RESERVATION OR EXCEPTION,
WHAT IS IT GOING TO BE?

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EDUCATION
St. Mary’s University School of Law, J.D., *with distinction*, May 1981
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St. Mary’s University, Bachelor of Arts, *magna cum laude*, May 1974

PROFESSIONAL MEMBERSHIPS AND AWARDS
State Bar of Texas Presidents’ Award 2016
State Bar of Texas President Citation 2015
TexasBarCLE’s “Standing Ovation Award” 2015
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Bexar County Women’s Bar Foundation Belva Lockwood Outstanding Lawyer Award 2015
San Antonio Bar Foundation Peacemaker Award 2014
State Bar of Texas Advanced Real Estate Weatherbie Workhorse Award 2013
American College of Real Estate Lawyers 2011 - present
State Bar of Texas Director 2012 – 2015
Co-Chair of the SBOT Annual Meeting 2015
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Co-Chair of District 10 Fellows Nominating Committee 2013-2014
State Bar of Texas - Real Estate Forms Committee 2004 - present
State Bar of Texas Lawyers Concerned for Lawyers Committee; Chair 2009 – 2010
Recipient of Ralph Mock Memorial Award 2012
Texas Bar College
Guardian Member of the Texas Access to Justice Society, Texas Access to Justice Commission
Texas Board of Legal Specialization Real Estate Law Advisory Commission 2015 – 2018
Texas Board of Legal Specialization Real Estate Law Exam Commission 2015 – 2018
San Antonio Bar Foundation - Chair 1998 – 1999
State Bar of Texas District 10 PEP Grievance Committee— 1997 – 1999; Chair 1998 - 1999
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CLE COMMITMENT
Course Director, Advanced Real Estate Drafting, State Bar of Texas 2015
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Impact San Antonio
United Way Women’s Leadership Council
RESERVATION OR EXCEPTION, WHAT IS IT GOING TO BE?

A grantor in a general warranty deed conveys to a grantee a fee simple estate in real property with a covenant of general warranty, subject to the reservations and exceptions stated in the deed. A reservation creates a new severance in favor of

1 A warranty deed to land conveys property; a quitclaim deed conveys the grantor's rights in that property, if any. We have long recognized the validity of quitclaim deeds, even if it turns out that they convey nothing. In deciding whether an instrument is a quitclaim deed, courts look to whether the language of the instrument, taken as a whole, conveyed property itself or merely the grantor's rights.

Here, the parties' Assignment and Bill of Sale identified the lease, but never stated the nature or percentage interest that was being conveyed. Instead, it (1) conveyed to Newton "all of [Geodyne's] right, title, and interest" in the described lease "AS IS, AND WHERE IS, WITHOUT WARRANTY OF MERCHANTABILITY," (2) provided that "this Assignment hereby conveys to Assignee ... all of Assignor's right, title, and interest on the effective date hereof in and to the Property," and (3) concluded in the habendum clause that the assignment was "WITHOUT WARRANTY OF TITLE, EITHER EXPRESS OR IMPLIED." As a matter of the law, this was a quitclaim deed.


The character of an instrument, as constituting a deed to land or merely a quitclaim deed, is to be determined according to whether it assumes to convey the property described and, upon its face has that effect, or merely professes to convey the grantor's title to the property. If, according to the face of the instrument, its operation is to convey the property itself, it is a deed. If, on the other hand, it purports to convey no more than the title of the grantor, it is only a


The longstanding general rule in Texas is that “earlier title emanating from [a] common source is the better title and is given prevailing effect.” Rogers v. Ricane Enters., Inc., 884 S.W.2d 763, 769 (Tex.1994) (citing Curdy v. Stafford, 88 Tex. 120, 30 S.W. 551, 552 (1895)). However, “[s]tatus as a bona fide purchaser is an affirmative defense to a title dispute.” Madison v. Gordon, 39 S.W.3d 604, 606 (Tex.2001). To qualify as a bona fide purchaser, “one must acquire property in good faith, for value, and without notice of any third-party claim or interest.” Madison, 39 S.W.3d at 606. The bona fide purchaser doctrine is codified in section 13.001 of the Texas Property Code, entitled “Validity of Unrecorded Instrument,” which states:

(a) A conveyance of real property or an interest in real property or a mortgage or deed of trust is void as to a creditor or to a subsequent purchaser for a valuable consideration without notice unless the instrument has been acknowledged, sworn to, or proved and filed for record as required by law.

(b) The unrecorded instrument is binding on a party to the instrument, on the party's heirs, and on a subsequent purchaser who does not pay a valuable consideration or who has notice of the instrument.

