1. Appellee, Eula Layman, filed a claim to preserve mineral interest with the Licking County Recorder. *Id.* While not stated in the opinion, that “Claim to Preserve Mineral Interest” was recorded on May 28, 1992, with the Licking County Recorder’s Office, and is a matter of public record. (See Claim to Preserve of Eula Faye Layman, a copy of which is attached hereto as App. Ex. 3). The date of that claim to preserve and the actual document were before the Fifth District when it decided *Riddel*. (See Appellate Brief of Appellee Eula Faye Layman, a copy of which is attached hereto as App. Ex. 4, p. 10). Note that the claim to preserve mineral interest

was recorded within 20 years of the recording of the mineral severance in 1973. Therefore, on January 25, 1994, when Riddel filed the complaint to quiet title, the issue was not whether the mineral interest could be abandoned after June 12, 1993 (20 years after the recording of the severance deed) because the claim to preserve mineral interest had been filed in 1992, but whether the severance deed constituted a title transaction as of its date of execution in 1965, or if it was a title transaction as of its date of recording in 1973—the former allowing the severed interest to be deemed abandoned prior to the filing of the claim to preserve on May 28, 1992. This is evidenced by Riddel’s argument that “there was no title transaction regarding the mineral rights in the twenty years prior to the enactment of the statute on March 22, 1989, and Appellee Layman failed to file a claim to preserve interest in the mineral rights by March 22, 1992, within the three year savings statute.” *Id.* at \*2. In fact, the appellee in *Riddel*, who ultimately prevailed, expressly argued that the 1989 DMA utilized “rolling” review periods. (App. Ex. 4, p. 17).

Thus, the issue in *Riddel* was whether the preserving event, i.e., title transaction, was the severance deed’s execution on January 4, 1965 (in which case the interest could have been subject to abandonment), or whether the preserving event was the date the severance deed was recorded—June 12, 1973. The Fifth District found the preserving event was the date of recording. Because of this, the reservation was not dormant for 20 years, as the 1973 recorded deed preserved the interest—beyond the claim to preserve’s filing on May 28, 1992—until June 12, 1993.

In cases where no savings event existed within the initial review period, courts have no need to look to any other period. In *Wendt v. Dickerson*, Tuscarawas C.P. No. 2012-CV-02-133 (February 21, 2013) *affirmed in* 5th Dist. No. 2014 AP 01 0003, 2014-Ohio-4615 (Oct. 16, 2014), the holders could not identify a single savings event during any time period when the

1989 DMA was in effect. So, while it did not matter what twenty-year period the court chose to review, it made sense to use the first date available for the abandonment, March 22, 1992. *See Wiseman v. Potts*, Morgan C.P. Case No. 08 CV 0145 (June 29, 2010) (no savings events were present during any period when the 1989 DMA was in effect). In *Tribett*, the severed mineral interest was not subject to a savings event between March 22, 1969, and March 22, 1992, so it makes perfect sense that the trial court chose to use that period to establish abandonment—to look further would be unnecessary and superfluous. 2014-Ohio-4320, ¶ 61; *Tribett v. Shepherd*, Belmont C.P. Case No. 12-CV-180 (July 22, 2013). In fact, that very court, the Belmont County Court of Common Pleas, subsequent to the *Tribett* decision, adopted the “rolling” review periods analysis. *Taylor v. Crosby*, Belmont C.P. Case No. 11 CV 422 (Sep. 16, 2013). Finally, in *Marty v. Dennis*, there were no preserving events between March 22, 1969, and June 30, 2006, and thus, the issue of the use of “rolling” review periods was not outcome determinative. Monroe C.P. Case No. 2012-203 (April 11, 2013).

Conversely, when a savings event was present in the initial twenty-year review period, courts (prior to the Court of Appeals’ decision in *Eisenbarth*) have looked beyond that initial twenty-year period. For example, in *Shannon v. Householder*, the severed interest was the subject of a recorded certificate of transfer on July 12, 1979. Jefferson C.P. Case No. 12CV226 (July 17, 2013) *affirmed by Swartz v. Householder*, 7th Dist. Jefferson No. 13 JE 24, 2014-Ohio-2359 (June 2, 2014) (same facts were present in the *Swartz v. Householder* case) *discretionary appeal accepted in 2014-Ohio-0804, and stayed pending a decision in Walker*, 2014-Ohio-0804. Yet, the trial court held that the severed interest needed to be preserved by a subsequent savings event before July 13, 1999, in order to avoid abandonment. Similarly, in *Taylor*, the severed mineral interest was subjected to an oil and gas lease in 1975, but the court held that the mineral

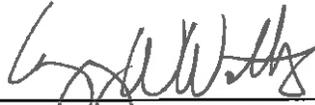
interest needed to be subject to an additional savings event between 1975 and 1995. Belmont C.P. Case No. 11 CV 422. Finally, the *Albanese* court, after reviewing the 1989 DMA's plain language and its legislative history, found that a will recorded in the Belmont County Recorder's Office on April 10, 1989, was a title transaction and preserved the interest throughout the remainder of the 1989 DMA's application and beyond the 2006 procedural amendments (April 10, 1989, through April 10, 2009). Belmont C.P. Case No. 12 CV 0044.

To construe the 1989 DMA as utilizing only one static review period would be fatal to the purpose and goal of the statute. Prior to *Eisenbarth*, the decisions on the 1989 DMA's review periods were in accord: the 1989 DMA required a preserving event every 20 years. The *Eisenbarth* decision ignores the plain language and intent of the 1989 DMA, embraces a view contrary to what the General Assembly intended, and results in the absurd outcome that the legislature enacted a dead letter law effective for only a single day. As a result, Amici Curiae respectfully submit that *Eisenbarth* and its progeny are incorrect and must be reversed by this Court.

### CONCLUSION

In attempting to achieve their goals of efficient production of Ohio's natural resources, the General Assembly enacted the 1989 DMA as a statute of abandonment. It was not, as its opponents systematically claim, a forfeiture statute. It was intended to work parallel to the Marketable Title Act and was intended to clear old, stale, dormant mineral interests from surface owners' chains of title based upon extensive non-use (defined by statute to be 20 years). The interpretation of this statute will affect thousands of Ohioans. The only reasonable interpretation of the 1989 DMA is that it was intended to operate prospectively (on a continuous basis) and that severed mineral holders were under a minimal obligation to use their interests every 20 years.

The Seventh District Court of Appeals, ignoring the mandates of R.C. 5301.55, clearly lost its way and its decision must be overturned.



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*2012, and The Jerilyn E. Christensen Revocable*

*Trust Dated September 25, 2012, Ralph and Sharley*

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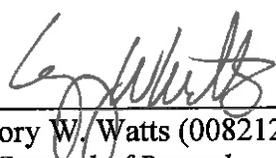
**PROOF OF SERVICE**

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Christensen, Co-Trustees of The Kjeld F.  
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2012, and The Jerilyn E. Christensen Revocable  
Trust Dated September 25, 2012, Ralph and Sharley  
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## APPENDIX

# **APPENDIX EXHIBIT 1**

S.B. 223  
(As introduced)

Sens. Cupp, Schafrath, Nettle

Provided that, in the absence of certain specified occurrences within the preceding 20-year period, including failure to file a written notice of claim in subsurface minerals, a mineral estate (other than in coal) is considered abandoned and the title vests in the surface owner.

FILE  
DO NOT REMOVE FROM FILE

#### Background

When a person buys an interest in land, the Marketable Title Act (sections 5301.47 to 5301.56 of the Revised Code) makes it unnecessary for the most part to do a title search back further than the date that is known as the effective date of the root of title. This is so because the Act generally cuts off interests existing prior to the effective date of the root of title, unless those interests have been preserved by the recording of a preserving notice as provided in the Act.

The "root of title" is the conveyance, in the seller's chain of title, that was most recently recorded as of the date 40 years before the date on which marketability is determined. The "effective date of the root of title" is the date on which was recorded the conveyance that is the root of title.

Current section 5301.56 provides that regardless of when the Marketable Title Act's 40-year period expires, for the purpose of recording a preserving notice of a claim in the right, title, estate or interest in and to subsurface minerals, with the exception of coal, such period shall not be considered to expire until after December 31, 1976. The bill would repeal this section because it no longer applies to conveyances of interests in minerals and would replace it with guidelines for determining when an interest in a mineral estate (other than coal) has become dormant and the interest would vest in the owner of the surface land.

#### CONTENT AND OPERATION

The bill would not change existing law concerning marketable title to or the filing of preserving notices for an interest in surface land. Under the bill, any mineral interest held (see COMMENT 1) by any person

other than the owner of the surface land, would be deemed abandoned and would vest in the owner of the surface land if neither of the following applies (sec. 5301.56(B)):

(1) The mineral interest is one in coal, or mining or other rights pertinent to or exercisable in connection with the mining;

(2) Within the preceding 20 years, one or more of the following has occurred:

(a) The interest has been conveyed, leased, transferred, or mortgaged by an instrument filed or recorded in the recorder's office of the county in which the lands are located;

(b) There has been actual production or withdrawal of minerals by the holder from the lands, from lands covered by a lease to which such interest is subject, or, in the case of oil or gas, from lands pooled, utilized, or included in unit operations in which the interest is participating;

(c) The interest has been used in underground gas storage operations by the holder;

(d) A drilling or mining permit has been issued to the holder (see COMMENT 2);

(e) A claim to preserve the interest has been filed in compliance with the provisions of the bill.

No mineral interest would be considered abandoned based on failure to comply with this provision prior to three years from the effective date of this section (sec. 5301.56(B)).

A claim to preserve a mineral interest from being deemed abandoned could be filed for record with the county recorder of the county in which the land is located. It would consist of a notice, verified under oath, of the nature of the interest claimed, a description of the land, the volume and page of any recorded instrument on which it is based, the name and address of the holder, and a statement that the holder does not intend to abandon but to preserve his rights. The claim would preserve the rights of all holders of a mineral interest in the same land. Any holder of an interest for use in underground gas storage operations could preserve his interest, and those of any lessor, by a single claim, defining the boundaries of the storage field or pool and its formations, without describing each separate interest claimed. This claim also would establish prima-facie evidence of the use of such interest in underground gas storage operations. (Sec. 5301.56(C).)

A claim filed pursuant to the procedure described above also would have to be recorded as provided in sections 317.19 to 317.201 (governing indexes maintained by a county recorder) (see COMMENT 3) and 5301.52 (contents of notice claiming to preserve an interest in land) of the Revised Code (sec. 5301.56(D)). A mineral interest could be preserved indefinitely from the bill's presumption of abandonment by the continuing occurrence of any of the items listed in the bill (the mineral in coal or the events listed occurred within the preceding 20 years). Indefinite preservation also could be accomplished by successive filings of claims to preserve a mineral interest by the method provided by the bill. (Sec. 5301.56(D).)

The filing of a claim to preserve a mineral interest from being deemed abandoned as provided by the bill would not affect the right of a lessor of an oil or gas lease to obtain a forfeiture pursuant to section 5301.332 (provides basis and procedure for forfeiture and cancellation of natural gas and oil land leases) (sec. 5301.56(E)). The bill specifies that its provisions would not apply to any mineral interest held by a governmental entity (sec. 5301.56(F)).

COMMENT

(1) Section 5301.56(A)(1) defines a holder as including not only the record holder of a mineral interest, but also any person who derives his rights from, or a common source with, the record holder and whose claim does not indicate, expressly or by clear implication, that it is adverse to the interest of the record holder.

(2) A drilling or mining permit is a permit issued under Chapter 1509., 1513., or 1514. (Oil and Gas, Coal Surface Mining, and Other Surface Mining, respectively) of the Revised Code to the holder to drill an oil or gas well or mine other minerals (sec. 5301.56(A)(2)).

(3) Sections 317.18 to 317.201 of the Revised Code set forth guidelines to be followed by a county recorder in maintaining the records of all real estate located in the county. For example, section 317.19 requires that a daily register of deeds and a daily register of mortgages be kept. The county recorder also is responsible for maintaining an alphabetical index, both direct and reverse, of the names of both parties to all instruments affecting county real estate (sec. 317.18). In addition, section 317.201 provides that every notice of preservation of claims filed in the recorder's office be logged in a record book called a "Notice Index."

ACTION	DATE	JOURNAL ENTRY
Introduced	05-28-87	p. 404

ASB0223-I/tjc/nag

# **APPENDIX EXHIBIT 2**

# FISCAL NOTE



<b>BILL</b>	Sub. S.B. 223	<b>DATE</b>	November 18, 1988
<b>STATUS</b>	As Reported by House Civil and Commercial Law	<b>SPONSOR</b>	Sen. Cupp

Fund & Title	Revenues	Expenditures	Appropriations
State and Political Subdivisions (owning land, but not the mineral rights) - FY 1991 and annually thereafter	Potential increase in asset value	-0-	-0-

This bill would make changes in mineral rights law.

#### EXPLANATION OF ESTIMATE:

The bill would allow non-coal mineral rights to revert to the surface landowner if the mineral right holder does nothing to the rights for 20 years. To extend their rights, a mineral right holder would simply have to file an extension with the local county recorder.

The bill would mainly affect properties where the mineral rights ownership has been lost, forgotten, or ignored for a long period of time. To the extent that the state owns such property, after a three-year grace period, the state (or any governmental unit, including the federal government) can file a claim for affected mineral rights through the county recorder's office. Owning the mineral rights would presumably increase the value of the property. Since the state would have to issue a permit for mineral rights holders to extract from state land anyway, it is unlikely that they would need to go through this process. However, it might be something that a political subdivision might choose to do.

As Introduced	1.4
117th General Assembly	1.6
Regular Session	S. B. No. 223 1.7
1987-1988	1.8
MESSRS. CUPP-SCHAFRATH-NETTLE	1.10
	1.11

A B I L L

To amend sections 317.18, 317.20, 317.201, and	1.14
5301.53, to enact new section 5301.56, and to	1.15
repeal section 5301.56 of the Revised Code to	1.16
provide a method for the termination of dormant	
mineral estates and the vesting of their title in	1.17
the surface owners, in the absence of certain	1.18
occurrences within the preceding 20 years,	1.19
including the filing by the holder of the mineral	1.20
interest of a notice of claim.	

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO: 1.23

Section 1. That sections 317.18, 317.20, 317.201, and 1.25  
5301.53 be amended and new section 5301.56 of the Revised Code be 1.26  
enacted to read as follows: 1.27

Sec. 317.18. At the beginning of each day's business the 1.30  
county recorder shall make and keep up general alphabetical 1.31  
indexes, direct and reverse, of all the names of both parties to 1.33  
all instruments theretofore received for record by him. The 1.34  
volume and page where such instrument is recorded may be omitted 1.35  
until it is actually recorded if the file number is entered in 1.36  
place of the volume or page, ~~but such file number may be omitted~~ 2.1  
~~from any index volume in use on April 21, 1896, if the form of~~ 2.3  
~~the index volume is not adapted to entering the file number.~~ The 2.5  
indexes shall show the kind of instrument, the range, township, 2.7  
and section or the survey number and number of acres, or the 2.8  
permanent parcel number provided for under section 319.28 of the 2.9  
Revised Code, or the lot and subplot number and the part thereof, 2.10  
all as the case requires, of each tract, parcel, or lot of land 2.12  
described in any such instrument of writing. The name of each 2.13

grantor shall be entered in the direct index, under the appropriate letter, followed on the same line by the name of the grantee, or, if there is more than one grantee, by the name of the first grantee followed by "and others" or their equivalent. The name of each grantee shall be entered in the reverse index under the appropriate letter, followed on the same line by the name of the grantor, or, if there is more than one grantor, by the name of the first grantor followed by "and others" or their equivalent.

As to notices of claims filed in accordance with sections 5301.51 and, 5301.52, AND 5301.56 of the Revised Code there shall be entered in the reverse index under the appropriate letter the name of each claimant, followed on the same line by the name of the present owner of title against whom the claim is asserted, if the notice contains the name of the present owner; or, if the notice contains the names of more than one such owner, there shall be entered the name of the first owner followed by "and others" or their equivalent.

In all cases of deeds, mortgages, or other instruments of writing made by any sheriff, master commissioner, marshal, auditor, executor, administrator, trustee, or other officer, for the sale, conveyance, or encumbrance of any lands, tenements, or hereditaments, and recorded in the recorder's office, the recorder shall index the parties to such instrument under their appropriate letters, respectively, as follows:

(A) The names of the persons represented by such officer as owners of the lands, tenements, or hereditaments described in any such instruments;

(B) The official designation of the officer by whom such instrument of writing was made;

(C) The individual names of the officers by whom such instrument of writing was made.

In all cases of instruments filed in accordance with sections 5311.01 to 5311.22 of the Revised Code, the name of each owner shall be entered in the direct index, under the appropriate

letter, followed on the same line by the name of the condominium 3.16  
 property, and the name of the condominium property shall be 3.17  
 entered in the reverse index under the appropriate letter  
 followed on the same line by the name of the owner of the 3.18  
 property, or, if the instrument contains the names of more than 3.19  
 one owner there shall be entered the name of the first owner 3.20  
 followed by "and others" or its equivalent. 3.21

Any general alphabetical index commenced--after-June-7, 3.22  
~~1911~~, shall be COMMENCED in conformity to this section, and 3.23  
 whenever, in the opinion of the board of county commissioners, it 3.25  
 becomes necessary to transcribe, on account of its worn out or 3.26  
 incomplete condition, any volume of such AN index now in use, 3.29  
 such volume shall be revised and transcribed to conform with this 3.30  
 section; except that in counties having a sectional index in 3.31  
 conformity with section 317.20 of the Revised Code, such 3.33  
 transcript shall be only a copy of the original. 3.34

Sec. 317.20. When, in the opinion of the board of county 3.36  
 commissioners sectional indexes are needed, and it so directs, in 4.1  
 addition to the alphabetical indexes provided for in section 4.2  
 317.18 of the Revised Code, the board may provide for making, in 4.3  
 books prepared for that purpose, sectional indexes to the records 4.4  
 of all real estate in the county, beginning with some designated 4.5  
 year and continuing through such period of years as it specified, 4.6  
 by placing under the heads of the original surveyed sections or 4.7  
 surveys, or parts of a section or survey, squares, subdivisions, 4.8  
 or the permanent parcel numbers provided for under section 319.28 4.10  
 of the Revised Code, or lots, on the left-hand page, or on the 4.12  
 upper portion of such page of the index book, the following: 4.13

(A) The name of the grantor; 4.14

(B) Next to the right, the name of the grantee; 4.16

(C) The number and page of the record where the instrument 4.18  
 is found recorded; 4.19

(D) The character of the instrument, to be followed by a 4.21  
 pertinent description of the property conveyed by the deed, 4.22  
 lease, or assignment of lease;

(E) On the opposite page, or on the lower portion of the same page, beginning at the bottom, in like manner, all mortgages, liens, notices as provided for in sections 5301.51 and, 5301.52, AND 5301.56 of the Revised Code, or other encumbrances affecting such real estate.

The compensation for the services rendered under this section shall be paid from the general revenue fund of the county, and no additional levy shall be made in consequence of such services. In the event that the board decides to have sectional index made it shall advertise for three consecutive weeks in one newspaper of general circulation in the county for sealed proposals to do such work as provided in this section, and shall let the work to the lowest and best bidder, and shall require him to give bond for the faithful performance of the contract, in such sum as the board fixes, and such work shall be done to the acceptance of the bureau of supervision and inspection of public offices upon allowance by such board. The board may reject any and all bids for the work, provided that no more than five cents shall be paid for each entry of each tract or lot of land.

When brought up and completed, the county recorder shall keep up the indexes described in this section.

