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# TAX TITLES REVISITED

Carolyn J. Clegg

# Arkansas Tax Titles Revisited

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## **ARKANSAS TAX TITLES REVISITED**

Arkansas law provides that property taxes are due and payable "a year behind", i.e., 2005 taxes are due and payable on or before October 10, 2006. All lands upon which the taxes have not been paid for one year following the date the taxes were due, October 10<sup>th</sup>, shall be forfeited to the State of Arkansas and transmitted by certification to the Commissioner of State Lands for collection or sale. A.C.A. §26-37-101. No tax delinquent land shall be sold at the county level. The county collector shall hold all tax delinquent lands in the county for one year after the date of delinquency, and if the lands are not redeemed by the certification date, which shall be no later than July 1 of the following year, the Collector shall transmit it to the State by certification, after notice as required by law, indicating all taxes, penalties, interests and costs due, and the name and last known address of the owner of record of the tax delinquent land. Upon receipt of the certification, title to the tax delinquent lands shall vest in the State of Arkansas in care of the Commissioner of State Lands. The county assessor must verify several matters (including existence of the land, assessed value, and name and address of owner of record) before the Collector can certify to the State. A.C.A. §26-37-103. The county tax collectors shall forward a list of the delinquent lands in their county to a legal newspaper of the county no later than December 1<sup>st</sup> of each year. Within seven days thereafter the newspaper shall publish the list, containing the name of the owner and the legal description of the property as recorded on the tax book. A.C.A. §26-37-107. The Commissioner of State Lands shall the publish the Notice of Sale of Land for which ad valorem property taxes have not been paid, including the following information: 1) assessed value of the land; 2) amount of taxes, interest, penalties and other costs due on the land; 3) name of owner; and 4) legal description and parcel number of land. The

Notice shall indicate that the land will be sold to the highest bidder if the bid is equal to at least the assessed value of the land as certified to the Commissioner of State Lands. A.C.A. §26-37-201. If the tax delinquent lands are not redeemed within the 30 day period, the Commissioner of State Lands shall issue a Limited Warranty Deed to the land. Except cases involving individuals suffering from a mental disability or an action to challenge the conveyance sold at a negotiated sale within 90 days after date of conveyance, all actions to contest the validity of the conveyance shall be brought within 2 years after the date of the conveyance or forever barred. A.C.A. §26-37-203. Lands not sold at public auction are held by the State and sold "privately". These sales are called "negotiated sales". "Negotiated sales" are characterized by the Land Commission as S-2, S-3, and S-4, and primarily relate to the minimum acceptable bid. Several Arkansas Code sections differentiate rights and remedies based upon whether the delinquent land was purchased at auction or by a negotiated sale.

The Arkansas Legislature modified the tax sale procedure through the 1987 Acts of Arkansas, Number 814 and the 1989 Acts of Arkansas, Number 938. The main distinction between the sales before 1987 and after 1987 deals with the amount to be bid at a tax sale being now based upon the assessed value as opposed to the appraised value. Because of this change in the law, the method of assessment is even more important than it was before.

Arkansas law recognizes potentially two separate estates in real property ownership: surface estate and mineral estate, and as long as these two estates have never been severed, the owner of the surface estate is also the owner of the mineral estate. As is the case in many other states, the mineral ownership can be severed from the surface ownership by virtue of a grant or reservation, at which time ownership of the minerals and surface become separate and distinct.

It is in the assessment of the taxes that many tax titles to severed minerals breakdown. A.C.A.

§26-26-1110 reads as follows:

“Mineral Rights”

(a) (1) When the mineral rights in any land shall, by conveyance or otherwise, be held by one (1) or more persons, and the fee simple in the land by one (1) or more persons, it shall be the duty of assessor when advised of the fact, either by personal notice or by recording of the deeds in the office of the office of the recorder in the county, to assess the mineral rights in the lands separate from the general property therein.

(2) In such a case, a sale of mineral interest for non payment of taxes shall not affect the title of the land itself, nor shall the sale of the land for non payment of taxes affect the title to the mineral rights.

When mineral rights are assessed pursuant to this statute and become forfeited for non payment of taxes, they are to be certified and redeemed in the same manner as other lands.

