WEST VIRGINIA CODE CHAPTER 55 ARTICLE 12A

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§55-12A-1. Legislative intent.

It is the intent of the Legislature, in empowering the circuit courts of the state, as provided by this article, to facilitate development of coal, oil, gas, and other minerals, as part of the public policy of the state, by removing certain barriers to such development caused by interests in minerals owned by unknown or missing owners or by abandoning owners.

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§55-12A-2. Definitions.

As used in this article, the following definitions shall apply:

(1) "Abandoning owner" means any person, vested with title to any interest in minerals, who is proved to have abandoned the interest, that is, to have relinquished any right to possess or enjoy the interest with the expressed intention of terminating ownership of the interest, but without vesting the ownership in any other person.

(2) "Development of the minerals" or "mineral development" means (a) mining coal by any method, or (b) drilling for and producing oil or gas by conventional techniques, or by enhanced recovery by injection of fluids of any kind into the producing formation, or (c) utilization of a gas-bearing formation as an underground gas storage reservoir within the meaning of article nine, chapter twenty-two of this code, or (d) production of other minerals by any method.

(3) "Interest in minerals" means any interest, real or personal, in coal, oil, gas or any other mineral, for which interest the property taxes are not delinquent as of the date of the filing of a petition under this article.

(4) "Surface owner" means any person vested with any interest in fee in the surface estate overlying the particular minerals sought to be developed under this article. A surface owner's rights under this article shall be subject to any deed of trust or other security instrument, lien, surface lease, easement or other nonpossessory interest in the surface owned by any other person; but such persons other than the surface owner shall have no right to notice and no standing to appear and be heard hereunder.

(5) "Unknown or missing owner" means any person, vested with title to any interest in minerals, whose present identity or location cannot be determined from the records of the clerk of the county commission, the sheriff, the assessor and the clerk of the circuit court in the county in which the interest is located or by diligent inquiry in the vicinity of the owner's last known place of residence, and shall include such owner's heirs, successors and assigns not known to be alive.

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§55-12A-3. Jurisdiction of the circuit court.

The circuit court of the county wherein the minerals sought to be leased, or the major portion thereof, are situated shall have jurisdiction of the proceedings authorized by this article.

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§55-12A-4. When court may appoint special commissioner; persons authorized to institute proceedings.

(a) If the title to any mineral interest is vested in an unknown or missing owner or an abandoning owner and it is proved that the development of the minerals would be advantageous to a prudent owner, and if it appears that the development of the minerals furthers the public policy stated in section one of this article, the circuit court of the county having jurisdiction under section three of this article shall have the power to appoint a special commissioner and authorize the special commissioner to sell, execute and deliver a valid lease of the mineral interest on terms and conditions customary in the area for the mineral interest to be leased. The lease shall continue in full force and effect so long as there are operations under its terms unless the lease has previously expired by its own terms.

(b) A petition to the circuit court for the appointment of a special commissioner may be instituted by any person who is:

(1) Vested with an interest in fee in the surface estate overlying the particular minerals sought to be developed; or

(2) Vested with an interest in fee in the particular minerals sought to be developed; or

(3) The lessee or the assignee or successor to the lessee, under a valid and subsisting mineral lease, the lessor of which is a person entitled to file a petition by reason of subdivision (2) of this subsection.

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§55-12A-5. Persons to be joined as defendants; contents of verified petition; notice; guardian ad litem.

(a) The person filing a petition under this article shall join as defendants to the action all unknown or missing owners or abandoning owners having record title to the particular minerals sought to be developed, and the unknown heirs, successors and assigns of all such owners not known to be alive. All persons not in being who might have some contingent or future interest therein, and all persons whether in being or not in being, having any interest, present, future or contingent, in the mineral interests sought to be leased, shall be fully bound by the proceedings hereunder.