(c) This section does not apply to a financing statement, a security agreement filed as a financing statement, or a continuation statement filed for record under the Business & Commerce Code.

Tex. Prop. Code Ann. § 13.001. “An instrument that is properly recorded in the proper county is: (1) notice to all persons of the existence of the instrument; and (2) subject to inspection by the public.” Id. § 13.002 (West, Westlaw through 2013 3d C.S.).

the grantor. An exception excludes an existing outstanding interest from the conveyance. While these two legal concepts seem simple enough, Texas appellate courts are often called upon to unravel the legal effect of provisions set out in recorded deeds drafted as reservations or exceptions.

Deeds conveying the surface estate subject to reservations and exceptions of mineral interests and rights often result in competing claims. Consequently, many appellate decisions construing the legal effect of provisions set out in recorded deeds drafted as reservations and exceptions are based upon competing mineral interests and rights. Texas appellate courts have decided (i) who owns a...

...And, courts have long held that a party acquiring property under a quitclaim deed is not eligible to claim bona fide purchaser status because it is charged with notice of title defects as a matter of law. See Woodward v. Ortiz, 150 Tex. 75, 237 S.W.2d 286, 291–92 (1951) (holding that a purchaser of property under a quitclaim deed “cannot enjoy the protection afforded a bona fide purchaser” because “he takes with notice of all defects in the title and equities of third persons”); Bright v. Johnson, 302 S.W.3d 483, 492 (Tex.App.–Eastland 2009, no pet.) (“[A] subsequent purchaser is not a bona fide purchaser if the conveyance is made without warranty.”); Kidwell v. Black, 104 S.W.3d 686, 691 (Tex.App.–Fort Worth 2003, pet. denied) (“The purchaser of a quitclaim deed takes the deed with notice of all defects in the title and equities of third persons. Because [appellant] is the grantee of a quitclaim deed, he cannot be a bona fide purchaser.”); Diversified, Inc. v. Hall, 23 S.W.3d 403, 407 (Tex.App.–Houston [1st Dist.] 2000, pet. denied) (“As the purchaser of a quitclaim deed, [appellant] cannot enjoy the protections afforded a bona fide purchaser, because a grantee in a quitclaim deed is not an innocent purchaser without notice.”); Equitable Trust Co. v. Roland, 721 S.W.2d 530, 534 (Tex.App.–Corpus Christi 1986, writ ref’d n.r.e.) (“[A] grantee in a quitclaim deed is not an innocent purchaser, but takes with notice of all defects in his grantor’s title”); see also Houston Oil Co. of Tex. v. Niles, 255 S.W. 604, 610 (Tex.Com’n App.1923, judgm’t adopted) (“[T]he holder of a title in which there appears, however remote, a quitclaim deed is prevented from asserting the defense of innocent purchaser as against an outstanding title or secret trust or equity existing at the time the quitclaim deed was executed.”).

464 S.W.3d at 409.


2016 Texas Land Title Institute
Reservation or Exception, What Is It Going To Be?
percentage of the mineral estate when deeds referenced prior reservations of the mineral estate but the prior reservations of the mineral estate did not exist; ³ (ii) who owns the mineral estate when the contract expressly stated that all the minerals would be conveyed to the buyer and the deed reserved all the minerals in the grantor; ⁴ (iii) whether a grantor reserving 3/8 th of the mineral interest could convey the remaining 5/8ths mineral interest burdened with 100% of the previously reserved one-fourth royalty; ⁵ and (iv) whether the grantor owns 50% of the mineral estate when the grantor’s deed only reserved 50% of all the minerals reserved in prior recorded deeds. ⁶ While the case law construing reservations and exceptions are myriad with competing mineral interests and rights, the same rules of law apply to all reservations and exceptions, including reservations of life estates and access easements and exceptions for utility easements and party walls. ⁷

³ Pich v. Lankford, 302 S.W.2d 645, 650, 157 Tex. 335 (1957); Griswold v. EOG Resources, Inc., 459 S.W.3d 713 (Tex.App.—Fort Worth 2015, no pet.).
⁷ The Texas Supreme Court’s analysis in Pich v. Lankford, 302 S.W.2d 645, 650, 157 Tex. 335 (1957), relied upon cases that construed deeds that excluded a numbered lot and a public thoroughfare.

