

Rightly Dividing the Division of Interest

**An Analysis of
Correct and Proper
Ownership Changes**

Section 1

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Introduction

Division Order Analysts carry out a vital and important function for an oil and gas company. Their tasks are many. They are called upon to calculate each owner's interest in a well to the 8th decimal place. They are often called upon to cure very complex title problems. They often handle substantial amounts of suspended funds. They speak with mineral owners, non-operators, overriding royalty owners, title attorneys and are called upon to coordinate well ownership with marketing, engineering and production. They provide correct information to the accounting department so people can get paid correctly. After a well is drilled and is producing, they become the guardians of everyone's interest in that producing well.

Many tasks are handed to the division order analyst. One task that can often be challenging is that of correctly dividing the division of interest when ownership changes are being made. Proper analysis of every conveying document or contract must be made in order to facilitate a proper outcome.

This course takes the division order analyst on a journey whereby they will look at various elements of a conveyance or contract in order to rightly divide the division of interest. The course asks the analyst to study each of these elements and then examine actual deeds and/or contracts. Several real-life scenarios are posed to the analyst. Their task is to examine the facts and documents as set out and then determine proper and correct ownership outcomes.

An Analysis of Correct and Proper Ownership Changes and Examination of the Elements of a Proper Conveyance

Property ownership in the United States carries with it certain privileges. One of those privileges is the right to sell, grant or give away the property to another party (*grantee*). When title is conveyed by the *grantor*, certain requirements must be met and the Division Order Professional who receives recorded copies of these conveyances must be aware of these guidelines related to the transfer of ownership. Although each state has its own rules and requirements, most conveyances must contain the following elements in order to be legally operative:

- The conveyance must be in writing.
- The grantor must have legal capacity, and the grantee must be capable of receiving the grant of the property. Both grantor and grantee must be identified in such a way as to be ascertainable.
- The property must be adequately described.
- Operative words of grant or conveyance must be present.
- The deed must be signed by the grantor.
- The conveyance must properly describe what is being conveyed.
- The conveyance should be properly acknowledged.

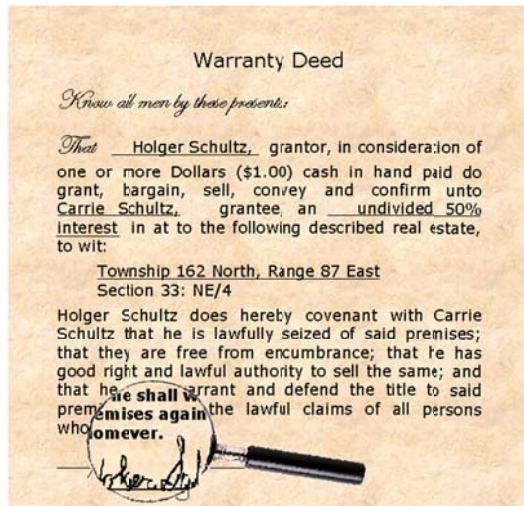
A CONVEYANCE MUST BE IN WRITING.

In 1920, William Payson Richardson, professor at the Brooklyn Law School, St. Lawrence University, authored the "Principles of Law of Contract." Herein he wrote, "The most important statute ever promulgated, either in England or in this country, is the celebrated Statute of Frauds." The statute originated in England in 1677 and was originally entitled "An Act for Prevention of Frauds and Perjuries."

The purpose of the statute was to prevent loss caused from fraudulent behavior, particularly associated with false testimony (perjury) regarding the sale or transfer of lands or property wherein no written deed was ever secured. In an attempt to reduce this type of fraud, England enacted a statute that required certain contracts be in writing.

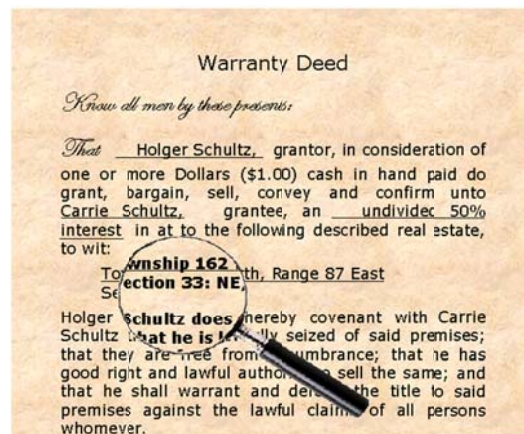
Because of the predisposition of certain people to use fraud and deceit for personal gain, the statute of frauds requires that all contracts involving the sale or transfer of real property be in writing and be signed by the grantor.