(b) The petition shall be verified. It shall contain allegations of the facts showing (1) the entitlement of the petitioner to file the petition, (2) an identification of the defendants and the mineral interest of each as far as practical under the circumstances, (3) a description of the tract of land which is the subject of the petition, (4) the interest in the particular minerals sought to be developed, (5) the nature of the proposed development of the minerals, (6) the efforts to locate unknown or missing owners, if any, (7) the relinquishment by abandoning owners, if any, of any right to possess or enjoy their interest with the expressed intention of terminating ownership of the interest, but without vesting the ownership in any other person, (8) such other information known to the petitioner which might be helpful in identifying or locating the present owners thereof, and, as exhibits to the petition, (9) a certified copy of the most recent recorded instrument embracing the interest to be leased, (10) such additional instruments as are necessary to show the vesting of title to the minerals in the last record owner thereof, and (11) a certified copy of any competing lease or easement of record, that is to say, a lease or easement from landowners who are not defendants, embracing all or part of the tract of land which is the subject of the petition, for any mineral development by the lessee or easement owner of record of the minerals sought by the petition; and the petition may contain allegations of the facts showing that (12) mineral development would be advantageous to the defendants and would further the public policy stated in section one of this article; and the prayer shall be for the court to order the sale of a lease covering the subject mineral interest under section six of this article, and thereafter, in the case of any defendant or heir, successor or assign of any defendant who does not appear to claim ownership of the defendant's interest for seven years after the date of the lease, for the court to order a conveyance of the defendant's mineral interest under section seven of this article, subject to the lease, to the owner of the surface overlying the mineral interest.

(c) If personal service of process is possible, it shall be made as provided by the West Virginia rules of civil procedure. In addition, immediately upon the filing of the petition, the petitioner shall (1) publish a Class III legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and (2) no later than the first day of publication, file a lis pendens notice in the county clerk's office of the county wherein the mineral estate or the larger portion thereof lies. Both the advertisement and the lis pendens notice shall set forth (1) the names of the petitioner and the defendants, as they are known

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to be by the exercise of reasonable diligence by the petitioner, and their last known addresses, (2) the date and record data of the instrument or other conveyance which immediately created the mineral interest, (3) an adequate description of the land as contained therein, (4) the source of title of the last known owners of the mineral interests, and (5) a statement that the action is brought for the purpose of authorizing the execution and delivery of a valid and present mineral lease for development of the particular minerals described in the petition, and thereafter, in the case of any defendant or heir, successor or assign of any defendant who does not appear to claim ownership of the defendant's interest within seven years after the date of the lease, for the court to order a conveyance of the defendant's mineral interest under section seven of this article, subject to the lease, to the owner of the surface overlying the mineral interest. In addition, the petitioner shall send notice by certified mail, return receipt requested, to the last known address, if there be such, of all named defendants. In addition, the court may in its discretion order advertisement elsewhere or by additional means if there is reason to believe that additional advertisement might result in identifying and locating the unknown or missing owners.

(d) The circuit court shall appoint a guardian ad litem for any unknown or missing owner or abandoning owner and their unknown heirs, successors and assigns not known to be alive. The compensation and expenses of the guardian ad litem shall be fixed by the court and paid by the petitioner under terms ordered by the court.

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§55-12A-6. Appointment of a special commissioner; sale of lease; special commissioner's report; when court not to authorize lease; investment of lease proceeds; search for owner; period during which unknown or missing owner or abandoning owner may establish identity and title.

(a) If upon presentation to the court of the petition, and the failure of the named defendants or their heirs, successors and assigns to answer the petition and deny material allegations in the complaint within the time to answer under the West Virginia rules of civil procedure, the court may accept the allegations of the verified petition, excluding allegations made upon information and belief, as prima facie proof of the facts alleged; and if it further appears to the court that (1) the petitioner has met the requirements for a lease under this article, including the evidentiary requirements of section five-b and the notice requirements of section five-c, (2) a diligent effort has been made to identify and locate the present unknown or missing owners and abandoning owners, and (3) the mineral development sought in the petition would be advantageous to the defendants and would further the public policy stated in section one of this article, the court shall appoint a special commissioner therefor and authorize the special commissioner to sell, execute and deliver a valid lease covering the mineral interests in and underlying the lands for the particular mineral development sought in the petition: Provided, That no order authorizing the special commissioner to sell, execute or deliver a lease of said mineral interest, shall be entered sooner than six months following filing of the petition, and the court may in its discretion direct the petitioner to make further efforts to locate the missing or unknown owners or abandoning owners.