The deed involved in Ambs v. Chicago Ry. Co., supra, conveyed certain land by metes and bounds description, following which were these words: ’with the exception of Lot 6, Block 36, heretofore conveyed to William H. Brown by Louis Robert and wife.’ The question before the Supreme Court of Minnesota was whether title to such lot passed under the deed. With respect to that question the court said: ’The deed clearly shows an intention that from the land granted by it there should be excepted a tract which was designated Lot 6, in Block 36, and which was further described as having been previously conveyed to William H. Brown * * *. Though it was not shown that [157 TEX 341] the lot had in fact been conveyed to William H. Brown, or even if it had been shown that such was not the fact, the maxim falsa demonstratio non nocet would apply, and that fact would be immaterial, the excepted lot being otherwise described with sufficient certainty.’ 46 N.W. 321-322.
The purposes of this paper are to review the legal effects of a reservation from grantor’s covenant of conveyance and an exception from grantor’s covenant of conveyance and warranty; and to emphasize the importance of drafting any reservation from grantor’s covenant of conveyance as contracted for by the seller and buyer, as distinguished from drafting broad or specific exceptions from grantor’s covenant of conveyance and warranty.

I. Texas Cases Distinguishing Reservations and Exceptions

“The primary distinction between a reservation and exception is that a reservation must always be in favor of and for the benefit of the grantor, whereas, exception is a mere exclusion from the grant, in favor of the grantor only to the extent that such interest as is excepted may then be vested in the grantor and not outstanding in another.” (Emphasis ours.)

The only Texas case which appears to bear on the question is Umschleid v. Scholz, 84 Tex. 265, 16 S.W. 1065, 1066. In that case [157 TEX 342] the deed involved contained the following language: 'it being understood that the public thoroughfare formerly existing along the edge of the river at this point is not intended to be conveyed by these presents, the corporation of the City of Bexar having the right to open said thoroughfare when it sees fit.' There was no evidence that the City had the right to open the thoroughfare, but this Court held that the exception was not affected by the false recitation and that the property previously used for such thoroughfare did not pass to the grantee.

302 S.W.2d at 649.

Addressing ownership rights based upon reservations and exceptions, the court in *Griswold v. EOG Resources, Inc.*,\(^9\) stated:

A warranty deed will pass all of the estate owned by the grantor at the time of the conveyance unless there are reservations or exceptions that reduced the estate conveyed. *See Cockrell. V. Tex. Gulf Sulphur Co.*, 157 Tex. 19, 299 S.W.2d 672, 676 (1956). Property “excepted” or “reserved” under a deed is never included in the grant and is something to be deducted from the thing granted, narrowing and limiting what would otherwise pass by the general words of the grant. *King v. First Nat’l Bank of Wichita Falls*, 144 Tex. 583, 192 S.W.2d 260, 262 (1946). Reservations must be made by clear language, and courts do not favor reservations by implication. *Monroe v. Scott*, 707 S.W.2d 132, 133 (Tex.App.—Corpus Christi 1986, writ ref’d n.r.e.). Exceptions must identify, with reasonable certainty, the property to be excepted from the larger conveyance. *Angell v. Bailey*, 225 S.W. 3d 834, 840 (Tex.App.—El Paso 2007, no pet.). And, it is a rule of construction of deeds that they are to be most strongly construed against the grantor and in favor of the grantee; this rule applies to reservations and exceptions.\(^10\)

…

The Griswolds are correct in the general distinction drawn between reservations and exceptions, exceptions and reservations “…are not strictly synonymous.” *Pich v. Lankford*, 157 Tex. 335, 343, 302 S.W.2d 645, 650 (1957). An exception generally does not pass title itself; instead, it operates to prevent the excepted interest from passing at all. *Patrick v. Barrett*, 734 S.W. 2d 646, 647 (Tex. 1987). On the other hand, a reservation is made in favor of the grantor, wherein he reserves unto himself a royalty interest, mineral rights, or other rights. *Id.* But a save-and-except clause may have the same legal effect as a reservation when the excepted interest remains with the grantor. *See Pich*, 157 Tex. at 342, 202 S.W.2d at 750 (explaining that the language quoted from the deed did not reserve the interest in the minerals, “it only excepted it from the grant. However, since the

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\(^9\) 459 S.W.3d 713 (Tex.App.—Fort Worth 2015, no pet.).

\(^{10}\) *Id.* at 717.
interest did not pass to the grantee and was not outstanding in another the legal effect of the language excepting it from the grant was to leave it in the grantor’); see Patrick, 734 S.W.2d 648 n.1 (noting that an exception “operates to the benefit of the grantor only to the extent that ownership in the excepted interest is vested in the grantor and is not outstanding in another person”). Thus, while as the Griswolds contend, a save-and-except clause will not operate to pass title, it may be effective to fail to pass title, that is, to exempt a portion of the grantor’s estate from passing to the grantee, leaving title with the grantor if the interest excepted is not outstanding in another. See Pich v. Lankford, 157 Tex. at 342, 302 S.W.2d at 650; Patrick, 734 SW.2d at 648, n.1; see also Union Oil Co. of Cal. V. Colglazier, 360 So.2d 965, 968-69 (Ala. 1978) (applying the holdings in Pich to the facts similar to those here.) 11

