

DETERMINING MINERAL OWNERSHIP IN TEXAS

Tiffany Dowell Lashmet¹

When a person purchases property in Texas, he or she might not receive ownership of the mineral rights to that property. Determining whether such minerals were conveyed with the property can be frustrating for a new landowner, particularly one not experienced in oil and gas production or law.

In Texas, mineral ownership can be (and often is) severed from surface ownership. Often, these severances occurred several generations ago, leaving current owners unsure of their ownership status. For example, if a landowner owns 100 percent of the surface and minerals of a property, the landowner could sell the surface rights of that property, but reserve the mineral rights, which is a severance by reservation.

Another way severances occur is by conveyance, where a landowner conveys the mineral rights to another party while still maintaining ownership of the surface rights of the property. Further complicating the issue is the fact that ownership of mineral rights may be divided in many ways, including by percentage or by certain rights.

Unfortunately, determining whether a surface owner has any portion of ownership of the mineral estate may be a challenging and expensive task. Here are several options for landowners to consider in determining mineral ownership:

1. If an oil or gas company is seeking a lease on the property or already has one in place, the landowner can request a copy of the company's title research on the minerals. Some oil and gas companies are willing to share this information, while others are not. It is worth asking the question, particularly if the landowner and oil and gas company could end up in negotiations to lease the minerals at issue. Some mineral owners have included provisions in oil and gas leases that require the lessee to provide

a copy of pages from the title opinion that reflect the mineral owners' interest. Similarly, if you are receiving a royalty check or previously received a copy of a division order, your percentage of mineral ownership may be reflected on these documents.

2. The landowner should review the title insurance policy he or she got when purchasing the property. Unfortunately, most title companies no longer state an opinion as to mineral ownership because it is time-consuming to do the research and could result in much risk to the insurer if a mistake was made. Nevertheless, checking to see if the title policy does mention mineral ownership is a good idea. Historical oil and gas leases should be reflected on the report. If your immediate predecessor in title is listed as a lessor, that indicates they held minerals before the sale to you. If your immediate predecessor owned some portion of mineral rights and did not expressly reserve those rights, they passed on to the next owner with the sale of the property.



Source: Photo by Texas A&M AgriLife Extension Service

¹ Assistant Professor and Extension Specialist

3. A landowner can do his or her own deed record search. This option may sound good, but sorting through deed records to determine when, if, and how minerals may have been reserved or severed decades ago is a complicated process. The chain of title must be traced back to determine ownership and ensure that there were no mineral rights ever reserved or severed, which can be extremely time-consuming and difficult for even experienced oil and gas attorneys.
4. A landowner can hire a landman to conduct the title research. Landmen spend their days in courthouses researching deeds and records to determine mineral ownership. They are experienced and typically very efficient. But, it may be difficult to find a landman willing and able to do this. Many good landmen work for oil and gas companies exclusively, meaning they are usually paid quite well and are extremely busy. Also, some landmen are leery of working for individual landowners because landowners often do not understand the complexity of the research or the time and money

it may cost to get an answer, leaving the landowner upset when a bill arrives. If a landowner can find a landman willing to do the title search, this can be a good option.

5. The landowner can hire an attorney to conduct the title research. As with most situations that involve hiring legal counsel, this option can be expensive, depending on the complexity of the title documents at issue. Be sure to ask an attorney for an upfront estimate of what the cost might be to make a title determination. Also, be sure that payment terms are understood and agreed upon before they begin the work.

Determining the ownership of the property a landowner owns or is seeking to buy is essential for understanding the rights that landowner has to use or otherwise benefit from that property, as well as being aware of the rights others may have to use it.

*Cover photo courtesy of Blair Fannin,
Texas A&M AgriLife Extension Service*