All references to “Std.” refer to the Title Standard set out in the 2000 Edition of the Standards for Examination of Real Estate Titles in Arkansas published by the Arkansas Bar Association.

Grantors

When title to real property is conveyed (transferred from one person or entity to another), the marital status of the grantor (the person or institution that conveys property to another) must be determined. If the grantor is married, the spouse must also sign the document in order to release the spouse's dower (a widow’s share for life of her husband's estate) or courtesy rights (a husband’s right, after his wife’s death, to certain kinds of property that she had inherited) and other rights of a tenancy by the entirety (ownership of property, real or personal, by a husband and wife). If the grantor lives on the property to be conveyed, his or her spouse must also sign the document to convey their homestead rights.

Second, if the grantor is a legal entity such as a corporation or partnership, the division order analyst must verify that the party executing the document has the authority to do so.

Other considerations that are relevant when the grantor or grantee is a trust or trustee will be discussed later.

Husband and Wife

In Arkansas, when dealing with real property, both spouses must always execute any document conveying title or any similar document. There are two reasons for this: First, any conveyance to a husband and wife creates a tenancy by the entirety unless otherwise stated. This is true even if the document does not state that the parties are husband and wife. Second, even if the property is owned by only one spouse, the other spouse must release his or her dower or courtesy interest.

As with any other joint tenancy, upon the death of one spouse, the property passes to the survivor. However, a tenancy by the entirety, unlike other joint tenancies, is not destroyed by a conveyance by only one spouse. Such a conveyance merely conveys any possessory rights (a right to exert control over certain land to the exclusion of others) and rights to income and profits from the property, subject to the right of survivorship in the other spouse. One spouse may convey his or her interest in property owned as tenants by the entirety to a third party, while the other spouse does not join in the conveyance. If the conveying spouse dies first, the grantee has no right against the survivor.

However, if the conveying spouse is the survivor, the grantee takes the entire title as it would have been taken by the grantor.

A divorce however, may destroy the tenancy by the entirety, depending on when it occurred.

Before March 28, 1947, a court could destroy a tenancy by the entirety only with the consent of the parties, since vested interests could not be affected retroactively.

Between March 29, 1947 and March 7, 1975, courts had the power to dissolve a tenancy by entirety. However, there was no dissolution unless the court specifically said so. Tenancies created prior to March 28, 1947 still could not be destroyed since they were vested interests and the regulating statute was not retroactive.

After March 8, 1975, a divorce decree automatically dissolved a tenancy by entirety unless specifically stated otherwise.

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1 Std. 7.2
Dower and Curtesy

Dower and curtesy rights are the provisions the law makes for a widow or widower out of the real and personal property of the deceased spouse for the support of the surviving spouse and the children. In Arkansas the portion of the decedent's estate that is subject to dower and curtesy depends on who the surviving heirs are and whether the property is a new acquisition or ancestral property.

If a decedent leaves a surviving spouse and a child or children, the dower or curtesy interest of the surviving spouse is one-third of all property for life regardless how the lands were acquired.

If a decedent leaves a surviving spouse and no children, the dower or curtesy interest of the surviving spouse is one-half of the lands that were not ancestral in fee simple (permanent and absolute possession of property without restrictions) and a life estate (an estate held for life) in one-half of all ancestral lands.

In 1969 Arkansas abolished the distinction between ancestral estates and new acquisitions for the purposes of intestate succession, but left intact the distinction as it applies to dower and curtesy. The conflicting provisions can be reconciled if the division order analyst remembers that the distinction between ancestral and new estates was abolished only as to the heritable estate. The heritable estate is that portion of the intestate's estate that may pass by inheritance, after providing for dower or curtesy rights, homestead rights, any statutory rights granted the surviving spouse and minor children and the costs of the administration of the estate.

The distinction between ancestral property and new acquisitions for dower and curtesy only affects the heritable estate when (1) the decedent left no direct descendants (children, grandchildren, and so on), and (2) the decedent and his or her surviving spouse were married less than three years.

If the decedent and his or her surviving spouse had been married more than three years and there are no children, the surviving spouse receives his or her curtesy or dower and all of the heritable estate. Since the surviving spouse receives all of the estate, the distinction between ancestral property and new acquisitions is irrelevant.

If the decedent is survived by a wife and a child or children, the wife only receives her dower interest, a one-third life estate, and all of the heritable estate goes to the children. Once again the distinction between ancestral property and new acquisitions is irrelevant.

