

May 11, 2017  
North Houston Association of Professional Landmen

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**Curing Title Defects and Addressing Title Requirements Using the  
Texas Title Examination Standards [*and some other stuff*]**

**North Houston Association of Professional Landmen**



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Jack Wilhelm is an Austin, Texas, attorney whose office is located within a stone's throw of the General Land Office, the Texas Railroad Commission, the State Comptroller's Office, the State Capitol, and Austin area courthouses. Jack focuses his practice on oil and gas law and state taxation issues before the Texas Comptroller of Public Accounts. Jack's oil and gas clients include Fortune 500 oil and gas companies, privately owned oil and gas independents, and sophisticated landowners. Most of the oil and gas practice focuses on real estate (title examination, acquisitions and divestitures & associated due diligence, and negotiations) and assisting clients with matters before regulatory agencies. In addition to his Juris Doctorate degree, Jack holds a Masters of Energy and Environmental Law from The Tulane University. He is licensed to practice in Texas, Louisiana, Arkansas, and Illinois, and by numerous federal courts, including all Texas and Louisiana federal district courts and the United States 5th Circuit Court of Appeals located in New Orleans, as well as the United States Supreme Court.

**Edward Wilhelm**

Edward Wilhelm is licensed to practice law in Texas, Louisiana, and North Dakota, and focuses his practice on oil and gas law and representing foreign businesses that invest in oil and gas activities. His oil and gas work focuses on the real estate side (oil and gas title examinations, acquisitions and divestitures of oil and gas interests, due diligence, and commercial negotiations). Currently, he is representing a non-operating oil-field working interest owner in a civil matter pending in west Texas that contains issues regarding trespass, adverse possession, and Railroad Commission rules and regulations; and the interpretation of oil and gas joint operating agreements. Edward Wilhelm grew up in Texas and graduated from St. Andrews High School in Austin. He graduated from Hampden-Sydney College, located in central Virginia, with honors, in 2007. While attending Hampden-Sydney, he spent his junior year attending the University of Edinburgh, Scotland, and interned at the Scottish Parliament in the Office of the Majority Whip. Following his graduation, Edward taught English and Western Civilization in Japan through the Japanese English Teachers Program (JET), and then returned to the University of Edinburgh to earn a Masters of Science degree with a focus on international relations. His Master's dissertation explored energy and economic interdependencies between the United States and Venezuela. In 2010, Edward enrolled in The Tulane University Law School in New Orleans, where served as a member of The Tulane Moot Court Board and graduated magna cum laude. While at Tulane, Edward was awarded the CALI Award for excellence in acknowledgement of having obtained the highest grade in the following subjects:

- Ethics
- Federal Courts
- Corporate Law & the Practical Aspects of a Hostile Acquisition.

In acknowledgement of his work in the area of legal ethics, Edward was the recipient of the "David L. Herman Award for High Professional Standards in The Legal Profession (Ethics)". Also, he successfully completed The Tulane - University of Berlin 2011 Mediation-Arbitration Training Program held in Berlin, Germany. Edward's work related experiences include working as a petroleum landman on important Texas Barnett Shale and Eagle Ford Shale projects; serving as a law clerk for the State of Alabama assisting in the preparation of a judicial appeal case before the United States Supreme Court; and interning with three different commercial transaction law firms in New Orleans. Oh, and most importantly, Edward is an Eagle Scout.



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## **Curing Title Defects and Addressing Title Requirements Using the Texas Title Examination Standards**

The Texas Title Examination Standards can be found as an Appendix to Title 2 of the Texas Property Code. These “standards” were developed over a period of 20 years by members of the Texas oil and gas bar, real estate bar, and wills, trust, and probate bar. The purpose is to establish standards upon which lawyers agree in conducting title examinations. While not mandatory, they are a reference and provide a good insight into what requirements are to be expected in a title opinion.

The Texas Title Examination Standards defines the purpose of a title examination as follows:

### **Standard 1.10. Purpose Of Title Examination**

The purpose of an examination of title and comments, objections, and requirements is to advise an examiner’s client of the status of title and of the methods by which the client may secure marketable title to real property. Based upon the materials examined, the title opinion should advise an examiner’s client of all irregularities, defects, and encumbrances that may reasonably be expected to affect materially the value or use of the property or that may expose the owner to litigation or adverse claims even if the litigation or adverse claims can reasonably be expected to be successfully defended. The examiner does not ordinarily determine the validity or priority of irregularities, defects and encumbrances.

#### ***The goals of my examinations are the following:***

1. Satisfy contractual obligations my client may have. Many lending agreements contain a covenant requiring that title opinions be obtained.
2. Make sure my client distributes revenues correctly and never has to “over-pay.”
3. Make sure my clients can efficiently document their record oil and gas property titles (particularly important in sales and purchases of oil and gas properties).
4. Avoid lawsuits, and, if one is commenced, that my client wins.

***A recent study noted that 30% of the lawsuits involving oil companies in the United States concern royalty payments.***



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These are typical title requirements you may expect to find in an oil and gas opinion.

**Severance from the Sovereign.**

All land titles should be based on a severance from the sovereign. These may be Spanish or Mexican land grants, or conveyances (called patents) from the State of Texas or the Republic of Texas. The severance instruments should be recorded in the official records of the County, and you may expect a requirement that the patent be obtained and filed if it is not reflected in the runsheet. It is also a good idea to visit the General Land Office's web-site ([www.glo.texas.gov](http://www.glo.texas.gov)) to confirm the GLO's records on the initial severance.

Conveyances by the State of Texas after 1895 (date of patent, not recordation date of patent) usually contain a reservation of some or all of the mineral estate (Relinquishment Act lands). Relinquishment Act lands are usually found in West Texas, but they "pop up" from time to time in all parts of the state. Enacted in 1919, the Relinquishment Act reserves all minerals to the State in those lands sold with a mineral classification between September 1, 1895 and June 29, 1931. Under the Relinquishment Act, the "owner of the soil," also commonly known as the surface owner, acts as the agent for the State of Texas in negotiating and executing oil and gas leases on Relinquishment Act land. The State surrenders to the surface owner one-half (½) of any bonus, rental and royalty as compensation for acting as its agent, and in lieu of surface damages. The owner of the soil's agency power is somewhat limited, however, because the General Land Office publishes a standard Relinquishment Act lease form which must be used to lease Relinquishment Act land. Additionally, the General Land Office must approve the consideration paid for any Relinquishment Act lease and no lease is effective until it has been approved and filed in the General Land Office.

