



Sale of Mineral Rights by Mail Solicitation Act
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Effective May 19, 2016, Act 179 of the 2016 Louisiana Legislature, the “Sale of Mineral Rights by Mail Solicitation Act” (Louisiana Revised Statutes 9:2991.1 et seq.) was passed and signed into law.

Background

Act 179 was designed, according to its comments, to regulate certain transfers of mineral rights that place landowners and others at risk of exploitation, i.e., transfers initiated by offers transmitted through the mail accompanied by a form of payment (e.g., a check or draft). The thinking is that these offers may induce an owner to sell mineral rights without understanding the consequences of the transaction or for a price far below market value. This legislation was a reaction to allegations that unsophisticated land owners were taken advantage of during the recent Haynesville Shale boom, by mineral and royalty buyers (mainly one company), who solicited minerals and royalty via mass unsolicited mail-outs checks included. Often these solicitations sought the purchase of all or a portion of an owner’s mineral or royalty interests in a broad area, enticed the owner by including a nominal payment, and included language appointing the buyer as the seller’s agent for the execution of any curative necessary to vest title in the buyer. In normal real estate transactions, sellers have the remedy, under Louisiana Civil Code Article 2598, of seeking rescission of the sale for lesion if the price is less than one-half (1/2) of the fair market value. Given inherent risk and uncertainty as to value, under Mineral Code Article 17, lesion does not apply to the sale of mineral rights. Because of that, the Act’s comments further indicate that it was felt that the owners had relatively little protection under existing law. In 2013, similar legislation was introduced, but was defeated, as it was much broader and more problematical (e.g., it would have applied to mineral leases). Instead, the matter was referred to the Louisiana Law Institute, which drafted Act 179.

Summary

Under Act 179

- A sale of mineral rights by mail solicitation is the creation or transfer of a mineral servitude or mineral royalty, or the granting of an option, right of first refusal, or contract to create or to transfer a mineral servitude or mineral royalty, that is contracted **pursuant to an offer that is received by the transferor through the mail or by common carrier** and is **accompanied by any form of payment**. As used in the Act, the term “mineral rights” **does not include a mineral lease**.
- It does not apply to a sale of mineral rights by mail solicitation contracted **subsequent to a prior personal contact that included a meaningful exchange between the transferor and the transferee**. The comments state that contracts that are preceded by negotiations—whether in person, by telephone, or by written or electronic communication—do not involve the same potential for abuse associated with transfers initiated by unsolicited mail communications. They further state that the term “prior personal contact” does not

require in-person negotiations or even significant negotiations between the parties or their representatives, just that a meaningful exchange take place between the transferor and transferee. But mass-mailings, automated telephone calls, and other communications that do not involve a meaningful exchange would not be excluded from the Act. This exclusion would seem to inherently involve questions of fact and be ripe for litigation.

- An instrument covered by the act-i.e. one evidencing a sale of mineral rights by mail solicitation is required to contain on the first page, a caption “The Seller’s Right to Cancel” and a **disclosure** (the content of which is spelled out in the act), in conspicuous and legible type that is not smaller than fourteen-point font, which includes a statement advising **the transferor that it has the right to cancel the transfer by mailing a notice to the buyer**, that the notice must be **mailed no later than 60 days after the transferor’s execution of the agreement**, the transferor must return any payment to the buyer within 60 days after mailing the notice and that the transferor may lose important rights if it does not record the notice in the conveyance records within 90 days after the recordation of the transfer. A form of notice of cancellation is required to be included in the deed, but that notice is not required to be used by the transferor-he must only give written notice indicating an intent to cancel, and give the names of the transferor and transferee and a description of the land that is subject to the affected mineral rights.
- **If the instrument** evidencing the sale of mineral rights by mail solicitation **contains the required disclosure**-the transferor may rescind the agreement **within 60 days after the date the transferor signs it**. **If such instrument does not** contain the required disclosure, the transferor may rescind the agreement **within a 3 year preemptive period** from when the transferor signs it.
- The rescission of the sale is effective as between the parties when the notice is transmitted. **If the required disclosure is contained in the instrument, a third person acquiring from the transferee is subject to the effect of rescission within 90 days after the filing of the instrument creating the mineral rights. In all other cases, rescission may not impair the rights of third persons who acquire an interest in the mineral rights prior to the time the notice of rescission is filed for registry.** Rescission is not effective as to a party making royalty or other payments until 60 days after receipt of a certified copy of the notice of rescission.
- If an instrument evidencing the sale of mineral rights by mail solicitation does not contain the required disclosure, a transferee against whom the right to rescind is exercised shall be liable for attorney’s fees and court costs and may, in addition to restoring any royalties or other payments to the transferor, a court may award as damages an amount up to twice the sum of royalties or other payments received by the transferee.
- The Act also provides that a number of terms that might be viewed as means of avoiding the Act are null (e.g., any provision that excludes, limits or waives the obligations under the Act, provisions appointing the transferee as agent for transferor, choice of law or forum or venue outside of this state, venue inconsistent with the Code of Civil Procedure, indemnity in favor of transferee for any loss related to transferor’s right to rescind).

Practice Tips

Act 179 potentially affects not only those buying minerals and royalty, but others, including those taking leases. It is difficult to predict the unintended consequences that may arise. Here are a few of the tips you should consider when buying minerals or royalty or taking leases:

- If you fit the Act comply with the Act.
- If you don't want the Act to apply, and you are buying minerals or royalty utilizing mail in any way, then
 - Don't include a payment with any written offer. If you are going to handle both by mail, do so separately with some time in between. Do not restate offer in letter forwarding payment.
 - Have some prior meaningful contact-personal, by phone, or by email concerning the transaction prior to any written offer by mail.
 - Establish a process that can be proven, stick to it and keep records.
 - Consider including a statement of the process in the deed. The transferor cannot waive the application of the Act, but if there was personal contact on X date, an offer on Y date, and a closing and payment on Z date, then consider saying so and referencing the check number.
- If you are not buying with the use of offers via mail, consider including information in the deed confirming same. For example, in a non-simultaneous closing, state when the Purchase and Sale Agreement was executed and when the closing and funding occurred.
- If you are dealing with a TRANSFEREE (i.e., the party who obtained minerals or royalty and is subject to recession IF the Act applies)-whether you are acquiring minerals or royalty or an interest therein or obtaining a lease covering same or taking a mortgage or security interest therein:
 - The Act only applies to mineral servitudes or mineral royalty interests created or transferred on or after May 19, 2016.
 - If the disclosure required by the Act is included, and you are within 90 days of the filing of the instrument-note, even as a third party, you are subject to the risk of rescission-even if the notice is filed after your acquisition or lease.
 - After the 90 days, and up to 3 years, with or without the required disclosure, as a third party, you are only affected by any rescission if the notice gets recorded before your acquisition or lease. You should therefore check the conveyance records to confirm

no notice has been filed prior to acquiring or leasing. Note that if you delay recording, you are subject to the risk that an intervening notice may be filed.