Dower and curtesy may be released by execution of the same instrument or by execution of a separate instrument, but they must be released. That is, they cannot be conveyed. Prior to March 25, 1981, women could extinguish the curtesy rights of their husbands by conveying the property without the husband's signature. Specific language releasing dower and curtesy is common in Arkansas forms but not necessary. If both spouses sign the document, their dower or curtesy rights are automatically released.

Homestead

In Arkansas, homestead is defined as:
- The domicile of an individual or family, not within any city, town or village. It may consist of not more than 160 acres of land if less than $2,500 in value, or 80 acres of land without regard to value.
- The domicile of an individual or family within any city, town or village. It may consist of not more than one acre of land unless the equity value exceeds the sum of $2,500 or up to one-fourth acre without regard to value.

\[ \text{Std. 7.5} \]

\[ \text{7.5} \]
Any homestead outside any city, town, or village, owned and occupied as a residence, which is annexed to or made part of an incorporated city or town within the state of Arkansas located on land that is rural in nature and has a significant agricultural use.

Once property has been designated as a homestead, it will not be considered abandoned if the owner temporarily lives elsewhere. Abandonment is largely a question of intent. Before August 13, 1993 homestead rights could only be released by a single instrument signed by both spouses. This was later changed.

Corporations and LLCs

If an entity is a corporation or LLC (limited liability company), it can be assumed that the corporation or LLC was in good standing and that the person or persons who executed the instrument were duly authorized to do so.

Partnerships

When dealing with transfers from a partnership, it is important to know whether the property being transferred is actually partnership property and whether the partner(s) executing the document has the authority to do so. Most of the time the document itself or information contained in the files will provide the answers to these questions. For those times the answer to either question is uncertain, Arkansas' version of the Uniform Partnership Act provides some useful guidelines.

1. A partnership is defined as the association of two or more persons to carry on as co-owners a business for profit, whether or not the persons intend to form a partnership. However, joint tenancy, tenancy in common, tenancy in the entirety, joint property, common property or partial ownership does not by itself establish a partnership, even if the co-owners share profits made by the use of the property.

2. Property is partnership property if it is acquired in the name of the partnership or in the name of one or more partners with an indication in the instrument transferring title to the property of the person’s capacity as a partner or of the existence of a partnership but without an indication of the name of the partnership. For example: Woodrow Boudreau and Justin LeBlanc, partners or Elizabeth Boudreau, partner.

3. Subject to a statement of partnership authority, any partner may execute any instrument in the partnership name, and it will be binding, if the transaction is apparently in the ordinary course of business for the partnership and the person with whom the partner was dealing did not know nor should have known that the partner lacked authority. If the act was not apparently in the course of the partnership business, it is only binding on the partnership if it was actually authorized by the other partners.

4. A partnership may file a statement of partnership authority, giving one or more partners authority to conduct certain acts. A grant of authority to transfer real property in a statement that has been filed of record is conclusive in favor of a person who gives value without knowledge to the contrary, so long as a statement containing a limitation on that authority is not of record.

5. A partner may file a statement of denial limiting or denying a person’s authority to act.

6. Each partner has equal rights in the management and conduct of the partnership business unless changed by

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4 Std. 4.8

5 A.C.A. 4-46-202

6 A.C.A. 4-46-204
written agreement.

7. The spouse of a partner has no dower or curtesy rights in partnership property.

Grantees

Joint Tenants. Before July 15, 1991, if the intent of the conveyance as determined by “the four corners of the deed” was to create a joint tenancy with right of survivorship, then one was created, even without express wording.

After July 15, 1991 a conveyance must contain language expressly creating a joint tenancy or it will be a tenancy in common.

Unlike in a tenancy by the entirety, a conveyance by one joint tenant destroys the joint tenancy and the two owners become tenants in common.

Minors. The Uniform Transfers to Minors Act provides a method to transfer property to a minor without involving the court system. This eliminates the need for a guardian which must be appointed by a court and have all of their actions approved by the court. It is generally easier for a custodian to administer the property under this act than it is for a trustee of property placed in a trust.

To transfer real property to a custodian for a minor all it takes is a deed, assignment, or other instrument of conveyance that substantially uses the following language: Grantor hereby conveys to Billie Ray Cyrus as Custodian for Hanna Montana under the Arkansas Uniform Transfers to Minors Act, Grantee.

