PROPOSED ADDITIONAL
TEXAS TITLE EXAMINATION STANDARDS

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Editor in Chief

The current Texas Title Examination Standards now appear as an Appendix to Title 2 of the Texas Property Code in Vernon’s Texas Property Code Annotated. In addition, they are also accessible on the web pages of the Oil, Gas and Energy Resources Law Section located at www.oilgas.org and on the web pages of the Real Estate, Probate and Trust Section www.reptl.org on the internet.

The Title Examination Joint Editorial Board now proposes to add additional standards. Please study these proposed additions together with the proposed comments and cautions. The Title Standards Joint Editorial Board requests and encourages you to submit your comments to the Editorial Board so that this work will be refined before it is submitted for adoption and promulgation. We would also appreciate any recommendations that you may have to amend or augment the existing standards. Your ideas are greatly appreciated.

Please send your comments and suggestions by October 15, 2017 to:

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Standard 4.130. Warranties of Title
The examiner generally does not need to address the issue of title warranties, because warranties are not a part of the conveyance and do not enlarge the title.

Comment:
A warranty is not part of the conveyance, and does not enlarge the title. City of Beaumont v. Moore, 202 S.W.2d 448 (Tex.1947). “A covenant of warranty is not required in a conveyance.” Tex. Prop. Code § 5.022(b). A deed without warranty conveys all of grantor’s interest as fully as one with warranty. Flanniken v. Neal, 4 S.W. 212 (Tex. 1887). The Supreme Court in White v. Dupree, 40 S.W. 962, 964 (Tex. 1897) said:

A grantor with an undisputed title may decline to warrant it, while one with a doubtful claim may be willing to covenant for the repayment of the purchase money and interest in case the title should fail. Covenants of warranty are mere matters of contract in reference to the title, and may or may not be incidents of the conveyance. The conveyance is complete without
they.

The presence of a warranty in a deed does not prevent the deed from being a quitclaim deed. Enerlex, Inc. v. Amerada Hess, Inc., 302 S.W.3d 351 (Tex. App.—Eastland 2009, no writ). However, a “deed without warranty passes the grantor’s title to the grantee with an express exclusion of warranties. This deed relieves the grantor of any warranty responsibility for title defects, yet provides the grantee a true deed, as opposed to a mere quitclaim.” Texas Real Estate Forms Manual, Section 12.11:1 (2014).

Caution: While the examiner is not concerned about title warranties generally, the examiner needs to consider the possible application of the doctrine of estoppel by deed. See Standard 4.90.

Source:

Citations in the comment.

History:

Adopted ____________, 2017

Chapter XVII Title from the Sovereign

Standard 17.10. Title from Sovereign.

A title examiner should determine whether title to the land under examination has been severed from the sovereign. Title that has not been severed from the sovereign belongs to the State of Texas.

Comment:

Introduction:

A “grant” severs title from the Crown of Spain or the Republic of Mexico. A “patent” confirms the severance of title from the Republic of Texas or the State of Texas by a survey, application for title, fulfillment of any applicable conditions or requirements, and, if applicable, payment. The commonly accepted practice is for the title examiner to rely on the grant or patent filed in the county clerk’s office in the county where the land is located as evidence that the land under examination has been segregated from the sovereign. However, the official grant or patent filed
in the Archives of the General Land Office controls over any inconsistencies in the
grant or patent recorded in the deed records of a county.

A patent is an administrative act that confirms that all requirements for passage
of title from the sovereign have occurred. Thus, a patent is not essential to the
passage of title from the sovereign, but it is confirmation of passage. While a patent
is customarily recorded in the county where the land is located, and recordation is
now required by General Land Office regulations, recordation has historically been
neither universal nor mandatory, Arrowood v Blount, 41 S.W.2d 412 (Tex. 1931), 57
– 58 (“[w]hile patents are admitted to record, there is no law that requires them to
be recorded in the county where the land is situated … A patent is notice to the
world, the record of it is in the general land office.”) If the record title reveals no
patent, the examiner should contact the General Land Office to determine the
status of the land. An examiner should require that a patent be obtained for
examination to eliminate any question of marketability. Where no patent has been
issued and it is impractical to obtain one due to time constraints or cost, the
examiner should require a certificate of facts from the General Land Office showing
that title has passed from the sovereign. Although such a certificate may not be
binding on the State of Texas, the certificate of facts will ordinarily confirm that the
land was surveyed and that all requirements for severance of title from the
sovereign have been met. See generally 31 Tex. Admin. Code § 3.31b(2).

