# Preparing and Reviewing Oil & Gas Title Opinions

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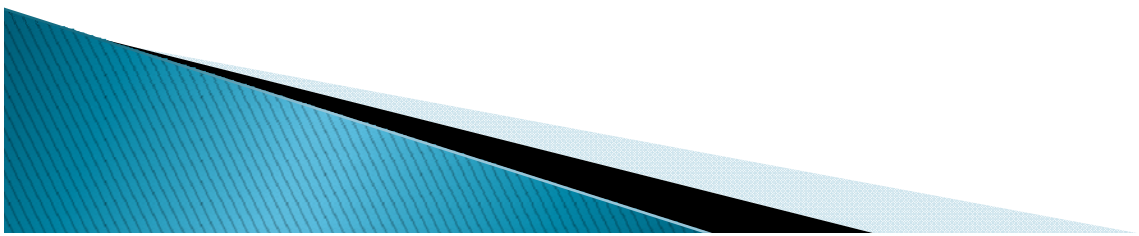
# Types of Title Opinions: Part I

# Types of Title Opinions

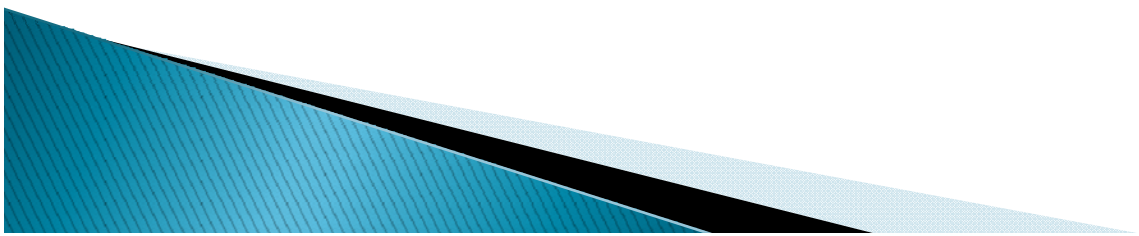
- Original Title Opinion
- Division Order Title Opinion
- Supplemental Title Opinion
- Lending Title Opinion



# Original Title Opinions

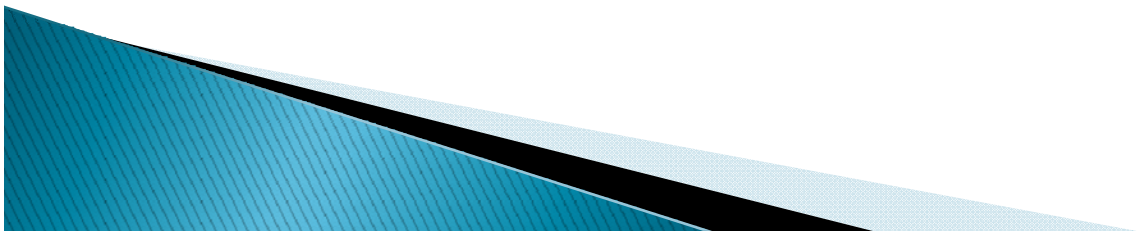
# Original Title Opinion

An Original Title Opinion is the most common type of title opinion, and provides the client with an attorney's professional opinion regarding the advisability of commencing drilling operations on a particular tract of land.



# Original Title Opinion

Attorneys spot issues in Original Title Opinions by using both their experience and title standards.



# Original Title Opinion

## Experience

- An attorney uses their experience to formulate an opinion as to whether or not a particular defect results in a serious impediment to the transaction at issue, and if it will require correction.

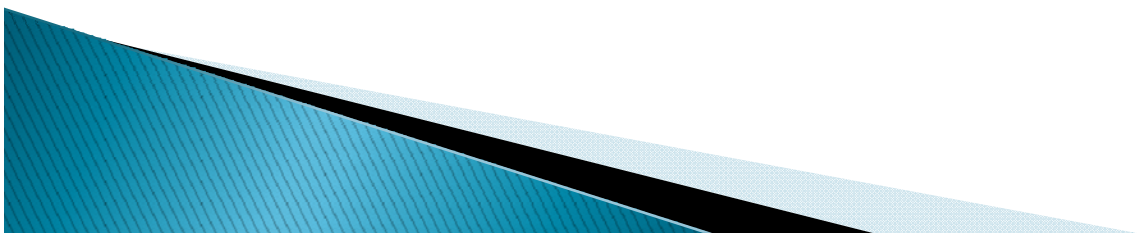
## Title Standards

- Title standards represent the "collective judgment" of title examination professionals and direct a practitioner's examination. But, title standards do not apply to examinations conducted for title insurance.

# Division Order Title Opinions

# Division Order Title Opinion

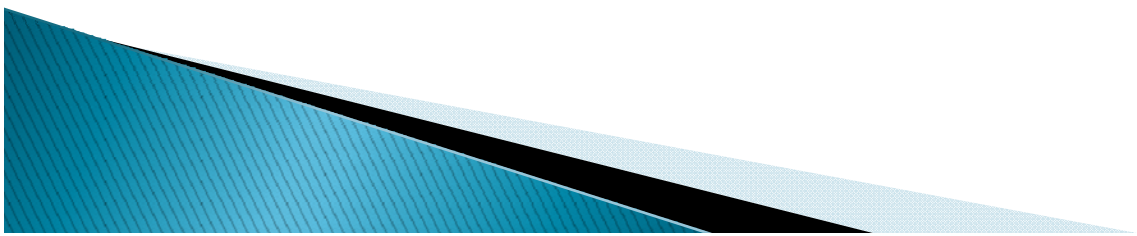
A Division Order Title Opinion sets forth the ownership of production from an existing well, and serve as the basis for preparing division orders.



