



# DUE DILIGENCE ISSUES UNDER DIFFERENT PSA CLOSING MODELS

Presented by Brandon Durrett – Jackson Walker, San Antonio  
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## Purchase & Sale Agreement

- Common name for contract to sell oil and gas assets (or company holding assets), usually involving real property
- Producing wells, PUD acreage, mineral/royalty/non-op packages, gathering systems, water/SWD systems, service and infrastructure facilities, etc.
- Allocates benefits and liabilities of assets between Buyer and Seller

# Purchase & Sale Agreement

- Deferred Closing Model
  - Interim Period between signing and Closing of PSA
  - For due diligence, curative/remediation, and price reductions
  - Most common model historically
- Sign-and-Close Model
  - PSA is signed and closed simultaneously
  - Due diligence occurs before sign/close
  - No reductions – price agreed is price paid
  - Common in M&A generally

# Deferred Closing Model

- Execution Date
  - When Buyer and Seller sign PSA
  - PSAs often highly negotiated
- Effective Date
  - When title effectively transfers, along with benefits and liabilities of ownership
  - Often first of month prior to Execution Date, or signing of LoI or term sheet

## Deferred Closing Model

- Interim Period
  - Time between Effective Date and Closing Date
  - Seller operates assets on Buyer's behalf – Interim covenants
  - Buyer conducts due diligence, Seller cures/remediates
  - Possible price reductions – Interim representations
- Closing Date
  - Assignment executed and Adjusted Purchase Price paid
  - Usually weeks or months after Execution Date

## Deferred Closing Model

- Purchase Price
  - Initial agreed value of assets
  - May include deposit/earnest money
  - Prior to price reductions and accounting
- Adjusted Purchase Price
  - Possible reduction for defects in marketability
  - Accounting adjustments back to Effective Date

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## Title search: Due Diligence Issues under Different PSA Closing Models

Also available as part of the eCourse

[Due Diligence Issues under Different PSA Closing Models](#)

First appeared as part of the conference materials for the 50<sup>th</sup> Annual Ernest E. Smith Oil, Gas and Mineral Law Institute session "Due Diligence Issues under Different PSA Closing Models"