

# **KEY ISSUES IN TITLE INVESTIGATION**

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# KEY ISSUES IN TITLE INVESTIGATION

## INTRO TO TITLE INVESTIGATION



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## **Land Trust Alliance Standards and Practices, Practice 9H, Title Investigation and Subordination:**

### **Indicator Practice 9H. Title Investigation and Subordination**

The land trust investigates title to each property for which it intends to acquire title or an easement to be sure that it is negotiating with the legal owner(s) and to uncover liens, mortgages, mineral or other leases, water rights and/or other encumbrances or matters of record that may affect the transaction. Mortgages, liens and other encumbrances that could result in extinguishment of the easement or significantly undermine the important conservation values on the property are discharged or properly subordinated to the easement. [Text may change with LTA revision.]

# WHAT IS TITLE?

**TITLE = OWNERSHIP**



In Texas, title to land may be divided between the  
**SURFACE ESTATE**  
and the  
**MINERAL ESTATE**



# SURFACE ESTATE:

- Possession
- Development: Resid, Commer, Indust
- Agriculture, timber, grazing
- Hunt, fish
- Surface mining: coal, sand, gravel
- Water
- Leasing, or granting easements





# MINERAL ESTATE:

- Oil, gas, and other minerals  
Subsurface minerals



# KEY POINT:

Grantor of conservation easement must be owner of surface estate





# HOW DO YOU KNOW WHO THE OWNER IS?

Pre-Accreditation: Land Trust would get copy of the landowner's deed

Accreditation Era: Title Investigation (S&P 9H)



# **TITLE INVESTIGATION = COMMITMENT FOR TITLE INSURANCE**

- TITLE INSURANCE IS ISSUED BY A TITLE INSURANCE COMPANY



# **TITLE COMMITMENT SCHEDULE A**

- 1 – Insured Party: Your Land Trust**
- 2 – Insured Interest: CE (unless fee transaction)**
- 3 – Record Title Owner: Name of CE Grantor**
- 4 – Property Description of CE Property**
  - Field Notes: Exhibit A of CE**
  - Survey Plat – Should match field notes**



# **TITLE COMMITMENT**

## **SCHEDULE B: EXCEPTIONS TO COVERAGE**

- Boilerplate exceptions – tidelands, navigable waterways, material liens, etc.
- Access Easements
- Utility Easements
- Mineral leases
- Property Access (May need access easement)



# **TITLE COMMITMENT SCHEDULE C**

## **Title Company Requirements**

### **Mortgages**

- Must be paid off or subordinated at closing**



# **TITLE INVESTIGATION = COMMITMENT FOR TITLE INSURANCE \***

**\*** Reviewed by someone who  
knows what they're doing





# **CLOSING THE TRANSACTION**

- **Collecting signatures**
- **Signature authority:**
  - **General Authority – to sign on behalf of organization**
  - **Specific Authority – to sign THIS DOCUMENT**
- **Closing instructions**



# MORAL

**Close with title company**





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# Water & Minerals 2017

## Who owns what?

# Texas Property Law : Surface, Minerals, & Groundwater



## Ways to share:

- Severance of minerals
- Severance of water
- Access
- Shared ownership  
(undivided interest)
- Life estate
- Fee simple determinable