In Goss v. Addax Minerals Fund, L.P., 12 the court stated:

Courts recognize that reservations and exceptions “are not strictly synonymous.” See, e.g. Griswold, 459 S.W.3d at 718 (quoting Pich v. Lankford, 157 Tex. 335, 343, 302 S.W.2d 645, 650 (1957)). The chief distinction between a reservation and an exception is that a reservation always operates for the benefit of the grantor. Bright v. Johnson, 302 S.W.3d 483, 488 (Tex.App.—Eastland 2009, no pet.) (citing Patrick v. Barrett, 734 S.W.2d 646, 647 (Tex. 1987) and Pich, 302 S.W.2d at 648-50). “An exception generally does not pass title itself, instead, it operates to prevent the excepted interest from passing at all.” Griswold, 459 S.W.3d at 717, accord, Bright, 302 S.W.3d at 488. But, as the Fort Worth court reiterated in its recent opinion in Griswold, even though not effective to pass title, a save-and-except clause may exempt a portion of the grantor’s estate from passing title to the grantee, leaving title with the grantor provided the interest

11 Id. at 718.

12 No. 07-14-00167CV (Tex.App.—Amarillo 2016, no pet).
excepted is not outstanding in another. *Griswold*, 459 S.W.3d at 718 (citing *Pich*, 302 S.W.2d at 648-50), *Patrick*, 734 S.W.2d 646 n.1.  

II. Texas Cases Illustrating “What Could Possibly Go Wrong?”

A. In *Pich v. Lankford*, the court addressed the conveyance of 160 acres, described as the Southwest one fourth of Section 490.

<table>
<thead>
<tr>
<th>A (Petitioner) to B by 1928 Deed</th>
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<tbody>
<tr>
<td>Reservation from Conveyance: one half of the full 1/8th Royalty, or a 1/16th of all minerals produced on said land.</td>
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<tr>
<th>B to C: 1929 Deed</th>
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<tr>
<td>No reservations and exceptions</td>
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<th>C to D: 1930 Deed</th>
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<tr>
<td>Reservation from Conveyance: “one fourth of all royalty, the same being 1/32 of all oil and gas produced from said land.”</td>
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<th>D’s estate to F: 1941 Deed</th>
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<th>C – E: Conveyance</th>
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<tbody>
<tr>
<td>One fourth royalty reserved in the 1930 Deed</td>
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<tr>
<th>F to G: 1943 Deed</th>
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<tbody>
<tr>
<td>“Save and Except an undivided three-fourths of the oil, gas and other minerals in, on and under said land, which have been heretofore reserved.”</td>
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2016 Texas Land Title Institute
Reservation or Exception, What Is It Going To Be?
With the only evidence at trial being the above referenced deeds, the trial court ruled:

E to be the owner of the 1/4\(^{th}\) of the 1/8\(^{th}\) non-participating royalty interest; 
A to be the owner of the ½ of the 1/8\(^{th}\) non-participating royalty interest; and 
H (respondents) to be the owner of the fee less the two royalty interests adjudged to E and A.

Stating that “[t]he real question to be decided is as to the effect of the language quoted from the deeds executed by [F] and [G] to [H] respondents”, the Texas Supreme Court reversed and remanded the trial court’s and appellate court’s judgments, adjudging that A [petitioner] is the owner of an undivided ¾ interest in the minerals in, on and under the 160 acres of land, that H [respondent] is the owner of the surface and an undivided ¼ interest in the minerals in, on and under the 160 acres of land, with E being the owner of the 1/4\(^{th}\) of the 1/8\(^{th}\)
nonparticipating royalty, craved entirely from A’s [petitioner’s] interest because of A’s pleadings providing for such limitation.

Reaching this decision, the Texas Supreme Court stated:

There is no patent ambiguity in the [F] and [G] deeds. The deeds do not except from the grants only such royalty interests or interests in the minerals as ‘have heretofore been reserved’ or that ‘do not belong to the grantors herein’; they except an undivided three-fourths (3/4) interest in the minerals in place in plain and unambiguous language. The quoted phrases are but recitals which purport to state why the exceptions are made. The chain of title conclusively negatives the recitals. It shows they are false. The giving of a false reason for an exception from a grant does not operate to alter or cut down the interest or estate excepted, nor does it operate to pass the excepted interest or estate to the grantee. [Citations omitted.] 14

B. In Griswold v. EOG Resources, Inc., the court addressed the conveyance of a 31.25 acre tract and dispute with mineral lessee.

| A to B by 1926 Deed the 74 acre tract Reserving a ½ interest in the mineral estate |
| A’s & B’s to C by 1938 Constable Deed based upon a judgment against A and B |
| C to D predecessor in interest to E by 1938 Deed Conveying full fee interest |
| E to F by 1993 Deed conveying 31.25 acre tract out of the 74 acre tract |

“LESS, SAVE AND EXCEPT an undivided ½ of all oil, gas and other minerals in, under[,] and that may be produced from the above described tract of land heretofore reserved by predecessors in title

SUBJECT TO THE FOLLOWING:

Oil, Gas and Mineral Lease in favor of … recorded in … Deed Records….”


