State of Texas
Texas General Land Office
Vacancy Application Packet

VACANCY APPLICATION PACKET

This vacancy application package includes the following documents:

- **The Vacancy Process -- An Overview**
  This document explains the vacancy and good-faith claimant process. It is for your records.

- **Application To Purchase Or Lease Vacant Land.**
  This application form should be completed in its entirety.

- **Instructions for Completing and Filing Vacancy Application and for Paying Required Fees and Cost Deposit.**
  The instruction sheet provides step-by-step directions for completing the application and preparing the list of necessary parties as well as instructions on how to file the completed application. The sheet also describes the fees and cost deposit that must be paid in connection with the vacancy application.

- **Instructions for Completing and Filing Good-Faith Claimant Affidavit & Supporting Documents.**
  The instruction sheet provides step-by-step directions for completing the affidavit as well as instructions on how to file the affidavit and any other documents that may be required.

- **Good-Faith Claimant Affidavit.**
  If you use or occupy land or if you claim minerals or mineral rights on land that the GLO determines to be vacant, you may have a right of first refusal to purchase the land or the minerals. To assert that claim, you must complete the Good-Faith Claimant Affidavit and attach land records that support your claim. You may file it with the vacancy application. A Good-Faith Claimant Affidavit may be filed anytime up to 90 days following a determination that a vacancy exists.

For more information or additional forms, contact:

Texas General Land Office
Asset Enhancement
Director of Surveying
1700 N. Congress Ave.
P. O. Box 12873
Austin, Texas 78711-2873

Phone: (512) 475-1437

THE GLO VACANCY PROCESS

This discussion is intended to provide vacancy applicants and those applying for good-faith claimant status, with a general explanation of the process that the Texas General Land Office (GLO) uses when determining whether or not a vacancy exists. This discussion does not constitute legal advice and is not considered a substitute for the law and procedures under Chapter 51 or the accompanying rules found in Title 31, Texas Administrative Code, Chap. 13, Subchap. F. ***YOU MAY WISH TO CONSULT WITH AN ATTORNEY WHO HAS EXPERIENCE IN LAND BOUNDARY MATTERS FOR ASSISTANCE WITH THIS PROCESS.***

VACANCY OVERVIEW

A vacancy is a tract of unsurveyed unsold public land located between original surveys. A vacancy usually arises from surveying errors. Land that was never surveyed in original land grants still belongs to the state. Vacant state land has been dedicated by the Texas Constitution to the benefit of the permanent school fund to support public education.

The existence of a potential vacancy is usually revealed when land is surveyed for other purposes, and the surveyor finds a gap on the ground between two older surveys that were presumed to be adjoining. The legislature has granted the GLO the statutory authority to process applications and to determine whether a vacancy exists.1 Once a vacancy has been determined to exist, the School Land Board has the authority to sell or lease certain property interests in the property at fair market value. GFCs and the applicant have preferential rights to buy or lease the vacant land.

INITIATING A VACANCY APPLICATION

To initiate the vacancy process, a vacancy application must be completed and filed with the county or counties where the allegedly vacant land is located and with the GLO. The applicant must include all the information required by the vacancy statute.

The application fee of $150, field note filing fee of $25, and a $25 filing fee for each affidavit and deed submitted, must accompany the application when submitted to the GLO.

In completing the application, the applicant is required to make a diligent search of all land and tax records to find the names and last known addresses of all necessary parties.

The applicant bears the cost of a vacancy determination. In addition to filing fees, the applicant must pay for notifying necessary parties and any other administrative costs.

MAKING A COST DEPOSIT

The applicant must make a cost deposit to cover the estimated cost of processing the vacancy application, including mailing notices, the cost of an attorney ad litem, and the cost of a hearing, if required. The GLO will inform the applicant of the required amount of the cost deposit after the application has been declared administratively complete. The GLO may require additional deposits. The deposit is only an estimate, and the applicant is liable for all costs of the vacancy, even of the amount exceeds the original cost deposit.

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1 See TEX. NAT. RES. CODE §§ 51.171 et seq.

PROVIDING A SURVEY

To determine the existence of a vacancy, a survey is required. The applicant can provide a survey, but it must be done in accordance with statutory requirements and the GLO's rules. If the applicant provides a survey, the survey and the field notes must be filed with the application.

