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Petroleum Education Workshops, LLC
558 Castle Pines Parkway, Ste. B4-207
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Chapter 4 – Common Conflicts in a Chain of Title

Few chains of title will be completely free from title irregularities and an attorney's examination will uncover various types and degrees of title irregularities or defects. The number of potential issues could be extensive as title defects take on many forms. Some of the more common defects would result from improper wording in a deed, improper recording of documents, failure to include a necessary party or to have a necessary party execute a document, previous liens or encumbrances, and/or failure to follow recording or filing procedures.

The more common conflicts found in a chain of title have been categorized into the following areas, with each group needing their own unique brand of curing. It is important to note that issues surrounding these topics could be expansive and the following does not purport to cover all of the potential issues and answers that could be experienced when dealing with these irregularities. The material covered does, however, cover the best practices for curing the most common title issues encountered today.

The most common areas where title irregularities will occur:

1. Ambiguous, incomplete, or improper language used in instruments
2. Surface issues
3. The oil and gas lease
4. Encumbrances that are superior to the lease
5. Recording issues
6. Date irregularities
7. Acknowledgment issues
8. Name issues
9. Spousal joinders
10. When someone dies
11. Unpaid Taxes
12. When there is a divorce

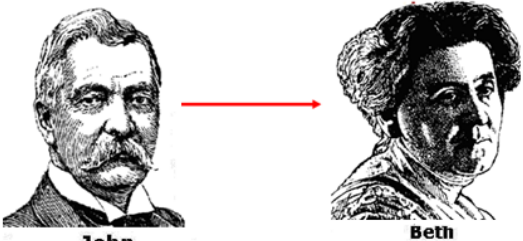
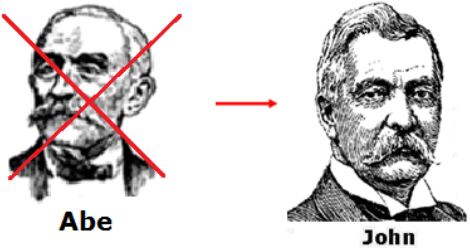
Ambiguous, Incomplete, or Improper Language

One common group of title irregularities that create interest discrepancies are caused by ambiguous, incomplete, or improper language used in conveyances or reservations. When such ambiguous, incomplete, or improper language appears in the chain of title, the proper curative action may not be easily identified. Read the following scenarios and determine what curative action should be taken in each of the given scenarios.

Scenario 1:

This scenario is an illustration of when curative action may be needed because of improper language used in a conveyance. Follow the story line involving a mineral ownership in North Dakota. Assume that at the time of the first conveyance John owned an undivided 25% of the oil and gas minerals.

From whom should you secure an oil and gas lease? _____

<p>Through a Quit Claim Deed, dated August 29, 1997, John granted to Beth an undivided 25% of the mineral interests in said lands. The deed contained the following language, "Including any and all after acquired right, title and interest."</p>  <p>John → Beth</p>	<p>Typically quit claim deeds do not convey after acquired interests. In North Dakota, Title Standards 1-05 and 1-06, a quit claim deed can be used to convey after acquired interests if the word "grant" is used but no such word was used in this deed.</p> <p>Nonetheless, the intent is shown to convey after acquired interests to the grantee.</p>
<p>On May 21, 2005, Bk 107, Pg 753, John received an undivided 35% mineral interest from the estate of his deceased brother, Abe.</p>  <p>Abe → John</p>	<p>As to the undivided 35% interest passing to John from the estate of Abe, because of the restrictive language found in the Title Standards, there would not be an automatic passing of this interest to Beth, but arguably Abe had provided for that occasion by the inclusion of this additional language.</p>

From this information, what *curative steps*, if any, should be taken?

If one or both parties do not agree to sign the curative instruments, how should you proceed? _____

If only John is willing to sign a lease what would that mean for your company? _____

ANSWER: At this point, it would appear that John is the rightful owner of the undivided 35% of the minerals. The appropriate lease should be taken from him with a protection lease or ratification taken from Beth. However, if it can be determined that John's intent is to have the minerals pass to Beth, any lease taken by her should be accompanied by a ratification signed by John.

One way to have this title issue resolved would be for John to quitclaim any interest he may now have to Beth. Be aware that any lease taken by Beth that was dated prior to the quitclaim *must* be ratified by John. If not, her lease, because of its prior date, would create additional title concerns.

Scenario 2:

The following scenario is an illustration of when curative action is needed as a result of incomplete language used in a conveyance. Read the following Title Requirement that involves a mineral ownership in Oklahoma. Determine what appropriate curative actions should be taken in order to protect the company's lease.

Requirement #2: Your attention is directed to Lease No. 24, which covers Section 23: NE/4, N/2SE/4, T85N, R15E, Benson County, Oklahoma, recorded in Book 134, Page 177, covering 240 acres. On April 23, 2012, Your Oil Company acquired Lease No. 24 from Brent Carlson on a 5-year delay rental lease form. Brent Carlson owns an undivided 80% net mineral interest in the tract of land or 192-net mineral acres. According to the terms of the delay rental clause, the lease will terminate unless on or before the anniversary date of said lease Your Oil Company pays a delay rental payment of \$5 per acre per year to said lessor.

On January 31, 2013, we received a recorded Quitclaim deed from Brent Carlson whereby he, as grantor, conveyed "**a 10% interest**" to Kensington Walker, grantee in the captioned lands. The conveying language is ambiguous in nature. It does not clarify if Brent Carlson is conveying 10% of his undivided 80% interest in the lands or if he is conveying a full 10% of the entire tract of land to Kensington Walker.

If Brent Carlson conveyed 10% of his 80%, he conveyed 19.2 net mineral acres to Kensington Walker. He would be keeping 172.8 net mineral acres. Under this scenario, rental payments should be made as follows:

\$96 to Kensington Walker
\$864 to Brent Carlson

If Brent Carlson conveyed 10% of the entire tract of land, he conveyed 24 net mineral acres to Kensington Walker and he is keeping 168 net mineral acres. Under this scenario, rental payments should be made as follows:

\$120 to Kensington Walker
\$840 to Brent Carlson

If any portion of the delay rental payment is underpaid, that portion of the lease will be lost through the termination language in the lease.

From this information, what *curative steps* should be taken in order to resolve this issue? _____

From whom should you secure the curative items needed to fix this issue?

If one or both parties do not agree to sign the curative instruments, how should you proceed? _____

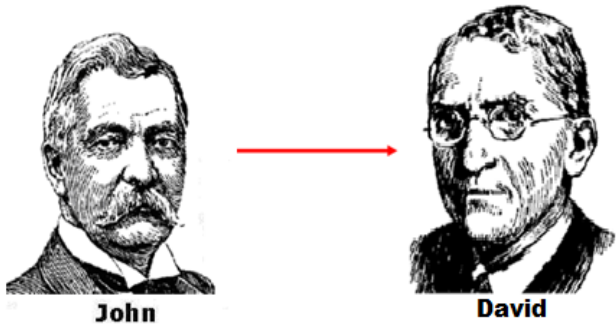
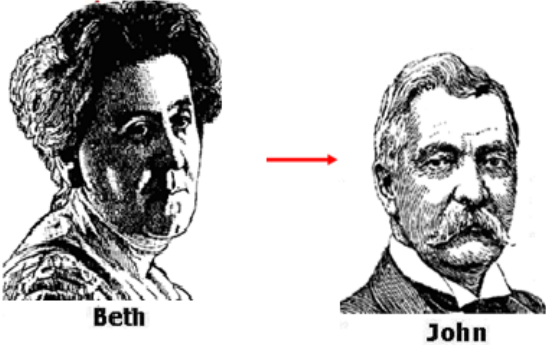
ANSWER: There are at least three possible ways to approach this issue. The first approach would be to have Brent Carlson submit a corrective deed setting forth the appropriate interest to Kensington Walker. If the corrective deed set forth the proper amount without any ambiguity, this approach would, without question, be the most conclusive. However, given the time frame for making the delay rental payment, this approach may not be the most practical. Secondly, the oil company may choose to overpay both Kensington and Brent, thus avoiding the possibility of being in default of the delay rental language found in the lease. Overpaying is often the method used in such a matter. However an overpayment is not fixing the title issue. It would be a "Band-Aid" fix and should only be used if other practical measures could not be taken in a timely manner. The third approach would be to contact Brent Carlson and inquire as to the intent of the conveyance. The oil company should not care if the intent is to convey a full 10% interest or 10% of Brent's 80%. Next, a Ratification and Rental Division Order setting out the desired interest should be circulated, signed, and recorded by both. If the ratification is not forthcoming in a timely manner, the overpayment to both Brent and Kensington should be made prior to April 23, 2013.

Scenario 3:

The following scenario is an illustration of when curative action is needed as a result of what appears to be an ambiguous date used in a conveyance. Read the following title requirement and determine what appropriate curative action should be taken.

Requirement: David's title to Tract No. 12 is dependent upon a Quitclaim Deed effective October 15, 1998, executed by John, as grantor, in favor of David and covering the captioned land. At the time of this conveyance, John owned no interest in Tract No. 12.

Effective October 20, 1998, Beth, the owner of Tract No. 12, via a Warranty Deed, conveyed all right, title, and interest in the captioned lands to John. If the *effective date* of the Warranty Deed to David is in error, curative steps should be taken in order to establish the ownership of David in the captioned land.

<p>1. Effective Oct. 15, 1998, John, via a Quitclaim Deed, granted Tract No. 12 to David.</p> <p>Prior to this date, John owned no interest in Tract No. 12.</p>  <p>John David</p>	<p>2. Effective Oct. 20, 1998, Beth via a Warranty Deed, granted Tract No. 12 to John. At the time of the conveyance, Beth owned 100% interest in the tract of land.</p>  <p>Beth John</p>
<p>3. It would appear that the effective date of the Quitclaim Deed to David is in error.</p>	<p>4. What curative steps, if any, might be taken in order to resolve any issues?</p>

ANSWER: In order to correct the effective date issue related to David's interest in Tract No. 12, two approaches may be taken. First, a correction deed should be executed citing the proper effective date of conveyance from John to David. Secondly, John could draft another Quitclaim Deed to David with an effective date of October 21, 1998.

Curative Pertaining to Surface Issues

In the United States, real property is subject to the rights of those who are in actual possession of the land; therefore, several types of surface issues may need to be addressed. Prior to the drilling of a well, the land professional may be called upon to secure more than one curative item that is related to surface issues. The following is a list of the types of curative items used to address varying surface issues:

1. A Certificate of Inspection
2. Affidavits of Use and Possession
3. A Surface Use Agreement
4. An Affidavit of Possession
5. A Tenant Consent
6. Affidavits that Divest or Disclaim Rights
7. Disclaimer of Interest
8. Affidavit of Adverse Possession

The types of issues that may need to be addressed vary but can include a determination that no mineral activity exists on the lands; no burial grounds, wetlands, or endangered species exist on the lands; and, that no adverse party claims ownership to the lands. Rights related to the surface possession by a tenant farmer or rancher through an unrecorded surface or agricultural lease should also be addressed.

Certificate of Inspection and/or Surface Use Affidavit

Prior to drilling a well, a title examiner will require that a surface investigation of lands should be made to determine if there are any claims to title which would adversely affect the interests of the lessee. Courthouse records will only prove marketable title through recordable documents. A surface inspection might reveal significant facts that would not show up in the courthouse records such as the existence of roads, power lines, streams, schools, cemeteries, burial grounds, placer and lode mining locations, old oil or gas wells, wetlands, endangered species, or any of the liability issues that could surround trespass and/or adverse possession. Keep in mind, these issues may not be determined from the courthouse records.

This report or affidavit will make a detailed report from physical evidence as to the property, its use, location, improvements, type of terrain, roads, rivers, lakes or streams. A map, photographs, and very often an aerial picture will be attached to the report.

Example of Certificate of Inspection

Certificate of Inspection

I, _____, Title of person making the inspection _____ of _____ Name of Company hired to do the inspection _____ hereby certify that on the _____ day of _____ 20____, I made a personal examination and inspection of the following described land in _____ County, _____ State to wit:

General Description of Access: All of the land was fenced. Rolling hills covered the entire property. Large patches of scrub oak were identified throughout the land with patches of natural buffalo grass growing in the open areas of land. Access to the premises was acquired by driving approximately 10 miles southeast on Lake Gulch Road; turning right on an unmarked, unpaved dirt road located by a row of mail boxes and traveling approximately 1 mile; turning left on the first dirt road and traveling approximately 1/2 of a mile until you gained entrance to the premises through a gate located at the Northwest corner of the land.

Roads and Improvements: There were no other access roads to the property. The drainage ditch along the access road was slight. None of the land is in cultivation although the entire property is bounded by a barbed wire fence. A house, occupied by a tenant, is located in the middle of the premises. Access to the house is from a dirt road that runs in a southeasterly direction, approximately 1/8th of a mile from the gate to the house. A water well was located approximately 30 yards to the east of the house. The only other building that could be located was a shed located approximately 100 yards to the east of the house. There was no sign of any old abandoned houses where people might have formerly lived. There was no evidence of any persons now occupying or possessing the lands adversely. There were no streams of any size on the land and no other bodies of water that could be considered navigable. See map attached.

That, to the best of my knowledge and belief, after actual and diligent inquiry and physical inspection of the premises there is no evidence whatever of any vested or accrued water rights for mining, agricultural, manufacturing, or other purposes; nor any ditches or canals constructed by or being used under authority of the United States, nor any exploration or operations whatever for the development of coal, oil, gas, or other minerals on said lands.




The premises are now wholly unoccupied and vacant except for the occupancy of _____ as tenant, who has made a statement of tenant disclaiming all right, title, and interest in and to said premises, executed on the _____ day of _____ 20____.

Signed _____ and Dated this ____ day of _____, 20____.

Affidavits of Use and Possession

Very often the title examiner will require an Affidavit of Use and Possession to assure that the lessor still occupies and owns the property. In many cases, the party actually using and possessing the land is not the same party as found in the courthouse chain of title or the party that executed the oil and gas lease. When this occurs, title curative documents are used to avoid any claims of adverse possession. An Affidavit of Use and Possession will state the title history, will identify those in possession of the land, and will state the nature of the use of the land. The last thing an oil company would want is to begin drilling on land that could be claimed through adverse possession by some stranger in title who can make a legitimate claim to the land.

Scenario:

<p>1. Assume that John is the record title owner to surface and subsurface lands in 160 acres located in T35N, R23W, Sec. 15: NW/4, 6th PM Grant County, MT</p>  <p>John</p>	<p>2. He is currently living on the land with his wife, Beth. Together they raise chickens, grow corn and sell apples from their apple orchard.</p>  <p>John Beth</p>
<p>3. Minnie has been their neighbor for the last 15 years.</p>  <p>Minnie</p>	<p>4. Your oil company has leased John and received the following requirement for his tract of land. With this information, fill out the Affidavit of Possession.</p>

Requirement: You should submit an affidavit of possession stating what person or persons who are in actual possession and occupancy of the lands covered in Lease #5. The affidavit should state the authority by which the possessors occupy the said acreage, and what right, title, and interest they claim. If no one is occupying said acreage, either by grazing, cultivation, or otherwise, an affidavit to this effect should be submitted.

Answer to Affidavit of Possession

STATE OF MONTANA)
) SS.
COUNTY OF GRANT)

Affidavit of Possession

The undersigned, being of lawful age and of sound mind, being duly sworn, deposes and says that John and Beth is (are) the owner(s) of the following described land in Grant County, Montana , to wit:

Township 35 North, Range 23 West, 6th PM, Section 15: NW/4

The undersigned further says that S he is familiar with said land that S he knows that said owner(s) has (have) been in actual open, peaceable, and undisturbed possession of all of said land and that no other person claims or occupies said land adverse to said owner(s) and that said owner(s) has (have) possession of said land as follows: * That John and Beth own title to the said property in fee simple; that they reside on the land, raise livestock including chickens; that they grow crops including corn and apples; and, have lived on the lands for the past 15 years.

** Minnie

Subscribed and sworn to before me this _____ day of _____, 20____.

Notary Public in and for _____ County, _____

My Commission Expires: _____

(SEAL)




*In this blank the affiant would state whether the owners hold land by tenant or title, whether they reside on land, farm the land, raise livestock on the land and how long they have had possession of the land.

**This affidavit should be filled out and executed by a disinterested party.

Statement by the Tenant and/or Tenant Consent

In many cases, an oil company will acquire an oil and gas lease on lands that are subject to the surface possession of a tenant farmer or rancher through an unrecorded surface or agricultural lease. In these cases, since the surface tenant holds a pre-existing right to the surface, a title examiner will require a recordable Tenant’s Consent Agreement or a Statement by the Tenant in which the tenant acknowledges that his possession as tenant is subject to the rights of any lessee or assignee under any oil and gas lease executed by any owner of oil and gas rights under such land.