If there has been a severance of mineral rights pursuant to a recorded deed, those mineral rights must be assessed separate from the surface rights. As noted, a sale of the surface will not affect the severed minerals if the Assessor has failed to separately assess them. Huffman vs. Henderson Company, 184 Ark. 278, 42 SW 2<sup>d</sup> 221 (1931). A major problem with this issue of separate assessment is when the “severance” occurred. Although the duty is on the county assessor to separately assess these minerals, it can only arise when the instrument is recorded or as the statute indicates, the assessor becomes aware of the severance. The Arkansas Supreme Court has found that for assessment purposes, a severance is effective when the transfer is legally completed between the parties involved, and does not require recordation. Skelly Oil Company vs. Johnson, 209 Ark. 1107, 194 SW 2d 425 (1946). It would therefore appear that an unrecorded mineral deed which severs the mineral estate from the surface estate can prevent the forfeiture of the minerals even if the Assessor never learns of the severance, and certified the

entire fee of the Commissioner of State Lands pursuant to the statute.

In the event that a separate mineral estate exists, often the issue is what actually constitutes a “mineral”. In Missouri Pacific Railroad Company vs. Strohacker, 202 Ark. 645, 152 SW 2<sup>d</sup> (1941), the Arkansas Supreme Court stated: “Our task is to decide what the Grantor meant when it reserved all coal and mineral deposits”. The Arkansas Supreme Court has interpreted this doctrine to require a review of what the intent was of the Grantor when looking at the commercial usage of the word at the time of usage. This can be very important when trying to determine whether a tax title conveyed a mineral interest. The Arkansas Supreme Court in Sorkin vs. Meyers, 216 Ark 908, 227 SW 2<sup>d</sup> 958 (1960), indicated that separate mineral assessment must be “subjoined” to the surface estate on the county assessor’s records. This term subjoined has been defined as being attached immediately to the surface assessments. Originally, subjoining meant that the severed minerals were to be assessed immediately following the surface estate on the assessment books. Prior to the enactment of A.C.A §26-26-1112, the Sorkin case required one assessment book for all real property. However, it is well known that most counties maintain separate books for mineral assessments, and some counties had no book for non-producing severed minerals, and did not assess these non-producing severed minerals at all. A failure to assess the severed but non-producing minerals will prevent any valid sale of those minerals for delinquent taxes. Act 234 of the Arkansas Acts of 1989 stated:

“No deed issued after January 1, 1987 by the Commissioner of State Lands is void or voidable on the ground that the assessment of the property tax on the severed mineral interest is not subjoined to the assessment of property tax on the surface realty.”

This Act which was effective on February 21, 1989, was repealed on July 1, 1989, by Act 404 of the Arkansas Acts of 1989. Clearly there is no uniformity in the counties of Arkansas with regards to the maintenance of separate books for severed minerals, and Arkansas continues to have difficulty of this issue of subjoinder.

Although A.C.A. §18-11-102 provides that if a person pays taxes and has “color of title” for a period of seven years he is held to be in possession of property, this does not apply in the case of severed minerals. One holding possession of the surface does not amount to possession if the minerals are severed. In Laney vs. Monsanto Chemical Company, 233 Ark. 645, 348 SW 2<sup>d</sup> 826 (1961), the Court addressed what constitutes constructive possession of minerals with regards to the seven year statute. The Court held that production on one part of the lease acreage was not sufficient constructive possession of the entire lease acreage. Even where a person buys a tax deed to a severed mineral interest, he has not gained color of title sufficient to grant him the constructive possession necessary to acquire the mineral interest by adverse possession. Garaan v. Potlatch Company, 278 Ark. 414, (1983). Only by “opening and operating” of the mines can actual possession be accomplished sufficient to satisfy the statute.

The only Arkansas statute that actually addresses tax titles and adverse possession provides as follows:

#### §18-60-212 Recovery of Land Held Under Tax Title

(a) No action for the recovery of any lands or for the possession thereof against any person, or his or her heirs or assigns, who may hold such lands by virtue of a purchase thereof at a sale by the collector or Commissioner of State Lands, for the nonpayment of taxes, or who may have purchased them from the state by virtue of any act providing for the sale of lands forfeited to the state or the nonpayment of taxes, or who may hold the land under a donation deed from the state, shall be maintained unless it appears that the plaintiff, his or her ancestors, predecessors, or grantors were seized or possessed of the lands in question within two (2) years next before the commencement of the action.

