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Mineral Estates in Iowa

Defending Against the Pirates



The pirate in mineral right situations is a remote landowner who uses mineral rights as a tool to gain wealth - - especially when they have no intent whatsoever to actually extract minerals from the land and who may not have even known they had the mineral rights in the first place.

Examples of Mineral Reservations

- ❖ In a will: “I hereby give, devise and bequeath all minerals of any kind or description underlying any of the real estate described in this Last Will and Testament or underlying any real estate in which I may own or in which I may have any interest at the time of my death to my said heir”
- ❖ In a deed: “reserving therefrom the mineral rights, now under and subject to the lease now in effect or additional leases made with other parties covering said mineral rights”.

Basic Law

- ❖ Mineral interests are taxable separately as real estate when severed from the surface estate. Patterson v. May, 239 Iowa 602, 613, 219 N.W.2d 547 (1947). See also Iowa Code Section 458A. 18.
- ❖ Possession of the surface does not constitute possession of a severed mineral estate below the surface. Jensen v. Sheker, 231 Iowa 240, 244, 1 N.W.2d 262, 265 (1941).
- ❖ A party must take actual possession of the minerals to claim adverse possession of the mineral estate. Bremhorst v. Phillips Coal Company, 211 898 (Iowa 1927).

Iowa Administrative Code

Rule 27-60.75 - General mining activities

(1) *Topsoil and overburden stockpiles.* Topsoil shall not be buried or mixed with non topsoil materials. All stockpiles (topsoil and overburden) shall be seeded and stabilized if they are to remain in place for a period of time in excess of 12 months.

(2) *Erosion control.* Affected areas which will not be disturbed by future operations shall be graded, disked, mulched, fertilized, and seeded as necessary within a period of nine months to attain substantial and appropriate grass, legume, shrub, tree, crop, or other acceptable species and to ensure viable erosion control.

(3) *Setback.*

a. A minimum excavation setback distance of 25 feet shall be maintained from all registered site boundaries to protect the adjacent property from erosion or damage which might result from mining activities.

b. In areas where excavation depth exceeds 25 feet, a minimum excavation setback distance of at least 50 feet shall be maintained from registered site boundaries.

c. A minimum excavation setback distance of 50 feet shall be maintained from all buildings, dwellings, public right-of-way boundaries and other man-made structures not associated with the mining operation.

d. Excavation on a registered site found to be closer than the allowable minimum setback shall be in violation of this subrule. The operator shall be required to backfill, slope and stabilize to the required limits.

Defense - Language of Reservation

- ❖ A reservation that does not contain words of inheritance exists only for the life of a grantor. *Stone v. Stone*, 141 Iowa 438, 119 N.W. 712 (1909).
- ❖ Reservations in deeds are to be construed most strongly against the grantor. *Mikesh v. Peters*, 284 N.W. 2d 215 (Iowa 1979).
- ❖ No surface support waiver found in a reservation of “the coal and other minerals with rights of access thereto and reasonable facilities for mining and removing same” *Collins v. Gleason Coal Company*, 140 Iowa 114, 115 N.W 497 (1908).

Defense - Duty of Support

- ❖ Where ownership of surface of land has been severed from the minerals under it, the owner of the surface has an absolute right to necessary support of the land, unless the matter has otherwise been determined by contract or conveyance. Jensen v. Sheker, 231 Iowa 240, 245, 1 N.W. 2d 262 (Iowa 1941).
- ❖ Being absolute, this right of support, if violated, entitles a surface owner to damages without proof of negligence. Gabrielson v. Central Service Co., 232 Iowa 483, 5 N.W.2d 834 (Iowa 1942).

Defense - Coal

- ❖ Coal rights are limited by state law.
- ❖ “A mineral interest in coal shall be extinguished twenty years after its creation, transfer, or preservation, unless a statement of claim is filed in accordance with section 557C.3, and the ownership shall revert to the person who was then the owner of the interest from which the mineral interest in coal was created, transferred, or preserved. Upon the filing of a statement of claim within the specified period, the mineral interest shall be deemed to have been preserved for an additional period of twenty years, or a shorter period as may be specified in the instrument creating the interest.” Iowa Code Section 557C.1 (2020).

Defense - Laches

- ❖ Laches is an equitable doctrine.
- ❖ It is premised on unreasonable delay in asserting a right, which causes disadvantage or prejudice to another. Sahu v. Iowa Bd. of Med. Exam'rs, 537 N.W.2d 674, 676 (Iowa 1995)
- ❖ Mineral estate owners who have not exercised their rights over a period of time are subject to this defense.

Defense - Zoning

- ❖ Mineral extraction can be limited by zoning ordinances.
- ❖ Most municipal zoning ordinances will consider it to be an activity only permitted in industrial zoning districts.
- ❖ Many county ordinances will allow it only as a conditional or special use permitted upon approval from the zoning board of adjustment.
- ❖ The land may be located in an area where zoning would need to be obtained before any extraction could occur.

Defense - Registration & Setbacks

- ❖ The Iowa Mineral Program administered under the Iowa Department of Agriculture registers mining operations in the state.
- ❖ There are more than 1,100 registered mineral sites in Iowa, utilized by some 250 operators and 26 counties. Minerals extracted at these sites include: limestone, sand and gravel, gypsum and clay. The limestone industry alone produces over 25 million tons of stone each year for use in the construction industry.
- ❖ Rules adopted require reclamation bonds and setbacks.
- ❖ Many mineral operators in urban areas cannot observe setbacks and get to the minerals.

Defense - Iowa Marketable Title Act

- ❖ The Iowa Marketable Title Act bars any interests outside of the root of title.
- ❖ 614.17A also can prohibit any act 10 years prior.
- ❖

Types of Actual Minerals In Iowa

- ❖ Coal
- ❖ Gypsum
- ❖ Gravel
- ❖ Limestone

Iowa Code Chapters Relating to Minerals

- ❖ **Chapter 458A - Oil Gas and Other Minerals**
- ❖ **Chapter 207 - Coal Mining** “It is the policy of this state to provide for the rehabilitation and conservation of land affected by coal mining and preserve natural resources, protect and perpetuate the taxable value of property, and protect and promote the health and safety of the people of this state.” Section 207.1 (1) 2020.

Future Legislation

- ❖ The bar has talked about possible legislation on mineral interests for years.
- ❖ Affidavits alone just claiming the interests will not solve the problems of clearing title going forward.
- ❖ Possible legislation idea is to require that any person claiming mineral interest must affirmatively state the mineral claimed, verify that cost of lawful removal of overburden will not prevent a real and actual profit from being realized, and attorney fees in litigation awarded to parties extinguishing the mineral interests if the assertions are false.