HAS THE CONVEYANCE BEEN PROPERLY SIGNED BY THE GRANTOR?



There are times when a conveying party cannot sign their own name. Several years ago, as a result of illiteracy, this was more common than it is today. In other cases, an inability on the part of the conveying party might hinder them from signing a conveyance. In situations like this, the person has the authority to make some sort of a mark. (The one most commonly used is an "X.") In order for this signature to be legitimate, it must be attested to by witnesses.

DOES THE CONVEYANCE PROPERLY DESCRIBE THE LANDS BEING CONVEYED?



The statute of frauds also requires that a *legally sufficient* description of the property be used when describing the lands. Legal sufficiency requires a higher degree of specificity than a normal street address.

Although "3162 Simpson Creek Road, Wry, Wyoming" might be sufficient for someone to find a designated house, it is not precise enough to be used as a legally sufficient legal description for making a conveyance in real property.

A description meets the standard of *legal sufficiency* if a competent surveyor can *locate* the parcel using the description.

"Locate" requires that the surveyor be able to define the exact boundaries of the property. The street address does not reveal how large the parcel of land is or where it begins or ends.

Thus, if the house at 3162 Simpson Creek Road were located on this tract of land, the legal description would describe the piece of land giving all

pertinent information such as land lot, subdivision name, block, parcel, acreage, etc. that comprises a *legal and sufficient description* of a particular property.

In Texas, words conveying “all lands owned by the Grantor” are satisfactory to convey the lands in the particular county where they are located.

In Texas, one will often see errors or inconsistencies surrounding legal descriptions. Generally, these are not material unless they create a significant question regarding the identity of the land. When errors or omissions occur, the land professional should consider the nature and material impact of the errors. Do the errors or omissions create a major or a minor impact on the legal sufficiency of the title?

Scenario #1: Legal Description

Scenario: Assume Barbara Pliha recently sent you the following Quit Claim Deed along with a certified copy of Richard Butler's death certificate. The cover letter explained that Richard Butler was her father and that the Quit Claim Deed was transferring all of her father's interest in the McGregor 1-35 well into her name. The McGregor 1-35 is located in T131N, R107W, 5th P.M., Section 35, Blaine County, North Dakota. You also determine that the McGregor 1-35 is a well that your company operates and that Richard Butler does have a royalty interest in that well. His interest is currently in pay status.

Examine the conveyance and determine if you should set up Barbara Pliha in your system and transfer Richard Butler's interest into her name.

- Yes
- No

QUIT CLAIM MINERAL DEED

172233

KNOW ALL MEN BY THESE PRESENTS: That RICHARD J. BUTLER, an unmarried widower, hereinafter called Grantor, whether one or more, for and in consideration of the sum of One and No/100 Dollar (\$1.00) and other good and valuable consideration cash in hand paid, the receipt of which is hereby acknowledged, do hereby sell, remise, release and quit claim unto BARBARA JANE PLIHA, 2520 Vista del Oro, Newport Beach, California 92660, hereinafter called Grantee, whether one or more, all of their right, title and interest in and to all oil, gas and all other minerals, including gravel, clay, and scoria now owned or hereafter acquired by the Grantor in and under the following described real property:

TOWNSHIP 131 NORTH, RANGE 107 WEST of the 5th P.M.

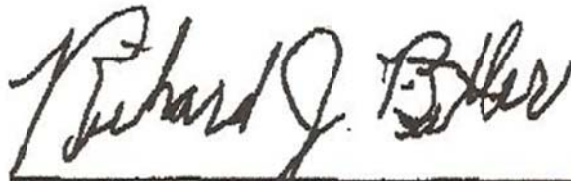
Section 27: Lots 1, 2, 3 and 4; E1/2E1/2.

Section 34: Lots 1, 2, 3, and 4; E1/2E1/2

together with the right of ingress and egress at all times for the purpose of mining, drilling, exploring, operating and developing said lands for all of the above described minerals, and storing, handling, transporting and marketing the same therefrom with the right to remove from said land all of Grantee's property and improvements.

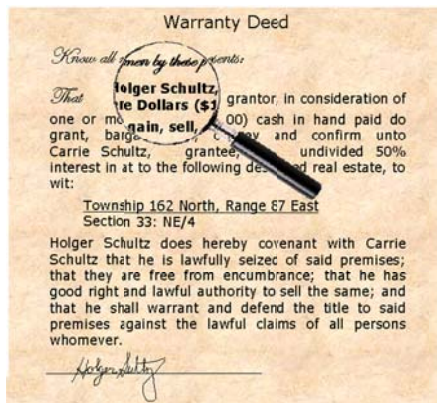
TO HAVE AND TO HOLD The above quit claimed premises and easement with all and singular the rights, privileges and appurtenances thereunto or in anywise belonging unto the Grantee herein, its successors and assigns, forever.

