

Copyright © 2012 by  
Petroleum Education Workshops, LLC  
558 Castle Pines Parkway, Ste. B4-207  
Castle Rock, Colorado 80108

All rights reserved. No part of this book may be reproduced or transmitted in any form by any means, electronic or mechanical, including, photocopying, recording or by an information retrieval system, without the permission in writing from the publisher.

Printed in Denver, Colorado  
UNITED STATES OF AMERICA

This publication is designed to help identify the prevailing guidelines that surround the disposition of the subject matter covered. It is, however, not intended to substitute for any specific legal advice or opinion. Since state rulings in the matter of law are defined by the courts and can change at any time, no portion of this publication is a substitute for legal advice. Since state statutes are voluminous and vary from state to state, this course does not purport to be a complete or definitive volume on the subject. In many cases, topics covered have been summarized in order to relate to the layperson. As with all condensed statements, they are incomplete in their substance. Where these statements are expressed, they are designed only as a guideline and not as a legal opinion on any one specific matter. The publisher and/or authors are not engaged in rendering any legal, accounting, or other professional service and do not purport to offer any legal opinion on any one specific matter. If legal advice or other expert assistance is required, the service of a competent professional person should be sought.

## Chapter 3 – Common Curative Documents and General Rules of Construction

---

Seldom will title be so gravely defective that it cannot be cured. In many cases, more than one avenue can be taken to cure an issue and the land professional should determine which avenue is the least expensive and time consuming. Three solutions exist that can cure a defect. First, title statutes can cure some title defects. Secondly, the procurement of certain curative documents will be necessary in order to certain cure title defects. Lastly, some titles cannot be cured by the land professional. Judicial action would be required.

The following chart lists several common curative documents.

Curative Documents	Curative Effect
Affidavit of Adverse Possession	This affidavit is a document filed by a person who wishes to claim ownership to abandoned property through open, notorious, actual, exclusive, and adverse possession.
Affidavit of Death and Heirship	This affidavit will establish all necessary facts in order to determine the successor heirs to a deceased party's estate.
Affidavit of Delivery	This affidavit will confirm the delivery of some instrument during the lifetime of the grantor, regardless of the recording date.
Affidavit of Extension of Oil and Gas Lease	The affidavit is often used when production of oil or gas has not been obtained at the expiration of the primary term of a lease, but the lessee wishes to extend the lease so that drilling operations can take place. The affidavit must be filed on or before the expiration of the primary term.
Affidavit of Identity	When a discrepancy of names appear in the record title for what appears to be the same person, this affidavit will confirm that the person is one and the same.

<b>Curative Documents</b>	<b>Curative Effect</b>
Affidavit of Death of Joint Tenant	The recording of this document coupled with a death certificate has the effect of transferring title to property held by joint tenants to the survivor(s) when one of the joint tenants dies.
Affidavit of Surviving Joint Tenant	The recording of this document coupled with a death certificate has the effect of transferring title to property held by joint tenants to the survivor(s) when one of the joint tenants dies.
Affidavit of Homestead or Non-Homestead	This affidavit will confirm the homestead status of a tract of land.
Affidavit of Non-Development	This affidavit will confirm that through non-development or non-production an unreleased oil and gas lease has expired on its own terms.
Affidavit of Possession	This affidavit establishes the status of possession at the time of a title transaction and certifies that no other person claims or occupies the land in an adverse manner.
Amendment of Oil and Gas Lease	Older HBP leases were written to accommodate the drilling and development of the original well(s). Because operations have changed, oil companies need to modify the terms of the old lease in order to develop new wells. These changes often deal with unitization.
Affidavit of Production	This affidavit will confirm that leases or lands are held by production.
Correction Deed	This curative item is used to correct an error, mistake, or ambiguity found in a previous deed in the County records. Caution should be used when drafting a correction deed to clearly identify the deed being corrected and what is being corrected.

<b>Curative Documents</b>	<b>Curative Effect</b>
Correction of Oil and Gas Lease	This curative item is often used when an error occurred in the drafting of the original lease (legal description, etc.).
Death Certificate	A certified copy of a death certificate is an official statement, signed by a physician, of the cause, date, and place of a person's death. In cases where title has been owned in a life estate, joint tenancy, or tenancy by entirety, the death certificate has the effect of transferring property.
Declaration of Interests	When confusion and uncertainty exists as to the ownership of interest in a given tract of land, this curative item can be used to stipulate and agree as to the ownership of interest. The item also contains words of grant whereby each party quitclaims to each of the other parties any interest necessary to vest the interest as set forth.
Disclaimer	This curative item confirms that a party asserts no right, title, or interest in given lands or to oil, gas, and minerals interests in and under said lands.
Disclaimer with Words of Grant	This curative item confirms that a party asserts no right, title, or interest in given lands or to oil, gas, and minerals interests in and under said lands. The item also contains words of grant whereby the party quitclaims all right, title, and interest to a third party.
Divorce Decree	The divorce decree is the final decree and formal order from the court regarding all issues that surround the divorce, including the granting of the divorce. It is this instrument that will vest title in one spouse and divest interest in title from the other.

<b>Curative Document</b>	<b>Curative Effect</b>
Oil & Gas Lease Extension	An extension of the term of an existing oil and gas lease is often used when the term of the original lease must be extended in order to provide for operations past the expiration date of the original lease.
Power of Attorney	When a chain of title reflects one person acting on behalf of or representing another in legal matters, the instrument that created and authorized this relationship must be secured. This curative item is called a power of attorney.
Probate	Probate can be defined as the court process by which a last will and testament is proved valid or invalid. It is also the legal process wherein the estate of the deceased is administered, where the estate goes through the probate court. If there is a will, the court determines if it should be admitted to probate and given legal effect. If there is no will, the court, usually, appoints a Personal Representative to distribute the property according to the laws of Descent and Distribution.
Ancillary Probate	When a deceased party dies leaving property in more than one county or state, in addition to the primary probate that occurs in the county and state of residence, an ancillary probate is necessary in the county or state where the other property is located.
Quitclaim Deed	A quitclaim deed can be used by a grantor to convey title to another party regardless of ownership prior to the conveyance. It is often used when uncertainty of ownership exists or ambiguities in title exist.

Curative Document	Curative Effect
Quiet Title Action	When title disputes cannot be resolved by the parties or when very complicated title issues exist, a court action may be necessary in order to resolve ownership to title.
Ratification and Rental Division Order	Executing a ratification and rental division order is an act of tying oneself to an oil and gas lease and authorizing the lessee to pay rentals in the proportions as set out in the document.
Ratification of Oil and Gas Lease	Very often, parties that should have been tied to an executed oil and gas lease were either not present to sign or unknown at the time of execution. Executing a ratification of the lease is an act of confirming the lease's existence and terms. It will have the same effect as if the party who ratified actually executed the original lease.
Release of Oil and Gas Lease	This release will confirm that a lessee or assignee to a prior unreleased oil and gas lease relinquishes all claim to the lease.
Release of Mortgage	This release will confirm that the mortgage has been satisfied.
Stipulation of Interest	When doubt and uncertainty may exist as to the intent of a certain conveyance, this curative item may be used to stipulate and agree as to the ownership of interest.
Subordination of Mortgage Agreement	When lands are encumbered by a mortgage that has been executed and recorded prior to a subsequent lease, the "mortgagee" holds superior title to the subsequent lease. If the loan enters into default, the mortgagee may foreclose not only on the fee ownership to the land but also on the oil company's interest that is subject to the mortgage. In such a case, a requirement will set forth the need to secure, from the

	<p>mortgagee, a "Subordination of Mortgage to the Lease." Once the subordination agreement is executed by the mortgagee, the oil and gas lease is treated as if it was executed and recorded prior to the mortgage.</p>
<p>Surface Inspection Report</p>	<p>Following a physical inspection of land, a surface inspection report is submitted confirming the absence of, among other things, any oil and gas operations currently existing on said land.</p>
<p>Tenant's Consent Agreement</p>	<p>This curative document establishes that the undersigned is the owner of a lease in surface rights, and is willing to subordinate his or her rights of tenancy to the leasehold estate created by an oil and gas lease.</p>

# The Use of Corrective Instruments

---

It is not uncommon to find mistakes and/or ambiguities in a chain of title. These can be found within any portion of the instrument including the granting language or in the amount of interest being conveyed or reserved. At times, the chain of title will show numerous parties, involved in multiple transactions. These transactions can involve conveyances, leases, and assignments and can create ambiguous, erroneous, or unclear ownership. *Errors* can also occur in the effective dates of instruments or through improper recording documentation.

Instruments of title will often use the phrase "more or less" after citing the amount of acres being described. The words "more or less" are seen as words of caution and are sometimes used to show that the quantity of land is not exact. They do not, in themselves, cause the description to be ambiguous. *Dwelle v. Greenshields*, 305 P.2d 1038 (Okla. 1956). There are limits, however, to the grace provided by the phrase "more or less." If the described land and the purposed number of acres vary greatly, the description may be found ambiguous, demonstrating a mistake had been made when describing the land. *Birmingham v. McCoy*, 358 P.2d 824 (Okla. 1960). In this situation, an inquiry of the parties involved and some curative action may be necessary. All of these issues can create confusion as to the division of ownership in the subject land and the parties involved may be asked to execute and record correction instruments.

