**Presented:**
Fundamentals of Oil, Gas and Mineral Law

March 21, 2013
Houston, Texas

# The Oil and Gas Lease, Part IV: Other Clauses

**Prof. Gina Warren**

Gina S. Warren
Professor of Law
Texas Wesleyan School of Law
Fort Worth, Texas

gswarren@law.txwes.edu
817-212-3935

## Table of Contents

## I. Introduction

The oil and gas lease is the single most important document for oil and gas development. It is a contract, which sets forth the rights and obligations of the parties, and in most states it also acts as a conveyance of mineral rights from the lessor (the mineral interest owner) to the lessee. Its purpose is to "secure development of the property for the mutual benefit of the parties." *Garcia v. King*, 164 S.W.2d 509, 512 (Tex. 1942). The lease can range anywhere in length from one or two pages to dozens of pages, and it is generally customized through negotiations between the parties. While parties seem to painstakingly negotiate the primary clauses, such as the granting, habendum, royalty and pooling clauses, the "other clauses," may not get as much attention. This is unfortunate, however, because these clauses can have a significant impact on the rights and obligations of the parties as well as the life of the lease. The purpose of this paper is to explore some of the "other clauses," to provide sample language, and to discuss judicial treatment and interpretation of the clauses. It is impossible to cover each and every "other clause" that may exist in an oil and gas lease. The goal is simply to provide insight as to some of the most noteworthy, including retained acreage clauses, proportionate-reduction clauses, savings clauses and surface use clauses.

## II. Retained Acreage Clauses

Retained acreage clauses, sometimes called continuous development clauses, modify general lease terms to provide that leased lands outside of a drilling unit will not be held by a producing well within the drilling unit. In other words, a producing well will only save the lease as to that portion of the lease held by production, and not the entirety of the leased land, which is not being developed. Retained acreage clauses are most commonly used when the lease covers a large amount of land and the lessor is concerned that one well on a drilling unit could hold a significant amount of undeveloped acreage. Under this clause, lands not being developed will be released to lessor so the lessor can lease to subsequent lessees. A typical clause is as follows:

> Notwithstanding anything in this lease to the contrary, at the end of the primary term or upon cessation of continuous development, as hereafter defined, whichever is later, this lease shall terminate and be of no further force and effect as to all of said land except those portions within the drilling, spacing or proration unit (the "production unit") assigned by Lessee according to applicable rules of the Texas Railroad Commission (or successor governmental authority having jurisdiction) to a well then capable of producing oil or gas in paying quantities, each such unit containing the minimum amount of acreage necessary for the well to be assigned the maximum allowable production (if allowable production is assigned on the basis of acreage per well) or otherwise prescribed as the

> minimum area for a proration unit, and necessary for the well to be operated at a regular location in compliance with applicable well spacing and density rules.
>
> 6 West's Tex. Forms: *Minerals, Oil & Gas* § 3:79 (4th ed.)

A retained acreage clause can also be used for horizontal severance of a lease where production is occurring in one oil or gas formation and in not the others. For example the lease may provide:

> [T]his lease shall likewise terminate as to all depths and horizons in each such production unit lying more than 100 feet below the stratigraphic equivalent of the deepest depth from which production in paying quantities is then being had (or at which a well capable of producing gas in paying quantities has been completed). At such time Lessee shall release this lease as to all lands and depths as to which it has thus terminated and shall file such release for record and furnish a copy of same to Lessor.
>
> 6 West's Tex. Forms: *Minerals, Oil & Gas* § 3:79 (4th ed.)

After the expiration of the primary term, this provision provides that the lease will terminate except for lands held by wells in specific formations, which are producing in paying quantities. Most retained acreage clauses provide that the lease will terminate as to all formations below the deepest producing formation; however, the provision could be written to "sandwich" the producing formation and require release of all undeveloped formations both above and below.

Absent lease language to the contrary, a lessee is only obligated to release back to the lessor undeveloped lands or formations once. After the initial release, Texas courts will construe the lease as reverting to a general lease obligation so that production anywhere on the remaining leased land will hold the lease. *Humphrey v. Seale,* 716 S.W.2d 620, 622 (Tex. App. – Corpus Christi 1986, no writ) ("If the parties to the lease had wished to provide for a continual relinquishment of nonproducing acreage, so that a 40-acre tract would no longer be subject to the lease once production had ceased on that particular 40-acre tract, it would have been simple to include such language. However, in the absence of such a provision, the general rule that production any where [sic] on the leased premises will maintain the lease prevails.") As a result, many leases covering large amounts of land will also include a provision similar to the one:

> At such time after any such partial termination as any well shall cease to produce, and if operations are not commenced within ninety (90) days thereafter for the reworking of such well or for the drilling of another well within the production unit for such well, and then prosecuted, with no cessation of more than ninety (90) consecutive days, either on the same well or on a different well or wells, until such operations have resulted in a well capable of production in paying quantities, this lease shall thereupon terminate as to the land within the production unit for the well that ceased to produce.

# Title search: The Oil and Gas Lease, Part IV: Other Clauses

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

First appeared as part of the conference materials for the
2013 Fundamentals of Oil, Gas and Mineral Law session
"The Oil and Gas Lease, Part IV: Other Clauses"