



MASSIVE MINERALS

**Curative**

# Purpose of Title Opinion

- 1) Advise as to the status of title
- 2) Advise how to cure title defects

Who owns what?

- Ownership Section/Division of Interest

What are the problems?

- Comments

How do we fix the problems?

- Requirements

# Title Issues Outside of the Title Opinion

- Not all title issues occur within examination of title
- Issues can come up:
  - After an opinion is rendered (title is not static)
  - If title wasn't run properly (e.g., missed document)
  - For reasons outside of the documentation reviewed
  - When a "lost" owner is found

# Types of Curative Instruments

- Affidavits of Use & Possession
- Affidavits of Non-Production
- Affidavits of Death & Heirship
- Affidavits of Identity
- Other Affidavits
- Releases
- Quitclaims
- Correction Instruments
- Stipulations of Interest
- Ratification/Revivor
- Probate Proceedings
- Amendments
- Death Certificate
- Trust Agreement or Certification of Trust
- Division Orders

# Curative Actions

- Suits to Quiet Title
- Trespass to Try Title Actions
- Action to Declare Heirship
- Ancillary Probate
- Probate as a Muniment of Title
- Receiverships
- Request Supplemental Runsheets
- Obtain Evidence of a Chain of Title

# Affidavits in General

- Affidavit: written statement, under oath, signed by the affiant and evidenced by a jurat.
  - (Texas Title Examination Standard §13.10)
- Jurat: a certificate signed by an officer authorized to administer oaths before whom an instrument was executed, stating that the instrument was **subscribed and sworn** to before the officer by the person executing the instrument.
- **An affidavit must have a jurat to be effective.** If there is an acknowledgment, but no jurat, it is not an affidavit since the facts stated are not sworn to by the affiant.

# Affidavits in General

- Title Standard 13.20 Reliance Upon Affidavits
  - An examiner may rely upon an affidavit unless the examiner has a reasonable basis to question its reliability
- Factors to consider:
  - Date of affidavit and length of time it has been recorded
  - Interested or disinterested parties
  - Completeness; facts vs. conclusions; basis of knowledge
  - Value of property under examination
  - Other options for proof
  - Cost and feasibility of alternative options
  - Contradictory documents or statements

# When Not to Rely on Affidavits

- An examiner should be very hesitant to rely upon an affidavit in lieu of more reliable and readily obtainable proof, such as a conveyance or the existing proceedings of a court record.



# Affidavits of Use & Possession

- Establishes possession of the land and how the land has been used for a period of time (25 years)
- Can help clear up issues with early title
- Can help clear up gaps in the chain of title (but not the preferred method)

# Affidavits of Non–Production

- An examiner may rely upon an affidavit which includes facts sufficient to show that the interest has expired by its own terms, although it is preferable to obtain a release from the owner of the interest.
  - Texas Title Examination Standard §13.30
- Often not feasible to obtain a release.
- The affidavit does not terminate the interest; it only contains facts the examiner may consider in forming an opinion as to the status of the term interest.

# Affidavits of Death & Heirship

- In the absence of information to the contrary, an examiner may rely upon an affidavit of heirship with respect to the family history and the identity of heirs of a decedent.
  - Texas Title Examination Standard §11.70
- Items to include:
  - Name of decedent and date of death
  - Statement that there was no will or the will was not probated
  - Names of heirs and their relation to decedent
  - Marital status and history of decedent
  - Additional information based on circumstances

# Affidavits of Death & Heirship

- Priority of Affiants:
  - 1) A person related to the decedent but who does not inherit
  - 2) A person possessing personal knowledge of the decedent
  - 3) An interested heir can be used, but it is desirable to obtain a supporting affidavit from a person who has no interest in the estate
- Statutory Form in Tex. Estates Code §203.002

# Affidavits of Identity

- Will help clear up variances in names
- An examiner may rely on affidavits and recitals of identity to obviate variances too substantial or too significant to ignore.
  - Texas Title Examination Standard §6.70
- Also consider: marriage certificate

# Other Affidavits

- Adverse Possession
- Payment of Debts
- Boundaries
- Homestead
- Marital Status
- Minority
- Guardianship
- Merger or Name Change
- Affidavits with attachments

# Releases

- Release of Lease
- Release of Lien
- Release of Easement

# Quitclaims

- A deed that purports to convey not the land or a specific interest but only the grantor's right, title and interest in it.
- Texas courts have developed and liberally applied the notion that if the language of a deed as a whole reasonably implies a purpose to effect a transfer of particular rights in the land, it will be treated as a conveyance of those rights, not a mere quitclaim, despite the presence of traditional quitclaim language and even the word "quitclaim" itself.
- See comments to Texas Title Examination Standard §4.90



# Correction Instruments

- When to use:
  - To correct land descriptions
  - To correct type or extent of interest conveyed
  - To correct names or capacities
  - To correct recording information
  - To correct missing information

# Correction Instrument Statute

- Texas Property Code §§5.027-031
  - §5.027 Correction Instruments: Generally
  - §5.028 Correction Instruments: Nonmaterial Corrections
  - §5.029 Correction Instruments: Material Corrections
  - §5.030 Correction Instrument: Effect
  - §5.031 Correction Instruments Recorded Before September 1, 2011

# Examples: Non–Material Correction

- Inaccurate or incorrect element in a legal description, such as distance, angle, direction, reference to a plat, lot or block number, section number, township name or number, county name, state name
- Addition, correction or clarification of:
  - Spelling of a party name, suffix, description of a business entity
  - Party's marital status
  - Date on which the conveyance was executed
  - Recording data for instrument referenced in the correction instrument
  - Fact relating to acknowledgment or authentication

# Examples: Material Correction

- Add: disclaimer of interest, consent to subordination, land conveyance that correctly conveys other land
- Remove land from a conveyance that correctly conveys other land
- Accurately identify a lot or unit number owned by grantor that was inaccurately identified as another lot or unit number in the recorded original instrument of conveyance

# Correction Instruments

- If the correction is material, all parties to the recorded original instrument of conveyance (or their successors and assigns) must execute the correction instrument.
- Err on the side of caution.
  - If the correction instrument significantly alters the grantee's interest and the grantee did not execute the correction instrument, consider making a comment and requirement.

