"Frequently asked questions" or "FAQs" on a variety of oil, gas and energy law topics. The purpose of these FAQs is to provide short "plain English" answers to some of the more common questions that the public might have about land and legal issues arising in the energy industry.

ADVERSE POSSESSION

1. **What is meant by the term "adverse possession"?**

   "Adverse possession" means actual, physical possession of a tract of land, which may, if it lasts for a period of time set by statute, result in the possessor's acquiring title to the land as though it had been deeded to him or her.

2. **What must occur for one person to gain title to another's property through adverse possession?**

   (1) The person seeking to gain title through adverse possession must be in actual, open possession of the land, occupying or using it in a way that would be visible to anyone inspecting the property, such as by planting crops or by fencing for the grazing of livestock. Adverse possession of minerals owned separately from the surface requires actual production of those minerals.

   (2) The possession must extend, without any break, for the period required by law. The required period may be as little as three years or as long as twenty-five years, depending on other circumstances, such as whether the person in possession of the land has a deed or has paid taxes on the land. The ten-year adverse possession statute requires little more than the required possession.

   (3) The possession must be adverse to (inconsistent with) the rights of the actual owner, under a claim of the right to possession. For example, possession under a lease from the true owner would not amount to adverse possession, and the possessor's admitting he has no right to the land may defeat his attempt to establish ownership by adverse possession.

3. **If a person gains title through adverse possession, does that include both the surface and mineral rights for that property?**

   If the surface and minerals were unsevered (owned by the same person) at the time the person who acquired title by adverse possession first occupied the property, his or her title will include the minerals as well as the surface. This is true even if the real owner sells the minerals at some time before the possession has extended long enough for title to become vested in the possessor. On the other hand, if the minerals (or some interest in the minerals) has been sold before the adverse possession begins, the mineral title owned by someone other than the surface owner will not be affected by adverse possession of just the surface. For adverse possession to affect the minerals under those circumstances, the person claiming title by adverse possession would have to be producing minerals from the property.

4. **How can I protect myself against someone gaining title to my property through adverse possession?**

   The best protection against someone's gaining title to your property is to regularly

inspect the property and take action against anyone using or occupying any part of it for any purpose. If the person refuses to give up the use or possession on request, you must file suit before the end of the period for adverse possession title prescribed by statute, or your land may be lost.

5. **Where can I find more information about adverse possession?**

A lawyer knowledgeable about real property law will be able to give you more information.

6. **What information or materials should I gather to make a meeting on this topic with a lawyer most effective?**

Bring with you copies of all deeds and ownership documents you may have concerning the property, as well as a legal description if you have one available. If possible, construct a timeline of the possession that is in question, identifying all persons who were in possession of the property, and the manner in which they used the property, in as much detail as possible. Be prepared to identify and locate people in the area, particularly those who have lived in the vicinity a long time, who may be able to testify to the use and occupancy of the land during all relevant periods of time.

CONVEYANCING

1. **How may I convey mineral rights to someone else?**

Whether you are making a gift or a sale, mineral rights are usually conveyed (transferred) by a deed naming the seller or donor, and the purchaser or donee, describing the rights being sold or given, and stating that the rights are being granted, given, sold, assigned, conveyed and/or transferred. The instrument may sometimes be called a “conveyance,” an “assignment,” a “transfer,” or some other name or title, but the title is unimportant as long as the purpose and effect are clear.

2. **How should I sign a conveyance document covering my mineral rights?**

Usually you should sign (and the body of the deed should name you) in the same way your name appears in the document by which you acquired title. This may be an earlier deed to you, a will, or some other document identifying you as the owner. If there is any reason to do otherwise (for example, an error in your name in the deed to you), the conveyance document may include some explanation.

3. **Must my spouse also sign a conveyance document covering my mineral rights?**

For property in Texas your spouse usually does not need to sign a document conveying your mineral rights. Your spouse would need to join you in signing only if (1) the rights are held in both your names, or (2) the mineral rights are in property that you occupy part of as your home.

