



## “THE OHIO MARKETABLE TITLE ACT”

ORC 5301.47 to 5301.56

### **5301.47 Marketable title definitions.**

As used in sections 5301.47 to [5301.56](#), inclusive, of the Revised Code:

- (A) "Marketable record title" means a title of record, as indicated in section [5301.48](#) of the Revised Code, which operates to extinguish such interests and claims, existing prior to the effective date of the root of title, as are stated in section [5301.50](#) of the Revised Code.
- (B) "Records" includes probate and other official public records, as well as records in the office of the recorder of the county in which all or part of the land is situate.
- (C) "Recording," when applied to the official public records of the probate or other court, includes filing.
- (D) "Person dealing with land" includes a purchaser of any estate or interest therein, a mortgagee, a levying or attaching creditor, a land contract vendee, or any other person seeking to acquire an estate or interest therein, or impose a lien thereon.
- (E) "Root of title" means that conveyance or other title transaction in the chain of title of a person, purporting to create the interest claimed by such person, upon which he relies as a basis for the marketability of his title, and which was the most recent to be recorded as of a date forty years prior to the time when marketability is being determined. The effective date of the "root of title" is the date on which it is recorded.
- (F) "Title transaction" means any transaction affecting title to any interest in land, including title by will or descent, title by tax deed, or by trustee's, assignee's, guardian's, executor's, administrator's, or sheriff's deed, or decree of any court, as well as warranty deed, quit claim deed, or mortgage.

Effective Date: 09-29-1961

### **5301.48 Unbroken chain of title of record.**

Any person having the legal capacity to own land in this state, who has an unbroken chain of title of record to any interest in land for forty years or more, has a marketable record title to such interest as defined in section [5301.47](#) of the Revised Code, subject to the matters stated in section [5301.49](#) of the Revised Code.

A person has such an unbroken chain of title when the official public records disclose a conveyance or other title transaction, of record not less than forty years at the time the marketability is to be determined, which said conveyance or other title transaction purports to create such interest, either in:

(A) The person claiming such interest; or

(B) Some other person from whom, by one or more conveyances or other title transactions of record, such purported interest has become vested in the person claiming such interest; with nothing appearing of record, in either case, purporting to divest such claimant of such purported interest.

Effective Date: 09-29-1961

#### **5301.49 Record marketable title.**

Such record marketable title shall be subject to:

(A) All interests and defects which are inherent in the muniments of which such chain of record title is formed; provided that a general reference in such muniments, or any of them, to easements, use restrictions, or other interests created prior to the root of title shall not be sufficient to preserve them, unless specific identification be made therein of a recorded title transaction which creates such easement, use restriction, or other interest; and provided that possibilities of reverter, and rights of entry or powers of termination for breach of condition subsequent, which interests are inherent in the muniments of which such chain of record title is formed and which have existed for forty years or more, shall be preserved and kept effective only in the manner provided in section [5301.51](#) of the Revised Code;

(B) All interests preserved by the filing of proper notice or by possession by the same owner continuously for a period of forty years or more, in accordance with section [5301.51](#) of the Revised Code;

(C) The rights of any person arising from a period of adverse possession or user, which was in whole or in part subsequent to the effective date of the root of title;

(D) Any interest arising out of a title transaction which has been recorded subsequent to the effective date of the root of title from which the unbroken chain of title or record is started; provided that such recording shall not revive or give validity to any interest which has been extinguished prior to the time of the recording by the operation of section [5301.50](#) of the Revised Code;

(E) The exceptions stated in section [5301.53](#) of the Revised Code.

Effective Date: 01-23-1963

#### **5301.50 Interests prior to effective date of root of title.**

Subject to the matters stated in section [5301.49](#) of the Revised Code, such 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. All such interests, claims, or charges, however denominated, whether legal or equitable, present or future, whether such

interests, claims, or charges are asserted by a person sui juris or under a disability, whether such person is within or without the state, whether such person is natural or corporate, or is private or governmental, are hereby declared to be null and void.

Effective Date: 09-29-1961

### **5301.51 Preservation of interest in land.**

(A) Any person claiming an interest in land may preserve and keep effective the interest by filing for record during the forty-year period immediately following the effective date of the root of title of the person whose record title would otherwise be marketable, a notice in compliance with section [5301.52](#) of the Revised Code. No disability or lack of knowledge of any kind on the part of anyone suspends the running of the forty-year period. The notice may be filed for record by the claimant or by any other person acting on behalf of any claimant who is:

- (1) Under a disability;
- (2) Unable to assert a claim on his own behalf; or
- (3) One of a class, but whose identity cannot be established or is uncertain at the time of filing the notice of claim for record.

