

# **Sample Lesson**

## **Types of Conveyances**

# WARRANTY DEED

The word *warranty* defines this type of conveyance. In a warranty deed, the grantor is *warranting* certain guarantees to the grantee. In some areas of the country this is also known as a grant deed. There are two types of warranty deeds.

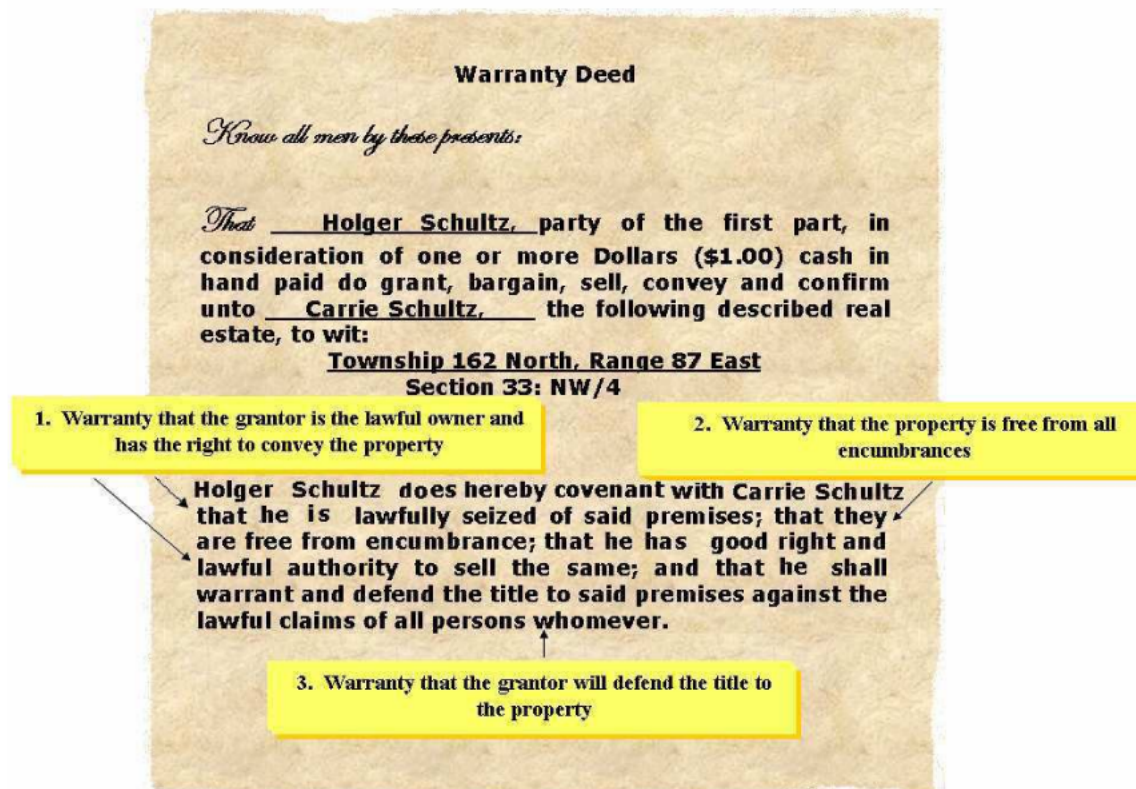
## 1. GENERAL WARRANTY DEED

A general warranty deed will contain words such as:

*"conveys and warrants".*

These words offer the following guarantees:

- First, the grantor warrants that he or she is the lawful owner and that he or she has the right to convey the property.
- Second, the grantor warrants that the property is free from all encumbrances and/or liens.
- Third, the grantor warrants that he or she will defend title to the estate.<sup>1</sup>



## 2. SPECIAL WARRANTY DEED

A *special warranty deed* is similar to a general warranty deed except it limits the guarantees made by the grantor. This type of deed only offers guarantees against defects that might arise from the time period in which the grantor owned the property and not against any issues that existed before that time.<sup>2</sup>

Corporations or individuals might use a special warranty deed in order to side step liability issues that could be valid under a general warranty deed. Special warranty deeds need not be titled as a special warranty deed. The language in the deed holds the key. Such language might be:

"conveys and specially warrants," and  
"by, through or under the grantor but not otherwise."

