How Does An Oil & Gas Lawyer Start Their Day?
Hot Topic Legal Issues

- Family disputes over mineral rights, i.e., will contests, undue influence, etc.
- Curative title issues – who owns what, i.e., 1953 deed.
- Disputes between mineral owners and oil companies.
- Disputes between surface owners and oil companies – surface use agreements.
Hot Topic Legal Issues

- Abandoned mineral claims
- Probates
- Breach of implied covenants
- Lease disputes – what’s force majeure, drilling operations, etc.
- Environmental issues
- Personal injury cases
- Criminal cases
- Class actions ??
Document Drafting 101

- Leases
- Surface Use Agreements
- Statements Of Claim
- Deeds
- Trusts / LLCs
- Curative Title Docs (Stipulation & Cross Conveyance)
- Quiet Title Complaint
- Notice of Termination & Forfeiture
- Affidavit of Validity & Effectiveness
- Settlement Agreement
- Estate/succession planning
- Transactional
Why So Many Lawsuits?

The Bakken Equation

Property + Minerals $$$$$
Doing The Math – Disputed Lease

- Original lease for 320 nma signed 3/15/2008 with 5-year primary term.
- 15% royalty, $500 net acre bonus.
- No production (not hbp)
- What constitutes drilling operations, maybe force majeure applies?
- If we void lease in active area, looking at +20% royalty and $3-5k bonus.
- Even renegotiating good.

- District courts saw an 11.3% increase in case filings from 2011 to 2012. In 2011, 167,165 cases were filed statewide compared to the 185,982 cases in 2012.
- Since 2009, the last time a judgeship added in western ND, we’ve had an increase of 31,000 cases per year.
- The Northwest District saw case filing jump from 33,535 to 42,315 between 2011 and 2012.
Problem – *We Need More Lawyers!!!*

- Two additional judges proposed for western North Dakota.
- Judges, lawyers, staffs, everyone stretched thin. It takes several months just to get more than an hour before the Court.
- Not enough lawyers practicing in the area – turning work away.
Walking Through Some Of The Basics

OIL & GAS LEASES / LEASING IN NORTH DAKOTA
Mineral Estate vs. Surface Estate


- Where the mineral estate severed from surface estate, the mineral estate is dominant. Hunt Oil Co. v. Kerbaugh, 283 N.W.2d 131 (N.D. 1979).

- What does this mean? That ownership of minerals carries with it right to find and develop the minerals. Without such right, the mineral estate would be worthless. The surface owner does have some rights, i.e., to remediation, damages, etc., per Chapter 38-18, N.D.C.C.

- Operators must notify surface owner of exploration, well construction, etc.

- Issues, tension, and conflict (recent National Geographic article)
Hypothetical – What Would You Do?

- A client calls you. They’ve been offered a lease from “Big Time Oil & Gas Corp.”

- Terms: they’re offering $1,000 per mineral acre bonus and a 18% royalty. Your clients owns 320 mineral acres in Mountrail County. That’s $320,000 bonus without a bit of oil or gas coming out of ground.

- Your client wants to sign and get their $320,000 check. There’s a lot in the lease – the question: is it worth it?

- This is happening every day in western North Dakota.
Would You Sign The Lease?
Before You Sign On The Dotted Line

- An oil & gas lease is unlike any contract you’ve reviewed or signed before. Principles of contract law govern, but it’s a different animal.

- How long is lease? Two time periods. Primary term and secondary term. Primary term usually 3 – 5 years. This is called the “habendum” clause. “A habendum clause sets forth ‘the duration of the grantee’s or lessee’s interest in the premises.’” Egeland v. Continental, 2000 ND 169, ¶ 3 n. 1. To extend beyond primary term, need production (i.e., held by production clause) or drilling operations.

- Once you sign and well produces, you’re generally locked into that well.

- Some wells have been producing in ND since late 70s. Terms of these leases still operative! Terms today are likely lower than terms tomorrow. Even from 2006 or 2008 to today. Seeing lots of litigation where mineral owners trying to get out of leases, i.e., breach of “implied covenants.”