Four sovereigns have issued grants and patents in Texas. Prior to Mexico’s
independence from Spain in 1821, grants were from the Spanish monarchy. From
1821 until March 2, 1836, grants were from the Republic of Mexico. All titles for
lands within Texas issued by the Republic of Mexico after November 13, 1835, are
void. Donaldson v. Dodd, 12 Tex. 381 (1854). From March 2, 1836 to December 29,
1845, patents were from the Republic of Texas and thereafter from the State of
Texas. Upon entry into the United States, the State of Texas retained all vacant

With the exception of grants issued by Mexico after November 13, 1835, the State of Texas recognizes all validly issued grants and patents under the laws of each preceding sovereign. Kilpatrick v. Sisneros, 23 Tex. 113 (1859). The law of the granting sovereign at the time of the grant determines the validity of the grant.

Harris v. O'Connor, 185 S.W.2d 993 (Tex. Civ. App.–El Paso 1944, writ ref'd w.o.m.). Texas law presumes that the public officers of a former government, acting in their official capacity, had authority to sever title from the sovereign. Atchley v. Superior Oil Co., 482 S.W.2d 883 (Tex. Civ. App–Beaumont 1972, writ ref'd n.r.e.).

Spanish and Mexican Grants

Spanish and Mexican land grants may consist of a petition, an order, and a grant (sometimes the order of survey) along with a directive to issue title and put the grantee in possession. Customarily, an examiner should confirm that the date of the grant correlates with the sovereign’s authority, that the grant identifies the grantee, that the grant includes a valid legal description, and that the document is a grant of the land under examination. See Dittmar v. Dignowity, 14 S.W. 268 (Tex. 1890). An examiner may contact the General Land Office for assistance in resolving any doubts about these grants.

In Spanish and Mexican grants, the lands were described using varas, labors, and leagues. In Texas a vara is 33 1/3 inches. United States v. Perot, 98 U.S. 428 (1878). A labor is approximately 177.1 acres. A league or a sitio is 4428.4 acres. Examiners should bear in mind, however, that while measurements eventually became standardized, there were some variations in them over time and some units of measurement—e.g., the vara—may not conform to the standard unit of measurement. As a result, these variances may explain conflicts between adjoining surveys or survey discrepancies.
Under Spanish rule, grants were made to towns. Town lands were divided into town lots for home and cultivation, which could be sold, kept as common areas, or perhaps rented to pay municipal expenses. Under Mexican rule, towns were authorized to develop without a formal grant in designated areas covering up to four square leagues because the organization of the municipal corporation operated as a grant. Generally, roads in Spanish and Mexican town grants belonged to the sovereign and, upon abandonment, became vacant public land, rather than passing to the adjoining landowners as ordinarily would be the case for road easements in Texas. See Standard 5.40 Roads.

Under Spanish law, deeds, contracts, and powers of attorney, including assignments of grants, were executed before a regidor, a public officer, a sort of notary or alderman, exercising quasi judicial power. The parties appear before him accompanied by 'instrumental witnesses.' The parties state the matter between them. The officer makes a minute of the terms stated. He then enters in a book the formal agreement. This is the protocol. He then furnishes to the party in interest a similar document. This is a testimonio. The protocol remains with the notary while the testimonio was delivered to the parties. McPhaul v. Lapsley 87 U.S. 264 (1874). The testimonio is a second original and is not secondary evidence. Titus v. Kimbro 8 Tex. 210 (1852).

