

Chapter 268

(Senate Bill 288)

AN ACT concerning

Maryland Dormant Mineral Interests Act

FOR the purpose of stating the purpose of this Act; authorizing a certain owner of real property to maintain an action to terminate a certain mineral interest under certain circumstances; establishing certain actions that constitute use of a mineral interest; requiring a certain owner to bring a certain action in the circuit court of a certain jurisdiction under certain circumstances; authorizing an owner of a mineral interest to record the mineral interest under certain circumstances; providing that a mineral interest is preserved in the county in which the notice is recorded; authorizing certain individuals to record a certain notice under certain circumstances; requiring certain information to be included in a certain notice; requiring a mineral interest to be identified in a certain manner; requiring a court to permit a certain owner to record a late notice under certain circumstances; authorizing the circuit court of a certain jurisdiction to place a severed mineral interest into trust under certain circumstances, to appoint a trustee for the trust, and to order or authorize the trustee to take certain actions on behalf of the trust; authorizing a person vested in certain property to institute proceedings to create a trust and to appoint a trustee; authorizing a certain trustee to file a petition containing certain elements to terminate the trust and to convey title to a severed mineral interest under certain circumstances; requiring the court to enter an order requiring the trustee to convey the title to a severed mineral interest to a certain party under certain circumstances; requiring the trustee to take certain actions if the court issues the order; providing that certain surface owners are entitled to certain proceeds after the conveyance of the severed mineral interest by the trustee; requiring the court to terminate the trust and discharge the trustee after receiving a certain report from the trustee; ~~providing that a certain lease will remain in force and effect following certain events unless it has previously expired by its own terms;~~ requiring certain provisions to be administered in accordance with the Maryland Rules; requiring certain notice, forms, and hearing procedures to be in accordance with the Maryland Rules; defining certain terms; providing for the application of this Act; making the provisions of this Act severable; and generally relating to dormant mineral interests.

BY adding to

Article – Environment

Section 15–1201 through 15–1206 to be under the new subtitle “Subtitle 12.
Maryland Dormant Mineral Interests Act”

Annotated Code of Maryland
(2007 Replacement Volume and 2009 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – Environment

SUBTITLE 12. MARYLAND DORMANT MINERAL INTERESTS ACT.

15-1201.

(A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(B) “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.

(C) “MINERAL” INCLUDES:

- (1) GAS;**
- (2) OIL AND OIL SHALE;**
- (3) COAL;**
- (4) GASEOUS, LIQUID, AND SOLID HYDROCARBONS;**
- (5) CEMENT MATERIALS, SAND AND GRAVEL, ROAD MATERIALS, AND BUILDING STONE;**
- (6) CHEMICAL SUBSTANCES;**
- (7) GEMSTONE, METALLIC, FISSIONABLE, AND NONFISSIONABLE ORES; AND**
- (8) COLLOIDAL AND OTHER CLAY, STEAM, AND GEOTHERMAL RESOURCES.**

(D) “SEVERED MINERAL INTEREST” MEANS A MINERAL INTEREST THAT IS SEVERED FROM THE INTEREST IN THE SURFACE ESTATE OVERLYING THE MINERAL INTEREST.

(E) “SURFACE ESTATE” MEANS AN INTEREST IN THE ESTATE OVERLYING A MINERAL INTEREST.

(F) (1) “SURFACE OWNER” MEANS ANY PERSON VESTED WITH A WHOLE OR UNDIVIDED FEE SIMPLE INTEREST OR OTHER FREEHOLD INTEREST IN THE SURFACE ESTATE.

(2) “SURFACE OWNER” DOES NOT INCLUDE THE OWNER OF A RIGHT-OF-WAY, EASEMENT, OR LEASEHOLD ON THE SURFACE ESTATE.

(G) (1) “UNKNOWN OR MISSING OWNER” MEANS ANY PERSON VESTED WITH A SEVERED MINERAL INTEREST WHOSE PRESENT IDENTITY OR LOCATION CANNOT BE DETERMINED:

(I) FROM THE RECORDS OF THE COUNTY WHERE THE SEVERED MINERAL INTEREST IS LOCATED; OR

(II) BY DILIGENT INQUIRY IN THE VICINITY OF THE OWNER’S LAST KNOWN PLACE OF RESIDENCE.

(2) “UNKNOWN OR MISSING OWNER” INCLUDES THE HEIRS, SUCCESSORS, OR ASSIGNEES OF AN UNKNOWN OR MISSING OWNER.