(c) The person, or his or her heirs or assigns, claiming any land mentioned in subsection (a) of this section shall, before the issuing of any writ, file in the office of the clerk of the proper court an affidavit setting forth that the claimant has tendered to the purchaser or purchasers thereof, or his or her agent or legal representative, the full amount of all taxes and costs first paid on account of the lands, with interest thereon at the rate of one hundred percent (100%) upon the amount first paid for the lands and twenty-five percent (25%) upon all costs and taxes paid upon the land thereafter, from the time the costs and taxes were paid, and also the full value of all improvements of whatever kind and description made on the lands, by the purchaser or purchasers, his or her heirs or assigns, or tenants, and that it has been refused.

(d) If any action shall be brought in any court of record in this state against any purchaser, or his or her heirs or assigns, holding any lands as specified in subsection (a) of this section, and it shall appear to the satisfaction of the court that no affidavit, as required in subsection (c) of this section was filed previous to the commencement thereof, it shall be the duty of the court to dismiss the action at the cost of the plaintiff.

(e) If judgment shall be given against any purchaser, or his or her heirs or assigns who hold any lands as provided for in subsection (a) of this section in favor of any person claiming them, no matter by what manner of title, the judgment shall only be for the possession of the premises in question and damages shall be assessed in favor of the defendant for the full amount of all taxes, costs, and interest provided for in subsection (c) of this section, together with the full value of all improvements of whatever kind and description made thereon, for which judgment shall be entered in favor of the defendant, and it shall be a lien upon the lands until satisfied.

Where minerals were constructively severed from the soil by mineral deeds, and were non-producing, it follows that there was no possession of the minerals by anyone without production. Davis vs. Stonecipher, 218 Ark. 962, 239 SW 2<sup>d</sup> 756 (1951). This statute clearly requires actual physical possession of the property. Towson vs. Denson, 74 Ark. 302, 86 SW 2d 661 (1904). This statute is unique in that it shortens the period of limitations for recovery of lands adversely possessed under tax deeds to 2 years and 2 years actual possession which would be tantamount to production under a mineral deed before the ability of the owner to redeem is barred. The period of limitations begins to run not from the date of the tax deed, but from the date actual possession is taken under it. Boyd vs. Meador, 10 Ark. App. 5, 660 SW 2<sup>d</sup> 943

(1983).

Whenever real property, either surface or mineral has forfeited to the State for non payment of taxes and the period for redemption has passed, the State may file suit for confirmation requesting that the Circuit Court of the county where the property is located to confirm and quiet title in the State of Arkansas. A.C.A. §26-38-111B (1987). If the property has been improperly described by the Tax Assessor or the Collector, it can be correctly be described and confirmed in the Complaint in the Circuit Court. Any party claiming interest adverse to the State shall have the right to be made a party to the suit. The Decree of Confirmation pursuant to A.C.A. §28-38-118 is a cure of all voidable tax sales after the lapse of one year where there was the power to sell, but a tax sale which is void from the beginning cannot be confirmed.

Arkansas has a statutory provision outlined in A.C.A. §18-60-601, et seq., whereby the State can file suit to confirm title to land including minerals severed from the surface which have been forfeited for non payment of taxes. Pursuant to this statute, the purchaser or their heirs or legal representatives of purchasers of lands at Sheriff's Sales are those made by the County Clerks or the Commissioner of State Lands who have acquired title by purchase at the sale by the Sheriff or by foreclosure proceedings or those made by those Order, Decree or authority of and Court or Record may protect themselves from eviction of the lands so purchased by following the detail procedure. Unfortunately in Shuman vs. Certain Lands, 223 Ark. 85, 265 SW 2d 413 (1954), the Arkansas Supreme Court held that this statutory proceeding is not applicable for confirmation of title of severed minerals. In that case, although the Court confirmed that the Plaintiff followed exactly the procedure set forth for confirmation by this statute, it cited the Strohacker Doctrine for the rationale that "land as used by the legislature in acting this statute in 1836 did not include undivided interest in oil and gas." In 2005, the Arkansas Legislature

enacted A.C.A. §18-12-609 confirming the marketability of real property sold at tax sales, but unfortunately specifically stated that it does not apply to a tax sale of a severed mineral.

