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OIL, GAS, AND MINERAL LAW
A PRACTITIONER'S GUIDE

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1. Introduction

For the purposes of this paper, the discussion is centered around the ownership of oil, gas, and other minerals by individuals. Most attorneys dealing with issues involving wills, trusts, guardianship, and elder care are much more apt to be dealing with persons, trusts, wards, and older people who own oil, gas, and other minerals, and are dealing with them, rather than on the operator/lessee side, which generally revolves around companies that are in the business of exploring for, drilling, and producing oil and gas. Hence, in this paper, concentration is on ownership by individuals and entities which are controlled by or for the benefit of individuals.[1]

2. Characterization of Oil, Gas, and Minerals

Before any discussion of oil, gas, and other minerals can proceed, it is necessary to establish the parameters of the discussion. First of all, for Texas lawyers, it is important to understand that oil, gas, and other minerals are characterized as real property interests.[2] This is not true in other states, so if a client owns minerals in other states, the careful practitioner should establish how that other state characterizes oil, gas, and other minerals. For example, in Oklahoma, oil, gas, and other minerals are not owned by the landowner or mineral owner, but the landowner has the exclusive right to take those minerals, but the oil, gas, and other minerals are not real property.[3] Never mind that they are treated much the same for conveyancing purposes, there might be some surprising outcomes under residuary clauses in wills. Technically, a devise of "all my real property" in Texas would result in the oil, gas, and other minerals being vested in the person who is entitled to real property. A similar devise in Oklahoma might well result in a party that has "all my personal property" receiving the oil, gas, and other minerals, since in Oklahoma, a person has the right to capture oil and gas below the person's land, but does not have a real property ownership right. For those practitioners that are representing an owner that may have oil, gas, and other minerals in other states, the recommendation is to utilize a residuary clause that reads somewhat as follows: "all my real property, oil, gas, and other mineral rights, and surface estates."

Since this is a Texas course, the focus will be on Texas law and the way Texas has dealt with oil, gas, and other minerals, but those practitioners that have a multi-state practice, or have clients with interests in other states, should consult with an attorney who has some experience in those other states. When reviewing this paper, a practitioner should keep in mind that statements which follow may not necessarily apply to other jurisdictions.

Having established that oil, gas, and other minerals are real property in Texas, there are some necessary matters that flow from that characterization.

First among them, is the requirement that conveyancing and devising the oil, gas, and other minerals must comply with the Statute of Frauds.[4] Briefly, that means a description of the property must be sufficient enough so that the property may be located on the ground, or the description must refer to a previous document that located the property on the ground. While that seems to be simple enough to understand, many practitioners do not understand that a map with an outline is not sufficient for description purposes, nor is a description that refers to a well by a particular name (e.g., the "Jones #1 well in Harris County") sufficient for description purposes. Hence, when dealing with real property and oil, gas, and other minerals, the first and most important bit of work is to obtain a proper description.

The best way of doing that, for individuals, family limited partnerships, trusts, other entities that might be dealt with by a practitioner, is to obtain a copy of the oil and gas lease that covered that property, since those will generally have a decent description. If there is a long, complicated, metes and bounds description annexed to the oil and gas lease, then frequently, a short cut to "the same land described in an oil and gas lease dated May 1, 2017, by John Jones, lessor, to Big Oil Company, lessee, recorded in Book 123, Page 456 of the Official Public Records" will be sufficient. A caveat: do not use the descriptions used in division orders[5], since those usually are for internal oil company use. For example, "Unit 257," "Jones #1 well," "Marigold Farm," or any number of like descriptions are not sufficient.

In Texas, a grant or conveyance of "all client name's property in Harris County" is sufficient to pass title to all real property in Harris County.[6] It is a bit dicey, since that would cover his home, oil, gas, and other mineral properties, and any rental property, so it is not a good idea to use that form of grant or conveyance, but sometimes, that is all the practitioner can do. As an aside, this will not work in most western states, because those states rely upon a recording system that is much different than the one in use in Texas. In Texas, documents are recorded by the name of the grantee and the grantor;[7] in most western states, recording is by quarter section, section number, range, and township.

For those practitioners that wish to delve into the records and attempt to retrieve information directly from the records, there are any number of services that provide on-line capabilities to research those records. The Railroad Commission of Texas which is the agency charged with regulating the oil and gas industry in Texas is ***not*** a source of ownership information.[8]

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First appeared as part of the conference materials for the
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"Dealing with Mineral Rights: A Practitioners Guide to Oil and Gas"