WITNESS, Our hands this 9th day of February, 1993.



RICHARD J. BUTLER

DOES THE CONVEYANCE CONTAIN A VALID GRANTOR AND GRANTEE?



Generally, the statute of frauds requires the identification of both a valid grantor and grantee.

Rules for the Grantor

1. When someone other than the grantor is placed in a position to act on his or her behalf, the capacity and authority of the person acting in such a capacity must be accurately described.
2. If the grantor is known by more than one name in the chain of title, each of those names should be listed.
3. The grantor must have the ability to convey.
4. The grantor must be competent.
5. The grantor must not be a minor.
6. The grantor cannot be deceased.
7. Homestead property or tenancy by the entirety requires the signature of both spouses.

Rules for the Grantee

1. Unborn children cannot receive title to property.
2. A deceased person cannot receive title to property.
3. A legal entity such as a corporation that did not exist at the time of the conveyance cannot receive title to property.
4. A grantee cannot be a deceased person.
5. A "Stranger in Title" is not generally entitled to ownership rights.

Scenario #2: Proper Grantor

Generally, the act of re-recording an instrument after it has been materially altered does not of itself destroy the rights of the parties to the original unaltered instrument. To give effect to a material alteration of a previously recorded document affecting title to real property, the instrument must be re-executed, re-acknowledged, re-delivered, and re-recorded. However, a grantor cannot unilaterally derogate from a previous grant. *Derogate* means “cause to seem inferior” or “take away a part so as to impair.”

Scenario: Regarding the Quit Claim Deed you have just examined in Scenario #1, assume that you contacted Barbara Pliha and told her of your issues with the deed and that her father’s interest in the McGregor 1-35 was being placed in suspense until the issues were cleared up. Two months later, you receive the following Corrected Quit Claim Deed from Barbara’s attorney.

Examine the Corrected Quit Claim Deed closely. Are you now ready to set up Barbara Pliha in your system and transfer her father’s interest into her name?

- Yes
- No

#134496

Re-Rec
172233

CORRECTED
QUIT CLAIM MINERAL DEED

KNOW ALL MEN BY THESE PRESENTS: That RICHARD J. BUTLER, an unmarried widower, hereinafter called Grantor, whether one or more, for and in consideration of the sum of One and No/100 Dollar (\$1.00) and other good and valuable consideration cash in hand paid, the receipt of which is hereby acknowledged, do hereby sell, remise, release and quit claim unto BARBARA JANE PLIHA, 2520 Vista del Oro, Newport Beach, California 92660, hereinafter called Grantee, whether one or more, all of their right, title and interest in and to all oil, gas and all other minerals, including gravel, clay, and scoria now owned or hereafter acquired by the Grantor in and under the following described real property:

TOWNSHIP 131 NORTH, RANGE 107 WEST of the 5th P.M.

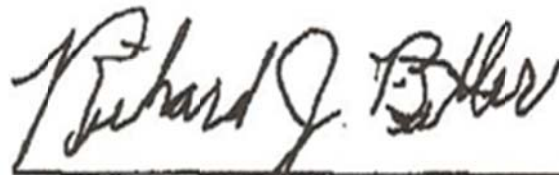
- Section 27: Lots 1, 2, 3 and 4; E1/2E1/2.
- Section 34: Lots 1, 2, 3, and 4; E1/2E1/2
- Section 35: ALL

Blaine County, North Dakota

together with the right of ingress and egress at all times for the purpose of mining, drilling, exploring, operating and developing said lands for all of the above described minerals, and storing, handling, transporting and marketing the same therefrom with the right to remove from said land all of Grantee's property and improvements.

TO HAVE AND TO HOLD The above quit claimed premises and easement with all and singular the rights, privileges and appurtenances thereunto or in anywise belonging unto the Grantee herein, its successors and assigns, forever.

WITNESS, Our hands this 9th day of February, 1993.



RICHARD J. BUTLER

Answer: There appears to be one large issue with this document. Even though the corrected deed was recorded, you have Richard Butler's death certificate. He is dead, and dead people cannot grant property. How could he enter into and correct the first Quit Claim Deed? Examine the two deeds side-by-side.