Effective July 16, 2003, A.C.A. §26-37-314 entitled **Sale Of Tax Delinquent Severed Mineral Interests Prohibited** now provides that only the owner of the surface shall be permitted to purchase the tax delinquent severed mineral interests. The surface owner purchasing mineral interests under this section shall be allowed to purchase the mineral interests for an amount equal to the delinquent taxes and shall not be required to pay any interest or penalties if the surface owner was not the owner of the mineral interests at the time the taxes became delinquent. The new legislation specifically provides that no deed issued under this Act shall be void or voidable on the ground that the assessment of the property taxes on the severed mineral interest was not subjoined to the assessment of the property taxes on the surface realty.

Several bills were presented during the last legislative session including Senate Bills 188 and 189 which attempted to amend A.C.A. §18-60-601 to validate what would appear to be void tax titles due to the separate assessment issue. These Bills never made it out of Committee, but it is my understanding from visiting with several legislators that certainly with the current gas activity in the Fayetteville Shale in numerous counties in north central Arkansas, similar bills will come before our Arkansas Legislature again soon. I think the constitutionality of bills such as these is highly suspect.

Title 18 **Property.**

SubTitle 5 **Civil Actions.**

Chapter 60 **Miscellaneous Proceedings Relating to Property.**

SubChapter 6 **Quieting Title - Public Sales.**

**18-60-601 Proceedings to Confirm Public Sales.**

The purchasers, or the heirs and legal representatives of purchasers, of lands at sheriff's sales or those made by the county clerks, or by the Commissioner of State Lands, or from levee or drainage improvement districts, who have acquired title by purchase at the sale held by the sheriff or by foreclosure proceedings for taxes due the districts, in pursuance of any of the laws thereof, or those made by the order, decree, or authority of any court of record, may protect themselves from eviction of the lands so purchased, or from any responsibility as possessors of them, by proceeding in the manner provided in this subchapter.

**History:**

Rev. Stat., ch. 149, § 1; Acts 1881, No. 69, § 1, p. 134; C. & M. Dig., § 8379; Pope's Dig., § 10975; Acts 1951, No. 263, § 1; A.S.A. 1947, § 34-1918.

**18-60-602 Petition for Confirmation - Affidavit.**

(a) The petition for confirmation shall be filed with the clerk of the circuit court of the county at least twenty (20) days prior to the first day of the term of court at which application is to be made.

(b) The petitioner, if he or she is acquainted with the lands, shall file with his or her petition his or her affidavit, or the affidavit of some person who is acquainted with the lands, showing that there is no person in actual possession of the lands claiming title adverse to the petitioner, copies of the tax receipt showing payment of the taxes for the three (3) years next preceding the publication of the notice to confirm shall be filed with the petition, and, in the case of levee or drainage improvement districts, copies of tax receipts showing payment of all delinquent taxes.

**History:**

Rev. Stat., ch. 149, § 3; Acts 1893, No. 95, § 2, p. 165; C. & M. Dig., §§ 8384, 8385; Pope's Dig., §§ 10980, 10981; Acts 1951, No. 263, § 2; A.S.A. 1947, § 34-1920.

## **18-60-603 Publication of Notice.**

(a)(1) When land is not made redeemable by any law of this state applicable to the sale, or, if redeemable, at any time after the expiration of the time allowed for the redemption, at all sales which have been or may be made, the purchaser, the heirs and legal representative of the purchaser, or the assignee of the purchaser or the heirs or legal representative of the assignee, may publish a notice.

(2) This notice shall be published four (4) weeks in succession in some newspaper published in the county where the land lies, if there is a newspaper published in the county or, if not, in the nearest newspaper having a bona fide circulation in the county.

(3) The notice shall call on all persons who can set up any right to the land so purchased in consequence of any informality or any irregularity connected with the sale to show cause, at the first term of the circuit court of the county after the publication of the notice, why the sale so made should not be confirmed.

(4) The notice shall state the authority under which the sale took place and give the description of the land purchased and the nature of the title by which it is held.

(b) The last insertion of the notice in the newspaper shall be at least twenty (20) days before the application for confirmation is submitted to the court for trial.

(c) Proof of the publication of the notice shall be made in the same manner as proof of publication of notices in other circuit court causes.