It is important to note that certain curative measures will fall outside the scope and job description of many land professionals. For instance, assume the following title requirement appeared in a drilling title opinion. It should be quite clear that the burden for providing the required stipulation rests upon the parties involved in the questioned ownership. Most land professionals would not have the legal authority to draft and circulate such a curative item.

**Requirement:** By Warranty Deed dated December 30, 1996, recorded in Book 457, Page 305, Deed Records, Beth Adams conveyed to Mary Wheatley, Chuck Wheatley, George Wheatley, and Jason Wheatley an undivided 1/8<sup>th</sup> interest in Section 18 with the following provision:

PROVIDED, however, there is excepted from this conveyance and reserved unto the Grantor all of the oil, gas, and other mineral interest now owned by Grantor which lies below a depth of 18,000 feet from the surface of Section 18.

At the time of this conveyance, Beth Adams owned an undivided 1/4 interest in the surface of Section 18. She may have intended, by virtue of the Warranty Deed, to convey only a 1/8<sup>th</sup> interest in the surface estate, reserving all of the oil, gas, and other minerals interests owned by her below 18,000 feet beneath the surface and reserving 1/2 of her mineral interest from the surface down to a depth of 18,000 feet. However, because this instrument is ambiguous, we cannot be certain what Beth Adams actually intended to convey.

By Contract and Agreement to Lease, dated December 31, 1996, recorded in Book 516, Page 159, Deed Records, Mary Wheatley, Chuck Wheatley, George Wheatley, and Jason Wheatley assigned to Beth Adams all of their undivided interest in and to the oil, gas, and other minerals in Section 18 for fifteen (15) years, beginning January 1, 2002.

We have credited Beth Adams with one-half of the interest originally acquired by Beth Adams in Section 18 in the surface. We have also credited Beth Adams with an undivided one-half of the interest originally acquired by Beth Adams in Section 18 from the surface down to 18,000 feet; this interest is subject to the above-described Contract and Agreement to Lease. We have also credited Beth Adams with all of the interest she originally acquired in the captioned land below a depth of 18,000 feet beneath the surface.

**Requirement:** Submit for examination a Stipulation of Interest executed by Beth Adams, Mary Wheatley, Chuck Wheatley, George Wheatley, and Jason Wheatley, which contains words of grant and which sets forth the interest that each of these parties purports to own in the captioned land.

### Minor vs. Material Corrections

Generally, if a recorded instrument is found to contain a minor error, that same document can be corrected and then rerecorded. This revised original instrument will be sufficient to cure the error. However, when the error is material in nature, the cure must come in the form of a newly drafted document, re-executed, re-acknowledged, and rerecorded. A minor alteration might involve the spelling of the grantor's or grantee's name. A material alteration to an existing document would be a change, addition, or deletion that would be so significant that the legal effect of the document has been impacted. If this were to happen, such changes may invalidate the instrument.

#### GENERAL RULE

**Generally, a recorded instrument that contains only minor errors can be corrected and then rerecorded. When the error is material in nature, the cure must come in the form of a newly drafted document, re-executed, re-acknowledged and rerecorded.**

**Scenario:** Assume Barbara Pliha recently sent your company the following Quitclaim 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 Quitclaim 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, R 107W, 5<sup>th</sup> P.M. Section 35. 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 circle any and all errors.

**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 9<sup>th</sup> day of February, 1993.



RICHARD J. BUTLER

There are two issues with this scenario: First, even though the document was recorded, the legal description does not contain a county or state. Secondly, the McGregor 1-35 is located in Section 35 and the deed does not contain any lands in Section 35. Would either or both of these issues be considered minor or material?

Next, assume that Barbara Pliha was contacted and told of the issues. Two months later, your company received the following Corrected Quitclaim Deed from Barbara's Attorney:

Can you spot any major issues with the Corrected Quitclaim Deed?

#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

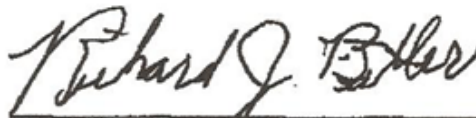
Section 35: ALL

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 9<sup>th</sup> day of February, 1993.



RICHARD J. BUTLER

This Corrected Quit Claim Mineral Deed contains both County and State and all of the lands in Section 35; however does this raise any "red flags?"

Compare 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 9<sup>th</sup> day of February, 1993.

  
RICHARD J. BUTLER

**CORRECTED QUIT CLAIM MINERAL DEED**

#13496  
Re-let  
**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:

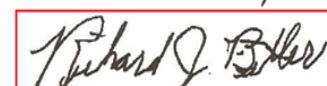
TOWNSHIP 131 NORTH, RANGE 107 WEST of the 5th P.M.  
Section 27: Lots 1, 2, 3 and 4; E1/2E1/2.  
Section 34: Lots 1, 2, 3, and 4; E1/2E1/2  
Section 35: ALL

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 9<sup>th</sup> day of February, 1993.

  
RICHARD J. BUTLER

Would you consider the changes made to the original Quit Claim Deed minor or material? A minor alteration might involve the spelling of the grantor's or grantee's name. A material alteration to an existing document would be a change, addition or deletion that would be so significant that the legal effect of the document has been impacted. Would you consider the addition of the county and state material? What about expanding the legal description to include Section 35? Given the fact that the original deed came attached to Richard Butler's death certificate, would this have any impact on your decision? Since dead people cannot grant property, can his signature, in the corrected document, be accepted as valid?

Many in the industry would see the corrected deed as simply a "short cut" curative measure used in an attempt to correct the problem, but would not see the problem fixed. Many would see the corrected deed as invalid and place the interest in suspense until such time as the appropriate documents are forthcoming.

**GENERAL RULE**  
The statute of frauds requires that a valid conveyance contain a valid grantor.  
An invalid grantor would include:  
1. someone who does not have the ability to convey,  
2. a mentally incompetent person,  
3. a minor child,  
4. a deceased person, or  
5. homestead property or tenancy by the entirety property requires the signature of both spouses.

## A Corrective Deed

A correction deed is used to correct an error or ambiguity found in a previous document of record. This instrument will clearly identify the previous instrument that is to be corrected, will state the precise recording location of the instrument, identify the issue that is to be corrected, and include the appropriate language in order to correct the error or ambiguity. It is important to note that if the corrective deed fails to specifically address and/or appropriately and clearly correct any of these issues, the title defect will become even greater than it was before.

### Scenario:

Assume that the following two deeds are found in the courthouse records.

The first is a Warranty Deed whereby Dorothy Voda conveyed 100% of grantor's interest to Kelly Benton.

Reception #445213

### 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 north 102.34 acres of the west 277 acres of Block A-2, Section 77, Abstract #75, Southern Union Railway Company Survey, in Crockett County, State of Texas.*

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 22<sup>nd</sup> day of October, 2004, but effective as of September 1, 2004.

Signed *Dorothy Voda*

### Proper Acknowledgment

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

The second is the following Mineral Deed.

Reception #477890

## 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 north 102.34 acres of the west 277 acres of Block A-2, Section 77, Abstract #75, Southern Union Railway Company Survey, in Crockett County, State of Texas.*

**WITNESS our hand this 16<sup>th</sup> day of August, 2004, but effective as of August 1, 2004**

Signed **Kelly Benton**

*Proper Acknowledgment*

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

NOTE: The Warranty Deed is effective September 1, 2004 and the Mineral Deed purports to be effective August 1, 2004. An examining title attorney might require a correction deed to be submitted in order to clear up the effective date issue.

Assume that Kelly Benton is notified of the issue; that the effective date found in the Mineral Deed pre-dates the effective date found in the Warranty Deed; and that because of this issue, there is a cloud on both Kelly Benton's mineral ownership and that of Gas Marketing Inc.

One month later, Kelly Benton submits the following Correction Mineral Deed. Examine the deed and determine if the effective date issue has been cured. Has the Correction Deed created any new issues? If so how should they be addressed? Circle any new issues that have resulted from the Correction Mineral Deed.

## Correction Mineral Deed

This Correction Mineral Deed is in correction and replaces that certain Mineral Deed dated August 16<sup>th</sup>, 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 north 102.34 acres of the west 277 acres of Block A-2, Section 77, Abstract #75, Southern Union Railway Company Survey, in Crockett County, State of Texas.*

WITNESS our hand this 27<sup>th</sup> day of April, 2005, but effective as of September 1, 2004

Signed *Kelly Benton*

### *Proper Acknowledgment*

FILED FOR RECORD, this 18th of May, 2005, at 9:00 O'clock A.M. and recorded, this 18<sup>th</sup> 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 next 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 does demonstrate the propensity of a correction deed to create additional curative issues if not done correctly.

#### GENERAL RULE

**A correction instrument which is replacing an effective and unambiguous instrument cannot make a**

- 1. significant change to the grantee's name,**
- 2. significantly decrease the grantee's interest,**
- 3. significantly decrease the size of what is being conveyed,**
- 4. add extra restrictions or stipulations**

**without both the grantor's and grantee's execution of the correction conveyance with would also contain cross-conveying language.**

## A Quitclaim Deed

It is not uncommon to see the use of a quitclaim deed to clear up certain title questions. For instance, the chain of title may contain a cloud on ownership because of an error or ambiguity related to a third party. To clear title to the appropriate owner and make sure that the stranger does not later assert a claim to title, a quitclaim deed may be secured. Unless the deed is a "limited" quitclaim deed conveying only specified interests, all known or possible ownership rights in the interest would be granted to the grantee.