# Division Order Title Opinion

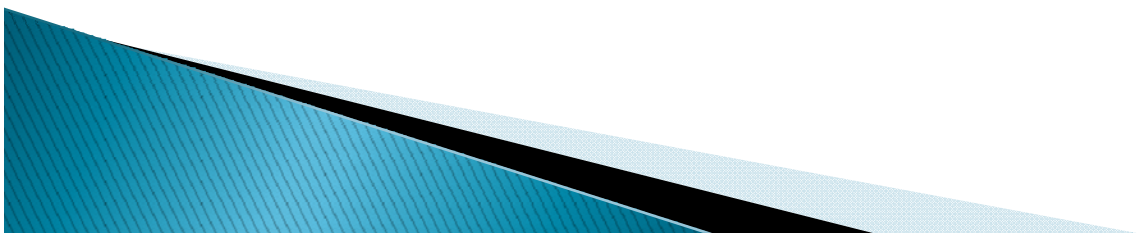
- A Division Order Title Opinion must tabulate and identify the ownership of royalties as well as defects to title that have not been resolved by previously published title opinions.

- A Division Order Title Opinion is not limited to just the Lessor's royalty, but includes nonparticipating royalty owners, overriding royalty owners, working interest owners, and net profit interest owners.



# Division Order Title Opinion

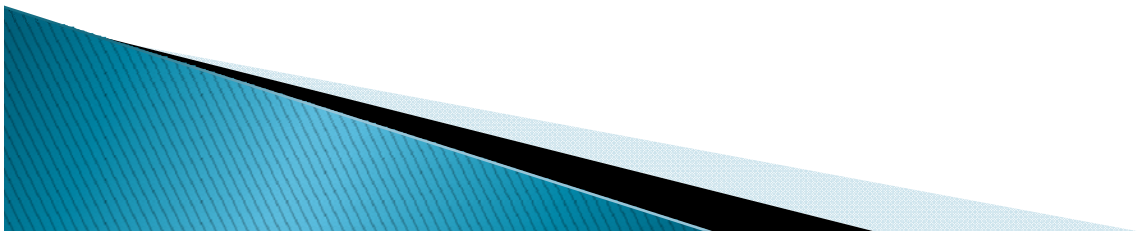
Because many Division Order Title Opinions rely on previously published opinions, the examining attorney should closely consider whether previously rendered opinions are trustworthy.



# Division Order Title Opinion

## Problems Typically Encountered:

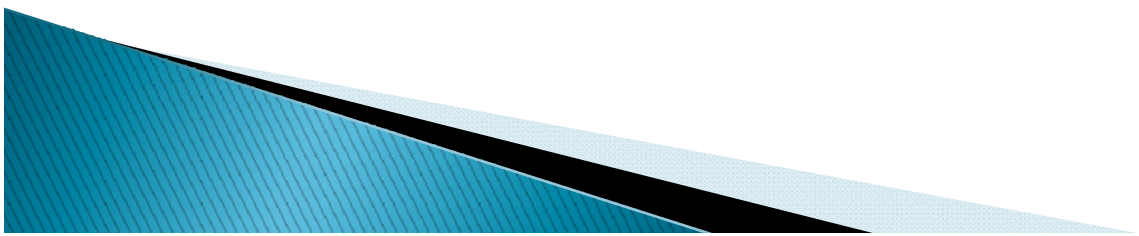
- Royalty language is ambiguous
- Unsubordinated liens burdening the leasehold estate exist
- Effectiveness of the lease on record is compromised
- Effectiveness of the division orders are compromised
- Entireties clause issues arise
- Community lease questions arise
- The validity of preferential rights to purchase production is questioned.
- Unrecorded farm-out agreements may be present
- The validity of net profits interests are questioned



# Supplemental Title Opinions

# Supplemental Title Opinion

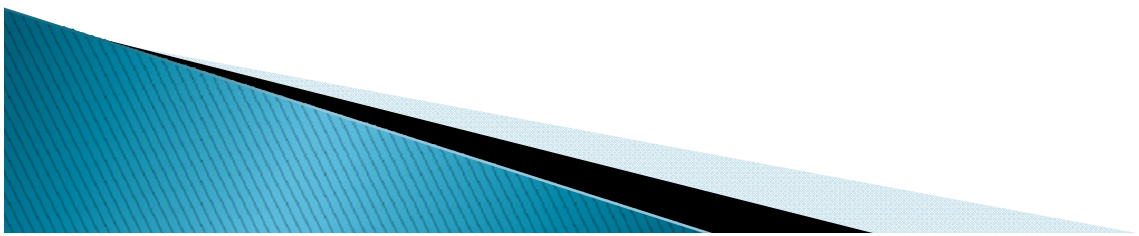
A Supplemental Title Opinion discusses the status or requirements published in previous title opinions.