2016 Texas Land Title Institute
Reservation or Exception, What Is It Going To Be?
Applying the binding precedent set forth in *Pich*, we hold that the save-and-except clause in the [1993 Deed] and in the [subsequent deed] excepted a ½ interest in the oil, gas, and other minerals in plain and unambiguous language. The phase at the end of the save-and-except clause—“heretofore reserved by predecessor in title”—was a recital purporting to state why the exception was made. Although the chain of title conclusively negated the recited reason for the exception, “[t]he giving of a false reason for an exception from a grant does not operate to alter or cut down the interest or estate excepted, nor does it operate to pass the excepted interest or estate to the grantee. *See id.* at 340, 302 S.W.2d at 648…the legal effect of the save-and-except clause at issue was to leave the excepted ½ mineral interest in the oil, gas, and other mineral interests in [E, grantor of the 1993 Deed].”

C. In *Cosgrove v. Cade*, the Texas Supreme Court addressed a contract to sale two acres of land with seller retaining a mineral rights and unambiguous deed failing to reserve the minerals rights.

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15 *Griswold v. EOG Resources, Inc.*, 459 S.W.2d 713, 720 (Tex.App.—Fort Worth 2015, no pet.).
Reversing the judgment of the court of appeals and ruling for B, the purchaser of the property and grantee under the mistaken deed, the Texas Supreme Court stated:

Today we expressly hold what we have suggested for almost half a century: Plainly obvious and material omissions in an unambiguous deed charge parties with irrebuttable notice for limitations purposes. [See McClung v. Lawrence, 430 S.W.2d 179, 181 (Tex.1968)] Also disputed in this case is whether Property Code section 13.002—“[a]n instrument that is properly recorded in the proper county is ... notice to all persons of the existence of the instrument”—provides all persons, including the grantor, with notice of the deed's contents as well .[Tex. Prop. Code § 13.002.] We hold that it does. Parties to a deed have the opportunity to inspect the deed for mistakes at execution. Because section 13.002 imposes notice of a deed's existence, it would be fanciful to conclude that an injury stemming from a plainly evident mutual mistake in the deed's contents would be inherently undiscoverable when any reasonable person could examine the deed and detect the obvious mistake within the limitations period.
A grantor who signs an unambiguous deed is presumed as a matter of law to have immediate knowledge of material omissions. Accordingly, this grantors' suit was untimely, and we reverse the court of appeals' judgment.\textsuperscript{16}

D. In \textit{Goss v. Addax}, the court addressed a contract to convey 100\% of mineral rights versus a warranty deed conveying 100\% of mineral rights.

\begin{boxedverbatim}
1994 A contracts with B to sell land
Contract provides that A “would retain no mineral rights” and B was “to receive 100\% of minerals, royalties and timber interest.”

A – B [petitioner]: 1994 Warranty Deed

RESERVATIONS AND EXCEPTIONS TO CONVEYANCE AND WARRANTY: Reservations, restrictions and easements of record, and current year ad valorem taxes. LESS, SAVE AND EXCEPT HEREFROM ALL OIL, GAS AND OTHER MINERALS, IN UNDER AND PRODUCED FROM THE ABOVE DESCRIBED PROPERTY.

The deed’s granting and warranty language read as follows:

GRANTOR, for the consideration and subject to the reservations from and exceptions to conveyance and warranty, GRANTS, SELLS, AND CONVEYS to Grantee the property, together with all and singular the rights and appurtenances thereto in anywise belonging, to have and to hold it to Grantee, and to Grantee’s heirs, executors, administrators, Cosgrove v. Cade, 468 S.W.3d 32, 34-35 (Tex. 2015).

Grantor’s heirs, executors, administrators, and successors to warrant and forever defend all and singular the property to Grantee and Grantee’s heirs, executors, administrators, successors, and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof, except as to the reservations from and exceptions to warranty.
\end{boxedverbatim}

\textsuperscript{16}Cosgrove v. Cade, 468 S.W.3d 32, 34-35 (Tex. 2015)
In 2013, B [Petitioner] files suit to quiet title alleging that the 1994 Warranty Deed “unambiguously conveyed the minerals to [B] and asserted that the reservation from conveyance and warranty language merely removed the mineral interest from the deed’s general warranty.”