## How this occurs:

- Reserve right
- Transfer right





# Surface Water

- Water in a watercourse / “state water”
- Texas Water Code 11.021





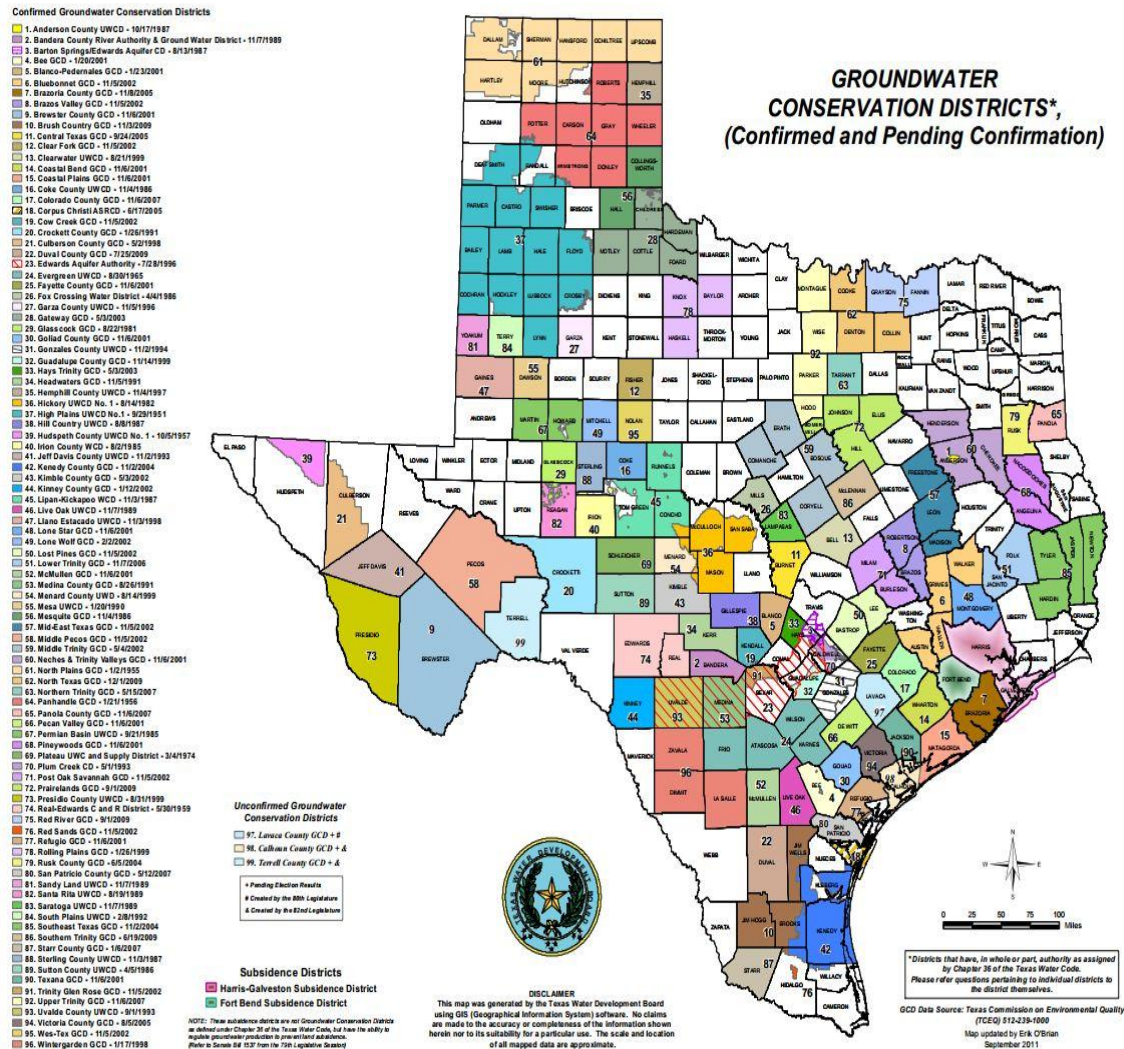
# TCEQ

- The state agency with jurisdiction over state water
- A “water right” is “a right ...to impound, divert, or use state water”
- Prioritized
- For a Particular Use



# Groundwater

- Rule of Capture
- Subject to regulation



# Minerals in Texas

- What is a mineral?
- “*Oil, gas, and other minerals.....*”
- oil & gas & uranium
- NOT sand, soil, limestone or caliche
- NOT groundwater
- NOT substances that lie within 200 feet of the surface if production will destroy or deplete the surface (surface destruction test).