# Supplemental Title Opinion

- Supplemental Title Opinions are similar to an Original Title Opinion, though Supplemental Title Opinions only cover the time from the previously published opinion to the current date.

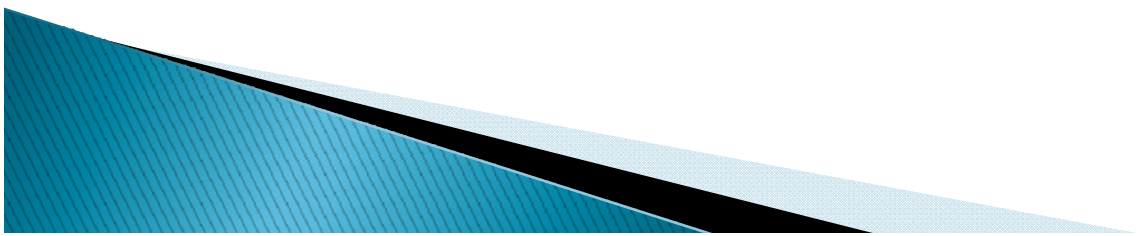
- Supplemental Title Opinions are a response to curative that has been performed and curative that still needs to be performed.



# Lending Title Opinions

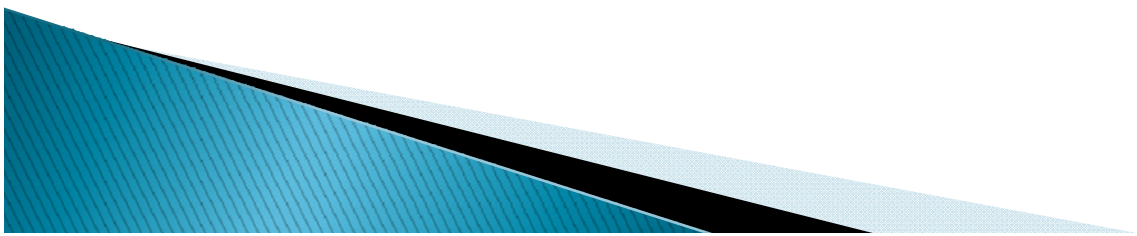
# Lending Title Opinion

A Lending Title Opinion is made on behalf of a lending institution concerning a piece of property for which the institution will provide a loan. The Lending Title Opinion is intended to apprise a lending institution of its position as a secured creditor over a particular tract of land.



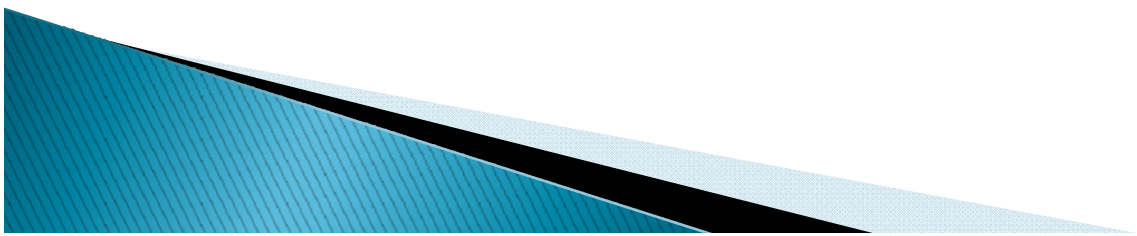
# Lending Title Opinion

- Because a Lending Title Opinion does not typically concern other interest holders and is limited to a lien priority discussion, the examining attorney will usually opine whether or not the security instrument is a first or prior lien.



# Lending Title Opinion

- When drafting a Lending Title Opinion, the examining attorney should be mindful of ethical considerations. The Lending Title Opinion is usually designed for a limited purpose and normally is not provided to the borrower. Therefore, if the opinion is provided to a borrower, the purpose of the opinion should be thoroughly laid out and the scope adequately limited.



# Acquisition Title Opinions

# Acquisition Title Opinion

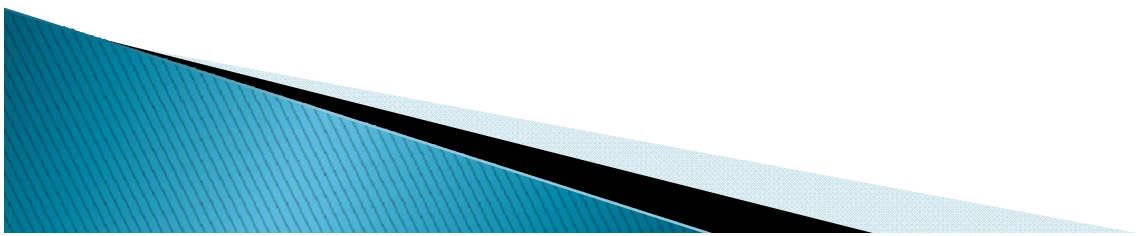
- An Acquisition Title Opinion is prepared to confirm what the buyer is purchasing and that the seller's title has transferred.

- An Acquisition Title Opinion is normally prepared in connection with the clients due diligence program.

- The examining attorney should alert the client to any encumbrances that would affect the acquisition of the working interest in the tract.

# Acquisition Title Opinion

Acquisition Title Opinions are prepared for limited and specific purposes. As such, these opinions are typically not as trustworthy as original title opinions because of their limited nature.

