

LEGISLATIVE & REGULATORY UPDATE

By Nikolas Tysiak, Legislative and Regulatory Chairman



There have been interesting developments surrounding Renewable Energy Zoning, Estate Administration, Real Estate Tax Sales, and all also regarding the West Virginia Unknown Heirs Act.

Renewable Energy Development and Zoning

Renewable energy development faced significant zoning challenges during this period. The Pennsylvania Commonwealth Court's decision in *West Lampeter Solar 1, LLC v. West Lampeter Township Zoning Hearing Board*, 2026 WL 110932, — A.3d — (2026) established important precedent for solar development, holding that a proposed 25-acre agrivoltaics project combining solar energy production with sheep grazing was not agricultural use under zoning ordinances. The court determined that agriculture, as an undefined term given its plain and ordinary meaning, does not include solar energy production, even when combined with traditional agricultural activities like sheep grazing. This ruling significantly impacts solar developers seeking to utilize agricultural zoning classifications for renewable energy projects.

Ohio courts addressed wind energy development in *One Energy Enterprises Inc. Board of Allen Township Trustees of Hancock County One Energy Enterprises Inc v. Board of Allen Township Trustees of Hancock County*, 2026 WL 357969 (2026), involving disputes over wind turbine expansion and local zoning authority. The case arose when Allen Township, historically without zoning laws, began considering zoning regulations in response to proposed wind turbine expansion, demonstrating ongoing tension between renewable energy development and local control over land use.

Estate Administration and Real Property Transfers

Estate-related property disputes also appeared across multiple jurisdictions. Pennsylvania's Superior Court in *Imbrenda v. Imbrenda*, 2026 WL 81887, — A.3d — (2026) addressed a quiet title action involving allegations of forged deeds transferring property from family members to a deceased father. The case largely involved the acceptability of evidence from interested parties regarding the allegedly forged deed. The court examined the application of Pennsylvania's Dead Man's Act, a statute designed to facilitate testimony about pre-death transactions, pursuant to an allegedly forged 1978 deed. The Court ultimately held that a statutory exception to the Dead Man's Act, for parties claiming property interests under the deceased, applied because the controversy involved ownership interests following the father's death rather than estate claims, and found the testimony of such interested parties appropriate.

Ohio courts addressed estate administration complexities in *Estate of Guito Alibrando v. Minor*, 2026-Ohio-133, (5th Cir. 2026), involving disputes over real property sales by a holder of power of attorney and the distinction between probate and non-probate assets in joint survivorship accounts. The court clarified that funds in joint and survivorship accounts are non-probate assets that pass to the surviving joint owner outside of estate administration procedures.

In re Estate of Forte, 2026 WL 249802, — A.3d — (2026), a case where Pennsylvania's Superior Court addressed spousal election rights and property settlement agreements in contested estate proceedings. The Superior Court examined the Orphans' Court's mandatory jurisdiction over estate administration and distribution, noting the court's authority over both decedent estates and testamentary trusts.

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Tax Title and Property Redemption Issues

Tax title procedures generated significant litigation during this period. Pennsylvania's Supreme Court in *In re Upset Sale, Tax Claim Bureau of Tioga County*, Control No. 012488, 349 A.3d 933 (2026) established that, absent irregularity or illegality in upset tax sale proceedings tied to allegedly inadequate sale prices, the Real Estate Tax Sale Law does not permit landowners to seek equitable relief based solely on sale price, regardless of the ratio between sale price and fair market value.

West Virginia's Intermediate Court of Appeals addressed tax redemption rights in *Roper v. Mattera*, 2026 WL 290363, Not Reported in S.E. Rptr. (February 3, 2026), holding that property owners retain redemption rights until a tax deed is actually issued. The court emphasized that under W.Va. Code § 11A-3-56, "the owner of a tax delinquent property may redeem that property at any time before a tax deed is issued," protecting property owners' rights even when purchasers at tax sales have pending requests for deed issuance.

Winged Foot Minerals, LLC v. SWN Production Company, 2026 WL 685161 (not reported in S.E. Rptr.) (March 3, 2026) was a West Virginia Intermediate Court of Appeals decision addressing the validity of a 1993 tax deed purporting to convey a three-fourths interest in oil and gas rights underlying approximately 227 acres in Marshall County, West Virginia. The case centers on whether severed mineral interests can be properly conveyed through tax deed procedures when the severed minerals may not have been correctly assessed for taxation, and when the severed minerals also appear to have remained assessed with the surface.

The dispute involves a three-fourths oil and gas interest that was originally devised to James Prendergast's predecessors. Petitioners, led by Winged Foot Minerals, LLC and various members of the Prendergast family, claimed ownership of this 75% mineral interest based on James Prendergast's purchase at a 1991 tax sale and the resulting 1993 tax deed. The remaining one-fourth interest in the oil and gas was initially devised to Joseph Nolte, Jr., and remained unsevered from the surface estate.

The case reveals a complex title history where the one-fourth interest owned by Joseph Nolte, Jr. was never separately severed from the surface and continued to be taxed as part of the overall surface tract assessment. The remaining $\frac{3}{4}$ interest, while severed in title, appears to have remain assessed with the surface following such severance, and also subject to a later, separate assessment that may have been created improperly. The separate assessment apparently covered interests in "royalty" only and were entered in the name of parties with no interest in such $\frac{3}{4}$ minerals. The central legal issue involves the validity of a tax deed for the severed $\frac{3}{4}$ mineral interest and the requirements for proper tax assessment of such interests. The court focused on the fact that the "royalty" assessment was not proper for various reasons, and also that the $\frac{3}{4}$ oil and gas rights remained assessed with the surface, ultimately finding that the tax deed for the "royalty" rights was void.

WEST VIRGINIA UNKNOWN HEIRS PROCEEDING

Heritage Resources -Marcellus Minerals, LLC v. JB Exploration I, LLC, 2026 WL 688270 (not reported in S.E. Rptr.) (February 18, 2026) was a West Virginia Intermediate Court of Appeals decision addressing the seven-year statute of limitations for reopening unknown heir proceedings under West Virginia's Unknown Heir Statute. The case demonstrates the strict temporal limitations that apply to parties seeking to establish their identity and claim mineral interests after unknown heir proceedings have concluded.

JB Exploration I, LLC had apparently initiated unknown heir proceedings as to a tract of 28.25 acres in McElroy District, Tyler County, to obtain leasing authority over mineral interests owned by unknown or missing owners. Heritage Resources-Marcellus Minerals, LLC subsequently sought to intervene and establish its claim to these mineral interests but filed its motion to reopen after the statutory deadline had expired. The Appeals Court agreed but also stated that the trial court likely erred regarding its declaration that Heritage was, in fact, an unknown owner without appropriate factual findings or development of Heritage's claims. The decision was partially reversed and sent back to the trial court for further development on the factual issues.

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