



Chapter 4

Rules for Conveying Property

Please note that in all matters of law, state statute may vary from state to state or county to county, and all state rulings are defined by the courts and can change at any time with new court decisions. No portion of this workbook is a substitute for legal advice.

GUIDELINES FOR CONVEYING PROPERTY

We have seen that property ownership carries with it certain privileges. One of those privileges is the right to sell, grant or give away the property to another party (*grantee*). When title is conveyed by the *grantor*, certain requirements must be met.

1. THE CONVEYANCE MUST TAKE PLACE IMMEDIATELY.

To pass title to a grantee, the conveyance must take effect immediately. Although property can be transferred to a grantee sometime into the future, for a conveyance actually to take place, the transfer of ownership must take effect immediately.¹

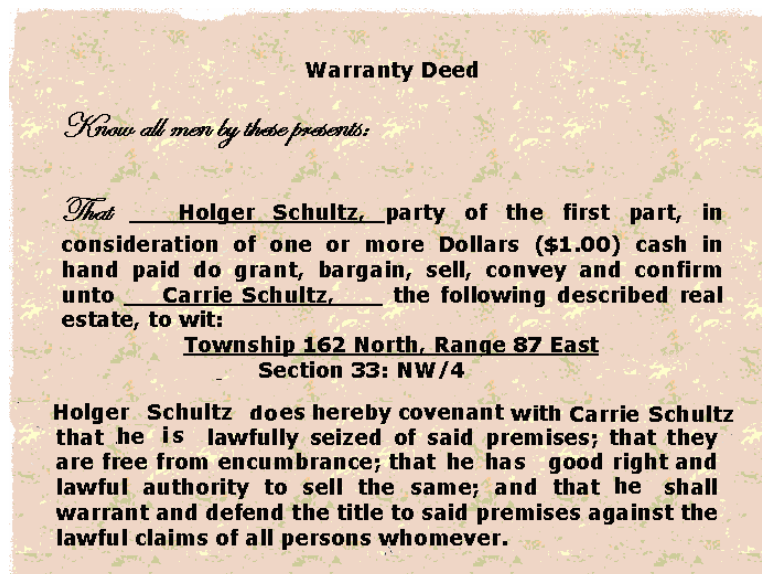
2. THE CONVEYANCE MUST BE IN WRITING.²

3. THE CONVEYANCE MUST CONTAIN WORDS OF GRANT.

In order for a conveying document to transfer title, there must be certain words of granting. The language most often used is "grant, bargain, sell and convey." Other words that can have the same effect include "transfer, set over or assign." Apart from the use of such conveying language, the transfer of property would become invalid.³

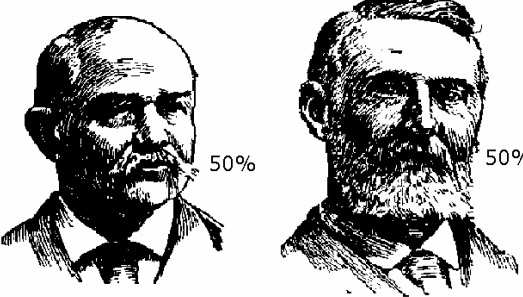
It is also important to note that different types of deeds contain other types of additional language. For example, a Warranty Deed might read:

"Grantor does hereby covenant that he is lawfully seized of said premises; that they are free from encumbrance; that he has good right and lawful authority to sell the same; and that he shall warrant and defend the title to said premises against the lawful claims of all persons whomever."



In this example the Grantor covenanted to convey the property with warranty language. Follow the story line below and then answer the question.

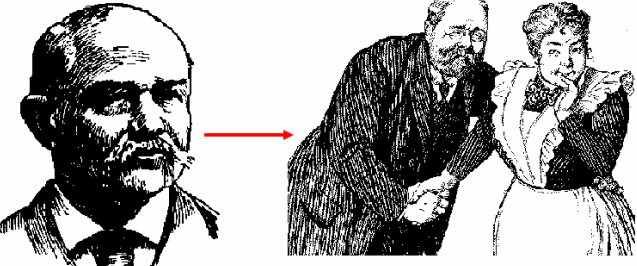
1.