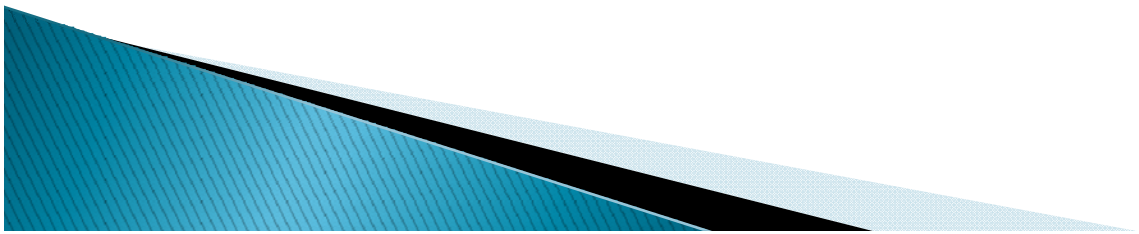


# Format and Contents of Title Opinions: Part II

# Contents of Title Opinions

# Contents of Title Opinions

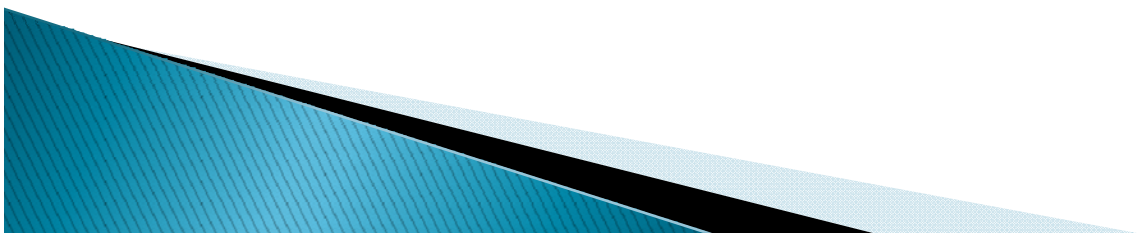
- A Title Opinion should always contain the essential information necessary to advise the client on the current status of title and the steps that need to be taken to make title to the land marketable.



# Content of Title Opinions

- Generally a title opinion should include the following information:

- Description
- Materials Examined
- Division of Interest
- Discussion of the Subject Lease
- Discussion of the Assignments
- Comments and Requirements



# Description

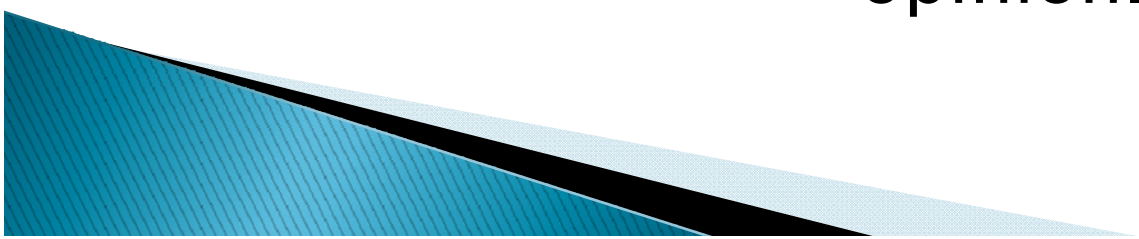
- A Title Opinion should contain a description of the land, which describes the property being examined and includes a reference to the lease involved.

- The description should include the property's metes and bounds along with a plat.

  - The description usually appears in the caption or first paragraph of the opinion.

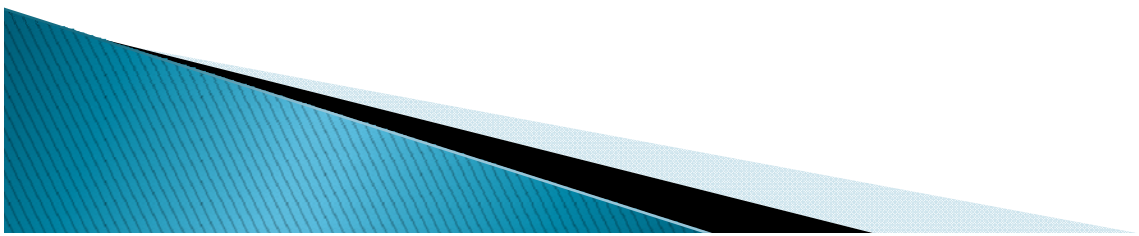
# Materials Examined

- The Materials Examined section includes a list of all title evidence used to prepare the opinion.
  - This section includes abstracts, affidavits, transcripts, etc.
- The Materials Examined should set forth the time period that is being covered by the opinion.



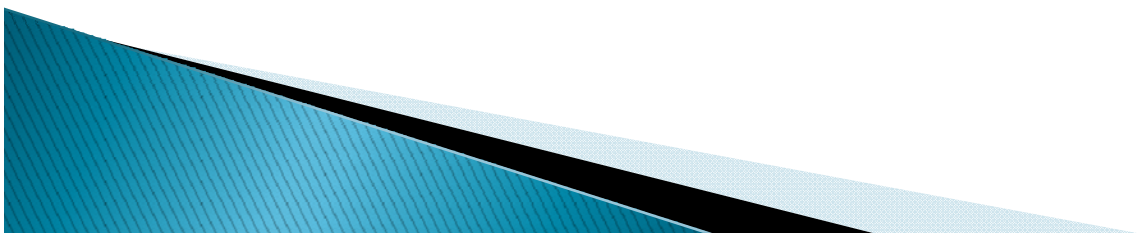
# Division of Interest

- Sets forth in decimal form the different ownership interests.
- The DOI is often divided into surface, mineral, royalty, and leasehold interests.
- The sum of the interests must always equal 1.00000000.