# Minerals in Texas

- Exceptions
- Spanish land grants (26 million acres, 1730 – 1821)
- Mexican land grants (1821 - 1835)
- State of Texas – riverbeds
- Mineral classified lands (trans-pecos region)
- Free royalty tracts (after 1931)



# Minerals in Texas

- What is a mineral lease
- Fee simple determinable



# Minerals in Texas

- The mineral estate
- 5 separate components
  1. The right to develop (right of ingress and egress)
  2. the right to lease (executive right)
  3. the right to receive bonus payments
  4. the right to receive delay rentals
  5. the right to receive royalty payments





# Minerals in Texas

- The Dominant Estate
- The right to use as much as the surface as is *reasonably necessary* for the exploration and development of the minerals
- Includes use of water / injection of water for production
- Includes the right to construct roads, bridges, canals, pipelines
- Includes the right to install storage tanks, slush pits, structures
- Includes the right to use caliche on the property
- Very limited circumstances for surface damage liability
- No duty to restore



# Minerals in Texas

- What about the Surface Owner?
- The rights of the two are “reciprocal and distinct”
- May continue to use the surface in any manner that is not inconsistent with the mineral owner’s use
- May further define or limit rights by agreement
- Either party that exceeds its rights is a trespasser

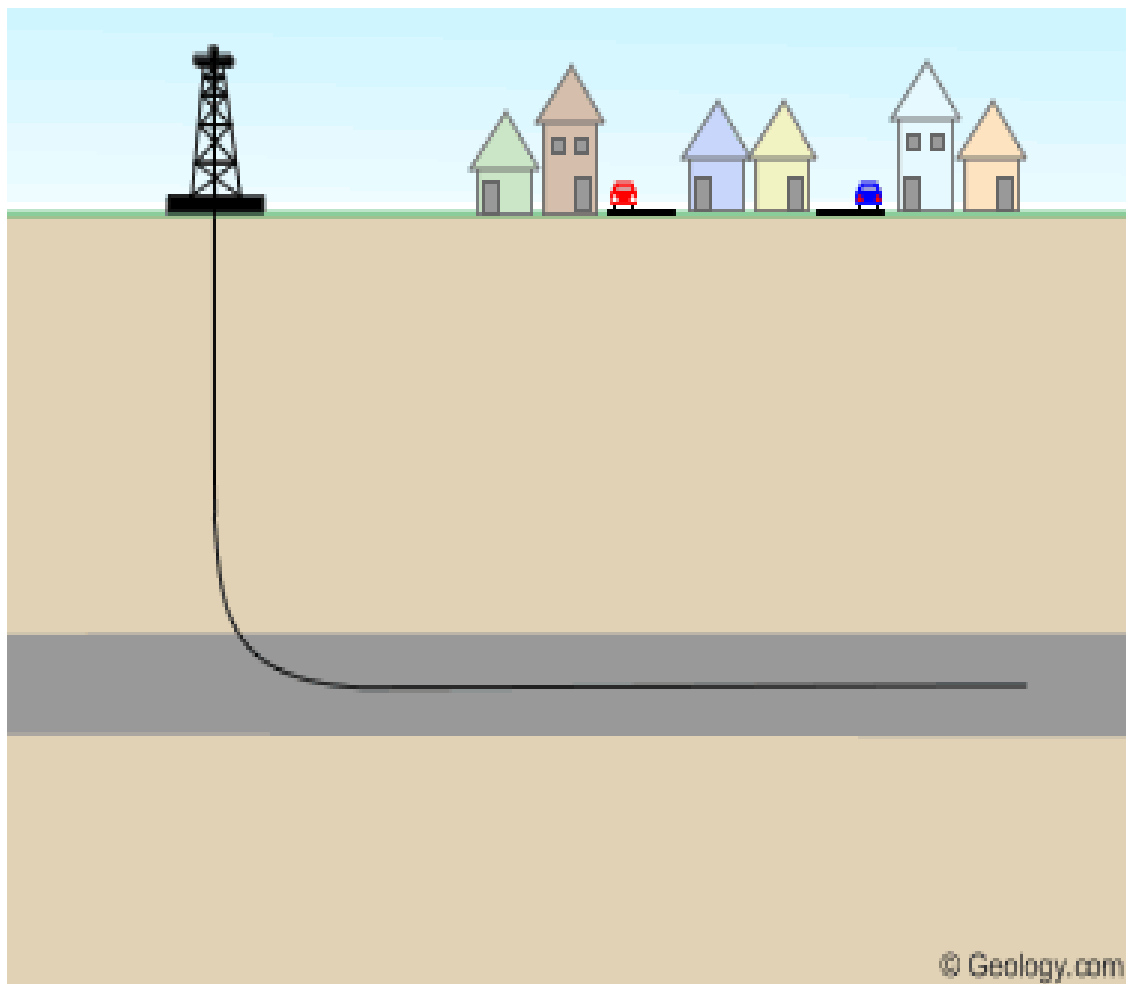


# Minerals in Texas

- Protecting the surface
- Surface Use Agreement, a component of the lease
- Ex. Location of wells, roads, pipelines
- Restoration
- Surface damages
- Use of water
- Waiver of use of surface



