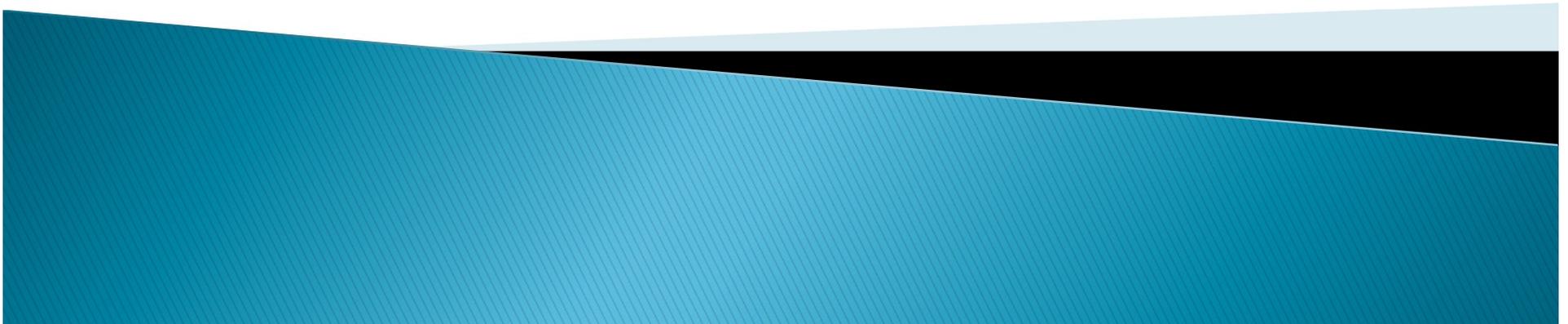


# Chapter 10: KANSAS ISSUES AFFECTING LAND TITLE AND THE DIVISION ORDER ANALYST

Linda Barry, CDOA



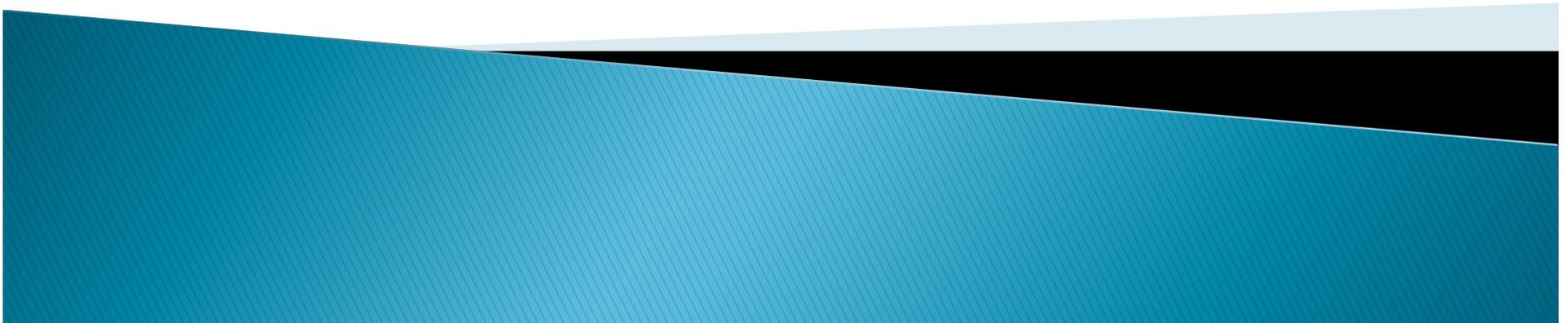
For Questions

Contact

Linda Barry

email: [lbarry@newfield.com](mailto:lbarry@newfield.com)

phone: 281-674-2851



# Kansas Property Interests

The interests that analysts work with in Kansas can be either real property or personal property. When dealing with oil and gas interests it is important to know if the interest is real property or personal property so you can determine which laws apply.

- ▶ Mineral Interests are **real property**
- ▶ Royalty Interests are **personal property**



# Real Property

- ▶ **Separate Property**– a mineral interest owned before any current marriage, or acquired after marriage by gift, devise, or descent.
- ▶ **Tenants In Common**– occurs when a person owns an undivided interest in minerals or land. The presumption in Kansas is that all property acquired during a valid marriage is owned as Tenants In Common.
- ▶ **Co-Tenants (Joint Tenants)**– Two or more persons who own an undivided interest in property. When one owner dies the property vests in the surviving joint tenant.



# Documentation Required to Pass Title Upon the Death of an Owner

- ▶ Co-Tenancy (Joint Tenancy) – Surviving Co-Tenants would own the oil and gas interests and production proceeds in equal shares. Thus an Analyst only needs:
  - Adequate proof of death (Death Certificate)
  - Proof that all taxes have been paid.
- ▶ Separate Property or Property held in Co-Tenancy requires more documentation.