QUIT CLAIM MINERAL DEED 172233

KNOW ALL MEN BY THESE PRESENTS: That RICHARD J. BUTLER, an unmarried widower, hereinafter called Grantor, whether one or more, for and in consideration of the sum of One and No/100 Dollar (\$1.00) and other good and valuable consideration cash in hand paid, the receipt of which is hereby acknowledged, do hereby sell, remise, release and quit claim unto BARBARA JANE PLIHA, 2520 Vista del Oro, Newport Beach, California 92660, hereinafter called Grantee, whether one or more, all of their right, title and interest in and to all oil, gas and all other minerals, including gravel, clay, and scoria now owned or hereafter acquired by the Grantor in and under the following described real property:

TOWNSHIP 131 NORTH, RANGE 107 WEST of the 5th P.M.
 Section 27: Lots 1, 2, 3 and 4; E1/2E1/2.
 Section 34: Lots 1, 2, 3, and 4; E1/2E1/2


together with the right of ingress and egress at all times for the purpose of mining, drilling, exploring, operating and developing said lands for all of the above described minerals, and storing, handling, transporting and marketing the same therefrom with the right to remove from said land all of Grantee's property and improvements.

TO HAVE AND TO HOLD The above quit claimed premises and easement with all and singular the rights, privileges and appurtenances thereunto or in anywise belonging unto the Grantee herein, its successors and assigns, forever.

WITNESS, Our hands this 9th day of February, 1993.


 RICHARD J. BUTLER

**CORRECTED
 QUIT CLAIM MINERAL DEED**

#134496

172233

KNOW ALL MEN BY THESE PRESENTS: That RICHARD J. BUTLER, an unmarried widower, hereinafter called Grantor, whether one or more, for and in consideration of the sum of One and No/100 Dollar (\$1.00) and other good and valuable consideration cash in hand paid, the receipt of which is hereby acknowledged, do hereby sell, remise, release and quit claim unto BARBARA JANE PLIHA, 2520 Vista del Oro, Newport Beach, California 92660, hereinafter called Grantee, whether one or more, all of their right, title and interest in and to all oil, gas and all other minerals, including gravel, clay, and scoria now owned or hereafter acquired by the Grantor in and under the following described real property:

TOWNSHIP 131 NORTH, RANGE 107 WEST of the 5th P.M.
 Section 27: Lots 1, 2, 3 and 4; E1/2E1/2.
 Section 34: Lots 1, 2, 3, and 4; E1/2E1/2

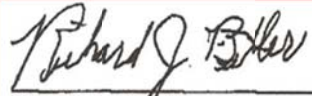
Section 35: ALL

Blaine County, North Dakota

together with the right of ingress and egress at all times for the purpose of mining, drilling, exploring, operating and developing said lands for all of the above described minerals, and storing, handling, transporting and marketing the same therefrom with the right to remove from said land all of Grantee's property and improvements.

TO HAVE AND TO HOLD The above quit claimed premises and easement with all and singular the rights, privileges and appurtenances thereunto or in anywise belonging unto the Grantee herein, its successors and assigns, forever.

WITNESS, Our hands this 9th day of February, 1993.


 RICHARD J. BUTLER

How should the Division Order Professional respond to this issue? _____

Scenario #3: Proper Grantee

Scenario: Assume you received the following Warranty Deed. The cover letter explains that Betty Wilson is selling the land to Brad Beebe but intends to reserves 75% of the minerals to herself and Tom Elliot, her brother, equally.

After your research, you determine that of these three people, only Betty Wilson is set up as a royalty owner in the McGregor 1-15, which is located in T45N, R55W, 6th P.M., Section 15, Blaine County, North Dakota. Betty's interest in the well is .01171875.

You must rightly divide Betty's interest to transfer to whoever you determine are the new owners. How would the Division Order Professional rightly divide the interest?

Betty Wilson
Tom Elliott
Brad Beebe

Warranty Deed

Know all men by these presents:

That Betty Wilson, a widow, party of the first part, in consideration of one or more Dollars (\$1.00), cash in hand paid, does grant, bargain, sell, convey and confirm unto Brad Beebe, 8901 W. Sheridan Blvd., Denver, Colorado 80226, party of the second part all of her interests in the following described real estate situated in Blaine County, North Dakota, to-wit:

Township 45 North, Range 55 West, 6th P.M.
Section 15: SW/4

Reserving however to **Betty Wilson**, a widow; and **Tom Elliot**; an undivided seventy-five percent (75%) interest in and to all of the oil, gas and other minerals in and under and that may be produced from the above-described lands, together with the right of ingress and egress at all times for the purpose of mining, drilling, exploring, operating, and developing said lands for oil, gas and other minerals and storing, handling, transporting and marketing the same therefrom.