# Discussion of the Subject Lease

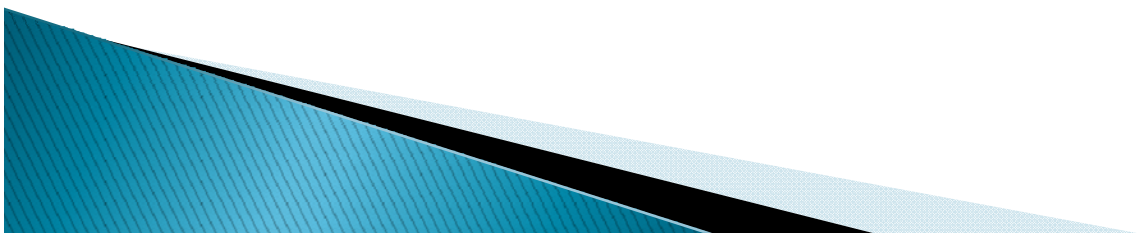
- The examining attorney should include a discussion of the pertinent provisions of the Subject Lease(s) and any amendments or ratifications made to the Subject Lease(s).



# Discussion of the Subject Lease

- Pertinent provisions the examining attorney should discuss include:

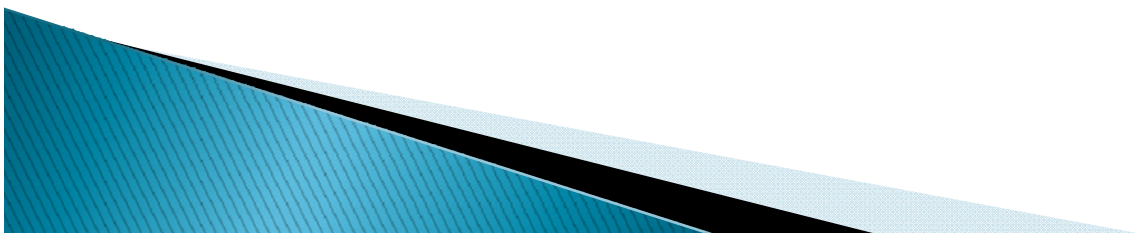
- Lessor and Lessee
- Date of execution
- Recording Data
- Acreage covered or property covered
- Primary Term
- Existence of Delay Rentals and payment instructions
- Royalties, including Shut-In royalties
- Pooling
- Governmental Authority
- Special Provisions



# Discussion of the Assignments

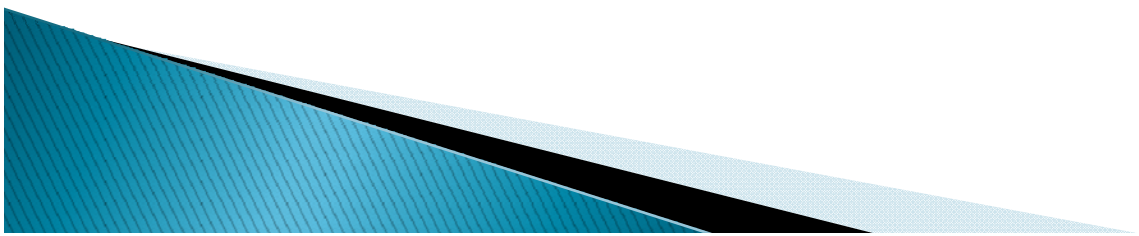
- The examining attorney should include a discussion of the relevant assignment information including:

- Assignor and Assignee
- Interests being assigned
- Interests being reserved



# Comments and Requirements

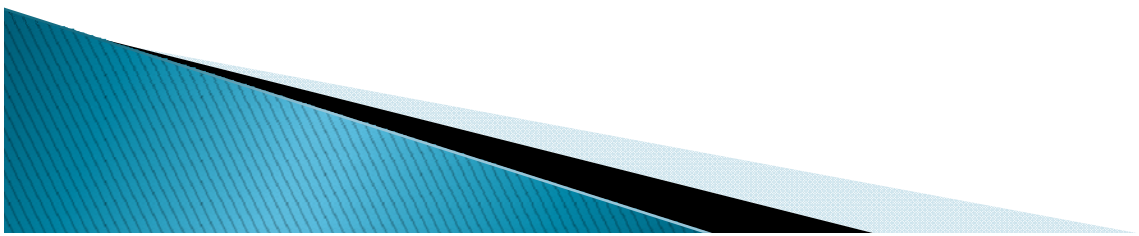
- The Comments and Requirements section is a detailed legal analysis that sets forth requirements necessary to make the title marketable.



# Comments and Requirements

- Advisory comments concern matters that do not directly affect the marketability of title, but may, or in the future, limit the free use and enjoyment of property.