Scenario:

<p>1. Assume that John and Beth are the record title owners of the surface and subsurface lands in T35N, R23W, 6th PM, Sec. 15: NW/4, Grant County, Mt.</p> <p>They have leased to Your Oil Company.</p> <div style="text-align: center;">  </div>	<p>2. John and Beth have leased the house and land to Minnie on a five-year lease term agreement. Minnie signed the lease May 22, 2011.</p> <div style="text-align: center;">  </div>
<p>3. Your Oil Company plans to drill a well on this tract of land.</p> <div style="text-align: center;">  </div>	<p>4. The following requirement appeared in the Drilling Title Opinion. With this information, fill out the Statement of Tenant.</p>

Requirement: An unrecorded agricultural lease covering tract #1 between John and Beth, record title holders to the tract of land, and Minnie, who appears to be the current tenant of the surface lands. You should submit a statement by the tenant who occupies and is in possession of tract #1. The statement should state that the tenant acknowledges that her possession as tenant is subject to the rights of Your Oil Company under lease No.1 executed by John and Beth.

Answer to Statement by the Tenant and/or Tenant Consent

STATE OF MONTANA)
) SS.
COUNTY OF GRANT)

Statement by Tenant/Tenant Consent

The undersigned, of lawful age, being first duly sworn, deposes and says that he (she) occupies the following described land, to wit:

Twp 35 N, Rge 23 W, Section 15: NW/4

The undersigned further says that he (she) is a tenant of John and Beth , the owner(s) thereof; that he (she) became such tenant on the 22nd day of May , 20 11 ; and that his (her) tenancy is for five years and expires on the 22nd day of May , 20 16 ; that he (she) claims no title to said land other than as tenant as aforesaid and does hereby declare that his (her) right to possession in no way interferes with the right to lease said land for oil and gas development purposes and that his (her) possession as tenant is subject to the rights of any lessee or assignee under any oil and gas lease executed by any owner of oil and gas rights under such land.

* Minnie

Subscribed and sworn to before me this _____ day of _____, 20____
Notary Public in and for the _____ County, _____
My Commission Expires: _____
(SEAL)

*This document should be executed by the tenant.

Affidavits that Divest or Disclaim Rights

From time to time, the chain of title will indicate that some third party may claim an interest in a given tract of land. When this occurs, an examining attorney will require that this third party, usually through an affidavit, disclaims any rights in a tract of land or oil and gas lease. See Disclaimer of Interest #1.

A number of court cases have concluded that such a disclaimer was not effective in extinguishing the party's interest and did not stop the disclaiming party from making a claim in the future. If and when it seems this could happen, the more prudent approach would be to secure a quitclaim deed from the third party, a Stipulation of Interest and Cross Conveyance that contains general words of cross-conveyance, or a Disclaimer that contains words of grant. See Disclaimer of Interest #2.

Disclaimer of Interest #1

KNOW ALL MEN BY THESE PRESENTS:

That, notwithstanding any prior instrument or instruments of record covering or pertaining to the following described lands in _____ County, State of _____, to wit:

the undersigned, _____, and _____, his wife, have and assert no right, title, or interest in and to said lands or in and to the oil, gas, or other minerals in and under said lands.

THAT it is the intention of the undersigned in executing this instrument to disclaim any right, title, or interest in and to said lands and in and to the oil, gas, and other minerals in and under said land.

NOW THEREFORE, for and in consideration of the sum of One Dollar (\$1.00), and other good and valuable consideration, receipt of which is hereby acknowledged, the undersigned and each of them, do hereby disclaim any right, title, or interest in and to the above described lands and in and to oil, gas, and other minerals in and under said lands.

This instrument shall be binding upon the heirs, executors, administrators, and assigns of the undersigned.

EXECUTED THIS _____ day of _____, 20____.

Requirement: A surface inspection revealed that John and Beth, the record title owners to T35N, R23W, 6th PM, Sec. 15: NW/4, Grant County, Montana, have fenced in 10 acres of land in the northern part of Section 9: SW/4. A review of the courthouse records shows that record title to all of Section 9: SW/4 is currently owned by Minnie. It should be determined if John and Beth are making a claim to said land through adverse possession. If not, you should submit a Disclaimer of Interest that contains general words of grant whereby John and Beth disclaim all interest in said lands.

From the information given in the requirement, fill out the affidavit.

Disclaimer of Interest #2

KNOW ALL MEN BY THESE PRESENTS:

That, notwithstanding any prior instrument or instruments of record covering or pertaining to the following described lands in _____ County, State of _____, to wit:

the undersigned, _____, and _____, his wife, have and assert no right, title, or interest in and to said lands or in and to the oil, gas, or other minerals in and under said lands.

THAT it is the intention of the undersigned in executing this instrument to disclaim any right, title, or interest in and to said lands and in and to the oil, gas, and other minerals in and under said land.

NOW THEREFORE, for and in consideration of the sum of One Dollar (\$1.00), and other good and valuable consideration, receipt of which is hereby acknowledged, the undersigned and each of them, do hereby disclaim any right, title, or interest in and to the above described lands and in and to oil, gas, and other minerals in and under said lands.

FURTHER, to effectuate the purpose hereof, for the same consideration, the undersigned, and each of them, do hereby quitclaim, grant, bargain, sell, and convey unto _____, and to _____ heirs and assigns, forever, all right, title, interest, and estate, both at law and in equity, of, in, and to the above described real estate, together with all and singular the hereditaments and appurtenances thereunto belonging; to have and to hold the above granted premises unto the said _____ heirs and assigns, forever.

This instrument shall be binding upon the heirs, executors, administrators, and assigns of the undersigned.

EXECUTED THIS _____ day of _____, 20____.

Answer to Disclaimer of Interest with words of grant

Disclaimer of Interest #2

KNOW ALL MEN BY THESE PRESENTS:

That, notwithstanding any prior instrument or instruments of record covering or pertaining to the following described lands in Grant County, State of Montana, to wit:

Township 35 North, Range 23 West, 6th P.M.
Section 9: SW/4

the undersigned, John, and Beth, his wife, have and assert no right, title, or interest in and to said lands or in and to the oil, gas, or other minerals in and under said lands.

THAT it is the intention of the undersigned in executing this instrument to disclaim any right, title, or interest in and to said lands and in and to the oil, gas, and other minerals in and under said land.

NOW THEREFORE, for and in consideration of the sum of One Dollar (\$1.00), and other good and valuable consideration, receipt of which is hereby acknowledged, the undersigned and each of them, do hereby disclaim any right, title, or interest in and to the above described lands and in and to oil, gas, and other minerals in and under said lands.

FURTHER, to effectuate the purpose hereof, for the same consideration, the undersigned, and each of them, do hereby quitclaim, grant, bargain, sell, and convey unto Minnie, and to her heirs and assigns, forever, all right, title, interest, and estate, both at law and in equity, of, in, and to the above described real estate, together with all and singular the hereditaments and appurtenances thereunto belonging; to have and to hold the above granted premises unto the said Minnie, her heirs and assigns, forever.

This instrument shall be binding upon the heirs, executors, administrators, and assigns of the undersigned.



EXECUTED THIS 2nd day of November, 2012.

John
Beth

Affidavit of Adverse Possession

The land professional must understand that real property in the United States is subject to the rights of the parties that are in *physical possession* of the land. Occasionally, a party not found in the courthouse chain of title can make a claim to the ownership of the land and secure title through what is known as *adverse possession*. Adverse possession is defined as the occupation of property in a *continuous, exclusive, visible, hostile, and notorious manner for a period of years*, as set out by individual state statute. Title examiners will advise the client of the potential litigation if operations were to take place on a tract of land being claimed through adverse possession and will require a surface inspection to determine that no party other than the current lessee is in actual possession of the lands. Should a party making claim to the land through adverse possession be found, an Affidavit of Adverse Possession can be used to establish this fact.

Scenario:

<p>1. John and Beth acquired the surface and minerals in Sec. 9: NW/4, T14N, R10E, 6th PM, Blaine County, Oklahoma on May 22, 1989.</p>  <p style="text-align: center;">John Beth</p>	<p>2. Minnie has owned the surface and minerals in Sec. 9: SW/4, T14S, R10E, 6th PM, Blaine County, Oklahoma since June, 1965.</p>  <p style="text-align: center;">Minnie</p>
<p>3. John and Beth claim title to 10 acres located in the SW/4 (Minnie's property). They claim that when they bought their property they fenced in their 160 acres and 10 acres in the northern part of the SW/4. They claim their home is built on the 10 acres, they have pastured cattle, have grown crops, drilled a water well, built a small utility shed and constructed a gate and road on these 10 acres.</p>	<p>4. The following title requirement appeared in the Drilling Title Opinion.</p> <p style="text-align: center;">With this information, fill out the Affidavit of Adverse Possession.</p>

Requirement: A note has been submitted to me stating that 10 acres of land in the northern part of Section 9: SW/4, described as the NW/4NW/4SW/4, is adversely held by John and Beth. A review of the courthouse records did not uncover any mention of such facts and shows that record title to all of Section 9: SW/4 is currently owned by Minnie. A surface inspection is required to verify if the 10 acres in question are adversely held and possessed by John and Beth. You should submit an Affidavit of Adverse Possession if such possession does exist. The affidavit should state that they are in actual, open, notorious, exclusive, and adverse

Answer to Affidavit of Adverse Possession

STATE OF Oklahoma)
) SS.
COUNTY OF Blaine)

Affidavit of Adverse Possession

The undersigned affiants, being of lawful age, being duly sworn, deposed, and says that affiants are the owner and are in open, notorious, actual, exclusive, and adverse possession of the following described lands in Blaine County, OK, to wit:

T14S, R10E, 6th PM, Section 9: NW/4NW/4SW/4

Further, that on 22nd day of May, 1989, affiants took actual physical possession of the land by:

When we bought the NW/4 of Section 9, T14S, R10E, Blaine County, Oklahoma, we fenced in our 160 acres plus 10 acres located in the SW/4, described as NW/4NW/4SW/4. We have built our home on said lands, have pastured cattle, have grown crops, drilled a water well, built a small utility shed, and constructed a gate and road on these 10 acres of land.

Affiants claims the full fee interest in the above described lands under the claim of adverse possession, both to the surface and to the subsurface mineral rights, as against all the world.

Further Affiants saith not. John and Beth

Subscribed and sworn to before me this _____ day of _____, 20____,
in and for the _____ County, _____
My Commission Expires: _____.
(SEAL)

Curative Pertaining to the Oil and Gas Lease

Unfortunately, it is not uncommon to have an oil and gas lease in need of curative measures. This curative can come in several forms, including:

1. A Correction to the Legal Description
2. An Extension of the Primary Term
3. An Amendment to the Lease
4. A Designation or Change of Depository
5. A Release of the Oil and Gas Lease
6. An Affidavit of Non-production
7. An Affidavit of Production

Correction to the Description of Lease

The legal description portion of the oil and gas lease is perhaps the most important part of the lease because its function is to specifically describe the asset being leased without any ambiguity.

Each and every tract of land in the United States has a specific “finger print” that sets it apart from every other tract of land. That finger print is its legal description. No two tracts of land in the United States contain the same legal description. This legal description becomes the most important part of the oil and gas lease asset because it specifically sets forth where the mineral asset is located. If the description is incorrect, the asset may become worthless. The legal description must also be so certain as to enable the land to be identified. *Arbuckle Realty Trust v. Southern Rock Asphalt Co.*, 189 Okla. 304, 116 P. 2d 912 (1941).

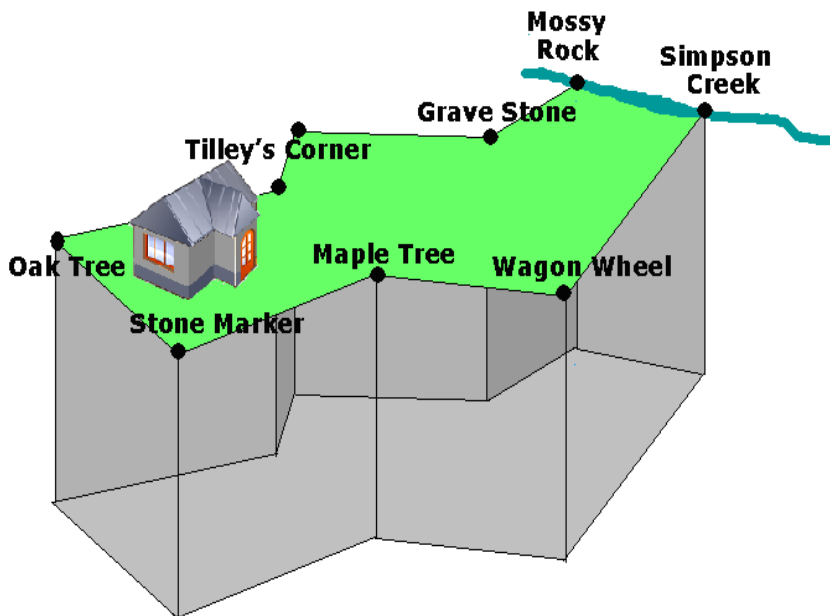
Courts have stated that a legal description must be *legally sufficient*.

Legal sufficiency requires a higher degree of specificity than a normal street address.

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



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



Beginning at a stone marker located at the NW corner of the SE/4 of Section 33, T12N, R23W of the 6th Meridian, Burrows County South Dakota; thence 60° NE 59 chains to a Maple Tree; thence 70° SE 54 chains to a wagon wheel; thence 30° NE 61 chains to Simpson Creek; Meander up Simpson Creek until you come to large mossy rock; thence 30° SW 18 chains to a grave stone; thence 85° NW 55 chains to Tilley's corner; thence 17° SW 11 chains; thence 68° SW 51 chains to an Oak Tree; thence 30° SE 48 chains to POB

Locate means that the surveyor can define the exact boundaries of the property. The street address does not reveal how large the parcel of land is or where it begins or ends.

Thus, if the house at 3162 Simpson Creek Road were located on this tract of land, the legal description would describe the piece of land giving all pertinent information such as land lot, subdivision name, block, parcel, and acreage, which comprises a legal and *sufficient description* of a particular property.

Unfortunately, errors are made when legal descriptions are entered into leases. When this occurs, the only cure is to have a new lease drafted and executed or to have the lessor execute and record a curative document called a "Correction to the Description of Lease."

TASK 1: Read the following title requirement. Cure the title issue by using the Correction of Description of Lease that follows.

Requirement: Oil, Gas, and Mineral Lease No. 7 by George Osmond, a single man, dealing with his sole and separate property, as lessor to Sunrise Oil and Gas, Inc., as lessee dated March 31, 2010, recorded in Brower County, Nebraska, Book 234, Page 77, incorrectly describes Tract No. 5 as T23N, R55W, 6th PM, Section 23: N/2NW/4. A correction instrument should

be obtained and filed correcting the description of Tract No. 5 from N/2NW/4 to N/2NW/4SE/4.

From the information given in the requirement, fill out the following Correction of Description of Oil, Gas, and Mineral Lease.

Correction of Description of Oil, Gas, and Mineral Lease

THE STATE OF _____

COUNTY OF _____

WHEREAS, under date of _____.

_____, as Lessor, did execute and deliver to _____, as Lessee, an Oil, Gas, and Mineral Lease recorded in Volume _____, Page _____, of the _____ Records, covering the following described land in _____, to wit:

said land being more fully described in said Lease, reference to which said Lease and to the record thereof being here made for all purposes; and

WHEREAS, said Lease and all rights and privileges thereunder are now owned by _____; and

WHEREAS, an error was made in describing the lands covered by the said Oil, Gas, and Mineral lease, and the parties thereto are now desirous of correcting said error.

NOW, THEREFORE, in consideration of the premises and for the purpose of correcting the said lease description, all the parties hereto do hereby stipulate and agree that the aforesaid lease is hereby amended to embrace the following described land; to wit:

In lieu of the lands originally described therein and for the same consideration, the undersigned do hereby ADOPT, RATIFY, and CONFIRM the same lease as amended and corrected herein. And except as hereby amended, the aforesaid Oil, Gas, and Mineral Lease shall remain in full force and effect as originally written and is binding on each of us as a valid and subsisting Oil, Gas, and Mineral Lease.

Answer to Correction of Description of Oil, Gas, and Mineral Lease

Correction of Description of Oil, Gas, and Mineral Lease

THE STATE OF Nebraska

COUNTY OF Brower

WHEREAS, under date of March 31, 2010.

George Osmond, as Lessor, did execute and deliver to Sunrise Oil and Gas, Inc., as Lessee, an Oil, Gas, and Mineral Lease recorded in Volume 234, Page 77, of the County Records, covering the following described land in Brower County, Nebraska, to wit:

Township 23 North, Range 55 West, 6th P.M.

Section 23: N/2NW/4

said land being more fully described in said Lease, reference to which said Lease and to the record thereof being here made for all purposes; and

WHEREAS, said Lease and all rights and privileges thereunder are now owned by Sunrise Oil and Gas, Inc.; and

WHEREAS, an error was made in describing the lands covered by the said Oil, Gas, and Mineral lease, and the parties thereto are now desirous of correcting said error.