Sec. 317.201. The county recorder shall maintain a book to be known as the "Notice Index." Separate pages of the book shall be headed by the original survey sections or surveys, or parts of a section or survey, squares, subdivisions, or the permanent parcel numbers provided for under section 319.28 of the Revised Code, or lots. In this book there shall be entered the notices for preservation of claims presented for recording in conformity with sections 5301.51 and, 5301.52, AND 5301.56 of the Revised Code. In designated columns there shall be entered on the left-hand page:

(A) The name of each claimant;

(B) Next to the right, the name of each owner of title;

(C) The deed book number and page where the instrument 5.27  
containing the claim has been recorded; 5.28

(D) The type of claim asserted; and on the opposite page 5.30  
on the corresponding line a pertinent description of the property 5.31  
affected as appears in such notice. 5.32

Sec. 5301.53. The provisions of sections 5301.47 to 5.35  
5301.56 of the Revised Code, shall not be applied TO BAR OR 6.1  
EXTINGUISH ANY OF THE FOLLOWING: 6.2

(A) ~~To-bar-any~~ ANY lessor or his successor as reversioner 6.4  
of his right to possession on the expiration of any lease or any 6.5  
lessee or his successor of his rights in and to any lease, EXCEPT 6.7  
AS MAY BE PERMITTED UNDER SECTION 5301.56 OF THE REVISED CODE; 6.8

(B) ~~To-bar-or-extinguish-any~~ ANY easement or interest in 6.10  
the nature of an easement created or held for any railroad or 6.11  
public utility purpose; 6.12

(C) ~~To-bar-or-extinguish-any~~ ANY easement or interest in 6.14  
the nature of an easement, the existence of which is clearly 6.15  
observable by physical evidence of its use; 6.17

(D) ~~To-bar-or-extinguish-any~~ ANY easement or interest in 6.19  
the nature of an easement, or any rights granted, excepted, or 6.20  
reserved by the instrument creating such easement or interest, 6.21  
including any rights for future use, if the existence of such 6.22  
easement or interest is evidenced by the location beneath, upon, 6.23  
or above any part of the land described in such instrument of any 6.26  
pipe, valve, road, wire, cable, conduit, duct, sewer, track,  
pole, tower, or other physical facility and whether or not the 6.27  
existence of such facility is observable; 6.28

(E) ~~To-bar-or-extinguish-any~~ ANY right, title, estate, or 6.30  
interest in coal, and any mining or other rights pertinent 6.31  
thereto or exercisable in connection therewith; 6.32

(F) ~~To-bar-or-extinguish-any~~ ANY mortgage recorded in 6.33  
conformity with section 1701.66 of the Revised Code; 6.34

(G) ~~To-bar-or-extinguish-any~~ ANY right, title, or interest 6.36  
of the United States, or of the-state-of-Ohio THIS STATE, or any 7.2  
political subdivision, body politic, or agency thereof. 7.3

Sec. 5301.56. (A) AS USED IN THIS SECTION: 7.5

(1) "HOLDER" INCLUDES NOT ONLY THE RECORD HOLDER OF A MINERAL INTEREST, BUT ALSO ANY PERSON WHO DERIVES HIS RIGHTS FROM, OR A COMMON SOURCE WITH, THE RECORD HOLDER AND WHOSE CLAIM DOES NOT INDICATE, EXPRESSLY OR BY CLEAR IMPLICATION, THAT IT IS ADVERSE TO THE INTEREST OF THE RECORD HOLDER. 7.7 7.8 7.10 7.11

(2) "DRILLING OR MINING PERMIT" MEANS A PERMIT ISSUED UNDER CHAPTER 1509., 1513., OR 1514. OF THE REVISED CODE TO THE HOLDER TO DRILL AN OIL OR GAS WELL OR MINE OTHER MINERALS. 7.13 7.15 7.16

(B) ANY MINERAL INTEREST HELD BY ANY PERSON OTHER THAN THE OWNER OF THE SURFACE OF THE LANDS SHALL BE DEEMED ABANDONED AND VESTED IN THE OWNER OF THE SURFACE, IF NEITHER OF THE FOLLOWING IS TRUE: 7.19 7.20 7.21

(1) THE MINERAL INTEREST IS ONE IN COAL, OR MINING OR OTHER RIGHTS PERTINENT THERETO, AS DESCRIBED IN DIVISION (E) OF SECTION 5301.53 OF THE REVISED CODE; 7.23 7.24 7.25

(2) WITHIN THE PRECEDING TWENTY YEARS, ONE OR MORE OF THE FOLLOWING HAS OCCURRED: 7.27 7.28

(a) THE INTEREST HAS BEEN CONVEYED, LEASED, TRANSFERRED, OR MORTGAGED BY AN INSTRUMENT FILED OR RECORDED IN THE RECORDER'S OFFICE OF THE COUNTY IN WHICH THE LANDS ARE LOCATED; 7.30 7.31 7.32

(b) THERE HAS BEEN ACTUAL PRODUCTION OR WITHDRAWAL OF MINERALS BY THE HOLDER FROM THE LANDS, FROM LANDS COVERED BY A LEASE TO WHICH SUCH INTEREST IS SUBJECT, OR, IN THE CASE OF OIL OR GAS, FROM LANDS POOLED, UNITIZED, OR INCLUDED IN UNIT OPERATIONS, UNDER SECTIONS 1509.26 TO 1509.28 OF THE REVISED CODE, IN WHICH THE INTEREST IS PARTICIPATING; 7.34 7.35 7.36 8.1 8.2 8.3

(c) THE INTEREST HAS BEEN USED IN UNDERGROUND GAS STORAGE OPERATIONS BY THE HOLDER; 8.6

(d) A DRILLING OR MINING PERMIT HAS BEEN ISSUED TO THE HOLDER; 8.8 8.9

(e) A CLAIM TO PRESERVE THE INTEREST HAS BEEN FILED UNDER DIVISION (C) OF THIS SECTION. 8.12

NO MINERAL INTEREST SHALL BE DEEMED ABANDONED UPON THE 8.14  
 BASIS OF FAILURE OF COMPLIANCE WITH DIVISION (B) OF THIS SECTION 8.16  
 PRIOR TO THREE YEARS FROM THE EFFECTIVE DATE OF THIS SECTION. 8.17

(C) A CLAIM TO PRESERVE A MINERAL INTEREST FROM BEING 8.19  
 DEEMED ABANDONED UNDER DIVISION (B) OF THIS SECTION MAY BE FILED 8.21  
 FOR RECORD BY THE HOLDER WITH THE COUNTY RECORDER OF THE COUNTY 8.22  
 IN WHICH THE LAND IS LOCATED. THE CLAIM SHALL CONSIST OF A 8.23  
 NOTICE, VERIFIED UNDER OATH, OF THE NATURE OF THE INTEREST  
 CLAIMED, A DESCRIPTION OF THE LAND, THE VOLUME AND PAGE OF ANY 8.24  
 RECORDED INSTRUMENT ON WHICH IT IS BASED, THE NAME AND ADDRESS OF 8.26  
 THE HOLDER, AND THAT HE DOES NOT INTEND TO ABANDON BUT TO  
 PRESERVE HIS RIGHTS. SUCH CLAIM PRESERVES THE RIGHTS OF ALL 8.27  
 HOLDERS OF A MINERAL INTEREST IN THE SAME LAND. ANY HOLDER OF AN 8.29  
 INTEREST FOR USE IN UNDERGROUND GAS STORAGE OPERATIONS MAY  
 PRESERVE HIS INTEREST, AND THOSE OF ANY LESSOR THEREOF, BY A 8.30  
 SINGLE CLAIM, DEFINING THE BOUNDARIES OF THE STORAGE FIELD OR 8.31  
 POOL AND ITS FORMATIONS, WITHOUT DESCRIBING EACH SEPARATE 8.32  
 INTEREST CLAIMED. SUCH A CLAIM ALSO ESTABLISHES PRIMA-FACIE 8.33  
 EVIDENCE OF THE USE OF SUCH INTEREST IN UNDERGROUND GAS STORAGE 8.34  
 OPERATIONS. 8.35

(D) A CLAIM FILED UNDER DIVISION (C) OF THIS SECTION SHALL 9.2  
 BE RECORDED AS PROVIDED IN SECTIONS 317.18 TO 317.201 AND 5301.52 9.3.  
 OF THE REVISED CODE.

(E) A MINERAL INTEREST MAY BE PRESERVED INDEFINITELY FROM 9.6  
 THE PRESUMPTION OF ABANDONMENT UNDER THIS SECTION BY OCCURRENCE 9.7  
 OF ANY OF THE EVENTS DESCRIBED IN DIVISION (B)(2) OF THIS 9.8  
 SECTION, INCLUDING SUCCESSIVE FILINGS OF CLAIMS UNDER DIVISION 9.9  
 (C) OF THIS SECTION. THE FILING OF A CLAIM UNDER DIVISION (C) OF 9.10  
 THIS SECTION DOES NOT AFFECT THE RIGHT OF A LESSOR OF AN OIL OR 9.11  
 GAS LEASE TO OBTAIN ITS FORFEITURE UNDER SECTION 5301.332 OF THE 9.12  
 REVISED CODE.

(F) THIS SECTION DOES NOT APPLY TO ANY MINERAL INTEREST 9.14  
 HELD BY ANY GOVERNMENTAL ENTITY. 9.15

Section 2. That existing sections 317.18, 317.20, 317.201, 9.17  
and 5301.53 and section 5301.56 of the Revised Code are hereby 9.18  
repealed. 9.19

As Reported by the Senate Judiciary Committee	1.4
117th General Assembly	1.6
Regular Session	1.7
1987-1988	1.8
MESSRS. CUPP-SCHAFRATH-NETTLE-MRS. DRAKE	1.10

A B I L L

To amend sections 317.18, 317.20, 317.201, and 5301.53, to enact new section 5301.56, and to repeal section 5301.56 of the Revised Code to provide a method for the termination of dormant mineral estates and the vesting of their title in the surface owners, in the absence of certain occurrences within the preceding 20 years, including the filing by the holder of the mineral interest of a notice of claim.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 317.18, 317.20, 317.201, and 5301.53 be amended and new section 5301.56 of the Revised Code be enacted to read as follows:

Sec. 317.18. At the beginning of each day's business the county recorder shall make and keep up general alphabetical indexes, direct and reverse, of all the names of both parties to all instruments theretofore received for record by him. The volume and page where such instrument is recorded may be omitted until it is actually recorded if the file number is entered in place of the volume or page; but such file number may be omitted from any index volume in use on April 21, 1896, if the form of the index volume is not adapted to entering the file number. The indexes shall show the kind of instrument, the range, township, and section or the survey number and number of acres, or the permanent parcel number provided for under section 319.28 of the Revised Code, or the lot and subplot number and the part thereof, all as the case requires, of each tract, parcel, or lot of land described in any such instrument of writing. The name of each

grantor shall be entered in the direct index under the appropriate letter, followed on the same line by the name of the grantee, or, if there is more than one grantee, by the name of the first grantee followed by "and others" or their equivalent. The name of each grantee shall be entered in the reverse index under the appropriate letter, followed on the same line by the name of the grantor, or, if there is more than one grantor, by the name of the first grantor followed by "and others" or their equivalent.

As to notices of claims filed in accordance with sections 5301.51 and, 5301.52, AND 5301.56 of the Revised Code there shall be entered in the reverse index under the appropriate letter the name of each claimant, followed on the same line by the name of the present owner of title against whom the claim is asserted, if the notice contains the name of the present owner; or, if the notice contains the names of more than one such owner, there shall be entered the name of the first owner followed by "and others" or their equivalent.

In all cases of deeds, mortgages, or other instruments of writing made by any sheriff, master commissioner, marshal, auditor, executor, administrator, trustee, or other officer, for the sale, conveyance, or encumbrance of any lands, tenements, or hereditaments, and recorded in the recorder's office, the recorder shall index the parties to such instrument under their appropriate letters, respectively, as follows:

(A) The names of the persons represented by such officer as owners of the lands, tenements, or hereditaments described in any such instruments;

(B) The official designation of the officer by whom such instrument of writing was made;

(C) The individual names of the officers by whom such instrument of writing was made.

In all cases of instruments filed in accordance with sections 5311.01 to 5311.22 of the Revised Code, the name of each owner shall be entered in the direct index, under the appropriate

letter, followed on the same line by the name of the condominium 3.16  
 property, and the name of the condominium property shall be 3.17  
 entered in the reverse index under the appropriate letter  
 followed on the same line by the name of the owner of the 3.18  
 property, or, if the instrument contains the names of more than 3.19  
 one owner there shall be entered the name of the first owner 3.20  
 followed by "and others" or its equivalent. 3.21

Any general alphabetical index commenced--after June 77 3.22  
~~1911~~, shall be COMMENCED in conformity to this section, and 3.23  
 whenever, in the opinion of the board of county commissioners, it 3.25  
 becomes necessary to transcribe, on account of its worn out or 3.26  
 incomplete condition, any volume of such AN index now in use, 3.29  
 such volume shall be revised and transcribed to conform with this 3.30  
 section; except that in counties having a sectional index in 3.31  
 conformity with section 317.20 of the Revised Code, such 3.33  
 transcript shall be only a copy of the original. 3.34

Sec. 317.20. When, in the opinion of the board of county 3.36  
 commissioners sectional indexes are needed, and it so directs, in 4.1  
 addition to the alphabetical indexes provided for in section 4.2  
 317.18 of the Revised Code, the board may provide for making, in 4.3  
 books prepared for that purpose, sectional indexes to the records 4.4  
 of all real estate in the county, beginning with some designated 4.5  
 year and continuing through such period of years as it specified, 4.6  
 by placing under the heads of the original surveyed sections or 4.7  
 surveys, or parts of a section or survey, squares, subdivisions, 4.8  
 or the permanent parcel numbers provided for under section 319.28 4.10  
 of the Revised Code, or lots, on the left-hand page, or on the 4.12  
 upper portion of such page of the index book, the following: 4.13

- (A) The name of the grantor; 4.14
- (B) Next to the right, the name of the grantee; 4.16
- (C) The number and page of the record where the instrument 4.18  
 is found recorded; 4.19
- (D) The character of the instrument, to be followed by a 4.21  
 pertinent description of the property conveyed by the deed, 4.22  
 lease, or assignment of lease;

(E) On the opposite page, or on the lower portion of the same page, beginning at the bottom, in like manner, all the mortgages, liens, notices as provided for in sections 5301.51 and 5301.52, AND 5301.56 of the Revised Code, or other encumbrances affecting such real estate.

The compensation for the services rendered under this section shall be paid from the general revenue fund of the county, and no additional levy shall be made in consequence of such services. In the event that the board decides to have such sectional index made it shall advertise for three consecutive weeks in one newspaper of general circulation in the county for sealed proposals to do such work as provided in this section, and shall let the work to the lowest and best bidder, and shall require him to give bond for the faithful performance of the contract, in such sum as the board fixes, and such work shall be done to the acceptance of the bureau of supervision and inspection of public offices upon allowance by such board. The board may reject any and all bids for the work, provided that no more than five cents shall be paid for each entry of each tract or lot of land.

When brought up and completed, the county recorder shall keep up the indexes described in this section.

Sec. 317.201. The county recorder shall maintain a book to be known as the "Notice Index." Separate pages of the book shall be headed by the original survey sections or surveys, or parts of a section or survey, squares, subdivisions, or the permanent parcel numbers provided for under section 319.28 of the Revised Code, or lots. In this book there shall be entered the notices for preservation of claims presented for recording in conformity with sections 5301.51 and 5301.52, AND 5301.56 of the Revised Code. In designated columns there shall be entered on the left-hand page:

- (A) The name of each claimant;
- (B) Next to the right, the name of each owner of title;

(C) The deed book number and page where the instrument containing the claim has been recorded;	5.27
(D) The type of claim asserted; and on the opposite page on the corresponding line a pertinent description of the property affected as appears in such notice.	5.28 5.30 5.31 5.32
Sec. 5301.53. The provisions of sections 5301.47 to 5301.56 of the Revised Code, shall not be applied TO BAR OR EXTINGUISH ANY OF THE FOLLOWING:	5.35 6.1 6.2
(A) <del>To bar any</del> ANY lessor or his successor as reversioner of his right to possession on the expiration of any lease or any lessee or his successor of his rights in and to any lease, EXCEPT AS MAY BE PERMITTED UNDER SECTION 5301.56 OF THE REVISED CODE;	6.4 6.5 6.7 6.8
(B) <del>To bar or extinguish any</del> ANY easement or interest in <del>the</del> nature of an easement created or held for any railroad or public utility purpose;	6.10 6.11 6.12
(C) <del>To bar or extinguish any</del> ANY easement or interest in the nature of an easement, the existence of which is clearly observable by physical evidence of its use;	6.14 6.15 6.17
(D) <del>To bar or extinguish any</del> ANY easement or interest in the nature of an easement, or any rights granted, excepted, or reserved by the instrument creating such easement or interest, including any rights for future use, if the existence of such easement or interest is evidenced by the location beneath, upon, or above any part of the land described in such instrument of any pipe, valve, road, wire, cable, conduit, duct, sewer, track, pole, tower, or other physical facility and whether or not the existence of such facility is observable;	6.19 6.20 6.21 6.22 6.23 6.26 6.27 6.28
(E) <del>To bar or extinguish any</del> ANY right, title, estate, or interest in coal, and any mining or other rights pertinent thereto or exercisable in connection therewith;	6.30 6.31 6.32
(F) <del>To bar or extinguish any</del> ANY mortgage recorded in conformity with section 1701.66 of the Revised Code;	6.33 6.34
(G) <del>To bar or extinguish any</del> ANY right, title, or interest of the United States, or of the state of Ohio THIS STATE, or any political subdivision, body politic, or agency thereof.	6.36 7.2 7.3

Sec. 5301.56. (A) AS USED IN THIS SECTION:	7.5
(1) "HOLDER" INCLUDES NOT ONLY THE RECORD HOLDER OF A MINERAL INTEREST, BUT ALSO ANY PERSON WHO DERIVES HIS RIGHTS FROM, OR A COMMON SOURCE WITH, THE RECORD HOLDER AND WHOSE CLAIM DOES NOT INDICATE, EXPRESSLY OR BY CLEAR IMPLICATION, THAT IT IS ADVERSE TO THE INTEREST OF THE RECORD HOLDER.	7.7 7.8 7.10 7.11
(2) "DRILLING OR MINING PERMIT" MEANS A PERMIT ISSUED UNDER CHAPTER 1509., 1513., OR 1514. OF THE REVISED CODE TO THE HOLDER TO DRILL AN OIL OR GAS WELL OR MINE OTHER MINERALS.	7.13 7.15 7.16
(B) ANY MINERAL INTEREST HELD BY ANY PERSON OTHER THAN THE OWNER OF THE SURFACE OF THE LANDS SHALL BE DEEMED ABANDONED AND VESTED IN THE OWNER OF THE SURFACE, IF NEITHER OF THE FOLLOWING IS TRUE:	7.19 7.20 7.21
(1) THE MINERAL INTEREST IS ONE IN COAL, OR MINING OR OTHER RIGHTS PERTINENT THERETO, AS DESCRIBED IN DIVISION (E) OF SECTION 5301.53 OF THE REVISED CODE;	7.23 7.24 7.25
(2) WITHIN THE PRECEDING TWENTY YEARS, ONE OR MORE OF THE FOLLOWING HAS OCCURRED:	7.27 7.28
(a) THE MINERAL INTEREST HAS BEEN THE SUBJECT OF A TITLE TRANSACTION WHICH HAS BEEN FILED OR RECORDED IN THE OFFICE OF THE COUNTY RECORDER OF THE COUNTY IN WHICH THE LAND IS LOCATED;	7.30 7.32
(b) THERE HAS BEEN ACTUAL PRODUCTION OR WITHDRAWAL OF MINERALS BY THE HOLDER FROM THE LANDS, FROM LANDS COVERED BY A LEASE TO WHICH SUCH INTEREST IS SUBJECT, OR, IN THE CASE OF OIL OR GAS, FROM LANDS POOLED, UNITIZED, OR INCLUDED IN UNIT OPERATIONS, UNDER SECTIONS 1509.26 TO 1509.28 OF THE REVISED CODE, IN WHICH THE INTEREST IS PARTICIPATING, PROVIDED THAT THE INSTRUMENT CREATING OR PROVIDING FOR THE POOLING OR UNITIZATION OF OIL OR GAS INTERESTS HAS BEEN FILED OR RECORDED IN THE OFFICE OF THE COUNTY RECORDER OF THE COUNTY IN WHICH THE LANDS THAT ARE SUBJECT TO THE POOLING OR UNITIZATION ARE LOCATED;	7.34 7.35 7.36 8.1 8.2 8.4 8.5 8.6 8.7 8.8
(c) THE INTEREST HAS BEEN USED IN UNDERGROUND GAS STORAGE OPERATIONS BY THE HOLDER;	8.11
(d) A DRILLING OR MINING PERMIT HAS BEEN ISSUED TO THE HOLDER, PROVIDED THAT AN AFFIDAVIT STATING THE NAME OF THE PERMIT	8.13 8.15

HOLDER, THE PERMIT NUMBER, THE TYPE OF PERMIT, AND A LEGAL 8.16  
DESCRIPTION OF THE LAND AFFECTED BY THE PERMIT HAS BEEN FILED OR 8.17  
RECORDED, IN ACCORDANCE WITH SECTION 5301.252 OF THE REVISED 8.18  
CODE, IN THE OFFICE OF THE COUNTY RECORDER OF THE COUNTY IN WHICH 8.19  
THE LAND IS LOCATED;

(e) A CLAIM TO PRESERVE THE INTEREST HAS BEEN FILED UNDER 8.22  
DIVISION (C) OF THIS SECTION;

(f) IN THE CASE OF A SEPARATED MINERAL INTEREST, A 8.24  
SEPARATELY LISTED TAX PARCEL NUMBER HAS BEEN CREATED FOR THE 8.25  
MINERAL INTEREST IN THE AUDITOR'S TAX LIST AND THE TREASURER'S 8.26  
DUPLICATE TAX LIST IN THE COUNTY IN WHICH THE LAND IS LOCATED. 8.27

NO MINERAL INTEREST SHALL BE DEEMED ABANDONED UPON THE 8.29  
BASIS OF FAILURE OF COMPLIANCE WITH DIVISION (B) OF THIS SECTION 8.31  
PRIOR TO THREE YEARS FROM THE EFFECTIVE DATE OF THIS SECTION. 8.32

(C) A CLAIM TO PRESERVE A MINERAL INTEREST FROM BEING 8.34  
DEEMED ABANDONED UNDER DIVISION (B) OF THIS SECTION MAY BE FILED 8.36  
FOR RECORD BY THE HOLDER WITH THE COUNTY RECORDER OF THE COUNTY 9.1  
IN WHICH THE LAND IS LOCATED. THE CLAIM SHALL COMPLY WITH ALL OF 9.2  
THE FOLLOWING:

(1) BE FILED IN ACCORDANCE WITH SECTION 5301.52 OF THE 9.4  
REVISED CODE; 9.5

(2) STATE THE RECORDING INFORMATION, IF ANY, UPON WHICH 9.7  
THE CLAIM IS BASED; 9.8

(3) STATE THAT THE CLAIMANT DOES NOT INTEND TO ABANDON BUT 9.10  
TO PRESERVE HIS RIGHTS IN THE MINERAL INTEREST DESCRIBED. 9.11

SUCH CLAIM PRESERVES THE RIGHTS OF ALL HOLDERS OF A MINERAL 9.14  
INTEREST IN THE SAME LAND. ANY HOLDER OF AN INTEREST FOR USE IN 9.15  
UNDERGROUND GAS STORAGE OPERATIONS MAY PRESERVE HIS INTEREST, AND 9.16  
THOSE OF ANY LESSOR THEREOF, BY A SINGLE CLAIM, DEFINING THE 9.17  
BOUNDARIES OF THE STORAGE FIELD OR POOL AND ITS FORMATIONS, 9.18  
WITHOUT DESCRIBING EACH SEPARATE INTEREST CLAIMED. SUCH A CLAIM 9.19  
ALSO ESTABLISHES PRIMA-FACIE EVIDENCE OF THE USE OF SUCH INTEREST 9.20  
IN UNDERGROUND GAS STORAGE OPERATIONS. 9.21

(D) A CLAIM FILED UNDER DIVISION (C) OF THIS SECTION SHALL 9.24  
BE RECORDED AS PROVIDED IN SECTIONS 317.18 TO 317.201 AND 5301.52 9.25  
OF THE REVISED CODE.

