



Does Someone Else Own the Oil, Gas and Mineral Rights Under Your Home?

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Reuters ran an interesting article on October 9, “[Special Report: U.S. Builders Hoard Mineral Rights Under New Homes](#)”, an excellent and comprehensive report describing a practice by some developers and homebuilders to reserve the oil, gas and mineral rights underlying the lots and homes they sell. The article mentions a homeowner’s surprise that he did not own the oil, gas and mineral rights beneath his property and his discovery that they’re owned by the developer and homebuilder who built his house. Reuters reports that the practice by developers and homebuilders to reserve and retain the oil, gas and mineral rights is widespread throughout the United States.

Oklahoma homeowners may be surprised to find the same practice here in Oklahoma, and for most people it is nearly impossible – or, at least, very expensive – to detect. Almost all, if not all, abstract companies and title/closing companies automatically exclude a search of the ownership of the oil, gas and mineral rights in real estate sale/purchase transactions. Most residential purchases – especially those with mortgage financing – are underwritten with title insurance that routinely excepts the oil, gas and mineral rights from coverage. That means that the purchaser has no idea whether the seller even owns the oil, gas and mineral rights.

The only way the purchaser can find out if the seller owns the oil, gas and mineral rights, and whether the purchaser can acquire them, is to commission a title search of specifically those interests, which can be an expensive proposition. The abstract company can be engaged to prepare an abstract of title that includes all documents pertaining to the oil, gas and mineral rights, including deeds in which those right may have been reserved by prior owners, which can then be examined by a title attorney who provides an opinion regarding the ownership. The alternative is to engage the services of a title attorney to examine the courthouse records (either by examining the records in the courthouse – called a “stand-up” opinion because the attorney stands at the counter in the courthouse and examines the records – or by reviewing photographic images of the records obtained by a landman for that purpose) upon

which an opinion of the ownership of the oil, gas and mineral rights can be provided. Trouble is, either alternative won't be cheap – abstractors', landmen's and attorneys' fees for these services amount to hundreds of dollars, sometimes thousands.

The form contracts commonly in use for real estate sale transactions in Oklahoma often exclude the oil, gas and mineral rights from the sale. If the purchaser doesn't carefully review the contract before signing it, he or she may inadvertently waive even the right to object to the exclusion of the oil, gas and mineral rights, let alone the right to demand the requisite title records that include the oil, gas and mineral rights be provided for examination. If ownership of the oil, gas and mineral rights is a concern of the purchaser, he or she should make sure to eliminate that exclusion in the contract and further insist that the title records furnished for examination include the oil, gas and mineral rights.

But an interesting feature of the residential sale contract form promulgated by the Oklahoma Real Estate Commission – some variant of which is used by most real estate brokers – is that the seller's title information is not required to be furnished for examination until a short time before the scheduled closing, probably not enough time for a thorough examination of the title to the oil, gas and mineral rights. If the purchaser's current home has been sold, with a closing date approaching, and the boxes are almost packed and the moving van has been ordered, the purchaser may be reluctant to postpone or even cancel the transaction because of a discovery that the seller does not own the oil, gas and mineral rights. The Reuters article points out that purchasers typically do not even consider whether they are acquiring the oil, gas and mineral rights, and certainly their mortgage lenders and the title insurance underwriters don't care, either, given the routine exclusion of those interests in the title insurance coverage.

The parties who have vested interests in leaving this issue alone – not only the sellers, of course, but also the mortgage lenders, the title companies, and the real estate brokers whose commissions are at risk if a transaction fails to close because of a hang-up on the title to the oil, gas and mineral rights – will quickly remind the purchaser that Oklahoma municipalities typically have ordinances prohibiting or severely restricting drilling for oil or gas within the municipality's boundaries, and that's true. But it does not in most instances apply to properties in unincorporated areas – residential areas outside municipal corporate boundaries, for example – and it may someday not apply if the U.S. falls into another national crisis where petroleum shortages mandate exploration wherever oil or gas might be found, even inside municipal boundaries.

What's a purchaser to do? Go into the transaction with eyes wide open. If the ownership of the oil, gas and mineral rights under your home is of no concern to you, then ignore the issue, like thousands do. On the other hand, if the ownership of the oil, gas and mineral rights under your home is important to you, and if you have the flexibility and the financial resources to pursue the matter, make sure your purchase contract doesn't exclude them, require the seller to provide sufficient evidence of the seller's ownership of the oil, gas and mineral rights, and have your contract allow your

attorney sufficient time in the process to examine that ownership and inform you of any issues in time for you to make an educated decision. And, of course, make sure your seller's deed of the property to you doesn't contain an exclusion of the oil, gas and mineral rights.

For additional information, please contact attorneys at GableGotwals, Stephen Schuller at 918-595-4800.

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