

**First Regular Session
Sixty-third General Assembly
STATE OF COLORADO**

INTRODUCED

LLS NO. 01-0425.02 Thomas Morris

HOUSE BILL 01-1088

HOUSE SPONSORSHIP

Rippy

SENATE SPONSORSHIP

Dyer (Durango)

House Committees

Senate Committees

Agriculture, Livestock, & Natural Resources

A BILL FOR AN ACT

101 **CONCERNING NOTIFICATIONS REGARDING SEVERED MINERAL RIGHTS.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments that may be subsequently adopted.)

Requires title companies to provide surface owners with written notice at the time of closing or the issuance of a title commitment that the mineral estate has been severed from the surface estate. Requires surface owners to provide mineral estate owners with written notice 30 days prior to the time of any necessary public hearing regarding impending surface development, zoning changes, and subdivision. Allows surface owners to rely on real estate and appraiser's records.

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
*Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.*

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** Article 11 of title 10, Colorado Revised Statutes, is
3 amended BY THE ADDITION OF A NEW SECTION to read:

4 **10-11-123. Notification of severed mineral estates.** (1) FOR
5 PURPOSES OF THIS SECTION:

6 (a) "MINERAL ESTATE" MEANS A MINERAL INTEREST IN REAL
7 PROPERTY, HOWEVER CREATED AND REGARDLESS OF FORM, WHETHER
8 ABSOLUTE OR FRACTIONAL, DIVIDED OR UNDIVIDED, CORPOREAL OR
9 INCORPOREAL, INCLUDING A FEE SIMPLE OR ANY LESSER INTEREST OR ANY
10 KIND OF ROYALTY, PRODUCTION PAYMENT, EXECUTIVE RIGHT,
11 NONEXECUTIVE RIGHT, LEASEHOLD, OR LIEN, IN MINERALS, REGARDLESS OF
12 CHARACTER.

13 (b) "SEVERED" MEANS THAT THE SURFACE OWNER DOES NOT OWN
14 ALL OR ANY PART OF THE MINERAL ESTATE.

15 (c) "SURFACE ESTATE" MEANS AN INTEREST IN REAL PROPERTY
16 THAT DOES NOT INCLUDE THE FULL MINERAL ESTATE AS SHOWN BY THE
17 REAL ESTATE RECORDS OF THE COUNTY IN WHICH THE REAL PROPERTY IS
18 SITUATED.

19 (d) "SURFACE OWNER" MEANS THE OWNER OF THE SURFACE ESTATE
20 AND ANY PERSON WITH RIGHTS UNDER A CONTRACT TO PURCHASE ALL OR
21 PART OF THE SURFACE ESTATE.

22 (2) AT OR PRIOR TO THE TIME OF A TITLE INSURANCE COMPANY'S
23 PROVISION OF CLOSING AND SETTLEMENT SERVICES OR THE ISSUANCE OF A
24 TITLE COMMITMENT WITH REGARD TO A SURFACE ESTATE, THE COMPANY
25 SHALL PROVIDE WRITTEN NOTIFICATION TO THE NEW SURFACE OWNER OF
26 THE FOLLOWING:

27 (a) THAT THE MINERAL ESTATE HAS BEEN SEVERED FROM THE

1 SURFACE ESTATE AND THAT THERE IS A SUBSTANTIAL LIKELIHOOD THAT A
2 THIRD PARTY HOLDS SOME OR ALL INTEREST IN OIL, GAS, OTHER MINERALS,
3 OR GEOTHERMAL ENERGY IN THE PROPERTY; AND

4 (b) THAT SUCH MINERAL ESTATE MAY INCLUDE THE RIGHT TO
5 ENTER AND USE THE PROPERTY WITHOUT THE SURFACE OWNER'S
6 PERMISSION.