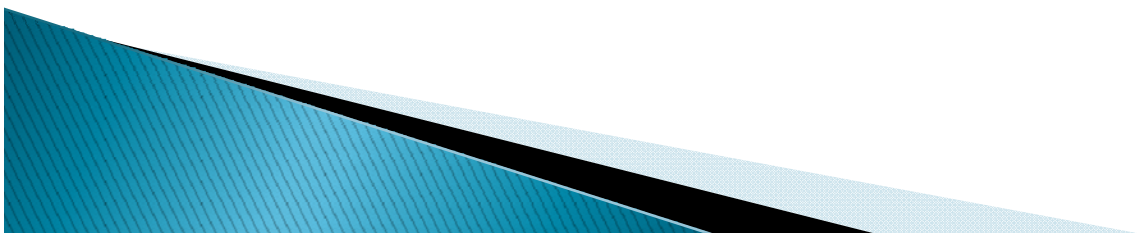
- Even though no curative action may be required, the examining attorney should still point out recorded easements, restrictions, covenants, mineral conveyances, and leases.



# Comments and Requirements

- Exceptions are matters specifically excluded from the opinion.

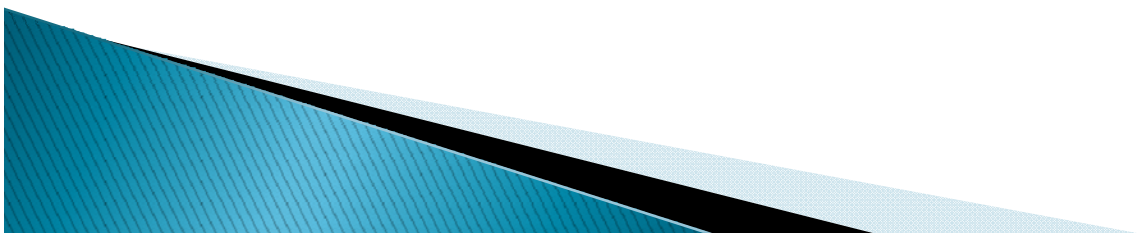
- For excepted matters, the examining attorney should point out that no warranty is made with respect to said matters.



# Comments and Requirements

- Typical Comments and Requirements include:

- Unreleased Oil, Gas and Mineral Leases
- Liens
- Right-of-Ways
- Taxes
- Minerals underlying Navigable Waters



# Comments and Requirements

- Unreleased Oil and Gas Leases may still be in effect because production normally perpetuates a lease.

- The examining attorney should note the existence of any easements or right-of-ways that could affect operations on the property.

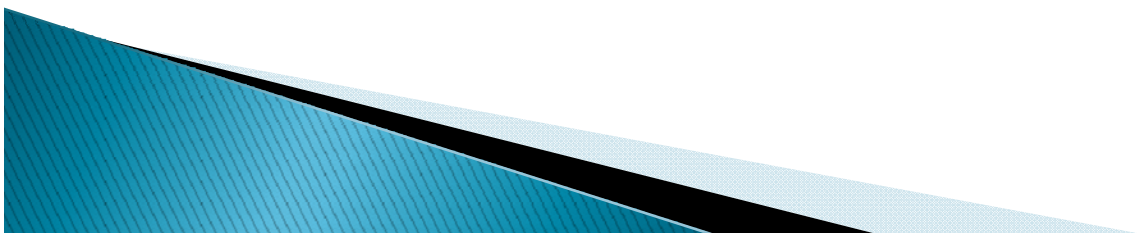
- Unpaid taxes constitute an encumbrance on the property, and the examining attorney should indicate the status of the payment of ad valorem taxes.

# Comments and Requirements: Minerals and Navigable Waters

The State retains title to beds of streams that average thirty feet in width from the mouth up under the Thirty Foot Statute, and the State retains title to beds of streams that are navigable in fact regardless of the width of the stream.

# Comments and Requirements: Minerals and Navigable Waters

Because the boundaries of navigable and non-navigable streams shift with the movement of the stream itself, land may be gained by accretion or reliction, or land may be lost through erosion. Therefore, these changes may affect ownership rights of the State and riparian owners, including mineral owners.

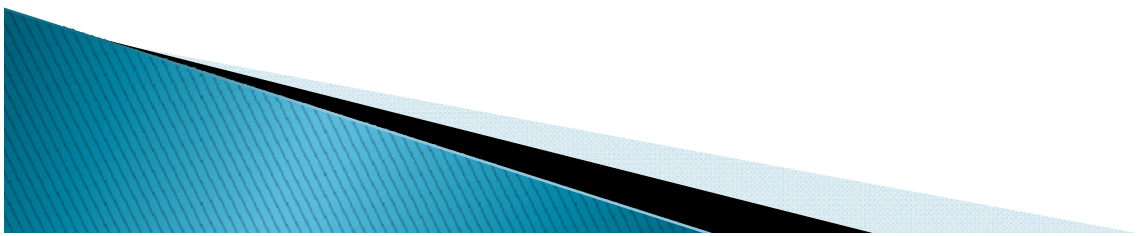


# Comments and Requirements: Minerals and Navigable Waters

- The Small Act (Tex. Civ. State. Ann. art. 5414a) validates title to the patents which lie across navigable stream.

- But, the patent must have been issued at least ten years prior to the enactment of the Small Act.

