



Division of Resolutions and Receiverships - Owned Real Estate Department Guidance Memorandum Managing and Marketing ORE	Version – 1.00	Date: February 21, 2013
	Contact: Closing Manager ORE	Review Date: February 21, 2014

TO: ORE Managers
ORE Account Officers
FDIC ORE National Contractors

FROM: Daniel L. Walker 
Assistant Director Institutions and Asset Sales

SUBJECT: GUIDANCE ON THE SALE OF REAL PROPERTY (ORE SURFACE RIGHTS) AND MINERAL INTEREST CONVEYANCE

This memorandum is to provide further guidance that will assist FDIC ORE National Contractors on the application of additional new ORE documents of conveyance. This Guidance Statement supplements previous statement from 2011 E-Mail Memorandum on the use of FDIC Long and Short ORE Contract Forms and Documents of Conveyance. The ORE Contractors are to begin utilizing these new documents of conveyance effective April 1, 2013.

GOAL:

Future marketing of ORE Properties will primarily be for the surface rights with the Mineral Interest¹ being withheld from the sale and conveyance of the real property. New Purchase and Sale Agreement ADDENDUMS and SPECIAL WARRANTY DEEDS (SWD) are being issued for use by ORE staff and ORE Contractors. There will be exceptions where the purchaser of the real property is interested in the Mineral Interests the Mineral Interests could be sold with the real property.

If the ORE specialist or ORE Contractor anticipates marketing the ORE property with mineral interest, consideration to the value of those rights need to be addressed prior to marketing the property, during the negotiations, and ultimately included in the case proposal for approval. For Mineral Interest to be conveyed, the value of the Mineral Interest must be assessed (appraised) and the proper title work included in the analysis. The price for the mineral rights should be a part of the negotiation process. **The sale and conveyance of Mineral Interest must be discussed in the case and specifically mentioned in the case proposal when Mineral Interests are being conveyed with the sale of owned real estate.**

BACKGROUND:

Historically, ORE property sales have not addressed retaining Mineral Interests or selling them to buyers of real estate, resulting in the Mineral Interest passing to the real estate purchaser. Mineral Interest represents value to the Receivership; consequently, the FDIC intends to retain ownership of

¹ Mineral Interest is defined as Oil & Gas & Minerals. Not included in the definition are Water Rights & Air Rights

Mineral Interest in ORE properties, or include them in the surface rights sale with due consideration of the Mineral Interests' values. Mineral Interest or the lack of Mineral Interest, should be apparent in the deeds of conveyance the FDIC possesses on the property the FDIC owns. In most cases, prior purchases have already retained the Mineral Interest. FDIC can only sell Mineral Interest that is owned and has **title work** that clearly demonstrates ownership.

If an ORE purchaser wants to pursue acquisition of Mineral Interest rights, oil & gas engineering contractors will need to determine what the Mineral Interest is worth. If there is a tangible value, the Mineral Interest value needs to be included in the negotiations for the sale. **No tangible interest in the property the FDIC possesses in real or Mineral Interest should be conveyed unless the intention is specifically mentioned in the case proposal.** An explanation of sale or retention of Mineral Interest should be included in the case discussion. Valuation of Mineral Interest expenses may be passed on to the purchaser.

Several types of sales include Water Rights and Condominiums Units. Water Rights can be sold separately by the oil and gas specialist. Individual condominium units represent a claim on improvements and are basically air rights. Therefore, individual condominium units are sold with either a Special Warranty Deed or a Quit Claim Deed. However, if the FDIC is stepping into the developer's position for the entire condominium project, there could be Mineral Interest withheld. This will be only on a unique asset basis and will require special evaluation of the Mineral Interest.

GUIDANCE:

Generally, the conveyance of real property through the Owned Real Estate of the FDIC will be subject to the type of property being conveyed and the complexity of the transaction. The FDIC will normally convey real property without Mineral Interest.

Mineral Interest reservations apply to all types of ORE properties with the exception of condominiums, ORE valued at \$50,000 or less, or any sale using a Quit Claim Deed. The Quit Claim Deed does not contemplate ownership and transfer of Mineral Interest; therefore, there is no change for smaller dollar sales involving conveyance for Quit Claim Deeds.

The ORE Contractor and FDIC Account Officer must always remember that the case proposing the sale of real property must address whether the property is being sold with or without the Mineral Interest. Only when the Mineral Interest is addressed in the case proposal is the approval considered in the final action.

