



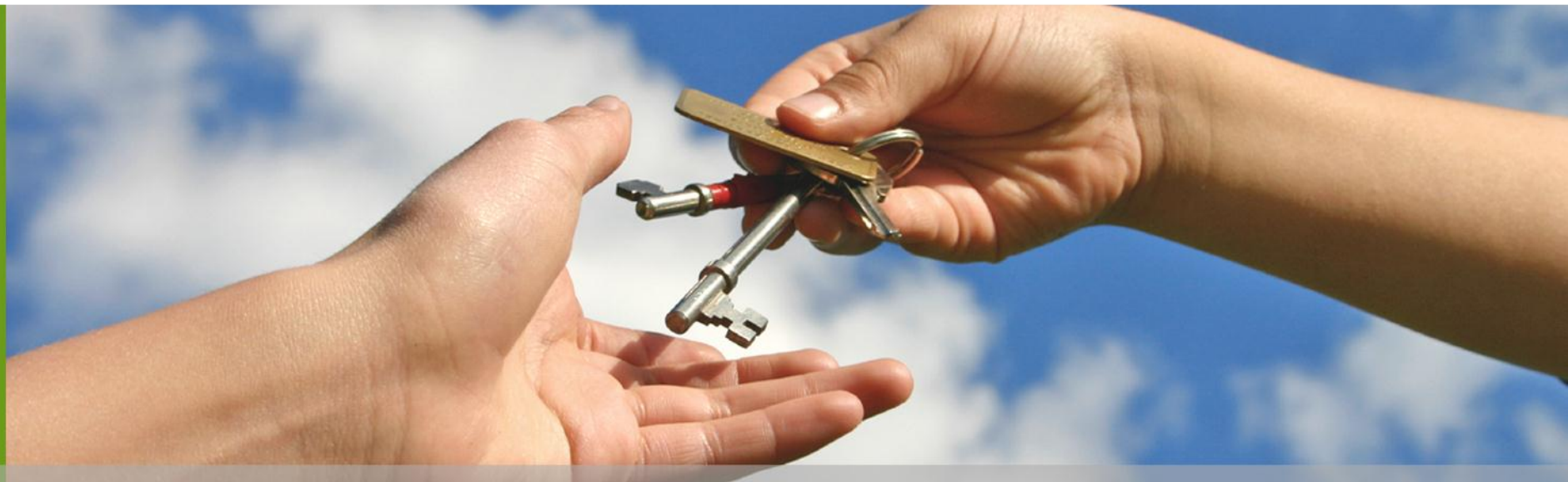
“We’ve Got Your Back”

Keeping You Informed On the Issues Affecting
Your Business

Celia C. Flowers, Attorney-at-Law
FLOWERS ↓ DAVIS, P.L.L.C.

Owner:





Mineral Rights

What is a mineral estate

How it affects surface owners and surface usage

What you need to know



Typical Scenario

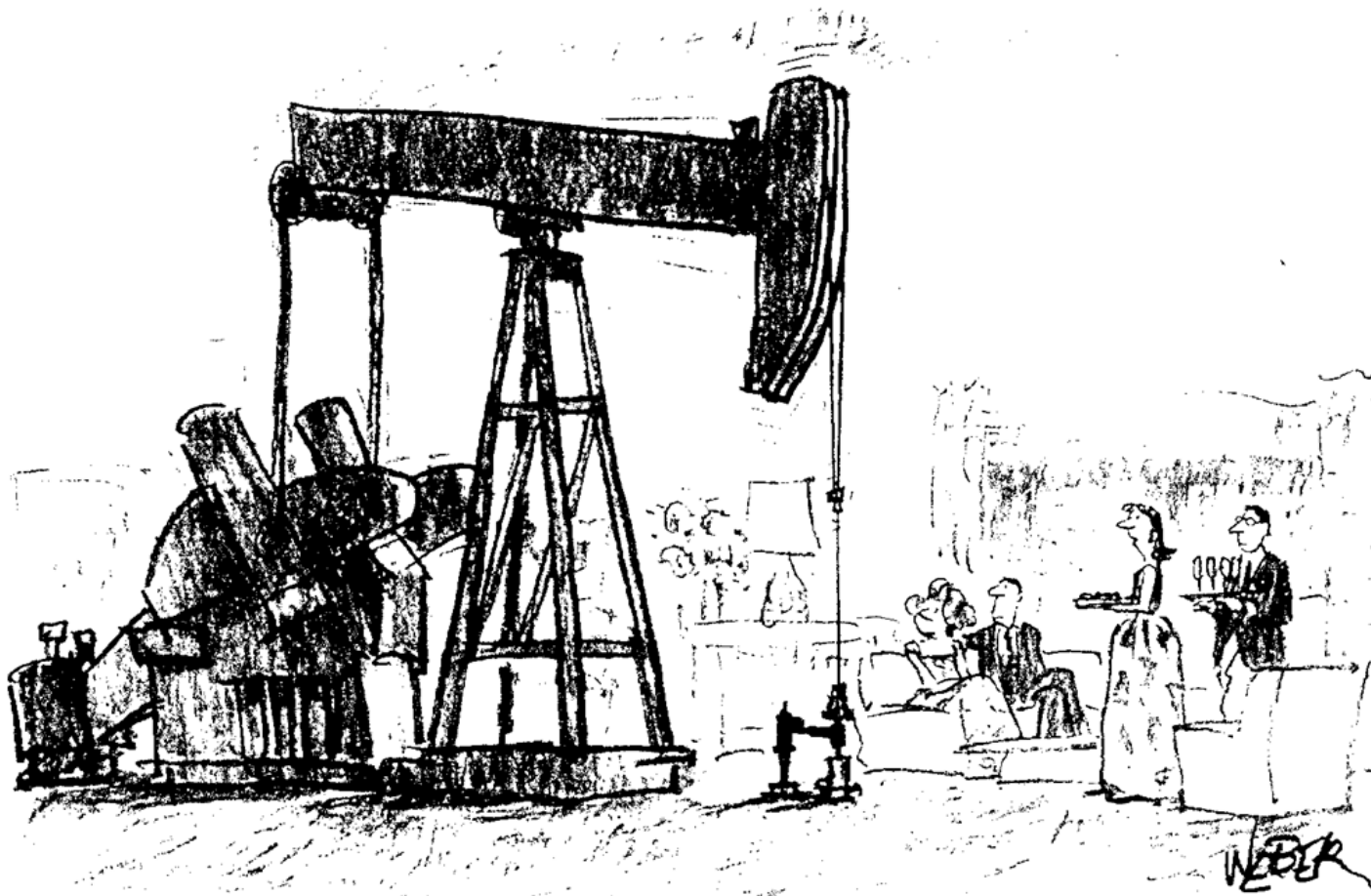


Yikes!!!!!!!!!!!!!!!!!!!!!!



WHO ARE THEY GOING TO CALL?





“We got a great deal on the house, but unfortunately, it didn’t include the mineral rights.”



Motivations of the Sellers and Buyers



SELLERS WANT ...



BUYERS WANT ...

To protect the surface of the new property just purchased

And.....



The Mineral Estate is the Dominant Estate



Rights of Mineral owner:

- Right to develop & produce
- Rights to use surface/ingress and egress
- Use as much of surface as reasonably necessary

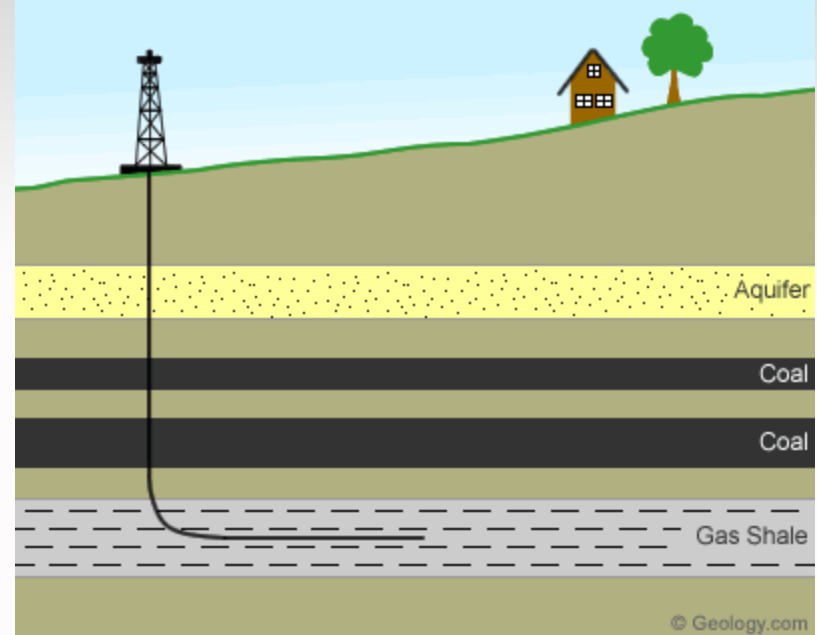
Limitations:

