CHAPTER 38-10
SALES AND LEASES BY PERSONAL REPRESENTATIVES

38-10-01. Definitions.

In this chapter, unless the context or subject matter otherwise requires:

1. "District court" means the district court having jurisdiction of the estate of which the personal representative involved is administrator, executor, or guardian, as the case may be.
2. "Estate" means the estate of a person who died testate or intestate and the estate of a minor or of an incompetent, spendthrift, or habitual drunkard under guardianship.
3. "Lease for production" means any lease of property of an estate for the purpose of mining or of drilling and operating for oil, including the laying of pipelines and the building of tanks, power stations, and other structures upon the lands described in such lease for the purpose of producing, saving, and taking care of products of the mine or well.
4. "Personal representative" means an executor of the last will or the administrator of the estate of a deceased person, or a guardian of the estate of a minor or of an incompetent, spendthrift, or habitual drunkard.

38-10-02. Personal representative may lease for production or sell mineral or oil rights in lands of estate.

A personal representative, upon compliance with the provisions of this chapter, may give a lease for production covering real property in the estate or may sell the oil, gas, or minerals in or under such real property separately from the surface rights.

38-10-03. Term of lease for production - Conditions and limitations in lease.

A lease for production made by a personal representative may be made subject to the confirmation of the district court, for a period of not more than ten years, and it may be extended thereafter as long as oil or gas is produced from such land by the lessee or the lessee's assigns or the lessee or the lessee's assigns are engaged in continuous drilling or reworking operations. Such a lease must be made upon such terms and in consideration of such bonuses, royalties, rentals, and payments as may be agreed upon except that in no case may the royalty be:

1. Less than equal to a one-eighth part of all oil produced and saved from the leased premises;
2. Less than equal to a one-eighth part of the gross proceeds at the prevailing market rate at the well for all gas used off the premises, when gas only is found on the leased premises; nor
3. Less than one-eighth of the gross proceeds at the prevailing market rate at the well for gas, during all times that such gas is used, when gas is produced from any oil well and used off the premises or for the manufacture of casinghead gasoline or dry commercial gas.

No lease for production is effective for a period of more than two years from its date unless mining or a well is commenced on such land within such time, except that the lease may provide that the lessee may pay a delay rental in an amount that may be specified in the lease. Such payment operates as a rental and covers the privilege of deferring the commencement of mining or of a well for one year. A lease may provide for the payment of successive delay rentals which defers the commencement of mining or of a well for like successive periods. Any lease made by a personal representative under the authority of this section may provide for the pooling or unitization of the lease land, or any part or parts thereof, and of any mineral or royalty interest therein, with land adjoining or in the vicinity of the leased land, or any mineral or royalty interest therein, so as to form a unit for development and purpose of operation. Operations or production on any such unitized area shall have the same effect as operations or production on the leased land. The lease may provide for payment of a proportionate part of the royalties on production from any such unitized area to the personal representative in lieu of the royalties provided in the lease as to the area so unitized. A personal representative, upon compliance with the provisions

of this chapter, may also enter into agreements pooling or unitizing existing leases. Upon the execution, approval, and delivery of a production lease, all persons interested in the estate are bound thereby during the entire period thereof.

38-10-04. Lease for production made by personal representative to be approved by county court - Notice - Recording.

Repealed by S.L. 1973, ch. 257, § 82.

38-10-05. Personal representative may sell mineral, oil, and gas rights separately from surface rights.

Whenever it appears to the satisfaction of the district court that it is necessary for the payment of the family allowance or of claims, expenses of administration, or legacies, or that it is for the advantage, benefit, or best interests of the estate of a decedent, minor, or incompetent, and of the persons interested therein, that the whole or some undivided fractional part of the oil, gas, or other minerals in or under, or that may be produced from, land belonging to the estate should be sold separately from the surface rights, the personal representative may sell the same, upon order of the district court.

38-10-06. Petition required to obtain order of license - Contents of petition - Citation issued on petition.

