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The Essentials to Conveying and Chaining Title

Property Ownership in the United States

The term *property* comes from a Latin word which means "belonging to one" or “one’s own.” Ownership of land comes with a handful of rights. It is like owning a bundle of sticks – not just one stick. Some of the sticks might be the rights to the surface estate, the rights to the mineral estates, the right of occupation, the right of use, the right to exclude others, the right to lease the minerals as to certain depths, the right to lease the air, the right to sell or mortgage, the right to give the property away, the right to abandon, the timber rights, the water rights, and the right to receive the fruit of the land.

In the United States, laws govern the ownership, transfer of ownership, and the rights associated with property.

Types of Estates

The term and concept of *estate* can be traced back to the feudal system of England and can refer to four main categories of ownership or aspects thereof. They are:

1. **FREEHOLD ESTATE** - such as *fee simple.* The term *Freehold Property* refers to the ownership of land that allows the possessor to have the use of the property without the hindrance of another party. The owner of this type of estate has the rights of full possession. These rights continue indefinitely or until an occurrence of some event such as the sale of the property or the death of the owner.

2. **LEASEHOLD ESTATES** – In a leasehold estate, the tenant and/or occupant owns the rights of possession and use, but not ownership.

3. **STATUTORY ESTATES** – A *statutory estate* refers to a type of right that is associated with the property such as *community property rights*, *homestead rights, dower* or *curtesy rights,* and *tenancy by the entirety*.

4. **EQUITABLE ESTATES** – An equitable estate involves such aspects as *easements* or *rights of ways*, *liens*, and *encumbrances*. In such cases, the party enjoys neither ownership nor possession.

Types of Property

Conversely, *property* can be divided into several types of categories:

1. **REAL PROPERTY** – *Real property* identifies the property that is secured or fixed property, such as land, or a home, or a building, or any article or structure that has become forever secured to the land. For oil and gas purposes, most states consider the oil and gas minerals in the ground to be real property. The oil and gas minerals that have been produced are considered to be personal property. In several states, the descent and distribution laws devise personal property to heirs in a different way than they devise real property.

2. **PERSONAL PROPERTY –** *Personal property* identifies all of the articles that an individual possesses apart from real property. Personal property might be jewelry, appliances, or home furnishings. For oil and gas purposes, most states consider the oil and gas minerals that have been produced to be personal property. The oil and gas minerals that are still in the ground are considered to be real property. In several states, the descent and distribution laws devise personal property to heirs in a different way than they devise real property.

3. **TANGIBLE PROPERTY –** The word *tangible* comes from a word that means "to touch." Some define *tangible property* as "all property that can be touched or seen, such as houses, cars, fences, or land."

4. **INTANGIBLE PROPERTY –** If tangible property items are those things that can be seen and touched, intangible property are those items that cannot be seen, items that can often be represented by paper, such as life insurance policies, bank accounts, shares of stock, cash, rights of a patent to an invention, rights to oil and gas minerals, water rights, easement rights, or even freedom of speech.

5. **CHATTEL** – Chattel includes personal property such as a car, clothing, growing crops, or an oil and gas lease.

Types of Statutory Estates

Homestead Ownership -Many states have homestead laws. A *homestead* is defined as "the home or the dwelling place of a landowner [which] will include a specific amount of the adjacent land." Homestead rights are valid only if the parties claiming these rights actually occupy the homestead property.

Homestead exemption laws are designed to safeguard those who are incapable of paying their debts. One's homestead is immune and free from all debts except taxes. Some states, however, do not exempt the homestead from prior liens or monetary penalty resulting from public offenses.

The homestead exemption does not mean that a person cannot lose their home to creditors, or that a lien cannot be placed on the home. If a person borrows money on their home, the mortgage holder can foreclose and the exemption has no effect. If an unsecured creditor (someone who has loaned money without obtaining specified assets as collateral) sues and obtains a judgment, the creditor can have the ability to place a lien on the property. However, if Dr. Anthony Miles brought a $50,000 lawsuit against Jim and Janice Anderson because of unpaid medical bills, and Dr. Miles won the case, homestead exemption laws would protect Jim and Janice from losing their home.

Under homestead exemption laws, the head of the household is entitled to the homestead exemption. Upon his or her death, the homestead exemption usually passes to the surviving spouse or to the surviving children until they reach an adult age.

Generally, homestead rights extend to any unsevered mineral estate; therefore, both spouses must execute and gas leases.

The following are examples of homestead statutes in four states:

In **Texas**, a homestead property is free from any forced sale of the property, except from debts created in order to purchase the property, liens, property improvement liens, and taxes. Regardless of how title is vested, neither spouse can sell or mortgage the homestead without the express written adherence of the other spouse. If one spouse dies, the surviving spouse has the right to live in the homestead property for his or her lifetime, regardless of how title was vested at the time of the spouse's death. A severed mineral interest would not be covered by homestead rights. A party can only claim homestead rights on occupied lands or lands that are intended to be occupied. When leasing lands for oil and gas purposes, court house records are often inconclusive as to the homestead status. Because public records hardly ever establish homestead status, the lessee must determine its status prior to, or during, leasing. If both spouses claim homestead rights, then both spouses must sign an oil and gas lease. According to Texas Family Code, Sec. 5.81 and 5.82., a lease containing only one signature becomes inoperative as to the non-joining spouse. It is recommended that all homestead parties join in the execution of a lease.

In **Oklahoma**, a homestead property is free from any forced sale of the property, except from debts created in order to purchase the property, liens, property improvement liens, and taxes. If one spouse dies, the surviving spouse has the right to possession of the homestead property for his or her lifetime regardless of how title was vested at the time of the spouse's death. When leasing lands for oil and gas purposes, if both

spouses claim homestead rights, then both spouses must sign the same oil and gas lease. A lease containing only one signature, or two separately executed leases, would make the lease or leases void.