(B) If the same record owner of any possessory interest in land has been in possession of the land continuously for a period of forty years or more, during which period no title transaction with respect to such interest appears of record in his chain of title, and no notice has been filed by him on his behalf as provided in division (A) of this section, and such possession continues to the time when marketability is being determined, the period of possession is equivalent to the filing of the notice immediately preceding the termination of the forty-year period described in division (A) of this section.

Effective Date: 05-31-1988

### **5301.52 Notice and filing of claim of interest in land.**

(A) To be effective and entitled to recording, the notice referred to in section [5301.51](#) of the Revised Code shall satisfy all of the following:

- (1) Be in the form of an affidavit;
- (2) State the nature of the claim to be preserved and the names and addresses of the persons for whose benefit the notice is being filed;
- (3) Contain an accurate and full description of all land affected by the notice, which description shall be set forth in particular terms and not by general inclusions, except that if the claim is founded upon a recorded instrument, the description in the notice may be the same as that contained in such recorded instrument;
- (4) State the name of each record owner of the land affected by the notice, at the time of its recording, together with the recording information of the instrument by which each record owner acquired title to the land;

(5) Be made by any person who has knowledge of the relevant facts or is competent to testify concerning them in court.

(B) The notice shall be filed for record in the office of the recorder of the county or counties where the land described in it is situated. The recorder of each county shall accept all such notices presented to him which describe land situated in the county in which he serves, shall enter and record them in the deed records of that county, and shall index each notice in the grantee deed index under the names of the claimants appearing in that notice and in the grantor deed index under the names of the record owners appearing in that notice. Such notices also shall be indexed under the description of the real estate involved in a book set apart for that purpose to be known as the "Notice Index." Each recorder may charge the same fees for the recording of such notices as are charged for recording deeds.

(C) A notice prepared, executed, and recorded in conformity with the requirements of this section, or a certified copy of it, shall be accepted as evidence of the facts stated insofar as they affect title to the land affected by that notice.

(D) Any person who knowingly makes any false statement in a notice executed under this section is guilty of perjury under section [2921.11](#) of the Revised Code.

Effective Date: 05-31-1988

#### **5301.53 Certain rights not barred or extinguished.**

(A) Any lessor or his successor as reversioner of his right to possession on the expiration of any lease, or any lessee or his successor of his rights in and to any lease, except as may be permitted under section [5301.56](#) of the Revised Code;

(B) Any easement or interest in the nature of an easement created or held for any railroad or public utility purpose;

(C) Any easement or interest in the nature of an easement, the existence of which is clearly observable by physical evidence of its use;

(D) Any easement or interest in the nature of an easement, or any rights granted, excepted, or reserved by the instrument creating such easement or interest, including any rights for future use, if the existence of such easement or interest is evidenced by the location beneath, upon, or above any part of the land described in such instrument of any pipe, valve, road, wire, cable, conduit, duct, sewer, track, pole, tower, or other physical facility and whether or not the existence of such facility is observable;

(E) Any right, title, estate, or interest in coal, and any mining or other rights pertinent to or exercisable in connection with any right, title, estate, or interest in coal;

(F) Any mortgage recorded in conformity with section [1701.66](#) of the Revised Code;

(G) Any right, title, or interest of the United States, of this state, or of any political subdivision, body politic, or agency of the United States or this state.

Effective Date: 03-22-1989

### **5301.54 Effect of changes.**

Nothing contained in sections [5301.47](#) to [5301.56](#), inclusive, of the Revised Code, shall be construed to extend the period for the bringing of an action or for the doing of any other required act under any statutes of limitations, nor, except as provided in sections [5301.47](#) to [5301.56](#), inclusive, of the Revised Code, to affect the operation of any statutes governing the effect of the recording or the failure to record any instrument affecting land.

Effective Date: 09-29-1961

### **5301.55 Liberal construction of statutes.**

Sections [5301.47](#) to [5301.56](#), inclusive, of the Revised Code, shall be liberally construed to effect the legislative purpose of simplifying and facilitating land title transactions by allowing persons to rely on a record chain of title as described in section [5301.48](#) of the Revised Code, subject only to such limitations as appear in section [5301.49](#) of the Revised Code.

Effective Date: 09-29-1961

### **5301.56 Mineral interests - vesting in surface owner.**

(A) As used in this section:

(1) "Holder" means the record holder of a mineral interest, and any person who derives the person's rights from, or has a common source with, the record holder and whose claim does not indicate, expressly or by clear implication, that it is adverse to the interest of the record holder.

