

### What is a split estate?

A split estate occurs when the right to develop oil or gas deposits is severed from the surface. Therefore, one party may own the right to farm the land, build a house, or graze cattle, but another party owns the right to drill for the underlying oil or gas.

### How does an estate become split?

Governments around the world have long recognized the importance of reserving mineral rights when giving away or selling land—maintaining the option of developing minerals could mean cash in the future. As land was settled in Idaho and the rest of the West under numerous homestead acts, the federal government often reserved the rights to develop minerals.

### Who owns what?

In Idaho, the federal Bureau of Land Management (BLM) and the state of Idaho are large land and mineral owners, but many minerals are owned privately. Among federal, state, and private ownership of either the surface or mineral estate, there could be any combination of ownership. Private owners may sell the surface to one party and the minerals to another, or the owner of an estate may sell the surface but retain the minerals. In the case of minerals, it is worth noting that under any piece of land, different parties may own rights to different minerals. For example, one party may own the right to develop the coal, while another may hold the rights to the oil and gas. Since 1923, state law has required the State of Idaho to reserve the mineral rights when state land is sold. Some exceptions have been added to this law, but most sales of state land continue to have a state mineral reservation.

### Who can do what?

Both the surface and mineral owners in a split estate have property rights. However, courts have held that the mineral right has no value unless the oil or gas can be removed from the ground. That means that mineral owners have the right to reasonable use of the surface, regardless of whether or not the surface owner grants permission. State and federal regulations further define this relationship. Surface and mineral owners are encouraged to open a line of communication as soon as possible to discuss plans and needs. This can happen before drilling is planned. If the surface owner leases the land to another party, the surface owner is encouraged to include the lessee or any others who may have an interest in the surface use in discussions about the use of the property.

### Where are the mineral ownership records?

The deed to the property is a good place to start. For surface owners, if the deed says ownership of the property is fee simple or fee simple absolute, that means the surface and mineral rights might be intact unless otherwise indicated in the chain of title. A chain of title search is the only definitive way to determine if minerals are owned, and title insurance does not normally cover mineral ownership. If a personal copy of the deed isn't available, the information is most likely on file with the Clerk and Recorder for the county in which the land is located. A legal description of the land would be helpful in finding mineral deeds, grants, or reservations. If initial searches are unsuccessful, some title companies or landmen may provide assistance for a fee. Make sure that surface and mineral rights ownership are included in the title search.

### What about mineral leasing?

Mineral owners often lease minerals to an oil and gas developer. To find out if minerals are leased, contact the mineral owners if they are known. Mineral leases are usually on file with the Clerk and Recorder for the county in which the land is located. State-owned minerals are administered and leased by the Idaho Department of Lands. For more information or to be placed on a mailing list for mineral lease sales, call 208-334-0200. Federally owned minerals are administered and leased by the BLM. The Idaho Web site for the agency is [www.blm.gov/id](http://www.blm.gov/id). The site contains information on current and historical sales as well as regulations.

### What about partial mineral ownership and pooling?

In some cases, more than one party may own minerals under a parcel of land. Even if some of the mineral owners do not want to drill, state law allows that the mineral interests may still be developed. See Idaho Code Title 47, Chapter 3, or call the Idaho Department of Lands for more information.



## GUIDE TO SPLIT ESTATES IN OIL AND GAS DEVELOPMENT

Idaho Department of Lands  
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Boise, ID 83720  
(208) 334-0200 Phone  
(208) 334-5342 Fax  
<http://www.idl.idaho.gov>

**What happens with exploration?** Most exploration is done with seismic equipment that tests for the potential presence of oil or gas by measuring shock waves. Surface damage is usually minimal.

<b>The seismic operator shall:</b>	<p>Meet with IDL staff.</p> <p>Apply for an IDL permit to conduct seismic operations.</p> <p>File a bond approved by IDL.</p> <p>Publish a legal notice in a newspaper of general circulation in the county where the survey will be conducted, unless the geophysical survey is conducted within a well or conducted by aerial surveys.</p> <p>Give notice to landowners at least 30 days prior to commencement of field seismic operations.</p> <p>Notify IDL within five business days of commencement and completion of each seismic operation.</p> <p>See IDAPA 20.07.02.360.</p>
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**Surface Owner Protections:** Idaho's oil and gas rules provide procedures to compensate a surface owner for lost agricultural income and lost value of improvement directly caused by oil and gas exploration and production. See IDAPA 20.07.02.075.

<b>The surface owner and mineral developer shall:</b>	<p>If the mineral estate has been severed from the surface estate where an oil or gas well is to be located, the well owner or operator shall attempt a good faith negotiation of a surface use agreement with the surface owner. The surface use agreement must address how the owner will be compensated for lost agricultural income and lost value of improvements directly caused by oil and gas exploration and production.</p>
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<b>In the absence of agreement on damages:</b>	<p>If a surface use agreement cannot be negotiated, then the well owner or operator must notify the surface owner of the intent to drill by certified mail at least 60 days prior to the commencement of the surface disturbing activities, unless otherwise agreed to by the surface owner. The notification must include a proposed surface use bond amount and a copy must be sent to IDL.</p> <p>If the surface owner disagrees with the owner's or operator's proposed surface use bond amount, the surface owner must send a written objection to IDL within 30 days of receiving the notification from the owner or operator. The objection must contain their proposed surface use bond amount. Any objection filed will not delay the owner's or operator's proposed start of surface disturbance activities.</p> <p>If a surface owner objects to the owner's or operator's proposed bond amount, IDL will determine a surface use bond based on the information received from both the owner or operator and the surface owner according to the procedures in IDAPA 20.07.02.075. The minimum surface use bond in all instances with no surface use agreement will be \$5,000 and will be paid in cash to IDL. When the owner, operator, or surface owner objects to IDL's proposed surface use bond, a hearing will be scheduled as soon as possible to determine the final bond amount.</p> <p>The IDL will hold the bond pending either a surface use agreement between the two parties that negates the need for the surface use bond, or reclamation of the surface disturbance.</p> <p>The IDL may forfeit the bond upon the failure of the well owner or operator to reclaim the disturbed area in a timely manner, or upon failure of the parties to reach a surface use agreement, upon the completion of drilling operations.</p>
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<b>Drill permit bonds</b>	<p>These bonds cover the plugging and abandonment of the oil or gas well, as well as surface reclamation. Bonds for individual wells are \$10,000 plus \$1 per foot. Blanket bonds for 10 wells or more range from \$50,000 to \$150,000 depending on the number of wells covered.</p>
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