In **Louisiana**, for conveyance purposes, both husband and wife must execute jointly. After January 1, 1980, both husband and wife must execute any oil and gas lease if the lands contain the *family home.* The homestead exemption protects the owners from any and all liens up to $25,000. Homestead lands cannot exceed 200 rural acres of land or five urban acres of land.

In **Michigan**, if an oil and gas company were to lease a part of a homestead without the signature of the lessor's spouse, the lease would be absolutely void. *Jasper Twp v Martin*, 161 Mich 336; 126 NW 437 (1910).

Community Property Ownership

Most states that have adopted community property rules were first colonized by Spain or France. In the United States, there are nine community property states: *Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, Washington , and Wisconsin*. Wisconsin is not really a true community property state; however, its laws bear a strong resemblance to the laws of the other community property states.

Most states are like *Ohio, Oklahoma, Colorado, West Virginia,* or *Pennsylvania* and are considered equitable property distribution states rather than community property states. Property acquired during marriage is owned as title is vested. In the case of divorce, the property is subject to a special "marital share" and will be divided by the court in a "fair and just" manner with the presumption that the property will be divided equally.

Property in *Alaska* also can be considered community property if a married couple signs an agreement to that effect.

Pennsylvania enacted community property laws for a short period between September 1, 1947 and November 26, 1947. Oklahoma enacted community property laws for a short period between July 26, 1945 and June 2, 1949. Michigan enacted community property laws for a short period between July 1, 1947 and May 10, 1948. Although these states have repealed community property, when examining title ownership, community property laws must be considered during these time periods. Three other states that have enacted and then repealed community property are Nebraska, Hawaii, and Oregon.

In community property states, property accumulated during the course of the marriage, any earnings, profits, income and/or assets would be owned jointly by both spouses and are divided 50/50 or by a dollar value that

would be equitable upon divorce, annulment, or death. This is true even if only one of the parties earned and acquired all of the assets.

Community property would include:

1. Property accumulated during marriage
2. Earnings, profits, and income

The exceptions to this 50/50 rule would be property acquired from:

1. Gifts
2. Property acquired through inheritance
3. Property owned prior to marriage

Although community property laws vary from state to state, generally, community property cannot be conveyed separately. In other words, both parties would need to sign an oil and gas lease.

A Texas court in Orr v. Pope determined that when a spouse from a common law state purchases real property in Texas with his or her separate funds, even though the purchase was made during the couple's marriage, the real property would be considered his or her separate property.

Scenario 1: After ten years of marriage, Kenny and Ruthie separated and are considering getting a divorce. When they first got married, they moved in to the home given to Kenny by his father-in-law. It is located near Dallas, Texas. Since their marriage, they acquired a rental property in the Dallas area. Ruthie had the good fortune to buy her sister's house located in Oklahoma. During the marriage, Kenny received stock options from a company he works for.

1. The community property would be the rental property near Dallas and the stock options.
2. Kenny's separate property is the house acquired by gift. However, if Kenny and Ruthie are living in the house and claim it as their homestead, neither spouse can sell or mortgage the homestead without the express written adherence of the other spouse. If Kenny were to die, Ruthie has the right to live in the homestead property for his lifetime, regardless of how title was vested at the time of the Kenny's death.
3. Since Oklahoma is not a community property state, Ruthie's separate property would be the Oklahoma home.

Scenario 2: The following letter was submitted directing that the minerals for Harold D. Harrison be split according to the community property laws of the State of Texas. What should you do?

Forest National Bank

Re: Account of Imogene A. Harrison Estate and
Account of Harold D. Harrison Estate

Gentlemen:

We, the Forest National Bank and Mary Ann Swinger, have been named Co-Independent Executors of the two captioned estates.

Please be aware that on August 8, 1967 Harold D. Harrison acquired 160 mineral acres in the following described tract of land located in Beaver County, Oklahoma:

Township 23 North, Range 15 West
Section 22: SW/4

Since Imogene and Harold were married prior to the mineral acquisition, *all ownership and all production is community property;* therefore, we would like the interest split between the estates.

Please style the new transferees as follows:

Imogene A. Harrison Estate
Forest National Bank and
Mary Ann Swinger, Co-Independent Executors

Harold D. Harrison Estate
Forest National Bank and
Mary Ann Swinger, Co-Independent Executors

Enclosed are copies of Letters Testamentary, certified copies of death certificates, August 8, 1967 Mineral Deed and September 1, 1964 marriage license.

☐ Transfer the minerals into the Imogene A. Harrison Estate.

☐ Transfer the minerals into the Harold D. Harrison Estate.

☐ Transfer the minerals as directed in the letter.

ANSWER: Transfer the minerals in the Harold D. Harrison estate

Common Law Ownership

In all non-community property states, the ownership of *personal property* by a spouse will be administered by *common law rules*. This means that the ownership of the property will depend on how the property is "vested, titled, or held." In most cases, the key to ownership would depend on whose name or names are on the title. Many times, the property in question is property other than land, home, or minerals ownership. The property involves items that do not contain a title of certificate, such as a microwave, household items, or jewelry. In a divorce, the person whose income was used to purchase this item generally becomes its owner. If the married couple's joint funds were used, then the property is jointly owned.

For oil and gas purposes, if the vesting title to the minerals was in *James and Martha Johnson, husband and wife,* then the oil and gas lease should be styled exactly as the vesting deed showed.

Curtesy Ownership

The English common law system of curtesy was brought to America by the early colonists and created a provision whereby a widower could use his deceased wife's property (that is, property which she acquired and held in her own name) until his own death, but he could not sell or transfer it to anyone except children of his wife.

Dower Ownership

The English common law system of dower rights for widows was also brought to America by our early colonists. These dower rights entitled a widow to a lifetime one-third interest of her husband's estate upon his death. Even if the husband died intestate, the widow's one-third share would still be recognized. Because of the dower rights of a married woman and her legal interest in any land being sold or purchased, most early deeds included the wife. It is important to note that dower rights have been removed in many states in the United States.