### Special Warranty Deed

*Know all men by these presents:*

*That* Holger Schultz, party of the first part, in consideration of one or more Dollars (\$1.00) cash in hand paid does grant, bargain, sell, convey and confirm unto Carrie Schultz, the following described real estate, to wit:

Township 162 North, Range 87 East  
Section 33: NW/4

*And I do Covenant* with the said grantee, h r heirs and assigns, that I am lawfully seized in fee of the premises, that they are free of all encumbrances and that I have good right authority to sell the same; and that I shall and will Specially Warrant and Defend the same to the said Grantee, her heirs and assigns forever, against the lawful claims and demands of all persons claiming under or through me. ↗

Warranty that the grantor will defend title only against defects arising during his or her ownership of the property.

## QUITCLAIM DEED

Sometimes called a *quit deed* or *quick claim deed*, a *quitclaim deed* is different than a warranty deed in that there are no warranties or guarantee of title being offered to the grantee. It has been said that a person owning no property in the state of California could sell, under a quitclaim deed, all right, title and interest in and to the *Golden Gate Bridge*. Since there is no guarantee of title under this type of deed, the buyer is buying at their own risk. Selling such an item under a warranty deed is another matter.

A quitclaim deed does, however, transfer all legal rights in the property that the grantor possessed or *may* have possessed at the time of the conveyance. This type of deed is often used between married couples going through a divorce or children wishing to transfer to one parent all interests they *may* have received from a deceased parent's estate. Because the deed conveys all rights either owned or that may have been owned at the time of conveyance, no guarantee or warranty is offered.

Quitclaim deeds will contain words such as:

"convey and quit claim."

QUIT CLAIM DEED. Perkins Bros., Printers and Binders, Sioux City, Iowa.

**Know all Men by these Presents:**

That ~~He~~ *Charles H. Miller and Margaret J. Miller*  
*Husband and wife* of *Montgomery*  
County, and State of *Virginia* in consideration of  
the sum of *sixteen* DOLLARS,  
in hand paid by *Jamies R. Day*  
of \_\_\_\_\_ County and State of \_\_\_\_\_ do hereby  
QUIT CLAIM unto the said *Jamies R. Day*  
all our right, title, and interest in and  
to the following described premises, situated in the County of *Plymouth*  
and State of *Iowa*:  
*The East one half of the North East quarter (E 1/2 of NE 1/4)*  
*of Section thirteen (13) Township No Ninety two (92) North*  
*Range No Forty nine (49) West 5th P.M. - The*  
*South East quarter of the North West quarter and*  
*the South West quarter of the North East quarter of*  
*Section No Twenty three (23) Township No Ninety two*  
*(92) North Range No Forty nine (49) West 5 P.M. -*  
*Containing one hundred and sixty acres more*  
*or less - according to Government survey -*  
And the said *Margaret J. Miller* hereby relinquishes her right  
of dower in and to the above described premises.  
Signed the *13* day of *May* A. D. 187*8*  
IN PRESENCE OF *Charles H. Miller*