- Not use more land than is reasonably necessary
- Non-negligent use
- Due regard/accommodation
- Waivers
- Express lease language
- City ordinances



What is the Mineral Estate?

- **Minerals include:**
 - Oil, gas, uranium, coal, lignite,
 - Sand, water, and gravel
- **The minerals and surface: one estate in fee simple**
- **Upon Severance, minerals divided as follows:**
 - **Mineral estate:** oil, gas, uranium, coal, and lignite
 - **Surface estate:** water, sand, gravel, and “shallow” coal or lignite



MINERALS VS. ROYALTY



- **FEE SIMPLE**

- SURFACE ESTATE

- Trees, grass
 - Improvements
 - Minerals that belong to the surface estate according to case law

- MINERAL ESTATE

- Right to execute the lease
 - Right of ingress and egress to explore and produce
 - Right to receive lease bonus
 - Right to receive delay rentals
 - ROYALTY – right to receive the income from a producing well
 - no right of ingress and egress



Conveyance Rules



- If seller fails to reserve minerals when selling the property, seller's mineral estate passes to buyer
- If seller does not own minerals, buyer receives no mineral interests, even if seller purports to convey minerals, because seller had no interest to convey.



Now That You Know the Rules

Let's Examine the Titles



A
↓
B
↓
C
↓
D

Res ½ OGM = OGL

Res ½ OGM = OGL

Listing Meeting

A
↓
B
↓
C
↓
D

Res ½ OGM = OGL

Owns ½ -
can execute lease

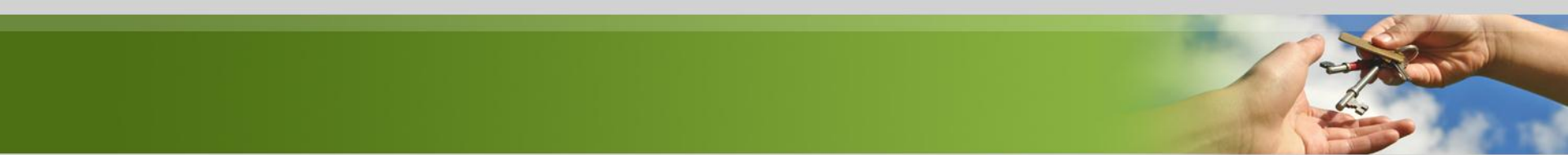
A
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Res ½ OGM = OGL

= OGL

??