I do hereby Covenant with said Grantee that I am lawfully seized of the said premises, that they are free from all encumbrances, that I have good right and lawful authority to sell the same, and that I shall warrant and defend the title to said premises against the lawful claims of all persons whosoever.

Dated this 7th day of February, 2012

Signed Betty Wilson

STATE OF NORTH DAKOTA }
COUNTY OF BLAINE }

Before me, THE UNDERSIGNED, a Notary Public in and for said County and State, on this day personally appeared Betty Wilson, known to me to be the person or persons whose name(s) is/are subscribed to the foregoing instrument, and acknowledged to me that (s)he executed the same for the purposes and consideration therein expressed. Given under my hand and official seal this 13th day of April, 2004 A.D.

Jason Morales

Jason Morales, Notary Public in and for Blaine County, North Dakota.

(SEAL)

FILED FOR RECORD this 30th day of May, 2012, at 8:30 O'clock A.M. and recorded this 30th day of May, 2012 at 1:15 O'clock P.M.

Answer: A stranger in title is not generally entitled to ownership rights. Can you spot the stranger in title in the Warranty Deed?

A Stranger in Title

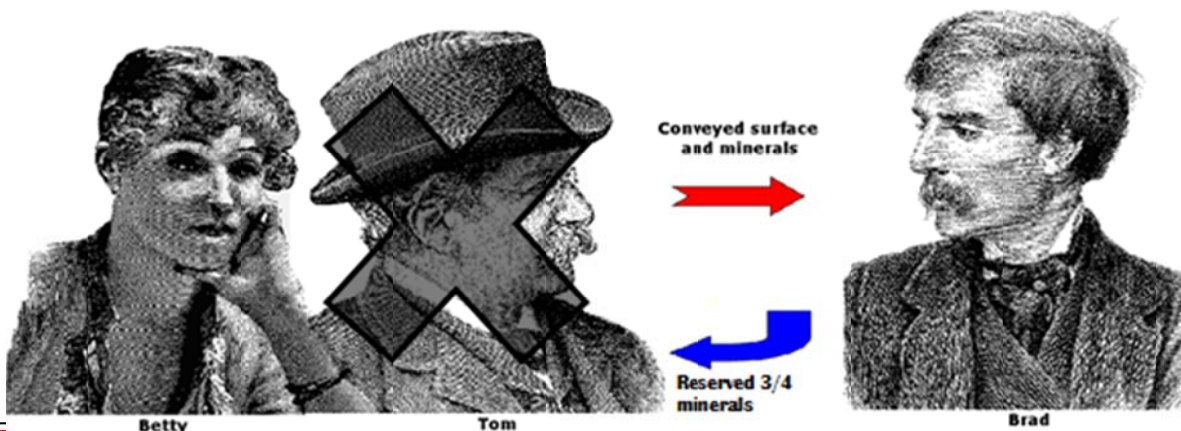
It should be quite clear that if someone were selling a tract of land and wished to reserve minerals, they could only reserve the minerals that they owned. In other words, they could not reserve the minerals under their neighbor's tract of land when they were selling their own tract of land.

In the same vein, assume that Betty owned, in fee simple, a certain tract of land as her sole property. Betty has two friends: Tom and Brad. The tract of land is conveyed, but the deed contains the following reservation:

“Excepting and reserving, however, unto Betty and Tom an undivided 75% in and to the oil and gas minerals”

It is clear that the intent is to reserve an equal share of minerals between Betty and Tom; however, the tract of land is Betty's separate property to begin with. None of the property belongs to Tom, and he would be considered a stranger in title or a third party to the reservation. Therefore, none of the minerals estate can transfer to Tom in this way. Betty owns all of the reserved interest, and the only way Tom could come into title would be through a specific grant from its owner.

According to Black's Law Dictionary (7th ed. 1999), words of "reservation" are not deemed to be words of "grant." Therefore, most states would not consider the third-party or stranger-in-title interest to be valid.



Examples of the rule:

West Virginia – Courts have concluded that a reservation to a third party is void but that the grantor retains the mineral rights. *Meadows v. Belknap*, 199 W. Va. 243, 250, n. 14, 483 S.E.2d 826, 833, n. 14 (1997).

