

1 **State of Arkansas**  
2 **78th General Assembly**  
3 **Regular Session, 1991**  
4 **By: Representative Shaver**

**A BILL ACT 660 OF 1991**  
**HOUSE BILL 1773**

**For An Act To Be Entitled**

8 "AN ACT TO PROVIDE A PROCEDURE FOR PERFECTING LAND TITLES  
9 TO SURFACE LANDS ABANDONED OR INTERESTS WAIVED BY MISSING  
10 OR ABSENT TENANTS-IN-COMMON, COTENANTS OR JOINT TENANTS  
11 NOT IN POSSESSION; AND FOR OTHER PURPOSES."

12  
13 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

14  
15 SECTION 1. All right or claim of right, title, interest, equity and  
16 estate by a cotenant or tenant-in-common, including minors, to surface rights  
17 in real property, which the cotenant or tenant-in-common is not possessing,  
18 having been created by intestate descent and distribution or under the testate  
19 distribution of those surface rights by the cotenant or tenant-in-common's  
20 grantor, shall be conclusively deemed waived, abandoned and forfeited to the  
21 other person or legal entity, holding title as cotenant, or tenant-in-common,  
22 and in possession, on the condition that:

23 (a) The cotenant or tenant-in-common, not in possession, and whose  
24 whereabouts are unknown, has made no written demand upon the cotenant or  
25 tenant-in-common, in possession, for rents, profits or possession of the  
26 surface rights for a twenty-year period;

27 (b) After the expiration of the twenty-year period, whether commencing  
28 before or after the effective date of this act, the cotenant or tenant-in-  
29 common, in possession, publishes notice in a newspaper of general circulation  
30 in the county in which the surface rights are located, of an intent to oust  
31 the cotenant or tenant-in-common, not in possession, from the lands described  
32 in the notice, as a result of the abandonment and waiver referred to above.  
33 Said notice shall be published once a week for two (2) consecutive weeks. Not  
34 less than ninety (90) days nor more than three hundred and sixty-five (365)  
35 days following the last date of publication referred to herein, the cotenant  
36 or tenant-in-common, in possession, may maintain an action to quiet title in

1 the county in which the surface rights are situated and located, with the  
2 rights or claim of right of the cotenant or tenant-in-common, not in  
3 possession, having been conclusively deemed waived, abandoned and forfeited to  
4 the person or legal entity, holding as cotenant, or tenant-in-common, and in  
5 possession thereof, and upon successful prosecution of the action to quiet  
6 title, the cotenant, or tenant-in-common, in possession, shall hold the  
7 surface rights free and clear of any claim or title in the cotenant or tenant-  
8 in-common, including minors, not in possession; and

9 (c) The following form of notice shall be sufficient, for purposes of  
10 this act:

11

12 \_\_\_\_\_, the owner and possessor of the

13 (Name)

14 surface rights to the real property described below, do hereby state, affirm  
15 and give notice to any missing or absent claimants, whose whereabouts are  
16 unknown, to said real property of my intent to oust said missing or absent  
17 claimant, who has made no written claim for rents, profits or possession of  
18 said real property during the last twenty (20) years and intend to institute  
19 an action to quiet title to such real property. The real property referred to  
20 is described as follows:

21

22

23

24

\_\_\_\_\_

25

(Signature)

26

27 Subscribed and sworn to before me this \_\_\_\_\_ day of

28 \_\_\_\_\_, \_\_\_\_\_.

29

30 (Seal)

31

32 SECTION 2. For purposes of the aforementioned action to quiet title, an  
33 affidavit or other evidence denying the receipt of written demand referred to  
34 in condition numbered 1, above, and an affidavit or other evidence affirming  
35 the publication of notice of intent to oust referred to in condition numbered  
36 2, above, shall be sufficient evidence to sustain the plaintiff's burden of

1 proof in said action, with no other evidence necessary. It shall not be  
2 necessary that the notice or the action to quiet title name the missing or  
3 absent cotenant or tenant-in-common, not in possession, as those missing  
4 persons may be collectively referred to as "missing or absent claimants" to  
5 the lands described in the notice or action.

6

7 SECTION 3. This act shall not apply to mineral rights or other  
8 subsurface rights held by cotenants or tenants-in-common. For purposes of  
9 this act, cotenants or tenants-in-common shall include joint tenants.

10

11 SECTION 4. All provisions of this act of a general and permanent nature  
12 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code  
13 Revision Commission shall incorporate the same in the Code.

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15 SECTION 5. If any provision of this act or the application thereof to  
16 any person or circumstance is held invalid, such invalidity shall not affect  
17 other provisions or applications of the act which can be given effect without  
18 the invalid provision or application, and to this end the provisions of this  
19 act are declared to be severable.

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21 SECTION 6. All laws or parts of laws in conflict with this act are  
22 hereby repealed.

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*/s/J. L. Shaver*

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APPROVED: 3-20-91

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