1878 Quit Claim Deed



## LIFE ESTATE DEED

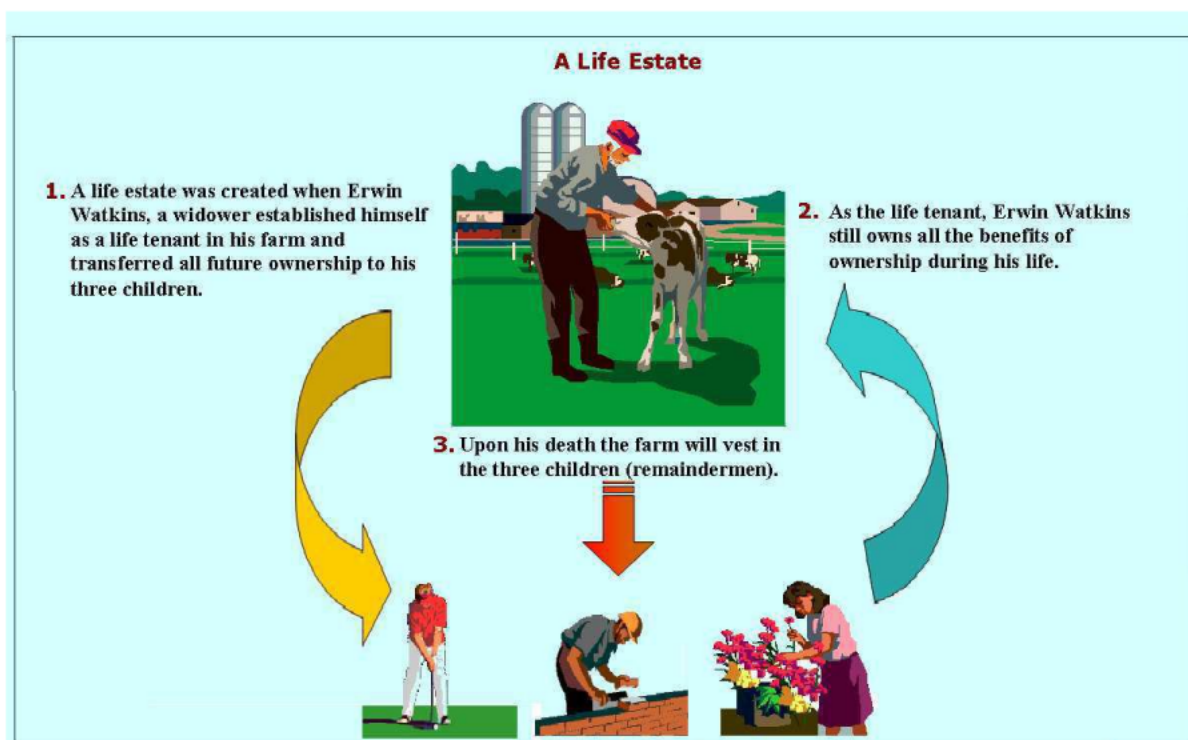
A life estate is established through a "life tenancy" conveyance. This deed will grant all the benefits of ownership in the property to a life tenant during his or her life and will establish who the owners are at the time of the life tenant's death. These parties are called remaindermen.

### Life Tenant

Through a life estate, the life tenant receives the rights of possession to the property during their lifetime. Generally a life tenant does not have the authority to enter into any oil and gas lease without signatures of the remaindermen. A general rule is to have the life tenant, remaindermen and their respective spouse sign any oil and gas lease. For land administration purposes, those receiving bonus, annual delay rentals or royalty payments must be clearly established.

### Remaindermen

The life estate deed must establish who are referred to as remaindermen at the same time the life tenancy is created. As long as the life tenant is alive the remaindermen do not have the right of possession to the property; however, title will vest in those named as remaindermen upon the death of the life tenant.



## MINERAL DEED

Under a given tract of land the owners of the mineral estate may be different than the owners of the surface estate. This is not uncommon. At the time of conveyance, the grantee to the minerals would also receive the right to execute leases, receive bonus and rental payments.

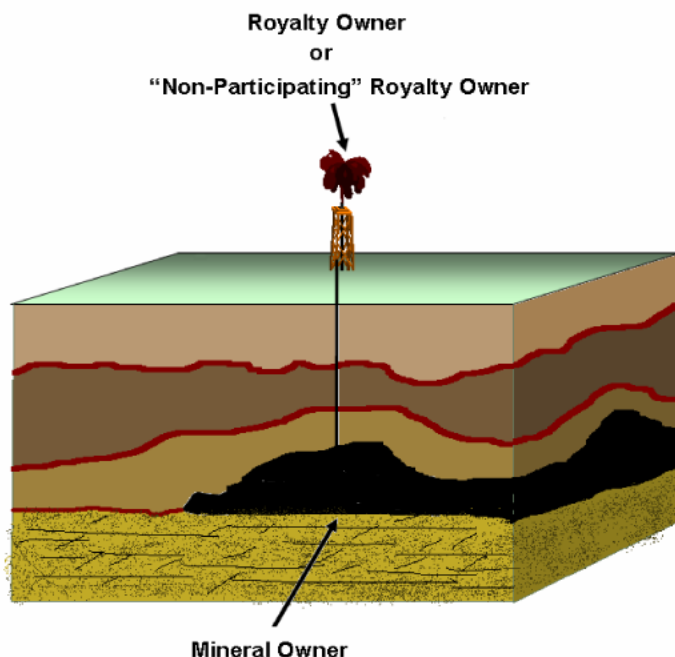
A *mineral deed* is most commonly used when conveying a mineral interest but oil and gas personnel must be aware that this is not the only type of deed used when conveying minerals.

