

Department of Legislative Services
Maryland General Assembly
2012 Session

FISCAL AND POLICY NOTE

Senate Bill 471 (Senator Edwards)
Judicial Proceedings

Real Property - Natural Gas and Oil Leases - Recordation Requirement - Intake Sheet

This bill prohibits a clerk of a circuit court from recording an instrument that effects a real property lease dealing in natural gas and oil unless the instrument is accompanied by a complete intake sheet.

Fiscal Summary

State Effect: None. The bill only affects local government operations.

Local Effect: The bill's requirements can likely be absorbed within existing budgeted resources. No impact on revenue.

Small Business Effect: Minimal.

Analysis

Current Law: Generally, a deed or other instrument affecting property and presented for recordation in the land records must be (1) accompanied by a complete intake sheet on the form provided by the Administrative Office of the Courts; or (2) if the deed or other instrument effects a change in ownership on the assessment books, endorsed by the assessment office for the county where the property is located.

A complete intake sheet must contain specified information, including a description of the property, the name of each grantor/grantee, donor/donee, mortgagor/mortgagee, and assignor/assignee, the type of instrument, the amount of consideration payable, and the amount of recording changes due, including any transfer or recordation taxes. An intake

sheet may request any additional information that the Administrative Office of the Courts considers necessary.

The intake sheet is not part of the instrument and does not constitute constructive notice of the instrument's contents. A clerk may not refuse to record an instrument that does not effect a change of ownership on the assessment books solely because it is not accompanied by an intake sheet. However, if an instrument that effects a change of ownership on the assessment rolls is not accompanied by an intake sheet or endorsed as transferred on the assessment books, a clerk may refuse to record the deed or instrument and the person offering the deed or other instrument must mail or deliver the information required on the intake sheet to the person in charge of the assessment books. The lack of an intake sheet does not affect the validity of any conveyance, lien, or lien priority based on recordation of an instrument.

An intake sheet must be recorded immediately after the instrument it accompanies. A clerk may not charge any fee for recording an intake sheet.

Background: An owner of property with a mineral commodity may lack either the ability or desire to extract the minerals beneath the property. However, to profit from the presence of the minerals, the owner may transfer the right to extract and produce the mineral (mineral rights) while retaining the rights to the surface. Mineral rights include natural gas and oil rights.

Because a party interested in extracting natural gas and oil rights is often unsure of the presence of natural gas or oil, the party may choose to lease the rights from the property owner rather than purchase the rights. If natural gas or oil is discovered, the lease terms may stipulate that the lessee make a higher payment for the rights.

The Marcellus Shale: The Marcellus Shale formation is a geologic feature in the Appalachian Range which has recently attracted significant attention from the energy industry for its rich natural gas deposits. On June 6, 2011, the Governor established the Marcellus Shale Safe Drilling Initiative to determine how gas production from the Marcellus shale will affect the public and the environment. Geologists have long known about the natural gas resources contained within the formation but had considered the gas to be not economically recoverable until the recent development of new drilling technology reliant on a process called hydraulic fracturing.

The Marcellus Shale underlies New York, Pennsylvania, Ohio, West Virginia, and Western Maryland. Production wells have been drilled in Pennsylvania, New York, Ohio, and West Virginia, and several companies have expressed interest in drilling into the formation in Maryland. In Maryland, the formation is located in Allegany, Garrett,

and Washington counties; however, the only anticipated areas of gas production are in Garrett and western Allegany counties.

Additional Information

Prior Introductions: None.

Cross File: HB 403 (Delegate Beitzel) - Environmental Matters.

Information Source(s): Garrett County, State Department of Assessments and Taxation, Maryland Department of Agriculture, Department of Natural Resources, Judiciary (Administrative Office of the Courts), www.geology.com, Department of Legislative Services

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Analysis by: Michael F. Bender

Direct Inquiries to:
(410) 946-5510
(301) 970-5510