

Fundamentals of Oil, Gas and Mineral Law

The Oil and Gas Lease
is an economic transaction
“It’s Just bidness!”

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Nature of the Lease

- Both conveyance and contract
- More deed than lease
 - Right to use land and to take oil and gas
 - Duration is indefinite
 - Lessor and Lessee share benefits
- O&G Lease Classification
 - Fee simple determinable in Texas
 - Profit a prendre in most, e.g., Oklahoma, Kansas, ND
 - Uncertain in many states

Non-Possessory Interests

- Easement -- right to use land
 - Affirmative or negative.
 - In gross or appurtenant.
- Profit a Prendre -- right to use & exploit
 - In gross
 - Affirmative

No “Standard” Lease Form

- Many different forms
 - Many labeled “Producer’s 88”
- Most are drafted by lessees
 - Primarily protects lessee
 - Lessee has few express obligations
 - Courts construe ambiguities against drafter
 - Courts created implied covenants to protect lessor

LESSEE’S GOALS

- Option, not obligation, to drill
- Right to maintain lease for economic life

Key Lease Clauses for Lessee Texas AAPL Form

GRANTING CLAUSE, ¶ 1

LESSER INTEREST (PROPORTIONATE REDUCTION)
CLAUSE, ¶ 10

HABENDUM CLAUSE, ¶ 2

DELAY RENTAL, ¶ 5

SAVINGS CLAUSES

- DRY HOLE/OPERATIONS/CESSATION-OF-
PRODUCTION, ¶ 6
- SHUT-IN ROYALTY, ¶ 3
- FORCE MAJEURE, ~~¶ 4~~ ^{PRODUCTION, ¶ 4}

GRANTING CLAUSE

"1. Lessor, . . . does hereby **grant**, lease and let unto Lessee for the purpose of **exploring**, prospecting, **drilling and mining** for and **producing oil and gas and all other hydrocarbons**, laying pipe lines, building roads, tanks, power stations, telephone lines and other structures thereon to produce, save, take care of, treat, transport and own said products, and housing its employees, and without additional consideration, does hereby authorize Lessee to enter upon the lands covered hereby to accomplish said purposes, **the following described land** ... [Legal Description]"

GRANTING CLAUSE ISSUES

- Surface use rights?
- What land?
- What substances?
 - E.g., “oil, gas and other minerals,” “oil, gas and other hydrocarbons,” “oil and gas,” etc.
- What interests?
 - “100%”
 - Estoppel by deed
 - Proportionate-reduction (lesser-interest) clause

Surface-Use Problems

- Mineral interest ownership and surface ownership may not be the same.
 - Surface owner suffers burden of mineral development without receiving the benefits
- Even when lessor owns surface, lessor may not appreciate the impact of future petroleum operations

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Also available as part of the eCourse

[The Oil and Gas Lease from A to Z: Classification, Scope of Grant, and Duration; Royalty Clauses; Implied Covenants; and Other Clauses](#)

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"The Oil and Gas Lease, Part I: Classification, Scope of Grant and Duration"