The trial court ruled for A and the appellate court affirmed, stating “the trial court was correct to find that the deed left title to the minerals in [A], regardless whether the “less, save and except herefrom all oil, gas and other minerals” language is considered a reservation or an exception.”

“The deed unambiguously left the mineral estate in [A]. The trial court did not err is so holding.”

E. In Wenske v. Ealy, the court addressed the conveyance of 55 acres of land with reservations and exceptions.

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A & B to C (appellant): 1988 Deed

A & B each reserved a 1/8th Non Participating Royalty Interest, resulting in a total reservation of a 1/4th NPRI.

Anything in the foregoing conveyance to the contrary notwithstanding, it is expressly agreed and stipulated that out of the sale hereby made there is expressly excepted and reserved to the grantors herein [A] & [B], their heirs and assigns… an undivided one-fourth (1/4) interest in and to all of the oil royalty, gas royalty, and royalty in casinghead gas, gasoline and royalty in other minerals in and under and that may be produced from the above described tract or parcel of land for a period of twenty-five years…[Emphasis added.]

C to D (respondent): 2003 Deed

C reserved an undivided 3/8ths of all oil, gas, and other minerals, in and under, and that may be produced from the property, subject “to several Reservations and Exceptions to Conveyance and Warranty ‘for all purposes.’”

For [C and C’s (appellants and appellants’)] heirs, successors, and assigns forever, a reservation of an undivided 3/8ths of oil, gas, and other minerals, in and under, and that may be produced from the Property. If the mineral estate is subject to existing production or existing leases, the lease, and the benefits from it are allocated in proportion to ownership in the mineral estate.

(Emphasis added). The Exception from the 2003 Deed states the following:

Undivided one-fourth (1/4) interest in and to all of the oil, gas and other minerals in and under the herein described property, reserved by [A & B], for a period of twenty-five years in an instrument recorded in Volume 400, Page 590 of the Deed Records of Lavaca County, Texas, together with all rights, express or implied, in and to the property described herein arising out of or connected with said reserved interest and reservation reference to which instrument is here and now made for all purposes.

C and D both entered into mineral leases.
C, the owner of 3/8ths mineral interest, filed suit against D, claiming that C reserved its 3/8ths free and clear of the ¼ royalty interest reserved by A & B. A & B are entitled to the same royalty but only from D’s 5/8th mineral interest. D asserted that A & B’s royalty interest burdened both the 3/8ths and 5/8ths interest proportionately. The court agreed with D that a deed will convey every interest held by the grantor except that which is clearly reserved or excepted. See Day & Co. v. Texland Petroleum, Inc., 766 S.W.2d 667, 668 (Tex. 1990) (citing Cockrell v. Tex. Sulphur co., 157 Tex. 10, 15, 299 S.W.2d 672, 675 (1957)). Here, all that [C] reserved was a 3/8ths mineral interest, and they excepted from the conveyance a 1/4th interest to[A & B] (presumably the NPRI). However, in certain circumstances, an exception will have the same legal effect as a reservation when the excepted interest remains with the grantor, and here, the excepted interest did not remain with [C]. See Pich v. Lankford, 302 S.W.2d 645, 650 (1957). Thus, for the foregoing reasons, we cannot conclude as [C] argue that the exception in the 2003 Deed conveyed the entire burden of the NPRI to [D].

F. In Thomason v. Badgett, the Court addressed a conveyance referencing prior deeds.

<table>
<thead>
<tr>
<th>A to B: 1996 Deed</th>
<th>Reserving ½ of the mineral rights</th>
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<tbody>
<tr>
<td>B to C &amp; D</td>
<td>Save and except the ½ mineral reservation set out in the 1996 Deed</td>
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<tr>
<td>C &amp; D to E &amp; F</td>
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</tbody>
</table>

The lessee became concerned that C & D did not own 50% of the mineral estate. C & D filed a trespass to try title suit against the current owners of the lots claiming that they owned ½ of the minerals based upon their deeds to E & F. The trial court ruled for the lot owners and the appellate court affirmed.

The court points out that the exception does not describe what minerals are excepted but only directs the reader to the two previously executed deeds; the 2003 Deed that contains a mineral reservation and the B to C & D Deed that contains no separate reservation.

