

## UNIQUE TITLE ISSUES

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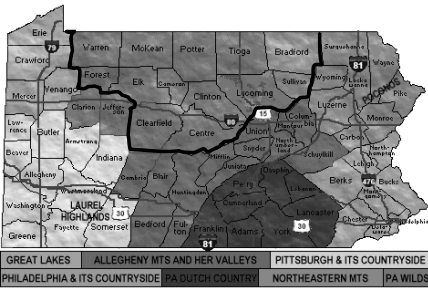
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## Counties Central Pennsylvania Lumber Company Had Interests



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## "WASHING THE TITLE"

- 1880 Thomas Proctor sells to Elk Tanning Company
  - Excepts and reserves oil, gas, and mineral rights
- 1890 Elk Tanning Company sells to Union Tanning Company
  - Excepts and reserves oil, gas, and mineral rights
- 1900 Union Tanning Company sells to Central Pennsylvania Lumber Company
  - Excepts and reserves oil, gas, and mineral rights

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■ 1930's – Central Pennsylvania Lumber Company sells parcel to  
A) Private party or  
B) Commonwealth of Pennsylvania  
■ Excepting and Reserving oil, gas, and mineral rights

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Q: Who owns oil, gas, and mineral rights?  
  
A: Central Pennsylvania Lumber Company

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Problem  
Parallel Title  
"Washing the Title"  
  
Example 1  
Unseated land not separately  
assessed for oil, gas, and mineral  
rights

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### Definition of Unseated Land

- In a state of nature
- Lack of permanent improvements
- "Depends altogether upon what had been done or what is being done upon it; upon the appearance which it may present to the eye of the assessor" – *Proctor v. Sagamore Big Game Club*, 166 F. Supp. 415

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### 1910

- Central Pennsylvania Lumber company let surface go to tax sale
- Parcel bought at Treasure's Sale by straw man

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### 1913

- Straw man records Treasure's Deed after waiting 2 year redemption period and then reconveys parcel to Central Pennsylvania Lumber Company without the exception and reservation of oil, gas, and mineral rights
- Central Pennsylvania Lumber Company owns surface and oil, gas, and mineral rights

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## Example 2

Unseated land oil, gas and minerals are separately assessed

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- Taxes on oil, gas, and minerals unpaid and returned to County Commissioners
- Central Pennsylvania Lumber Company does not pay taxes on surface
- Surface returns to County Commissioners
- Merger occurs when title to both held by Commissioners

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- Central Pennsylvania Lumber Company or straw man buys parcel at Treasure's Sale
- Waits 2 years to record deed
- Central Pennsylvania Lumber Company own surface and oil, gas, and mineral rights

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Who owns oil, gas, and mineral rights now?

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1950's

- Central Pennsylvania Lumber Company conveys all remaining oil, gas, and mineral rights to Keta Realty Company
- All in the State
- Deed recorded in all applicable counties

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1958

- Keta Realty Company's parent company, Astra Oil & Gas Corp. files for bankruptcy
- All remaining oil, gas, and mineral rights are disposed of by Trustee in Bankruptcy to various Grantees

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## Problem

- You cannot find the Title Wash by “grantoring” the original oil, gas, and mineral reservation (Proctor)
  - Treasure’s Deed does not recite who the taxes were assessed against
  - Identifies land by warrant name and number

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## Solution

- You must search from present owner back by “granteeing” back
- You must look in “Redemption Book” and “Treasure’s Deed Book”
- All counties required to keep an “Unseated Land” Book – may not be in Recorder’s Office
  - Only 2 did not
    - Allegheny and Philadelphia did not
  - 72 PS 5020-409 – requires owners of oil, gas, and minerals to report to assessor

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## Dunham’s Rule

- Peculiar to Pennsylvania
- Rebuttable presumption that in deed between private parties, natural gas is not a mineral and thus does not pass under a deed severing coal and other minerals from the surface tract
  - Dunham and Short v. Kirkpatrick – 101 Pa. 36; 47 Am.Rep. 690 (1882) and explained in US Steel Corp v. Hoge – 304 Pa Supa 182; 450 A.2d 162; 1982 Pa Super
    - “long recognized and relied upon” – Highland v. Commonwealth 400 Pa 261; 161 A.2d 326; 1960 Pa.

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## Dunham's Rule

- If exception and reservation is "oil and minerals" is gas reserved?

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