



Oil and Gas Leases Landowners' Most Frequently Asked Questions

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TABLE OF CONTENTS

	PAGE
Purpose of This Booklet	2
What should I do if I am approached by a landman?.....	3
What documents can I expect to receive from the landman?....	3
Should I have the documents that I receive from the landman reviewed by an attorney?.....	4
What is a Paid-Up Lease?.....	5
What kind of royalty can I expect to receive?.....	5
For what period of time will I have a lease?.....	5
What is pooling?.....	6
When will I receive my bonus and royalty?.....	6
Can I enter into a lease in which the oil and gas company cannot come onto my land to drill or conduct any other activity to produce gas?.....	6
Can I negotiate where operations will take place on my land? ...	7
Can I receive any other compensation other than bonus and royalty payments?.....	8
Who Can I Contact for More Information?.....	8

PURPOSE OF THIS BOOKLET

This booklet provides some basic information you should know if you are approached about an oil and gas lease.

This booklet provides valuable information regarding what to expect from a landman, what to look for in a lease and what sort of compensation you may be able to negotiate. Equally important, this booklet provides cautions as to what not to say or do following when approached about leasing your oil and gas rights.

While informative, this booklet is not a substitute for the advice and legal guidance of an experienced oil and gas attorney. This booklet and the information contained herein does not create an attorney-client relationship.

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WHAT SHOULD I DO IF I AM APPROACHED BY A LANDMAN?

If you own oil and gas rights, do not be surprised if one day a landman knocks on your door to offer you an oil and gas lease. If this occurs, listen to what the landman has to say, and ask these questions:

If you have not heard of the oil and gas company before, ask the landman whether he represents an oil and gas company or a broker? If the landman represents a broker, you may not want to consider a lease with this company as the probabilities may be that the company will not actually develop your land for oil and gas production. This company may only be interested in selling or assigning your lease to an oil and gas company. In addition, the terms that you may be offered, particularly as to bonus and royalty, may not be as good as what you may be offered from an actual producer.

The landman will tell you what the bonus and royalty is that is being offered, but is the royalty a net royalty, a royalty with deductions, or a gross royalty, a royalty without deductions? You should also ask the landman whether any of your neighbors have been offered an oil and gas lease. If so, who, and what bonus and royalty has been offered? What are the oil and gas company's plans for the area that you live in? Has the oil and gas company started to drill in your area? If so, where? If not, when does the oil and gas company expect that it will start to drill?

You may not receive an answer to some of your questions; however, you may receive some information that may be of some benefit to you in the leasing process.

Do not agree to anything! The landman may give you certain documents. Take the documents and tell the landman that you will have the documents reviewed by an attorney.

WHAT DOCUMENTS CAN I EXPECT TO RECEIVE FROM THE LANDMAN?

You will normally receive an oil and gas lease and a memorandum of lease. The memorandum of lease is a short form version of the oil

and gas lease. The memorandum of lease is recorded. The full lease will not be recorded.

You may also receive an addendum. The oil and gas lease that you receive will have been drafted by the oil and gas company for its own benefit. Provisions of the oil and gas lease are normally changed by the use of an addendum. The addendum should be prepared for you by an attorney. Your attorney should insert provisions into the addendum that will amend the lease to protect you. However, oil and gas companies are now providing their own addendums that add to or change provisions in their own lease. On its face, the oil and gas company's addendum may appear to be to the landowner's benefit. However, its addendum should be reviewed. The addendum is probably not to your benefit or it probably does not go far enough to protect you, the landowner.

One other document that you may receive is an order for payment. This document normally states the bonus that the landowner is to receive, what will be done by the oil and gas company in deciding whether to accept the lease that you have signed, and when and under what circumstances you will receive the bonus. The landowner may not receive the bonus just because the landowner signs the oil and gas lease.

SHOULD I HAVE THE DOCUMENTS THAT I RECEIVE FROM THE LANDMAN REVIEWED BY AN ATTORNEY?

Absolutely! The oil and gas lease and the other documents that you receive from the landman have very specific provisions, which a landowner may have never seen before and does not understand. If these provisions are not reviewed with and explained to the landowner, the landowner may be signing a document that potentially could be very detrimental to the landowner's interests.

A lawyer who is familiar with oil and gas law should be able to explain the provisions set forth in the lease and other documents and inform the landowner of what is good, what is bad, and what should be changed or inserted by way of an addendum.

If the documents received from the landman are not reviewed by an attorney and explained to the landowner, the landowner is at risk.

WHAT IS A PAID UP LEASE?

At one time, the oil and gas company paid a delay rental payment to the landowner during the initial or primary term of the lease. The delay rental payment was usually paid on a yearly basis. While the delay rental payment was being paid, the oil and gas company did not have to drill or do anything on the leased land. The delay rental payment has now been replaced by an upfront bonus. With the payment of the upfront bonus, the oil and gas company may still not have to, and probably does not have to, do anything during the initial or primary term of your oil and gas lease. However, instead of being paid on a periodic basis, the landowner is paid a bonus at one time and the bonus is usually more, and probably far more, than a delay rental payment. Accordingly, when you see the words “Paid-Up Lease,” this normally means that you will receive an upfront bonus for which the oil and gas company does not have to do anything during the initial or primary term of the lease. If the oil and gas company wants to extend the lease, it will have to comply with the provisions in the lease that allows the lease to be extended beyond its initial or primary term.