NOW, THEREFORE, in consideration of the premises and for the purpose of correcting the said lease description, all the parties hereto do hereby stipulate and agree that the aforesaid lease is hereby amended to embrace the following described land; to wit:

Township 23 North, Range 55 West, 6th P.M.

Section 23: N/2NW/4SE/4

In lieu of the lands originally described therein and for the same consideration, the undersigned do hereby ADOPT, RATIFY, and CONFIRM the same lease as amended and corrected herein. And except as hereby amended, the aforesaid Oil, Gas, and Mineral Lease shall remain in full force and effect as originally written and is binding on each of us as a valid and subsisting Oil, Gas, and Mineral Lease.

Extension of Primary Term

Assume the following: Today's date is January 21, 2011. Your company wishes to drill a well on a three-year term lease acquired from Abe and Beth, dated March 15, 2008, covering SW/4, Sec. 14, T24 N, R6E, 6th PM, Brown County, Alabama, recorded in Book 755, Page 1003. You know that operations cannot take place prior to the expiration of the lease. Cure this issue by properly filling out the Extension of Lease Term. The affidavit must be filed on or before the expiration of the primary term.

EXTENSION OF LEASE TERM

WHEREAS, Oil and Gas Lease dated _____, recorded in Book _____, Page _____, of the records of _____ County, State of _____, by and between _____, as Lessor, and _____, as Lessee, covering the following described lands, to wit:

of Section _____, Township, _____ Range _____, and

WHEREAS, said lease expires in the absence of drilling operations on _____, and

WHEREAS, _____, as present owner and holder of all rights of the Lessee in the Lease, has requested the undersigned party to grant an extension of the primary term of the Lease and to amend the Lease in accordance with the further terms and provisions set forth below.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are acknowledged, the undersigned do hereby AGREE that the said term of said lease insofar as the interest of the undersigned in the above described land is concerned shall be and is hereby extended with the same tenor and effect as if such extended term had been originally expressed in such lease, for a period of _____ years from the date of the said expiration thereof and as long thereafter as oil or gas (including casinghead gas) is or can be produced from any well on the land covered by said lease, subject however, in all other respects, to the provisions and conditions of said lease or said lease as modified, if any modification thereof may have been heretofore executed.

All express or implied covenants of this lease shall be subject to all Federal and State Laws, Executive Orders, Rules or Regulations, and this lease shall not be terminated, in whole or in part, nor lessee held liable in damages, for failure to comply therewith, if compliance is prevented by, or if such failure is the result of, any such Law, Order, Rule, or Regulation.

IN WITNESS WHEREOF, this instrument is signed on this the ____ day of _____, 20____.

Answer to Extension of Lease Term

EXTENSION OF LEASE TERM

WHEREAS, Oil and Gas Lease dated March 15, 2008, recorded in Book 755, Page 1003, of the records of Brown County, State of Alabama, by and between Abe and Beth, as Lessor, and Your Company, as Lessee, covering the following described lands, to wit:

T24N, R6E, 6th PM, Section 14: SW/4 containing 160 acres more or less

of Section 14, Township, 24N Range 6E, and containing 160 acres MOL

WHEREAS, said lease expires in the absence of drilling operations on 3/8/11, and

WHEREAS, Your Company as present owner and holder of all rights of the Lessee in the Lease, has requested the undersigned party to grant an extension of the primary term of the Lease and to amend the Lease in accordance with the further terms and provisions set forth below.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are acknowledged, the undersigned do hereby AGREE that the said term of said lease insofar as the interest of the undersigned in the above described land is concerned shall be and is hereby extended with the same tenor and effect as if such extended term had been originally expressed in such lease, for a period of Two (2) years from the date of the said expiration thereof and as long thereafter as oil or gas (including casinghead gas) is or can be produced from any well on the land covered by said lease, subject however, in all other respects, to the provisions and conditions of said lease or said lease as modified, if any modification thereof may have been heretofore executed.

All express or implied covenants of this lease shall be subject to all Federal and State Laws, Executive Orders, Rules or Regulations, and this lease shall not be terminated, in whole or in part, nor lessee held liable in damages, for failure to comply therewith, if compliance is prevented by, or if such failure is the result of, any such Law, Order, Rule, or Regulation.

IN WITNESS WHEREOF, this instrument is signed on this the 31st day of January, 20 11.

Amendment of Lease

An amendment to an oil and gas lease would be necessary if the lease contained a specific error or did not contain a critical provision for a future drilling operation or for operations necessary to continue to hold a lease by production.

Usually, an amendment to an oil and gas lease will state that both Lessor and Lessee agree that the current lease is in full force and effect and that it is the desire of both parties to amend the terms or particular provision set out in the lease.

“The Lease is recognized and deemed by Lessors to be in full force and effect. The Lease is presently owned by Lessee, named above. It is the desire of the Lessor and Lessee to amend the Lease as to the particular provision set out below.”

It is also critical that the amendment contain precise language addressing the specific issue being amended in the lease agreement. Following that, language is usually added stating that the lessor and lessee amend the lease by incorporating the amended language into the terms and provisions as if it were originally contained in the lease. Language might also contain the following:

“If any of the amendments, set out above, vary from or are different than any provisions or terms stated in the Lease, the amending provision specifically supersede and replace the provisions or terms originally contained in Lease.”

Scenario 1: Assume that your company plans to drill a future well and the lease in question needs to be pooled with other leases. Also assume that at the time the lease was executed, the lessor’s attorney had the pooling clause deleted. In a case like this, if the lease was not amended and was included in a producing unit, the lessor would receive royalty payments not proportionately reduced by the size of the unit. Another alternative would be to have the lessor negotiate a new lease with pooling language or, if possible, an amendment of the lease containing pooling language might be secured, thus curing the problem.

Scenario 2: Assume that your company recently acquired an old producing natural gas field. The field contains 50 wells that have been producing for many years. The leases are old and several do not contain a shut-in gas provision. Because of a major engineering issue with the pipeline connecting the wells, all wells must be shut-in. One way this situation can be cured is to have all current minerals owners tied to those leases without shut-in provisions execute and record an amendment to the old lease.

Example of an Amendment to Oil and Gas Lease

Amendment to Oil and Gas Lease

STATE:

COUNTY:

LESSOR:

LESSEE:

EFFECTIVE DATE of Lease being amended:

On _____, Lessors, named above, executed and delivered to _____, Lessee, an oil and gas lease recorded in Book _____, page _____ of the Records of the county and state named above. The lease covers the following lands:

The Lease is recognized and deemed by Lessors to be in full force and effect. The Lease is presently owned by Lessee, named above. It is the desire of the Lessor and Lessee to amend the Lease as to the particular provision set out below:

For adequate consideration, Lessor and Lessee amend the Lease by incorporating into it the following terms and provision as if originally contained in the lease.

If any of the amendments, set out above, vary from or are different than any provisions or terms stated in the Lease, the amending provision specifically supersedes and replaces the provisions or terms originally contained in Lease.

For adequate consideration, Lessor grants, leases, and lets to Lessee the Lands for the term provided in the Lease, as amended.

Designation or Change of Depository

Most oil and gas leases taken today are on a "Paid-up" lease form; however, leases that require annual delay rental payments are still used. This type of lease will often designate a depository bank whereby the delay rental payment or shut-in payment is to be made. If the bank's name is inadvertently omitted from the lease, or, if during the term of the lease, the depository bank should change or be acquired by another bank, a designation or change of depository document could remedy the issue.

Read the following title requirement. Cure the title issue by using the Change of Depository and Ratification of Lease that follows.

Requirement: Oil, Gas Lease No. 7 by George Osmond, a single man, dealing with his sole and separate property, as lessor to Sunrise Oil and Gas, Inc., as lessee dated March 31, 2010, recorded in Brower County, Nebraska, Book 234, Page 77, was drafted on an five-year annual delay rental lease form. The lease covers an undivided 50% mineral interest in Section 7: SW/4, T34N, R77W, 6th PM, containing 160 acres more or less. The lease shows the designated depository bank to be Grand Island Bank and Trust. From a note submitted, it appears that Grand Island Bank and Trust was recently acquired by Nebraska State Bank and Trust, Lincoln, Nebraska. The first delay rental payment is due on or before March 31, 2011. It is advised that prior to making the delay rental payment a change of depository and ratification of lease be executed and recorded by George Osmond.

DESIGNATION OF DEPOSITORY AND RATIFICATION OF LEASE

WHEREAS, _____, heretofore called party of the first part, is the owner and holder of an oil and gas lease on the following described lands in _____ County, State of _____, to-wit:

which lease was executed by _____ on the _____ day of _____, 20____, to _____ for a term of _____ years, and recorded in Book _____, Page _____ of the records of said County and State.

WHEREAS, the undersigned is the owner of _____ interest in the oil, gas, and other minerals, subject to said lease, insofar as it covers:

NOW, THEREFORE, FOR AND IN CONSIDERATION OF THE PREMISES, and of full compliance with the terms of said oil and gas lease by party of the first part, its successors, heirs, or assigns, for and during the remainder of the term of said oil and gas lease, the undersigned hereby designates the _____ Bank of _____, its successors or assigns (instead of the Bank named in said lease or in any subsequent agreement), as the depository for delay rentals due or to become due under said lease insofar as it covers the interest of the undersigned. Should party of the first part elect to maintain said lease in force, the deposit of rental to the credit of the undersigned in the above named Bank shall constitute a complete and legal payment of said delay rental; and, except as modified hereby, said lease shall remain in full force and effect according to its terms, and said oil and gas lease is hereby ratified and confirmed by the undersigned to the party of the first part, its successors, heirs, or assigns. The party of the first part shall not be responsible for the payment of such delay rental or any part thereof to the heirs, administrators, successors, or assigns of the undersigned unless and until said party of the first part shall be furnished with legally sufficient evidence of such change of ownership.

Answer to Designation of Depository and Ratification of Lease

DESIGNATION OF DEPOSITORY AND RATIFICATION OF LEASE

WHEREAS, Sunrise Oil and Gas, heretofore called party of the first part, is the owner and holder of an oil and gas lease on the following described lands in Brower County, State of Nebraska, to-wit:

Township 34 North, Range 77 West 6th P.M.
Section 7: SW/4 containing 160 acres more or less

which lease was executed by George Osmond on the 31st day of March, 20 11, to Sunrise Oil and Gas for a term of 5 years, and recorded in Book 234, Page 77 of the records of said County and State.

WHEREAS, the undersigned is the owner of an undivided 50% interest in the oil, gas, and other minerals, subject to said lease, insofar as it covers:

NOW, THEREFORE, FOR AND IN CONSIDERATION OF THE PREMISES, and of full compliance with the terms of said oil and gas lease by party of the first part, its successors, heirs, or assigns, for and during the remainder of the term of said oil and gas lease, the undersigned hereby designates the Nebraska Sate Bank and Trust Bank of Lincoln, Nebraska, its successors or assigns (instead of the Bank named in said lease or in any subsequent agreement), as the depository for delay rentals due or to become due under said lease insofar as it covers the interest of the undersigned. Should party of the first part elect to maintain said lease in force, the deposit of rental to the credit of the undersigned in the above named Bank shall constitute a complete and legal payment of said delay rental; and, except as modified hereby, said lease shall remain in full force and effect according to its terms, and said oil and gas lease is hereby ratified and confirmed by the undersigned to the party of the first part, its successors, heirs, or assigns. The party of the first part shall not be responsible for the payment of such delay rental or any part thereof to the heirs, administrators, successors, or assigns of the undersigned unless and until said party of the first part shall be furnished with legally sufficient evidence of such change of ownership.

Release of Oil and Gas Lease

When looking at a chain of title, it is not uncommon to see old oil and gas leases which appear to have expired by their own terms but have not been released of record. Title opinions will address this type of an issue with a requirement that a release of the old oil and gas lease be secured and recorded. This type of title requirement may not appear to be of severe consequence and it can become tempting to ignore such a requirement involving leases that are years old; however, title to a tract of land will be less than marketable if the land is encumbered by a prior, unreleased oil and gas lease, mortgage, unpaid tax, or judgment.

An oil and gas lease "for a term of five years and as long thereafter as oil or gas or either of them is produced," which is *unreleased* after the expiration of the five-year term, constitutes a *cloud on the lessor's title* to the land and prevents the record from showing good and marketable title for the lessor. Such a lease which is beyond its primary term should be released by the owner of record; however, most oil and gas companies do not, as a standard operating procedure, file such a release of record unless it is required or requested by the lessor or by state statute.

A "Release of Oil and Gas Lease" is a document executed by the lessee of record on a lease that is past its primary term and is no longer maintained by any type of rental, production, or continuous drilling activity. In some states, the state oil and gas commission will provide a certificate of nonproduction.

The land professional should be aware that any lease beyond its primary term can be held by production from any of the land described in the lease, shut-in gas royalty payments, continuous drilling, or by lands pooled or unitized with the lease land. In the latter, a producing well need not be located on the lands described in the lease in order to hold the lease beyond its primary term.

Task: Read the following title requirement. Cure the title issue by using the Release of Oil and Gas Lease that follows.

All of the mineral estate in and to T33N, R15W, 6th PM, Section 18: NE/4SW/4, El Paso County, Colorado is subject to an unreleased oil and gas lease, Dorothy E. Osmond, Lessor, Windjammer Petroleum, Lessee, dated April 1, 2004 and recorded April 13, 2004 in Book 456 and Page 85. This lease had a primary term of 5 years and the last working interest owner was Windjammer Petroleum. No affidavit of production has been filed for this lease.

Requirement: You should obtain and record a release from the last working owner of record. In the alternative, you should confirm through the Colorado Oil and Gas Conservation Commission that no production has been

reported from this lease and obtain and record affidavits of non-development from someone acquainted with the facts affirming that this lease has expired by its terms. Any such affidavit should cover all lands included in this expired lease and not merely the captioned land. Since this lease is more than six months past its primary term, a third alternative would be to rely on 16A C.R.S. Section 38-42-106 (1982) which provides that in order for a lease to provide continued constructive notice of its existence, an affidavit of lease extension must be recorded in the county records within six months after expiration of the primary term. The last two alternatives would not protect you if the prior lease has been held by production from the leased lands, or lands pooled therewith, and you or your predecessors-in-interest had or should have had notice of such production. *Note - delete third alternative if primary term expired less than six months ago.

From the information given in the requirement, fill out the following Release of Oil and Gas Lease.

RELEASE OF OIL AND GAS LEASE

KNOW ALL MEN BY THESE PRESENTS: That _____, for a good and valid consideration does hereby release, relinquish, quitclaim, and surrender to the lessor, _____, all right, title, and interest, including the release and waiver of the right of homestead, in and to a certain oil and gas mining lease made and entered into by and between _____, as lessee, and _____, as lessor, dated the ___ day of _____ 20 ____,

Insofar as same covers the following described land, to-wit;

Section _____, Township _____, Range _____, and containing _____ acres, situated in the County of _____, State of _____, said lease being recorded in the office of the Recorder of Deeds in and for said county, in Book _____, Page _____.

Executed this _____ day of _____, 20 ____.

Answer to Release of Oil and Gas Lease

RELEASE OF OIL AND GAS LEASE

KNOW ALL MEN BY THESE PRESENTS: That Windjammer Petroleum
for a good and valid consideration does hereby release, relinquish, quitclaim,
and surrender to the lessor, Dorothy E. Osmond, all right,
title, and interest, including the release and waiver of the right of homestead,
in and to a certain oil and gas mining lease made and entered into by and
between Windjammer Petroleum, as lessee, and Dorothy E.
Osmond, as lessor, dated the 1st day of April 20 04,

Insofar as same covers the following described land, to-wit;

Township 33 North, Range 15 West, 6th P.M.
Section 18: NE/4SW/4

Section 18, Township 33N, Range 15W, and containing 40
acres, situated in the County of El Paso, State of Colorado, said
lease being recorded in the office of the Recorder of Deeds in and for said
county, in Book 456, Page 85.

Executed this _____ day of _____, 20 _____.

Affidavit of Production

There are times that the lands under question are subject to an oil and gas lease beyond its primary term. A handful of circumstances can be involved that would hold the lease beyond its primary term including: continuous operations, active production, shut-in payments, and/or drilling operations. If these circumstances involve production, continuous drilling, or operations, the title attorney may require an investigation to verify that the production or such operations have met and been in compliance with the terms as set out in the lease. A handful of states require that an Affidavit of Production be filed prior to or directly after the expiration of the primary term of an oil and gas lease. This affidavit is usually signed by the lessee and sets forth the appropriate contingencies required to hold the lease beyond its primary term.

AFFIDAVIT OF PRODUCTION

State: _____

County: _____

Affiant on oath swears that the following statements are true:

My name is _____. I am over the age of _____. I know of my own personal knowledge that _____ is the owner of the Oil and Gas Lease dated _____, between _____, as Lessor, and _____, as Lessee, recorded in Book _____, Page _____, of the _____ Records of the county and state named above, covering the following lands in that county:

The Lease has a stated primary term of _____ years from its date, and contains a provision that the Lease shall remain in force and effect as long thereafter as the Lessee produces oil or gas, or either of them, from the lands subject to the Lease.

