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**PREPARING OIL AND GAS TITLE OPINIONS:  
What to Know and Do Before, During and After**

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## **SECTION #1: GENERAL INDUSTRY MATTERS TO KNOW BEFORE DRAFTING**

### **A. HOW FRACKING IMPACTS THE OIL AND GAS INDUSTRY**

It is well known both that fracking has dramatically increased the production of natural gas in the United States and that there is an active opposition movement. The first three resources listed below offer general industry information, inclusive of fracking, and the latter resources pertain specifically to fracking:

- Shale Media Group ([shalemediagroup.com](http://shalemediagroup.com))
- Marcellus Drilling News ([marcellusdrilling.com](http://marcellusdrilling.com))
- Energy in Depth ([energyindepth.org](http://energyindepth.org))
- Frac Focus ([fracfocus.org](http://fracfocus.org))
- “Hydraulic Fracturing 101: What it is; Why it is Used; Why all the Fuss? Is it Used in Indiana?” by Herschel McDivitt, Director of the Division of Oil and Gas, Indiana Department of Natural Resources (<http://www.in.gov/dnr/dnroil/>)
- “Just the Fracks, Ma'am: The TRUTH about Hydrofracking and the Next Great American Boom” by Greg Kozera
- “The Frackers: The Outrageous Inside Story of the New Billionaire Wildcatters” by Gregory Zuckerman

The Indiana Department of Natural Resources website (<http://www.in.gov/dnr/dnroil/>) sets forth the following:

“Hydraulic fracturing (also known as hydrofracturing, “fracking”, or “fracing”) was first used in 1947 in a well in Grant County, Kansas when a mixture of approximately 1,000 gallons of fluid was pumped into an underground formation at a depth of 2,400 feet in an attempt to improve the production of a natural gas well completed in a limestone formation. Since that time, the use of hydraulic fracturing has become a regular practice to stimulate increased production in oil and gas wells in the United States and throughout the world.

Hydraulic fracturing was first introduced in the Illinois Basin in the early to mid-1950's where it was found to be an effective method to increase production from oil wells in Illinois, Indiana, and western Kentucky. In some areas, the early use of hydraulic fracturing has been credited with increasing average production rates by 75% or more. The practice has been widely used here ever since.”

Before a well is fracked, preliminary and precautionary procedures are implemented. Initially, the well bore is drilled through the shallow fresh water aquifer and “Surface Casing” cement is placed around the well bore to seal off and protect the water zone. The well bore is thereafter drilled until it reaches the zone where oil and gas are located, known as “Total Depth.” The well bore passes through several different rock formations, including bedrock, between the Surface

Casing and Total Depth. If the well is commercially viable, “Production Casing” cement is placed around the well bore from the Surface Casing to Total Depth, which prohibits the escape of water and fracking fluids into protected zones.

The well pipe is “Perforated” at the producing zone by shooting holes through the production casing, which allows oil and gas to enter the well bore. How much oil and gas makes its way back into the well bore is impacted by the pore space within the rock, how numerous and large the connections are between pore spaces, and the buildup of natural pressure within the reservoir. Fracking is a method to link the pore spaces and to interconnect natural fractures and hydraulic fractures, thereby creating a path for the exit of oil and gas. Fracking fluid, which consists of at least 98% water and sand, is pushed out of the perforations in the producing zone to generate fractures, which the sand holds open after creation. Fracture pathways expand out horizontally from the well bore rather than vertically.

The fact that fracture routes do not lead back to water aquifers high above the perforated well bore has been confirmed by numerous studies, including those performed by the Environmental Protection Agency, MIT, Stanford and various states, as fracking is presently state regulated. In his article entitled “Landmark Fracking Study Finds No Water Pollution” published by the Associated Press on September 16, 2014, Kevin Begos states as follows:

“The final report from a landmark federal study on hydraulic fracturing, or fracking, found no evidence that chemicals or brine water from the gas drilling process moved upward to contaminate drinking water at a site in western Pennsylvania. The Department of Energy report, released Monday, was the first time an energy company allowed independent monitoring of a drilling site during the fracking process and for 18 months afterward. After those months of monitoring, researchers found that the chemical-laced fluids used to free gas stayed about 5,000 feet below drinking water supplies.

Scientists used tracer fluids, seismic monitoring and other tests to look for problems, and created the most detailed public report to date about how fracking affects adjacent rock structures. The fracking process uses millions of gallons of high-pressure water mixed with sand and chemicals to break apart rocks rich in oil and gas. That has led to a national boom in production, but also to concerns about possible groundwater contamination.”

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## **B. HOW PIPELINE AND PROCESSING TRENDS IMPACT THE OIL AND GAS INDUSTRY**

According to the US Energy Information Administration, the United States now produces more natural gas than any other country. James Stafford comments that North America has surpassed Saudi Arabia and Russia as the world’s largest producer of oil and natural gas liquids but notes that “North America doesn’t have nearly enough oil and gas pipelines to accommodate its 11-million-barrel-a-day output level. The famously unresolved proposed Keystone XL pipeline would carry oil from Canada to the U.S. Gulf Coast, but its future is in legal and political limbo.

The controversial Northern Gateway pipeline, proposed as an alternative to Keystone XL, would connect Canada's oil sands to the Pacific Coast, allowing greater volumes of oil to be shipped to Asia, but it, too, is still on the drawing board." (<https://oilprice.com/Energy/Energy-General/New-Technology-Could-End-The-Debate-Over-Pipeline-Safety.html>)

In his article "Keystone Pipeline will Boost U.S. Oil, Gas Supply" Maj. Gen. Bill Hodgkins states that "The KXL Pipeline is estimated to deliver almost 1 million barrels of oil from Canada into the United States daily, creating more than 40,000 new jobs, according to the State Department, and providing additional energy security...The pipeline represents increased energy independence and security for our country. There is a clear connection between energy security, energy independence and national security...The pipeline's creation is expected to pump an additional \$3.4 billion into the U.S. gross domestic product."

