

The Oil & Gas Lease, Part III

Implied Covenants



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Outline of Presentation

- A. What are implied covenants? What do they do? Why do they exist?
- B. The main implied covenants
- C. Other possible implied covenants
- D. Lagniappe issues
 - standard of care, the effect of express provisions, procedural issues, etc.

What are implied covenants?

- Obligations that bind leaseholder, but which are not expressly stated in lease

What do these covenants generally do?

- Implied covenants generally impose a duty upon lessee to be reasonably active and diligent

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Why do implied covenants exist?

1. The primary benefit that a lessor hopes to gain from a lease is the payment of royalties.
2. The likelihood of royalties and the amount of royalties depends, in part, on how active lessee is in exploring, drilling, etc.
3. Typical lease does not expressly impose any duties on lessee to explore, drill, etc.

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Why do implied covenants exist?

“It is doubtful if any other character of legal instrument can be found in which one of the parties has so much potentially at stake with so little express contractual protection.”

A. W. Walker, Jr., *The Nature of Property Interests Created by an Oil and Gas Lease in Texas*, 11 Tex. L. Rev. 399 (1933)

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Implied Covenants Recognized in Texas

- 1) Develop the leasehold
- 2) Protect the leasehold
- 3) Administer & manage the lease

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