7 (3) IN DETERMINING COMPLIANCE WITH THIS SECTION, TITLE
8 COMPANIES MAY RELY ON THE REAL ESTATE RECORDS OF THE COUNTY IN
9 WHICH THE REAL PROPERTY IS SITUATED AND SHALL NOT BE LIABLE FOR
10 ANY ERRORS OR OMISSIONS IN SUCH RECORDS.

11 **SECTION 2.** Title 24, Colorado Revised Statutes, is amended BY
12 THE ADDITION OF A NEW ARTICLE to read:

13 **ARTICLE 65.5**

14 **Notification of Surface Development**

15 **24-65.5-101. Legislative declaration - intent.** THE GENERAL
16 ASSEMBLY RECOGNIZES THAT THE SURFACE ESTATE AND THE MINERAL
17 ESTATE ARE SEPARATE AND DISTINCT INTERESTS IN REAL PROPERTY AND
18 THAT ONE MAY BE SEVERED FROM THE OTHER. THE GENERAL ASSEMBLY
19 FURTHER RECOGNIZES THAT IF THE SURFACE ESTATE AND MINERAL ESTATE
20 ARE SEVERED, THE OWNERS OF THESE ESTATES MAY BE ENTITLED TO THE
21 NOTICE SPECIFIED IN SECTION 31-23-215 OR 34-60-106 (14), C.R.S. IT IS
22 THE INTENT OF THE GENERAL ASSEMBLY THAT THIS ARTICLE PROVIDE A
23 STREAMLINED PROCEDURE FOR PROVIDING NOTICE TO OWNERS OF MINERAL
24 INTERESTS CONCERNING IMPENDING SURFACE DEVELOPMENT. FURTHER,
25 IT IS THE INTENT OF THE GENERAL ASSEMBLY TO INCLUDE LOCAL
26 GOVERNMENTS IN THE NOTIFICATION PROCESS WITHOUT CREATING
27 ADDITIONAL LIABILITIES FOR LOCAL GOVERNMENTS.

1 **24-65.5-102. Definitions.** AS USED IN THIS ARTICLE, UNLESS THE
2 CONTEXT OTHERWISE REQUIRES:

3 (1) "APPLICANT" MEANS A PERSON WHO SUBMITS AN APPLICATION
4 FOR DEVELOPMENT TO A LOCAL GOVERNMENT.

5 (2) "APPLICATION FOR DEVELOPMENT" MEANS AN APPLICATION FOR
6 A PRELIMINARY OR FINAL PLAT FOR A SUBDIVISION, A PLANNED UNIT
7 DEVELOPMENT, OR ANY OTHER SIMILAR LAND USE DESIGNATION THAT IS
8 USED BY A LOCAL GOVERNMENT. "APPLICATION FOR DEVELOPMENT"
9 INCLUDES APPLICATIONS FOR ZONING, REZONING, AND SPECIAL USE
10 PERMITS WHERE SUCH APPLICATIONS ARE IN ANTICIPATION OF NEW
11 SURFACE DEVELOPMENT, BUT DOES NOT INCLUDE BUILDING PERMIT
12 APPLICATIONS.

13 (3) "LOCAL GOVERNMENT" MEANS A COUNTY; A HOME RULE OR
14 STATUTORY CITY, TOWN, OR CITY AND COUNTY; OR A TERRITORIAL
15 CHARTER CITY.

16 (4) "MINERAL ESTATE" MEANS AN INTEREST IN REAL PROPERTY
17 THAT IS LESS THAN FULL FEE TITLE AND THAT INCLUDES MINERAL RIGHTS
18 AS SHOWN BY THE REAL ESTATE RECORDS OF THE COUNTY IN WHICH THE
19 REAL PROPERTY IS SITUATED.

20 (5) "MINERAL ESTATE OWNER" MEANS THE OWNER OF A MINERAL
21 ESTATE UNDERNEATH A SURFACE ESTATE THAT IS SUBJECT TO AN
22 APPLICATION FOR DEVELOPMENT.