- Title will pass to the patentee, but only to the extent necessary to convey the number of acres in the patent.



# Comments and Requirements: Minerals and Navigable Waters

- The bed of a natural lake belongs to the State, even if it is navigable or affected by the flow of the tide.

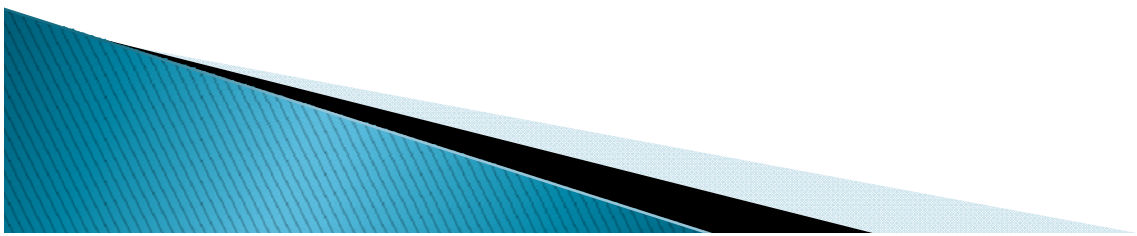
- Exception: where the lake is non-navigable, the bed is subject to private ownership where the field notes in the patent cross the lake, showing an unmistakable intention to convey the bed of the lake, or when the lake is the boundary by extending lines of the adjoining survey to the middle of the lake.

# Comments and Requirements: Minerals and Navigable Waters

The boundary separating public and private ownership along tidal lands is determined by the date that the original patent was issued.

Before January 20, 1840: Civil Law Rule

On or after January 20, 1840



# Treatment of Title Issues: Part III

# Treatment of Title Issues

- There are a variety of tools that can be used to cure defects in title. Prominent tools attorneys rely on include:

- Corrective Acknowledgments
- Corrective Deeds
- Ratifications
- Stipulation of Interest
- Affidavits
- Releases

# Corrective Acknowledgments

- For faulty acknowledgments, another instrument should be prepared, as a duplicate of the original, that is executed and acknowledged in accordance with the correct procedures.

- For older faulty acknowledgments, the party may file suit in a district court seeking judgment that proves the validity of the instrument or corrects the certificate as long as the instrument was signed and proved or acknowledged as required by law.

# Corrective Deeds

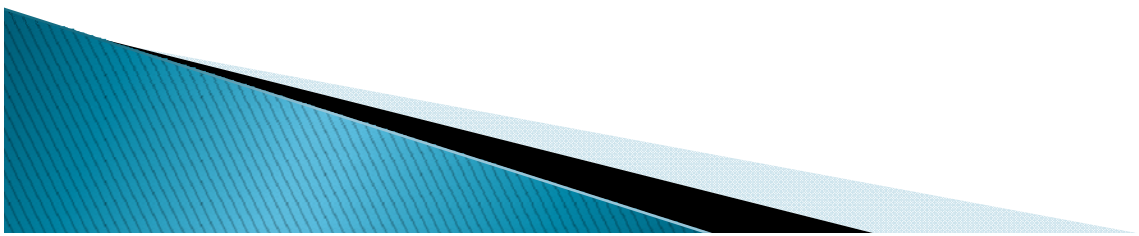
- A Correction Deed may be utilized when there is some facial imperfection in a deed, such as errors occurring in the property description, mistaken recordation references, misnomers of a party, etc.

- Correction Deeds may also be used to explain the grantor's right or authority to convey.

  - Correction Deeds are also used to convert equitable title to legal title.

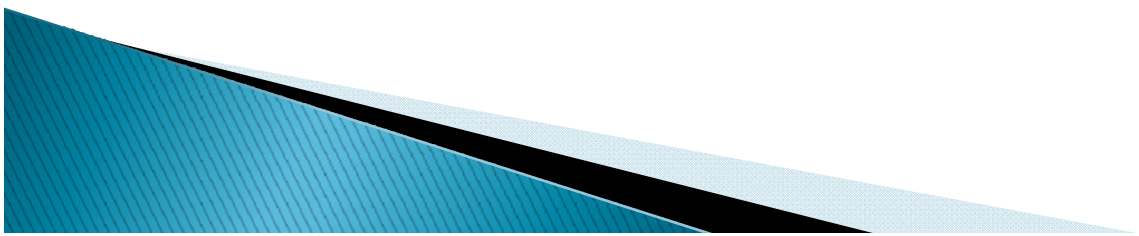
# Correction Deeds

- Correction Deeds may only correct mutual errors.
- Correction Deeds may not make a material change in the scope or substance of the original transaction.
- A Correction Deed must comply with all the requirements of a valid deed.



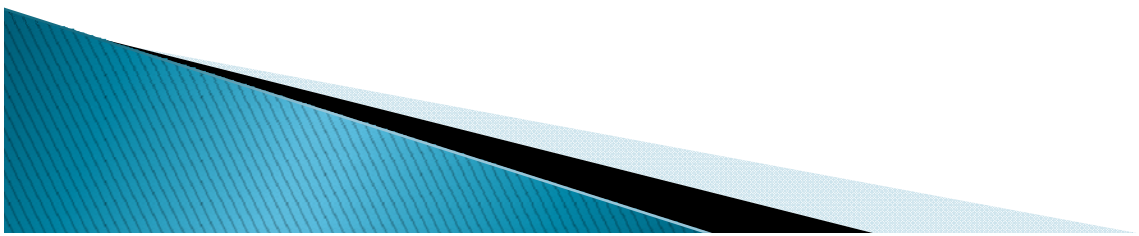
# Ratification

- Ratification is the process of recognizing the application or validity of a defective instrument that is otherwise valid to revive or conform the transaction, and applies the validity of the document to the present situation.