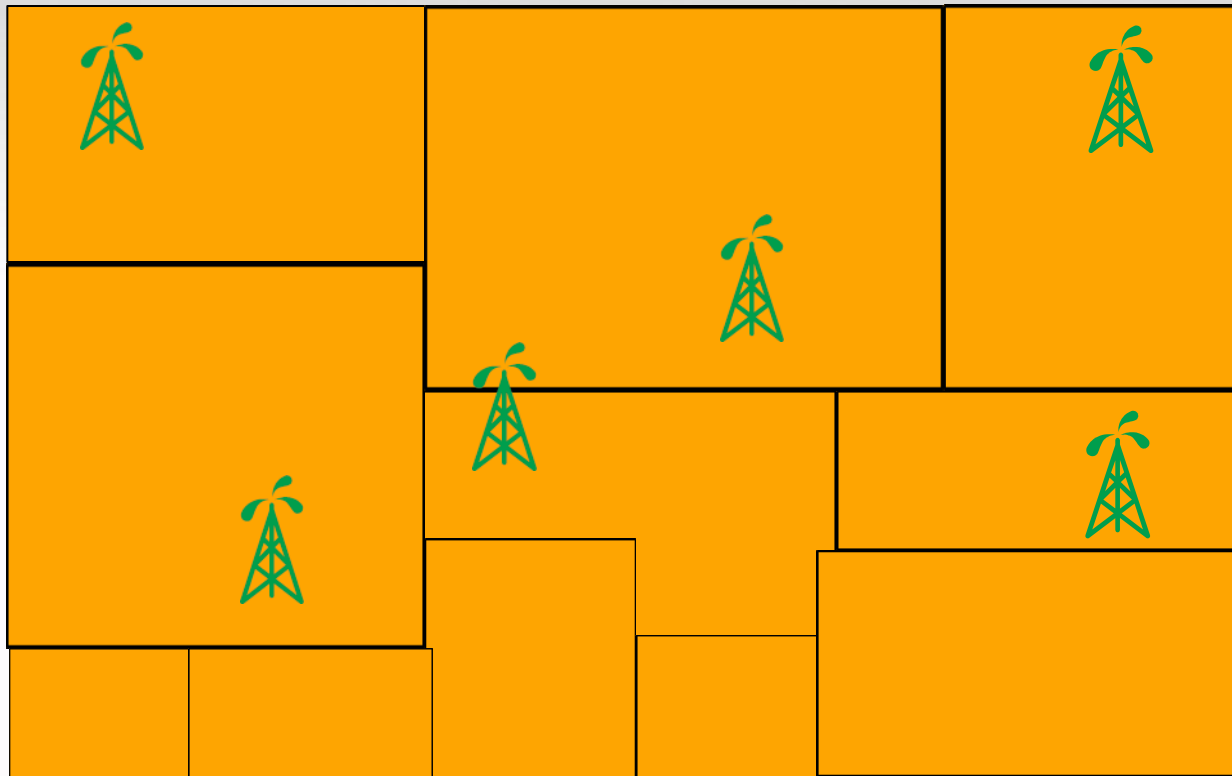




Reserve 1/2

Reserve 1/4

Conveys to
Current
Owners



Rights of the Typical Lessee (The Myths)



- **Rights under the lease and case law**
- **Can a lessee/mineral owner build a road? Does Lessee pay damages?**
- **Can lessee use gravel/caliche from the land?**
- **Can lessee locate the well anywhere they want to?**
- **Can lessee drill the opening weekend of deer season?**
- **Can lessee conduct seismic operations on the land without further permission?**
- **Does Lessee have to pay damages? Even to crops? Improvements?**
- **Any duty to fence? Any duty to restore?**
- **Can Lessee use the water from a lake, drill a well?**
- **Don't be the Realtor that said "Don't worry the pay"**



Title Searches by Title Companies



- Title companies searched records for a sufficient period of time to determine ownership and encumbrances for title insurance policy exceptions
- Title companies do not determine the ownership of the mineral estate.
- Title companies deal with Surface Estate (not attorneys)



Historical Problems with Researching Mineral Title

- Oil and gas development began in Texas in early 1900s
- Title searches that do not go back far enough miss early mineral reservations



Mineral Title is a Highly Specialized Area

- In high production areas, extensive and costly searches are required to catch all mineral exceptions
- The examination of mineral documents requires expertise of an oil and gas attorney to interpret nuances of mineral-severance language

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"I still say those 10 Commandments are deceptively open to interpretation."



T-19.2 Endorsement - Owner or Lender



- **“Damage to improvements (excluding lawns shrubbery, or trees) located on the Land on or after Date of Policy resulting from the future exercise of any right existing at Date of Policy to use the surface of the Land for the extraction or development of COAL, LIGNITE, OIL, GAS or OTHER MINERALS excepted or excluded on Schedule A, Item 2 or excepted in Schedule B. This endorsement does not insure against loss resulting from subsidence.”**



T-19.3 Endorsement Owner or Lender



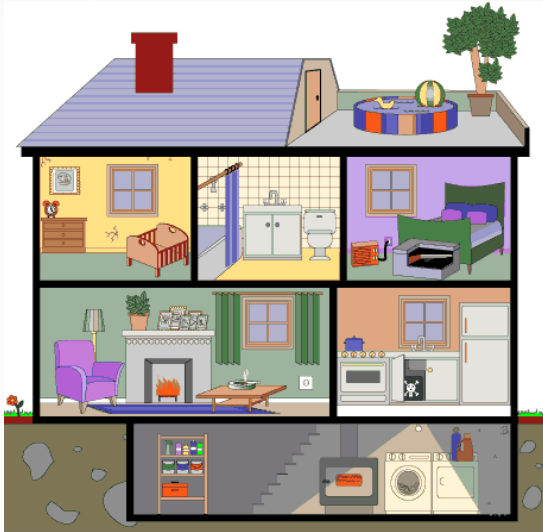
- **“Damage to permanent buildings located on the Land on or after Date of Policy resulting from the future exercise of any right existing at Date of Policy to use the surface of the Land for the extraction or development of COAL, LIGNITE, OIL, GAS or OTHER MINERALS excepted or excluded on Schedule A, Item 2 or excepted in Schedule B. This endorsement does not insure against loss resulting from subsidence.”**