Once natural gas is brought up to the wellhead, it is processed and transported to the consumer for use by a complex network of pipelines. *Natural Gas, From Wellhead to Burner Tip: Transport: The Transportation of Natural Gas*, <http://www.naturalgas.org/naturalgas/transport>. Three major types of pipelines are used along the transportation route:

1. Gathering System: Also known as the "upstream" segment of gas distribution, comprised of low pressure, small diameter pipelines that transport raw natural gas from the wellhead to the processing plant, where pipeline-quality natural gas is produced.
2. Interstate Pipeline: Also known as the "midstream" segment of gas distribution, comprised of high pressure pipelines that carry gas across state boundaries. The higher pressure reduces the volume of the natural gas being transported and provides the propellant force needed to move the gas through the pipeline.
3. Distribution Systems: Also known as the "downstream" segment of gas distribution, comprised of small diameter pipelines. Large industrial and commercial consumers may receive natural gas directly from interstate pipelines; however, most consumers receive natural gas from local distribution companies, typically owned by investors or local governments, which transport the natural gas to consumers from delivery points along interstate pipelines. "It has been estimated that there exists over one million miles of distribution pipe in the United States." *Id.*

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## **SECTION #2: WHAT TO DO BEFORE BEGINNING THE DRAFTING PROCESS**

### **A. ACQUIRE NECESSARY EDUCATIONAL RESOURCES:**

1. Read all oil and gas statutes (i.e. Indiana Code)
2. Read all oil and gas administrative regulations (i.e. Indiana Administrative Code)

3. Read the real property and probate statutes
4. Read the Land Title Standards (if promulgated in the Examiner's state)
5. Read the Department of Natural Resources' website
6. Read highly regarded oil and gas law treatises:
  - Eugene Kuntz, a Treatise on the Law of Oil and Gas
  - Howard R. Williams & Charles J. Meyers, Oil and Gas Law
  - George J. Morgenthaler, Oil and Gas Title Examination
  - W.L. Summers, The Law of Oil and Gas
  - American Law of Mining, Rocky Mountain Mineral Law Foundation
  - Oil & Gas Law Book by State, American Association of Petroleum Landmen
  - Oil & Gas Law Book by Topic, American Association of Petroleum Landmen
  - Rocky Mountain Mineral Digital Law Library
  - Energy and Mineral Law Foundation Digital Library
  - Energy and Mineral Law Foundation White Papers

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## **B. UNDERSTAND DEFINITIONS OF KEY INDUSTRY TERMS**

The following list of oil and gas industry terms is not exhaustive. See Schlumbergers Oil Field Glossary ([www.glossary.oilfield.slb.com](http://www.glossary.oilfield.slb.com)) or Petro Strategies Glossary ([www.petrostrategies.org](http://www.petrostrategies.org)) for additional definitions:

### **TITLE TERMS**

1. Abstract of Title: A chronological composition of all instruments that affect title, judgments rendered against all parties in title, and tax payment histories. Abstracts are generally compiled by an abstract company or title company and include a title page describing the subject land and the scope and span of the title search, plat maps, an index of the instruments contained therein, copies of the related instruments and a certification by the preparer that the Abstract includes all pertinent information and copies of all documents affecting title to the subject land.
2. Chain of Title: All documents pertaining to a tract of land that affect title, including all instruments on record in the County Recorder's Office or on file in the County Clerk's Office or other location.

3. Marketable Title: Black's Law Dictionary 722 (3rd pocket ed. 2006) defines marketable title as "A title that a reasonable buyer would accept because it appears to lack any defect and to cover the entire property that the seller has purported to sell." Courts generally construe marketable title to mean title that a reasonable buyer would accept.
4. Run Sheet: Like an Abstract, it is a chronological composition of all instruments that impact title, judgments rendered against all parties in title, and tax payment histories. Run Sheets are generally compiled by a land services company and are less formal in fashion, including only an index of the instruments contained therein and copies of the related instruments of record, with no certification as to the scope of the title search.
5. Stand-Up Title: The records of the County Recorder's Office and other county offices where the subject land is located are searched and title is compiled by an attorney rather than an abstract company or a land services company and the attorney renders a Title Opinion based upon the title search results.

### **TYPES OF UNITS**

1. Drilling Unit: The minimum area of land, which may be comprised of numerous tracts of land, upon which a well can be drilled in accordance with state regulations.
2. Pooled Unit: An area of land that includes the drilling unit and additional lands. By including additional land in the Pooled Unit, the Operator can hold the Oil and Gas Leases that cover the additional land in full force and effect.
3. Production Unit: A general term used to describe the area of land that is the basis of in the Division of Interest Calculations, which may be a Drilling Unit or a Pooled Unit. Operators are not bound to drill on lands larger than the drilling unit but often opt to do so.

### **TYPES OF OWNERSHIP INTEREST**

1. Carried Interest: A carried interest owner pays no well or operational expenses until a point in time mutually agreed upon, which is generally when the well reaches pay-out. Well and operational expenses are paid by the working interest owners that are not carried.
2. Division Order: Before production proceeds are disbursed, the Operator submits a Division Order to each party that owns an interest in the Production Unit. The interest owner, known as the payee, signs the Division Order to acknowledge the accuracy of their ratio of ownership and agrees that the Operator may disburse production proceeds based on the stated ratio, known as the Division of Interest Calculation, until notified of a change in ownership.

3. Lease Burdens: Includes the Lessor's royalty interest, overriding royalty interests, production payments and any similar interests payable out of the production proceeds generated from a well. Owners of interest that constitute the lease burden generally do not pay well or operational expenses.
4. Leasehold Interest: Any right to an estate created under a lease. In the area of oil and gas, the term refers to the working interest.
5. Net Profits Interest: A payment to a party calculated in relation to net production proceeds generated from a well. It is paid solely by the working interest owner and is sometimes granted in lieu of a royalty interest.
6. Net Revenue Interest: The share of production proceeds generated from a well that the working interest owners actually receive. The net revenue rate is calculated by deducting all lease burdens, such as royalty interests and overriding royalty interests, from 100%. For example, if an Oil and Gas Lease granted a royalty interest of 12.5% and a 5% overriding royalty interest was conveyed by the working interest owner to an investor, the net revenue interest would be 100%, less 12.5%, less 5.0%, equaling 82.5%. The working interest owner would be required to pay all well costs, but would receive 82.5% of the production proceeds generated from the well.
7. Operator: The individual or business entity responsible for the exploration, development, and production of an oil or gas well or Oil and Gas Lease.
8. Overriding Royalty Interest: The right to payment of production proceeds generated from a well, which is carved out of the working interest created by an Oil and Gas Lease. An overriding royalty interest expires once the related Oil and Gas Lease expires or production ceases, whichever is the latter to occur. Unless otherwise agreed, the overriding royalty interest owner is not subject to any portion of the expense of exploration, development, drilling, operating, producing, maintaining the well, marketing or any other expense associated with the same.

An overriding royalty is a right to an interest in the oil and gas produced at the surface and is not connected to ownership of minerals under the leased property. Rather, it stems from ownership of a portion of generated revenues from oil and gas. Owners of overriding royalty own only proceeds from the production of minerals and not the minerals under the ground. An overriding royalty interest is a non-operating interest; therefore, the owner has no decision-making powers, such as whether a well will be drilled or abandoned.

