

PRESENTED AT

The University of Texas School of Law
Texas NAELA Conference
August 13, 2016
Moody Gardens, Galveston, TX

**Ancillary Probate:
What Texas Lawyers Need to Know about
OKLAHOMA**

Lee M. Holmes, Presenter
With additional written comments
From Mark Holmes

Lee M. Holmes
Holmes, Holmes & Neisent, PLLC
501 NW 13th, Oklahoma City, OK 73103

lee@hhnlaw.com

(405) 235-8455; (405) 235-8454f

TOPIC: Real Estate in Oklahoma, which includes surface and/or mineral interests

Advising your Clients

In Oklahoma, mineral interests separate from the surface are not subject to real estate taxes so no tax notices are given to mineral owners. Example: A mineral interest is distributed by a probate court to four children. The Court Order of Distribution is recorded in the county clerk's office and indexed to the properties.

The County Assessor and County Treasurer do not make any notice of the filing or the ownership.

If minerals are producing, notify the oil companies so income goes to the estate beneficiaries.

If minerals are leased but not producing, keep track until lease expires because notice of production- Request for signed Division Orders- may be sent to decedent, mail is not forwarded, resulting in no action and production money is put in suspense.

It is frequently best to engage an attorney (attorneys) in the county (counties) where you know minerals are owned so the local attorney can help you determine exact ownership of known minerals AND look for additional minerals.

Big problem is that frequently the value of the non-producing and producing minerals do not justify complete checking of records or determine exact ownership.

For transfer of title purposes, you do not usually have to know exact acreage owned.

Not Dead Yet

To Do: get exact legal description AND exact ownership if not too expensive. Do not rely on clients' verbal statements. Do not rely only on Division Orders or Division Order Title Opinions or Oil & Gas leases. There may be other minerals owned outside the leased or producing areas.

Oklahoma real estate passes under the laws of Oklahoma, Oklahoma does not recognize the Texas Estate Administration for passing title.

If you want to avoid ancillary probate or administration in Oklahoma, consider the following:

Trust: Put Oklahoma minerals in a Trust with authorization to lease, sell/transfer - Prepare excellent Memorandum of Trust. Deed all known surface and mineral interests to the Trust. Prepare "Expandable Deeds" (Lee's term).

EXAMPLE: A mineral deed that... "transfer to XYZ Trust all my mineral interests in _____ County, Oklahoma, including without limitation the minerals described in Exhibit A."

-Have many duplicate originals of the deeds.

-Transfer on Death Deed 58 O.S. §1251. See Exhibit A to these materials, but realize that minerals are owned forever so plan for successors to the beneficiaries.

-Transfer into Joint Tenancy- might be good for parent deeding to themselves and children.

-Transfer and reserve life estate- good for Medicaid planning in some cases- Life Tenant gets income for life. In Oklahoma, the life estate mineral interest usually has no "sale" value.

-Power of Attorney Documents (POA)-

Get POAs to allow transfer to Trust, Transfer on death, gift deed, etc. Durable Power of Attorney should be under Oklahoma form 58 O.S. §1071. Original will need to be attached to documents being recorded. Or we file the original and attach certified copies to transferring documents.

-New Last Will and Testament - does require Oklahoma estate administration (Probate) - But gives protection in case beneficiaries are young, on drugs, insolvent, etc.

-Disinheritance of child and/or issue of deceased child: Oklahoma - Note: Children and issue of deceased children can be forced heirs-must be specifically disinherited or they inherit as though no Last Will & Testament. So if disinheriting, be careful to disinherit the child and the issue of the child.

Woops - client died without lawyer planning

-Affidavit by heirs- 16 O.S. §67 and 16 O.S. §82 and 16 O.S. §83- Read these statutes.

-Affidavit can be good for technically passing title after 10 years.

-For producing minerals most oil companies will pay out royalty payments without estate administration if small annual production. Chesapeake and Devon up to \$7,500/year.

-Ancillary Estate Administration - easy enough but plan on \$2,000 to \$5,000 of attorney fees and @\$450 of costs for court costs, publication costs, recording.

-Estate Recovery - must give Notice to Creditors to all creditors of decedent. Include Oklahoma DHS (Medicaid) (and other states) if decedent was ever on Medicaid, in state facility- such as state mental hospital or on nursing home Medicaid, etc., then state is a creditor of the estate and statute of limitations does not prevent recovery as a creditor.

-Caution - Tenant in Common - regular estate administration for each owner that is on deed

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](http://utcle.org/elibrary)

Title search: Ancillary Probate: What Texas Lawyers Need to Know about Oklahoma

First appeared as part of the conference materials for the
2016 Texas NAELA Summer Conference session

"Ancillary Probate and what Texas lawyers need to know about Oklahoma"