T-19.2



- **ONE acre or less, improved or intended to be improved for one-to-four-family residential use, OR:**
- **Improved or intended to be improved for office, industrial, retail, mixed use retail/residential, or multifamily purpose (no limitation on the number of acres)**



T-19.2 (Cont'd)



■ **Examples of Properties:**

- **Home on a tract of land of one acre or less**
- **Apartment complex**
- **Office buildings**
- **Shopping centers**
- **Condominiums**



T-19.3



- **Does NOT fit into the categories in T-19.2**
- **Examples of Properties:**
 - **Vacant land with no current intent to improve**
 - **Real property of more than one acre, improved or intended to be improved for one-to-four-family residential use**
 - **Farms**
 - **Easement Tracts**



Traditional Solution in High Production Areas



- *Sellers have decided to sell the property but may want to keep all or part of the mineral estate in case oil and gas is later produced from the property.*
- *Buyers want to protect the surface of the property that they just purchased.*
- *The contract prepared by the Realtor must reflect any reservation of the oil and gas that the parties have agreed to.*
- ***HOW DOES THE REALTOR DO THIS?***



TREC PROMULGATED ADDENDUM



PROMULGATED BY THE TEXAS REAL ESTATE COMMISSION (TREC) 12-05-2011

ADDENDUM FOR RESERVATION OF OIL, GAS, AND OTHER MINERALS

ADDENDUM TO CONTRACT CONCERNING THE PROPERTY AT

(Street Address and City)

NOTICE: For use only if Seller reserves all or a portion of the Mineral Estate.

- A. "Mineral Estate" means all oil, gas, and other minerals in or under the Property, any royalty under any existing or future lease covering any part of the Property, surface rights (including rights of ingress and egress), production and drilling rights, lease payments, and all related benefits.
- B. The Mineral Estate owned by Seller, if any, will be conveyed unless reserved as follows (check one box only):
- (1) Seller reserves all of the Mineral Estate owned by Seller.
 - (2) Seller reserves an undivided _____ % interest in the Mineral Estate owned by Seller. *NOTE: If Seller does not own all of the Mineral Estate, Seller reserves only this percentage of Seller's interest.*
- C. Seller waives does not waive Seller's surface rights (including rights of ingress and egress). *NOTE: Any waiver of surface rights by Seller does not affect any surface rights that may be held by others.*
- D. If B(2) applies, Seller shall, on or before the Closing Date, provide Buyer contact information known to Seller for any existing lessee.

If either party is concerned about the legal rights or impact of the above provisions, that party is advised to consult an attorney BEFORE signing.

TREC rules prohibit real estate licensees from giving legal advice.



Five Attributes of the Mineral Estate



- 1 – right to develop (includes right of ingress and egress)
 - 2 – right to lease – executive right
 - 3 – right to receive the bonus
 - 4 – right to receive delay rentals
 - 5 – right to receive royalties (has not right of ingress and egress alone)
-
- Each can be conveyed or reserved separately
 - TREC Addendum does not accommodate
 - Must be sure the Seller and Buyer understand



Issues Regarding Addendum



- **“Mineral Estate” definition does not reflect oil & gas law**
- **“minerals” and oil gas and other “minerals”**
- **“surface rights” – no legal definition – oil and gas owner has the “right to use” the surface – only right of ingress and ingress**
- **Do not use addendum for minerals owned by the surface**
- **Always a counteroffer**
- **fraction of the whole**



What is the Realtor to do????



- **IF THE REALTOR REPRESENTS THE SELLER**
- **Ask Seller his intentions about his minerals at your meeting to obtain the listing – sometimes the Seller does not know?.?.?.?**
- **If the Seller wants to do something more than the TREC Addendum allows, get him with his oil and gas attorney asap**
- **If the contract submitted by the Buyer does not have the TREC Addendum attached – reminder the addendum must be attached and submitted – counteroffer**
- **Use the TAR information on minerals form**



What is the Realtor to do????



