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Where Trust and Value Meet™

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**ESTATE CONVEYANCES
OF OIL & GAS RIGHTS IN
PENNSYLVANIA**

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I. Testate vs. Intestate

A. Testate – Died with a Will

- Will names executor (sometimes successors) to transact business on behalf of the decedent.
- Estate must be opened in the county where decedent died or was domiciled. Need Petition for Probate, Original Will, death certificate.
- Ancillary estate if decedent was out of state.
- Register of Wills grants letters testamentary to a personal representative (or letters of administration).

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Testate

- Only personal representative (i.e. – executor) is authorized to execute conveyance documents for estate, e.g. fiduciary deed.
- Beneficiaries may acknowledge but have no authority to convey.
- Beneficiaries have vested right in assets of decedent upon death, subject to the administration of the estate.

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Testate

- Executor has fiduciary duty not to “waste” assets of estate and to carry out all duties of administration
 - Gather assets & liabilities
 - Value assets & liabilities
 - Prepare and file tax returns
 - Income Tax
 - Pennsylvania Inheritance Tax
 - Federal Estate Tax
 - Prepare and file Inventory of Assets
 - Pay debts
 - Distribute assets under Will/Trust (sell assets not specifically bequeathed or devised– prevent “waste”)

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Testate

- If executor conveyed real property from estate to a third party (ie.- sale), OGM could have been reserved to distribute to beneficiaries. Check fiduciary deed.
- Any conveyance of surface and/or OGM in kind to beneficiaries should be pursuant to the will, i.e. – specific bequest or residuary bequest to all beneficiaries – if not, technically a cloud on title.
- Estate could also convey OGM to a third party separately by Deed.
- If unpaid, Pennsylvania Inheritance Tax is a “secret lien” on real property held by decedent at time of death; Federal Estate Tax is a lien on all assets of decedent.

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Testate

- Full probate file should indicate everything needed to confirm proper conveyance. Documents in probate file to examine vis-a-vis conveyances:

- | | |
|--------------------------------------|--|
| • Petitions for Probate | • Letters Testamentary/ Administration |
| • Will | • Trust (if any) |
| • Renunciation | • Disclaimer |
| • Inventory of assets | • PA Inheritance Tax Return REV 1500 |
| • Federal Estate Tax Return Form 706 | • Claims against estate |
| • Court Orders (estate litigation) | • Family Settlement Agreement |
| • Decree of Distribution | • Receipts & Releases |

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Intestate

B. Intestate – Died Without a Will

- Many similarities to Testate except appointment of personal representative, identity of beneficiaries, and distribution to them.
- Appointment of personal representative (i.e. – administrator) is by petition and notice to all beneficiaries. All beneficiaries have primary standing to serve as administrator.

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Intestate

- Once appointed, administrator has same powers as executor except in a testate estate, Will may relieve and excuse executor from posting bond and petitioning Court to sell real estate.
- Intestate estates must post bond and petition Court to sell real estate. Look for Court Orders in probate file approving sale of real estate.

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Intestate

- Distribution of intestate estate is prescribed by law – 20 Pa. C.S.A. § 2101 et seq.
 - In Pennsylvania, if spouse and children, spouse receives first \$30,000.00 and one-half of the rest, and children receive the other half.
 - If children and no spouse, all to children.
 - If no spouse or children, to parents, then siblings, etc.
 - Common in testate or intestate estates to have deed convey real estate to some beneficiaries and non-real estate to other beneficiaries.

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II. Trusts/Life Estates

A. Inter Vivos Trusts

- Established during lifetime.
- Upon death, assets are distributed pursuant to the terms of the trust, but they are subject to PA Inheritance Tax and Federal Estate Tax if revocable during life of decedent.
- Typically in a separate document. Sometimes included in deed.
- May or may not be included in probate file; check PA Inheritance Tax file.
- Ensure trustee conveyed real estate, OGM properly.

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Trusts/Life Estates

B. Testamentary Trusts

- Established upon death; typically in Will of decedent, therefore, likely in probate file.
- To distribute to trust from estate, Executor/Administrator will convey assets to trust in the name of trustee for further administration.
- Trustee may then convey assets to beneficiaries at the appropriate time.
- All of the above flowing out of the Will.

