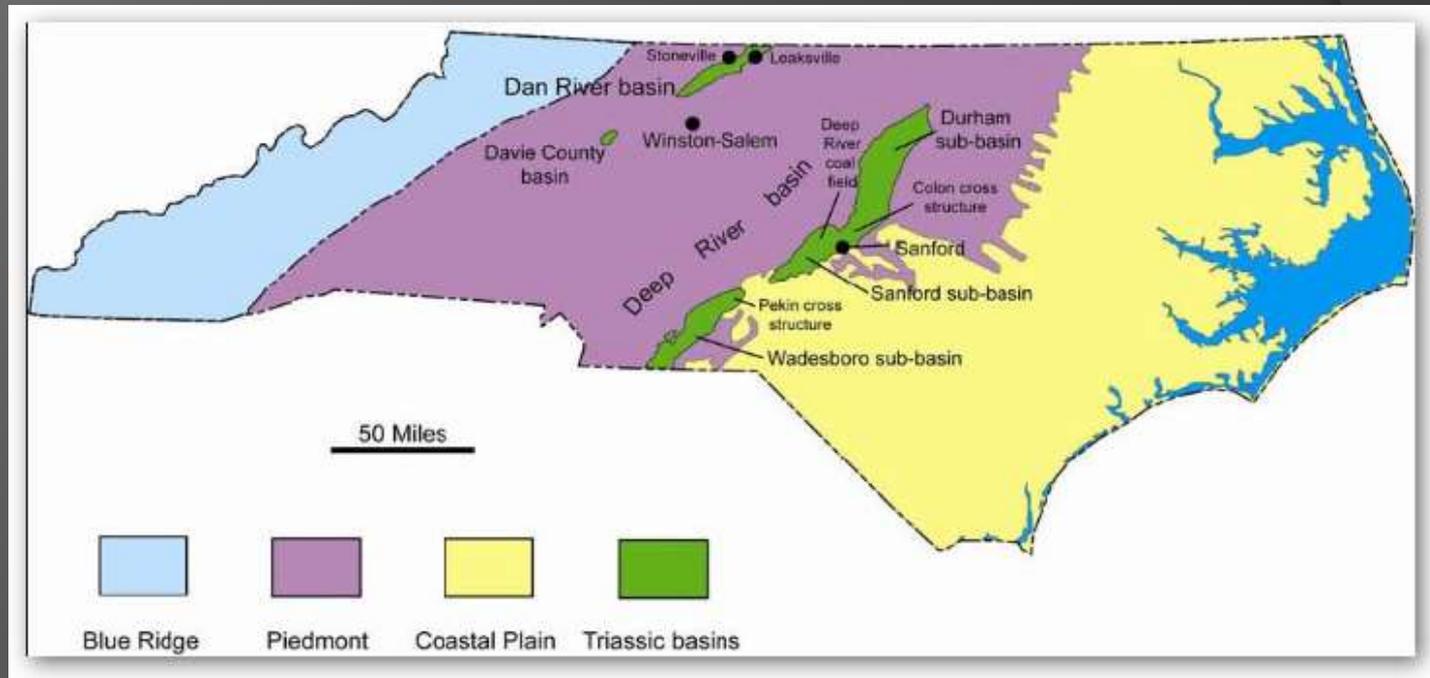


A LAND RECORDS VIEW OF MINERAL RIGHTS IN NORTH CAROLINA



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What is Real Property?

- Real Property refers to the interest, benefits, and rights inherent in ownership of real estate.
- Said rights are restricted for use within the Boundary defined in the granting document.
- Real Property is the land, buildings, structures, improvements, and permanent fixtures on the land.

Ownership:

- The right of one or more persons to possess and use a thing to the exclusion of all other persons.



Title:

- Legal Evidence of ownership.



Estate:

- The degree, quantity, nature, and extent of interest which a person has in real and personal property.

Rights:

- A Claim or title to or interest in anything whatsoever which is enforceable by law.

Rights and Interest reserved by the Sovereign from a Land Grant

- To Tax
- To take by eminent domain
- To conserve resources
- To regulate use and entry (zoning)
- Conservation of historic artifacts
- Apply the laws of the State
- Navigation of air and water
- ETC.

Rights and Interests granted by the Sovereign to a grant of land.

- Six basics (Bundle of Right) associated with ownership of an Estate:
 - 1. Right to use,
 - 2. Right to sell,
 - 3. Right to lease or rent,
 - 4. Right to enter or leave,
 - 5. Right to give away,
 - 6. Right to refuse to do any of these.

Rights and Interests in Real Property

(surveyors role)

- ⦿ The original surveyor establishes the boundary on the ground between rights granted to individuals.
- ⦿ The surveyor does not create or grant said rights.
- ⦿ Once rights in a property are granted within a defined boundary any change in said boundary must meet the legal standards for effecting such change.

