



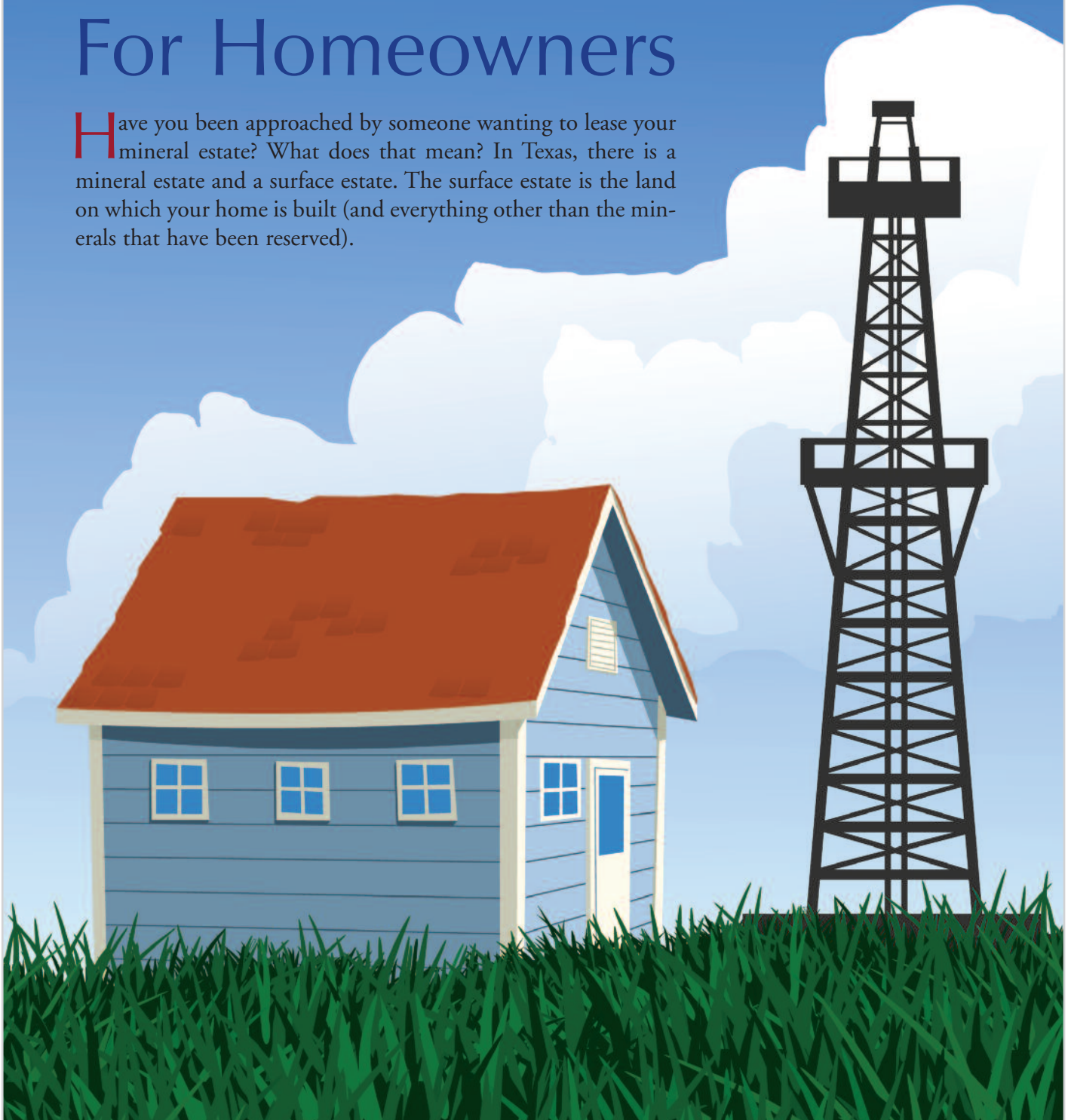
CLIENT PAGE

INFORMATION FOR CLIENTS OF TEXAS ATTORNEYS

The information included in this column is for educational and informational purposes only. Please consult an attorney regarding specific legal questions.