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Trusts/Life Estates

C. Life Estates

- Assets can be conveyed to a grantee for life, passing to another upon the life tenant's death.
- To be valid, oil and gas lease must be signed by life tenant and remainder beneficiaries. Law unsettled in PA.

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III. Estate and Inheritance Taxes

A. Pennsylvania Inheritance Taxes

- Every decedent's estate in Pennsylvania must file an inheritance tax return within nine (9) months of date of death (not opening of estate).
- Pennsylvania Inheritance Tax currently is at the following rates of estate's net assets:
 - Spouse – 0%
 - Children (lineal descendants) – 4.5%
 - Siblings – 12%
 - All others – 15%

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Pennsylvania Inheritance Taxes

- For Pennsylvania Inheritance Tax purposes, “estate” assets includes property to the extent attributed to the decedent as of date of death or transferred without adequate consideration within one (1) year prior to death.
 - e.g. – joint property (not with spouse), assets gifted within one (1) year of death.
- Pennsylvania Inheritance Tax Bureau issues an appraisal on return which serves as a “closing letter” once fully accepted.
- If tax is not paid, “secret lien” on all real property owned by decedent at date of death, with a statute of limitations of 20 years, 9 months after date of death (unless real estate conveyed to family member).
- Usually a separate office and file from probate file – Register of Wills (probate); Inheritance Tax Bureau (Inheritance Tax).

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Federal Estate Tax

B. Federal Estate Tax

- Federal Estate Tax assessed on decedent’s assets regardless of how titled if total value is over exemption amount.
 - Exemption has ranged from \$50,000 in 1916 to \$5 million in 2011 and 2012 (no estate tax in 2010).
 - Rate of tax has fluctuated from 1% to 77%; currently maximum rate is 35%.
- If not paid, IRS can lien all assets of decedent, probate or non-probate, real estate or non-real estate, for ten (10) years.

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Federal Estate Tax

- Estate tax return – Form 706 due nine (9) months after date of death, same as Pennsylvania Inheritance Tax return.
- IRS issues “Closing Letter” when return has been filed and accepted with full payment.
- Return and closing letter are usually in Inheritance Tax and Probate files.
- If not, only other method to obtain closing letter is to request a transcript of the estate record from the IRS.

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IV. Effect on Oil, Gas & Minerals

A. Devise of Real Estate from Estate

- Since oil and gas rights run with the real estate surface until severed or leased, must ensure that real estate was conveyed properly.
 - Deed post-dates appointment of executor or administrator
 - If specific bequest of real estate, must have been conveyed to proper beneficiary (beneficiaries) – check will.
 - If intestate estate, verify that proper beneficiaries are grantees – check Petition for Probate, Inheritance Tax Return and Intestacy statute.
 - If not specifically devised, executor may sell and distribute proceeds of sale, or convey to residuary beneficiaries.

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Effect on Oil, Gas & Minerals

B. Is an Estate necessary to convey real estate?

- If decedent owned real estate in his/her sole name, or as tenants in common, only executor/administrator of the estate appointed by the Court may convey real estate.
- If real estate was owned as tenants-by-the-entireties (i.e.-husband and wife), or as joint tenants with rights of survivorship, title passes by law to surviving tenant, i.e. – no estate is needed.
- Upon divorce, tenancy-by-the-entities converts to a tenancy in common.
- Upon death of surviving tenant, deed should be executed only by executor/administrator and include a recital that the other tenant pre-deceased the decedent – if not, must research death of co-tenant, e.g. – social security death index.

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Effect on Oil, Gas & Minerals

C. What if an Estate is “Missing?”

- Technical defect in title.
- Social security death search – find place of death; look in county’s records.
- Compel executor to exemplify record to county where property is located.
- Age of missing effects level of defect if cannot be cured.

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Effect on Oil, Gas & Minerals

D. Curative Measures

- If unclear whether proper beneficiaries were listed on deed or lease, obtain Affidavit of Heirship.
- Affidavit of Heirship unnecessary if estate is properly administered.
- Affidavit of Heirship should be signed by non-interested party who knew the decedent and was familiar with decedent's family.

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Effect on Oil, Gas & Minerals

- Affidavit should list all heirs at law, including spouse, children and grandchildren, property at issue.
- Obtain certified estate file from probate court where decedent's estate was probated.
- Compelling proper estate administration preferred over Affidavit of Heirship.

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