It should be noted that the grantor and the custodian cannot be the same person or legal entity. A custodian, acting in a custodial capacity, has all the rights, powers and authority over custodial property that unmarried adult owners have over their own property. The custodian has certain duties regarding the custodial property and must keep records subject to inspection by a parent or legal representative of the minor. The custodian is also liable for breach of his or her responsibilities.

Trusts. It is unclear whether a trust can hold title to real property in Arkansas, as there are no statutes and no case law. When conveying to a trust, it is safer to put title into a trustee, for example, James T. Kirk, Trustee of the James T. Kirk Interstellar Galactic Trust.

Even though title is actually going to the trustee, it is vitally important to include the trust as part of the name of the grantee. A conveyance to James T. Kirk, Trustee, without mention of the trust conveys title to James T. Kirk, individually, not the trust. In this instance, James T. Kirk can transfer, encumber or otherwise do anything with the property he wishes. In addition, his wife, Green Lady Kirk, must execute any documents in order to release her dower interest.

The only exception to this rule is that property may be transferred to a trust by a Beneficiary Deed, which will be discussed later on. If a deed or assignment into a trust has no trustee named, there is no legally valid reason not to accept the document.

What is being given

Descriptions. There are a variety of problems that can arise in a legal description. The description may not close, it may not have a good point of beginning, it may be overly broad or it may just make no sense at

7 Std. 8.1.3
8 A.C.A. 18-12-106
9 A.C.A. 18-12-603
10 A.C.A. 9-26-201, et seq
11 Std. 4.7.1 & 4.7.2
12 A.C.A. 18-12-604
13 A.C.A. 18-12-608
14 Std. 21
all. If the description is truly indefinite, the document does not convey any title.

In general, a conveyance must only describe the land with sufficient certainty to identify the land by any reasonable construction.\(^{15}\) If descriptive words within the document furnish a key to identification of the property, nothing more is required.\(^ {16}\)

What does all this mean? Set out below are some examples provided by the Arkansas Supreme Court of valid and invalid descriptions that may be helpful.

1. The use of the word *part* invalidates a description unless the description goes on to specifically describe the part.\(^ {17}\) However, the phrase "It is my intention to convey all of real estate belonging to me" has been held to be a sufficient key to identify the lands intended to be conveyed, even though the abbreviation for part was used in the description. For example, “Pt. E/2 NW/4 of Sec. 12-17N-4W” was held valid since the phrase quoted above was included in the description.\(^ {18}\)

2. If a description does not close, it is defective, making the instrument voidable. Thus a court could correct the defect in a suit for reformation.

3. If a description has an uncertain point of beginning, it is void and cannot be reformed.\(^ {19}\)

4. A description of “All property owned in Pope County” is valid.\(^ {20}\)

5. An incorrect statement of acreage does not affect the validity of the description.\(^ {21}\) If the deed calls for 100 acres, but the tract actually described contains 253.93 acres, the entire tract is conveyed.\(^ {22}\)

6. A legal description does not have to contain the name of the county if it contains the correct section, township and range.\(^ {23}\)

Rights of way

It is not uncommon to see a call in a description that either excepts a right of way or goes to the boundary line of a right of way, such as “the North right of way of Hwy. 96”. In either case, when a right-of-way is still in use, there is a presumption that the conveyance extends to the center of the right-of-way unless a contrary intention is clearly stated. This presumption applies to private and public roads and railroad rights-of-way.\(^ {24}\) A grantee takes to the center of an abandoned easement only when the grantor explicitly expresses that intention.\(^ {25}\)

Life estates

A *life estate* may be created through the operation of dower and curtesy, by reservation or by conveyance. Set out below are some items to keep in mind when dealing with a life estate.

\(^{15}\) *Snyder v. Bridewell*, 167 Ark. 8, 267 S.W. 561 (1924)


\(^{17}\) *Browning v. Hicks*, 243 Ark. 394, 420 S.W.2d 545 (1967)

\(^{18}\) *Ketchum v. Cook*, 220 Ark. 320, 247 S.W.2d 1002 (1952)

\(^{19}\) *Mode v. Henley*, 227 Ark. 875, 302 S.W.2d

\(^{20}\) *Snyder v. Bridewell*, 167 Ark.8, 267 SW 561 (1924)

\(^{21}\) *Wyatt v. Wycough*, 232 Ark. 760, 341 S.W.2d 18 (1960)

\(^{22}\) *Scott v. Dunckel Box & Lumber Co.*, 106 Ark. 83, 152 S.W. 1025 (1912)

\(^{23}\) *Stephens v. Ledgerwood*, 216 Ark. 404, 226 S.W. 2d 587 (1950)

\(^{24}\) *Abbott v. Pearson*, 257 Ark. 694, 520 S.W.2d 204 (1975)

\(^{25}\) *Abbott*, supra
1. Probably the life tenant and the remainderman have to execute an oil and gas lease or leases in order to have an effective lease. There is no case law on this point, but it makes sense that a commitment from both parties would be required.

