

**Sixty-first Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 6, 2009**

HOUSE BILL NO. 1370
(Representatives S. Meyer, Drovdal, Kempenich, Onstad)
(Senators Bowman, Wardner)

AN ACT to create and enact a new section to chapter 38-18.1 of the North Dakota Century Code, relating to perfecting title to dormant minerals; and to amend and reenact sections 38-18.1-03, 38-18.1-04, 38-18.1-05, and 38-18.1-06 of the North Dakota Century Code, relating to termination of mineral interests.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 38-18.1-03 of the North Dakota Century Code is amended and reenacted as follows:

38-18.1-03. When mineral interest deemed to be used.

1. A mineral interest is deemed to be used when:
 - a. There are any minerals produced under that interest.
 - b. Operations are being conducted thereon for injection, withdrawal, storage, or disposal of water, gas, or other fluid substances.
 - c. In the case of solid minerals, there is production from a common vein or seam by the owners of such mineral interest.
 - d. The mineral interest on any tract is subject to a lease, mortgage, assignment, or conveyance of the mineral interest recorded in the office of the recorder in the county in which the mineral interest is located.
 - e. The mineral interest on any tract is subject to an order or an agreement to pool or unitize, recorded in the office of the recorder in the county in which the mineral interest is located.
 - f. Taxes are paid on the mineral interest by the owner or the owner's agent.
 - g. A proper statement of claim is recorded as provided by section 38-18.1-04.
 - ~~h. The owner or lessee utilizes the mineral interest in a manner pursuant to, or authorized by, the instrument creating the mineral interest.~~
2. The payment of royalties, bonus payments, or any other payment to a named or unnamed interest-bearing account, trust account, escrow account, or any similar type of account on behalf of a person who cannot be located does not satisfy the requirements of this section and the mineral interest is not deemed to be used for purposes of this section. Interest on such account must be credited to the account and may not be used for any other purpose. A named or unnamed interest-bearing account, trust account, escrow account, or any similar type of account that has been in existence for three years is deemed to be abandoned property and must be treated as abandoned property under chapter 47-30.1. A lease given by a trustee remains valid.

SECTION 2. AMENDMENT. Section 38-18.1-04 of the North Dakota Century Code is amended and reenacted as follows:

38-18.1-04. Statement of claim - Recording - Time. The statement of claim provided for in section 38-18.1-02 must:

1. Be recorded by the owner of the mineral interest or the owner's representative prior to the end of the twenty-year period set forth in section 38-18.1-02, ~~or within two years after July 1, 1983, whichever is later.~~ A joint tenant, but not a tenant in common, may record a claim on behalf of oneself and other joint tenants.
2. Contain the name and address of the owner of the mineral interest, and a legal description of the land on, or under which, the mineral interest is located as well as the type of mineral interest involved.
3. Be recorded in the office of the recorder in the county in which the mineral interest is located.

The mineral interest is deemed to be in use at the date of recording, if the recording is made within the time provided by this section. A statement of claim filed after July 31, 2009, by a person other than the owner of record of the mineral interest 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.

SECTION 3. AMENDMENT. Section 38-18.1-05 of the North Dakota Century Code is amended and reenacted as follows:

38-18.1-05. Failure to record the statement of claim. Failure to record the statement of claim within the time period provided in section 38-18.1-04 will not cause a mineral interest to be extinguished if ~~the owner of the mineral interest meets all of the following requirements:~~

- ~~1. Owns one or more mineral interests in the county in which the mineral interest in question is located at the time of the expiration of the time period provided in section 38-18.1-04.~~
- ~~2. Has failed to preserve the mineral interest in question.~~
- ~~3. Within sixty days after first publication of the notice provided for in section 38-18.1-06, recorded a statement of claim.~~
1. The owner of record of the mineral interest satisfies either one of the following requirements within sixty days after first publication of the notice provided for in section 38-18.1-06:
 - a. Files with the county recorder a statement of claim as required in section 38-18.1-04; or
 - b. Files with the county recorder documentation that at least one of the activities under subsection 1 of section 38-18.1-03 took place during the twenty-year period immediately preceding the first publication of notice.
2. A person other than the owner of record of the mineral interest files with the county recorder within sixty days after first publication of the notice provided for in section 38-18.1-06 an affidavit under oath or a declaration under oath which includes an explanation of the factual and legal basis for the person's assertion of title to the mineral interest. This explanation must be accompanied by documentation supporting the assertion or an explanation why documentation is unavailable.