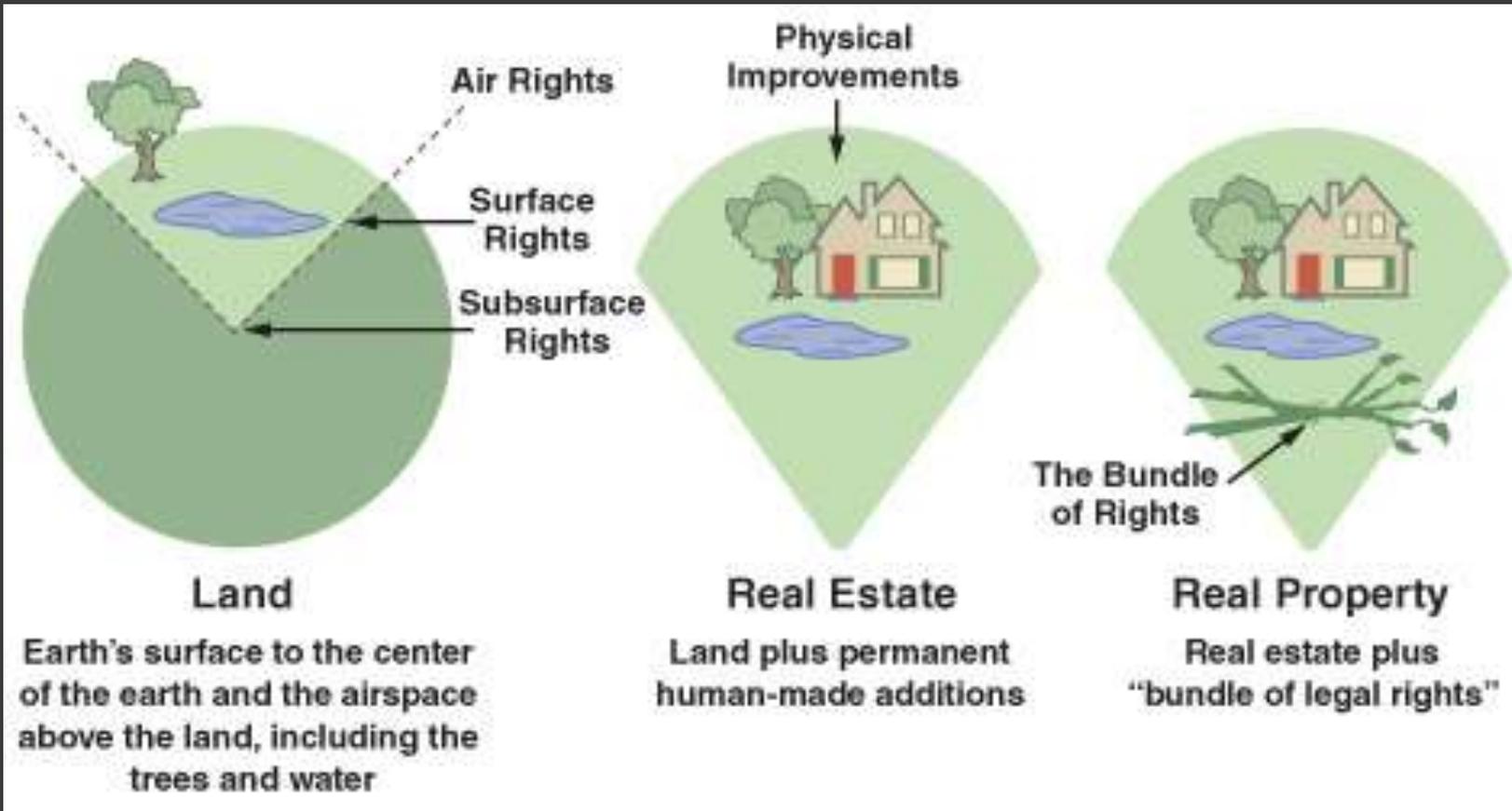
Remember!

- ⦿ You can not transfer what you do not own.
- ⦿ To try to do so is call **Fraud**.

Land can be divided in many different ways.