23 (6) "SURFACE ESTATE" MEANS AN INTEREST IN REAL PROPERTY
24 THAT IS LESS THAN FULL FEE TITLE AND THAT DOES NOT INCLUDE MINERAL
25 RIGHTS AS SHOWN BY THE REAL ESTATE RECORDS OF THE COUNTY IN WHICH
26 THE REAL PROPERTY IS SITUATED.

27 (7) "SURFACE OWNER" MEANS THE OWNER OF THE SURFACE ESTATE

1 AND ANY PERSON WITH RIGHTS UNDER A RECORDED CONTRACT TO
2 PURCHASE ALL OR PART OF THE SURFACE ESTATE.

3 **24-65.5-103. Notice requirements.** (1) NOT LESS THAN THIRTY
4 DAYS BEFORE THE DATE SCHEDULED FOR THE INITIAL PUBLIC HEARING BY
5 A LOCAL GOVERNMENT ON AN APPLICATION FOR DEVELOPMENT, THE
6 APPLICANT SHALL SEND NOTICE, BY FIRST CLASS MAIL, TO:

7 (a) THE MINERAL ESTATE OWNER. SUCH NOTICE SHALL CONTAIN
8 THE TIME AND PLACE OF THE INITIAL PUBLIC HEARING, THE NATURE OF THE
9 HEARING, THE LOCATION OF THE PROPERTY THAT IS THE SUBJECT OF THE
10 HEARING, AND THE NAME OF THE APPLICANT.

11 (b) THE LOCAL GOVERNMENT CONSIDERING THE APPLICATION FOR
12 DEVELOPMENT. SUCH NOTICE SHALL CONTAIN THE NAME AND ADDRESS OF
13 THE MINERAL ESTATE OWNER.

14 (2) THE APPLICANT SHALL IDENTIFY THE MINERAL ESTATE OWNER
15 BY EXAMINING THE RECORDS IN THE OFFICE OF THE COUNTY CLERK AND
16 RECORDER OF THE COUNTY IN WHICH THE REAL PROPERTY IS LOCATED. IF
17 SUCH RECORDS DO NOT IDENTIFY ANY MINERAL ESTATE OWNERS, THE
18 APPLICANT SHALL BE DEEMED TO HAVE ACTED IN GOOD FAITH AND SHALL
19 NOT BE SUBJECT TO FURTHER OBLIGATIONS UNDER THIS ARTICLE. THE
20 APPLICANT SHALL BE ENTITLED TO RELY UPON THE TAX RECORDS OF THE
21 OFFICE OF THE COUNTY ASSESSOR OF THE COUNTY WHERE THE REAL
22 PROPERTY IS LOCATED FOR THE IDENTIFICATION OF THE MOST RECENT
23 ADDRESSES OF THE MINERAL ESTATE OWNER, AND THE APPLICANT SHALL
24 NOT BE LIABLE FOR ANY ERRORS OR OMISSIONS IN SUCH RECORDS.

25 (3) A MINERAL ESTATE OWNER MAY WAIVE THE RIGHT TO NOTICE
26 UNDER THIS SECTION IN WRITING TO THE APPLICANT.

27 (4) LOCAL GOVERNMENTS SHALL, AS A CONDITION OF APPROVAL OF

1 AN APPLICATION FOR DEVELOPMENT, REQUIRE THE APPLICANT TO CERTIFY
2 THAT NOTICE HAS BEEN PROVIDED TO THE MINERAL ESTATE OWNER
3 PURSUANT TO SUBSECTION (1) OF THIS SECTION OR THAT THE MINERAL
4 ESTATE OWNER HAS WAIVED THE RIGHT TO SUCH NOTICE PURSUANT TO
5 SUBSECTION (3) OF THIS SECTION.

6 **24-65.5-104. Enforcement.** MINERAL ESTATE OWNERS AND
7 SURFACE OWNERS WHO ARE ENTITLED TO NOTICE PURSUANT TO SECTION
8 24-65.5-103, 31-23-215 (1), OR 34-60-106 (14), C.R.S., SHALL HAVE
9 STANDING TO ENFORCE THE PROVISIONS OF THOSE SECTIONS AND TO MAKE
10 CLAIMS AS MAY BE AVAILABLE AT LAW OR EQUITY FOR NONCOMPLIANCE.