Republic of Texas and State of Texas

The Republic of Texas and the State of Texas issued instruments known as warrants, scrips, or land certificates, which included headright certificates, donation and bounty warrants, land scrips, railroad grants, and land certificates, which were negotiable and considered personal property. These instruments vested a right to obtain unappropriated land in the holder upon the satisfaction of certain statutory requirements, including location and survey, which vested a legal right to
the surveyed lands in the holder of the certificate. Legal title remained in the State
of Texas until a patent issued, but a valid certificate, location and survey gave the
claimant the right to maintain an action at law for its recovery by proof of such title,
good against all but the State of Texas. Duren v. Houston & T.C. Ry. Co., 24 S.W.
258 (Tex. 1893). Valid certificates and other evidence of rights to located and
surveyed land constitute sufficient evidence of title to the land to support an action
for trespass to title or any other legal proceeding and the rights of parties are
determined by the priority of valid location, not by the mere issuance of the patent.
“A survey under a valid location, although unpatented, will prevail over a patent
issued under a location subsequently made upon the same land.” Atlantic Ref. Co. v.
Prop. Code §22.002. The acceptance of a resurvey cannot authorize the inclusion of
lands not included in the original survey. Watts v Alco Oil & Gas Corp, 540 S.W.2d
557 (Tex. Civ. App.—El Paso 1976, writ ref’d n.r.e.).

Donation and bounty warrants were issued to those who rendered military
service to the Republic and to the heirs of those who died in battle. Bounty warrants
were usually given to those who served in the army with the period of service
determining the amount of acreage allotted. Generally, if the recipient was
deceased, a bounty warrant vested in the decedent’s estate, subject to devise by will
and to creditors’ claims in administration, whereas a donation warrant vested in the
recipient’s heirs. Todd v. Masterson, 61 Tex. 618 (1884); see also 3 Aloysius A.
Leopold, Land Titles and Title Examination §2.23, n. 1 (Texas Practice 3d ed. 2005).

From 1836 to 1876, the Republic of Texas or the State of Texas, as applicable,
sold land scrips to pay the State’s debt. A purchaser of scrip could then locate and
survey state-owned acreage and thereby become entitled to a patent. 3 Aloysius A.
Leopold, Land Titles and Title Examination §2.30 (Texas Practice 3d ed. 2005).
From January 30, 1854 until 1882, the State of Texas issued land scrip to companies in return for constructing railroads. Early Laws of Texas art. 2365, § 6. Typically, a block of land was surveyed into regular 640-acre square sections and thereby segregated from the public domain. The even-numbered sections within a block were usually reserved to the State of Texas, and the odd-numbered sections were patented to the railroad companies upon completion of the survey. By Act dated March 18, 1873, the even-numbered sections within the railway surveys were set apart to be sold for the benefit of the public-school fund. 3 Aloysius A. Leopold, Land Titles and Title Examination §2.47 (Texas Practice 3d ed. 2005). The State also issued land scrip for other public works.

For land to be transferred from the sovereign, the land must first be surveyed. The date of the survey, as indicated by the records of the General Land Office, serves as the date that segregates the land from the sovereign so long as the other required steps are taken. Until the land is located and surveyed by a statutorily authorized surveyor, title does not pass and a patent cannot be lawfully issued. Atlantic Refining Company v. Noel, 443 S.W.2d 35 (Tex. 1968); see 3 Aloysius A. Leopold, Land Titles and Title Examination §3.30 (Texas Practice 3d ed. 2005).

By Act of January 29, 1840, the Commissioner of the General Land Office was authorized to issue a patent upon the return of a “survey and location” and fulfillment of the other legal requirements. See Stubblefield v. Hanson, 94 S.W. 406 (Tex. Civ. App. 1906, writ denied). The issuance of the patent confirms that the survey was correctly made upon unsegregated acreage and that other legal requirements were satisfied. Regardless of the date of the patent, the date of passage of title relates back to the date of the survey and location. Early Laws of Texas Art. 398, § 36; Atlantic Refining Company v. Noel, 443 S.W.2d 35 (Tex. 1968).