- Worst calls: I’ve signed, what can I do now?
Important Questions

- Are the bonus and royalty offers fair?
- Does the lease contain a Pugh clause?
- What constitutes “drilling operations” under the lease?
- How long does a “shut-in” well hold the lease?
- Is the “force majeure” provision too broad?
- What does it mean for you to warrant title? Is this bad?
- Who’s on the hook for any damages? Indemnification clause?
Mineral Owners Not Required To Sign Lease

- The mineral owner does not have to sign the lease. Time not of the essence, i.e., you must sign in two weeks or you could forfeit your rights.
- You have 3 options as mineral owner: (1) sign the lease; (2) don’t sign and go nonparticipating; or (3) working interest owner.
- N.D.C.C. 38-08-08 explains consequences of not signing lease.

- Operator can impose risk penalty, but instead of taking only a percentage of what you own, i.e., 20% royalty, you take 100% after costs and risk penalty deducted. Operator must provide 30 days notice of risk penalty (50%).
- Depending on client’s financial situation, you may have leverage by threatening to go nonparticipating or participating.

Note: not a lease in the typical sense of the term “lease.” Texas Supreme Court: “In Texas it has long been recognized that an oil and gas lease is not a ‘lease’ in the traditional sense of a lease of the surface of real property.” Ramsey v. Grizzle, 313 S.W.2d 498 (Tex. Ct. App. 2010).

Snowflake principle: “The situations in which courts have been called upon to determine the nature of the legal interest created by oil and gas leases are many and diverse, involving practically all of the classifications of legal interests and of legal operative acts.” Moore v. Bethlehem Baptist Church, 272 Ala. 259 (1961).
Although many leases look the same and have many of the same clauses (boiler plate) you must absolutely still carefully review each one when advising a client to sign 

- “Option” Clause (popular)
- Pugh clause v. continuous operations
- Define your terms
$$ isn’t everything ... but it’s pretty important

- Bonus and royalty certainly important, and most economically appealing, but not the panacea. Especially true if you also own the surface rights and are farming, ranching, or living near well pad.

- Many other issues, i.e., water use and rights, construction of roads and pipelines, prohibiting drilling with x feet of farm buildings. Failure to define these rights and responsibilities can lead to costly - and completely preventable - litigation.
Before You Sign, Consider This ...

- What happens when damages result to surface estate from drilling operations? There’s a spill and it contaminates prime farm soil?

- Who is liable? Mineral developer or mineral owner? Both?

- One sentence is lease can prevent this headache: “The lessee [mineral developer] shall be liable and indemnify the lessor [your client] for any and all damages caused by its operations.”

- “[I]n the lease before us, express uses of the surface were set forth and the extent of such uses was specified. The case before us is controlled by the express provision as to extent or scope of the use to be made of the surface, rather than any implied right to use.” Feland v. Placid Oil Co., 171 N.W.2d 829, 834 (N.D. 1969).
Lots of litigation in ND right now over what is “drilling operations.”

“A continuous drilling operations clause provides that ‘a lease may be kept alive after the expiration of the primary term and without production by drilling operations of the type specified in the clause continuously pursued.’” Egeland, supra, at ¶ 3 n. 2.
Pugh clause – new, old, twist coming down the pipeline

- Failure to include Pugh clause can result in your land being tied up indefinitely with little benefit.

- Acres belonging to different owners are often pooled into a single unit for drilling and production purposes.

- Leases have clause allowing developer to combine your acres with adjoining acres.

- Pugh clause provides that drilling operations or production for a pooled unit or units maintains the lease only for the acres included within the unit or units – as compared to the entire lease.
Other Important Clauses To Consider

- **Warranty of title**: Remove any language whereby lessor (mineral owner) warrants title. See Lease. If operator messes up and your client warrants title, they’re on the hook. No reasons for your client to warrant title.

- **Force majeure**: Limit the force majeure clause, i.e., “Act of God.” The lessee’s lack of diligence in securing necessary governmental permits should not be Act of God. Developers are writing these things as residuals to CYA in the event they don’t develop leases within primary term.

- **Drilling operations**: define it.

- **Royalty payments**: clarify that royalty payments shall not be reduced by every cost the developer decides to take out, i.e., processing, transportation, etc. Don’t pay the developer’s bills unless you have to.

- **Shut-in gas**: Limit the duration of the shut-in gas clause to 24 months, max. Failure to do so means they can cap the well indefinitely, pay you $1 per month and hold lease.

