

PENN ATTORNEYS

TITLE ALERT

DATE: 08/31/10

RE: Title Alert 2010-15 Gas and Oil and Coal Exceptions in Pennsylvania

Title To The Surface Of The Land Only - In many parts of Pennsylvania, it was a common practice for a developer (usually a coal company) to convey only the surface of the land, retaining title to everything beneath the surface. This surface-only title was and is indicated by preceding the metes and bounds description with an introductory clause, "All the surface and right of soil in and to...", or words to that effect.

When the search and examination disclose that such a limiting phrase has appeared in prior descriptions, we MUST similarly limit the description of the Land in the commitment and title insurance policy.

Other Documents Creating Or Transferring Sub-Surface Interests or Substances - The search and examination may disclose other documents that indicate a separation of below-ground interests or materials from the ownership of the land. There may be a deed in which there is a reservation to the Grantor of certain materials, or even a reservation of royalties from mineral development. There may be a separate document transferring or conveying certain interests or substances (such as a conveyance of coal, or an oil or gas lease).

The Coal Exception - Pennsylvania has certain "Notices" imposed by statute, regarding coal and the possibility of surface subsidence. These notices are more particularly addressed in **Title Alert 2004-02** - Pennsylvania Statutory Coal Notices, which may be found on our website at http://www.pennattorneys.com/info/title_alerts.htm. That Title Alert also imposes a coal exception ("Coal and mining rights and all rights related thereto.") to be placed on commitments and policies covering properties subject to one or both of the coal "notices".

The Oil and Gas Exception - With the increased activity across the Commonwealth of Pennsylvania in the oil and gas industry, particularly due to development of the Marcellus shale formation, we have received inquiries about a number of topics relating to oil and gas.

Practice: We will continue to show as title policy exceptions all of those instruments which pertain to oil and gas that are discovered in the title search and examination.

In addition, we will raise the following general exception for oil and gas in ALL COMMITMENTS AND POLICIES, regardless of whether or not the title search and examination discloses any such instrument or severance:

"Oil, gas, or other mineral interests and all rights incident thereto now or previously conveyed, transferred, leased, excepted or reserved."

This exception will be raised in **ALL COUNTIES** except Philadelphia, Chester, Bucks, Delaware, Montgomery, Franklin, Cumberland, Adams, York, Lancaster, Berks, Lehigh, and Northampton.

The Coal Exception and Oil and Gas Exception Are Not To Be Removed - Often we receive requests to eliminate an exception for coal, oil, gas, or other mineral interest shown on a title commitment solely because the instrument in question (typically an oil and gas lease) has been recorded for many years and/or there are no visible signs of any activity on the subject premises. Neither of these reasons is sufficient for removing an exception related to coal, oil, gas, or other mineral interest. Nothing short of a recorded release of the instrument in question or a Court Order clearing the title will support a decision to remove such items as exceptions.

Affirmative Coverage for The Coal Exception and Oil and Gas Exception - Lenders and Owners of 1-4 family residential property can obtain affirmative coverage as to surface damage with respect to both the coal exception and the oil and gas exception. The ALTA Short Form Residential Loan Policy provides coverage for damage to improvements resulting from the future exercise of any right to use the surface of the Land for the extraction or development of minerals, water or any other substance. Alternatively, lenders can purchase Endorsement 900 (ALTA 9 Comprehensive) that provides similar, but less extensive coverage for surface damage due to extraction or development of the minerals.

Penn Attorneys, a division of Ohio Bar Title Insurance Company, does not provide affirmative coverage for coal, oil, gas, or other mineral interests by way of the General Endorsement 1070, or by adding some kind of parenthetical or limiting language as part of Schedule B of the policy.

In transactions involving vacant ground, tracts of ground over 5 acres, or in commercial transactions, we will consider providing Endorsement 900 to a lender, and we will consider, upon request, the Owner Comprehensive Endorsement 901 or 902, but such coverage must be approved by underwriting. Certain due diligence will be required before granting such coverage and as is most often the case, we view affirmative coverage in Loan Policies and Owner's policies differently.

In any case, however, we will not give affirmative insurance that the coal, oil, gas, or other mineral interests have not been severed from the ownership of the surface of the Land.

Attached is a Sample Schedule B showing the coal exception, the coal Notice, and the oil and gas exception.

As always, feel free to contact us with questions or comments.

Title Alerts from 1997 to present are available on our website at: <http://www.pennattorneys.com>

***Penn Attorneys, a Division of
Ohio Bar Title Insurance Company***

900 State Street, Ste 320 Erie, PA 16501

Tel 814-454-8278 or 800-352-2216 FAX 814-453-5983 or 1-800-234-2352

erie@pennattorneys.com

SCHEDULE B

File No.: **TEST-SM**

Policy No.:

EXCEPTIONS FROM COVERAGE

This Policy does not insure against loss or damage, and the Company will not pay costs, attorneys' fees, or expenses that arise by reason of:

1. Easements, or claims of easements, not shown by the Public Records.
2. Any variation in location of lines or dimensions or other matters which an accurate survey would disclose.
3. Rights or claims by parties in possession or under the terms of any unrecorded lease or agreement(s) of sale.
4. Accuracy of area content not Insured.
5. Coal and mining rights and all rights related thereto.

NOTICE: THIS DOCUMENT DOES NOT INCLUDE OR INSURE THE TITLE TO THE COAL AND RIGHT OF SUPPORT UNDERNEATH THE SURFACE LAND DESCRIBED OR REFERRED TO HEREIN, AND THE OWNER OR OWNERS OF SUCH COAL MAY HAVE THE COMPLETE LEGAL RIGHT TO REMOVE ALL OF SUCH COAL AND, IN THAT CONNECTION, DAMAGE MAY RESULT TO THE SURFACE OF THE LAND AND ANY HOUSE, BUILDING OR OTHER STRUCTURE ON OR IN SUCH LAND. THE INCLUSION OF THIS NOTICE DOES NOT ENLARGE, RESTRICT OR MODIFY ANY LEGAL RIGHTS OR ESTATES OTHERWISE CREATED, TRANSFERRED, EXCEPTED OR RESERVED BY THIS INSTRUMENT. (See 52 P.S. 1551)

6. Oil, gas, or other mineral interests and all rights incident thereto now or previously conveyed, transferred, leased, excepted or reserved.
7. Title to that part of the premises lying in the bed and right of way of all roads, driveways and alleyways is subject to public and private rights therein.
8. Possible tax increase based on additional assessments, not yet due and payable.

This policy is invalid unless the insuring provisions and Schedules A and B are attached.

Ohio Bar Title Insurance Company