

Twenty years ago, a man who owned a 20-acre ranch agreed to sell all of his mineral rights to his neighbor. The man executed a warranty deed conveying the mineral estate to the neighbor, who failed to record the deed.

The following year, a woman moved her mobile home onto an undeveloped five-acre portion of the man's ranch. After the woman had lived on the property for 10 years, a local drilling company began operations on a nearby tract to drill a natural gas well. Believing that the woman owned the property, the drilling company approached the woman about leasing the mineral rights on her property and requested that the woman sign a lease of her mineral rights. The woman signed the lease as requested, and it was promptly and properly recorded. The drilling operations were successful, and the drilling company prepared to distribute profits from royalties. However, a dispute arose between the neighbor and the woman, as both parties claim ownership of the minerals.

The period of time to acquire title by adverse possession in the jurisdiction is 10 years.

In an action to determine title, is the court likely to award title to the mineral estate to the woman?

- A. No, because the woman actually possessed only the surface estate that had previously been severed from the mineral estate.
- B. No, because the woman did not actually possess the mineral estate until she signed the lease of the mineral rights.
- C. Yes, because the neighbor failed to record the warranty deed conveying the mineral estate.
- D. Yes, because the woman adversely possessed both the surface estate and the mineral estate for the statutory period.

Explanation:

An adverse possessor can acquire title to land owned by another if his/her possession of the land is:

Open and notorious – apparent or visible to a reasonable owner

Continuous – uninterrupted for the statutory period

Exclusive – not shared with the owner

Actual – physical presence on the land *and*

Nonpermissive – hostile and adverse to the owner.

If the **surface and mineral estates** are **owned by the same party**, then the adverse possessor will **acquire title to both estates**—even if only one estate is actually possessed. But if the mineral estate has been **severed** from the surface estate (ie, the surface and mineral estates are **owned by different parties**), then the adverse possessor will **only acquire title to the estate that is actually possessed**. The mineral estate is actually possessed when the adverse possessor mines or drills wells on the land.

Here, the neighbor purchased the mineral estate from the man, thereby severing the mineral estate from the surface estate. And since the woman merely lived on the property for the 10-year statutory period—she did not attempt to mine or drill a well on the mineral estate—she actually possessed only the surface estate during that time **(Choice D)**. This means that the woman did not adversely possess the mineral estate, and the court is *not* likely to award her title to that estate.

(Choice B) Adverse possession of a mineral estate requires the commencement of drilling or mining operations. Merely signing a lease of the mineral rights is not enough.

(Choice C) A deed need not be recorded to be valid, so the neighbor's failure to record has no impact on whether the woman adversely possessed the mineral estate.

Educational objective:

If a mineral estate has previously been severed from the surface estate (ie, surface and minerals owned by different persons), then an adverse possessor can only acquire title to the mineral estate by actually possessing the minerals (eg, by mining or drilling wells).

Adverse possession of a mineral estate