- **No options**: lookout for option language used to extend lease on the cheap.
How Unique Are Leases – *Implied Covenants*

- Example where something **not** in lease important. Unless disclaimed, developer agrees to several implied covenants, including the implied covenant of reasonable development. The lessee/developer agrees to act as a “prudent developer.”

- Another trending litigation topic in North Dakota. This can give you some leverage (hasn’t really been tested lately in ND Supreme Court) to later negotiate better lease terms with threat of suit. Why? Question of fact that doesn’t lend itself to summary judgment.

- Make sure lease does not disclaim implied covenants. “It is well settled that the lessee of an oil and gas lease has an implied obligation to the lessor to do everything that a reasonably prudent operator would do in operating, developing, and protecting the property, with due consideration being given to the interests of both the lessor and the lessee, if there is no express clause in the lease relieving the lessee of this implied duty.” *Slaaten v. Amerada Hess Corp.*, 459 N.W.2d 765, 769 (N.D. 1990).
Walking Through Some Of The Basics

DOCUMENT DRAFTING 101
Rights of a surface owner often limited.

Several statutes in NDCC give surface owner rights.

Refresher – mineral estate can and often is severed from the surface estate.

Chapter 38-11.1, N.D.C.C. “Oil & Gas Production Damage Compensation”

Chapter 38-11.2, N.D.C.C. “Subsurface Exploration Damages”

Chapter 38-18, N.D.C.C. “Surface Owner Protection Act”
Compensation Requirement

- **N.D.C.C. 38-11.1-04:** Mineral developer shall pay surface owner a sum of money equal to amount of damages sustained by the surface owner and the surface owner’s tenant, for lost land value, lost use of and access to the surface owner’s land, and lost value of improvements caused by drilling operations.

- The compensation requirement might create an incentive for developers not to cause unnecessary surface damage, and to remedy any damage – avoidable or unavoidable – they may cause w/o necessitating resort to the courts by surface owner suing under the terms of a lease or under the common law of negligence. *Murphy v. Amoco*, 729 F.2d 552 (D.N.D. 1984).
<table>
<thead>
<tr>
<th>Include everybody, i.e., may consider language that original developer remains liable – cannot transfer liability in sale</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lump sum and yearly rental</td>
</tr>
<tr>
<td>Payment per wellhead</td>
</tr>
<tr>
<td>All damages – very broad release</td>
</tr>
<tr>
<td>Specifically ID land and define operations allowed, and not allowed, under agreement</td>
</tr>
<tr>
<td>Payment per rod for pipeline, access road, transmission lines.</td>
</tr>
<tr>
<td>Limiting activities hypo: be wary of “any and all” operations</td>
</tr>
<tr>
<td>Limit to previously identified wells</td>
</tr>
<tr>
<td>The surface use agreement is silent on this provision – large storage tanks, employee quarters, etc.</td>
</tr>
<tr>
<td>Expanding wellsite, extra cuttings pit, etc.</td>
</tr>
</tbody>
</table>
Get It In Writing – Details Matter

- Require operator to attach a map of the proposed site showing where pipelines, roads, utility lines, etc., may be located. Ask for additional compensation for any right of ways.
- All underground line buried below plow depth if farm land.
- All structures must be removed x days after operations terminated or well abandoned.
- Operator has x days to take steps to restore and reclaim site.
Statement Of Claim

- Protects your rights as mineral owner from surface owner filing dormant mineral claim under Chapter 38-18.1, N.D.C.C.
- You MUST file it!
- Puts world on notice that you claim rights to minerals
- Must be done every 20 years if no production, leasing, etc.
Why Statement Of Claim Important – Dormant Mineral Act –

“Any mineral interest, if unused for a period of twenty years immediately proceeding the first publication of the notice required by N.D.C.C. 38-18.1-06, deemed to be abandoned, unless a statement of claim is recorded in accordance with N.D.C.C. 38-18.1-04.”

