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## Oil and Gas Title Examination: The Basics

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# ONE J

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## OIL AND GAS TITLE EXAMINATION: THE BASICS

DAVID D. HUNT, II\*

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### *Introduction*

Oil and gas title examination methods have undergone significant changes in the past 30 years. Historically the title attorney remained in the law office and examined abstracts of title that were prepared and certified to by a licensed abstracter. By at least 1990 and perhaps before, the stand-up title examination became the norm. This phase saw the attorney traveling to the office of the County Clerk, obtaining a photocopy of the numerical index for the Section of land being examined, then pulling land record

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books individually to examine and take notes on each instrument shown in the Clerk's index with respect to those lands. Typically this examination was conducted while standing up at a table resembling a drafting desk, thus the term "stand-up opinion." While in the courthouse building it was common to supplement this examination with a review of probate records in the Court Clerk's office, as well as property tax records in the offices of the County Assessor.

Although stand-up title examination continues today on a limited basis, a third method has developed and is the new norm: digital land records examined by the title examiner in his or her office. Typically this practice involves hiring a digital imaging technician to make the trip to the County Clerk's office on the attorney's behalf. The digital tech starts with a photocopy of the Clerk's numerical index for the Section of land being examined. Using a digital camera, he or she photographs high resolution images of all documents listed in the numerical index. This digital imaging process is designed to furnish the examining attorney with all information that would have been reviewed if he or she had traveled to the courthouse and pulled the books personally. Generally the data furnished to the attorney includes copies of information from the County Assessor and perhaps probate records from the Court Clerk. At a minimum, the basic information to be supplied must allow the title examiner to replicate the stand-up examination process: a copy of the numerical index, plus a chronological series of all documents reflected in that index.

Regardless of the mechanics used in examining land documents, the objective is the same. The title attorney is tasked with forming an opinion as to ownership of the subject lands and advising his or her E & P company client accordingly. The specific advice to be given depends upon where the company stands in the development process. Is it acquiring, drilling or producing? Depending on the answer to that question, the title examiner might (a) render a due diligence based Acquisition Title Report as a part of an asset purchase from another company, (b) author a Drilling Opinion which confirms title prior to commencement of a new oil or gas well, or (c) issue a Division Order Opinion to include calculation of complex decimal fractions representing all owners' shares of production of oil or gas from a recently completed well.

This presentation will highlight basic concepts of oil and gas title examination, but will be limited by the constraints of the one hour segment allotted for these materials. Primary emphasis will be on preparation of a Drilling Opinion. Also covered will be a discussion of title opinion best practices for organizing and presenting the title examiner's conclusions in the most user friendly format.

*Title Examination Basics**Scope of the Title Examination*

Before getting started with any title examination project, the title examiner and E & P company client should have a clear understanding of what should be examined. Ideally the company will provide a letter or email message to the examining attorney identifying the following:

- Drilling and spacing unit surface boundaries, e.g., all of Section 1-2N-3W<sup>1</sup> (traditional or horizontal 640 acre unit), NW/4 of Section 1-2N-3W (160 acre unit), or E/2 of Section 1-2N-3W and E/2 of Section 12-2N-3W (non-standard horizontal 640 acre unit).
- Likely target formations, e.g., the Springer and Woodford formations.
- Requested depth limitations, e.g., limit the opinion to depths below the base of the Morrow formation, or limit the opinion to the Woodford formation only.
- Copies of previous title opinions the title examiner should rely upon as a basis for the current examination, e.g., enclosed is a 2009 Drilling Opinion prepared by another attorney – you may begin your examination as of the effective date of this prior opinion.
- Copies of Ownership Reports prepared by a landman on the client's behalf.

Based on the above information, the title examiner and client will know whether to obtain County Clerk's indexes for one entire Section of land or two Sections, and whether digital images should be obtained from inception of title forward, or from a later date to the present. In any case it is best to obtain a copy of the entire index, even if the title opinion will rely on an earlier opinion. Likewise it is best to obtain digital images relating to the entire Section of land – sometimes it is difficult to determine solely from

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1. The standard legal description example used throughout this paper will be Section 1-2N-3W, which happens to be located in Garvin County, Oklahoma. The author has no particular knowledge of these lands. The legal description was selected at random and any reference hereafter to landowners, lessees or documents in the chain of title is strictly fictitious.

the index whether a particular land document is applicable to the portion of the Section that is being examined. At the same time, the parties can decide which of them will hire the digital imaging firm. Normally the E & P company arranges for document imaging but that is not always the case.

### *Reliance on Digital Images*

How reliable is a stand-up or digital image-based examination of the county land records? Theoretically, any examination of land titles which falls short of reliance on a complete and certified abstract of title carries a risk of error, principally due to the occasional indexing error by the County Clerk's office. On the other hand, as a practical matter complete abstracts of title are not a viable option. Most abstracters today limit their certifications to surface transactions, expressly excluding from the abstract any instruments affecting title to the oil, gas and mineral estate. Given that abstracts of title represent the gold standard in theory, but cannot be obtained in practice, the title examiner is well advised to include exculpatory language in any title opinion based on a stand-up exam or digital imaging. For example:

This Drilling Opinion was prepared based on an off-site review of photocopies of the County Clerk's Index, plus digital images of instruments listed in such index. Pursuant to your request, the undersigned is relying upon information supplied by a third party, as the undersigned did not travel to the County Courthouse for a personal review of such records. In any event, for complete assurance with regard to title, you should obtain and submit abstracts of title covering the captioned lands from sovereignty to the present date.

Even as title examination practices are making the transition from stand-up review of records by the attorney personally to in-office examination of digital images supplied by a digital imaging service acting on the attorney's behalf, a new permutation is arising. Some counties in Oklahoma have ceased the practice of maintaining a physical index of documents filed in the county's land records, or for that matter physical copies of the documents themselves. Notable examples are Oklahoma, Cleveland and Canadian Counties, where the traditional numerical index has been replaced with database query software and land documents are viewed as an image on a computer screen. For example, the Cleveland County Clerk stopped maintaining hard copies of indexes and the of land documents themselves on November 1, 1997. Electronic indexes and digital images of land

documents as maintained by these and other counties do comply with requirements of Oklahoma Statutes which direct the manner in which County Clerks must keep permanent land records. In particular, Title 19 of the Oklahoma Statutes provides that a “suitable record may include . . . computer storage of such instruments.”<sup>2</sup>

Likewise, private companies have joined certain of the County Clerks in Oklahoma in providing online access to land records. Most notable is the OKCountyRecords.com website maintained by KellPro, Inc. This fee-based company maintains searchable electronic land records for 65 of Oklahoma’s 77 Counties. The range of dates for which records are available varies from one County to the next. KellPro’s online records are an extremely useful tool, but it must be stressed they do not amount to an official source of county land records for the 65 counties that are covered by the service. The shortfall lies in the fact OKCountyRecords.com does not provide a complete index that would meet the statutory requirements found in Title 19 of the Oklahoma Statutes.<sup>3</sup>

This website does allow one to make a search for documents indexed against a particular Section of land. The search results returned by the site are quite useful, but do not necessarily amount to a complete index of all documents relevant to the Section being searched. For example, the land records maintained by the County Clerk in Beaver County are coded differently when a land document relates to multiple Sections of land. Such documents are identified as “MULTI” in the Legal Description field, rather than listing specifically the multiple Sections of land that are affected. When a search is made for a particular Section of land, the search results will not include any document relating to the land that has been coded “MULTI” in the system. For example, an Assignment of Oil and Gas Leases with an exhibit identifying leases on numerous Sections of land will be omitted from the search result.