9. Payout: The point at which all costs of leasing, exploring, drilling and operating have been recovered from the production proceeds generated from a well.



10. Post-Production Costs: Post-production costs occur after production costs cease and after gas has reached the wellhead, and include expenses associated with dehydration, processing, gathering, compression and transportation. Transportation costs include costs associated with transporting gas to the pipeline of the purchaser and generally include fees to use a third party's pipeline or gathering system or the costs of building a pipeline or gathering system to connect to the purchaser's pipeline.
11. Production Payment Interest: An interest that will change ownership when a specified production level has been attained or the interest has earned a certain amount of money.
12. Royalty Interest: The right to receive revenue from the sale of oil and gas produced from a well drilled on the property covered by an Oil and Gas Lease owned by the Lessor (or a subsequent owner of the leased property). Unless otherwise agreed, the royalty interest owner is not subject to any portion of the expense of exploration, development, drilling, operating, producing, maintaining the well, marketing or any other expense associated with the same. Owners of royalty own the minerals under the ground.
13. Severed Royalty Interest: A non-expense-bearing interest in the minerals produced and saved from the subject land, owned by a party other than the surface owner. The interest may be created by a landowner prior or subsequent to the leasing of the land. The interest may be granted or reserved for years, for life, in fee simple defeasible (e.g., when the grant or reservation is for years "and so long thereafter" as oil or gas is produced), or in perpetuity.
14. Working Interest: The rights of the Lessee (generally an oil and gas producer) under an Oil and Gas Lease, including the right to explore, drill and produce oil and gas from a well located on the leased property. Unless otherwise agreed, the working interest owner bears all well and operational costs including those associated with exploration, development, drilling, producing, maintaining the well and marketing production. Working interest ownership includes the right to operate the well and the working interest owner is automatically the Operator, unless the working interest owner appoints another party to act as Operator.

The share of the production proceeds to which the working interest owner is entitled is less than the share of the costs the working interest owner bears as the royalty interest owner and overriding royalty interest owner generally does not pay well and operational costs. For example, the owner of a 100% working interest in an Oil and Gas Lease that granted the royalty interest owner (landowner) a royalty interest of 12.5% would be required to pay all well costs, but would receive 87.5% of the production. The working interest can be owned by one or more parties and each shares the well costs in relation to their percentage of ownership, unless otherwise agreed. Only one of the working interest owners will act as the Operator, which is determined by agreement.

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## C. UNDERSTAND DEFINITIONS OF OIL AND GAS LEASE TERMS

The following list of oil and gas lease terms is not exhaustive. See Schlumbergers Oil Field Glossary ([www.glossary.oilfield.slb.com](http://www.glossary.oilfield.slb.com)) or Petro Strategies Glossary ([www.petrostrategies.org](http://www.petrostrategies.org)) for additional definitions:

1. Oil and Gas Lease: A contractual agreement between a Lessor intending to drill an oil and gas well and a Lessee owning all or part of the oil and gas interest in the leased property that grants the right to access the leased property and produce the minerals thereunder.
2. Habendum Clause: This clause, also referred to as the “Term Clause,” limits the duration of the Lessee’s interest. The primary term is the time period stated in the Oil and Gas Lease (such as “five years”) and the secondary term is established by “thereafter” language (such as “and as long thereafter as oil, gas and/or associated hydrocarbons are produced from the leased premises or on lands pooled therewith”). Production, operations, continuous drilling and/or shut-in royalty payments may extend an Oil and Gas Lease into the secondary term.
3. Granting Clause: This clause describes the rights granted to the Lessee and the property that is subject to the Oil and Gas Lease. It commonly contains either a “Mother Hubbard” provision, which gives the Lessee certain rights in lands adjacent or contiguous to the leased property, or an “In Gross” provision, according to which the stated acreage amount prevails over the actual acreage content of the leased property for specified purposes, such as for rental payment purposes.
4. Royalty Clause: This clause describes the share of production proceeds that the Lessor shall receive and how the royalty shall be received.
5. Shut-in Royalty Clause: This clause describes the terms that will govern should a well capable of producing in paying quantities be shut-in and how the Lessor shall be compensated monetarily.
6. Pooling Clause: This clause establishes the rights of the Lessee to combine Oil and Gas Leases to form a larger single production unit.
7. Pugh Clause: This is a non-standard clause that prohibits an Oil and Gas Lease from holding beyond the primary term that portion of the leased property not included in a Pooling or Unitization Agreement.
8. Vertical Pugh Clause: This is a non-standard clause that prohibits an Oil and Gas Lease from holding beyond the primary term that portion of the leased property located below the deepest producing formation, thereby leaving the minerals at other depths open and available for lease.

9. Pugh with Continuous Drilling Clause: This is a non-standard clause that requires that the Operator continue to drill additional wells after the expiration of the primary term to avoid losing that portion of the leased property that has not been included in a Pooling or Unitization Agreement.

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#### **D. UNDERSTAND THE PURPOSE OF VARIOUS TITLE OPINION TYPES**

1. Lease Acquisition Title Opinion:

- Requested by a client acquiring a leasehold interest in existing leases
- Generally prepared in connection with a purchase and sale agreement
- Limited to the status, quantity and quality of the seller's interest
- May examine due diligence measures agreed to between buyer and seller
- Identifies all oil and gas and/or mineral owners and parties to be leased
- Describes encumbrances that may impact the leasehold interest
- Does not address disbursement of production proceeds to interest owners

2. Drilling Title Opinion:

The primary purpose of a Drilling Title Opinion is to document the following:

- All tracts of land located within the drilling unit are properly leased
- The client validly acquired and presently owns the leasehold interest
- No contractual restrictions exist that would limit drilling operations
- No easements or encumbrances exist that would limit drilling operations
- The Title Materials confirm that title is marketable or, if title defects exist, that the client is fully informed regarding the associated business risk

Upon encountering a significant title defect, it is advisable to call the client immediately. When title defects are such that title is not marketable, the Title Opinion sets forth Objections (also known as Comments) and Requirements. Objections describe the fact pattern and instruments associated with the title defect, cloud on title or marketability issue. Requirements set forth curative measures intended to reduce the risk borne by the client.