Title to the abandoned mineral interest vests in the owner or owners of the surface estate in the land in or under which the mineral interest is located on the date of abandonment. The owner of the surface estate in the land in or under which the mineral interest is located on the date of abandonment may record a statement of succession in interest indicating that the owner has succeeded to ownership of the minerals under this chapter.”
Dormant Mineral Claim Related Issues

- Establishing an interest in the minerals.
- Decades old deeds, tracking down interested parties.
- Interest owner dies intestate
- NDCC 38-18.1-06 (address of record or reasonable inquiry)
- Using experts (genealogical)

- Who do you have to send notice of lapse to?
- Is Buffalo, ND or Tyler, TX an address of record? Is that reasonably calculated to provide notice?
- These minerals were never probated
- Now you get a call out of blue from landman saying gramps/grandma had minerals
Sorenson v. Alinder,
2011 ND 36, 793 N.W.2d 797

- Facts: Sorensons, surface owners, sued to quiet title of mineral owners of record, Russ and Edna Alinder.

- Alinders acquire via mineral deed recorded in Nov. 1953.

- Fifty years lapse, Alinders don’t use minerals. Sorenson publishes notice of lapse in Jan. 2007.

- Sorenson also mails notice to Alinder at their address of record, which on the deed was “Buffalo, ND” w/ in 10 days of last publication.

The district court held Sorenson had failed to conduct a “reasonable inquiry” to locate the addresses of the Alinders and their successors in interest before mailing a required statutory notice.

**ISSUE**: whether the district court erred in requiring Sorenson to conduct a “reasonable inquiry” under N.D.C.C. 38-18.1-06, when the address of the mineral interest owner was shown of record. Sorenson argues the notice of lapse he mailed to owners’ address of record satisfied statutory requirements sub (6).

Did it? “Buffalo, ND” an address?
The publication provided for in subsection 1 must be made once each week for three weeks in the official county newspaper of the county in which the mineral interest is located; however, if the address of the mineral interest owner is shown of record or can be determined upon reasonable inquiry as defined in subsection 6, notice must also be made by mailing a copy of the notice to the owner of the mineral interest within ten days after the last publication is made.
In *Sorenson v. Felton*, we construed N.D.C.C. § 38–18.1–06(2) and held this section requires a “reasonable inquiry” only when the mineral owner's address does not appear of record.

In this case, it is undisputed Sorenson timely mailed the notice of lapse to Russell and Edna Alinder at their address shown of record in Buffalo, North Dakota, within ten days after the last publication. Based on this record, Sorenson complied with the mailing requirement of N.D.C.C. § 38–18.1–06(2), and the district court erred in requiring Sorenson to also conduct a “reasonable inquiry” to establish compliance with N.D.C.C. § 38–18.1–06.

Under our construction, Sorenson was required to conduct a reasonable inquiry only if Felton's address was not shown of record. Here, Felton's address was shown of record so no additional inquiry was required.
- Put world on notice you have/claim interest in the minerals.
- 60 days to file after notice of lapse.
- Must include: (1) recorded by owner or owner’s representative; (2) name and address of owner; (3) legal description; (4) type of mineral interest involved; and (5) if not mineral owner, explain your connection to the minerals, i.e., Frank was my grandfather and has an interest under a mineral deed dated ________, ___ 19___, cite to document.
- Problem: person died in 1952 and didn’t know they owned minerals, died intestate, no heirs, and no judicial proceeding to adjudicate ownership.
- Or, deed found in safety deposit.
Curative Title Issues

- Before they pay, oil company has to pay right people. How?
- Title opinion.
- There’s a problem ... letter.
- Minerals never conveyed or probated (residual, rest & remainder of my property)
- Where are they? Property passes on death. To who?
- Recent example (California NPOs and children of great grandparents)

- Tracks conveyances, deeds, and recording information.
- Explains chain of title and where “gap” occurred, or where potential problem is.
- Lists, in detail, what is required by the oil company/operator to cure title and get your client paid.
How do we “cure” title?

- Typically, one of three things are required:
  - 1 – stipulation and cross conveyance
  - 2 – quiet title action
  - 3 – probate

- Easiest of three is stipulation and cross conveyance. More time consuming are quiet title actions and doing a probate.

