# **1 The Law of Oil and Gas Leases, 2nd Edition § 11.02**

***The Law of Oil and Gas Leases, 2nd Edition* > *Chapter XI THE ASSIGNMENT CLAUSE***

**§ 11.02 Notice to Lessee of Change in Ownership of Land or Minerals**

The next sentence in the assignment clause[[1]](#footnote-2)14.5 is as follows:

“No such change or division in ownership of the land, rentals, or royalties shall be binding upon lessee for any purpose until such person acquiring any interest has furnished lessee with the instrument or instruments, or certified copies thereof, constituting his chain of title from the lessor.”

The courts have held that this is a reasonable provision and the parties to the lease are bound by it. In the Texas case of *Cassity v. Smith*[[2]](#footnote-3)15 it was held that where, under the terms of an ***oil*** and gas lease, it was provided that change in ownership of land should not “operate to enlarge the obligations or diminish the rights of the lessee and no change or division in such ownership shall be binding on lessee until thirty (30) days after lessee shall have been furnished … with a certified copy of recorded instrument or instruments evidencing same,” the provision must be followed. In this case it was claimed that the lessee had notice of the change of ownership, and therefore it was not necessary to furnish the lessee with the certified copies of the “instrument or instruments” required by the lease provisions; but the court held that the lessee was not bound to recognize and make payment to the new owner until he complied with the provision and furnished the copies.

In the case of ***Kern*** *v. Clear Creek* ***Oil*** *Co*.,[[3]](#footnote-4)15.1 the lease provided that “no changes in ownership of the land or assignments of royalties shall be binding on the lessee until after the lessee has been furnished with a written transfer or assignment or a true copy thereof … .” ***Kern*** purchased the property on which the ***oil*** and gas lease was located. ***Kern*** did not provide Clear Creek with written notice of the transfer but argued that Clear Creek had actual and constructive knowledge of the change in ownership. ***Kern*** brought suit against Clear Creek seeking in part, termination of the lease since Clear Creek had not paid to ***Kern*** a required delay rental payment. The trial court granted partial summary judgment in favor of ***Kern*** on this issue.

The Ohio Court of Appeals reversed the partial summary judgment concluding that “the trial court erred when it terminated the lease … . In doing so, we find that the trial court failed to consider the language of the lease requiring notice to be given to Clear Creek ***Oil*** regarding the change in ownership before such change would be binding on Clear Creek ***Oil***. The record indicates that the ***Kerns*** never provided Clear Creek ***Oil*** with such written notice. The fact that Clear Creek ***Oil*** may have had verbal notice of the change in ownership does not suffice to comply with the specific terms of the lease. This written notice was required to make the change in ownership of the land binding on Clear Creek ***Oil***. Thus, having failed to provide such written notice, we conclude that the ***Kerns*** were not entitled to termination of the lease and right-of-way or yearly delay rentals.”

In the case of *Woolley v. Standard* ***Oil*** *Company of Texas*[[4]](#footnote-5)16 there was a clause providing that if the lessee in good faith and with reasonable diligence should attempt to pay a rental but should fail to pay or incorrectly pay any portion thereof the lease should not terminate unless notice of such mistake was given the lessee and the lessee failed to correct the error within thirty days thereafter. The case was decided on the issue that the mineral owner was estopped because he had accepted and retained the erroneous rental tendered, but the court held also that this clause would have prevented the lease from terminating.[[5]](#footnote-6)17

In *Gulf Refining Company v. Shatford*[[6]](#footnote-7)18 the court construed a provision requiring notice to lessee of change of ownership very similar to the one first quoted above. The court said there: “This provision in the lease is a reasonable and valid one, written in clear and unambiguous language. Shatford, who bought his way in as a lessor after execution of the lease, was bound by this provision, but he did not diligently comply with it.”

The facts showed that Shatford acquired his interest more than six months before rental paying date. First he wrote a letter to Gulf advising of his purchase. Gulf called for the copy of his deed, as provided in the lease. The deed was not received by Gulf until ten days before the rental date, and Gulf had paid the rental to the former owner one day before Shatford’s deed was received. The court held that the payment was good and Gulf was not required to pay Shatford. It said that Gulf had a right to protect its lease in this way; that the payment “made just a few days before the deadline, was within the letter and spirit of the ‘on or before provision of the lease’ ”; and that such payment “was a reasonable and prudent, safe business procedure.”