(d) The clerk of the court shall notify any delinquent tax owner or owners at their last known address by registered mail at least twenty (20) days before the application for confirmation is submitted to the court for trial.

### **History:**

Rev. Stat., ch. 149, § 2; Acts 1893, No. 95, § 1, p. 165; C. & M. Dig., §§ 8380-8382; Pope's Dig., §§ 10976- 10978; Acts 1951, No. 349, § 1; 1955, No. 264, § 2; A.S.A. 1947, § 34-1919; Acts 2005, No. 1962, § 77.

## **18-60-604 Petition Taken as Confessed.**

If the deed or deeds are in proper legal form and properly executed, if the tax receipts show payment of the taxes, and if the evidence shows that no one is in possession adverse to the petitioner, then, in case no one has appeared to show cause against the prayer of the petitioner, the petition shall be taken as confessed and the court shall render final decrees confirming the sale in question.

### **History:**

Rev. Stat., ch. 149, § 4; Acts 1893, No. 95, § 3, p. 165; C. & M. Dig., § 8388; Pope's Dig., § 10984; Acts 1951, No. 263, § 3; A.S.A. 1947, § 34-1921.

### **18-60-605 Trial of Sale Validity.**

In case any person or persons claiming title to the land opposed the confirmation of sale, then the court shall try the validity of the sale and the court shall:

- (1) Confirm the sale if the sale was valid; or
- (2) Annul the sale if the sale has been made contrary to law.

#### **History:**

Rev. Stat., ch. 149, § 4; Acts 1893, No. 95, § 3, p. 165; C. & M. Dig., § 8389; Pope's Dig., § 10985; Acts 1951, No. 263, § 3; A.S.A. 1947, § 34-1921.

### **18-60-606 Evidence At Trial.**

(a)(1) On the trial of the cause, the petitioner shall exhibit to the court the tax receipts showing the payment of the taxes for at least three (3) successive years and, in the case of lands acquired from levee and drainage improvement districts:

- (A) All delinquent taxes that have been due;
- (B) The deed or deeds under which he or she claims title, or the record thereof, or a certified copy or copies from the record; and
- (C) Oral or written proof by one (1) or more witnesses acquainted with the lands showing that no one is in possession claiming adverse to the petitioner.

(2) The name of the witness or witnesses so sworn shall be preserved in the decree.

(b) A sheriff's or land commissioner's deed, given in the usual form, without witnesses, shall be taken and considered by the court as sufficient evidence of the authority under which the sale was made, the description of the land, and the price at which it was purchased.

#### **History:**

Rev. Stat., ch. 149, §§ 4, 5; Acts 1893, No. 95, § 3, p. 165; C. & M. Dig., §§ 8386, 8387, 8390; Pope's Dig., §§ 10982, 10983, 10986; Acts 1951, No. 263, § 3; A.S.A. 1947, §§ 34-1921, 34-1922.

### **18-60-607 Confirmation of Sale.**

(a) There should be no confirmation of the sale of any lands that are in actual possession of any person claiming title adverse to the petitioner, nor shall there be any confirmation of the sale of lands unless the petitioner, or his or her grantor or those under whom he or she claims title, has paid the taxes on the lands for at least two (2) years after the expiration of the right of redemption, the payment of taxes to be three (3) consecutive years immediately prior to the application to confirm.

(b) With respect to land in levee and drainage improvement districts, there shall be no confirmation of sale unless title has been acquired as referred to in § 18-60-601, nor unless the petitioner, or his or her grantor or grantors, exhibit proof of payment of all taxes that are due against the lands in the districts at the time of the rendition of the decree of confirmation by the court.

#### **History:**

Rev. Stat., ch. 149, § 3; Acts 1893, No. 95, § 2, p. 165; C. & M. Dig., § 8383; Pope's Dig., § 10979; Acts 1951, No. 263, § 2; A.S.A. 1947, § 34-1920.

### **18-60-608 Effect of Decree Confirming Sale.**

(a)(1) The judgment or decree of the court confirming the sale shall operate as a complete bar against any and all persons who may thereafter claim the land in consequence of informality or illegality in the proceedings.