- The differences? Who they apply to.
There are several problems with the above-described chain of title. First, the subject lands were acquired by Williams County in 1940 for non-payment of real estate taxes. Under North Dakota Title Standards § 1-03, tax title may be cured by either a judgment in a quiet title action, a marketable record title affidavit pursuant to N.D.C.C. Chapter 47-19.1, or a deed from the person who owned the land immediately prior to issuance of the tax deed to the county. Here, there is of record an Affidavit of Marketable Title executed by Eugene Hexom and E. Ruth Hexom on May 19, 1980. However, for reasons which are more fully explained below, said Affidavit of Marketable Title may not cure title as to both the surface and the minerals. There is also of record a subsequent Warranty Deed from Lucile Seibert and J. O. Seibert, her husband, conveying their interest in the subject lands. Lucile Seibert was the owner of record of Lots 3, 4 and E/2SW/4 of Section 7 immediately prior to the issuance of the Tax Deed to Williams County. However, as Quit Claim Deeds I and II conveying Lots 3, 4 and E/2SW/4 of Section 7 to Lucile Seibert are possibly void, there is a question as to whether Lucile Seibert was ever properly vested with title in the lands in order to convey them under said Warranty Deed. Thus, although some curative measures have been filed of record, there is at least a possible argument that the tax title has not been completely cured.
Second, there are problems with both Quit Claim Deeds I and II from Emmeline Schubert, f/k/a Emmeline Seibert, and Stewart W. Schubert conveying their interest in Lots 3, 4 and E/2SW/4 of Section 7. Neither deed satisfies the requirements of North Dakota’s homestead statute. Furthermore, and much more problematic, Quit Claim Deed I conveys the interest to "Lucile Seibert and/or J. O. Seibert." Quit Claim Deed II, which was apparently intended as a corrective deed, conveys the interest to "J. O. Seibert or Lucile Seibert." Under North Dakota Title Standards § 2-18, a conveyance to grantees in the alternative renders the conveyance void. However, in Hummel v. Kratu, 126 N.W.2d 786, 790 (N.D. 1964), the North Dakota Supreme Court held that the phrase "and/or" in a contract may mean either "and" or "or," and the interpretation given "should be the one that will best effect the purpose of the parties as gathered from the contract." Although Hummel did not specifically involve a deed, a North Dakota court could apply the case to Quit Claim Deeds I and II and interpret them as conveying the intended interest to Lucile Seibert and J. O. Seibert as co-owners. However, especially in light of Quit Claim Deed II conveying the interest to "J. O. Seibert or Lucile Seibert," which could be interpreted as clarifying the intent of Quit Claim Deed I, a question remains as to whether a court would declare the deeds as void conveyances in the alternative to Lucile Seibert or J. O. Seibert.

We note that the County Court of Williams County apparently treated the interest as effectively conveyed from Lucile Seibert and J. O. Seibert, her husband, to Lucile Seibert and J. O. Seibert, as joint tenants, under Warranty Deed I. However, J. O. Seibert succeeded to all of the interest from the Estate of Lucile Seibert as well, so he would have succeeded to all of her interest in Lots 3, 4 and E/2SW/4 of Section 7 whether their interest was construed as a joint tenancy or a co-tenancy. Thereafter, the entire interest in Lots 3, 4 and E/2SW/4 of Section 7 was distributed from the Estate of J. O. Seibert, a/k/a Jesse O. Seibert, to Emmeline Schubert and Marjorie R. Severson, in equal shares of 1/2 (one-half) each. The minerals were then severed from the surface by Warranty Deed II on August 14, 1964. In certain circumstances, a marketable record title affidavit pursuant to N.D.C.C. Chapter 47-19.1 would be sufficient to cure all of the above-described defects in the chain of title. Here, based on the date of severance of the minerals, there is a question as to whether the Affidavit of Marketable Title dated May 19, 1980 from Eugene Hexom and E. Ruth Hexom is sufficient to cure defects as to both the surface and the minerals. The presumption is that one having possession of the surface also has possession of the subsoil does not exist where the surface and mineral estate are severed. By using Warranty Deed I dated November 23, 1953, the earliest possible error-free deed, as the root deed, there is less than a 20-year period from the date thereof to the severance of the minerals on August 14, 1964. Even
using Quit Claim Deed I dated August 11, 1953 as the root deed, which is the initial deed with the possible void "and/or" language, does not change the result. Nevertheless, for purposes of this opinion, we have treated Peggy Mohr, as the successor in interest to Emmeline Schubert, as vested with an undivided 1/2 (one-half) mineral interest in Lots 3, 4 and E/2SW/4 of Section 7, and have treated Severson Minerals, LLC and RES Minerals, LLC, as the successors in interest to Marjorie R. Severson, each as vested with an undivided 1/4th mineral interest in the same, subject to satisfaction of the following requirement.