The present owner of the Lease has caused a well to be drilled on the Lease, which well was completed on or about _____. Since that day, to the date of this Affidavit, that well has continued to produce oil/gas in paying quantities.

This Affidavit is made for the purpose of giving notice that the Lease has been extended beyond its stated primary term in accordance with the terms of the Lease.

Affiant _____ Date Signed: _____

Encumbrances that are Superior to the Lease

When lands are encumbered by a mortgage that has been executed and recorded prior to a subsequent deed or lease, the “mortgagee” (the party who has made and is holding the loan and is holding the mortgaged property as security) holds superior title to the subsequent deed or lease. When the oil company’s interest is encumbered by such a mortgage and 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.

Mortgagee/Mortgagor Defined

The “Mortgagee” is the party who makes the loan and is the party who holds the property as security for repayment of a loan.

The “Mortgagor” is the party who has borrowed money and pledged his/her real property as security for the loan.

Regardless of whether the mortgage contains language that would require production to be assigned to the mortgagee, an examining title attorney may see the mortgage as potentially encumbering all production. In such a case, a requirement will set forth the need to secure, from the 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. Most subordination agreements only release the interests of the lessee from the lien of the mortgage; the mortgagee retains a superior lien upon the royalty under the lease. The direction and manner of royalty payments will also be addressed in the requirement asking the operator to secure division orders from both the mortgagor and mortgagee setting forth how such payments should be made.

SUBORDINATION OF MORTGAGE TO LEASE

Requirement: The interest of John and Beth Anderson in and to Section 22: SW/4, T75N, R77E, 6th PM, Monroe County, Montana, as lessors under Lease No. 7, is encumbered by a mortgage to the Farmers Home Administration Land Bank, which was executed and recorded prior to the execution of the oil and gas lease. The Mortgage is dated October 18, 1999, and recorded at Book 458, Page 755, in the amount of \$250,000. The interest of the lessee under Lease No. 7 is subject to the mortgage and may be foreclosed upon along with the fee. You should secure and file of record a subordination agreement whereby the Farmers Home Administration Land

Bank releases the interest of the lessee held under and by virtue of said oil and gas lease from the lien of said mortgage and from any other liens securing such indebtedness. Both the mortgagors and the mortgagee should execute a division order directing the manner and method of payment of royalties attributable to the interest of the mortgagors under Lease No. 7.

SUBORDINATION OF MORTGAGE TO LEASE

WHEREAS, the undersigned _____ of _____, State of _____, is the mortgagee under a certain mortgage executed by _____ and his wife, _____ to _____ to secure an indebtedness of \$ _____, covering the following described land situated in _____ County, State of _____, to wit:

which mortgage is dated the _____ day of _____, 20____, and recorded in Book, _____, at Page _____, in the County of _____, State of _____; and

WHEREAS, on the _____ day of _____, 20____, _____ and his wife _____ as lessors, executed an oil and gas lease on and for said land to _____, as lessee, for a primary term of _____ years, which lease is recorded in Book _____, at Page _____, in the County of _____ State of _____.

NOW THEREFORE, in consideration of One Dollar in hand paid, the receipt of which is hereby acknowledged, the undersigned _____ hereby excepts and releases the interest of the lessee held under and by virtue of said oil and gas lease from the lien of said mortgage and from any other liens securing such indebtedness, but without waiving or releasing any rights of said undersigned under said mortgage as against the royalty under said lease, and agree that said oil and gas lease shall have the same validity and effect as if executed, delivered, and recorded prior to the date of execution of said mortgage.

Executed this _____ day of _____ 20____.

When a Subordination Agreement Cannot be Secured

When running a chain of title, older unreleased mortgages are often found. Although rules vary from state to state, generally, if an unreleased mortgage has been of record for more than ten years past a specific and designated maturity date, the mortgage may be ignored. If such a specific maturity date is not found, the mortgage may be ignored if it has been of record for more than thirty years past its recording date. A mortgage secured from a federal agency becomes a lien that lasts for a set number of years with the possibility of an extension of additional years.

GENERAL RULE

If an unreleased mortgage has been of record for more than ten years past a specific and designated maturity date, the mortgage may be ignored. If such a specific maturity date is not found, the mortgage may be ignored if it has been of record for more than thirty years past its recording date.

Because the oil and gas lease represents potential production and added value to the mortgagee's collateral property, in most cases, a subordination agreement can be secured from the mortgagee. In those cases when such an agreement cannot be secured, the oil and gas company may need to rely upon language contained in most oil and gas leases whereby the lessee has the option to pay and discharge any past taxes, mortgages, judgments, or liens held against the leased lands. According to the language in the lease, the lessee can recover such payments from the lessor. Usually, this is accomplished by applying the lessor's royalty against the debt.

Oil and Gas Lease Language:

LIENS: Lessee may, at its option, pay and discharge any past due taxes, mortgages, judgments, or other liens and encumbrances on or against any land or interest included in the Leasehold; and Lessee shall be entitled to recover from the debtor, with legal interest and costs, by deduction from any future payments to Lessor or by any other lawful means.

Release of Mortgage or Deed of Trust

When a mortgage agreement and the Deed of Trust has been paid off and is no longer an encumbrance on a property, a Release of Deed of Trust or Release of Mortgage will be required to verify that the mortgagor has met all obligations of the mortgage.

Requirement: The interest of John and Beth Anderson in and to Section 22: SW/4, T75N, R77E, 6th PM, Monroe County, Montana, as lessors under Lease No. 7 is encumbered by a mortgage to the First State Bank of Billings, Montana, which was executed and recorded prior to the execution of the oil and gas lease. The Mortgage is recorded in Book 458, Page 755, in the amount of \$250,000 and is dated October 18th, 1979, with a designated maturity date being October 18th, 2009. The interest of the lessee under Lease No. 7 is subject to the mortgage; however, it appears that said mortgage is well past its maturity date. You should secure and file of record a Release of Mortgage whereby the First State Bank of Billings, Montana releases the interest of John and Beth Anderson from the lien of said mortgage.

RELEASE OF MORTGAGE

In Consideration of the payment of the debt therein, _____
_____ State of Montana, hereby releases the mortgage
made by _____ to _____ and
which is recorded in Book _____ of Mortgages, Page _____ of the
Records of _____ County, State of _____, covering the
following described property to wit:

In _____ County, State of _____

In Witness Whereof, _____ has
caused this release to be signed by its _____ President and attest by its
Secretary and its corporate seal to be hereto affixed this _____ day of
_____, 20____.

Attest:

Secretary By _____
President

Recording Issues

At the most basic level, the Anglo-American system of land ownership and title transfer rests on two ancient concepts: 1.) The Statute of Frauds, which requires that a written instrument must be provided as evidence of land ownership; 2.) The Recording System, which says that even transactions evidenced by a written instrument may be voidable unless notice of the transaction is given by recording the instrument. Thus a *written instrument* evidences ownership of title and the *recording system* preserves evidence of that ownership.

The vast majority of states in the United States employ a system of *recording instruments* as the exclusive means for publicly documenting land titles and interests. This system differs significantly from land *Registered Land Systems*, such as the *Torrens System* that have been adopted in a few states. The principal difference is that the recording system does not determine who owns the title or interest involved. That determination is ultimately made through litigation in the courts or agreement of the parties. What the system does do is to provide a framework for determining whom the law will protect with relation to those titles and interests when a dispute arises.

Torrens title is a system where the state will guarantee title to those included in its registry. Ownership is actually transferred through a registration of title instead of using deeds. The system limits problems such as uncertainty, complexity, and certain costs, which depended on proof of an unbroken chain of title back to a good root of title. The Torrens system's chief goal is to simplify land transactions and to certify ownership in title.

In the United States, only Iowa has all its land under the Torrens system; other states with a limited implementation include Minnesota, Massachusetts, Colorado, Georgia, Hawaii, New York, North Carolina, Ohio, and Washington.

State recording statutes also prescribe the following:

1. Which instruments may and must be recorded, where they are to be recorded, and the protection offered through recording.
2. Certain technical requirements, such as whether acknowledgements before a notary public are required (the great majority), or if witnesses must also sign the document (rarer);
3. The effect of failure to record; and
4. The procedure for indexing instruments presented for recording.


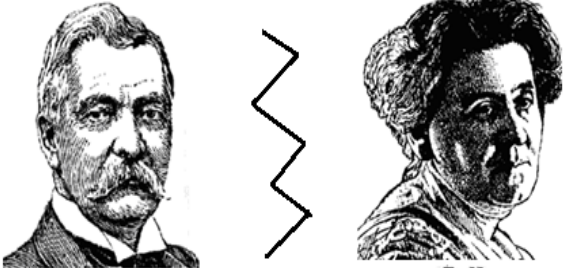


Three types of Recording Issues

When examining recording issues, three main areas of concern are predominant. The first area of concern surrounds instruments that are not recorded. A second area of concern encompasses those issues involving improperly recorded documents. A final area of concern is the individual state recording statutes themselves.

1. Documents that are not Recorded

This issue speaks for itself. Even though there can be severe consequences when holding an important instrument back from being immediately recorded, it still remains the practice of some. An unrecorded instrument is valid between the parties; however, states grant a higher degree of legitimacy for instruments that have been recorded. "Notice" is the key word in this scenario. A properly recorded document provides "constructive notice" to the entire world that a transaction has taken place. Once an instrument affecting the title to real estate has been *recorded*, the law holds that everyone is deemed to know of its existence, even if they haven't searched the records in the recorder's office. The doctrine of constructive notice is nearly universal in the various states and becomes a substitute for having actual notice.

Scenario:

<p>1. Assume that John and Beth owned a tract of land as joint tenants with the right of survivorship. That deed was recorded in 1975.</p>  <p>John Beth</p>	<p>2. In 1995, John and Beth separated.</p>  <p>John Beth</p>
<p>3. That same year, Beth sold her undivided 50% of the land to Minnie. That Warranty Deed sat in Minnie's dresser drawer having never been recorded.</p>  <p>Minnie</p>	<p>4. Last year, Beth passed away. After the funeral, Minnie decided to record her deed.</p>  <p>Beth</p> <p>5. Who owns title to the land?</p>

ANSWER: Even though the deed between Beth and Minnie is valid between the two of them, because it was not recorded until after Beth's death, the joint tenancy deed is given the higher degree of legitimacy. If Minnie had, in fact, recorded her deed prior to Beth's death, the joint tenancy between John and Beth would have been broken in most states, and Minnie's claim to 50% of the land would be given the higher degree of legitimacy.

Actual Notice and a Bona Fide Purchaser

Actual notice is different than constructive notice and arises from *personal or reputed knowledge* of an earlier transaction. Actual notice is defined to arise from facts which might lead a reasonable person to ask certain questions or inquire further into prior activities. In most jurisdictions, if a subsequent purchaser had actual notice of a prior purchase, their claim to the property would not be valid. Notice of an earlier conveyance may be provided in the description found in the later deed (e.g., "thence along lands previously

conveyed to Betty Harris..."). The common law also infers knowledge where there is close kinship between the competing purchasers (e.g. siblings).




The principal legal theory is that once a person has conveyed all of their title in property to one person, they have nothing left to transfer to any subsequent person. However, as a result of the various state recording laws, the courts may protect the second purchaser over the first if they deem that person to be the bona fide purchaser. Again, states differ on the definition of such a person, but generally, a bona fide purchaser is one who pays valuable consideration and doesn't have knowledge of the prior unrecorded deed from the claims of a prior grantee under that deed. The same is true regarding most types of unrecorded liens or encumbrances.

In most states, in order for a person to qualify as a bona fide purchaser, they must meet these three criteria:

1. Acquire property that is "recordable"
2. Pay "valuable consideration"
3. Take title to the property "without notice" of a third party's claim

Scenario: Assume that Art, the owner of a tract of land, lists the land as for sale on Craig's List. His ad simply says, "Land for sale, \$100,000 or best offer." That night, Beth offered to pay Art \$95,000. Upon Art's acceptance, he drafted and gave Beth a deed to the land. An hour later, Minnie called and asked Art if the land was still for sale. Art replied, "Well, I've been offered \$95,000. If you can beat that offer, I'll sell you the land." As Art was drafting Minnie's deed, he said, "If I were you, I would immediately take this deed to the courthouse to be recorded. Don't wait! Because I like you, I would rather you be the owner of the land than anyone else who has come by."

Would you consider Minnie to be a bona fide purchaser?

<p>1. Assume that Art is selling a tract of land for \$100,000 or best offer.</p>  <p>Art</p>	<p>2. Beth offers to pay \$95,000 for the land and Art gives her a deed to the property.</p>  <p>Art Beth</p>
<p>3. That same night, Minnie offers to pay \$105,000 for the same tract of land. Art tells her that once he gives her a deed she should immediately record. He said, "Because I like you, I would rather you be the owner than anyone else who has come by!"</p>  <p>Art Minnie</p>	<p>Is Minnie a Bona Fide Purchaser?</p> <p>Who would own title to the property?</p>

ANSWER: If this scenario happened in most jurisdictions, Minnie would, most likely, not be considered a bona fide purchaser since Art's statements would have lead a reasonable person to ask certain questions or inquire further into any prior transactions. Even if Minnie recorded prior to Beth, in most jurisdictions, Beth would most likely be considered the bona fide purchaser.

2. Documents that are Improperly Recorded

The second type of recording issue involves improperly recorded documents or those documents that might be recorded but should not have been recorded. For instance, the effect of a defective or missing acknowledgment can vary from state to state but, in some states, an instrument that contains a defect in such an acknowledgment would fall into the improperly recorded category. Some jurisdictions would not entitle the instrument to be recorded and would not allow the instrument to be constructive notice to parties outside the instrument. Even though the instrument might have been recorded, it is as if it does not appear in the courthouse records. The statutes of a number of states will grandfather in defective acknowledgments after they have been of record for a specified number of years, or if they were recorded prior to a certain date.


Another example might be related to the types of recorded documents that give constructive notice and those types that would not give constructive notice. Recording statutes provide for the recording of only those documents that will affect or convey "real" property. Often instruments are recorded that do not, in fact, convey or affect real property such as an affidavit that is referring to another instrument. Because the affidavit did not affect or convey title, in some states, it would not constitute constructive notice.

3. Recording Statutes


The last category of concern that would surround recorded documents involves the individual state recording statutes themselves. The vast majority of states in the United States employ a system directing how instruments are recorded and how the recording of these instruments will affect title. These recording systems have become the exclusive means for publicly documenting land titles and interests. As with most property issues, recording statutes vary from state to state. Three general categories of state recording acts are in use in the United States: "notice," "race," and "race-notice" recording statutes. The least common of these categories are the race recording acts.

Race State - Under a Race statute, the first purchaser to record a deed from a common grantor has title. Title is determined by the person who wins the race to the courthouse. Under a race statute, a person can receive a deed to property that was previously conveyed to another party from the same grantor. Even though the subsequent purchaser knows of the previous conveyance, they can still obtain title if they record first. Title is determined by the person who wins the race to the courthouse. Louisiana is a pure "race" jurisdiction state. The bona fide (for value) purchaser becomes the first to record. In some cases, a purchaser has been deemed owner when a prior deed contained a defective description of the property. In Louisiana, an unrecorded oil and gas lease would not affect the parties to the lease but it will become void if a subsequent bona fide lessee records first.

Assume that Alice pays for and receives a deed to a piece of land in a "Race Jurisdiction" state. That same day, Betty pays for the same piece of land from the same grantor. Thirty minutes later, Clint does the same thing. Who would be the bonafide purchaser?

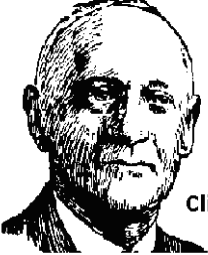


Alice



Betty

In this type of jurisdiction, it simply becomes a race to the courthouse. The first to record is the owner of the property.



Clint

Notice State – Under a Notice statute, the last bona fide purchaser to be conveyed the property from a common grantor without notice of an earlier conveyance has title. A second purchaser will prevail over the first purchaser if there was no notice (constructive-recording or actual-word of mouth) and there was valuable consideration. If the first purchaser records after the second purchaser, the second purchaser wins because at the time of the second purchase there was no notice. If the first and second purchaser fail to record and a third purchaser (without notice and for valuable consideration) files their deed, they win. The last person to be conveyed the property without effective notice of an earlier conveyance has title. Recording provides effective notice and terminates further claims for title. However, recording does not fix title when several previous conveyances have been made. The last person to be conveyed the property without effective notice of an earlier conveyance has title.

Race-Notice - Under a Race-Notice Statute, the bona fide purchaser to first record their deed after being conveyed the property without notice of an earlier conveyance has title. Race-notice gives title to the first innocent purchaser to record. In a race-notice jurisdiction, an unrecorded oil and gas lease is binding on the parties to the lease but becomes void as to a subsequent lessee who pays valuable consideration and is without notice of the unrecorded lease. If the subsequent lessee has notice of the unrecorded lease and records first, they would not be considered a bona fide purchaser. Again, a bona fide purchaser must meet the following qualifications:

1. Acquire property that is recordable;
2. Pay valuable consideration;
3. Be in good faith; and
4. Be without "notice" of the prior claim.

