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LAND SERVICES

The Duhig Rule

Over-conveyance of mineral interests · how Oklahoma and Texas apply it

The problem: an over-conveyance

A Duhig problem shows up when someone deeds away more of the minerals than they own. It usually happens when a grantor reserves a fraction to themselves but does not except an outstanding fraction that a third party already owns. On its face the deed grants the buyer one amount and keeps another for the grantor, and the two together add up to more than the grantor actually has.

The rule

The Duhig rule decides who absorbs that shortfall. Where a grantor conveys by warranty deed and reserves a fractional mineral interest without excepting a prior outstanding interest, the grantee is made whole first, and the grantor's reserved interest is reduced or wiped out to cover the shortage. The grantor cannot use their reservation to claim minerals that the warranty already promised to the grantee. The rule comes from *Duhig v. Peavy-Moore Lumber Co.*, 135 Tex. 503, 144 S.W.2d 878 (1940), and rests on estoppel by warranty.

Worked example

A third party already owns 2/8 of the minerals. The grantor owns the other 6/8. The grantor signs a warranty deed conveying the tract and reserving 3/8 to himself, and the deed says nothing about the outstanding 2/8.

Party	What the deed appears to give	Duhig result
Grantee (buyer)	5/8 (the whole estate less the grantor's reserved 3/8)	**5/8** — made whole first
Third party (prior owner)	2/8, untouched by this deed	**2/8** — unchanged
Grantor (seller)	3/8 reserved	**1/8** — reservation cut to cover the shortfall

The grantor tried to keep 3/8 and give away 5/8, which is 8/8, but only had 6/8 to work with. The grantee takes the full 5/8 the deed appears to grant, leaving the grantor 1/8. The grantor's reservation, not the grantee's grant, absorbs the loss.

When Duhig does not apply

Situation	Effect
Quitclaim deed, or a deed without a warranty	Duhig is grounded in the warranty. A quitclaim conveys only what the grantor has, so there is no estoppel and no forced sacrifice of the reservation.
The deed excepts the outstanding interest	If the deed says the conveyance is subject to the prior reservation, there is no over-conveyance and the grantor keeps the full reserved fraction. This is the drafting fix: always except and describe prior outstanding interests.

Situation	Effect
Contrary intent shown on the face of the deed	Where the deed as a whole shows the parties meant something different, courts follow that intent rather than the mechanical Duhig result.
Mutual mistake	If the over-conveyance came from a mutual mistake, the parties can correct it with a corrective deed they both sign, or a court can reform the deed in equity. Without one of those, the mechanical Duhig result stands.

Oklahoma and Texas

Both states have adopted the Duhig rule and reach the same result on a warranty deed that reserves a fraction without excepting a prior interest. Texas is the origin and has the deepest body of case law, so its application is the most settled and mechanical. Oklahoma applies the rule as well, resting on estoppel by warranty, though on a thinner body of case law. The practical takeaway is the same in both states: a reserved fraction that ignores an outstanding interest is a red flag, and the reservation is the interest at risk.

	Texas	Oklahoma
Adopted Duhig	Yes, the origin (*Duhig*, 1940)	Yes, adopted
Basis	Estoppel by warranty	Estoppel by warranty
Applies to	Warranty deeds, not quitclaims	Warranty deeds, not quitclaims
Reformation for mutual mistake	Available	Available
Body of case law	Extensive and settled	Thinner, less settled

Notes for title work

Topic	Note
Spotting a Duhig problem	Watch for a deed that reserves a fraction of minerals while the grantor owned less than the full mineral estate and the deed does not except the outstanding interest. Add up the grant plus the reservation; if it exceeds what the grantor owned, Duhig is in play.
Where the loss lands	Under Duhig the grantee keeps the granted fraction and the grantor's reservation is reduced. Chase the grantor's remaining interest, not the grantee's.
The drafting fix	When preparing a reservation, always except and describe every outstanding interest, and state the conveyance is subject to it. That removes the over-conveyance and preserves the intended reservation.
Quitclaims in the chain	A quitclaim in the chain can break the Duhig analysis, since it carries no warranty. Read the granting and warranty language, not just the reservation.

or disputed matters to a licensed attorney in the state involved. Citations are to *Duhig v. Peavy-Moore Lumber Co.* and general title authority.