Problems pertaining to the location and surveying of land for segregation from the sovereign are relatively rare, but an examiner should be alert to them,
especially where a patent has not been issued. Where a patent has not been issued, the examiner should request that the owner of an interest in the land apply for the issuance of a patent or obtain a certificate of facts from the General Land Office confirming that the land was surveyed.

Occasionally, more than one party may have a claim to title directly from the State of Texas. A junior patent is valid to the extent it does not conflict with the senior patent. The conflicting portion of the junior patent is not void but voidable and may serve as title or color of title under the three-year limitations period. Tex. Civ. Prac. & Rem. Code §16.024. League v. Rogan, 59 Tex. 427 (1883).

If written evidence of title has been filed with the General Land Office, a copy of that written evidence may be recorded if the original was properly executed and if the copy is certified. However, A court may not admit a title to land that was filed in the General Land Office as evidence of superior title against a location or survey of the same land that was made under a valid land warrant or certificate prior to the filing of the title in the General Land Office unless prior to the location or survey:

(1) the older title had been recorded with the county clerk of the county in which the land is located; or

(2) the person who had the location or survey made had actual notice of the older title.

Tex. Prop. Code §12.003 (b). This statute and its precursors provide a means by which a title granted by an earlier sovereign can be filed with the GLO or in the county and would then constitute good title in Texas. Likewise, it provides for the situation in which the Republic or State of Texas had patented the same lands to a third party and resolved the conflict by subjecting the later title to a notice condition. Airhart v. Massieu, 98 U.S. 491, 506 (1879). A testimonio or a protocol can be filed under Tex. Prop. Code §12.003.
Patents issued without an actual survey on the ground have been found valid where field notes had been prepared through protraction calculations and where the failure to conduct a survey on the ground was the fault of the government officer and not the owner. Stafford v. King, 30 Tex. 257 (1867).

Where the examiner is aware of duplicate or overlapping surveys that affect the land under examination, the examiner should investigate General Land Office records to determine which survey is senior. In general, the survey first filed and accepted by the General Land Office is senior and controlling. See also Standard 5.10, Land Descriptions Generally.

Texas divided some of its public lands according to the beneficiary of the sale as Public Free School Lands, University Lands, Asylum Lands and unsurveyed or public lands. While an examiner may encounter references to the beneficiary of the sale, such as Public Free School Lands and Asylum Lands, except for purposes of mineral reservations by the State of Texas, discussed below, such references are not relevant to title.

Mineral Title

Prior to September 1, 1895 – minerals released

Prior to Texas independence, the laws of Spain and Mexico retained all minerals in all public or private lands to the Crown of Spain or the Republic of Mexico. The Republic of Texas and State of Texas succeeded to the sovereign claims of Spain and Mexico. When Texas adopted the common law in 1840, the reservation of minerals in the sovereign was continued until the Constitution of 1866, which contained provisions releasing the minerals owned by the State of Texas into private ownership. Private ownership was continued in the Constitutions of 1869 and 1876. Tex. Const. of 1866, Art. VII, Sec. 39; Tex. Const. of 1869, Art. IX, Sec. 9; Tex. Const. of 1876, Art. XIV, Sec. 7 (repealed 1969). Although various release statutes were enacted to implement these constitutional provisions, the Land Sales Act of
1895, which released the minerals previously claimed by the State of Texas in earlier patents or grants to the owners of the soil, was held to be constitutional but not prospective so that the “Legislature [was not] denied the power to provide for the reservation of minerals in future grants.” Cox v. Robison, 150 S.W. 1149, 1156 (Tex. 1912).