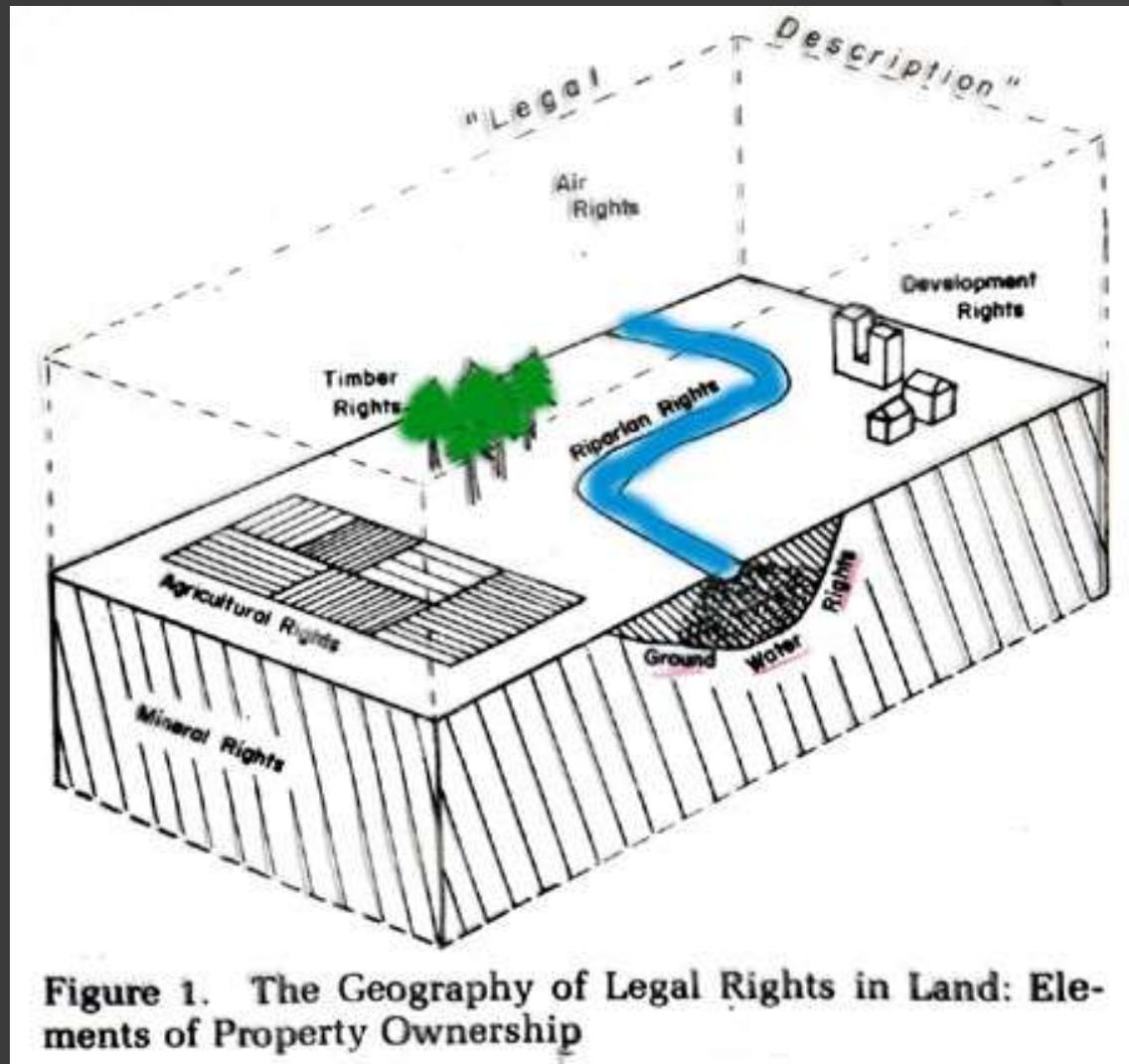
- ① We typically think of land ownership as a boundary at the surface of the earth with rights within those confines extending from the center of the earth to the heavens.
- ② We know that the boundary can be subdivided vertically in to lots or tract of land.
- ③ But we rarely thinks of subdividing horizontally into layers.

The Fee Estate



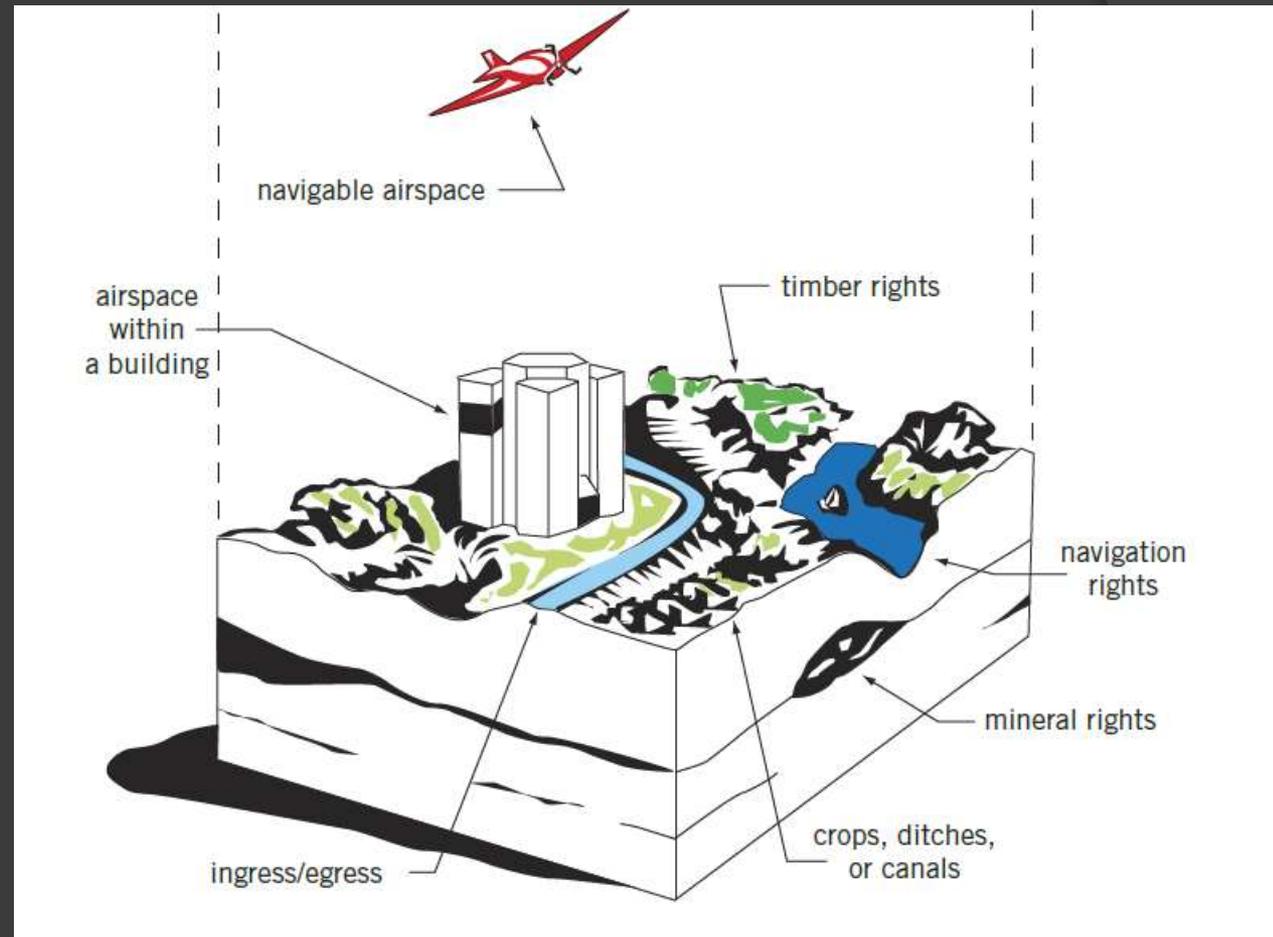
Things within the boundary that rights apply to:

Air
Timber
Development
Riparian
Mineral
Oil & Gas
Ground
Water



Rights and interests can be disconnected from the primary or fee simple surface Estate

- Individual rights can be conveyed or passed on to another separately.



NC Statutes .

- ⦿ An Instrument affecting real property must be in writing. (§ 22-2)
- ⦿ The holder in legal or equitable title:
 - Can transfer all or part of the property, (§ 22-2)
 - Can transfer some rights, (§ 39-6.4)
 - Can restrict or modify use. (§ 22-2)
- ⦿ Only the rights of those executing the document with proper notarization are affected. (§47-14(d))
- ⦿ The instrument must be register in the Register of Deeds office in the county where the property is located. (§47-18(a))

The transfer of rights create additional Estates.

- ⦿ Once an Estate is transferred it can only be modified by the holder of the Estate or by an action of Law.
- ⦿ In the case of a subsurface right, if said right has been transferred, a subsequent division of the surface right will not modify the subsurface Estate.

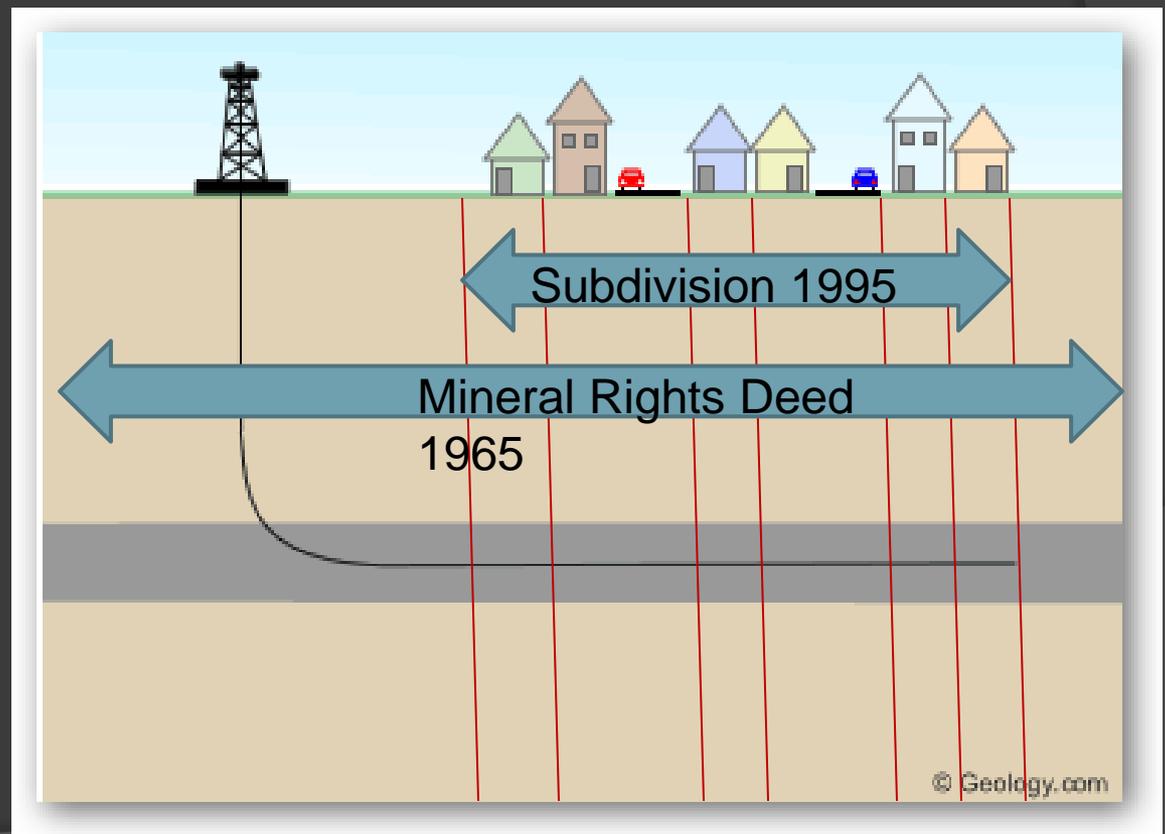
Division of Estates

- The Subsurface Estate was deeded in 1965, the Surface Estate was subdivided and sold in 1995.

