

Advising Wyoming Clients

Craig Newman

The Law Office of Craig Newman

Casper, Wyoming

Who Is a Surface Owner Under Wyoming's Split Estate Act?

Wyo. Stat. Ann. § 30-5-401(a)(viii), in part:

“Surface owner” does not include any person or governmental entity that owns all of the land surface and all of the underlying oil and gas estate, or any person or governmental entity that owns only an easement, right-of-way, license, mortgage, lien, mineral interest or nonpossessory interest in the land surface; (Emphasis added)

Important Limitation:

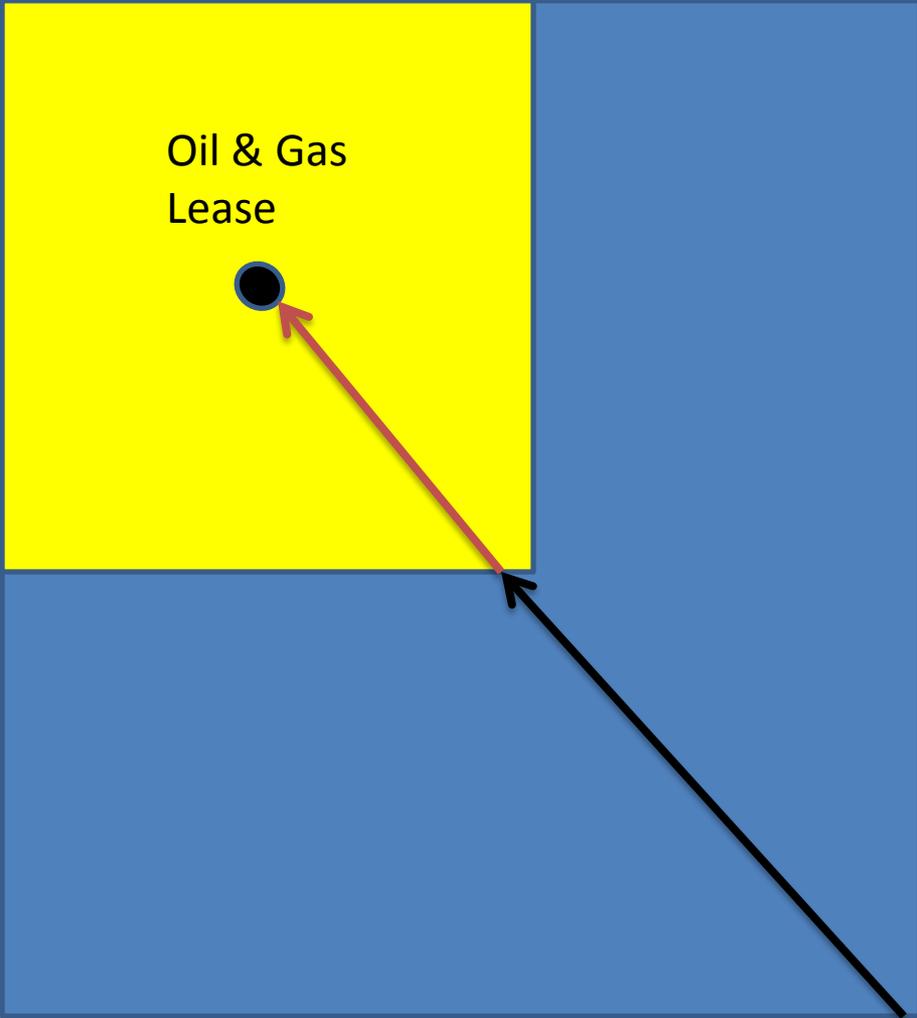
Wyoming Split Estate Act Applies Only to Oil and Gas Operations. It does not operate to affect the relationship between a surface owner and mineral developer of any other minerals.

Question: Does the accommodation doctrine apply to those other mineral developers?

**Distinguishing Lands to
Which Dominant Estate
Rules Apply**

“Getting to the Lease Line”