# Intestate Succession

- ▶ If the interest owner did not have Will or the Will is not offered for Probate the heirs can obtain a Decree of Descent.
- ▶ What is required to obtain a Decree of Descent?
  - A person is deceased longer than six (6) months;
  - He/she owned property in Kansas;
  - No petition for Probate or Administration has been filed
  - Any person interested in the estate may petition the Kansas District Court for determination of descent in the county of the decedent's residence or where any property is located.



# Intestate Succession Continued

- ▶ A Kansas District Court will determine descent based on:
  - The Kansas laws of intestate succession (See Page 6 Table 1 – Summary of Intestate Laws of Kansas), or
  - The terms of a Settlement Agreement.
- ▶ Note: If less than ten (10) years since the death of the decedent no Decree of Descent will be issued until the court is provided with proof that the taxes have been paid.



# Intestate Succession Continued

- ▶ If the Division Order Analyst is advised that no Will exists or it will not be offered for probate the Analyst should request the following:
  - Copy of the Death Certificate
  - Letters of Administration
  - The Decree of Descent filed in the county where the property is located.



# Affidavit of Heirship

- ▶ What is an Affidavit of Heirship?
  - It is a document which provides critical information about the heirs of the deceased owner. It should be completed by a disinterested party.
- ▶ When can an Affidavit of Heirship be used?
  - If the Analyst's company allows the use of the form;
  - If the interest is small and a small dollar amount of proceeds was paid to the deceased owner during the last year, then an Affidavit of Heirship can be used.

Note: An Affidavit of Heirship does not give the heir marketable title; it only allow for the payment of proceeds.



# Table I – Summary of Intestate Laws of Kansas

Leaving spouse and no descendants	Spouse takes entire estate	
Leaving spouse and descendants	Spouse takes one-half	Descendants share one-half. Descendants of pre-deceased children inherit per stripes.
Half-blood	Children of half-blood inherit with the children equally with children of the whole blood through the common parent only. If siblings are born of different unions, property is equally divided between paternal and maternal lines of the deceased. Siblings fully related in blood take in both lines and those related by half-blood take each in his own line.	
Leaving parents, but no spouse or descendants	The surviving parent or parents take the entire estate.	
Leaving no parents, spouse or descendants	The shares attributable to the parents shall pass in equal shares, to the heirs of the parent (excluding their representative spouses). If one parent left no heirs, then that shall also pass to the heirs of the other parent.	
Laughing heirs	No heir shall inherit, except by lineal descent, to a person more than six degrees removed from the decedent.	
Murder	A murderer may not inherit, treated as though predeceased decedent.	

# Kansas Testate Succession

- ▶ Important Points about Wills in Kansas:
  - Any person of sound mind and possessing rights of majority may dispose of property by Will.
  - Wills must be written not oral.
  - Wills must be signed, attested, and subscribed in the presence of two or more witnesses.
  - Holographic Wills are not recognized.
  - A spouse may “will away” his/her separate property
  - A spouse may will one half of the property held as a Tenant in Common with the surviving spouse.
  - A spouse may not “will away” from the other spouse more than one-half of his/her property unless the other spouse consents to this in writing executed in the presence of two witnesses or elect to take under the will.



# Passing of property when held as Separate Property or held in Co-Tenancy

- ▶ If there is a Will and/or if Probate proceedings will be held in the Estate the Analyst needs a copy of the:
  - Death Certificate
  - Will, if there is a Will
  - Order admitting the Will to Probate or Copy of the Order opening Administration
  - Letters Testamentary
- ▶ The Analyst may then pay the Executor/Administrator of the Estate



# Kansas Testate Succession

- ▶ If the Estate is closed the analyst should request the following:
  - Death Certificate;
  - Copy of the Will;
  - Copy of the Journal Entry of Final Settlement and any Executor's Deeds, if there were any;
  - Receipt for payment of taxes.
- ▶ The Analyst may then pay the devisees
- ▶ Note: it is very important to review KS Stat. 55-1614-1615 before suspending a royalty owner in the state of Kansas as interest will be due in most circumstances.



# Kansas Deeds

- ▶ As in every state property can be transferred by deed. As with all deeds in other states, a valid deed must include the following:
  - Names of Grantor and Grantee;
  - Address of parties;
  - Words of grant;
  - Statement of consideration;
  - Description of property and interest transferred;
  - Date of the deed and the effective date;
  - Execution by grantor (may use mark);
  - An acknowledgement;
  - Recorded in county where property is located. Note: An Analysts should pay attention to contracts for sale.



# Special Notes Regarding Kansas Deeds

- ▶ It is not necessary to have the signature witnessed (even if the grantor is signing with his or her mark.)
- ▶ A spouse need not join in the execution of the conveyance except in the conveyance of a homestead.



