

WFG Underwriting Bulletin



To: All Pennsylvania Policy Issuing Agents of WFG National Title Insurance Company
From: Underwriting Department
Date: July 16, 2019
Bulletin No.: PA2019-10
Subject: Coal and other Mineral Rights (excluding gas, oil and shale rights) Statutory Notices and Underwriting Requirement

A fee simple estate in land includes title to both the surface estate and the mineral estate. The mineral estate (either the entire estate or lesser interests or rights in the mineral estate) can be severed from the surface land. The severance of minerals can be accomplished in several ways, such as an exception or reservation in a deed, a deed of the surface only, a deed of minerals or mineral rights, a mineral lease, or a mortgage of the mineral estate only. Minerals can be conveyed, encumbered, leased, excepted, reserved and assessed separately from the surface land. Generally, the owner of the mineral estate has the right to use the surface land, including the right of ingress and egress, for purposes of exploration, drilling, mining, and otherwise extracting the minerals.

Nearly 300 mineral species have been found in Pennsylvania. Coal is among them and has been found in 45 of the 67 counties in the northern, southern, eastern and western parts of the Commonwealth. Failing to properly deal with coal and coal mining rights can lead to significant liability under the title insurance policy.

Underwriting Requirements:

At the end of this bulletin is a list of all counties in the Commonwealth where coal has been found. If the property you are being asked to insure is located in a coal county, the following two (2) exceptions must be included in every Commitment and Policy issued:

- (1) **"Title and rights to all oil, gas, coal and other minerals within and underlying the premises, together with appurtenant mining, drilling and extraction rights and all other rights and privileges appurtenant thereto."** and
- (2) **"Policy does not insure against subsidence."**

In addition to the above two (2) exceptions, if there has been a severance of the underlying coal or of any part of the right to surface support from the coal from the surface land then a Pennsylvania law

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The Agent may be held responsible for any loss sustained as a result of the failure to follow the standards set forth above.

requires the following Notice be inserted in the title insurance policy and deed and must be set forth entirely either in capital letters or in type or writing distinctly different from the balance of the instrument or set apart by underlining. This same Notice, commonly known as the Coal Severance Notice, is also required in every agreement of sale and other written instruments except a mortgage, a quitclaim deed or an agreement to convey by quitclaim deed. (52 P.S. §§ 1551).

Coal Severance Notice:

"This document does not sell, convey, transfer, 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 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 the notice does not enlarge, restrict or modify any legal rights or estates otherwise created, transferred, excepted or reserved by this instrument."

Two types of coal are found in Pennsylvania; anthracite and bituminous. In those counties where bituminous coal has been found and separately assessed for taxation, the following notice must also be included in every deed of conveyance. The list at the end of this bulletin contains those counties where bituminous coal has been found.

"Red" Coal Notice:

The Bituminous Mine Subsidence and Land Conservation Act of 1966 requires the grantor in every deed for the conveyance of surface land in a county in which bituminous coal has been found and separately assessed for taxation to certify whether any structure then or thereafter erected on the land conveyed has a right to support from the underlying coal. If the grantor does not sign such a certification, the grantee must sign a statement in the deed in a contrasting color with no less than twelve (12) point type that he knows that he may not be obtaining the right of protection against subsidence resulting from coal mining operations and that the purchased property may be protected from damage due to mine subsidence by a private contract with the owners of the economic interests in the coal. The word "Notice" must be printed in the same color as the statement with no less than twenty-four (24) point type. 52 P.S. §1406.14. Customarily this notice is printed in red typeface and is referred to as the "red" coal notice. The following is the form of the red coal notice that is inserted in the deed:

NOTICE: The undersigned, as evidenced by the signature(s) to this notice and the acceptance and recording of this deed, (is/are) fully cognizant of the fact that the undersigned may not be obtaining the right of protection against subsidence, as to the property herein conveyed, resulting from coal mining operations and that the purchased property, herein conveyed, may be protected from damage due to mine subsidence by a private contract with the owners of the economic interest in the coal. This notice is inserted herein to comply with the Bituminous Mine Subsidence and Land Conservation Act of 1966, as amended 1980, Oct. 10, P.L. 874, No. 156 §1.

Practice Tip:

The presence of the Red Coal Notice in any deeds in the chain of title puts the insurer on notice that there may have been a severance of the coal rights. Therefore, in those situations you must add the Coal Severance Notice as an exception in both the title commitment and the title policy. A search back to 1835 is required to make the determination that there has never been a severance of the coal rights.

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Affirmative Coverage:

In some situations affirmative coverage is available to insure the owner or lender of the surface estate against loss or damage caused by the extraction or development of minerals or any other subsurface substances excepted from the description of the land or excepted in Schedule B. The affirmative coverage may be provided by way of the following endorsements:

ALTA 9-06 (PA1030), covering Restrictions, Encroachments and Minerals; and
ALTA 9.7-06 (PA1034), covering Restrictions, Encroachments and Minerals; and
ALTA 35-06 series covering Minerals and Other Subsurface Substances.

Please obtain underwriting approval prior to issuing any of these endorsements.

Because of the extraordinary risk involved in insuring a mineral estate separate and apart from the ownership of the land, WFG will not insure just a mineral estate, or any other mineral interest or right. Also, WFG will not insure against loss or damage resulting from mine or drilling subsidence.

Should you have any questions, please feel free to contact one of your local Underwriters:

Coal Counties

Allegheny	Centre	Fulton	McKean	Wayne
Armstrong	Clarion	Greene	Mercer	Warren
Beaver	Clearfield	Huntingdon	Northumberland	Washington
Bedford	Clinton	Indiana	Potter	Westmoreland
Blair	Columbia	Jefferson	Somerset	Wyoming
Bradford	Crawford	Lackawanna	Schuylkill	
Butler	Dauphin	Lawrence	Sullivan	
Carbon	Elk	Lebanon	Susquehanna	
Cambria	Fayette	Luzerne	Tioga	
Cameron	Forest	Lycoming	Venango	

Counties with Bituminous Coal

Allegheny	Clearfield	Lawrence	Westmoreland
Armstrong	Clinton	Lycoming	
Beaver	Crawford	McKean	
Bedford	Elk	Mercer	
Blair	Fayette	Potter	
Bradford	Forest	Somerset	
Butler	Fulton	Sullivan	
Cambria	Greene	Tioga	
Cameron	Huntingdon	Venango	
Centre	Indiana	Warren	
Clarion	Jefferson	Washington	

Counties with No Coal

Adams	Mifflin
Berks	Montgomery
Bucks	Monroe
Chester	Montour
Cumberland	Northampton
Delaware	Perry
Erie	Philadelphia
Franklin	Pike
Juniata	Snyder
Lancaster	Union
Lehigh	York

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