For all sale transactions the current Purchase and Sale Agreements (PSA) remain the same. When the Mineral Interests is being withheld from the sale of the ORE, the FDIC has created new Purchase and Sale Agreement **ADDENDUMS** and new **SPECIAL WARRANTY DEEDS(s)** to exclude the Mineral Interest. For properties located within the boundaries of **incorporated cities** the FDIC will waive all rights to utilize the surface of the property and the SWD excludes the right to control surface access. In **rural properties** the FDIC will retain the right to use the surface of the property and the SWD reserves the right to control surface access. The current set of SWD's (dated 04/04/11) will continue to be used, when the Mineral Interest is sold with the ORE, as identified on the PSA Matrix Document Index.

Louisiana has different documentation requirements and a separate Addendum to the Purchase and Sale Agreement specific for that state is needed. Louisiana requires its own Special Warranty Deed; therefore, the legal division must be consulted for the issuance of a SWD specific to the property sale in Louisiana², to include or exclude the reservation of Mineral Interest or sale of the Mineral Interest.

To initiate the sale of the ORE Property and to withhold Mineral Interest, the Purchase and Sale Agreements must include the proper Addendum Form. Also, the proper Special Warranty Deeds must be included with the conveyance as follows documents (see the PSA Matrix Document Index for a full listing):

1. Long Form Special Warranty Deeds (without mineral interest),
2. Long Form Specially Warranty Deeds (with mineral interest),
3. Special Warranty Deeds (without mineral interest),
4. Special Warranty Deeds (with mineral interest) and,
5. Quit Claim Deeds (always without mineral interest retained).

Separate forms exist for properties held by the FDIC in its Receivership, Corporate or Subsidiary capacity. These Deeds and Purchase and Sale Agreements will also differentiate between rural and incorporated city locations.

The PSA Matrix Document Index is attached to assist in the use of Purchase and Sale Agreements, Addendums, and the different forms of Warranty Deeds. The standard Purchaser Eligibility Certificate and Confidentiality Agreement will continue to be utilized. Contractors must identify in the Short Form Sales Case and in the Long Form Sales Case the Deed and Purchase and Sale Agreement Addendum used.

The ORE Specialist and ORE Contractor are responsible for selecting the correct Purchase and Sale Agreement, Addendum, and Special Warranty Deed to convey title. When there is a special circumstance or a unique asset, etc., the Legal Division should be consulted to insure the proper Purchase and Sale Agreement, Addendum and the proper Special Warranty Deed are used. The Legal Division's advice will be beneficial in insuring title is passed without error and the FDIC's recovery is maximized.

Attachments: PSA Matrix Document Index

² Conveyance of mineral rights and interest in Louisiana poses an additional obstacle because under the Louisiana Mineral Code, a mineral reservation expires in 10 years. Consequently, the deed of conveyance to the FDIC and the deed that conveys property rights must be reviewed in light of the restrictions that are particular to Louisiana. The real estate laws of Louisiana require a separate and distinct form of deed than do other states. The period commences from the date that it was created. The FDIC has 10 years from the date of its reservation of mineral interest to use it or convey it. In the absent use or conveyance the reservation will expire pursuant to the Louisiana statute. The asset manager or specialist should also know that a purchaser of a mineral interest reserved by the FDIC in the deed anticipated by the subject deed process gets only whatever is left of the 10 year prescriptive period that began to run upon the FDIC's original mineral reservation.

MATRIX ON USING THE PURCHASE AND SALE AGREEMENT

APPROPRIATE USE OF CONTRACT FORMS BASED ON SALES PRICE (See Guidance Statement for more details)	LONG FORM PURCHASE AND SALE CONTRACTS★			SHORT FORM SWD PURCHASE AND SALES CONTRACTS★			QUITCLAIM DEED SALES CONTRACT ★
	LFK OIL AND GAS SPECIAL WARRANTY DEED★ INCLUDING SURFACE ACCESS♦	LFK OIL AND GAS SPECIAL WARRANTY DEED★ EXCLUDING SURFACE ACCESS♦	LFK SPECIAL WARRANTY DEED ★ NO MINERAL RESERVATION	OIL AND GAS SPECIAL WARRANTY DEED ★ INCLUDING SURFACE ACCESS ♦	OIL AND GAS SPECIAL WARRANTY DEED ★ EXCLUDING SURFACE ACCESS ♦	SPECIAL WARRANTY DEED ★ NO MINERAL RESERVATION	QUITCLAIM DEED ★
Rural Properties Over \$1,000,000 <i>FDIC Retains Mineral Rights ♦</i>	X			(SFR 1-4 Only)			
Properties Over \$1,000,000 in Incorporated Cities <i>FDIC Retains Mineral Rights ♦</i>		X			(SFR 1-4 Only)		
Properties over \$1,000,000 <i>With Buyers Purchasing Mineral Rights</i>			X			(SFR 1-4 Only)	
Rural Properties Between \$50,000 and \$999,999 <i>FDIC Retains Mineral Rights ♦</i>				X			
Properties Between \$50,000 and \$999,999 and in Incorporated Cities <i>FDIC Retains Mineral Rights ♦</i>					X		
Properties Between \$50,000 and \$999,999 <i>With Buyer Purchasing Mineral Rights</i>						X	
Rural Unique Assets Regardless of Dollar Amount \$ <i>FDIC Retains Mineral Rights ♦</i>	X						
Unique Assets Regardless of Dollar Amount \$ and in Incorporated Cities <i>FDIC Retains Mineral Rights ♦</i>		X					
Unique Assets Regardless of Dollar Amount \$ <i>With Buyers Purchasing Mineral Rights</i>			X				
Properties Less than \$50,000							X

