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**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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# **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<sup>1</sup>**

## **I. INTRODUCTION**

Come and listen to a story about a man named Ted, a poor dirt farmer, barely kept his family fed, and then one day he was shootin at some food, and up through the ground came a bubblin crude. Oil that is, black gold, Texas tea.<sup>2</sup>

While the exploration and discovery of oil in Texas was through the hard work of entrepreneurial wildcatters and risk tolerant investors, often it was those hardy ranchers and dry dirt farmers who settled on the edge of the Chihuahuan dessert who reaped the greatest and most unexpected reward of owning minerals in what would become one of the most prolific oil fields in the world, the Permian Basin. When coupled with the gas plays in north and south Texas, the old fields in east Texas and the salt domes of the Gulf Coast, it is no wonder that oil ownership is almost ubiquitous to Texans and their now remote descendants. Whether it is a small family heirloom royalty interest or hundreds of leasehold interests, mineral ownership provides a unique opportunity for planning but can be fraught with traps for the unwary both in planning and in the administration of a decedent's estate.

The purpose of this Article is to provide a roadmap for counsel to provide advice to and assist the client with estate planning for mineral interests as well as how to advise a personal representative handling these assets during the administration of an estate. Section II will provide some basic principles of the ownership of mineral interests and classification of property. Section III will discuss estate planning techniques commonly recommended. Section IV will discuss the management of mineral interests in the administration of an estate. Section V will outline proper conveyancing and perfecting title on transfer. Section VI will outline some ethical considerations for the attorney handling oil and gas interest in estate planning and probate for first, fiftieth, or five hundredth time.

## **II. CLASSIFICATION OF LAND, INTERESTS IN LAND AND CONVEYANCING INSTRUMENTS**

Before someone can convey their property, or certain interests therein, or establish a detailed estate plan devising certain interests in their property, they have to know and understand what they actually own and any limits to their interests. In this section, we will discuss, generally, the classification system for Texas lands, the interests in lands (other than the surface estate), and the various instruments used to convey an interest in land.

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<sup>1</sup> Originally written by R. Shaun Rainey, Garrett S. Melchiorre, Greg Friesenhahn, and Joseph Rodriguez for the Intermediate Estate Planning Course 2021 from TexasBarCLE, State Bar of Texas, webcast, June 8, 2021; updated by R. Shaun Rainey in 2024.

<sup>2</sup> Texas-fied adaptation of "The Ballad of Jed Clampett" by Flatt and Scruggs, written by Paul Henning, Columbia Records, 1962.

## A. Classification of Land

### i. *Classifications*

All land sold in Texas is classified by the Commissioner of the General Land Office (the “GLO”).<sup>3</sup> Texas land will be classified as agricultural, grazing, timber or minerals. The State of Texas owns no interest in lands classified as agricultural, grazing, timber or unclassified. Mineral classifications result in the State of Texas owning title to the minerals and will be discussed in more detail below with the Relinquishment Act.

Generally, the classification of land cannot be accurately ascertained by reviewing the county records where the land is located. Therefore, it is recommend that an attorney contact the GLO for the specific classification of the particular land. In recent years, the GLO has also identified land classifications on its interactive map via the GLO website.<sup>4</sup> Knowing the classification of land is vital if the land is mineral classified, as discussed below.

### ii. *Relinquishment Act*

The Relinquishment Act can be most succinctly be defined as the reservation of all minerals to the State of Texas in those certain lands sold by the State with a mineral classification between September 1, 1895 and June 29, 1931.<sup>5</sup>

Under the Relinquishment Act, the owner of the soil (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.

It should be pointed out that if the surface owner of Relinquishment Act land either conveys a royalty interest or conveys the surface of the land and reserves a royalty interest, this royalty interest is only valid under the existing Relinquishment Act Lease.<sup>6</sup> For example, assume that there is a current Relinquishment Act Lease in full force and effect and that an individual has effectively acquired a royalty interest in this lease. Upon termination of this lease, the royalty interest also terminates; said royalty interest will not apply to future oil and gas leases. The GLO publishes a number of rules and regulations dealing with oil and gas leases, including a GLO lease form.<sup>7</sup>

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<sup>3</sup> Tex. Nat. Res. Code § 51.013(a).

<sup>4</sup> The Texas General Land Office GIS Maps & Data can be accessed at <https://www.glo.texas.gov/land/land-management/gis/index.html>.

<sup>5</sup> For a thorough discussion on the Relinquishment Act, see A. W. Walker, Jr., *The Texas Relinquishment Act*, 1st Inst. on Oil & Gas Law and Taxation, SW Legal Fdn. (1949).

<sup>6</sup> See *Lewis v. Oates*, 145 Tex. 777, 195 S.W.2d 123, 133 (1946).

<sup>7</sup> For more information on the GLO lease form and the rules pertaining to same, see the GLO’s website at [www.glo.texas.gov](http://www.glo.texas.gov).

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