



Titles and Conveyances in Oil & Gas Interests

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Konomark
Most rights sharable

Creating and transferring oil and gas interests

Oil and gas interests are, in most jurisdictions, understood to be interests in real property.

They can arise in many ways:

- by conveyance
- by reservation in a conveyance of land
- by inheritance
- by adverse possession
- by judicial action

Creating and transferring oil and gas interests

Can be transferred in the form of

- deed
 - in fee
 - but note that oil-and-gas people often use “fee” to signify the unsevered ownership of the surface and mineral rights together
- lease
 - not like a normal land lease
 - potentially indefinite duration, but capable of ending
 - involves the removal and permanent taking of minerals

Two kinds of deeds

- Warranty deed
 - the grantor warrants that she or he has seisin, the right to convey the interest, that it has no encumbrances, etc.
 - can be a “full” or “general” warranty deed, or a “special” or “limited” warranty deed with less than the full panoply of covenants
 - if the things covenanted turn out not to be true, the grantee has an action against the grantor
 - everywhere, up to the consideration paid
 - some jurisdictions, beyond the consideration paid to all damages suffered
- Quitclaim deed
 - the grantor transfers all the title the grantor has, but without any kind of warranty that the grantor’s title is full, unencumbered, good, or even exists
 - If there are no covenants of title, it’s probably a quitclaim deed.
 - Quitclaim deeds often use the language, “Grantor quitclaims and conveys ...”

Conveyances

Generally five things are needed for a valid conveyance:

1. writing
2. words of grant
3. description
4. designation of grantor and grantee
5. execution

This is essentially the same as what is required for the conveyance of real property

Conveyance requirement:

Writing

- The statute of frauds applies to conveyances of oil and gas interests, like it does to other real property interests.
- That means it has to be a signed writing.
- It can be informal, but often it is very formal looking.

Conveyance requirement:

Words of grant

- Nothing magic here. Lots of different words will suffice. Saying I hereby “grant” should always be good enough.
- Nonetheless, forms often take a belt-and-suspenders approach.
 - E.g.:
 - “does hereby assign, grant, bargain, sell, convey, transfer and deliver ... ”

Conveyance requirement:

Description

- The real property has to be adequately described.
- A slapdash description, such as identifying people, address, landmarks, etc., may suffice for legal validity.
- But for marketability - so that the property interest can be sold to others - you really need a proper description of the type discussed under Topic S7 (“Land Descriptions”).

**Conveyance requirement:
Designation of grantor and grantee**

- Grantor and grantee must be identified with reasonable certainty.
- The real-world advice is to fill in all the blanks and spell names correctly.

**Conveyance requirement:
Execution**

- In compliance with the statute of frauds, the writing must be signed.
- Attestation and acknowledgment: Generally deeds (and leases) are also attested to and acknowledged.
 - Attestation is a witness signing to attest that the person's signature was made by that person actually signing. This is generally done with "witnesses."
 - Acknowledgment is the signor saying they have the right to sign and they are signing freely. This is generally done with a notary public.
- Attestation and acknowledgement is generally not necessary for validity.
- But attestation and acknowledgement is generally necessary for recording the deed.
- And recording with the county is exceedingly important for many, many reasons.

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- And recording with the county is exceedingly important for multiple reasons - particularly notice.

Conveyance requirement: Execution

- If the attestation or acknowledgement is defective, then, depending on the jurisdiction:
- The deed may not constitute constructive notice, but does count as actual notice to those who see it in county records. (Majority rule.)
- The deed may be totally ineffective for giving any kind of notice.
- The deed may serve as constructive notice against the world, so long as the recorder accepted it and recorded it (even if the recorder wasn't supposed to).

**Conveyance practical necessity:
Recording**

- Record the conveyance in the county courthouse.
- Among the reasons you record is to avoid a situation in which the grantor comes along later and grants the property AGAIN and then gets better title than you because they didn't have notice of your title and/or because you didn't record before they did.

**The Five Sticks in the bundle
of rights to a mineral estate**

1. the right to develop (the right of ingress and egress, incl. esp. on the surface)
2. the executive right (the right to lease)
3. the right to receive bonus payments
4. the right to receive delay rentals
5. the right to receive royalty payments

The Five Sticks in the bundle of rights to a mineral estate

Here's how the Supreme Court of Texas puts it:

“A mineral estate consists of five interests: 1) the right to develop, 2) the right to lease, 3) the right to receive bonus payments, 4) the right to receive delay rentals, and 5) the right to receive royalty payments.”

French v. Chevron U.S.A. Inc., 896 S.W.2d 795, 797 (Tex. 1995)

The Five Sticks in the bundle of rights to a mineral estate

The sticks can be unbundled:

“A conveyance of a mineral estate need not dispose of all interests; individual interests can be held back, or reserved, in the grantor. However, “[w]hen an undivided mineral interest is conveyed, reserved, or excepted, it is presumed that all attributes remain with the mineral interest unless a contrary intent is expressed.”

French v. Chevron U.S.A. Inc., 896 S.W.2d 795, 797 (Tex. 1995)

Executive right in mineral interests

For most practical purposes, the “executive right” is the power to grant/execute an oil and gas lease.

Although it might differ by jurisdiction, the executive right, in its broadest terms, is probably the right to take all actions and to authorize all actions affecting the exploration, development, and production of minerals, including geophysical testing, drilling, mining, producing, fracking, etc. In other words, to do everything that a lessee can do.

Executive right in mineral interests

Multiple owners of a mineral estate might have the executive right. And unless the executive right is severed, then they do.

But the owner (X) of all of a mineral estate might grant $\frac{1}{2}$ the mineral estate of Puceacre to another (Y), reserving the exclusive executive right.

In this case, Y can't lease Puceacre. But if X leases Puceacre, Y gets $\frac{1}{2}$ the benefits.

Executive right in mineral interests

Non-executive mineral owners are entitled to their share of lease benefits.

So even though they don't have the power to lease, they have the right to the benefits of a lease.

(Although, depending on the jurisdiction that might have some subtleties. E.g., Louisiana has the executive right owner keeping the bonus and delay rentals.)

Executive right in mineral interests

What duties are owed by the owner of the executive right to the non-executive owners?

See Veteran's Land Board v. Lesley (Tex. 2011) in Chapter 3, pp. 86-94.

Is it a mineral?

We know oil and gas are minerals. But what about other things?

It gets complicated.

See *Moser v. U.S. Steel Corp.* (Tex. 1984) in Chapter 3, pp. 101-106.

Is it a mineral?

eiusdem generis - “of the same kind,” interpreting a general phrase by the specifics that are listed with it

“tables, chairs, sofas, shelves, beds, freestanding cabinets, lamps, desks, and all other things in the house”

Does this include ...

- a diamond ring in a desk drawer?
- a pet cat in the house?
- the kitchen sink (attached to the plumbing)?
- the air inside the house?