In summary, to assure a reliable examination of digital images of County land records, the title examiner should insist on obtaining copies or images of the complete County Clerk’s index for the Section of land under examination. The index should be reproduced as to all pages going back to inception of title. Such is the case even if the title examination will rely on another attorney’s previous title opinion. There are times when the prior examiner’s underlying assumptions are not articulated fully in his or her title opinion. Access to a complete index is helpful when working with another attorney’s opinion and will allow for the review of at least a

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2. 19 Okla. Stat. §286.

3. 19 Okla. Stat. §291 (numerical index) and 19 Okla. Stat. §287 (grantor/grantee index).

summary of all land documents in the chain of title. Likewise, the title examiner should be furnished with all pages of every document in the chain of title for the time period being examined. You should not accept a set of images which omits documents in the early chain of title which appear to be irrelevant today, e.g., real estate mortgages dating back to the 1920's, nor should you accept abstracted or shortened versions of lengthy documents. That means the full text of a 200 page pipeline mortgage should be imaged and furnished for your review. The point is to make certain you come as near as possible to replicating the experience of traveling to the County Clerk's office and conducting the examination personally.

#### *Examining the Land Records – Taking Good Notes*

Assuming the usual situation holds true, the object of the title examination project will be to prepare a Drilling Opinion (a/k/a Drilling Title Opinion) covering a complete Section of land for the time period from inception of title to the present. In order to do so effectively, you will need to examine all land documents and arrive at an opinion as to ownership of the (i) surface estate, (ii) oil, gas and other minerals in fee, (iii) oil and gas leasehold, and (iv) overriding royalty interests as applicable. As for each of these ownership categories you must also identify defects in marketability of title, as well as other parties' interests which place a burden on the ownership interest, e.g., mortgages, liens and easements.

However, prior to making any of these ownership determinations you will examine all instruments in the chain of title and take adequate notes on an instrument-by-instrument basis. The County Clerk's index is a chronological summary listing of all documents affecting the subject lands and generally speaking your notes should be made in the same order as shown in the index. Historically a title examiner's notes were taken in longhand on a sheet of paper pre-printed with a grid to allow key information to be filled in uniformly from one document to the next. A typical note-taking form might look something like this:

ENTRY	GRANTOR	INSTR.	DATED				FILED				RECORDED	GRANTEE	1	2	3	4	5	6	COMMENT
			3	4	5	3	7	5	3	7									
75	Mary Smith, widow	WD	3	4	55	3	7	55		451/322	Robert Thomas					x			SW/4 (no reservation).
76	Robert Thomas, single	MTG	3	5	55	3	7	55		451/324	Mary Smith					x			SW/4, \$50,000 due 3/5/65.
77	Mary Smith, widow	REL	3	5	65	4	1	65		550/400	Robert Thomas					x			Releases Mortgage at 76.

The example above shows three related instruments in the chain of title and briefly but adequately summarizes the effect of each instrument. The purpose of each column is as follows:

- Entry. These are the 75<sup>th</sup> through 77<sup>th</sup> instruments in the chain of title. Entry numbers are useful for referring to the instrument later, e.g., the comment associated with Entry 77.
- Grantor. The name and marital status of the document's grantor is shown here.
- Instr. The type of instrument is identified, i.e., Warranty Deed, Mortgage, and Release, respectively.
- Dated. The date of execution of the instrument is shown here.
- Filed. The date the instrument was filed with the County Clerk is shown here.
- Recorded. The Book and Page of recording with the County Clerk is shown here.
- Grantee. The name of the document's grantee is shown here.
- 1/2/3/4/5/6. At some point in the examination it will be possible to identify recurring tracts of land and they can be noted here, i.e., the SW/4 has been set up as Tract 4.
- Comment. The land document's purpose is noted here, i.e., Entry 75 conveyed the SW/4 with no reservation on the part of the grantor. Had there been a defect in the instrument it would be noted here as well.

Many title examiners have begun taking their examination notes in an Excel spreadsheet. It is quite easy to create a blank template which may be reused from one title examination project to the next. There are a number of advantages to entering notes into a spreadsheet document versus handwritten notetaking: (a) A spreadsheet is searchable, particularly useful when chaining title in connection with an examination involving hundreds of instruments; (b) Lengthy names or legal descriptions may be copied and pasted from one instrument to another – in some cases a repeated name will auto-fill after keying in one or two characters; (c) Legal descriptions, special provisions in leases and other lengthy items can be copied and pasted from the notes spreadsheet directly into the title opinion itself; and (d) maintaining notes in an electronic format facilitates backing up this



important information and preventing data loss (imagine losing a set of notes that was built over the course of two months' time).

The subtitle of this portion of the presentation is "taking good notes". For better or worse it is beyond the scope of this paper to offer a comprehensive how-to course on all aspects of oil and gas title examination. However, some discussion of what amounts to good notetaking is in order:

- Grantor. Take note of the full names of all grantors appearing in the instrument, including the parties' marital status if noted. If a grantor states he, she or it was formerly known by another name, or is an heir or corporate successor by merger, note it. In the case of multiple grantors recited at the beginning of the instrument, be sure all such parties also executed the instrument and that such signatures were in the presence of a notary. Trusts should be identified by the full names of the Trustee(s) and the complete name of the Trust itself. In some instances the grantor may be identified as the named Trust directly.
- Date and Recording Information. Date of the instrument, date of recording and book and page of recording are important details that should be noted accurately. If an instrument contains an effective date which is different from the execution date, that too should be noted.
- Grantee. As with the grantor, the full names of all grantees should be noted accurately, including identification of Trusts and Trustees, Corporations, Limited Liability Companies, etc. If two individual grantees are identified as wife and husband, that information should be in the notes, as well as any statement that title is taken as joint tenants with right of survivorship (or not). Take note if multiple parties are granted distinct fractional or percentage interests among themselves.
- Legal Description. Make a careful and complete notation of the legal description of the lands affected by the instrument. Sometimes the description is as simple as the SW/4 of a particular Section, while other times a half page metes and bounds description is involved. Also confirm the Section, Township and Range are accurate.

