

## DEVELOPMENT COMPANIES USE LEASES AS SECURITY FOR FINANCING



Gas and oil developers are particularly avid about garnering mineral rights leases (whether from the State or individual owners) because they can use them as collateral to obtain loans to shore up their own finances. They don't just *show* financiers the leases – they bundle them together and use them as financing vehicles, and the financiers require that *they* are shown as the mortgagor on these “properties” and record them in the originating counties... This is so that the financiers are assured of being a top-priority lienholder rather than their interest being subordinate to others' in case the developer goes bankrupt.

**Development companies often function this way: raising money so as to enable them to pay for lobbying and lease-gathering expenses, so as to have the leases as backing for raising more operating funds...**

The landowner, meanwhile, won't be aware of what negative effect this will have on property values – and may not even become aware of such a title lien unless s/he tries to sell or refinance the property. (This would especially be likely if the landowner doesn't own the actual mineral rights – “split estate” – see below.) An approached mortgagor will find that this property is not as valuable to the mortgage bank as the property owner expects, since there is already a first-right lienholder on it. The would-be buyer *may* be able to get a loan from a lender that will take a risk on *holding* “non-conforming” paper rather than being able to resell it – but s/he will very likely be quoted much higher points and interest on it if so. A potential buyer finding this to be the case might just want to look elsewhere for a property *without* such a lien on it. **...The property itself, therefore, is devalued in the marketplace. The development company wins, the landowner loses.**

### **Do you own your land from top to bottom?**

By Mike Butts mbutts@idahopress.com -- Apr 2, 2011 © 2011 Idaho Press-Tribune

**TREASURE VALLEY — Think you own your property lock, stock and barrel?**

Think again.

Idaho or the federal government [*OR OTHER ENTITIES*] could own the rights to valuable minerals underneath your land without you even knowing about it. And you would not be alone.

While you may own the “surface estate” of your property, or the land on top, the government or another entity could own rights to the minerals underneath the surface.

And it could lease those rights to companies to extract oil, gas, precious metals or even rocks or sand.

There are thousands of such “split estate” properties in the Treasure Valley. And interest is growing in extraction of their minerals.

**For Ed Botkin of Emmett, his split estate meant he couldn't get a business loan because of a mortgage on his mineral rights.**

**Another Emmett-area man said the same mortgage makes it appear his property has a lien on it when it does not.**

“I assumed when I bought the land, I bought the land,” Bill Conger, 59, said. “I’ve never had this issue come up.”

**... Botkin, 58 and a lumber yard owner, said he was turned down for two loans because of Bridge Energy’s mortgage on minerals rights under his property west of town. Banks interpreted the mortgage as a liability for Botkin.**

“If I wasn’t attempting to refinance I wouldn’t have a clue that that (the mortgage) was there,” Botkin said.

A spokeswoman with Bridge Energy said she would speak to title companies and lenders in the area to educate them about her company’s mortgage.

Lt. Gov. Brad Little of Emmett also has some property with mineral rights leased by the company.

“My suggestion is they put some different protocol in place” for handling mineral rights leases, Little said. *[NOTHING HAS BEEN DONE ABOUT THIS IN THE LEGISLATURE]*

### ***More information:***

#### **Mineral rights Q and A**

##### **Q: How do you find out if you don’t own your property’s mineral rights?**

A: Copies of deeds or patents with split estate information should be available at the recorder’s office in the county courthouse in the county where the lands are located. *[THESE NEED TO BE SEARCHED THOROUGHLY TO FIND ANY MINERAL RIGHTS SEVERANCE, AS THE TRANSFER OF MINERAL RIGHTS THEREAFTER MAY NOT BE MENTIONED IN LATER DEEDS]*

The Idaho Department of Lands website also has an interactive map at [gis1.idl.idaho.gov/DLR](http://gis1.idl.idaho.gov/DLR). *[ONLY FOR STATE-OWNED MINERAL RIGHTS]* If property owners know the legal description of their land (the township, range and section number) they can locate their property on the map. Use the legend tab to see how split estates are indicated.

##### **Q: Why are some estates split?**

A: Law enacted in 1923 requires the state of Idaho to retain the mineral estate on lands it sold subsequent to May 8, 1923. Private land owners sometimes retain minerals when they sell the surface of land. The federal government retained mineral ownership on some lands that were transferred under Homestead Acts, including the 1916 Stock Raising Homestead Act.

##### **Q: Who has property rights on split estates?**

A: Both the surface and mineral estate owners on split estate lands have property rights. The mineral estate owner has the right to enter onto the surface estate to access the minerals.

**For more information, see [www.IntegrityAndAccountability.org](http://www.IntegrityAndAccountability.org)**

**C.A.I.A. – PO Box 2622, Eagle, ID 83616 – 208/963-5707 – [info@integrityandaccountability.org](mailto:info@integrityandaccountability.org)**