(E) A MINERAL INTEREST MAY BE PRESERVED INDEFINITELY FROM 9.26  
THE PRESUMPTION OF ABANDONMENT UNDER THIS SECTION BY OCCURRENCE 9.29  
OF ANY OF THE EVENTS DESCRIBED IN DIVISION (B)(2) OF THIS 9.30  
SECTION, INCLUDING SUCCESSIVE FILINGS OF CLAIMS UNDER DIVISION 9.31  
(C) OF THIS SECTION. THE FILING OF A CLAIM UNDER DIVISION (C) OF 9.32  
THIS SECTION DOES NOT AFFECT THE RIGHT OF A LESSOR OF AN OIL OR 9.33  
GAS LEASE TO OBTAIN ITS FORFEITURE UNDER SECTION 5301.332 OF THE 9.34  
REVISED CODE.

(F) THIS SECTION DOES NOT APPLY TO ANY MINERAL INTEREST 9.36  
HELD BY ANY GOVERNMENTAL ENTITY. 10.1

Section 2. That existing sections 317.18, 317.20, 317.201, 10.3  
and 5301.53 and section 5301.56 of the Revised Code are hereby 10.4  
repealed. 10.5

As Passed by the Senate	1.4
117th General Assembly	1.6
Regular Session	1.7
1987-1988	1.8
MESSRS. CUPP-SCHAFRATH-NETTLE-MRS. DRAKE-MR. BURCH	1.10

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A B I L L

To amend sections 317.18, 317.20, 317.201, and	1.14
5301.53, to enact new section 5301.56, and to	1.15
repeal section 5301.56 of the Revised Code to	1.16
provide a method for the termination of dormant	
mineral estates and the vesting of their title in	1.17
the surface owners, in the absence of certain	1.18
occurrences within the preceding 20 years,	1.19
including the filing by the holder of the mineral	1.20
interest of a notice of claim.	

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:	1.23
Section 1. That sections 317.18, 317.20, 317.201, and	1.25
5301.53 be amended and new section 5301.56 of the Revised Code be	1.26
enacted to read as follows:	1.27
Sec. 317.18. At the beginning of each day's business the	1.30
county recorder shall make and keep up general alphabetical	1.31
indexes, direct and reverse, of all the names of both parties to	1.33
all instruments theretofore received for record by him. The	1.34
volume and page where such instrument is recorded may be omitted	1.35
until it is actually recorded if the file number is entered in	1.36
place of the volume or page; but such file number may be omitted	2.1
from any index volume in use on April 21, 1896, if the form of	2.3
the index volume is not adapted to entering the file number. The	2.5
indexes shall show the kind of instrument, the range, township,	2.7
and section or the survey number and number of acres, or the	2.8
permanent parcel number provided for under section 319.28 of the	2.9
Revised Code, or the lot and subplot number and the part thereof,	2.10
all as the case requires, of each tract, parcel, or lot of land	2.12
described in any such instrument of writing. The name of each	2.13

grantor shall be entered in the direct index under the appropriate letter, followed on the same line by the name of the grantee, or, if there is more than one grantee, by the name of the first grantee followed by "and others" or their equivalent. The name of each grantee shall be entered in the reverse index under the appropriate letter, followed on the same line by the name of the grantor, or, if there is more than one grantor, by the name of the first grantor followed by "and others" or their equivalent.

As to notices of claims filed in accordance with sections 5301.51 and, 5301.52, AND 5301.56 of the Revised Code there shall be entered in the reverse index under the appropriate letter the name of each claimant, followed on the same line by the name of the present owner of title against whom the claim is asserted, if the notice contains the name of the present owner; or, if the notice contains the names of more than one such owner, there shall be entered the name of the first owner followed by "and others" or their equivalent.

In all cases of deeds, mortgages, or other instruments of writing made by any sheriff, master commissioner, marshal, auditor, executor, administrator, trustee, or other officer, for the sale, conveyance, or encumbrance of any lands, tenements, or hereditaments, and recorded in the recorder's office, the recorder shall index the parties to such instrument under their appropriate letters, respectively, as follows:

(A) The names of the persons represented by such officer as owners of the lands, tenements, or hereditaments described in any such instruments;

(B) The official designation of the officer by whom such instrument of writing was made;

(C) The individual names of the officers by whom such instrument of writing was made.

In all cases of instruments filed in accordance with sections 5311.01 to 5311.22 of the Revised Code, the name of each owner shall be entered in the direct index, under the appropriate

letter, followed on the same line by the name of the condominium 3.16  
 property, and the name of the condominium property shall be 3.17  
 entered in the reverse index under the appropriate letter  
 followed on the same line by the name of the owner of the 3.18  
 property, or, if the instrument contains the names of more than 3.19  
 one owner there shall be entered the name of the first owner 3.20  
 followed by "and others" or its equivalent. 3.21

Any general alphabetical index commenced--after-June-7, 3.22  
~~1911~~ shall be COMMENCED in conformity to this section, and 3.23  
 whenever, in the opinion of the board of county commissioners, it 3.25  
 becomes necessary to transcribe, on account of its worn out or 3.26  
 incomplete condition, any volume of such AN index now in use, 3.29  
 such volume shall be revised and transcribed to conform with this 3.30  
 section; except that in counties having a sectional index in 3.31  
 conformity with section 317.20 of the Revised Code, such 3.33  
 transcript shall be only a copy of the original. 3.34

Sec. 317.20. When, in the opinion of the board of county 3.36  
 commissioners sectional indexes are needed, and it so directs, in 4.1  
 addition to the alphabetical indexes provided for in section 4.2  
 317.18 of the Revised Code, the board may provide for making, in 4.3  
 books prepared for that purpose, sectional indexes to the records 4.4  
 of all real estate in the county, beginning with some designated 4.5  
 year and continuing through such period of years as it specified, 4.6  
 by placing under the heads of the original surveyed sections or 4.7  
 surveys, or parts of a section or survey, squares, subdivisions, 4.8  
 or the permanent parcel numbers provided for under section 319.28 4.10  
 of the Revised Code, or lots, on the left-hand page, or on the 4.12  
 upper portion of such page of the index book, the following: 4.13  
 (A) The name of the grantor; 4.14  
 (B) Next to the right, the name of the grantee; 4.16  
 (C) The number and page of the record where the instrument 4.18  
 is found recorded; 4.19  
 (D) The character of the instrument, to be followed by a 4.21  
 pertinent description of the property conveyed by the deed, 4.22  
 lease, or assignment of lease;

(E) On the opposite page, or on the lower portion of the same page, beginning at the bottom, in like manner, all the mortgages, liens, notices as provided for in sections 5301.51 and, 5301.52, AND 5301.56 of the Revised Code, or other encumbrances affecting such real estate.

The compensation for the services rendered under this section shall be paid from the general revenue fund of the county, and no additional levy shall be made in consequence of such services. In the event that the board decides to have such sectional index made it shall advertise for three consecutive weeks in one newspaper of general circulation in the county for sealed proposals to do such work as provided in this section, and shall let the work to the lowest and best bidder, and shall require him to give bond for the faithful performance of the contract, in such sum as the board fixes, and such work shall be done to the acceptance of the bureau of supervision and inspection of public offices upon allowance by such board. The board may reject any and all bids for the work, provided that no more than five cents shall be paid for each entry of each tract or lot of land.

When brought up and completed, the county recorder shall keep up the indexes described in this section.

Sec. 317.201. The county recorder shall maintain a book to be known as the "Notice Index." Separate pages of the book shall be headed by the original survey sections or surveys, or parts of a section or survey, squares, subdivisions, or the permanent parcel numbers provided for under section 319.28 of the Revised Code, or lots. In this book there shall be entered the notices for preservation of claims presented for recording in conformity with sections 5301.51 and, 5301.52, AND 5301.56 of the Revised Code. In designated columns there shall be entered on the left-hand page:

- (A) The name of each claimant;
- (B) Next to the right, the name of each owner of title;

(C) The deed book number and page where the instrument containing the claim has been recorded;	5.27
(D) The type of claim asserted; and on the opposite page on the corresponding line a pertinent description of the property affected as appears in such notice.	5.28 5.30 5.31 5.32
Sec. 5301.53. The provisions of sections 5301.47 to 5301.56 of the Revised Code, shall not be applied TO BAR OR EXTINGUISH ANY OF THE FOLLOWING:	5.35 6.1 6.2
(A) <del>To bar any</del> ANY lessor or his successor as reversioner of his right to possession on the expiration of any lease or any lessee or his successor of his rights in and to any lease, EXCEPT AS MAY BE PERMITTED UNDER SECTION 5301.56 OF THE REVISED CODE;	6.4 6.5 6.7 6.8
(B) <del>To bar or extinguish any</del> ANY easement or interest in the nature of an easement created or held for any railroad or public utility purpose;	6.10 6.11 6.12
(C) <del>To bar or extinguish any</del> ANY easement or interest in the nature of an easement, the existence of which is clearly observable by physical evidence of its use;	6.14 6.15 6.17
(D) <del>To bar or extinguish any</del> ANY easement or interest in the nature of an easement, or any rights granted, excepted, or reserved by the instrument creating such easement or interest, including any rights for future use, if the existence of such easement or interest is evidenced by the location beneath, upon, or above any part of the land described in such instrument of any pipe, valve, road, wire, cable, conduit, duct, sewer, track, pole, tower, or other physical facility and whether or not the existence of such facility is observable;	6.19 6.20 6.21 6.22 6.23 6.26 6.27 6.28
(E) <del>To bar or extinguish any</del> ANY right, title, estate, or interest in coal, and any mining or other rights pertinent thereto or exercisable in connection therewith;	6.30 6.31 6.32
(F) <del>To bar or extinguish any</del> ANY mortgage recorded in conformity with section 1701.66 of the Revised Code;	6.33 6.34
(G) <del>To bar or extinguish any</del> ANY right, title, or interest of the United States, or of the state of Ohio THIS STATE, or any political subdivision, body politic, or agency thereof.	6.36 7.2 7.3

Sec. 5301.56. (A) AS USED IN THIS SECTION: 7.5

(1) "HOLDER" INCLUDES NOT ONLY THE RECORD HOLDER OF A 7.7  
MINERAL INTEREST, BUT ALSO ANY PERSON WHO DERIVES HIS RIGHTS 7.8  
FROM, OR A COMMON SOURCE WITH, THE RECORD HOLDER AND WHOSE CLAIM 7.10  
DOES NOT INDICATE, EXPRESSLY OR BY CLEAR IMPLICATION, THAT IT IS 7.11  
ADVERSE TO THE INTEREST OF THE RECORD HOLDER.

(2) "DRILLING OR MINING PERMIT" MEANS A PERMIT ISSUED 7.13  
UNDER CHAPTER 1509., 1513., OR 1514. OF THE REVISED CODE TO THE 7.15  
HOLDER TO DRILL AN OIL OR GAS WELL OR MINE OTHER MINERALS. 7.16

(B) ANY MINERAL INTEREST HELD BY ANY PERSON OTHER THAN THE 7.19  
OWNER OF THE SURFACE OF THE LANDS SHALL BE DEEMED ABANDONED AND 7.20  
VESTED IN THE OWNER OF THE SURFACE, IF NEITHER OF THE FOLLOWING 7.21  
IS TRUE:

(1) THE MINERAL INTEREST IS ONE IN COAL, OR MINING OR 7.23  
OTHER RIGHTS PERTINENT THERETO, AS DESCRIBED IN DIVISION (E) OF 7.24  
SECTION 5301.53 OF THE REVISED CODE; 7.25

(2) WITHIN THE PRECEDING TWENTY YEARS, ONE OR MORE OF THE 7.27  
FOLLOWING HAS OCCURRED: 7.28

(a) THE MINERAL INTEREST HAS BEEN THE SUBJECT OF A TITLE 7.30  
TRANSACTION WHICH HAS BEEN FILED OR RECORDED IN THE OFFICE OF THE 7.32  
COUNTY RECORDER OF THE COUNTY IN WHICH THE LAND IS LOCATED;

(b) THERE HAS BEEN ACTUAL PRODUCTION OR WITHDRAWAL OF 7.34  
MINERALS BY THE HOLDER FROM THE LANDS, FROM LANDS COVERED BY A 7.35  
LEASE TO WHICH SUCH INTEREST IS SUBJECT, OR, IN THE CASE OF OIL 7.36  
OR GAS, FROM LANDS POOLED, UNITIZED, OR INCLUDED IN UNIT 8.1  
OPERATIONS, UNDER SECTIONS 1509.25 TO 1509.28 OF THE REVISED 8.2  
CODE, IN WHICH THE INTEREST IS PARTICIPATING, PROVIDED THAT THE 8.4  
INSTRUMENT CREATING OR PROVIDING FOR THE POOLING OR UNITIZATION 8.5  
OF OIL OR GAS INTERESTS HAS BEEN FILED OR RECORDED IN THE OFFICE 8.6  
OF THE COUNTY RECORDER OF THE COUNTY IN WHICH THE LANDS THAT ARE 8.7  
SUBJECT TO THE POOLING OR UNITIZATION ARE LOCATED; 8.8

(c) THE INTEREST HAS BEEN USED IN UNDERGROUND GAS STORAGE 8.11  
OPERATIONS BY THE HOLDER;

(d) A DRILLING OR MINING PERMIT HAS BEEN ISSUED TO THE 8.13  
HOLDER, PROVIDED THAT AN AFFIDAVIT STATING THE NAME OF THE PERMIT 8.15

HOLDER, THE PERMIT NUMBER, THE TYPE OF PERMIT, AND A LEGAL 8.16  
DESCRIPTION OF THE LAND AFFECTED BY THE PERMIT HAS BEEN FILED OR 8.17  
RECORDED, IN ACCORDANCE WITH SECTION 5301.252 OF THE REVISED 8.18  
CODE, IN THE OFFICE OF THE COUNTY RECORDER OF THE COUNTY IN WHICH 8.19  
THE LAND IS LOCATED;

(e) A CLAIM TO PRESERVE THE INTEREST HAS BEEN FILED UNDER 8.22  
DIVISION (c) OF THIS SECTION;

(f) IN THE CASE OF A SEPARATED MINERAL INTEREST, A 8.24  
SEPARATELY LISTED TAX PARCEL NUMBER HAS BEEN CREATED FOR THE 8.25  
MINERAL INTEREST IN THE AUDITOR'S TAX LIST AND THE TREASURER'S 8.26  
DUPLICATE TAX LIST IN THE COUNTY IN WHICH THE LAND IS LOCATED. 8.27

NO MINERAL INTEREST SHALL BE DEEMED ABANDONED UPON THE 8.29  
BASIS OF FAILURE OF COMPLIANCE WITH DIVISION (B) OF THIS SECTION 8.31  
PRIOR TO THREE YEARS FROM THE EFFECTIVE DATE OF THIS SECTION. 8.32

(c) A CLAIM TO PRESERVE A MINERAL INTEREST FROM BEING 8.34  
DEEMED ABANDONED UNDER DIVISION (B) OF THIS SECTION MAY BE FILED 8.36  
FOR RECORD BY THE HOLDER WITH THE COUNTY RECORDER OF THE COUNTY 9.1  
IN WHICH THE LAND IS LOCATED. THE CLAIM SHALL COMPLY WITH ALL OF 9.2  
THE FOLLOWING:

(1) BE FILED IN ACCORDANCE WITH SECTION 5301.52 OF THE 9.4  
REVISED CODE; 9.5

(2) STATE THE RECORDING INFORMATION, IF ANY, UPON WHICH 9.7  
THE CLAIM IS BASED; 9.8

(3) STATE THAT THE CLAIMANT DOES NOT INTEND TO ABANDON BUT 9.10  
TO PRESERVE HIS RIGHTS IN THE MINERAL INTEREST DESCRIBED. 9.11

SUCH CLAIM PRESERVES THE RIGHTS OF ALL HOLDERS OF A MINERAL 9.14  
INTEREST IN THE SAME LAND. ANY HOLDER OF AN INTEREST FOR USE IN 9.15  
UNDERGROUND GAS STORAGE OPERATIONS MAY PRESERVE HIS INTEREST, AND 9.16  
THOSE OF ANY LESSOR THEREOF, BY A SINGLE CLAIM, DEFINING THE 9.17  
BOUNDARIES OF THE STORAGE FIELD OR POOL AND ITS FORMATIONS, 9.18  
WITHOUT DESCRIBING EACH SEPARATE INTEREST CLAIMED. SUCH A CLAIM 9.19  
ALSO ESTABLISHES PRIMA-FACIE EVIDENCE OF THE USE OF SUCH INTEREST 9.20  
IN UNDERGROUND GAS STORAGE OPERATIONS. 9.21

(D) A CLAIM FILED UNDER DIVISION (C) OF THIS SECTION SHALL 9.24  
 BE RECORDED AS PROVIDED IN SECTIONS 317.18 TO 317.201 AND 5301.52 9.25  
 OF THE REVISED CODE.

(E) A MINERAL INTEREST MAY BE PRESERVED INDEFINITELY FROM 9.28  
 THE PRESUMPTION OF ABANDONMENT UNDER THIS SECTION BY OCCURRENCE 9.29  
 OF ANY OF THE EVENTS DESCRIBED IN DIVISION (B)(2) OF THIS 9.30  
 SECTION, INCLUDING SUCCESSIVE FILINGS OF CLAIMS UNDER DIVISION 9.31  
 (C) OF THIS SECTION. THE FILING OF A CLAIM UNDER DIVISION (C) OF 9.32  
 THIS SECTION DOES NOT AFFECT THE RIGHT OF A LESSOR OF AN OIL OR 9.33  
 GAS LEASE TO OBTAIN ITS FORFEITURE UNDER SECTION 5301.332 OF THE 9.34  
 REVISED CODE.

(F) THIS SECTION DOES NOT APPLY TO ANY MINERAL INTEREST 9.36  
 HELD BY ANY GOVERNMENTAL ENTITY. 10.1

Section 2. That existing sections 317.18, 317.20, 317.201, 10.3  
 and 5301.53 and section 5301.56 of the Revised Code are hereby 10.4  
 repealed. 10.5

As Reported by the House Civil and Commercial Law Committee	1.4
117th General Assembly	1.6
Regular Session	1.7
Sub. S. B. No. 223	1.7
1987-1988	1.8
MESSRS. CUPP-SCHAFRATH-NETTLE-MRS. DRAKE-MR. BURCH	1.10

A B I L L

To amend sections 317.08, 317.18, 317.20, 317.201,	1.14
and 5301.53, to enact new section 5301.56, and to	1.16
repeal section 5301.56 of the Revised Code to	1.17
provide a method for the termination of dormant	1.18
mineral interests and the vesting of their title	1.19
in surface owners, in the absence of certain	1.20
occurrences within the preceding 20 years,	1.21
including the filing by the holder of a mineral	1.22
interest of a preserving claim.	1.23

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO: 1.26

Section 1. That sections 317.08, 317.18, 317.20, 317.201, 1.28  
and 5301.53 be amended and new section 5301.56 of the Revised 1.30  
Code be enacted to read as follows: 1.31

Sec. 317.08. Except as provided in division (F) of this 1.34  
section, the county recorder shall keep five separate sets of 1.36  
records as follows:

(A) A record of deeds, in which shall be recorded all 2.1  
deeds and other instruments of writing for the absolute, and 2.2  
unconditional sale or conveyance of lands, tenements, and 2.4  
hereditaments; all notices, as provided for in sections 5301.47 2.5  
to 5301.56 of the Revised Code; all judgments or decrees in 2.7  
actions brought under section 5303.01 of the Revised Code; all 2.9  
declarations and bylaws as provided for in sections ~~5311.01 to~~ 2.10  
~~5311.22~~ CHAPTER 5311. of the Revised Code; affidavits as provided 2.12  
for in section 5301.252 of the Revised Code; all certificates as 2.13  
provided for in section 5311.17 of the Revised Code; all articles 2.14  
dedicating archaeological preserves accepted by the director of 2.15  
the Ohio historical society under section 149.52 of the Revised 2.16

Code; all articles dedicating nature preserves accepted by the	2.17
director of natural resources under section 1517.05 of the	2.18
Revised Code; all agreements for the registration of lands as	2.19
archaeological or historic landmarks under section 149.51 or	2.20
149.55 of the Revised Code; and all conveyances of conservation	2.21
easements under section 5301.68 of the Revised Code; AND ALL	2.23
INSTRUMENTS OR ORDERS DESCRIBED IN DIVISION (B)(1)(c)(ii) OF	2.25
SECTION 5301.56 OF THE REVISED CODE;	2.26
(B) A record of mortgages, in which shall be recorded:	2.28
(1) All mortgages, including amendments, supplements,	2.30
modifications, and extensions thereof OF MORTGAGES, or other	2.32
instruments of writing by which lands, tenements, or	2.33
hereditaments are or may be mortgaged or otherwise conditionally	2.35
sold, conveyed, affected, or encumbered;	3.1
(2) All executory installment contracts for the sale of	3.2
land executed after September 29, 1961, which by the THEIR terms	3.4
thereof are not required to be fully performed by one or more of	3.5
the parties thereto TO THEM within one year of the date of the	3.6
contracts;	3.7
(3) All options to purchase real estate, including	3.8
supplements, modifications, and amendments thereof OF THE	3.10
OPTIONS, but no such instrument shall be recorded if it does not	3.12
state a specific day and year of expiration of its validity.	3.13
(C) A record of powers of attorney;	3.14
(D) A record of plats, in which shall be recorded all	3.16
plats and maps of town lots, of the subdivision thereof, and of	3.17
other divisions or surveys of lands, and any center line survey	3.18
of a highway located within the county, the plat of which shall	3.19
be furnished by the director of transportation or county	3.20
engineer, and all drawings as provided for in sections-5311-81-to	3.22
5311-22 CHAPTER 5311, of the Revised Code;	3.23
(E) A record of leases, in which shall be recorded all	3.24
leases, memoranda of leases, and supplements, modifications, and	3.25
amendments thereof OF LEASES AND MEMORANDA OF LEASES.	3.26

All instruments or memoranda of instruments entitled to 3.27  
 record shall be recorded in the proper record in the order in 3.28  
 which they are presented for record. The recorder may index, 3.29  
 keep, and record in one volume unemployment compensation liens, 3.30  
 federal tax liens, personal tax liens, mechanics MECHANIC'S 3.32  
 liens, notices of liens, certificates of satisfaction or partial 3.34  
 release of estate tax liens, discharges of recognizances, excise 3.36  
 and franchise tax liens on corporations, and liens provided for 4.1  
 in sections 1513.33, 1513.37, 5111.021, and 5311.18 of the 4.2  
 Revised Code. 4.3

The recording of an option to purchase real estate, 4.4  
 including any supplement, modification, and amendment thereof OF 4.6  
 THE OPTION, under this section shall serve as notice to any 4.7  
 purchaser of an interest in the real estate covered by the option 4.8  
 only during the period of the validity of the option as stated in 4.9  
 the instrument. 4.10

(F) In lieu of keeping the five separate sets of records 4.11  
 required in divisions (A) to (E) of this section and the records 4.12  
 required in division (G) of this section, a county recorder may 4.14  
 record all the instruments required to be recorded by this 4.15  
 section in two separate sets of record books. One set shall be 4.16  
 called the "official records" and shall contain the instruments 4.17  
 listed in divisions (A), (B), (C), (E), and (G) of this section. 4.19  
 The second set of records shall contain the instruments listed in 4.21  
 division (D) of this section.