- **IF THE REALTOR REPRESENTS THE BUYER**
- **Use the TAR information on minerals form**
- **Buyers may have many questions on what can happen on the surface of the property once they purchase it**
- **You may need to get the Buyers to discuss with an oil and gas attorney so they can clearly understand**
- **Oil and gas law is complicated and has many variations due to different facts**
- **Do not tell the Buyer a myth....**





TEXAS ASSOCIATION OF REALTORS®
INFORMATION ABOUT MINERAL CLAUSES IN CONTRACT FORMS

USE OF THIS FORM BY PERSONS WHO ARE NOT MEMBERS OF THE TEXAS ASSOCIATION OF REALTORS® IS NOT AUTHORIZED.
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This form contains general information about mineral estates in published contract forms.

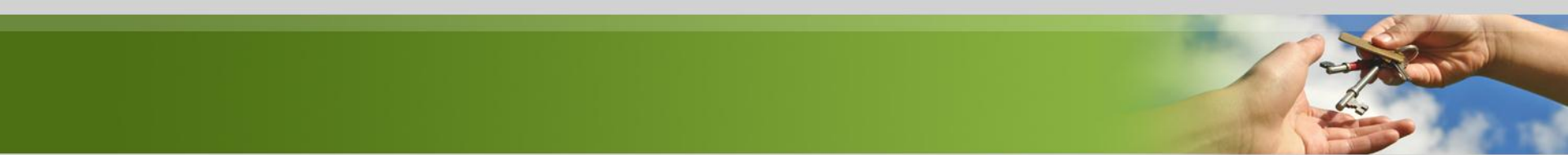
1. **INTRODUCTION:** Historically, buyers and sellers of property near urban areas have not been concerned about the conveyance or retention of mineral interests. Mineral interests for such properties may have been severed in the past or the value of the mineral interests may have been relatively insignificant. There has historically been little risk that the owner of the mineral interests under property near urban areas could or would access the surface of the property to drill or excavate for minerals (perhaps, because the property was too small to support such activity or because such activity may have been heavily regulated by a city). In recent years, the discovery of large mineral deposits near urban areas and advances in drilling technologies have led to increased exploration and drilling activities in and near urban areas. In turn, buyers and sellers of property in urban and suburban areas have raised questions as to whether it is best to convey or retain all or part of the mineral interests in a particular sale.
2. **WHO OWNS THE MINERALS?** Owners of property in or near urban areas typically are not aware of the precise extent of the mineral interests they may own. One may own all or only a portion of the mineral interests. Further, the mineral interests may have been leased. Determining who owns the mineral interests, whether the mineral interests have been leased, and who holds rights under any leases requires an expert (such as an oil and gas attorney) to review the chain of title and formulate an informed opinion.
3. **CONTRACT FORMS:** The residential contract forms promulgated by the Texas Real Estate Commission and the commercial contract forms published by the Texas Association of REALTORS® provide that the seller will convey to the buyer all of the seller's rights associated with the property, including all mineral interests and any rights held under any mineral leases by the seller. If a seller wishes to reserve all or a part of the mineral interests and rights held by the seller, the seller must use the Texas Real Estate Commission's *Addendum for Reservation of Oil, Gas, And Other Minerals* (TREC No. 44-0, TAR No. 1905). If the addendum is not attached to the sales contract, the seller conveys to the buyer all of the mineral interests and rights held by the seller at the time of the transaction.
4. **RESOURCES:** One may find information related to mineral estates and mineral leases through many sources, including but not limited to: (a) the Real Estate Research Center (www.recenter.tamu.edu); and (b) the Railroad Commission of Texas (www.rrc.state.tx.us). There are many other useful sources that one can access via the Intranet through most Intranet search engines.

The undersigned acknowledge receipt of this notice.

