Abandoned and Lapsed Minerals in North Dakota
Types of Mineral Ownership

Fee Simple

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Severed Mineral Ownership
- Jerry Jones owns all of the surface but Roger Staubach, Troy Aikman and Tony Romo etc. own the minerals.
Severed Mineral Ownership can be created in two ways.
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1. Conveyance:
   - Jerry Jones conveys to Troy Aikman all of the oil, gas and other minerals in and under Cowboys Stadium.
   - Jerry now owns the surface but Troy owns all the minerals.
Severed Mineral Ownership can be created in two ways.

1. Conveyance:
   - Jerry Jones conveys to Troy Aikman all of the oil, gas and other minerals in and under Cowboys Stadium.
     - Jerry now owns the surface but Troy owns all the minerals.

2. Reservation:
   - Jerry conveys to Tony Romo all of his interest in Cowboys Stadium, reserving “one half of the oil, gas and other minerals in and under Cowboys Stadium.”
   - Tony now owns Cowboys Stadium and one half of the minerals and Jerry owns only one half of the minerals.
Severed Mineral Ownership and Abandoned Minerals

Why is this important?
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Only a severed mineral interest will lapse, so we must know what type of interest we are dealing with.
Termination of Mineral Interest.  N.D.C.C. § 38-18.1

N.D.C.C. 38-18.1-02 states:

Any mineral interest is, if unused for a period of twenty years immediately preceding the first publication of the notice…is deemed to be abandoned. Title to the abandoned mineral interest vests in the owner or owners of the surface estate in the land in or under which the mineral interest is located on the date of abandonment.

The purpose is to reunite unused or lapsed severed mineral interests with the current surface owner.

Requires a mineral interest owner to execute incidents of ownership or to act to preserve their mineral interest.
Termination of Mineral Interest. N.D.C.C. § 38-18.1

What is a Mineral Interest?
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“Mineral Interest includes any interest in oil, gas, coal, clay, gravel, uranium, and all other minerals of any kind and nature, whether created by grant, assignment, reservation, or otherwise owned by a person other than the owner of the surface estate.” N.D.C.C. § 38-18.1-01.
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Does this apply to a prior royalty conveyance?

It appears based on the definition that the statute will apply to royalty conveyances even though they are not “used” in the traditional sense of the statute. The North Dakota Supreme Court has yet to weigh in on the issue.
Termination of Mineral Interest.  N.D.C.C. § 38-18.1

What is a “USE”?  

1. Production  
2. Operations – drilling, disposal, withdrawal  
3. Minerals are leased, mortgaged, assignment, or conveyance, all of which must be recorded to be construed a use  
4. The property has been unitized or pooled and is of record  
5. Taxes paid  
6. A Statement of Claim has been filed
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Payment of royalties, bonus payments or other payments to accounts on behalf of persons who cannot be located is NOT a use.
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Requirements:

1. Must be recorded by the owner or the owner’s representative prior to the end of the twenty year period. A joint tenant, but not a tenant in common, may record a claim on behalf of oneself and other joint tenants.

2. Contain the name and address of the owner.

3. Contain the legal description.

4. Identify the type of mineral interest.

5. Recorded in the county in which the mineral interest is located.
Termination of Mineral Interest. N.D.C.C. § 38-18.1

What does this accomplish?
Termination of Mineral Interest.  N.D.C.C. § 38-18.1

What does this accomplish?

The interest is now deemed in use and the twenty year clock resets to the date of the recording.

A statement of claim filed after July 31, 2009 by a person other than the owner of record of the interest is not effective to preserve the interest UNLESS accompanied by a reference to the name of the record owner and whom the owner of the mineral interest claims.

Failure to record the statement of claim within the 20 year period is not fatal if there is another use or the owner files the statement with 60 days of the first publication of the notice of lapse.
Claiming abandoned minerals

N.D.C.C. § 38-18.1-06 – Notice of Lapse

Surface owner must give notice of lapse by publication once per week for three consecutive weeks in the official county newspaper in which the mineral interest is located.

If the address of the interest owner is shown of record OR can be determined upon reasonable inquiry, notice must also be mailed within ten days after the last publication.
Claiming abandoned minerals

Contents of the Notice

1. The name of the record owner of the mineral interest.
2. The legal description where the interest is located.
3. The name(s) of the surface owner(s).

A copy of the Notice and Affidavit of Service must be recorded to constitute prima facie evidence in any legal proceedings that such notice has been given.
Claiming abandoned minerals

Reasonable Inquiry?
N.D.C.C. § 38-18.1-06 (6) states:

That to constitute a reasonable inquiry the owner or owner’s agent must:

1. Conduct a search of the county recorder’s records for the existence of a use.
2. Conduct a search of the clerk of court’s records for any judgments, liens or probate records which identify the owner of the interest.
3. The Social Security Death Index; and
4. One or more public internet databases to locate or identify the owner of the mineral interest or any known heirs of the owner.
Claiming abandoned minerals

When is a reasonable inquiry required?
Spring Creek Ranch, LLC v. Svenberg, 1999 ND 113.

North Dakota Supreme Court held that a reasonable inquiry must be made regardless of address of record.

Primary issue in this case was what constituted an address.

Court further indicated that reasonable is case specific.

Pre 2009 Amendments.
Recent Interpretation:
The Reasonable Inquiry Holy Trinity
Claiming abandoned minerals

Sorenson v. Felton, 2011 ND 33
Sorenson v. Alinder, 2011 ND 36
Johnson v. Taliaferro, 2011 ND 34

All three cases interpret pre 2009 amendments.

Main holding of all three is if an address is of record you need not undertake reasonable inquiry.

This holding seems to be in contradiction to the 2009 amendments to 38-18.1.
2009 revisions to 38-18.1

N.D.C.C. § 38-18.1-06.1

Allows for quiet title action as a way to complete the process and perfect title in the surface owner.

38-18.1-06.1(2) states that in an action under this section a surface owner must show that all procedures required under 38-18.1 were properly completed AND that a reasonable inquiry was conducted.

-The provisions within 38-18.1 are in contradiction.
Claiming abandoned minerals

2009 revisions to 38-18.1

N.D.C.C. § 38-18.1-06.1(4)

-A lessee who obtains a lease from an owner who has obtained a judgment pursuant to this section is a bona fide purchaser and the lease remains in effect even if the judgment is subsequently vacated.

-Lessee is not liable to third parties for lease bonus, royalties or other proceeds paid before the judgment is vacated.
Claiming abandoned minerals

2009 revisions to 38-18.1

Do I need to conduct a reasonable inquiry after the 2009 amendments when there is an address of record?
Claiming abandoned minerals

2009 revisions to 38-18.1

It remains unknown if a reasonable inquiry is required in a lapse proceeding brought after the 2009 revisions.

- Chief Justice VandeWalle concurred in the Johnson v. Taliaferro decision and weighed in on this situation.

- The wise choice would be to conduct a reasonable inquiry at the lapse stage even if addresses are of record, otherwise the subsequent quiet title will fail.