- Also called a Pre-Drilling Title Opinion or Preliminary Title Opinion
- Requested by an Operator that is contemplating drilling operations
- Usually rendered prior to the commencement of drilling operations

- Based upon examination of Title Materials, including Abstracts
- Informs the client regarding whether the proposed well is viable
- May cover an individual tract only (Tract Title Opinion)
- May cover the well site location only (Drill Site Title Opinion)
- May cover all tracts located within the drilling unit
- Identifies surface, oil and gas, and leasehold interest owners
- Describes Oil and Gas Lease provisions and the related obligations
- Describes encumbrances that may impact the leasehold interest or property development, including well placement and surface activity
- Does not address disbursement of production proceeds to interest owners
- Identifies title defects, clouds on title and marketability issues
- Objections and Requirements set forth curative measures that must be satisfied prior to drilling

3. Division Order Title Opinion:

The primary purposes of a Division Order Title Opinion include the objectives set out under the description of a Drilling Title Opinion except that a Division Order Title Opinion covers all tracts of land located within a pooled unit or production unit rather than a drilling unit. A Division Order Title Opinion also includes Division of Interest Calculations pertaining to the disbursement of production proceeds between royalty interest, overriding royalty interest, working interest owners and/or other interest owners. The Division of Interest Calculations produce a decimal interest in the total share of production. The decimal interests combined must equal one hundred percent.

- Requested by an Operator after a well is producing in paying quantities
- Based upon examination of a Base Opinion (Pre-Drilling Title Opinion, Drilling Title Opinion or Preliminary Title Opinion), a Supplemental Abstract and curative measures completed to date
- Sets forth all of the information contained in the Base Opinion
- Describes Oil and Gas Lease provisions and the related obligations
- Describes encumbrances that may impact the leasehold interest or property development, including well placement and surface activity
- Identifies surface, oil and gas, overriding royalty interest, working interest and any additional interest owners
- Specifies whether any working interest owner is carried, together with “before pay-out” or “after pay-out” ownership ratios
- Specifies the burden or cost sharing ratio borne by each working interest owner

- Contains Division of Interest Calculations utilized by the client in the ensuing Division Orders
- Discusses post-production costs
- Identifies title defects, clouds on title and marketability issues
- Objections and Requirements set forth curative measures that must be satisfied prior to distribution of production proceeds to the interest owners at issue

4. Supplemental Title Opinion:

- Updates any previously rendered Title Opinion
- Based upon examination of Supplemental Title Materials that should include all documents recorded or generated after the Base Opinion
- If no updated Title Materials are provided, the Supplemental Title Opinion should document the same to exonerate the current Examiner from liability
- Often includes curative instruments generated pursuant to the Objections and Requirements set forth in the Base Opinion
- May update a Base Opinion prepared by the current Examiner
- May update a Base Opinion drafted by other attorney
- The Examiner may not have access to the original Title Materials that served as the basis of the Base Opinion
- If the original Title Materials are not provided, the Supplemental Title Opinion should document the same to exonerate the current Examiner from liability
- Usually restates the Objections and Requirements set forth in the Base Opinion and indicates whether the curative instruments fully satisfy the Requirements

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**E. ASCERTAIN AND IMPLEMENT THE CLIENT'S DIRECTIVES**

It is imperative to ascertain the client's objectives before drafting a Title Opinion and it is advisable to document the directives in writing. Generally, Title Opinions contain similar content and must not vary to the degree that they insufficiently protect the client; however, objectives may vary significantly between various clients and between the same client based upon the county and/or production area, the investment and ownership structures, the cost of the well and production result in the area.

It is beneficial to understand the client's drilling scheme and scope of operations and the impact of regulations on the client's specific drilling plan. To confirm that all necessary Assignments of Oil and Gas Leases and Assignments of Overriding Royalty Interest are properly placed of record, it is beneficial to understand the ownership structure as set out in unrecorded agreements.

It is beneficial to communicate with the client regarding the following:

- The scope and purpose of the Title Opinion
- When the well will be drilled or the Title Opinion is needed
- The parties within a law firm who will assist with the Title Opinion
- Who will serve as your contact within the client's company
- Who will serve as the contact at the land services company
- How the client would like to manage requests for missing Title Materials

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#### **F. ACQUIRE ALL ABSTRACTS OF TITLE AND TITLE MATERIALS**

Frequently, not all Title Materials are provided to the Examiner. Oil and gas attorneys are split regarding how to respond. Some attorneys will not rely on documentation supplied outside of the Abstracts due to liability issues. Other attorneys will request missing Title Materials from the land services company and describe what is received in the Description of Title Materials to save the expense of a Supplemental Abstract and Supplemental Title Opinion.

The Examiner must acquire all instruments that are in the process of being recorded and should obtain copies of unrecorded agreements such as Acquisition Agreements, Bills of Sale, Farm-Out Agreements and Purchase and Sales Agreements.

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### **SECTION #3: CONTENTS OF OPINIONS AND DRAFTING THE TITLE OPINION**

#### **A. EXAMINING THE TITLE MATERIALS**

It is most efficient to review the Title Materials and draft the Title Opinion in uninterrupted blocks of time. It is always necessary to thoroughly examine each document in the Title Materials, to chain out title and to note title defects and necessary curative measures. Attorneys are divided in how they review the Title Materials and input information into the Title Opinion. Some attorneys input information and title issues into the Title Opinion as they review of the Title Materials pertaining to each tract. Others attorneys review all Title Materials pertaining to the entire production and thereafter draft the Title Opinion. In larger projects, several weeks can elapse between reviewing title pertaining to the first tract in the production unit and completing the review of the title pertaining to the last tract. If an Examiner begins drafting the Title Opinion only after review of all title, nuances of complex title issues can be lost and revisiting those is costly to the client.

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## **B. DRILLING TITLE OPINION TABLE OF CONTENTS**

Drilling Title Opinions generally contain information pertaining to the following:

1. Description of Subject Land
2. Description of Title Materials
3. Ownership of Surface, Oil and Gas
4. Ownership of Overriding Royalty Interest (Optional)
5. Ownership of Working Interest
6. Operative Oil and Gas Leases
7. Assignments of Oil and Gas Leases
8. Assignments of Overriding Royalty Interest (Optional)
9. Pooling and Unitization Agreements
10. Unreleased Prior Oil and Gas Leases
11. Easements, Rights-of-Way and other Restrictions
12. Unreleased Mortgages, Deeds of Trust and Other Encumbrances
13. Real Property Taxes Payment History
14. Objections and Requirements
15. Appropriate Limitations and Assumptions
16. Maps of the Subject Land

A generic sample of a Table of Contents for use in a Drilling Title Opinion is as follows:

- I. Description of Subject Land
- II. Description of Title Materials
- III. Ownership of Interests
  - A. Surface Estate
  - B. Oil and Gas Estate
  - C. Royalty Interest
  - D. Non-Participating Royalty
  - E. Overriding Royalty
  - F. Working Interest
- IV. Current Oil and Gas Leases

- V. Assignment of Current Oil and Gas Leases
- VI. Encumbrances on Title
  - A. Unreleased Mortgages, Liens and Other Encumbrances
  - B. Easements, Rights-of-Way and Restrictions
  - C. Unreleased Prior Oil and Gas Leases
  - D. Payment of Real Property Taxes
  - E. Pooling and Unitization Agreements
- VII. Objections and Requirements
- VIII. Assumptions and Limitations