Virginia – Under common law, “a reservation, to be good, must be made to all, some, or one of the grantors, and not to a stranger to the deed”. *Shirley v. Shirley*, 259 Va. 513, 525 S.E.2d 274, (2000).

Arkansas – Courts have concluded that “reservation to a stranger to the instrument is void for all purposes.” *Rye v. Baumann*, 231 Ark. 278, 329 S.W.2d 161, 165 (1959).

Oklahoma – “A reservation or exception in favor of a stranger to a conveyance is void or inoperative.” Howard H. Harris, *Reservations in Favor of Strangers to the Title*, 6 Okla.L.Rev. 127 (1953).

New York – “A deed with a reservation or exception by the grantor in favor of a third party, a so-called ‘stranger to the deed,’ does not create a valid interest in favor of that third party.” *Estate of Thomson v. Wade*, 509 N.E. 2d 309, 310 (N.Y. 1987).

Exceptions to the rule:

Wyoming – A grantor may reserve an interest to a third party as long as conveying or granting language is used. *Simpson v. Kistler Investment Co.*, 90 O&GR 364, 713 P.2d 751 (Wyo. 1986). For example: “excepting and reserving all mineral rights in favor of Jim Johnson 50% and Jane Johnson 50%, with the express provision that all such mineral rights shall be distributed, vested and granted in such persons.”

North Dakota – The state has a third-party reservation rule, often referred to as the Malloy rule. Assume one spouse owns 100% of the surface and subsurface interest. The property is then conveyed to a third party, and the non-owning spouse signs the conveyance because of homestead rights. The North Dakota Supreme Court decided that such a conveyance was effective to reserve a mineral interest in the other spouse. *Malloy v. Boettcher*, 334 N.W.2d 8 (N.D. 1983).

Montana – A mineral reservation “to the grantors” can, indeed, reserve a mineral interest to a non-mineral owning spouse if the spouse executed the deed for homestead purposes. In *Kelly v Wallace* 972 P.2d 1117 (MT 1998), the Montana Supreme Court found that when intent could be shown, the court would give effect to a “non-party to the transfer.” Thus, where intent can be shown, the courts in Montana will recognize a third-party mineral reservation as being effective.

North Dakota - has a third party reservation rule, often referred to as the Malloy rule. In 1983, the Supreme Court ruled that when one spouse owning both surface and subsurface interest, conveys to a third party and the non-owning spouse signs the conveyance because of homestead rights, such a conveyance is effective to reserve a mineral interest in the non-owning spouse. *Malloy v. Buetlicher*, 334 N.W.2d 8.

Montana - A mineral reservation "to the grantors" can, indeed, reserve a mineral interest to a non-mineral owning spouse if the spouse executed the deed for homestead purposes. In *Kelly v Wallace*, 972 P.2d 1117 (MT 1998), the Montana Supreme Court found that when intent can be shown, the court will give effect to a "non-party to the transfer".

Wyoming - The court determined that a grantor may reserve an interest to a third party as long as conveying or granting language is used. *Simpson v. Kistler Investment Co.*, 90 O&GR 364, 713 P.2d 751 (Wyo. 1986). For example: "excepting and reserving all mineral rights in favor of Jim Johnson 50% and Jane Johnson 50% with the express provision that all such mineral rights shall be distributed and vested in such persons".

West Virginia - Courts have concluded that a reservation to a third party is void but that the grantor retains the mineral rights. citing *Meadows v. Belknap*, 199 W. Va. 243, 250, n. 14, 483 S.E.2d 826, 833, n.14 (1997).

New York - "A deed with a reservation or exception by the Grantor in favor a third party, a so-called 'stranger to the deed', does not create a valid interest in favor of that third party." *Estate of Thompson v. Wade*, 509 N.E. 2d 309, 310 (N.Y. 1987)