### Scenario:

Read the following title requirement and then correctly fill out the following Quitclaim Deed.

**Requirement:** On July 25, 1995, Abe Matthews conveyed all right, title, and interest in Tract No. 3 covering T33N, R78W, 6 PM, Section 22: N/2SW/4, Chambers County, Indiana, covering 80 acres, in favor of Carl Jones via Special Warranty Deed, recorded in Book 555, page 77. On May 22, 2009, your company acquired Lease No. 3 from Carl Jones, which covers the same

80 acres described as Tract No. 3. However, taxes on Tract No. 3 have been paid by Abe Matthews beginning in 1995 until the present. You should secure a quitclaim deed from Abe Matthews in favor of Carl Jones to prevent any type of adverse claim whereby Abe Matthews asserts a claim to title on Tract No. 3 which covers your Lease No. 3.

## QUIT-CLAIM DEED

THIS QUIT-CLAIM DEED, is executed this \_\_\_\_\_ day of \_\_\_\_\_ 200\_\_  
by \_\_\_\_\_, hereinafter referred to as "Grantor," to  
\_\_\_\_\_, hereinafter referred to as "Grantee;"

WITNESSETH, that Grantor, for and in consideration of the sum of Ten Dollars (\$10.00) and other valuable consideration, in hand paid by Grantee, the receipt and sufficiency of which is hereby acknowledged, does hereby remise, release, and quit-claim unto Grantee, all right, title, interest, and claim which the Grantor has in and to the following described lot, piece, or parcel of land, situate, lying, and being in the County of \_\_\_\_\_, State of \_\_\_\_\_, to wit:

TO HAVE AND HOLD the same, together with all and singular the appurtenances thereunto, of all interest, equity, and claim whatsoever Grantor may have, either in law or equity, for the proper use, benefit, and behalf of the Grantee forever.

IN WITNESS WHEREOF, Grantor has signed and sealed these presents the day and year first above written.

Grantor:

\_\_\_\_\_

ACKNOWLEDGEMENTS

**Answer to Quit-Claim Deed**

**QUIT-CLAIM DEED**

THIS QUIT-CLAIM DEED, is executed this 21 day of May 2009 by Abe Matthews, hereinafter referred to as "Grantor," to Carl Jones, hereinafter referred to as "Grantee;"

WITNESSETH, that Grantor, for and in consideration of the sum of Ten Dollars (\$10.00) and other valuable consideration, in hand paid by Grantee, the receipt and sufficiency of which is hereby acknowledged, does hereby remise, release, and quit-claim unto Grantee, all right, title, interest, and claim which the Grantor has in and to the following described lot, piece or parcel of land, situate, lying and being in the County of Chambers, State of Indiana, to wit:

T33N, R78W, 6 PM, Section 22: N/2SW/4  
covering 80 acres more or less

TO HAVE AND HOLD the same, together with all and singular the appurtenances thereunto, of all interest, equity, and claim whatsoever Grantor may have, either in law or equity, for the proper use, benefit, and behalf of the Grantee forever.

IN WITNESS WHEREOF, Grantor has signed and sealed these presents the day and year first above written.

Grantor:

*Abe Matthews*

ACKNOWLEDGEMENTS

## Stipulation/Declaration of Interest

Given the fractionalization of mineral ownership under many tracts of land in the United States, confusion often exists as to what specific interest a party owns in the tract of land. When this occurs, an examining attorney may require that the parties declare, stipulate, acknowledge, and establish of record each of their ownership interests in the mineral estate in the lands. The curative form that can be used to effectuate this is either a Declaration of Interest or a Stipulation of Interest.

### Declaration of Interest

KNOW ALL MEN BY THESE PRESENTS:

THAT, WHEREAS, some doubt and uncertainty may exist as to the interest of the undersigned in the minerals in and under the following described land in Blain County, Mississippi, to-wit:

WHEREAS, the undersigned wish to stipulate for the record as to the mineral interest owned by each.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, each to the other in hand paid, the undersigned hereby declare that the interests owned by each in the minerals in and under the above described land are as follows:

Gary Williams	75%
Thomas J. Smith	25%

TO EFFCTUATE this Declaration of Interest, each of the undersigned for himself, his heirs, successors and assigns, grants, bargains, sells, conveys, quitclaims and delivers to each of the other parties hereto any interest necessary to vest in the said party the interests set opposite his name, to have and to hold the same to said party, his heirs, successors and assigns, forever.

\_\_\_\_\_  
\_\_\_\_\_

**STIPULATION OF INTEREST**

This Stipulation of Interest agreement is made and entered into this 20th day of August, 2012, by and between GARY WILLIAMS and THOMAS J. SMITH.

WHEREAS, Gary Williams executed a Warranty Deed, dated January 1, 2012, recorded in Book 86, Page 1004 of the records of Blaine County, Mississippi covering the following described land in said County and State, to-wit:

unto Thomas J. Smith, excepting and reserving unto Gary Williams an undivided 75% mineral interest in said tract; and

WHEREAS, on February 1, 2012, Gary Williams, joined by his wife, Betty Williams, executed a Quitclaim Deed to Thomas J. Smith recorded in Book 88, Page 335 of the records of said County and State, which deed was intended solely to cure the failure of Betty Williams to join in the execution of the above described Warranty Deed, and was not intended to convey any additional interest to Thomas J. Smith, other than that conveyed by said Warranty Deed; and

WHEREAS, some doubt and uncertainty may exist as to the intent of the parties in executing said conveyances, and it is the desire of the undersigned to clarify the ownership of the oil, gas, and other minerals underlying the above described land;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the undersigned hereby stipulate and agree that the ownership of the oil, gas, and other minerals in and under the above described land is as follows:

Gary Williams	75%
Thomas J. Smith	25%

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

## Stipulation and Cross Conveyance

Often, multiple transactions on the same tract of land can create severe ambiguities or unclear ownership. The transactions may have rendered the ownership to be undeterminable by the examiner. When title looks like “scrambled eggs,” a Correction Deed may not be able to unscramble the eggs. One way to cure this type of issue is through a Stipulation of Interest and Cross Conveyance. The parties involved will be asked to clearly establish the ownership rights at a particular point in time and then execute the curative document that includes proper words of conveyance and cross-assignment.

If all parties wish to clearly establish ownership at a particular point and time and all parties agree on the ownership, three things need to be clearly set forth in the stipulation and cross conveyance.

First, each and every one of the title transactions needs to be unmistakably identified and set forth. A failure to miss even one of the title transactions that has caused the confusion will result in scrambling the eggs even more.

Second, after all of the prior transactions are set forth, each of the interested parties will set forth the nature and amount of interest agreed upon by the parties.

Third, the document must contain conveying and cross-conveying language whereby each and every party to the document conveys and cross conveys whatever interest is necessary to effectuate the purpose of the instrument.

### STIPULATION OF INTEREST AND CROSS CONVEYANCE

THIS INDENTURE, made this 16 of May, 2004, by and between Gayle Swanson, Sally Claremont, Mary Klein :

WHEREAS, the undersigned are the owners of undivided interests as set forth below in oil, gas and other minerals in and under the following described land situated in Burke County, North Dakota to wit:

Township 16 North, Range 9 West, Section 5, S/2SE/4

WHEREAS, a Warranty Deed dated May 6, 1983 between Sally Claremont as seller and Gayle Swanson and Mary Klein as buyer, wherein Sally Claremont sold all right, title, and interest to Gayle Swanson and Mary Klein in the above captioned tract of land reserving, subject to previous reservations, an undivided ½ interest in and to all of the oil, gas and other minerals in and under said land; and

WHEREAS, a Mineral Deed dated July 9, 1990 between Sally Claremont, as grantor and Mary Klein, as grantee, wherein an undivided ½ interest in and to all of the oil, gas and other minerals in and under said premises was conveyed to grantee; and

WHEREAS, a Quit Claim Mineral Deed dated Aug 1, 1992 between Gayle Swanson, as grantor and Sally Claremont and Mary Klein, as grantee, wherein the grantor conveyed an undivided ½ interest in and to all of the oil, gas and other minerals now owned by the grantor in and under said premises to grantees, which conveyance was intended by the parties to ratify and confirm ownership of the same mineral interests as stated in the Warranty Deed dated May 6, 1983 and said Mineral Deed dated July 9, 1990; and

WHEREAS, the undersigned parties are desirous of determining their respective interests in oil, gas and other minerals in and under said premises;

NOW, THEREFORE, for and in consideration of Ten and no/100 Dollars and other valuable consideration, the undersigned parties and each of them do hereby agree, declare and stipulate that their interest in and to the oil, gas and other minerals in and under the said described land is as follows:

<u>MINERAL OWNER</u>	<u>INTEREST</u>
Gayle Swanson	50.00%
Sally Claremont	25.00%
Mary Klein	25.00%

The undersigned parties, and each of them, do hereby GRANT, BARGAIN, SELL AND CONVEY, to the other party, whatever interest in oil, gas and other minerals is necessary to effectuate the purposes of this instrument.

**Scenario:**

From the following information and Title Requirement, prepare a Stipulation and Cross Conveyance on the form provided.

By Mineral Deed, dated May 13, 1977, Book 22, Pg 23, recorded June 1, 1977 Monroe County, Alabama, John and Beth Martins conveyed 10.00 net mineral acres to Matthews Oil Company in and to Section 24: NW/4SW/4NW/4, T3S, R8E, Monroe County, Alabama.