General Instructions:

- (a) Single Family Residence use the Short form of the Purchase and Sales Agreement and the Special Warranty Deed as indicated above.
- (b) There may be instances when the ORE Contractor may justify using another contract form and this decision must be addressed in the Sales Case.
- (c) In any situation where a long-form purchase and sale contract is indicated, the long-form individual sales case should be used to request the approval of the sale, describe the asset and the proposed sales transaction.
- (d) All Contracts are to be submitted with the following attachments: Confidentially Agreement, Purchaser Eligibility Certification and where applicable, one of the two Oil and Gas Addenda.

★ Separate forms exist for properties held by FDIC in its Receivership, Corporate or Subsidiary capacity.

§ Unique Assets may encompass Commercial Assets, Income-Producing Assets with multiple tenants, Properties with Environmental Issues, Complex Assets with multiple marketing or managerial considerations, and/or high visibility assets which have been noted in the media or the subject of local or national political inquiries.

♦ The Addendum for Reservation and Exception of Oil and Gas and Other Minerals must be used in the Sales Contract.

LFK - stands for Long Form Contract

Matrix as of 02/01/2013

Purchase and Sale Agreements and Respective Deeds

Purchase and Sale Agreements	Document Name (PDF) to Use		DEED / TRANSACTION TYPE	Deed Document Name (PDF) to Use	
			Long Form Special Warranty Deed Receivership Asset FDIC Retains Mineral Rights. Sale of ORE in Rural Locations Including Surface Access	fdicLfk_sw_d_REC_110612OandGincludingsurfacerrights	 LF SWD Recvrp Rural Locations
			Long Form Special Warranty Deed Receivership Asset FDIC Retains Mineral Rights. Sale of ORE within Incorporated City Limits Excluding Surface Access	fdicLfk_sw_d_REC_032012og	 LF SWD Recvrp City Limits
			Long Form Special Warranty Deed Receivership Asset No Mineral Reservation by FDIC, Mineral Rights are Sold with the ORE	fdicLfk_sw_d_REC_040411	 LF SWD Recvrp Sale of Mineral Rights
			Long Form Special Warranty Deed Corporate Asset FDIC Retains Mineral Rights. Sale of ORE Rural Locations Including Surface Access	fdicLfk_sw_d_CORP_110612OandGincludingsurfacerrights	 LF SWD CORP Rural Locations
			Long Form Special Warranty Deed Corporate Asset FDIC Retains Mineral Rights. Sale of ORE Within Incorporated City Limits Excluding Surface Access	fdicLfk_sw_d_CORP_032012og	 LF SWD CORP City Limits
			Long Form Special Warranty Deed Corporate No Mineral Reservation by FDIC, Mineral Rights are Sold with the ORE	fdicLfk_sw_d_CORP_040411	 LF SWD CORP Sale of Mineral Rights
PROPERTIES OVER \$1,000,000 & Unique Assets §					
Long Form Sales Contract - FDIC as Receivership or Corporate Capacity [w/Attachments (1), (2), & depending on the location of the Asset (3) or (4)]	fdicformresalescontract_LF_recorp_040411_final	 Sales Contract LF Recvrp or Corp			
			Long Form Special Warranty Deed Subsidiary Asset FDIC Retains Mineral Rights. Sale of ORE in Rural Locations Including Surface Access	fdicLfk_sw_d_SUB_110612OandGincludingsurfacerrights	 LF SWD SUB Rural Locations
			Long Form Special Warranty Deed Subsidiary Asset FDIC Retains Mineral Rights. Sale of ORE within Incorporated City Limits Excluding Surface Access	fdicLfk_sw_d_SUB_032012og	 LF SWD SUB City Limits
			Long Form Special Warranty Deed Subsidiary No Mineral Reservation by FDIC, Mineral Rights are Sold with the ORE	fdicLfk_sw_d_SUB_040411	 LF SWD SUB Sale of Mineral Rights
SUBSIDIARY PROPERTIES OVER \$1,000,000 and Unique Assets §					
Long Form Sales Contract - FDIC in its Subsidiary Capacity [w/Attachments (1), (2), & depending on the location of the Asset (3) or (4)]	fdicformresalescontract_LF_sub_040411_final	 Sales Contract LF SUB			
			Special Warranty Deed Receivership Asset FDIC Retains Mineral Rights. Sale of ORE in Rural Locations Including Surface Access	fdicswdK_sw_d_REC_110612OandGincludingsurfacerrights	 SWD_REC Rural Locations
			Special Warranty Deed Receivership Asset FDIC Retains Mineral Rights. Sale of ORE within Incorporated City Limits Excluding Surface Access	fdicswdK_sw_d_REC_032012og	 SWD_REC City Limits
			Special Warranty Deed Receivership No Mineral Reservation by FDIC, Mineral Rights are Sold with ORE	fdicswdK_sw_d_REC_040411	 SWD_REC Sale of Mineral Rights
			Special Warranty Deed Corporate Asset FDIC Retains Mineral Rights. Sale of ORE in Rural Locations Including Surface Access	fdicswdK_sw_d_CORP_110612OandGincludingsurfacerrights	 SWD CORP Rural Locations
			Special Warranty Deed Corporate Asset FDIC Retains Mineral Rights. Sale of ORE within Incorporated City Limits Excluding Surface Access	fdicswdK_sw_d_CORP_032012og	 SWD CORP City Limits
			Special Warranty Deed Corporate Asset No Mineral Reservation by FDIC, Mineral Rights are Sold with the ORE	fdicswdK_sw_d_CORP_040411	 SWD CORP Sale of Mineral Rights
PROPERTIES BETWEEN \$50,000 AND \$999,999 & SFR's					
Short Form Sales Contract with Special Warranty Deed FDIC in its Receivership or Corporate Capacity [w/Attachments (1), (2), & depending on the location of the Asset (3) or (4)]	fdicformresalescontract_SWD_recorp_040411_final	 Sales Contract SWD Recvrp or Corp			

