

OIL & GAS CONVEYANCING

CAPTURING THE INTENT OF THE PARTIES

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Overview of Topics

- 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

- 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

- 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

- 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

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