



Land Contracts and Oil and Gas Rights

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What is a Land Contract?

- An executory contract (a contract in which both sides have obligations to perform) in which legal title remains in the seller until the buyer performs all of the obligations of the contract and equitable title passes to the buyer on proper execution of the contract. Michigan Real Property Law, 3rd Ed., § 16.1.

Key Terms

- The seller under a Land Contract is known as the “Land Contract Vendor,” and the seller’s interest is frequently referred to as the “Land Contract Vendor’s Interest” or “Vendor’s Interest.”
- The purchaser under a Land Contract is known as the “Land Contract Vendee,” and the purchaser’s interest is frequently referred to as the “Land Contract Vendee’s Interest” or the “Vendee’s Interest.”

Legal Requirements

- The legal requirements for a Land Contract are no different than that of a deed. It must be executed by the Land Contract Vendor and it must be notarized. However, unlike a deed, the Land Contract will frequently also be executed by the Land Contract Vendee.
- The Land Contract does not necessarily need to be recorded. Frequently, the parties will simply record a Memorandum of Land Contract so all of the terms and conditions are not disclosed to the public.
- If a Memorandum of Land Contract appears of record, you must obtain a full copy of the underlying Land Contract to determine all of the terms and conditions in order to lease the proper party or parties and determine if the oil, gas and mineral rights were reserved.

Other Land Contract Issues

- Generally, both the Land Contract Vendee and the Land Contract Vendor interests in the Land Contract can be assigned and transferred (unless assignment is prohibited or restricted by the Land Contract).
 - Any defects in the assignments or transfers of the interests in the Land Contract may affect the rights to the oil, gas and minerals.

Leasing When Land Contracts Appear in the Chain of Title

- There are three primary scenarios you will encounter involving Land Contracts:
 - Leasing when a Land Contract is in place (prior to the Deed pursuant to the Land Contract);
 - Leasing recently after the Deed pursuant to the Land Contract was executed (within 15 years from when the Deed was executed); and
 - Leasing well after the Deed pursuant to Land Contract was executed (15 years or more after the Deed was executed).

Leasing when a Land Contract Exists

- When an oil, gas, and mineral interest is subject to a Land Contract, and assuming that there are no reservations of the oil, gas and mineral rights contained in the Land Contract, who should execute the Oil and Gas Lease?

Leasing when a Land Contract Exists

- When an oil, gas, and mineral interest is subject to a valid Land Contract, and assuming that there are no reservations of the oil, gas and mineral rights, who should execute the Oil and Gas Lease?
 - **Best practice would require that both the Land Contract Vendor and the Land Contract Vendee should execute and or ratify the same Oil and Gas Lease. Therefore, both the Vendor Interest and the Vendee Interest will be subject to an Oil and Gas Lease (unless the Land Contract specifically states otherwise).**

Leasing when a Land Contract Exists

- Who has the right to receive the bonus payments and royalties when oil, gas, and mineral interest is subject to a valid Land Contract and assuming that there are no reservations of the oil, gas and mineral rights?

Leasing when a Land Contract Exists

- Who has the right to receive the bonus payments and royalties when oil, gas, and mineral interest is subject to a valid Land Contract and assuming that there are no reservations of the oil, gas and mineral rights?
 - **Look to the Land Contract. Absent a provision in the contract, the Land Contract Vendor is entitled to possession of the property, and therefore, would have a strong claim to any bonus payments. However, the vast majority of Land Contracts permit the Land Contract Vendee to have possession of the property, so this question will depend on the terms of the Land Contract. If you have two separate Oil and Gas Leases, they would both need to receive bonus payments to keep both of the Oil and Gas Leases valid.**
 - **As for royalties, a Land Contract Vendee is prohibited from committing waste. Therefore, the Land Contract Vendor is likely entitled to the royalties during the term of the Land Contract, but a stipulation executed by these parties should be obtained.**
 - **One other option would be to have the Vendor and Vendee agree to place the payments under the Oil and Gas Lease in escrow, with the Vendor obtaining the interest earned on the escrow account during the term of the Land Contract, and the escrow account is released to the Vendee upon satisfaction of the terms of the Land Contract. Another would be to direct all of the payments to the Vendor, but treat them as payments of the amounts due under the Land Contract (both parties would need to consent to either of these methods).**

