WEST VIRGINIA CODE CHAPTER 37B ARTICLE 3

WV Legislature

§37B-3-1. Short title.

This article is known and may be cited as the Coal Co-tenancy Modernization and Miners Protection Act.

WV Legislature

§37B-3-2. Legislative findings; declaration of public policy.

The Legislature finds that it is the public policy of this state and in the public interest to:

(1) Promote the safe and efficient mining, extraction, and production of coal in this state;

(2) Protect the health and safety of coal miners;

(3) Prohibit the waste of coal;

(4) Encourage the maximum recovery of coal;

(5) Safeguard, protect, and enforce the correlative rights of coal producers and coal owners;

(6) Protect the rights of surface owners; and

(7) Promote the execution and performance of contracts lawfully made.

WV Legislature

§37B-3-3. Definitions.

As used in this article, the following words and phrases have the meanings ascribed to them.

"Coal" means a sedimentary deposit composed predominantly of carbon that is readily combustible and includes, but is not limited to, anthracite, bituminous, semi-bituminous, subbituminous, and lignite coal.

"Coal land" means the coal estate in land containing coal, for which a present ownership interest has been leased, purchased in fee, or otherwise acquired by an operator.

"Consenting co-tenant" means a tenant in common, joint tenant, or parcener having a present ownership interest in coal land who consents in writing to the lawful production of the coal land through a bona fide lease made in an arms-length transaction.

"Nonconsenting co-tenant" means a tenant in common, joint tenant, or parcener having a present ownership interest in coal land who, for any reason, does not consent to the lawful use of coal land agreed to by consenting co-tenants owning a present ownership interest in the coal. Nonconsenting co-tenant includes, but is not limited to, an unknown or unlocatable interest owner.

"Operator" means any owner of an interest in the right to mine, develop, and produce coal from coal land, and to appropriate the coal produced from the coal land.

"Person" means any individual, corporation, partnership, joint venture, limited liability company, association, receiver, trustee, executor, administrator, guardian, fiduciary, or other representative of any kind, and includes any government or any political subdivision or any agency thereof.

"Pro rata share" means the proportion that the net acreage of a nonconsenting co-tenant’s ownership interest bears to the total net acreage in a coal estate.

"Unknown or unlocatable interest owner" means a person vested with a present ownership interest in coal land whose identity or present location cannot be determined from:

(1) An examination of county real property records, grantor-grantee indices, and tax rolls;

(2) A review of probate, estate, and civil records in the county of situs and any reasonably identifiable county of residence; and

(3) A review of available online public databases.

WV Legislature

§37B-3-4. Lawful use and development by co-tenants; reporting and remitting of interests of unknown or unlocatable interest owners; establishing terms and provisions for development; and merging of surface and coal.

(a) An operator's mining, use, or development of the coal estate is permissible, is not waste, and is not trespass if:

(1) The operator has made reasonable efforts to negotiate with all known, locatable owners of coal land; and

(2) At least three fourths of the undivided interests in the right to mine, develop, lease, operate, and produce coal have consented to the lawful use or development of the coal land.

(b) If the criteria in subdivisions (1) and (2), subsection (a) of this section have been satisfied, any consenting co-tenant and his or her lessees, operators, agents, contractors, or assigns:

(1) Are not liable for damages for waste or trespass due to the lawful use or development of the coal estate;

(2) Shall pay any nonconsenting co-tenant in accordance with subsections (c) and (e) of this section;

(3) Shall reserve the amounts specified in subsections (d) and (e) of this section for the benefit of unknown or unlocatable interest owners; and

(4) Shall report and remit the reserved interests as provided in subsection (d) of this section.

(c) A nonconsenting co-tenant is entitled to receive a pro rata share of production royalty, paid on the gross proceeds received at the first point of sale to an unaffiliated third-party purchaser, equal to the greater of:

(1) The highest royalty percentage paid to any consenting co-tenant in the same coal land; or

(2) Seven percent, with no deductions for any related mining, processing, transportation, or marketing costs.

