

**NATURAL RESOURCES CODE**

**TITLE 3. OIL AND GAS**

**SUBTITLE B. CONSERVATION AND REGULATION OF OIL AND GAS**

**CHAPTER 91. PROVISIONS GENERALLY APPLICABLE**

**SUBCHAPTER A. GENERAL PROVISIONS**

**Sec. 91.001. DEFINITIONS. In this chapter:**

- (1) "Commission" means the Railroad Commission of Texas.
- (2) "Gas" means natural gas.
- (3) "Oil" means crude oil and crude petroleum oil.

Acts 1977, 65th Leg., p. 2560, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

**Sec. 91.002. CRIMINAL PENALTY.** (a) A person who wilfully or with criminal negligence violates Section 91.101 of this code or a rule, order, or permit of the commission issued under that section commits an offense.

(b) An offense under Subsection (a) of this section is punishable by a fine of not more than \$10,000 a day for each day a violation is committed.

(c) Venue for prosecution of an alleged violation of this section is in a court of competent jurisdiction in the county in which the violation is alleged to have occurred.

Added by Acts 1983, 68th Leg., p. 5262, ch. 967, Sec. 9, eff. Sept. 1, 1983. Renumbered from Sec. 91.351 by Acts 1987, 70th Leg., ch. 167, Sec. 5.01(a)(32), eff. Sept. 1, 1987.

## **MINERAL OWNER'S QUICK REFERENCE GUIDE (SUBCHAPTER J)**

This guide helps you navigate the legal protections found within this document. All citations refer to the

### **Texas Natural Resources Code.**

**Page 3 - Essential Definitions:** Defines "Payee," "Payor," and "Division Order".

**Page 4 - The 120-Day Payment Deadline:** Your legal guarantee for timely first payments from a new well.

**Pages 5-6 - Authorized Provisions:** Lists the only information an operator is legally entitled to include in a division order.

**Pages 6-8 - The Standard Model Form:** Provides the official Texas "Model Form" for an oil division order.

**Page 9 - Refusal to Sign:** Your rights if you refuse to sign a division order that contains unauthorized terms.

**Pages 9-10 - The Lease Supremacy Clause:** Confirms that a division order cannot change the terms of your original lease.

**Page 10 - Late Payment Interest:** Establishes your right to interest if the payor misses statutory deadlines.

**Page 11 - Notice of Non-Payment:** The mandatory steps you must take before beginning judicial action for unpaid royalties.

**Page 12 - Attorney's Fees & Minimum Awards:** Details your right to recover legal costs in a successful suit.

## **SUBCHAPTER J. PAYMENT FOR PROCEEDS OF SALE**

### **Sec. 91.401. DEFINITIONS. In this subchapter:**

(1) "Payee" means any person or persons legally entitled to payment from the proceeds derived from the sale of oil or gas from an oil or gas well located in this state.

(2) "Payor" means the party who undertakes to distribute oil and gas proceeds to the payee, whether as the purchaser of the production of oil or gas generating such proceeds or as operator of the well from which such production was obtained or as lessee under the lease on which royalty is due. The payor is the first purchaser of such production of oil or gas from an oil or gas well, unless the owner of the right to produce under an oil or gas lease or pooling order and the first purchaser have entered into arrangements providing that the proceeds derived from the sale of oil or gas are to be paid by the first purchaser to the owner of the right to produce who is thereby deemed to be the payor having the responsibility of paying those proceeds received from the first purchaser to the payee.

(3) "Division order" means an agreement signed by the payee directing the distribution of proceeds from the sale of oil, gas, casinghead gas, or other related hydrocarbons. The order directs and authorizes the payor to make payment for the products taken in accordance with the division order. When used herein "division order" shall also include "transfer order".

(4) "Transfer order" means an agreement signed by a payee and his transferee (new payee) directing the payor under the division order to pay another person a share in the oil or gas produced.

Added by Acts 1983, 68th Leg., p. 966, ch. 228, Sec. 1, eff. Sept.

1, 1983. Amended by Acts 1991, 72nd Leg., ch. 650, Sec. 1, eff. Aug. 26, 1991.

**Sec. 91.402. TIME FOR PAYMENT OF PROCEEDS.** (a) The proceeds derived from the sale of oil or gas production from an oil or gas well located in this state must be paid to each payee by payor on or before 120 days after the end of the month of first sale of production from the well. After that time, payments must be made to each payee on a timely basis according to the frequency of payment specified in a lease or other written agreement between payee and payor. If the lease or other agreement does not specify the time for payment, subsequent proceeds must be paid no later than:

(1) 60 days after the end of the calendar month in which subsequent oil production is sold; or

(2) 90 days after the end of the calendar month in which subsequent gas production is sold.

