

**PRESENTED AT**

2021 Fundamentals of Oil, Gas and Mineral Law

March 25, 2021

Houston, Texas

## **Basics of Oil & Gas Interest Conveyancing**

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# Basics of Oil & Gas Interest Conveyancing<sup>1</sup>

## *Capturing the Intent of the Parties*

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As with most types of contract law, when dealing with oil and gas conveyance agreements the devil is in the details. That is particularly true in Texas, where the conveyance of oil and gas rights is a complex, nuanced area of law, with roots stretching from the Nineteenth Century into the Digital Age.

The following is a primer on key concepts to consider in conveyancing oil, gas, and mineral rights, as well as potential complications to address beforehand.

### **Statute of Frauds**

As with any real property transaction in Texas, an oil and gas conveyance must comply with the state's Statute of Frauds,<sup>2</sup> which says any such transaction must be fully documented in writing, with all important facts disclosed. The purpose of this statute, is to prevent perjury and fraud in the enforcement of obligations, by requiring certain contracts and transactions to be evidence by a writing signed by the party to be charged.

In order to meet this requirement, the parties must provide certain required information, including a description of the property that allows it to be identified with near certainty. This can be done with a metes and bounds description detailing property lines in precise detail, or by a map or plat that clearly defines the boundaries and size of the property. These descriptions should be included – or clearly referenced – in the primary document. Simply attaching them to the document will likely be insufficient to meet the Statute of Frauds standard. If (1) from the instrument as a whole a grantor and grantee can be ascertained, (2) there are operative words of grant showing an intent by the grantor to convey to the grantee title to a real property interest, (3) which is sufficiently described, and (4) the instrument is signed and acknowledged by the grantor, then the instrument of conveyance is a deed that accomplishes a legally effective conveyance.<sup>3</sup> Failing to meet these standards can create uncertainty that comes back to haunt a property owner.

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<sup>1</sup> The views and opinions expressed by the authors in this paper are their personal views and opinions; they do not express the views or opinions of Womble Bond Dickinson (US) LLP or its clients.

<sup>2</sup> Business and Commercial Code, Title 3. Insolvency, Fraudulent Transfers, and Fraud. Chapter 26.

<sup>3</sup> *Gordon v. West Houston Trees, Ltd.*, 352 S.W.3d 32 (Tex. App. – Houston [1st Dist.] 2011, no pet.); *see also Green v. Canon*, 33 S.W.3d 855 (Tex. App. – Houston [14th Dist.] 2000, pet. denied); *Sanchez v. Telles*, 960 S.W.2d 762 (Tex. App. – El Paso 1997, pet. denied).

## Recording your Conveyance

In general, there are three types of recording statutes recognized in the United States: race; race-notice; and notice. A “race” statute provides that a purchaser or lienholder who is second in time of conveyance prevails if he or she records first, regardless of whether that person has notice of other unrecorded interests. Under a “race-notice” statute, the subsequent purchaser or lienholder must acquire an interest without notice of the prior unrecorded interest and also must file for record before recordation of the prior unrecorded interest. A “notice” statute protects a subsequent purchaser or lienholder who acquires an interest without notice of a prior unrecorded conveyance or lien, regardless of when the subsequent purchaser’s deed or subsequent lienholder’s security instrument is recorded.<sup>4</sup>

Texas is a notice recordation state. Our courts have said time and again that the recording laws in Texas are meant to protect good faith purchasers and creditors without notice of prior transfers from being injured or prejudiced by their lack of knowledge of the competing claim; that the intention of our recording laws is to compel every person receiving conveyances of real property to place such an instrument of record, not only that he or she may protect their own rights, but also those of all others who may afterwards seek to acquire an interest in the same property; and that the purpose of our recording laws is to notify subsequent purchasers of the rights the prior recorded instruments intended to convey.<sup>5</sup>

Our legislature has codified this jurisprudence in the Texas Property Code by providing that a conveyance of real property or an interest in real property or a mortgage or deed of trust is void as to a creditor or 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; and that an instrument that is properly recorded in the proper county is notice to all persons of the existence of the instrument.<sup>6</sup>

The legal effect of a properly recorded instrument in a grantee’s chain of title is that it constitutes constructive notice to third parties.<sup>7</sup> Constructive notice creates an irrebuttable presumption of actual notice.<sup>8</sup> As a result, a subsequent purchaser or lienholder is bound by every recital, reference, and reservation contained in or fairly disclosed by an instrument which forms an essential link in the chain of title under which he or she claims. The rationale of this rule is that any description, recital of fact, or reference to other documents in an instrument puts the purchaser upon inquiry, and he or she is bound to follow up this inquiry, step by step, from one discovery to another and from one instrument to another, until the whole series of title deeds is exhausted and a complete knowledge of all the matters referred to and affecting the estate is obtained.<sup>9</sup>

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<sup>4</sup> Comments to Texas Title Examination Standard 4.40 and cases cited therein.

<sup>5</sup> *Boucher v. Wallis*, 236 S.W.2d 519 (Tex. App. – Eastland 1951, writ ref’d. n.r.e.).

<sup>6</sup> *Id.* § 13.002.

<sup>7</sup> *HECI Exploration Co. v. Neel*, 982 S.W.2d 881 (Tex. 1998); *Sherman v. Sipper*, 152 S.W.2d 319 (Tex. 1941).

<sup>8</sup> *HECI Exploration Co. v. Neel*, 982 S.W.2d 881 (Tex. 1998); *Mooney v. Harlin*, 622 S.W.2d 83 (Tex 1981).

<sup>9</sup> *Waggoner v. Morrow*, 932 S.W.2d 627 (Tex. App. – Houston [14<sup>th</sup> Dist.] 1996, no writ).

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First appeared as part of the conference materials for the  
2021 Fundamentals of Oil, Gas and Mineral Law session

"Oil and Gas Conveyancing - Capturing the Intent of the Parties"