**REQUIREMENT:** Appropriate quiet title proceedings are required to conclusively determine the validity of the above-described chain of title and preclude the successors) in interest to Emmeline Schubert from claiming title to all of the mineral interest in Lots 3, 4 and E/2SW/4 of Section 7. See also Comment and Requirement No. 57 below.

**STATUS 1/2012:** Open. Suspend proceeds pending resolution of this requirement.
57. **Ambiguous Reservation of Severson Mineral Interest - Lots 3, 4 and E/2SW/4.** Subject to Comment and Requirement No. 56 above, Marjorie R. Severson was vested with an undivided 1/2 (one-half) interest in the surface and the oil and gas in Lots 3, 4 and E/2SW/4 of Section 7 of the captioned lands. By Warranty Deed dated August 14, 1964, and recorded December 4, 1964 in Book 154 of Deeds, Page 369, George Severson and Marjorie R. Severson, husband and wife, conveyed to Eugene Hexom and E. Ruth Hexom, as joint tenants, Lots 3, 4 and E/2SW/4 of Section 7, "[r]eserving, however, unto the Grantors, their heirs and assigns, all oil, gas, and other minerals in and underlying said land with the right of ingress and egress." The question posed by the foregoing reservation is whether it also reserved a mineral interest unto

George Severson, who previously owned no interest in the oil and gas in Lots 3, 4 and E/2SW/4 of Section 7. An exception or reservation may be effective to convey a property interest to a spouse who does not own an interest in the lands prior to the deed, but joins in the execution of the deed, where it is determined to have been the grantor's intent. See Malloy v. Boettcher, 334 N.W.2d 8 (N.D. 1983). The Warranty Deed described above is unclear in this regard, and a question is presented as to whether Marjorie R. Severson intended her spouse, George Severson, to own a portion of her mineral interest. For purposes of this opinion, we have assumed that Marjorie R. Severson did not intend to reserve an interest in the oil and gas to George Severson, and have treated the successors in interest to Marjorie R. Severson as vested with an undivided 1/2 (one-half) mineral interest in Lots 3, 4 and E/2SW/4 of Section 7, subject to satisfaction of the following requirement.

**REQUIREMENT:** You should secure and record an appropriate stipulation of interest, with operative words of grant and cross-conveyance, between George Severson, or if deceased, his heirs, devisees or successors in interest; and Severson Minerals, LLC and RES Minerals, LLC, as the successors in interest to Marjorie R. Severson, stipulating as to ownership of their respective interests in the oil and gas in Lots 3, 4 and E/2SW/4 of Section 7. Alternatively, you should secure and record a quit claim deed from George Severson conveying all his right, title and interest in Lots 3, 4 and E/2SW/4 of Section 7 to Severson Minerals, LLC and RES Minerals, LLC, in equal shares.

**STATUS 1/2012:** Open. Suspend proceeds pending resolution of this requirement.
What does it mean to quiet title?
- Is exactly what it sounds like.
- Determine ownership – unasserted claims, disputed claims – way of resolving ownership interests in property.
- Think of it like any other lawsuit, but involving title to property, hence the quiet title.
- Very common now in western North Dakota.
### Advantages of Quieting Title

- **Applies to everyone, not just to those parties stipulating to it.**

- **So long as notice is proper, everyone with potential claim to property must assert it.**

- **Finality and resolution.**

- **Publishing notice in county newspaper of record for 3 consecutive weeks.**

- **Who should receive notice?**

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**N.D.C.C. 32-17-01:** An action may be maintained by any person having an estate or an interest in, or lien or encumbrance upon, real property, whether in or out of possession thereof and whether such property is vacant or unoccupied, against any person claiming an estate or interest in, or lien or encumbrance upon, the same, for the purpose of determining such adverse estate, interest, lien, or encumbrance.
Action to quiet title is a direct action for the purpose of determining what, if any, interest each of the parties have in the land involved. The statutory complaint is sufficient for the commencement of an action. We held in Spencer v. Beiseker, 15 N.D. 140, 107 N.W. 189, 190, ‘In other words, the statute dispenses with the necessity of framing issues by a proper pleading as in other actions, and requires the court to determine ‘the validity, superiority and priority’ of the claims set up without a pleading assailing their validity.’