To obtain an order of the district court for the sale of oil, gas, or other mineral rights, a verified petition must be presented to and filed with the court setting forth the matters required by law to be contained in a petition for the sale of real estate and in addition thereto setting forth the quantity of the interest in the oil, gas, or other minerals desired to be sold and the probable amount to be realized on the sale thereof. A citation must be issued on the petition and served in the manner provided by law for the service of citations in district court. If all persons interested in the estate join in the petition or signify in writing their assent thereto or waive service of notice thereof, the hearing may be had at any time.

38-10-07. Objections to petition for confirmation of lease or for order of license to sell.

Any person interested in the estate may file written objections to a petition for the approval and confirmation of a lease for production or to a petition for an order of license to sell oil, gas, or mineral rights. The petition and the objections thereto must be heard, the hearings thereon conducted, and the witnesses examined in the manner provided in title 30 for hearings on petitions for the sale of real property belonging to an estate.

38-10-08. Order of license to sell oil, gas, or mineral rights and procedure thereafter.

If it appears to the district court, after the hearing provided for in this chapter, that it is necessary, or for the advantage, benefit, and best interests of the estate and of the persons interested therein, to sell the whole or some fractional part of the oil, gas, or minerals in and under, and that may be produced from, land belonging to the estate, the court may enter its order of license authorizing the sale of the whole or any fractional part thereof separately from the surface rights. Thereafter, further proceedings must be had and conducted in compliance with the provisions of sections 30.1-13-04, 30.1-18-03, 30.1-18-04, 30.1-18-11, 30.1-18-15, and 30.1-19-08.

38-10-09. Sales of oil, gas, or mineral rights made subject to existing lease.

Sales of oil, gas, or mineral rights made under the provisions of this chapter must be made subject to the terms of any then existing oil, gas, or mineral lease and must cover and include all or a fractional part of the oil royalty, gas rental or royalty, and mineral rental or royalty to be paid under such lease.

38-10-10. Conveyance of oil, gas, or mineral rights to include right of ingress and egress.

In addition to the whole or fractional part of all oil, gas, and other minerals in or under, or that may be produced from, the land, the conveyance must convey the right of ingress and egress at all times for the purpose of mining, drilling, and exploring such lands for oil, gas, and other minerals, and removing the same therefrom, with the right to remove any or all equipment in connection therewith at any time.

38-10-11. Property directed by will to be disposed of - Duty of executor.

If property is directed by a will to be sold or if authority is given in a will to sell property, the executor may sell the whole or any fractional part of the oil, gas, or other minerals in or under, or that may be produced from, land belonging to the estate in the same manner as the executor may sell the property under title 30.1.

38-10-12. Appointment of trustee to execute mineral lease if contingent future interests are involved.

If lands, or any estate or interest therein, are subject to any contingent future interest, legal or equitable, by way of remainder, reversion, or possibility of reverter, upon the happening of a condition subsequent, or otherwise, created by deed, will, or otherwise, and whether a trust is involved or not, and it is made to appear that it will be advantageous to the present and ultimate owners of said lands or estate or interest therein, the district court of the county in which the land or a portion thereof is situated has the power, pending the happening of any contingency and the vesting of such future interest or interests, to declare a trust in said lands or estate or interest therein, appoint a trustee therefor, and to authorize such trustee to sell, on such terms and containing such conditions as the court may prescribe, execute and deliver a valid oil, gas, coal, or other mineral lease covering said lands or estate or interest therein. If a trust is in existence and there is a trustee serving under the trust, the trustee appointed by the court under this section must be the same trustee or trustees as are serving under the existing trust. All proceedings must substantially comply with that provided for the administration of trusts in chapters 59-09, 59-10, 59-11, 59-12, 59-13, 59-14, 59-15, 59-16, 59-17, 59-18, and 59-19.

38-10-13. Who may institute proceedings.

The proceedings provided for by section 38-10-12 may be instituted upon the petition of any one or more of the parties who have a present interest or a contingent interest in the land or estate or interest therein.

38-10-14. Disposition of income and royalties.

All bonuses, rental payments and royalties from such leases must be paid to the trustee until the lessee is furnished with notice of the termination of the trust. Any bonuses or rental payments must be distributed by the trustee to the life tenant or other persons entitled thereto. The trustee is authorized to invest royalties from such leases in such investments as may appear to be in the best interests of the life tenant and remaindermen. Income from investments must be paid to the life tenant or other person entitled thereto.