2. **Bonus, delay rental** and interest on royalty are income and are payable to the life tenant.

3. Where a life estate is created by conveyance or reservation, the royalty itself is considered part of the corpus and is reserved for the remainderman unless the Open Mine doctrine applies. In this case, the life tenant is entitled to the royalty. A lease alone is enough to open the mine.26 As a practical matter, most oil and gas companies obtain a payment directive from the parties, directing how to make payments.

4. If a life estate consists of the dower or curtesy of the surviving spouse, the life tenant is entitled to his or her fraction of the royalty.27

5. It is not possible to create a life estate in a stranger to the title by reservation.28

Mineral reservations and conveyances

**Strohacker Doctrine,29** “A reservation or grant of ‘minerals’ or ‘mineral rights’ without specific reference to any specific mineral includes only those that were commonly known and recognized by legal or commercial usage in the area where the land is situated at the time the instrument was executed”.30

Most of the deeds where Strohacker is applicable were executed around the turn of the 20th century, although there are cases pending at this time in the Fayetteville Shale play that seek to apply Strohacker to deeds executed in the 1940s and 1950s.

There are very few hard and fast dates for a person trying to interpret a generic mineral reservation to hang his or her hat on. The Arkansas Supreme Court has provided help in a handful of counties.

**Miller County**, 1892 and 1893: Oil and gas not included in “all coal and mineral deposits”.31

**Union County**, 1900: Oil and gas not included in “mineral interest”.32

**Logan County**, 1905: Gas included in “all of the coal, oil and mineral”.33

For other areas, a general rule used by most landmen and title attorneys is that if the reservation was before 1900, oil and gas were not included. If the reservation was after 1905 oil and gas were included. In between is a gray area in which the correct answer is a question of fact. The earliest oil and gas leases recorded in the area and the earliest drilling activity in the area are facts that could sway a court one way or the other. Courts have also taken into account newspaper articles from the time period, historical essays and other written materials.

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26 *Warren v. Martin*, 168 Ark. 682, 276 S.W. 367 (1925)
27 A.C.A. 28-11-304
29 Std. 19.5
30 *Ahne v. Reinhart & Donovan Company*, 240 Ark. 691, 401 S.W.2d 565 (1966); *Missouri Pacific Railroad Co. v. Strohacker*, 202 Ark. 645, 152 S.W.2d 557 (1941)
31 *Missouri Pacific Railroad Co., supra*
32 *Stegall v. Bigby*, 228 Ark. 632, 310 S.W.2d 251 (1958)
33 *Abne, supra*
**Duhig Rule.** A grantor may not purport to convey and warrant an interest and then attempt to reserve a portion of that interest, thus breaching his or her warranty. Consequently, if full effect cannot be given to both the grant and the reservation, priority will be accorded the grant prior to attempting to fulfill the reservation. In Arkansas the Duhig rule only applies to the construction of a reservation in a warranty deed when the immediate parties to the deed are not the parties to the lawsuit.

In cases involving a dispute between the original grantor and grantee, the courts attempt to determine their intent. The Duhig Rule could also be applied to a mineral deed that contains a warranty clause.

If all of the following items are present, Duhig applies. If any one item is not present, it does not:

1. The instrument is a warranty or mineral deed that contains a warranty clause.
2. Less than the grantor’s entire mineral ownership is being transferred (i.e., grantor is reserving part of the mineral interest).
3. The grantor owns less than the entire mineral interest at the time of conveyance.
4. Nowhere in the deed does the grantor indicate that he or she is also excepting from the warranty any prior reservations or conveyances of record.

**Example of Duhig Application:** Jack Daniels owned the surface and all of the minerals under the NE/4 SE/4. In 1961, he conveyed one-half of the minerals under the NE/4 SE/4 to Hans. By 1986, Natural Gas, Inc. had drilled two successful gas wells in a unit containing the NE/4 SE/4, so when Mr. Daniels sold the property to D. Yan Kee, he attempted to reserve the remaining one-half of the minerals to himself.