(b) Payments may be withheld without interest beyond the time limits set out in Subsection (a) if:

(1) there is:

(A) a dispute concerning title that would affect distribution of payments;

(B) a reasonable doubt that the payee:

(i) has sold or authorized the sale of its share of the oil or gas to the purchaser of such production; or

(ii) has clear title to the interest in the proceeds of production; or

(C) a requirement in a title opinion that places in issue the title, identity, or whereabouts of the payee and that has not been satisfied by the payee after a reasonable request for curative information has been made by the payor; or

(2) the payments are subject to a child support lien under Chapter 157, Family Code, or an order or writ of withholding issued under Chapter 158, Family Code.

(b-1) A payee does not have a common law cause of action for breach of contract against a payor for withholding payments under Subsection (b) unless, for a dispute concerning the title, the contract requiring payment specifies otherwise.

(c)(1) As a condition for the payment of proceeds from the sale of oil and gas production to payee, a payor shall be entitled to receive a signed division order from payee containing only the following provisions:

(A) the effective date of the division order, transfer order, or other instrument;

(B) a description of the property from which the oil or gas is being produced and the type of production;

(C) the fractional and/or decimal interest in production claimed by payee, the type of interest, the certification of title to the share of production claimed, and, unless otherwise agreed to by the parties, an agreement to notify payor at least one month in advance of the effective date of any change in the interest in production owned by payee and an agreement to indemnify the payor and reimburse the payor for payments made if the payee does not have merchantable title to the production sold;

(D) the authorization to suspend payment to payee for production until the resolution of any title dispute or adverse claim asserted regarding the interest in production claimed by payee;

(E) the name, address, and taxpayer identification number of payee;

(F) provisions for the valuation and timing of settlements of oil and gas production to the payee; and

(G) a notification to the payee that other statutory rights may be available to a payee with regard to payments.

(2) Such a division order does not amend any lease or operating agreement between the interest owner and the lessee or operator or any other contracts for the purchase of oil or gas.

(d) In the alternative, the provisions of Subsection (c) of this section may be satisfied by a division order for oil payments in substantially the following form and content:

**DIVISION ORDER**

|                   |                           |
|-------------------|---------------------------|
| TO: _____ (Payor) | <u>Property No.</u> _____ |
| _____             | _____                     |
| _____             | _____                     |
| _____             | <u>Effective</u> _____    |
|                   | <u>(Date)</u>             |

The undersigned severally and not jointly certifies it is the legal owner of the interest set out below of all the oil and related liquid hydrocarbons produced from the property described below:

**OPERATOR:**

Property name: \_\_\_\_\_

County: \_\_\_\_\_ State: \_\_\_\_\_

Legal Description: \_\_\_\_\_

.....

OWNER NO. \_\_\_\_\_ TAX I.D./SOC. SEC. NO. PAYEE \_\_\_\_\_

DIVISION OF INTEREST

.....

.....

THIS AGREEMENT DOES NOT AMEND ANY LEASE OR OPERATING AGREEMENT BETWEEN THE INTEREST OWNERS AND THE LESSEE OR OPERATOR OR ANY OTHER CONTRACTS FOR THE PURCHASE OF OIL OR GAS.

The following provisions apply to each interest owner ("owner") who executes this agreement:

**TERMS OF SALE:** The undersigned will be paid in accordance with the division of interests set out above. The payor shall pay all parties at the price agreed to by the operator for oil to be sold pursuant to this division order. Purchaser shall compute quantity and make corrections for gravity and temperature and make deductions for impurities.

**PAYMENT:** From the effective date, payment is to be made monthly by payor's check, based on this division of interest, for oil run during the preceding calendar month from the property listed above, less taxes required by law to be deducted and remitted by payor as purchaser. Payments of less than \$100 may be accrued before disbursement until the total amount equals \$100 or more, or until 12 months' proceeds accumulate, whichever occurs first. However, the payor may hold accumulated proceeds of less than \$10 until production ceases or the payor's responsibility for making payment for production ceases, whichever occurs first. Payee agrees to refund to payor any amounts attributable to an interest or part of an interest that payee does not own.

**INDEMNITY:** The owner agrees to indemnify and hold payor harmless from all liability resulting from payments made to the owner in accordance with such division of interest, including but not limited to attorney fees or judgments in connection with any suit that affects the owner's interest to which payor is made a party.