By Mineral Deed, dated May 22, 1977, Bk 46, Pg 333, recorded June 2, 1977 Monroe County, Alabama, Matthews Oil Company conveyed 1.73047 net mineral acres to Nolan Production in and to Section 24: NW/4SW/4NW/4, T3S, R8E, Monroe County, Alabama.

By Mineral Deed, dated May 23, 1977, Bk 976, Pg 267, recorded June 3, 1977 Monroe County, Alabama, Matthews Oil Company conveyed 3.1245 net mineral acres to Curtis Matthews in and to Section 24: NW/4SW/4NW/4, T3S, R8E, Monroe County, Alabama.

The following letter request was submitted from Matthews Oil Company:



**Requirement:** Matthews Oil Company, Nolan Production, and Catherine Matthews should execute a stipulation and cross conveyance regarding lease No. 4 which would vest the ownership as shown below:

Matthews Oil Company	4.499046
Nolan Production	2.249610
Curtis Matthews	2.732204
Catherine Matthews	0.519140

Cure this title issue by properly filling out the Stipulation provided.

## STIPULATION OF INTEREST AND CROSS CONVEYANCE

THIS INDENTURE, made this \_\_\_\_\_ of \_\_\_\_\_, 20 \_\_\_\_\_, by and between \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_:

WHEREAS, the undersigned are owners of undivided interests as set forth below in oil, gas, and other minerals in and under the following described land situated in Monroe County, Alabama, to wit:

WHEREAS,

WHEREAS,

WHEREAS,

WHEREAS, the undersigned parties are desirous of determining their respective interests in oil, gas, and other minerals in and under said premises;

NOW, THEREFORE, for and in consideration of ten and no/100 Dollars and other valuable consideration, the undersigned parties and each of them do hereby agree, declare, and stipulate that their interest in and to the oil, gas, and other minerals in and under the said described land is as follows:

MINERAL OWNER

INTEREST

The undersigned parties, and each of them, do hereby GRANT, BARGAIN, SELL, AND CONVEY, to the other party, whatever interest in oil, gas and other minerals is necessary to effectuate the purposes of this instrument.

**Answer to Stipulation and Cross Conveyance**

**STIPULATION OF INTEREST AND CROSS CONVEYANCE**

THIS INDENTURE, made this \_\_\_\_\_ of \_\_\_\_\_, 20 \_\_\_\_\_, by and between \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_:

WHEREAS, the undersigned are owners of undivided interests as set forth below in oil, gas, and other minerals in and under the following described land situated in Monroe County, Alabama, to wit:

T3S, R8E, Section 24: W/2SW/4NW/4 Monroe County, Alabama.

WHEREAS, By Mineral Deed, dated May 13, 1977, Book 22, Pg 23, recorded June 1, 1977 Monroe County, Alabama, John and Beth Martins conveyed 10.00 net mineral acres to Matthews Oil Company in and to Section 24: NW/4SW/4NW/4 T3S, R8E, Monroe County, Alabama.

WHEREAS, By Mineral Deed, dated May 22, 1977, Bk 46, Pg 333, recorded June 2, 1977 Monroe County, Alabama, Matthews Oil Company conveyed 1.73047 net mineral acres to Nolan Production in and to Section 24: NW/4SW/4NW/4 T3S, R8E, Monroe County, Alabama.

WHEREAS, By Mineral Deed, dated May 23, 1977, Bk 976, Pg 267, recorded June 3, 1977 Monroe County, Alabama, Matthews Oil Company conveyed 3.1245 net mineral acres to Curtis Matthews in and to Section 24: NW/4SW/4NW/4 T3S, R8E, Monroe County, Alabama.

WHEREAS, the undersigned parties are desirous of determining their respective interests in oil, gas, and other minerals in and under said premises;

NOW, THEREFORE, for and in consideration of ten and no/100 Dollars and other valuable consideration, the undersigned parties and each of them do hereby agree, declare, and stipulate that their interest in and to the oil, gas, and other minerals in and under the said described land is as follows:

<u>MINERAL OWNER</u>	<u>INTEREST</u>
Matthews Oil Company	4.499046 net mineral acres
Nolan Production	2.249610 net mineral acres
Curtis Matthews	2.732204 net mineral acres
Catherine Matthews	0.519140 net mineral acres

The undersigned parties, and each of them, do hereby GRANT, BARGAIN, SELL, AND CONVEY, to the other party, whatever interest in oil, gas, and other minerals is necessary to effectuate the purposes of this instrument.

# The Use of Affidavits

---

An affidavit is a sworn, written statement made under oath by the person signing the statement. The affidavit simply lists the witness':

1. name,
2. address,
3. connection to the matter at hand, and
4. their recital of the facts pertaining to the particular matter at hand.

Most often, affidavits are simply statements of facts given by knowledgeable parties (affiants) who are setting forth certain facts as they know them. These facts can answer many questions raised by title requirements. The facts, however, rarely touch on opinion and are not conclusions regarding law unless the affiant is a qualified professional dealing in the area of his or her expertise. The affidavit can be used to explain defects in the recorded links in the chain of title but are not considered a link in title. Therefore, they do not substitute for more substantial curative measures. For instance, the heirs of a decedent may decide not to probate the decedent's estate because the cost of probating would be more than the estate is worth. According to the state's laws of decent and distribution, an affidavit of Death and Heirship would determine the heirs at law, but only the probate process resulting in the Final Decree from the court would substantiate title to the appropriate heirs. The affidavit will only create a rebuttable presumption of the proper heirs.

## **Rebuttable Presumption Defined**

**Based on the evidence of certain facts, a rebuttable presumption is an *assumption of fact* accepted by the court. It will stand as a fact until it is contested and contradicted when someone comes forward and proves otherwise.**

Because an affidavit is a verified statement made under oath, it is essentially a promise that the information is true and correct, and it is the equivalent of testimony before a court. It is best to obtain an affidavit from a disinterested third party whenever possible.

## **GENERAL RULE**

**An affidavit generally states only facts. It rarely will touch on an opinion unless the affiant is a qualified professional dealing with an area of their expertise.**

When dealing with title requirements, the use of affidavits becomes common place, simply because there are so many types that deal with many different title concerns. Affidavits can be used to address any of the following issues, including death, heirship, family history, sex, age, birth, marital status, divorce, residence, or even a person's status or service in the Armed Forces. They can be used to determine the status of a lease, and/or the status of production or non-production in an area. They can be used to identify a person, corporate officers, partnership members, trustees to trusts, members of a joint venture, a party's term of service, the history of a corporation or organization, or even address conflicts that appear of record.

The most common types of affidavits are affidavits of identity, affidavits of death and heirship, a corroborating affidavit, affidavit of production or non-production, and an affidavit of marital status.

### **Affidavit of Identity**

When an individual has more than one name or variation of names in the chain of title, this affidavit will list each of the names used and then state that they refer to the same person.

### **Affidavits of Marital Status**

Depending on the circumstances, several types of affidavits regarding marital status can be used.

1. A marriage affidavit is a written declaration upon oath that a couple is married. Its purpose is to acknowledge the marriage as a legal bond.
2. In states that recognize common law marriage, a common law marriage affidavit would provide evidence of the relationship. In some states, disinterested parties who are aware of the common law relationship must provide the affidavit along with an affidavit provided by the couple.
3. An affidavit of single status can also be referred to as a certificate of freedom to marry and is required when a non-American citizen wishes to marry an American citizen. This affidavit is a prerequisite to obtaining a marriage license. For oil and gas purposes, this affidavit would help explain name variations that have resulted because of a death of spouse or divorce. It can also be used simply to establish the single status of an individual.
4. From time to time, an affidavit of marriage separation may be required to explain circumstances regarding parties tied to title.

**Scenario:**

**1. Assume that on May 1, 1965, Beth Matthews, a single woman, acquired a tract of land located in Caddo Parish, Louisiana.**



**Beth**

**2. The tract of land is described as Township 3 South, Range 17 East, Section 7: N/2, Caddo Parish, Louisiana, recorded in Bk 598, Pg 22.**



**3. On July 10, 1972, Beth married John Anderson. They currently live on the property claiming it as their homestead.**



**John**

**Beth**

**4. A title requirement is requesting that an Affidavit of Marital Status be secured from Beth.**

**Using the information given, appropriately fill out the following Affidavit.**

### **AFFIDAVIT OF MARITAL STATUS**

BEFORE ME, the undersigned authority, a Notary Public in and for the State and Parish aforesaid, personally came and appeared \_\_\_\_\_ who after having been duly sworn, deposes and says:

That she acquired the hereinafter described property on the \_\_\_\_\_ day of \_\_\_\_\_, as reflected in Conveyance Book \_\_\_\_\_ Page \_\_\_\_\_ in the name of \_\_\_\_\_

The said property is described as:

That subsequent to the acquisition of said property she married \_\_\_\_\_, on \_\_\_\_\_ day of \_\_\_\_\_ that she does execute this affidavit to set forth her true name, identity, and marital status as \_\_\_\_\_.