15-1202.

(A) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, THIS SUBTITLE APPLIES TO ALL MINERAL INTERESTS.

(2) THIS SUBTITLE DOES NOT APPLY TO A MINERAL INTEREST:

(I) HELD BY THE UNITED STATES OR A NATIVE AMERICAN TRIBE, EXCEPT TO THE EXTENT PERMITTED BY FEDERAL LAW; OR

(II) HELD BY THE STATE OR AN AGENCY OR POLITICAL SUBDIVISION OF THE STATE, EXCEPT TO THE EXTENT PERMITTED BY STATE LAW.

(B) THE PURPOSE OF THIS SUBTITLE IS TO MAKE UNIFORM THE LAW GOVERNING DORMANT MINERAL INTERESTS AMONG THE STATES.

(C) THIS SUBTITLE DOES NOT LIMIT OR AFFECT ANY OTHER PROCEDURE PROVIDED BY LAW FOR CLEARING AN ABANDONED MINERAL INTEREST FROM TITLE TO REAL PROPERTY.

(D) THIS SUBTITLE DOES NOT LIMIT OR AFFECT WATER RIGHTS.

15-1203.

(A) (1) ON OR AFTER OCTOBER 1, 2011, A SURFACE OWNER OF REAL PROPERTY THAT IS SUBJECT TO A MINERAL INTEREST MAY MAINTAIN AN ACTION TO TERMINATE A DORMANT MINERAL INTEREST.

(2) A MINERAL INTEREST IS DORMANT FOR THE PURPOSE OF THIS SUBTITLE IF:

(I) THE MINERAL INTEREST IS UNUSED FOR A PERIOD OF 20 OR MORE YEARS PRECEDING THE COMMENCEMENT OF TERMINATION OF THE MINERAL INTEREST; AND

(II) NOTICE OF THE MINERAL INTEREST WAS NOT RECORDED DURING THE PERIOD OF 20 OR MORE YEARS PRECEDING THE COMMENCEMENT OF TERMINATION OF THE MINERAL INTEREST.

(B) (1) THE ACTION MUST BE IN THE NATURE OF AND REQUIRE THE SAME NOTICE AS IS REQUIRED IN AN ACTION TO QUIET TITLE AS SET FORTH IN § 14-108 OF THE REAL PROPERTY ARTICLE.

(2) THE ACTION MAY BE MAINTAINED, WHETHER OR NOT THE OWNER OF THE SEVERED MINERAL INTEREST IS AN UNKNOWN OR MISSING OWNER.

(C) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, THE FOLLOWING ACTIONS TAKEN BY OR UNDER THE AUTHORITY OF THE OWNER OF A MINERAL INTEREST IN RELATION TO ANY MINERAL THAT IS PART OF THE MINERAL INTEREST SHALL CONSTITUTE USE OF THE ENTIRE MINERAL INTEREST:

(I) ACTIVE MINERAL OPERATIONS ON OR BELOW THE SURFACE OF THE REAL PROPERTY OR OTHER PROPERTY UTILIZED OR POOLED WITH THE REAL PROPERTY, INCLUDING PRODUCTION, GEOPHYSICAL EXPLORATION, EXPLORATORY OR DEVELOPMENTAL DRILLING, MINING, EXPLOITATION, AND DEVELOPMENT OF MINERALS;

(II) PAYMENT OF TAXES ON A SEPARATE ASSESSMENT OF THE MINERAL INTEREST OR OF A TRANSFER OR SEVERANCE TAX RELATING TO THE MINERAL INTEREST, IN ACCORDANCE WITH § 8-229 OF THE TAX – PROPERTY ARTICLE;

(III) 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; AND

(IV) RECORDATION OF A JUDGMENT OR DECREE THAT MAKES A SPECIFIC REFERENCE TO THE MINERAL INTEREST.

(2) THE INJECTION OF SUBSTANCES FOR THE PURPOSE OF DISPOSAL OR STORAGE DOES NOT CONSTITUTE USE OF A MINERAL INTEREST.

(D) (1) A SURFACE OWNER OF REAL PROPERTY THAT IS SUBJECT TO A MINERAL INTEREST WHO BRINGS AN ACTION TO TERMINATE A DORMANT MINERAL INTEREST IN ACCORDANCE WITH THIS SECTION SHALL BRING THE ACTION IN THE CIRCUIT COURT OF THE JURISDICTION IN WHICH THE REAL PROPERTY IS LOCATED.

