



McMORAN EXPLORATION CO.

Louisiana

Texas

GULF of MEXICO

Buried Treasures on the Shelf



Deciphering the Security Rights Provision of the Joint Operating Agreement

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Security Rights Provision in Operating Agreements

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Contents of Security Rights Provisions

- 1. Security Agreement**
- 2. Financing Statement**
- 3. Deed of Trust (Mortgage)**
- 4. Memorandum (Declaration) of Operating Agreement**



Security Rights Provision in Operating Agreements

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Locations of Security Rights Provisions

- 1. Body of the Operating Agreement**
- 2. Exhibit to the Operating Agreement**
- 3. Combinations of the above**



Security Rights Provision in Operating Agreements

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Purpose of the Security Rights Provision

The purpose of the security rights provision in an operating agreement is to facilitate creation of a non-possessory lawful cause that gives one party preferential rights against specific property of another party which includes the right to have that property seized and sold, and to be paid by preference from the proceeds of a sale



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Memorandum of Operating Agreement (Louisiana)



Declaration of Operating Agreement

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Part 5. Operating Agreements

La. R.S. 31:216 (Filing):

An agreement entered into by or among owners of mineral rights for the joint exploration, development, operation or production of minerals thereunder shall be binding upon third persons when the agreement is filed for registry in the conveyance records of the parish or parishes where the lands affected by the mineral rights are located



Declaration of Operating Agreement

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Part 5. Operating Agreements

La. R.S. 31:217 (Declaration in lieu of agreement):

In lieu of filing an agreement as provided in R.S. 31:216, the parties thereto may file a declaration signed by them or signed by any person designated in the agreement as the general operator or agent of the parties...



Declaration of Operating Agreement

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Declaration of Operating Agreement

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The Elements

A Declaration must:

- 1. Describe the lands affected by the mineral rights that are subject to the (operating) agreement**
- 2. State in general terms the nature or import of the (operating) agreement a**
- 3. State where the (operating) agreement may be found**



Declaration of Operating Agreement

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Recommendations:

- 1. Refer to correct statutory provision
(La. R.S. 31:217 (before July 1, 2006,
La. R.S. 9:2731))**
- 2. Expressly authorize operator (and)
non-operators to file declaration in JOA**



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Secured Transactions

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Secured Transactions

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Bankruptcy:

Bankruptcy is a procedure under federal law that allows debtors who owe more money than they can pay to either eliminate their debts or work out a payment plan to pay a portion (or all) of their debts over time

In this context, a debtor is a party to an Operating Agreement (Operator or Non-Operator) that cannot comply with its obligations under the Operating Agreement



Secured Transactions

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Division of Assets:

How are the assets of a company divided?

- 1. Secured Creditors are paid first**
- 2. Unsecured Creditors are paid second**
- 3. Stockholders are paid last**



Secured Transactions

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Secured Transactions

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Secured Creditors:

A "secured creditor" is one that has a lien on property such as a home or car. A lien is an interest in property that a creditor can use to satisfy a debt. Liens can be voluntary (mortgage or auto loan) or involuntary (a lien on property resulting from unpaid taxes or a judgment). A secured creditor stands in a superior position to the debtor

In this context, status as a secured creditor requires an affirmative step to put third parties on notice



Secured Transactions

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Unsecured Creditors:

An "unsecured creditor" is a creditor who has no interest in any particular property of the debtor. Unsecured creditors are paid either voluntary by debtors or they must receive a judgment through the court in order to collect on a debt via garnishment or seizure



Secured Transactions

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Mortgage (Deed of Trust)



Mortgages

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What is a mortgage?:

A mortgage is a non-possessory security right against real (immovable) property including a mineral lease. It confers upon the creditor the right to have the property seized and sold, and to be paid by preference from the proceeds of the sale



Louisiana Mortgages

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Why file a mortgage?:

- 1. It protects the right to extract minerals from the leasehold**
- 2. Without it, another creditor (i.e., a non-party) can foreclose and have the debtor's leasehold interest sold and receive preference from the proceeds of a sale**
- 3. Filing of Exhibit F of AAPL Model Deepwater JOA (or the entire operating agreement) is generally insufficient to perfect a mortgage in Louisiana**



