

Strategies for Curing Title Defects in Agricultural Land Transactions: Identifying and Resolving Common Clouds on Farmland Titles

Roger McEowen (roger.mceowen@washburn.edu) – Washburn University School of Law

Ag Law and Taxation Blog: <https://agriculturallaw.lawprofessorsblogs.com/>

March 2026

Overview

In the world of agricultural real estate, "clean title" is more than a legal formality—it is the bedrock of collateral for operating loans, USDA program eligibility, and long-term land stewardship. Unlike urban residential plots, farmland carries a unique set of historical "encumbrances" that can stall a closing or jeopardize a generational transfer.

Curing title defects in an agricultural context requires a blend of traditional real estate law and a deep understanding of rural land use history.

Identifying the "Ag-Specific" Defects

Before a defect can be cured it must be categorized. In rural transactions, the most common "clouds" on a title include:

- **Ancient Mineral Severances:** Rights to oil, gas, or minerals reserved by a great-grandparent, for example, in 1920 that were never exercised but remain on the chain of title.

Note: In many states (such as those with a Dormant Mineral Act), mineral interests can be reunited with the surface if they haven't been "used" or "booked" for 20-plus years.

- **Undefined Easements:** Blanket easements for utility lines or "farm-to-market" roads that lack specific legal descriptions.
- **Heirship Gaps:** "Heir property" issues where a predecessor died intestate (without a will), leaving the land owned by dozens of distant cousins, for example, who may not even know they have an interest.
- **Boundary Discrepancies:** Conflicts between historical "fence-line" boundaries and modern GPS surveys.

The Legal Toolkit for Curing Defects

Depending on the severity of the cloud, it is common for real estate attorneys to use one of three strategies for clearing up a title to agricultural real estate.



- **Corrective Instruments (the "Soft" Cure).** If the defect is a clerical error - such as a misspelled name or an incorrect legal description in a prior deed - a Corrective Deed or an Affidavit of Scrivener's Error is the most efficient fix. This is the most useful approach for fixing an older deed that accidentally described the "Northwest Quarter" instead of the "Northeast Quarter."

Observation: In many jurisdictions, a "Scrivener's Affidavit" cannot be used to change the *substance* of a legal description (e.g., changing "Northwest" to "Northeast"). Many title underwriters require a Corrective Deed signed by the original parties for substantive changes, as an affidavit is technically "self-serving" testimony by the drafter.

- **Affidavits of Heirship and Death.** In cases of intestate succession (when a person dies without a will or trust that disposes of their property), an Affidavit of Heirship can bridge the gap in the chain of title.¹ While not as robust as a formal probate decree, when combined with a specific period of time (varying by state statute), it allows title companies to insure the transaction.² The person signing the affidavit must be a disinterested party who knew the family history well but does not stand to inherit.

Note: Many title companies require the affidavit to be of record for a specific number of years (often 5 to 10) before they will rely on it exclusively for a "clean" title policy. Also, even if heirs are identified, care should be taken to ensure there are no outstanding liens or UCC-1 filings on farm equipment (or other farm-related assets) that might be tied to the land's title.

- **Quiet Title Actions (the "Hard" Cure).** When a defect cannot be solved through cooperation (e.g., a missing heir refuses to sign or a mineral holder cannot be found), a Quiet Title Action is necessary. This is a formal lawsuit filed in the county where the land sits. Procedurally, the court issues a judgment declaring the plaintiff's ownership and "quieting" all other claims. This is often the only way to extinguish ancient, unused easements that interfere with modern irrigation or building placement.

Specialized Agricultural Considerations

In the agricultural context, there are common situations that often result in title defects.

Fences and boundaries. One involves boundary (partition) fences. Farmers often treat fences as borders regardless of what a subsequent survey might indicate. Indeed, in agriculture, fences often determine property boundaries more frequently than does a survey.³

¹ An Affidavit of Heirship is often the "missing link" in rural land titles where probate was skipped,

² Importantly, an Affidavit of Heirship does not cut off the rights of omitted heirs or taxing authorities. Unlike a court-ordered probate decree, an affidavit is merely evidence. For instance, if a "lost" cousin appears several years later, the title insurance company (not the affidavit) is the buyer's only real shield.

