is the right of entry onto or upon the land to explore for such oil, gas or minerals). These two separate interests are treated differently under the law. *See P & N Investment Corp. v. Florida Ranchettes, Inc.,* 220 So. 2d 451 (Fla. 1st DCA 1969).

The court, in *P & N* said, "[w]hen the surface estate is severed from the mineral estate, the mineral estate is the dominant estate, and, therefore, the owner of the mineral estate has the right of ingress and egress to explore for, locate, and remove the minerals, but he cannot so abuse the surface estate so as unreasonably to injure or destroy its value and is answerable in damages to the owner of the surface estate for any unreasonable injuries done." This standard would apply if a right of entry exists/has not been otherwise extinguished.

Section 704.05, Florida Statutes[2], provides that the right of entry (or of an easement), given or reserved for mining, drilling, exploring, or developing for oil, gas, minerals, or fissionable materials (i.e. the "surface interest"), may be extinguished by operation of MRTA. Pursuant to Attorneys' Title Fund Services, LLC, Title Note 27.01.02, MRTA may be relied on for insuring purposes to eliminate private rights of entry. Title Note 27.01.02 further provides that "[w]here the right of entry is extinguished by MRTA the exception for private oil, gas and mineral rights can be followed by", language indicating there is no right of entry. The inclusion of this language in the Title Commitment indicates affirmative coverage will be provided to the insured, in other words, the stated exception is limited only to the sub-surface interest. The effect of this for title insurance purposes is that the insured is covered for any damages incurred should grantee access the property for purposes of mining, drilling, exploring, or developing for oil, gas, minerals, or fissionable materials.

"Schedule B" of the Title Commitment identifies those encumbrances which must be excepted from coverage (as being not insurable), and which will be carried over to "Schedule B-

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[2] 704.05 Easements and rights of entry. –

(1) The rights and interests in land which are subject to being extinguished by marketable record title pursuant to the provisions of s. 712.04 shall include rights of entry or of an easement, given or reserved in any conveyance or devise of realty, when given or reserved for the purpose of mining, drilling, exploring, or developing for oil, gas, minerals, or fissionable materials.