(b) Should the court appoint a special commissioner pursuant to subsection (a) of this section, the order of the court shall also (1) require the special commissioner to give a bond in favor of the owners of the mineral interest which is to be leased in a specified amount, (2) provide for all of the rental, royalty, and other provisions of the lease which the special commissioner is authorized to make, except for the initial monetary consideration for the sale of the lease, (3) specify whether the special commissioner's sale of the lease shall be public or private, (4) if the order provides for a public sale, determine the notice to be given, and (5) direct that the special commissioner be paid compensation and expenses, including the bond expense, as provided in section eight of this article in an amount agreed upon by the special commissioner and the petitioner; but if no agreement is made within thirty days after the special commissioner is appointed, then the court shall fix the compensation and expenses. The sale shall be for a monetary consideration payable on confirmation of sale. No appraisal shall be required.

(c) The special commissioner shall proceed in compliance with the provisions of the order to sell the lease authorized thereby; and if two or more persons offer to purchase the lease, the sale shall be made to the offeror whose offer is deemed most beneficial to the unknown or missing owner or abandoning owner, and most consistent with the public policy stated in section one of this article. After making the sale, the special commissioner shall make a report thereof to the court. Upon filing the report, the court may hear evidence as to whether or not the sale price and the provisions of the lease are reasonable; and if the court

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is satisfied with the sale price and the provisions of the lease, the sale of the lease shall be confirmed by the court, whereupon the lease shall be executed, acknowledged and delivered by the special commissioner.

(d) The court shall not authorize a special commissioner's lease of the mineral interest of any owner whose identity and whereabouts is known, or can be ascertained by diligent inquiry, or is discovered as a result of the action brought hereunder, unless such owner is proved to be an abandoning owner who fails to answer the subject petition, notice having been given as provided in section five of this article.

(e) Any person purporting to be the unknown or missing owner or an abandoning owner, or any heir, successor or assign of an unknown or missing owner or abandoning owner, may appear as a matter of right at any time prior to the entry of judgment confirming the special commissioner's lease, for the purpose of establishing his title to a mineral interest. If the appearing owner's claim is established to the satisfaction of the court, the court shall dismiss the action as to the appearing owner's interest at plaintiff's cost.

(f) The lessee shall promptly deliver the sale consideration and subsequent proceeds, if any, from the lease to the special receiver of the court, who shall hold and invest the same for the use and benefit of the unknown or missing owners or abandoning owners. The court, upon its own motion or upon motion of the special receiver, may at any time authorize the special receiver to expend an amount not to exceed ten percent of the funds collected by the special receiver for the purpose of instituting a search for the unknown or missing owners.

(g) Within seven years after the date of the special commissioner's lease, any unknown or missing owner or abandoning owner of a mineral interest leased hereunder may file a motion with the court to reopen the action, and may thereupon present such proof as the court may deem necessary to establish the movant's identity and title to the mineral interest or any part thereof. If the court finds that the identity and interest of the movant has been established, and that the movant has manifested a desire to obtain the benefits of the proceeds resulting from the lease, the court shall enter an order (1) documenting the movant's title, (2) assigning all future attributable proceeds to the movant and (3) directing the special receiver to pay over the funds then held attributable to the movant's interests. The circuit clerk of the court shall file and record a certified copy of the order with the clerk of the county commission of each county wherein such land is; and from the time of recordation, the movant shall be deemed the owner of the mineral interest specified in the order.

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§55-12A-7. When special commissioner may convey title in mineral interest to surface owner; form of deed; final report of special Commissioner; unknown owners; transfer of funds; rulemaking.