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**C. DIVISION ORDER TITLE OPINION TABLE OF CONTENTS**

Division Order Title Opinions generally contain information pertaining to the following:

1. Description of Subject Land
2. Description of Title Materials
3. Ownership of Surface, Oil and Gas
4. Ownership of Overriding Royalty Interest
5. Ownership of Working Interest
6. Division of Interest Calculations
7. Operative Oil and Gas Leases
8. Assignments of Oil and Gas Leases
9. Assignments of Overriding Royalty Interest
10. Discussion of Post-Production Costs
11. Pooling and Unitization Agreements
12. Unreleased Prior Oil and Gas Leases
13. Easements, Rights-of-Way and other Restrictions
14. Unreleased Mortgages, Deeds of Trust and Other Encumbrances
15. Real Property Taxes Payment History
16. Objections and Requirements
17. Appropriate Limitations and Assumptions
18. Maps of the Subject Land



A generic sample of a Table of Contents for use in a Division Order Title Opinion is as follows:

- I. Description of Subject Land
- II. Description of Title Materials
- III. Ownership of Interests with Division of Interest Calculations
  - A. Surface Estate
  - B. Oil and Gas Estate
  - C. Royalty Interest
  - D. Non-Participating Royalty
  - E. Overriding Royalty
  - F. Working Interest
- IV. Current Oil and Gas Leases
- V. Assignment of Current Oil and Gas Leases
- VI. Post-Production Costs
- VII. Encumbrances on Title
  - A. Unreleased Mortgages, Liens and Other Encumbrances
  - B. Easements, Rights-of-Way and Restrictions
  - C. Unreleased Prior Oil and Gas Leases
  - D. Payment of Real Property Taxes
  - E. Pooling and Unitization Agreements
- VIII. Objections and Requirements
- IX. Assumptions and Limitations

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**D. TITLE OPINION CONTENTS IN DETAIL**

1. Description of Subject Land: Legal descriptions set forth in this section of the Title Opinion are generally verbatim from the Source Deed. If the Source Deed is erroneous, a notation should appear and if the description defect necessitates an Objection and Requirement, the notation should direct the reader to the Objection and Requirement. The Examiner must evaluate the legal descriptions contained in the instruments in the chain of title to determine if they are adequate. Courts generally rule that a description is adequate when it allows identification of the described land with reasonable certainty.

2. Description of Title Materials: This section of the Title Opinion sets forth a brief description of all Abstracts of Title, Run Sheet, reports and all other documents, instruments, correspondence and maps pertaining to the subject land that were provided to the Examiner by the client or the land services company, or which the Examiner obtained through independent investigation, which served as the basis of the Title Opinion. If a Title Opinion supplements a Base Opinion, the Base Opinion must be listed in the Description of Title Materials.
  
3. Ownership of Surface, Oil and Gas: Ownership information is set out in this section of the Title Opinion separately for each tract of the subject land. If a party owns more than one tract of land, their name will appear under each tract that they have an ownership interest in. The royalty interest negotiated in the operative Oil and Gas Lease is generally set forth along with notations regarding title defects, clouds on title or marketability issues. Oil and gas ownership may be severed from the surface estate, may pertain to certain depths or formations only, or may pertain to production from a specific wellbore only.
  
4. Ownership of Overriding Royalty Interest: Ownership information set out in this section of the Title Opinion should specify whether the overriding royalty interest is proportionately reduced.
  
5. Ownership of Working Interest: Ownership information set out in this section of the Title Opinion should specify whether the working interest is payable before payout or after payout, what the working interest burden is and the applicable net revenue interest rate.
  
6. Division of Interest Calculations: Division of Interest Calculation produce a decimal interest that equates to the interest owner's ratio of ownership in the production proceeds generated from the production unit.
  
7. Operative Oil and Gas Leases: This section of the Title Opinion sets forth Operative Oil and Gas Lease information and lease provisions as exemplified below. Special or unusual lease provisions are set out under "Other Provisions" and may include an automatic renewal provision, an assignment of royalty interest to a different payee, terms pertaining to surface use and surface restoration and any other terms negotiated.

**LEASE #4:**

**Title:** Oil and Gas Lease (Paid Up)

**Lessor:** Joe Smith and Sue Smith, husband and wife

**Lessee:** North Energy Company

**Dated:** October 2, 2003

**Recorded:** March 5, 2004, as Instrument #04-1125

<b>Covering:</b>	Tract 1
<b>Conveyed:</b>	All interest in the oil and gas underlying the leased property
<b>Primary Term:</b>	Five years and as long thereafter as operations are conducted on the leased property with no cessation for more than 90 consecutive days
<b>Extension Option:</b>	Lessee shall pay Lessor \$5.00 for each acre of the leased property to extend the primary term for an additional 5 years
<b>Royalty Interest:</b>	Lessee shall pay Lessor 1/8th of the oil and gas produced from the leased property less certain enumerated allowed costs
<b>Delay Rentals:</b>	The operative Oil and Gas Lease does not contain delay rental provisions
<b>Shut-in Royalty:</b>	Lessee shall pay Lessor \$1.00 for each acre of the leased property within 60 days of each annual period in which all wells are shut-in or the Operative Lease is not otherwise maintained in force
<b>General Pooling:</b>	Lessee may establish 160 acre units or 640 acre units as to gas, oil produced from formations below the base of the Black River Lime and oil produced from wells classified as gas wells
<b>Shallow Pooling:</b>	Lessee is granted the right to form a pooled unit for shallow formations containing up to 2,560 acres
<b>Other Provisions:</b>	No operations shall be conducted by the Lessee on the surface of the lands leased

8. Assignments of Oil and Gas Leases: This section of the Title Opinion sets forth information pertaining to pertinent Assignments of Oil and Gas Leases as exemplified below.

**ASSIGNMENT #4:**

<b>Title:</b>	Partial Assignment of Oil and Gas Leases
<b>Assignor:</b>	North Energy Company
<b>Assignee:</b>	South Energy Company
<b>Dated:</b>	July 14, 2004, effective as of July 9, 2004

**Recorded:** July 15, 2004, as Instrument #04-3600

**Covering:** The Assignment pertains to all of the Phase One Operative Leases acquired by North Energy Company

**Conveyed:** Assignor bargains, sells, conveys, assigns, and delivers its interests in and to the Leases described on Exhibit "A" attached hereto ("Leases"). It is the intention of Assignor and Assignee for the Leases to be owned as follows: an undivided ninety-five percent (95%) by South Energy Company and an undivided five percent (5%) by North Energy Company.