In Wilson v. Polsfut, 78 N.D. 204, 49 N.W.2d 102, 104, this court sets out the nature of an action to quiet title as follows:

‘In an action to quiet title ‘The court in its decision shall find the nature and extent of the claim asserted by the various parties, and shall determine the validity, superiority, and priority of the same.’ Sec. 32-1710, NDRC 1943. Both contesting parties in this action have asked for complete, equitable relief and a determination of their respective claims regarding the tract of land in controversy. A court of equity has authority to grant as full relief as is sought by the pleadings and within the scope of proof. Styles v. Dickey, 22 N.D. 515, 526, 136 N.W. 702, 44 Am. Jur., Quieting Title, Sec. 94, p. 79.'
Why we notice everybody! Word of the day is diligence – don’t get lazy.

- Where all heirs were not made parties in action between heirs to settle adverse claims to land, judgment could not be rendered which would adjust rights of all parties interested in subject matter and only rights of defendant to land based on counterclaim would be adjudicated.

Property must be described with such specificity as to describe it – locate it. Where have we seen this before? Where have we seen the “form” of a complaint/claim.

Plaintiff(s) state their interest in the property and how they acquired their interests in the property.

Plaintiff(s) state the defendants – certain named and unnamed parties – may claim an interest in the property that needs to be ... silenced!

Statute says to allege the facts concerning use and occupation and value thereof, and any property wanted or removed and the property thereof, if pertinent.
Stipulation & Cross Conveyance

- Parties agree who has what.
- Identifies parties, describes land and parties forever agree to stipulate to interests.
- We don’t file this as pleading with Court. Record.
- We need all parties with interest to agree.
- Advantages / disadvantages versus quiet title
- Why would oil company prefer quiet title?
A Note Of Caution … Deed Drafting

- Have to be careful when drafting conveyances! Language has consequences.
- “It is well settled that the primary purpose in construing a deed is to ascertain and effectuate the intent of the grantor.”
- “We construe Section 49-09-17, N.D.C.C., as permitting a natural person to receive a present interest in property even though that person is not named through words of conveyance as a party under the grant.”
Deed Drafting Examples

- Accidentally conveying minerals when you intend to reserve them.
- Conveying more than you have (Duhig Rule)
- K for Deed vs. Warranty Deed.
- No extrinsic evidence if deed is clear and unambiguous.
- Problem: parties to many of these deeds long gone.
- Californication – Malloy issue.
This appeal from the District Court of Hettinger County, dated October 19, 1982, raises the following single issue: Whether or not, in a deed of conveyance, a reservation of a life estate unto a third party, who is a stranger to the title of the property, is effective to convey the life estate to the third party.

On May 22, 1978, Clyde Boettcher and his wife, Dorothy, executed a deed conveying an undivided one-third interest in a quarter section of property to their daughter, Loretta Jean Boettcher Malloy. The deed contained the following reservation clause:

“RESERVING HOWEVER, to parties of the first part a life estate in the one-third (1/3) interest hereby conveyed.”

It is stipulated that at the time the deed was executed Clyde was the sole owner of the property, and Dorothy had no interest in it.

What happened? High stakes family drama --- daughter filed a quiet title action against mom! Would you do that to your mother?
Let’s Play the Feud!

- Clyde died intestate on September 8, 1978. On February 12, 1982, Loretta filed a quiet title action asserting that she is the owner of the undivided one-third interest in the property conveyed to her by the May 22, 1978, deed.
- Dorothy asserts that by the reservation in the deed she possesses a life estate interest in the property.
- Neither party attempted to introduce testimony or other extrinsic evidence relative to Clyde's intent as a grantor of the May 22, 1978, deed.
- Trial court rules for daughter, mom appeals.
- Who wins?
“For reasons hereinafter discussed, we abandon the common law rule and apply, in its stead, the rule that a reservation or exception can be effective to convey a property interest to a third party who is a stranger to the deed or title of the property where that is determined to have been the grantor's intent.”