(G) Except as provided in division (F) of this section, 4.22  
 the county recorder shall keep a separate set of records 4.23  
 containing all corrupt activity lien notices filed with the 4.24  
 recorder pursuant to section 2923.36 of the Revised Code. 4.25

Sec. 317.18. At the beginning of each day's business, the 4.27  
 county recorder shall make and keep up general alphabetical 4.28  
 indexes, direct and reverse, of all the names of both parties to 4.30  
 all instruments theretofore PREVIOUSLY received for record by 4.32  
 him. The volume and page where EACH such instrument is recorded 4.33  
 may be omitted until it is actually recorded if the file number 4.35

is entered in place of the volume or page, but such file number 4.36  
~~may be omitted from any index volume in use on April 21, 1896, if~~ 5.2  
~~the form of the index volume is not adapted to entering the file~~ 5.3  
 number. The indexes shall show the kind of instrument, the 5.5  
 range, township, and section or the survey number and number of 5.6  
 acres, or the permanent parcel number provided for under section 5.7  
 319.28 of the Revised Code, or the lot and subplot number and the 5.9  
 part thereof, all as the case requires, of each tract, parcel, or 5.10  
 lot of land described in any such instrument of writing. The 5.12  
 name of each grantor shall be entered in the direct index under 5.13  
 the appropriate letter, followed on the same line by the name of 5.14  
 the grantee, or, if there is more than one grantee, by the name 5.15  
 of the first grantee followed by "and others" or their ITS 5.17  
 equivalent. The name of each grantee shall be entered in the 5.18  
 reverse index under the appropriate letter, followed on the same 5.19  
 line by the name of the grantor, or, if there is more than one 5.20  
 grantor, by the name of the first grantor followed by "and 5.21  
 others" or their ITS equivalent. 5.23

As to notices of claims filed in accordance with sections 5.24  
 5301.51 and, 5301.52, AND 5301.56 of the Revised Code, there 5.26  
 shall be entered in the reverse index under the appropriate 5.27  
 letter the name of each claimant, followed on the same line by 5.28  
 the name of the present owner of title against whom the claim is 5.29  
 asserted, if the notice contains the name of the present owner; 5.30  
 or, if the notice contains the names of more than one such owner, 5.32  
 there shall be entered the name of the first owner followed by 5.34  
 "and others" or their ITS equivalent. 5.36

In all cases of deeds, mortgages, or other instruments of 6.1  
 writing made by any sheriff, master commissioner, marshal, 6.2  
 auditor, executor, administrator, trustee, or other officer, for 6.4  
 the sale, conveyance, or encumbrance of any lands, tenements, or 6.6  
 hereditaments, and recorded in the recorder's office, the 6.7  
 recorder shall index the parties to such instrument under their 6.8  
 appropriate letters, respectively, as follows: 6.9

(A) The names of the persons represented by such officer 6.10  
as owners of the lands, tenements, or hereditaments described in 6.12  
any such instruments;

(B) The official designation of the officer by whom such 6.13  
instrument of-writing was made; 6.14

(C) The individual names of the officers by whom such 6.15  
instrument of-writing was made. 6.16

In all cases of instruments filed in accordance with 6.17  
~~sections-5311-01-to-5311-22~~ CHAPTER 5311, of the Revised Code, 6.20  
the name of each owner shall be entered in the direct index, 6.21  
under the appropriate letter, followed on the same line by the 6.22  
name of the condominium property, and the name of the condominium 6.23  
property shall be entered in the reverse index under the 6.24  
appropriate letter followed on the same line by the name of the 6.26  
owner of the property, or, if the instrument contains the names 6.28  
of more than one owner, there shall be entered the name of the 6.30  
first owner followed by "and others" or its equivalent. 6.31

Any general alphabetical index commenced ~~after June 7,~~ 6.32  
~~1917~~ shall be COMMENCED in conformity to this section, and 6.33  
whenever, in the opinion of the board of county commissioners, it 6.35  
becomes necessary to transcribe, on account of its worn out or 6.36  
incomplete condition, any volume of such AN index now in use, 7.3  
such volume shall be revised and transcribed to conform with this 7.4  
section; except that in counties having a sectional index in 7.5  
conformity with section 317.20 of the Revised Code, such 7.7  
transcript shall be only a copy of the original. 7.8

Sec. 317.20. When, in the opinion of the board of county 7.10  
commissioners sectional indexes are needed, and it so directs, in 7.11  
addition to the alphabetical indexes provided for in section 7.12  
317.18 of the Revised Code, the board may provide for making, in 7.13  
books prepared for that purpose, sectional indexes to the records 7.14  
of all real estate in the county, beginning with some designated 7.15  
year and continuing through such period of years as it specified, 7.16  
by placing under the heads of the original surveyed sections or 7.17  
surveys, or parts of a section or survey, squares, subdivisions, 7.18

or the permanent parcel numbers provided for under section 319.28 7.20  
of the Revised Code, of lots, on the left-hand page, or on the 7.22  
upper portion of such page of the index book, the following: 7.23

- (A) The name of the grantor; 7.24
- (B) Next to the right, the name of the grantee; 7.26
- (C) The number and page of the record where the instrument 7.28  
is found recorded; 7.29
- (D) The character of the instrument, to be followed by a 7.31  
pertinent description of the property conveyed by the deed, 7.32  
lease, or assignment of lease;
- (E) On the opposite page, or on the lower portion of the 7.33  
same page, beginning at the bottom, in like manner, all the 7.34  
mortgages, liens, notices as provided for in sections 5301.51 7.35  
and, 5301.52, AND 5301.56 of the Revised Code, or other, 8.1  
encumbrances affecting such real estate. 8.3

The compensation for the services rendered under this 8.4  
section shall be paid from the general revenue fund of the 8.5  
county, and no additional levy shall be made in consequence of 8.6  
such services. In the event that IF the board decides to have 8.8  
such sectional index made, it shall advertise for three 8.9  
consecutive weeks in one newspaper of general circulation in the 8.10  
county for sealed proposals to do such work as provided in this 8.11  
section, and shall let the work to the lowest and best bidder, 8.13  
and shall require him to give bond for the faithful performance 8.14  
of the contract, in such sum as the board fixes, and such work 8.15  
shall be done to the acceptance of the bureau of supervision and 8.16  
inspection of public offices AUDITOR OF STATE upon allowance by 8.18  
such board. The board may reject any and all bids for the work, 8.19  
provided that no more than five cents shall be paid for each 8.20  
entry of each tract or lot of land, 8.21

When brought up and completed, the county recorder shall 8.22  
keep up the indexes described in this section. 8.23

Sec. 317.201. The county recorder shall maintain a book to 8.24  
be known as the "Notice Index." Separate pages of the book shall 8.25  
be headed by the original survey sections or surveys, or parts of 8.27

a section or survey, squares, subdivisions, or the permanent parcel numbers provided for under section 319.28 of the Revised Code, or lots. In this book, there shall be entered the notices for preservation of claims presented for recording in conformity with sections 5301.51 and 5301.52, AND 5301.56 of the Revised Code. In designated columns, there shall be entered on the left-hand page:

- (A) The name of each claimant; 9.1
- (B) Next to the right, the name of each owner of title; 9.3
- (C) The deed book number and page where the instrument containing the claim has been recorded; 9.5
- (D) The type of claim asserted, and on; 9.8

ON the opposite page on the corresponding line, a pertinent description of the property affected as appears in such notice SHALL BE ENTERED. 9.11

Sec. 5301.53. The provisions of sections 5301.47 to 5301.56 of the Revised Code, shall not be applied TO BAR OR EXTINGUISH ANY OF THE FOLLOWING: 9.16

(A) To bar any ANY lessor or his successor as reversioner of his right to possession on the expiration of any lease, or any lessee of his successor of his rights in and to any lease, EXCEPT AS MAY BE PERMITTED UNDER SECTION 5301.56 OF THE REVISED CODE; 9.18

(B) To bar or extinguish any ANY easement or interest in the nature of an easement created or held for any railroad or public utility purpose; 9.19

(C) To bar or extinguish any ANY easement or interest in the nature of an easement, the existence of which is clearly observable by physical evidence of its use; 9.21

(D) To bar or extinguish any ANY easement or interest in the nature of an easement, or any rights granted, excepted, or reserved by the instrument creating such easement or interest, including any rights for future use, if the existence of such easement or interest is evidenced by the location beneath, upon, or above any part of the land described in such instrument of any pipe, valve, road, wire, cable, conduit, duct, sewer, track, 9.22

pole, tower, or other physical facility and whether or not the	10.8
existence of such facility is observable;	10.9
(E) To bar or extinguish any ANY right, title, estate, or	10.11
interest in coal, and any mining or other rights pertinent	10.12
thereof TO or exercisable in connection therewith WITH ANY RIGHT,	10.14
TITLE, ESTATE, OR INTEREST IN COAL;	10.15
(F) To bar or extinguish any ANY mortgage recorded in	10.16
conformity with section 1701.66 of the Revised Code;	10.17
(G) To bar or extinguish any ANY right, title, or interest	10.19
of the United States, or of the state of Ohio THIS STATE, or OF	10.22
any political subdivision, body politic, or agency thereof OF THE	10.24
UNITED STATES OR THIS STATE.	
Sec. 5301.56. (A) AS USED IN THIS SECTION:	10.26
(1) "HOLDER" MEANS THE RECORD HOLDER OF A MINERAL	10.29
INTEREST, AND ANY PERSON WHO DERIVES HIS RIGHTS FROM, OR HAS A	10.30
COMMON SOURCE WITH, THE RECORD HOLDER AND WHOSE CLAIM DOES NOT	10.31
INDICATE, EXPRESSLY OR BY CLEAR IMPLICATION, THAT IT IS ADVERSE	10.32
TO THE INTEREST OF THE RECORD HOLDER.	
(2) "DRILLING OR MINING PERMIT" MEANS A PERMIT ISSUED	10.34
UNDER CHAPTER 1509., 1513., OR 1514. OF THE REVISED CODE, TO THE	10.36
HOLDER TO DRILL AN OIL OR GAS WELL OR TO MINE OTHER MINERALS.	11.1
(B)(1) ANY MINERAL INTEREST HELD BY ANY PERSON, OTHER THAN	11.4
THE OWNER OF THE SURFACE OF THE LANDS SUBJECT TO THE INTEREST,	11.5
SHALL BE DEEMED ABANDONED AND VESTED IN THE OWNER OF THE SURFACE,	11.7
IF NONE OF THE FOLLOWING APPLIES:	11.8
(a) THE MINERAL INTEREST IS IN COAL, OR IN MINING OR OTHER	11.11
RIGHTS PERTINENT TO OR EXERCISABLE IN CONNECTION WITH AN INTEREST	11.13
IN COAL, AS DESCRIBED IN DIVISION (E) OF SECTION 5301.53 OF THE	11.15
REVISED CODE;	
(b) THE MINERAL INTEREST IS HELD BY THE UNITED STATES,	11.18
THIS STATE, OR ANY POLITICAL SUBDIVISION, BODY POLITIC, OR AGENCY	11.19
OF THE UNITED STATES OR THIS STATE, AS DESCRIBED IN DIVISION (G)	11.20
OF SECTION 5301.53 OF THE REVISED CODE;	11.21
(c) WITHIN THE PRECEDING TWENTY YEARS, ONE OR MORE OF THE	11.23
FOLLOWING HAS OCCURRED:	11.24

(i) THE MINERAL INTEREST HAS BEEN THE SUBJECT OF A TITLE TRANSACTION THAT HAS BEEN FILED OR RECORDED IN THE OFFICE OF THE COUNTY RECORDER OF THE COUNTY IN WHICH THE LANDS ARE LOCATED;

(ii) THERE HAS BEEN ACTUAL PRODUCTION OR WITHDRAWAL OF MINERALS BY THE HOLDER FROM THE LANDS, FROM LANDS COVERED BY A LEASE TO WHICH THE MINERAL INTEREST IS SUBJECT, OR, IN THE CASE OF OIL OR GAS, FROM LANDS POOLED, UNITIZED, OR INCLUDED IN UNIT OPERATIONS, UNDER SECTIONS 1509.26 TO 1509.28 OF THE REVISED CODE, IN WHICH THE MINERAL INTEREST IS PARTICIPATING, PROVIDED THAT THE INSTRUMENT OR ORDER CREATING OR PROVIDING FOR THE POOLING OR UNITIZATION OF OIL OR GAS INTERESTS HAS BEEN FILED OR RECORDED IN THE OFFICE OF THE COUNTY RECORDER OF THE COUNTY IN WHICH THE LANDS THAT ARE SUBJECT TO THE POOLING OR UNITIZATION ARE LOCATED;

(iii) THE MINERAL INTEREST HAS BEEN USED IN UNDERGROUND GAS STORAGE OPERATIONS BY THE HOLDER;

(iv) A DRILLING OR MINING PERMIT HAS BEEN ISSUED TO THE HOLDER, PROVIDED THAT AN AFFIDAVIT THAT STATES THE NAME OF THE PERMIT HOLDER, THE PERMIT NUMBER, THE TYPE OF PERMIT, AND A LEGAL DESCRIPTION OF THE LANDS AFFECTED BY THE PERMIT HAS BEEN FILED OR RECORDED, IN ACCORDANCE WITH SECTION 5301.252 OF THE REVISED CODE, IN THE OFFICE OF THE COUNTY RECORDER OF THE COUNTY IN WHICH THE LANDS ARE LOCATED;

(v) A CLAIM TO PRESERVE THE INTEREST HAS BEEN FILED IN ACCORDANCE WITH DIVISION (C) OF THIS SECTION;

(vi) IN THE CASE OF A SEPARATED MINERAL INTEREST, A SEPARATELY LISTED TAX PARCEL NUMBER HAS BEEN CREATED FOR THE MINERAL INTEREST IN THE COUNTY AUDITOR'S TAX LIST AND THE COUNTY TREASURER'S DUPLICATE TAX LIST IN THE COUNTY IN WHICH THE LANDS ARE LOCATED.

(2) A MINERAL INTEREST SHALL NOT BE DEEMED ABANDONED UNDER DIVISION (B)(1) OF THIS SECTION BECAUSE NONE OF THE CIRCUMSTANCES DESCRIBED IN THAT DIVISION APPLY, UNTIL THREE YEARS FROM THE EFFECTIVE DATE OF THIS SECTION.

(C)(1) A CLAIM TO PRESERVE A MINERAL INTEREST FROM BEING DEEMED ABANDONED UNDER DIVISION (B)(1) OF THIS SECTION MAY BE FILED FOR RECORD BY ITS HOLDER. SUBJECT TO DIVISION (C)(3) OF THIS SECTION, THE CLAIM SHALL BE FILED AND RECORDED IN ACCORDANCE WITH SECTIONS 317.18 TO 317.201 AND 5301.52 OF THE REVISED CODE, AND SHALL CONSIST OF A NOTICE THAT DOES ALL OF THE FOLLOWING:

(a) STATES THE NATURE OF THE MINERAL INTEREST CLAIMED AND ANY RECORDING INFORMATION UPON WHICH THE CLAIM IS BASED;

(b) OTHERWISE COMPLIES WITH SECTION 5301.52 OF THE REVISED CODE;

(c) STATES THAT THE HOLDER DOES NOT INTEND TO ABANDON, BUT INSTEAD TO PRESERVE, HIS RIGHTS IN THE MINERAL INTEREST.

(2) A CLAIM THAT COMPLIES WITH DIVISION (C)(1) OF THIS SECTION OR, IF APPLICABLE, DIVISIONS (C)(1) AND (3) OF THIS SECTION PRESERVES THE RIGHTS OF ALL HOLDERS OF A MINERAL INTEREST IN THE SAME LANDS.

(3) ANY HOLDER OF AN INTEREST FOR USE IN UNDERGROUND GAS STORAGE OPERATIONS MAY PRESERVE HIS INTEREST, AND THOSE OF ANY LESSOR OF THE INTEREST, BY A SINGLE CLAIM, THAT DEFINES THE BOUNDARIES OF THE STORAGE FIELD OR POOL AND ITS FORMATIONS, WITHOUT DESCRIBING EACH SEPARATE INTEREST CLAIMED. THE CLAIM IS PRIMA-FACIE EVIDENCE OF THE USE OF EACH SEPARATE INTEREST IN UNDERGROUND GAS STORAGE OPERATIONS.

(D)(1) A MINERAL INTEREST MAY BE PRESERVED INDEFINITELY FROM BEING DEEMED ABANDONED UNDER DIVISION (B)(1) OF THIS SECTION BY THE OCCURRENCE OF ANY OF THE CIRCUMSTANCES DESCRIBED IN DIVISION (B)(1)(c) OF THIS SECTION, INCLUDING, BUT NOT LIMITED TO, SUCCESSIVE FILINGS OF CLAIMS TO PRESERVE MINERAL INTERESTS UNDER DIVISION (C) OF THIS SECTION.

(2) THE FILING OF A CLAIM TO PRESERVE A MINERAL INTEREST UNDER DIVISION (C) OF THIS SECTION DOES NOT AFFECT THE RIGHT OF A LESSOR OF AN OIL OR GAS LEASE TO OBTAIN ITS FORFEITURE UNDER SECTION 5301.332 OF THE REVISED CODE.

Section 2. That existing sections 317.08, 317.18, 317.20, 14.14  
317.201, and 5301.53 and section 5301.56 of the Revised Code are 14.16  
hereby repealed. 14.17

As Passed by the House	1.4
117th General Assembly	1.6
Regular Session	1.7
1987-1988	1.8
MESSRS. CUPP-SCHAFFRATH-NETTLE-MRS. DRAKE-MR. BURCH	1.10

A B I L L 1.11

To amend sections 317.08, 317.18, 317.20, 317.201,	1.14
and 5301.53, to enact new section 5301.56, and to	1.16
repeal section 5301.56 of the Revised Code to	1.17
provide a method for the termination of dormant	1.18
mineral interests and the vesting of their title	1.19
in surface owners, in the absence of certain	1.20
occurrences within the preceding 20 years,	1.21
including the filing by the holder of a mineral	1.22
interest of a preserving claim,	1.23

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO: 1.26

Section 1. That sections 317.08, 317.18, 317.20, 317.201, 1.28  
and 5301.53 be amended and new section 5301.56 of the Revised 1.30  
Code be enacted to read as follows: 1.31

Sec. 317.08. Except as provided in division (F) of this 1.34  
section, the county recorder shall keep five separate sets of 1.36  
records as follows:

- (A) A record of deeds, in which shall be recorded all 2.1
- deeds and other instruments of writing for the absolute and 2.2
- unconditional sale or conveyance of lands, tenements, and 2.4
- hereditaments; all notices, as provided for in sections 5301.47 2.5
- to 5301.56 of the Revised Code; all judgments or decrees in 2.7
- actions brought under section 5303.01 of the Revised Code; all 2.9
- declarations and bylaws as provided for in sections 5311.01 to 2.10
- 5311.22 CHAPTER 5311. of the Revised Code; affidavits as provided 2.12
- for in section 5301.252 of the Revised Code; all certificates as 2.13
- provided for in section 5311.17 of the Revised Code; all articles 2.14
- dedicating archaeological preserves accepted by the director of 2.15
- the Ohio historical society under section 149.52 of the Revised 2.16

Code; all articles dedicating nature preserves accepted by the 2.17  
 director of natural resources under section 1517.05 of the 2.18  
 Revised Code; all agreements for the registration of lands as 2.19  
 archaeological or historic landmarks under section 149.51 or 2.20  
 149.55 of the Revised Code; and all conveyances of conservation 2.21  
 easements under section 5301.56 of the Revised Code; AND ALL 2.23  
 INSTRUMENTS OR ORDERS DESCRIBED IN DIVISION (B)(1)(c)(1) OF 2.25  
 SECTION 5301.56 OF THE REVISED CODE; 2.26

(B) A record of mortgages, in which shall be recorded: 2.28

(1) All mortgages, including amendments, supplements, 2.30  
 modifications, and extensions thereof OF MORTGAGES, or other 2.32  
 instruments of writing by which lands, tenements, or 2.33  
 hereditaments are or may be mortgaged or otherwise conditionally 2.35  
 sold, conveyed, affected, or encumbered; 3.1

(2) All executory installment contracts for the sale of 3.2  
 land executed after September 29, 1961, which by the THEIR terms 3.4  
 thereof are not required to be fully performed by one or more of 3.5  
 the parties thereto TO THEM within one year of the date of the 3.6  
 contracts; 3.7

(3) All options to purchase real estate, including 3.8  
 supplements, modifications, and amendments thereof OF THE 3.10  
 OPTIONS, but no such instrument shall be recorded if it does not 3.12  
 state a specific day and year of expiration of its validity. 3.13

(C) A record of powers of attorney; 3.14

(D) A record of plats, in which shall be recorded all 2.16  
 plats and maps of town lots, of the subdivision thereof, and of 3.17  
 other divisions or surveys of lands, and any center line survey 3.18  
 of a highway located within the county, the plat of which shall 3.19  
 be furnished by the director of transportation or county 3.20  
 engineer and all drawings as provided for in sections 5311.01 to 3.22  
 5311.22 CHAPTER 5311. of the Revised Code; 3.23

(E) A record of leases, in which shall be recorded all 3.24  
 leases, memoranda of leases, and supplements, modifications, and 3.25  
 amendments thereof OF LEASES AND MEMORANDA OF LEASES. 3.26

All instruments or memoranda of instruments entitled to 3.27  
 record shall be recorded in the proper record in the order in 3.28  
 which they are presented for record. The recorder may index, 3.29  
 keep, and record in one volume unemployment compensation liens, 3.30  
 federal tax liens, personal tax liens, mechanics MECHANIC'S 3.32  
 liens, notices of liens, certificates of satisfaction or partial 3.34  
 release of estate tax liens, discharges of recognizances, excise 3.36  
 and franchise tax liens on corporations, and liens provided for 4.1  
 in sections 1513.33, 1513.37, 5111.021, and 5311.18 of the 4.2  
 Revised Code. 4.3

The recording of an option to purchase real estate, 4.4  
 including any supplement, modification, and amendment thereof OF 4.6  
 THE OPTION, under this section shall serve as notice to any 4.7  
 purchaser of an interest in the real estate covered by the option 4.8  
 only during the period of the validity of the option as stated in 4.9  
 the instrument. 4.10

(F) In lieu of keeping the five separate sets of records 4.11  
 required in divisions (A) to (E) of this section and the records 4.12  
 required in division (G) of this section, a county recorder may 4.14  
 record all the instruments required to be recorded by this 4.15  
 section in two separate sets of record books. One set shall be 4.16  
 called the "official records" and shall contain the instruments 4.17  
 listed in divisions (A), (B), (C), (E), and (G) of this section. 4.19  
 The second set of records shall contain the instruments listed in 4.21  
 division (D) of this section.