- Reservations, Limitations and other Special Provisions. Scour the instrument for reservations, limitations and special provisions. In the case of a Warranty Deed, watch out for a reservation of all or part of the oil, gas and other minerals, or the reservation of a life estate in favor of the grantor. Review Assignments of Oil and Gas Leases for wellbore limitations, depth limitations, reservations of overriding royalty interests and any other special provisions. If a Lease Assignment recites it is subject to an unrecorded letter agreement, take note of it. Oil and Gas Leases are increasingly prone to inclusion of numerous special provisions, all of which should be noted.
- Defective Instruments. Be sure to make a prominent note of instruments with title defects. A red pen on paper or red font in Excel can be used to highlight title problems that will become the subject of title objections and requirements when the opinion is drafted. A short list of common issues includes (i) documents executed by persons who do not appear to own any interest, (ii) defects in the manner of executing the document or in the notary acknowledgment, (iii) errors in legal descriptions, (iv) purporting to convey or reserve a greater interest than what the grantor owns of record, and (v) instruments by purported heirs without adequate documentation of the claimed interest.
- Old Oil and Gas Leases. In some cases an old Oil and Gas Lease is one that expired by its terms many years ago and is no longer of any concern. In other instances an old Oil and Gas Lease is nonetheless effective today because it has been held by production from a well or wells drilled during its primary term. Unfortunately there is no uniform industry practice that assures us that expired Oil and Gas Leases will be the subject of a Release of Oil and Gas Lease that is recorded in the County land records. Instead, it is up to the title examiner to research the oil and gas well history that might impact the validity of an old Oil and Gas Lease.<sup>4</sup> Some such Leases will have been granted on all or parts of multiple Sections of land. Under many circumstances a well drilled and completed as a producer on any one of the multiple Sections will be adequate to perpetuate the old Oil and Gas Lease as to all lands covered by the Lease. Of course the analysis becomes much easier in the case of

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4. Secondary research methods will be discussed immediately below.

an old Oil and Gas Lease that is limited to a single Section of land. In that instance it is sufficient to research the well history for that particular Section alone. An exception would be the situation where a multi-Section secondary recovery unit has been established by Order of the Oklahoma Corporation Commission, including lands covered by the old Oil and Gas Lease.<sup>5</sup> If there is any doubt about expiration of any such old Oil and Gas Lease, the issue should be addressed in an appropriate title opinion requirement.

#### *Finding and Reviewing Secondary Sources*

No doubt the County Clerk's land records are the most critical source of information in connection with oil and gas title examination. However, any meaningful determination of ownership for title opinion purposes requires a review of important secondary sources of information. Without these secondary sources the title examiner is operating in a vacuum that will make it impossible to render a title opinion that is useful to his or her E & P company client. Fortunately most of these secondary sources are available online and many can be obtained without cost. A non-exhaustive list of these sources is as follows:

- Acreage Content for Section Examined. The title opinion to be rendered should identify the acreage content of the Section being examined, as well as that of each tract within the Section. In most cases, the digital images furnished for review will include a plat of the subject Section with acreage content noted. Normally the Section will contain 640 acres. However, total acreage will be different if the Section is located along the North or West side of the township, i.e., correction (for curvature of the Earth) Sections 1 – 7 and 18, 19, 30 and 31. A plat of a correction Section will depict tract-by-tract acreage content as well as its adjusted overall acreage, which might be greater than or less than 640 acres. If no plat is included with the digital images provided, the Bureau of Land Management offers no-cost online access to original government survey plats that include acreage content information.<sup>6</sup> From this website select Oklahoma in the State field and enter the Township and Range (no Section). The site will return a list of surveys for the

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5. See 52 Okla. Stat. §287.1, et seq.

6.

<http://www.glorerecords.blm.gov/search/default.aspx#searchTabIndex=0&searchByTypeIndex=1>

selected 36-Section Township. Select the most recent plat image and then zoom to your Section of land. Numbered government lots with non-standard acreage content will be noted, along with total acreage for the correction Section, e.g., Section 1-2N-3W contains 638.32 acres according to the 1899 government survey. Government Lots 1 through 4, a/k/a the NE/4 NE/4 and NW/4 NE/4 and NE/4 NW/4 and NW/4 NW/4 respectively, will have non-standard acreage content. The balance of the Section will be as usual, e.g., the SW/4 and SE/4 contain 160 acres each.

- Prior Well History. An important aspect of oil and gas title examination is knowing whether oil and gas wells have been drilled on the subject lands in the past and whether such wells are or were productive. For example, while taking notes of instruments in the chain of title you may come across a series of old but unreleased Oil and Gas Leases dating 50 years ago. More importantly, your examination shows that parties in the chain of title have continued to assign interests in some or all of those old Leases after the conclusion of the 10 year primary term. This scenario suggests the existence of a previous oil or gas well capable of extending the old Leases past their respective primary terms. Online methods of finding prior drilling activity and/or production history include these sources:
  - OCC Imaging Web Application – Well Records.<sup>7</sup> (Free) The Oklahoma Corporation Commission (the “OCC”) provides a great deal of relevant information at no cost. Enter the subject Section of land in the Legal Description field, e.g., “0102N03W” refers to Section 1-2N-3W. The site returns a list of permits to drill (1000) well completions (1002A), pluggings (1003), transfers (1073) and other relevant forms. Click the ID link in the left column and the site produces a pdf version of the document itself. Caveat: The search by Section is indexed to the surface location of the well(s), i.e., a horizontal well drilled on a pad in the neighboring Section of land will not be included in search results. The OCC site does not provide historical production information searchable by specific wells or Sections of land.

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7. <http://imaging.occeweb.com/imaging/OGWellRecords.aspx>

- Pangaea, Inc. – Well Info.<sup>8</sup> (Fee Based) Log in with your paid account ID and navigate to the Well Info portion of the site. Enter the Section, Township and Range. Pangaea returns the same information as the OCC site, but with an important addition: search results are designed to include all relevant well information, even if the surface location is elsewhere. Pangaea includes a link to a pdf image of the applicable OCC form. Caveat: In limited circumstances the available records will not include all historical documents and instead are limited to more recent information. The search result page states clearly whether the documents listed are limited or complete. Pangaea also provides historical production information relating to the Section of land from 2000 to the present via its Production link.
  
- Oil-Law Records Corporation – Well Data.<sup>9</sup> (Fee Based) Similarly, log in with your paid account and access Well information under the Well Data section of the site. Enter the Section, Township and Range. Oil-Law returns the same information as the OCC site, but has the advantage of grouping related information for easier review. For instance, a particular well's initial completion report, amendments, re-completions and pluggings will be listed together. Oil-Law provides an abstracted version of the relevant OCC form. Caveat: Like the OCC site, wells are indexed by surface location. An applicable well that has an offsite surface location will not be included in search results. Oil-Law provides a link to historical production information from 1979 to the present. That link is located alongside the well record itself.
  
- OCC Spacing and Pooling Orders. Well Spacing Orders entered by the Oklahoma Corporation Commission will tell the title examiner the normal pattern of development for the subject Section of land, e.g., 640 acres (entire Section), 80 acres in a stand-up pattern (E/2 NW/4) or 320 acres in a lay-down pattern (S/2). The applicable drilling and spacing unit will impact the portion of the title opinion which shows working interest ownership on a drilling unit basis – does the proposed spacing unit consist of the entire Section or smaller subdivisions of the Section? Inquiring of your client and/or

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8. <http://www.pangaeadata.com>

9. <http://welldata.oil-law.com>

reviewing existing Spacing Orders will provide the answer. Also important are existing Pooling Orders to the extent the scope of the title opinion will include formations subject to an existing Pooling Order, especially those Orders entered since 1988. Under current law, a Pooling Order impacts the respondents' well participation rights in future wells drilled to the same formations as those covered by the initial Order.<sup>10</sup> If a leasehold owner elected not to participate in drilling of a Woodford well under a 1995 Pooling Order, that owner would be bound by the same election in the case of a proposal to drill a new Woodford well on the same spacing unit. The same is true of an unleased mineral owner who elected to receive a cash bonus and 3/16 royalty under the 1995 Pooling Order. From a title examination perspective, the terms and scope of that OCC Order must be taken into account. Essentially the same online sources are available to provide Spacing and Pooling Orders as those discussed above for well history data:

- o OCC Case Processing Web Application.<sup>11</sup> (Free) This OCC application requires a compatible Java plug-in, but does allow for a no-cost method of searching for and retrieving OCC Orders via a Section, Township and Range search. From the main search screen, the procedure involves creating a query that looks like this: "Section equals 01 and Township equals 02N and Range equals 03W." Be sure to use two digit numerals in the query. The Get Result button should return a summary table of OCC cases affecting Section 1-2N-3W. Pdf images of Orders can be retrieved from the results page. Unfortunately this site is problematic because it sometimes fails to return all relevant results. For instance, using the author's standard example, Section 1-2N-3W was searched and only one result was returned despite the existence of eight (8) OCC Orders impacting these lands. The existence of those eight OCC matters was confirmed using the Pangaea, Inc. site described below.