The description in the warranty deed read, “NE/4 SE/4 of Sec. 42-6N-32W, RESERVING UNTO GRANTOR, JACK DANIELS, an undivided one-half interest in the oil and gas and other minerals in and under the above described property.” Going down the checklist, (1) the instrument is a warranty deed, (2) less than 100% of the mineral ownership is being transferred, (3) Jack owned less than 100% of the minerals at the time of the conveyance, and (4) Jack did not mention the prior conveyance of one-half of the minerals. Therefore the attempted reservation fails and the one-half of the minerals that Jack owned pass to Mr. Kee.

The rational is that when the warranty deed reads “grant, bargain, sale and convey the NE/4 SE/4 to D. Yan Kee”, it is warranting that fee simple title to Mr. Kee or as much title is owned, in this case title to the surface and one-half of the minerals. If the owner (in this case, Jack Daniels) then attempts to reserve one-half of the minerals to himself, he violates the warranty because he cannot convey the surface and one-half of the minerals and keep one-half of the minerals since he owns only one-half to begin with. In order to not violate the warranty on the surface and one-half of the minerals, the one-half of the minerals Mr. Daniels attempted to reserve must go to Mr. Kee, leaving Mr. Daniels with nothing.

**Acknowledgments**

There isn’t really anything unique or unusual about the Arkansas acknowledgment form. The various forms for different entities may be found in the Arkansas statutes, and Arkansas will accept any acknowledgement.

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34 A Survey of Recent Cases, Legislation & Rules Pertaining to Arkansas Oil & Gas Interests by Kevin S. Vaught
35 Hill v. Gilliam, 284 Ark. 383, 682 S.W.2d 737 (1985)
form that is legal in another state if the document was executed in another state. Even an acknowledgment by telephone is valid if the party executing the document is known to the notary public and the notary can recognize the voice of the executing party.36

Anyone who has examined title knows that many mistakes are made both in drawing up an acknowledgment and in filling in the blanks. The good news is that Arkansas has curative statutes that correct these errors.37 The bad news is that there is a date, August 13, 1993, which marks a change in the curative statutes. Instruments in writing that have been recorded and which are defective or ineffectual because of the defects listed below, due to the curative statutes, are binding ad effectual just as if there was no defect.

**Instruments in writing executed before August 13, 1993** are considered binding and effective despite the following defects:

1. Failure of a spouse’s signature on an instrument affecting title to the homestead to be properly acknowledged.
2. Omission of words required by law in the certificate of acknowledgment by the officer certifying the acknowledgement.
3. Failure of the officer to attach his or her seal to the certificate.
4. Attachment of a seal to the certificate that does not bear the words and devices required by law.
5. Certification by an officer who was (a) a mayor of a city or an incorporated town and was not authorized to certify the acknowledgment, or (b) the deputy of an official authorized by law to take.

**Instruments in writing executed after August 13, 1993** are considered binding and effective despite the following defects:

1. Failure of the officer to attach his or her seal to the certificate.
2. Attachment of a seal to the certificate that does not bear the words and devices required by law.
3. Failure of the officer to state the date or the correct date of the expiration of his or her commission on the certificate.
4. Failure of the officer to correctly date the certificate of acknowledgment or state the county wherein the acknowledgement was taken.
5. Certification in any county of the state by a person holding an unexpired commission as notary public who had, at the time of the certification, ceased to be a resident of the county within and in which he or she was commissioned.

Where to record the document

In most counties, it is easy to determine where to record a document. Most documents can be recorded at the Circuit Clerk’s office in the county courthouse located in the county seat. However, there are 10 Arkansas counties that are divided into two judicial districts, meaning there are two county seats, two courthouses.

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37 A.C.A. 16-47-108 and A.C.A. 18-12-208
and two sets of records.

A county judicial district is defined as that portion of the specified county in which the real estate under examination is located and in which there is maintained a permanent set of records pertaining to such real estate.38

Any instrument affecting title to real estate must be filed in the proper county judicial district. If a document is not filed in the correct county judicial district, there is no constructive notice and any statutory requirements, such as those dealing with foreclosure, may not be satisfied.39 Essentially, a document filed in the wrong judicial district may as well have not been filed at all.