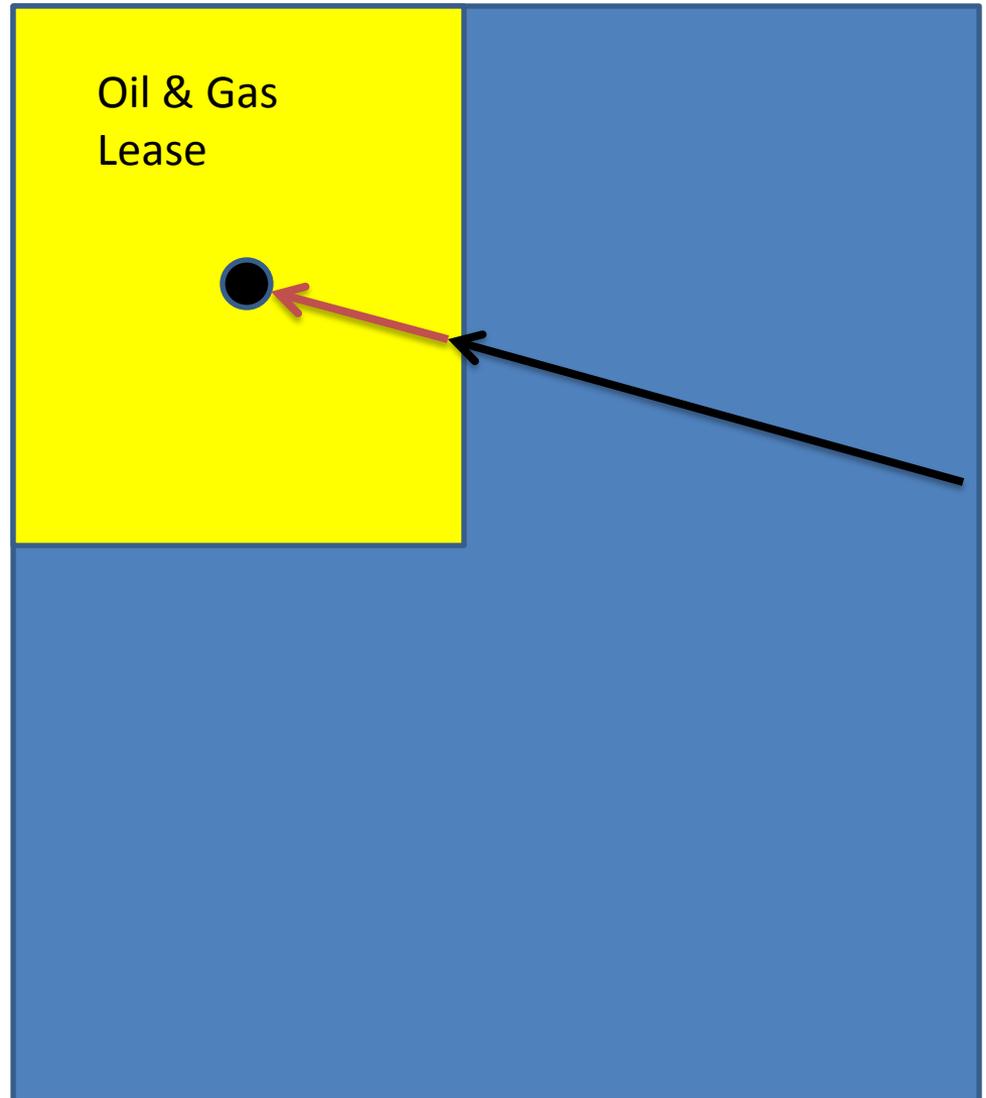
Dominance Rules Do Not
Apply to Lands Outside of
the Lease



Getting to the Lease Line In the Subsurface

Dominance Rules and
Ownership Rules:

From Whom Is Consent or
Access Rights Required?



Two Important Recording Act Provisions Affecting Surface Use and Damage Agreements:

I. Wyo. Stat. Ann. § 34-1-141 (Easement Descriptions):

(a) Except as provided in subsection (c) of this section, easements across land executed and recorded after the effective date of this act which do not specifically describe the location of the easement are null and void and of no force and effect.

(b) Except as provided in subsection (c) of this section, agreements entered into after the effective date of this act which grant the right to locate an easement at a later date and which do not specifically describe the location of the easement are null and void.

(c) For purposes of this section an easement or agreement which does not specifically describe the location of the easement or which grants a right to locate an easement at a later date shall be valid for a period of one (1) year from the date of execution of the easement or agreement. If the specific description is not recorded within one (1) year then the easement or agreement shall be of no further force and effect.

(d) For purposes of this section the specific description required in an easement shall be sufficient to locate the easement and is not limited to a survey.

II. Wyo. Stat. Ann. § 34-1-102 (Conveyance Defined for purposes of Wyoming Recording Act):

The term “conveyance”, as used in this act, shall be construed to embrace every instrument in writing by which any estate or interest in real estate is created, alienated, mortgaged or assigned, or by which the title to any real estate may be affected in law or in equity, except wills, leases for a term not exceeding three (3) years, executory contracts for the sale or purchase of lands, and certificates which show that the purchaser has paid the consideration and is entitled to a deed for the lands, and contain a promise or agreement to furnish said deed at some future time. (Emphasis Added)

Lesson: Unrecorded Surface Use and Damage Agreements granting easements and access rights are void as against subsequent purchasers for value, without actual or inquiry notice.

Eminent Domain and Condemnation Proceeding-- Use as a way out of Surface Use and Damage Agreement that has become too expensive:

Wyoming Resources Corporation v. T-Chair Land Company, 49 P.3d 999, 163 Oil & Gas Rep. 1140, 2002 WY 104