

Testimony of Laura E. Fox, Esq, at the Senate Environmental Resources and Energy Committee, March 19th, 2013

Hello and thank you to the Committee Chairperson Senator Gene Yaw and the entire Committee for inviting me to speak about this important issue.

My name is Laura Fox and I have been a title lawyer (or dirt lawyer as we often say) for over thirty years, since my graduation from Dickinson School of Law in 1980. I searched titles throughout law school including here in Dauphin County, at the Recorder's Office, just down the street

I began my practice in Allentown, Lehigh County where I worked for an attorney, Carl Hessinger, a prominent real estate and Estate attorney, and Trustee of the Trexler Estate, who also was a title insurance agent for his entire career. In 1985, after a brief stint back in Harrisburg working for a small firm, I became Underwriting Counsel for Lawyers Title, now Fidelity National Title, ("FNF") in Philadelphia, where I continue to practice today.

During my tenure at FNF, I have handled all types of underwriting, specifically supporting agent insurance agents throughout the 67 counties of PA for both residential and commercial transactions, as well as Claims administration. I have been involved with the Pennsylvania Land Title Association ("PLTA") since 1985 in various capacities, currently serving as Chair of the Legislative and Judicial Committee I frequently lecture for the Pennsylvania Bar Association's Pennsylvania Bar Institute on Title Insurance issues.

Contrary to most types of insurance, Title Insurance is not risk assumption but risk elimination. We search titles to determine ownership of the land, as well as verifying encumbrances and liens. Once we know the issues in any given title, we work to resolve the problems and insure "good" title to a new buyer and their lender.

Part of that process of insuring "good title" is clearing any outstanding interests that can occur for a variety of reasons. Sometimes the scrivener in a document simply makes a mistake, other times parties start to do a transaction in one way but end up completing it in another and don't always follow through to clear the title.

But regarding SB 258, somewhat unique to PA, is the fact that starting in the mid-1800s, PA was a "coal" state; and therefore, the subsurface of many properties was routinely reserved to grantors in deeds. This practice continued throughout the years, long after the coal had been mined out and sometimes where no coal existed, just as a common practice.

Until the discovery of (or ability to produce-by-products from) Marcellus Shale, those long ago reservations, had little impact on titles, their transfer or an owners enjoyment of their property. However, because so many of those long forgotten reservations did occur, now that such subsurface interests have become valuable, the current owners of many properties are prevented from being able to transfer those rights, even when the owners who reserved them, can no longer be found.

Quiet Title actions have long been a useful, and straightforward vehicle for property owners to eliminate outstanding interests of many types. SB258, will simply create a rebuttable presumption, that when a reservation of the subsurface interest occurred more than 50 years ago, the subsurface interest has been abandoned and can be stricken, so that current owners may enjoy the full ownership of the property.

However, please remember, that this rebuttable presumption can only be used in a Quiet Title Action, a full Court proceeding. This right to the subsurface will only be stricken by Court Order after stringent requirements of service of the legal action on the parties that reserved the right.

Passage of SB258 is necessary to create certainty in the PA real estate market for both land owners and the companies that wish to purchase those subsurface interests.

Thank you for your time and I welcome any questions.