Louisiana Mortgages

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- 1. Should be executed in authentic form**
- 2. Does not need to be executed by the mortgagee**
- 3. Must contain a clear description of the property, i.e., the lease**
- 4. Must state the maximum amount that may be secured**
- 5. Must be recorded in the mortgage records of the adjacent parish(es) (and should be filed in the non-required file for the lease maintained by the MMS)**



Louisiana Mortgages

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- 1. Form of Mortgage to Secure Future Advances pursuant to La. Civ. Code art. 3298 is recommended**
- 2. General rule is that mortgages are initially effective on the public records for ten years from the date of the act of mortgage**
- 3. Reinscription is accomplished by filing a signed "notice of reinscription" containing the (i) name of the mortgagor; (ii) recordation date of the document and (iii) declares the instrument reinscribed**



Security Rights Provision in Operating Agreements

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Security Interests

Securing Personal (Movable)

Property



Security Interests

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Security interests apply to any interest in movable (personal) property and fixtures, created by contract that secures payment or other performance of an obligation.

Property so secured is know as collateral.



Security Interests

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How do you create a lien in property that is insusceptible of being mortgaged?

Article 9 of the Uniform Commercial Code (UCC)

Article 9 has been adopted by all Gulf of Mexico states (Texas, Louisiana, Mississippi, Alabama and Florida)



Security Interests in Operating Agreements

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Creation

- **Creation of a security interest requires both *Attachment* and *Perfection***
- **Execution of the Operating Agreement typically accomplishes *Attachment***
- **Proper filing of a financing statement typically *perfects* the interest**



Security Interests in Operating Agreements

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Attachment

Attachment generally requires three elements:

- that a security agreement be made and “authenticated”
- that value be given
- that the debtor have rights in the collateral

***Attachment is effective between the parties,
but not effective as to third persons***



Security Interests in Operating Agreements

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Perfection

Perfection puts third parties on notice of the rights and allows a party to prevail over a creditor using judicial process to obtain a lien on the collateral, including a trustee in bankruptcy

Perfection may be accomplished by (i) possession; (ii) control or (iii) **filing**



Security Interests in Operating Agreements

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Filing Form

- **Use UCC-1 Form whenever possible**
- **Non-standard form is acceptable, but be certain to include all information required, i.e., contained on state's UCC-1 form**
- **Get the name of the "debtor" correct**
- **No signatures are required**



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UCC-1 Collateral Description

- **Must put subsequent “lenders” on notice that a prior interest may exist on the “debtor’s” property**
- **No need to copy security agreement language of Exhibit F**
- **Specific listing, UCC type or “all collateral” acceptable for collateral definitions**



Security Interests in Operating Agreements

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Sample Collateral Description on UCC-1

All of Debtor's right, title and interest in all of the oil and gas produced from OCS-G 12345 more fully described on Exhibit A hereto, all equipment, accounts, goods, documents, intangibles, fixtures and as-extracted collateral located or used in connection with the production of oil and gas from the property described in Exhibit A, and all proceeds from any of the foregoing



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Where to File

- **Financing statements are filed in the appropriate filing office where the debtor is “located”**
- **Juridical (i.e. companies) debtors are located in their state of incorporation or organization**
- **Filing for “fixtures and as-extracted collateral” in the appropriate office in the state where the collateral is located**



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Location of Filing

- **Thus, to be properly perfected as to all collateral granted in the security agreement (Exhibit F), a UCC-1 Financing Statement should be recorded in the appropriate filing office in (i) the non-operator(s') state of incorporation AND (ii) the UCC records of any parish in Louisiana**



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Post Perfection Rules

- **Secured Party must revise the Financing Statement to reflect any changes in the Debtor's name within four months of the change, or the interest will become unperfected**
- **Financing Statements must be "continued" within six months of the fifth anniversary of filing of the interest will become unperfected**



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Louisiana Recordation:

- 1. File executed mortgage in mortgage records of parish(es) adjacent to lease(s)**
- 2. File UCC-1 (Financing Statement) in UCC records of any parish in Louisiana. If desired, file additional UCC-1 where debtor is “located”**
- 3. File Declaration of Operating Agreement in conveyance records of parish(es) adjacent to the lease(s)**
- 4. Continue post-filing review (Debtor changes, Continuance and Reinscription)**
- 5. Don't forget rights under Louisiana's Oil Well Lien Act**



QUESTIONS