If the deed to one of the lots does not mention the mineral rights deed can the lot owner claim the mineral rights?

Probably Not.

Caveat emptor
(Buyer Beware)



§ 46-4. Surface and minerals in separate owners; partitions distinct.

- ⦿ When the title to the mineral interests in any land has become separated from the surface in ownership, the tenants in common or joint tenants of such mineral interests may have partition of the same, distinct from the surface, and without joining as parties the owner or owners of the surface;
- ⦿ *The owners of a mineral right may petition the court for a Partition (a division) with out involving the surface owners.*

Relationship Between Surface & Sub-Surface Estate

The sub-surface estate has:

- ⦿ Dominance of surface estate
- ⦿ Reasonable use of surface Estate
 - Accepted and prevailing method of mining of the particular mineral
 - Any particular rights waved or reserved
 - Intent of parties
 - Protection for residences and residential water supplies (inconsistent case law)

Ref: Theodore A (Ted) Feitshans, Department of Agricultural & Resource Economics, NC State University Jan. 8, 2013

Mineral:

- **§ 74-49. Definitions.** (6) "Minerals" means soil, clay, coal, stone, gravel, sand, phosphate, rock, metallic ore, and any other solid material or substance of commercial value found in natural deposits on or in the earth.
- The definition is interpreted to include Oil and Gas.

Transfer of a Right

- A Mineral Right Deed must meet the same standard of construction that a deed transferring the total estate or the surface estate.

Under case law, an Instrument of Conveyance must contain the following:

- ① 1. a competent grantor,
- ② 2. an existing grantee capable of taking title,
- ③ 3. a granting or conveyance clause,
- ④ 4. an identifiable description of the property to be insured,
- ⑤ 5. the requisite execution and "seal" of the grantor,
- ⑥ 6. satisfactory acknowledgment by a notary or authorized officer, and
- ⑦ 7. delivery to and acceptance by the grantee.

North Carolina Real Estate Transactions, Author: Nancy Ferguson
<https://www.agentxtra.net/extranet/SingleSource/content/StateLaw/NorthCarolina/NorthCarolina.htm>

Is there any thing special about a Mineral Deed? “NO”

- A transfer must Identify intent of the Grantor (what is intended to be transferred) and the limits of the grant.

Can a mining company use one mineral claim to access another mineral claim?

- ⦿ Unless specifically specified, a Mineral Claim does not include the right to access to or from another property.

Is there a different standard for a Lease?

- North Carolina property rights created by lease are governed by the same legal principles applicable to ownership. *See State v. Allen, 216 N.C. 621, 5 S.E.2d 844, 845 (1939)* (even mineral rights leases create interest in real estate governed by principles of law applicable to land (citing *Piney Oil & Gas Co. v. Allen, 235 Ky. 767, 32 S.W.2d 325, 326 (1930)*)).
- A lessee as tenant takes and holds his term in the same manner as any other. *See Brown et al v Cranberry Iron & Coal co 1894*

How long is a Mineral Deed good for?

- Theoretically once a right is transferred it stays transferred unless there are limiting terms specified in the deed.

Just like the
Dinosaur,
once gone it
stays gone.



Voluntary or involuntary transfer of rights.

- ◎ Rights acquired can not be diminished except by an action of law or by an action or inaction of the title holder.
 - An action of law such as **eminent domain** can take rights from the fee holder of said rights without the fee holder agreeing.
 - A fee holder may transfer, restrict, or divide his rights with a written document stating his intent, and identifying the boundary to the rights.
 - Or
 - Though inaction he may lose said rights. Adverse Possession or Statute of limitations (abandonment)

§ 1-42. Possession follows legal title; severance of surface and subsurface rights.

- ⦿ Adverse Possession Claims between Surface rights and Sub-surface can not be perfected under the normal requirements for proving the ripening of said claim.
- ⦿ In addition to the normal requirements for Adverse Possession. A claimant holding surface or sub-surface owners must also file annually a brief notice of intent in the office of the Register of Deeds. (see NC GS 1-42)

Can an Estate be deemed abandoned?

- The Real Property Marketable Title Act (General Statute Chapter 47B) is designed to re-unify Abandoned Rights.
- However 47B-3 Has a number of exceptions:
 - Such marketable record title shall not affect or extinguish the following rights:
- **(5) Rights of any owners of mineral rights.**

US Supreme Court affirms States right to revert unused or abandoned Interests.