11 **SECTION 3.** 24-67-107 (4), Colorado Revised Statutes, is
12 amended to read:

13 **24-67-107. Application and construction of article.** (4) Nothing
14 in this article shall be construed to waive the requirements for substantial
15 compliance by counties and municipalities with the subdivision
16 requirements of part 1 of article 28 of title 30 and part 2 of article 23 of
17 title 31, C.R.S., respectively, and appropriate regulations promulgated
18 thereunder. COUNTIES AND MUNICIPALITIES, INCLUDING HOME RULE
19 CITIES, SHALL COMPLY WITH THE REQUIREMENTS OF ARTICLE 65.5 OF THIS
20 TITLE. Subdivision regulations applicable to planned unit developments
21 may differ from those otherwise applicable. In order to facilitate
22 processing of applications, however, a county or municipality, pursuant
23 to resolution or ordinance, may provide for concurrent or simultaneous
24 processing of planned unit development and subdivision applications.

25 **SECTION 4.** 30-28-133 (10), Colorado Revised Statutes, is
26 amended to read:

27 **30-28-133. Subdivision regulations.** (10) It is recognized that

1 surface and mineral estates are separate and distinct interests in land and
2 that one may be severed from the other and that the owners of subsurface
3 mineral interests and their lessees, if any, are entitled to the notice
4 specified in section 31-23-215, C.R.S., AND SECTION 24-65.5-103, C.R.S.,
5 and shall be recognized by the commission as having the same rights and
6 privileges as surface owners.

7 **SECTION 5.** 31-23-215 (1), Colorado Revised Statutes, is
8 amended to read:

9 **31-23-215. Procedure - legal effect.** (1) The commission shall
10 approve or disapprove a plat within thirty days after said plat has been
11 submitted to it; otherwise such plat shall be deemed approved and a
12 certificate to that effect shall be issued by the commission on demand
13 unless the applicant for the commission's approval waives this
14 requirement and consents to an extension of such period. The ground of
15 disapproval of any plat shall be stated upon the records of the
16 commission. Any plat submitted to the commission shall have submitted
17 with it the names and addresses of all surface owners, mineral owners,
18 and lessees of mineral owners to whom notices of a hearing shall be sent
19 as their names may appear upon the plats or records in the county clerk
20 and recorder's office and as their most recent addresses may appear in a
21 telephone or other directory of general use in the area of the property or
22 on the tax records of the municipality or county. No plat shall be acted
23 on by the commission without affording a hearing thereon. Notice of the
24 time and place of such hearing shall be sent to said persons by registered
25 mail not less than ~~five~~ THIRTY days before the date fixed therefor IN
26 ACCORDANCE WITH ARTICLE 65.5 OF TITLE 24, C.R.S.

27 **SECTION 6.** 34-60-106 (14), Colorado Revised Statutes, is

1 amended to read:

2 **34-60-106. Additional powers of the commission.** (14) The
3 commission shall provide a means for giving reasonable advance notice
4 of the commencement of oil and gas operations to the appropriate local
5 government and surface owners whose lands will be affected thereby. IN
6 DETERMINING THE IDENTITIES OF SURFACE OWNERS, OPERATORS MAY RELY
7 ON THE REAL ESTATE RECORDS OF THE CLERK AND RECORDER OF THE
8 COUNTY WHERE THE LANDS ARE SITUATED, AND IN DETERMINING THE
9 ADDRESSES OF SURFACE OWNERS, OPERATORS MAY RELY ON THE TAX
10 RECORDS OF THE ASSESSOR OF THE COUNTY WHERE THE LANDS ARE
11 SITUATED.

12 **SECTION 7. Safety clause.** The general assembly hereby finds,
13 determines, and declares that this act is necessary for the immediate
14 preservation of the public peace, health, and safety.