# Ratification

- Ratifications may be used when a document appears invalid or has questionable status.
  - Ratification may also be used to revive a lapsed mineral lease.



# Ratification

## Ratification by conduct or execution of an instrument

- Ratification may be accomplished by a party signing a document for a particular purpose other than ratification, but recognizes the validity of the transaction in question.
- Ratification may also occur when a party accepts some benefit, such as a royalty, from the transaction.

## Express and written Ratification

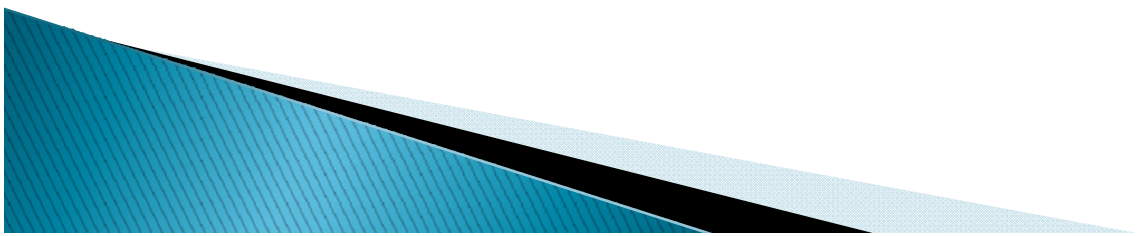
- The written statement that ratifies a prior instrument should be supported by consideration in order to evidence a contract between the parties.
- The written statement must be explicit.
- When the statement is by a NPRI owner and is intended to ratify a mineral lease, the particular provision of the lease being ratified should be specified.

# Stipulation of Interest

- A stipulation of interest is a contract that consists of mutual conveyances, and, therefore, it must conform to the requirements of both a contract and conveyance. Consequently, title to the property interest will be owned as set out in the stipulation.

- A stipulation of interest is used when conflicts and confusion result from poorly worded descriptions of the fractional interests conveyed or retained in a mineral estate.

- A stipulation of interest is appropriate when there are multiple claimants to various interests in a piece of property, or may be used for counterpart execution and provide that the stipulation is only binding on those who sign it.



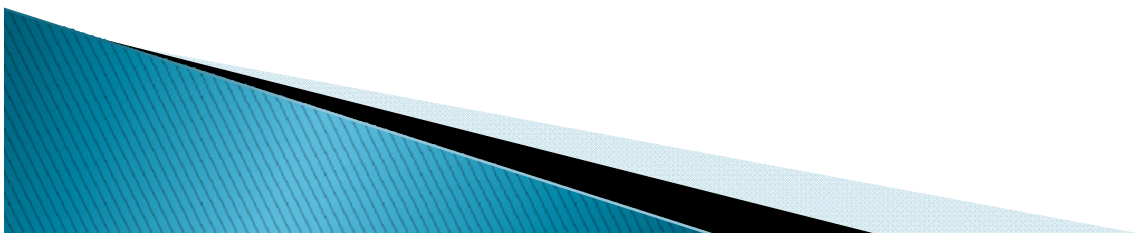
# Affidavits

- An affidavit contains averments or testimony of the affiant covering issues associated with a particular parcel of land.
- The affiant must administer an oath to tell the truth in front of an authorized officer, who must also sign a jurat certifying the averment was made by the affiant under oath.
- Affidavits should be transmitted to the county clerk where the subject property is located for recording.

# Affidavits

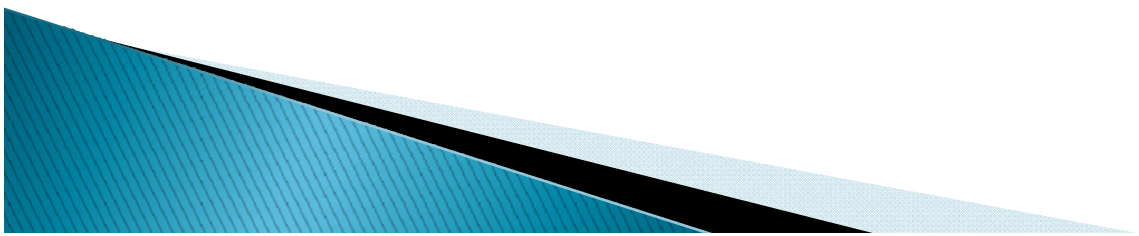
- Affidavits of Heirship require the affiant to state all facts necessary to establish inheritance of a decedent's real estate as well as proportional interest.

- Affidavits of Invalidity of Oil and Gas Lease require the affiant to state facts pertaining to production. Affiant should also obtain RRC reports filed by Lessee to support any averments made.



# Releases

- Releases, while not requiring any prescribed form, must be supported by consideration and signed by all parties holding or claiming to hold the right being released.



# Q&A