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10. See *Amoco Production Co. vs. Corporation Commission*, 1986 OK CIV APP 16, 751 P.2d 203 (approved for publication by the Oklahoma Supreme Court; mandate issued February 19, 1988), in which the Court held Pooling Orders are effective prospectively to affect rights of owners as to the entire drilling and spacing unit and not just the wellbore of the well drilled under terms of the subject Pooling Order.

11. <http://occeweb.com/Orawebapps/OCCOraWebAppsone.html>

- Pangaea, Inc. – Apps & Orders.<sup>12</sup> (Fee based) Log in with your paid account ID and navigate to the Apps & Orders portion of the site. Enter the Section, Township and Range. Pangaea returns a summary table of all relevant OCC matters affecting the lands with links to pdf versions of any Orders that have been entered. These matters include Spacing, Pooling, Unitization, Increased Density and Well Location Exceptions. The table also shows pending Applications which have been filed but not yet concluded at the Commission.
- Oil-Law Records Corporation – Regulatory Data.<sup>13</sup> (Fee Based) Similarly, log in with your paid account and access the Regulatory Data section of the site. Enter the Section, Township and Range. Oil-Law returns a summary table of all relevant OCC matters affecting the lands with links to pdf versions of any Orders that have been entered. These matters include Spacing, Pooling, Unitization, Increased Density and Well Location Exceptions. The table also shows pending Applications which have been filed but not yet concluded at the Commission.
- Oklahoma Title Examination Standards. The Oklahoma Title Examination Standards are maintained and updated by the Real Property Law Section of the Oklahoma Bar Association, with changes approved annually by the OBA House of Delegates. These standards are a must have guide if one is to undertake an examination of title in this State. The Title Standards may be accessed online<sup>14</sup>, although the most efficient method involves purchasing the printed Oklahoma Title Examination Standards Handbook. It is published annually after the first of the year at a current cost of \$8.00, purchased directly from the Oklahoma Bar Association. These standards are an authoritative guide in determining what does and does not constitute a proper objection to title to real estate, including oil, gas and mineral and leasehold interests. The persuasiveness of these Title Standards is evident from the fact most oil and gas title opinions rendered in this State contain a variation on the following limiting or exculpatory language:

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12. <http://www.pangaeadata.com>

13. <http://www.oil-law.com>

14. 16 Okla. Stat., Chapter 1 App., §1.1, et seq.

In rendering this opinion, the undersigned has omitted to make objections to title or requirements with regard to matters not construed as an encumbrance or title defect so long as the same are not so construed under the real estate title examination standards of the Oklahoma Bar Association where applicable.

In short, do not undertake an examination of title to real estate or oil and gas properties in Oklahoma unless you have a current set of the Oklahoma Title Examination Standards close at hand.

- Landman's Ownership Report. Chances are your E & P company client previously engaged a field landman to search the County land records and other sources at the time oil and gas leases were being acquired for the lands that are the subject of your title opinion. The landman likely prepared a formal Ownership Report containing his or her conclusions as to the status of title to the surface, mineral estate and existing oil and gas leasehold. Of course the title attorney will make an independent evaluation of the status and quality of title to the lands, but an existing Ownership Report can be a great tool for a number of reasons. First there is the "second opinion" factor. Why not compare the attorney's ownership conclusions with those of the landman? Differences of opinion will warrant a careful review of the reasons for those differences. Sometimes the field landman had the opportunity to speak with owners or descendants of deceased owners and was able to gather relevant family history that would not appear in the chain of title. Perhaps the landman was directed to formal probate proceedings had in a different County. An Ownership Report is a valuable source if one is available for review.

#### *Determining Ownership – Building a Chain of Title*

Once the title examination notes have been completed and the secondary sources reviewed, the next task is to make a determination of ownership of the surface, mineral estate and oil and gas leasehold. This process of chaining title begins with the land Patent from the sovereign. The grantor of this initial conveyance might be the United States, the Commissioners of the Land Office of the State of Oklahoma, or a Native American Indian Tribe. As with any other land deed, the Patent should be examined carefully for the presence of reservations of mineral rights or other important



conditions or limitations. This beginning point is commonly referred to as the inception of title.

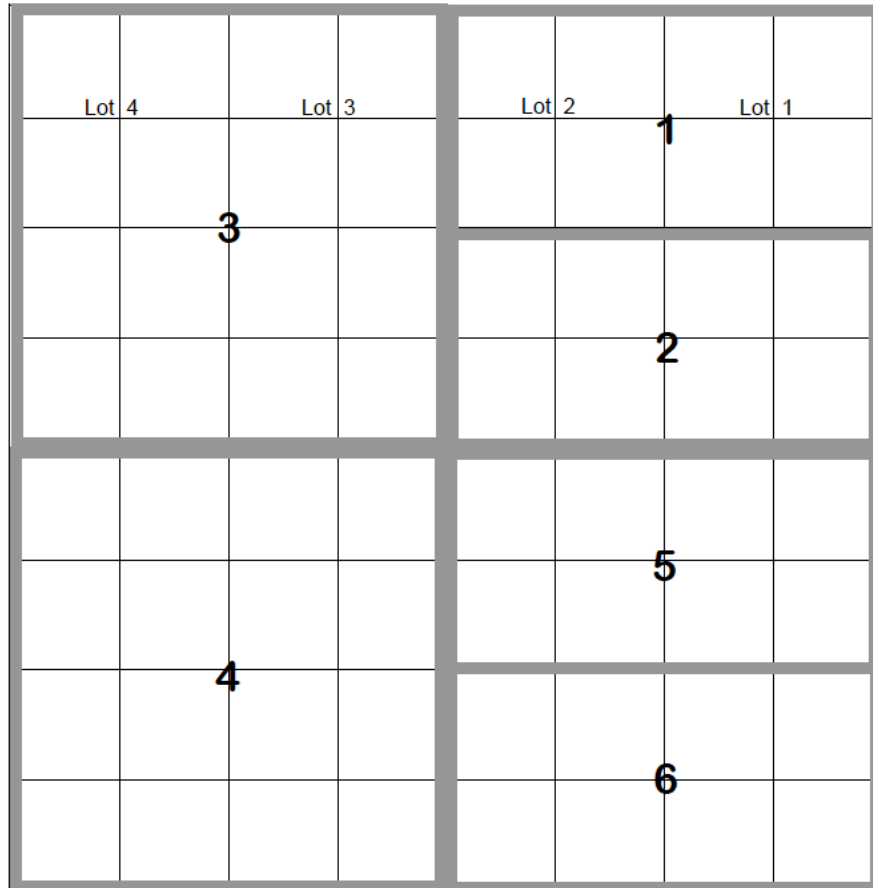
In Oklahoma title examination practice it is the rare exception to find the entire 640 acre Section patented from the government as a single tract. This author has seen a few instances of Patents conveying a complete Section with respect to timber lands in Southeastern Oklahoma, but only a few. It also is unusual to have the lands as originally patented remain in one parcel over time, e.g., a land Patent covering the SW/4 subsequently might be subdivided into the W/2 SW/4, NE/4 SW/4 and SE/4 SW/4, with or without a reservation of the mineral estate along the way.