The general rule is that when there is a conveyance from a patentee to a purchaser, for value, the purchaser will not be charged with any notice of prior legal/equitable claims by third parties. *Bogart v. Moody*, 79 SW 633 (1904). There are several exceptions to the rule - for instance, had the patentee made a conveyance prior to the receipt of his patent, a subsequent purchaser would be subject to a superior claim of that earlier purchaser.

**Requirement No. :** You should obtain a certified copy of the original patent that covers the Captioned Land and record such in the official records of the county where the land is located.

**Requirement No. :** Since the land is mineral classified, you should obtain and follow the GLO procedures (published brochure) when you acquire a lease that covers the Captioned Land.

**Ownership of oil, gas, and minerals under roadways.**

Most roadways in Texas were acquired by right of way conveyances (no minerals conveyed) or by purchases where titles to the minerals were expressly reserved.

However, there are instruments (usually in the 1900-1940 vintage), often in favor of the county judge, where the mineral rights were conveyed. Generally speaking, the grant of the instrument is controlling – not the title of the instrument. Furthermore, if the grant is a fee simple absolute, the fact that the instrument recites it is for a roadway will not defeat the conveyance of the underlying oil, gas, and mineral estate. LEOPOLD: LAND TITLES AND TITLE EXAMINATION §18.19 (TEX. PRAC.).

There is an attorney general's opinion holding that if there is a conveyance pertaining to a county road that is a fee simple conveyance (a conveyance of the oil, gas, and mineral estate), a lease should be obtained from the General Land Office (see *Tex. AG Op. No. WW-870*, Jul. 5, 1960).



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Early conveyances for the construction of railways can present similar issues.

**Requirement No. \_\_\_ :** While styled a "right of way deed," the instrument dated at DR Vol. \_\_\_, p. \_\_\_, is in fact a conveyance of a fee simple mineral estate interest. Accordingly, a surveyor, or other knowledgeable individual, should identify the strip of land, and its size, and you should secure a lease from the General Land Office.

**Leasehold Issues**

1. Documentation that each lease has been properly assigned to the Client.
2. Documentation that the lease has been extended beyond its initial primary term if there is a unilateral extension right (should be documented in the official).
3. Has each lease been properly identified in the pooling declaration & does each lease grant the "pooling" envisioned by the pooling declaration.

**Requirement No. \_\_\_ :** The governing oil and gas lease is beyond its primary term although it contains a provision whereby the lessee may unilaterally extend the primary term. If the primary term has been unilaterally extended, you should document this by a lessor acknowledgement or by an affidavit executed by a knowledgeable individual within the lessee's organization and record such document in the official records. If the lease has not been extended, you should satisfy yourself that it has been perpetuated by production or operations, or both, or acquire a new lease.

**Chain of Title Issues**

More often than not, there are breaks in the chain of title. For instance, Homer Simpson buys the Captioned Land. 40 years later, Bart and Lisa Simpson sell it to a third party.

What to do, what to do?

**Requirement No. \_\_\_ :** Establish a chain of title from Homer Simpson into Bart Simpson and Lisa Simpson. In order to do this, you should establish the date of death of Homer Simpson and whether he died testate or intestate. If he died testate, you should obtain and forward a copy of his estate proceedings. If he died intestate, you should acquire an affidavit of heirship from two (2) disinterested individuals. The results of your investigation should be furnished the examiner so that record title can be updated and further requirements, as necessary, can be made.

**Requirement No. \_\_\_ :** In the course of your curative work investigations, owners and potential lessors/owners may be determined to be deceased. In such an instance, their heirs or successors should be identified (and, when appropriate, leases obtained therefrom). This should be accomplished by securing a copy of their estate proceedings (for each decedent in the title chain), or, if it is determined one or more parties have died intestate, and then you should secure an affidavit of death and heirship for each decedent, sworn to by two disinterested individuals. Authenticated copies of each will and order admitting same to probate, or if intestacy, the original affidavit of death and heirship (each one), should be recorded in the official records of the county at issue to establish a clear chain of title.

**Standard 13.10. Affidavit Defined**

An affidavit is a written statement, under oath, signed by the affiant and evidenced by a jurat.



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A jurat is a certificate signed by an officer authorized to administer oaths before whom an instrument was executed, stating that the instrument was subscribed and sworn to before the officer by the person executing the instrument. An affidavit must contain a jurat to be effective. A form of a jurat is as follows:

Subscribed and sworn to this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by \_\_\_\_\_.  
Notary Public, State of Texas  
My commission expires:

In the past, it was typical for an affidavit to contain both a jurat and an acknowledgment. An acknowledgment merely requires that the signing party acknowledge that he or she executed the instrument. Prior to September 1, 1989, an acknowledgment was required in order for an affidavit to be recorded. As of that date, an affidavit need only contain a jurat to be recorded.

**Standard 13.20. Reliance Upon Affidavits**

An examiner may rely upon an affidavit unless the examiner has a reasonable basis to question its reliability.

**Fractional Conveyances**

Perhaps the most vexing issue facing title examiners is the problem of properly interpreting fractional conveyances of mineral and royalty estate interests.

One problem concerns the over-conveyance, by a grantor who owns only a fractional interest (e.g. owns ½ of the mineral estate but conveys ¾ of the mineral estate). These are usually referred to a “Duhig” cases after an early case dealing with a mineral estate over-conveyance.

A second problem concerns the conveyance of a royalty interest be interpreted as a 1. fixed royalty conveyance (e.g. a 1/32<sup>nd</sup>) or a 2. fraction of the negotiated royalty (1/4 x royalty rate). If refer to this as the ***fixed v. floating royalty issue***.

**Requirement No. \_\_\_\_\_** : Ringo Starr and Paul McCartney should execute a stipulation as to the division of the 1/16<sup>th</sup> NPRI acquired from them from the estate of John Lennon. If unable to do so, you should hold in suspense the revenues attributable to the interest and, if not resolved in a timely fashion, interplead these revenues in a court of competent jurisdiction that has the power to properly interpret and resolve the division of this interest.

**Trustees**

Unless a trustee’s power is restricted by the trust instrument or by law, the trustee of an express trust has the power to convey, lease, and encumber the real property interest that is subject to the trust. Tex. Title Examination Standards 9.10.

Absent an agreement to the contrary, below is the statutory power of trustee over mineral rights:

**Tex. Prop. Code Sec. 113.012. MINERALS.** (a) A trustee may enter into mineral transactions, including:



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- (1) negotiating and making oil, gas, and other mineral leases covering any land, mineral, or royalty interest at any time forming a part of a trust;
- (2) pooling and unitizing part or all of the land, mineral leasehold, mineral, royalty, or other interest of a trust estate with land, mineral leasehold, mineral, royalty, or other interest of one or more persons or entities for the purpose of developing and producing oil, gas, or other minerals, and making leases or assignments granting the right to pool and unitize;
- (3) entering into contracts and agreements concerning the installation and operation of plans or other facilities for the cycling, repressuring, processing, or other treating or handling of oil, gas, or other minerals;
- (4) conducting or contracting for the conducting of seismic evaluation operations;....