_____ Date _____ Date

Printed Name: _____ Printed Name: _____





Mineral Rights Conclusion





The New Dodd-Frank Rules and What They Mean for You

State of the CFPB Union and How You Can Impact It

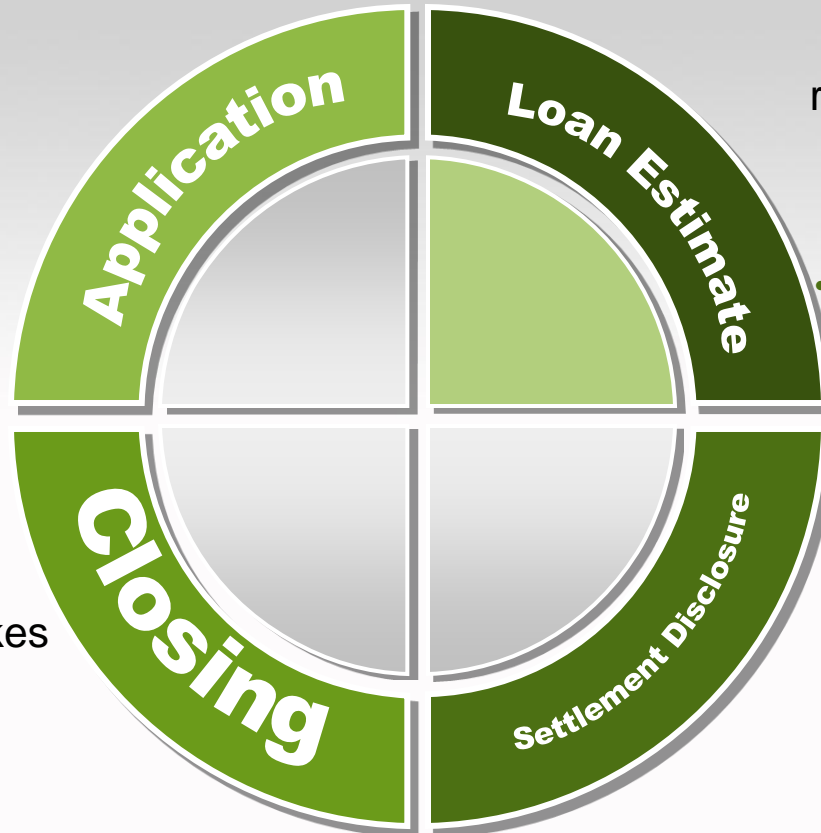


Integrated Initial and Closing Disclosures CFPB Proposal under Consideration



Integrate TILA with RESPA's GFE with HUD-1 Settlement Statement

Borrower makes loan application



Loan Estimate must be provided within 3 days, replacing early TIL & GFE.

- Summarizes key loan terms/estimated costs
- Can be used by consumer for comparison shopping.

.....
If no changes, closing takes place.

.....
Settlement Disclosure is provided at least 3 business days before closing, replaces final TIL & HUD-1

Settlement Disclosure summarizes final loan terms and provides detailed accounting of transaction



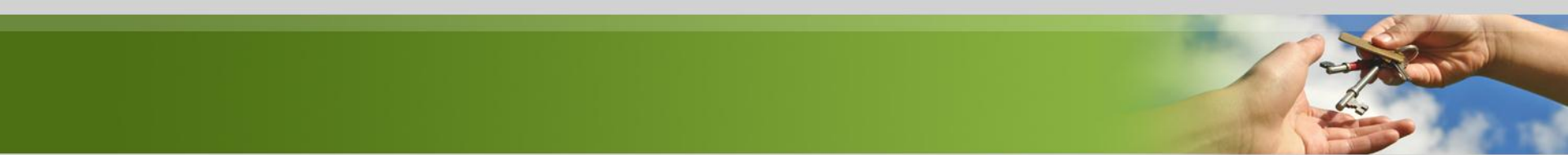
Delays in Closings



■ New Closing Disclosure

- Replaces the HUD (5 pages instead of 3 pages) – take longer at closing to explain
- Forms are changing again - **Second time in two years**
- **IF** changes occur between the time the Closing Disclosure form is given and the closing
- The consumer **MUST** be provided a new form **AND**
- The consumer must be given three (3) additional business days to review the form
 - EXCEPTIONS from the three (3) day requirement:
 - 1 – Negotiations between buyer and seller after the final walk through
 - 2 - Exception for minor changes which result in less than \$100 in increased charges
- The nature of closings will have to change to accommodate
- Lenders and Title Companies must be available to answer questions 3 days before closing
- Three day mail box rule





Do You Have Any Questions?

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