WINBLAD LAW PLLC
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Wills, Trusts, Estate Plans, Probate

Methods to transfer oil and gas mineral interests to children or heirs.

Instrument Type	Probate Avoidance	Control	Capital Gains	Advantages	Disadvantages
Deed to kids Gift.	Yes	Lost	If sold, the kids have the same "basis" of the grantor. Basis is the price paid or the value at inheritance	Simple. Nothing to be done. Completed once filed.	Lose control, may trigger the need for a Gift Tax return. No ability to recover from the kids. May impair eligibility for needs-based programs.
Joint Tenancy Property is held by two or more persons. When one dies the survivors own the property.	Yes, at least on first death.	Loss of total control.	Same as for deed	Simple, survivor files affidavit with copy of death certificate.	Same as for deed. Also, if a child predeceases additional planning needed.
Life Estate Owner retains income and right to use the property. Upon death the remandermen (persons to inherit) receive the property.	Yes, at first death	Unless carefully drafted may prevent leasing, making elections on pooling order, etc.	Kids get "stepped up basis" meaning that capital gains are measured from value at the time of death of the grantor.	Simple to transfer with death certificate and affidavit.	Cannot make changes. This can cripple ability to lease or take other actions. May impair eligibility for needs-based programs.
Transfer on Death Deed Owner designates one or more persons to receive the property upon his/her death.	Usually avoids probate or creditor claims.	Under most statutes, the owner can sell, lease, give away property without permission or notice to the beneficiaries.	Kids get "stepped up basis" meaning that capital gains are measured from value at the time of death of the grantor.	Very simple to set up. Avoids probate. Beneficiaries claim property by filing death certificate. Ability to change at any time prior to death.	May work well for mineral interests. In Oklahoma if beneficiaries don't act promptly, then becomes subject to probate. Limited or non-existent ability to name contingent beneficiaries.
Trust Property is deeded to trustee who manages the property. Typically distributes to beneficiaries upon grantor's death.	Not subject to probate, some states may require minimal court filings.	Grantor becomes Trustee and retains control.	Kids get "stepped up basis" meaning that capital gains are measured from value at the time of death of the grantor.	Simple to establish, simple to distribute property. No separate tax return while grantor is living.	Only works if minerals are deeded to the trust. One trust can hold minerals from many states.
Last Will & Testament	Requires probate.	Control and ability to change Will, lease or sell property.	Kids get "stepped up basis" meaning that capital gains are measured from value at the time of death of the grantor.	Must be properly drafted and witnessed. May be changed.	Costly administration through the courts. May be subject to creditor claims. Requires administration or probate in each state where minerals are located.

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