The authority of the trustee can be expanded, or restricted, by the terms of the trust. Thus, it is important to examine a copy of the trust instrument (remembering that trusts can be established by will, and, hence, the will is the instrument establishing the trust). As an alternative to a trustee furnishing a copy of the trust agreement, the trustee can produce a "Certification of Trust," containing specific provisions that are outlined in TEX. PROP. CODE §114.086. Some forward looking trustees are attaching a certification to the conveyance instrument whereby the trust acquires real estate.

Where the authority of a trustee is not documented by any instrument of record, but the deed by the trustee has been of record for at least twenty years, there is a presumption of the trustee's recited authority.

As an aside, if property is conveyed to a person identified as "trustee," but the conveyance does not identify the trust or disclose the names of the beneficiaries, you may presume that authority of the trustee to convey, transfer or encumber the title to the property. Tex. Title Examination Standards 9.20. As well, absent information to the contrary, the property in question is deemed to be in the named trustee or his successors (heirs and assigns).

**Requirement No. :** A copy of the trust agreement should be obtained and furnished to the examiner for review and for appropriate further comments and requirements, including, but not limited to, obtaining appropriate documents to determine the identity of the current trustee. The trust agreement, or a certificate of trust, should, in due course, be recorded in the official records of the county(ies) where the real property covered by the trust is located.

**Powers of Attorney<sup>1</sup>**

Powers of Attorney are agency agreements where one individual (principal) authorizes another (the agent) to perform acts on behalf of the principal. Agency agreements affecting real estate are required to be in writing. Tex. Prop. Code §5.021. A durable power of attorney for a real property transaction requiring the execution and delivery of an instrument that is to be recorded, including a release, assignment, satisfaction, mortgage, security agreement, deed of trust, encumbrance, deed of conveyance, oil, gas, or other mineral lease, memorandum of a lease, lien, or other claim or right to real property, shall be recorded in the office of the county clerk of the county in which the property is located. Tex. Est. Code §751.151.

Sec. 751.151. RECORDING FOR REAL PROPERTY TRANSACTIONS REQUIRING EXECUTION AND DELIVERY OF INSTRUMENTS. A durable power of attorney for a real property transaction requiring the execution and delivery of an instrument that is to be recorded, including a release, assignment, satisfaction, mortgage, security agreement, deed of trust, encumbrance, deed of conveyance, oil, gas, or other mineral

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<sup>1</sup> A model form durable, general power of attorney is attached to the appendix to this paper.





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lease, memorandum of a lease, lien, or other claim or right to real property, must be recorded in the office of the county clerk of the county in which the property is located.

Agency agreements, including powers of attorney, [always] end upon the death of the principal.

Generally, there are two types of powers of attorney: 1. Specific; and 2. General.

A specific power of attorney is strictly construed. For instance, a specific power of attorney to sell 7312 Memorial Drive, Houston, Texas, would not authorize the agent to lease it for oil and gas rights or to mortgage the property.

A general power of attorney (including durable powers of attorney) are more liberally construed. A very broad general power of attorney might include something like the following: "to do any and every act, and exercise any and every power that I might, or could do ...."

A real life example of a limitation to a specific power of attorney: *Texas Cityview Care Center, L.P. v. Fryer*, 227 SW3d 345 (Tex. App. – Fort Worth 2007). An elderly lady checked into a hospital for treatment, attended to by her daughter. The elderly lady executed a "Medical Power of Attorney" authorizing her daughter to make medical decisions on her behalf. While being treated, her daughter also executed certain subsequent documents waiving the rights of the elderly lady to certain legal claims for medical malpractice, negligence, and the like. The court held that the medical power of attorney authorized the daughter to only make decisions pertaining to health care and did not authorize the daughter to change or waive legal rights. The subject documents were held to be of no effect.

**Requirement No. :** You should obtain and record the power of attorney that authorizes Jane Watson to execute oil and gas leases on behalf of Sherlock Holmes.

**Independent Executors and Administrators**

When an individual dies with a will (testate), a probate proceeding is opened almost always in the county of last residence (probate court in large counties such as Bexar; county court in smaller counties such as Howard or Crane). There is an application to probate the will which has the original will attached and an affidavit regarding certain needed information (usually called a proof of death and other facts). When the will is approved (proved to be genuine, testator competent to execute will, and the like, it is admitted to probate (Order Admitting Will to Probate) and an Independent Executor (executrix has been eliminated) appointed (Letters Testamentary are the evidence of this appointment).

In every county where the decedent (dead guy) owned real estate, an authenticated copy of the will and order admitting same is supposed to be filed in the official records (even in the official records of the county where the probate occurred). This very often is not done.

**Requirement No. :** You should acquire an authenticated copy of the will and order admitting same to probate for Sophia Loren and record such in the official records of the county.

An Independent Executor may execute oil and gas leases binding upon the estate and heirs upon the receipt of court authority (see attached appendix).

**Requirement No. :** The lease executed by the Independent Executor of the Estate of Franklin D. Roosevelt should either be ratified by all of his testamentary heirs and devisees or you should obtain court approval of the lease.



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**Unreleased oil and gas leases, unit agreements, and term mineral/royalty deeds**

Many, many unreleased old oil and gas leases cover not only the acreage being examined but also lands not under examination (often in different surveys). Unless these leases contain a “pugh” clause (also known as a “freestone rider”) or retained acreage clause - and these clauses were rare at least until the 1960s -, or have otherwise been released of record by the lessee, operations and production from anywhere on the lease acreage (which can be far removed from the lands under examination) will perpetuate the existence of the lease.

Please make note of the case of *McCammon v. Ischy*, No. 03-06-00707-CV, 2010 WL 1930149 (Tex. App. – Austin, May 12, 2010, reversed on other grounds). In 2003 McCammon acquired an oil and gas lease on a 169.1 acre tract of land. In 2004, McCammon obtained a drilling permit and a drilling title opinion. The title examiner called for releases or an affidavit of non-production for the land covered by two 1989 leases which covered the 169.1 acre tract and *other lands*. Viewing the title requirement as a *mere formality*, McCammon drilled a well, which was a commercial producer. Whereupon, the owner of the 1989 leases, Ischy, asserted ownership of the well and its production claiming that its 1989 leases had been perpetuated by operations and production on the “other lands.” A trespass to try title case ensued, with Ischy prevailing. Notably, the *jury* determined that McCammon had not acted in good faith, and required McCammon to turn over operations, all of the equipment, and \$1,000,000 held in suspense. Had the jury determined that McCammon was a “good faith trespasser,” presumably McCammon would have been able to recover his drilling costs (an improvement) out of that well’s revenue. IT CAN HAPPEN!