4. **Must a conveyance document covering my mineral rights be recorded?**

Conveyances of mineral rights should be recorded in the local county clerk's office. The purpose is to protect the rights of the new mineral owner by giving public notice of the

transfer. The conveyance is not invalid between the persons who have signed it or received it if it has not been recorded, but recording is important nevertheless.

5. **Must a conveyance document covering my mineral rights be notarized, and, if so, what form of notary acknowledgment should I use?**

A conveyance is not invalid because it has not been notarized, but it may not be recorded until it has been. Because recording of every conveyance document is important, it is likewise important that the document be notarized. Texas law provides forms of notary acknowledgment certificates for use in conveyances of property located in Texas. Forms designed for use in other states, which may or may not be adequate in Texas, should be avoided. The notary should complete the acknowledgment certificate and place his or her signature and seal on it (except that an out-of-state notary in a state that does not require seals on acknowledgments does not need to use a seal for a Texas document).

6. **Where can I find more information about conveyancing of mineral rights?**

A lawyer knowledgeable in oil, gas and mineral transactional law will be able to give you more information.

7. **What information or materials should I gather to make a meeting on this topic with a lawyer most effective?**

Gather and bring all deeds and other documents in your possession that relate to your interest in the property, as well as a legal description of the land. Be certain ahead of time the exact nature and quantity of the mineral rights you desire to convey. Be prepared to furnish full names and addresses of all persons to be included in each conveyance document.

THE DETERMINATION OF MINERAL OWNERSHIP

1. **What is meant by the term "mineral ownership"?**

“Mineral ownership” is the ownership of the oil, gas and other minerals within a tract of land, typically including, in Texas, both ownership of the minerals in place and the right to remove and sell them.

2. **How does “mineral ownership” differ from other types of land ownership?**

Mineral ownership may or may not be in the same persons as other interests in the land. Mineral owners have the right to use the land in exploring for, developing, producing and marketing the minerals, but only to the extent reasonably necessary to do so. All other rights are commonly associated with “surface” ownership, although “surface” rights may extend not only to purely surface uses such as agriculture but also to use of the subsurface for such purposes as disposal of waste water and storage of gas produced elsewhere.

3. **Are "mineral rights" limited to "oil and gas rights?"**

Oil and gas are within the definition of “minerals” or “mineral rights,” but “minerals rights”

include other minerals as well. Generally speaking, under current law the term "minerals," for purposes of determining who has the right to a particular substance in a tract of land, includes all substances within the ordinary and natural meaning of the word, including not only oil and gas but also coal, uranium, metal ores, precious metals and stones, and other substances ordinarily considered mineral in character. Some substances, for example sand, gravel, building stone and water, are considered to belong to the surface estate and are not included in the term "mineral rights" unless by specific definition.

4. **If there is a dispute over land use between the owners of the surface and mineral rights, which rights prevail?**

Generally, the owner of the mineral rights has the right to use the surface to the extent reasonably necessary to produce the minerals. The mineral owner is said to have the dominant estate, and his or her rights will prevail in the event of an irreconcilable conflict. However, mineral owners are required to have due regard for the rights of surface owners and must accommodate existing surface uses where reasonable alternatives are available.

5. **How can I determine who owns the mineral rights under a particular piece of property?**

Mineral ownership, like surface ownership, can usually be traced through the public records of the county where the land is located. Sometimes additional information must be gathered if the owners have neglected to adequately document transfers of title in the county records. Lawyers and land professionals experienced in investigating and analyzing mineral ownership can determine what the records show and how else to proceed.

6. **Where can I find more information about mineral ownership?**

A lawyer experienced in mineral title examination will be able to give you more information.

7. **What information or materials should I gather to make a meeting on this topic with my lawyer most effective?**

Gather copies of all deeds and other title documents that are relevant to the ownership issue at hand, as well as a legal description of the land involved. If you have abstracts of title on the land, bring them. Have available, if possible, the names and addresses of anyone involved in any ownership issues you are aware of.

