

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

A Bill

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

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

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

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13 _____, the owner and possessor of the

14 (Name)

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

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28 Subscribed and sworn to before me this _____ day of

29 _____, _____.

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31 (Seal)

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

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

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

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

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

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

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26 /s/J. L. Shaver

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