WHAT KIND OF ROYALTY CAN I EXPECT TO RECEIVE?

Royalties can be described as either net or gross. If net, there will be deductions, numerous deductions, before the landowner receives a royalty. If the royalty is gross, there should be few or no deductions before the royalty is received. However, the landowner needs to be careful as the lease may say that it is a gross royalty, but the language may indicate otherwise. Language can be inserted into the lease to insure that a gross royalty is in fact a gross royalty.

FOR WHAT PERIOD OF TIME WILL I HAVE A LEASE?

An oil and gas lease has what is known as a primary term and a secondary term. The primary term is usually a fixed period of time; e.g., five, seven, and sometimes ten years from the date of the execution of the lease.

The primary term can be extended into a secondary term, which can extend the lease indefinitely. The secondary term normally starts at

the end of the primary term and continues “for as long as” or “as long thereafter as” certain activities take place and/or payments are made. For example, after the initial or primary term, the lease may continue for as long as production of gas is taking place from land that has been leased from the landowner or for as long as production of gas is taking place from lands with which the landowner’s land has been pooled.

The language that extends the lease into the secondary term needs to be reviewed with and explained to the landowner. Otherwise, the landowner may be at a disadvantage. The lease may continue for a much longer period of time than the landowner ever anticipated. If the provisions that extend the lease are unacceptable, an effort should be made to renegotiate these provisions.

WHAT IS POOLING?

A pooling provision in an oil and gas lease allows the oil and gas company to take all or a portion of the leased land and pool it or place it with other lands into a unit for the development and production of oil and gas. This clause is important. It needs to be reviewed and explained. In particular, the landowner needs to understand how the pooling of the landowner’s land will affect the royalty that the landowner is to receive.

WHEN WILL I RECEIVE MY BONUS AND ROYALTY?

The landowner may expect to receive the bonus at the signing of the oil and gas lease; however, this is normally not the case. Once the lease is signed by the landowner, the lease is then given to the landman who takes it to the oil and gas company. The oil and gas company will then have a certain period of time, which is usually set forth in the order of payment, to review and accept or reject the lease. When the landowner is to receive the bonus payment depends on the provisions in the lease and very often it depends upon the provisions in the order for payment.

CAN I ENTER INTO A LEASE IN WHICH THE OIL AND GAS COMPANY CANNOT COME ONTO MY LAND TO DRILL OR

CONDUCT ANY OTHER ACTIVITY TO PRODUCE GAS?

Yes, this may be possible. This is called a non-surface use lease.

A true non-surface use lease will contain provisions that state that no activity of any nature whatsoever can take place on the landowner's land without the landowner's written permission. If the lease is a non-surface use lease, it is important that the lease is reviewed to ensure that the clause that provides that the lease is a non-surface use lease does, in fact, say that. Some leases are titled or classified as non-surface use leases; however, a review of the non-surface use clause may allow the oil and gas company to come onto the landowner's land under certain circumstances for purposes of development and production of oil and gas. Language can be crafted that will make a non-surface use lease a true non-surface use lease wherein no activity will take place on the landowner's land without the landowner's written permission.

CAN I NEGOTIATE WHERE OPERATIONS WILL TAKE PLACE ON MY LAND?

Yes. The location of whatever is going to be placed on your land can be negotiated. This would include such items as the location of well pads, right-of-ways, pipelines, equipment, structures, facilities, and whatever else may be placed on your land. Location can be made subject to your approval. This can be done either through a separate clause or clauses in the lease, most likely in an addendum, or through a separate surface use agreement or, if applicable, a right of way agreement.

In negotiating your lease, you need to take into consideration what is located on your land and the purpose for which your land is being used. Are there structures on your land that need protected? Is your land being used for a specific purpose? Are there any trees or crops or animals that need protected? Are there streams or ponds or other sources of water on your land? All of these things and more need to be considered. If you do not consider them, if you do not negotiate approval of the location of operations on your land, you may find that the oil and gas company has the right to operate on your land in areas that you never expected or wanted.

CAN I RECEIVE ANY OTHER COMPENSATION OTHER THAN BONUS AND ROYALTY PAYMENTS?

Yes. In addition to a bonus and royalty, you can be compensated for such things as the location of a well pad on your property, the number of wells on your property, and right-of-ways for pipelines.

WHO CAN I CONTACT FOR MORE INFORMATION?

There are many other questions that a landowner may have about an oil and gas lease and the leasing process. These can be addressed by an attorney who has experience in oil and gas law. It is crucial that a landowner who has received an offer for an oil and gas lease has the lease and other documents reviewed by an oil and gas attorney. If this does not occur, the landowner can be placed at a serious disadvantage.

If you are approached with a lease, we can review the lease documents for you, explain them, answer your questions, draft an addendum, negotiate the lease and addendum, or help you through the process of negotiating the lease and addendum should you wish to do so by yourself.

BOTTOMLINE: DO NOT SIGN ANY LEASE DOCUMENTS WITHOUT HAVING AN ATTORNEY REVIEW THEM. WE CAN DO THIS FOR YOU.

Please contact us at:

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