DIVISION ORDERS

1. **What is a division order?**

A division order is a contract between the owner of a royalty or other interest in oil and gas (payee) and the company that will be paying for royalty and other production on its sale (payor). The purpose is for the royalty or other owner to verify the decimal fraction of oil and/or gas production (or the sale proceeds of production) the owner is entitled to receive. Generally, a payor who owes you royalty or other payments for oil and gas

production may assume that you will not claim the right to be paid any more than shown in the division order you have signed, and will not be responsible for any greater interest as long as the division order is in effect.

2. **May I revoke a division order?**

A division order, unlike many other contracts, can be revoke unilaterally by either party. This means, for example, that if the royalty owner believes the royalty interest stated in a prior division order is incorrect, the royalty owner can, on his own, cancel the division order by notifying the payor. Any payments due thereafter would not be affected by the division order.

3. **Is there a standard form of division order?**

For many years there was no standard form of division order and each payor had its own form. Now, the Texas legislature has adopted a division order form for oil production. The National Association of Division Order Analysts (NADOA) also publishes a widely used form that covers both oil and gas production. The NADOA form is patterned after and nearly identical to the form contained in the Texas statutes.

4. **What laws apply to division orders?**

If the property is in Texas, Texas law will govern the division order. Texas statutes, laws enacted by the Texas legislature, within Texas National Resources Code chapter 91, restrict the contents of division orders a payor may require you to sign and make it clear that division orders may be revoked. If the well or property it covers are in Texas, you are entitled to insist that a payor's division order include no terms other than those the statutes allow.

5. **Must I sign a division order that has been sent to me in order to receive payment of my mineral or royalty share?**

A A payor may withhold your payment until it has received a signed division order. The payor may not require a division order, however, that requires much more than is necessary for it to verify the interest you claim to be entitled to. You may insist that the payor submit a division order containing no more than is required by Texas law.

6. **What should I do if I disagree with the calculation of my interest shown in a division order?**

If you disagree with the amount of the interest shown in the division order submitted to you, then you should respond to the payor by describing the interest you are entitled to receive. As best as you are able, you should explain the chain of title into you that creates the interest you believe you are entitled to receive.

7. **Where can I find more information about division orders?**

You can access the NADOA website at www.NADOA.org, or consult an attorney experienced in oil and gas matters.

8. **What information or materials should I gather to make a meeting on this topic with**

my lawyer most effective?

The interest in oil and gas sale proceeds you as a royalty owner are entitled to receive is dependent upon the chain of title into you. Take to the lawyer copies of all instruments you have in the chain of title into you, as well as any prior division orders you have signed and any other correspondence previously received by you concerning the payment of royalty.

ESCHEAT

1. **What is meant by the term "escheat" and how might it affect mineral rights I may have in a given property?**

   Escheat is the process by which the state collects money and other property that is presumed abandoned. If you own rights in a producing mineral property but the person responsible for disbursing payment for mineral proceeds cannot identify or locate you, the money ordinarily will be held for you. After three years, however, Texas law requires the money held for you to be delivered to the state comptroller. Your underlying right to further proceeds is also presumed abandoned at that point, and any mineral proceeds that accrue afterward will also be paid to the state.

2. **How can I determine if I am entitled to monies for any mineral interests that might otherwise escheat to the state?**

   If you own an interest in mineral property that you believe is producing or has produced but for which you are receiving no payment, you may contact the operator of the property and each purchaser of mineral production from the property, identify yourself and inquire if any unpaid money has accumulated for payment to you. The state comptroller's office maintains a list of mineral owners and their last known addresses for whom it has received funds, which is open to public inspection. By checking the comptroller's list, which can be done by telephone or electronically through the state comptroller's internet website, www.window.state.tx.us/up, and which is published annually in Texas newspapers, you can find out whether any money payable to you has been delivered to the state.