SECTION 4. AMENDMENT. Section 38-18.1-06 of the North Dakota Century Code is amended and reenacted as follows:

38-18.1-06. Notice of lapse of mineral interest - Method.

1. ~~Any person~~ The owner or owners of the surface estate in the land in or under which the mineral interest is located intending to succeed to the ownership of a mineral interest upon its lapse shall give notice of the lapse of the mineral interest by publication.
2. The publication provided for in subsection 1 must be made once each week for three weeks in the official county newspaper of the county in which the mineral interest is located; however, if the address of the mineral interest owner is shown of record or can be determined upon reasonable inquiry as defined in subsection 6, notice must also be made by mailing a copy of the notice to the owner of the mineral interest within ten days after the last publication is made.
3. The notice must state:
 - a. The name of the record owner of the mineral ~~interests~~ interest;
 - b. A description of the land on which the mineral interest involved is located; and
 - c. The name of the ~~person~~ owner or owners of the surface estate in the land in or under which the mineral interest is located giving the notice.
4. A copy of the notice and an affidavit of service of the notice must be recorded in the office of the recorder of the county in which the mineral interest is located and constitutes prima facie evidence in any legal proceedings that such notice has been given.
5. ~~A person~~ The owner or owners of the surface estate in the land in or under which the mineral interest is located who succeeds to the ownership of a mineral interest upon its lapse under this chapter is entitled to record a statement of succession in interest indicating that that ~~person~~ owner or owners of the surface estate in the land in or under which the mineral interest is located has succeeded to the ownership of the mineral interest.
6. To constitute a reasonable inquiry as provided in subsection 2, the owner or owners of the surface estate or the owner's authorized agent must conduct a search of:
 - a. The county recorder's records for the existence of any uses as defined in section 38-18.1-03 by the owner of the mineral interest;
 - b. The clerk of court's records for the existence of any judgments, liens, or probate records which identify the owner of the mineral interest;
 - c. The social security death index for the last-known residence of the owner of the mineral interest, if deceased; and
 - d. One or more public internet databases to locate or identify the owner of the mineral interest or any known heirs of the owner. The owner or owners of the surface estate are not required to conduct internet searches on private fee internet databases.

SECTION 5. A new section to chapter 38-18.1 of the North Dakota Century Code is created and enacted as follows:

Perfecting title in surface owner.

1. Upon completion of the procedure provided in section 38-18.1-06, the owner or owners of the surface estate may maintain an action in district court in the county in which the minerals are located and obtain a judgment in quiet title in the owner or owners of the surface estate. This action must be brought in the same manner and is subject to the same procedure as an action to quiet title pursuant to chapter 32-17.

2. In an action brought under this section, the owner or owners of the surface estate shall submit evidence to the district court establishing that all procedures required by this chapter were properly completed and that a reasonable inquiry as defined by subsection 6 of section 38-18.1-06 was conducted. If the district court finds that the surface owner has complied with all procedures of the chapter and has conducted a reasonable inquiry, the district court shall issue its findings of fact, conclusions of law, and enter judgment perfecting title to the mineral interest in the owner or owners of the surface estate.
3. A judgment obtained by the owner or owners of the surface estate in compliance with this section is deemed conclusive except for fraud, misrepresentation, or other misconduct.
4. A mineral lessee that obtains a lease from the owner of the surface estate, which owner has obtained a judgment to minerals pursuant to this section, is deemed a bona fide purchaser and its lease remains effective in the event the judgment is subsequently vacated for any reason. Further, the lessee is not liable to any third party for lease bonus, royalties, or any other proceeds paid to the surface owner under the lease before the judgment being vacated.
5. Absent fraud or misrepresentation, the owner or owners of the surface estate which obtain a judgment under this section and lease minerals to a lessee are entitled to retain all lease bonus, royalties, or any other proceeds paid to the surface owner under the lease before the judgment being vacated.