

# Understanding Mineral Rights

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**This MontGuide is designed to help land and mineral owners understand mineral rights. Understanding what mineral property is, how it is defined, what a mineral interest is, and some of the basic rules associated with mineral ownership are fundamental to understanding the process of mineral development and its effects on land that you may own or have an interest in.**



## MontGuide

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### What is mineral property?

Mineral property is real property that can have several different forms. Mineral property includes hydrocarbons (oil, gas, and coal); hardrock minerals (gold, silver, copper, and other metals); and other types of minerals (talc, bentonite, uranium, and others). This MontGuide provides general information about mineral property.

### Why is mineral property important?

When minerals are developed, the owners of the mineral property stand to benefit. Others who do not own the minerals, such as surface owners or neighbors, are not likely to directly gain. While surface owners or neighbors may be able to profit from mineral development by supplying other supporting services, the value of the minerals will be collected by the owner and developer. Conflict between mineral owners and non-mineral owners can arise with any type of mineral. There can also be conflicts between mineral owners.

Sedimentary minerals like metals and coal do not move below the surface. While there have been disputes about neighboring rights in hardrock minerals (for example intersecting mine shafts), such problems are fairly straightforward to resolve. Mineral records are complicated and it may take intensive research to establish title, but minerals are real property and therefore similar to real estate.

Unlike metals or coal, in some formations oil and natural gas can migrate under the surface. As oil or gas is extracted it becomes personal property with ownership defined by the *rule of capture*. A person can own the oil and gas by extracting it, even if the source was another person's mineral property. The claim to oil and gas in a specific location can be made before extraction, and those rights will be protected by the Board of Oil and Gas Conservation (BOGC). Because these types of property are defined differently there can be disputes about ownership, but the BOGC regulates extraction to limit conflicts. The BOGC has a broader mandate to promote conservation, but limiting potential conflicts between mineral owners is an important task.

### What types of mineral property are there?

There are several types of mineral property. Every mineral owner needs to know what type of property he or she owns. The following sections outline types of mineral property.

#### *Unified Estate*

The simplest way to think about mineral property is when it is owned along with the surface by one person. This is sometimes called "fee simple" or unified tenure. The mineral and surface rights are held together.

**Example 1:** Ted owns a piece of property that was homesteaded by his great-grandfather in 1883. The property has never been divided in any way. Ted owns all of the mineral and surface property. Ted owns a unified estate.

#### *Severed or Split Estate*

Mineral ownership can be separate from surface ownership. The term for this situation is *severed minerals*; when mineral ownership is severed, it is called a *split estate*. Severed minerals originate in two ways. In many cases, the federal government reserved (did not grant) minerals in initial homestead claims. Later homestead claims, especially after 1916, often reserved minerals. Those reserved minerals are mostly owned by the federal government, with leasing administered by Bureau of Land Management (BLM). In Montana there are about 12 million acres of federal severed minerals, most of which are under privately-owned surface lands.

**Example 2:** In 1922 Bob and Ruth homesteaded a section for a wheat farm. After proving up (satisfying requirements for ownership), they received title to the surface from the federal government. However, they did not receive the mineral title because they made their homestead claim under the Stock Raising Homestead Act. The U.S. federal government reserved ownership of the minerals. Today the farm is owned by Marjorie, Bob and Ruth's granddaughter; she does not own the minerals.

The other way minerals can become severed is if an owner decides to split the estate into a surface interest and a mineral interest. This is sometimes done when property is passed

down between generations. Other times owners choose to sell the minerals to another person – it can be a relative or a stranger. In some cases, railroad grant lands were resold to private individuals without the mineral rights. Today, much of that mineral acreage is owned by corporations.

**Example 3:** Fran and Willie own a ranch. One year they decided to sell the mineral rights under part of the ranch to raise money to pay back a loan. They retained the surface rights, which they still use as a summer pasture. The mineral rights are now owned by an energy investment company based in Tulsa, Oklahoma.

There are very specific rules about the responsibility of a severed mineral owner to a surface owner. The exact requirements depend on the type of mineral owner. More information is available from a fact sheet prepared by the Montana Legislature in 2007 available online at <http://leg.mt.gov/content/publications/environmental/hb790brochure.pdf>.

### **Fractional**

Another common situation is *fractional* ownership of minerals. Fractional ownership of X percent is similar to owning X percent of the real mineral property: a 50 percent ownership means that the owner is entitled to half of the minerals. Fractionalization can result when an owner leaves the minerals to children or grandchildren. Sometimes a seller will keep some of the minerals, which also leads to fractional ownerships. Fractional mineral interests are usually *tenants in common*, unless the specific division was made differently.

**Example 4: Tenants in Common** Gertrude, Carlyle, and Marlowe were siblings. When their father, Christian, died, he bequeathed each of them  $\frac{1}{3}$  of the mineral interest under their farm. The three were tenants in common. Gertrude later left her  $\frac{1}{3}$  interest to her children: Phil and Julie each received  $\frac{1}{6}$ . Today, the mineral interest is held by four individuals: Carlyle and Marlowe both own their original share of  $\frac{1}{3}$  each; Phil and Julie each have a  $\frac{1}{6}$  share as tenants in common. Marlowe still operates the farm and lives nearby. Both Phil and Julie live in Montana. Carlyle lives in Chicago.