In states that still recognize dower rights, these rights may now apply to both husband and wife. For instance, in Ohio, dower is the right of one spouse to a lifetime one-third interest in the other spouse's real property. For this reason, a spouse is asked to release dower when real property is transferred or when a mortgage is placed on the property.

Michigan has abolished curtesy rights but has maintained dower rights for the wife. Since property acquired by the husband during the marriage is subject to the wife's dower rights, the wife's signature should always be obtained. In Michigan, a widow can elect her dower share rather than the interest given to her from a will, or her "forced share" granted under the

state's Estates and Protected Individuals Code. [MCL 700.2202.]

Because discrimination on the basis of sex is now illegal, most states have abolished dower and curtesy and generally provide the same benefits regardless of sex. This amount is generally known simply as the statutory share. But dower and curtesy still exist in several states and under certain circumstances, a living spouse may not be able to sell or convey property that is subject to the other spouse's dower, curtesy, or statutory share rights.

The following states allow dower rights: Arkansas, Kentucky with exceptions, Massachusetts, Ohio, and Vermont.

The following states allow curtesy rights: Alaska under the Uniform Probate Code §§13.06.005, et seq., Arkansas statutory curtesy provided §28-11-301 et seq., Kentucky with exceptions, and Vermont.

Marketable Title

If a tract of land has a clean, unbroken chain of title from the first owner to the present and without such encumbrances they would have Marketable Title to the land.

Title Standards

Most states in the United States have adopted what is commonly known as "Title Standards" for their particular state. A standard is simply the criteria that have been adopted in order to evaluate the marketability of title. Defects in a chain of title are analyzed against the title standards adopted by that state.

Marketable Title Acts

Since the chain of title for many tracts of land in the United States do not have an unbroken chain of title, many states have enacted Marketable Title Acts that will statutorily remove a title defect or a cloud on the title. Marketable Title Acts vary from state to state but generally, will clear title to an owner who has clean title (20, 30, 40 years) back to a *root of title*. Root of Title refers to a deed from which a clean connected series of conveyances flow for a period of years.

Several states have enacted the Uniform Marketable Title Act drafted by the National Conference of Commissioners in 1990. Once a uniform act is drafted it can be adopted by an individual state as written, changed or modified or rejected altogether. In many cases, those states which have

enacted the Uniform Marketable Title Act have made modifications but the statute would read similar to following:

> "Any person having the legal capacity to own land in this state, who has an unbroken chain of title of record to any interest in land for _____ years or more, shall be deemed to have a marketable record title to such interest as defined …"

The following states have adopted the Uniform Marketable Title Act:

Connecticut	40 years	Florida	30 years
Illinois	40 years	Indiana	50 years
Iowa	40 years	Kansas	25 years
Michigan	40 years	Nebraska	22 years
North Carolina	30 years	North Dakota	20 years
Ohio	40 years	South Dakota	22 years
Utah	40 years	Vermont	40 years
Wyoming	40 years		

One debatable issue related to this notion of title curing itself after a period of time relates to ownership of mineral rights. The National Conference of Commissioners which drafted the Uniform Marketable Title Act (UMTA) argued that making an *exception* on a topic as important as mineral rights would largely defeat the Acts rationale and purpose. Therefore, the UMTA did *not* make an exception for mineral ownership. States that wished to adopt the UMTA had the option to exclude mineral rights but the Commission suggested they adopt the Uniform Dormant Minerals Act as a means of resolving mineral issues.

Marketable Title in Texas - Oil companies may not demand perfect or completely Marketable Title when taking leases in a prospect. Initially, the oil company seeking leases wants to know what owners are unleased and then prior to drilling they will try and work out the major kinks in the title. Nevertheless, Marketable Title is a core concept and the professional landman should know its basic meaning.

In Texas, Marketable Title is described as "one free from reasonable doubt such that a prudent person, with knowledge of all salient facts and circumstances and their legal significance and would be willing to accept it." In Texas, an unbroken chain of title for more than 30 years, coupled with the use of the land, may be all that is necessary to perfect title when dealing with missing or unrecorded documents.

Un-Marketable Title in Texas - Unreleased oil and gas leases, outstanding royalty interests, outstanding easements and mortgages, deeds of trust, judgment liens and tax liens, make land titles in Texas

unmarketable. This list is not exhaustive but demonstrative. Generally, land subject to debt or litigation, even slight, can affect marketability.

Marketable Title in Oklahoma - Oklahoma has adopted title standards but they also have a Marketable Record Title Act that has been integrated into these standards.

This act provides that title will be deemed marketable when a person has an unbroken chain of title for 30 years and no other evidence appears that would make a claim to the title.

According to the title standard, this 30-year unbroken chain of title consists of "(1) A single conveyance or other title transaction which purports to create an interest and which has been a matter of public record for at least thirty (30) years; or (2) A connected series of conveyances or other title transactions of public record in which the root of title has been a matter of public record for at least thirty (30) years.

Marketable Title in Louisiana - Louisiana has not adopted a Marketable Title Act or Title Standards. However, the state adheres to a concept known as *acquisitive prescription (running of time).* Under acquisitive prescription, a person can obtain clear ownership to land if they have demonstrated "use" of the property for either 10 years or 30 years. The party must meet certain statutory requirements related to continuous possession, must be public, peaceful and uninterrupted.

Ten-year acquisitive prescription requirements

1. Possession of the land for ten years
2. Good faith
3. A deed or other conveyance
4. Peaceable, continuous and uninterrupted possession

Thirty-year acquisitive prescription requirements

1. Possession of the land for thirty years
2. Peaceable, continuous and uninterrupted possession

La. Civ. Code art. 3475.

When title is perfected into the possessor on the basis of acquisitive prescription, mineral rights are included to the extent that the possession includes mineral rights during the prescriptive period.

Montana - Montana has not enacted and marketable title act.

North Dakota - North Dakota has adopted both a Marketable Title Act and the North Dakota Dormant Mineral Title Standards that apply solely to minerals. Chapter 47-19.1 of the Century Code.