50% 50%

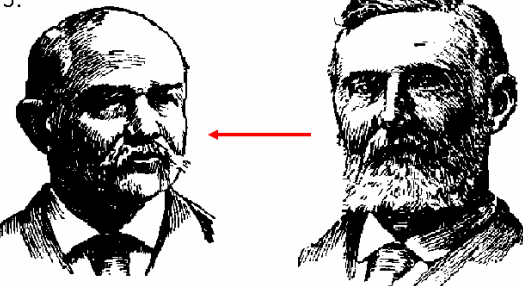
Jacob and Samuel are brothers. They each own an undivided 50% interest in a certain tract of land.

2.



Through a Warranty Deed Jacob conveyed to Elmer and Emily Berchard an undivided 75% interest in the tract of land.

3.



Ten years later, Samuel died and his entire estate passed to his brother, Jacob.

4.

What percent of the tract of land do Elmer and Emily own?

What percent does Jacob own?

Caution must always be exercised with respect to this issue. Statutes vary from state to state; however, generally, since the original deed from Jacob was a *warranty deed* and Jacob *covenanted to convey title*, the tract of land would automatically pass to Elmer and Emily Berchard without the need for any type of corrective instrument.

In general, only grant deeds such as warranty deeds and special warranty deeds will transfer after-acquired interest. Quitclaim deeds are another matter. They will pass title to any and all interest owned at the time of the conveyance; but since they do not contain any covenant of warranty, generally, most states do not hold that quitclaim deeds can pass after-acquired title.

Again, caution must always be exercised with respect to this issue. One of the exceptions arises from the revised statutes of Nebraska, Section 76-209, which state "such after-acquired interest shall not inure to the benefit of the original grantee or his heirs or assigns, if the deed conveying said real estate was either a *quitclaim* or *special warranty*."

4. THE CONVEYANCE MUST CONTAIN BOTH A GRANTOR AND GRANTEE.⁴

Obviously, if a conveyance is to be valid, the grantor must have the ability to convey. State laws vary on this matter, but a general rule would be that the grantor must be other than a minor and be mentally competent at the time of granting.⁵ The grantor must also be accurately identified. Often, someone other than the grantor is placed in a position to act on his or her behalf. In those cases, the capacity and authority of the person acting in such a capacity must be accurately described. If the grantor is known by more than one name in the chain of title, each of those names should be listed.

If the property being conveyed is considered homestead property or the spousal interest is, in any way, connected through tenancy by the entirety, the one spouse cannot sell the property without the signature of the other spouse.

If the property is owned jointly, either as cotenants or as joint tenants with the right of survivorship and only one cotenant or joint tenant is named as the grantor, the interest of the other cotenant or joint tenant will not be conveyed.⁶

There are also rules regarding the grantee. A transfer of title cannot be made to an unborn child or to a deceased person. It cannot be made to a legal entity such as a corporation that does not exist at the time of the conveyance.

For oil and gas purposes, if property is owned as community property or held through a homestead exemption then both parties need to sign the oil and gas lease.

If title vested into both the husband and wife then the oil and gas lease should be styled exactly as title vested. If the vesting title created ownership as tenants in common then each individual tenant could sign their own individual lease.

In states that uphold tenancy by the entirety both husband and wife must appear on the oil and gas lease.