If the applicant chooses, the GLO will retain a surveyor to perform the required survey at the applicant's expense. A cost deposit is required once the application is declared
administratively complete.

If the Commissioner appoints a surveyor pursuant to the applicant's request, the survey must be submitted to GLO within 120 days after surveyor's appointment. The GLO must mail notice of intent to survey to all necessary parties thirty days prior to the beginning of the survey. The GLO must send, by certified mail, a copy of the survey to all necessary parties within thirty days of the date that the survey is filed at the GLO.

FILING ORIGINAL VACANCY APPLICATIONS WITH THE COUNTY AND THE GLO

After the vacancy application is prepared, *but before it is filed with the GLO*, the applicant should provide four originals of the vacancy application to the county clerk of each county in which all or part of the land claimed to be vacant is located. The county clerk should file stamp all four copies, return three to the applicant, and file one original in the county records.

Within five days after filing the application with the necessary county clerk(s), the applicant must file a file-stamped original with the county surveyor of each county in which all or part of the land claimed to be vacant is located (if the county has a county surveyor).

The applicant must file two file-stamped originals of the application with the GLO within 30 days of filing with the county clerk. The GLO must inform the applicant within 45 days of receiving the application whether it is administratively complete. All subsequent timelines begin when the application is administratively complete.

DETERMINATION OF ADMINISTRATIVE COMPLETENESS

If the vacancy application is deemed incomplete, the GLO will notify applicant of deficiencies. The applicant has thirty days to cure the deficiencies. If not cured, the vacancy application may be dismissed without prejudice.

If the application is administratively complete, the GLO will notify the applicant that the application commencement date will be two weeks after the date of the notification letter. Within thirty days of application commencement date, the GLO will notify the necessary parties of the filing of the vacancy application, include a copy of the survey and field notes, if they were filed with the application, a Request for Continuance of Notice to receive further notices regarding the GLO's investigation of this vacancy application, and a GFC Affidavit .

APPOINTMENT OF ATTORNEY AD LITEM

The applicant must provide evidence that he or she owns all real property interests (surface and minerals) in the land surrounding the alleged vacancy. If the applicant does not own all interests, the Commissioner shall, within 30 days of application commencement date, appoint an attorney ad litem to identify all necessary parties. The fees for the attorney ad litem's services will be paid by the applicant through the cost deposits.

FILING AN EXCEPTION TO AN APPLICATION OR A SURVEY

Within sixty days after the date of the notice to necessary parties, any necessary party can file an exception to the vacancy application or to the survey filed with the application. Within thirty days after the filing of a survey by a surveyor appointed by the Commissioner, a necessary party may file an exception to the survey. In either instance, the exceptor must send a copy of the exception to all necessary parties.

ASSERTING GFC STATUS WITH THE APPLICATION

The applicant may file the GFC affidavit with the vacancy application. The land records that support a GFC affidavit often contain valuable information about possible necessary parties, such as mineral interest holders.

INVESTIGATION OF THE ALLEGED VACANCY

After receiving all the necessary information, the GLO will investigate the alleged vacancy. If no vacancy is found to exist, the Commissioner will issue a finding of no vacancy, which is unappealable.

DETERMINATION THAT A VACANCY EXISTS

If the GLO determines that a vacancy may exist, it will conduct a hearing. If the Commissioner determines that a vacancy exists, the Commissioner will issue a final order including findings of fact and conclusions of law. A vacancy finding can be appealed to district court. Within 15 days of issuing the final order, the Commissioner will send a copy to **all** necessary parties, including those who did not request continuance of notice.

NOTICE OF CLAIM OF VACANCY

The Commissioner's final order shall be attached to a "Notice of Claim of Vacancy" and filed with the county clerk and any county surveyor of each county in which any or a part of the vacancy is located.

DETERMINATION OF PREFERENCE TO PURCHASE OR LEASE AS A GFC

After a vacancy is determined, the GLO will determine GFC status based on the affidavits and supporting lands records received. Anyone asserting status as a GFC should complete the GFC affidavit, which must be filed within ninety days after a determination that a vacancy exists. The GFC applicant must provide certified copies of all deeds and other county property records supporting his or her claim. Following the GLO's determination of the GFCs, the SLB will sell or lease the vacant land in accordance with the preferences of the GFCs.