*This is a better way to protect our client:*

**Requirement No. \_\_\_ :** Ideally, you should obtain and record appropriate releases of the aforesaid. In the alternative, conduct a drilling and production history for the Captioned Land (and the other lands the referenced leases cover) that shows, definitively, that the aforesaid leases, term royalty interests, and oil and gas units have lapsed for lack of operations or production, or both. Based on these findings, a landman’s statement regarding past oil and gas activity should be prepared and furnished to the examiner for review and any necessary revisions or updates to this opinion. The examiner suggests that the landman statement incorporate an affidavit of nonproduction from a knowledgeable third party and contain a report on a review of the Railroad Commission Records (and possibly *Drillinginfo*) pertaining to past oil and gas activity within the subject survey.

**Survey Requirement**

You should always have a metes and bounds description of the examined acreage (preferably a prior deed with such description) and a map of the examined acreage. If not, or if the survey is old or appears irregular, you may expect the following requirement:

**Requirement No. \_\_\_ :** The examiner recommends that a survey be made of the Captioned Land.

**Ad Valorem Taxes**

Land is subject to foreclosure for nonpayment of delinquent taxes.

**Requirement No. \_\_\_ :** Determine whether ad valorem taxes assessed against the mineral estate have been paid; and also establish a mechanism to monitor that future ad valorem tax



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levies are timely paid, as such accrue. Unpaid ad valorem taxes should be brought to the attention of the examiner.

**Easements and Rights-of-Way**

As we know, in Texas, the accommodation doctrine provides that as a rule the mineral estate has an unfettered right to the use of the surface. However, where practicable, the mineral estate owner (or his or her lessee) must reasonably accommodate the surface owner. As well, there are often lease restrictions, state laws, and city and county ordinances on the location of oil and gas wells. As well, drilling into a "live" petroleum products line is a very dangerous undertaking.

The following easements burden the Captioned Land, to-wit:

**Requirement No. \_\_\_** : [Advisory]. Prior to the commencement of any operations on the Captioned Land, a physical inspection of the Captioned Land should be undertaken to locate the above and any unrecorded easements or rights-of-way as well as building or structures on the Captioned Land. Operations should be conducted so as to avoid interference with such.

**Requirement Pertaining to Division Orders**

**Requirement No. \_\_\_** : [Advisory]. A division of interest order should be executed by all of those parties listed as royalty interest owners, above.

The Texas statutory division order language contained at TEX. NAT. RES. CODE 91.401 et seq. has a provision that protects oil and gas production companies from errors in the distribution of royalties by allowing such companies to require the execution of a reasonable division orders.

Sec. 91.402. TIME FOR PAYMENT OF PROCEEDS.

(c)(1) As a condition for the payment of proceeds from the sale of oil and gas production to payee, a payor shall be entitled to receive a signed division order from payee containing *only* the following provisions:

**Requirement Regarding Recordation Information**

All recordation references (e.g. DR Vol. \_\_, p. \_\_) are to records of \_\_\_\_\_ County, Texas, unless noted differently.

**Requirement No. \_\_\_** : [Advisory]. As noted.

**Requirement Regarding Establishing Title by Possession**

While record title is strong, IT CAN BE DEFEATED ON ADVERSE POSSESSION. Furthermore, continuous, adverse, and notorious possession can serve to "cure" title deficiencies.

**Requirement No. \_\_\_** : You should investigate the use and occupancy of the Captioned Land for at least a thirty (30) year period and should include an onsite investigation of the Captioned Land. Your investigation should include an identification of the Captioned Land on a map by the affiants. Also, your investigation should include inquiry as to the parties who have actually occupied the



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land, the nature of the use to which the lands have been placed, including, but not limited to, any past oil and gas operations, the identity of the party who constructed improvements, the manner in which the lands have been fenced, the parties who have rendered taxes thereon, and the existence or absence of any boundary disputes or disputed claims of ownership. Special attention should be directed towards the existence or absence of bodies of water, roadways, rights of way, and railroad lines. Assuming that the facts obtained in your investigation will strengthen the title claims of your lessors, it is material under the Texas Statutes of Limitation that the facts should be documented in the form of Possession Affidavits, which, following examination, should be filed for record in \_\_\_\_\_ County, Texas.

**Runsheets Closing Date**

The closing date in the runsheet is \_\_\_\_\_, 20\_\_, at \_\_\_\_\_ a./p.m.

**Requirement No. \_\_\_**: [Advisory]. Prior to commencement of operations, it is recommended that you review the official records of \_\_\_\_\_ County, Texas to ensure that nothing has been placed of record since this date that could adversely affect title to Captioned Land. If any such instruments have been filed of record, you should submit these instruments for our examination so that additional comments and requirements, if appropriate, may be made.

**Encumbrances**

Traditionally, if an encumbrance (e.g. deeds of trust/mortgages) that predates an oil and gas lease is foreclosed upon, the foreclosing entity (bank or lending institution) acquires the real property “free and clear of the oil and gas lease.”

A new chapter 66 is added to the Texas Property Code that provides for the following:

An oil or gas lease covering real property subject to a security instrument that has been foreclosed remains in effect after the foreclosure sale if the oil or gas lease has not terminated or expired on its own terms and was executed and recorded in the real property records of the county before the foreclosure sale. The debtor’s interest passes to the purchaser of the foreclosed property.

However, if the mortgaged real property includes the mineral estate and the surface estate, the foreclosure sale terminates and extinguishes any right granted under the oil or gas lease for the lessee to use the surface of the real property.

The Captioned Land’s mineral estate is subject to the following encumbrances, which predate the governing lease, to-wit:

**Requirement No. \_\_\_**: The subject encumbrance (e.g. Deed of Trust) should be released of record or subordinated to the governing oil and gas lease.

**Requirement No. \_\_\_**: The subject encumbrance provides that royalties attributable to this interest are payable to the creditor (beneficiary). The royalty owner and the financial institution should stipulate as to how and to whom these royalties are to be paid.



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### Nonparticipating Royalty Interests

Unless the instrument creating the executory power provides to the contrary, an executory right owner, although he or she has the power to bind the nonexecutory NPRI owner to oil and gas leases, the executory right owner DOES NOT have the power to bind the NPRI owner to pooling agreements.

**Requirement No. \_\_\_ :** You should obtain written pooling authorizations from the NPRI owners (ratification of lease with pooling authority, pooling agreement, or unit ratification).