(2) The title to the land shall be considered as confirmed and complete in the purchaser thereof, his or her heirs and assigns forever, saving, however, to infants, persons of unsound mind, or individuals imprisoned overseas, the right to appear and contest the title to the land within one (1) year after their disabilities may be removed.

(b) The decree shall not be valid for any purpose as against the owner of the land, his heirs or assigns, who was, at the time of the decree rendered, in actual possession of it, unless he or she is made a party to the action by personal service of notice therein.

#### **History:**

Rev. Stat., ch. 149, § 6; Acts 1893, No. 72, § 1, p. 117; C. & M. Dig., § 8391; Pope's Dig., § 10987; Acts 1939, No. 318, § 1; A.S.A. 1947, § 34-1923.

### **18-60-609 Effect of Title Not Confirmed.**

In case any purchaser or purchasers contemplated in any of the provisions of this subchapter, or his, her, or their heirs or assigns, shall not deem it necessary to use the remedy conferred by this subchapter to confirm the title thereto, then the sale shall have the same effect only as is given to it by the existing laws of this state.

### **18-60-610 Costs.**

(a) When no opposition is made to the confirmation of the sale, the costs attending the proceedings shall be paid by the party praying for confirmation.

(b) Where opposition is made, the costs shall be borne by the party against whom judgment is rendered.

#### **History:**

Rev. Stat., ch. 149, § 7; C. & M. Dig., § 8392; Pope's Dig., § 10988; A.S.A. 1947, § 34-1924.

**18-12-609. Marketability of real property sold at tax sales.**

(a) The title to any real property located within the State of Arkansas based upon a deed resulting from a delinquent tax sale is marketable if:

- (1) The tax deed has been of record for more than fifteen (15) years;
- (2) Any taxes due have been paid by the tax deed grantee or the heirs or successors of the tax deed grantee for more than fifteen (15) years;
- (3) No claim of adverse possession of the real property has been asserted or filed of record since the recording of the tax deed; and
- (4) The taxes for which the tax deed was issued had not been paid before the tax deed was executed and delivered to the tax deed grantee.

(b) This section shall not be subject to the additional time to challenge a tax deed given to minors, persons suffering a mental incapacity, or persons serving in the United States armed forces during a time of war under § 26-37-203(b).

(c) Nothing in this section shall preclude a judicial action to quiet the title to any real property located within this state prior to the time that the title to the real property is considered marketable under subsection (a) of this section.

(d) This section shall not apply to a tax sale of a severed mineral interest.

**History.** Acts 2005, No. 2270, § 1.

### **18-60-212. Recovery of lands held under tax title.**

(a) No action for the recovery of any lands or for the possession thereof against any person, or his or her heirs or assigns, who may hold such lands by virtue of a purchase thereof at a sale by the collector or Commissioner of State Lands, for the nonpayment of taxes, or who may have purchased them from the state by virtue of any act providing for the sale of lands forfeited to the state or the nonpayment of taxes, or who may hold the land under a donation deed from the state, shall be maintained unless it appears that the plaintiff, his or her ancestors, predecessors, or grantors were seized or possessed of the lands in question within two (2) years next before the commencement of the action.

(b) This section shall not apply to lands which have been sold to any improvement district of any kind or character for taxes due the districts nor to any taxes due any improvement districts, but the lien of the taxes shall continue until paid.

(c) The person, or his or her heirs or assigns, claiming any land mentioned in subsection (a) of this section shall, before the issuing of any writ, file in the office of the clerk of the proper court an affidavit setting forth that the claimant has tendered to the purchaser or purchasers thereof, or his or her agent or legal representative, the full amount of all taxes and costs first paid on account of the lands, with interest thereon at the rate of one hundred percent (100%) upon the amount first paid for the lands and twenty-five percent (25%) upon all costs and taxes paid upon the land thereafter, from the time the costs and taxes were paid, and also the full value of all improvements of whatever kind and description made on the lands, by the purchaser or purchasers, his or her heirs or assigns, or tenants, and that it has been refused.

(d) If any action shall be brought in any court of record in this state against any purchaser, or his or her heirs or assigns, holding any lands as specified in subsection (a) of this section, and it shall appear to the satisfaction of the court that no affidavit, as required in subsection (c) of this section, was filed previous to the commencement thereof, it shall be the duty of the court to dismiss the action at the cost of the plaintiff.