3. **Once monies have escheated to the state, is there any way I may still receive them?**

   Yes, you may file a claim for your money with the state comptroller's office. If your claim is determined valid, the comptroller will pay the money to you.

4. **Where can I find more information about escheat?**

   Information is available from the Texas State Comptroller, or you may contact a lawyer familiar with oil, gas and mineral law matters.

5. **What information or materials should I gather to make a meeting on this topic with my lawyer most effective?**

   Gather any information that may identify the property for which you believe money may be held for you, any wells you believe may be producing on the property, and the

operator and purchasers of production. These may include deeds or other ownership documents, check stubs from any payments previously received, division orders, and correspondence with the operator or purchasers of production. If your name has appeared on the state comptroller's list, provide the exact name and city under which it appears.

INTESTATE SUCCESSION AND PROBATE

1. **What is meant by the term "intestate" and how does it differ from the term "testate?"**

The term "intestate" means that a person who has died, sometimes called the "decedent," died without having first executed a will. The legislatures of all states have enacted statutes identifying who inherits an intestate decedent's property. The statutes are referred to as the statutes of "descent and distribution" or "intestate succession."

That a decedent has died "testate" means that the person, at a time he was mentally competent prior to death, executed a will that can be admitted to probate.

2. **If someone dies "intestate," what happens to his or her property?**

In Texas, the property owned by the decedent is classified as either community property or separate property. Community property is property acquired while married that is not separate property. Separate property is property a person acquired while single, or property acquired during marriage by gift or inheritance, or in exchange for money or other property that is separate property. The community property of a spouse who dies intestate will pass to the other spouse, or to the decedent's children if the spouse is not their other parent. Separate property real estate owned by a decedent with children will pass to his children (and the children of any deceased child), subject to a life estate of 1/3 in his surviving spouse, if any. If a person has died intestate without descendants, his or her separate property will pass to parents, brothers and sisters, or if none to more distant relatives.

3. **Do I need a will?**

Yes, especially if you are not completely satisfied with who will get your property if you die intestate. Having a lawyer to prepare a will in Texas is, under most circumstances, relatively inexpensive. Leaving a will enables you to be sure the survivors of your choosing will receive your property, and Texas law provides relatively streamlined procedures that can make the transfer of property go more smoothly than if you leave no will.

4. **What does it mean to "probate" a will?**

Probate is the legal process by which a court, usually in the county where the decedent lived, approves the decedent's will. A will does not transfer title to the decedent's property unless and until it has been admitted to probate by the court.

5. **How can I determine whether someone has died "intestate" or "testate"?**

A person dies "testate" if he or she signed a will meeting certain requirements while

mentally competent. In Texas a will generally must be in writing and either signed by the decedent and two or more disinterested witnesses or entirely in the decedent's handwriting.

6. **Where can I find more information about intestate succession and probate?**

In Texas, the statutes concerning intestate succession and wills are contained in the Probate Code. Although they certainly can be read by non-lawyers, an attorney should be consulted for an accurate and complete interpretation and advice.

7. **What information or materials should I gather to make a meeting on this topic with my lawyer most effective?**

Prior to meeting with a lawyer, the family members of a person who has died should collect his or her will, if any, and any of the following that are available:

a. The title documents relating to all property, such as wills, deeds, bills of sale and certificates of title.

b. Knowledge of the family history of the decedent, including marriages, children (both living and deceased), and, particularly if there are no children, parents, brothers and sisters and their children.

JOINT OWNERSHIP

1. **What is meant by the term "joint ownership?"**

Any circumstance in which more than one person owns rights in the same property may be referred to as “joint ownership.”

2. **What different types of joint ownership are there, and how do they differ?**

In Texas joint ownership is usually in the form of “cotenancy,” also referred to as ownership or tenancy “in common” between two or more owners. This means that each owner has part ownership of the entire property, “undivided,” but each owner’s interest is separately transferable by deed, will or inheritance.