Grantor and Grantee are both named

WARRANTY DEED

THIS DEED, Made this 15th day of March, 1946, between Sam M. Murray, of Morrison County, State of Ohio, party of the first part and Norris Noel and Mildred T. Noel, husband and wife, of Morrison County, State of Ohio, party of the second part:

WITNESSETH, that the said party of the first part, for and in consideration of the sum of Ten and more DOLLARS and other good and valuable consideration to the said party of the first part in hand paid by the said parties of the second part, the receipt whereof is hereby confessed and acknowledged, has granted, bargained, sold and conveyed, and by these presents does grant, bargain, sell, convey and confirm unto the said parties of second part, their heirs and assigns forever, all the following described lot or parcel of land, situate, laying and being in Jefferson County, State of Ohio, to wit:

Township 23 North, Range 52 East
Section 7: NW/4

Words of Grant: granted, bargained, sold and conveyed

Proper description of interest being conveyed

Proper description of Lands

5. THE CONVEYANCE MUST PROPERLY DESCRIBE THE LANDS BEING CONVEYED.

In order for a legal description to be suitable, the conveyance must contain enough data or reference to some other written data so that the lands can be identified and located.⁷

In Texas, words conveying "all lands owned by the Grantor" are satisfactory to convey the lands in the particular county where they are located.⁸

6. THE CONVEYANCE MUST PROPERLY DESCRIBE THE INTEREST BEING CONVEYED IN THE LANDS.⁹

7. THE CONVEYANCE MUST BE PROPERLY SIGNED (*EXECUTED*) BY THE GRANTOR.

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

8. THE CONVEYANCE SHOULD BE RECORDED.

The underlying intrinsic principle in recording is the belief that the proper recording of a conveyance grants notice to the entire world of the conveyance. This standard is known as *constructive notice*. Constructive notice would stop any subsequent grantee or third party who in good faith made a claim on the property.

In order for a grantee to be completely protected from such third party, the conveyance should be recorded and become a part of the public records of the county in which the property lies. An unrecorded conveyance is valid between the grantor and grantee; however, it would become invalid if a second conveyance was granted to a different purchaser who purchased in good faith and recorded first.

"Although an unrecorded instrument is generally valid as between the parties, it is void as against any subsequent purchaser in good faith and for valuable consideration if such subsequent purchaser first records." Landman's Legal Handbook, page 183

Example

Donald Murphy sells 160-acres in section 20 to Nonda Randall, but Nonda fails to record her deed. Three years later, Donald Murphy sells the same tract of land to Graham Harrison. If Graham Harrison purchased in good faith without any type of constructive notice of the Nonda Randall deed, and he is the first to record, he would likely be deemed rightful owner. On the other hand, if Graham Harrison had actual knowledge of the Nonda Randall deed prior to his purchase, he may not be deemed rightful owner--even if he records first.

9. THE RULE RELATED TO AN "INTEREST CONVEYED" V. "LAND DESCRIBED"

It is not uncommon for a surface owner to own less than 100% of the surface at the time of conveyance. In such cases, the wording in the reservation becomes paramount to what is being reserved.

In reading the following warranty deed, suppose that Thomas B. Rutledge owned only an undivided 50% interest in the surface and an undivided 50% interest in the minerals or 160 mineral acres out of the 320-acre tract, and the reservation language is as follows:

WARRANTY DEED

Know all men by these presents:

That THOMAS B. RUTLEDGE of 146 S. Wood Street,

Gamble City, South Dakota party of the first part, in consideration of the sum of ten and more dollars (\$10.00) cash in hand paid, the receipt of which is hereby acknowledged, do hereby grant, bargain, sell and convey unto Josh Hardin, a single man of 7223 S. Main Street, Gamble City, South Dakota party of the second part, the following described real property and premises situate in Morgan County, South Dakota to-wit:

an undivided fifty percent (50%) interest in and to:

Township 23 North, Range 15 East
Section 15: W2

excepting and reserving, however, unto Thomas B. Rutledge, his heirs and assigns, in addition to all minerals heretofore previously reserved or conveyed, an undivided twenty-five percent (25%) interest in and to all of the oil, gas, and other minerals in and under said land.

