

# TIME FOR A WORKOVER: OIL & GAS IN ESTATE PLANNING (AND PROBATE) OR DEALING WITH WHAT COMES OUT OF THE GROUND BEFORE (AND AFTER) THEY GO IN

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## Basics of Oil & Gas



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# Ownership and Severance

Minerals are real property prior to extraction.

- Minerals are subject to the ownership-in-place doctrine, whereby minerals are treated as possessory subparts of the fee simple estate.
- Under the rule of capture, a landowner vested with full fee simple title to the land may extract and capture migratory minerals such as oil and gas.

Upon extraction minerals become personal property once produced.

Ownership, upon original conveyance from the sovereign, extends from the surface down to the core and out to the atmosphere, but interests can be severed and conveyed.

- The Surface Estate
  - Entering a lease is not a severance that changes the individual holding the possibility of reverter, absent other language.
- The Mineral Estate
  - Dominant Estate
  - Accommodation Doctrine



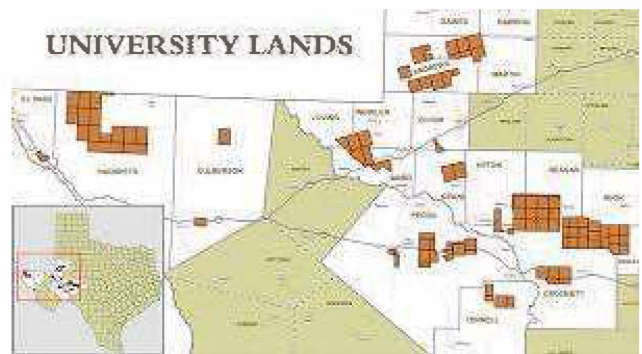
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# Mineral Classified Land and the Relinquishment Act

Under the Relinquishment Act, the owner of the surface owner acts as the agent for the State of Texas in negotiating and executing oil and gas leases on Relinquishment Act land.

- In lieu of surface damage payments from the State of Texas, the State surrenders to the surface owner one-half (1/2) of any bonus, delay rental and royalty.

This is not a severable interest in real property, the holder of the surface holds the executive right and right to payments therefrom.



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# Types of Ownership Interests

## MINERAL INTERESTS

A mineral interest is an interest in oil, gas and other minerals (the mineral estate), and is a possessory interest which exists prior and continues beyond a lease.

The mineral estate is comprised of five severable rights:

- the right to develop,
- the executive right,
- the right to receive bonus,
- the right to receive delay rentals and
- the right to receive royalty payments.

## LEASEHOLD INTERESTS

A leasehold interest is an interest held under a lease and is contingent upon the continuation of the lease.

- Working Interest
- Overriding Royalty Interests.

# Oil & Gas “Lease”



A mineral “lease” is not a lease in the typical manner in which we think of it, rather it conveys the mineral estate as a determinable fee, with the mineral interest owner retaining a possibility of reverter as a future interest.

These are negotiable. Important terms:

- Lease Bonus
- Royalty Rate
- Length of Primary Term
- Delay Rentals
- Surface Damages

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## Title search: Time for a Workover: Oil & Gas in Estate Planning (and Probate)

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