# Stipulation of Interest

- A contract that consists of mutual conveyances and must contain words of grant
- Title to the property interest will be as set out in the stipulation
- Need for Stipulations is often the result of poorly worded descriptions of fractional interests
- Stipulations are also appropriate where there are multiple claimants to portions of the property interest

# Ratifications & Revivors

- Ratifications can be used to recognize the application or validity of a document that may seem invalid or questionable in a given situation.
  - Example: NPRI owner ratifying a lease
  - Example: Remaindermen ratifying the lease of the life tenant
- If the ratification contains appropriate language, it can also revive a lapsed lease
  - "...grant, lease and let.."
  - "...adopt, ratify and confirm..."
  - "revive" and "confirm the lease is a valid and binding lease"

# Certified or Exemplified Probate Proceedings

- If the decedent died testate, the probate proceedings of his or her estate should be recorded in the County where the property is located.
  - Other Counties in Texas → Certified Copy
  - Out of State Proceedings → Exemplified Copy



# Amendments

- Changes the terms of an agreement so that both parties agree to future conduct or action.
  - Example: Amending a lease to allow for pooling
    - Alternatively, lessor and lessee could enter into a separate pooling agreement
  - Example: Amend a lease to include additional land
  - Example: Amend a lease to include continuous development provision

# Trust Agreement or Certification of Trust

- Often used to confirm authority of the Trustee to convey an interest in the land
- Can also contain information pertaining to name of trustee; successor trustees; powers of appointment; spendthrift provisions; if there are co-trustees, how many have to sign to exercise powers; name for title to the trust property
- Texas Property Code § 114.086 Certification of Trust
  - Contains a list of items that must be in the Certification of Trust
- The Certification of Trust should be recorded in the County where the subject land is located.

# Division Orders

- While not technically curative documents, division orders can be used to help protect companies when options are limited or unavailable.

# Suit to Quiet Title vs. Trespass to Try Title

- Suit to Quiet Title is an equitable action and accords equitable remedy
- Trespass to Try Title action is statutory and accords legal remedy

# Suit to Quiet Title

- Relies on the invalidity of the defendant's claim to the property
- The plaintiff must prove, as a matter of law, that he has a right of ownership and that the adverse claim is a cloud on the title that equity will remove.
- The elements of the cause of action to quiet title are:
  - 1) an interest in a specific property,
  - 2) title to the property is affected by a claim by the defendant, and
  - 3) the claim, although facially valid, is invalid or unenforceable.

# Trespass to Try Title

- Texas Property Code §22.001-045
- The method of determining title to lands, tenements, or other real property.
- When the dispute between the parties involves a question of title, the trespass to try title statute governs the substantive claims.
- The prevailing party's remedy is title to and possession of the real property interest at issue.

# Trespass to Try Title

The Plaintiff may recover by proving:

- 1) A regular chain of conveyances from the sovereign;
- 2) A superior title out of a common source;
- 3) Title by limitations; or
- 4) Prior possession and that the possession has not been abandoned

# Action to Declare Heirship

- Texas Estates Code §§202.001-202.206
- When it is unclear who all of the heirs are, this proceeding can be used



# Ancillary Probate

- Another option available for owners who were domiciled out of state but owned property in Texas.
- Texas Estates Code §§501.001-008
- The will of a non-resident may be admitted to probate at any time if:
  - The will would affect any property in Texas; and
  - Proof is presented that the will has been probated in another U.S. state or a foreign nation

# Probate as a Muniment of Title

- Allows the will to stand as proof of title to the property
- Texas Estates Code §§257.001-152
- Less expensive than ancillary probate

# Receivership

- Chapter 64 of the Texas Civil Practice & Remedies Code
- Can be used for unknown owners, non-residents/absentees
- Can be used in situations where multiple parties are claiming the same interest

# Request Supplemental Runsheets

- Situations can come up where the best option is to request a supplemental runsheet:
  - Covering a particular tract of land
  - Covering specific owners
- Contributing Factors:
  - Multiple documents referenced that appear to affect ownership but that were not included in the materials examined but should have been
  - Uncertainty whether certain documents have been credited by a prior title opinion

# Obtain Evidence of Chain of Title

- When there is a large gap in the chain of title, the title requirement should request documents evidencing the chain of title from the last owner of record before the gap to the first owner of record following the gap.
- Evidence can include conveyances, assignments, probate proceedings, affidavits of heirship, etc.

$A \rightarrow B \text{ (GAP) } E \rightarrow F$

Need to fill in gap between B and E.

# Appropriate Curative Action vs. Practical Resolution

- Sometimes the correct action to take or document to obtain is not practical.
- Oftentimes this situation can be resolved by limitations or the passage of time.
  - Example: Gaps in the chain of title from 1880's
- Depending on the situation, a good option may be to discuss it with the client before writing a comment or proceeding with an assumption.
  - If appropriate curative cannot be retained, the only option may be to mitigate the issue as much as possible.

# Uncurable Defects

- Circumstances can make title issues “uncurable”
- Examples:
  - Owners who will not comply with title requirements
  - Owners who cannot be found



# QUESTIONS?

**YOUR PARTNER IN CREATING MASSIVE, OUTSIZED VALUE**