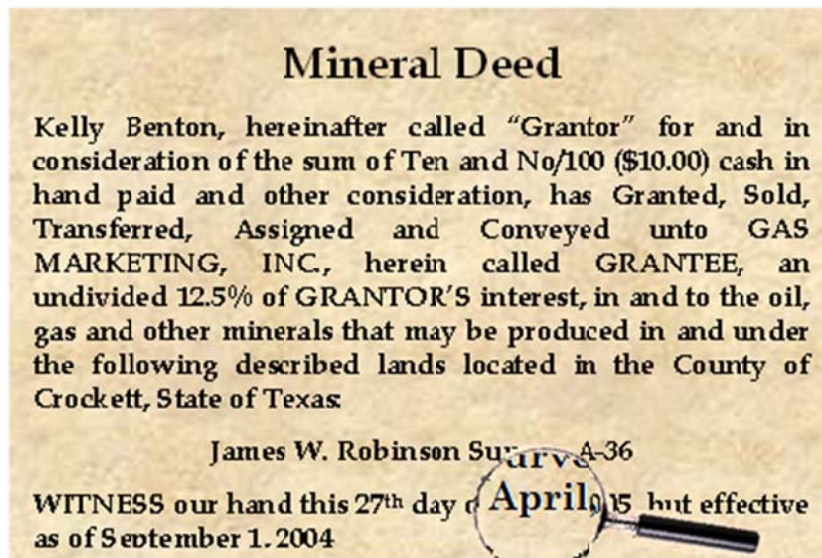
Virginia - Courts have concluded that under the common law, in order for a reservation to be good, it "must be made to all, some, or one of the grantors and not to a stranger to the deed". *Shirley v. Shirley*, 259 Va. 513, 525 S.E.2d 274, 2000 Va. LEXIS 34 (2000).

Arkansas - Courts have concluded "that reservation to a stranger to the instrument is void for all purposes." *Rye v. Baumann*, 231 Ark. 278, 329 S.W.2d 161, 165 (Ark. 1959).

Oklahoma - "A reservation or exception in favor of a stranger to a conveyance is void or inoperative." *Howard H. Harris, Reservations in Favor of Strangers to the Title*, 6 Okla.L.Rev. 127 (1953).



DOES THE CONVEYANCE CONTAIN PROPER DATES?



It is important to note that an instrument can be made effective at, before, or after the date it is actually signed simply by stating in the document what the effective date will be. In this illustration, the mineral deed states, "Witness our hand this 27th day of April, 2005 but effective as of

September 1, 2004." The effective date is earlier than the signature date. The Mineral Deed could also have said, "Witness our hand this 27th day of April, 2005 but made effective *July 1, 2005.*" The effective date would be after the signature date. As long as the grantor is in possession of the granted interest on the date of purported delivery, which is the effective date, then title will pass without any issues.

Problems arise when the effective date purportedly conveys an interest prior to the time of ownership by the grantor. This can often become confusing, especially if title is not straightforward.

The date affixed on an instrument becomes the *prima facie* evidence of the date of delivery. (*Prima Facie* is a Latin term meaning that, on first examination a matter appears to be self-evident from the facts. The phrase denotes evidence that, unless rebutted, would be sufficient to prove a particular proposition or fact.) If there is a conflict between the date affixed to the instrument and the date it was acknowledged, the majority of Courts hold that the date affixed to the instrument is the correct one to use. If there is no date affixed to the instrument, the acknowledgment date will serve as the *prima facie* evidence of the date of delivery.

Scenario #4: Effective Dates

Scenario: Assume that Kelly Benton recently sent you the following two conveyances. Both have been appropriately executed, notarized and recorded. Also assume that at the time of the Warranty Deed, Dorothy Voda owned 100% of the surface and subsurface.

Examine the two deeds closely. Are you ready to transfer interest into Kelly Benton and Gas Marketing Inc.?

- Yes
- No

Warranty Deed

Dorothy Voda, hereinafter called "Grantor" for and in consideration of the sum of Ten and no/100 (\$10.00) cash in hand paid and other consideration, has granted, sold, transferred, assigned and conveyed unto **Kelly Benton**, herein called GRANTEE, all of GRANTOR'S interest in and to the following described lands located in the County of Crockett, State of Texas:

The East 200 acres of Section 375, Block H, W&NW RR survey

I do hereby Covenant with said Grantee that I am lawfully seized of the said premises; that they are free from all encumbrances; that I have good right and lawful authority to sell the same; and that I shall Warrant and Defend the title to said premises against the lawful claims of all persons whomever.

WITNESS our hand this 22nd day of October, 2004, but effective as of September 1, 2004.

Signed Dorothy Voda

STATE OF TEXAS }
COUNTY OF CROCKETT }

Before me, THE UNDERSIGNED, a Notary Public in and for said county and state, on this day personally appeared Dorothy Voda, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that they executed the same for the purposes and consideration therein expressed. Given under my hand and official seal, this 22nd day of October, 2004 A.D.

Jason Morales, Notary Public in and for Crockett County, Texas.

(SEAL)

FILED FOR RECORD this 30th day of October, 2004 at 8:30 O'clock A.M., and recorded this 30th day of October, 2004 at 8:45 O'clock P.M.

