



## **There's Gold In Them Thar Hills**

For centuries the allure of gold, oil, and other precious minerals has built cities and sparked countless disputes amongst neighbors and others. Times have not changed.

### The Facts

Mr. and Mrs. Hatfield could not make the mortgage payments on the family farm, and were in danger of losing the land via foreclosure. Faced with no alternatives, they sold the farm to Mr. and Mrs. McCoy.

Big Sandy River Closing Company ("Big Sandy") conducted the sale of the land from the Hatfields to the McCoy's. The purchase contract stated that the Hatfields reserved for themselves all rights to, and interests in, any oil, gas, coal, clay, sand, gravel, uranium, and other minerals lying in and under the land. The purchase contract also stated that the Hatfields were reserving ingress and egress rights for the purpose of exploration and development of the minerals.

Big Sandy drafted the warranty deed through which title to the land was transferred from the Hatfields to the McCoy's. Big Sandy neglected to include the Hatfields' reservations in the warranty deed. At the time of the closing, neither the Hatfields nor the McCoy's discovered the error.

Years after the closing, a modern day gold rush occurred in and around the town where the land is located. The Hatfields claim ownership of the gold, arguing that they never intended to transfer the mineral rights. The McCoy's similarly claim ownership of the gold, swearing that the purchase contract was modified to include the transfer of mineral rights, and that, regardless, the warranty deed trumps the purchase contract. In an updated, slightly more civilized twist to the old tale, the Hatfields filed a lawsuit against the McCoy's and Big Sandy to establish their rights in the minerals or, alternatively, for damages from Big Sandy for losing their rights in the minerals. All parties involved are paying their attorneys a small pile of gold.

### Lesson Learned

In certain parts of the country the price to purchase mineral rights can be substantial. In those same communities, rural tracts where minerals typically are found often consist of hundreds of acres. Accordingly, a small oversight concerning the reservation of mineral rights can have significant consequences. Title companies operating in areas where mineral rights often are reserved, or sold at a premium, strongly should consider having the buyer(s) and seller(s) initial next to the language in the warranty deed where such rights are reserved. In situations where the mineral rights are being sold with the land, and the warranty deed is silent with respect to mineral rights, the title company should consider having the buyer(s) and seller(s) sign a separate document which states that the mineral rights are being sold. By requiring signatures in both situations, the title company can better assure that mineral rights do not slip through the cracks and, potentially, prevent neighborly feuds.<sup>1</sup>

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<sup>1</sup> As of April 1, 2013, the FDIC instituted a nationwide policy of reserving its mineral rights in all residential and commercial property, except property worth less than \$50,000 and individual condominium units. Accordingly, when selling property owned by the FDIC, the issue of mineral rights now must be addressed.