Identification of distinct parcels of land is important because the ownership set out in the opinion will be built around separate tracts having common characteristics. By the time the notetaking process is completed (and often earlier), the examiner will see a pattern of tracts that should be set apart from the others. The point is to create no more tracts than needed, while recognizing that one parcel will differ from another in such a way the two parcels cannot be tabulated as one in the opinion. Below are key factors in identifying distinct tracts:

- Mineral Owners. If the NE/4 has a certain group of mineral interest owners and the NW/4 has even a single mineral interest owner who is a different person from the NE/4 group, those two quarter sections should be set up as different tracts.
- Fractional Mineral Interests. Even if the NE/4 and NW/4 share precisely the same mineral interest owners, any difference in fractional interests between the two should result in creating separate tracts. For example, if John Smith and Mary Jones each own a 1/4 mineral interest in the NE/4, but they own 1/8 and 3/8 respectively in the NW/4, separate tracts should be created.
- Oil and Gas Leases. If Mary Jones owns the full mineral interest in the N/2 but executed two separate and presently effective oil and gas leases, one for the NE/4 and another for the NW/4, separate tracts are best.
- Oil and Gas Leasehold. If Mary Jones instead executed a single lease for the entire N/2, normally such lands could be treated as a single tract. The situation changes when Company A is assigned the lease as to the NE/4 and Company B obtains an assignment as to the NW/4. In that instance two tracts should be created.

- Depth Severances. If Mary Jones executed a single lease for the entire N/2 and Company A was the sole owner of the lease, usually the N/2 would be treated as one tract. However, if Company A partially released the lease, but only as to rights below the base of the Marmaton formation in the NW/4, the NW/4 and NE/4 should be maintained as two separate tracts.
- Surface Ownership. Differences in surface ownership do not create a need to establish separate tracts for mineral and leasehold ownership purposes. If John Smith owns the surface estate in the NE/4, Mary Jones owns the surface estate in the NW/4, and mineral and leasehold ownership is common as to the entire N/2, then a single tract can be maintained. In that instance the N/2 would be set up as Tract 1, with the NE/4 identified as Surface Tract 1A and the NW/4 called Surface Tract 1B.

Using the guidelines set out above, the complete set of notes taken by the title examiner will suggest a method of dividing the subject lands into separate tracts. Although not absolutely necessary to do so, long-standing tradition provides that tract numbering begins in the Northeast Corner of the Section with Tract 1 and proceeds in a counter-clockwise direction ending in the Southeast Corner. A Section plat depicting separate tracts for use in examining title to our fictitious Section 1-2N-3W is shown below. A sample title opinion used for illustration in a later section of this paper is based on the following tract plat:



**Section 1-2N-3W, 638.32 acres, more or less.**

Once the various tracts have been identified and set up, the title examiner should review all land documents relating to Tract 1, then Tract 2 and so on. Begin with the land Patent and proceed through the notes of the title examination, tracking each Deed, Final Decree, Mineral Deed, effective Oil and Gas Lease, Assignment of Oil and Gas Lease, etc. Probably the most efficient way to follow and update ownership changes throughout the chain of title is to use an Excel spreadsheet set up for that purpose. A good spreadsheet template for tract-by-tract ownership should look something like the following:

Net Acres=	0.000000				
<b>Tract 1:</b>					
<u>Surface Estate</u>					
	Fractional				
<u>Owner</u>	<u>Interest</u>				
	<b>ALL</b>				
<u>Mineral Interest</u>					
	Fractional		Net Mineral	Royalty	Under
<u>Owner</u>	<u>Interest</u>		<u>Acres</u>	<u>Interest</u>	<u>Lease</u>
			0.000000		
			0.000000		
			0.000000		
			0.000000		
			0.000000		
			0.000000		
	<b>0%</b>		<b>0.000000</b>		
<u>Working Interest</u>					
	Fractional		Net Mineral	Net Revenue	Under
<u>Owner</u>	<u>Interest</u>		<u>Acres</u>	<u>Interest</u>	<u>Lease</u>
			0.000000		
			0.000000		
			0.000000		
			0.000000		
	<b>0%</b>		<b>0.000000</b>		

In the example above, Net Mineral Acres is a calculated value that is dependent on the fraction entered in the Fractional Interest column and the

Net Acres entered at the top of the sheet. The figures in bold font are calculated values amounting to the sum of the numbers above them. This practice amounts to a good failsafe – if the net acres do not add up correctly, the fractions are in error. Notice the net acres are calculated to 6 decimal places, generally considered to be adequate. More rows can be inserted into the spreadsheet to accommodate more complex mineral or working interest ownership. Rows can be deleted later if not needed. Separate sheets are maintained for each distinct tract. When the spreadsheet has been completed for the tract and cleaned up as needed, the final ownership spreadsheet will look similar to the example below:

Net Acres=	79.580000					
<b>Tract 1: Lots 1 and 2 (a/k/a N/2 NE/4) of Section 1-2N-3W, containing 79.58 acres, more or less.</b>						
<u>Surface Estate</u>						
	Fractional					
<u>Owner</u>	<u>Interest</u>					
Mary Jones	<b>ALL</b>					
<u>Mineral Interest</u>						
	Fractional			Net Mineral	Royalty	Under
<u>Owner</u>	<u>Interest</u>			<u>Acres</u>	<u>Interest</u>	<u>Lease</u>
Mary Jones	5/8			49.737500	3/16	1
John Smith	3/8			29.842500	1/5	2
	<b>100%</b>			<b>79.580000</b>		
<u>Working Interest</u>						
	Fractional			Net Mineral	Net Revenue	Under
<u>Owner</u>	<u>Interest</u>			<u>Acres</u>	<u>Interest</u>	<u>Lease</u>
Company A, LLC	5/8			49.737500	81.250000%	1
Company B, LLC	3/8			29.842500	80.000000%	2
	<b>100%</b>			<b>79.580000</b>		

A spreadsheet that has been formatted in this way can be copied and pasted directly from the spreadsheet file into the word processing document as a table. The first row (containing “Net Acres = 79.580000”) is for calculation purposes only and not pasted into the Word document.

In addition to calculating ownership separately by tract, the title opinion also should include a consolidated working interest ownership table which combines the tract-by-tract working interests into a single set of calculations. That consolidated ownership should reflect working interest ownership throughout the proposed drilling and spacing unit. In the case of a Drilling Opinion, the combined figures will focus on identity of working interest owners, their unit-wide fractional interests, net acres, net revenue interests and leases held by each working interest owner. Overriding royalty burdens are shown as a deduction from the net revenue interest. A Division Order Opinion would include an expanded set of consolidated figures to include net revenue interests of all owners – royalty, working interest and overriding royalty interest – usually expressed as a decimal fraction calculated to 8 or 9 decimal places. Under applicable Oklahoma law,<sup>15</sup> a second set of unit-wide calculations is required in order to show the royalty owners’ proportionate royalty share and the working interest owners’ proportionate production interest as those terms are defined in the statute.