FURTHER DEPONENT SAYETH NOT: \_\_\_\_\_

## Answer to Affidavit of Marital Status

### AFFIDAVIT OF MARITAL STATUS

BEFORE ME, the undersigned authority, a Notary Public in and for the State and Parish aforesaid, personally came and appeared Beth Anderson who after having been duly sworn, deposes and says:

That she acquired the hereinafter described property on the 1st day of May, 1965, as reflected in Conveyance Book 598 Page 22 in the name of Beth Matthews

The said property is described as:

Township 3 South, Range 17 East, Section 7: N/2, Caddo Parish, Louisiana

That subsequent to the acquisition of said property she married \_\_\_\_\_

John Anderson, on the 10th day of July, 1972 that she does execute this affidavit to set forth her true name, identity, and marital status as Beth Anderson.

FURTHER DEPONENT SAYETH NOT: Beth Anderson

### Affidavit of Death and Heirship

When a party in the chain of title dies intestate, leaves a will that is deemed to be invalid, or leaves a will that is not admitted into probate, an affidavit of death and heirship can help to cure title. Many statutes consider a proper affidavit of death and heirship that has no objections or incompetency issues to be good evidence as to the facts recited within the affidavit. The Oklahoma Bar Association Title Standards, 16 O.S. § 67, effective after November 1, 2000, says that a purchaser of a severed mineral interest who is receiving title from a party who claims title through a recorded affidavit of death and heirship recorded for ten years, acquires marketable title as against any person claiming adversely to the recorded affidavit or recital. The recorded affidavit must state that the decedent died without a will, the names of the decedent's heirs and their relationship to the decedent, and that the maker is related to the decedent or otherwise has personal knowledge of the facts stated therein. Even with this title standard in place, an affidavit will never be as definitive as the probating of the decedent's last will and testament.

When dealing with issues of descent and distribution, the land professional must consider a number of issues including residence at time of death; the name, address, and relationship of all heirs; the history of the decedent as to current or previous marriages; children born in each marriage and/or outside of the marriage; date and death of heirs or any predeceased spouse or child; and, a statement concerning the existence and disposition of a will. Some states require a general description of the real and personal property in the estate and a statement that all debts have been paid or the manner in which all debts will be paid.

### **Affidavit of Production or Non-production**

In cases where an effective release of an expired lease is not of record, the land professional must make a thorough examination, determining that the lease does not currently have active operations in place or production that would hold the lease beyond its primary term. The investigation should make sure that no production was ever obtained on any of the land covered in the lease or by any lands pooled or unitized with the lease lands. During this investigation, records from the state oil and gas commission should be verified. If federal lands are in the vicinity, Bureau of Land Management records should be examined. Once the investigation has been completed, an Affidavit of Production, Non-Production, or Non-development can be used to help cure the title issue.

### **Corroborating Affidavit**

Because of the potential future revenue associated with ownership in a producing oil and gas well, it is very important that an affidavit contain accurate information. On more than one occasion, royalties have been paid to designated heirs listed on an Affidavit of Death and Heirship, when in fact other heirs were purposely not disclosed. A consistent example of this involves illegitimate children who have never been accepted by family members. It is suggested that if any question arises as to the legitimacy of facts given by an affiant, corroborating affidavits should be secured. This corroborating affidavit should be obtained in order to confirm and support the primary affidavit.

# The Use of Ratifications and Division Orders

---

## Ratification

Certain types of curative issues can be taken care of with either a Ratification or a Ratification and Rental Division Order. A ratification is a very strong curative document and, once signed by a non-leasing party, becomes the ratifying party's confirmation or adoption of the lease that had already been signed by another party. Obtaining the signature of a third party through a ratification is more than just putting a bandage on a wound, it is more like suturing the wound. The signature of a third party, on a ratification, indicates their complete agreement to the terms of the item but, more importantly, it ties the third party to the item from its effective date.

Delaware was the first state to ratify the Constitution of the United States. Their ratification of the constitution indicated their complete agreement to the document as if they had been there when it was first drafted. Also, any proposed amendment to the U.S. Constitution must be ratified by three-quarters of the state legislatures or by convention in three-quarters of the states. In the same way, the party which ratifies a lease is not only confirming their agreement to the lease, they are agreeing to lease their interest on the same terms and conditions as set out on the lease. When a third party ratifies an oil and gas lease they are accepting the terms and conditions of the lease and are tying those conditions to themselves.

Ratifications can be used in many situations where third parties must be secured to an existing lease or other type of agreement. The following are just a handful of examples:

- Life Estates
- Future reversionary interests
- Nonparticipating royalty owner issues
- Issues related to effective dates of ownership
- A ratification of a prior deed
- A ratification and consent to pooling or unitization
- A ratification of an assignment of an oil and gas lease
- A ratification of a Confidentiality Agreement
- A ratification of an oil and gas lease by a party claiming an adverse interest
- A ratification of an Operating Agreement
- A ratification of a renewal, revival, or extension of an oil and gas lease

Those that agree to sign a ratification must do so voluntarily, deliberately, and intelligently, knowing that without the ratification, they would not be bound to the oil and gas lease.

## **Ratification and Rental Division Order**

At times, not only does a third party need to be tied to an existing lease but the appropriate way to pay a delay rental payment or royalty payment must also be established. A Ratification and Rental Division Order will accomplish both of these tasks. This curative document will include language whereby the signer adopts, ratifies, confirms, grants, leases, and lets to Lessee all of signer's rights, title, and interest in the lands, subject to and in accordance with the terms and conditions contained in the Lease.

## **Ratification, Renewal, Revivor, and Extension of the Lease**

At times, an extension of the lease may be needed in order for the lessee to drill and complete a well on the lease. In a case like this, the curative document that may be used is called a Ratification, Renewal, Revivor, and Extension of the Oil, Gas, and Mineral Lease. The document must be agreeable to both lessor and lessee and would include language whereby, both parties agree to extend, revive, renew, and ratify the exiting named lease. The extension period is set forth as well as the conditions that surround the drilling operations. If the well is completed as a producer, the Lease is deemed to have been extended beyond its primary term, and to be valid, in force and effect, and Lessee's rights and obligations to Lessor as set forth in the Lease are deemed to be extended, revived, and renewed.

## **Ratification and Consent to Pooling and/or Unitization**

In Texas, even when pooling is authorized by a lease, the lease will not bind a nonparticipating royalty owner (NPRI) to the pooling without their consent. In other words, NPRI owners cannot be unitized without their signed unit joinder or a ratification and consent to pooling. Generally, the ratification and consent to pool will include language whereby the NPRI consents to, approves, and ratifies the pooling or unitization of the lease with other lands and leases, as if the owner was a party to the designation of pooled unit and/or unitization.

From time to time, such a curing document should be used with regard to pooling overriding royalty interests.

## **Ratification of Assignment of Oil and Gas Leases**

A Ratification of Assignment of Oil and Gas Leases can be used when an undivided owner in leases failed to be included as an Assignor of their interest in the original assignment of leases. Generally, this document will include language whereby the ratifying party ratifies the Assignment and all of its terms and provisions to the same extent and effect as if they were a signatory party to the agreement. Further, the ratifying party grants, assigns, and conveys to the Assignee all of its rights, title, and interest in the leases as to the land they cover that were the subject of the assignment.

## Division Order

A Division Order is an agreement between the owner of interest out of production and either the lessee or a third party payor which will set forth the lessor's decimal interest (Net Revenue Interest "NRI") in the production of a given producing property. The document is generated by the party distributing revenue to the owner. This would be either the operator of the well or the purchaser. Although the document may be signed by a lessor, it will not modify or change the terms of the oil and gas lease and is not a conveyance of mineral or royalty interest.

The division of interest as set out on the division order is generally based upon a title opinion prepared by an examining attorney.

The Division Order document will include:

1. Name of the oil & gas company, purchaser, or operator
2. Legal description of the producing property
3. Type of interest – royalty, overriding royalty, or working interest
4. Calculated decimal interest of owner
5. Name and address of the interest owner

**Scenario 1:** Read the following title requirement and then correctly fill out the Ratification of Oil and Gas Lease.

**Requirement 1:** Your attention is directed to Lease No. 23, which covers Section 23: NW/4NW/4, T85N, R15E, Benson County, Oklahoma, recorded in Book 134, Page 177. On April 13, 2008, Abraham Graham granted a ten (10) year Term Mineral Deed covering 100% of grantor's interest in and to all oil, gas, and other minerals in Tract 4 to Beth Anderson. On May 25, 2012, Provision Petroleum acquired Lease No. 23 from Beth Anderson covering the minerals in Tract 4, recorded in Book 534, Page 179. Since the conveying term mineral deed did not provide for the continuation of the lease past the expiration date of the reversionary period, the lease will not transfer to the reversionary mineral owner and two leases should have been taken, one from the holder of the term interest and the other from the holder of the reversionary interest. You should, at a minimum, have Abraham Graham ratify the Beth Anderson's lease. If he refuses to ratify the Anderson lease, you should negotiate a separate lease with Abraham Graham effective at the date of the reversionary interest.

## RATIFICATION OF OIL AND GAS LEASE

KNOW ALL MEN BY THESE PRESENTS.

That, the undersigned do hereby ratify, approve, and confirm that certain oil and gas lease dated, \_\_\_\_\_, executed by \_\_\_\_\_ as \_\_\_\_\_ Lessor, \_\_\_\_\_ to \_\_\_\_\_ as Lessee, covering certain lands situated in \_\_\_\_\_ County, State of \_\_\_\_\_, recorded in Book \_\_\_\_\_, Page \_\_\_\_\_ in so far as it covers the following described land to wit:

WHEREAS, it is the desire of the undersigned, to adopt, ratify, and confirm said lease, and to grant, lease, and let said lands in accordance with the terms and provision hereof.