### Community Property

#### **Standard 14.10. Community Property Presumption**

Except as otherwise provided in this Chapter, an examiner must presume that real property acquired during marriage is community property, whether acquired in the name of one or both spouses.

#### **Standard 14.20. Gifts, Devise And Descent; property acquired prior to marriage (separate property)**

An examiner must consider property acquired during marriage by gift, devise or descent to be the acquiring spouse's separate property. Property acquired before the marriage is presumed to be separate property.

#### **Standard 14.30. Conveyances Between Spouses**

An examiner must consider property conveyed by one spouse to another to have become the grantee's separate property regardless of whether consideration is recited. However, effective January 1, 2000, a conveyance or agreement signed by both spouses may convert separate property to community property if such intention is specified.

Property may be partly separate and partly community in character, in a kind of tenancy in common between the two estates, if acquired partly with one spouse's separate funds and partly with community funds or credit. *Gleich v. Bongio*, 99 S.W.2d 881 (Tex. 1937). Under such circumstances the interest of each estate is established proportionately to the fractional share of the purchase consideration furnished out of each. 99 S.W.2d at 884.

#### **Standard 14.60. Necessity For Joinder When Community Property Is In Name Of Both Spouses**

If property is acquired during marriage by a deed naming both spouses as grantees, an examiner may not give effect to a subsequent conveyance of the property unless (1) it is joined by both spouses or (2) it was made by the husband before January 1, 1968, and did not convey homestead property.

However, property held in one spouse's name is subject to his or her sole management, leaving property acquired in both spouses' names subject to joint management.

**Requirement No. \_\_\_ :** Since the State of Texas is a community property state, prior to the distribution of proceeds from the Captioned Land, you should investigate and determine whether any individual distributees are married, and, if so, your division orders should be executed by both



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husband and wife unless the owner can document that his or her interest constitutes a part of his or her separate estate.

These are the typical disclaimers you will see in title opinions:

DISCLAIMERS

1.

This opinion is strictly limited to matters revealed by the materials examined, including the runsheet, title notes, photocopied documents, abstracts, maps, and other instruments furnished for our review, all of which are specifically identified in Exhibit A. We cannot be responsible for mistakes in the materials examined in the preparation of this opinion. In particular, we cannot be responsible for errors in metes and bounds descriptions or any improper reliance on metes and bounds descriptions by the abstractor.

2.

This Opinion does not cover, and does not certify to, vacancies, conflicts in boundaries, encroachments or discrepancies in area, survey errors, ownership of or access rights to minerals affected by city laws or codes or residential or commercial subdivision plats, ownership of the minerals underlying roads or the beds of navigable waterways or any other matter which a survey on the ground might disclose, or the rights of parties, if any, in actual possession of the Captioned Land claiming the same adversely to the record owners thereof or to their predecessors in title. In addition, this Opinion is subject to the disabilities of the parties executing instruments and instruments that have been mis-indexed by the County Clerk and/or District Clerk. This Opinion does not cover the rules and regulations of governmental agencies (including the Internal Revenue Service) and the matters pending before such agencies, nor the effect of bankruptcy proceedings involving any party in the chain of title. This Opinion reflects only liens of record during the period of examination, and is subject to unpaid lienable bills for improvements and unrecorded tax liens, including but not limited to federal tax liens on decedents' estates, that may relate back to the period of examination.

3.

This Opinion does not cover any matters relating to past compliance with oil and gas lease obligations affecting the Captioned Land. [IF THE LEASE IS BEYOND ITS PRIMARY TERM YOU MAY FIND ADDITIONAL DISCLAIMERS].

4.

This Opinion does not cover any matters relating to compliance with or violation of any federal, state or local laws or regulations, including, without limitation, environmental laws, or any matters relating to compliance with or violation of any orders, decrees, judgments, injunctions, notices or demands issued, entered, promulgated, or approved under any such environmental laws or regulations.

5.

This opinion does not cover ownership of hard minerals, including but not limited to coal and lignite rights ownerships.

6.

To the extent title is determined by reliance on recorded affidavits of possession, affidavits of heirship where there have been intestate successions, and recitals contained in deeds and other ancient documents, this opinion must, not surprisingly, be based on the assumption that all of the relied upon affidavits and recitals are, in fact, truthful. We bring to your attention that reliance on such affidavits and recitals is an acceptable and proper practice in accordance with the Texas Model Title Examination Standards.

7.

This opinion has been prepared solely for the use and benefit of the client, \_\_\_\_\_, and should not be relied upon by third parties.



**FIVE CASES PENDING BEFORE THE TEXAS STATE SUPREME COURT**

1. **Liability for Surface Damages:**  
*ExxonMobil Corp. v. Lazy R Ranch, et al.*

A surface owner seeks an injunction [specific performance] against a lessee which would require the lessee to remediate damage to the property. The lessee contends that the cost to remediate the property would exceed the property's value, thus the relief would run afoul of longstanding Texas law which limits recovery in property damage cases to the value of the property.

2. **Parties Necessary for Royalty Litigation:**  
*Richard D. Crawford v. XTO Energy, Inc.*

The Supreme Court will determine whether a royalty owner who claims to have been underpaid must join any third-parties that may have received royalties which should have been paid to the plaintiff royalty owner. The royalty owner in this case claims that such a procedural requirement would place an undue burden on small royalty owners.

3. **Indemnity:**  
*Noble Energy, Inc. v. ConocoPhillips Company*

A purchaser of assets out of a bankruptcy estate took the assets "free and clear" of all "claims," but an appellate court found a duty of defense and indemnity existed in connection with a \$60 million liability arising 10 years after the assets were purchased. This case should be followed by any company acquiring assets out of bankruptcy proceedings.

4. **Pooling:**  
*Samson Exploration, LLC v. T.S. Reed Properties, Inc., et al.*

This dispute involves two overlapping units (by depths) created by Samson. The trial court, upheld on appeal, held the second pooling to be ineffective.

5. **Retained Acreage Clauses:**  
*XOG Operating, LLC, et al. v. Chesapeake Exploration Limited Partnership, et al.*

At issue is the interpretation and application of a retained acreage clause. The dispute focuses, in large part, on whether the lessee is permitted to retain all acreage it could have included in an RRC proration unit or only the acreage which it actually included in the [RRC] proration unit for each well.



Legislature: 85th Legislature

Our legislature meets once every two years for 140 days. The current, 85<sup>th</sup> legislative session, commenced January 10, 2017, and bills filed affecting the oil and gas industry (as of January 19, 2017), are summarized below.

