

# 25 Mineral, Oil and Gas Brokerage

## *History*

Prior to 1943 there was much speculation in the sale and leasing of mineral, oil and gas lands, particularly during the Depression period from 1933 to 1939. While it may seem strange that people invested in such highly speculative ventures during that period, it is explained that they were desperation investments. Many persons gambled their last resources in hope of gaining huge profits.

During the period mentioned, it was estimated that approximately 1,000 oil and gas salespersons were actively engaged in every section of the state. They confined their sales to parcels in newly created oil and gas subdivisions for the most part. While most oil and gas subdivisions were located in California, lands and leases in Texas, Oklahoma, Illinois, New Mexico, Wyoming, Montana and various other states were offered. While these lands were believed to have some potential for oil and gas production, the possibilities were rather remote. In most cases, purchasers of interests lost the entire amount invested.

A statewide drive was undertaken in 1943 to end these activities. This was accomplished by the Department of Real Estate (the Department) with the assistance of district attorneys, the Attorney General, Department of Corporations and local police departments. Many promoters were convicted of grand theft and about 600 operators lost their real estate licenses as a result of formal hearings or failures to renew such license because of the circumstances. The 1943 efforts resulted in legislation.

## **MINERAL, OIL AND GAS REGULATION**

The 1943 legislation required persons engaging in business as mineral, oil and gas brokers or salespersons within this state to secure a Mineral, Oil and Gas (M.O.G.) license from the Department. In 1967, due to the declining appeal of these types of transactions, the mineral, oil and gas salesperson license was discontinued. However, the broker classification was retained. Licensed real estate brokers were not required to have an M.O.G. license if the transfer of a mineral, oil or gas interest was "purely incidental" to the sale, lease or exchange of real property. If not, a real estate licensee was required to obtain a special M.O.G. permit in order to engage in not more than ten mineral, oil or gas transactions in a year.

In 1984, the licensing laws for mineral, oil and gas brokers were further simplified to conform them to those relating to real estate brokers, and to eliminate bonding and quarterly report requirements.

## **1994 - NO SEPARATE LICENSE REQUIREMENT**

Since January 1, 1994, an M.O.G. broker license is no longer required to allow anyone who is a licensed real estate broker or salesperson to engage in M.O.G. transactions. Those who hold M.O.G. licenses may continue to do so, and may renew their licenses, but no new M.O.G. licenses are issued. Instead, the definition of a real estate broker has been expanded to include mineral, oil and gas transactions.

### ***Transactions Requiring a Real Estate License***

A real estate broker, or a salesperson duly employed by a broker, may now solicit, negotiate and broker the sale, purchase or exchange of mineral, oil or gas properties. A licensee may also solicit borrowers or lenders, negotiate loans, service loans, lease, rent and collect rents or royalties relating to M.O.G. properties.

A real estate license is also required to assist or offer to assist another in filing an application for the purchase or lease, or to locate or enter upon mineral, oil or gas properties owned by the state or federal government.

Persons who act as principals in the purchase, lease or taking of an option on mineral, oil or gas land or property must obtain a real estate license if the purpose of the transaction is to then sell, exchange, lease, sublease or assign a lease on all or part of the property to another. Any person acting as a principal who offers mining claims for sale or assignment must also have a real estate license.

### ***Exempt Transactions***

A real estate broker's license is not required to engage in the following activities with respect to a mineral, oil or gas property:

- acting as a depository under an oil and/or gas lease if it is not for the purpose of a sale;

- engaging in a transaction subject to a court order;
- engaging in the business of drilling for or producing oil or gas, or in the business of mining for or producing minerals;
- negotiating leases or agreements between owners of mineral, oil or gas lands, leases, or mineral rights, and specified production businesses, or entering into leases or agreements with owners on behalf of such production businesses; and
- dealing with mineral rights or land, other than oil or gas rights or land, as the owner of the rights or land.

### ***Mineral, Oil and Gas is a Technical Field***

Mineral, oil and gas brokerage is a specialized branch of the general real estate brokerage business. The primary prerequisites for success are a broad knowledge of the elementary principles of geology relating to this field and sound knowledge of the fundamentals of real estate practice and ethics.

A person interested in focusing on M.O.G. transactions should develop a working knowledge of the technical subject matter with particular emphasis upon the functions and duties of a real estate broker as they relate to practice in the field of mineral, oil and gas brokerage.

### ***Study References***

Given the nature of this *Reference Book* and the relatively few persons specializing in this field, an extended discussion of mineral, oil and gas subject areas is not warranted. There are a number of geology text books available in bookstores, including *California's Changing Landscapes* by Gordon B. Oakeshott, which focus on the geology of California.

Considerable information concerning the oil and gas fields of this state, their structural conditions, importance, quality of oil or gas produced, etc., may be obtained in various publications of the California Division of Oil, Gas, and Geothermal Resources of the Department of Conservation. The California Geological Survey of that Department also has publications and resources of value regarding mineral, mining, and geological matters.

### ***Mineral, Oil and Gas Subdivisions***

Mineral, oil and gas subdivisions are those created for the sale, lease or financing of 5 or more speculative parcels of land for mineral, oil or gas purposes. The subdivision laws apply and there is no exemption for lots of 160 acres or more. The property may be located in California or in any other state. If the developer proposes to make sales in this state, the Department assumes jurisdiction.

No mineral, oil or gas subdivisions have been filed with the Department for a number of years, perhaps because of the stringent conditions which must be met under the law and the widespread prospecting activities of the major oil companies. Anyone interested in filing a mineral, oil or gas subdivision with the Department may obtain details from the Subdivisions Technical Section in Sacramento.