

FAMILY MINERAL COMPANIES

Many families in Oklahoma and surrounding states who have lived here for a while or who have had relatives that have worked in the oil and gas business have accumulated ownership in minerals throughout the years. Many have adhered to the old adage “never sell your minerals” and so have accumulated mineral ownership in various amounts over several generations.

As older family members die holding mineral interests, passing those minerals on to the next generation can present several issues and problems going forward. The first is that it costs money to transfer those minerals to their beneficiaries, including the cost of legal fees for probate, preparing mineral deeds and assignments and recording fees in each county in every state that minerals are owned. Depending on the number of separate tracts of minerals and where they are located, the recording costs can be considerable.

The second problem that can occur in passing minerals to the next generation is the increased fractionalization of each mineral interest depending on how many beneficiaries there are. For example, if granddad owned fifteen mineral acres in Grady County and died with three children, each child would get five mineral acres. If each child has two kids then when each child dies his or her 5 mineral acres would then pass to their children in the amount of 2½ acres each. You now have the original 15 acres owned by one person, owned by six people - each grandchild now having a significantly smaller interest with less bargaining power when it comes to leasing or selling the minerals. As mineral interests continue to get smaller and smaller with each passing generation, they become less and less valuable and the oil companies less likely to consider those interests anything other than a nuisance.

Over the last several years, Robertson & Williams has assisted families in establishing their own mineral companies as a means of preserving values for the family and saving money by avoiding legal fees and recording costs as minerals are passed on from generation to generation. By using an Oklahoma limited liability company to hold minerals owned by a family, the family can avoid multiple rounds of fees and recording costs when a family member dies. Instead of passing different mineral interests to the next generation of beneficiaries, interests in the limited liability company are passed - avoiding deeds and transfer fees every time.

One question that comes up is “won’t using a trust to hold the minerals avoid these multiple fees and costs?” The answer is - not forever. Under Oklahoma law and the laws of most states, a trust (unlike a limited liability company) cannot last forever. While a trust may avoid one or maybe two generations of transfers, ultimately the trust will terminate and transfers will have to be made from the trust to the trust beneficiaries at the time of termination. There are only a handful of states that have what are called “dynasty trusts” and most of those require a bank or trust company to be the trustee of the trust rather than a family member.

What does it cost to establish a family mineral company in Oklahoma? The one-time investment a family makes in establishing a family mineral company in Oklahoma is \$1,800. This includes the filing fees with the Oklahoma Secretary of State, the organizational documents prepared by our law firm - articles of organization, initial meeting minutes, getting the tax ID from the IRS, filing the initial tax application with the Oklahoma Tax Commission, a minute book and a company summary sheet reflecting the critical information concerning the company in a simple one page document. Annually, an Oklahoma limited liability company pays a \$25 annual fee with the Oklahoma Secretary of State.

The \$1,800 investment does not include the costs of preparing the mineral deeds and recording costs (for the last and only time) which costs will vary depending on the number of deeds and where those deeds need to be recorded. Two recent examples our firm handled were (1) a family mineral company with over 60 separate mineral interests, 37 mineral deeds filed in 7 states which cost about \$2,600 in legal fees and recording costs and (2) a family mineral company with 9 separate mineral interests in Oklahoma in 4 counties with 4 mineral deeds costing about \$400 in legal fees and recording costs. When using a family mineral company, these are one-time costs since no deeds are filed when interests pass from one generation to another.

In conclusion, for many families it makes sense to look at using this tool to preserve value for minerals the family has accumulated over the years. Please give me a call if you have further questions or are interested in pursuing the use of this important tool in family wealth planning and preservation.

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