Assume that Alice pays for and receives a deed to a piece of land in a "Notice Jurisdiction" state. That same day, Betty, without knowledge of Alice's deed, pays for the same piece of land from the same grantor. Thirty minutes later, Clint, without knowledge of the previous transactions, does the same thing.

Who would be the **bonafide** purchaser?

In this type of jurisdiction, the last innocent purchaser to be conveyed the property from a common grantor has title. Clint would be the owner.








Assume that Alice pays for and receives a deed to a piece of land in a "Race-Notice Jurisdiction" state. That same day, Betty, without knowledge of the previous deed, pays for the same piece of land from the same grantor. Thirty minutes later, Clint, without knowledge of the previous transactions, does the same thing.

Who would be the **bonafide** purchaser?

In this type of jurisdiction, the first innocent party to record will be the rightful owner.

LIST OF THE VARIOUS STATE RECORDING STATUTES

Alabama: Ala. Code Sections 35-4-51 (Michie 1975 & Supp. 1994)
Alaska: Alaska Stat. Section 40.17.080 (1988)
Arizona: Ariz. Rev. Stat. Sections 33-411 &-411.01 (supp. 1995)
Arkansas: Ark. Stat. Ann. Sections 18-40-107 (1987)
California: Cal. Civ. Code Section 1107 (West 1982)
Colorado: Colo. Rev. Stat. Section 38-35-109 (1990)
Connecticut: Conn. Gen. Stat. Ann. Sections 47-10 (West 1986)
Delaware: Del. Code Ann. Tit. 25, Section 151 (Michie 1989)
District of Columbia: D.C. Code Ann. Sections 45-801 & -802 (Michie 1989)
Florida: Fla. Stat. Ann. Section 695.01 (West 1994)
Georgia: Ga. Code Ann. Section 44-2-1 (West 1991)
Hawaii: Hawaii Rev. Stat. Section 502-83 (1992)
Idaho: Idaho Code Section 55-611 (1988)
Illinois: 765ILCS 5/30 (Smith-Hurd 1992)
Indiana: Ind. Code Ann. Sections 32-1-2-11 & -16 (Burns 1994)
Iowa: Iowa Code Ann. Sections 558.41 (West 1992 & Supp. 1995)
Kansas: Kan. Stat. Ann. Sections 58-2221 to -2223 (1994)
Kentucky: Ky. Rev. Stat. Ann. Section 382-110 (Michie 1974 & Supp. 1991)
Louisiana: La. Rev. Stat. Ann. Section 9:2721 (West 1991 & Supp. 1995)
Maine: Me. Rev. Stat. Tit. 33, Section 201 (West 1988)
Maryland: Md. Real Prop. Code Section 3-203 (1998)
Massachusetts: Mass. Ann Laws Ch. 183, Section 4 (Law. Co-op Supp. 1987)
Michigan: Mich. Stat. Ann. Section 565.29 (West 1988)
Minnesota: Minn. Stat. Ann. Section 507.34 (West 1990)
Mississippi: Miss. Code Ann. Section 89-5-5 (1991)
Missouri: Mo. Ann Stat. Sections 442.380 & .390 (Vernon 1986)
Montana: Mont. Code Ann. Sections 70-21-201 & -302 (1994)
Nebraska: Neb. Rev. Stat. Sections 76-237 & -238 (1990)
Nevada: Nev. Rev. Stat. Ann. Sections 111.320 & .325 (Michie 1993)
New Hampshire: N.H. Rev. Stat. Ann. Section 477:3-a (1991)
New Jersey: N.J. Stat. Ann. Sections 46:2-1 & 46:22-1 (West 1998)
New Mexico: N.M. Statr. Ann. Sections 14-9-1 to -3 (1978)
New York: N.Y. Real Prop. Law Section 291 (McKinney Supp. 1989)
North Carolina: N.C. Gen. Stat. Section 47:18(a) (1984)
North Dakota: N.D. Cent. Code Section 47-19-41 (1978)
Ohio: Ohio Rev. Code Ann. Section 5301.25 (Baldwin 1994)
Oklahoma: Okla. Stat. Ann. Tit. 16 Sections 15 & 16 (West 1986)
Oregon: Or. Rev. Stat. Section 93.640 (Butterworths 1989)
Pennsylvania: Pa. Stat. Ann. Tit 21 Section 351 (Purdon 1955)
Rhode Island: R.I. Gen. Laws Section 34-1-1 (West 1984)
South Carolina: S.C. Code Ann. Section 30-7-10 (Law Co-op 1990)
South Dakota: S.D. Codified Laws Section 43-28-17 (1988)

Tennessee: Tenn. Code Ann. Section 66-5-106 (Michie 1993)
 Texas: Tex. Prop. Code Ann. Section 13.001 (Vernon 1984 & Supp. 1995)
 Utah: Utah Code Ann. Section 57-3-3 (1994)
 Vermont: Vt. Stat. Ann. Tit. 27, Section 342 (1990)
 Virginia: Va. Code Ann. Section 55-96 (1995)
 Washington: Wash. Rev. Code Ann. Section 65.08.070 (West 1994)

Is Texas a “Race-Notice” or “Notice” Jurisdiction State?

The following is the Texas Recording Statute. Many attorneys in Texas read this statute and see Texas as a Race-Notice state, whereas others read the statute and see Texas as a Notice state.

CHAPTER 13. EFFECTS OF RECORDING

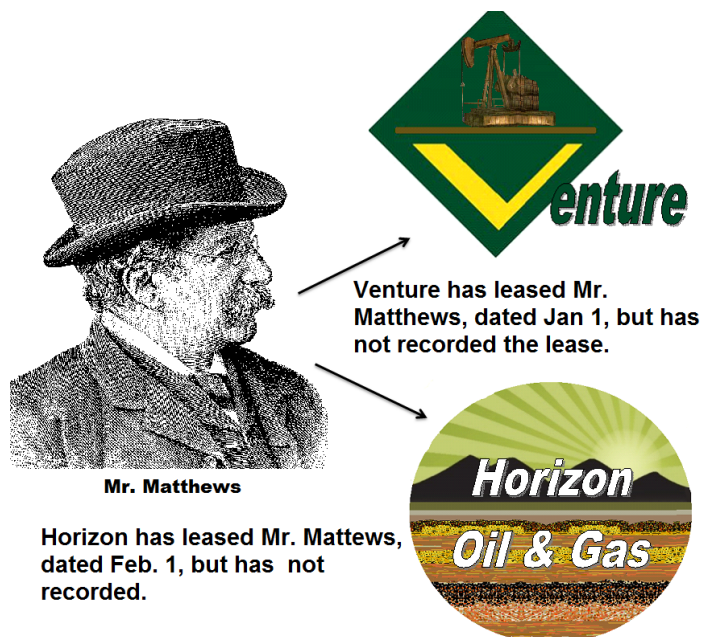
§ 13.001. VALIDITY OF UNRECORDED INSTRUMENT. (a) A conveyance of real property...is void as to a...subsequent purchaser for a valuable consideration without notice unless the instrument has been acknowledged, sworn to, or proved and filed for record as required by law.

§ 13.002. EFFECT OF RECORDED INSTRUMENT. An instrument that is properly recorded in the proper county is: notice to all persons of the existence of the instrument and subject to inspection by the public.

Texas goes to great lengths to protect a bona fide (innocent) purchaser who buys property after a prior conveyance to a party that has failed to record. This subsequent purchaser will be deemed to hold superior title to the property if they have met a “valuable consideration” threshold and are deemed bona fide or innocent. Thus, Texas is a notice state.

Scenario: Assume Venture has taken an oil and gas lease from a mineral owner named Mr. Matthews. The lease is dated January 1 but has not yet been recorded. Horizon, without knowledge of the prior lease, takes a lease from the same mineral owner. This lease is dated February 1. It has not yet been recorded. Because Texas goes to great lengths to protect a bona fide purchaser who buys after a prior conveyance, Horizon would hold the valid lease.

Now, assume that Venture records their lease on March 1.



Which party now holds the valid lease? The answer has not changed. Horizon would hold the valid lease. If a third company took a lease from the same mineral owner prior to Horizon recording their lease, the third company would hold valid title.

In Texas, a person receiving title to the property through the consideration of "love and affection" would not meet this threshold. A bona fide purchaser receiving title through a quitclaim deed, even if valuable consideration was paid, would not hold superior title. A subsequent purchaser would not be considered bona fide if the prior purchaser moved onto and possessed the property prior to the subsequent purchase. In Texas, an unrecorded oil and gas lease is binding on parties to the lease but will become void if a subsequent bona fide lessee records first.

Is Oklahoma a "Race-Notice" or "Notice" Jurisdiction State?

The following is from the 2012 Oklahoma Recording Statute. Often the statute language makes the principle difficult to determine. "Except as hereinafter provided, no acknowledgment or recording shall be necessary to the validity of any deed, mortgage, or contract relating to real estate as between the parties thereto; but no deed, mortgage, contract, bond, lease, or other instrument relating to real estate other than a lease for a period not exceeding one (1) year and accompanied by actual possession, shall be valid as against third persons unless acknowledged and recorded as herein provided."

This race-notice statute is saying that an unrecorded deed between parties is valid between the parties but becomes void as against a third party unless the original deed had been acknowledged and recorded.

Is Ohio a "Race-Notice" or "Notice" Jurisdiction State?

"The recording of the instrument in the office of the county recorder of the county in which the subject property is situated is constructive notice of the instrument to all persons, including, without limitation, a subsequent purchaser in good faith or any other subsequent holder of an interest in the property, regardless of whether the instrument was recorded prior to, on, or after February 1, 2002."

Ohio is a race-notice jurisdiction state.

Scenario 1:

Examine the following two Mineral Deeds. Assume that this conveyance occurred in Texas, a notice state, Michigan, a race-notice state, and Louisiana, a race state, and that both grantees are bona fide purchasers; that neither knew about the conveyance from the other party. Also assume that the first purchaser records first. Determine who is the “rightful” owner if the conveyances occurred in Texas? ...in Michigan? ...in Louisiana?

MINERAL DEED #1

KNOW ALL MEN BY THESE PRESENTS THAT

JASON MCCOY hereinafter called Grantor, for and in consideration of the sum of One and no/100 -----Dollars each in hand paid and other good and valuable consideration, the receipt of which is hereby acknowledged, do hereby grant, bargain, sell, convey, transfer, and deliver unto **Matthew Willis, 345 N. Main St., Billings, MT 54789**, hereinafter called Grantee, an undivided **One hundred percent (100%)** interest in and to all of the oil, gas, casinghead gas, coal, clay, uranium, potash, and other minerals, known or unknown, in and under and that may be produced from the following described lands situated in Goodhope County, TX, MI, LA, to-wit:

Texas Legal Description, Michigan Legal Description, and Louisiana Legal Description

WITNESS our hand this 10th day of July, 2012.

Signed **Jason McCoy**

STATE OF TX, MI and LA }
COUNTY OF GOODHOPE }

Before me, THE UNDERSIGNED, a Notary Public, in and for said County and State, on this day personally appeared Jason McCoy, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he executed the same.

Given under my hand and official seal, this 10th day July, 2012 A.D.

Terry Marshall, Notary Public, in and for Goodhope County, TX, MI, LA.

FILED FOR RECORD, this 12th day of July, 2012, at 8:40 O'clock A.M. and recorded, this 12th day of July, 2012 at 9:40 O'clock A.M.

MINERAL DEED #2

KNOW ALL MEN BY THESE PRESENTS THAT

JASON McCoy hereinafter called Grantor, for and in consideration of the sum of One and no/100 -----Dollars each in hand paid and other good and valuable consideration, the receipt of which is hereby acknowledged, do hereby grant, bargain, sell, convey, transfer, and deliver unto _____ **Nora Johnson**, 345 N. 2nd St., Billings, MT 54789, hereinafter called Grantee, an undivided **One hundred percent (100%)** interest in and to all of the oil, gas, casinghead gas, coal, clay, uranium, potash, and other minerals, known or unknown, in and under and that may be produced from the following described lands situated in Goodhope County, TX, MI, LA, to-wit:

Texas Legal Description, Michigan Legal Description, and Louisiana Legal Description

WITNESS our hand this 11th day of July, 2012.

Signed Jason McCoy

STATE OF TX, MI and LA }

COUNTY OF GOODHOPE }

Before me, THE UNDERSIGNED, a Notary Public, in and for said County and State, on this day personally appeared Jason McCoy, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that they executed the same for the purposes and consideration therein expressed.

Given under my hand and official seal, this 11th day July, 2012 A.D.

Terry Marshall, Notary Public, in and for Goodhope County, TX, MI, LA.

(SEAL)

STILL UNRECORDED

Who is the rightful owner in Texas _____ ?
Who is the rightful owner in Michigan _____ ?
Who is the rightful owner in Louisiana _____ ?

ANSWER: In this scenario, it appears that both Matthew Willis and Nora Johnson are innocent parties. From what can be determined, neither had actual or constructive notice of the other's deed. Depending on where this occurred, the outcome would be different.

Since Texas is a Notice State, the last innocent purchaser to receive title to real property from a common grantor would hold title. Since Nora Johnson had neither actual nor constructive notice, she would be the last bona fide purchaser. In a notice state, if the first purchaser (Matthew) failed to record prior to a subsequent purchaser (Nora), he would lose the right of being bona fide. In the example, even though Matthew recorded, his recording came after the deed to Nora and since she is the last innocent party, she would win.

Michigan is a Race-Notice State and the first innocent purchaser to record would be deemed the bona fide purchaser. Both grantees are innocent or bona fide but, in this state, Matthew Willis would be deemed the more bona fide since he recorded first. If more than one purchaser qualifies as innocent or bona fide, title goes to the party which records first.

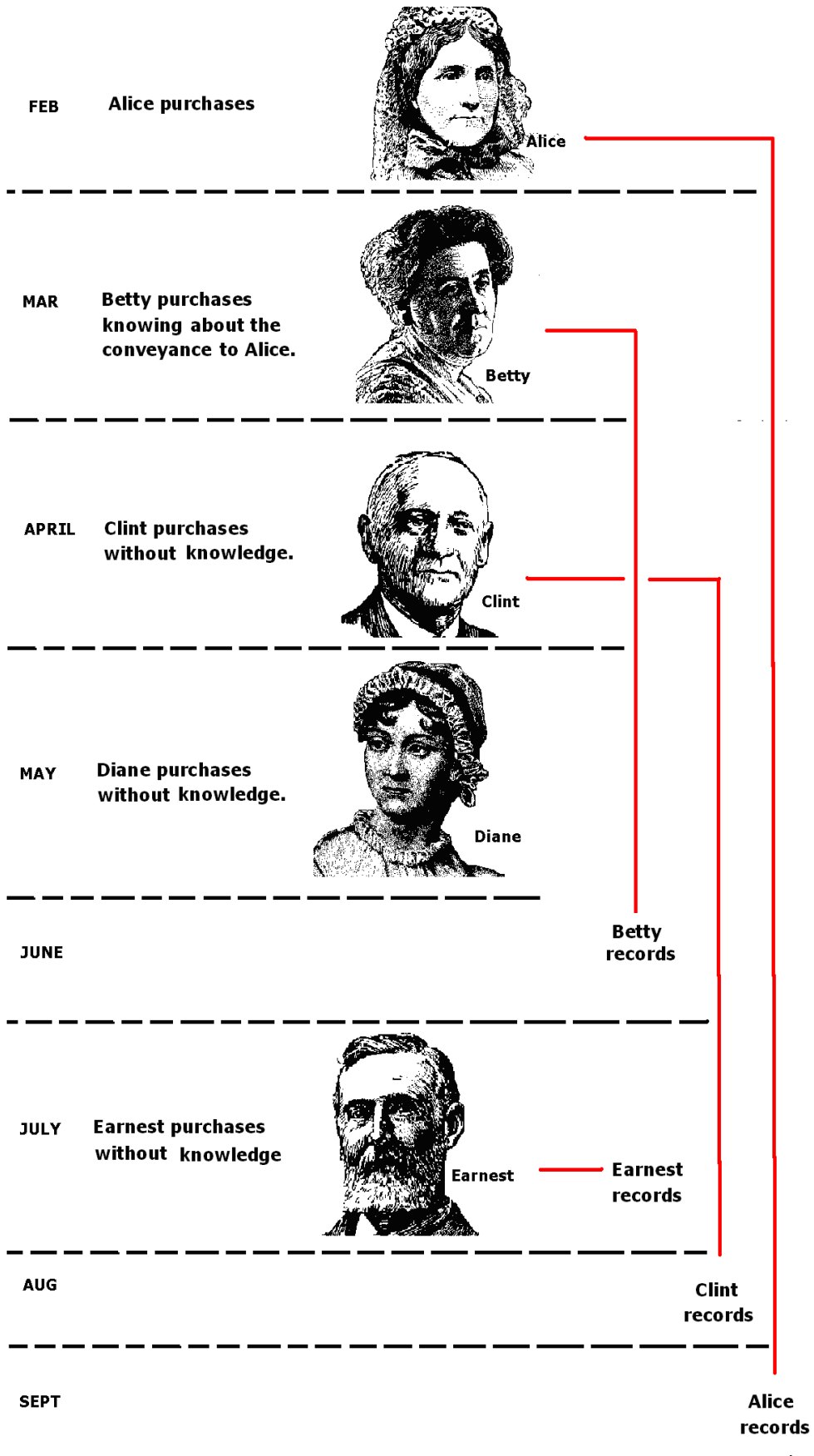
Louisiana is a Race State. Here bona fide simply means the first person to record regardless of actual notice. In this case, Matthew would hold title.