(G) Except as provided in division (F) of this section, 4.22  
 the county recorder shall keep a separate set of records 4.23  
 containing all corrupt activity lien notices filed with the 4.24  
 recorder pursuant to section 2923.36 of the Revised Code. 4.25

Sec. 317.18. At the beginning of each day's business, the 4.27  
 county recorder shall make and keep up general alphabetical 4.28  
 indexes, direct and reverse, of all the names of both parties to 4.30  
 all instruments theretofore PREVIOUSLY received for record by 4.32  
 him. The volume and page where EACH such instrument is recorded 4.33  
 may be omitted until it is actually recorded if the file number 4.35

is entered in place of the volume or page, but such file number 4.36  
 may be omitted from any index volume in use on April 27, 1896, if 5.2  
 the form of the index volume is not adapted to entering the file 5.3  
 number. The indexes shall show the kind of instrument, the 5.5  
 range, township, and section or the survey number and number of 5.6  
 acres, or the permanent parcel number provided for under section 5.7  
 319.28 of the Revised Code, or the lot and subplot number and the 5.9  
 part thereof, all as the case requires, of each tract, parcel, or 5.10  
 lot of land described in any such instrument of writing. The 5.12  
 name of each grantor shall be entered in the direct index under 5.13  
 the appropriate letter, followed on the same line by the name of 5.14  
 the grantee, or, if there is more than one grantee, by the name 5.15  
 of the first grantee followed by "and others" or their ITS 5.17  
 equivalent. The name of each grantee shall be entered in the 5.18  
 reverse index under the appropriate letter, followed on the same 5.19  
 line by the name of the grantor, or, if there is more than one 5.20  
 grantor, by the name of the first grantor followed by "and 5.21  
 others" or their ITS equivalent. 5.23

As to notices of claims filed in accordance with sections 5.24  
 5301.51 and, 5301.52, AND 5301.56 of the Revised Code, there 5.26  
 shall be entered in the reverse index under the appropriate 5.27  
 letter the name of each claimant, followed on the same line by 5.28  
 the name of the present owner of title against whom the claim is 5.29  
 asserted, if the notice contains the name of the present owner; 5.30  
 or, if the notice contains the names of more than one such owner, 5.32  
 there shall be entered the name of the first owner followed by 5.34  
 "and others" or their ITS equivalent. 5.36

In all cases of deeds, mortgages, or other instruments of 6.1  
 writing made by any sheriff, master commissioner, marshal, 6.2  
 auditor, executor, administrator, trustee, or other officer, for 6.4  
 the sale, conveyance, or encumbrance of any lands, tenements, or 6.6  
 hereditaments, and recorded in the recorder's office, the 6.7  
 recorder shall index the parties to such instrument under their 6.8  
 appropriate letters, respectively, as follows: 6.9

(A) The names of the persons represented by such officer as owners of the lands, tenements, or hereditaments described in any such instruments;

(B) The official designation of the officer by whom such instrument of writing was made;

(C) The individual names of the officers by whom such instrument of writing was made.

In all cases of instruments filed in accordance with section ~~5311-01-02-5311-02~~ CHAPTER 5311, of the Revised Code, the name of each owner shall be entered in the direct index under the appropriate letter, followed on the same line by the name of the condominium property, and the name of the condominium property shall be entered in the reverse index under the appropriate letter followed on the same line by the name of the owner of the property, or, if the instrument contains the names of more than one owner, there shall be entered the name of the first owner followed by "and others" or its equivalent.

Any general alphabetical index commenced ~~after June 7, 1911~~ shall be COMMENCED in conformity to this section, and whenever, in the opinion of the board of county commissioners, it becomes necessary to transcribe, on account of its worn out or incomplete condition, any volume of such AN index now in use, such volume shall be revised and transcribed to conform with this section; except that in counties having a sectional index in conformity with section 317.20 of the Revised Code, such transcript shall be only a copy of the original.

Sec. 317.20. When, in the opinion of the board of county commissioners sectional indexes are needed, and it so directs, in addition to the alphabetical indexes provided for in section 317.18 of the Revised Code, the board may provide for making, in books prepared for that purpose, sectional indexes to the records of all real estate in the county, beginning with some designated year and continuing through such period of years as it specified, by placing under the heads of the original surveyed sections or surveys, or parts of a section or survey, squares, subdivisions,

or the permanent parcel numbers provided for under section 319.28 7.20  
of the Revised Code, or lots, on the left-hand page, or on the 7.22  
upper portion of such page of the index book, the following: 7.23

(A) The name of the grantor; 7.24

(B) Next to the right, the name of the grantees; 7.26

(C) The number and page of the record where the instrument 7.28  
is found recorded; 7.29

(D) The character of the instrument, to be followed by a 7.31  
pertinent description of the property conveyed by the deed, 7.32  
lease, or assignment of lease;

(E) On the opposite page, or on the lower portion of the 7.33  
same page, beginning at the bottom, in like manner, all the 7.34  
mortgages, liens, notices as provided for in sections 5301.51 7.35  
and 5301.52, AND 5301.56 of the Revised Code, or other 8.1  
encumbrances affecting such real estate. 8.3

The compensation for the services rendered under this 8.4  
section shall be paid from the general revenue fund of the 8.5  
county, and no additional levy shall be made in consequence of 8.6  
such services. in-the-event-that IF the board decides to have 8.8  
such sectional index made, it shall advertise for three 8.9  
consecutive weeks in one newspaper of general circulation in the 8.10  
county for sealed proposals to do such work as provided in this 8.11  
section, and shall let the work to the lowest and best bidder, 8.13  
and shall require him to give bond for the faithful performance 8.14  
of the contract, in such sum as the board fixes, and such work 8.15  
shall be done to the acceptance of the bureau-of-supervision-and 8.16  
inspection-of-public-offices AUDITOR OF STATE upon allowance by 8.18  
such board. The board may reject any and all bids for the work, 8.19  
provided that no more than five cents shall be paid for each 8.20  
entry of each tract or lot of land. 8.21

When brought up and completed, the county recorder shall 8.22  
keep up the indexes described in this section. 8.23

Sec. 317.201. The county recorder shall maintain a book 8.24  
be known as the "Notice Index." Separate pages of the book shall 8.25  
be headed by the original survey sections or surveys, or parts of 8.27

a section or survey, squares, subdivisions, or the permanent parcel numbers provided for under section 319.28 of the Revised Code, or lots. In this book, there shall be entered the notices for preservation of claims presented for recording in conformity with sections 5301.51 and, 5301.52, AND 5301.56 of the Revised Code. In designated columns, there shall be entered on the left-hand page:

- (A) The name of each claimant; 9.1
- (B) Next to the right, the name of each owner of title; 9.3
- (C) The deed book number and page where the instrument containing the claim has been recorded; 9.6
- (D) The type of claim asserted; and on. 9.8

ON the opposite page on the corresponding line, a pertinent description of the property affected as appears in such notice SHALL BE ENTERED. 9.11 9.13

Sec. 5301.53. The provisions of sections 5301.47 to 5301.56 of the Revised Code, shall not be applied TO BAR OR EXTINGUISH ANY OF THE FOLLOWING: 9.16 9.18 9.19

(A) To bar any ~~any~~ lessor or his successor as reversioner of his right to possession on the expiration of any lease, or any lessee or his successor of his rights in and to any lease, EXCEPT AS MAY BE PERMITTED UNDER SECTION 5301.56 OF THE REVISED CODE; 9.21 9.22 9.24 9.25

(B) To bar or extinguish any ANY easement or interest in the nature of an easement created or held for any railroad or public utility purpose; 9.27 9.28 9.29

(C) To bar or extinguish any ANY easement or interest in the nature of an easement, the existence of which is clearly observable by physical evidence of its use; 9.31 9.32 9.34

(D) To bar or extinguish any ANY easement or interest in the nature of an easement, or any rights granted, excepted, or reserved by the instrument creating such easement or interest, including any rights for future use, if the existence of such easement or interest is evidenced by the location beneath, upon, or above any part of the land described in such instrument of any pipe, valve, road, wire, cable, conduit, duct, sewer, track, 9.36 10.1 10.2 10.3 10.4 10.7

pole, tower, or other physical facility and whether, or not the 10.8  
existence of such facility is observable; 10.9

(E) ~~To-bar-or-extinguish-any~~ ANY right, title, estate, or 10.11  
interest in coal, and any mining or other rights pertinent 10.12  
thereto TO or exercisable in connection therewith WITH ANY RIGHT, 10.14  
TITLE, ESTATE, OR INTEREST IN COAL; 10.15

(F) ~~To-bar-or-extinguish-any~~ ANY mortgage recorded in 10.16  
conformity with section 1701.66 of the Revised Code; 10.17

(G) ~~To-bar-or-extinguish-any~~ ANY right, title, or interest 10.19  
of the United States, or of the state of Ohio THIS STATE, or OF 10.22  
any political subdivision, body politic, or agency thereof OF THE 10.24  
UNITED STATES OR THIS STATE.

Sec. 5301.56. (A) AS USED IN THIS SECTION: 10.26

(1) "HOLDER" MEANS THE RECORD HOLDER OF A MINERAL 10.29  
INTEREST, AND ANY PERSON WHO DERIVES HIS RIGHTS FROM, OR HAS A 10.30  
COMMON SOURCE WITH, THE RECORD HOLDER AND WHOSE CLAIM DOES NOT 10.31  
INDICATE, EXPRESSLY OR BY CLEAR IMPLICATION, THAT IT IS ADVERSE 10.32  
TO THE INTEREST OF THE RECORD HOLDER.

(2) "DRILLING OR MINING PERMIT" MEANS A PERMIT ISSUED 10.34  
UNDER CHAPTER 1509., 1513., OR 1514. OF THE REVISED CODE TO THE 10.36  
HOLDER TO DRILL AN OIL OR GAS WELL OR TO MINE OTHER MINERALS. 11.1

(B)(1) ANY MINERAL INTEREST HELD BY ANY PERSON, OTHER THAN 11.4  
THE OWNER OF THE SURFACE OF THE LANDS SUBJECT TO THE INTEREST, 11.5  
SHALL BE DEEMED ABANDONED AND VESTED IN THE OWNER OF THE SURFACE, 11.7  
IF NONE OF THE FOLLOWING APPLIES: 11.8

(a) THE MINERAL INTEREST IS IN COAL, OR IN MINING OR OTHER 11.11  
RIGHTS PERTINENT TO OR EXERCISABLE IN CONNECTION WITH AN INTEREST 11.13  
IN COAL, AS DESCRIBED IN DIVISION (E) OF SECTION 5301.53 OF THE 11.15  
REVISED CODE;

(b) THE MINERAL INTEREST IS HELD BY THE UNITED STATES, 11.18  
THIS STATE, OR ANY POLITICAL SUBDIVISION, BODY POLITIC, OR AGENCY 11.19  
OF THE UNITED STATES OR THIS STATE, AS DESCRIBED IN DIVISION (G) 11.20  
OF SECTION 5301.53 OF THE REVISED CODE; 11.21

(c) WITHIN THE PRECEDING TWENTY YEARS, ONE OR MORE OF THE 11.23  
FOLLOWING HAS OCCURRED: 11.24

7  
9

(i) THE MINERAL INTEREST HAS BEEN THE SUBJECT OF A TITLE 11.26  
TRANSACTION THAT HAS BEEN FILED OR RECORDED IN THE OFFICE OF THE 11.28  
COUNTY RECORDER OF THE COUNTY IN WHICH THE LANDS ARE LOCATED; 11.29

(ii) THERE HAS BEEN ACTUAL PRODUCTION OR WITHDRAWAL OF 11.31  
MINERALS BY THE HOLDER FROM THE LANDS, FROM LANDS COVERED BY A 11.32  
LEASE TO WHICH THE MINERAL INTEREST IS SUBJECT, OR, IN THE CASE 11.33  
OF OIL OR GAS, FROM LANDS POOLED, UNITIZED, OR INCLUDED IN UNIT 11.35  
OPERATIONS, UNDER SECTIONS 1509.26 TO 1509.28 OF THE REVISED 11.36  
CODE, IN WHICH THE MINERAL INTEREST IS PARTICIPATING, PROVIDED 12.1  
THAT THE INSTRUMENT OR ORDER CREATING OR PROVIDING FOR THE 12.3  
POOLING OR UNITIZATION OF OIL OR GAS INTERESTS HAS BEEN FILED OR 12.4  
RECORDED IN THE OFFICE OF THE COUNTY RECORDER OF THE COUNTY IN 12.5  
WHICH THE LANDS THAT ARE SUBJECT TO THE POOLING OR UNITIZATION 12.6  
ARE LOCATED; 12.7

(iii) THE MINERAL INTEREST HAS BEEN USED IN UNDERGROUND 12.10  
GAS STORAGE OPERATIONS BY THE HOLDER; 12.11

(iv) A DRILLING OR MINING PERMIT HAS BEEN ISSUED TO THE 12.13  
HOLDER, PROVIDED THAT AN AFFIDAVIT THAT STATES THE NAME OF THE 12.14  
PERMIT HOLDER, THE PERMIT NUMBER, THE TYPE OF PERMIT, AND A LEGAL 12.16  
DESCRIPTION OF THE LANDS AFFECTED BY THE PERMIT HAS BEEN FILED OR 12.17  
RECORDED, IN ACCORDANCE WITH SECTION 5301.252 OF THE REVISED 12.18  
CODE, IN THE OFFICE OF THE COUNTY RECORDER OF THE COUNTY IN WHICH 12.19  
THE LANDS ARE LOCATED;

(v) A CLAIM TO PRESERVE THE INTEREST HAS BEEN FILED IN 12.22  
ACCORDANCE WITH DIVISION (c) OF THIS SECTION;

(vi) IN THE CASE OF A SEPARATED MINERAL INTEREST, A 12.24  
SEPARATELY LISTED TAX PARCEL NUMBER HAS BEEN CREATED FOR THE 12.25  
MINERAL INTEREST IN THE COUNTY AUDITOR'S TAX LIST AND THE COUNTY 12.26  
TREASURER'S DUPLICATE TAX LIST IN THE COUNTY IN WHICH THE LANDS 12.28  
ARE LOCATED.

(2) A MINERAL INTEREST SHALL NOT BE DEEMED ABANDONED UNDER 12.30  
DIVISION (b)(1) OF THIS SECTION BECAUSE NONE OF THE CIRCUMSTANCES 12.32  
DESCRIBED IN THAT DIVISION APPLY, UNTIL THREE YEARS FROM THE 12.33  
EFFECTIVE DATE OF THIS SECTION. 12.35

(C)(1) A CLAIM TO PRESERVE A MINERAL INTEREST FROM BEING 13.1  
 DEEMED ABANDONED UNDER DIVISION (B)(1) OF THIS SECTION MAY BE 13.2  
 FILED FOR RECORD BY ITS HOLDER. SUBJECT TO DIVISION (C)(3) OF 13.3  
 THIS SECTION, THE CLAIM SHALL BE FILED AND RECORDED IN ACCORDANCE 13.5  
 WITH SECTIONS 317.18 TO 317.201 AND 5301.52 OF THE REVISED CODE. 13.6  
 AND SHALL CONSIST OF A NOTICE THAT DOES ALL OF THE FOLLOWING: 13.7

(a) STATES THE NATURE OF THE MINERAL INTEREST CLAIMED AND 13.10  
 ANY RECORDING INFORMATION UPON WHICH THE CLAIM IS BASED;

(b) OTHERWISE COMPLIES WITH SECTION 5301.52 OF THE REVISED 13.13  
 CODE;

(c) STATES THAT THE HOLDER DOES NOT INTEND TO ABANDON, BUT 13.16  
 INSTEAD TO PRESERVE, HIS RIGHTS IN THE MINERAL INTEREST.

(2) A CLAIM THAT COMPLIES WITH DIVISION (C)(1) OF THIS 13.18  
 SECTION OR, IF APPLICABLE, DIVISIONS (C)(1) AND (3) OF THIS 13.19  
 SECTION PRESERVES THE RIGHTS OF ALL HOLDERS OF A MINERAL INTEREST 13.21  
 IN THE SAME LANDS.

(3) ANY HOLDER OF AN INTEREST FOR USE IN UNDERGROUND GAS 13.24  
 STORAGE OPERATIONS MAY PRESERVE HIS INTEREST, AND THOSE OF ANY 13.25  
 LESSOR OF THE INTEREST, BY A SINGLE CLAIM, THAT DEFINES THE 13.27  
 BOUNDARIES OF THE STORAGE FIELD OR POOL AND ITS FORMATIONS, 13.29  
 WITHOUT DESCRIBING EACH SEPARATE INTEREST CLAIMED. THE CLAIM IS 13.30  
 PRIMA-FACIE EVIDENCE OF THE USE OF EACH SEPARATE INTEREST IN 13.31  
 UNDERGROUND GAS STORAGE OPERATIONS. 13.33

(D)(1) A MINERAL INTEREST MAY BE PRESERVED INDEFINITELY 13.35  
 FROM BEING DEEMED ABANDONED UNDER DIVISION (B)(1) OF THIS SECTION 14.1  
 BY THE OCCURRENCE OF ANY OF THE CIRCUMSTANCES DESCRIBED IN 14.2  
 DIVISION (B)(1)(c) OF THIS SECTION, INCLUDING, BUT NOT LIMITED 14.4  
 TO, SUCCESSIVE FILINGS OF CLAIMS TO PRESERVE MINERAL INTERESTS 14.5  
 UNDER DIVISION (C) OF THIS SECTION. 14.6

(2) THE FILING OF A CLAIM TO PRESERVE A MINERAL INTEREST 14.8  
 UNDER DIVISION (C) OF THIS SECTION DOES NOT AFFECT THE RIGHT OF A 14.10  
 LESSOR OF AN OIL OR GAS LEASE TO OBTAIN ITS FORFEITURE UNDER 14.11  
 SECTION 5301.332 OF THE REVISED CODE. 14.12

Section 2. That existing sections 317.08, 317.18, 317.20, 317.21, 317.201, and 5301.53 and section 5301.56 of the Revised Code are hereby repealed.

14.14

14.16

14.17

PROPONENT TESTIMONY ON BEHALF OF  
SENATE BILL 223 AND HOUSE BILL 521,  
AN OHIO DORMANT MINERAL ACT

Ohio presently has a Marketable Title Act, R.C. §5301.47 et seq., which became effective September 29, 1961. It was amended September 30, 1974 to exclude any right, title, estate or interest in coal and coal mining rights from operation of the Act. Section 5301.48 of the Act states that a person has a marketable title to an interest in land if he has an unbroken chain of record title for a period of not less than 40 years. Chain of title is then defined by two clauses, the first of which states the case where the chain of title consists of only a single instrument or transaction and the second where it consists of two or more instruments or transactions. The Act provides that the requisite chain of title is only effective if nothing appears of record purporting to divest the claimant of the marketable title.

The obvious purpose of the Marketable Title Act is to simplify land title transactions by making it possible to determine marketability through limited title searches over some reasonable period thus avoiding the necessity of examining the record back to the patent for each new transaction. This is obviously a legitimate and desirable objective but in the absence of specific statutory authority, interests created and interests appearing in titles prior to that period would not necessarily be eliminated and would continue to be an impediment to marketability. Marketable Title Acts do not cure and validate errors or irregularities in conveyancing instruments but bar or extinguish interests which have been created by or result from irregularities in instruments recorded prior to the period prescribed by the statute and thereby free present titles from the effect of those instruments. In this very general sense, the Marketable Title Act is curative in character.

The Ohio Marketable Title Act was based on the model Marketable Title Act which was drafted by Professor Lewis M. Simes and Clarence B. Taylor as part of the Michigan research project, a comprehensive study undertaken to set up standard statutory language to provide for the simplification of real estate conveyances. At the time of that study in 1959, there were ten Marketable Title Acts in effect, including Michigan's. The Michigan Act, which had been in effect for 15 years and subjected to considerable testing and experience, appeared to be the best piece of draftsmanship and embodied the most practical approach for attaining the desired objective. The Michigan Act served as the basis for drafting the model Act. The Ohio Marketable Title Act was the tenth Marketable Title Act enacted after the Michigan study and was patterned directly from the model Act.