APPLICATION TO PURCHASE OR LEASE VACANT LAND

FOR GLO USE ONLY - DO NOT WRITE IN THE BOX

S.F. No. _____ M.A. No. _____ Date Received: _____ Applicants County(ies): _____ _____ _____ _____	Application Commencement Date: _____ By: _____ Termination Date: _____ ☐ Application Denied with Prejudice ☐ Application Denied without Prejudice ☐ Application Rejected for other Reason By: _____

TO THE COMMISSIONER OF THE GENERAL LAND OFFICE, AUSTIN, TEXAS:

1. I, _____ [print name] , hereby apply to

☐ purchase the surface estate, ☐ purchase the surface and the mineral estates, or

☐ lease the mineral estate in the following described area, which I believe to be unsurveyed public school land under the provisions of TEX. NAT. RES. CODE § 51.171 et seq.

2. The said tract of land is situated in _____ County*, Texas about _____ miles _____ from _____ , the county seat, and is bounded as follows to-wit**: _____

_____

☐ I do claim status as a Good-Faith Claimant ☐ I do not claim status as a Good-Faith Claimant

3. ☐ I have submitted a survey report with this application, and the survey was prepared by _____

_____

OR

☐ I have not submitted a survey report with this application request and I hereby request the General Land Office to obtain a survey of the tract at my expense

4. ☐ I will submit an abstract of title ☐ I will not submit an abstract of title

** If the alleged vacancy is located in more than one county, you will need a separate original application for each county. Please contact GLO's Vacancy Administrator for assistance at (512) 463-5009.*

*** You may attach a separate sheet describing the tract or refer to the description in the survey, if one is included.*

LIST OF NECESSARY PARTIES

In the table provided below, **please print legibly or type** a list of the full names and addresses of **all** persons who have a present legal interest in the surface or mineral estate of the land claimed to be vacant, as ascertained from the records of the General Land Office, and the applicable county records including tax records of the county or counties where the alleged vacancy is located. You may attach a separate sheet if you wish or additional sheets if necessary. This is the list of interested parties for your vacancy application. Please refer to the instructions for more information about identifying necessary parties. **Your application cannot be processed without a complete list of the names and addresses of all necessary parties.**

Name of Necessary Party(ies)	**Address & Other Contact Information** (Please include phone number and email address if available)	**How Necessary Parties are Identified** (Please state source of names such as deed, county tax appraisal rolls, personal knowledge, etc., if available)

Name of Necessary Party(ies)	**Address & Other Contact Information** (Please include phone number and email address if available)	**How Necessary Parties are Identified** (Please state source of names such as deed, county tax appraisal rolls, personal knowledge, etc., if available)

SWORN AFFIDAVIT OF DILIGENT SEARCH FOR NECESSARY PARTIES

I hereby certify that I, or person(s) under my direction and control, in order to identify al lnecessary parties to this vacancy application in accordance with the requirements of TEX. NAT. RES. CODE § 51.176(a)(3) and (4), have performed a diligent search of the records of the General Land Office as well as the records of the county or counties containing land alleged to be vacant in this vacancy application, including tax records and deed records of such county or counties.

I further certify that the list of necessary parties submitted with this vacancy application was compiled based upon the results of such diligent search, and that, to the best of my knowledge based on such diligent search, such list of necessary parties contains the names and addresses of all persons and legal entities appearing in such county and land office records who are necessary parties to the above-referenced vacancy application.

_____

Applicant Signature

ACKNOWLEDGEMENT

Sworn to and subscribed before me, by _____ this the _____ day of

_____ , 20__ .

_____

Notary Public, State of Texas

My commission expires: _____

IMPORTANT NOTICE!

Texas Natural Resources Code 51.176(c) requires the County Clerk to record one original in a book kept for the purpose of recording vacancy applications separate from the real property records.

Within five (5) days of the filing with the County Clerk, one original application must be filed in the appropriate records of the County Surveyor, if there is a County Surveyor.

