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Could recent court decisions lead to more Ohio mineral ownership debates?

A deed or a lease may seem to say who owns the oil, gas, and coal under the land. But, that might not really be the case, depending on whether there has been activity concerning the minerals over the years. It could also depend on what version of the law applies.

In [Hickman v. Consolidation](#), the Seventh District Court of Appeals has left the door open for a surface owner to bypass the Dormant Mineral Act (DMA) entirely and reclaim previously severed mineral interests under the [Ohio Marketable Title Act](#), thereby increasing the risk of additional ownership disputes.

Over the past several years, litigation over ownership of dormant minerals is not uncommon. The Supreme Court of Ohio's decision in [Corban v. Chesapeake Exploration, L.L.C.](#), answered questions regarding the continued applicability of the 1989 version of the DMA versus the 2006 version. Following the *Hickman* decision, however, more questions and disputes could arise.

In the February 4, 2019 *Hickman* decision, the Seventh District Court of Appeals affirmed the granting of summary judgment in the severed mineral interest holders and oil and gas company's favor, finding that because the surface owners failed to follow the required procedure set forth in the 2006 DMA, under *Corban*, the severed mineral estate did not merge with the surface estate and continued to belong to the severed mineral interest holders. In *Hickman*, the surface owners raised two assignments of error on appeal:

- The trial court erred in determining that the severed mineral interests were not extinguished under the Ohio Marketable Title Act.
- The enactment of the 2006 DMA violated the surface owners' constitutional rights because, under *Corban*, a conclusive presumption of abandonment and/or cause of action was

created by the 1989 DMA that was improperly taken away in violation of the surface owners' constitutional rights.

The court of appeals rejected both arguments, finding that under *Corban* there was no violation of the Constitution because no cause of action or constitutional property rights were created by the 1989 DMA that could have been improperly taken away by the enactment of the 2006 DMA. The court reiterated that *Corban* made clear the 1989 DMA simply created a procedural evidentiary rule to be used in litigation—not a vested, substantive property right that would raise constitutional implications.

The appeals court also held that, under the facts of the case, the surface owners failed to establish that they were entitled to relief under the Marketable Title Act.

Significantly, however, the *Hickman* decision leaves the door open for future dormant mineral ownership challenges. Under this decision, surface owners may reclaim previously severed dormant mineral interests—even though they fail to follow or bypass the 2006 DMA requirements to merge severed mineral interests with the surface estate—if they are able to establish a marketable record title under the Marketable Title Act.

Specifically, the appeals court followed its recent [*Blackstone v. Moore*](#) decision by extending the application of the Marketable Title Act to dormant mineral interests as an alternative theory of recovery in addition to the DMA.

What does this mean?

Under the Seventh District Court of Appeals' recent decisions, if a surface owner establishes an "unbroken chain of title of record to any interest in land for forty years or more, [the surface owner] has marketable record title to such interest." Furthermore: "Record marketable title shall be held by its owner and shall be taken by any person dealing with the land free and clear of all interests, claims, or charges whatsoever, the existence of which depends upon any act, transaction, event, or omission that occurred prior to the effective date of the root of title." In other words, surface owners may reclaim

previously severed dormant mineral interests if they are able to establish a marketable record title under the Marketable Title Act. While the surface owners in *Hickman* were unable to meet the requirements of the Marketable Title Act, other surface owners may be able to do so, leading to more uncertainty in Ohio's oil and gas litigation world.

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