It is apparent from the legislative history of the Ohio Marketable title Act and subsequent interpretation by courts and

practitioners since its enactment that it was the general intent of the act to apply to mineral interests except coal. Simes and Taylor, in their Model Act, pointed out that the single principal provision in the Marketable Title Act which makes it ineffective to bar dormant mineral interests is the provision that the record title is subject to such interest and defects as are inherent in the muniments of which the chain of record title is formed. This provision is included in the Model Act, as well as the Michigan and Ohio Acts. From a practical standpoint, any reference in the recorded chain of title to previously-created mineral interests may serve to keep those interests alive. This issue was the subject of Heifner v. Bradford, 4 O.S. 3d 49 (1983). In that case, the trial court upheld the validity of a severed mineral interest which was based upon transactions in a chain of title separate from the title claimed by the possessor of the surface interest. The severed mineral chain, however, contained transactions recorded during the 40-year period prescribed by the Act and the court held that transactions inherent in muniments of title during the period constituted a separate recognizable chain of title entitled to protection under the Act. The Appellate Court reversed in a decision acknowledging the fact that a precise reading of the statute upheld the trial court's decision but relied on legislative history to the effect that it was the intent of the drafters to extinguish severed mineral interests.

The Ohio Supreme Court overruled the Court of Appeals based upon a strict reading of the statute. Due to this obvious limitation in the Act, recognized by Simes and Taylor and highlighted by Heifner, it would appear that the Ohio Marketable Title Act is not generally effective as a means of eliminating severed mineral interests.

As a general principle, minerals are not deemed to be capable of being abandoned by a non-user unless they are actually possessed. Ohio is in the majority of jurisdictions which hold that a severed interest in undeveloped minerals does not constitute possession. Michigan's legislators recognized the importance of including minerals in those defects and errors which should be eliminated by operation of time and non-use. The Michigan Act and the Model Act provide an additional mechanism for the elimination of dormant mineral interests which, when used in conjunction with the Marketable Title Act, is effective in accomplishing this goal. Under the Michigan Act, owners of severed mineral interests are required to file notice of their claims of interest within 20 years after the last use of the interest. A three-year grace period was provided for initial filing under the Michigan Act. Any severed mineral interest deemed abandoned or extinguished as a result of the application of the Michigan Act vests in the owner of the surface.

The major distinction between the proposed bill for consideration by the Ohio legislature and the Michigan Act is that the Michigan Act applies only to interests in oil and gas. It is apparent from the 1974 amendment of the Ohio Marketable Title Act

that the Ohio Legislature has deemed it advisable for the Marketable Title Act to apply to all mineral interests except coal. The proposed Ohio Dormant Mineral Act has been drafted to conform to the Ohio Marketable Title Act and apply to any mineral interest except an interest in coal as defined by §5301.53(E) of the Marketable Title Act. The proposed Bill, if passed, would have lead to the desired result as stated by the Appellate Court in Heifner of terminating unused mineral interests not preserved by operations, transfers or a filing of notice of an intent to preserve interest.

The proposed bill also contains the essential elements recommended by the National Conference of Commissioners on Uniform State Laws at its annual conference in Boston in August, 1986. I have enclosed a copy of the Uniform Dormant Mineral Interests Act with prefatory notes and comments for your review.

California, Illinois, Indiana, Michigan, Minnesota, Nebraska, North Carolina, North Dakota, Oregon, Pennsylvania, South Dakota, Tennessee, Virginia, Washington and Wisconsin all have adopted Dormant Mineral Acts. All but Pennsylvania, Virginia and Tennessee have companion Marketable Title Acts.

I believe that enactment of the Dormant Mineral Act will encourage the development of minerals in Ohio which have been previously ignored due to defects in title. The development of minerals would lead to severance tax revenues and enhance the economy of areas of the state which may have no other source of revenue production.

I feel that companies engaged in the development of minerals as well as owners of property subject to title defects not cured by the Marketable Title Act would benefit from the enactment of the proposed dormant minerals statute.

This testimony was prepared and presented by William J. Taylor, Attorney and partner in Kincaid, Cultice & Geyer, 50 North Fourth Street, Zanesville, Ohio 43701, (614) 454-2591. Mr. Taylor's practice involves extensive mineral title work and his firm represented the prevailing party in Heifner v. Bradford, the leading Ohio Supreme Court case dealing with the Ohio Marketable Title Act. He frequently lectures and writes articles involving mineral title topics, including "Practical Mineral Title Opinions" and "The Effects of Foreclosing on Oil and Gas Leases" published by the Eastern Mineral Law Foundation. He is a member of the Ohio State Bar Association Natural Resources Committee, the Federal Bar Association Committee on Natural Resources, and the Legal Committee of the Ohio Oil and Gas Association.

**UNIFORM DORMANT MINERAL INTERESTS ACT**

Drafted by the

**NATIONAL CONFERENCE OF COMMISSIONERS  
ON UNIFORM STATE LAWS**

and by it

**Approved and Recommended for Enactment  
in All the States**

At its

**ANNUAL CONFERENCE  
MEETING IN ITS NINETY-FIFTH YEAR  
IN BOSTON, MASSACHUSETTS  
AUGUST 1-8, 1986**

**With Prefatory Note and Comments**

**UNIFORM DORMANT MINERAL INTERESTS ACT**

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Final, approved copies of this Act are available on 8-inch IBM Displaywriter diskettes, and copies of all Uniform and Model Acts and other printed matter issued by the Conference may be obtained from:

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## UNIFORM DORMANT MINERAL INTERESTS ACT

### PREFATORY NOTE

#### Nature of Mineral Interests

Transactions involving mineral interests may take several different forms. A lease permits the lessee to enter the land and remove minerals for a specified period of time; whether a lease creates a separate title to the real estate varies from state to state. A profit is an interest in land that permits the owner of the profit to remove minerals; however, the profit does not entitle its owner to possession of the land. A fee title or other interests in minerals may be created by severance.

A severance of mineral interests occurs where all or a portion of mineral interests are owned apart from the ownership of the surface. A severance may occur in one of two ways. First, a surface owner who also owns a mineral interest may reserve all or a portion of the mineral interest upon transfer of the surface. In the deed conveying the surface of the land to the buyer, the seller reserves a mineral interest in some or all of the minerals beneath the surface. Certain types of sellers, such as railroad companies, often include a reservation of mineral interests as a matter of course in all deeds.

Second, a person who owns both the surface of the land and a mineral interest may convey all or a portion of the mineral interest to another person. This practice is common in areas where minerals have been recently discovered, because many landowners wish to capitalize immediately on the speculative value of the subsurface rights.

Severed mineral interests may be owned in the same manner as the surface of the land, that is, in fee simple. In some jurisdictions, however, an oil and gas right (as opposed to an interest in nonfugacious minerals) is a nonpossessory interest (an incorporeal hereditament).

#### Potential Problems Relating to Dormant Mineral Interests

Dormant mineral interests in general, and severed mineral interests in particular, may present difficulties if the owner of the interest is missing or unknown. Under the common law, a fee simple interest in land cannot be extinguished or abandoned by nonuse, and it is not necessary to re-record or to maintain current property records in order to preserve an ownership interest in minerals. Thus, it is possible that the only document appearing in the public record may be the document initially creating the mineral interest. Subsequent mineral owners, such as the heirs of the original mineral owner, may be unconcerned

about an apparently valueless mineral interest and may not even be aware of it; hence their interests may not appear of record.

If mineral owners are missing or unknown, it may create problems for anyone interested in exploring or mining, because it may be difficult or impossible to obtain rights to develop the minerals. An exploration or mining company may be liable to the missing or unknown owners if exploration or mining proceeds without proper leases. Surface owners are also concerned with the ownership of the minerals beneath their property. A mineral interest includes the right of reasonable entry on the surface for purposes of mineral extraction; this can effectively preclude development of the surface and constitutes a significant impairment of marketability.

On the other hand, the owner of a dormant mineral interest is not motivated to develop the minerals since undeveloped rights may not be taxed and may not be subject to loss through adverse possession by surface occupancy. The greatest value of a dormant mineral interest to the mineral owner may be its effectual impairment of the surface estate, which may have hold-up value when a person seeks to assemble an unencumbered fee. Even if one owner of a dormant mineral interest is willing to relinquish the interest for a reasonable price, the surface owner may find it impossible to trace the ownership of other fractional shares in the old interest.

An extensive body of legal literature demonstrates the need for an effective means of clearing land titles of dormant mineral interests. Public policy favors subjecting dormant mineral interests to termination, and legislative intervention in the continuing conflict between mineral and surface interests may be necessary in some jurisdictions. More than one-fourth of the states have now enacted special statutes to enable termination of dormant mineral interests, and some of the nearly two dozen states that now have marketable title acts apply the acts to mineral interests.

#### Approaches to the Dormant Mineral Problem

The jurisdictions that have attempted to deal with dormant mineral interests have adopted a wide variety of solutions, with mixed success. The basic schemes described below constitute some of the main approaches that have been used, although many states have adopted variants or have combined features of these schemes.

Abandonment. The common law concept of abandonment of mineral interests provides useful relief in some situations. As a general rule, severed mineral interests that are regarded as separate possessory estates are not subject to abandonment. But less than fee interests in the nature of a lease or profit may be subject to abandonment. In some jurisdictions the scope of

the abandonment remedy has been broadened to extend to oil and gas rights on the basis that these minerals, being fugacious, are owned in the form of an incorporeal hereditament, and hence are subject to abandonment.

The abandonment remedy is limited both in scope and by practical proof problems. Abandonment requires a difficult showing of intent to abandon; nonuse of the mineral interest alone is not sufficient evidence of intent to abandon. However, the remedy is useful in some situations and should be retained along with enactment of dormant mineral legislation.

Nonuse. A number of statutes have made nonuse of a mineral interest for a term of years, e.g., 20 years, the basis for termination of the mineral interest. Such a statute in effect makes nonuse for the prescribed period conclusive evidence of intent to abandon.

The nonuse scheme has advantages and disadvantages. Its major attraction is that it enables extinguishment of dormant interests solely on the basis of nonuse; proof of intent to abandon is unnecessary. Its major drawbacks are that it requires resort to facts outside the record and it requires a judicial proceeding to determine the fact of nonuse. It also precludes long-term holding of mineral rights for such purposes as future development, future price increases that will make development feasible, or assurance by a conservation organization or subdivider that the mineral rights will not be exploited.

The nonuse concept should be incorporated in any dormant mineral statute. Even a statute based exclusively on recording, such as the Uniform Simplification of Land Transfers Act (USLTA) discussed below, does not terminate the right of a person who has an active legitimate mineral interest but who through inadvertence fails to record.

Recording. Another approach found in several jurisdictions, as well as in USLTA, is based on passage of time without recording. Under this approach a mineral interest is extinguished a certain period of time after it is recorded, for example 30 years, unless during that period a notice of intent to preserve the interest is recorded. The virtues of this model are that it enables clearing of title on the basis of facts in the record and without resort to judicial action, and it keeps the record mineral ownership current. Its major disadvantages are that it permits an inactive owner to preserve the mineral rights on a purely speculative basis and to hold out for nuisance money indefinitely, and it creates the possibility that actively producing mineral rights will be lost through inadvertent failure to record a notice of intent to preserve the mineral rights. The recording concept is useful, however, and should be a key element in any dormant mineral legislation.

**Trust for unknown mineral owners.** A quite different approach to protecting the rights of mineral owners is found in a number of jurisdictions, based on the concept of a trust fund created for unknown mineral owners. The basic purpose of such statutes is to permit development of the minerals even though not all mineral owners can be located, paying into a trust the share of the proceeds allocable to the absent owners. The usefulness of this scheme is limited in one of the main situations we are concerned with, which is to enable surface development where there is no substantial mineral value. The committee has concluded that this concept is beyond the scope of the dormant mineral statute, although it could be the subject of a subsequent act.

**Escheat.** A few states have treated dormant minerals as abandoned property subject to escheat. This concept is similar to the treatment given personal property in the Uniform Unclaimed Property Act. This approach has the same shortcomings as the trust for unknown mineral owners.

**Constitutionality.** Constitutional issues have been raised concerning retroactive application of a dormant mineral statute to existing mineral interests. The leading case, Texaso v. Short, 454 U.S. 516 (1982), held the Indiana dormant mineral statute constitutional by a narrow 5-4 margin. The Indiana statute provides that a mineral right lapses if it is not used for a period of 20 years and no reservation of rights is recorded during that time. No prior notice to the mineral owner is required. The statute includes a two-year grace period after enactment during which notices of preservation of the mineral interest may be recorded.

A combination nonuse/recording scheme thus satisfies federal due process requirements. Whether such a scheme would satisfy the due process requirements of the various states is not clear. Comparable dormant mineral legislation has been voided by several state courts for failure to satisfy state due process requirements. Uniform legislation, if it is to succeed in all states where it is enacted, will need to be clearly constitutional under various state standards. This means that some sort of prior notice to the mineral owner is most likely necessary.

#### Draft Statute

A combination of approaches appears to be best for uniform legislation. The politics of this area of the law are quite intense in the mineral producing states, and the positions and interests of the various pressure groups differ from state to state. It should be remembered that the dormant mineral portion of USLTA was felt to be the most controversial aspect of that act.

A statute that combines a number of different protections for the mineral owner, but that still enables termination of dormant mineral rights, is likely to be the most successful. Such a combination may also help ensure the constitutionality of the act from state to state. For these reasons, the draft statute developed by the committee consists of a workable combination of the most widely accepted approaches found in jurisdictions with existing dormant mineral legislation, together with prior notice protection for the mineral owner.

Under the draft statute, the surface owner may bring an action to terminate a mineral interest that has been dormant for 20 years, provided the record also evidences no activity involving the mineral interest during that period, the owner of the mineral interest fails to record a notice of intent to preserve the mineral interest within that period, and no taxes are paid on the mineral interest within that period. To protect the rights of a dormant mineral owner who through inadvertence fails to record, the statute enables late recording upon payment of the litigation expenses incurred by the surface owner; this remedy is not available to the mineral owner, however, if the mineral interest has been dormant for more than 40 years (i.e., there has been no use, taxation, or recording of any kind affecting the minerals for that period). The statute provides a two-year grace period for owners of mineral interests to record a notice of intent to preserve interests that would be immediately or within a short period affected by enactment of the statute.

This procedure will assure that active or valuable mineral interests are protected, but will not place an undue burden on marketability. The combination of protections will help ensure the fairness, as well as the constitutionality, of the statute.

The committee believes that clearing title to real property should not be an end in itself and should not be achieved at the expense of a mineral owner who wishes to retain the mineral interest. In many cases the interest was negotiated and bargained for and represents a substantial investment. The objective is to clear title of worthless mineral interests and mineral interests about which no one cares. The draft statute embodies this philosophy.

**UNIFORM DORMANT MINERAL INTERESTS ACT**

**SECTION 1. STATEMENT OF POLICY.**

(a) The public policy of this State is to enable and encourage marketability of real property and to mitigate the adverse effect of dormant mineral interests on the full use and development of both surface estate and mineral interests in real property.

(b) This [Act] shall be construed to effectuate its purpose to provide a means for termination of dormant mineral interests that impair marketability of real property.

**COMMENT**

This section is a legislative finding and declaration of the substantial interest of the state in dormant mineral legislation.

**SECTION 2. DEFINITIONS.**

As used in this [Act]:

(1) "Mineral interest" means an interest in a mineral estate, however created and regardless of form, whether absolute or fractional, divided or undivided, corporeal or incorporeal, including a fee simple or any lesser interest or any kind of royalty, production payment, executive right, nonexecutive right, leasehold, or lien, in minerals, regardless of character.

(2) "Minerals" includes gas, oil, coal, other gaseous, liquid, and solid hydrocarbons, oil shale, cement material, sand and gravel, road material, building stone, chemical substance, gemstone, metallic, fissionable, and nonfissionable ores, colloidal

and other clay, steam and other geothermal resource, and any other substance defined as a mineral by the law of this State.

#### COMMENT

The definitions in this section are broadly drafted to include all the various forms of minerals and mineral interests. This includes both fugacious and nonfugacious, as well as organic and inorganic, minerals. The Act does not distinguish among minerals based on their character, but treats all minerals the same.

The reference to liens in paragraph (1) includes both contractual and noncontractual, voluntary and involuntary, liens on minerals and mineral interests. It should be noted that the duration of a lien may be subject to general laws governing liens. For example, a lien that by state law has a duration of 10 years may not be given a life of 20 years simply by recording a notice of intent to preserve the lien pursuant to Section 5 (preservation of mineral interest by notice), just as a mineral lease which by its own terms has a duration of five years is not extended by recordation of a notice of intent to preserve the lease. Likewise, if state law requires specific filings, recordings, or other acts for enforceability of a lien, those acts must be complied with even though the lien is not dormant within the meaning of this Act. Conversely, an instrument that creates a security interest which, by its terms, endures more than 20 years, cannot avoid the effect of the 20-year statute. See Section 4(c) (termination of dormant mineral interest).

The definition of "minerals" in paragraph (2) is inclusive and not exclusive. "Coal" and other solid hydrocarbons within the meaning of paragraph (2) includes lignite, Leonardite, and other grades of coal. This Act is not intended to affect water law but is intended to affect minerals dissolved or suspended in water. See Section 3 (exclusions).

While Section 2 defines the term "minerals" and "mineral interest" broadly, the definitions serve the limited function of determining mineral interests that are terminated pursuant to this Act. They are not intended to redefine minerals and mineral interests for purposes of state law other than this Act.

#### SECTION 3. EXCLUSIONS.

(a) This [Act] does not apply to:

(1) a mineral interest of the United States or an Indian tribe, except to the extent permitted by federal law; or

(2) a mineral interest of this State or an agency or political subdivision of this State, except to the extent permitted by state law other than this [Act].

(b) This [Act] does not affect water rights.

#### COMMENT

Public entities are excepted by this section because they have perpetual existence and can be located if it becomes necessary to terminate by negotiation a mineral interest held by the public entity. A jurisdiction enacting this statute should also exclude from its operation interests protected by statute, such as environmental or natural resource conservation or preservation statutes.

This Act does not affect mineral interests of Indian tribes, groups, or individuals (including corporations formed under the Alaska Native Claims Settlement Act, 43 U.S.C. § 1600 et seq.) to the extent that the interests are protected against divestiture by superseding federal treaties or statutes.

Although this Act affects minerals dissolved or suspended in water, it is not intended to affect water law. See Comment to Section 2 (definitions).

While Section 2 (definitions) defines the terms "minerals" and "mineral interest" broadly, the definitions serve the limited function of determining mineral interests that are terminated pursuant to this Act. They are not intended to redefine minerals and mineral interests for purposes of state law other than this Act.

#### SECTION 4. TERMINATION OF DORMANT MINERAL INTEREST.

(a) The surface owner of real property subject to a mineral interest may maintain an action to terminate a dormant mineral interest. A mineral interest is dormant for the purpose of this [Act] if the interest is unused within the meaning of subsection (b) for a period of 20 or more years next preceding commencement of the action and has not been preserved pursuant to Section 5. The action must be in the nature of and requires

the same notice as is required in an action to quiet title. The action may be maintained whether or not the owner of the mineral interest or the owner's whereabouts is known or unknown. Disability or lack of knowledge of any kind on the part of any person does not suspend the running of the 30-year period.

(b) For the purpose of this section, any of the following actions taken by or under authority of the owner of a mineral interest in relation to any mineral that is part of the mineral interest constitutes use of the entire mineral interest:

(1) Active mineral operations on or below the surface of the real property or other property unitized or pooled with the real property, including production, geophysical exploration, exploratory or developmental drilling, mining, exploitation, and development, but not including injection of substances for purposes of disposal or storage. Active mineral operations constitute use of any mineral interest owned by any person in any mineral that is the object of the operations.

(2) Payment of taxes on a separate assessment of the mineral interest or of a transfer or severance tax relating to the mineral interest.

(3) Recordation of an instrument that creates, reserves, or otherwise evidences a claim to or the continued existence of the mineral interest, including an instrument that transfers, leases, or divides the interest. Recordation of an instrument constitutes use of (1) any recorded interest owned by any person in any mineral that is the subject of the instrument,

and, (ii) any recorded mineral interest in the property owned by any party to the instrument.

(4) Recordation of a judgment or decree that makes specific reference to the mineral interest.

(c) This section applies notwithstanding any provision to the contrary in the instrument that creates, reserves, transfers, leases, divides, or otherwise evidences the claim to or the continued existence of the mineral interest or in another recorded document unless the instrument or other recorded document provides an earlier termination date.

#### COMMENT

This section defines dormancy for the purpose of termination of a mineral interest pursuant to this Act. The dormancy period selected is 20 years — a not uncommon period among the various jurisdictions.

Subsection (a) provides for a court proceeding in the nature of a quiet title action to terminate a dormant mineral interest. The device of a court proceeding ensures notice to the mineral owner personally or by publication as may be appropriate to the circumstances and a reliable determination of dormancy.

Subsection (b) ties the determination of dormancy to nonuse. Each paragraph of subsection (b) describes an activity that constitutes use of a mineral interest for purposes of the dormancy determination. In addition, a mineral interest is not dormant if a notice of intent to preserve the interest is recorded pursuant to Section 5 (preservation of mineral interest).

Paragraph (b)(1) provides for preservation of a mineral interest by active mineral operations. Repressuring may be considered an active mineral operation if made for the purpose of secondary recovery operations. A shut-in well is not an active mineral operation and therefore would not suffice to save the mineral interest from dormancy.