Within **thirty (30) days** of the date stamped on the application, you must submit or deliver **two (2) file stamped originals and a filing fee of $150.00** to the attention of the Legal Services Division, Texas General Land Office, 1700 N. Congress Ave., P. O. Box 12873, Austin, TX 78711. One original will be returned to the Applicant for their records. **If you are seeking good-faith claimant status, see additional requirements in the good-faith claimant affidavit included in the application package.**

I, _____ , County Clerk of _____ , County, Texas, hereby certify that the above and foregoing application was filed for record on the _____ day of _____, 20__ , at _____ o'clock _____ , and duly recorded in Book _____ , Page _____ in the County Clerk's Office, _____ County, Texas.

_____
County Clerk

INSTRUCTIONS FOR COMPLETING AND FILING VACANCY APPLICATION AND FOR PAYING REQUIRED FEES AND COST DEPOSIT

OVERVIEW

An applicant initiates the vacancy determination process by completing a vacancy application and submitting the application and the required documentation and fees to the GLO as required by law. The applicant should follow the steps described below to ensure that the vacancy application is accepted by the GLO. For more information or additional forms, contact:

Texas General Land Office
Asset Enhancement
Director of Surveying
1700 N. Congress Ave.
P. O. Box 12873
Austin, Texas 78711-2783

Phone: (512) 475-1437

STEP 1: OBTAIN A VACANCY APPLICATION PACKET

The applicant should obtain a vacancy application packet from the GLO. As the vacancy statute has changed over the past several years, the applicant should make sure that he or she has the most recent version of the vacancy application.

STEP 2: SEARCH FOR NECESSARY PARTIES

The identification and notification of necessary parties that a vacancy application has been filed is essential to the vacancy process. **It is the responsibility of the applicant to identify all necessary parties.** The applicant must make a diligent search of the land and tax records to find the necessary parties.

A "necessary party" can be any of the following persons:

- an applicant or good-faith claimant whose present legal interest in the surface or mineral estate of the land claimed to be vacant may be adversely affected by the vacancy determination;
- a person who asserts a right to or who claims an interest in land claimed to be vacant;
- a person who asserts a right to or who claims an interest in land claimed to be vacant or in **land adjoining land claimed to be vacant** as shown in the records of the land office or the county records, including tax records, of any county in which all or part of the land claimed to be vacant is located;
- a person whose name appears in the relevant land or tax records; and
- an attorney ad litem appointed under TNRC §51.180.

Here are the primary sources for information about necessary parties:

- **Survey.** If the applicant has a survey performed to support the vacancy application, the survey may provide the names and addresses of adjacent landowners.
- **County Tax Maps.** County tax maps are up to date and will show the names of current owners of adjacent land. Addresses can be obtained from the county property tax records.
- **Deeds.** Deeds and other instruments conveying interests in the allegedly vacant land often include the names of people who may be necessary parties, either because they retain an interest in the land or because they may hold mineral rights.

After a vacancy application is filed, the GLO may find it necessary to retain an attorney ad litem to identify other necessary parties. The applicant will pay the cost of the work of an attorney ad litem. Therefore, the applicant who performs a thorough search before filing the application may be able to reduce the cost of the vacancy application process by minimizing the need for the services of an attorney ad litem.

STEP 3: COMPLETE THE VACANCY APPLICATION

The applicant should prepare four (4) "original" vacancy applications to initiate the vacancy process and have the applications notarized, filed and file stamped as indicated below:

- **Vacancy Application Form.** The applicant must complete the vacancy application form. On the application form the applicant does the following:
  - Declare intent to purchase or lease the surface, or obtain a mineral lease, or both;
  - List the names and last known addresses of all necessary parties; and
  - Provide a description of the land alleged to be vacant, which may be a simple "bounds description" of all original surveys surrounding the allegedly vacant tract.
  - Declare in the sworn affidavit (included in the application) that he or she has performed a diligent search of all relevant records to identify the names and addresses of the necessary parties.
- **Survey.** The applicant may, but is not required to, submit a survey or an abstract of title to the land adjoining the alleged vacancy.
- **Good-Faith Claimant Affidavit & Supporting Records.** The applicant may submit a GFC affidavit and the supporting deeds and records, if the applicant wishes to claim GFC status. The applicant or any other person may claim GFC status anytime up to 90 days following the finding of a vacancy.
- **Filing Fees.** The fee for filing a vacancy application is $150.00. The fee for filing deeds or other land records that support a GFC claim is $25.00 per instrument. The Survey Report consists of the original field notes, report of survey and plat. There is no charge to file a survey report and plat accompanying a vacancy application. However, the fee for filing the original field notes is $25.00.