Leasing when a Land Contract Exists

- Who has the right to receive the bonus payments and royalties when oil, gas, and mineral interest is subject to a valid Land Contract and assuming that there are no reservations of the oil, gas and mineral rights (continued)?
 - **If possible, one Oil and Gas Lease executed and/or ratified by both the Land Contract Vendee and the Land Contract Vendor should be obtained. If the Oil and Gas Lease and/or Ratification properly address bonus and royalty payments, this could eliminate many of the issues involving Land Contract.**
 - **If the Land Contract Vendor properly forecloses upon the Land Contract, then all of the surface and oil, gas and mineral rights that were subject to the Land Contract would revert back to the Land Contract Vendor. If the underlying Oil and Gas Lease was not signed or ratified by the Land Contract Vendor, the foreclosure will effectively terminate the Oil and Gas Lease.**

Leasing when a Land Contract Exists

- Who owns the oil, gas and mineral rights if (i) the Vendor did not own the rights at the time it executed the Land Contract, (ii) there is nevertheless a reservation of the oil, gas and mineral right in the Land Contract, and (iii) the oil, gas and mineral rights revert to the surface owner during the term of the Land Contract pursuant to the Dormant Minerals Act?
 - **Currently it is unclear. There would be an argument by the Vendee that the Vendor had no interest to reserve at the time of the reservation, therefore, the reservation is not valid. The Vendor would argue that it still held an interest in the land pursuant to the Land Contract and the reservation is effective. Ultimately, if such a fact pattern exists, you should exercise caution.**

Leasing Recently After Deed

- There are 4 possible scenarios you may encounter:
 - Reservation of oil, gas and mineral rights in the Land Contract and the resulting Deed.
 - No Reservation of oil, gas and mineral rights in the Land Contract or the resulting Deed.
 - Reservation of oil, gas and mineral rights in the Land Contract, but no reservation in the resulting Deed.
 - No reservation of oil, gas and mineral rights in the Land Contract, but a reservation appears in the resulting Deed.

Leasing Recently After Deed

- Reservation of oil, gas and mineral rights in the Land Contract and the resulting Deed.
 - Land Contract Vendor retains reserved interest.
- No reservation of oil, gas and mineral rights in the Land Contract or the resulting Deed.
 - Land Contract Vendee acquires all of the interest of the Land Contract Vendor in the oil, gas and mineral rights.

Leasing Recently After Deed

- Reservation of oil, gas and mineral rights in the Land Contract, but no reservation in the resulting Deed.
 - This creates a major problem in determining who owns the oil, gas and mineral rights. Note that even if there is no reservation in the Deed, it will frequently state “pursuant to a Land Contract dated ...”, “in satisfaction of a Land Contract dated ...”, or “subject to all easements, restrictions, and reservations of record.”

Leasing Recently After Deed

- Reservation of oil, gas and mineral rights in the Land Contract, but no reservation in the resulting Deed.
 - There are two potential claims that the Land Contract Vendor could make:
 - That there was a mutual mistake of fact and the Deed should be reformed to include the reservation; or
 - That while not explicitly reserved in the Deed, there is some other language in the Deed which incorporates that reservation contained in the Land Contract.

Leasing Recently After Deed

- Reservation of oil, gas and mineral rights in the Land Contract, but no reservation in the resulting Deed.
 - There are potential claims that the Land Contract Vendee could make:
 - That there was no mutual mistake of fact, that the Vendee understood it was to receive the oil, gas and mineral rights.
 - That there was a subsequent agreement (written or verbal), perhaps the Deed itself, that the oil, gas and mineral rights were to be conveyed to the Vendee.

Leasing Recently After Deed

- Reservation of oil, gas and mineral rights in the Land Contract, but no reservation in the resulting Deed.
 - Best practice would require that an Oil and Gas Lease be obtained from the Grantee in the Deed (former Land Contract Vendee) and a protective Oil and Gas Lease be obtained from the Grantor (former Land Contract Vendor). The two Oil and Gas Leases should have nearly identical terms.