Scenario 2: Since all states recognize the possibility that a common grantor can convey good title to property that they've already conveyed previously to a separate person, consider the following example. To illustrate the different results that would occur using the same fact pattern yet applying the different types of recording statutes, in the example illustrated by the diagram on the next page, *a person conveys the same property to five different people in the sequence shown. The diagram also establishes when owners record their deed.*

Question 1: If the conveyances occurred in a Race State, what would be the outcome? _____

Question 2: If the conveyances occurred in a Notice State, what would be the outcome? _____

Question 3: If the conveyances occurred in a Race-Notice State, what would be the outcome? _____



ANSWER: *Without considering the applicable recording statute, Alice would have title. Alice was the first to be conveyed the property and logic suggests there was nothing left for the grantor to convey to Betty, Clint, Diane, or Earnest. However, under the recording statutes, the sequence of the conveyances becomes irrelevant.*

Under a Race statute, the first person to record their deed has title. The first person to record was Betty. A Race statute does not penalize Betty because she knew about the earlier conveyance to Alice when she purchased the same property, though it was conveyed previously to Alice.

Under a Notice statute, the last person to be conveyed the property without notice of an earlier conveyance has the title. The determination of title under a Notice statute is to resolve which among several deeds from a common grantor was executed last but prior to the first deed recorded (or notice given). Consequently, Diane has title to the property even though she is the fourth person to be conveyed the same property from a common grantor. She was the last person to be conveyed the property without notice of an earlier conveyance. Whether Diane eventually records her deed is irrelevant to the seniority of her title. Earnest would not be considered having purchased without knowledge because Betty had recorded her deed in June (Constructive Notice).

Under a Race-Notice statute, Clint has title. He was unaware of any earlier conveyance when he purchased the property and he was the first person to record his deed from the group of purchasers without knowledge of an earlier conveyance. Both Betty and Earnest had notice of earlier conveyances before they recorded their deeds. Betty knows because Alice told her and Earnest knows because Betty recorded. From the example, a general rule of thumb for the resolution of title under Race-Notice is to determine which, among several innocent purchasers from a common grantor, recorded their deed first.

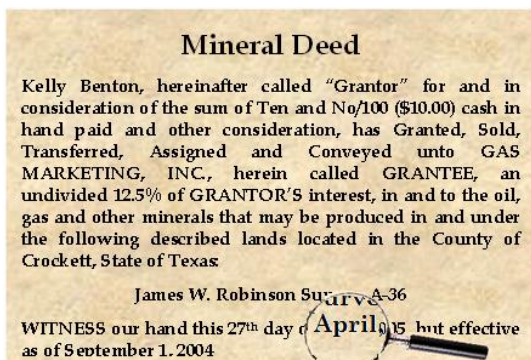
Date Irregularities

The date affixed on an instrument becomes the prima facie evidence of the date of delivery; however, if there is a conflict between the date affixed to the instrument and the date it was acknowledged, the majority of Courts hold that the date affixed to the instrument is the correct one to use. If there is no date affixed to the instrument, the acknowledgment date will serve as the prima facie evidence of the date of delivery.

Prima Facie Defined

A Latin term meaning that on first examination a matter appears to be self-evident from the facts. Prima facie denotes evidence that, unless rebutted, would be sufficient to prove a particular proposition or fact.

The effective date can be at, before, or after the date affixed



It is important to note that an instrument can be made effective at, before, or after the date it is actually signed by simply stating what the effective date will be in the document. In the illustration, the mineral deed states, "Witness our hand this 27th day of April, 2005 but effective as of *September 1, 2004.*" As long as the grantor was in possession of the granted interest on the date of purported delivery,

title will pass without any issues. On the other hand, the effective date in the Mineral Deed could have said, "Witness our hand this 27th day of April, 2005 but made effective *July 1, 2005.*"

Problems arise when the effective date purportedly conveys an interest prior to the time of ownership by the grantor. This can often become confusing, especially if title is not *straight forward*. The following title requirement outlines events creating this kind of date issue.

Requirement: Through Warranty Deed dated February 7, 1955, recorded Volume 122, Page 22, Arapaho County, Colorado, D. E. Davis and Martha Davis, as *individuals*, deeded Tract No. 9 to the Davis Revocable Trust. Through Quitclaim deed dated January 1, 1985, recorded Volume 222, Page 890, Arapaho County, Colorado, D.E. Davis and Martha Davis (as individuals) conveyed Tract No. 9 to their son, Ronald Davis.

Effective September 19, 2007, Sunrise Oil and Gas secured Lease No. 32 covering the interest in Tract No. 9 from Ronald Davis, a single man. At the

time of execution of Lease No. 32, The Davis Trust was the owner of the oil and gas minerals under Tract No. 9, not Ronald Davis. At the effective date of the Ronald David lease, the Davis Trust owned the minerals.

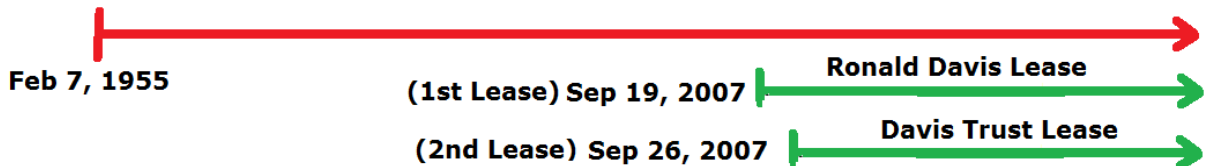
Ownership of Minerals

The Davis Trust
Ownership of Minerals

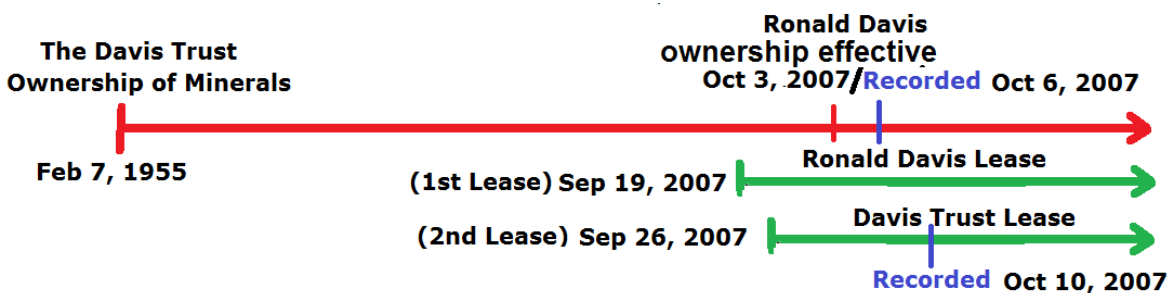


In an attempt to correct the problem, Sunrise Oil and Gas secured a second lease from the Davis Revocable Trust, dated *September 26, 2007*. This second lease would have cured the title issue.

The Davis Trust
Ownership of Minerals



However, prior to recording this second lease, D. E. and Martha Davis, as trustees for the Davis Revocable Trust quitclaimed all right, title, and interest to their son, Ronald Davis. This Quitclaim Deed was dated *October 3, 2007* and recorded *October 6, 2007*. Although conveyed *after* the September 26, 1997 Davis Trust lease, this deed was recorded *prior* to the *second* oil and gas lease. If the Sunrise lease had been recorded first then the title issue would have been fixed. Because the Ronald Davis conveyance was recorded prior to the Davis Trust lease, a gap of time exists rendering the Trust Lease less than marketable.



How might this title issue be cured? _____

ANSWER: Perhaps the easiest way to cure this issue is to have the Davis Trust ratify the 1st lease as to the prior dates of ownership. In this way, the Trust is acknowledging that even though they were not original parties to their son's lease, they are in agreement with it and are now parties to the lease.

Acknowledgment Issues

In order for a conveyance to be recorded and placed in the public record, the execution of the conveyance must be acknowledged by a valid notary public. Acknowledgment forms vary from state to state.

General Guidelines for Acknowledgements

1. The acknowledgment must be completely filled out at the time the notary public's signature and seal are affixed.
2. Documents requiring acknowledgments do not need to be signed in the Notary's presence in most states.
3. The signer must *appear before* the Notary at the time of notarization.

The effect of a missing or defective acknowledgement

The General Rule is...

1. The validity of the instrument, as between the parties, is not affected by the absence of, or defect in, the acknowledgement.
2. As against third parties, unacknowledged or defectively acknowledged instruments *do not serve as constructive notice* to third parties. *Thus the instrument can be denied the benefit of recordation.*

In other words, even though the instrument physically appears in the real estate records, it will, as a matter of law, be treated as unrecorded.

Some states have placed a statute of limitation upon the invalidating effect of defective acknowledgement. In Oklahoma, if an instrument which contains a defective acknowledgement has been recorded for a period of five (5) years, the instrument is considered valid notwithstanding the omission or defect and will not impact marketability.

GENERAL RULE

When there is a missing or defective acknowledgement, the general rule is that the validity of the instrument, as between the parties, is not affected by the absence of or defect in the acknowledgement but as against third parties, unacknowledged or defectively acknowledged instruments *do not serve as constructive notice* to third parties. *Thus the instrument can be denied the benefit of recordation.*

What defects are fatal to an acknowledgement?

1. Failure to include acknowledging party's name in Certificate of Acknowledgement;
2. Significant variance in acknowledging party's name in the Certificate versus the instrument being acknowledged;
3. Omission of the word "acknowledged" in the Certificate;
4. Failure of officer taking acknowledgement to sign the Certificate;
5. Absence of the officer's official seal when its use is applicable;
6. Officer taking acknowledgement was disqualified, and his/her disqualification is evident on the face of the instrument.

How to manage a missing or defective acknowledgement

The general rule is that a missing or defective acknowledgement would not need to be cured if the instrument does not convey title, such as a Transfer of Lien, Assignment of Lien, or Corporate Resolution. Additionally, if the instrument no longer affects title, such as a recorded Deed of Trust that has been paid off and released; or, if a sufficient amount of time has passed and the defect has been fixed by state statute, it does not need to be cured.

If, on the other hand, a missing or defective acknowledgment must be cured, there are only three courses of action.

1. Correct the acknowledgement by the original notary public, followed by re-filing of original instrument.
2. Have the grantor re-acknowledge the original instrument before a different notary public, followed by re-filing of original instrument.
3. File a new properly acknowledged instrument executed by the same grantor.

GENERAL RULE

A missing or defective acknowledgement would not need to be cured if the instrument did not convey title; if the instrument no longer affects title; or if a sufficient amount of time has passed and the defect has been fixed by state statute.

Scenario: Assume that you have received the following deed. Examine its contents and determine how many defects you can locate in the acknowledgement. Circle the defects.

Reception #445213

Warranty Deed

Know all men by these presents that: Betty B.

Black, party of the first part 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 **Violet Miller**, party of the second part, an **undivided 50% interest** in and to the following described real property and premises situated in Uptown County, New Mexico to wit:

Township 23 North, Range 17 West
Section 27: SE/4SE/4...containing 40 acres more or less

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

WITNESS our hand this 22nd day of October, 2012

Signed Betty B. Black

STATE OF OKLAHOMA }
COUNTY OF PAYNE }

On this 22nd day of March, 1995, before me personally appeared Betty B. Black, who being by me duly sworn, deposes and says that she resides at 174 E. 44th Street, Carmi, Illinois 62114, that she is President for Alright Realty Corp., the corporation described in and which executed the foregoing instrument; that she knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; and that she signed her name thereto and affixed the corporate seal by order of the Board of Directors of said corporation and the said instrument is the act and deed of such corporation.

In witness whereof, I have hereunto set my hand and affixed my official seal, at

, Notary Public,

ANSWER: The word "Acknowledged" does not appear; Betty shows up as President of Alright Realty in the acknowledgment and as Betty B. Black in the deed; the document is acknowledged in 1995 but deed signed in 2012; notary failed to sign; no seal present; and, commission expiration date of 1/1/2002 may indicate that notary authorization has expired.

Sworn Documents (Jurat)

Some documents, such as an affidavit, require a "jurat." A jurat looks very similar to an acknowledgment block but has one significant difference: a typical jurat contains the words, "Subscribed (signed) and sworn to before me...." Notice the word "sworn." Although jurat notarizations do not prove that a document is true, legal, valid, or enforceable, the party standing before the notary must "swear" that the testimony placed in the document is true, legal, and valid to the best of their knowledge. Once the party swears to the facts as being true to the best of their knowledge, the document is deemed to be the equivalent of testimony before a court.

An affidavit may or may not contain a notarial acknowledgement, but it must contain a jurat. The absence of the jurat on an affidavit would invalidate the document.

An Acknowledgment

vs.

a Jurat

Acknowledged by _____ before
me on the _____ day of _____, _____
Signature _____
Printed name _____
Notary public, State of __, County of _____
My commission expires _____

Subscribed and sworn to by _____ before me
on the _____ day of _____, _____
Signature _____
Printed name _____
Notary public, State of _____, County of _____
My commission expires _____

The Notary Certifies:

1. The signer's identity.
2. That the signer executed the document. Generally, the signing of the document need not take place in the notary's presence.
3. That the signer personally appeared before the notary on the date indicated.

The Notary Certifies:

1. That the signer personally appeared before the notary on the date and in the county indicated.
2. That the signer signed the document in the presence of the notary.
3. That the notary administered the oath or affirmation, typically, "Do you swear or affirm that the statements in this document are true?"
4. Traditionally, both parties raise their right hand, but this is not a legal requirement.

Curative Pertaining to Name Issues

It is not uncommon to see a person's name shown in several different ways in the chain of title. The title examiner can see a woman's name change as it relates to marriage or remarriage. It is not uncommon to have a party sign a contract using their common name when, in fact, that name is different than their legal name. For instance, *Nicholas Timothy Wilkins* might use any of the following names:

- Nicholas T. Wilkins
- N.T. Wilkins
- Timothy Wilkins
- Tim Wilkins
- Nick Wilkins



Nicholas T. Wilkins, a/k/a
N.T. Wilkins, a/k/a
Timothy Wilkins, a/k/a
Tim Wilkins, a/k/a
Nick Wilkins

In a case like this, which would be the appropriate name to use on the oil and gas lease or contract?

The basic rule is that an individual must sign an instrument with the same name as that in which title was received. If the conveyance vested title into *Nicholas Wilkins*, that is how his name should appear on the contract. If the conveyance vested title into *Tim Wilkins*, that is how his name should appear on the lease.

On the other hand, it is possible that different conveying instruments show more than one name for the same person. In a case like this, the contract should contain both names, such as: *Nicholas T. Wilkins, also known as Timothy Wilkins* and the contract should be signed as *Nicholas T. Wilkins*.

If two conveying instruments showed title vesting in both Nicholas T. Wilkins and N.T. Wilkins, then the contract should be styled: *Nicholas T. Wilkins, also known as N.T. Wilkins* and the contract should be signed as *Nicholas T. Wilkins*.

The Doctrine of Idem Sonans

The doctrine of "*idem sonans*" is a legal doctrine whereby a person's identity is presumed to be the same despite the misspelling of the person's name. If two names sound alike but are spelled differently though "sufficiently" the same, the names should be presumed to be identical. The doctrine presumes that if two names have a common usage or an abbreviation that

makes the pronunciation identical, then the identity of the two parties are one and the same. Examples might be as follows: Conolly and Conley, Macomber and McComber, Bert and Burt, or Bettie and Betty. Exceptions might include the addition of a suffix such as Jr., Sr., or II. Such suffixes would create an identity question as to another party.

Most jurisdictions follow the doctrine of idem sonas, including Texas. Oklahoma also follows the doctrine as stated in the 2011 Title Examination Standards Handbook Article 1, 5.1. "Identity of parties should be accepted as sufficiently established in the following cases: A.) Where there are used common abbreviations, derivatives or nicknames for Christian names, such as "Geo." for George, "Jon." for John, "Chas." for Charles, "Alex." for Alexander, "Bob" for Robert, "Eliza" or "Liza" for Elizabeth, "Jos." for Joseph, "Thos." for Thomas, "Wm." for William, "Susan" for Suzanna, "Ellen" for Eleanor, "Rich" for Richard, "Mc" for Mac (as prefix to a name); B.) Names within the rule of the generally accepted doctrine of idem sonans; and C.) In all instruments or court proceedings where in one instance a Christian name or names of a person is or are used, and in another instance the initial letter or letters only of any such Christian name or names is or are used but the surnames are the same or idem sonans, and in one instance a Christian name or initial letter is used, and in another instance is omitted, but in both instances the other Christian names or initial letters correspond and the surnames are the same or idem sonans."