**85(R) HB 129 Author: Craddick. Expands the manner “check stub” information can be distributed (by internet as opposed to by mail).**

**85(R) HB 237 Author: Anchia. One of the many bills to change the name of the Railroad Commission to the Texas Oil & Gas Commission or something similar.**

**85(R) HB 247 Author: Anchia. Requires the Railroad Commission to post the names of operators who are held in violation of the Railroad Commission rules and regulations.**

**85(R) HB 445 Author: Frank. A giveaway tax credit for wind power. But this one actually places some geographic limitations on this insanity.**

**85(R) SB 189 Author: Uresti. Requires that a notice of an application to drill injection wells within a certain distance of a groundwater conservation district be sent to the groundwater conservation district [does not give groundwater conservation district the authority to contest the application].**

**85(R) SB 243 Author: Burton. Would authorize the commissioners’ court to disapprove of certain condemnations; an expansion of the current authority to be the initial determiner of value.**

**85(R) SB 177 Author: Taylor. Would make certain technical revisions to fieldwide secondary recovery units (generally affects West Texas).**

**85(R) SB 901 Author: West. Would prohibit drones from traversing oil and gas facilities. Creates penalties.**





**APPENDIX A**

**Estate Code: Independent Executors leasing oil and gas rights.**

CHAPTER 358. MATTERS RELATING TO MINERAL PROPERTIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 358.001. DEFINITIONS. In this chapter:

(1) "Gas" includes all liquid hydrocarbons in the gaseous phase in the reservoir.

(2) "Land" and "interest in land" include minerals or an interest in minerals in place.

(3) "Mineral development" includes exploration for, whether by geophysical or other means, drilling for, mining for, development of, operations in connection with, production of, and saving of oil, other liquid hydrocarbons, gas, gaseous elements, sulphur, metals, and all other minerals, whether solid or otherwise.

(4) "Property" includes land, minerals in place, whether solid, liquid, or gaseous, and an interest of any kind in that property, including a royalty interest, owned by an estate.

SUBCHAPTER B. MINERAL LEASES AFTER PUBLIC NOTICE

Sec. 358.051. AUTHORIZATION FOR LEASING OF MINERALS. (a) The court in which probate proceedings on a decedent's estate are pending may authorize the personal representative of the estate, appointed and qualified under the laws of this state and acting solely under court orders, to make, execute, and deliver a lease, with or without a unitization clause or pooling provision, providing for the exploration for and development and production of oil, other liquid hydrocarbons, gas, metals and other solid minerals, and other minerals, or any of those minerals in place, belonging to the estate.

(b) A lease described by Subsection (a) must be made and entered into

Sec. 358.052. LEASE APPLICATION. (a) The personal representative of an estate shall file with the county clerk of the county in which the probate proceeding is pending a written application, addressed to the court or the judge of the court, for authority to lease estate property for mineral exploration and development, with or without a pooling provision or unitization clause.

(b) The lease application must:



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(1) describe the property fully by reference to the amount of acreage, the survey name or number, or the abstract number, or by another method adequately identifying the property and the property's location in the county in which the property is situated;

(2) specify the interest thought to be owned by the estate, if less than the whole, but requesting authority to include all of the interest owned by the estate, if that is the intention; and

(3) set out the reasons the estate property described in the application should be leased.

(c) The lease application is not required to set out or suggest:

(1) the name of any proposed lessee; or

(2) the terms, provisions, or form of any desired lease.

Sec. 358.053. SCHEDULING OF HEARING ON APPLICATION; CONTINUANCE. (a) Immediately after the filing of a lease application under Section 358.052, the county clerk shall call the filing of the application to the court's attention, and the judge shall promptly make and enter a brief order designating the time and place for hearing the application.

(b) If the hearing is not held at the time originally designated by the court or by a timely continuance order entered, the hearing shall be continued automatically without further notice to the same time on the following day, other than Sundays and holidays on which the county courthouse is officially closed, and from day to day until the lease application is finally acted on and disposed of by court order. Notice of an automatic continuance is not required.

Sec. 358.054. NOTICE OF HEARING ON APPLICATION. (a) At least 10 days before the date set for the hearing on a lease application filed under Section 358.052, excluding the date of notice and the date set for the hearing, the personal representative shall give notice of the hearing by:

(1) publishing the notice in one issue of a newspaper of general circulation in the county in which the proceeding is pending; or

(2) if there is no newspaper described by Subdivision (1), posting the notice or having the notice posted.

(b) If notice is published, the date of notice is the date printed on the newspaper.

(c) The notice must:

(1) be dated;



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(2) be directed to all persons interested in the estate;

(3) state the date on which the lease application was filed;

(4) describe briefly the property sought to be leased, specifying the fractional interest sought to be leased if less than the entire interest in the tract or tracts identified; and

(5) state the time and place designated by the judge for the hearing.

Sec. 358.055. REQUIREMENTS REGARDING ORDER AND NOTICE MANDATORY. An order of the judge or court authorizing any act to be performed under a lease application filed under Section 358.052 is void in the absence of:

(1) a written order originally designating a time and place for hearing;

(2) a notice issued by the personal representative of the estate in compliance with the order described by Subdivision (1); and

(3) proof of the publication or posting of the notice as required under Section 358.054.

Sec. 358.056. HEARING ON APPLICATION; ORDER. (a) At the time and place designated for the hearing under Section 358.053(a), or at the time to which the hearing is continued as provided by Section 358.053(b), the judge shall:

(1) hear a lease application filed under Section 358.052; and

(2) require proof as to the necessity or advisability of leasing for mineral development the property described in the application and the notice.

(b) The judge shall enter an order authorizing one or more leases affecting and covering the property or portions of property described in the application, with or without pooling provisions or unitization clauses, and with or without cash consideration if considered by the court to be in the best interest of the estate, if the judge is satisfied that:

(1) the application is in proper form;

(2) notice has been given in the manner and for the time required by law;

(3) proof of necessity or advisability of leasing is sufficient; and



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(4) the application should be granted.

(c) The order must contain:

(1) the name of the lessee;

(2) any actual cash consideration to be paid by the lessee;

(3) a finding that the requirements of Subsection (b) have been satisfied; and

(4) one of the following findings:

(A) a finding that the personal representative is exempted by law from giving bond; or

(B) if the representative is not exempted by law from giving bond, a finding as to whether the representative's general bond on file is sufficient to protect the personal property on hand, including any cash bonus to be paid.

(d) If the court finds the general bond insufficient to meet the requirements of Subsection (c)(4)(B), the order must show the amount of increased or additional bond required to cover the deficiency.

(e) A complete exhibit copy, either written or printed, of each authorized lease must be set out in the order or attached to the order and incorporated by reference and made part of the order. The exhibit copy must show:

(1) the name of the lessee;

(2) the date of the lease;

(3) an adequate description of the property being leased;

(4) any delay rental to be paid to defer commencement of operations; and

(5) all other authorized terms and provisions.