# Deeds Creating Life Estates

- ▶ The only difference between these deeds and others is that they contain a reservation of an interest for the grantor's life with the remainder going to the grantees.
- ▶ In this deed the Life Tenant has conveyed his/her interest and cannot convey further. Only the remaindermen own an interest and thus only the remaindermen can convey an interest subject to the Life Estate.



# Divorce and Kansas Title

- ▶ After a divorce petition is filed in the District Court no action can be taken by a court for sixty (60) days.
- ▶ After sixty (60) days a Decree of Divorce or Annulment may be issued by the court.
- ▶ It is final after the time for appeal. (Usually written in Decree)
- ▶ The analyst may need to request deeds or similar conveyances ordered by the court.



# Guardianships & Conservatorships

- ▶ Guardian – person appointed by a court to act for a disabled person or minor child.
- ▶ Conservator – same as guardian except he/she has control of an estate.
- ▶ Guardians and Conservators are appointed by the District Court and they are always subject to the control and direction of the District Court.



# Powers of a Conservator

- ▶ A conservator with the approval of the District Court may:
  - Sell, lease, or mortgage real property;
  - Prosecute and defend law suits;
  - Sell assets of the estate;
  - Invest funds;
  - Acquire title to real property;
  - Execute a Division Order.



# Termination of Guardianship or Conservatorship

- ▶ Of a minor child occurs:
  - Upon the death of the ward;
  - Upon attainment of legal age or marriage.
- ▶ Of a disabled person:
  - Upon death of the ward;
  - Upon restoration of capacity of the ward.



# Trusts

- ▶ In Kansas as in other states the most common question about property held in trust is: “Does the Trustee have the power to perform a certain act?” Such as: “Does the Trustee have the power to execute a deed or Division Order, etc.”
- ▶ To answer this question the analyst by obtain and examine the trust agreement.
- ▶ However, most Trustees are reluctant to give the analyst a copy of the Trust Agreement.
- ▶ So in January, 2004 Kansas passed KS Statute No 58a-1013 to address this problem.



# KS Statute No 58a-1013

- ▶ Instead of furnishing a copy of the Trust Agreement the Trustee may furnish an acknowledged Certification of Trust.
- ▶ The analyst who receives a Certification of Trust may rely on the information in this document and is not liable to any person for so acting.



# Contents of a Kansas Certification of Trust

- ▶ A Certification of Trust contains the following information:
  - It states the Trust exists and the date the trust agreement was executed;
  - It names the settlor;
  - It identifies the current Trustee/Acting Trustee and his/her address;
  - It sets out the powers of the Trustee;
  - It states the revocability or irrevocability of the Trust and who can revoke it;
  - It states the authority of any Co-Trustees and whether all or less than all are required to exercise the powers
  - It provides the Tax Identification number;
  - It states the manner of taking title to Trust Property.



# Kansas Certification of Trust Continued

- ▶ Certification of Trust should be:
  - Signed or otherwise authenticated by the trustee;
  - Must state that the Trust has not been revoked, modified or amended in any manner that would cause the representation of the contents of the Certification of Trust to be incorrect.



# What Does an Analyst Request when making a transfer to a Kansas Trust?

- ▶ Copy of the Trust Agreement, or
- ▶ Copies of critical excerpts of the Trust Agreement, or
- ▶ Certificate of Trust



# Special Concerns for the Kansas Division Order Analyst

- ▶ The Kansas Corporation Commission (KCC) supervises and regulates the Kansas oil and gas industry in a manner similar to other regulatory agencies in other states. But unlike many other states:
  - There are no spacing orders in Kansas, but field rules establish the norms for unit size;
  - The KCC allows non-contiguous units.



# Kansas Affidavit of Production

- ▶ This document is unique to Kansas. When a well begins producing, an Affidavit of Production must be filed of record in order to protect the producer's unit and provide the statutory notice of production.
- ▶ It should be a sworn statement by a company officer or agent.



# Contents of an Affidavit of Production

- ▶ An Affidavit of Production must contain:
  - The exact description of the unit;
  - A description of the leases contained in the unit;
  - The Location of the well;
  - Statement of notice of Production in accordance with Kan. Statute 50-205;
  - Statement that the lease or leases are perpetuated by production from the described unit.



# Conclusion

- Do not use the information contained in this presentation in-lieu of legal advice. But it should provide guidelines for an Division Order Analyst operating in the state of Kansas.
- Always consult your company's policies when making changes and seek the advice of your Team Lead, Supervisor or Manager when you have questions.
- Finally remember that when dealing with Kansas properties:
  - Use caution when suspending a royalty owner;
  - Be sure your company files an Affidavit of Production to provide statutory notice of production.



For Questions

Contact

Linda Barry

email: [lbarry@newfield.com](mailto:lbarry@newfield.com)

phone: 281-674-2851