(2) "Drilling or mining permit" means a permit issued under Chapter 1509., 1513., or 1514. of the Revised Code to the holder to drill an oil or gas well or to mine other minerals.

(3) "Mineral interest" means a fee interest in at least one mineral regardless of how the interest is created and of the form of the interest, which may be absolute or fractional or divided or undivided.

(4) "Mineral" means gas, oil, coal, coalbed methane gas, other gaseous, liquid, and solid hydrocarbons, sand, gravel, clay, shale, gypsum, halite, limestone, dolomite, sandstone, other stone, metalliferous or nonmetalliferous ore, or another material or substance of commercial value that is excavated in a solid state from natural deposits on or in the earth.

(5) "Owner of the surface of the lands subject to the interest" includes the owner's successors and assignees.

(B) Any mineral interest held by any person, other than the owner of the surface of the lands subject to the interest, shall be deemed abandoned and vested in the owner of the surface of the lands subject to the interest if the requirements established in division (E) of this section are satisfied and none of the following applies:

(1) The mineral interest is in coal, or in mining or other rights pertinent to or exercisable in connection with an interest in coal, as described in division (E) of section [5301.53](#) of the Revised Code. However, if a mineral interest includes both coal and other minerals that are not coal, the mineral interests that

are not in coal may be deemed abandoned and vest in the owner of the surface of the lands subject to the interest.

(2) The mineral interest is held by the United States, this state, or any political subdivision, body politic, or agency of the United States or this state, as described in division (G) of section [5301.53](#) of the Revised Code.

(3) Within the twenty years immediately preceding the date on which notice is served or published under division (E) of this section, one or more of the following has occurred:

(a) The mineral interest has been the subject of a title transaction that has been filed or recorded in the office of the county recorder of the county in which the lands are located.

(b) There has been actual production or withdrawal of minerals by the holder from the lands, from lands covered by a lease to which the mineral interest is subject, from a mine a portion of which is located beneath the lands, or, in the case of oil or gas, from lands pooled, unitized, or included in unit operations, under sections [1509.26](#) to [1509.28](#) of the Revised Code, in which the mineral interest is participating, provided that the instrument or order creating or providing for the pooling or unitization of oil or gas interests has been filed or recorded in the office of the county recorder of the county in which the lands that are subject to the pooling or unitization are located.

(c) The mineral interest has been used in underground gas storage operations by the holder.

(d) A drilling or mining permit has been issued to the holder, provided that an affidavit that states the name of the permit holder, the permit number, the type of permit, and a legal description of the lands affected by the permit has been filed or recorded, in accordance with section [5301.252](#) of the Revised Code, in the office of the county recorder of the county in which the lands are located.

(e) A claim to preserve the mineral interest has been filed in accordance with division (C) of this section.

(f) In the case of a separated mineral interest, a separately listed tax parcel number has been created for the mineral interest in the county auditor's tax list and the county treasurer's duplicate tax list in the county in which the lands are located.

(C)

(1) A claim to preserve a mineral interest from being deemed abandoned under division (B) of this section may be filed for record by its holder. Subject to division (C)(3) of this section, the claim shall be filed and recorded in accordance with division (H) of this section and sections [317.18](#) to [317.201](#) and [5301.52](#) of the Revised Code, and shall consist of a notice that does all of the following:

(a) States the nature of the mineral interest claimed and any recording information upon which the claim is based;

(b) Otherwise complies with section [5301.52](#) of the Revised Code;

(c) States that the holder does not intend to abandon, but instead to preserve, the holder's rights in the mineral interest.

(2) A claim that complies with division (C)(1) of this section or, if applicable, divisions (C)(1) and (3) of this section preserves the rights of all holders of a mineral interest in the same lands.

(3) Any holder of an interest for use in underground gas storage operations may preserve the holder's interest, and those of any lessor of the interest, by a single claim, that defines the boundaries of the storage field or pool and its formations, without describing each separate interest claimed. The claim is prima-facie evidence of the use of each separate interest in underground gas storage operations.

(D)

(1) A mineral interest may be preserved indefinitely from being deemed abandoned under division (B) of this section by the occurrence of any of the circumstances described in division (B)(3) of this section, including, but not limited to, successive filings of claims to preserve mineral interests under division (C) of this section.

(2) The filing of a claim to preserve a mineral interest under division (C) of this section does not affect the right of a lessor of an oil or gas lease to obtain its forfeiture under section [5301.332](#) of the Revised Code.