Section 47-19.1-01 of the Act provides: Any person having the legal capacity to own real estate in this state, who has an unbroken chain of title to any interest in real estate by himself and his immediate or remote grantors under a deed of conveyance which has been recorded for a period of twenty years or longer, is in possession of such real estate, shall be deemed to have a marketable record title to such interest, subject only to such claims thereto and defects of title as are not extinguished or barred by the application of the provisions of this chapter, instruments which have been recorded less than twenty years, and any encumbrances of record not barred by the statute of limitations.

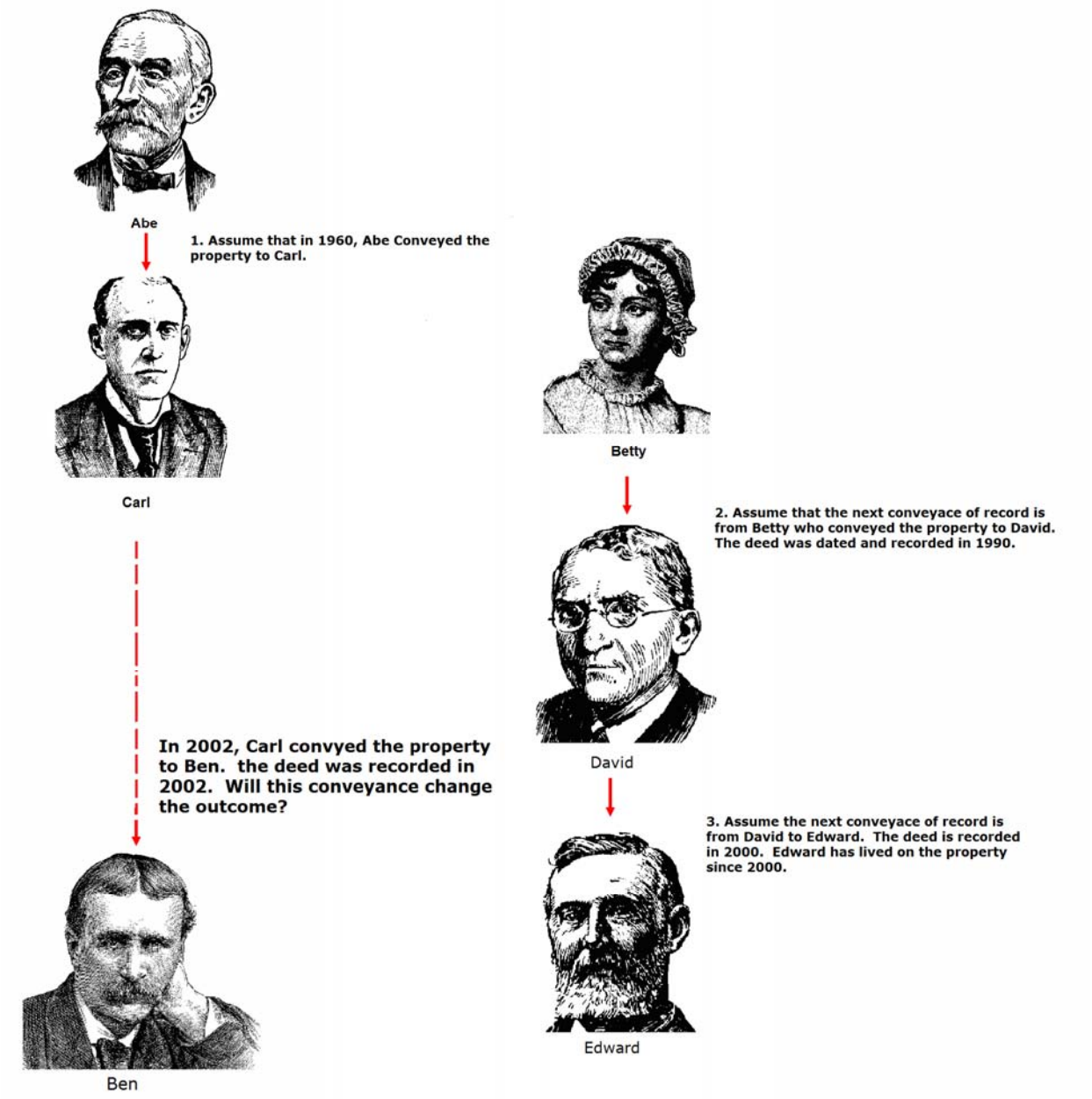
It is important to notice that it will clear title only to those that possess the real estate. Northern Pac. Ry. Co. v. Advance Realty Co. 78 N.W.2d 705 (N.D. 1956).

The Supreme Court, in Sickler v. Pope, tried a case where the surface owner tried to use the act to claim ownership of the severed minerals. The owner claimed he possessed the land for more than 20 years and had granted oil and gas leases during that time; however, the court found that he had not been in possession of the severed minerals and had not met the possession requirement of the act. It appears that possession of severed minerals only takes place if there is production or if the minerals are in the process of being developed.

Ohio – A person has marketable record title in Ohio if, there is an unbroken chain of record title for at least 40 years, at least 20 years from certain mineral interests; and there is no one in hostile possession of the land.

Scenario 1: If this chain of title was in North Dakota and given today's date, what would be the outcome?

ANSWER: Since Edward is in possession and has more than a twenty year



unbroken chain of title under a deed of conveyance, he would be deemed to have the marketable record title to such interest.

Scenario 2: If this chain of title was in Oklahoma and given today's date, what would be the outcome?

1. Assume that in 1960, three siblings (Abe, Betty and Carl) were conveyed an Oklahoman farm from their parent's estate. They each received a 33.3% ownership as tenants in common. The conveying deed was recorded.

Abe

Betty

Carl

David

2. In 1965 Abe and Betty conveyed the entire tract of land to David. The deed was recorded in 1965.

Edward

3. In 1985, David conveyed the property to Edward. The deed was recorded in 1985. There was no mention of Carl's interest in either the 1965 or 1985 deeds.