(d) An operator shall:

(1) Submit a report concerning each reserved interest for each unknown or unlocatable interest owner to the State Treasurer, as the unclaimed property administrator, not more than 120 days from the date upon which any amount is reserved for an unknown or unlocatable interest owner pursuant to subsections (a) and (b) of this section and §37B-4-1 *et seq*. of this code, and each calendar quarter thereafter;

(2) Concurrently with the report required in subdivision (1) of this subsection, remit the

WV Legislature

amount reserved in accordance with the provisions of §37B-4-1 *et seq*. and §36-8-1 *et seq*. of this code and as determined by the State Treasurer; and

(3) Submit any quarterly report and remittance required by this subsection by the first day of the month following each calendar quarter.

(e) Unless otherwise agreed to in writing or defined by this section, any nonconsenting co-tenant or unknown or unlocatable interest owner:

(1) Is subject to and shall benefit from the terms and provisions most favorable to the nonconsenting co-tenant or unknown or unlocatable interest owner that are contained in any lease executed by a consenting co-tenant; and

(2) Is not subject to nor liable under any warranty of title, jurisdictional or choice of law provision, or arbitration provision contained in any lease executed by a consenting co-tenant.

(f) A nonconsenting co-tenant may challenge an operator's representations regarding the highest royalty the operator has paid in the same coal estate pursuant to subsection (c) of this section, and the lease terms and provisions pursuant to subsection (e) of this section, by filing a petition for accounting with the West Virginia Tax Commissioner within 45 days following the operator's written delivery of royalty and lease information required by subsections (c), (d), and (e) of this section. The Tax Commissioner shall make a written ruling on the nonconsenting co-tenant's petition within 60 days of receipt of the petition. If either the nonconsenting co-tenant or the operator is dissatisfied with the Tax Commissioner's ruling, he or she may file a petition for appeal with the West Virginia Office of Tax Appeals. Judicial review of a decision by the Office of Tax Appeals is governed by §11-10A-19 of this code. At the operator's discretion, disclosure of the payment terms may be made under seal. While a petition is pending:

(1) Production of the coal estate may continue during the proceedings; and

(2) Proceedings regarding the petition shall be limited in scope to the disclosure of the payment terms or other terms and provisions the operator has made pertaining to the same coal land.

(g) After seven years from the date of the first report to the State Treasurer, a surface owner may file an action to quiet title to the interests of all unknown and unlocatable interest owners of the coal estate. To the extent relevant and practical, the action shall follow the provisions of §55-12A-1 *et seq*. of this code.

(1) Upon presentation of proof sufficient in the court's discretion, a surface owner is entitled to receive a special commissioner's deed transferring title to the interest of any unknown or unlocatable interest owner in a coal estate which underlies the surface tract.

(2) A surface owner is entitled to his or her proportionate share of any of the accrued funds attributable to the interests of the unknown or unlocatable interest owners that have been

WV Legislature

remitted to the State Treasurer prior to the execution of the special commissioner's deed and to any future proceeds.

(3) An unknown or unlocatable interest owner is not entitled to any amounts paid to any grantee of the special commissioner's deed after that deed is recorded with the clerk of the county commission of the county in which the coal estate is located.

WV Legislature

§37B-3-5. Limitations of liability for nonconsenting co-tenants.

A nonconsenting co-tenant including, but not limited to, any unknown or unlocatable interest owner:

(1) Is not liable for any bodily injury, property damage, warranty of title, or environmental claim arising out of site preparation, coal extraction, maintenance, reclamation, or any other operation regarding coal produced from the co-tenant's property; and

(2) Is liable for his or her intentional acts.

WV Legislature

§37B-3-6. Surface use.

(a) It is the intent of the Legislature in enacting this article to leave unchanged the common law of this state as it relates to a coal owner's right to use the land surface for extracting coal.

(b) This article does not modify the obligations imposed by §22-3-1 *et seq*. of this code.

WV Legislature