In this case the reservation clause reserves a life estate to the “parties of the first part” who are Clyde Boettcher and his wife Dorothy. If Clyde had intended to deduct from the property interest being conveyed to his daughter Loretta only a life estate for the duration of his own life, he could have easily expressed that intent in the reservation clause. Instead, however, he reserved a life estate to both himself and his wife Dorothy as “parties of the first part.” We believe that the language of the reservation clause expresses Clyde's intent that upon his death Dorothy would possess a life estate interest in the property.

What happens if there’s no litigation now? Both parties die – oil struck?
Scenario – Digging up a Deed

- Client calls, says grandma had a mineral deed for Mountrail County from 1952 in safety deposit box.

- Knows there’s production on property.

- Grandma not getting paid.

- What do we do?
First thing you should do? The deed was recorded, but never was a probate, no question property in area of production.

Deed from 1952 --- a/k/a 60 year old deed.

Next thing, not getting paid? Who would you call?

Additional facts: grandma dies, left a will! Will leaves everything to your client and his sister. Sister dead, but has two children.
Analysis

- Under terms of will, who takes North Dakota property?

- Not in will is fact parties agreed sister would get mom’s house, a car, and personal affects while son (our client) would take ND property.

- Now consider --- will contains a ¶ that provides any will contests will void bequests and/or gifts to the challenger.
Thinking it Through

- So what happens if our client brings a quiet title action?
- Is that challenging the will?
- What else can he do as related to ND minerals?
- Stipulation and cross-conveyance
- Probate
Notice Of Termination and Forfeiture

- You think oil company is in breach of your lease.

- First step, send demand letter to operator saying as much. Is there curing provision in lease?

- Maybe they’ll release it. Or at least they’ll preview an argument of why they feel it’s still held.

- Lessee says, nope, lease is still valid, get lost.

- Now what?
N.D.C.C. 47-16-36 (“Duty of lessee to have terminated or forfeited lease released ...“)

- **N.D.C.C. 47-16-36** explains requirements for notice of termination & forfeiture

- Requires a certain form of notice to be delivered in a statutorily-required manner as prescribed.

- Comply, comply, comply.

- When any lease terminates or is forfeited it is duty of lessee (operator), their successors or assigns, within 15 days of termination or forfeiture of lease, to surrender lease in writing and place of record in county where property located.

- If lessee (operator) fails to do this, which they almost always do, the mineral owner may serve upon lessee, their successors or assigns of record, in person or by registered mail, at the lessee’s last known address or, if PO Box not shown of record, then by publication once a week for three consecutive weeks in the county paper of record, in the following form:
To __________: I, the undersigned, owner of the following described land situated in __________ County, North Dakota: (description of land) upon which a lease dated _____________, ____, was given to __________ notify you that the lease has terminated or become forfeited by breach of the terms thereof, that I elect to declare and do declare the lease forfeited and void and that, unless you do, within twenty days from this date, notify the recorder of the county as provided by law that the lease has not been forfeited, I will file with the recorder a satisfaction of lease as provided by law, and I demand that you execute or have executed a proper surrender of the lease and that you put the same of record in the office of the recorder of the county within twenty days from this date.

Dated _____________, ____.  

____________________________________________  
Joshua A. Swanson
Sending Notice To Recorder’s Office

- The owner of real property can, after 20 days from date of service or first publication, file with county recorder’s office a satisfaction of lease stating the lease has terminated or lessee has failed to comply with terms of lease (breach).

- Must recite the facts constituting the failure to comply with lease, i.e., no development, production, etc., and lease is void/terminated.

- Must attach a copy of the notice of termination sent to lessee (operator).
Operator Strikes Back

- After filing satisfaction of lease, lessee (operator) has 20 days after service to the recorder to declare lease has not terminated or forfeited and lease still in full force and effect.
- If they do so, the recorder cannot record the satisfaction of lease, but the recorder must notify owner of minerals of lessee’s action.
- Once these requirements are satisfied, your statutorily-mandated diplomatic efforts are done and you can fire away (serve a summons and complaint).
Other Areas

- Entity setup: creating trusts & LLCs to manage minerals.
- Spill cleanup issues (reserve pit mess)
- Vacating default judgment (trending), party never served, Rule 60(b) void judgment
- Undue influence (trending)
Oil & Gas Practice Issues in North Dakota

QUESTIONS?