ANSWER: According to the Oklahoma Marketable Record Title Act, Carl's undivided one-third interest would be extinguished and Edward holds Marketable Title to the property.

Scenario 3: Assume the same facts as seen in scenario 2 except that in 1996, Carl conveyed his undivided one-third interest to Dan (someone not in the chain).

1. Assume that in 1960, three siblings (Abe, Betty and Carl) were conveyed an Oklahoman farm from their parent's estate. They each received a 33.3% ownership as tenants in common. The conveying deed was recorded.

Abe

Betty

Carl

2. In 1965, Abe and Betty conveyed the entire tract of land to David. The deed was recorded in 1965.

David

3. In 1985, David Conveyed the property to Edward. The deed was recorded in 1985. There is no mention of Carl's interest in either the 1965 or 1985 deeds.

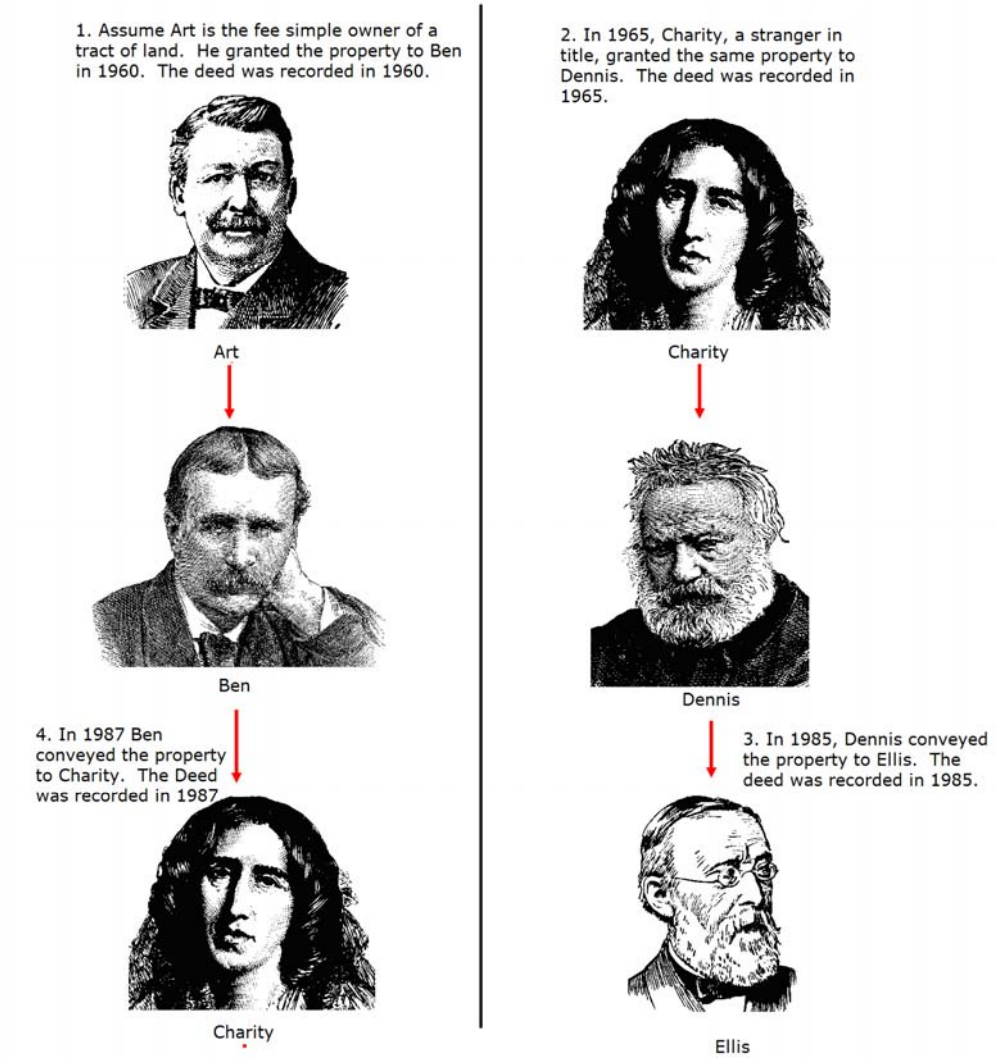
Edward

4. In 1996, Carl conveyed his undivided one-third interest to Frank.

Dan

ANSWER: According to the Oklahoma 2011 Tile Examination Standards Handbook, Since, Carl's interest was extinguished in 1995; the deed to Dan will not change the outcome.

Scenario 4: If this chain of title happened in Oklahoma and given today's date, what would be the outcome?



This scenario poses some interesting questions. First, given today's date, who owns the property? Is Ellis' 30-year title unbroken to the root of title? Can Ellis say that since Charity now has a deed from Ben that her 1965 conveyance from Dennis makes him whole? Can Charity say that she should prevail simply because her 1987 deed from Ben was from the record title holder since 1960?

ANSWER: According to the 2011 Tile Examination Standards Handbook, both Charity and Ellis have a "marketable record title, but each is subject to the other. Hence, neither extinguishes the other, and the relative rights of the parties are determined independently of the Act." Charity's title should therefore prevail. This outcome could change; however, if the physical possessor of the property was Ellis.

Dormant Minerals

In most parts of the United States, the severing of minerals from the surface ownership is common place. Given the nature of this severing, over time, severed mineral interests typically become smaller and smaller with each generation of ownership in the interest. The problems that this can pose are several, including an inability to locate owners with tiny fractionalized interests, the loss of revenue for states with tax severed minerals, and an inability to determine the heirs of severed owners when estates have not been properly probated in the state where the minerals are located.

States that operate under common law rules and have not passed dormant mineral acts hold that a severed mineral estate would not be lost because of non-development or dormancy of those minerals. Other states have adopted statutes that will return severed minerals to the surface owner if those severed minerals sit dormant or unused for a period of time. Other states have made provision whereby, after a statutory period, unclaimed minerals will revert back to the state. There are generally two types of dormant mineral statutes. In some states, the minerals will automatically revert back to the surface owner without any court action, and in others, the minerals will only revert back to the surface owner through a quiet title action.

