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Chapter 9

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Current Title Examination Procedures: Responses to Economic Pressures and Technological Advances

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Synopsis

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§ 9.01. Introduction and Background.

[1] — Traditional Standard Practices.

Not that many years ago, examining titles for oil and gas exploration and production involved a standard and carefully defined procedure widely used in the industry. While there were some variations from state to state and between different companies and law firms, the process was fairly uniform. The procedure began with the ordering of an abstract of title from an abstract company. The abstract was based upon the examination of all records contained in the county courthouse affecting the lands covered and all owners appearing in the chain of title beginning with the divestiture of title by the United States of America or other sovereign.[2]

The abstract was then sent to an examining attorney who rendered an opinion for the purpose of drilling an oil or gas well. The attorney's opinion listed all exceptions to the title and made requirements for the curing of those exceptions. A landman then took the opinion and proceeded to "cure the title." Upon completion of his or her efforts, a report and all documents developed in the curing of the title were submitted to the attorney for examination. The attorney would then render a first supplemental title opinion. It was not uncommon for this process to be repeated two or three times until the attorney was in a position to render a "final title opinion." A number of companies required the examining attorney to include at the conclusion of the title opinion an unqualified statement that in the opinion of the attorney, the title was satisfactory for the drilling of a well. This meant the operator owned all necessary interests in the property and in the production and would be exposed to no more than an acceptable legal risk in the drilling of the well.

In the event of production, the process began again. In many instances the purchaser of production, wanting to make certain it was acquiring title from the true owners and not in danger of paying "double royalties," would cause the abstracts to be supplemented and then sent to its own attorney (not the operator's attorney), who would then examine the abstracts and render a division order title opinion. The ownership of all

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2 Patrick D. Deem and John C. Stump, "Title Opinions Covering Mineral Properties," 16 *E. Min. L. Inst*. ch. 13 (Eastern Mineral Law Foundation 1996).

production would be set out with the interest of each owner expressed as a decimal interest carried out six to eight places. The division order opinion would contain additional requirements to be cured by the landman. When all requirements were satisfied, the operator or the purchaser of production would send each owner a division order to be signed before the proceeds of production were paid.

It was not uncommon for the operator to order, at the same time the abstract for the drill site was ordered, abstracts of title on all offset tracts and begin the examination and curative process on these tracts as well. This was done so there would be little, if any, delay in drilling an offset well in the event the initial well was productive.

[2] — Reasons Necessitating Change.

Present day practices bear little resemblance to those of times past except for the core desire to acquire all necessary rights for exploration and, in the event of production, pay production to the true owner. A number of factors have contributed to the changes which began gradually, around the time of the energy crisis of the 1970s.

The ownership of mineral interests has become more and more subdivided, making it more expensive to examine and cure title. For various reasons, drilling units have become larger, requiring more land to be included in the drilling title opinion.

At the height of the energy crisis, rig availability frequently dictated the time table for the completion of title opinions. What previously had been a four- or five-month process was compressed into three or four weeks due to rig availability. The cost of all goods and services relating to drilling operations increased rapidly during the energy crisis. Operators began to look for less expensive ways to examine and cure titles.

In recent years there has been considerable restructuring in the industry. Many major oil companies and some large independents have tried organizing their exploration companies or departments into "business units." Members of business units became sensitive to the costs of goods and services, as their job security depended on the ability of their business unit to make a profit.

Lower oil prices and the trend toward leaner drilling operations have continued to motivate significant changes in the procedures for the