Another form of joint ownership is “joint tenancy,” sometimes called “joint tenancy with right of survivorship.” In this form of joint ownership, if one of the owners dies, his or her interest in the property is extinguished, and the property becomes owned entirely by the remaining joint owner or owners. The owner who has died cannot pass his or her interest by will or inheritance. In Texas this form of ownership usually does not occur unless the deed or other conveyance to the joint owners makes it explicit.

A wife and husband may jointly own property as “community property.” In Texas property acquired by a couple during their marriage generally is community property, except property acquired as a gift or by will or inheritance, or bought with money or property one of the spouses had before marriage. Community property is considered owned by the “community” rather than each spouse individually, but for most purposes may be considered owned by both spouses in equal shares. Community property is subject to special rules and restrictions that do not necessarily apply to other forms of joint

ownership.

3. **What rights does a joint owner have?**

Each joint owner has the right to occupy and use the jointly owned property, each and every part of it, but may not exclude the other owner or owners. An owner who makes a profit on the property must account to the other joint owners for their shares. For example, one owner of a tract of land has the right to explore for, drill and produce oil and gas regardless of whether any or all other joint owners participate or consent. If one of the owners drills a successful well, though, he must pay all other owners their shares of oil and gas operating revenues after recovering his costs. By the same token, one joint owner may lease his or her interest in a tract for oil and gas exploration and production to a different lessee, and under entirely different terms, from another joint owner.

4. **Can joint owners change their joint ownership rights by signing a written contract?**

It is possible for owners to change their joint ownership rights. Joint owners may change from one form of ownership to another; in many cases this requires that very specific steps be taken in order to achieve the desired result. Joint owners may "partition" their joint property so that each becomes the owner, by himself or herself, of a particular tract out of the larger jointly owned area. Joint owners may also agree among themselves how the joint property is to be managed and expenses and income shared. In most cases this kind of agreement is unlikely to be effective unless it is in writing. It is strongly recommended that an attorney be consulted by anyone desiring to alter joint ownership rights.

5. **What are some common contracts between joint owners of mineral rights?**

Joint owners of the minerals or mineral leasehold in a tract of land who desire to develop and operate the land for oil and gas production typically enter into a joint operating agreement. The agreement usually appoints one owner to physically conduct the drilling and other operations, subject to various limitations, and provides for how the owners will share costs and income among each other. It is not unusual for joint owners to consolidate their rights by transfer to a single corporation, partnership, limited liability company, or other entity in order to centralize and simplify management, to shield assets from liability, or to accomplish other purposes.

6. **What information or materials should I gather to make a meeting on this topic with a lawyer most effective?**

Bring copies of any deeds, wills or other documents that have created existing ownership rights in the property. Locate complete names and addresses of all joint owners of the property involved and, if possible, legal descriptions of all land involved in the matter. Make careful notes on the circumstances that have brought you to consult with your lawyer and what result you desire to accomplish or advice you seek.

THE OIL AND GAS LEASE

1. **What is an oil and gas lease?**

An oil and gas lease is both a conveyance and a contract. It is a conveyance because the lessor, by signing, conveys all of his mineral estate to the lessee reserving the right to receive the stated royalty upon actual production and the right to receive the return of the mineral estate upon termination of the lease. It is a contract because it details the terms of the continuing relationship between the lessor and the lessee during the term of the lease.

2. **Is there a standard form of oil and gas lease?**

No. Most leases address the same issues, but the details of the relationship between the parties may vary significantly according to the lease document.

3. **What are some of the key provisions in an oil and gas lease?**

A. The primary term - the time period, often three to five years but sometimes only a few months or even days, during which the lease will last without any drilling or other activity.

B. The secondary term - the time period after the primary term, usually stated in the lease as being “as long thereafter as oil and/or gas is produced,”during which the lease will continue because of drilling operations by the lessee or production obtained by the lessee.