In areas of the country that are seeing a proliferation of oil and gas exploration, the dormant mineral issue becomes very important. Assume Abe is the surface owner of a tract of land, but owns none of the oil and gas minerals. Every time he goes into town, he sees another neighbor seemingly living the “good life” because of their oil and gas royalty checks.

The state Abe lives in has a dormant mineral statute that joins any severed minerals to his surface ownership if those minerals go unused for 20 years. Potentially, this future revenue could become very significant to Abe.

The one caveat he is wrestling with is that before the minerals will revert to him, the state requires him to make a detailed search for the current addresses of the severed owners and send them notice. The state then requires Abe to report the level of his due diligence in locating proper addresses. If the severed owners receive the notice and properly respond, Abe loses out because their 20 year clock begins all over.

In this scenario, how motivated is Abe to locate current addresses? Assume some of the severed owners are Abe’s cousins. What are the chances that this issue could escalate into a significant family squabble?

States and Dormant Minerals

California – California Civil Code §883.210 et seq. Termination of Dormant Mineral Rights provides for a nonuse period of 20 years in which the owner of the surface land may bring a *judicial action* to terminate severed mineral rights. The severed mineral owner can at any time record a notice of intent to preserve the mineral right.

Colorado – Colorado Revised Statutes §38-13-101-103 – Colorado does not have a dormant mineral statute; however, if production royalties have been unclaimed for a period of five years and are presumed to be abandoned, the royalty is to be paid to the Colorado State Treasurer.

Connecticut – Connecticut Code of 2005: The owner of fee simple title, subject to a dormant severed mineral interest for a period of 20 years, may file an action to terminate such mineral interest. The action shall be in the same manner as quiet title. The mineral owner can protect his interest by recording an instrument for the purpose of preserving and keeping the interest.

Florida – Florida Statute Ann. 712.01.712.11: Under the provisions of Florida's Marketable Title Act, a person who has been vested title in land for 30 years or more is deemed to own the estate free and clear, including any dormant mineral interest. The severed mineral owner can preserve their interest by filing of record documented evidence of ownership during the 30 year period.

Georgia – Georgia's Mineral Lapse Statue (O.C.G.A. 44-5-168): "The owner of the real property in fee simple may gain title to such mineral rights by adverse possession if the owner of the mineral rights has neither worked nor attempted to work the mineral rights, nor paid taxes due on them for the seven years immediately preceding the filing of a petition to gain title by adverse possession." Under the statute, the surface owner may gain title to mineral rights by filing a petition requesting relief. Upon a finding in the surface owner's favor, a judgment and decree will declare the plaintiff with absolute title to such mineral rights. The filing of a statement of claim does not seem possible under Georgia law.

Indiana – Indiana statute IC 32-23-10: A severed owner of coal, oil, gas, or other minerals can lose the minerals if they are unused for a period of 20 years. Once the ownership is extinguished, the severed minerals will revert back to the surface owner. Use of the minerals can include actual production, payment of taxes, operations, payment of rentals or royalties, or the filing of a proper "statement of claim" within the 20-year period or within 60 days after receiving actual knowledge that the 20-year period has expired. Surface owners can make claim to the unused minerals through filing a proper "lapse of interest" notice, whereby public notice is given in a

newspaper and written notice is given to the mineral owner (if a proper address can be found). Once the lapse of interest notice is filed, the county recorder records the filing in a book known as the "dormant mineral interest record." A second option for the surface owner is to file a "quiet title" suit against the severed mineral.

Illinois – Illinois Dormant Mineral Interests Act SB1876: If severed minerals sit unused (no form of production, operations, payment of taxes, a recorded document proving activity, or a proper statement of intent to preserve the mineral interest by the severed mineral owner) for a period of 20 years, the surface owner has a right to claim the minerals through a quiet title action. If multiple mineral owners exist, then activity by one owner would be considered activity by all owners. The Act does not affect the mineral interests of Indian tribes and also doesn't affect water laws.

Kansas – Kansas statute requires a 20-year dormancy or unused period before the surface owner can make a claim to the severed minerals. The mineral owner has a 60-day grace period after the publication of notice of dormancy in which he or she can file a statement of claim with the register of deeds.

Kentucky – The Dormant Mineral Interests Act provides for unused severed minerals to revert to the surface owner after 15 years of inactivity. A quiet title action is required on the part of the surface owner for the reversion to take place. Use of the minerals can include a proper statement of claim by the mineral owner, or by filing a late notice of interest with the court which will stop the quiet title action.

Louisiana – Although Louisiana does not recognize dormant minerals, the state provides for the loss of minerals through a 10-year nonuse prescription period. If a landowner wants to sell the minerals under his land, a mineral servitude is created and the new owner only owns the exclusive right to explore and develop the oil and gas for a term of 10 years.

Maryland – Dormant Mineral Interest Act of 2010: Surface owners, on or after October 1, 2011, can file an action with the Circuit Court in the county where the property is located to terminate a dormant mineral interest if unused for a period of 20 years. The action shall be in the same manner as quiet title. The mineral owner can protect his interest by recording an instrument that creates, reserves, or evidences a claim of interest.

Michigan – The Natural Resources Dormant Mineral Act 554.291 requires any owner of severed minerals to record a valid claim of interest within 20 years of the last sale, lease, mortgage, or transfer, or within 3 years of the date of the act, whichever is later. Any such filing requires "an accurate and

full description of all land affected by such notice, which description shall be set forth in particular terms and not by general inclusions." Any severed minerals which are not recorded are treated as abandoned, and they will revert to the surface owner.

Nebraska – Nebraska Revised Statute 57-228, et seq., provides for a nonuse period of 23 years in which the surface owner may bring a *judicial action* to terminate the mineral interest. A severed mineral owner has the right to file a verified claim of interest in the county within the twenty-three years prior to the filing of the action.

