

Procedures for Approvals of *Oil and Gas Assignments* And Recording of *Miscellaneous Instruments*

The issues of Undivided Interest and Joint Ownership

When in the course of lease ownership, it becomes attractive to share...how one sells interest to another depends on the age of the lease involved. The earliest oil and gas leases sold by the State Land Office permitted assignment of record title ownership by dividing ownership of formations and of surface descriptions. Current owners of these older leases may still request approval of such assignments. The several owners are considered record-title-owners of each division.

After December 17, 1924 the leases sold by the State Land Office no longer permitted undivided interest activity.

The question has been asked: “On these post-1924 leases, why does the Commissioner refuse to approve assignments of undivided interest, and why does he provide that no more than two lessees own a lease jointly and not severally?”

There are two answers.

1. The first is that New Mexico law is most specific about the Commissioner’s responsibility as the trust officer of public lands, and
2. The second is the practical matter of maintaining a clear chain-of-title.

The key section of the law is Section 19-10-13 NMSA 1978 which is discussed below. Prior to that discussion, however, let it be noted that clear echoes of that section appear in Section 7 of the basic oil and gas lease; in Item 7 of the Assignment of Oil and Gas Lease forms; and, in State Land Office Rule 19.2.100.41. They read as follows:

1. Section 7, Oil and Gas Lease: “The lessee shall have the right to assign this lease in whole or part. Provided, however, that no assignment of an undivided interest in the lease or in any part thereof...shall be recognized or approved by the lessor (Commissioner of Public Lands).”
2. Item 7, Assignment of Oil and Gas Lease: “An assignment will not be approved when it is made...for undivided interest...”
3. SLO Rule 19.2.100.41: “Assignments shall not be accepted nor approved by the Commissioner...for less than assignor’s entire interest in any legal subdivision (except where transfer is by operation of law).”

Discussion of Section 19-10-13 NMSA 1978

The section begins by stating what the Commissioner may not do:

“All leases issued under the provision of this act shall be assignable in whole or in part; provided, however, that no assignment of an undivided interest in the lease or any part thereof, or any assignment of less than a legal subdivision shall be recognized or approved by the Commissioner.”

The section goes on to describe the formal relationship the Commissioner shall have with the lessees:

“Upon approval by the Commissioner of an assignment, the assignor shall stand relieved from all obligations to the state with respect to the lands embraced in the assignment and the state shall likewise be relieved from all obligations to the assignor as to such tract or tracts, and thereupon the assignee shall succeed to all of the rights and privileges of the assignor with respect to such tracts and shall be held to have assumed all of the duties and obligations of the assignor to the state as to such tracts.”

Having been strict about the Commissioner’s and lessee’s relationship, the section continues by recognizing that the business world has relationships within itself which are quite apart from the trust functions exercised by the Commissioner.

“Provided, however, the record owner of any oil and gas lease may enter into any contract for the development of the leasehold premises or any portion thereof, or may create overriding royalties or obligations payable out of production, or enter into any other agreements with respect to the development of the leasehold premises or disposition of the production therefrom, and it shall not be necessary for any such contracts, agreements or other instruments to be approved by the commissioner of public lands; but nothing herein shall relieve the record title owner of such lease from complying with any of the terms or provisions thereof, and the commissioner shall look solely and only to such record owner for compliance therewith and in any controversy respecting any such contracts, agreements or other instruments entered into by such lessee with other persons, the State of New Mexico or the commissioner shall not be a necessary party.”

The section then puts together the state trust function and the working of the business world.

“All such contracts and other instruments may be filed either in the office of the commissioner of public lands or recorded in the office of the county clerk of the county where the lands are situated, and the filing or recording thereof shall constitute notice to all the world of the existence and contents of the instruments so filed or recorded.”

The law clearly intends that the mutual obligations of the state and the lessee to each other shall be kept direct, simple and responsible. While the various complexities of the business world are readily available through filing and recording, they shall not be allowed to cloud or complicate the basic trust function nature of the relationship of landlord and tenant strictly defined for the Commissioner and the lessee.

Since the Commissioner shall look solely and only to such record owner for compliance, it is absolutely necessary that the chain-of-title be clear, direct and immediately apparent on its face. The following three scenarios will provide examples of our procedures and what a different procedure might create by way of questions and confusion.

Scenario 1

If the original lessee assigns the lease duly numbered LH-0001 to Joseph Doe and John Smith, under our assignment approval process and with the Commissioner’s approval, this assignment becomes a lease assignment wholly independent of the original

lease contract. It is identified, under our system of Tract Books and the ONGARD system for the collection of rentals and royalties, as Assignment 1: LH-0001-0001.

Scenario 2

Joseph Doe decides to convey his right, title and interest to David Rice. In order to retain the chain-of-title intact and to preserve the ownership in one assignment, we require that Joseph Doe and John Smith join in the assignment as Assignors and that the assignment list David Rice and John Smith as the Assignees. By following this procedure, the chain-of-title has been maintained and the ownership preserved intact without creating an individual interest in the new Assignment 2: LH-0001-0002.

Scenario 3

If the Commissioner were to disregard Scenarios 1 and 2, the following situation would evolve:

Joseph Doe decides to convey his right, title and interest in Assignment 1 to David Rice, but John Smith does not join as an assignor. In this event, John Smith owns an undivided interest in and to the same lands assigned to David Rice in the assignment which is now listed as Assignment 2. Potential legal questions arise:

- a. Who is responsible for payment of annual rental, Assignee 1 or Assignee 2?
- b. Who is responsible for payment of royalties, Assignee 1 or Assignee 2?
- c. If one Assignee pays his one-half of the rent and the Assignee becomes delinquent, how can we proceed to cancel the lease assignment?

These are just a few of the problems that would develop if we did not follow the steps outlined in Scenarios 1 and 2.

The alternative to filing an “undivided interest assignment” – which cannot be approved by the SLO for leases issued after 1924 – is to file a Miscellaneous Instrument (MI). MI’s may be filed for agreements between private parties such as assignments and bills of sale, overriding royalty interest assignments, operating rights assignments, and undivided interest assignments. Also, MI’s are used for mergers and name changes, as well as last wills and testaments to maintain clear chain-of-title. **There are no specific forms for Miscellaneous Instruments; assignment forms may be used for convenience if labeled correctly.**

MI documents are to be submitted to the SLO in triplicate; one copy will be returned. Miscellaneous instruments will not be “approved”, but given a recordation number from the register of miscellaneous instruments and that number is posted to the Oil and Gas Miscellaneous Instrument Record Sheet which is filed with the active lease or assignment for those lands. Filing in the County Clerk’s office may be required under the New Mexico Oil and Gas Act.

Direct your questions on assignments to either Stephen Manning at 505-827-5749 or Paulette Lucero-Romero at 505-827-5714. Questions on miscellaneous instruments should be addressed to Debbie Tise at 505-827-5744.