(a) (1) If an owner of any mineral interest leased under section six of this article remains unknown or missing, or does not disavow the abandonment, for a period of seven years from the date of the special commissioner's lease, the special or general receiver shall report the same to the court, whereupon the court shall enter an order naming those who then appear to be surface owners as additional parties and giving notice to them, pursuant to the West Virginia rules of civil procedure, of an opportunity to appear and present proof of ownership in fee of the surface estate. Upon a finding by the court of the present ownership in fee of the surface estate, the court shall (i) order the special Commissioner to convey to the proven surface owner, subject to the special commissioner's lease, the mineral interest specified in the motion, by a deed substantially in the form specified in subsection (b) of this section and (ii) order the special or general receiver to pay to the Oil and Gas Reclamation Fund established pursuant to §22-6-29 the funds which have accrued to the credit of the mineral interests specified in the motion to the date of his or her report after payment of all allowable fees, expenses and court costs, including special Commissioner's fees paid or to be paid in amounts determined by the court. After the date of the special Commissioner's deed, the surface owner grantee shall be entitled to receive all proceeds under the lease attributable to the mineral interests specified in the deed.

(2) If the boundaries of the mineral tract subject to the special Commissioner's lease encompass two or more surface tracts, a separate deed shall be made for the mineral interest underlying each surface tract. If a surface tract is owned by more than one person, the deed respecting that surface tract shall convey the mineral interest according to the surface estate and interest of each surface owner.

(b) The special Commissioner's deed may be made in the following form, or to the same effect:

This deed, made the _____day of _____, 19___, between
_____, special Commissioner, grantor, and
_____, grantee,

Witnesseth, that whereas, grantor, in pursuance of the authority vested in him or her by an order of the circuit court of _____ county, West Virginia, entered on the _____day of _____, 19___, in civil action no. _____ therein pending, to convey the mineral interest more particularly described below to the grantee,

Now, therefore, this deed witnesseth: That grantor grants unto grantee, subject to the special commissioner's lease mentioned below, and further subject to all other liens and encumbrances of record, that certain mineral interest in _____ county, West Virginia, more particularly described in the cited order of the circuit court as follows: (here insert the description in the order); and being (here specify "all" or "a portion") of the

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mineral interest described in that certain special commissioner's lease dated _____, 19___, of record in the office of the clerk of _____ county, in _____book_____, at page ____.

Witness the following signature.

_____

Special Commissioner

(c) Upon the delivery of the deed or deeds and the payment or payments as directed in subsection (a) of this section, the special commissioner shall make a final report to the court; and upon approval thereof, the court shall order the discharge of the special commissioner's bond.

(d) Prior to the delivery of the special commissioner's deed, no deed or will from a surface owner to another shall sever ownership of the surface as such from ownership of any benefits under this article. The provisions of any deed or will granting or reserving an interest purporting to create such a severance shall be void.

(e) The amendments to this section made during the 2020 regular session of the Legislature which provided for certain accumulated proceeds to be payable to the Oil and Gas Reclamation Fund, shall take effect July 1, 2020, and any funds shall be transferred that have been unclaimed for seven years or more after the date of the special Commissioner's lease whether or not the special Commissioner's lease was signed before or after the effective date of the amendments to this section.

(f) The Department of Environmental Protection may propose rules for legislative approval in accordance with §29A-3-1 *et seq.* of this code to carry out the provisions of this section relating to transfer of funds to the Oil and Gas Reclamation Fund.

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§55-12A-8. Petitioner's attorneys' fees, expenses and court costs.

All of the petitioner's attorneys' fees, expenses and court costs incident to the original proceedings authorized under this article shall be paid by the lessee, if a lease is executed pursuant hereto, and by the petitioner if for any reason no lease is executed. After the date of the special commissioner's lease, all expenses and court costs shall be paid out of funds in the hands of the special receiver to the extent such funds are available.

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§55-12A-9. Limitation of action by unknown or missing owner or abandoning owner.

After the expiration of seven years from the date of the special commissioner's lease, no action may be brought by any unknown or missing owner or abandoning owner or any heir, successor or assign thereof either to recover any past or future proceeds accrued or to be accrued from the lease herein authorized, or to recover any right, title or interest in and to the mineral interest subject to the lease.

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§55-12A-10. Severability.

If any part of this article is adjudged to be unconstitutional or invalid, such invalidation shall not affect the validity of the remaining parts of this article; and to this end, the provisions of this article are hereby declared to be severable.

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