**Provisions:** The interest assigned hereby is subject to the terms of the Leases and that certain Assignment Agreement effective November 4, 2003 ("Assignment Agreement"). Any conflict between the terms and conditions of the Assignment Agreement and this Partial Assignment shall be resolved in favor of the Assignment Agreement.

The interest assigned hereby is also subject to that certain Letter Agreement effective May 23, 2003 ("Letter Agreement"), covering and affecting certain leasehold acreage located in the "White Prospect" in Greene County, Indiana. Any conflict between the terms and conditions of the Letter Agreement and this Partial Assignment shall be resolved in favor of the Letter Agreement.

Assignee, its successors and assigns, shall have the right and power to pool the above described overriding royalty interests, or any one of them, to the same extent and in the same manner as provided in the leases, or by applicable governmental order, or voluntary pooling agreement without the further consent of Assignor.

The terms and provisions hereof shall extend to and be binding upon Assignor and Assignee and their respective heirs, successors and assigns.

9. Assignments of Overriding Royalty Interest: This section of the Title Opinion sets forth information pertaining to pertinent Assignments of Overriding Royalty Interest as exemplified below.

**ASSIGNMENT #7:**

**Title:** Assignment of Overriding Royalty Interest

**Assignor:** Thomas Production Company

**Assignee:** Oil and Gas Investors

**Dated:** July 5, 2007

**Recorded:** July 19, 2007, as Instrument #07-3811

**Covering:** The Assignment pertains to all of the Phase One Operative Leases acquired by North Energy Company

**Conveyed:** Assignor hereby bargains, sells, transfers, conveys, assigns and delivers unto the Assignee a 3% of 8/8ths overriding royalty interest as to each oil and gas lease and as to the oil, gas, shale gas and other minerals which may be produced, saved and sold from the Leases.

**Provisions:** In the event a Lease covers less than the full undivided interest, then the overriding royalty shall be proportionately reduced to reflect the actual interest covered by the Lease.

10. Discussion of Post-Production Costs: This section of the Title Opinion may restate all post-production costs provisions contained in those Assignments of Oil and Gas Leases that reserve an overriding royalty interest or contained in Assignments of Overriding Royalty Interest, or the Title Opinion may set forth the post-production costs provisions in the Assignments of Oil and Gas Leases and Assignments of Overriding Royalty Interest portions of the Title Opinion and an Objection and Requirement may refer the client back to said provisions, as exemplified below:
- **OBJECTION #2:** Post-production cost provisions regarding royalty interest payments are set out in Section Four and Section Five of this Opinion.
  - **REQUIREMENT #2:** Production proceeds generated from the Pooled Unit should be disbursed according to the post-production cost provisions discussed above.
11. Pooling and Unitization Agreements: This section of the Title Opinion sets forth information pertaining to pertinent Declaration of Pooled Unit Agreements, Unitization Agreements and all amendments and ratifications thereof, as exemplified below:

**INSTRUMENT #1:**

**Title:** Smith 23 Unit Declaration of Pooled Unit

**Parties:** Client Energy Company

**Dated:** June 18, 2013

**Recorded:** June 19, 2013, as Instrument #13-2662

**Unitized:** Whereas, it is the desire of the undersigned that the New Albany Shale formation (“Unitized Formation”), under the following described lands:

*Township 8 North, Range 3 West, Madison Township, Greene County, Indiana Section 23: The entire section*

hereinafter called the “Unit Area,” be developed and operated as a unit for the Unitized Substances.

**Covering:** The instrument pertains to all of the Operative Leases

**Provisions:** Operator shall not be obligated to drill a well or wells on any part of the Unit Area for purposes of protecting said part from drainage by reason of any well or wells located on any other part or parts of the Unit Area producing Unitized Substances. Operator shall not be obligated to keep, maintain or store production of unitized Substances from any part or parts of the Unit Area separately, or apart from the Unitized Substances from any other part of the Unit Area. There shall be no obligation on the part of the Operator to meter separately the production of the Unitized Substances from the individual wells within the Unit Area. A master meter or metering facility may be utilized to measure the production of the Unitized Substances from the wells within the Unit area on a convinced basis.

12. Unreleased Prior Oil and Gas Leases: A Title Opinion should set forth information and a correlating Objection and Requirement pertaining to each Oil and Gas Lease past its primary term that has not been released of record or which is not held active by production from a well or other contractual mechanisms. The description of the prior unreleased Oil and Gas Lease should include the name of the Lessor, the name of the Lessee, the date of the Oil and Gas Lease, recording information, the primary term of the Oil and Gas Lease, and a description of the leased property, including lands located outside of the subject land.

- 13. Easements, Rights-of-Way and other Restrictions: A Title Opinion should set forth information and a correlating Objection and Requirement pertaining to each easement, right-of-way and other restriction pertaining to the subject land. The Objection and Requirement should suggest that the client verify that the easements and rights-of-way described in the Title Opinion will not impact the leasehold interest or property development, including well placement and surface activity.

Easements, rights-of-way and other restrictions are generally set forth in a Title Opinion in one of the following fashions:

FORMAT #1

At Book 150, Page 150 is recorded a Right-of-Way Grant and Agreement dated October 15, 1995, from Joe Smith to Marathon Pipeline Company, given for the purposes of constructing, operating and maintaining a pipeline and appurtenances for the transportation of liquids or gases on, over and across part of Tract 1 of the Subject Land.

FORMAT #2

INSTRUMENT #4:

**Title:** Right-of-Way Easement

**Grantor:** Joe Smith and Sue Smith, husband and wife

**Grantee:** Greene County Rural Water System, Inc.

**Dated:** June 6, 1994

**Recorded:** November 30, 1995, in Drawer 1, Card #6638

**Covering:** Part of Tract 1 and Tract 2, described as follows:

*A part of the N.E. 1/4 of Section 23 in Township 8 North, Range 3 West, Madison Township. The easement shall be 16 feet in width, said easement to be 8 feet on each side of the pipe as laid.*

**Conveyed:** Grantor does hereby grant, bargain, sell, transfer, and convey to the Grantee, a perpetual easement with the right to erect, construct, install and lay, and thereafter use, operate, inspect, repair, maintain, replace and remove any and all utility lines and appurtenances deemed necessary by the Grantee to insure the continued operation of Grantee’s system over, across and through the land of the Grantor.