Paragraph (b)(1) is intended to preserve in its entirety a mineral interest where there are active operations directed toward any mineral that is included within the interest. Thus, if there are fractional owners of a mineral interest, activity by one owner is considered activity by all owners. Other interests owned by other persons in the minerals that are the object of

the operations are also preserved by the operations. For example, oil and gas operations by a fractional oil, gas, and coal owner would save not only the interests of other fractional oil and gas owners but also the interests of oil and gas lessees and royalty owners holding under either the oil and gas owner or any fractional owner, as well as the interests of holders of any other mineral interest in the oil and gas that is the object of the operations. The oil and gas operations suffice to save the coal interest of the oil, gas, and coal owner, as well as other minerals included in any of the affected mineral interests, not just the interest in oil and gas that is the subject of the particular operations. This is the case regardless whether the mineral interest was acquired in one instrument or by several instruments. However, oil and gas operations by a fractional oil, gas, and coal owner would not save the mineral interest of a fractional coal owner if the interest does not include oil and gas.

Under paragraph (b)(2), taxes must be actually paid within the preceding 20 years to suffice as a qualifying use of the mineral interest.

Paragraph (b)(3) is intended to cover any recorded instrument evidencing an intention to own or affect an interest in the minerals, including a recorded oil, gas, or mineral lease, regardless whether such a lease is recognized as an interest in land in the particular jurisdiction.

Under paragraph (b)(3), recordation has the effect of preserving not only the interests of the parties to the instrument in the minerals that are the subject of the instrument, but also the recorded interests of nonparties in the subject minerals, as well as other recorded interests of the parties in other minerals in the same property. Thus, recordation of an oil and gas lease between a fractional owner and lessee preserves the interest in oil and gas not only of the fractional owner but also of the co-owners; moreover, the recordation preserves the interest of the fractional owner in other minerals that are not the subject of the lease, whether the other minerals were acquired by the same instrument by which the oil and gas interest was acquired or by a separate instrument.

Recordation of a judgment or decree under paragraph (b)(4) includes entry or recordation in a judgment book in a jurisdiction where such an entry or recordation becomes part of the property records. The judgment or decree must make specific reference to the mineral interest in order to preserve it. Thus, a general judgment lien or other recordation of civil process such as an attachment or sheriff's deed of a nonspecific nature would not constitute use of the mineral interest within the meaning of paragraph (b)(4).

Subsection (c) is intended to preclude a mineral owner from evading the purpose of this Act by contracting for a very long or indefinite duration of the mineral interest. A lien on minerals having a 30-year duration, for example, would be subject to termination after 20 years under this Act if there were no further activities involving the minerals or mineral interest. A person seeking to keep the lien for its full 30-year duration could do so by recording a notice of intent to preserve the lien pursuant to Section 5 (preservation of mineral interest by notice). It should be noted that recordation of a notice of intent to preserve the lien would not extend the lien beyond the date upon which it terminates by its own terms.

#### SECTION 5. PRESERVATION OF MINERAL INTEREST BY NOTICE.

(a) An owner of a mineral interest may record at any time a notice of intent to preserve the mineral interest or a part thereof. The mineral interest is preserved in each county in which the notice is recorded. A mineral interest is not dormant if the notice is recorded within 20 years next preceding commencement of the action to terminate the mineral interest or pursuant to Section 6 after commencement of the action.

(b) The notice may be executed by an owner of the mineral interest or by another person acting on behalf of the owner, including an owner who is under a disability or unable to assert a claim on the owner's own behalf or whose identity cannot be established or is uncertain at the time of execution of the notice. The notice may be executed by or on behalf of a co-owner for the benefit of any or all co-owners or by or on behalf of an owner for the benefit of any or all persons claiming under the owner or persons under whom the owner claims.

(c) The notice must contain the name of the owner of the mineral interest or the co-owners or other persons for whom the

mineral interest is to be preserved or, if the identity of the owner cannot be established or is uncertain, the name of the class of which the owner is a member, and must identify the mineral interest or part thereof to be preserved by one of the following means:

(1) A reference to the location in the records of the instrument that creates, reserves, or otherwise evidences the interest or of the judgment or decree that confirms the interest.

(2) A legal description of the mineral interest. [If the owner of a mineral interest claims the mineral interest under an instrument that is not of record or claims under a recorded instrument that does not specifically identify that owner, a legal description is not effective to preserve a mineral interest unless accompanied by a reference to the name of the record owner under whom the owner of the mineral interest claims. In such a case, the record of the notice of intent to preserve the mineral interest must be indexed under the name of the record owner as well as under the name of the owner of the mineral interest.]

(3) A reference generally and without specificity to any or all mineral interests of the owner in any real property situated in the county. The reference is not effective to preserve a particular mineral interest unless there is, in the county, in the name of the person claiming to be the owner of the interest, (i) a previously recorded instrument that creates, reserves, or otherwise evidences that interest or (ii) a judgment or decree that confirms that interest.

#### COMMENT

This section is broadly drawn to permit a mineral owner to not only his or her own interest but also any or all interests. For example, the mineral owner may share the interest with one or more other persons. This section permits the mineral owner to preserve the interests of the co-owners by specifying the interests to be preserved. Likewise, the mineral interest being preserved may be subject to an overriding royalty or sublease or executive lease. In this situation, the mineral owner may elect also to preserve any or all of the interests subject to it, by specifying the interests in the notice of intent to preserve. The mineral owner may also elect to preserve the interest as to some or all of the minerals included in the interest.

Where the mineral interest being preserved is of limited duration, recordation of a notice under this section does not extend the interest beyond the time the interest expires by its own terms. Where the mineral interest being preserved is a lien, recordation of the notice does not excuse compliance with any other applicable conditions or requirements for preservation of the lien.

The bracketed language in paragraph (c)(2) is for use in a jurisdiction that does not have a tract index system. It is intended to assist in indexing a notice of intent to preserve an interest despite a gap in the recorded mineral chain of title.

Paragraph (c)(3) permits a blanket recording as to all interests in the county, provided that there is a prior recorded instrument, or a judgment whether or not recorded, that establishes the name of the mineral owner in the county records. The blanket recording provision is a practical necessity for large mineral owners. Where a county does not have a general index of grantors and grantees, it will be necessary to establish a separate index of notices of intent to preserve mineral interests for purposes of the blanket recording.

#### SECTION 6. LATE RECORDING BY MINERAL OWNER.

(a) In this section, "litigation expenses" means costs and expenses that the court determines are reasonably and necessarily incurred in preparing for and prosecuting an action, including reasonable attorney's fees.

(b) In an action to terminate a mineral interest pursuant to this [Act], the court shall permit the owner of the mineral interest to record a late notice of intent to preserve the mineral interest as a condition of dismissal of the action, upon payment into court for the benefit of the surface owner of the real property the litigation expenses attributable to the mineral interest or portion thereof as to which the notice is recorded.

(c) This section does not apply in an action in which a mineral interest has been unused within the meaning of Section 4(b) for a period of 40 or more years next preceding commencement of the action.

#### COMMENT

This section applies only where the mineral owner seeks to make a late recording in order to obtain dismissal of the action. The section is not intended to require payment of litigation expenses as a condition of dismissal where the mineral owner secures dismissal upon proof that the mineral interest is not dormant by virtue of recordation or use of the property within the previous 20 years, as prescribed in Section 4 (termination of dormant mineral interest). Moreover, the remedy provided by this section is available only if there has been some recordation or use of the property within the previous 40 years.

#### SECTION 7. EFFECT OF TERMINATION.

A court order terminating a mineral interest [, when recorded,] merges the terminated mineral interest, including express and implied appurtenant surface rights and obligations, with the surface estate in shares proportionate to the ownership of the surface estate, subject to existing liens for taxes or assessments.

#### COMMENT

In some states it is standard practice for judgments such as this to be recorded. In other states entry of judgment alone may suffice to make the judgment part of the land records.

Merger of a terminated mineral interest with the surface is subject not only to existing tax liens and assessments, but also to other outstanding liens on the mineral interest. However, an outstanding lien on a mineral interest is itself a mineral interest that may be subject to termination under this Act. It should be noted that termination of a mineral interest under this Act that has been tax-deeded to the state or other public entity is subject to compliance with relevant requirements for release of tax-deeded property.

The appurtenant surface rights and obligations referred to in Section 7 include the right of entry on the surface and the obligation of support of the surface. However, termination of the support obligation of the surface under this Act does not terminate any support obligations owed to adjacent surface owners.

It is possible under this section for a surface owner to acquire greater mineral interests than the surface owner started with. Assume, for example, there are equal co-owners of the surface, one of whom conveys his or her undivided 50% share of minerals. Upon termination of the conveyed mineral interest under this Act, the interest would merge with the surface estate in proportion to the ownership of the surface estate, so that each owner would acquire one-half of the mineral interest. The end result is that the conveying surface owner would hold an undivided one-fourth of the minerals and the nonconveying surface owner would hold an undivided three-fourths of the minerals. This result is proper since the reversion represents a windfall to the surface estate in general and to the conveying owner in particular, who has previously received the value of the mineral interest.

In the example above, assume that the conveyed mineral interest is not terminated, but instead the owner of the mineral interest executes a 30-year mineral lease. If the lease is terminated under this Act after 20 years have run, the interest in the remaining 10 years of the lease would merge with the surface estate in proportionate shares, at the end of which time it would expire, leaving the interest of the mineral owner unencumbered.

**SECTION 8. SAVINGS AND TRANSITIONAL PROVISIONS.**

(a) Except as otherwise provided in this section, this [Act] applies to all mineral interests, whether created before, on, or after its effective date.

(b) An action may not be maintained to terminate a mineral interest pursuant to this [Act] until [two] years after the effective date of the [Act].

(c) This [Act] does not limit or affect any other procedure provided by law for clearing an abandoned mineral interest from title to real property.

(d) This [Act] does not affect the validity of the termination of any mineral interest made pursuant to any predecessor statute on dormant mineral interests. The repeal by this [Act] of any statute on dormant mineral interests takes effect [two] years after the effective date of this [Act].

**COMMENT**

The [two]-year grace period provided by this section is to enable a mineral owner to take steps to record a notice of intent to preserve an interest that would otherwise be subject to termination immediately upon the effective date because of the application of the Act to existing mineral interests. Thus, a mineral owner may record a notice of intent to preserve an interest during the [two]-year period even though no action may be brought during the [two]-year period. Subsection (d) is intended for those states that repeal an existing dormant mineral statute upon enactment of this Act.

**SECTION 9. UNIFORMITY OF APPLICATION AND CONSTRUCTION.**

This [Act] shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this [Act] among states enacting it.

**SECTION 10. SHORT TITLE.**

This [Act] may be cited as the Uniform Dormant Mineral Interests Act.

**SECTION 11. SEVERABILITY CLAUSE.**

If any provision of this [Act] or its application to any person or circumstance is held invalid, the invalidity does not affect any other provision or application of this [Act] that can be given effect without the invalid provision or application, and to this end the provisions of this [Act] are severable.

**SECTION 12. EFFECTIVE DATE.**

This [Act] takes effect \_\_\_\_\_

**SECTION 13. REPEALS.**

The following acts and parts of acts are repealed:

- (1) \_\_\_\_\_
- (2) \_\_\_\_\_
- (3) \_\_\_\_\_

# **APPENDIX EXHIBIT 3**

48030

CLAIM TO PRESERVE A MINERAL INTEREST

State of Florida  
County of Brevard

Eula Faye Layman, widow and unmarried, residing at 1595 Yates Drive, Merritt Island, Florida 32952, being duly sworn, says that she is the holder of an undivided Forty-Nine Per Cent (49%) of all of the mineral rights, including oil and gas underlying all of Lot 6 and part of Lot 5, Second Quarter, Third Township, McKean Township, Licking County, Ohio. Affiant says this interest arose by virtue of a reservation in a deed granted by Austin C. and Eula Faye Layman, Grantors, to Hilda J. Layman, Grantee, dated January 4, 1965 and recorded on January 12, 1973, in Volume 708, Page 586, Deed Records, Licking County, Ohio.

The present owner of the property is James B. Riddle by virtue of Warranty Deed, dated March 27, 1990, and recorded in Official Record Volume 316, Page 295, Licking County, Ohio.

Affiant further states that she has no intention to abandon this Forty-Nine Per Cent (49%) interest and desires to preserve her right in this mineral interest claim.

*Eula Faye Layman*  
Eula Faye Layman

State of Florida  
County of Brevard

I Lela Summary do hereby certify that Eula Faye Layman to me known and known to me to be the person described in and who executed the foregoing Affidavit, personally appeared before me this day and acknowledged that she executed the same.

Type of I.D. used FL WC L 530-211-26-923

Witness my hand and official seal this 18 day of May, 1992.

*Lela Summary*  
Lela Summary  
Notary Public

LELA SUMMARY  
Notary Public, State of Florida  
My comm. expires September 08, 1993  
No. AA704508

RECEIVED & RECORDED May 28 1992  
at 2:15 o'clock PM IN OFFICIAL RECORD  
VOL. 450 PAGE 400 FEE 10  
ROBERT E. WISE, LICKING COUNTY RECORDER  
Env. Clertex fil

TRANSFER NOT NECESSARY  
Date May 28 19 92  
*George D. Buchanan, III*  
Licking County Auditor

x 480300

# **APPENDIX EXHIBIT 4**

IN THE COURT OF APPEALS FOR LICKING COUNTY, OHIO  
FIFTH APPELLATE DISTRICT

FILED  
MAY 13 1994

JAMES B. RIDDEL

Plaintiff-Appellant

vs.

Case No. 94-CV-00038

EULA FAYE LAYMAN, et al.

Defendants-Appellees

FRED TARBOX  
LINDA TARBOX

Defendants-Appellees

ANSWER BRIEF OF APPELLEE EULA FAYE LAYMAN

APPEAL FROM THE COURT OF COMMON PLEAS OF LICKING COUNTY, OHIO

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APPELLEE'S RESPONSE TO APPELLANT'S STATEMENTS  
OF ASSIGNMENTS OR ERROR

ASSIGNMENT OF ERROR NO. 1

A mineral interest is not extinguished under R.C. §5301.56(B)(1) if a recording of a title transaction affecting that interest is made within the preceding twenty years.

ASSIGNMENT OF ERROR NO. 2

The trial court properly certified the trial court's judgment of September 14, 1994, as a final judgment under Civil Rule 54(B).

STATEMENT OF ISSUES PRESENTED FOR REVIEW

1. Is the twenty year period under R.C. §5301.56(B)(1), the Ohio Dormant Mineral Act, twenty years from the recording of a title transaction?

2. Was the 49% mineral interest reserved in the deed from Austin C. Layman and Eula Faye Layman, husband and wife, to Hilda J. Layman, executed on January 6, 1965, and recorded on June 12, 1973, extinguished by the Ohio Dormant Mineral Act?

3. Where a judgment of a trial court disposes of less than all of multiple claims against multiple parties, and makes a finding under Civil Rule 54(B) that there is no just reason for delay in entering final judgment on those claims which have been adjudicated, is the judgment subject to appeal?

STATEMENT OF THE CASE

1. Judgment from Which Appeal is Taken

This is an appeal from a summary judgment of the Court of Common Pleas, filed September 15, 1994. The judgment made final adjudication of three of multiple claims, and the judgment contained certification as a final judgment under Civ. R. 54(B).

2. Nature of Dispute

The case involves the validity of a 49% mineral interest in a 111 acre farm in McKean Township, Licking County, Ohio, which interest was reserved to Defendant Eula Faye Layman and her deceased husband, Austin C. Layman, in a deed recorded on June 14, 1973.

3. Primary Issue Before Court

The question presented is whether the reserved 49% mineral interest owned by Defendant Layman has been extinguished by R.C. §5301.56, the Ohio Dormant Mineral Act (O.D.M.A.).

4. Trial Court's Holding

The trial court found that the mineral interest in dispute had not been extinguished by the O.D.M.A. and granted summary judgment against Plaintiff and in favor of Defendant Layman on the first claim of the complaint seeking to quiet title, and also granted summary judgment in favor of Defendant Layman against all parties on the first and second claims in her counterclaim and cross-claims, those being for a

declaratory judgment and to quiet title.

#### 5. Parties

The plaintiff is the owner of the subject real estate who took title from Defendants Tarbox in April, 1990, by warranty deed without excepting any interest in mineral rights. (Appendix, Ex. D)

Defendant Layman is the record owner of an undivided 49% interest in the mineral rights in the lands by virtue of a reservation contained in a deed recorded June 12, 1973. (Appendix, Ex. A)

Defendants Tarbox had been the purchasers of the subject premises on land contract from Austin C. Layman and Eula Faye Layman, dated and recorded May, 1964, said land contract containing the 49% mineral reservation. (Appendix, Ex. B)

In completion of the land contract, Hilda J. Layman deeded the property to the Tarboxes by deed dated May 23, 1973, and filed July 3, 1973 (Appendix, Ex. C). This deed did not contain the reservation of the 49% mineral interest, although the land contract forming the basis for the deed excepted the 49% mineral interest.

Defendants Tarbox are also the grantors in a warranty deed to Plaintiff dated March 27, 1990, and recorded April. 15, 1990, which deed did not except any interest in mineral rights. (Appendix Ex. D)

Defendant Clinton Oil Company is the lessee under an oil and gas lease dated April 27, 1992, from Defendant Layman as lessor covering the subject premises, which lease was recorded

May 8, 1993.

Additional Defendant Bank One of Columbus, N.A., is the holder of a mortgage from Riddel, covering the subject premises, which mortgage was filed January 29, 1992, and which is subordinate to Defendant Layman's 49% mineral interest.

Additional Defendant National Union Fire Insurance Company of Pittsburgh is the holder of a judgment lien in the amount of \$25,429.93 against Plaintiff James B. Riddel, originally filed May 4, 1987, and renewed May 4, 1992, which lien, if valid, would be subordinate to Defendant Layman's 49% mineral interest.

Defendant United States of America, Acting through Farmers Home Administration, was named an additional defendant due to the existence of record of a security agreement affecting the subject premises, but has filed a disclaimer indicating it has no interest in the premises.

## 6. Pleadings and Claims

### A. Complaint of Plaintiff Riddel

The complaint filed by Riddel, owner of the 111 acres, more or less, contained three claims and named as defendants Layman, The Clinton Oil Company, holder of an oil lease in the premises and Fred C. Tarbox and Christina Kay Tarbox, Plaintiff's predecessors in title from whom Riddel purchased the premises.

The first claim of the complaint sought to quiet title to the Plaintiff's property in favor of Plaintiff, which would include the oil and gas interests in dispute, declaring null

and void and canceling all oil and gas leases on Plaintiff's land and barring all persons.

The second and third claims of Plaintiff's complaint sought damages against Defendants Tarbox for breach of contract of sale and breach of warranty contained in the warranty deed.

Plaintiff filed a motion to amend the counterclaim to add an additional claim to quiet title in his favor additional allegations pertaining to merger of title. This motion to amend was not ruled upon as it was mooted by the Court summary judgment.

**B. Counterclaim and Cross-claim of Layman**

Defendant Eula Faye Layman has filed a counterclaim and cross-claim against all original parties to the action and against additional defendants, Bank One of Columbus, N.A. ("Bank One"), National Union Fire Insurance Company of Pittsburgh ("National Union"), and Farmers Home Administration seeking in the first claim a declaratory judgment that her mineral interest is valid and not extinguished by the O.D.M.A., and in the second claim to quiet title to the 49% mineral interest in her favor against all parties to this action.

**C. Counterclaim of Clinton Oil Company**

Defendant Clinton Oil company filed a counterclaim seeking a declaratory judgment that its oil and gas lease was valid and for damages for slander of title.

**D. Other Pleadings**

Appellees Tarbox filed no pleadings requesting affirmative relief.

**7. Discovery**

Discovery included various requests for admissions to Plaintiff Riddel which were responded to.

**8. Defendant Layman's Motion For Summary Judgment and Granting of Same**

Defendant Layman filed her motion for summary judgment seeking summary judgment on the first claim in the complaint and on her first and second claim in her counterclaim and cross-claim.

Factual materials in support of the motion for summary judgment consisted of the response to Plaintiff Riddel's requests for admission and certified copies of various deed and other public records.

After hearing, the trial court granted Layman's motion for summary judgment in her favor dismissing the first claim for relief in the complaint, and in her favor and against all other parties on the first and second claims in her counterclaim and cross-claim.

**9. Civ. Rule 54(B) Certification**

The trial court's summary judgment filed September 14, 1994, contained the following certification:

"The Court further finds that there is no just reason for delay in entering final judgments on the claims adjudicated by this entry, and that the

judgment dismissing the first claim for relief in the complaint and the judgments granting the first and second claims for relief in Defendant Layman's counterclaim and cross-claims are final judgments within the meaning of Civil Rule 54(B)."

#### 10. Appeal Filed

From the judgment filed September 14, 1994, Plaintiff Riddel filed his notice of appeal. Riddel has filed his assignments of error and brief.

However, an Appellee, Tarbox, has also filed an Appellee's brief claiming error in the rendering of the summary judgment. Tarbox filed no notice of appeal, and it is questionable that they can claim error in the judgment of the trial court absent filing a notice of appeal, or be heard regarding same.

STATEMENT OF FACTS

1. Reservation of Mineral Interest

The 49% mineral interest was reserved to Austin C. Layman and Eula Faye Layman, husband and wife, in a deed executed on January 6, 1965, and filed June 12, 1973. (Appendix, Ex. A)

Austin C. Layman, the owner of an undivided one-half interest of the 49% mineral interest, died intestate in January, 1972. An affidavit of transfer by intestacy was filed on July 1, 1992, in O.R. Volume 458, page 203, indicating one-third of Austin C. Layman's undivided one-half interest in the 49% mineral reservation passed to Eula Faye Layman, and one-third each to the decedent's children, Bruce Roderic Layman and Susan Carol Layman (See attached Exhibit F) by virtue of Austin C. Layman's death. These two children quit-claimed their interest in the subject lands to their mother, Eula Faye Layman, by quit claim deeds filed and recorded July 1, 1992, in O.R. Volume 458, page 206, and O.R. Volume 458, page 209. (Attached Exhibits G, H)

2. Purchase Of Premises By Plaintiff;  
No Exception In Deed

Plaintiff purchased the subject property in April, 1990, and the deed from Tarboxes to him contained no exception for minerals. (Attached Exhibit D)

After his purchase, Plaintiff learned that Defendant Eula Faye Layman was the record owner of a 49% oil and gas interest in the subject premises, by virtue of the reservation contained in the deed recorded June 12, 1973.