Currently the 10 counties that have two judicial districts are Arkansas, Carroll, Clay, Craighead, Franklin, Logan, Mississippi, Prairie, Sebastian and Yell. Most circuit clerks or assessors can provide a map or listing of the lands within each district. However, in Sebastian County, the Fort Smith District includes everything within the city limits of Fort Smith, and the Greenwood District includes the remainder of the county. Therefore, any time the city of Fort Smith annexes a parcel of land, the correct place to file legal documents affecting that parcel changes from Greenwood to Fort Smith. To be safe, the documents can be filed in both places.

Effective January 1, 2001, Sebastian County moved the recording duties from the Circuit Clerk to the County Clerk. They are the only county to this.

Odds and ends

Mineral tax forfeitures.40 Prior to April 15, 1985, the law in Arkansas concerning mineral tax deeds was clear and unambiguous. A deed for minerals that had been forfeited for taxes was void unless the mineral assessment was subjoined to the surface assessment.41 Subjoined means that the severed mineral assessment must appear immediately below the surface assessment for the same property. At that time, there was not a county in Arkansas that subjoined the surface and mineral assessments and had oil or gas production.

After April 15, 1985, A.C.A. 26-26-1112 provided that county assessors may maintain separate records for severed mineral interests if they are maintained by legal description in the same manner as the surface. Most Arkansas title attorneys believe that this had the effect of making mineral tax deeds voidable, rather than void due to the great potential for defects in both the assessment and forfeiture procedures.

There is another statute that must be kept in mind in any discussion about mineral tax deeds. A.C.A. 26-37-314 purports to breathe life into all mineral tax forfeitures, even those that occurred before April 15, 1985. The purpose of the statute is to allow surface owners an opportunity to redeem severed minerals that have been forfeited for nonpayment of taxes. In an effort to get around the ruling in Sorkin v. Meyers, supra, the legislature inserted Paragraph (e) which states:

(c)(1) No deed issued under this section shall be void or voidable on the ground that the assessment of the property taxes on the severed mineral interest was not subjoined to the assessment of the property taxes on the surface realty.

(c)(2) This subsection shall be retroactive to all certifications of delinquent mineral

38 Std. 1.5
40 std. 19.3
41 Sorkin v. Myers, 216 Ark. 908, 227 S.W.2d 958 (1950)
interests in the records of the office of the Commissioner of State Lands.

A.C.A. 26-37-314 (e)(1) and (2) appear to breathe life into the old mineral tax deeds I told you were void earlier. However, Section 17 of Article 2 of the Arkansas State Constitution prohibits the legislature from passing an ex post facto law or any law impairing the obligation of contracts. An ex post facto law is one that “passed after the occurrence of a fact or commission of an act, which retrospectively changes the legal consequences or relations of such fact or deed”.

To sum it up, Paragraph (e) is an ex post facto law that also impairs the obligations of contracts. As such it is extremely doubtful that it would withstand a judicial challenge. However, until such a challenge is successfully made, this statute is still the law.

There are many other problems with mineral tax deeds. Some of the more common that could cause a mineral tax deed to be voided by a court of law are:

1. Some counties still don’t assess minerals in the manner required.
2. Legal descriptions contained on the assessments and the tax deeds are often incomplete or inaccurate.
3. Notice to the mineral owner that the tax was owed may not be adequate (see Conway County in particular).
4. The procedures for forfeiture are often not followed to the letter which the Arkansas Supreme Court has stated must be done.

If any of these factors is present, the severed mineral owner would stand a good chance of challenging the validity of the forfeiture and consequently the tax deed itself. The court would not even have to address the constitutional questions. The problem for a title examiner when presented with a mineral tax deed for minerals assessed after April 15, 1985 is that he or she has no way to determine from the record if any of the above defects exist. Ensuring that the mineral tax deed is valid requires research into the method of assessment and the forfeiture and sale procedures.

The problem for a division order analyst when presented with the same mineral tax deed is whether to transfer the interest or not. This is best referred to the legal department or local counsel for further review. If the interest is substantial, the records at that courthouse should be examined for defects. If they are, this would be good reason to suspend the interest and inform both parties. If not, then until the statute is overturned, it is the law.

Some factors to consider when making the decision to suspend or not include (1) whether the division order analyst has had any contact with the severed mineral owner; (2) whether the division order analyst has a title opinion stating that the severed mineral owner should receive royalties; (3) the size of the interest in question; and (4) whether any of the defects listed above is readily present.

Statutory Pugh clause

A.C.A. 15-73-201 created a statutory Pugh clause for all oil and gas leases executed on or after July 4, 1983. It has generally been interpreted to mean that an oil and gas lease will hold lands outside a producing unit for one year after the end of the primary term.