STEP 4: FILE THE VACANCY APPLICATION WITH THE COUNTY

The applicant must take the four original vacancy applications to the county clerk for each of the counties in which allegedly vacant land is located. The applicant should retain three (3) file-stamped originals and direct the county clerk to file the remaining original in the county land records.

Within five (5) days of filing the original application with the county clerk, the applicant must file one of the three remaining file-stamped originals with the county surveyor, if a county surveyor exists.

STEP 5: FILE THE VACANCY APPLICATION WITH THE GLO

The applicant must file the remaining two file-stamped original vacancy applications and required fees with the GLO within thirty (30) days after the county clerk's date stamp. The GLO will return one file-stamped original to the applicant marked with the GLO's file number.

Within thirty (30) days of the date stamped on the application, the applicant should submit two (2) file stamped originals and a filing fee of $150.00 to the following address:

Texas General Land Office
Legal Services Division
Vacancy Administrator
P. O. Box 12873
1700 N. Congress Avenue
Austin, Texas 78701

Phone (512) 463-5009

One original application, stamped with the GLO's file number, will be returned to the applicant for his or her records.

Please note that the GLO will accept a document for filing only if it bears *original signatures and seals* of notaries, county clerks, and surveyors, as appropriate.

COST DEPOSIT REQUIREMENT

The applicant must make a deposit for the estimated costs to GLO for investigating the application, including the costs of a survey, if a surveyor is appointed by the Commissioner, hearings, preparations of copies and sketches, mailings, attorney ad litem, and similar costs. The GLO will notify the applicant in writing of the estimated amount. Failure of the applicant to make the required deposit within thirty (30) days will result in termination of the application without prejudice. Thus, the applicant can file the same vacancy application in the future as long as it meets all of the GLO's requirements.

INSTRUCTIONS FOR FILING GOOD-FAITH CLAIMANT (GFC) AFFIDAVIT

If you are an applicant or other interested party filing as a good-faith claimant (GFC), you must submit a GFC Affidavit and supporting documents, such as deeds.

You may file a GFC Affidavit any time up to ninety (90) days following the issuance of a final vacancy order by the Texas Land Commissioner. Failure to file a GFC Affidavit by that time will result in forfeiture of any preferential right to purchase or lease.

The enclosed GFC Affidavit form may be used, or you may create a separate document including all the required elements of the GFC Affidavit as set forth in the enclosed form. If you use the enclosed form, fill in the blanks in the first part and attach an approximate description of the portion of the vacancy to which your claims apply, marked as "Exhibit A." Choose only the <u>one</u> option that describes your claims, complete that option, and cross out all other options with an "x."

<u>The completed GFC Affidavit must be notarized.</u>

With your GFC Affidavit, you must file proof of your claim, including copies of the deeds, tax receipts, title opinions or other documents providing evidence of your good-faith belief that you or your predecessors:

- Have occupied or used the land claimed to be vacant, including the surface or mineral estate;
- Hold an easement or right-of-way on or across the land claimed to be vacant;
- Own a mineral royalty or leasehold interest in the land claimed to be vacant;
- Have the land enclosed and have had it in possession under a chain of title for at least ten (10) years; or
- Own land adjoining the land claimed to be vacant.

Information supporting your GFC status may include, but is not limited to, the following:

- The purpose for which the vacant land is being and has been used;
- Your good-faith belief that the vacant land was included within the boundaries of a survey or surveys previously titled, awarded or sold under circumstances that led your predecessors in interest (10 years or more) and then you to believe that they and then you own the land;
- That you or your predecessors in interest have had the vacant land under fence or within definite recognized boundaries and have been in possession for 10 years or more with a good-faith belief that you own the vacant land;
- How you acquired your property;
- The extent and manner in which your property adjoins the vacant land;
- A brief history of the oil, gas, other mineral or geothermal resource activity on the land, including any active leases, royalty and leasehold interests;
- Whether you or your predecessors in interest have paid taxes on the land adjoining the vacancy, giving the specific taxes and dates;
- Evidence of any easement or right-of-way interests; and
- Any other factual statements that will help the GLO determine your good-faith claimant status.