In the case of *Atlantic Refining Company v. Shell* ***Oil*** *Company*[[7]](#footnote-8)19 the certified copy of the deed, as required by the lease, was not delivered to Atlantic. Instead of relying on the lease provision, Atlantic secured a copy of the *recorded deed.* The deed was executed by one Furlow to Shell ***Oil*** Company, but in the deed itself conveying one-half of the royalties, the further provision transferring one-half of the rentals was deleted and the alteration was plainly visible in the deed. In the certified copy Atlantic received from the recorder the deletion was not shown. The provision was simply omitted. Atlantic construed the transfer of mineral interest as including assignment of rentals. The court cancelled the lease, holding that if Atlantic had followed the lease provision it would have had proper notice that the ownership of rentals had been retained by the grantor by deleting the said clause.[[8]](#footnote-9)20

In *Hanks v. Wilson*,[[9]](#footnote-10)20.1 the Louisiana Court of Appeals held that a lessee was not bound to pay royalties to the alleged holder of a present mineral royalty interest, absent a showing that the interest holder furnished the lessee with the required proof of change in interest from that of owner of the reversionary mineral royalty interest before the royalty payment was due.

In a Texas case[[10]](#footnote-11)21 the only question submitted to the court was whether the provision requiring the *lessor* and lessor’s successors and assigns to give notice to the lessee of a transfer or an assignment of interest in the “land, royalties, delay rentals or other monies” was a valid provision. The court held that the provision was reasonable, and a proper subject of contract between the parties.

In *Humble* ***Oil*** *& Refining Co. v. Harrison*[[11]](#footnote-12)22 there was an ambiguity in a part interest mineral grant executed by the lessor, as to the amount of the delay rental assigned to the grantee therein. The ambiguity grew out of the attempt to transfer an interest in rentals different from that conveyed in the mineral rights. Notice of the change in ownership was given by Harrison in mailing a photostatic copy of the mineral deed to Humble. Humble, under mistaken construction of the conveyance, made an erroneous payment of rental thereunder. The Supreme Court of Texas refused to cancel the lease. The assignee received the payment but did not notify Humble of the error, and the court held that because the assignee remained silent, he was estopped to assert that the lease had been terminated. There are two unusual features about this Texas decision. First, the court held that the grant was ambiguous, yet it was able to place a construction on the language of the grant as such, without resorting to extraneous evidence to ascertain the intent of the parties. Second, it applied equitable principles to overcome the effect of the determinable fee principle, and deny cancellation of the lease.

In *Triangle Supply Co. v. Fletcher,*[[12]](#footnote-13)22.1 the lease was assigned by Thomas and Saxon Drilling Company to Triangle Supply Company. The assignment was recorded in the wrong county. Before the error in recording was discovered a judgment was obtained against Triangle’s assignor and a writ of execution levied on the interest assigned to Triangle. A sheriff’s sale was held and the said interest was purchased thereunder by one Fletcher, who assigned it to one McCutchin. Both Triangle’s assignor’s creditors and the assignee, Fletcher, had actual knowledge of Triangle’s unrecorded interest, but the defendant, McCutchin, did not have notice thereof and was not so informed until after the sale and after he had drilled a well on the lease. The action was brought by Triangle against Fletcher, McCutchin et al. to remove a cloud on its title. The judgment was against Triangle. It was held that McCutchin was an innocent purchaser, and that Triangle did not have such “open, exclusive, visible and unequivocal possession” necessary to constitute notice of its interest to a prospective purchaser.

In a federal case arising in Kansas[[13]](#footnote-14)23 the facts showed that Phillips Petroleum Company had paid a rental due under its ***oil*** and gas lease on or before March 22, 1947, the rental paying date. The rental was sent to the depository bank with instructions from Phillips as to how the payment should be credited to the various royalty owners. The bank then advised Phillips that there had been a change of ownership, and, at Phillips’ request furnished it with the instruments, including an abstract of title and a transcript of partition proceedings evidencing the change of ownership. A sheriff’s deed was furnished April 10, 1947, and the abstract and court proceedings on April 17, 1947. After examining the deed, abstract and transcript Phillips tendered the rental the purchasers were entitled to receive on May 13, 1947. The purchaser refused to accept the rental and sued for cancellation of the lease. The court refused to cancel the lease and held that under the facts of the case the tender of rentals on May 13, 1947 was within a reasonable time after it had been furnished with the “written transfer assignment” evidencing the change of ownership.

In *Trafalgar House* ***Oil*** *& Gas, Inc. v. De Hinojosa*,[[14]](#footnote-15)23.1 the ***oil*** and gas lease clause required the lessee to notify the lessor of the name and address of an assignee within 30 days of an assignment. Because the lessee did not do so, the court held that lessor was entitled to judgment of $20,600 for the breach of the clause.