## ROYALTY DEED

*Royalty ownership* is different from mineral ownership. Royalty can be defined as the monetary benefit that one would receive out of the production of a commercial oil and gas well. It is also referred to as "*non-participating royalty*".

The person who owns the minerals under a given tract of land most generally owns the royalties; however it is not uncommon to see a mineral owner convey either all or a portion of his or her royalty to another party. Since such a royalty owner would own no minerals they would not have the right to execute leases, receive bonus or rental payments.

A *royalty deed* is commonly used when conveying a royalty interest but oil and gas personnel must be aware that this is not the only type of deed used when conveying royalty.



The picture depicts mineral v. royalty ownership

## NON-PARTICIPATING ROYALTY OWNERS IN TEXAS POSE A PARTICULAR PROBLEM

In Texas, a non-participating royalty owner's interest is covered by the oil and gas lease *except* if the lease is pooled with other leases and becomes a part of a pooled unit.<sup>3</sup>

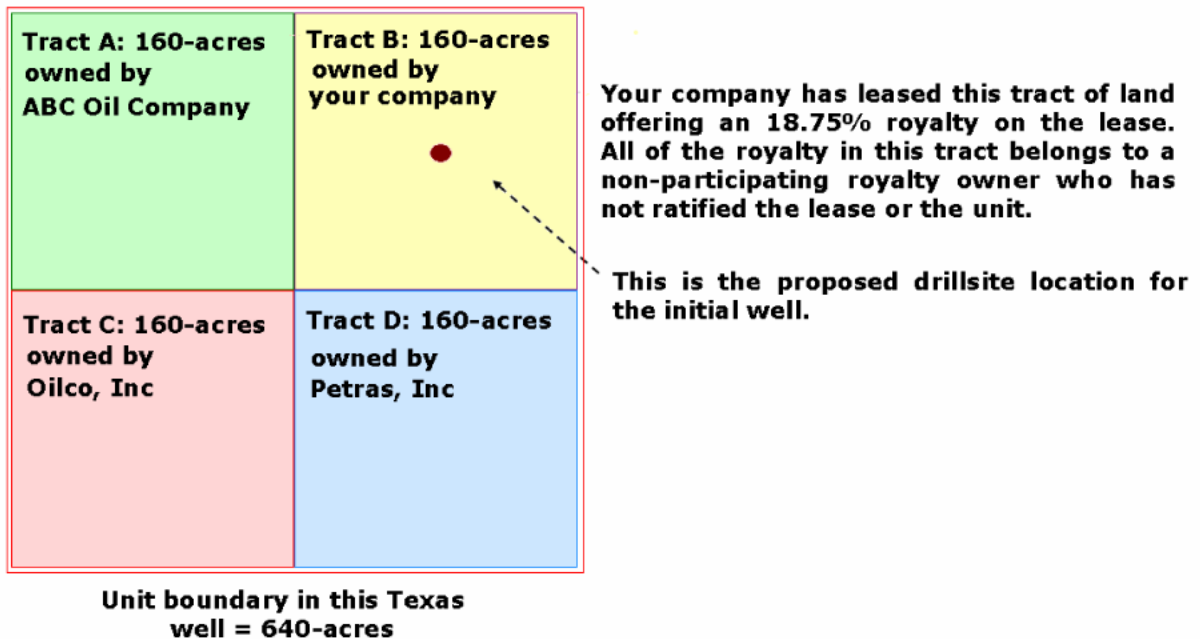
This situation could prove disastrous to an oil and gas company - especially if the drillsite location is to be located on the non-participating royalty owner's tract of land. The Texas Supreme Court's decision in *Brown v. Smith* states that a mineral owner with executive rights to lease does not have the right to pool any interest owned by the non-participating royalty owner without their approval. Courts in Texas have consistently upheld this principal in law.<sup>4</sup>

In Texas, if this owner fails to ratify the lease or sign some sort of unit designation, his or her interest cannot be pooled in the unit. There are two different outcomes for this scenario.

