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Chapter 7

Co-Tenancy and Statutory Unitization in the Appalachian Basin

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Synopsis

§ 7.01. Introduction — Why Is Co-Tenancy an Issue in the Appalachian Basin?

The states that comprise the Appalachian Basin have been around for a long time, much longer than the oil and gas producing states in the Mid-Continent. Indeed, Pennsylvania was one of the original colonies, and was formed as a result of a royal land grant to William Penn in 1681. Both Kentucky and West Virginia were once a part of Virginia, which was settled in 1607. Kentucky was carved from Virginia and was admitted to the Union in 1792. West Virginia was formed from another portion of Virginia, and

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became a state in 1863. Ohio became a state in 1803, and was the first state partitioned from the Northwest Territory.

Because of the early settlement of the states comprising the Appalachian Basin, the land has descended for generations, in many instances leading to joint ownership of tracts of property by various co-owners whose identity is not certain and/or who cannot be located. Issues related to joint ownership were compounded at the turn of the twentieth century when landowners began to split surface and mineral estates. In many instances, the mineral estate was purchased for development necessary to fuel the industrial revolution. In other instances, the mineral estate was reserved by an owner who wanted to transfer the surface but retain the mineral estate which was becoming increasingly valuable. As a result of such transfers and reservations, tracts of property can have numerous owners, including some who may be difficult to locate or identify, which is often problematic for landowners and producers who want to develop the oil and gas interests.

Individual states have developed common law principles and have enacted statutory mechanisms in an effort to deal with the many issues that arise out of such joint ownership, or "co-tenancy," of property. With respect to the development of the mineral estate, there is a split of authority among the various states as to whether one or more co-tenants can develop the oil and gas absent consent of the remaining co-tenants. As explained in more detail below, the majority of the states allow one co-tenant to extract oil and gas without the consent of the remaining co-tenants. On the other hand, some states require consent from all co-tenants before oil and gas can be extracted, which greatly inhibits the development of mineral interests. This chapter discusses the status of the law of co-tenancy in the various states in the Appalachian Basin, including West Virginia's new co-tenancy statute, and statutory unitization in Ohio and Kentucky.

§ 7.02. The Law of Co-Tenancy in the Appalachian Basin.

The states that comprise the Appalachian Basin include Pennsylvania, West Virginia, Ohio, and Kentucky. Each of these states has established common law and statutory mechanisms to address issues resulting from the