



# Navigating West Virginia's 2018 Cotenancy Legislation

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# Today's Presenters



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# Today's Discussion

- Overview of Pre-Act Law and Need for Cotenancy Reform in WV
- Overview of Cotenancy Act
- When Is Use of the Act Applicable to a Project?
- What Is the Process of Using the Act?
- What Benefits May be Gained from Using the Act?
- Miscellaneous Provisions in the Act





# OVERVIEW OF PRE-ACT LAW & NEED FOR COTENANCY REFORM IN WV

# Pre-Act Law in WV

- *Law v. Heck Oil Co.*, 106 W.Va. 296, 145 S.E. 601 (1928)
  - Facts: Heck Oil Co. leased all but Plaintiff's 1/768<sup>th</sup> O&G interest and attempted development.
  - Holding: Cannot compel owner to exchange real estate (O&G in place) for personal property (royalty).
  - Relief: Injunction granted.
  - Effect: No development without 100% interest leased.





# OVERVIEW OF THE 2018 WEST VIRGINIA COTENANCY ACT

# Cotenancy Act Overview

- Cotenancy Modernization and Majority Protection Act (HB 4268)
  - Passed March 5, 2018
  - Effective June 3, 2018
  - Amended W. Va. Code §§ 22C-9-3, 22C-9-4, and 37-7-2
  - Created a new chapter (37B) in the Code





# What Does the Cotenancy Act Do?

- Cotenancy: Limited means of developing O&G interest of non-consenting cotenants (“NCC”) and unknown or unlocatable interest owners (“UUI”)
- Statutory Protection: Development under the Act is not waste or trespass





# WHEN IS USE OF THE COTENANCY ACT APPLICABLE TO A PROJECT?

# Tract Ownership Requirement

- Minimum of seven royalty owners in a tract
- “Royalty Owner” means owner of:
  - O&G in place or constituents
  - Leasing rights
  - Any leasehold estate less than 25% of the total, to the extent not an operator
- “Royalty Owner” does not include:
  - WI in wellbore only
  - ORRIs
  - Non-participating royalty interest
  - Non-executive mineral interests
  - Net profits interests



A vertical image on the left side of the slide. The top portion shows an oil derrick on a grassy field under a blue sky. The bottom portion shows a close-up of a reddish-brown rock face with a black line, possibly a fracture or a wellbore.

# Operator Minimum Interest Requirement

- Operator must have consent to the lawful use or development of the O&G property from
- Royalty owners vested with at least 3/4 of the right to develop, operate, and produce O&G or their constituents





# Reasonable Efforts to Negotiate

- Operator must make or have made “reasonable efforts to negotiate with all royalty owners” in the property
- UUU: To qualify, Operator must have made reasonable review/inquiry:
  - Of county records where interest is located
  - In vicinity of last known residence
  - Of known interest owners in same tracts
  - Of available internet resources commonly used in the industry



# WHAT IS THE PROCESS OF USING THE COTENANCY ACT?

# Development Under the Cotenancy Act

- **Non-Consenting Cotenants**
  - Operator must submit best and final lease offer
  - NCC has 45 days to elect:
    - To receive a pro rata share of production royalty (default)
    - To participate in development and receive pro rata share of revenue and cost
  - 30-day appeals process if production royalty is elected or deemed to have been elected



# Development Under the Cotenancy Act

- **Unknown or Unlocatable Interest Owners**
  - Deemed to have elected to receive a pro rata share of production royalty
  - State reporting/remittance requirements:
    - Within 120 days from date on which payment is reserved for UUI
    - Each calendar quarter thereafter, submitted by 1<sup>st</sup> day of the month following the quarter





# Lease Terms

- NCCs and UUIs are subject to and benefit from the terms of a consenting cotenant's lease containing the “terms and provisions most favorable”
- Not subject to certain types of provisions:
  - Title Warranty
  - Jurisdiction/Choice of Law
  - Arbitration
  - Injection/Disposal Well
  - Storage
- One formation at a time



# Working Interest Terms

- NCCs who elect to participate are subject to terms determined “just and reasonable” by the OGCC
- OGCC may propose rules for legislative approval to implement this section of the Code
- An operator may proceed with development





# OTHER BENEFITS FROM USING THE COTENANCY ACT?

# Defense to Waste and Trespass Claims

- 1913 *WV South Penn Oil* case – extraction by joint tenant without consent constitutes waste and trespass
- Development in compliance with the Cotenancy Act “is permissible, is not waste, and is not trespass.”







# MISCELLANEOUS PROVISIONS IN THE COTENANCY ACT

# UUI Quiet Title Actions

- Bona fide surface owner may file quiet title action after seven years from date of first report to Treasurer
- Applicable to interests of all UUI owners of O&G estate underlying the surface
- UUI not entitled to amounts paid following the Special Commissioner's deed



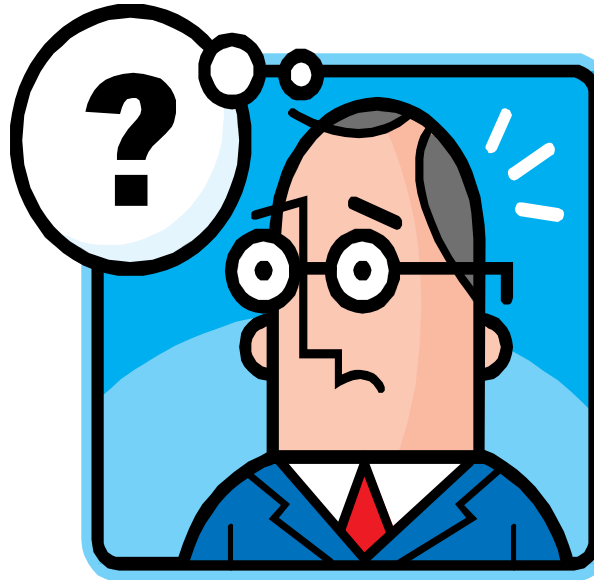
# Surface Use

- Use of Cotenancy Act for mineral development does not give a right to use the surface for drilling or “other surface disturbance”
- Surface owner consent not required if:
  - Surface disturbance does not occur
  - Tract otherwise subject to existing surface use agreement or contractual right to use surface





# QUESTIONS?



# Thank You



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