**September 1, 1895 to May 29, 1931** – mineral classification and relinquishment

Under the Mining Act of 1895, Act of Apr. 30, 1895, 24th Leg., R. S. ch. 127, §1, 1895 Tex. Gen. Laws 197 (effective September 1, 1895), the Commissioner of the General Land Office was required to examine all public land available for sale and to formally classify or designate all apparently mineral-bearing land as “mineral.” If the land in question was not classified as mineral, a purchaser under the Land Sales Act of 1895, such as a settler, acquired any minerals that might thereafter be discovered. Schendell v. Rogan, 63 S.W. 1001, 1005 (Tex. 1901) (“[I]t cannot be said that there was an intention to have a secret reservation of that which was not known.”). The State of Texas reserved minerals in any land classified as “mineral.” See generally H. Philip (Flip) Whitworth, Leasing and Operating State-Owned Lands for Oil and Gas Development, 16 Tex. Tech L. Rev. 673, 680-81 (1985). Under the Sales Act of 1907, land could be classified as mineral and also carry other classifications. Law of May 16, 1907, ch. 20, 1907 Tex. Gen. Laws 490, §6f. Where lands are classified for one purpose and also for minerals, the State of Texas reserved minerals. In other words, a patentee did not acquire minerals to acreage characterized as “grazing and mineral” or “agricultural and mineral.”

The mineral reservation is not always expressly stated in the patent. Up until about 1911 it was the practice of the Texas General Land Office to issue patents containing no reference to the minerals even though the land patented had been classified “mineral.” 3 Aloysius A. Leopold, Land Titles and Title Examination §5.10 (Texas Practice 3d ed. 2005). Because the date and circumstances of sale may not be
ascertainable, an examiner should require a statement of classification from the General Land Office indicating “mineral” or other classification from September 1, 1895 through May 29, 1931. This statement consists of a letter, which is routinely available upon request for a fee.

Under the Repurchase Act enacted in 1913, the State of Texas had the authority to reclassify school land that had been forfeited to the State of Texas between January 1, 1907 and December 31, 1912. 1913 Gen. Law of Texas, Ch. 160, p. 366, Art. 5423a-5423f. Thus, upon resale by the State, land that had not been classified mineral at time of the initial sale might be classified as mineral in a subsequent sale. For purposes of determining mineral classification the effective date of title generally relates back to the date of the sale. This relation back is important where the law regarding reservations of minerals in the State of Texas changed after the sale.

Mineral classified lands are also referred to as Relinquishment Act lands under the Relinquishment Act of 1919, now Tex. Nat. Res. Code §§ 52.171 – 52.190. The Relinquishment Act of 1919, which was held to be retroactive to September 1, 1895, governed the sale of lands dedicated as Public Free School Lands and Asylum Lands with a mineral classification or reservation until May 29, 1931. Under the language of the Relinquishment Act of 1919, the owner of the soil was purportedly vested with an undivided 15/16ths of the oil and gas in mineral-classified lands that had not yet been developed while the 1931 Sales Act granted a royalty interest. The Texas Supreme Court later construed the Relinquishment Act as conferring no mineral ownership on the surface owner. Rather the surface owner was found to serve as the agent for the State of Texas to lease the acreage for mineral purposes in exchange for receiving one-half of all benefits as compensation for surface damage. Greene v. Robison, 8 S.W.2d 655 (Tex. 1928); Wintermann v. McDonald, 102 S.W.2d 167 (1937). The owner of the surface cannot assign a royalty interest in
future leases as such a contract violates public policy, Lewis v. Oates, 195 S.W.2d 123, at 126-127 (Tex. 1946), but may assign or reserve the lease benefits under an existing lease for the duration of that lease. Lemar v. Garner, 50 S.W.2d 769 (Tex. 1932). For many years, the General Land Office has required the agent (owner of the soil) to use the lease form provided by the General Land Office and submit the lease to the General Land Office for approval. The lease is not effective until a certified copy of the recorded lease has been filed in the General Land Office. Tex. Nat. Res. Code §51.054(e).

