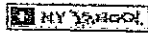




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Digging for clues to mineral rights

BY JIM FUQUAY
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It's often said a home is most people's biggest investment. So why can't real estate agents and title companies tell prospective homebuyers whether mineral rights are part of the deal?

As more homeowners sign deals to lease their mineral rights to drilling companies for thousands of dollars upfront, more buyers in the housing market are asking whether mineral ownership is a part of the deal.

That has made mineral rights another part of negotiations to buy and sell homes, real estate professionals say.

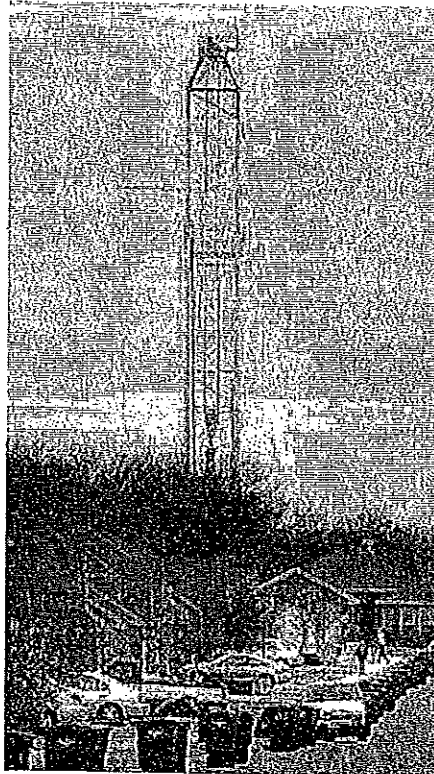
But finding out whether mineral rights are included in a sale isn't easy.

'Up to the buyer and seller'

Neither real estate agents nor title companies issuing title insurance policies have historically been involved in determining mineral rights ownership on small residential lots. Moreover, legal advisers are telling agents and companies not to make promises about who does or doesn't have mineral rights.

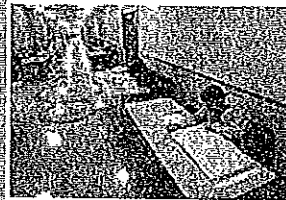
"It's up to the buyer and seller to work out," said Jack Rattikin Jr., chairman of Rattikin Title Co. in Fort Worth. "The only way to make a thorough search of minerals is to retain a landman and go back to 1845 or whenever," said Rattikin, referring to the date Texas became a state.

Marshall Boyd, partner in Williams Trew Real Estate Services, a large residential and rural property agency based in Fort Worth, tells a similar story.



STAR-TELEGRAM ARCHIVES/M.L. GRAY

Getting answers to who owns a property's mineral rights can be tricky.



■ Barnett Shale blog

"It's become an issue, but it's not part of our licensing or training," Boyd said of mineral rights ownership. When a homeowner using one of Trew's agents asks whether mineral rights come with a property, "we tell them they ought to seek the advice of an oil-and-gas attorney or petroleum landman. That's not necessarily the answer they want to hear," he said, but it's the best the agency can do.

Because of the growing interest among both buyers and sellers, his agency has created a mineral rights information sheet for sellers it represents, explaining how they can retain the mineral rights of a property. But even the sheet recommends retaining an oil-and-gas attorney.

Tom Morgan, vice president of legal affairs for the Texas Association of Realtors in Austin, said his group considers the drafting of a clause reserving or restricting mineral rights to be practicing law and hence to be avoided.

"Real estate people don't have enough knowledge to write a mineral rights clause that's detailed enough. We advise hiring a lawyer to draft that language."

Separate estates

The companies' responses to what would seem to be a straightforward question illustrates just how tricky mineral rights issues can be.

In Texas and many other states, the mineral "estate" can be separated from the surface estate, meaning that one party can own the mineral rights for a property while another party owns the surface and everything on it. The separation can happen at any time, but subsequent deeds to the property typically don't specifically address the issue. Instead, they may just refer to exemptions and restrictions recorded in earlier transactions. That means someone has to go look at those previous documents to see whether the mineral rights are still attached to the property.

Judging by comments from area landmen, consumers rarely hire them to research mineral rights.

"I don't think we have gotten calls like that," said Carla Brown of Morning Star Land Services in Azle, which has more than 30 landmen researching mineral rights ownership for petroleum producers. Brown said that she has encountered property owners at county courthouses trying to research their own mineral rights but that it can be a hit-or-miss experience.

"Some areas have good records and the title flows smoothly," she said. "But if there's a gap in title, where deeds aren't filed, it makes it really hard. When we train our landmen, we tell them not to go to the courthouse thinking, 'I'm going to research three tracts of land today.' There's just no way of knowing."

If it doesn't go smoothly, the search can get expensive. Landmen typically charge \$200 to \$400 a day, and most are busy with contracts with petroleum production operators.

Simplest issue

Perhaps the simplest issue involves whether the home seller also intends to sell, or convey, the mineral rights.

If the current homeowner owns the mineral rights and does not specifically reserve them, the rights pass to the buyer of the property. To reserve the mineral rights the homeowner must include an exclusion or reservation to the property deed stating that the mineral rights will not be sold with the property.

Mineral rights have become another negotiating point in many home sales, real estate experts say.

"If you have a house that's very desirable and a couple of potential buyers" are interested, the owner is much more likely to be successful retaining mineral rights, Boyd said. "Otherwise, it's the first thing the owners give in on."

Scott Bradshaw, owner of Arlington-based DFWProperties.net, which handles mostly residential properties, said mineral rights ownership has declined as an item of contention.

"When it first came out, people thought they were going to get rich. We nearly had deals fall apart over it when the seller didn't want to relinquish their mineral rights," Bradshaw said. But with the realization that a small urban lot might promise a signing bonus of a few thousand dollars at most and less than \$100 a month in royalty payments -- a figure that will quickly decline after the first year of production -- the urgency of securing mineral rights diminished.

"People aren't buying a house and mineral rights. They're buying a place to live," Bradshaw said. "We haven't seen a price spike" based on the value of mineral rights, he said, "so it's not a big value."

Land developers and home builders say that increasingly, the matter is settled before a home's foundation is even poured.

"By the time the land gets to us, unless somebody's just stupid" the mineral rights have already been reserved by a prior landowner, said Mike Edge, vice president of real estate for Choice Homes in Arlington. "In the majority of situations, we have told our salespeople that we don't own them," so home buyers can't get the mineral rights, Edge said.

Surface rights

The more important issue for Choice and other builders, he said, is making sure a drilling company can't use the surface.

At this point, *surface rights* are the magic words," Edge said. "I'm not going to the expense of creating a neighborhood if an operator can come in with surface rights" and drill.

That's an important issue, because in Texas and other states, the mineral estate is considered superior to the surface estate. That means that the surface owner must accommodate the mineral owner who wants to develop those minerals, possibly allowing access to the surface property for a drilling rig or other production equipment. A "no surface use" lease settles that question.

Charles Newman, a lawyer with Beadles Newman and Lawler P.C. in Fort Worth, said a "no surface use" waiver puts mortgage lenders and investors at ease as well.

Barnett Shale Blog

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