According to the reservation language, did Thomas reserve 25% of his undivided 50% or did he reserve 25% of the entire 320-acre mineral estate? If the first scenario is correct, Thomas reserved 12.5% or 40 mineral acres to himself. If the second scenario is correct, Thomas reserved a full 25% or 80 mineral acres to himself. The language holds the key.

In this case, Thomas is reserving an undivided twenty-five percent (25%) interest in and to all of the oil, gas, and other minerals in and under said *land*. The wording in the deed is paramount. A reservation of this type also could have been worded "in and under the *lands hereby described*," or "in and under *said lands*." Because the reservation refers to the minerals in and under the *land*, the twenty-five percent reserved is taken from the entire 320-acre mineral interest in the *land* and Thomas has reserved to himself a full 25% or 80 mineral acres.)

Let's say the reservation reads as follows:

excepting and reserving, however, unto Thomas B. Rutledge, his heirs and assigns, in addition to all minerals heretofore previously reserved or conveyed, an undivided twenty-five percent (25%) interest in and to all of the oil, gas, and other minerals in and under said lands hereby described and conveyed.

According to the reservation language, did Thomas reserve 25% of his undivided 50% or 25% of the entire mineral estate under the tract of land?

The wording in the reservation again holds the key. Because the language limited the reservation to the land described and *conveyed*, and since Thomas conveyed only 50% of the land, he can only keep 25% of what he conveyed. He ends up with 12.5% or 40 mineral acres.¹⁰

Practicing this Rule

In the following example, several conveyances take place. Track the ownership from Homer Sampson to the other grantees and determine the percentage of minerals in the 80-acre tract that each of the individuals own.

Homer Sampson owned a 100% interest in an 80-acre tract of land.



Homer Sampson

In 1975, Homer Sampson deeded an undivided 50% interest in the 80-acre tract of land to Belinda Cruse.



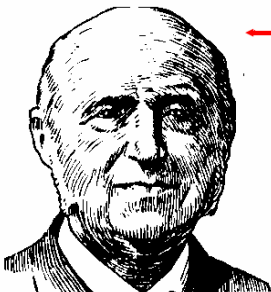
Belinda Cruse

In 1985, Belinda Cruse deeded an undivided 50% interest in the 80-acre tract of land to Davy Bristol. In the deed, subject to previous reservations, she reserved an undivided 50% interest in and to all of the oil, gas and other minerals in and under said lands described and conveyed.



Davy Bristol

In 1995, Davy Bristol deeded an undivided 50% interest in the 80-acre tract of land to Carl Rowe. In the deed, subject to previous reservations, he reserved an undivided 25% interest in and to all of the oil gas and other minerals in and under said lands described and conveyed.



Carl Rowe

In 1977, Homer Sampson deeded an undivided 50% interest in the 80-acre tract of land to Kenton and Beth Schnug. In the deed, subject to previous reservations, he reserved an undivided 25% interest in and to all of the oil, gas and other minerals in and under said lands described.



Kenton Schnug Beth Schnug

In 1993, Kenton and Beth Schnug deeded an undivided 50% interest in the 80-acre tract of land to their daughter, Britney Schnug. In the deed, subject to previous reservations, they reserved an undivided 12.5% interest in and to all of the oil, gas and other minerals in and under said land described.



Britney Schnug.

Who owns what percentage of this 80-acre tract?

Work Area

Homer Samson	_____	%
Belinda Cruse	_____	%
Davy Bristol	_____	%
Carl Rowe	_____	%
Kenton Schnug	_____	%
Beth Schnug	_____	%
Britney Schnug	_____	%

Answer: Homer Samson—25%, Belinda Cruse—25%, Davy Bristol—6.25%, Carl Rowe—18.75%, Kenton Schnug—6.25%, Beth Schnug—6.25%, Britney Schnug—12.5%

10. THE RULE RELATED TO A MINERAL RESERVATION.

The Duhig Rule

The general rule, subject to a determination of the intention of the parties, is that if one party convey to another and wishes to reserve minerals, *then* it is necessary that the previous reservation(s) be set forth - if the conveying party intends to retain the reserved interest.