3. Notice of Reservation and Additional  
"Title Transaction" Filed Within  
20 Year Period

Since the deed in question was recorded on June 12, 1973, the twenty year "look-back" period under the O.D.M.A., discussed infra, would expire on June 12, 1993.

On May 28, 1992, Defendant Layman filed a claim to preserve the mineral interest (Exhibit E). On July 1, 1992, an affidavit of transfer of title and two quit claim deeds were recorded (Exhibits F, G and H). All of these items constituted "title transactions" and were within the twenty year "look-back" period starting with June 12, 1993.

4. Factual Matters Before Court

A. Recorded Documents

The pertinent documents filed of record which are contained in the record on appeal are as follows, and true copies thereof are attached in the Appendix:

(1) Deeds and Land Contracts

1. Warranty deed from Austin C. Layman and Eula Faye Layman, to Hilda J. Layman, covering 111 acres, more or less, in McKean Township, Licking County, Ohio, dated January 4, 1965, filed for record June 12, 1973, and recorded June 14, 1973, in Deed Volume 708, page 586, Licking County, Ohio (Appendix Ex. A), which contains the following exception:

"Also excepting and reserving to the first parties [grantors Austin C. Layman and Eula Faye Layman] their heirs and successors, an undivided forty-nine percent of all mineral rights, including

oil and gas, and a like per cent of rentals and royalties payable under the present oil and gas lease on the premises and any furthe [sic] lease or license which may be granted; however, granting unto the second party, the first right of refusal to purchase said forty-nine per cent of the mineral reservation, should the first parties, their heirs or devisees desire to sell."

(Emphasis added)

This deed also expressly recited that it was subject to a land contract dated May 23, 1964, between Austin C. Layman and Eula Faye Layman to Fred C. Tarbox.

2. Land contract from Austin C. Layman and Eula Faye Layman, husband and wife, to Fred C. Tarbox, covering 111 acres in McKean Township, Licking County, Ohio, dated May 23, 1964, containing the same exception of 49% of the minerals, filed May 25, 1964, in Mortgage Volume 471, page 547, Licking County, Ohio. (Appendix Ex. B)

3. Warranty deed from Hilda J. Layman, unmarried, to Fred C. Tarbox, Jr., and Christina Kay Tarbox, covering the subject premises, dated May 23, 1973, but containing no reservation of the mineral interest, filed for record on July 3, 1973, and recorded on July 5, 1973, in Deed Volume 709, page 727, Licking County, Ohio. (Appendix Ex. C)

4. Warranty deed from Fred C. Tarbox and Christina Kay Tarbox, husband and wife, to James B. Riddle, covering 111 acres, more or less, and containing no reservation of the mineral interest, dated March 27, 1990, filed April 5, 1990, and recorded on April 5, 1990, in Official Record Volume 316, page 295, Licking County, Ohio. (Appendix Ex. D)

(2) Documents and Deeds Pertaining to Preservation of Layman's Mineral Interest

5. Claim to reserve mineral interest by Eula Faye Layman, filed and recorded May 28, 1992, in Official Record Volume 450, page 400, Licking County, Ohio. (Appendix Ex. E)

6. Affidavit of transfer of title, for the undivided one-half interest in the 49% mineral interest of Austin C. Layman, who died intestate on January 27, 1972, a resident of Merritt Island, Florida, said affidavit filed July 1, 1992, and recorded in Official Record Volume 458, page 203, Licking County, Ohio. (Appendix Ex. F)

7. Quit claim deed from Bruce Roderic Layman, single, to Eula Faye Layman, covering the subject premises, filed July 1, 1992, and recorded July 1, 1992, in Official Record Volume 458, page 206, Licking County, Ohio. (Appendix Ex. G)

8. Quit claim deed from Susan Carol Layman, single, to Eula Faye Layman, covering the subject premises, filed July 1, 1992, and recorded July 1, 1992, in Official Record Volume 458, page 209, Licking County, Ohio. (Appendix Ex. H)

B. Plaintiff's Responses to Request for Admissions

Plaintiff's responses to request for admissions served by Defendant The Clinton Oil Company are also attached to establish the admissions of Plaintiff contained therein. (Appendix Ex. I)

RESPONSE TO APPELLANT'S ASSIGNMENT OF ERROR NO. 1

IF A RECORDING OF A TITLE TRANSACTION AFFECTING A MINERAL INTEREST WAS MADE WITHIN THE PRECEDING TWENTY YEARS, SUCH MINERAL INTEREST IS NOT EXTINGUISHED UNDER R.C. 5301.56(b)(1).

1. Ohio Dormant Mineral Act

R.C. §5301.56(B)(1), known as the Ohio Dormant Mineral Act, effective March 22, 1989, pertains to mineral interests in realty, and states in pertinent part:

"(B)(1) Any mineral interest held by any person, other than the owner of the surface of the lands subject to the interest, shall be deemed abandoned and vested in the owner of the surface, if none of the following applies:

\* \* \* \* \*

"(c) Within the preceding twenty years, one or more of the following has occurred:

"(i) The mineral interest has been the subject of a title transaction that has been filed or recorded in the office of the county recorder of the county in which the lands are located;

\* \* \* \* \*

"(v) A claim to preserve the interest has been filed in accordance with division (C) of this section;

\* \* \* \* \*

"(2) A mineral interest shall not be deemed abandoned under division (B)(1) of this section because none of the circumstances described in that division apply, until three years from the effective date of this section."

(Emphasis added)

2. Only Requirement Is Recordation Of A Title Transaction In Preceding 20 Years

The only requirement in R.C. §5301.56(B)(1)(c) is the

recording of a title transaction within the preceding twenty years.

3. Three Year Grace Period;  
"Look Back" Period Begins From  
End Of Three Year Grace Period

R.C. §5301.56 was effective March 22, 1989, and contained a three year grace period. Under R.C. §5301.56(A)(2), supra, a mineral interest is not deemed abandoned until three years from the effective date of the statute.

Thus, the 20 year "look back" period created in R.C. §5301.56(B)(1)(c)(i), supra, would begin on March 22, 1972, and ended on March 22, 1992.

Consequently, if there was recordation of any "title transaction" between March 22, 1972, and March 22, 1992, the subject mineral interest would not be extinguished.

4. Title Transaction Defined  
In R.C. §5301.47(F)

R.C. §5301.56(B)(1)(c)(i) speaks of a "recorded" "title transaction". This term is defined in R.C. §5301.47(F) as follows:

"(F) 'title transaction' means any transaction affecting title to any interest in land, including title by will or descent, title by deed, or by trustee's, assignee's, guardian's, executor's, administrator's, or sheriff's deed, or decree of any court, as well as warranty deed, quit claim deed, or mortgage."

(Emphasis added)

Clearly, the deed from Austin C. Layman and Eula Faye Layman creating the 49% mineral reservation is a "title transaction", as are the affidavit for transfer of real estate

inherited and the quit claim deeds from Bruce Roderic Layman and Susan Carol Layman to Eula Faye Layman. (Appendix, Ex. G, H)

5. Deed Filed June 12, 1973, Constitutes Compliance With Twenty Year Provision Of Statutes

The first possible twenty year period would have commenced on March 22, 1992, and go backward twenty years to March 22, 1972.

Thus, the deed from Austin C. Layman and Eula Faye Layman, husband and wife, to Hilda J. Layman, was filed with the Licking County Recorder on June 12, 1973, well within the twenty year period provided for in R.C. §5301.56.

6. Recordation Within Twenty Year Period Is Only Requirement Of Statute

Under R.C. §5301.56(B)(1)(c)(i), the key is the filing or recordation of the title transaction within the previous 20 years.

Since this "title transaction" was recorded on June 12, 1973, it was within the 20 year look-back period provided by R.C. §5301.56(B)(1)(c)(i) considering the three year "grace period" in R.C. §5301.52(B)(2).

Hence, the Plaintiff's mineral interest was not extinguished by R.C. §5301.56(B)(1).

7. Legislative Intent Is That Record Title Prevail

The legislative intent in enacting R.C. §5301.41-56 is clearly stated in R.C. §5301.55, which states:

"Sections 5301.47 to 5301.56, inclusive, of the Revised Code, shall be liberally construed to effect the legislative purpose of simplifying and facilitating land title transaction by allowing persons to rely on a record chain of title as described in section 5301.48 of the Revised Code, subject only to such limitations as appear in section 5301.40 of the Revised Code."

(Emphasis added)

It is therefore clear that the legislative intent was that persons should be able to rely on the record chain of title, and that record title be the determinative issue. Only when there has been a recording of a "title transaction" does the statute apply.

Consequently, the statute should be construed to provide that the twenty year period in R.C. 5301.56(B)(1) applies only to matters filed of record within that period.

8. Mineral Interest Was Preserved Beyond June 12, 1993, By Timely Filing Of Claim To Preserve Mineral Interest And Two Quit Claim Deeds

Under the O.D.M.A., supra, a mineral interest may also be preserved by the filing of a claim. The method to file a claim to preserve a mineral interest is set forth in R.C. §5301.56(C) as follows:

"(C)(1) A claim to preserve a mineral interest from being deemed abandoned under division (B)(1) of this section may be filed for record by its holder. Subject to division (C)(3) of this section, the claim shall be filed and recorded in accordance with sections 317.18 to 317.201 [317.20.1] and 5301.52 of the Revised Code, and shall consist of a notice that does all of the following:

"(a) States the nature of the mineral interest claimed and any recording information upon which the claim is based;

"(b) Otherwise complies with section 5301.52 of the Revised Code;

"(c) States that the holder does not intend to abandon, but instead to preserve, his rights in the mineral interest.

"(2) A claim that complies with division (C)(1) of this section or, if applicable, divisions (C)(1) and (3) of this section preserves the rights of all holders of a mineral interest in the same lands.

"(3) Any holder of an interest for use in underground gas storage operations may preserve his interest, and those of any lessor of the interest, by a single claim, that defines the boundaries of the storage field or pool and its formations, without describing each separate interest claimed. The claim is prima-facie evidence of the use of each separate interest in underground gas storage operations."

**A. Claim to Preserve Interest Timely Filed**

Since the title transaction affecting Defendant Layman's 49% interest occurred on June 12, 1973, she was allowed 20 years from then, until June 12, 1993, in which to file a claim to preserve her 49% mineral interest. This she properly did by filing a claim to preserve mineral interests on May 28, 1992. Thus, her interest was preserved.

**B. Other Recorded Title Transactions Within 20 Year Period**

Further, there were other "title transactions" within that 20 year period ending June 12, 1993. These are:

1. claim to preserve mineral interest filed by Eula Faye Layman on May 28, 1992;

2. quit claim deed from Bruce Roderic Layman, single, to Eula Faye Layman, filed July 1, 1992;

3. quit claim deed from Susan Carol Layman to Eula Faye Layman, filed July 1, 1992.

Since "title transactions" were recorded during the 20 year "look back period" beginning June 12, 1993, the recordation preserved Defendant Layman's 49% reserved mineral interest.

9. R.C. §5301.56 Should Be Construed To Avoid Forfeiture Of Mineral Interest

Under Ohio law, forfeitures of interest are disfavored and statutes providing for forfeitures are strictly construed. This principle is set forth in 3 Ohio Jur 3d, Forfeitures and Penalties, §5, wherein it is stated:

"Forfeitures are regarded as odious, not being favored either in equity or at law, Accordingly it is well settled that a statutory provision for a forfeiture must be strictly construed. Moreover, a statute should, if possible, be so construed as to avoid a forfeiture. Whatever may be the nature or kind of forfeiture, it is not to be carried, by construction, beyond the clear expression of the statute creating it, and a forfeiture can only be claimed where the requirements of the law are strictly complied with."

(Emphasis added)

To the extent that construction of R.C. §5301.56 is required, under prevailing Ohio law the court must construe the statute in such a way as to avoid a forfeiture.

RESPONSE TO ASSIGNMENT OF ERROR NO. 2

THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN DETERMINING THAT THERE WAS "NO JUST REASON FOR DELAY."

1. Appellant's Claim

The Appellant's assignment of error states:

"2. The Trial Court [sic] erred in determining that there is 'no just reason for delay'."

This assignment of error demonstrates a complete ignorance of the rules applicable to Civil Rule 54(B) practice and is at best wholly misguided and at worst frivolous.

2. Civil Rule 54(B)

Civil Rule 54(B) provides in pertinent part, as follows:

"(B) Judgment upon multiple claims or involving multiple parties. When more than one claim for relief is presented in an action whether as a claim, counterclaim, cross-claim, or third-party claim, and whether arising out of the same or separate transactions, or when multiple parties are involved, the court may enter final judgment as to one or more but fewer than all of the claims or parties only upon an express determination that there is no reason for delay. \* \* \*"

(Emphasis added)

The staff notes to the 1992 amendments to Civil Rule 54(B) state:

"RULE 54(B) JUDGMENT UPON MULTIPLE CLAIMS OR INVOLVING MULTIPLE PARTIES.

"The amendment to Civ. R. 54(B) is intended to complement an amendment to App. R. 4 also effective July 1, 1992. The purpose of both amendments is to clarify the applicability of Civ. R. 54(B) to a judgment on less than all of the claims arising out of the same transaction as well as separate transactions and to the immediate appealability of that judgment. A question as to the applicability of Civ. R. 54(B) to multiple claims arising out of the

same transaction and the appealability of a Civ. R. 54(B) judgment to those claims and appealability was raised by the decision of the Supreme Court in Chef Italiano Corp. v. Kent State University (1989), 44 Ohio St. 3d 86, 541 N.E. 2d 64. The rule is amended to expressly state that it does apply to multiple claims that arise out of the same or separate transactions."

3. Any Single Claim Must Be Adjudicated In Its Entirety

Before Civil Rule 54(B) applies, the court must adjudicate one of multiple claims for relief in its entirety. The claim must be otherwise final, within the meaning of R.C. §2505.02, before certification may be made.

In Noble v. Colwell (1989), 44 Ohio St. 93 the syllabus states:

"An order which adjudicates one or more but fewer than all the claims or the rights and liabilities of the parties must meet the requirements of R.C. §2505.02 and Civ. R. 54(B) in order to be final and appealable."

Under R.C. §2505.02, a claim is final if it is dispositive of the entire claim. While a case may contain multiple claims, if one claim is adjudicated in its entirety, then that claim may be appealed upon certification under Civ. R. 54(B).

4. The Three Claims Disposed Of By Summary Judgment Were Adjudicated In Full And Dispositive Of Entire Claim And Were Final Within The Meaning Of R.C. §2505.02

In this case, the judgment of the trial court adjudicated three claims in their entirety and disposed of all three.

The first claim adjudicated was the first claim contained in Plaintiff's complaint, seeking to quiet title to the 49%

reserved mineral interest in favor of Plaintiff and against Defendants including Defendant Layman. The court held against Plaintiff, and granted summary judgment against Plaintiff and in favor of Defendant Layman dismissing his first claim for relief. That obviously is dispositive of the entirety of that claim and is final within the meaning of R.C. §2505.02.

The second claim adjudicated by the summary judgment was the first claim for relief in Defendant's counterclaim and cross-claim, that being for a declaratory judgment that the 49% mineral reservation is valid and not extinguished by the O.D.M.A., and that the interest is superior to the interests of Bank One, Columbus, N.A., and National Union Fire Insurance Company of Pittsburgh. That declaratory judgment was dispositive of the entirety of Defendant Layman's first claim for relief and is final within the meaning of R.C. §2505.02.

The third claim adjudicated by the summary judgment was Defendant Layman's second claim for relief seeking a judgment quieting title to the 49% mineral interest in her favor against all other parties to the action. The court found in favor of Defendant Layman and quieted title in her favor against Plaintiff and all other parties. This disposed of the entirety of the second claim and is final within the meaning of R.C. §2505.02.

5. Trial Court's Finding Of  
"No Just Reason For Delay"  
Is Matter Of Discretion

The seminal authority for the finding of "no just reason for delay" is Wisintainer v. Elcen Power Strut (1993), 67 Ohio

St. 3d 352, wherein the syllabus reads:

"1. For purpose of Civ. R. 54(B) certification, in deciding that there is no just reason for delay, the trial judge makes what is essentially a factual determination - whether an interlocutory appeal is consistent with the interests of sound judicial administration.

"2. Where the record indicates that the interests of sound judicial administration could be served by a finding of "no just reason for delay," the trial court's certification determination must stand."

The foregoing test simply grants discretion to the trial court to determine what "is consistent with the interests of sound judicial administration." In this case, the key issue is whether the 49% mineral interest was extinguished, and once that was resolved it would moot other claims and make resolution of those claims unnecessary. Obviously, that would be in the interest of sound judicial administration.

In addition, the Appellant makes no claim that the trial court abused its discretion in making Civ. R. 54(B) certification.

6. Authority Cited By Appellant  
Is Wholly Inapplicable

The paucity of Appellant's position in this assignment of error is amply demonstrated in a review of the authority he claims in support of the claimed error.

A. Counsel cites Cooper v. Cooper 140 [sic] Ohio App. 3d 327 (1987), 14 OBR 394 as authority. In that case, a finding of contempt was appealed. After the finding of contempt was made, an order was put on with Civ. R. 54(B) language. The Court of Appeals, however, held that the action

for contempt consists of two elements: "(1) the finding of contempt itself and (2) the sentence on contempt." The court of appeals held that the finding of contempt, alone, without a sentence having been rendered, was not itself a final appealable order and 54(B) certification of the contempt finding alone without the sentence did not make it such. Obviously, a judgment or order, itself, must be final before Civil Rule 54(B) applies.

B. Plaintiff next cites O'Neills Dept. Store v. Taylor, Stark County Court of Appeals Unreported Case No. CA-7219, decided November 30, 1987, as authority for its claim that the trial court was in error. In that case, this Court, in an opinion written by the late Judge Ira Turpin, stated:

"The sole assignment of error is overruled. An order denying a motion for summary judgment is not a final appeal order. \* \* \*"

(Emphasis added)

In this case, the judgment does not deny a motion for summary judgment; it grants a motion for summary judgment which is dispositive of the entirety of certain of the claims for relief, i.e. the first claim in Riddel's complaint and the two claims in Layman's counterclaim and cross-claim.

For counsel to cite authority involving the denial of a motion for summary judgment in a case where the motion for summary judgment was granted is clear evidence of a complete misunderstanding of the applicable law and clear evidence of the frivolous nature of the claim. At a bare minimum, counsel should be held to a standard of at least reading the case

authority which is cited.

C. Counsel for Appellant also cites Fuller v. Fuller, Stark County Court of Appeals Case No. 7250, decided October 26, 1987. Upon a simple reading of this unreported case, a copy of which is included in Appellant's brief, the Court would find the following holding from this Court, speaking through Milligan, J., as follows:

"Appellants' first assignment of error challenges the trial court's failure to add Civ. R. 54(B) certification language to its judgment entry overruling a dismissal-summary judgment motion.

"Civ. R. 54(B) certification is an essential prerequisite to an appeal from a truly final judgment rendered non-appealable because of undisposed claims or parties.

"An order denying a motion in summary judgment is not a final appealable order. Balson v. Dodds (1980) 62 Ohio App. 2d 287, 405 N.E. 2d 193; State ex. rel. Overmyer v. Walinski (1966), 8 Ohio St. 2d 23, 22 N.E. 2d 312; Mulqueen v. Thomas Lombardi & Sons, Inc. (March 17, 1986), Stark App. No. CA-6724, unreported. therefore, the trial court's refusal to add the requested Civ. R. 54(B) certification language "no just reason for delay" was proper. In fact, the trial court would have committed reversible error by including the Civ. R. 54(B) recital. Mulqueen, supra; McGraw v. The Canton Drop Forging & Mfg. Co. (Sept. 8, 1987), Stark App. No. CA-7180, unreported. The trial court's determination of "no just reason for delay" is always subject to appellate review and reversal if erroneously recited; the certification does not automatically convert a judgment which is not final into a final appealable order. Cooper v. Cooper (1984), 14 Ohio App. 3d 327, 471 N.E. 2d 525; Douthitt v. Garrison (1981), 3 Ohio App. 3d 254, 444 N.E. 2d 1068; Mulqueen, supra."

(Emphasis added)

Once again, counsel for Appellant cites a case involving overruling of a motion for summary judgment as authority for its claim for non-appealability. This case involves the

granting of a motion for summary judgment.

D. Appellant next cites Priester v. State Foundry Co. (1961), 172 Ohio St. 28, in support of its claim that no final, appealable order is before the court.

First, this case was decided in 1961, long before July 1, 1970, when the provisions of Civil Rule 54 were first effective, and, obviously, before the current version of Civil Rule 54(B) was adopted in July 1, 1992.

Second, a reading of the Priester case shows that the action involved only one claim against one defendant for breach of an employment agreement. A motion for summary judgment was filed and the court found that part of the sole claim was undisputed, but that part of the sole claim was the subject of disputed issues of fact, and set the matter for trial on those issues of disputed fact. There was no determination of the entire claim, indeed, only part of the sole claim in the case was adjudicated.

The Supreme Court of Ohio stated in paragraph 2 of the syllabus:

"2. There can be no appeal from an order rendered pursuant to a motion for summary judgment which order does not purport to be a judgment upon the whole case or for all the relief asked, even though such order purports to be a judgment upon part of the case and for part of the relief asked."

The Priester case is simply not applicable to the case at bar. First, Civil Rule 54(B) was not in effect when the case was decided. Second, it involved decision on only part of the one claim involved in the case.

In the instant case, three separate claims were adjudi-

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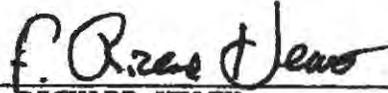
cated in their entirety; the first claim of Plaintiff's complaint, and the two claims of Defendant's counterclaim and cross-claim. In contrast, in Priester, only part of one claim against one defendant was adjudicated.

As such, Priester simply has no application to the case at bar.

CONCLUSION

The judgment of the Court of Common Pleas was proper, the judgment was properly certified under Civil Rule 54(B) and the it should be affirmed.

Respectfully submitted,



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