**DISPUTE; WITHHOLDING OF FUNDS:** If a suit is filed that

affects the interest of the owner, written notice shall be given to payor by the owner together with a copy of the complaint or petition filed.

In the event of a claim or dispute that affects title to the division of interest credited herein, payor is authorized to withhold payments accruing to such interest, without interest unless otherwise required by applicable statute, until the claim or dispute is settled.

**TERMINATION:** Termination of this agreement is effective on the first day of the month that begins after the 30th day after the date written notice of termination is received by either party.

**NOTICES:** The owner agrees to notify payor in writing of any change in the division of interest, including changes of interest contingent on payment of money or expiration of time.

No change of interest is binding on payor until the recorded copy of the instrument of change or documents satisfactorily evidencing such change are furnished to payor at the time the change occurs.

Any change of interest shall be made effective on the first day of the month following receipt of such notice by payor.

Any correspondence regarding this agreement shall be furnished to the addresses listed unless otherwise advised by either party.

In addition to the legal rights provided by the terms and provisions of this division order, an owner may have certain statutory rights under the laws of this state.

| <b>Witness</b> | <b>Signature of<br/>Interest Owner</b> | <b>Social Security/<br/>Tax I.D. No.</b> | <b>Address</b> |
|----------------|----------------------------------------|------------------------------------------|----------------|
| _____          | _____                                  | _____                                    | _____          |
| _____          | _____                                  | _____                                    | _____          |
| _____          | _____                                  | _____                                    | _____          |

Failure to furnish your Social Security/Tax I.D. number will result in withholding tax in accordance with federal law, and any tax withheld will not be refundable by payor.

(e) If an owner in a producing property will not sign a division order because it contains provisions in addition to those provisions provided for in this section, payor shall not withhold payment solely because of such refusal. If an owner in a producing property refuses to sign a division order which includes only the provisions specified in Subsection (c) of this section, payor may withhold payment without interest until such division order is signed.

(f) Payment may be remitted to a payee annually for the aggregate of up to 12 months' accumulation of proceeds if the payor owes the payee a total amount of \$100 or less for production from all oil or gas wells for which the payor must pay the payee. However, the payor may hold accumulated proceeds of less than \$10 until production ceases or the payor's responsibility for making payment for production ceases, whichever occurs first. On the written request of the payee, the payor shall remit payment of accumulated proceeds to the payee annually if the payor owes the payee less than \$10. On the written request of the payee, the payor shall remit payment of proceeds to the payee monthly if the payor owes the payee more than \$25 but less than \$100.

(g) Division orders are binding for the time and to the extent that they have been acted on and made the basis of settlements and payments, and, from the time that notice is given that settlements will not be made on the basis provided in them, they cease to be binding. Division orders are terminable by either party on 30 days written notice.

(h) The execution of a division order between a royalty owner and lessee or between a royalty owner and a party other than lessee shall not change or relieve the lessee's specific, expressed or implied obligations under an oil and gas lease, including any

obligation to market production as a reasonably prudent lessee. Any provision of a division order between payee and its lessee which is in contradiction with any provision of an oil and gas lease is invalid to the extent of the contradiction.

(i) A division order may be used to clarify royalty settlement terms in the oil and gas lease. With respect to oil and/or gas sold in the field where produced or at a gathering point in the immediate vicinity, the terms "market value," "market price," "prevailing price in the field," or other such language, when used as a basis of valuation in the oil and gas lease, shall be defined as the amount realized at the mouth of the well by the seller of such production in an arm's-length transaction.

Added by Acts 1983, 68th Leg., p. 966, ch. 228, Sec. 1, eff. Sept. 1, 1983. Amended by Acts 1991, 72nd Leg., ch. 650, Sec. 2, eff. Aug. 26, 1991; Acts 1995, 74th Leg., ch. 681, Sec. 1, eff. June 15, 1995.

**Amended by:**

Acts 2017, 85th Leg., R.S., Ch. 961 (S.B. [1965](#)), Sec. 4, eff.

**September 1, 2017.**

Acts 2021, 87th Leg., R.S., Ch. 101 (S.B. [1259](#)), Sec. 1, eff. May 24, 2021.

**Sec. 91.403. PAYMENT OF INTEREST ON LATE PAYMENTS.** (a) If payment has not been made for any reason in the time limits specified in Section 91.402 of this code, the payor must pay interest to a payee beginning at the expiration of those time limits at two percentage points above the percentage rate charged on loans to depository institutions by the New York Federal Reserve Bank, unless a different rate of interest is specified in a written agreement between payor and payee.

(b) Subsection (a) of this section does not apply where payments are withheld or suspended by a payor beyond the time limits specified in Section 91.402 of this code because of the conditions enumerated in Section 91.402 of this code.