14. Unreleased Mortgages, Deeds of Trust and Other Encumbrances: A Title Opinion should set forth information and a correlating Objection and Requirement pertaining to each mortgage, deed of trust, and lien against the property (such as tax and judgment liens) that appears on record prior to the operative Oil and Gas Lease. The Objection and Requirement should suggest that the instrument be released of record or that the lender or lienholder subordinate their superior right to the Oil and Gas Lease. As oil and gas production increases property value, lenders often agree to subordinate their interest.
15. Real Property Taxes Payment History: A Title Opinion should set forth information and a correlating Objection and Requirement that the client verify timely payment of all taxes related to the subject land and that no tax liens have been issued. Depending upon the state statute in place, a foreclosure and sale of the subject land for nonpayment of taxes may cause an Oil and Gas Lease that was acquired subsequent to the mortgage to be extinguished.
16. Limitations and Assumptions: The Examiner may seek to reduce the liability associated with rendering a Title Opinion by including limiting language. The following list is not exhaustive:

#### **ASSUMPTIONS**

- A. Signatures on each instrument contained in the Title Materials are genuine and not forgeries.
- B. The copies of each of the Title Materials conform to the original documents.
- C. Each entity that was a party to any document included in the Title Materials legally existed on the date of execution of such document.
- D. Each person who executed each of the documents included in the Title Materials had the legal capacity to do so and, to the extent he executed the document on behalf of an entity, he had the requisite entity authority to do so.
- E. The public records from which the Title Materials were obtained are properly indexed and contain all records filed in the public records.
- F. Documents and other materials among the Title Materials that are illegible are as described in the Abstract Index of Title.

#### **LIMITATIONS**

- A. The Opinion is rendered to the client only and only the client may act in reliance thereupon.



- B. The Opinion is rendered based upon only the documents and information contained in the Title Materials, which are assumed to be complete and accurate.
- C. The Title Materials do not contain a survey of the subject land and matters that are discoverable by an accurate survey are excluded from the Opinion.
- D. The Opinion is rendered in reliance upon the state's Marketable Title Act.

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## E. OBJECTIONS AND REQUIREMENTS IN DETAIL

### 1. The Primary Purpose of Objections and Requirements:

Objections describe title defects, clouds on title or marketability issues discovered in review of the Title Materials. Requirements set forth the curative measure or type of instrument that must be acquired, identify the party who should execute the instrument and specify whether additional information is required by the Examiner to reach a factual or legal conclusion. To draft effective Objections and Requirements, the Examiner must possess a comprehensive understanding of the statutes and case law pertaining to conveyances, intestate succession, probate proceedings and real property descriptions. A sample Objection and Requirement is as follows:

- o **OBJECTION #1:** The ownership interest of Joe Smith in Tract 5 has not been extinguished of record:

By a Warranty Deed dated July 15, 1950, and recorded on August 18, 1954, as Instrument #146226, Margaret Stout, a single woman, as Grantor, conveyed Tract 5 to Joe Smith and Sue Smith, as Grantee.

By a Warranty Deed dated February 2, 1976, and recorded on February 3, 1997, as Instrument #158665, Sue Smith, as Grantor, conveyed Tract 5 to Patrick E. Stout and Jeanette A. Stout, husband and wife, as Grantee. The Deed does not describe the marital status of Sue Smith and no Death Certificate, Divorce Proceedings, Probate Proceeding, Affidavit or other instrument appears on the public record to extinguish the ownership interest of Joe Smith.

- o **REQUIREMENT #1:** Obtain and record a Death Certificate or other instrument to document that the ownership interest of Joe Smith in Tract 5 is extinguished.

Objections and Requirements must protect the monetary investment of the client. Consequently, clients may direct the Examiner to apply a standard more rigorous than confirming marketable title. An Examiner may be instructed to address clouds on title and title issues in the Objections and Requirements in addition to title defects that cause title to fail the marketability test.

Clients generally prefer that the fact patterns in the Objections and the curative measures called for in the Requirements allow the Landman to effectuate curative measures without conducting an independent review of the Title Materials. So that clients can assess the associated business risk, Objections should identify the related operative Oil and Gas Lease, the current owner of the leased property and the acreage amount at issue.

Requirements may call for a curative measure that offers the greatest level of protection to the client and also provide an alternative, less onerous, curative measure. The Examiner may offer an assessment that the title issue poses a minimal business risk or, if the Examiner deems it beneficial to set forth a fact pattern related to a title anomaly when no Requirement is necessary, the Requirement may state “Advisory only.”

## 2. General Methods to Cure Title Issues:

The three common categories of curative measures include curative statutes, the acquisition of curative instruments and suits to quiet title.

### A. Curative Statutes:

The Examiner must apply all statutes enacted in their state that automatically cure title defects. Marketable Record Title Acts, which render innocuous those title defects that predate the specified time period, have been enacted in various forms in many states. The Indiana Marketable Record Title Act is as follows:

#### **IC 32-20-3-1**

##### **Unbroken chain of title; definition**

Sec. 1. A person who has an unbroken chain of title of record to an interest in land for at least fifty (50) years has a marketable record title to that interest, subject to section 2 of this chapter. A person is considered to have this unbroken chain of title when:

- (1) the official public records disclose a title transaction of record that occurred at least fifty (50) years before the time the marketability is determined; and
- (2) the title transaction purports to create an interest in:
  - (A) the person claiming the interest; or
  - (B) a person from whom, by one (1) or more title transactions of record, the purported interest has become vested in the person claiming the interest; with nothing appearing of record purporting to divest the claimant of the purported interest.

The following are selective additional curative statutes enacted in various states:

1. If more than 10 years have elapsed since the last installment payment due under a Mortgage or Deed of Trust, the instrument is deemed to be released.

2. If a corporation named as a grantee in a conveyance is not incorporated until after the conveyance, title vests in the grantee upon the date of incorporation.
3. An instrument that was not acknowledged or was improperly acknowledged that has been of record for 10 years is deemed to be properly acknowledged.

B. Curative Instruments:

Curative instruments can be adapted to address many different title defects, clouds on title or marketability issues. The following list of samples is not exhaustive:

- Affidavit of Adverse Possession
- Affidavit of Death
- Affidavit of Heirship
- Affidavit of Identity
- Affidavit of Marital Status
- Affidavit of Non-Production and Non-Development
- Affidavit of Possession
- Affidavit of Survivors
- Affidavit of Use and Possession
- Corrective Assignment
- Corrective Deed
- Corrective Oil and Gas Lease
- Corrective Release
- Disclaimer of Interest
- Disclaimer of Mineral Interest
- Ratification
- Quitclaim Deed
- Stipulation of Interest

All claimants and affected parties must execute the curative instrument. The types of Affidavits allowed of record and their rehabilitative impact varies between states. Further, the efficacy of an Affidavit is contingent upon the knowledge possessed by the affiant and the specificity and veracity of the facts set out therein.

