

HOW TO SEARCH YOUR PROPERTY'S TITLE RECORDS: DO YOU OWN YOUR LAND'S MINERAL RIGHTS?



In Idaho, there is no requirement that a landowner, realtor, or title company disclose whether or not the property deeded to you includes mineral rights. If not, this is called a 'split estate', where one owner retains subsurface mineral rights and the property/home buyer has only the surface rights. The State of Idaho, or in some cases the federal government, may actually own the mineral rights – or they may be owned by a private party (subdivision developers often retain mineral rights), sometimes even an investor who is aware of the development potential of these subsurface rights. ...And now that the gas & oil industry has moved into Idaho, ownership of minerals (which include oil and gas) is *very* much at issue!

The fact that your property title mentions "fee simple" does *not* guarantee that you are in legal possession of mineral rights. No realtor or seller is required to let you know about your not buying mineral rights along with the property – in fact, realtors and sellers usually have *no idea* whether those rights go with the property, and your title insurance policy doesn't cover this.

So how do you find out??

- **One way you *might* find out is if a gas developer's "landman" comes to your door asking if you will sign a mineral rights lease.** (This is to be differentiated from a seismic testing lease – in this case, it's possible that the gas & oil developer doesn't know for certain who owns the subsurface rights but only wants to find out whether there's reason for them to be interested in making the effort to learn that.) Ask for evidence of your ownership of the mineral rights.
- **Another way you *might* find out is by checking with the Idaho Dept. of Lands.** If the State of Idaho does own the mineral rights under your property, they will have a record of this and will let you know yea or nay. If not, remember, that only answers the question of whether *the State* owns those rights. **Or call BLM for federal lands: 208/373-4000** If not...
- **You can pay a title company to research this question.** Their fee will depend on how long it takes them to discover the answer – and that depends on how far back, through how many deed exchanges, they have to go to find this out. And that *could* take many hours of thorough research in county records. If you would like to do this on your own...
- **You can go systematically through the deeds in the County Recorder's office** until you come across a deed that transfers title to the mineral rights to another party – or until you've gone through *all* of the deeds in that "chain of title" and discover that your mineral rights were *not* severed from the estate.
- **Or you could pay any other person to do the above** (though a title company employee will likely do it faster).

See reverse side for information on how to conduct a title search yourself...

(This is also useful for determining whether an encumbering lease has been signed on a piece of property.)

How to conduct your own title search:

(If you've determined the State doesn't own the mineral rights under your surface land)

If your search is about your own property, you will have the official legal description (e.g., 06N 02S Sec 23 SubdivisionName No 7 Sub Lot 12 Blk 05) on your tax assessment form. If not (for instance, if you are interested in whether a *neighbor's* property is split estate), you can get that information from your county's Assessor's office, or perhaps from the county's online property search tool.

You will be doing the title search through your County Clerk's office, as recording documents is one of the Clerk's duties in Idaho. (Some records may be on microfilm or microfiche. As time goes on, such records *may* be accessible online, or via an in-house computer system – but perhaps not as far back as you need to check.) You may wish to quickly walk through the process to familiarize yourself with what's required, but **you will need to plan to spend time *carefully* going through records and deeds so as not to miss something critical.**

Most people will need to start from the present and work backward in time. You will start from the year you purchased(/inherited/etc.) your property.

If, however, you live in a subdivision, it may be useful to first find out when the subdivision was created and see whether the developer retained mineral rights at that time. Your Assessor's office can help to identify when this happened and the name of the developer. If there is no recorded reference to the reservation of mineral rights at this time, you can work backward from there. (A later lot owner *could* have reserved mineral rights at the time of a sale, but it is highly unlikely.)

Ask the County Clerk staff to walk you through the process of searching "warranty deeds" and "quitclaim deeds". This will involve several steps, including very large and heavy record books and/or microfiche/film that cross-index deeds by date and last name – and you will need an introduction to where all of these books and tools are kept. An "instrument number" will lead to a name, the name to a deed (but you may have to look through a good number of years to find it). (A mortgage holder could also become the owner of record if the loan was defaulted on.)

In order to identify each document in the "chain of title" (the sequential record of what happened with a given parcel), you will be looking for the owner of record (grantee) and use that name to search farther back. (The seller/conveyor – grantor – in one deed is the buyer/receiver – grantee – in the prior deed.) **Look for a notation about a reservation of mineral rights which resulted in a *separate* deed of ownership of them.** (And consider a need to look for *multiple* joint owners.)

If you run across a document in which an owner has granted someone title to mineral (or oil/gas) rights, this will indicate that *you* don't own any, or at least not all, of the mineral rights. (Granting of a partial share might stem from a divorce or property distribution amongst heirs.) A "royalty deed" (a transfer of the right to receive royalties, not of the mineral rights themselves) or a mineral (or oil/gas) *lease* would indicate probable ownership (at least *at that time*).

Note down the accession numbers for all the documents you identify as being pertinent. You may have to come back another day and begin from where you left off!

IMPORTANT NOTE ABOUT OLDER RECORDS: If your county was created, or its boundary lines changed, after the State was set up, you may have to search in another county's records as well.