

THE NEWS & OBSERVER

D.R. Horton to return mineral rights to homeowners

By John Murawski – News & Observer, Monday, Sept. 10

After months of public scrutiny, D.R. Horton has said it will return mineral rights and drilling rights to hundreds of North Carolina homeowners, many of whom did not know they had signed away those potentially lucrative rights when they bought their homes.

The Texas home builder notified the N.C. Attorney General on Friday to say it will voluntarily part with the subsurface drilling and mining rights it had legally kept for itself and assigned to a Texas subsidiary, DRH Energy. The company had systematically stripped mineral rights from 850 homes it had sold in North Carolina in the past several years.

“That’s the best-case scenario,” said Noelle Talley a spokeswoman for the state Attorney General. “It means that everybody gets their mineral rights back.”

The company’s decision follows months of customer confusion and efforts to fix the situation by means of investigations conducted by the AG and the N.C. Real Estate Commission. The two state agencies had pressured D.R. Horton to return the land rights, even though state officials lacked the legal authority to force the company to act.

D.R. Horton accumulated mineral rights as North Carolina debated the wisdom of allowing fracking for natural gas in underground shale rock formations. The state legislature by a single vote in July legalized fracking, an industry shorthand for hydraulic fracturing. The drilling and pumping can’t begin for at least two years, until a state commission completes studies and writes rules to govern the practice.

Geologists estimate that North Carolina has about 1.7 trillion cubic feet of natural gas, concentrated in Lee, Moore and Chatham counties. As the owner of the gas drilling rights on hundreds of parcels, D.R. Horton would have been able to collect royalty payments on any natural gas that comes out of the ground.

“That’s kind of scary that they have done that to so many people without their understanding,” said Mary Fowler, a Davie County resident who bought a D.R. Horton home in July 2011. “It just wasn’t discussed until we were at signing.”

Fowler said she and her husband Scott were told their contract did not include mineral rights, but she said the couple did not understand the term. After they signed the papers, D.R. Horton filed a mineral rights deed with the Davie County register of deeds, explaining in detail what the Fowlers had lost and the company had gained:

“The perpetual right to drill, mine, explore and operate for and produce, store and remove any of the Subsurface Resources on or from the Property by any means whatsoever” – starting at 500 feet below the surface and deeper. The mineral rights gave D.R. Horton the right “to re-drill, re-tunnel, ... repair, deepen and operate any such wells or mines.”

Homes that lack mineral rights may run afoul of mortgage agreements and be considered toxic real estate because the occupant of the home has little say over derricks, pipelines, compressor stations and other equipment needed to access and process the natural gas. Such homes could be more difficult to refinance and may lose market value, according to a report issued this year by the state AG's office.

By regaining their mineral rights, the Fowlers and other homeowners will be able to decide for themselves whether they want natural gas fracking under their properties, and to negotiate the terms of their leases with energy exploration companies.

Talley said it's not clear when D.R. Horton will return mineral rights, but it's expected to happen in the coming weeks. The company will notify all homeowners that their mineral rights have been restored, Talley said.

D.R. Horton's decision to return mineral rights has followed a long and arduous path. The company first said in April that it would stop keeping mineral rights from future properties sold. State officials wanted the company to go further and restore the rights it had taken.

Several months later D.R. Horton said it would return mineral rights to any property owner as long as the customer submitted a request in writing. That posture frustrated investigators because it placed the onus on property owners.

At least 200 property owners did request their mineral rights back, but that left hundreds of residents in limbo. In recent weeks, the Attorney General's office offered to contact those owners to let them know they could request the return of their mineral rights, but D.R. Horton said it would send out letters. That raised concerns that some customers wouldn't see the letters or mistakenly assume they were junk mail.

It's not clear why D.R. Horton, the nation's largest home builder, finally relented and agreed to return all mineral rights. Company representatives and lawyers did not return emails and phone calls.

"It was very reluctant on their part, and they were hoping it would all blow over and people would forget about them," said Chapel Hill real estate broker Larry Tollen. "It's a shame it took them as long as it did to realize it was the right response."

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