The table which follows builds on the example above for Tract 1 of Section 1-2N-3W, which Section contains 638.32 acres in all. In the example below, both Company A, LLC and Company B, LLC have the same proportion of leasehold acreage throughout the unit (5/8 at 3/16 royalty and 3/8 at 1/5 royalty respectively), except that 160 acres in the unit are unleased, Company A’s Lease 4 is subject to a 3.25% of 8/8 overriding royalty and Company B’s Lease 6 is subject to a 1.00% of 8/8 overriding royalty.

Acres in Unit=	638.32											
											Combined	Combined
Owner	Fractional Interest			Net Mineral Acres	Working Interest	Net Revenue Interest	Under Lease	Net Mineral Acres	Working Interest			
Company A, LLC	5/8	X	398.32	/ 638.32	248.950000	39.0008146%	81.250000%	1&3	298.950000	46.8338764%		
<i>Plus</i>	5/8	X	80.00	/ 638.32	50.000000	7.8330618%	78.125000%	4 <sup>1</sup>				
Company B, LLC	3/8	X	398.32	/ 638.32	149.370000	23.4004888%	80.000000%	2&5	179.370000	28.1003259%		
<i>Plus</i>	3/8	X	80.00	/ 638.32	30.000000	4.6998371%	79.000000%	6 <sup>2</sup>				

15. See Oklahoma’s Production Revenue Standards Act, 52 Okla. Stat. §570.1, et seq.

Unleased	100%	X	160.00	638.32	160.000000	25.0657977%	87.500000%	Unleased	160.000000	25.0657977%
					638.320000	100.0000000%			638.320000	100.0000000%
<sup>1</sup> This Lease is subject to an overriding royalty of 3.25% of 8/8, proportionately reduced, in favor of Company C.										
<sup>2</sup> This Lease is subject to an overriding royalty of 1.00% of 8/8, proportionately reduced, in favor of Company D.										

This table also is based on an Excel spreadsheet that allows for copying and pasting directly from the spreadsheet to the word processing document. It can be expanded to accommodate additional working interest owners as needed. Also, some E & P company clients request an additional column to reflect the average net revenue interest based on each working interest owner's leases and burdens, e.g., Company A, LLC has an average net revenue of 80.727337%. For Company B, LLC the figure is 79.832748%. These figures represent what each company's net revenue would be if it owned 100% of the leasehold and allows for an apples-to-apples comparison of their respective lease burdens.

### *Drafting the Title Opinion*

#### *Standard of Review – How High is the Bar?*

Generally speaking, a formal title opinion involves examining and evaluating title in accordance with the standard of marketable title. A Drilling Opinion or Division Order Opinion should aspire to marketable title, basically a perfect state of title. The Oklahoma Title Examination Standards define marketable title as follows:

A marketable title is one free from apparent defects, grave doubts and litigious uncertainty, and consists of both legal and equitable title fairly deducible of record.

\* \* \*

Comment: Marketable title is a title free of adverse claims, liens and defects that are apparent from the record. Any objections should be reasonable and not based on speculation. For purposes of this definition, words describing the quality of title such as perfect, merchantable, marketable and good, mean one and the same thing.<sup>16</sup>

For title examination purposes, a marketable title is one that is free of any defects. However, as stated earlier the title opinion generally contains a statement saying the examiner has omitted references to defects that would

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16. 16 Okla. Stat., Chapter 1 App., §1.1.

not be so construed under the Oklahoma Title Examination Standards.<sup>17</sup> Marketable title is the benchmark for preparation of a Drilling Opinion or Division Order Opinion.

On the other hand, the standard of title will be lessened when your E & P company client seeks to purchase oil and gas properties from a third party in an asset purchase transaction. As the examining attorney, you may be requested to examine title and prepare a series of Acquisition Title Reports in connection with a pre-purchase due diligence examination. The standard of acceptable title in this circumstance is a function of what the buyer and seller have agreed to in their Purchase and Sale Agreement. Generally speaking the quality of title being sought will be referred to as “defensible”, i.e., if an adverse claim or lawsuit arose after closing occurred the title could be defended successfully. The contractually defined term Defensible Title is variable and depends on what definition has been ascribed to it by the parties to the agreement. The following paragraph illustrates a common and simplified framework for such a definition:

As used in this Agreement, the term “Defensible Title” means that title of the Seller which, subject to Permitted Encumbrances:

- (a) entitles Seller to receive not less than the net revenue interest shown on Exhibit A hereto of all hydrocarbons produced, saved and marketed from any Well, Lease or Unit;
- (b) obligates the Seller to bear a percentage of the costs and expenses for such Well, Lease or Unit not greater than the working interest shown on Exhibit A; and
- (c) is free and clear of all Encumbrances other than Permitted Encumbrances.

The defined term “Permitted Encumbrances” allows the parties to negotiate for (i) exclusion of technical issues that normally are accepted without objection by a purchaser, e.g., customary consent requirements imposed by governmental agencies, or (ii) title defects that are considered low risk, e.g., defects in the early chain of the title consisting of the mere failure to recite marital status in a document.

In summary a defensible title is one that assures the oil and gas leasehold owner will (a) be paid at least the net revenue interest that is represented, (b) be burdened by no more than the working interest percentage that is represented, and (c) take a quality of title that is free from liens and encumbrances other than those it has agreed to accept. Defensible title is

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17. See recommended limitation language at page 13 above.



the customary standard in connection with oil and gas asset purchase transactions, but is not used in the preparation of a Drilling Opinion or Division Order Opinion.

### *Elements of a Drilling Opinion*

Included with this paper as Appendix 1 is a sample Drilling Opinion. It is based on fictitious Section 1-2N-3W and follows the Section Plat showing Tracts 1 through 6 on page 16 above. Methods of formatting and organization can vary widely from one title examiner to the next. The example provided here is the author's format, one that has been altered over time as different clients have made requests that have been incorporated and frankly resulted in a better product overall. The various elements of this sample opinion are discussed as follows.

Introduction. Similar to a good newspaper article, a title opinion should start off by identifying the "who, what, where, when, why and how" of the title examination project without delay. It is a mistake to bury any of these important basics in the interior of the opinion. The sample Drilling Opinion addresses each of these aspects in the first half of the first page, starting with the attorney's letterhead and continuing to the end of the Instruments Examined section:

- Who. The term "who" is a multi-part element. Identify the client entity *and* the individual who asked you to do the work. Naming the company is an obvious choice, but less obvious is the importance of identifying the person with whom you are working. In larger organizations listing the individual's name will help both you and the company keep better track of the project. Another important "who" relates to authorship of the opinion. The law firm letterhead should identify the author, or at least the author's law firm and location.
- What. In this case, "what" is a Drilling Opinion. Anybody looking at this document should be told at first glance whether it is a Drilling Opinion, Division Order Opinion, Acquisition Title Report, or perhaps a supplemental opinion. Also, directly under the heading "Drilling Opinion" is shown a statement of the scope of the opinion. In this case it covers all surface, mineral and leasehold interests in Section 1, excluding ownership of existing wellbores. If the opinion were limited to rights from the surface to a particular depth, or limited to a specific wellbore, that information should be stated in this introductory paragraph.