Purchase and Sale Agreements and Respective Deeds

SUBSIDIARY PROPERTIES BETWEEN \$50,000 AND \$999,999 & SFR's

Short Form with Special Warranty Deed - FDIC Subsidiary
[w/Attachments (1), (2), & depending on the location of the Asset (3) or (4)]

fdicformresalescontract_SWd_sub_040411_final



Special Warranty Deed Subsidiary Asset
FDIC Retains Mineral Interest. Sale of the ORE in Rural Locations
Including Surface Access
Special Warranty Deed Subsidiary Asset
FDIC Retains Mineral Rights. Sale of ORE within Incorporated City Limits
Excluding Surface Access

fdicswdK_swD_SUB_110612OandGincludingsurfacerrights

fdicswdK_swD_SUB_032012og

Special Warranty Deed Subsidiary
No Mineral Reservation by FDIC, Mineral Rights are Sold with the ORE

fdicswdK_swD_SUB_040411



PROPERTIES LESS THAN \$50,000

Short Form Sales Contract with Quit Claim Deed
FDIC in its Receivership or Corporate Capacity [w/Attachments (1), (2)]

fdicformresalescontract_QCD_recorp_040411_final



Quit Claim Deed Receivership (Cash)

fdicqcdK_qcd_REC__040411

Quit Claim Deed Corporate (Cash)

fdicqcdK_qcd_CORP__040411



SUBSIDIARY PROPERTIES LESS THAN \$50,000

Short Form Sales Contract with Quit Claim Deed - FDIC Subsidiary
[w/Attachments (1), (2)]

fdicformresalescontract_QCD_sub_040411_final



Quit Claim Deed Subsidiary (Cash)

fdicqcdK_qcd_SUB__040411



Attachments

(1) Confidentiality Agreement
(Property Evaluation, Review, Service or Property Sales)

Confidentiality Agreement



(2) Purchaser Eligibility Certification

Purchaser Eligibility Certification



(3) Addendum for Reservation and Exception of Oil and Gas, and Other Minerals
Properties in Rural Locations - Including Surface Access

oilgasaddendum_includingsurfacerrights_011813



(4) Addendum for Reservation and Exception of Oil and Gas, and Other Minerals
Properties within Incorporated City Limits - Excluding Surface Access

oilgasaddendum_excludingsurfacerrights_011813



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