- The United States Supreme Court affirmed, stating, “[f]rom an early time, this Court has recognized that States have the power to permit *unused or abandoned* interests in property to revert to another after the passage of time.” *Id.* at 526, 70 L. Ed. 2d at 749 (emphasis added)

(Continued)

- ⦿ The Supreme Court “has never required the State to compensate the owner for the consequences of his own neglect. . . . It is the owner’s failure to make any use of the property – and not the action of the State – that causes the lapse of the property right; there is no ‘taking’ that requires compensation.”
- ⦿ *Kevin Patrick Rowlette and Others V State of North Carolina, NO. COA06-1036, NORTH CAROLINA COURT OF APPEALS Filed: 19 February 2008*

Can a Mineral, Oil or Gas Right be legally declared abandoned in North Carolina.

- Statutes 1-42.1 through 1-42.9 set the criteria that define the durations and lack of action on the part of the Ancient Mineral Claim holder that would extinguish said claim. These statutes with the possible exception of 1-42.9 are county specific.

§ 1-42.1. Certain ancient mineral claims extinguished in certain counties.

- (a) Where it appears on the public records that the fee simple title to any oil, gas or mineral interests in an area of land has been severed or separated from the surface fee simple ownership of such land **and such interest is not in actual course of being mined, drilled, worked or operated, or in the adverse possession of another**, or that the record title holder of any such oil, gas or mineral interests **has not listed the same for ad valorem tax purposes in the county in which the same is located for a period of ten (10) years prior to January 1, 1965** (continued) (emphasis added)

§ 1-42.1. Certain ancient mineral claims extinguished in certain counties.

- any person, having the legal capacity to own land in this State, who has on September 1, 1965 **an unbroken chain of title of record to such surface estate of such area of land for fifty (50) years or more, and provided such surface estate is not in the adverse possession of another, shall be deemed to have a marketable title to such surface estate** as provided in the succeeding subsections of this section, **subject to such interests and defects as are inherent in the provisions and limitations contained in the muniments** of which such chain of record title is formed.

§ 1-42.1. Certain ancient mineral claims extinguished in certain counties.

- ⦿ (b) Such marketable title shall be held by such person and shall be taken by his successors in interest free and clear of any and all such fee simple oil, gas or mineral interests in such area of land founded upon any reservation or exception contained in an instrument conveying the surface estate in fee simple which **was executed or recorded fifty (50) years or more prior to September 1, 1965**, and such oil, gas or mineral interests are hereby **declared to be null and void and of no effect whatever at law or in equity**: Provided, however, that any such fee simple oil, gas or mineral **interest may be preserved and kept effective by recording within two (2) years after September 1, 1965**,

§ 1-42.1. Certain ancient mineral claims extinguished in certain counties.

- ⦿ (d) All oil, gas or mineral interests in lands severed or separated from the surface fee simple ownership **must be listed for ad valorem taxes and notice of such interest must be filed in writing in the manner provided by G.S. 1-42.1(b)** and recorded in the local registry in the book provided by G.S. **1-42 within two years** from September 1, 1967, **to be effective against the surface fee simple owner or creditors, purchasers, heirs or assigns of such owner.**

§ 1-42.1. Certain ancient mineral claims extinguished in certain counties.

- Subsurface oil, gas and mineral interests shall be **assessed for ad valorem taxes as real property and such taxes shall be collected and foreclosed in the manner authorized by Chapter 105** of the General Statutes of North Carolina. The board of county commissioners **shall publish a notice of this subsection in a newspaper published in the county or having general circulation in the county once a week for four consecutive weeks** prior to September 1, 1967.

An analysis of NC GS 1-42.1 through 1-42.9, Ancient Mineral claims extinguished in certain counties.

An analysis of NC GS 1-42.1 through 1-42.9 - Ancient Mineral claims extinguished in certain counties.

NC GS Statute:	GS 1-42.1 Extinguish mineral claims 1965	GS 1-42.2 Extinguish mineral claims 1971	GS 1-42.3 Extinguish mineral claims 1974	GS 1-42.4 Extinguish mineral claims 1977	GS 1-42.5 Extinguish mineral claims 1982	GS 1-42.6 Extinguish mineral claims 1981	GS 1-42.7 Extinguish mineral claims 1979	GS 1-42.8 Extinguish mineral claims 1982	GS 1-42.9 Extinguish mineral claims 1983/1986	GS 1-42.9 Extinguish mineral claims 2009 under 1-42.9
# of years required for tax listing	10	10	10	10	not required	10	10	10	5	5
years of tax listing must be prior to:	1/1/1965	1/1/1971	1/1/1974	1/1/1977		2/1/1981	1/1/1979	2/1/1982	1/1/1983 1/1/1984 1/1/1986	1/1/2009
claim age must be statutory(#) of years prior to date	9/1/1965	9/1/1971	9/1/1974	9/1/1977	6/30/1982	7/1/1981	9/1/1979	9/1/1982	9/1/1983 9/1/1984 9/1/1986	10/1/2009
Statutory Age of Claim	50	50	50	50	30	50	50	50	30	30
Session laws	SL 1965-1072	SL 1971-235 SL 1971-855	SL 1973-1435	SL 1977-751	SL 1981-329	SL 1981-333	SL 1979-343	SL 1981-1391	SL 1983-502 SL 1983-1794	SL 2009-77
2 year period for reinstatement beginning	9/1/1967	11/1/1971	11/1/1974	11/1/1977	See note 6 (within 30 years)	7/1/1981	11/1/1979	9/1/1982	9/1/1983 9/1/1984 9/1/1986	10/1/2009
Notes- See Below	1,2,	1,2,	1,2,	1,2,	6	1,2,	1,2	1,2	1,2,3,4,5	1,2
County										
Alamance										
Alexander										
Alleghany			x			x				
Anson	x	x								
Ashe				x						
Avery					x					