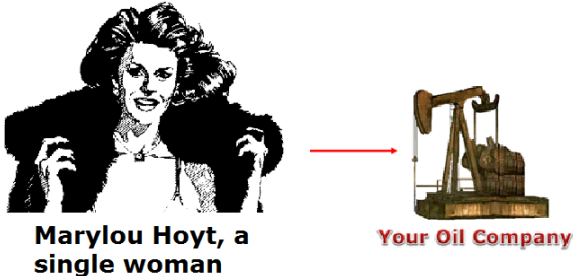

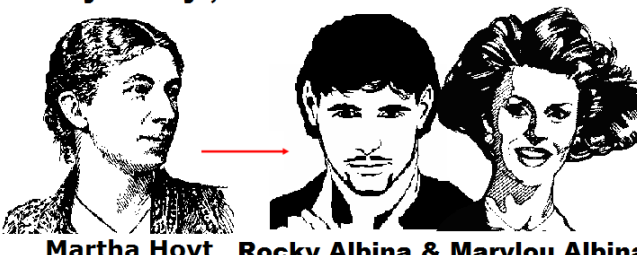

The Oklahoma handbooks concludes with this statement, "A greater degree of liberality should be indulged with the greater lapse of time and in the absence of circumstances appearing in the abstract to raise reasonable doubt as to the identity of the parties."

When the Variation of Names Needs to be Verified

When name variances do occur, state statutes, court rulings, and state title standards will help determine which variances can be disregarded. When a variation of names occurs, and the examining title attorney believes that the identities must be verified, the common curative item used is an Affidavit of Identity.

This affidavit will describe the lands affected, state all of the names under which the particular person was or has been known from the records of title, and can cite the recording information from the instruments tied to the issue.

Requirement:

<p>1. Oil and gas lease #3 covering 480 net mineral acres in Sec. 13, T3N, R5W, has been acquired from Marylou Hoyt, a single woman, by your Oil Company.</p>  <p>Marylou Hoyt, a single woman</p> <p>Your Oil Company</p>	<p>2. At the time of execution, Marylou's legal name was Marylou Enzo. She was married to her estranged husband Antonio Enzo. The name on the marriage certificate was Marylou C. Enzo.</p>  <p>Marylou Enzo Marylou C. Enzo</p> <p>Antonio Enzo</p>
<p>3. The vesting deed into Marylou came from her mother, Martha Hoyt. Martha Hoyt conveyed the interest to Rocky Albina and Marylou Hoyt, as JTROS.</p>  <p>Martha Hoyt Rocky Albina & Marylou Albina</p>	<p>4. Prior to Rocky Albina's death on March 15, 1998, Marylou changed her name to Marylou Albina.</p>  <p>Maylou Albina</p>

At the time of this conveyance, Marylou was living in Idaho and considered married to her first husband, Rocky Albina, through a common law marriage.
Vesting Deed into Marylou and Rocky Albina:

Warranty Deed

Martha Hoyt, 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 Marylou Hoyt and Rocky Albina, the man I know will make my little girl happy, as joint tenants with rights of survivorship, herein called "Grantees," all of Grantor's right, title, and interest in and to the following described lands, in fee simple absolute:

"PROPER LEGAL DESCRIPTION"

Requirement: Your attention is drawn to lease No. 7 covering 480 net mineral acres in T3N, R5W, Sec. 13, S/2 and the NW/4, Brewers County, New Mexico between your company and Marylou Hoyt, lessor. Before any operations take place, an Affidavit of Identity is required to satisfy that Marylou Hoyt, Marylou Albina, and Marylou Enzo are one and the same individual. How should this affidavit be filled out?

Affidavit of Identity

State of _____
County of _____

_____ of lawful age, being first duly sworn, deposes and says that he/she was well acquainted with _____ and with _____ and with _____ as mentioned in the chain of title to the following described land, to wit:

Of Section _____ Township _____, Range _____, County of _____ and State of _____, and affiant positively knows that said _____ and _____ and _____ are one and the same person, notwithstanding the discrepancy of the names.

Further affiant saith not.

* _____

*This affidavit should be filled out and executed by a disinterested party.

Answer to Affidavit of Identity

Affidavit of Identity

State of Brewers
County of Idaho

Jane Doe of lawful age, being first duly sworn, deposes and says that he/she was well acquainted with Marylou Hoyt and with Marylou Albina and with Marylou Enzo as mentioned in the chain of title to the following described land, to wit:

T3N, R5W, Sec. 13, S/2 and the NW/4
Containing 480 acres more or less

Of Section 13 Township 3 North, Range 5 West, County of Brewers and State of Idaho, and affiant positively knows that said Marylou Hoyt and Marylou Albina and Marylou Enzo are one and the same person, notwithstanding the discrepancy of the names.

Further affiant saith not.

* Jane Doe

Failure to Obtain Spousal Joinder

Often, state laws will require the joinder of both spouses on conveyances of real property when statutes in those states have previously vested a type of right in the property to the non-owning spouse. Examples of this would be community property rights, homestead rights, dower or curtesy rights, or a statutory contingent right to a life estate.

When these statutory rights exist, a conveyance by only one of the spouses may render the conveyance either void or ineffectual. If the conveyance has been deemed voidable, a ratification by the non-owning spouse will not cure the matter. The only recourse would be to have a new conveyance executed and acknowledged by both owning and non-owning spouses. Consider the ruling from an Oklahoma court:

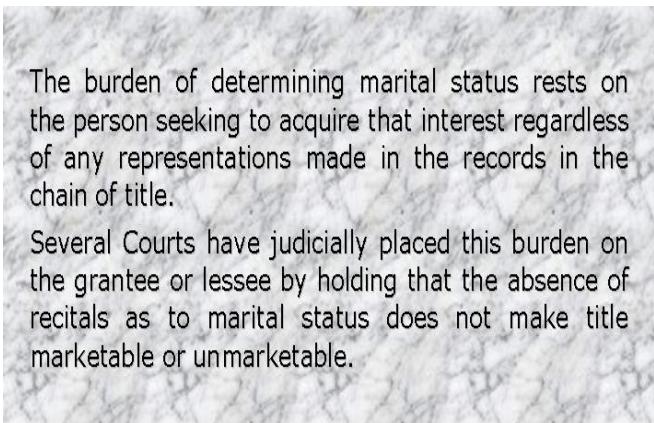
Any conveyance, mortgage, or lease that is on homestead lands is voidable unless the instrument is executed by both husband and wife. In Oklahoma a husband and wife must execute the same instrument. Separately executed instruments would both be voidable. *Grenard v. McMahan*, OK 80, 441 P.2d 950.

Again, statutes vary widely and when dealing with this issue surrounding a spousal joinder, a great deal of care must be taken. Whether or not the spouse should join in the execution of a lease is a routine problem for the lessee. Determining the correct course of action is not always an easy task because it requires considerable knowledge of both the specific facts of the matter and a sizeable knowledge of the law in the various jurisdictions.

Determining Marital Status

For oil and gas leases some states such as Louisiana require indication of the lessor's marital status. However, many instruments of record in the chain of title will not reflect marital status of individuals. Conversely, the chain of title will rarely give a clue as to whether the property falls into the category of homestead, community, curtesy, or dower. Given these truths, the burden of determining marital status still rests on the person seeking to acquire the interest, regardless of any representation made in the records in the chain of title.

As a practical matter, when dealing with spouses, the safest course of action is to always have conveyances in real property executed by both parties, regardless of the concepts of community property, homestead, or dower and curtesy.



The burden of determining marital status rests on the person seeking to acquire that interest regardless of any representations made in the records in the chain of title.

Several Courts have judicially placed this burden on the grantee or lessee by holding that the absence of recitals as to marital status does not make title marketable or unmarketable.

Dower and Curtesy Rights

The English common law system of curtesy was brought to America by the early colonists and created a provision whereby a widower could use his deceased wife's property (that is, property which she acquired and held in her own name) until his own death, but he could not sell or transfer it to anyone except children of his wife. Since most property was owned in the name of the husband, the right of dower provided a way for the woman to support herself after his death. Through this right, the widow would receive a life estate in one-third of the real property owned by the husband. Even if the husband died intestate, the widow's one-third share would still be recognized. Because of the dower rights of a married woman and her legal interest in any land being sold or purchased, most early deeds included the wife. It is important to note that dower rights have been removed in many states in the United States.

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

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

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

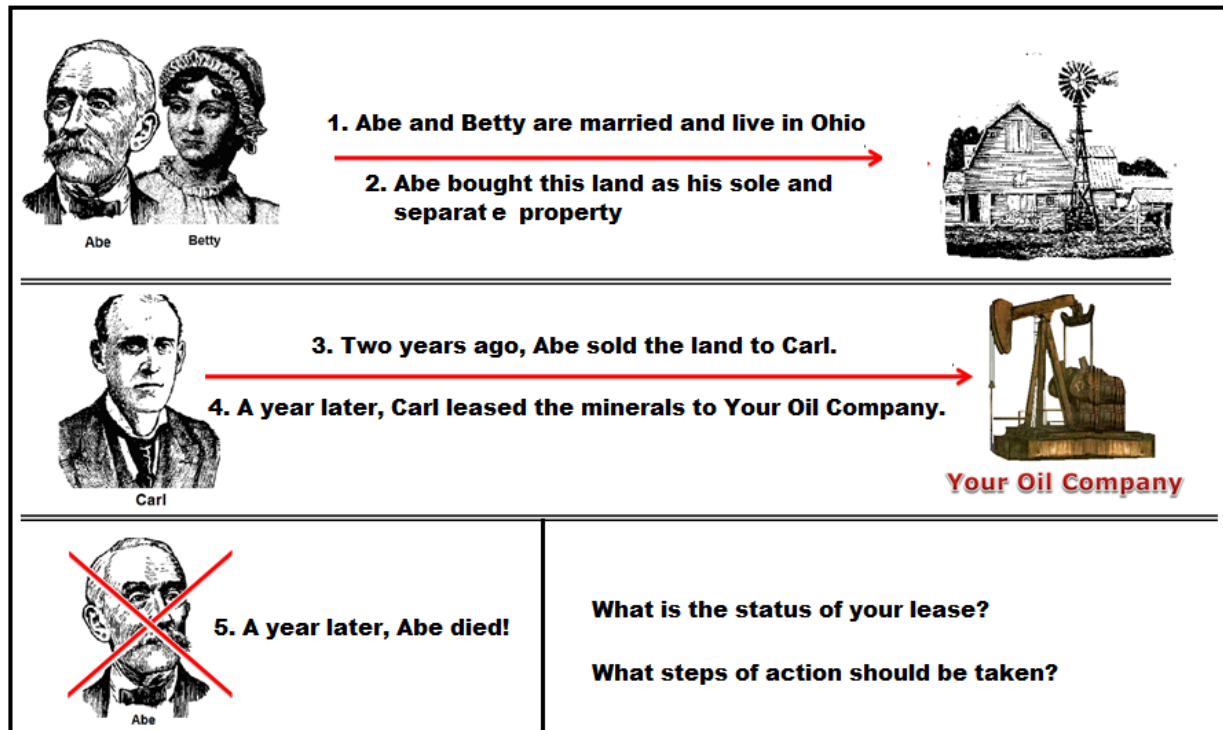
Ohio is one of the few remaining states that still recognize dower rights. Whenever a married person acquires real property in Ohio, the spouse automatically becomes the recipient of this dower interest, which is a one-third life estate interest in the real property. Termination of this dower interest can come through one of three ways:

1. Releasing the dower right through signature;
2. Divorce and/or the dissolution of a marriage; or,
3. Death of the recipient of the interest.

It is important to note that if a husband acquired real property as his separate property, the dower rights of his wife automatically attach. If the husband conveys the property to a third party without the signature of the wife, thus releasing her dower rights, the conveyance is not effective as to the dower interest of the wife. For this reason, all conveyances of real

property should include the marital status of the grantor along with the spouse's signature, thus releasing any and all dower rights.

Examine the following illustration, read the title requirement, and then determine the status of your company's oil and gas lease and what steps of action should be taken by your company.



Requirement: Your Oil Company has acquired lease No. 1, covering 100% of the oil and gas minerals in and to T33N, R77E, Section 10: NW/4 from Carl Miller, which covers all of the surface and subsurface mineral rights in and to Tract #8. On September 28, 2010, Carl Miller acquired ownership to Tract #8 from Abe Bennett through a Warranty Deed, recorded in Book 55, Page 777, Morgan County, Ohio. Ten years prior to the conveyance to Carl Miller, Abe Bennett acquired title to the tract of land as his sole and separate property. However, at the time of the acquisition, Abe Bennett was married to Betty Bennett. In Ohio, a spouse automatically becomes the recipient of a dower interest in a one-third life estate interest in the real property. Since dower automatically attaches to the lands, and Betty did not sign the conveying deed to Carl, thus releasing her dower rights, his purchase contains a cloud on title. Added to this, on October 15, 2011, Abe Bennett died. Thus, it would appear that Carl Miller is the remainderman to Betty's one-third life estate in the lands. If she died, he would be made whole. You should have Betty ratify Carl's lease, convey her one-third dower interest to Carl, or sign a separate lease with Your Oil Company.

ANSWER: It would appear that your oil and gas lease has a cloud on title regarding Betty's dower interest. According to the title requirement, one of three things could be done in order to remove the cloud. First, have Betty ratify Carl's lease. Second, have Betty release her dower interest through a conveyance of her one-third dower interest to Carl. Last, have Betty sign a separate oil and gas lease with your company. If the third option is chosen, and since Carl is the remainderman to Betty's life estate, Carl should ratify her oil and gas lease.

Community Property

Community Property laws exist in Arizona, California, Idaho, Nevada, New Mexico, Texas, Washington, and Wisconsin and are a method for defining the ownership of property acquired during marriage.

Community property is:

1. All earnings made during marriage,
2. All property acquired with those earnings, and
3. All debts incurred during marriage.

Homestead Property

Homestead rights are created by state statutes and typically are defined as the home in which a family lives, plus any adjoining land and other buildings on that land. Homestead rights are not subject to the claims of creditors as long as a home on the land is occupied by the head of the household and rights can attach to the property either automatically or through filing the appropriate homestead exemption as outlined in each state. After the head of the family dies, homestead laws often allow the surviving spouse or minor children to live on the property for as long as they choose.

Homestead rights should not be confused with land acquired out of the public lands of the United States. The term "homesteaders" refers to people who received their land by settling it and making it productive, rather than purchasing it outright.

Scenario 1: Read the following requirement and determine what course of action your company would take.

Requirement: Record title to Tract No. 12 is owned by John Matthews, as his sole and separate property. Your Company acquired oil and gas lease

No. 25 covering all lands in Tract No. 12 from John Matthews, as a married man, dealing with his sole and separate property. Although your lease purportedly covers all rights in and to the oil and gas minerals under Tract No. 12, it appears that John Matthew's residence is located on Tract No. 12. If it is determined that John and his wife, Beth, claim said tract of land as their homestead, you should have all homestead parties join in the execution of a new lease or, at the least, have Beth ratify the current lease. Regardless of how title is vested, neither spouse can sell, lease, or mortgage the homestead without the express written adherence of the other spouse. According to Texas Family Code Sec. 5.81 and 5.82., a lease containing only one signature becomes inoperative as to the non-joining spouse.

Assume that the following Homestead Designation Affidavit was provided to your company by John. What course of action should your company take?

HOMESTEAD DESIGNATION AFFIDAVIT

STATE OF TEXAS
COUNTY OF WISE

BEFORE ME, the undersigned notary public in and for said county and state, on this day personally appeared who being by me duly sworn, did each depose and say:

AFFIANTS own, use, claim and personally reside upon the following described lot, tract, or parcel of land situated in Wise County, Texas, described as follows:

PROPER LEGAL COVERING TRACT 12

The property above described is now, by Affiants, designated and set apart as their homestead.






Affiants represent that they have no homestead rights in and to any other property owned by them, or either of them, in the state of Texas.

SIGNED, this the 12th day of October, 19 89.

John Matthews
Signature of Homesteader

Beth Matthews
Signature of Homesteader

Scenario 2:

 John  	 Your Oil Company 3. Your Oil Company wants to lease the land.
 John Beth 2. After his marriage to Beth, they moved into the home that John grew up in.	4. John and Beth are currently separated and anticipating getting a divorce.

Assume your company attempted to lease both John and Beth. John is adamant that Beth not be on the lease. He claims the land as his sole and separate property and does not want his estranged wife making any claim or representation to ownership. He especially does not want her receiving any bonus or royalty if a well is drilled. What should you do? If the only signature you can receive is John's, would you need any curative documentation from Beth?