North Dakota – North Dakota adopted a Dormant Mineral Act in 1983, effective July 1, 1985. N.D.C.C. §38-18.1. North Dakota's abandoned mineral statute allows a surface owner to reclaim previously severed mineral interests upon 20 years of non-use by the mineral owner*. This is a quiet title action brought by the surface owner to quiet title to previously severed mineral interests* pursuant to North Dakota's abandoned mineral statute. N.D.C.C. § 38-18.1-02. Any mineral interest is, if unused for a period of twenty years, immediately preceding the first publication of the notice required by section 38-18.1-06, deemed to be abandoned, unless a statement of claim is recorded in accordance with section 38-18.1-04. Title to the abandoned mineral interest vests in the owner or owners of the surface estate on the date of abandonment.

If the mineral owner has failed to record a statement of claim and the mineral interest has not been "used" as defined in section 38-18.1-03, above, the surface owner may succeed to the dormant interest by complying with the following provisions:

N.D.C.C. § 38-18.1-06.

1. "Any person intending to succeed to the ownership of a mineral interest upon its lapse, shall give notice of the lapse of the mineral interest by publication.
2. The publication provided for in subsection 1 must be made once each week for three weeks in the official county newspaper of the county in which the mineral interest is located; however, if the address of the mineral interest owner is shown of record or can be determined upon reasonable inquiry, notice must also be made by mailing a copy of the notice to the owner of the mineral interest within ten days after the last publication is made.
3. The notice must state: a. The name of the record owner of the mineral interests; b. A description of the land on which the mineral interest involved is located; and c. The name of the person giving the notice.

4. A copy of the notice and an affidavit of service of the notice must be recorded in the office of the County Recorder of the county in which the mineral interest is located and constitutes prima facie evidence in any legal proceedings that such notice has been given."

North Dakota's Last Chance Provision – Failure to use the minerals or record a Statement of Claim will not cause the interest to be extinguished *if* within sixty days after first publication of the notice provided for in §38-18.1-06, the mineral owner records a statement of claim. N.D.C.C. § 38-18.1-05(3).

Ohio – Ohio Dormant Mineral Act, Ohio Revised Code Section 5301.56: A severed mineral owner can lose the minerals after a period of 20 years of nonuse. Once the ownership is extinguished, the severed minerals will revert back to the surface owner. Use of the minerals can include actual production, a title transaction, mineral use with underground storage, a drilling or mining permit, if a tax parcel number has been assigned to the interest, or the filing of a proper "statement of claim" within the 20-year period or within 60 days after receiving actual knowledge that the 20-year period has expired.

Surface owners can make claim to the unused minerals if a proper *notice* is given (Ohio Rev. Code Ann. 5301.56(E)(1)(West 2010)) and an *affidavit of abandonment* is filed in the County where the property is located. This affidavit must be filed at least 30 days after the notice has been given. The *notice* must be sent certified mail with return receipt requested to the severed mineral owner of their successors. If contact information is not known, notice must be published in the local newspaper where the property is located.

Oklahoma – Oklahoma – Uniform Unclaimed Property Stat. Ann. § Act 60-651 and 84-271.1 et seq.: If proceeds from any mineral interest are abandoned for a period of 15 years, as provided for in the Uniform Unclaimed Property Act, then the mineral interest shall not be escheated, rather the interest is subject to a mandatory judicial sale. Judicial action may be brought by any party who has an interest in either the surface or the mineral rights. This procedure is only available for mineral interests that have produced unclaimed proceeds, either in the form of unclaimed royalties or unclaimed bonus or rentals. Notice is to be provided to the surface owner, who then has an opportunity to acquire the mineral interest at the sale.

Oregon – Oregon's procedure for extinguishing dormant minerals Or. Rev. Stat. § 517.170 et seq: The owner of land subject to a dormant mineral interest for a period of 30 years may extinguish the interest by publishing notice and submitting an affidavit of publication for recording.

The mineral owner can protect his interest by recording a statement of claim within the last 30 years. Oregon is a self-executing state whereby the non-used minerals will lapse and revert back to the surface owner.

Pennsylvania – In 2006, Pennsylvania adopted a Dormant Oil and Gas Act; however, this legislation does not constitute what we might recognize as a "true" "dormant mineral act." Some see this as nothing more than a 100% tax on production. The Act permits a trustee to be appointed on behalf of the "dormant" owner. The trustee has the power to execute a lease and then, if the rightful owner does not make a claim on the oil and gas, the trustee will collect the royalties. After deducting the trustee fees, the trustee will then escheat the rest of the royalty to the Commonwealth. This act does not vest dormant severed minerals into the surface owner.

South Dakota – A mineral interest shall, if unused for 23 years, be deemed abandoned, unless a statement of claim is recorded. Title to an abandoned mineral interest shall vest in the owner of the surface estate on the date of abandonment. The notice of claim must be filed on or before 23-years from the mineral severance, or on or before July 1, 1958, whichever is later. In 2006, Senate Bill 121 was passed. Section 2 asserts that severed minerals are real property and taxes "shall be assessed in the same manner as any other real nonagricultural property." Section 3 asserts that the owner of severed minerals shall, no later than November 1, 2007, file for record a verified statement setting forth the correct address, interest, and legal description of the property.

Tennessee – Preservation, or extinguishment and reversion of mineral interests 66-5-108:

Any interest in coal, oil and gas, and other minerals shall, if unused for a period of twenty (20) years, be extinguished, unless a statement of claim is filed and the ownership of the mineral interest shall revert to the owner of the surface.

"Use of mineral interest" occurs when minerals are being produced thereunder or when operations are being conducted thereon for injection, withdrawal, storage, or disposal of water, gas, or other fluid substances, or when rentals or royalties are being paid to the owner thereof for the purposes of delaying or enjoying the use or exercise of such rights, or when any such use is being carried out on any tract with which such mineral interest may be unitized or pooled for production purposes, or when taxes are paid on such mineral interest by the owner of the land.