NOW THEREFORE, in consideration of the premises, and the sum of \$1.00 and other good and valuable consideration, to the undersigned, I or we, the undersigned, jointly and severally, do hereby adopt, ratify, and confirm said lease, and all of its terms and provisions, and do hereby grant, lease, and let, to said \_\_\_\_\_, any and all interests which I, we the undersigned, now have, or may hereafter acquire, either by conveyance, devise, inheritance, or operation of law, and whether vested, expectant, contingent, or future in and to said lands, in accordance with each and all of the terms and provisions of said lease, and as fully and completely, as if the undersigned had originally executed, acknowledged, and delivered said lease, as one of the lessors herein, either on the date thereof, or on the date hereof, and the undersigned declare each for themselves, that said lease and all of its terms and provisions are binding on the undersigned and is a valid and subsisting oil, gas, and mineral lease.

The undersigned hereby fully recognizes said oil and gas lease as being in full force and effect as though the undersigned had personally signed, sealed and acknowledged the same.

WITNESS OUR HANDS THIS \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_.

## Answer to Scenario 1:

### RATIFICATION OF OIL AND GAS LEASE

KNOW ALL MEN BY THESE PRESENTS.

That, the undersigned do hereby ratify, approve and confirm that certain oil and gas lease dated, May 25, 2012 , executed by Beth Anderson as Lessor, to Provision Petroleum as Lessee, covering certain lands situated in Benson County, State of Oklahoma, recorded in Book 534, Page 179 in so far as it covers the following described land to wit:

Section 23: NW/4NW/4, T85N, R15E, Benson County, Oklahoma

WHEREAS, it is the desire of the undersigned, to adopt, ratify, and confirm said lease, and to grant, lease, and let said lands in accordance with the terms and provision hereof.

NOW THEREFORE, in consideration of the premises, and the sum of \$1.00 and other good and valuable consideration, to the undersigned, I or we, the undersigned, jointly and severally, do hereby adopt, ratify, and confirm said lease, and all of its terms and provisions, and do hereby grant, lease, and let, to said **Provision Petroleum**, any and all interests which I, we the undersigned, now have, or may hereafter acquire, either by conveyance, devise, inheritance, or operation of law, and whether vested, expectant, contingent, or future in and to said lands, in accordance with each and all of the terms and provisions of said lease, and as fully and completely, as if the undersigned had originally executed, acknowledged, and delivered said lease, as one of the lessors herein, either on the date thereof, or on the date hereof, and the undersigned declare each for themselves, that said lease and all of its terms and provisions are binding on the undersigned and is a valid and subsisting oil, gas, and mineral lease.

The undersigned hereby fully recognizes said oil and gas lease as being in full force and effect as though the undersigned had personally signed, sealed, and acknowledged the same.

WITNESS OUR HANDS THIS \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_.

*Abraham Graham*

**Scenario 2:** Read the following title requirement and then correctly fill out the Ratification and Rental Division Order:

**Requirement 2:** Your attention is directed to Lease No. 22, which covers Section 22: NW/4, T85N, R15E, Corby County, Pennsylvania, dated February 14, 2012, recorded in Book 135, Page 77, whereby John Anderson, as life tenant, leased Tract 3 to Sunrise Oil and Gas. One remainderman, Ben Anderson, has ratified Lease No. 22 and is thus committed to this oil and gas lease and will allow for exploration of these mineral interests. This ratification does not, however, indicate how royalties are to be paid if there is production from the property. The mineral deed does not show whether the royalties are to be paid directly to the life tenant. If production is secured from the proposed McGregor 1-36 well under the terms of this oil and gas lease, a royalty division order is needed, setting out how the .046875 royalty interest in the proposed unit (T85N, R15E, Section 22: All) should be paid between the life tenant and the remainderman.

## RATIFICATION AND RENTAL DIVISION ORDER

KNOW ALL MEN BY THESE PRESENTS:

That, WHEREAS, that certain oil and gas lease dated, \_\_\_\_\_ from \_\_\_\_\_, as Lessor, to \_\_\_\_\_, as Lessee, recorded in Book \_\_\_\_\_, Page \_\_\_\_\_, of \_\_\_\_\_ County, State of \_\_\_\_\_, in so far as it covers the following described land, to wit:

NOW, THEREFORE, in consideration of the sum of One Dollar (\$1.00) and other good and valuable considerations, we \_\_\_\_\_ and each of us, do hereby ratify, approve, confirm, and adopt the above described oil and gas lease in so far as it covers the above described land, and do hereby lease, demise, and let said land unto \_\_\_\_\_, subject to and under all of the terms and provisions of said lease, and as to said land, do hereby agree and declare that said lease is now in full force and effect; that payment has been duly made of the entire bonus consideration and all of the delay rentals necessary to extend said lease to the next rental paying date; and each of the undersigned agrees that any delay rentals or royalty which may be paid under the terms of said lease with respect to the above described land may be divided as follows:

CREDIT TO

ADDRESS

AMOUNT

**Answer to Scenario #2:**

**RATIFICATION AND RENTAL DIVISION ORDER**

KNOW ALL MEN BY THESE PRESENTS:

That, WHEREAS, that certain oil and gas lease dated, May 14, 2012 from John Anderson, as life tenant, as Lessor, to Sunrise Oil and Gas, as Lessee, recorded in Book 135, Page 77, of Corby County, State of Pennsylvania, in so far as it covers the following described land, to wit:

Section 22: NW/4, T85N, R15E

NOW, THEREFORE, in consideration of the sum of One Dollar (\$1.00) and other good and valuable considerations, we John Anderson and Ben Anderson and each of us, do hereby ratify, approve, confirm, and adopt the above described oil and gas lease in so far as it covers the above described land, and do hereby lease, demise, and let said land unto Sunrise Oil and Gas subject to and under all of the terms and provisions of said lease, and as to said land, do hereby agree and declare that said lease is now in full force and effect; that payment has been duly made of the entire bonus consideration and all of the delay rentals necessary to extend said lease to the next rental paying date; and each of the undersigned agrees that any delay rentals or royalty which may be paid under the terms of said lease with respect to the above described land may be divided as follows:

CREDIT TO	ADDRESS	AMOUNT
John Anderson, Life Tenant	123 S. Main St	.046875 RI
Ben Anderson, Remainderman	456 1 <sup>st</sup> Ave	.000000 RI

# Example of a Division Order

NADOA Model Form Division Order (Adopted 9/95)

---

## DIVISION ORDER

To: John Anderson

Date: August 23, 2013

Property Number: 456-859

Property Name: McGregor 1-36

Effective Date: First Sales

Operator: Sunrise Oil and Gas

County and State: Bent County, New Mexico

Property Description: T23N, R78W, 6<sup>th</sup> P.M. Section 36

Production:  X  Oil  X  Gas \_\_\_\_\_ Other: \_\_\_\_\_

Owner Name & Address:

**John Anderson**

**123 N. Main St**

**Phoenix, Arizona**

OWNER NUMBER: **75321**

Type of Interest: **ORRI**

Decimal Interest: **.0002345**

The undersigned certifies the ownership of their decimal interest in production as described above payable by Sunrise Oil and Gas (Payor).

Payor shall be notified, in writing, of any change in ownership, decimal interest, or payment address. All such changes shall be effective the first day of the month following receipt of such notice.

Payor is authorized to withhold payment pending resolution of a title dispute or adverse claim asserted regarding the interest in production claimed herein by the undersigned. The undersigned agrees to reimburse Payor any amount attributable to an interest to which the undersigned is not entitled.

Payor may accrue proceeds until the total amount equals \$25.00, or pays \_\_\_\_\_ whichever occurs first, or as required by applicable state statute.

This Division Order does not amend any lease or operating agreement between the undersigned and the lessee or operator or any other contracts for the purchase of oil or gas.

In addition to the terms and conditions of this Division Order, the undersigned and Payor may have certain statutory rights under the laws of the state in which the property is located.

Special Clauses:

Owner(s) Signature(s): \_\_\_\_\_

Owner(s) Tax I.D. Number(s) \_\_\_\_\_

# The Power of Attorney

---

An *attorney-in-fact* is a person that has been specifically named by another through a written "*power of attorney*." The power of attorney is a legal document that must be signed by a competent adult (the principal) authorizing the attorney-in-fact (the agent) to act on behalf and in the name of the principal for the purpose of conducting business. A person would not be considered a legitimate attorney-in-fact without the written power of attorney document. In real estate matters, this document must be formally acknowledged and should be recorded. The extent of the powers granted to the attorney-in-fact is established in the document, powers must be effective prior to the date of any instrument executed by the attorney-in-fact, and the extent of powers must be wide enough to include any instrument executed by the attorney-in-fact.

## **A General Power of Attorney**

The "*general power of attorney*" or a "*universal power of attorney*" grants the attorney-in-fact power to conduct all types of business and execute any document.

## **A Special Power of Attorney**

The "*special power of attorney*" grants limited powers to the attorney-in-fact for conducting business or signing documents that have been specifically set out in the power of attorney document.

## **A Durable Power of Attorney**

A durable power of attorney differs from a power of attorney in that it would continue the principal/agent relationship beyond the incapacitation of the principal. Prior to the creation of the durable power of attorney, the only way to deal with the affairs of an incapacitated principal was through the appointment of a guardian.