C. Suits to Quiet Title:

Parties may opt to bring a suit in court, known as a Suit to Quiet Title, when it is necessary to establish or clear a party's title to real property and to remove all claims to the title. Due to the associated expense and inherent time delay, curing title via judicial action is generally the remedy of last resort.

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F. **COMMON TITLE DEFECTS, CLOUDS ON TITLE AND MARKETABILITY ISSUES**

The list of common title defects, clouds on title and marketability issues set out below is not exhaustive. All title issues should be evaluated in conjunction with the statutes and case law in the Examiner's state as well as the totality of the public record and any related court proceedings.

1. Mineral Reservations and Dormant Minerals: The Examiner must review each conveyance in the Title Materials thoroughly to detect severances or conveyances of the mineral estate only. When minerals are severed from the surface estate, the Examiner must determine if the severance remains active or has lapsed pursuant to any Dormant Mineral Act enacted in the Examiner's state. A portion of Indiana's Dormant Mineral Act is as follows:

**IC 32-23-10-2 Statement of claims; filing; reversion**

Sec. 2. An interest in coal, oil and gas, and other minerals, if unused for a period of twenty (20) years, is extinguished and the ownership reverts to the owner of the interest out of which the interest in coal, oil and gas, and other minerals was carved. However, if a statement of claim is filed in accordance with this chapter, the reversion does not occur.

**IC 32-23-10-3 Presumption of use**

Sec. 3. (a) A mineral interest is considered to be used when:

- (1) minerals are produced under the mineral interest;
- (2) operations are conducted on the mineral interest for injection, withdrawal, storage, or disposal of water, gas, or other fluid substances;
- (3) rentals or royalties are paid by the owner of the mineral interest for the purpose of delaying or enjoying the use or exercise of the rights;
- (4) a use described in subdivisions 1 through 3 is carried out on a tract with which the mineral interest may be unitized or pooled for production purposes;
- (5) in the case of coal or other solid minerals, there is production from a common vein or seam by the owners of the mineral interest; or
- (6) taxes are paid on the mineral interest by the owner of the mineral interest.

(b) A use under or authorized by an instrument that creates a mineral interest continues in force all rights granted by the instrument.

2. Overconveyance of Minerals (The Duhig Rule): When a Grantor in a historic conveyance reserved a partial interest in the mineral estate underlying the subject land (for example the historic Grantor reserved a 50% interest in the mineral estate) and thereafter a new Grantor in a subsequent Warranty Deed attempts to both convey to a new Grantee and, simultaneously via the same instrument, reserve unto itself a partial interest in the mineral estate (for example the new Warranty Deed states that the Grantor reserves a 50% interest and conveys a 50% interest in the mineral estate), it is unclear whether the new Grantor intended to convey a full 50% interest in the mineral estate or whether the Grantor intended to convey half of the 50% interest (being a 25% interest) and retain a 25% interest.

The Court in Duhig v. Peavy-Moore Lumber Co. 135 Tex. 503 (1940), generated what is known as the “The Duhig Rule.” Thereunder, if the Grantor does not own a large enough fractional interest to effectuate both the grant and the reservation, priority will be given to the conveyed interest over the reserved interest (for example, the Grantor described in the paragraph above would be deemed to have retained no mineral estate and to have conveyed a 50% mineral estate).

3. Probate: If a record title owner dies with a valid Last Will and Testament in place, real property passes to the decedent’s devisees pursuant to the terms of the Will, if the Will is probated properly. The Examiner must review the Last Will and Testament and the probate proceedings to verify that the real property passed to the devisees in the Will and that the interest conveyed was not subject to a lien.
4. Intestate Succession: If a record title owner dies without a Last Will and Testament, real property passes to the decedent’s heirs pursuant to the laws of descent and distribution. The Examiner must identify the decedent’s devisees and determine whether succession was effectuated in accordance.
5. Bankruptcy: A Title Opinion should advise the client that bankruptcy filings often do not appear in the Office of the County Recorder and that because such filings may impact ownership, the client should conduct an independent search of Federal Bankruptcy records.
6. Capacity of Parties: The Examiner must verify that when an instrument was executed by an administrator, agent, corporate officer, executor, fiduciary, guardian, representative or trustee, said party was granted the power and authority to do so. The related Objection and Requirement should call for acquisition of a Power of Attorney or, when a Trustee acts as a signatory, a Trust Certificate or Certificate of Trust Authority.
7. Life Tenants and Remaindermen: In most states, when property subject to an Oil and Gas Lease is owned by life tenants and remaindermen, both parties must execute the Oil and Gas Lease or a Ratification of Oil and Gas Lease. Generally, life tenants may not commit waste and remaindermen have no present possessory rights. The related Objection and Requirement should call for an agreement regarding allocation of royalty, bonuses, and delay rentals between life tenants and remaindermen.

8. Roads and Easements: The Examiner must determine whether instruments that create highways, roads, streets and alleys or that expand or widen existing roadways conveyed a fee interest or an easement or right-of-way interest only.
9. Non-Joinder of Spouses
10. Name Discrepancies
11. Instruments from Strangers to Title
12. Missing Death Certificate
13. Title Conveyed by Executor's Deed
14. Title Conveyed by Guardian's Deed
15. Title Conveyed by Sheriff's Deed
16. Title Conveyed by Tax Deed
17. Title Conveyed by a Corporation
18. Title Conveyance by a Partnership
19. Title Conveyed by a Joint Venture
20. Title Conveyed by a Limited Liability Company
21. Title Conveyed by Church or Religious Organization
22. Title Conveyed by a Cemetery
23. Oil and Gas Lease Acquired from a Cemetery
24. Ownership of Rights Under Rivers
25. Erroneous Legal Description
26. Insufficient Legal Description (Land is not identifiable)
27. Tax Liens
28. Judgments
29. Mechanic's Liens

30. Materialman's Liens
31. Mortgages and Deed of Trust
32. Mortgage Foreclosures
33. Unreleased Oil and Gas Leases
34. Divorce Proceedings
35. Lawsuits and Lis Pendens

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#### **SECTION #4: CURATIVE MEASURES SUBSEQUENT TO DRAFTING**

The client may request that the Examiner draft the curative instruments called for in the Requirements or effectuate other curative measures. This can be a time-saving approach when scenarios are complex as the attorney is familiar with the fact pattern.

When the Examiner is not executing the curative measures, they should always be available to confer with the Landman responsible for curative measures. Often the Landman will place a call to the examining attorney while in the midst of assimilating Objection and Requirement information and an immediate response can speed that process. Or the Landman may be meeting with a landowner or Affiant where, likewise, time is of the essence.

It is advisable to retain all project notes, chains of title and the Title Materials until all curative measures are completed by the client.