- First, if the drillsite is located on this tract of land the non-participating royalty owner will receive his or her royalty in whole and not proportionately reduced by the other acreage in the unit.
- Secondly, if the drillsite is located on another tract of land the non-participating royalty owner is not entitled to receive any royalty benefits from production. They do have the right, however, to sign a ratification or unit designation even after the well is drilled and completed. At this point their royalty payment would be based on their proportionate part of the unit.<sup>5</sup>
- One court allowed a non-participating owner to collect royalty payments from a well that was drilled 13 years before he signed the ratification to the lease.<sup>6</sup>
- Another court granted a non-participating royalty owner the right to ratify only portions of a lease. In this case, the lease covered a larger tract of land and the non-participating royalty owner could pick and choose what portions of the lease he wished to ratify. On wells that were not located on lands burdened by his royalty interest, the owner received royalty payments based on his proportionate part of the unit. On wells that were located on lands burdened by his royalty interest, the owner received his full royalty interest.<sup>7</sup>

## Example:

Study the scenario below as it relates to a unit boundary in Texas.



Since your company owns 25% of the unit they would be responsible to pay 25% of the costs for drilling the well. If the well was drilled and completed in the NE/4 of the section, according to what you have learned, what percent of the revenue would your company be able to keep

$$\begin{aligned} & \mathbf{25\%,} \\ & 25\% - 4.6875\% = \mathbf{20.3125\%} \\ & 25\% - 18.75\% = \mathbf{6.25\%?} \end{aligned}$$

Since this is a Texas well with the drillsite being located on the non-participating royalty owner's tract of land and since they have not signed a ratification of the lease or a unit designation you must pay them their full royalty not proportionately reduced by the unit size (a full 18.75% royalty out of production). Your company would get to keep what is left over (25% - 18.75% = 6.25%).



## TERM MINERAL OR TERM ROYALTY DEEDS

Term mineral or term royalty conveyances or reservations can often pose problems to oil and gas personnel. Since statutes differ from state to state and the following is a general overview of the subject, one should consult with an attorney or a particular state legal source when specific questions arise.

Conveying or reserving minerals and or royalty can be done in one of three manners:

*First*, both minerals and royalties can be conveyed or reserved without any specified term attached to the conveyance. In this case the one party has given up any and all future or reversionary rights to what is being conveyed or reserved.

*Second*, both minerals and royalties can be conveyed or reserved for a specified time period. This is called a *term-mineral* or *term-royalty interest*. In this case, upon the expiration of the specified term, the minerals or royalty will revert back to the other party.

States have generally concluded that the holder of a term interest can sign an oil and gas lease, but that lease will not continue beyond the expiration date of the term mineral interest. Therefore, when dealing with a term mineral interest, two leases should be taken - one from the holder of the term interest and the other from the holder of the reversionary interest.

In *RLM Petroleum Corp. v. Emmerich*, the Oklahoma court found that unless language in the deed expressly gives the term mineral interest holder the right to encumber both the term mineral interest and the future reversionary interest with an oil and gas lease, the oil and gas lease will terminate upon the expiration of the term mineral interest.<sup>8</sup>

*Third*, both minerals and royalties can be conveyed with the following language: conveyed or reserved for a *fixed term* and "as long thereafter as oil or gas is produced."

**Chester Morrow conveyed a 5-year term mineral deed to Victor Sherman dated March 3, 2001**



**On March 3, 2007 the minerals will revert back to Chester Morrow.**

**Any oil and gas lease signed by Victor will not continue beyond the expiration date of the term mineral interest.**

In order for this option to take affect and move the term mineral into a "secondary term" there must be either oil or gas production in paying quantities not only during the term of the deed but at the date of expiration of the term or there must be diligent operations in place. If not, the minerals or royalty will revert back to the other party.