Although [C & D] may have meant something by the use of the phrase ‘all oil, gas[,] and other minerals as recorded,’ (which was missing in two deed) we cannot say that that something is an effective exception of the mineral estate. See Reeves, 621 S.W.2d at 211 (“The question to be answered in this case is not what the grantors may have intended to say in the deed, but the meaning of what they did, in fact, say.”); see also Large v. T. Mayfield, Inc., 646 S.W.2d 292, 293 (Tex.App.—Eastland 1983, writ ref’d n.r.e.) (noting that the rights of

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C & D entered a mineral lease.

The lessee became concerned that C & D did not own 50% of the mineral estate. C & D filed a trespass to try title suit against the current owners of the lots claiming that they owned ½ of the minerals based upon their deeds to E & F. The trial court ruled for the lot owners and the appellate court affirmed.

The court points out that the exception does not describe what minerals are excepted but only directs the reader to the two previously executed deeds; the 2003 Deed that contains a mineral reservation and the B to C & D Deed that contains no separate reservation.

Although [C & D] may have meant something by the use of the phrase ‘all oil, gas[,] and other minerals as recorded,’ (which was missing in two deed) we cannot say that that something is an effective exception of the mineral estate. See Reeves, 621 S.W.2d at 211 (“The question to be answered in this case is not what the grantors may have intended to say in the deed, but the meaning of what they did, in fact, say.”); see also Large v. T. Mayfield, Inc., 646 S.W.2d 292, 293 (Tex.App.—Eastland 1983, writ ref’d n.r.e.) (noting that the rights of
the parties are governed by the language used and that the choice of words is of controlling importance).19

III. Chapter 12 of the State Bar of Texas Real Estate Forms Manual (“REFM”)

Chapter 12 of the REFM entitled “Deeds, Bill of Sales and Other Transfers” provides the forms for conveyance of real and personal property. Section 12.1 of the Commentary addresses a form for a general warranty deed which “…conveys to a grantee a fee simple estate in real property with a covenant of general warranty, subject to the reservations and exceptions stated in the deed.” This section then explains:

The traditional deed clauses include the granting clause, the habendum clause, and the warranty clause. The customary granting clause includes the grant of the property with its related rights and appurtenances and begins with “grants, sells, and conveys.” The customary habendum clause defines the extent of property ownership to be held by the grantee and begins with “to have and to hold.” The customary warranty clause describes the warranty of title made by the grantor and begins with “Grantor binds.”

Two implied covenants, often called “warranties,” are given by stating that the deed “grants” or “conveys.” By using either of those words, the grantor covenants that—

1. before the execution of the conveyance, the grantor has not conveyed the estate or any interest in the estate to a person other than the grantee; and
2. at the time of the execution of the conveyance, the estate is free from encumbrances. Tex. Prop. Code § 5.03.
Taxes, assessments, and liens on real property are included in the term encumbrance. Tex. Prop. Code § 5.24.

The general warranty of title obligates the grantor to indemnify the grantee against any loss resulting from a title defect or from any encumbrances that arose before the conveyance. The grantor warrants that he will restore the purchase price to the grantee if the property is lost. *City of Beaumont v. Moore*, 202 S.W.2d 448, 453 (Tex. 1947). However, the express covenant of warranty and the implied covenants are limited if exceptions, reservations, and encumbrances are excepted from those warranties by the terms of the deed. A reliable title examination is important to determine if title defects or encumbrances exist.

A deed must identify a grantor and a grantee, contain operative words or words of grant showing the intent of the grantor to convey title to a real property interest to the grantee, and contain an adequate description of the property that is sufficient to identify the subject matter of the grant. *Harlan v. Vetter*, 732 S.W.2d 390 (Tex. App.—Eastland 1987, writ ref’d n.r.e.). A description in a deed must furnish within itself or by reference to some other existing writing the means by which the land to be conveyed may be identified with reasonable certainty. *Morrow v. Shotwell*, 477 S.W.2d 538 (Tex. 1972). See section 3.7 in this manual for a discussion of property descriptions.

Section 12.7:6 of the Commentary entitled “Reservations from Conveyance states:


If the grantor wishes to reserve a property right from the conveyance, the reservation should be described under that heading in the deed. A reservation in favor of a third party is inoperative. *Little v. Linder*, 651 S.W.2d 895, 900–01 (Tex. App.—Tyler 1983, writ ref’d n.r.e.).

Examples of common reservations are found in form 12-7 in this chapter.
The common reservations set forth in form 12-7 are (i) an access easement; (ii) a life estate; and (iii) a mineral estate in its entirety, a fractional interest, a terminable interest, or a royalty. The form sets out provisions to be included in a deed to create the applicable reservation in favor of the Grantor.