Ancient Mineral Claim within the designated counties would be extinguished unless:

- ① 1. The claim is a working claim at the time the Act goes into full force and effect.
or
- ② 2. A notice of the title to the claim, filed in the Register of deeds that is younger than the age limit set forth in the Act. Generally 30 or 50 years.
or
- ③ 3. The holder of the claim has listed it with the county tax office for a period of years prior to the Act. Generally 5 or 10 years.
Or
- ④ 4. The holder of the claim has filed an affidavit in the Office of the Register of Deed within 2 years of the Act.

Notes 1

- Note 1: Subsurface oil, gas and mineral interests shall be assessed for ad valorem taxes as real property and such taxes shall be collected and foreclosed in the manner authorized by Chapter 105 of the General Statutes of North Carolina.

Note 2

- Note 2: Within 2 years following the date listed in the statute any forfeitable rights under this statute must be listed for Ad Valorem taxes and a notice of this interest must be filed in writing and recorded in the local registry to be effective against the surface fee simple owner or creditors, etc.

Note 3

- Note 3: Applies to all counties that published a notice of the section in a newspaper published in the county or having general circulation in the county once a week for four consecutive weeks prior to September 1, 1983, or January 1, 1986. It is not clear if this applied to all 100 counties or the 50 previously mentioned. (see session laws)

Cabarrus County Government January 6, 1986

Cabarrus county was not named in acts prior to 1-42.9 but apparently felt justified in participating at the time.

UPON MOTION of Commissioner Upright, seconded by Commissioner Payne and unanimously carried, the Board adopted the provisions relating to the extinguishment of ancient oil, gas and mineral claims as recommended by the North Carolina General Assembly and authorized the publication of a notice of the statute in the newspaper once a week for four consecutive weeks prior to January 1, 1986. Under the provisions of General Statutes 1-42.9 as amended, the owner of the surface lands will gain fee simple title to the subsurface rights, if the subsurface interests are not preserved by being listed for ad valorem taxes and recorded with the county register of deeds within two years of January 1, 1986.

Note 4 and Note 5

- Note 4: This Act does not revive any interest rendered ineffective under the provisions of GS 1-42.1 through GS 1-42.8
- Note 5: If a county failed to publish prior to September 1, 1983 but published prior to September 1, 1984 the 1984 date is substituted for 1983.

