

## Who Owns The Minerals Under My Property?

Real property ownership comprises a group of rights, sometimes referred to by lawyers as the "bundle of sticks" theory. This means that property owners can retain the entire bundle of rights together, or they can separate out some of the rights and sell, lease, gift, or otherwise convey those rights to others. Among the bundle of sticks is the right to use the surface of the land and the right to own and use the minerals underneath the surface of the land. This ability to separate the minerals and related mineral rights from ownership of the surface causes confusion for many Wisconsin landowners; do I own these minerals or not?

Typically, when property was originally conveyed from the government to third persons (often referred to as the "land patent" grant), that conveyance included the entire bundle of sticks—surface ownership and mineral ownership. Down the chain of title, some property owners separately conveyed away ownership of the minerals. This creates two separate estates of ownership in the property—one of the surface and one of the minerals. These two estates can co-exist peaceably, however, tension can arise if the mineral owner wants to use (e.g., develop, mine, etc.) the minerals and requires surface use to do so.

Although Wisconsin statutes do not expressly address the issue, common law holds that a owner of a mineral estate is assumed to own them for the purpose of using the minerals and can access the surface to the extent necessary for such use (with possible compensation to the surface owner for damages).

This possibility can be alarming for landowners, who may wish to preclude any use of the surface by a mineral estate owner. So how can you establish whether your minerals have been severed? A title company or the Register of Deeds for the county in which your land is located can assist you in tracing title to see whether minerals were ever severed. If a title search shows prior mineral severance, what can you do? The answer depends on whether the severed minerals are being used in compliance with Wisconsin Statutes Section 706.057. This provision of the Wisconsin Statutes, sometimes referred to as a "dormant minerals statute," was enacted as a means to identify owners of severed mineral estates and create a way to extinguish those severed mineral estates after an extended period of nonuse.

Under this statute, a severed mineral estate owner must "use" the minerals at least once in a twenty-year period or the mineral estate is subject to recapture by

### POSTED:

Jun 27, 2018

### RELATED PRACTICES:

[Real Estate](#)

<https://www.reinhartlaw.com/practices/real-estate>

### RELATED PEOPLE:

[Maya S. Zahn Rhine](#)

<https://www.reinhartlaw.com/people/maya-zahn-rhine>

the surface estate owner. Under Wis. Stats. § 706.057(2), "use" is defined as (a) mining the minerals, (b) recording a mineral conveyance (sale, lease, or other transfer) or mortgage, (c) paying property taxes on the minerals, or (d) recording a statement of ownership. If a mineral estate owner does none of the above within that twenty year period, the minerals are said to have "lapsed" and are subject to recapture by the surface estate owner. The statute provided a three year grace period after it was first enacted, giving most mineral estate owners until July 1, 1987, to "use" their minerals before they were subject to recapture.<sup>[1]</sup>

So what happens if you think the minerals have lapsed? It's a race to either use the minerals (in which case, the mineral estate owner retains ownership) or record a statement of claim (in which case, the surface estate owner recaptures ownership of the minerals). For the mineral estate owner, you can cure a lapse by using the minerals before the surface owner records a statement of claim recapturing the minerals. If you're the surface estate owner, you should record a statement of claim as quickly as possible.<sup>[2]</sup> If there's a dispute regarding ownership, the statute provides that the party claiming to be the mineral estate owner may bring an action for a declaratory judgment or declaration of interest on the ownership of the interest in minerals in the circuit court in the county where the interest in minerals is located.<sup>[3]</sup> Wis. Stats. § 706.057(9).

If you have questions about mineral ownership in Wisconsin, please contact your Reinhart attorney or any member of the Reinhart Real Estate Team.

---

<sup>[1]</sup> Wis. Stats. § 706.057(3).

<sup>[2]</sup> But not too quickly. Statements of claim are only good for six years after recording. If the minerals do not lapse within that six year period, you have to record a new statement of claim in order to recapture the mineral estate.

<sup>[3]</sup> Wis. Stat. § 706.057(9).

*These materials provide general information which does not constitute legal or tax advice and should not be relied upon as such. Particular facts or future developments in the law may affect the topic(s) addressed within these materials. Always consult with a lawyer about your particular circumstances before acting on any information presented in these materials because it may not be applicable to you or your situation. Providing these materials to you does not create an attorney/client relationship. You should not provide confidential information to us until Reinhart agrees to represent you.*