

How Oil and Gas Ownership Works

by

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Property ownership is an important issue in Oil and Gas Law. For example, a “**LEASING COMPANY**” typically will not enter a Lease until it determines who owns the Oil and Gas. As you can imagine, a LEASING COMPANY’s determinations regarding ownership can have a substantial financial impact on the people involved. The LEASING COMPANY’s determinations can leave some people receiving substantial sums of money, while others receive nothing. However, a LEASING COMPANY’s determination of Oil and Gas ownership is not final. Where people involved disagree over who owns Oil and Gas rights, that disagreement can be addressed in several ways. If necessary, a Court can decide who owns the Oil and Gas rights. This is often called a “Quite Title Action.”

Because ownership is such an important concept in Oil and Gas Law, it is worth exploring the basics. This Chapter covers:

- 1 **How Property Ownership Works in Pennsylvania; and**
- 2 **Oil And Gas Rights Explained**

1 HOW PROPERTY OWNERSHIP WORKS IN PENNSYLVANIA

What Is Real Property? Real Property includes a lot more than just “land.” Real Property also includes:

- all of the dirt, rock, minerals, coal, Oil and Gas, and other materials **underneath** the surface;
- the sky **above** the surface; and
- “improvements” (like buildings) **on top of** the surface.

The surface and all of these things combined together are “Real Property.”

What Are Real Property Rights? There are many rights that go along with property ownership. Because of the rights that go along with Real Property . . . people can occupy the property . . . they can exclude other people from the property . . . they build on the property . . . they can extract or harvest resources like coal, timber, and water.

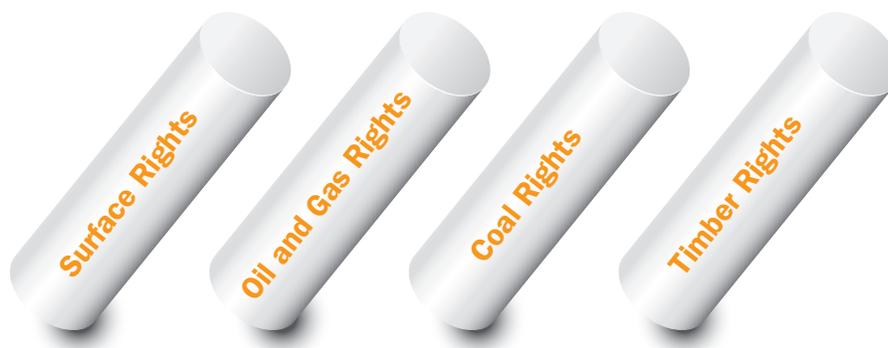
We all know that Real Property can be transferred to another person. So can most of the individual Real Property rights. Those rights can be bought or sold. Likewise, they can be leased or rented.

How Are Real Property Rights Transferred? Most commonly, Real Property is transferred by a deed. When people buy and sell Real Property, they are required to record a deed so that the rest of the world knows about the transaction. If a deed is not publicly recorded, then the buyer runs a risk that his property rights will not be fully protected.

In a similar way, if somebody leases a right (for example: to drill for Oil and Gas), that person will usually want to protect his or her rights. In the case of an Oil and Gas lease, the person leasing the rights will publicly record the lease or a document known as a memorandum. The memorandum is a document that lets the world know that there is a lease on the property.

People Can Transfer Some Rights And Keep Others: Importantly, a person does not need to transfer all of the Real Property interests that he or she owns. In a deed, a seller can keep certain interests while transferring others. This is called “**excepting**” or “**reserving**” (depending on the language used in the deed). Exceptions and reservations require special language to be used.

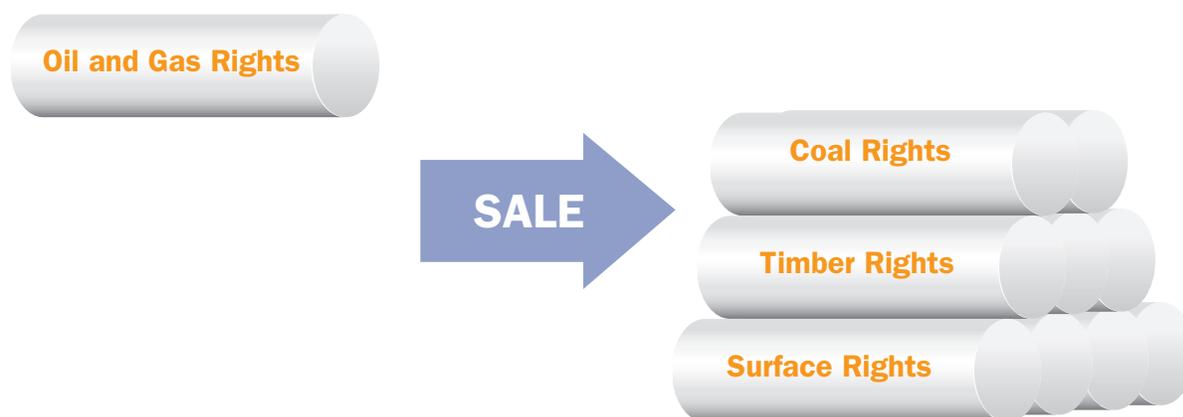
It helps to think of the concept this way. . . each individual Real Property Right can be represented by a stick. A property owner can decide whether or not to sell each “stick”:



Typically, a Deed will bundle Real Property rights together for the sale:



If a seller uses the correct language to “except” or “reserve” Real Property rights, then those rights are not included in the sale. The seller keeps them. Here is an illustration of a situation where Oil and Gas Rights are excepted and reserved:



As you can imagine, there can be high stakes disputes over the language in a deed. Sometimes, it is necessary to file a lawsuit called a Quiet Title Action so that a Court can make a final determination about what a deed means.

2 OIL AND GAS RIGHTS EXPLAINED

Oil and Gas Are Usually Not Considered To Be “Minerals”: As discussed above, a seller can carve out Oil and Gas from a Real Estate sale and keep those rights. When doing so, it is important to review the deed language very carefully. Sometimes the language in a deed only refers to “minerals.” Sometimes a deed refers specifically to “Oil and Gas.” The general rule is that the word “mineral” does not include “Oil and Gas.” In other words, if a seller wants to keep Oil and Gas rights, it is best to specifically use the words “Oil and Gas” (in addition to the other specific words that are necessary).

Oil and Gas Rights vs. Surface Rights: Landowners commonly ask whether a gas well can be placed on their property without permission. Under Pennsylvania law, the Oil and Gas estate is considered to be the “dominant estate.” This generally means that the person who owns the Oil and Gas has the right to use of as much surface land as reasonably necessary to extract it. However, the owners must show “due regard” to the rights of the surface owner. For example, this may include providing advanced notice of Oil and Gas drilling operations.

Pipelines and “Foreign” Gas: Some leases allow gas companies to transmit “foreign” gas through a pipeline across a property. Generally, foreign gas is considered to be gas that was not extracted from the leased property or the same drilling unit in which the property is included. Some landowners negotiate Oil and Gas leases to require that only “non-foreign” gas can be transmitted across their property.

Production vs. Storage: Oil and Gas are found in underground rock formations (e.g., shale or sandstone). When the Oil and Gas are removed from those rock formations, it leaves empty space. After gas is processed, it can be pumped back into that space for use at a later time. Under some leases, gas storage may only be permitted while gas is being “produced” or extracted pursuant to the terms of the lease. Other leases may give broader rights to store gas. It is important to interpret each lease on a case by case basis.



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