The court found that a *granted interest takes priority over a reserved interest to the extent possible*. However, the "Duhig Rule" is not followed if it can be shown that the grantee had actual notice of previously reserved interests.

Duhig v. Peavy-Moore Lumber Co., 144 S.W.2d 878 (Tex. 1940)

In Texas, the court has fashioned a rule referred to as the *Duhig Rule*. This rule has been upheld in courts throughout the land and states that if one party convey to another through a warranty deed and wish to reserve minerals, then it is necessary that all prior reservations of record be set forth, if the conveying party intends to retain the reserved interest. The court has found that *the granted interest* on the face of the conveying deed *will take priority over any reserved interest to the extent possible*.¹¹

Example 1:

- Let's say that Jim Morrison was conveyed 100% ownership to a tract of land in 1973. The seller reserved 50% of the minerals at the time of the conveyance.
- Twenty years later Jim Morrison through a warranty deed sold 100% of the same tract of land to David Carlyle. Jim Morrison reserved 50% of the minerals but does not mention the prior reservation in the 1973 conveyance.

Since the prior reservation was not set out, you must ask yourself, "What interests *appear* to be granted in the David Carlyle conveyance?" Clearly he is receiving 100% of the surface land. However, if you were David Carlyle and knew nothing about the previous 50% mineral reservation, from the *face of your deed*, what mineral interest would appear to be *granted*: 50%, 25% or none?

If David Carlyle knew nothing about the previous reservation, the conveyance would appear to be granting 100% of the surface rights and

50% of the mineral rights. In this case, Jim Morrison would receive no mineral interest in the tract of land because *the granted interest* on the face of the conveying deed has taken *priority over the reserved interest to the extent possible*.

Example 2:

- On July 4, 1967, Ruth Peterson sold a 640-acre tract of land to her sister Rachael Peterson. The deed contained the following provision:

"Reserving an undivided one-half interest in and to all oil, gas and associated minerals under said lands hereby described."

- Several years later Rachael Peterson through a warranty deed sold the 640-acres to Amy White. Rachael had forgotten all about the previous reservation and thought that she owned all of the minerals. In the deed to Amy White, Rachael included the following reservation language:

"Reserving an undivided seventy-five percent (75%) interest in and to all oil, gas and associated minerals under said lands hereby described."

Your company wishes to lease all mineral ownership in the 640-acres. Who owns what portion of the minerals? From whom do you lease?

Since Rachael did not make known the previous reservation, it would appear from the face of the deed that Amy White is being granted 25% of the minerals and the granted interest would take priority over the reserved interest only to the extent possible. In this case your company would need to lease Ruth Peterson 50%, Rachael Peterson 25% and Amy White 25%.

Example 3:

1. On October 27, 1977, Wanda Sellers conveyed the SE4 of Section 18 to Terry Timmons. The granting clause of the deed contained the following reservation:

"Reserving an undivided one-half interest in and to all oil, gas and associated minerals under said lands hereby described."

Several years later, Terry Timmons through a warranty deed conveyed this tract of land to Bent Matthews. The granting clause of the deed contained the following reservation:

"excepting and reserving, an undivided fifty (50%) percent of all oil, gas and other minerals . . . now owned by the grantors:"

Your company wishes to lease all mineral ownership in the 160-acres. Who owns what portion of the minerals? From whom do you lease?

Although this deed did not specifically make the conveyance subject to existing reservations, it did limit the interpretation of the mineral interest being reserved to 50% of the interest then owned by the grantors. It would appear that Terry Timmons reserved an undivided $\frac{1}{4}$ mineral interest or (50% of $\frac{1}{2}$) and that Brent Matthews acquired the surface and an undivided $\frac{1}{4}$ mineral interest. When approaching an issue like this, however, one must use caution. A title attorney might recommend that all parties enter into a stipulation of interests or, alternatively, a quiet title action to resolve any questions regarding mineral ownership.