**Example 5: Individual Ownership** When Christian died, he also owned 480 acres in another county. He granted his children the minerals, but instead of giving each a  $\frac{1}{3}$  interest, he avoided fractional ownership by giving each child an undivided mineral interest in a specific 160 acres. Gertrude, Marlowe, and Carlyle are each mineral owners, but they are not tenants in common since they each own defined and separate acreage.

**Example 6: Joint Tenants with Rights of Survivorship** An alternative strategy to what Christian did would be to grant the mineral property to his children as joint tenants. The three of them would jointly own the property, or own  $\frac{1}{3}$  each. However, when Gertrude died her interest would revert to her brothers Carlyle and Marlowe. This

arrangement avoids fractionalization when compared to the tenants in common that is typical. During their lives, each of the children would enjoy a fractional interest.

### **Severed Landowner Royalties**

This type of ownership is less common than *unified*, severed or fractional ownership. Examples are royalties or other interests that are separated from the ownership of mineral property. These ownerships will be recorded as restrictions on the title of the other interests.

**Example 7:** John gave his three children a royalty interest in his minerals. Anne, Ellen and Jay each individually received a 2.5 percent royalty interest, while John retained any additional royalties. If John is able to receive a 12.5 percent royalty for developing his minerals, each of his children will receive 2.5 percent and John will keep the other 5 percent.

### **Is it possible to have separate ownership of different minerals?**

Ownership of different types of minerals can be separated. This is one reason why it is very important to know exactly what mineral property you own.

### **What about coalbed methane, is it coal or gas?**

Coalbed methane is natural gas trapped inside the coal seams where it originated – the coal and gas are mixed together. Conventional deposits of natural gas have migrated out of source rocks (such as coal) and been trapped in other porous formations. So what is coalbed methane: coal or gas?

In 1998 the U.S. Supreme Court ruled in *Amoco v. Southern Ute* that the mineral estate could be divided between coal and gas, even if the gas was trapped in the coal. This means that coalbed methane is not part of the coal, but part of the oil and gas estate in cases where the two are held separately. Anticipation of this decision led to a vast expansion of coalbed methane exploration and development, including in the Powder River Basin of Wyoming and Montana.

### **What happens if I do not own minerals?**

Many landowners do not own minerals under their surface property. When a landowner only owns the surface rights, development of minerals may adversely affect the surface owner. Surface land with severed minerals is sometimes called a split estate. Split estate surface owners have certain rights if and when minerals underneath their land are developed. A split estate surface owner cannot prevent development of the underlying minerals.

### **Do mineral and surface ownership boundaries line up?**

Not necessarily. Within the bounds of one parcel of real surface property there could be a number of different mineral ownerships. Conversely, one mineral owner may have several surface owners overlying the boundaries of the mineral parcel.

This possible complication underscores the importance of keeping clear and accurate records of real property (mineral or surface) that is owned.

**Example 8:** Rick and Becky own a ranch that covers 920 acres. They own the minerals on 320 of those acres. On 160 acres the minerals are owned by Becky's aunt and uncle. On 320 acres the minerals are owned by the federal government and currently leased to an oil and gas company. The remaining 120 acres are owned by Rick and his sister as tenants in common.

**Example 9:** Kate owns a 640-acre mineral tract that was given to her by her grandmother. In the intervening years the surface has been subdivided and resold. The section is subdivided into 32 20-acre parcels. Because some of the surface owners have more than one parcel, there are a total of 28 different surface owners on the section.

## How do I find out what kind of mineral property I own or don't own?

Review the ownership records of property you own, including deeds. Not all documentation will specify the ownership of mineral property. A standard title search will not always turn up the ownership of minerals, additional research may be needed.

Start with deeds that you have. They may specify the mineral ownership. If you don't have the mineral ownership specified on your deed, you will have to decide if you want to try to track down the ownership yourself or if you want to hire someone to do it for you. The first step in either case is to get a legal description of the property. If you decide to research your mineral ownership yourself, the following steps are a general outline of the process.

1. All property records are recorded in the county courthouse of the county where the property is located. The county clerk and recorder is responsible for maintaining the records. Usually the records of land transactions are kept in a room called the "public room" because the public can go in and look at the records. In most counties in Montana you can get help finding records in the public room.
2. Find the correct plat book and locate the property. Deed numbers will be listed. Then you can look up the deeds. In some cases there will be multiple deeds. By carefully reading the deeds you can determine if mineral rights were ever severed or withheld. If they are severed, a separate mineral deed should be referenced.
3. There are many possible complications that can arise. For example, if your land was once part of a railroad grant, there may be different treatment of mineral ownership, as opposed to land ownership that was established through a homestead claim.

