

# OIL & GAS CONVEYANCING

## CAPTURING THE INTENT OF THE PARTIES

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## Overview of Topics

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- Statute of Frauds
  - Recording your Conveyance
    - What must be recorded?
    - What about e-Contracts?
  - Joint Operating Agreements
  - Are you conveying a mineral interest or royalty?
  - Are you conveying a fixed or floating royalty?
    - How is the royalty calculated? May the lessee deduct post-production costs?
  - The Rule Against Perpetuities
  - The Two-Grant Theory
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## Statute of Frauds

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- Originally to prevent “*fraud*”
  - Some agreements are too important for oral contracts
  - To avoid the risk of fraudulent oral contracts, signed, written documentation was required.
- a contract for the sale of real estate;
- a lease of real estate for a term of more than a year;
- an agreement which is not to be performed within one year from the date of making the agreement;
- a promise or agreement to pay a commission for the sale or purchase of an oil or gas mining lease, an oil or gas royalty, minerals, or a mineral interest

## Statute of Frauds

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- Oil and Gas Leases
- Mineral Deeds
- Nonparticipating Royalty Deeds
- Overriding Royalty Deeds
- Farmout Agreements
- Participation Agreements
- Seismic Agreements
- Area of Mutual Interest Agreements
- Easements
- Joint Operating Agreements

## Statute of Frauds

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- Property Description must be “Sufficient”
- Must include within itself the means or data to identify the particular property with reasonable certainty, or
- Must reference another existing writing which contains the means or data to identify the particular property with reasonable certainty.
  - May not rely on property description in other documents unless they existed at the time the parties entered into the contract. *Pick v. Bartel*, 659 S.W.2d 636, 637 (Tex. 1983)
- A conveyance in the chain of title that does not identify the land being conveyed is ineffective to pass title.
  - A defective description of the property is one of the most frequent causes of title failure.

## Statute of Frauds

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- Historically words of description are given a liberal construction.
- *Gates v. Asher*, 154 Tex. 538, 280 S.W.2d 247 (1955): Reasonable certainty threshold.
- Where the instrument contains the “nucleus of description,” parol evidence will be admitted to explain the descriptive words and to identify the land. *Id.* at 248.
  - Example: “All my property in Deaf Smith County, Texas”

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## Title search: Oil and Gas Conveyancing - Capturing the Intent of the Parties

Also available as part of the eCourse

[2023 Fundamentals of Oil, Gas and Mineral Law eConference](#)

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