(f) If the date of a lease does not appear in the exhibit copy of the lease or in the order, the date of the order is considered for all purposes to be the date of the lease.

(g) If the name or address of the depository bank for receiving rental is not shown in the exhibit copy of a lease, the estate's personal representative may insert that information, or cause that information to be



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inserted, in the lease at the time of the lease's execution or at any other time agreeable to the lessee or the lessee's successors or assignees.

Sec. 358.057. MAKING OF LEASE ON GRANTING OF APPLICATION. (a) If the court grants an application as provided by Section 358.056, the personal representative of the estate may make the lease or leases, as evidenced by the exhibit copies described by Section 358.056, in accordance with the order.

(b) The lease or leases must be made not later than the 30th day after the date of the order unless an extension is granted by the court on sworn application showing good cause.

(c) It is not necessary for the judge to make an order confirming the lease or leases.

Sec. 358.058. BOND REQUIREMENTS. (a) Unless the personal representative of the estate is not required to give a general bond, a lease for which a cash consideration is required, although ordered, executed, and delivered, is not valid:

(1) unless the order authorizing the lease makes findings with respect to the general bond; and

(2) if the general bond has been found insufficient, unless and until:

(A) the bond has been increased or an additional bond given, as required by the order, with the sureties required by law; and

(B) the increased bond or additional bond has been approved by the judge and filed with the clerk of the court in which the proceedings are pending.

(b) If two or more leases of different land are authorized by the same order, the general bond must be increased, or additional bonds given, to cover all of the leases.

Sec. 358.059. TERM OF LEASE BINDING. (a) A lease executed and delivered in compliance with this subchapter is valid and binding on the property or interest in property owned by the estate and covered by the lease for the full term provided by the lease, subject only to the lease's terms and conditions, even if the primary term extends beyond the date the estate is closed in accordance with law.

(b) The authorized primary term of the lease may not exceed five years, subject to the lease terms and provisions extending the lease beyond the primary term by:



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(1) paying production;

(2) bona fide drilling or reworking operations, whether in or on the same well or wells or an additional well or wells, without a cessation of operations of more than 60 consecutive days before production has been restored or obtained; or

(3) a shut-in gas well.

Sec. 358.060. AMENDMENT OF LEASE REGARDING EFFECT OF SHUT-IN GAS WELL. (a) An oil, gas, and mineral lease executed by a personal representative under the former Texas Probate Code or this code may be amended by an instrument that provides that a shut-in gas well on the land covered by the lease or on land pooled with all or part of the land covered by the lease continues the lease in effect after the lease's five-year primary term.

(b) The personal representative, with the approval of the court, shall execute the instrument according to the terms and conditions prescribed by the instrument.

SUBCHAPTER C. MINERAL LEASES AT PRIVATE SALE

Sec. 358.101. AUTHORIZATION FOR LEASING OF MINERALS AT PRIVATE SALE. (a) Notwithstanding the mandatory requirements of Subchapter B for setting a time and place for hearing of a lease application filed under Section 358.052 and the issuance, service, and return of notice, the court may authorize the making of oil, gas, and mineral leases at private sale without public notice or advertising if, in the court's opinion, facts are set out in the application required by Subchapter B sufficient to show that it would be more advantageous to the estate that a lease be made privately and without compliance with those mandatory requirements.

(b) Leases authorized by this section may include pooling provisions or unitization clauses as in other cases.

Sec. 358.102. ACTION OF COURT IF PUBLIC ADVERTISING NOT REQUIRED. (a) At any time after the fifth day and before the 11th day after the filing date of an application to lease at private sale and without an order setting the hearing time and place, the court shall:

(1) hear the application;

(2) inquire into the manner in which the proposed lease has been or will be made; and

(3) hear evidence for or against the application.



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(b) If satisfied that the lease has been or will be made for a fair and sufficient consideration and on fair terms and has been or will be properly made in conformity with law, the court shall enter an order authorizing the execution of the lease without the necessity of advertising, notice, or citation. The order must comply in all other respects with the requirements essential to the validity of mineral leases as set out in Subchapter B, as if advertising or notice were required.

(c) The issuance of an order confirming a lease or leases made at private sale is not required, but such a lease is not valid until any increased or additional bond required by the court has been approved by the court and filed with the court clerk.

**SUBCHAPTER D. POOLING OR UNITIZATION OF ROYALTIES OR MINERALS**

Sec. 358.151. AUTHORIZATION FOR POOLING OR UNITIZATION. (a) If an existing lease or leases on property owned by an estate being administered do not adequately provide for pooling or unitization, the court in which the proceedings are pending may, in the manner provided by this subchapter, authorize the commitment of royalty or mineral interests in oil, liquid hydrocarbons, gas, gaseous elements, and other minerals, or any one or more of them, owned by the estate, to agreements that provide for the operation of areas as a pool or unit for the exploration for, development of, and production of all of those minerals, if the court finds that:

(1) the pool or unit to which the agreement relates will be operated in a manner that protects correlative rights or prevents the physical or economic waste of oil, liquid hydrocarbons, gas, gaseous elements, or other minerals subject to the agreement; and

(2) it is in the best interest of the estate to execute the agreement.

(b) An agreement authorized under Subsection (a) may, among other things, provide that:

(1) operations incident to the drilling of or production from a well on any portion of a pool or unit shall be considered for all purposes to be the conduct of operations on or production from each separately owned tract in the pool or unit;

(2) any lease covering any part of the area committed to a pool or unit continues in effect in its entirety as long as:

(A) oil, gas, or other minerals subject to the agreement are produced in paying quantities from any part of the pooled or unitized area;



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(B) operations are conducted as provided in the lease on any part of the pooled or unitized area; or

(C) there is a shut-in gas well on any part of the pooled or unitized area, if the presence of the shut-in gas well is a ground for continuation of the lease under the terms of the lease;

(3) the production allocated by the agreement to each tract included in a pool or unit shall, when produced, be considered for all purposes to have been produced from the tract by a well drilled on the tract;

(4) the royalties provided for on production from any tract or portion of a tract within the pool or unit shall be paid only on that portion of the production allocated to the tract in accordance with the agreement;

(5) the dry gas, before or after extraction of hydrocarbons, may be returned to a formation underlying any land or leases committed to the agreement, and that royalties are not required to be paid on the gas returned; and

(6) gas obtained from other sources or other land may be injected into a formation underlying any land or leases committed to the agreement, and that royalties are not required to be paid on the gas injected when the gas is produced from the unit.