Send the GFC Affidavit, supporting documents, and filing fees to the following address:

Texas General Land Office
Legal Services Division
Vacancy Administrator
1700 N. Congress Ave.
P. O. Box 12873
Austin, Texas 78711-2873

Phone: (512) 463-5009

REMEMBER to include a check for the appropriate document filing fees.
Fees include $25.00 for the GFC Affidavit and $25.00 each for all documents filed in support of the GFC affidavit (such as deeds, leases, etc.).

Good-Faith Claimant Affidavit (form)

STATE OF Texas §
§
COUNTY OF _____ §

SF/MA _____

County _____

AFFIDAVIT
(Good-Faith Claimant)
(Claimant should modify as appropriate)

The undersigned, being first duly sworn on oath, states as follows:

"My name is _____ _____ _____ _____
(First) (Last)

I am over eighteen years of age and I reside at the following address:

Mailing Address _____ City _____ State _____

Zip Code _____ ."

"I, or my business entity _____ ,
(Name of Business Entity)

as the case may be, claim status as a good-faith claimant of approximately _____ acres out of the alleged vacancy in _____ County, Texas, described in the Application to Purchase or Lease Vacant Land, filed by _____ , SF No. _____ . A plat, map, diagram, or other description,
(Applicant)

approximately depicting the portion of the vacancy to which I claim status as a good-faith claimant is attached to this affidavit as Exhibit A." **[Please attach an approximate description, marked as "Exhibit A."]**

[Instructions: Affiant should complete only the one option below that describes his or her claims, and cross out the others with an "x." Attach additional sheets to this affidavit form if necessary.]

Option 1 – Choose if asserting both surface and mineral claims:

"I have occupied or used the alleged vacancy, or, to the best of my knowledge and belief, my predecessors in interest have occupied or used the portion of the alleged vacancy described above, for various purposes including exploring for or removing oil, gas, sulphur, other minerals or geothermal resources from the alleged vacancy for a period of ____ years. Specifically, I have used the alleged vacancy at the following times for the following purposes:

_____ ."

If printing, please print legibly using blue or black ink

Option 2 – Choose if asserting surface claim only:

"I have occupied or used the alleged vacancy, or, to the best of my knowledge and belief, my predecessors in interest have occupied or used the portion of the alleged vacancy described above for a period of ____ years. Specifically, I have used the alleged vacancy at the following times for the following purposes:

."

Option 3 – Choose if asserting mineral, royalty, or leasehold claims only:

"I, or my business entity _____ ,
(Name of Business Entity)
used the alleged vacancy for the purpose of exploring for or removing oil, gas, sulphur, other minerals or geothermal resources from the alleged vacancy at the following times and in the following manner:

."

Option 4 – Choose if asserting easement or right-of-way claim:

"I, or my business entity _____ ,
(Name of Business Entity)
used the alleged vacancy for the purpose of an easement or right-of-way for the following times and purpose(s).

."

Option 5 – Choose if asserting claim based on recognized boundaries for at least 10 years:

"I, or to the best of my knowledge and belief, my predecessors in interest, have had the alleged vacancy enclosed or within definite recognized boundaries and in possession for a period of ten (10) or more years with a good-faith belief that the alleged vacancy was included inside the boundaries of the survey or surveys that were previously titled, awarded or sold under circumstances that led me to believe that I own the alleged vacancy. "I acquired the alleged vacancy in the following manner, from following party(ies), and on the following dates:

."

"I have paid real estate taxes on the alleged vacancy for the following years:

."

Option 6 - Choose if asserting claim as the owner of land that adjoins land alleged to be vacant.

"I own property that adjoins the alleged vacancy in the following manner:

[ ]."

Provide additional statements, if any, in support of this good-faith claim:

[ ]

_____
Good-Faith Claimant Signature

Sworn to and subscribed before me, by _____ this the day of

_____ , 20__ .

_____
Notary Public, State of Texas

My commission expires: _____