WEST VIRGINIA CODE: §36-4-9a

§36-4-9a. Cancellation of oil or gas leases for nonpayment of delay rental; prohibition against maintaining actions or proceedings in state courts for enforcement of certain oil or gas leases; rebuttable presumption of intention to abandon well and well equipment.

Except in the case where operations for the drilling of a well are being conducted thereunder, any undeveloped lease for oil and/or gas in this state hereafter executed in which the consideration therein provided to be paid for the privilege of postponing actual drilling or development or for the holding of said lease without commencing operations for the drilling of a well, commonly called delay rental, has not been paid when due according to the terms of such lease, or the terms of any other agreement between lessor and lessee, shall be null and void as to such oil and/or gas unless payment thereof shall be made within sixty days from the date upon which demand for payment in full of such delay rental has been made by the lessor upon the lessee therein, as hereinafter provided, except in such cases where a bona fide dispute shall exist between lessor and lessee as to any amount due or entitlement thereto or any part thereof under such lease.

No person, firm, corporation, partnership or association shall maintain any action or proceeding in the courts of this state for the purpose of enforcing or perpetuating during the term thereof any lease heretofore executed covering oil and/or gas, as against the owner of such oil and/or gas, or the owner's subsequent lessee, if such person, firm, corporation, partnership or association has failed to pay to the lessor such delay rental in full when due according to the terms thereof, for a period of sixty days after demand for such payment has been made by the lessor upon such lessee, as hereinafter provided.

The demand for payment referred to in the two preceding paragraphs shall be made by notice in writing and shall be sufficient if served upon such person, firm, partnership, association or corporation whether domestic or foreign, whether engaged in business or dissolved, by United States registered mail, return receipt requested, to the lessee's last known address.

A copy of such notice, together with the return receipt attached thereto, shall be filed with the clerk of the county commission in which such lease is recorded, or in which such oil and/or gas property is located, in whole or in part, and upon payment of a fee of 50¢ for each such lease, said clerk shall permanently file such notice alphabetically under the name of the first lessor appearing in such lease and shall stamp or write upon the margin of the record in the clerk's office of such lease hereafter executed the words "canceled by notice"; and as to any such lease executed before the enactment of this statute said clerk shall file such notice as hereinbefore provided and shall stamp or write upon the margin of the record of such lease in the clerk's office the words "enforcement barred by notice."

The word "lessor" includes the original lessor, as well as the original lessor's successors in

WV Legislature

title to the oil and/or gas involved. The word "lessee" includes the original lessee, the original lessee's assignee properly of record at the time such demand is made, and the original lessee's successors, heirs, or personal representatives. No assignee of such lease whose assignment is not recorded in the proper county shall be heard in any court of this state to attack the validity or sufficiency of the notice hereinbefore mentioned.

There is a rebuttable legal presumption that the failure of a person, firm, corporation, partnership or association to produce and sell or produce and use for its own purpose for a period of greater than twenty-four months, subsequent to July 1, 1979, oil and/or gas produced from such leased premises constitutes an intention to abandon any oil and/or gas well and oil and/or gas well equipment situate on said leased premises, including casing, rods, tubing, pumps, motors, lines, tanks, separators and any other equipment, or both, used in the production of any oil and/or gas from any well or wells on said leasehold estate.

This rebuttable presumption shall not be created in instances (i) of leases for gas storage purposes, or (ii) where any shut-in royalty, flat rate well rental, delay rental or other similar payment designed to keep an oil or gas lease in effect or to extend its term has been paid or tendered, or (iii) where the failure to produce and sell is the direct result of the interference or action of the owner of such oil and/or gas or his subsequent lessee or assignee. Additionally, no such presumption is created when a delay in excess of twenty-four months occurs because of any inability to sell any oil and/or gas produced or because of any inability to deliver or otherwise tender such oil and/or gas produced to any person, firm, corporation, partnership or association.

In all instances when the owner of such oil and/or gas or the owner's subsequent lessee or assignee desires to terminate the right, interest or title of any person, firm, corporation, partnership or association in such oil and/or gas by utilization of the presumption created in this section, this presumption may not be utilized except in an action or proceeding by the owner of the oil and/or gas or the owner's lessee or assignee in an action brought in the circuit court for the judicial district in which the oil and/or gas property is partially or wholly located. A certified copy of a final order of the circuit court shall be mailed by the clerk of such court to the chief of the office of oil and gas of the Division of Environmental Protection.

The continuation in force of any such lease after demand for and failure to pay such delay rental or failure to produce and sell, or to produce and use oil and gas for a period of twenty-four months as hereinbefore set forth is deemed by the Legislature to be opposed to public policy against the general welfare. If any part of this section shall be declared unconstitutional such declaration shall not affect any other part thereof.

WV Legislature