(e) If judgment shall be given against any purchaser, or his or her heirs or assigns who hold any lands as provided for in subsection (a) of this section in favor of any person claiming them, no matter by what manner of title, the judgment shall only be for the possession of the premises in question and damages shall be assessed in favor of the defendant for the full amount of all taxes, costs, and interest provided for in subsection (c) of this section, together with the full value of all improvements of whatever kind and description made thereon, for which judgment shall be entered in favor of the defendant, and it shall be a lien upon the lands until satisfied.

**History.** Acts 1857, §§ 1-4, p. 80; C. & §§ 4663-4665, 8925; Acts 1945, No. 82, M. Dig., §§ 3708-3710, 6947; Pope's Dig., § 2; A.S.A. 1947, §§ 34-1419 — 34-1422.

**26-37-314. Sale of tax delinquent severed mineral interests prohibited.**

(a)(1) When severed mineral interests are forfeited to the state and conveyed by certification to the Commissioner of State Lands for nonpayment of property taxes, title to the severed mineral interests shall vest in the State of Arkansas in the care of the Commissioner of State Lands.

(2) The Commissioner of State Lands shall so notify the owner of record by certified mail at his or her last known address.

(3)(A) Except as provided in subsection (b) of this section, the Commissioner of State Lands shall not sell the severed mineral interests but shall retain the severed mineral interests indefinitely for redemption.

(B) However, the severed mineral interests may be leased by the Commissioner of State Lands if he or she determines that a lease is in the best interest of the state.

(C) All benefits, including royalty and leasehold payments, accruing after title vests in the state and before redemption shall be payable to the Commissioner of State Lands.

(D) Upon receipt of any such benefits, the Commissioner of State Lands shall deposit the funds into financial institutions in this state.

(4)(A) The tax-delinquent severed mineral interests may be redeemed at any time in the manner prescribed for the redemption of tax-delinquent real property.

(B) However, upon redemption the owner shall not be entitled to any payments received by the Commissioner of State Lands before redemption.

(5) All funds derived from redemption shall be held in escrow by the Commissioner of State Lands for one (1) year, at which time they shall be distributed the same as funds derived from the redemption of real property.

(b)(1) After the expiration of the redemption period prescribed by this subchapter, the Commissioner of State Lands shall sell the severed mineral interests to the surface owners if the surface owners opt to purchase the tax-delinquent severed mineral interests.

(2) The surface owner purchasing severed mineral interests under subdivision (b)(1) of this section shall be allowed to purchase the severed mineral interests for an amount equal to the delinquent taxes and shall not be required to pay any interest or penalties if the surface owner was not the owner of the severed mineral interests at the time the taxes became delinquent.

(c) All benefits, including royalty and leasehold payments, payable to the Commissioner of State Lands pursuant to this section are not subject to the provisions of § 18-28-201 et seq. and § 18-28-401 et seq.

(d) The provisions of this section shall be applicable to all tax-delinquent severed mineral interests currently forfeited to the state and certified to the Commissioner of State Lands as well as to all tax-delinquent severed mineral interests forfeited to the state in the future.

(e)(1) No deed issued under this section shall be void or voidable on the ground that the assessment of the property taxes on the severed mineral interests was not subjoined to the assessment of the property taxes on the surface realty.

(2) This subsection shall be retroactive to all certifications of delinquent severed mineral interests in the records of the office of the Commissioner of State Lands.

**History.** Acts 1993, No. 864, §§ 1-4; Acts 2003, No. 1279, § 1.

**Amendments.** The 2003 amendment inserted "of State Lands" throughout this section; in (a)(3)(A), substituted "retain the interests" for "retain the same"; inserted the subdivision designations in (a)(4); redesignated former (b) as present

(b)(1) and rewrote the subdivision; added (b)(2); in (c), substituted "§ 18-28-201 et seq. and § 18-28-401 et seq." for "§§ 18-28-201 — 18-28-232 and §§ 18-28-401 — 18-28-403," respectively; added (e); and made stylistic and gender neutral changes.

#### RESEARCH REFERENCES

UALR L.J. Survey of Legislation, 2003 Severed Mineral Rights, 26 UALR L.J. Arkansas General Assembly, Taxation. 500.