ANSWER: Even though the land belongs to John as his sole and separate property, the real issue is the property is possibly claimed as "homestead property." The impact of homestead rights will vary from state to state. If the land is claimed as homestead property, both Beth and John should execute the lease, however, depending on the state, when one spouse has failed to join in the execution of the lease, one of three outcomes can occur.

First outcome, that the lease is still valid. For example, in Colorado it is assumed that if notice of the homestead has *not* been recorded in the appropriate county by Beth, then John can lease the property free and clear of the homestead rights. In this case, a lease executed by John would suffice. If John had filed notice that Beth was homesteading the property, the signature of both spouses is required.

The second outcome rests on the fact that Beth did not join in the execution of the lease, rendering the lease void and completely ineffective. A voided lease cannot be cured by a ratification signed by Beth. The only cure is to have a new lease executed by both spouses. Oklahoma rules are an example of this. If both John and Beth claim homestead rights, then both spouses must sign the same oil and gas lease. A lease containing only one signature, or two separately executed leases, would make the lease or leases void. It would appear that in Oklahoma no separate curative document would suffice.

A possible third outcome rests on the fact that Beth did not join in the execution of the lease, which would not render the lease void but could render the lease voidable. Wyoming is an example of this. If the property qualified as homestead, both John and Beth must join in the execution of a lease or it is not valid as to the homestead interest of the non-joining spouse. It would appear that if Beth ratified John's lease then her interest would become valid. Texas is another example. In Texas, if both spouses claim homestead rights, then both spouses must sign an oil and gas lease. According to Texas Family Code, Sec. 5.81 and 5.82., a lease containing only one signature becomes inoperative as to the non-joining spouse until the non-joining spouse ratifies the lease.

When Someone Dies

When a person in the chain of title dies, the land professional must consider a handful of questions:

1. Did the person die with or without a will?
2. If there was a will, was it probated?
3. If there was a will, was it not probated?
4. If there was a will, was it properly probated?
5. Was the will probated in the county where the mineral lands are located?

The Probate Process

When a person dies with a will, the estate is considered to be a “testate estate.” If the will is submitted to the court, a probate process occurs whereby the will is proved to be legitimate, an executor or executrix of the estate is appointed, and the estate is administered and then distributed to those parties established in the will.

This probate process will involve several steps, including: proving that the will was a valid will, an inventory of the deceased party’s property, an appraisal of the estate, payment of any debts and taxes, and making distribution of the property to the heirs as set out in the will.

When a person dies without a will, the estate is considered to be an “intestate estate.” An intestate estate can also be submitted to the court. The probate court will go through a similar process identifying and appraising the property, paying off any debts and taxes, and making distribution of the property according to the descent and distribution laws of the state.

The Important of Probate

In 1540, the Parliament of England enacted the Statute of Wills. For the first time in English history landholders could determine who would inherit their land upon their death by designating their heirs through a will. Prior to the enactment of this statute, landowners did not have the right to determine who would become the new owner of the land and land could be passed only if the landholder had competent living relatives.

Many of the procedures created by the Statute of Wills are still effective in the United States today. The statute requires that wills be in writing, that they are signed by the person making the will, and that the will be properly

witnessed by other persons. These procedures are in place in order to accomplish two important issues that surround the will. First, they help to ensure the validity of the will and that its contents were not falsified. Secondly, they help to fulfill the wishes of the decedent. It is the probate process that authorizes this “stamp of approval” on the will. If the procedures are not met, the probate process will not enforce the will.

The probate process serves another important function. Listing heirs in the last will and testament does not transfer title to the heirs. Title to the heirs is validated through the probate process so that distribution of the property can occur. Generally, for marketable title to exist, probate must occur in the state where the property is located.

A Personal Representative

In many states, the probate court does not have the authority to convey a decedent’s property to the designated heirs or future owners. The court’s power rests with establishing who the heirs are, who is entitled to receive the property, and the value of the property. The court does, however, possess the authority to appoint a personal representative. This personal representative would then have the right and power to distribute the property through a “Personal Representative’s Deed.”

Ancillary Probate

The probate process must take place in the state where the decedent lived and held property. Very often, however, a person will die owning real property in more than one state. Because each state’s laws govern only the property within their jurisdiction, an ancillary probate must occur in each of the other states. This process is called “ancillary probate.” This process is not as lengthy as the primary probate because many of the items that must be submitted have already been established, such as copies of the last will and testament, order admitting the will to probate, inventory and appraisal of property, and any other court orders. Usually, the ancillary probate court will require certified copies of the probate that was filed in another county, or an exemplified copy if the probate was filed in another state.

In *Smith v. Reneau*, 188 Okl. 629, 112 P.2d 160, the Supreme Court of the State of Oklahoma held that a foreign will which has not been probated in Oklahoma under Oklahoma law is ineffectual to show title or interest in the person claiming title to Oklahoma realty thereunder.

When a Will is not being admitted to probate

It is not uncommon to have a last will and testament that is not admitted to probate. Usually, the reason given is that the person’s estate is worth less

than the cost of probating the estate. Conversely, most states have a time limit for offering a last will and testament to probate, and in order for the will to be recognized, the will must be submitted within the appropriate time period. If the time period lapses, the estate is distributed according to the laws of intestate succession.

When a party dies without any type of will, a break in the chain of title can exist. Such a break in the chain of title should prompt an investigation. If the estate is being administered, copies of the proceeding, evidence of the payment of estate taxes, and any distribution of property should be examined. If no probate proceeding can be found in the records, the title examiner should determine if the estate has been probated in another state. If no evidence of this exists, an affidavit of Death and Heirship can help to explain this cloud on title. However, such affidavits are simply statements of fact; they are not considered to be conclusions of law. Such an affidavit may be used to explain the defects in the recorded links in the chain of title but will not become the missing link in the chain of title. Therefore, affidavits do not substitute for the probate of a will but do create a rebuttable presumption of the proper designation of heirs.

Many modern statutes consider a proper Affidavit of Heirship and Marital History to be good evidence of all facts recited within. However, the land professional must be aware that, for the Affidavit of Heirship and Marital History to have that effect, the document must be free from any objection, incompetency, hearsay, etc.

Texas Probate Code Sec 52A sets forth a statutory form, "Affidavits of Facts Concerning Identity of Heirs." If this affidavit has been recorded for at least five years in the county where the real property is located, the affidavit is admissible as evidence as prima facie proof of the facts as stated.

An Affidavit of Death and Heirship should contain:

1. Name of decedent, residence, and date and place of death.
2. Name, address, and relationship of each of decedent's heirs.
3. Marital history, names, addresses, and dates of death of all spouses and/or children or their heirs.
4. A statement as to whether the decedent died testate or intestate, and, if testate, the disposition of decedent's will.
5. At least a general description of the real and personal property belonging to the estate of the decedent.
6. An explanation for the omission of any of the above information.
7. A statement that all debts of the decedent are paid or the manner in which all debts will be paid.

Unpaid Taxes

Since the early days of our nation, states and governments including counties, school districts, and other authorities have imposed taxes against real estate. If these taxes are delinquent or unpaid, the county government has the authority to offer the real estate, through auction or lottery drawing, to the public through a tax lien sale. Generally, these sales are held annually, and the property is either auctioned to the highest bidder or granted to a buyer through a lottery process.

This tax lien sale is not an actual conveyance of the property. The “buyer” simply holds a lien on the property during what is called a “redemption period.” He or she has, in essence, paid the delinquent taxes on behalf of the property owner. The property owner can redeem the land during the redemption period by paying all past taxes owed plus interest on the money to the holder of the lien. Redemption periods and the amount of interest assessed vary greatly from state to state.

If the property owner fails to pay the interest and back taxes during this redemption period, the holder of the tax lien can foreclose on the property. At this point, the court orders a Tax Deed and the property is conveyed to the tax lien holder.

Courts have regularly determined that if a surface owner failed to pay assessed taxes, severed mineral interests would not transfer to the new owner in the tax sale. An Illinois Appellate Court dealt with this issue when the owner of a tax deed claimed that severed mineral interests now belonged to him. The severed mineral owners claimed that the tax deed was insufficient to pass title to the new owner in the tax sale. The court agreed. *Jackson v. Reed*, 448 N.E.2d 226, 227 (Ill. App. Ct. 1983).

The severance analysis used by the Illinois court has been widely used by courts when confronting oil and gas property claims. In a similar situation, the Superior Court of Pennsylvania determined that a lien for unpaid taxes attached only to the estate assessed (surface estate) and not to any severed mineral estate. *Babcock Lumber Co. v. Faust*, 39 A.2d 298, 302 (Pa. Super. Ct. 1944).

On the other hand, if a lien for unpaid taxes occurred on a tract of land where the surface owner also owned the mineral estate, the tax deed would impact the mineral estate and could adversely affect a company’s oil and gas lease asset.

Tax Lien Certificate or Tax Certificate

Tax lien certificates are often referred to as tax certificates, which should not be confused with the definition of a tax certificate below. At the time of a tax sale, a tax lien certificate is issued to the purchaser certifying their payment, and entitling the purchaser to an instrument of conveyance (tax deed) once certain conditions have been met. This tax lien certificate would be the purchaser's official proof of payment toward the past due and unpaid taxes on the property.

Tax Certificates

When such taxes are not paid, a tax lien and foreclosure can result. The impact of this upon an oil and gas lease can be significant; thus, an examining attorney will often require a "tax certificate" to be obtained from each of the taxing authorities in order to verify that all taxes are paid. This certificate is simply proof that all taxes are current on the property and that the leasehold owner is not subject to any possible loss due to unpaid taxes.

Tax Deed

Even after a tax deed has been issued, and regardless of the time elapsed since it was issued, some title examiners will treat these tax deeds as *color of title*. Many will require that the land professional secure an affidavit of possession from the tax deed holder and determine that taxes have been paid for a period of time sufficient to establish title by adverse possession.

Color of Title Defined

Color of title refers to a claim to title that appears valid, but may be legally defective. A buyer has received a color of title when they received a deed that purports to pass title but might be defective. The buyer is in possession but the conveying document has issues.

The following are requirements that might be seen regarding taxes:

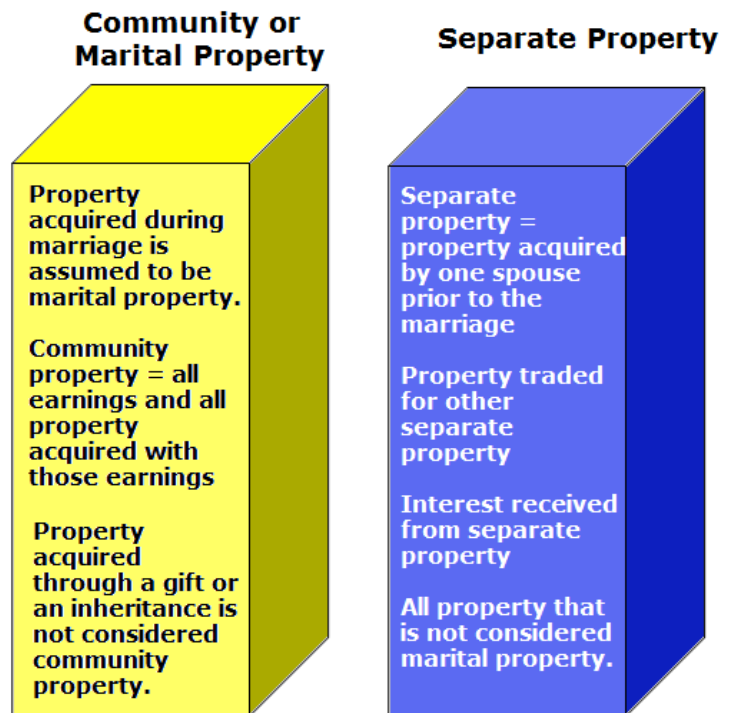
Requirement: Taxes for the captioned property for the past and current year should be paid and proof of their payment should be submitted to us for our examination.

Requirement: You should obtain an abstractor's Special Certificate certifying as to the payment of ad valorem taxes affecting the subject property for 2012 and prior years, or otherwise satisfy yourself that they have been paid.

Requirement: No tax certificates have been furnished.

When There is a Divorce

Categories of Property - Property owned by couples going through a divorce can be divided into two categories: either community or marital property and separate property. Property purchased during the marriage is assumed to be marital property regardless of how it was purchased. If the couple presents conclusive evidence to the contrary, the presumption of marital property is overruled. In a state that adheres to community property laws, community property would consist of all earnings and all property acquired with those earnings. Property acquired by one spouse during the marriage through either a gift or an inheritance would not be considered community property. Separate property would be considered as any property purchased by one spouse prior to the marriage, property traded for other separate property, interest received from separate property, and all property that is not considered marital property.



Property Settlement Agreement - It is these two types of properties that are allocated in the Property Settlement Agreement. The distribution can come from either court order or from agreement of the parties. The following property settlement agreement is the type that might be used if both parties are able to resolve any property disputes. Clearly, the example mentions at least one minor child. Not all settlement agreements will cover all issues related to the divorce; however, the issues that are addressed can be incorporated in the divorce decree. At that point they would become a legally binding portion of the decree from the court.

PROPERTY SETTLEMENT AGREEMENT

John, hereinafter referred to as "Petitioner," and Beth, hereinafter referred to as "Respondent," hereby agree to the following:

1. Petitioner and Respondent were lawfully married on July 10, 1998, at Columbus (city), Ohio (state), in the County of Washington. Because certain irreconcilable problems have developed between Petitioner and Respondent, they have agreed to live separately and apart, have filed for divorce, and are attempting to resolve the property issues between them without going to trial.
2. Petitioner and Respondent have made a complete, fair, and accurate disclosure to each other of all financial matters affecting this agreement.
3. This agreement is intended to be a final disposition of the matters addressed herein and may be used as evidence and incorporated into a final decree of divorce or dissolution.
4. Should a dispute arise regarding the enforcement of this agreement, the prevailing party will be entitled to his or her reasonable costs and attorney's fees.

Marital Property

Respondent will remain in the family home, located at 123 N. Main Street, Fredrick, Ohio, until at least such time as the youngest child of the parties is eighteen years old. The resident of the homestead agrees to pay all expenses associated with living in the home, including but not limited to the mortgage payments, taxes, insurance, utility bills, and maintenance costs.

The parties agree that the current value of the equity in the homestead is \$ 300,000. At such time as the youngest child turns eighteen, the home will be sold and the equity will be evenly / equitably divided between the parties as follows: \$ 150,000 to Petitioner; \$ 150,000 to Respondent.

C. Personal Property

The personal property of the parties that already been divided between them, including but not limited to household furnishings, clothing, collections, computer equipment, and artwork

The 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. The final decree of divorce is usually filed of record in the county in which any property is located and a certified copy of the divorce decree can usually be obtained from these official records.

Beth: Plaintiff: Case No. 11-DIV-000 vs. JOHN: Defendant. :

DECREE OF DIVORCE

This cause came on for hearing on March 2, 2011 upon the complaint of the Plaintiff, and upon consideration thereof, the Court enters judgment as hereinafter set forth. The Court finds that Plaintiff has been a resident of the State of Ohio for at least six (6) months immediately preceding the filing of the initial complaint for divorce. The Court also finds that the Plaintiff has been a resident of Ashland County, Ohio for at least 90 days immediately preceding the filing of the initial complaint for divorce. The Court finds that the parties were married at Ashland, Ohio on February 1, 1997. The Court also finds that the parties are incompatible as alleged in the Complaint, and that the Plaintiff is entitled to a divorce as demanded.

The Court also finds that all parties were properly served with notice of the final hearing, and that this Court has jurisdiction of the subject matter of this matter and of the parties hereto.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the marriage relationship existing between the parties should be and is hereby terminated and dissolved, both parties released therefrom, and that a Decree of Divorce is hereby awarded to the Plaintiff.

IT IS ORDERED, ADJUDGED, AND DECREED that the parties' marital property and debt be distributed between the parties as follows:

Real Estate: The Plaintiff shall retain full fee simple title to the real estate located at 1800 Gold Lane, Ashland, Ohio 44805, and further described as being situated in the City of Ashland, County of Ashland and State of Ohio, Township 27 North, Range 73 East, Section 15: NW/4. Deed Ref. Vol. 177, Page 599 Ashland County Deed Records.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that where required to affect the distribution set forth above, each party shall deliver any and all duly and properly executed deeds, titles, certificates, or other instruments or documents necessary to transfer title of an asset, or the asset itself, to the party to whom such property is awarded no later than 30 days following the date of this Decree.

The Uniform Marriage and Divorce Act (UMDA) - Arizona, Colorado, Illinois, Kentucky, Minnesota, Missouri, Montana, and Washington have adopted the UMDA which is a uniform law providing certain standards that would govern divorce, property distribution, alimony, child support, and custody of minor children. The UMDA specifically deals with the disposition of property and provides that the property should be fairly divided between the couples regardless of "marital misconduct."