In *Danko Holdings, L.P. v. Exco Res. (PA), LLC*,[[15]](#footnote-16)23.2 the lessor’s successor sought a declaratory judgment that a lease had expired by its own terms due to failure to pay delay rentals to extend the primary term. The lessee’s successor asserted that because the delay rental payment had been made to the initial lessor and because no one in the lessee’s chain of title had been furnished with proper notice of a change in ownership, the payment to the initial lessor was effective to extend the lease. The United States District Court for the Middle District of Pennsylvania, in a case of first impression, agreed holding the payment to the initial lessor was sufficient to extend the Lease by its own terms since the “change of ownership” notice provisions had not been satisfied.

Other cases on this point are cited in the footnote.[[16]](#footnote-17)24 From a review of these cases construing the provision requiring notice of change of ownership to be given the lessee, it appears that the only safe procedure is to follow the literal provisions of the lease. In the *Cassity* and ***Kern*** cases, *supra,* it was held that this provision was applicable, even though it could be shown that the lessee had notice of the change of ownership independent of the requirements of the provision. And in the *Atlantic* case, *supra,* where the lessee went to the official record for information as to ownership, the Louisiana court held it was his duty to follow the lease provision and he could not rely upon the official record in the event there was a conflict between that record and the information which would be obtained by following the lease requirement.

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1. 14.5*See* the beginning of Section 11.01 for the first sentence. [↑](#footnote-ref-2)
2. 15193 S.W.2d 991 (Tex. Civ. App. 1946), *err. ref*. [↑](#footnote-ref-3)
3. 15.1149 Ohio App. 3d 560, 2002 Ohio 5438, 778 N.E.2d 115 (Ohio App. 2002). [↑](#footnote-ref-4)
4. 16230 F.2d 97 (5th Cir. 1956). [↑](#footnote-ref-5)
5. 17*See also* Benson v. Lacy, 202 S.W.2d 689 (Tex. Civ. App. 1947). [↑](#footnote-ref-6)
6. 18159 F.2d 231 (5th Cir. [La.] 1947). [↑](#footnote-ref-7)
7. 1946 So. 2d 907, 217 La. 576 (1950). [↑](#footnote-ref-8)
8. 20In Garelick v. Southwest Gas Producing Co., 129 So. 2d 520 (La. App. 1961), the plaintiff had acquired an undivided one-eighth interest in a tract of land covered by defendant’s lease. The lease contained a clause providing that no change in ownership would be binding upon the lessee until such lessee had been furnished, forty-five days before any payment of rental or royalty was due, a certified copy of the instrument evidencing the transfer. The plaintiff contended that the lessee had actual notice of the transfer inasmuch as it caused an abstract to be made for the purpose of preparing a division order, but it was admitted no certified copy of the instrument under which plaintiff claimed had ever been furnished to the lessee. The court held that the lessee was not required to take notice of the public records as to transfer of interests, and that it was obligatory on the transferee to furnish the lessee with the certified copy required by the lease, following Pearce v. Southern Natural Gas Co., 58 So. 2d 396, 220 La. 1094 (1952), and Atlantic Ref. Co. v. Shell ***Oil*** Co., 46 So. 2d 907, 217 La. 576 (1950). [↑](#footnote-ref-9)
9. 20.1633 So. 2d 1345 (La. App. 1994). [↑](#footnote-ref-10)
10. 21Benson v. Lacy, 202 S.W.2d 689 (Tex. Civ. App. 1947). [↑](#footnote-ref-11)
11. 22146 Tex. 216, 205 S.W.2d 355 (1947). [↑](#footnote-ref-12)
12. 22.1408 S.W.2d 765 (Tex. Civ. App. 1966), *err. ref. n.r.e.* [↑](#footnote-ref-13)
13. 23Endicott v. Phillips Pet. Co., 172 F.2d 372 (10th Cir. 1949). [↑](#footnote-ref-14)
14. 23.1773 S.W.2d 797 (Tex. App. 1989), 109 O.&G.R. 95. [↑](#footnote-ref-15)
15. 23.257 F. Supp. 3d 389 (M.D. Pa. 2014). [↑](#footnote-ref-16)
16. 24Vaughan v. Littlefield, 4 S.W.2d 153 (Tex. Civ. App. 1928); Mitchell v. Simms, 63 S.W.2d 371 (Tex. Comm. App. 1933); Brandt v. Roxana Pet. Corp., 29 F.2d 980 (5th Cir. 1929); Union Gas & ***Oil*** Co. v. Wright, 200 Ky. 791, 255 S.W. 697 (1923); Empire Gas & Fuel Co. v. Higgins ***Oil*** & Fuel Co., 279 Fed. 977 (5th Cir. 1922); Thomas v. Standard Development Co., 70 Mont. 156, 224 P. 870 (1924). [↑](#footnote-ref-17)