Lands sold under the Relinquishment Act which were later forfeited and then repurchased under the Relief Act of 1925 remain subject to the Relinquishment Act. Magnolia Petroleum Co. v. Walker, 83 S.W.2d 929 (Tex. 1935). After November 27, 1912, until May 29, 1931, the Commissioner of the General Land Office typically classified all lands sold as mineral-bearing. A. W. Walker, Jr., The Texas Relinquishment Act, 1 Inst. on Oil & Gas Law & Tax’n 245, 253 (SW Legal Fdn. 1949).

After May 29, 1931 – minerals reserved by patent

The Sales Act of 1931, Tex. Nat. Res. Code §51.011, et seq., applies to all public lands sold or contracted to be sold after May 29, 1931 and, unlike the Relinquishment Act which covered only oil and gas, it covered other minerals. Wintermann v. McDonald, 102 S.W.2d 167, at 172 (Tex. 1937). Under the Sales Act of 1931, the State of Texas reserved a “free royalty” of 1/8th on sulphur and 1/16th on oil and gas (or 1/8th on oil and gas for land within five miles of a producing well). The Sales Act was amended on September 1, 1983, permitting the School Land Board to set the mineral reservation in favor of the State of Texas at not less than 1/16th on oil and gas and not less than 1/8th on sulphur for lands sold thereafter. Tex. Nat. Res. Code §51.054(a). Since then, the policy of the General Land Office has been to reserve all minerals, not merely a royalty.
Statutes other than the Relinquishment Act, under which the State of Texas has reserved mineral rights have generally referred broadly to “minerals.” Oil and gas are embraced within a reservation of the “minerals,” even if the statute calling for mineral reservation does not specifically refer to those substances, Texas Co. v. Daugherty, 176 S.W. 717, at 719 (Tex. 1915); see Luse v. Boatman, 217 S.W. 1096 (Tex. Civ. App.—Fort Worth 1919, writ ref’d) (holding, in a private reservation, that “all the coal and mineral” included oil and gas). What specific minerals have been reserved by the State is a question of statutory interpretation. Legislative grants are construed strictly in favor of the State on grounds of public policy. Thus, whatever is not unequivocally granted in clear and explicit terms is withheld. Empire Gas & Fuel Co. v. State, 47 S.W.2d 265, 272 (Tex. 1932). When the State has reserved minerals, the State owns the coal and lignite, even where those substances must be strip mined. Schwarz v. State, 703 S.W.2d 187, 191 (Tex. 1986). The General Land Office takes the position that mineral reservations by the State are broader than “mineral” conveyances and reservations between private parties and include such deposits as granite, limestone, gravel, and sand that might otherwise be deemed part of the surface estate. See State v. Cemex Construction Materials South, L.L.C., 350 S.W.3d 396 (Tex. App.—El Paso 2011, pet. granted, jdgm’t vacated by agreement).

Boundaries – See Standard Chapter 5

Patented Excess Acreage

An excess of acreage is property that has been patented by the State of Texas but not paid for by the patentee. An excess occurs when a tract contains a greater quantity of land than set out in its patent. Excess acreage within a survey is distinguishable from a “vacancy,” discussed below, which is unsurveyed land. Although the State of Texas has divested itself of title to all acreage described in the patent, including the excess acreage (Foster v. Duval County Ranch Co., 260 S.W.2d
103, 107 (Tex. Civ. App.—San Antonio, 1953)), any person owning an interest in a
titled or patented survey may pay for the excess at a price fixed by the School Land

If it appears that excess acreage actually exists and that the applicant
is entitled to obtain it under the law, the commissioner shall execute a
deed of acquittance covering the land in the name of the original
patentee or his assignees with a mineral reservation or with no
mineral reservation accordingly as may have been the case when the
survey was titled or patented.

Tex. Nat. Res. Code §51.246(c); see also Standard 5.20. Owners of interests in the
excess acreage at the time of the deed of acquittance succeed to the interests of the
original patentee.