Sec. 358.152. POOLING OR UNITIZATION APPLICATION. (a) The personal representative of an estate shall file with the county clerk of the county in which the probate proceeding is pending a written application for authority to:

(1) enter into pooling or unitization agreements supplementing, amending, or otherwise relating to any existing lease or leases covering property owned by the estate; or

(2) commit royalties or other interests in minerals, whether or not subject to a lease, to a pooling or unitization agreement.

(b) The pooling or unitization application must also:

(1) sufficiently describe the property as required in an original lease application;

(2) describe briefly any lease or leases to which the interest of the estate is subject; and

(3) set out the reasons the proposed agreement concerning the property should be entered into.





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(c) A copy of the proposed agreement must be attached to the application and made a part of the application by reference.

(d) The agreement may not be recorded in the judge's probate docket.

(e) Immediately after the pooling or unitization application is filed, the clerk shall call the application to the judge's attention.

Sec. 358.153. NOTICE NOT REQUIRED. Notice by advertising, citation, or otherwise of the filing of a pooling or unitization application under Section 358.152 is not required.

Sec. 358.154. HEARING ON APPLICATION. (a) The judge may hold a hearing on a pooling or unitization application filed under Section 358.152 at any time agreeable to the parties to the proposed agreement.

(b) The judge shall hear evidence and determine to the judge's satisfaction whether it is in the best interest of the estate that the proposed agreement be authorized.

(c) The hearing may be continued from day to day and from time to time as the court finds necessary.

Sec. 358.155. ACTION OF COURT AND CONTENTS OF ORDER. (a) The court shall enter an order setting out the court's findings and authorizing execution of the proposed pooling or unitization agreement, with or without payment of cash consideration according to the agreement, if the court finds that:

(1) the pool or unit to which the agreement relates will be operated in a manner that protects correlative rights or prevents the physical or economic waste of oil, liquid hydrocarbons, gas, gaseous elements, or other minerals subject to the agreement;

(2) it is in the best interest of the estate that the agreement be executed; and

(3) the agreement conforms substantially with the permissible provisions of Section 358.151.

(b) If cash consideration is to be paid for the agreement, the court shall also make findings as to the necessity of increased or additional bond, as in the making of leases on payment of the cash bonus for the lease. Such an agreement is not valid until any required increased or additional bond has been approved by the judge and filed with the clerk.

(c) If the effective date of the agreement is not stipulated in the agreement, the effective date of the agreement is the date of the court's order.



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SUBCHAPTER E. SPECIAL ANCILLARY INSTRUMENTS THAT MAY BE EXECUTED WITHOUT COURT ORDER

Sec. 358.201. AUTHORIZATION FOR EXECUTION OF AGREEMENTS. As to any mineral lease or pooling or unitization agreement, executed on behalf of an estate before January 1, 1956, or on or after that date under the provisions of the former Texas Probate Code or this code, or executed by a former owner of land, minerals, or royalty affected by the lease or agreement, the personal representative of the estate being administered may, without further court order and without consideration, execute:

- (1) division orders;
- (2) transfer orders;
- (3) instruments of correction;
- (4) instruments designating depository banks for the receipt of delay rentals or shut-in gas well royalty to accrue or become payable under the terms of the lease; and
- (5) similar instruments relating to the lease or agreement and the property covered by the lease or agreement.

SUBCHAPTER F. PROCEDURE IF PERSONAL REPRESENTATIVE OF ESTATE NEGLECTS TO APPLY FOR AUTHORITY

Sec. 358.251. APPLICATION TO SHOW CAUSE. If the personal representative of an estate neglects to apply for authority to subject estate property to a lease for mineral development, pooling, or unitization, or to commit royalty or another interest in minerals to pooling or unitization, any person interested in the estate may, on written application filed with the county clerk, have the representative cited to show cause why it is not in the best interest of the estate to make such a lease or enter into such an agreement.

Sec. 358.252. HEARING ON APPLICATION. (a) The county clerk shall immediately call the filing of an application under Section 358.251 to the attention of the judge of the court in which the probate proceedings are pending.

(b) The judge shall set a time and place for a hearing on the application, and the personal representative of the estate shall be cited to appear and show cause why the execution of a lease or agreement described by Section 358.251 should not be ordered

Sec. 358.253. ORDER. On a hearing conducted under Section 358.252, if satisfied from the evidence that it would be in the best interest of the estate, the court shall enter an order requiring the personal representative



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promptly to file an application to subject the estate property to a lease for mineral development, with or without pooling or unitization provisions, or to commit royalty or other minerals to pooling or unitization, as appropriate

Sec. 358.254. PROCEDURE TO BE FOLLOWED AFTER ENTRY OF ORDER. After entry of an order under Section 358.253, the procedure prescribed with respect to an original lease application, or with respect to an original application for authority to commit royalty or minerals to pooling or unitization, whichever is appropriate, shall be followed.



**APPENDIX B**

**Limitation on Purchasing Mineral Interests by Mail**

**PROPERTY CODE**

§ 5.151. DISCLOSURE IN OFFER TO PURCHASE MINERAL INTEREST.

(a) A person who mails to the owner of a mineral or royalty interest an offer to purchase only the mineral or royalty interest, it being understood that for the purpose of this section the taking of an oil, gas, or mineral lease shall not be deemed a purchase of a mineral or royalty interest, and encloses an instrument of conveyance of only the mineral or royalty interest and a draft or other instrument, as defined in Section 3.104, Business & Commerce Code, providing for payment for that interest shall include in the offer a conspicuous statement printed in a type style that is approximately the same size as 14-point type style or larger and is in substantially the following form:

BY EXECUTING AND DELIVERING THIS INSTRUMENT YOU ARE SELLING ALL OR A PORTION OF YOUR MINERAL OR ROYALTY INTEREST IN (DESCRIPTION OF PROPERTY BEING CONVEYED).

(b) A person who conveys a mineral or royalty interest as provided by Subsection (a) may bring suit against the purchaser of the interest if:

- (1) the purchaser did not give the notice required by Subsection (a); and
- (2) the person has given 30 days' written notice to the purchaser that a suit will be filed unless the matter is otherwise resolved.

(c) A plaintiff who prevails in a suit under Subsection (b) may recover from the initial purchaser of the mineral or royalty interest the greater of:

- (1) \$100; or
- (2) an amount up to the difference between the amount paid by the purchaser for the mineral or royalty interest and the fair market value of the mineral or royalty interest at the time of the sale.

(d) The prevailing party in a suit under Subsection (b) may recover:

- (1) court costs; and
- (2) reasonable attorney's fees.

(e) A person must bring a suit under Subsection (b) not later than the second anniversary of the date the person executed the conveyance.

(f) The remedy provided under this section shall be in addition to any other remedies existing under law, excluding rescission or other remedies that would make the conveyance of the mineral or royalty interest void or of no force and effect.