³ Indeed, "agreed boundaries" where both parties treat a fence as the line for a statutory period, can become the legal line regardless of a survey via a quiet title action.

In these situations, a boundary line (fence) agreement entered into by the adjacent landowners can resolve a fence-line encroachment issue and prevent an adverse possession claim.⁴

Water rights. Another area of concern involves water rights. In many states, water rights can be severed from the land. In "Prior Appropriation" states (primarily the western two-thirds of the U.S.) water rights are real property interests that can be sold separately from the land. A title search for the *land* will often not show the status of the *water*. The danger is that a buyer might purchase 500 acres of "irrigated" farmland only to find the water rights were sold to a nearby municipality ten years prior. In this situation, it is critical to trace the water right through the state's Department of Water Resources, not just the County Recorder's office.

To truly "cure" a water defect, it is often necessary to file a Report of Conveyance or a Change of Ownership form with the state agency.⁵ If the chain of title for the water is broken, a "Quitclaim Deed" may be necessary to specifically address water rights from all potential heirs of the original right holder. A Special Warranty Deed can be used if the seller is willing to warrant that *they* didn't sell the water, but they cannot guarantee that a predecessor in 1940 didn't encumber it.⁶

Note: Water rights are subject to forfeiture or abandonment. Thus, even if the title is "clean," if the water hasn't been applied to "beneficial use" for a statutory period (usually 3–10 years), the right may be legally dead. This means that to be thorough, the curative document should suggest an Affidavit of Beneficial Use or evidence of power bills for irrigation pumps to prove the right is active.

Conservation easements. Conservation easements may also present title issues. If the land is under an NRCS or private easement, any new mortgage must be "subordinated" to that easement. This can be accomplished by the execution of a subordination agreement.

Miscellaneous. USDA Farm Service Agency (FSA) liens or "shared appreciation" agreements can act as a cloud on title if the seller received federal subsidies. Also, for western ranches, if the ranch relies on Bureau of Land Management (BLM) or Forest Service land, the "title" to those permits is a critical part of the transaction's value, even if they aren't "fee simple" property. And, oral "year-to-year" leases are common in agriculture. In many states, if a tenant has a crop in the ground, they have a legal right to the land that survives a sale, which is a "possessory" defect on title.

The Role of Title Insurance and Endorsements

Standard title policies often exclude matters that a "physical inspection" would reveal. For agricultural land, it is critical to request specific endorsements such as a survey endorsement (to cover losses due to inaccuracies in boundary measurements); an access endorsement (to guarantee that the property has legal access to a public

⁴ Also, many states have specific laws dictating who is responsible for maintaining which half of a boundary fence. While not a title defect, per se, a violation of these statutes can create a statutory lien or a neighbor dispute that stalls a closing.

⁵ A "title cure" for water may also require a Well Log or a Meter Test. A legal right to 500 acre-feet of water, for example, is a "clouded" asset if the physical well has collapsed or the aquifer is depleted.

⁶ A Special Warranty Deed protects the buyer from the seller's actions, but it does not cure a pre-existing defect. If the water right is missing, the deed won't bring it back.

road which is vital for hauling grain and equipment); and a contiguity endorsement (to ensure that multiple parcels being purchased are actually touching and have no "gaps" or "gores" between them.

Conclusion

Curing title defects in agricultural transactions is a process of reconciling the informal "handshake" history that is common in American agriculture with the rigid requirements of modern real estate law. By utilizing corrective instruments early and resorting to Quiet Title actions, when necessary, assurance can be achieved that the land remains a viable asset for the next generation.

For more information about this publication and others, visit [AgManager.info](https://www.agmanager.info).

K-State Agricultural Economics | 342 Waters Hall, Manhattan, KS 66506-4011 | www.ageconomics.k-state.edu

[Copyright 2026: AgManager.info](https://www.agmanager.info) and [K-State Department of Agricultural Economics](https://www.ageconomics.k-state.edu)