In some states (i.e. Texas) the production must be on the lands covered by the term mineral interest. In others, (i.e. Oklahoma) production can simply be on lands pooled with those involving the term mineral interest and actual marketing of the production must have taken place.

Many states such as Texas and Oklahoma have held that a shut-in payment will not perpetuate the term mineral interest into the secondary term unless the conveying document states that a shut-in gas well will continue the term interest.<sup>9</sup>

**Carlos Santino conveyed a 10-year term mineral deed to Robert Murray dated April 7, 1997.**



**The conveying deed contained these words:**

**" 100% of the minerals in and under the land for a period of 10-years and as long thereafter as oil or gas is produced".**

**If a well is producing in paying quantities on April 7, 2007 the minerals will still be owned by Robert Murray and as long thereafter as oil or gas is produced.**

If, in the previous example:

- Carlos Santino conveyed to Robert Murray all of his interest in Section 10, 11 and 12 lands.
- On January 1, 2006 a producing well was drilled and completed in the SW4 of Section 12.
- No other wells had been drilled on the other lands prior to April 7, 2007.

Would production from the well in Section 12 perpetuate the mineral ownership to Robert Murray as to the lands in Sections 10 and 11?

\_\_\_\_\_ Yes \_\_\_\_\_ No

Answer: Yes, as long as there is production from the Section 12 well on April 7, 2007. The deed conveys "The Land" and refers to the entire tract of lands described in the granting clause.

If, in the above example,

- Carlos Santino conveyed to Robert Murray all of his interest in Section 10: NW4 and Section 11: W2.
- A spacing unit was formed for all of Section 11 and on January 1, 2006 a producing well was drilled and completed in the E2 of Section 11.
- No other wells had been drilled on the other lands prior to April 7, 2007.

Would production from the well in Section 11 perpetuate the mineral ownership to Robert Murray as to the lands in Sections 10?

\_\_\_\_\_ Yes \_\_\_\_\_ No

Answer: This answer becomes a little tricky. In Texas, in order for the minerals to perpetuate into the secondary term there must be production from the land conveyed. Since the production is from lands not conveyed (Section 11: E2), in Texas, the minerals would revert back to Carlos.

In states like Oklahoma and Kansas, the acreage included in the spacing unit would perpetuate into the secondary term. In this case, Robert Murray would own these minerals.

## FOOTNOTES

<sup>2</sup> [washingtonpost.com/wp-srv/business/longterm/glossary/n\\_z/special\\_warranty\\_deed.htm](http://washingtonpost.com/wp-srv/business/longterm/glossary/n_z/special_warranty_deed.htm)

<sup>3</sup> George A. Snell, III, Oil and Gas Law 2001: Nationwide Comparison of Laws on Leasing, Exploration and Production.

<sup>4</sup> Brown v. Smith, 141 Tex. 425, 174 S.W.2d 43 (1943).

<sup>5</sup> George A. Snell, III, Oil and Gas Law 2001: Nationwide Comparison of Laws on Leasing, Exploration and Production.

<sup>6</sup> DeBenavides v. Warren, 674 S.W.2d 253 (Tex. Civ. App.–San Antonio 1984, writ ref'd, n.r.e.)

<sup>7</sup> MCZ, Inc. v. Triolo, 708 S.W.2d 49 (Tex. Civ. App.–Houston [1st Dist.] 1986, writ ref'd n.r.e.)

<sup>8</sup> RLM Petroleum Corp. v. Emmerich, 1995 OK 50, ¶2, 896 P.2d 531.

<sup>9</sup> George Snell, Timothy Dowd, Tom Daily, Gregory Nibert, John McDavid and Richard Revels, "A Comparative Review of Oil and Gas law in Texas, Oklahoma, Arkansas, New Mexico, Mississippi & Louisiana," *Landman Oil & Gas Law Special Section*, (December, 2002).