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Bill would increase opportunities to rejoin split estates

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By Pam Kasey - [email](#)

In 1995, a man bought the rights to a mineral tract under about 80 acres of surface in Marshall County.

The previous owner had failed to pay property taxes, and the buyer got a good deal: \$45.

Richard Sherman, owner of the surface since 1988, was unaware the minerals under him had become available.

So when gas started booming in 2010, Sherman, a retired hourly worker at Bayer, did the title research and found out who owned the minerals under him. He offered to buy the rights as a measure of protection for himself and his land, but the mineral owner wasn't interested.

And, in 2011, Chesapeake Appalachia told Sherman they might want to put a 5-acre wellpad on his property.

The mineral owner had leased the gas to Chesapeake for an amount of money that David McMahon, co-founder of the West Virginia Surface Owners' Rights Organization, estimates at \$75,000 to \$325,000.

To get access to the proposed well site, Chesapeake would have to go through Sherman's yard. "The nicest piece of the property would be ruined," he said.

He was told they might give him something like \$15,000 for that — "Not enough to buy a used tractor."

Sherman said he is not a bitter man, but there's something wrong with the way this went.

"The fact that somebody else owns the minerals is one thing, I think that's crazy to begin with," he said. "But secondly, as the guy that bought the property, paid the taxes and did the work, I don't even have the right to know when the taxes on the minerals are delinquent — that's really a bad deal."

A bill introduced in the state Legislature Feb. 2 would address that.

House Bill 4393, drafted by McMahon, would offer surface owners notification and a priority right just behind the mineral owner when the underlying mineral property is sold for unpaid taxes.

Tax sales now

The way it works now is this, McMahon explained.

If the property tax on a mineral interest is not paid, the sheriff sells that interest at a tax sale.

A notice of the sale is published in the newspaper in the name of the mineral owner. But the surface owner may not know the name of the mineral owner — interests may be passed down to heirs with different names, sometimes several of them — and so has no opportunity to find out about the sale.

The buyer is required to find out who owns the mineral interest, possibly by hiring an abstractor or lawyer to do a title search, and offer the owner the chance to redeem the property by paying the back taxes and the buyer's costs.

If no mineral owner redeems the interest, the buyer gets the deed.

Notifying surface owners

H.B. 4393 would bring surface owners into that loop by requiring the buyer, who already is conducting a title search, to identify and contact them as well as the mineral owners.

A surface owner would then have the right to acquire the mineral interest by paying the tax sale buyer twice the money the buyer has put into it, up to an extra \$3,000 — that's an incentive for bidding at tax sales, McMahon said.

The surface owner would then assume the role of the purchaser, passing the property back to the mineral owner if it is redeemed but retaining it if the mineral owner does not step up. At that point, the estate is rejoined.

Two other methods could provide notification to surface owners when mineral properties become available, McMahon said, but neither makes as much sense.

County sheriffs could do the research to identify and notify surface owners each time a mineral property comes up for tax sale. That places an unnecessary burden on the counties.

Or surface owners could file a form that already exists, the "Statement of Lienholders and Other Interested Parties," with their sheriffs' tax offices. But that would require each surface owner to go to the expense of a title search that might never pay off.

The H.B. 4393 solution fits surface owners into an already-working framework.

Moving in the right direction

Although there is no quick statistic on how many mineral properties go up for tax sale in a given year, the bill would move in the right direction on split estates, which McMahon said "everybody says was a bad idea."

"It's bad for the stewardship of the land," he said. "It causes problems for the mineral owner when they want to develop their rights because the surface owner has no financial interest. It's hard on industry and it's incredibly unfair to the surface owner."

The bill is sponsored by Mike Caputo, D-Marion, John Ellem, R-Wood, Barbara Fleischauer, D-Monongalia, John Frazier, D-Mercer, Patrick Lane, R-Kanawha, Tim Manchin, D-Marion, Mike Manypenny, D-Taylor, and John Pino, D-Fayette.

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