Section 12.7:7 of the Commentary entitled Exceptions to Conveyance and Warranty” states

All encumbrances affecting the property, whether recorded or not, must be excepted to, or the grantor will breach the general warranty clause immediately on execution of the warranty deed. The items may be excepted to in broad, general terms or specifically itemized. The broad exceptions are more commonly preferred by sellers and the specific exceptions by buyers.

If specific exceptions are used, those suggested in form 12-8 in this chapter may be appropriate, depending on the condition of title. If the parties have agreed not to examine title, the broadest possible exception will be appropriate. See clauses 12-8-1 and 12-8-2.

Properly used, an exception excludes an existing outstanding interest from the conveyance. Donnell v. Otts, 230 S.W. 864, 865 (Tex. Civ. App.—Fort Worth 1921, no writ). Exceptions should be drafted so as not to validate an instrument that is no longer in effect. Morgan v. Fox, 536 S.W.2d 644, 649–50 (Tex. Civ. App.—Corpus Christi 1976, writ ref’d n.r.e.).

Form 12-8 sets out examples of four broad exceptions to Grantor’s warranty of title and forty seven specific exceptions, including prior existing exceptions in favor of third parties in the nature of easements, life estates and mineral interest.

Form 12-1 of the REFM is a General Warranty Deed which addresses reservations and exceptions as follows:
Reservations from Conveyance: [to be filled in by attorney]

Exceptions from Conveyance and Warranty: [to be filled in by attorney]

Grantor, for the Consideration and subject to the Reservations from Conveyance and the Exceptions to Conveyance and Warranty, grants, sells, and conveys to Grantee the Property, together with all and singular the rights and appurtenances thereto in any way belonging, to have and to hold it to Grantee and Grantee’s heirs, successors, and assigns forever. Grantor binds Grantor and Grantor’s heirs and successors to warrant and forever defend all and singular the Property to Grantee and Grantee’s heirs, successors, and assigns against every person whomsoever lawfully claiming or to claim the same or any part thereof, except as to the Reservations from Conveyance and the Exceptions to Conveyance and Warranty.

Form 12 -2 of the REFM is a special warranty deed that sets an additional limitation of grantor’s liability:

Grantor, for the Consideration and subject to the Reservations from Conveyance and the Exceptions to Conveyance and Warranty, grants, sells, and conveys to Grantee the Property, together with all and singular the rights and appurtenances thereto in any way belonging, to have and to hold it to Grantee and Grantee’s heirs, successors, and assigns forever. Grantor binds Grantor and Grantor’s heirs and successors to warrant and forever defend all and singular the Property to Grantee and Grantee’s heirs, successors, and assigns against every person whomsoever lawfully claiming or to claim the same or any part thereof when the claim is by, through, or under Grantor but not otherwise, except as to the Reservations from Conveyance and the Exceptions to Conveyance and Warranty.

(Emphasis added.)

Form 12 -4 of the REFM is a deed without warranty that limits grantor’s liability in its entirety.

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Reservation or Exception, What Is It Going To Be?
Grantor, for the Consideration and subject to the Reservations from Conveyance and the Exceptions to Conveyance, grants, sells, and conveys to Grantee the Property, together with all and singular the rights and appurtenances thereto in any way belonging, to have and to hold it to Grantee and Grantee’s heirs, successors, and assigns forever, without express or implied warranty. All warranties that might arise by common law as well as the warranties in section 5.023 of the Texas Property Code (or its successor) are excluded.

(Emphasis added.)

It is the responsibility of the attorney drafting the General Warranty Deed to fill in the reservations in favor of the Grantor as set forth in the real estate sales contract and the exceptions as set forth in the title commitment or other title source. What could possibly go wrong?

IV. Conclusion

This review of Texas law indicates that the many and divergent competing claims based upon reservations and exceptions in recorded deeds are generally governed by four simple rules of law.

A. A reservation creates a new severance of a property interest in favor of the grantor and is excluded from grantor’s conveyance to grantees.

B. An exception excludes a property interest from grantor’s conveyance and warranty, usually in favor of a third party and based upon a prior transfer of such interest.

C. An exception will be in favor of the grantor when the excluded interest is not outstanding in another and, therefore, remains with the grantor.

D. A reservation in a deed will be an exception in a subsequent deed.

A buyer of real property should have a clear understanding of what property interests have been previously reserved and excepted from the property. Regardless of who drafts the general warranty deed, the attorneys...
for seller and buyer should make sure that if the seller is reserving an interest in the property, the grantor’s reservation is clearly stated under “Reservation from Conveyance”, and a broad exception or specific exceptions are placed under “Exceptions from Conveyance and Warranty”.

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20 Cosgrove v. Cade is important in a paper urging attorneys to be especially careful when drafting reservations in deeds.