# Surface Use Protections



# Minerals in Texas

- Drilling regulations
- Texas Railroad Commission
- Govern surface and subsurface use
- Approval of well locations
- Collection of oil and gas fee payments and surcharges



# Minerals in Texas

- Mineral interest v. royalty interest

*Seller reserves a 1/8 mineral interest.....*

*Seller reserves a 1/8 royalty interest.....*





# Minerals in Texas

- Accommodation doctrine
- “mineral easement” over the surface of the land

*Mineral Estate Rights in Texas.* Mineral parties have the right to use as much of the surface, subsurface and adjacent airspace of the land as reasonably necessary to enjoy the mineral estate, but such right must be exercised with “due regard” to the rights of the surface parties. Getty Oil v. Jones, 470 S.W.2d at 621; Humble Oil v. Williams, 420 S.W.2d at 134. These rights over the surface estate have been described by the Texas Supreme Court as an “appurtenance” and a “mineral easement” over the surface of the land. Harris v. Currie, 176 S.W.2d 302, 305 (Tex. 1943); Empire Gas & Fuel Co. v. Texas, 47 S.W.2d 265, 268 (Tex. 1932) (defining the “mineral easement” to be “the necessary right to use the surface of the earth in the enjoyment of the mineral estate”). If a surface party does not explicitly grant the mineral easement to the mineral party, then the grant of the mineral easement is implied. *Id.* Without the mineral easement, Texas courts have noted that the rights in the mineral estate would be “wholly worthless.”



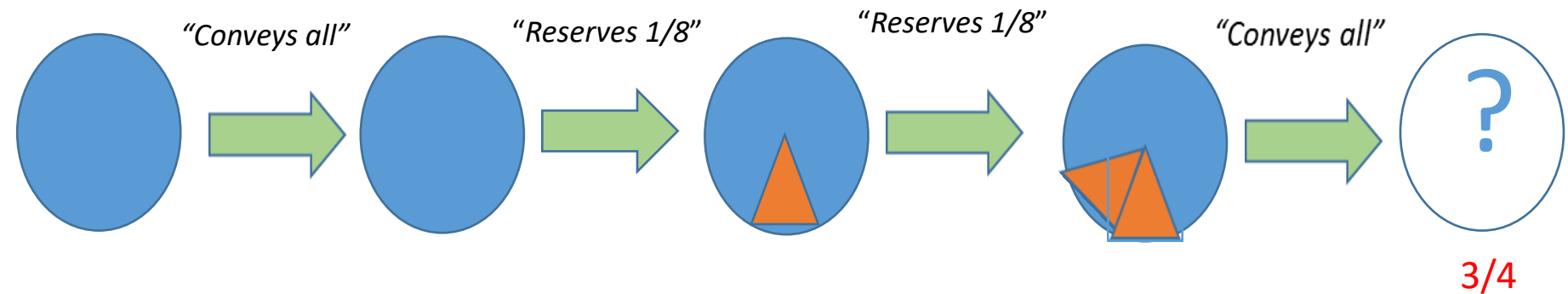
# George and Harriett

- Co-tenants
- Duties of co-tenants
  - Right of possession – each has a right to occupy any part of the jointly owned property
  - Right of accounting – each must account to the other for all the income and expenses arising from projects conducted on the property by one cotenant without the other's consent



# Minerals in Texas

- Title Investigation
- Mineral title opinion
- Deed records
- Probate records
- Minerals deed records



# Curing mineral severances

- Waiver of surface use
- Title insurance
- Affidavit of non-production
- Purchase of mineral estate
- Contract for preemptive surface use agreement
- Geologist's remoteness letter



# Accommodation Doctrine

- Coyote Lake Ranch, LLC v. City of Lubbock
- May 27, 2016 Texas Supreme Court



# CONSERVATION EASEMENT



**HOT TOPICS**



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