Forced pooling procedures

Arkansas has a forced pooling procedure that grants the Arkansas Oil and Gas Commission the authority to integrate

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42 Black’s Law Dictionary, Revised Fourth Edition
43 A.C.A. 26-26-1112
44 A.C.A. 15-72-302(e)
separately owned tracts embraced in a drilling unit when the owners fail or refuse to do so voluntarily, provided that persons who own at least an undivided fifty percent (50%) interest in the right to drill and produce oil or gas, or both, from the total proposed unit area agree. In Arkansas this is known as integration. The application is normally filed by the proposed operator and may seek to integrate both working interest and mineral owners.

A drilling unit is comprised of regular governmental sections with an area of approximately 640 acres. Upon showing of good cause, the unit may be split into the North half of one section and the South half of another section. Parts of multiple sections may be combined if the sections are fractional (substantially smaller than 640 acres), such as those along the Arkansas River, in order to create a unit of approximately 640 acres.

An integration order may remain in force for period of no longer than the later of one (1) year following the effective date of the order, or one (1) year following the cessation of drilling operations or production within the unit. After that, the order of the commission and its provisions automatically terminate.\footnote{A.C.A. 15-72-302(c)(3)}

An unleased mineral owner will receive the equivalent of the best terms given to any leases party within the drilling unit. If some leases were taken for three-sixteenths royalty and a $250 per acre bonus and others for a one-quarter royalty and $50 per acre bonus, the order normally gives the integrated party the same options. If no election is made within a 15 day period of receipt of the order, the integrated party is deemed to have leased at the option chosen by the operator in the order.

It has not been established by case law or statute whether drilling operations can be commenced on lands owned by an integrated mineral owner. In theory, the integrated owner is subject to the terms of a standard lease form attached to the integration order, which grants the right to drill and conduct other surface operations to the lessee. However, it is uncertain whether this amounts to taking the property unconstitutionally.

Integration Procedures A/K/A Forced Pooling

Arkansas has a forced pooling procedure that is part statutory and part regulatory in nature. I have attached the pertinent statutes and Arkansas Oil and Gas Commission (AOCG) rules at the back of the paper for your future reference. A.C.A. 15-72-302(c) grants the AOGC the authority to integrate separately owned tracts embraced in a drilling unit when the owners thereof fail or refuse voluntarily to do so provided that persons who own at least an undivided fifty percent (50%) interest in the right to drill and produce oil and gas, or both, from the total proposed unit area agree thereto. In Arkansas we call this “Integration”.

APPLICATION AND HEARING

An application for integration is filed with the AOGC by the proposed operator and may seek to integrate both working interest and mineral owners. AOGC Rule A-2 sets out the specific requirements for filing an application.

1. Fourteen (14) copies of the application, including exhibits must be sent to the AOGC 20 days prior to the first day of the next regularly scheduled hearing.
2. Hearings begin on the fourth Tuesday of each month and run until completed.
3. The hearing sites alternate between Fort Smith and El Dorado except in February when they are held in Hot Springs in conjunction with the Natural Resources Law Institute.
4. Notice of hearing shall be mailed to all interested parties at least 10 days prior to the date of the hearing and a notice must also be published for at least 1 day in the newspaper of general circulation in each county containing a portion of the land identified in the application.

5. At the hearing the applicant will put on its evidence first. This shall include (1) name and address of applicant; (2) reason for integrating the interests; (3) legal description of the drilling unit; (4) geologic report indicating the potential reservoirs; (5) names of all owners who have not leased, agreed to participate or otherwise contracted their interest; (6) resume of efforts showing the applicant has attempted to reach an agreement with each party; (7) proof as to the highest and/or best cash bonus and royalty terms that the applicant has knowledge of within the unit.

6. After that any other party may put on evidence. All witnesses are subject to cross-examination by other parties as well as the Commissioners.

7. At the end of the hearing a motion is made to accept the application and it is voted on by the Commissioners. There are 9 commissioners and all applications must be approved by at least 5 votes.

DRILLING UNIT
A drilling unit is generally comprised of regular governmental sections with an area of approximately 640 acres. Upon showing of good cause the unit may be split into the North half of one section and the South half of another section. Part of multiple sections may be combined if the sections are fractional (substantially smaller than 640 acres), such as those along the Arkansas River, in order to create a unit of approximately 640 acres.