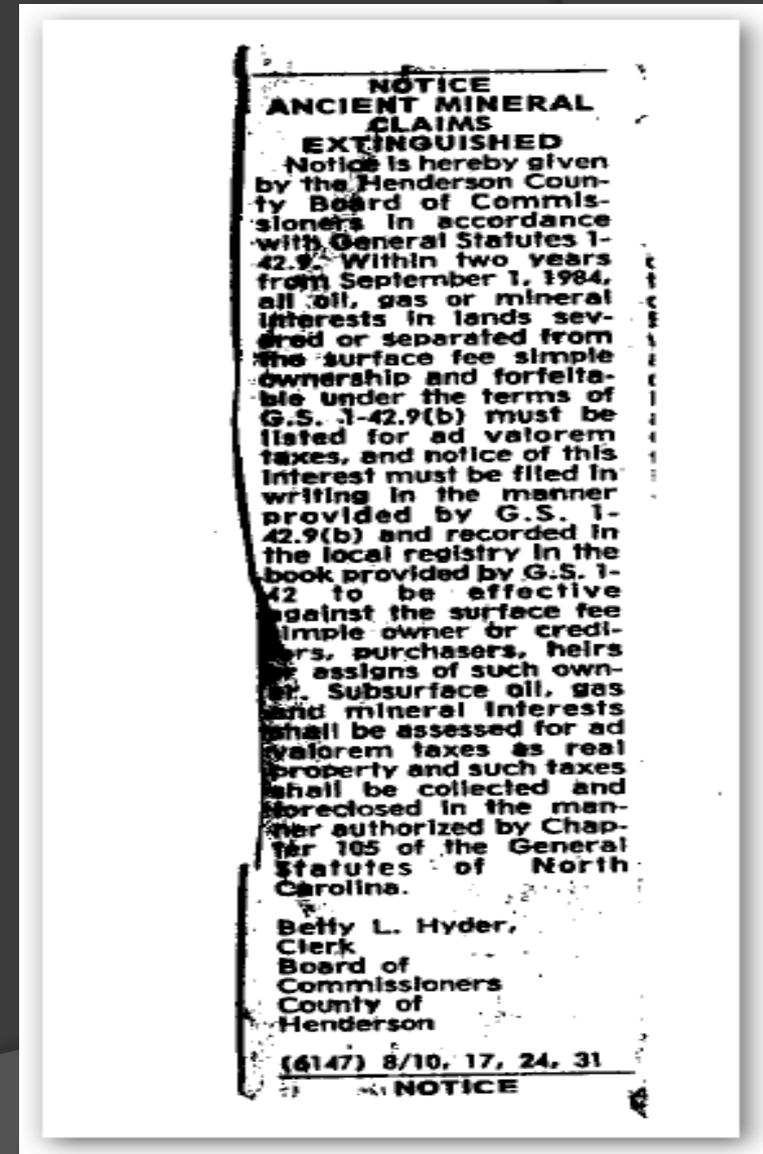
Note 6

- Note 6: Provided However that any such fee simple oil, gas, or mineral interest may be preserved and kept effective by recording within such 30-year period, a notice in writing that sets forth the nature of the interest .

Local Governments must follow due process.

Henderson County 1984

- Before the Act is valid with in a county, the County commissioners were required to post a public notice in the local news paper or a regional news paper that is widely distributed within the county for 4 consecutive weeks.



Davidson County 1985

20 The Dispatch, Lexington, N.C. / Wednesday, December 18, 1985

STATE OF
NORTH CAROLINA
COUNTY OF DAVIDSON
BEFORE THE
HONORABLE
BOARD OF
COMMISSIONERS
TAKE NOTICE:

Pursuant to the North Carolina General Statutes Section 1-42.9, the Davidson County Board of Commissioners does hereby publish "Ancient mineral claims extinguished; oil, gas and mineral interests to be recorded and listed for taxation."

(a) Where it appears on the public records that the fee simple title to any oil, gas or mineral interests in an area of land has been severed or separated from the surface fee simple ownership of such land and such interest is not in actual course of being mined, drilled, worked or operated, or in the adverse possession of another, and that the record titleholder of any such oil, gas or mineral interests has not listed the same for ad valorem tax purposes in the county in which the same is located for a period of five years prior to January 1,

(d) within two years from January 1, 1986, all oil, gas or mineral interests in lands severed or separated from the surface fee simple ownership and forfeitable under the terms of G.S. 1-42.9 (b) must be listed for ad valorem taxes, and notice of this interest must be filed in writing in the manner provided by G.S. 1-42.9 (b) and recorded in the local registry in the book provided by G.S. 1-42 to be effective against the surface fee simple owner or creditors, purchasers, heirs or assigns of such owner. Subsurface oil, gas and mineral interests shall be assessed for ad valorem taxes as real property and such taxes shall be collected and foreclosed in the manner authorized by Chapter 105 of the General Statutes of North Carolina.

This the 27th day of November, 1985.

Davidson County Board
of Commissioners
Elizabeth G. Hargrave
Chairman

James F. Mock
Clerk Ex Officio
Nov. 27, Dec. 4, 11, 18, 1985

There may be another problem with government procedures.

- ⦿ As part of the preservation of Ancient Mineral rights the holder of those rights is required to list said rights for ad valorem taxes.
- ⦿ If County Government does not provide the facilities within the tax system to meet the Statutory requirements for listing of separate rights, has the county followed due process?

§ 105-302. In whose name real property is to be listed.

- (C)(11) When land is owned by one party and improvements thereon or special rights (such as mineral, timber, quarry, waterpower, or similar rights) therein are owned by another party, the parties shall list their interests separately unless, in accordance with contractual relations between them, both the land and the improvements and special rights are listed in the name of the owner of the land.

§ 105-303. Obtaining information on real property transfers; permanent listing.

- (b) (2) Persons whose duty it is to list real property under the provisions of G.S. 105-302 are relieved of that duty, but annually, during the listing period established by G.S. 105-307, these persons must furnish the assessor with the information concerning improvements on and **separate rights** in real property required by G.S. 105-309(c)(3) through (c)(5).

§ 105-309. What the abstract shall contain.

- ⦿ (c) Each tract, parcel, or lot of real property owned or controlled in the county shall be listed in accordance with the following instructions:
 - (5) If some person other than the owner of a tract, parcel, or lot shall own any buildings or other improvements thereon or separate rights (such as mineral, quarry, timber, waterpower, or other rights) therein, that fact shall be specified on the abstract on which the land is listed, together with the name and address of the owner of the buildings, other improvements, or rights.

§ 105-317. Appraisal of real property; adoption of schedules, standards, and rules.

- (b) (3) A separate property record be prepared for each tract, parcel, lot, or group of contiguous lots, which record shall show the information required for compliance with the provisions of G.S. 105-309 insofar as they deal with real property, as well as that required by this section.

§ 105-355. Creation of tax lien; date as of which lien attaches.

- ⦿ (A)(2) Taxes levied on improvements on or separate rights in real property owned by one other than the owner of the land, whether or not listed separately from the land under G.S. 105-302 (c)(11), shall be a lien on both the improvements or rights and on the land.

Conclusions

- ① 1. Mineral rights are a separate estate once transferred.
- ② The sub-surface rights has dominance over surface rights.
- ③ Subsequent division of the parent tract does not effect previously severed rights.
- ④ Ancient Mineral claims may be extinguished .
- ⑤ Counties must follow due process to prefect extinguishment.