(2) A COURT ORDER THAT TERMINATES A MINERAL INTEREST 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.

(E) THIS SECTION SHALL APPLY NOTWITHSTANDING ANY PROVISION TO THE CONTRARY IN:

(1) THE INSTRUMENT THAT CREATES, RESERVES, TRANSFERS, LEASES, DIVIDES, OR OTHERWISE EVIDENCES THE CLAIM TO, OR THE CONTINUED EXISTENCE OF, THE MINERAL INTEREST; OR

(2) ANOTHER RECORDED DOCUMENT, UNLESS THE INSTRUMENT OR OTHER RECORDED DOCUMENT PROVIDES AN EARLIER TERMINATION DATE.

15-1204.

(A) (1) AN OWNER OF A MINERAL INTEREST MAY RECORD, AT ANY TIME, A NOTICE OF INTENT TO PRESERVE THE MINERAL INTEREST OR A PART OF A MINERAL INTEREST.

(2) A MINERAL INTEREST IS PRESERVED IN THE COUNTY IN WHICH THE NOTICE IS RECORDED.

(B) (1) THE FOLLOWING INDIVIDUALS MAY RECORD A NOTICE IN ACCORDANCE WITH SUBSECTION (A) OF THIS SECTION:

(I) AN OWNER OF THE MINERAL INTEREST;

(II) ANOTHER PERSON ~~ACTING~~ LEGALLY AUTHORIZED TO ACT ON BEHALF OF THE OWNER IF THE OWNER:

~~1. IS DISABLED OR UNABLE TO ASSERT A CLAIM ON THE OWNER'S BEHALF; OR~~

~~2. CANNOT BE IDENTIFIED; OR~~

(III) A CO-OWNER, FOR THE BENEFIT OF ANY OR ALL CO-OWNERS.

(2) A NOTICE RECORDED UNDER SUBSECTION (A) OF THIS SECTION SHALL CONTAIN:

(I) THE NAME OF THE OWNER, OR CO-OWNERS, OF THE MINERAL INTEREST, ~~OR THE CO-OWNERS OR OTHER PERSONS FOR WHOM THE MINERAL INTEREST IS TO BE PRESERVED;~~ OR

(II) IF THE IDENTITY OF THE OWNER CANNOT BE DETERMINED, INFORMATION THAT STATES THAT THE OWNER CANNOT BE DETERMINED; AND

(III) AN IDENTIFICATION OF THE MINERAL INTEREST OR PART OF THE MINERAL INTEREST TO BE PRESERVED, IN ACCORDANCE WITH SUBSECTION (C) OF THIS SECTION.

(C) A MINERAL INTEREST SHALL BE IDENTIFIED BY:

(1) A REFERENCE TO THE LOCATION IN THE RECORDS OF THE INSTRUMENT THAT CREATES, RESERVES, OR OTHERWISE EVIDENCES THE INTEREST;

(2) THE JUDGMENT OR DECREE THAT CONFIRMS THE MINERAL INTEREST;

(3) A LEGAL DESCRIPTION OF THE MINERAL INTEREST, IF ACCOMPANIED BY A REFERENCE TO THE NAME OF THE RECORD OWNER UNDER WHOM THE OWNER OF THE MINERAL INTEREST CLAIMS; OR

(4) A GENERAL REFERENCE TO ANY OR ALL MINERAL INTERESTS OF THE OWNER IN ANY REAL PROPERTY SITUATED IN THE COUNTY, IF:

(I) A PREVIOUSLY RECORDED INSTRUMENT CREATED, RESERVED, OR OTHERWISE EVIDENCED THE MINERAL INTEREST; OR

(II) A JUDGMENT OR DECREE CONFIRMS THE MINERAL INTEREST.

15-1205.

(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 IN ACCORDANCE WITH § 15-1203 OF THIS SUBTITLE, 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, IF THE OWNER OF THE MINERAL INTEREST PAYS THE LITIGATION EXPENSES INCURRED BY THE SURFACE OWNER OF THE REAL PROPERTY THAT IS SUBJECT TO THE MINERAL INTEREST.