There are a couple of notable exceptions to the 640 drilling unit. One is for wells drilled in the Fayetteville shale and other unconventional sources of supply. In these areas a drilling unit may consist of 2 adjoining sections where a horizontal well crosses unit boundaries. In this instance the costs and revenue are split based on acreage allocation as defined in Rule B-43 (o)(2)(E).

The second exception is for the Lower Carpenter formation which is generally less than 2500 feet. Production was widely obtained in this formation before the AOGC was formed and it remains an uncontrolled zone. The unit for a well completed in the Lower Carpenter is the size and shape of the lease it is drilled on unless there is a voluntary declaration of pooling filed.

INTEGRATION ORDER
1. Orders are effective for no longer than 1 year from the date of the order or as long as a well located within the unit is capable of producing oil or gas in paying quantities. Generally the order calls for either 6 months or 1 year.

2. Orders cover all depths and formations.

3. An unleased mineral owner may elect to (1) lease for the best terms as established at the hearing; (b) participate in the well; or (3) go non-consent. If a mineral owner goes non-consent 1/8 of the interest is deemed royalty and paid to the mineral owner. An owner who makes no election is deemed leased.

4. A non-committed working interest owner may elect to (1) participate in the well or (2) go non-consent.

5. Non-consent terms are defined in the Order and can either be permanent or subject to redemption after a predetermined penalty.
6. Unleased mineral owners that fail to elect are subject to an oil and gas lease that is attached as an exhibit to the application.

7. A JOA is also attached to the application and all integrated parties are subject to its terms. The form is set by the AOGC.

Instruments executed by a stranger to title

An instrument in the chain of title that was executed by a stranger to the title may be disregarded as a stray instrument if the following conditions are met:

1. The instrument contains no recitals (other than the legal description) linking it with the record title.
2. It is not linked by reference to an unrecorded instrument.
3. It is older than 10 years.
4. The grantee has never attempted to re-convey the land, or any interest therein, as of record.
5. The chain of title is otherwise clear.
6. It is not the last instrument of record by date.
7. There is no indication of ownership in or through the grantee contained in the current records of the tax assessor in the county judicial district where the land is situated.

In the Killam case, TXO relied on a title opinion that had ignored a stray mineral deed. Neither the grantor nor the grantee appeared in the chain of title. The title examiner had considered the instrument a stray deed. However, there had been a mineral deed into the grantor that had never been recorded. Since the grantee’s interest was assessed on the tax rolls, the Court said this should have put TXO on notice that there was possibly another claimant to that interest.

For the most part, this kind of problem is going to arise only if the division order analyst is setting up a new well and must chain title from a landman’s run sheet or an abstract. If the division order analyst is presented with a deed by an outside party, it is best to ask that party to provide a chain of title from a point in time when the title is certain to the present.

Beneficiary deed

A beneficiary deed conveys an interest in real property, including any debt secured by a lien on real property, to a grantee designated by the owner. It expressly states that the deed is not to take effect until the death of the owner. While the Supreme Court has yet to rule on several questions regarding the statute, some points are clear:

1. No legal or equitable interest vests in the grantee until the death of the owner prior to the revocation of the beneficiary deed.
2. A beneficiary deed transfers the interest to the designated grantee beneficiary upon the death of the owner, subject to any mortgages, oil and gas leases, security pledges or other encumbrances made by the owner whether the encumbrance was made before or after the execution of the beneficiary deed.
3. The owner may designate a successor grantee beneficiary.
4. The owner may place conditions that must occur before the successor grantee is vested with any interest.
5. A beneficiary deed may be used to transfer property to a trust.
6. A beneficiary deed may be revoked by the owner at any time prior to his or her death.
7. The revocation has to be executed and recorded before the death of the owner.

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46 std. 3.1
47 Killam v. Texas Oil and Gas Corp., 303 Ark.547, 798 S.W.2d 419 (1990)
48 A.C.A. 18-12-608
8. If an owner executes more than one beneficiary deed concerning the same real property, the recorded beneficiary deed that is signed last is the one that is effective.

9. Any third party that owes an obligation to the grantee beneficiary may require that person to provide reasonable evidence that the owner is deceased and that he or she did not revoke the deed prior to his or her death.

There are other nuances that concern taxes and Medicare eligibility and multiple owners and multiple grantees that are beyond the scope of this paper. However, it is important to remember that title does not transfer until the death of the owner and only if it has not been revoked.