Practicing this Rule

In the following example, several conveyances take place. Track the ownership from Harriet Smith to the other grantees and determine the percentage of minerals in the 80-acre tract that each individual owns.

80 -acres



Harriet Smith

Harriet Smith owned 80 acres in fee simple.

In 1955 Harriet Smith sold to Ivan Tommy the tract of land and reserved an undivided 25% interest in and to all of the oil, gas and other minerals in and under said land.



Ivan Tommy

Ivan Tommy sold the 80 acres to Chester Russell in 1960 and reserved 25% of all the oil, gas minerals in and under said land. There was no mention of the Harriet Smith reservation.

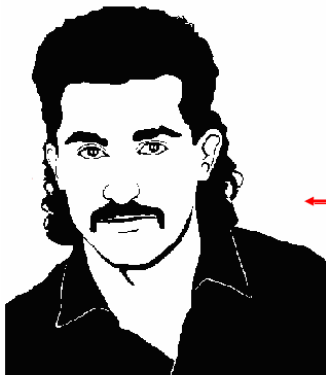


Chester Russell

In 1981 Chester Russell sold the 80 acres to Orville Simpson and reserved an undivided 12.5% mineral interest in and to all of the oil, gas and other minerals in and under land. He did mention the previous mineral reservations.



Orville Simpson



Julio Ortega

In 1991 Orville Simpson sold the 80 acres to Julio Ortega and reserved an undivided 12.5% mineral interest in and to all of the oil, gas and other minerals in and under land. He did not mention the previous mineral reservations.

Who owns what percentage of this 80-acre tract?

Work Area

Harriet Smith	_____	%
Ivan Tommy	_____	%
Chester Russell	_____	%
Orville Simpson	_____	%
Julio Ortega	_____	%

Answer: Harriet Smith—25%, Ivan Tommy—0%, Chester Russell—12.5%, Orville Simpson—0%, Julio Ortega—62.5%

11. THE RULE REGARDING MINERAL ACRES CONVEYED

It is not uncommon to see the interest that is being conveyed set out in the following manner:

"... do hereby grant, bargain, sell and convey 32/80 mineral acres..."

Normally, what this means is that the person is conveying 32 mineral acres out of an 80-acre tract of land or 32/80ths of the minerals in the 80-acre tract of land.

There are times, however, when the conveyance might read something like this:

"...do hereby grant, bargain, sell and convey 32/80 mineral acres..." when in fact the acres in the tract of land might total 82.34 acres. In a case like this, the conveying language is strictly adhered to. In this deed the interest being conveyed would be $32/80 \times 82.34$ acres = 32.936 acres.

12. THE USE OF THE WORDS "OUT OF" V. "OF"

Thomas Burke owned an undivided 50% mineral interest in a 160-acre tract of land. He sold an undivided 1/2 mineral interest to George Freeman using the following language:

"It being the intention of the Grantor herein to convey 1/2 of the minerals out of the interest owned by him in the above described tract of land."

Did Thomas Burke sell 40 net mineral acres or 80 net mineral acres?

If your answer was that Thomas Burke was only conveying 1/2 of what he owned at the time or 40 net mineral acres you would not have interpreted the language the same as a Texas Court. In this case, they would have interpreted the language as conveying a full 1/2 interest in the tract of land or 80 net mineral acres.

The court in *Black v. Shell Oil Company*, 397 S.W.2d 877 (Tex. Civ. App. – Texarkana 1965, writ ref'd n.r.e.) believed that the words "out of" held the key. The grantor was conveying out of what?