Note that the existence of excess acreage will generally not be apparent from
an examination of record title in the absence of a resurvey. While the lien set out in
Tex. Nat. Res. Code §51.077 might apply to excess acreage, the historical practice of
the GLO has been not to assert a lien; however, there is one case that describes the
excess acreage as a “cloud on patentee’s title.” Wofford v. Miller, 381 S.W.2d 640,

If there is excess acreage and if there is a navigable stream, the lands
conveyed by a deed of acquittance will be affected by the following regulation.

(1) If a resurvey reveals excess acreage, and it is determined that the
survey crosses a navigable stream, then, under the provisions of Texas
Civil Statutes, Article 5414a, commonly referred to as the “Small Bill”,
the owner is entitled to the acreage for which the survey is patented,
even though a part or all of the stream bed may be included in this
acreage. However, if more than the patented acreage lies outside of the
stream bed, the state will hold title to all of the stream bed and the
land owner may make application to purchase such excess not included
in the stream bed.
(4) In surveys where the state retains only a part of the stream bed acreage, the state's part of the stream bed will be taken from the entire length of the stream bed, using the thread of the stream bed as the center of the state's acreage.

31 Tex. Admin Code § 7.3. For further discussion of streambeds, see Standard 5.30.

Land within a Vacancy

Unlike excess acreage, land within a vacancy has never been segregated from the public domain. A vacancy is unsurveyed public school land that is not in conflict on the ground with land previously titled, awarded, or sold. Tex. Nat. Res. Code §51.172(6). Strong v. Sunray DX Oil Co., 448 S.W.2d 728 (Tex. Civ. App.-Corpus Christi 1969, writ ref'd. n.r.e.). A vacancy generally consists of a gap between adjacent surveys. Under early vacancy laws (before 1931), a person who discovered a vacancy had a preferential right to purchase the vacancy. Short v. W.T. Carter & Bro., 126 S.W.2d 953 (Tex. 1938). The 1931 Sales Act gave a preferential right to the adjacent landowner to purchase a vacancy under fence. In 1939 amendments to the 1931 Sales Act restored some rights to the finder. Current law favors a “good-faith” claimant as described in Tex. Nat. Res. Code §51.172(2). A person qualifying as a good-faith claimant to a vacancy, such as one occupying the land, may file an application with the General Land Office to establish that the land is in fact vacant and to request the General Land Office to sell the vacancy. Tex. Nat. Res. Code §51.171, et seq. See also, 31 Tex. Admin. Code Sec. 13.32 et seq., implementing Tex. Nat. Res. Code §§51.171-51.195. If no good-faith claimant exists, or if no good-faith claimant exercises a preferential right, an applicant may have a preferential right to purchase or lease the land or an interest in the land at the price set by the school land board, subject to any mineral or royalty reservations by the board. Tex. Nat. Res. Code §51.195. The school land board sets the terms and conditions for each sale
and lease of a vacancy to an applicant and adopts rules governing such terms, including rules governing mineral or royalty reservation, Tex. Nat Res. Code §51.175.

Beginning in 2001, the Texas Constitution was amended to relinquish the state’s claims to specified land and prospectively to authorize the release of the State’s interest in land held by a person under color of title, Tex. Const. of 1876, Art. VII, Sec. 2A – 2C. See also, Tex. Nat. Res. Code §11.084. For applicable procedures for a patent under this section, see Tex. Nat. Res. Code §11.085.

**Caution:** See the above discussion on the desirability of securing a patent, rather than relying on a certificate facts.

See the above discussion on the desirability of securing a deed of acquittance for excess acreage.

Regarding Relinquishment Act lands, the General Land Office generally requires the agent (owner of the soil) to use the lease form provided by the General Land Office and submit the lease to the General Land Office for approval. An examiner should confirm with the General Land Office that the lease has been approved.

“An oil, gas, or other mineral lease on land in which the state reserves a mineral or royalty interest is not effective until a certified copy of the recorded lease is filed in the General Land Office.” Tex. Nat. Res. Code Ann. §51.054(e).

**Source:**

Citations in the comment.

**History:**

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