

## Chapter 11

### Comparative Analysis of Unique Title Materials

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#### Synopsis

§ 11.01.	<b>Introduction</b> .....	<b>325</b>
§ 11.02.	<b>Ownership of Real Estate Titled in Defunct Corporations</b> .....	<b>326</b>
	[1] — Pennsylvania .....	327
	[2] — Ohio .....	329
	[3] — West Virginia.....	331
§ 11.03.	<b>Ownership of Real Estate Titled in Unincorporated Associations</b> .....	<b>332</b>
	[1] — Pennsylvania .....	333
	[2] — Ohio .....	335
	[3] — West Virginia.....	338
§ 11.04.	<b>Forfeiting Expired Oil and Gas Leases</b> .....	<b>340</b>
	[1] — Pennsylvania .....	340
	[2] — Ohio .....	342
	[3] — West Virginia.....	346
§ 11.05.	<b>Validity of Reservations Made in Favor of Strangers to Title/Deed</b> .....	<b>348</b>
	[1] — Pennsylvania .....	348
	[2] — Ohio .....	351
	[3] — West Virginia.....	352
§ 11.06.	<b>Proper Use of Corrective Deeds</b> .....	<b>353</b>
	[1] — Pennsylvania .....	354
	[2] — Ohio .....	355
	[3] — West Virginia.....	357
§ 11.07.	<b>Ownership of the Minerals Lying Beneath the Ohio River</b> .....	<b>357</b>
	[1] — Pennsylvania .....	358
	[2] — Ohio/West Virginia .....	358

#### § 11.01. Introduction.

A plethora of articles exist discussing how to cure various title defects. For example, there are white papers addressing how to cure gaps in title, resolve competing chains of title, and confirm that a fiduciary is, in fact, empowered

to convey or lease real property on behalf of his principal. This chapter seeks to differentiate itself from those earlier articles by providing practitioners with information and practical solutions to cure extraordinary title defects (*i.e.*, defects not typically encountered during a title examination). These defects are: (1) ownership of real estate titled in defunct corporations; (2) ownership of real estate titled in unincorporated associations; (3) forfeiting expired oil and gas leases; (4) validity of reservations made in favor of strangers to title/deed; (5) proper use of corrective deeds; and (6) ownership of the minerals lying beneath the Ohio River. Each title defect will be discussed in turn.

### **§ 11.02. Ownership of Real Estate Titled in Defunct Corporations.**

In examining title to real estate, practitioners may come across situations where: (1) a corporation took title to the subject land; (2) the corporation subsequently dissolved, expired, or had its articles canceled; and (3) the corporation failed to convey or transfer the subject land during the winding-up of its business affairs. These situations create complexities in ensuring the marketability of title. It is “hornbook” law that an ownership interest in real estate cannot be “abandoned” in the sense that the interest ceases to exist. An interest in real estate can be disposed of or lost only by or through a transfer to another person (*e.g.*, conveyance, devise). That is to say, some positive action is necessary to convey title to real estate.<sup>1</sup> Accordingly, it is important for practitioners to correctly identify those persons who have authority to execute deeds, leases, and other agreements on the corporation’s behalf when that corporation has become defunct.

Regardless of the state where the subject land is located, practitioners should first review the applicable secretary of state’s business records and confirm that the corporation is indeed defunct. In certain instances, a foreign corporation may have lost its right to transact business in the state where the subject land is located, but nevertheless continue to operate in its state

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<sup>1</sup> Rodney D. Knutson, “Defunct Companies That Hold Record Title to Mining Properties: Problems and Solutions,” 24 *Rocky Mtn. Min. L. Inst.* 10 (1978).