Any person who will succeed to the ownership of any mineral interest upon the lapse thereof may commence such lapse by filing, with the clerk and

master of the county in which the mineral interest is located, a complaint of claim of abandoned mineral interest.

If, within sixty (60) days after publication is provided, the mineral interest owner does not file with the clerk and master an answer alleging a claim to the mineral interest, the clerk and master shall so certify to the chancellor who shall enter the following order declaring the mineral interest has lapsed and vesting title to the mineral interest in the owner of the surface estate.

Washington – Extinguishment of Unused Mineral Rights 78.22 RCW: Washington provides for a nonuse period of 20 years. If a surface owner files a claim of abandonment and extinguishment, together with a copy of the notice and affidavit of publication in the county auditor's office, then the mineral interest *shall be conclusively presumed to be extinguished* (self-executing). The severed mineral owner must file a statement of claim in the county auditor's office during the 20-year period or the 60-day period after the notice by the mineral owner.

West Virginia – West Virginia has no statutory dormant mineral act; however, according to W. Va. Code § 55-12A-7, when a person is unknown, missing, or has abandoned mineral interests, a "special commissioner" will be appointed to receive payment from the royalty. If the rights to the royalty have not been claimed in seven years, the commissioner will convey the minerals back to the surface owner.

Wisconsin – Lapse and Reversion of Interest in Minerals Law: Severed minerals can exist as long as the minerals are used during a 20 year period. If a severed mineral estate becomes dormant, the owner of the surface may file a statement of mineral claim and claim ownership of the mineral rights. This creates a 3-year waiting period during which a mineral owner may come forward and contest the surface owner's claim, by showing that the minerals have been used at some time in the last 20 years.

Scenario: Read the following scenario and answer the question.

Lawrence

Randall

1. In 1977, Lawrence, the fee simple owner of land, conveyed an "Undivided 50% of the minerals" to Randall.

3. In 2008, Lawrence died. His heir is his son Mitch.

Mitch

2. In 2006, Randall died. His heirs are Beverly, his daughter and Matthew, his son.

Beverly, Matthew

4. The minerals have sat dormant since 1977. Whom should you lease if the lands are located in North Dakota, Oregon or Pennsylvania?

☐ **Mitch** ☐ **Beverly and Matthew**

ANSWE

R: Given today's date and if this happened in North Dakota, the minerals have sat unused and dormant for over 30 years. However, since North Dakota requires a quiet title action in order for the minerals to revert back to Mitch, it would appear that Beverly and Matthew would be the current owners. Many companies would lease from Beverly and Matthew and also take a protective lease from Mitch. In Oregon, the minerals will automatically revert back to Mitch, but he can only extinguish Beverly and Mitch's interest by publishing notice and submitting an affidavit of publication for recording. In Pennsylvania, it would appear that taking a lease from any of the three would be incorrect. Instead, a trustee must be appointed on behalf of the "dormant" owner. It is this trustee that has the power to execute a lease. In Pennsylvania, make sure that any royalty payments go to the trustee.

Other On-Line Classes

An Introduction to Petroleum Land Management

Choosing a career as an oil and gas landman or land administration professional is a job path that is highly sought by many individuals. These types of jobs can be rewarding both personally and financially, offering an income that can be substantially greater than many other professions that require far more training. This class is excellent for those wishing to examine the subjects and tasks the land professional is called upon to manage, including: land and mineral ownership in the United States, leasing available minerals, land strategies, pooling, unitization, and searching for and drilling for oil and gas.

A Comprehensive Study of the Oil & Gas Lease, Lease Obligations, and Lease Clauses

This class is perhaps the best resource available for those wanting to learn about the management of a company's oil and gas lease assets. It is designed to offer specialized instruction for the landman, land tech., and lease or title analyst as they deal with particular lease and lease related issues.

A Comprehensive Study of Property Ownership and Transferring Title

This course takes an in-depth and thorough look at property ownership, beginning with the origins of ownership in the United States. Other topics include: differing types of property ownership such as real property, personal property, community property, separate property, homestead laws or dower estates; the rules surrounding mineral and royalty ownership including surface, divided, and undivided interests; the rules for conveying property; varying types of conveyances, testate and intestate succession laws; and, the many types of title transfers that result from court actions.

Contracts Used by Petroleum Land Management

Contracts are the heart and soul of the oil and gas industry, which uses a number of unique agreements in order to explore for, develop, produce, and market oil and gas. This course will provide an understanding of contract law and is designed for all oil and gas professionals or those having a desire to work directly or indirectly in land or land administration. Contracts examined will include the Joint Venture Agreement, Area of Mutual Interest Agreement, Seismic Agreements, Surface Agreements, unit operating agreements, unit agreements, the AAPL Joint Operating Agreement, and the Farmout Agreement.

Numbers Tell a Story, Calculating the Division of Interest

This on-line class comes with both a textbook and the Calculating Your Division of Interest Workbook and will be of tremendous value in helping the land professional calculate all types of interests, including net mineral acres, royalty, net revenue, gross working, and overriding royalty interest. Chapters also include Unit calculations, calculating payouts, non-consents, farmouts, and calculating overrides based on farmout language.

Becoming a Great Negotiator

By its very definition, a negotiation is a dialogue between two people intending to resolve disputes or produce an agreed consensus. We negotiate for many reasons. However, we are not born as a great negotiator. Great negotiators learn their craft! The purpose of this course is to reveal practical negotiating tools that, if mastered, can help anybody negotiate through business and the issues of life.

Critical Legal Concepts

Crucial information dealing with a myriad of critical concepts surrounding the land profession and the oil and gas industry are covered in this class. Subject matter covers state specific title issues and statutes that impact how oil and gas interests are interpreted, calculated, and maintained; specific language in conveyances and how each word or the placement of the words impact the conveyance outcome; and state-specific legal concepts surrounding doctrines of oil, gas, royalty, trespass, pooling, types of ownerships, and ownership theories.