- Where. Immediately under the addressee is noted the legal description, acreage content and the County where the land is situated.
- When. This element is a two part answer. “When” refers to the date of the opinion at the top of the page, but also its effective date. The first item of the Instruments Examined section identifies the effective date as August 15, 2014 at 5:00 p.m. Instruments recorded in the land records after that date will be considered outside the scope of the opinion.
- Why. The entire first paragraph directly under the heading Drilling Opinion should be a statement of the scope of the title examination project – tell the reader why the opinion is being prepared.
- How. In other words, how did you arrive at your conclusions? The Instruments Examined section should list all of the information that was reviewed in the process of determining ownership of the interests identified in the title opinion. Other items to include in this section would be unrecorded probate proceedings, a Joint Operating Agreement, Farmout Agreement, prior title opinions or other such information.

Summary of Working Interest Ownership. Placement of this section of the opinion is optional. The author’s preference is to set it out early in the opinion unless ownership throughout the proposed drilling and spacing unit is especially complex. If the working interest is limited to specific depths or a certain formation or formations, that limitation should be noted prominently at the beginning of the table. In the example there are two leases which are subject to overriding royalty interests. Those burdens are identified with endnotes that follow immediately after the table. The purpose and placement of this section is designed to tell the E & P company client immediately what its acreage and burdens are in a summary form, alongside those interests of other leasehold owners in the unit. Notice our hypothetical client has been listed first in the table. That should be done even if theirs is a minority interest. It is a simple courtesy to give your client top billing in the opinion.

Ownership by Tract. This portion of the title opinion identifies each of the separate tracts of land by legal description and acreage content, then lists ownership of the surface estate, mineral interests and working interests. Mineral interests and working interests should include both the owner’s

fractional interest and net mineral acres, as well as the lease (if any) associated with the interest. The Mineral Interest calculations include a Royalty Interest column for owners who are subject to an effective lease. Working Interests include a Net Revenue Interest column to show leasehold burdens, including the lessor's royalty and any overriding royalty interests. Owners of any overriding royalty interests are identified in endnotes which follow the Ownership by Tract section of the opinion.

Regarding organization of the Mineral Interest section, the author typically lists individual owners in the order of their respective lease numbers, followed by unleased owners from largest to smallest interests. Working interest owners usually are shown in this order: (a) client, (b) client affiliate, (c) third party owners from largest to smallest, and finally (d) a single "Unleased" entry listing the sum of all unleased interests in that tract.

Endnotes. Following the last tract in the Ownership by Tract section is a list of all endnotes relating to the tract-by-tract ownership above it. Endnotes might include identification of overriding royalty owners; remaindermen after a life estate; non-participating royalty interests which burden a particular mineral interest owner; or interests that are subject to a particular title requirement, e.g. "Subject to Requirement No. 2 below."

Applicable Spacing and Other Orders of the Commission. This section of the title opinion provides a brief tabulation of all Oklahoma Corporation Commission Spacing Orders and Pooling Orders affecting the subject lands. Under some circumstances, usually in a Division Order Opinion, it is appropriate to include a tabulation of any Orders for a location exception or authorizing an increased density well.

Comments. The Comments section is useful for setting out any limitations or exculpatory language. This author normally identifies any secondary exhibits to the opinion that have not been mentioned elsewhere, e.g., Easements are tabulated on Exhibit "C". As noted below, Comments are distinguishable from Requirements or Advisory Requirements.

Requirements. As suggested above, two categories apply here, the standard Requirement and an Advisory Requirement. A requirement is divided into two portions, an objection identifying the title defect and a requirement that states what curative should be undertaken to cure the defect. Some title examiners label the initial paragraph "Objection" and the curative portion "Requirement".

The objection portion should do the following: (a) name the owner who is impacted, (b) identify the owner's tract, fractional and acreage interest, type of interest and effective lease if applicable, (c) give enough title history to put the title defect in perspective, (d) identify the title problem

specifically, and (e) state whether the defect impacts multiple interest types, e.g., “this requirement impacts the surface and mineral estate, but does not affect the oil and gas leasehold under Lease 1.”

The requirement portion tells the reader what steps must be undertaken to cure the stated defect and render the title marketable. In some circumstances the title examiner can offer a less than perfect solution by advising of a lesser curative method that might vest the owner with a better quality of title, albeit not a marketable or perfect title. Requirement No. 2(a) in the sample Drilling Opinion contains such a fallback suggestion in connection with curing title to an unprobated mineral interest of a decedent.

Advisory Requirements: In terms of gravity, wedged somewhere between a Comment and a Requirement is an Advisory Requirement. This category is useful to state a caveat or to highlight an issue that should be important to the E & P company client, even though it does not represent a title defect per se. Advisory Requirement No. 6 in the sample Drilling Opinion is an example. In this case the title examiner cautions the client about the existence of special provisions contained in several of the effective Oil and Gas Leases. Such is an important issue but it does not mean to suggest title is unmarketable. No curative action is called for, although the E & P company is advised to become familiar with the special provisions in these leases.

Exhibit “A” – Tabulation of Effective Leases and Assignments. All effective oil and gas leases and assignments should be tabulated in detail somewhere in the opinion. Some title examiners place the effective leases and assignments in the main body of the title opinion. This author believes leases and assignments are easier for the reader to access from an exhibit separated from the body of the opinion. Both methods are correct. Using Lease 1 as an example, notice the tabulation includes lease date and full recording information, lessor, lessee, legal description, basic terms of the lease and a statement of what fractional interest is covered by the lease. The final part of the tabulation includes a summary of more prominent special provisions contained in the lease. Title examiners disagree among themselves as to the level of detail that is required. This author takes a minimalist approach, which is supported by an Advisory Requirement that directs the client’s attention to the fact special provisions are present in certain of the leases, with an invitation to furnish full copies on request. Some title examiners go into considerably greater detail in summarizing special provisions contained in leases. Other title examiners go as far as to include virtually all provisions in the lease, with such provisions quoted verbatim. Probably the best practice is to inquire of your E & P company client and learn what they prefer or require. Typically the client who wants

greater detail will request full copies of the leases themselves. In many cases they have all leases in their files already.

Following the tabulation of all the effective oil and gas leases should be a set of tabulations of the assignments of those leases, including assignments of leasehold and overriding royalty interests, as well as production payments and net profits interests. Even though a particular Drilling Opinion might state that it excludes existing wellbores from the scope of the opinion, it is a good practice to tabulate wellbore assignments on Exhibit "A" anyway. In the event of a future question about whether an assignment affected the leasehold overall or just the wellbore, it is very useful to have wellbore assignments tabulated for future reference.

Exhibit "A-1" – Leases for Which No Credit is Given. This optional exhibit is used in situations where a series of recent oil and gas leases has been obtained and recorded under circumstances in which (a) the lessor does not appear to own any interest in the lands described in the lease or (b) the lessor's mineral interest is shown to be covered by a previous oil and gas lease. This exhibit is designed to highlight potential adverse claims. It is not used to tabulate leases in the early chain of title that apparently expired by their terms many years ago.

Exhibit "B" – Mortgages. With one exception, all mortgages are tabulated on this exhibit, whether the same cover only the surface estate, a mineral interest or the oil and gas leasehold. The exception which is not tabulated here is any mortgage that encumbers only pipelines or rights-of-way. This author takes the position it is outside the scope of a Drilling Opinion or Division Order Opinion to give an opinion as to the marketability of title to an easement. Therefore mortgages affecting easements are not tabulated. However, the easements themselves are tabulated for information purposes on the next exhibit.