(C) THIS SECTION DOES NOT APPLY IN AN ACTION IN WHICH A MINERAL INTEREST HAS BEEN UNUSED IN ACCORDANCE WITH § 15-1203 OF THIS SUBTITLE FOR A PERIOD OF 40 YEARS OR MORE PRECEDING THE COMMENCEMENT OF THE ACTION.

15-1206.

(A) IF THE TITLE TO A SEVERED MINERAL INTEREST IS VESTED IN AN UNKNOWN OR MISSING OWNER, THE CIRCUIT COURT OF THE COUNTY WHERE THE SEVERED MINERAL INTEREST IS LOCATED MAY ON PETITION, AND AFTER NOTICE AND A HEARING:

(1) PLACE THE SEVERED MINERAL INTEREST IN TRUST BY ORDER;

(2) APPOINT A TRUSTEE FOR THE UNKNOWN OR MISSING OWNER;

(3) ORDER THE TRUSTEE TO CREATE A SEPARATE TRUST BANK ACCOUNT TO MANAGE ALL TRUST ASSETS;

(4) AUTHORIZE THE TRUSTEE TO SELL, EXECUTE, AND DELIVER A VALID LEASE ON THE MINERALS TO THE OWNER OF THE SURFACE ESTATE; AND

(5) PLACE CONDITIONS ON THE AUTHORIZATION IN ITEM (4) OF THIS SUBSECTION.

(B) A PETITION TO CREATE A TRUST FOR A SEVERED MINERAL INTEREST AND TO APPOINT A TRUSTEE UNDER SUBSECTION (A) OF THIS SECTION MAY BE FILED BY A PERSON VESTED IN:

(1) ~~FEE~~ FEE SIMPLE WITH THE WHOLE OR UNDIVIDED INTEREST IN THE SURFACE ESTATE OR ESTATES;

~~(2) FEE SIMPLE WITH THE WHOLE OR UNDIVIDED INTEREST IN MINERAL INTERESTS THAT ARE ADJACENT AND CONTIGUOUS TO THE SEVERED MINERAL INTEREST VESTED IN AN UNKNOWN OR MISSING OWNER; OR~~

~~(3) A VALID MINERAL LEASE WITH THE WHOLE OR UNDIVIDED INTEREST IN THE INTERESTS SET FORTH IN ITEM (1) OR (2) OF THIS SUBSECTION.~~

(C) (1) IF THE UNKNOWN OR MISSING OWNER OF A VESTED SEVERED MINERAL INTEREST DOES NOT CONTEST A TRUST CREATED UNDER SUBSECTION (A)(1) OF THIS SECTION ON OR BEFORE 5 YEARS AFTER THE DATE THAT THE COURT ISSUED THE ORDER CREATING THE TRUST, THE TRUSTEE SHALL FILE A PETITION TO TERMINATE THE TRUST AND TO CONVEY TITLE TO THE SEVERED MINERAL INTEREST TO THE SURFACE OWNERS.

(2) THE PETITION IN PARAGRAPH (1) OF THIS SUBSECTION SHALL:

(I) NAME AS DEFENDANTS:

- 1. THE SURFACE OWNERS; AND**
- 2. ANY OTHER PERSON WITH A LEGAL INTEREST IN THE SEVERED MINERAL INTEREST, INCLUDING ANY UNKNOWN OR MISSING OWNERS; AND**

(II) INCLUDE:

- 1. A LEGAL DESCRIPTION OF THE SEVERED MINERAL INTEREST;**
- 2. A DESCRIPTION OF THE PUTATIVE PROPERTY INTERESTS OF EACH OF THE PARTIES;**
- 3. THE LAST KNOWN ADDRESS OF EACH OF THE PARTIES;**
- 4. AN AFFIDAVIT SIGNED BY THE SURFACE OWNERS, AFFIRMING FEE SIMPLE OWNERSHIP OF THE SURFACE ESTATE OR ESTATES, AND REQUESTING THE COURT TO CONVEY TITLE TO THE SEVERED MINERAL INTEREST AT ISSUE; AND**
- 5. AN AFFIDAVIT SIGNED BY THE TRUSTEE, AFFIRMING THAT:**

~~A. AFTER~~ AFTER CONDUCTING A DILIGENT INQUIRY, INCLUDING A SEARCH IN THE COUNTY WHERE THE SEVERED MINERAL INTEREST IS LOCATED, PERFORMED IN ACCORDANCE WITH GENERALLY ACCEPTED STANDARDS OF TITLE EXAMINATION OF THE LAND RECORDS OF THE COUNTY, RECORDS OF REGISTER OF WILLS OF THE COUNTY, AND RECORDS OF THE CIRCUIT COURT FOR THE COUNTY, THE TRUSTEE CANNOT LOCATE THE UNKNOWN OR MISSING OWNER; AND