(c) The payor's obligation to pay interest and the payee's right to receive interest under Subsection (a) of this section terminate on delivery of the proceeds and accumulated interest to the comptroller as provided by Title 6, Property Code.

Added by Acts 1983, 68th Leg., p. 966, ch. 228, Sec. 1, eff. Sept. 1, 1983. Amended by Acts 1985, 69th Leg., ch. 230, Sec. 18, eff. Sept. 1, 1985; Acts 1991, 72nd Leg., ch. 650, Sec. 3, eff. Aug. 26, 1991; Acts 1991, 72nd Leg., ch. 676, Sec. 1, eff. Sept. 1, 1991; Acts 1997, 75th Leg., ch. 1037, Sec. 39, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1423, Sec. 14.15, eff. Sept. 1, 1997.

**Sec. 91.404. NONPAYMENT OF OIL AND GAS PROCEEDS OR INTEREST.**

(a) If a payee seeks relief for the failure of a payor to make timely payment of proceeds from the sale of oil or gas or an interest in oil or gas as required under Section 91.402 or 91.403 of this code, the payee must give the payor written notice by mail of that failure as a prerequisite to beginning judicial action against the payor for nonpayment.

(b) The payor has 30 days after receipt of the required notice from the payee in which to pay the proceeds due, or to respond by stating in writing a reasonable cause for nonpayment.

(c) A payee has a cause of action for nonpayment of oil or gas proceeds or interest on those proceeds as required in Section 91.402 or 91.403 of this code in any court of competent jurisdiction in the county in which the oil or gas well is located. Added by Acts 1983, 68th Leg., p. 966, ch. 228, Sec. 1, eff. Sept.

1, 1983.

**Sec. 91.405. EXEMPTIONS.** This subchapter does not apply to any royalties that are payable to:

(1) the board of regents of The University of Texas System under a lease of land dedicated to the permanent university fund; or

(2) the General Land Office as provided by Subchapter D, Chapter 52, of this code.

Added by Acts 1983, 68th Leg., p. 966, ch. 228, Sec. 1, eff. Sept. 1, 1983.

**Sec. 91.406. ATTORNEY'S FEES AND MINIMUM AWARD.** If a suit is filed to collect proceeds and interest under this subchapter, the court shall include in any final judgment in favor of the plaintiff an award of:

(1) reasonable attorney's fees; and

(2) if the actual damages to the plaintiff are less than \$200, an additional amount so that the total amount of damages equals \$200.

Added by Acts 1987, 70th Leg., ch. 1011, Sec. 1, eff. Aug. 31, 1987.

**Sec. 91.407. NOTICE OF CHANGE OF PAYOR.** (a) Following a change in payor, the new payor shall give written notice to each payee to whom the payor is responsible for distributing oil or gas proceeds. The notice must be given to the payee or the payee's designee at the payee's or designee's most recent known address.

(b) Upon receipt of payee's address from the operator or lessee, the payor must provide the notice within the time permitted

for payment of proceeds and in accordance with the conditions for payment provided by Section 91.402. The notice must include:

(1) the information required by Sections 91.502(1), (2), and (12) and Section 91.503; and

(2) the payor's telephone number.

(c) The notice may be given by any writing, including a division order, check stub, or attachment to a payment form.

(d) A payor that is obligated to pay interest to a payee under Section 91.403 and that does not give the payee a notice required by this section is liable to the payee for interest under that section at a rate that is two percent more than the rate provided by that section.

Added by Acts 1997, 75th Leg., ch. 1432, Sec. 1, eff. Sept. 1, 1997.

**Sec. 91.408.** INFORMATION FOR PAYEES OF PROCEEDS OF PRODUCTION FROM CERTAIN GAS WELLS. (a) A payor of proceeds from the sale of gas produced from a tight formation as defined by Section 29(c)(2)(B), Internal Revenue Code of 1986, annually shall furnish the payee a statement providing the information necessary to compute the federal income tax credit provided by that section for the gas for which payment was made in the preceding year, including:

(1) information as described in Section 91.502(1) of this code; and

(2) the volume of the gas, measured in:

(A) thousands of cubic feet and heating value; or

(B) millions of British thermal units for each thousand cubic feet.

(b) A payor shall furnish a statement required by Subsection

(a) not later than March 15 each year.

Added by Acts 1999, 76th Leg., ch. 609, Sec. 1, eff. Sept. 1, 1999;

Acts 1999, 76th Leg., ch. 1483, Sec. 5, eff. Sept. 1, 1999.