C. The royalty - a percentage or fraction of oil and gas production or sale proceeds, usually 1/8 to 1/4 and often the subject of negotiation between the lessor and lessee, which the lessor is entitled to receive free of cost.

D. The delay rental - an amount paid annually, traditionally $1.00 per acre, for the privilege of deferring drilling operations for another year. Although delay rentals were once a feature of nearly all oil and gas leases, many, if not most, leases now do not require delay rental payment in lieu of drilling and are referred to as being "paid-up."

E. The shut-in gas royalty - an amount, often $1.00 per acre, that the lessee will pay when it has completed a well capable of producing gas but cannot actually produce the gas because of lack of a pipeline connection, a gas price that is too low (in the lessee's opinion), or some other reason allowed by the lease.

4. **Must I sign an oil and gas lease that has been sent to me?**

No. Just as a property owner may refuse any other offer, a mineral owner has no obligation to sign any lease tendered to him. The mineral owner/lessor may make a counteroffer by suggesting different or additional lease terms or asking for more bonus money, or he can ignore the offer entirely.

5. **What payments will I receive in the event that I sign an oil and gas lease?**

First, you as lessor should receive a bonus payment, which is usually defined in terms of dollars per acre, such as $100.00 per acre owned. Secondly, you may receive delay rental payments, traditionally $1.00 per acre, so that the lessee may defer drilling by one

year at a time. For example, a three-year lease will require a delay rental payment on or before the beginning of the second year and the third year. Most leases nowadays are "paid-up"; no such annual payment is required regardless of whether drilling has begun. Third, if production is obtained, the lessor receives royalty, as defined above.

6. **How does an oil and gas lease terminate?**

A. If the lease requires annual delay rental payments, and they are not paid in advance when the lease is signed, the lease terminates if the lessee fails to make the delay rental payment or makes it too late, to the wrong person, or in the wrong amount.

B. At the end of the primary term, if the lessee is not conducting drilling operations and has not previously completed a producing well, then the lease terminates. Leases may provide for termination as to nonproducing portions of a producing lease at some point in time, for example when the lessee is no longer continuously drilling after the primary term.

C. If the lessee begins drilling during the primary term and obtains oil or gas production, then the lease terminates in the future when the lease ceases to produce oil and/or gas in “paying quantities.” The term “paying quantities” means that, over a reasonable period of time, the lessee’s income received from selling the oil and/or gas exceed the lessee’s costs in operating the well and producing the oil and/or gas.

7. **Must my spouse sign an oil and gas lease covering my mineral rights?**

Usually no. If title to the mineral estate is in both husband and wife, or if the land is their home, then both must sign. If title is in only one spouse, then that spouse only must sign. However, if both spouses sign when title is in one spouse, then payments of royalty and other payments may be made to both spouses jointly.

8. **Must an oil and gas lease covering my mineral rights be recorded?**

No. An oil and gas lease is effective between the lessor and lessee when executed by the lessor and delivered to the lessee. However, it is in the lessee’s interest to record the lease so that all third parties will know that the lessor has granted a lease.

9. **Must the signatures on an oil and gas lease be notarized, and, if so, what form of notary acknowledgment should be used?**

Notarization of signatures is required for recording. In other words, the lack of notarization does not affect the lease as between the parties, but, if not notarized, the lease cannot be recorded with a county clerk in Texas. Since, as explained in question 8 above, the lessee will want to record the lease, oil and gas leases are routinely notarized. The Texas form for an individual’s notarization is:

STATE OF TEXAS)
COUNTY OF _____)

This instrument was acknowledged before me on the _____ day of _____, 20__

by _____.

_____
Notary Public

10. **What information or materials should I gather to make a meeting on this topic with my lawyer most effective?**

You should take the deed or other instrument that conveyed the minerals to you. You should also take copies of any previous leases. It will also be helpful if you can recall any previous contacts you have received from potential lessees that did not ultimately ripen into a lease.