

MINERAL OWNER ESTATE

GENERAL OVERVIEW

Under Texas law, landownership includes two distinct sets of rights, or “estates”: surface estates and mineral estates. Initially, the same person owned these two estates and they may continue to be owned together by one person. However, these estates can also be separated.

In many areas of the state, where there has been extensive oil and gas development, it is common for the mineral estate and the surface estate to be owned by different people. The division, or severance, of the mineral estate occurs when the owner sells the surface estate and retains all or part of the mineral estate; or when the owner sells all or part of the mineral estate and retains the surface estate. If an owner does not expressly retain the mineral estate when selling the surface, the mineral estate automatically is included in the sale.

Under Texas law, underground water belongs with the surface estate. In some instances, the surface estate may sell the water rights to another entity.

DOMINANCE OF MINERAL ESTATE

Regardless of whether the mineral estate and surface estate are held by one owner or have been severed, Texas law holds that the MINERAL ESTATE is the dominant estate.

The mineral estate consists of the following five rights: (1) the right to develop (right of ingress and egress), (2) the right to lease (executive right), (3) the right to receive bonus payments, (4) the right to receive delay rentals, and (5) the right to receive royalty payments. Each of these rights is a separate real property interest and may be owned entirely separate from the others or in any combination. A conveyance or reservation of mineral estates is presumed to include all of the rights, unless a contrary intention is expressed.

There is a distinct and economic difference between a mineral interest and a royalty interest. A mineral interest normally empowers its owner to lease the property for drilling and retain a percentage of gross income as royalty. A royalty interest normally empowers its owner to receive a percentage of royalty retained, or simply the right to a stated share of production from land free and clear of the expenses of finding and developing production. It does not include any of the other rights included within the mineral estate such as the right to lease or the right to receive bonus payments.

The owner of the mineral estate has the right to freely use the surface estate to the extent reasonably necessary for the exploration, development, and production of the oil and gas under the property. The right to freely use the surface estate for the benefit of the mineral estate may be exercised by a company or an individual that has taken a mineral lease from the owner of the mineral estate. The company that takes a lease and actually

engages in mineral recovery operations is referred to as the *lessee* and the mineral interest owner who granted the lease is the *lessor*.

Lessees have broad rights to use the surface for the purpose of exploring for oil and gas. These rights include the right to conduct seismic tests, drill wells at locations they select, and to enter and exit well sites and other facilities at will. Additionally, lessees have the right to build, maintain and use roads for access to and from well sites and facilities as well as to build, use and maintain pipelines and gathering systems to serve wells and facilities on the property.

Except for the limitations discussed below, the lessee has the right to conduct the activities set out above and to reasonable use the surface without getting permission from the surface owner. The lessee does not have to restore the surface. Neither does the lessee have to pay for non-negligent damages caused by the operation. However, if a lessee's use of the surface is found to be negligent, unreasonable, or excessive, the lessee may be liable to pay for damages to the surface owner for the resulting injury.

EXCEPTIONS AND LIMITATIONS

The general rules regarding free use of the surface to benefit the mineral estate may be changed by specific terms of the mineral lease covering the property or the deed that severed the mineral estate from the surface estate. The rights of the lessee may also be limited by the *accommodation doctrine*. This legal doctrine applies in limited circumstances to require the lessee to modify its operations to accommodate an existing surface use when reasonable alternatives are available.

WHAT ARE YOUR OPTIONS AS A MINERAL OWNER?

The vast majority of mineral owners do not have the knowledge or the expertise to negotiate a lease with an exploration and production company, better known as the lessee. The landmen who are employed by energy and production companies work at it every day for a living while the mineral estate owner may do so occasionally, at best. The landman's job is to convince mineral estate owners to agree to the energy company's terms, which are, of course, for their benefit.

Though it is time consuming, mineral estate owners should take the time to visit the *Helpful Links* sites here on the MCPOA home page. There are a number of educational and informative articles that provide some insights into the issues and problems involved when a mineral estate owner attempts to negotiate a lease. The odds of an inexperienced owner reaching a beneficial agreement are not very good. Always keep in mind that the first offer being made will always be the lowest and least favorable. In fact, even the second offer will likely be lower than market. Don't accept heresy from your neighbor. Get the facts! Your bank account will increase.

Oil and gas is tricky, so to speak. It is like the stock market – you can never have enough knowledge and when negotiating these requirements, experience is the one thing you need more than anything else. It is in owner's best interest to have assistance from a well-qualified legal representative. With the busts and booms in the energy markets, there are many new oil and gas attorneys hanging out shingles as proficient in oil and gas law after attending seminars for several weekends in Houston. Experience comes with time, knowledge and contacts. A significant part of experience is knowing what is being paid in the area and being able to compare offers. Ask friends and neighbors. Get recommendations. Take the time to get qualified help from someone you can trust to work for your best interest. There will be costs for enlisting experts, but it will be money well spent.

Another avenue is to consider using a natural resource consultant. These are the people who will negotiate oil, gas and other natural resource leases, including production and royalty payment audits, surface use assessments and pipeline right-of-way easements. Again, money spent for competent knowledge and advice is dollars well spent, and to the owner's advantage.

We have received a number of reports from both mineral and surface owners who were satisfied with the serviced provided by consultants. When it comes to dollars and cents, consultants are the people who know what companies are paying, including payouts for various regions. An example of regional difference is illustrated by payments negotiated for a pipeline right-of-way located south of Saint Jo. The surface owner near Saint Jo was offered \$8 per foot while an owner in the Bowie area was paid \$36 per foot. What makes the difference?