A durable power of attorney document can grant either general power or special limited powers. All fifty states recognize some version of the durable power of attorney. In some states, certain powers cannot be delegated, including the powers to make, amend, or revoke a will, change insurance beneficiaries, contract a marriage, and vote.

The Uniform Statutory Power of Attorney Act, technically called the "Uniform Statutory Form Power of Attorney Act," was created by the National Conference of Commissioners on Uniform State Law (NCCUSL) in 1988. The Act provides a legal template for a standardized power of attorney law. States began enacting all or part of the act in their jurisdictions. According to

USLegal.com, Louisiana is the only state that has not adopted the Uniform Power of Attorney Act.

### **The Need to see the Power of Attorney**

Since every power of attorney is to be strictly construed, an attorney-in-fact can execute a document only if the power of attorney grants such authority. Assume that a General Power of Attorney authorizes the agent to sell real estate but there is no mention of having leasing authority. Even though the document is titled General Power of Attorney, the authority to lease has not been granted to the agent. A power of attorney that grants broad powers, granting the agent "all authority that the principal would have," would be sufficient to execute an oil and gas lease.

When a presumed attorney-in-fact executes an oil and gas lease, a demand to see the written power of attorney would be both reasonable and necessary.

**Scenario:** Read the following title requirement and then examine each of the powers of attorney that follow. Determine if either has granted Jason McCall the authority to act in the capacity as stated in the title requirement.

**Requirement:** Sandra McCall, by and through her attorney-in-fact, Jason McCall, executed Oil and Gas Lease No. 12 dated November 10, 2012, recorded in Volume 125, page 756, Lease Records, in favor of Windjammer Petroleum covering an undivided 25% interest in Tract No. 25. No power of attorney from Sandra McCall to Jason McCall appears in the material examined. *We should be* furnished with a certified copy of the power of attorney from Sandra McCall to Jason McCall.

## **GENERAL POWER OF ATTORNEY**

TO ALL PERSONS, let it be known that I, Sandra McCall, the undersigned principal, do hereby grant a general power of attorney to Jason McCall, as my Attorney-in-Fact.

My Attorney-in-Fact shall have full powers and authority to undertake all acts on my behalf that I could do personally including, but not limited to, the right to sell, deed, buy, trade, mortgage, assign, rent, or dispose of any of my real or personal property; the right to deposit, endorse, or withdraw funds to or from any of my bank accounts; the right to borrow, lend, invest, or reinvest funds on any terms; the right to initiate, defend, commence, or settle legal actions on my behalf; and the right to retain any accountant, attorney, physician, or other advisor deemed necessary to protect my interest generally or relative to any of the foregoing powers.

## **SPECIAL POWER OF ATTORNEY**

TO ALL PERSONS, let it be known that I, Sandra McCall, the undersigned principal, do hereby grant a special power of attorney to Jason McCall, as my Attorney-in-Fact.

My Attorney-in-Fact shall have full powers and authority to perform any act which I may be legally entitled to undertake to accomplish the following objectives and goals, and to do the following:

To make demand for, initiate legal action for, foreclose on, enter into settlement agreements, obtain judgment, and to collect thereon, and thereafter to execute appropriate releases, receipt, discharges, and satisfaction of judgment, on any and all debts, accounts, notes, and other amounts of money which I may hold now or hereinafter may hold.

To improve, maintain, manage, enter into management agreement for, insure, repair, rent and lease, and in any way or manner deal with all or any part of any real property whatsoever, or any interest therein, except to sell or to mortgage the same, and to effect any or all of the above-described transactions with any entities on such terms and as prices my attorney-in-fact may deem proper.

ANSWER: It would appear that both documents grant the right to execute an oil and gas lease. The Special Power of Attorney specifically states that authority is given to "rent and lease." Although the General Power of Attorney does not use the word "lease" it specifies, "to undertake all acts on my behalf that I could do personally including, but not limited to...."

# A Certified Copy or Exemplified Copy

Often a title issue can be resolved by simply locating an existing document and recording it in the appropriate county where the title issue is found. In order for these documents to achieve their appropriate action, they will often be required to be either a certified copy or an exemplified copy of the original document.

A certified copy of an instrument would be an *official* copy of a document that has been evidenced as a *true* and *authentic* copy of the original. The certified copy will be signed by the party who is entrusted in keeping the original copy. A copy of a death certificate will more than likely be required to be a "Certified Copy" of the original death certificate.

An exemplified copy is a copy of an original document that has been obtained from a County Clerk or a Judgment Clerk where the original document has been filed. If obtained from a County Clerk, the clerk will verify in writing that the original document was indeed properly executed and recorded in that county. In order for the other counties to accept the original documents as recordable "foreign," they must be authenticated by verifying the identity and authority of the certifying officer. An example of this would be probate proceedings that were filed in one county when, in fact, the decedent had property in several "foreign" counties, or a judgment against a debtor that was decided in one state but must also be filed in a "foreign" county or state.

## Examples of Certified and Exemplified Copies

<input type="checkbox"/> District Court <input type="checkbox"/> Denver Probate Court County, Colorado Court Address:		▲ COURT USE ONLY ▲  Case Number:  Division    Courtroom
In the Matter of the Estate of:  <b>John Anderson</b>  <b>Deceased</b>		
<b>CERTIFICATE OF ANCILLARY FILING – DECEDENT'S ESTATE</b>		
The domiciliary foreign personal representative's sworn statement stating that no administration, or application, or petition for administration, is pending in Colorado, has been filed with this Court.		
The following documents regarding <u>the estate of John Anderson, deceased</u> as the domiciliary foreign personal representative, have been filed with this Court:		
<input checked="" type="checkbox"/> Exemplified authenticated copies of the foreign court's order appointing the domiciliary foreign personal representative.		
<input checked="" type="checkbox"/> Exemplified authenticated copy of the foreign court's letters or other documents evidencing or affecting the domiciliary foreign personal representative's authority to act.		
<input type="checkbox"/> Other: _____		
The attached document(s) is/are certified to be a true copy of the <input type="checkbox"/> certified <input checked="" type="checkbox"/> exemplified <input type="checkbox"/> authenticated copy of the document(s) referenced above that is/are in my custody.		
Date: 4/01/12		<i>Inaak Insalaco, Registrar of Court</i> (Deputy) Clerk or Registrar of Court

# Lis Pendens and Quiet Title Actions

**Lis pendens** - Latin for a "suit pending" and is a notice that a lawsuit has been filed regarding real property. A lis pendens will safeguard a plaintiff's claim to property so that any sale, lease, or other encumbrance on the property, prior to the outcome of the suit, will not lessen the plaintiff's rights to the property, should the plaintiff win its case. A properly recorded lis pendens is not a lien on the property but is constructive notice and places a cloud on title that would alert a title examiner that the pending suit could affect title. The presence of a lis pendens would not prevent an oil company from acquiring a lease but the lease acquisition would be subject to the outcome of the pending litigation. Therefore, the land professional may wish to secure leases from all parties involved.

**Quiet Title Action** - A *quiet title action* is a civil legal process that removes the cloud on the title and establishes the proper ownership as determined by the courts. Such an action would establish a person's title against anyone and everyone, and thus "quiet" any and all disputes or claims on the property. The purpose, of course, is to remove the cloud of title and to establish clear marketable title that is free from any encumbrance. When the risk of a title defect is so grave and no other curative steps can be taken to fix title, a title examiner may require that a quiet title action be commenced.

The ultimate resolution comes when the court presents the final findings in the matter. What may follow is some type of conveyance whereby any disputing party transfers any claim to the property to the resolved party.

STATE OF NORTH DAKOTA  
COUNTY OF BURKE,

IN THE DISTRICT COURT  
FIFTH JUDICIAL DISTRICT

Elizabeth Davis Wilson,

Plaintiff,

vs

The heirs at law of Jackson Davis, deceased; the heirs at law of Martha Davis, deceased; Mary A. Trent, Robert Rou, Rex Trent, Ella S. Stevens and all other persons unknown claiming any estate or interest in or lien or encumbrance upon the real property described in the complaint, Defendants.

## ORDER FOR JUDGMENT.

The above entitled action came duly on for hearing before the Honorable John P. Love, Judge of the above Court at the Court House in the City of Bowbells, North Dakota on the 15 day of September, 1932; H.A. Horace, appearing as attorney for the plaintiff and no one appearing for or on behalf of the defendants or any of them, either in person, by attorney or otherwise...

## CONCLUSION OF LAW.

The Court finds, as conclusion of law, that the above named Martha Davis was, at the date of the death of the said Jackson Davis, his sole heir at law and that the above named plaintiff, Elizabeth Davis Wilson is now the owner in fee simple of the premises described in the complaint herein ...

NOW THEREFORE, it is ORDERED that the above named Martha Davis be adjudged to be the sole heir of Jackson Davis, deceased, and that the above named plaintiff Elizabeth Davis Wilson be adjudged to be the owner of the premises, described in the complaint...

# General Rules of Construction

---

Consider the word, “curative” or “cure”. Curative documents are items that one would use in order to bring health or wholeness back to a title that is broken or is in need of being cured. The curative documents available for the land professional are much like those items found in a home first aid kit. Both have a similar purpose.

For the sake of the illustration, think of dividing the individual items found in a first aid kit into three categories. First, there would be bandages, adhesive tape, antiseptic, tweezers, scissors, alcohol wipes, aspirin, and a thermometer, all items that could be used to attend to minor injuries such as small bruises, small cuts, or a minor illness. Secondly, there would be cold packs, sterile gauze dressings, vinyl gloves, and antibiotic ointment that could attend to more serious injuries such as burns, sprains, cuts, or general injury. For even greater or more serious injuries, there would be a tourniquet, a CPR mouthpiece, a splint, emergency phone contacts, and directions to a hospital.