## Title searches and landmen

If you don't have the time, interest or patience to investigate your mineral property, you can hire an attorney or a title company to make a search for you. You can also hire a professional with expertise in researching mineral titles. These professionals are called landmen. Many landmen work for oil and gas companies, but you can find an independent landman and hire them to research your mineral property for you. The Montana Association of Professional Landmen has a directory on its website, <http://www.maplweb.org/mapl-directory.html>. The cost of a mineral search is typically higher than a standard title search for surface title, in part because of the complicated nature of mineral records.

## What happens to minerals whose owners cannot be located?

Montana is a custodial state, which means that any unclaimed property is held by the state on the owners' behalf. If an oil and gas company cannot locate a mineral owner, they go to district court in the county where the minerals are located to establish a trust account with the county as trustee and the mineral owner as beneficiary. Most counties decline the trusteeship and name the Department of Revenue as trustee. Proceeds from the mineral property, which could include initial lease payments, royalty payments, and other payments, are held in perpetuity, or until the mineral owner (or their heir) is located.

**Example 10:** Royalties from a producing well were paid to owners who held 75 percent of the mineral interest. The other 25 percent of ownership could not be found and royalties were placed in a trust at the unclaimed property section of the Department of Revenue. Cassie found out that she was the owner of the unclaimed percentage after her great aunt left her a share of the mineral interest. Cassie claimed the royalty checks from the Department of Revenue and recorded evidence of her mineral interest with the county clerk and recorder. Cassie will receive any future payments and is entitled to a share of the interest earned on the monies while they were in the trust.

## Does my mineral ownership lapse in Montana if I don't periodically renew it?

Mineral ownership never lapses in Montana. "Dormant mineral" legislation has not been passed in Montana, although other states have passed legislation that provides a method for surface owners to claim unclaimed minerals from private owners after a period of time.

## Is there any way to reconsolidate fractional mineral interests?

Fractionalized mineral ownership is a problem for two reasons. First, it reduces the returns to each of the owners, and therefore each individual's incentive to monitor the use of the minerals. As fractional interests are further divided

through succeeding generations, the interest any one owner has in management of the minerals diminishes. Some families have avoided this problem by creating trusts for their mineral property.

Second, expanding the number of owners legally entitled to a share of royalties (or who must be consulted before development), causes the costs of managing minerals from the perspective of the operator to increase dramatically.

Consolidating fractional mineral interests is a time-consuming process that often frustrates mineral owners. Once mineral rights have been divided, reconsolidating them can be challenging.

## How do I find out what my minerals are worth?

The value of minerals varies widely by type and location. The type of ownership is one factor that affects the mineral valuation. Mineral production is uncertain, so estimates of value may vary with assessments of the amount of minerals that can be produced.

An income approach is commonly used to assess mineral value. This means that the amount of recoverable mineral is estimated and then multiplied by the expected market price of the product. The costs of production must be taken into account. A discount is applied for the time of production.

To determine what the value of minerals is, an assessment can be made. Licensed appraisers with experience in mineral assessment can be used. Alternatively, many mineral brokers are willing to quote prices for mineral rights. An owner could ask for a bid on minerals from one of these buyers. Oil and gas publications often include advertisements for mineral brokers.

**Example 11:** Suppose that there are 100,000 barrels of oil that are recoverable on a tract and oil sells for \$80/barrel now and into the foreseeable future. The gross revenue is \$8,000,000. However, it will cost \$6,500,000 to drill a well and extract the oil. This leaves a difference (profit) of \$1,500,000. The present value of that eventual profit is lower because the oil cannot be extracted immediately.



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## What happens to my mineral rights when I die?

Mineral property is real property that is part of your estate. MSU Extension has several MontGuides with more thorough discussions of those topics. They are available online at [www.montana.edu/estateplanning/](http://www.montana.edu/estateplanning/). You may want to consult legal counsel as you consider how to treat your mineral property.

## Does owning mineral property entitle me to benefit from mineral development?

As a mineral owner, you could benefit from development of your minerals. However, in almost all cases a contract pertaining to mineral development is written that will be instrumental in determining how much compensation you receive. That contract, or a *mineral lease*, is the topic of an accompanying MontGuide. For further information see the MontGuide, *Oil and Gas Leasing* ([MT201209HR](#)).

## Glossary

**Fractional:** An ownership of less than 100 percent of the real property. Fractional owners are tenants in common or joint tenants with rights of survivorship.

**Joint tenants with rights of survivorship:** A way for shared ownership in which an interest is passed from one joint tenant to the other(s) upon death.

**Mineral lease:** A contract between a mineral owner and a mineral developer outlining the terms of development for both parties.

**Rule of capture:** When resources can move, ownership of the products is established when they are “captured,” as when oil is pumped to the surface. This rule creates personal property from real property.

**Severed minerals:** When mineral ownership is separated from surface ownership. Also called split estate.

**Split estate:** A case where minerals have been severed.

**Tenants in common:** Shared possession of one asset among two or more owners.

**Unified:** An ownership of 100 percent of both the minerals and surface real property on the same piece of land. Also called fee simple or a whole tenure.