Exhibit "C" – Easements. Because any type of easement has the potential to interfere with oil and gas operations, a Drilling Opinion or Division Order Opinion should include a section which tabulates all easements regardless of type, i.e., pipeline, telephone, water, wind power, roadway, etc. No attempt is made to make a judgment as to marketability of title to a particular easement. The exhibit is provided for information purposes only.

#### *Elements of a Division Order Opinion*

Nearly all of the above elements relating to preparation of a Drilling Opinion are equally applicable to a Division Order Opinion, including the order in which the various sections are presented. The few differences are as follows:

Introduction – Scope of the Opinion. Typically a Division Order Opinion is limited to the specific well that has been drilled by your E & P company client, and is further limited to the producing formation or potentially productive formations. In the case of a well that was preceded by a Pooling Order that acquired certain of the mineral or leasehold interests under terms of the Order, the scope of the Division Order Opinion should be limited to no more than the producing formation and any shallower formations included in the Pooling Order. The legal description on page one of the opinion would be expressed like this:

Re: Jones No. 1-1H Well  
 All of Section 1-2N-3W, containing 638.32 acres, more or less,  
 Garvin County, Oklahoma, LIMITED to production of oil and gas from the Woodford Formation

Division Order Ownership – Traditional Net Revenue Calculations. This section replaces the “Summary of Unit Working Interest Ownership” portion of the Drilling Opinion described above. It includes net revenue interest ownership for all parties throughout the unit, i.e., the mineral interests, working interests and overriding royalty interests. Due to limitations of a presentation on the basics of title examination, detailed methodology will not be attempted here. However, as an example the mineral interest credited to Elizabeth Smith in the sample Drilling Opinion would be calculated as a fractional interest of  $\frac{3}{8} \times \frac{1}{5} \times \frac{80}{638.32}$ , a net revenue of 0.00939967 under Lease 5. The sum of all owners’ interests in the unit must total 1.00000000.

Division Order Ownership – Calculations under the Production Revenue Standards Act. This set of figures is mandated by the Oklahoma Legislature under terms of the Production Revenue Standards Act.<sup>18</sup> These calculations include the traditional figures discussed immediately above, together with a “proportionate royalty share” for mineral owners and a “proportionate production interest” for working interest owners. No separate calculation is made with respect to the owners of overriding royalty interests. The proportionate royalty share is a decimal that identifies each mineral owner’s relative entitlement to revenue in relation only to the other royalty owners, i.e., all proportionate royalty shares add up to 1.00000000. Similarly, the proportionate production interest is a decimal that identifies each working

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18. 52 Okla. Stat. §570.1, et seq.

interest owner's relative share of production, but only in relation to the other working interest owners, i.e., all proportionate production interests will total 1.00000000. Once again, a detailed analysis of how these figures are determined is outside the scope of this presentation.

Well Completion Information. The Division Order Opinion should include a tabulation of well completion information for the well which is the subject of the opinion. For example:

We have examined Oklahoma Corporation Commission Form 1002-A, which shows the existence of the [fictitious] Company A, LLC Jones No. 1-1H Well, a horizontal well with a surface location in Lot 2 of Section 1-2N-3W. It was completed as a producer of oil and gas from the Woodford formation.

This information may be included in the Comments section of the opinion. In the alternative, a separate section could be labeled "Well Completion Information" and placed below the tabulation of Oklahoma Corporation Commission proceedings.

The few variations noted above represent the extent of differences between a Division Order Opinion and a Drilling Opinion.

#### *Other Drafting Issues*

Examiner's Attitude Toward Title Defects. When a title defect is identified, at least two approaches are possible: (a) give the purported owner credit for the interest and subject it to an appropriate requirement or (b) give no credit for the interest and make a requirement calling for the party to prove his or her interest. When your E & P company client has taken the time and effort to acquire an oil and gas lease from a purported owner whose interest is questionable, it is suggested that option (a) is preferable. Using the example of the Drilling Opinion in Appendix 1, Requirement No. 2 is an example of taking the option (a) approach. Company B, LLC has acquired what is probably a valid lease from the correct party, but the underlying mineral interest is defective. As a title examiner you have given the parties the benefit of the doubt, but nonetheless have made the mineral interest and the oil and gas leasehold subject to a requirement calling for specific curative action.

Likewise, if your E & P company client is known to use a particular lease broker and you find a new oil and gas lease that has not been assigned from the broker to your client, it is best to credit the leasehold to your client but make a requirement calling for submission of a recorded assignment from the broker to the client.

On the other hand, Requirement No. 4 in the sample Drilling Opinion is a situation where no credit should be given, i.e., option (b) is best. Each of the parties in the multiple subsections of this requirement appear to be strangers to title – there is nothing to tie any of these persons to the chain of title. Their respective claims of interests should be failed, but a requirement is appropriate to make your client aware these parties are potential claimants.

Supplemental Opinions. Occasionally the title examiner will render a Drilling Opinion or Division Order Opinion, then later be asked to evaluate curative that has been obtained and render a Supplemental Opinion. For the benefit of your client and any other parties who would have occasion to review the Supplemental Opinion, you should undertake to prepare a self-contained or freestanding document. In other words, do not use the shortcut of merely referring back to the original opinion. For example, in the Requirements section of the Supplemental Opinion, resist the temptation to do only this: “1. Requirement: Unchanged from prior opinion.” A reader who does not have the original opinion in front of him or her will have no idea what is being referenced. This author repeats the objection and the requirement verbatim in the Supplemental Opinion, then adds a new paragraph which begins “Status of Requirement:”. What follows might be “unchanged from prior opinion” or “Satisfied in full based on an examination of copies of all probate proceedings had in the Estate of James Andrews, deceased.” In either event, the reader of the Supplemental Opinion would be fully informed of the precise nature of the underlying requirement. Any curative information you are furnished, e.g., the James Andrews probate proceedings, should be summarized and added to the Instruments Examined section at the beginning of the Supplemental Opinion.

Readability Issues. When practical to do so, this author tries not to split a table or allow a page to break in the middle of a block of information. For instance, when tabulating oil and gas leases as shown on Exhibit “A” to the sample Drilling Opinion, notice each lease is tabulated on a single page and is never split in the middle of the lease at a page break. This practice makes lease analysis easier for the reader – your client. Although more difficult to accomplish in the Ownership by Tract section of the opinion, try to structure page breaks between mineral ownership and working interest ownership, rather than in the middle of a tabulation of the mineral ownership or working interest for a particular tract. Sometimes it is not possible to accomplish, but readability is improved when you can do so.



*Conclusion*

Oil and gas title examination methods have changed over the past 30 years, almost certainly in ways that have allowed the title examiner to render a better opinion in a more efficient manner. Improved examination tools and methods have been offset somewhat by the increased complexity seen in the typical chain of title today. Sheer numbers of owners have multiplied as families' interests pass through generations. Oil and gas lease terms are more complex than ever, as are leasehold ownership and transfers of those interests. Oil and gas title examination as a practice area remains cyclical as is the nature of the oil and gas industry itself. Regardless, the industry is doing well and that bodes well for title examiners, too. This paper has tried to provide a mix of technical information at a basic level, while undertaking to recognize important nuances that allow for the creation of a more client friendly product to the greatest extent possible. After all, success as a title examiner is dependent on a mix of attention to detail and tolerance for minutia, but combined with a recognition that rendering a title opinion is a service oriented practice. Good luck, mind the details and take good care of your client.