(E) Before a mineral interest becomes vested under division (B) of this section in the owner of the surface of the lands subject to the interest, the owner of the surface of the lands subject to the interest shall do both of the following:

(1) Serve notice by certified mail, return receipt requested, to each holder or each holder's successors or assignees, at the last known address of each, of the owner's intent to declare the mineral interest abandoned. If service of notice cannot be completed to any holder, the owner shall publish notice of the owner's intent to declare the mineral interest abandoned at least once in a newspaper of general circulation in each county in which the land that is subject to the interest is located. The notice shall contain all of the information specified in division (F) of this section.

(2) At least thirty, but not later than sixty days after the date on which the notice required under division (E)(1) of this section is served or published, as applicable, file in the office of the county recorder of each county in which the surface of the land that is subject to the interest is located an affidavit of abandonment that contains all of the information specified in division (G) of this section.

(F) The notice required under division (E)(1) of this section shall contain all of the following:

(1) The name of each holder and the holder's successors and assignees, as applicable;

(2) A description of the surface of the land that is subject to the mineral interest. The description shall include the volume and page number of the recorded deed or other recorded instrument under which the owner of the surface of the lands claims title or otherwise satisfies the requirements established in division (A)(3) of section [5301.52](#) of the Revised Code.

(3) A description of the mineral interest to be abandoned. The description shall include the volume and page number of the recorded instrument on which the mineral interest is based.

(4) A statement attesting that nothing specified in division (B)(3) of this section has occurred within the twenty years immediately preceding the date on which notice is served or published under division (E) of this section;

(5) A statement of the intent of the owner of the surface of the lands subject to the mineral interest to file in the office of the county recorder an affidavit of abandonment at least thirty, but not later than sixty days after the date on which notice is served or published, as applicable.

(G) An affidavit of abandonment shall contain all of the following:

- (1) A statement that the person filing the affidavit is the owner of the surface of the lands subject to the interest;
- (2) The volume and page number of the recorded instrument on which the mineral interest is based;
- (3) A statement that the mineral interest has been abandoned pursuant to division (B) of this section;
- (4) A recitation of the facts constituting the abandonment;
- (5) A statement that notice was served on each holder or each holder's successors or assignees or published in accordance with division (E) of this section.

(H)

(1) If a holder or a holder's successors or assignees claim that the mineral interest that is the subject of a notice under division (E) of this section has not been abandoned, the holder or the holder's successors or assignees, not later than sixty days after the date on which the notice was served or published, as applicable, shall file in the office of the county recorder of each county where the land that is subject to the mineral interest is located one of the following:

- (a) A claim to preserve the mineral interest in accordance with division (C) of this section;
- (b) An affidavit that identifies an event described in division (B)(3) of this section that has occurred within the twenty years immediately preceding the date on which the notice was served or published under division (E) of this section.

The holder or the holder's successors or assignees shall notify the person who served or published the notice under division (E) of this section of the filing under this division.

(2) If a holder or a holder's successors or assignees who claim that the mineral interest that is the subject of a notice under division (E) of this section has not been abandoned fails to file a claim to preserve the mineral interest, files such a claim more than sixty days after the date on which the notice was served or published under division (E) of this section, fails to file an affidavit that identifies an event described in division (B)(3) of this section that has occurred within the twenty years immediately preceding the date on which the notice was served or published under division (E) of this section, or files such an affidavit more than sixty days after the date on which the notice was served or published under that division, the owner of the surface of the lands subject to the interest who is seeking to have the interest deemed abandoned and vested in the owner shall cause the county recorder of each applicable county to memorialize the record on which the severed mineral interest is based with the following: "This mineral interest abandoned pursuant to affidavit of abandonment recorded in volume ....., page ....."

Immediately after the county recorder memorializes the record, the mineral interest shall vest in the owner of the surface of the lands formerly subject to the interest, and the record of the mineral interest shall cease to be notice to the public of the existence of the mineral interest or of any rights under it. In addition, the record shall not be received as evidence in any court in this state on behalf of the former holder or the former holder's successors or assignees against the owner of the surface of the lands formerly subject to the interest. However, the abandonment and vesting of a mineral interest pursuant to divisions (E) to (I) of this section only shall be effective as to the property of the owner that filed the affidavit of abandonment under division (E) of this section.

(I) For purposes of a recording under this section, a county recorder shall charge the fee established under section [317.32](#) of the Revised Code.



A county recorder who uses microfilm as provided under section [9.01](#) of the Revised Code may require the memorial "This mineral interest abandoned pursuant to affidavit of abandonment recorded in volume ....., page ....." to be located on the affidavit of abandonment instead of the record on which the severed mineral interest is based, and the affidavit may be recorded under section [317.08](#) of the Revised Code.

Effective Date: 03-22-1989; 06-30-2006