~~B. THERE IS A PERSON WILLING TO PURCHASE A MINERAL LEASE FOR THE SEVERED MINERAL INTEREST HELD BY THE UNKNOWN OR MISSING OWNER.~~

(D) FOLLOWING A PETITION BY THE TRUSTEE MADE UNDER SUBSECTION (C) OF THIS SECTION, THE COURT SHALL, AFTER NOTICE, HOLD A HEARING ON THE MOTION AND ENTER AN ORDER REQUIRING THE TRUSTEE TO CONVEY THE UNKNOWN OR MISSING OWNER'S MINERAL INTEREST TO THE NAMED SURFACE OWNERS IF:

(1) THE UNKNOWN OR MISSING OWNER DOES NOT APPEAR TO CONTEST THE PETITION; AND

(2) THE COURT FINDS THAT THE INDIVIDUALS NAMED IN THE PETITION AS THE SURFACE OWNERS ARE IN FACT THE FEE SIMPLE OWNERS OF THE SURFACE ESTATE OR ESTATES.

(E) IF THE COURT ORDERS THE CONVEYANCE IN ACCORDANCE WITH SUBSECTION (D) OF THIS SECTION, THE TRUSTEE SHALL:

(1) CONVEY BY RECORDABLE INSTRUMENT THE UNKNOWN OR MISSING OWNER'S SEVERED MINERAL INTEREST TO THE NAMED SURFACE OWNERS;

(2) PAY FROM ANY TRUST ACCOUNT ALL REQUIRED TAXES, COURT COSTS, EXPENSES, AND FEES, INCLUDING ANY FEE FOR SERVICES TO THE TRUSTEE AUTHORIZED BY THE COURT;

(3) PAY ANY BALANCE REMAINING IN ANY TRUST ACCOUNT AFTER THE PAYMENTS SET FORTH IN ITEM (2) OF THIS SUBSECTION TO THE NAMED SURFACE OWNERS;

(4) CLOSE ANY TRUST ACCOUNT; AND

(5) MAKE A FINAL REPORT TO THE COURT ACCOUNTING FOR THE FINANCIAL TRANSACTIONS OF THE TRUST.

(F) AFTER THE CONVEYANCE TO THE SURFACE OWNERS IN ACCORDANCE WITH SUBSECTION (E) OF THIS SECTION, THE SURFACE OWNERS SHALL BE ENTITLED TO RECEIVE ALL PROCEEDS FROM THE LEASE OF THE MINERAL INTEREST CONVEYED.

(G) AFTER RECEIVING THE FINAL REPORT OF THE TRUSTEE IN ACCORDANCE WITH SUBSECTION (E)(5) OF THIS SECTION, THE COURT SHALL ORDER THE TRUST TERMINATED AND THE TRUSTEE DISCHARGED.

~~**(H) A LEASE AUTHORIZED BY THE COURT UNDER SUBSECTION (A)(4) OF THIS SECTION SHALL CONTINUE IN FORCE AND EFFECT AFTER THE TERMINATION OF THE TRUST OR THE MERGER OF THE MINERAL INTEREST WITH THE SURFACE ESTATE OR ESTATES UNLESS THE LEASE HAS PREVIOUSLY EXPIRED BY ITS OWN TERMS.**~~

~~**(H)**~~ **(H) (1) A TRUST CREATED UNDER THIS SECTION SHALL BE ADMINISTERED BY THE COURT AS PROVIDED BY THE MARYLAND RULES.**

(2) UNDER THIS SECTION, PROCEDURES FOR NOTICE TO INTERESTED PERSONS, THE FORMS OF PETITIONS, AND THE CONDUCT AND REQUIREMENTS AT A HEARING SHALL BE AS PROVIDED BY THE MARYLAND RULES.

SECTION 2. AND BE IT FURTHER ENACTED, That if any provision of this Act or the application thereof to any person or circumstance is held invalid for any reason in a court of competent jurisdiction, the invalidity does not affect other provisions or any other application of this Act which can be given effect without the invalid provision or application, and for this purpose the provisions of this Act are declared severable.

SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2010.

Approved by the Governor, May 4, 2010.