

# THE LAW OFFICE OF RUTH BROCK

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## A note from Ruth and Lee Ann.....

*With dirt flying on almost every corner in Flower Mound, everyone is interested in real estate. So, read on to learn about **oil and gas development**, the possible benefits of subjecting your land to a **conservation easement**, and new processes available for **resolving post-construction defects**, or just to add some zing to your Starbucks conversations.*

*Please stop by for a visit if you're in our area, and if we don't see you before the Thanksgiving holiday, please know that we appreciate you.*



Ruth Brock



Lee Ann Strunk

## Rights of Surface Owners as Gas Wells are Drilled

As gas development creeps nearer, many Denton County residents find themselves pulling out their deeds in an effort to determine whether they own the underlying mineral interests. If an owner discovers that the underlying "mineral estate" is owned by someone else, what rights does the owner of the "surface estate" have?

As you might expect in a mineral-rich state like Texas, our law provides that the mineral estate is dominant, or is in the power position, over that of the surface estate. That is, as long as it acts without negligence, the owner of the mineral estate can use the surface "as needed" to develop the minerals.

One of the few exceptions is the "accommodation doctrine," which requires a balancing of the interests of the surface user and the minerals user. This balancing is only required in the event the surface use pre-exists the development of the minerals. That is, **if** there is an existing use of the surface at the time the minerals are being developed for production, the mineral estate must use the method of development which has the least impact on the surface use. However, the mineral estate is NOT required to protect the surface use if to do so

would preclude or impair mineral production. Because of both constant changes in drilling technology and varied fact situations, the application of the doctrine is always subject to the circumstances in each given situation. The recent case of *Texas Genco, LP v. Valence Operating Company*, 187 S.W. 3d 118 (Tex. App. Waco, 2006), which is currently **pending appeal** with the Texas Supreme Court, provides an example of how complex this balancing act can be.

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## Conservation Easements Popular

Conservation easements are becoming more popular in this area due to increasing land values and the popularity of blending higher-density residential uses with natural "open space." Flower Mound currently has two conservation-designed projects (Chimney Rock and the Sanctuary), and two or three more are being considered, according to sources with the Town.

By use of a conservation easement, a developer or a landowner permanently restricts all or a portion of his property for uses such as animal habitat, open space, or scenic view.

The easement is actually a perpetual grant to a charitable land trust that accepts responsibility for monitoring the easement to assure compliance with the easement purposes.

The benefits to a developer can include—

- reduced infrastructure costs,
- substantial reduction in park dedication fees, and
- reduction in agricultural rollback taxes.

The benefits to an individual landowner can include—

- estate tax savings,
- income tax savings, and
- a guarantee that a ranch or a scenic view is preserved without the threat of subsequent development.

Frequently, these benefits can be achieved while the landowner continues to reside at the property.

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## Residential Construction Defect Options

In 2003, the Texas legislature passed the Texas Residential Construction Commission Act (TRCCA) in an effort to establish some solid ground for both builders and consumers. Before the passage of the Act, home

builders were concerned that they might be subjected to the capricious whims of sometimes impossible-to-please consumers. Consumers were plagued by vague, weak warranties provided by builders trying to extricate themselves from the whole post-construction repair process.

Under TRCCA, most builders are required to be licensed and to register their home construction projects with the Texas Residential Construction Commission. TRCCA establishes minimum standards for home warranties and building and performance standards. Additionally, it provides a process for resolution of post-construction defects, which utilizes third-party inspectors to assess the nature of an alleged defect and recommend repairs.

To determine if your new home was registered with the Texas Residential Construction Commission, if your builder is registered, or to learn more about the process, check the Texas Residential Construction Commission website at <http://www.trcc.state.tx.us/>

*Note: You should be aware that TRCCA is not applicable to all residential construction projects, and other statutes, including the Residential Construction Liability Act, may also be applicable. The advice of legal counsel is recommended when dealing with post-construction defects.*

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