The curative items found in the land professional’s first aid kit can also be divided into three categories. First, items that might be used in order to attend to minor title defects would be affidavits, tenant consents, or rental division orders. Those items needed to attend to more serious title defects would be corrective or explanatory documents, documents divesting or disclaiming rights, certified or exemplified copies of documents, lease amendments, a subordination of lien, a release of the oil and gas lease, a release of a lien, or a tax certificate. For even greater or more serious title defects, one might use a ratification, quitclaim deed, a stipulation of interest, or defer to the court for resolution.

Very often a title defect can be treated in more than one way and those administering the cure can select the type of document they wish in order to resolve the issue in a timely and economical manner.

## General Rules of Construction

If we lived in an ideal world, the wording in every conveyance would be crystal clear - easy to understand and unambiguous. Courts are often called upon to resolve disagreements or disputes over an intended meaning or interpretation in a conveyance that arises from ambiguity or uncertainty. Generally, courts will rely on certain *rules of construction* when interpreting a conveyance. The rules of construction are the principles used by the courts to interpret contracts. They are not codified rules of law; instead,

they are rules adopted by the courts involving the construction of conveyances. These rules are based on the idea that similar problems that have resulted from similar construction issues should have similar results.

When dealing with property disputes, it is not the intention of the courts to rule contrary to the intention of the parties. Generally, courts will limit their examination of the facts to the four corners of the instrument. It is within these corners that the court will attempt to find the intent of the parties.

**GENERAL RULE**

**Courts will limit their examination of the facts to the four corners of the instrument. It is within these corners that the court will attempt to find the intent of the parties.**

If intent is not straightforward or clear from the four corners of the instrument, a court will then apply “rules of construction” to help construe the intent. Although rules of construction vary from state to state, below are a handful of rules frequently found in oil and gas cases.

1. Unless a grantor specifically *reserves* interests owned at the time of a conveyance, if the grant has not limited the nature of the interest being conveyed, it is believed that the grantor has conveyed everything he owns.
2. If the conveyance is determined to be complete, clear, and unambiguous, the intention of the parties will be determined by an examination of the words in the deed itself and will not rely on external or oral evidence. When a contract is reduced to writing, the intention of the parties is to be ascertained from the writing alone.
3. The general rule is that the granting clause in a deed determines the interest conveyed.
4. If an instrument contains either typewritten or handwritten provisions and printed provisions and the two are in conflict with one another, the typewritten or handwritten provisions will generally prevail.
5. The party which drafted the instrument is viewed as having meant exactly what was written in the instrument. Therefore, if there is a dispute, the instrument is most generally interpreted against the drafter. *Coley v. Williams*, 98 Okla. 143, 224 P. 345 (1924).





**GENERAL RULE**

**When a document contains both printed language and typewritten or handwritten language, the typewritten or handwritten language will prevail over the printed language.**

**GENERAL RULE**

**The party which drafted an instrument is viewed as having meant exactly what was written in the instrument. If there is a dispute, the instrument is most generally interpreted against the drafter.**

Scenario related to #5:

<p>On July 1, 2011, John executed an oil and gas lease with Your Oil Company. The lease covered a 10-acre tract of land on a 5-year delay rental lease form. The lease contained this language...</p>   <p style="text-align: center;">→</p> <p style="text-align: center;"><b>Your Oil Company</b></p> <p style="text-align: center;"><b>John</b></p>	<p><b>"This lease shall terminate on July 1, 2012 unless on or before that date Lessee either (a) commences operations for the drilling of a well on the land, or (b) pays the lessor a rental payment of \$10 per acre for all or that portion of the land the Lessee elects to continue to hold hereunder..."</b></p>
<p>On July 1, 2012, your oil company's lease administrator was in the hospital recouping from a nervous breakdown. The rental payment was not made until July 2, 2012.</p>   <p style="text-align: center;">→</p> <p style="text-align: center;"><b>Your Oil Company</b></p> <p style="text-align: center;"><b>John</b></p>	<p>John believes that the lease is now terminated. Your Oil Company is willing to take the matter to court in an effort to save the lease.</p> <p>If the matter went to court, who do you believe would most likely win the case?</p> <p><input type="checkbox"/> John</p> <p><input type="checkbox"/> Your oil company</p>

ANSWER: Since your oil company drafted the oil and gas lease, the lease would most likely be viewed as meaning exactly what your company intended. John would most likely win in court.

6. If a conveyance contains both a grant and a reservation, the granting language will be interpreted prior to the interpretation of the reservation. Both would be interpreted in sequence and independently of the other. If the two are in conflict with one another, generally, the granting language will take priority.
7. No part of the mineral estate will be reserved by a grantor who uses only *exception language* in a habendum clause of a warranty deed unless the grantor expressly reserves the minerals to himself. Such exception language has, by many courts, been construed only as excepting from the covenant of warranty.



## WARRANTY DEED

THIS WARRANTY DEED is made the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between \_\_\_\_\_, (hereinafter referred to as "Grantor"), and \_\_\_\_\_, (hereinafter referred to as "Grantee"):

The Grantor, for and in consideration of the sum of \_\_\_\_\_ (\$\_\_\_\_) and other valuable consideration, receipt of which is hereby acknowledged, hereby grants, bargains, sells, remises, releases, and conveys to the Grantee, all that certain land situated in \_\_\_\_\_ County, State of \_\_\_\_\_, to-wit:

*"Legal Description"*

TO HAVE AND TO HOLD the premises aforesaid with all the rights, privileges, tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining to have and to hold unto Grantees forever. The Grantor hereby covenants with said Grantee that the Grantor is lawfully seized of said land in fee simple, has good right and lawful authority to sell and convey said land, that said land is free from all encumbrances, and hereby fully warrants the title to said land and will defend the same against the lawful claims of all persons whosoever.

***"Except an undivided one-half of all the oil, gas and other minerals"***

Granting Clause

Habendum  
Warranty Clause

ANSWER to Scenario for Rule #7: If no language is used in the deed indicating that it was ***the intention of Abe to reserve the minerals to himself***, the exception contained in the deed should not be construed as a reservation of the mineral rights but must be construed as excepting them from the covenant of warranty. *Jarrett v. Moore*, 159 Okla. 93, 14 P.2d 390. With this Oklahoma case, since Abe did not expressly reserve the minerals to himself, David would own 100% of the minerals.







8. When reservation language appears in the habendum clause of a conveyance and it appears that there is intention on the part of the



ANSWER: With the language as cited above, an Oklahoma court concluded, "The reservation of mineral rights appearing in the habendum clause of a deed will control over the granting clause where the intention of the grantor to create such reservation is clearly expressed." Notice the word "reserved" in the language. The court held that there was a clear intention to reserve the 15/16ths mineral interest; that the language "except 15/16ths of all mineral rights reserved," ***expressed a clear intention by the grantor not to include this mineral interest under the general granting clause in the deed.*** In this case, it appears that John is the owner of the minerals. *Wescott v. Bozarth*, 202 Okla. 149, 211 P.2d 258. (Emphasis ours)

9. To create a reservation it must appear from the instrument that ***the grantor intended to, and by appropriate words expressed the intent to reserve an interest in himself.*** Otherwise, the exception must be construed as an exception to the warranty. An Oklahoma court ruled over a case similar to the example below. *Jarrett v. Moore*, 159 Okla. 93, 14 P.2d 390 (1932).

**Scenario related to #9:**

<p><b>Assume that Abe, the fee owner, granted to Betty a ten year mineral deed.</b></p>    <p style="text-align: center;">Abe <span style="margin-left: 300px;">Betty</span></p>	<p><b>Abe believes that at the end of the ten year term, the minerals will revert to him.</b></p> <p><b>David believes that at the end of the ten year term, the minerals will revert to him</b></p>
<p><b>Eight years later, by warranty deed, Abe conveyed the land to David. The warranty deed contained the provision that the premises conveyed were unincumbered.</b></p> <p><b>"except all oil and gas rights and mineral rights held by Betty."</b></p>    <p style="text-align: center;">Abe <span style="margin-left: 300px;">David</span></p>	<p><b>Who do you think will own the minerals?</b></p> <p><input type="checkbox"/> Abe</p> <p><input type="checkbox"/> David</p>



ANSWER: It is clear that the intent is to reserve the minerals to Minnie; however, the tract of land was John's separate property. None of the property belonged to Minnie and she would be considered a stranger in title or a third party to the reservation; therefore, in most states none of the minerals would transfer to Minnie. According to Black's Law Dictionary 1309 (7th ed. 1999), words of "reservation" are not deemed to be words of "grant." Therefore, most states would not consider the third party or a stranger in title interest to be valid.

The question then remains, who now owns the minerals? John or Beth? Some courts have attempted to address this issue by determining if the language used was "excepting" language or if it was "reserving" language. In other words, if John was "excepting" the minerals, they would never have passed to Beth in the first place and would therefore be owned by John. On the other hand, if John was "reserving" the minerals, they would first pass to Beth before being reserved. If the reservation failed to pass the minerals to the third party (Minnie), they would then be owned by Beth. However, it appears that most courts would not attempt to make this distinction and would find in favor of John.