Leasing Recently After Deed

- Claim of Mutual mistake of fact and that the Deed should be reformed to include the reservation contained in the Land Contract.
 - In a prior case, the Land Contract reserved all of the oil, gas and mineral rights to the Vendor. However, the Vendor executed a Deed to the Vendee without any reservation of oil, gas and mineral rights. The Deed did state that it was “given pursuant to the terms of a certain land contract.”
 - The Michigan Supreme Court held that the Deed did not reserve the oil, gas and mineral rights, but the facts made it clear that there was a mutual mistake of fact and reformed the Deed to include the reservation of oil, gas and mineral rights. *Barryton State Sav. Bank v Durkee*, 325 Mich. 138 (1949).

Leasing Recently After Deed

- When the oil, gas and mineral rights are not specifically reserved in the Deed, but some other language in the Deed incorporates the reservation in the Land Contract:
 - Prior case law addresses an issue where the Land Contract reserved the oil, gas and mineral rights, but the Deed only stated that it is subject to encumbrances “which shall have accrued or attached since August 30, 1985” (the Land Contract was dated August 30, 1985).
 - Ultimately, the Court of Appeals held that the language in the Deed incorporated the reservation of oil, gas and mineral rights in the Land Contract, and the oil, gas and mineral rights remained with the Vendor. *Bishop v Makarewicz*, 2004 WL 1837694 (Mich. Ct. App.)

Leasing Recently After Deed

- Note that while case law does exist to support potential findings of mutual mistake of fact and/or that the Deed properly incorporated the reservation from the Land Contract, these claims are fact specific and you should exercise caution when similar fact patterns exist.

Leasing Recently After Deed

- No reservation of oil, gas and mineral rights in the Land Contract, but a reservation appears in the resulting Deed.
 - Absent subsequent written agreement between the parties, there is likely no right to reserve if it is not contained in the Land Contract.
 - While no case law could be located addressing this issue in Michigan, in this instance, the Land Contract Vendee may have a claim against the Land Contract Vendor for (i) breach of contract, and (ii) reformation of the Deed.
 - Best practice would require that Oil and Gas Leases be obtained from the Grantee in the Deed (former Land Contract Vendee) and a protective Oil and Gas Lease be obtained from the Grantor (former Land Contract Vendor). The two Oil and Gas Leases should have nearly identical terms.

Leasing Long After Deed

- As stated above, there are 4 possible scenarios you may encounter:
 - Reservation of oil, gas and mineral rights in the Land Contract and the resulting Deed.
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 - Reservation of oil, gas and mineral rights in the Land Contract, but no reservation in the resulting Deed.
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Leasing Long After Deed

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 - Land Contract Vendor retains reserved interest.
- No Reservation of oil, gas and mineral rights in the Land Contract or the resulting Deed.
 - Land Contract Vendee acquires all of the interest of the Land Contract Vendor in the oil, gas and mineral rights.

Leasing Long After Deed

- Reservation of oil, gas and mineral rights in the Land Contract, but no reservation in the resulting Deed.
 - The two potential claims that the Land Contract Vendor could make for a recently executed Deed may not be available after a sufficient passage of time.

Leasing Long After Deed

- Mutual mistake of fact and the Deed should be reformed to include the reservation contained in the Land Contract:
 - Existing case law states that a claim for reformation of a Deed is subject to the 15 year statute of limitations contained in MCL § 600.5801(4).
 - Based on the Court of Appeal's opinion, the statute of limitation starts to run from the date of the Deed.
Estate of Joyce A. Tremblay v Burgin, 2010 WL 2507035 (Mich. Ct. App.).
 - Note that there are certain factors that could toll the statute of limitations.

Leasing Long After Deed

- When not specifically reserved in the Deed, some other language in the Deed incorporates the reservation in the Land Contract:
 - This claim is based on interpretation of the Deed, and is not likely subject to the 15 year statute of limitations in the same manner as the reformation claim. Therefore, the same analysis as a recently executed Deed applies.
 - However, if a significant amount of time has elapsed, this claim could still be resolved by operation of the Marketable Record Title Act or the Dormant Minerals Act.

Leasing Long After Deed

- No reservation of oil, gas and mineral rights in the Land Contract, but a reservation appears in the resulting Deed:
 - This claim would be by the Vendee for breach of contract and/or reformation. While no case law could be located addressing this issue in Michigan, this issue is clearly analogous to the reformation case cited above and these claims are presumably subject to the 15 year statute of limitations or shorter for other claims (6 year statute of limitations for breach of contract claims).

Questions?

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