Oil & Gas Basics For Homeowners

Have you been approached by someone wanting to lease your mineral estate? What does that mean? In Texas, there is a mineral estate and a surface estate. The surface estate is the land on which your home is built (and everything other than the minerals that have been reserved).





Mineral and surface estates are considered one estate, unless they have been severed by you or a previous owner. For example, you may sell your home and the surface estate on which it sits, but retain ownership of the mineral estate underneath your home and surface. This causes a severance of the two estates. If you do not specifically exclude the mineral estate from the sale of your home (by “reserving” or “excepting” the mineral estate in the deed you execute), it will be sold with your home.

This article is intended to answer questions homeowners may have about leasing their mineral estates.

WHAT IS A MINERAL ESTATE?

In Texas, the mineral estate is comprised of five separate and distinct parts, which are referred to generally as the mineral owner’s “bundle of sticks.” This bundle of sticks includes: (1) the right to develop; (2) the right to lease; (3) the right to receive bonus payments; (4) the right to receive delay rentals; and (5) the right to receive royalty payments. By executing a mineral lease, the mineral owner is “leasing” its right to develop the minerals to the lessee/oil and gas company in exchange for the payment of a bonus, delay rentals, and/or royalties.

CAN I SIGN A LEASE WITH MORE THAN ONE COMPANY?

No, leasing your mineral rights is exclusive, so you cannot sign with more than one company.

WHAT DOES IT MEAN WHEN THE LEASE STATES A THREE-YEAR PRIMARY TERM WITH TWO-YEAR OPTION?

The company will pay you the bonus for the first three years. If the company cannot keep the lease in force through production of minerals or a savings clause, then the company has the option to pay you another bonus to hold the lease for another two-year primary term.

WHEN WILL THE LEASE EXPIRE?

The lease will expire at the end of the

primary term (unless there is an option that the company exercises) unless oil or gas is being produced. Once oil or gas is being produced, the lease will continue so long as oil or gas is being produced in paying quantities (enough to make a profit).

WILL I NEED TO GET A LEGAL RELEASE (SUBORDINATION AGREEMENT) FROM MY MORTGAGE COMPANY?

Your mortgage holder or the oil and gas company may require a subordination or non-disturbance agreement. A subordination agreement is a written agreement between holders of liens on a property that changes the priority of mortgage, leases, judgment and other liens under certain circumstances.

WHO REGULATES THE OIL AND GAS COMPANIES?

The Texas Railroad Commission regulates the oil and gas industry in Texas. (A bill to abolish the Texas Railroad Commission, create the Oil and Gas Commission, and transfer all the powers and duties of the TRC to the Oil and Gas Commission died during the 2011 legislative session.) In addition, your municipality may also enact specific ordinances regarding the drilling sites.

WHAT SHOULD I DO IF I DECIDE TO SELL MY HOUSE — CAN I KEEP THE MINERAL ESTATE?

If you decide to sell your property after you have signed the oil and gas lease, you have the option to sever your mineral estate from your surface estate. You can sell your house, which is part of the surface estate and retain the mineral estate or vice versa. Be sure to tell your realtor whether you wish to retain the mineral rights. If you are selling the property yourself, consult an attorney for the proper language to retain the mineral estate.

HOW WILL THE OIL AND GAS LEASE AFFECT MY TAXES, IF AT ALL?

Income from oil and gas leases is considered income for federal taxation pur-

poses. All bonuses and royalties should be included on your income tax returns.

ARE THERE ANY SALES SCAMS?

Yes. You should always verify that you are leasing your mineral estate and not selling it (unless you intend to sell the mineral estate). There have been reports of purchase agreements that were written to “appear” as a lease. ✱

This article is excerpted from *Oil and Gas Basics for Homeowners*, a pamphlet produced as a public service by the Texas Young Lawyers Association and distributed by the State Bar of Texas. For copies of the complete pamphlet, contact Public Information Department, State Bar of Texas, P.O. Box 12487, Austin 78711-2487; call (800) 204-2222, Ext. 1800; or visit www.tyla.org or www.texasbar.com.

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