They ruled that the intent was to convey 1/2 of the minerals that came *out of* the tract of land from which the grantor owned his interest. In other words, the conveyance was granting a 1/2 interest "out of ... *the above described tract of land*" and it was this tract of land in which the Grantor owned his interest.¹²

If the Thomas Burke conveyance had left out the word "out" and simply used the word "of":

"It being the intention of the Grantor herein to convey ½ of the minerals of the interest owned by him in the above described tract of land." the court might very well have interpreted the conveyance differently.

TERMS RELEVANT TO DEEDS

GRANTOR

The grantor is the person or entity that owns an interest in the property and executes a conveyance to another party. This can be one or more persons, a corporation, partnership or other entity.

GRANTEE

The grantee is the person or entity that receives title to the property.

CONSIDERATION

Consideration refers to the dollars or value given to a grantor in exchange for receiving title to property. Many states do not require that the amount shown on the conveyance be the exact selling price of the land. In some cases, deeds will include words such as:

"\$10.00 and other good and valuable consideration"

"love and affection and other good and valuable consideration"

WORDS OF CONVEYANCE

In order for a conveying document to transfer title, there must be certain words of granting. These granting words vary somewhat between states. Examples would include:

- "grant, bargain, sell and convey"
- "transfer, set over or assign"
- "convey and warrant"
- "convey and quitclaim"

SUBJECT TO CLAUSE

Often property ownership is subject to previously reserved or conveyed rights. In such cases, the conveyance will contain a clause setting out these rights. An example might be:

- "Subject to all rights of way, easements and covenants of record"

EXCEPTION CLAUSE

The exception clause refers to portions of the ownership that are excluded from the conveyance. Such a deed might read:

- "Less and except the northwest quarter of the southeast quarter (NW4SE4)"
- "Less and except any prior reservations of all oil, gas and mineral rights in the property conveyed."

EXECUTION

In order for a conveyance to be valid, it must be in writing and signed by the grantor.

ACKNOWLEDGMENTS

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. Acknowledgement forms vary from state to state.

MINERAL OWNER

In many cases, when the United States Government conveyed tracts of land through land grants, it also deeded the minerals that were under the tracts of land. Companies cannot explore those minerals without the express right granted to them from the mineral owners.

ROYALTY OWNER

Royalty is the revenue generated to the mineral owner from a producing oil and gas well. In most cases the royalty owner and the mineral owner are one and the same person; however, mineral owners can convey their royalty rights to a third party.

FOOTNOTES

¹ Lewis G. Mosburg, Jr., "Landman's Handbook on Petroleum Land Titles" in Land Support Personnel, ed. Edited by Lewis G. Mosburg, Jr (The Institute of Energy Development, Inc., 1981), 65.

² Ibid., p.65.

³ Ibid., p.66.

⁴ Ibid., p.66.

⁵ Ibid., p.66.

⁶ Keith Sellers, Conveyances, (National Association of Lease and Title Analysts Certification Review Manual), (July, 2006), page 4-3.

⁷ Morrow v. Shotwell, 477 S.W.2d 538 (Tex. 1972).

⁸ U.S. Enterprises, Inc. v. Dauley, 535 S.W.2d 623 (Tex. 1976) at Page 628.

⁹ Lewis G. Mosburg, Jr., Inception of Private Title, from Landman's Handbook on Petroleum Land Titles, (IED 1979) page 11. Petroleum Land Titles (Oklahoma City: 1981) page 164.

¹⁰ Averyt v. Grnade, Inc., 686 S.W.2d 632 (Tex. App-Texarkana 1984, writ ref'd n.r.e.), and aff'd 717 S.W.2d 891 (Tex. 1986).

¹¹ Duhig v. Peavey-Moore Lumber Co., 135 Tex 503. 144 S.W.2d 878 (1940).

¹² Geroge A. Snell, III, Real Property Law/Oil and Gas Law, (National Association of Lease and Title Analysts Certification Review Manual), (July, 2006), page 3-10.