Mineral Deed

Kelly Benton, hereinafter called "Grantor" for and in consideration of the sum of Ten and no/100 (\$10.00) cash in hand paid and other consideration, has granted, sold, transferred, assigned and conveyed unto GAS MARKETING INC., herein called GRANTEE, an undivided 96% of GRANTOR'S interest in and to the oil, gas and other minerals that may be produced in and under the following described lands located in the County of Crockett, State of Texas:

The East 200 acres of Section 375, Block H, W&NW RR survey

WITNESS our hand this 16th day of August, 2004, but effective as of August 1, 2004.

Signed *Kelly Benton*

STATE OF TEXAS }
COUNTY OF CROCKETT }

Before me, THE UNDERSIGNED, a Notary Public in and for said county and state, on this day personally appeared Kelly Benton, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that they executed the same for the purposes and consideration therein expressed. Given under my hand and official seal, this 16th day of August, 2004 A.D.

Jason Morales, Notary Public in and for Crockett County, Texas.

(SEAL)

FILED FOR RECORD this 27th day of December, 2004 at 9:00 O'clock A.M., and recorded this 27th day of December, 2004 at 9:15 O'clock P.M.

Answer: At this point, it would not be appropriate to transfer any interest into Gas Marketing Inc. The problem is the effective date found on the Mineral Deed. Kelly received her interest in the minerals effective September 1, 2004. She attempted to transfer her mineral interest into Gas Marketing Inc. effective August 1, 2004.

The story continues:

Assume that you phone Kelly Benton and tell her that the effective date found in the Mineral Deed pre-dates the effective date found in the Warranty Deed. Because of this issue, you cannot transfer interest into Gas Marketing Inc. In the conversation, you suggest that she could cure the effective date issue by having a Correction Mineral Deed drafted.

Thirty days later, Kelly Benton submits the following Correction Mineral Deed. Examine the same and determine if this has corrected the issue. Are you now ready to transfer interest into Kelly Benton and Gas Marketing Inc.?

- Yes
- No

Correction Mineral Deed

This Correction Mineral Deed is in correction and replaces that certain Mineral Deed dated August 16th, 2004 from Kelly Benton to Gas Marketing, Inc., recorded 12/27/04 at reception #477890 as to the effective date.

Kelly Benton, hereinafter called "Grantor" for and in consideration of the sum of Ten and no/100 (\$10.00) cash in hand paid and other consideration, has granted, sold, transferred, assigned and conveyed unto GAS MARKETING, INC., herein called GRANTEE, an undivided 12.5% of GRANTOR'S interest, in and to the oil, gas and other minerals that may be produced in and under the following described lands located in the County of Crockett, State of Texas:

The East 200 acres of Section 375, Block H W&NW RR survey

WITNESS our hand this 27th day of April, 2005, but effective as of September 1, 2004.

Signed *Kelly Benton*

STATE OF TEXAS }
COUNTY OF CROCKETT }

Before me, THE UNDERSIGNED, a Notary Public in and for said county and state, on this day personally appeared Kelly Benton, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that they executed the same for the purposes and consideration therein expressed. Given under my hand and official seal this 27th day of April, 2005 A.D.

Jason Morales, Notary Public, in and for Crockett County, Texas.

(SEAL)

FILED FOR RECORD this 18th of May, 2005 at 9:00 O'clock A.M., and recorded this 18th day of May, 2005 at 9:15 O'clock P.M.

ANSWER: The correction deed does, in fact, clear up the date ambiguity; however, it creates more than one other issue. First, the correction deed limits its ability to correct anything other than the effective date (read the first sentence in the deed). "This Correction Mineral Deed is in correction and replaces that certain Mineral Deed ... as to the effective date." A correction deed can change more than one item; however, in this case, it limits itself to the effective date.

The second issue is related to the amount of mineral interest being conveyed to Gas Marketing Inc. The first mineral deed conveyed an undivided 96% of grantor's interest. The correction deed conveys an undivided 12.5%. The general rule is that a correction instrument which is replacing an effective and unambiguous instrument cannot make significant changes to the grantee's name or significantly decrease the grantee's interest without both grantor and grantee's signature on the deed.

The last issue created in the correction deed is related to the Grantee's name. In the first deed, the grantee is shown as GAS MARKETING INC. (without any comma). In the second, the grantee is shown as GAS MARKETING, INC. (with a comma). This, of course, is the most minor of the issues, but it does demonstrate the propensity of a correction deed to create additional curative issues if not done correctly.

How should the Division Order Professional respond to this issue? _____
