

PRESENTED AT

43rd Annual Ernest E. Smith Oil, Gas and Mineral Law Institute

April 14, 2017

Houston, TX

Documenting Oil and Gas Leasehold Transactions to Survive the Statute of Frauds

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DOCUMENTING OIL AND GAS LEASEHOLD TRANSACTIONS TO SURVIVE THE STATUTE OF FRAUDS

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For virtually every oil and gas leasehold transaction, Texas law requires signed documentation containing “a written memorandum which is complete within itself in every material detail and which contains all of the essential elements of the agreement so that the contract can be ascertained from the writing without resorting to oral testimony.”¹ This requirement is codified in the Statute of Frauds² and the Statute of Conveyances³ as “the Legislature’s directive that courts enforce promises covered by the statute only if such promises are in writing.”⁴

I. STATUTE OF FRAUDS

As adopted by the Legislature, the broad scope of the Statute of Frauds applies to almost all oil and gas leasehold agreements because such agreements typically constitute a conveyance of an interest in land. The relevant text of the Statute of Frauds provides:

Promise or Agreement Must Be In Writing

(a) A promise or agreement described in Subsection (b) of this section is not enforceable unless the promise or agreement, or a memorandum of it, is

(1) in writing; and

(2) signed by the person to be charged with the promise or agreement or by someone lawfully authorized to sign for him.

(b) Subsection (a) of this section applies to:

* * *

(4) a contract for the sale of real estate;

(5) a lease of real estate for a term longer than one year;

(6) an agreement which is not to be performed within one year from the date of making the agreement;

¹ *Frost Nat’l Bank v. Burge*, 29 S.W.3d 580, 594 (Tex. App.—Houston [14th Dist.] 2000, no pet.); see also *Pick v. Bartel*, 659 S.W.2d 636, 637 (Tex. 1983).

² TEX. BUS. & COM. CODE ANN. § 26.01 (Vernon 2005).

³ TEX. PROP. CODE § 5.021 (Vernon 1984).

⁴ *Nagle v. Nagle*, 633 S.W.2d 796, 799 (Tex. 1982) (quoting *Hooks v. Bridgewater*, 111 Tex. 122, 229 S.W. 1114 (1921)).

- (7) a promise or agreement to pay a commission for the sale or purchase of:
 - (A) an oil or gas mining lease;
 - (B) an oil or gas royalty;
 - (C) minerals; or
 - (D) a mineral interest.⁵

* * *

II. STATUTE OF CONVEYANCES

The Statute of Conveyances applies to all oil and gas leasehold conveyances. The relevant text of the Statute of Conveyances provides:

Instrument of Conveyance. A conveyance of an estate of inheritance, a freehold, or an estate for more than one year, in land and tenements, must be in writing and must be subscribed and delivered by the conveyor or by the conveyor's agent authorized in writing.⁶

III. TEXAS COURT DECISIONS

Texas court decisions confirm that, to be enforceable, a contract for the conveyance of real property or an interest in land must comply with the Statute of Frauds.⁷ Court decisions also confirm that these requirements apply to the documentation for virtually every type of oil and gas leasehold transaction—oil and gas leases,⁸ an interest in oil and gas leases,⁹ royalties,¹⁰ overriding royalties,¹¹ severed mineral estates,¹² oil payments out of fractional shares in the minerals,¹³ and in some cases, joint operating agreements.¹⁴

Compliance with the Statute of Frauds is critically important. If the signed written documentation is insufficient under the Statute of Frauds, the agreement is voidable by a party to the agreement.¹⁵

The validity of the agreement (for an alleged failure to comply with the Statute of Frauds) can only be attacked by one of the parties. A stranger to the agreement lacks standing to challenge a contract on the basis

⁵ TEX. BUS. & COM. CODE ANN. § 26.01 (Vernon 2005).

⁶ TEX. PROP. CODE § 5.021 (Vernon 1984).

⁷ *Chambers v. Pruitt*, 241 S.W.3d 679, 687 (Tex. App.—Dallas 2007, no pet.); *Lewis v. Adams*, 979 S.W.2d 831, 834 (Tex. App.—Houston [14th Dist.] 1998, no pet.).

⁸ *Stephens County v. Mid-Kansas Oil & Gas Co.*, 113 Tex. 160, 165 254 S.W. 290, 291 (1923).

⁹ See, e.g., *Minchen v. Fields*, 345 S.W.2d 282, 288 (Tex. 1961).

¹⁰ *Sheffield v. Hogg*, 124 Tex. 290, 77 S.W.2d 1021, 1024 (1934); *Stoval v. Poole*, 382 S.W.2d 783, 784 (Tex. Civ. App.—Waco 1964, writ ref'd n.r.e.).

¹¹ *Johnson v. Texas Gulf Coast Corp.*, 359 S.W.2d 91, 92 (Tex. Civ. App.—San Antonio 1962, no writ).

¹² *Grissom v. Anderson*, 125 Tex. 26, 31, 79 S.W.2d 619, 621 (1935); *Humphreys-Mexia Co. v. Gammen*, 113 Tex. 247, 263, 254 S.W.2d 296, 303 (1923); *Stephens County*, 113 Tex. at 165, 254 S.W. at 291.

¹³ *Minchen*, 345 S.W.2d at 288.

¹⁴ *Hill v. Heritage Resources, Inc.*, 964 S.W.2d 89, 135 (Tex. App.—El Paso 1997, pet. denied); *Eland Energy, Inc. v. Rowden Oil & Gas, Inc.*, 914 S.W.2d 179, 186 (Tex. App.—San Antonio 1995, writ denied); *Crowder v. Tri-C Resources, Inc.*, 821 S.W.2d 393, 396 (Tex. App.—Houston [1st Dist.] 1991, no writ).

¹⁵ *Eland Energy*, 914 S.W.2d at 186 (“A contract that fails to meet the requirements of the statute of frauds is not void but is merely voidable.”).

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First appeared as part of the conference materials for the
43rd Annual Ernest E. Smith Oil, Gas and Mineral Law Institute session
"The Statute of Frauds and Typical Leasehold Documents"