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas  
2 85th General Assembly  
3 Regular Session, 2005  
4

*As Engrossed: S2/14/05*

## A Bill

SENATE BILL 188

5 By: Senators Wooldridge, G. Jeffress, J. Jeffress, B. Johnson  
6 By: Representative Roebuck  
7  
8

### For An Act To Be Entitled

10 AN ACT TO ENHANCE THE MARKETABILITY OF THE TITLE  
11 OF PROPERTY SOLD FOR NONPAYMENT OF TAXES; AND FOR  
12 OTHER PURPOSES.  
13

### Subtitle

14 TO ENHANCE THE MARKETABILITY OF THE  
15 TITLE OF PROPERTY SOLD FOR NONPAYMENT OF  
16 TAXES.  
17  
18  
19

20 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
21

22 SECTION 1. Arkansas Code Title 18, Chapter 12, Subchapter 6 is amended  
23 to add an additional section to read as follows:

24 18-12-608. Marketability of property sold at tax sales.

25 (a) The title to any real property located within the State of  
26 Arkansas, including, but not limited to, severed mineral rights, based upon a  
27 deed resulting from a delinquent tax sale is marketable if:

28 (1) The tax deed has been of record for more than twenty (20)  
29 years;

30 (2) Any taxes due have been paid by the tax deed grantee or the  
31 heirs or successors of the tax deed grantee for more than twenty (20) years;

32 (3) No claim of adverse possession of the property has been  
33 asserted or filed of record since the recording of the tax deed;

34 (4) The taxes for which the tax deed was issued had not been  
35 paid before the tax deed was executed and delivered to the tax deed grantee;  
36 and



Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas  
2 8h General Assembly  
3 Regular Session, 2005  
4

*As Engrossed: S2/14/05*  
**A Bill**

SENATE BILL 189

5 By: Senators Wooldridge, G. Jeffress, J. Jeffress, B. Johnson  
6 By: Representative Roebuck  
7  
8

9 **For An Act To Be Entitled**

10 AN ACT TO PERMIT ACTIONS TO QUIET THE TITLE OF  
11 MINERAL INTERESTS SOLD FOR NONPAYMENT OF TAXES;  
12 AND FOR OTHER PURPOSES.  
13

14 **Subtitle**

15 TO PERMIT ACTIONS TO QUIET THE TITLE OF  
16 MINERAL INTERESTS SOLD FOR NONPAYMENT OF  
17 TAXES.  
18  
19

20 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
21

22 SECTION 1. Arkansas Code § 18-60-601 is amended to read as follows:  
23 18-60-601. Proceedings to confirm public sales.

24 (a) The purchasers, or the heirs and legal representatives of  
25 purchasers, of lands at sheriff's sales or those made by the county clerks,  
26 or by the Commissioner of State Lands, or from levee or drainage improvement  
27 districts, who have acquired title by purchase at the sale held by the  
28 sheriff or by foreclosure proceedings for taxes due the districts, in  
29 pursuance of any of the laws thereof, or those made by the order, decree, or  
30 authority of any court of record, may ~~protect themselves from eviction of~~  
31 quiet and confirm the title to the lands so purchased, ~~or from any~~  
32 ~~responsibility as possessors of them~~, by proceeding in the manner provided in  
33 this subchapter.

34 (b) As used in this subchapter, "lands" means any divided or undivided  
35 interest in real property, including, but not limited to, subsurface mineral  
36 interests, whether severed or unsevered.

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SECTION 2. Arkansas Code Title 18, Chapter 60, Subchapter 6 is amended to add an additional section to read as follows:

18-60-611. Applicability.

The procedure for quieting title and the resulting substantive rights under this subchapter apply to lands purchased before or after the effective date of this act.

SECTION 3. EMERGENCY CLAUSE. It is found and determined by the General Assembly of the State of Arkansas that under the decision in Schuman v. Certain Lands, 223 Ark. 85, 264 S.W.2d 413 (1954), the statutes to quiet the title to land purchased at public sales were held inapplicable to tax sale purchases of severed mineral rights; and that a procedure to establish the marketability of titles based upon tax sale purchases of severed mineral rights is needed to permit the transfer or lease of minerals for the good of the state's economy and its citizens. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on:

(1) The date of its approval by the Governor;

(2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or

(3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.

*/s/ Wooldridge*