

Fair Mineral Leases

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Mineral Lease Guidelines on Oil and Gas Leasing

As the oil and gas industry has evolved in Oklahoma, mineral owners should pay more attention to the terms of the lease they are willing to sign. For years, many of the minerals in Oklahoma were leased for five and ten-year terms and no attempt to produce the minerals was made. In this situation, the terms of a lease do not prove to be detrimental to the mineral owner. Today, minerals are normally only leased when some entity has a desire to explore. If oil or gas is discovered, then the mineral owner lives with the terms of the lease as long as there is production. The lease term becomes very critical in this situation.

There is no standard lease form used in the industry. There are numerous forms used by companies and brokers. These agreements may not necessarily be in the best interest of the mineral owner and landowners. Mineral and landowners should remember that all terms or provisions of a lease are negotiable. However, the landowners or mineral owner's ability to negotiate more favorable terms will vary in each situation, and all negotiating or changes must be made prior to finalizing the lease.

Typical Lease Form

Even though there are many different lease forms, most of them are structured similarly, but the provisions, wording, and meaning vary tremendously from one form to another. In many instances, a mineral owner should seek legal advice before signing any lease form.

Following are the elements of a typical printed lease form and the order in which they would likely appear:

1. Date—When lease is to begin
2. The parties involved—Lessor and Lessee

3. Consideration statement – Makes lease legal and enforceable
4. Granting clause—States the rights and privileges of lessee and the purpose of the lease
5. Haberdum clause – Specifies the length of the lease, primary and secondary terms, subject to other terms of the lease.
6. Royalty clause or terms – States the lessor's royalty share and conditions
7. Delay rental clause – Yearly rental to keep lease in effect
8. Shut-in Clause – States time a well can be shut in and payment to lessee
9. Dry hole provisions – Delay rentals must continue to keep lease in effect
10. Free gas clause – Gives lessor right to use gas for home irrigation, etc.
11. Free gas, oil, and water for lease – Provides for operator to use oil and gas produced on lease for his operations. Does not grant free water use from any source.
12. Damages section – Should state that operator or lessor is liable for surface and crop damages
13. Burying pipeline – Directs lessee to bury lines on request, and indicates depth to bury lines
14. Pooling and unitizing section – Gives lessee right to pool and unitize when deemed necessary
15. Assignment clause – Gives either party the right to transfer interest or reassign
16. Proportionate reduction clause – Provides that the royalties and rentals shall be paid to the lessor only in proportions to which his interest bears to the whole

About A.L. Hutson

A.L. Hutson has been in his current position for 28 years. His special areas of emphasis are: marketing and risk management; farm and ranch record keeping; financial management and planning; and estate planning.

Hutson received a B.S. (1970) and a M.S. (1973) from Oklahoma State University in agriculture economics. In 1990, he received the OSU Alumni Service Award. He worked at Wilson and Company in Cherokee, Iowa, prior to taking the

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17. Surrender clause – States the lessee shall have the right to surrender the lease by providing a certificate of release to lessor or court record in proper county
18. Warranty clause – States the lessor shall defend title. It is the lessors' advantages to omit this clause
19. The Force Majeure clause – Provides that the lease is subject to state and federal law
20. Legal effects section – Makes lease legal and binding on both parties

As is apparent, there are many areas of concern in negotiating a fair lease. The following will discuss some of the more important items and also some additional covenants you may want to negotiate for.

One extremely important area land and mineral owners should include is a depth clause. This clause should include the fact that all acreage not producing or included in a unit shall be released at expiration of the primary term of the lease. Also all nonproducing formations should be released at expiration of the primary term. An example clause follows:

It is further understood and agreed that all acreage not included in a unit and not producing or upon which drilling operations have not commenced, shall be released at the

expiration of the primary term and further, that the lease shall terminate as to all acreage located outside of the drilling and spacing unit and as to all nonproducing formations within the unit at the expiration of the primary term of this lease.

Another area of concern to mineral owners deals with potential deductions from proceeds that mineral owners are to receive. A sample example clause follows:

Lessee agrees that all royalties occurring to the lessor under this lease shall be without deduction for cost of producing, gathering, storing, separating, treating, dehydrating, compressing, processing, transporting, and otherwise making the oil and gas and other products hereunder ready for sale or use.

Negotiating an acceptable oil and gas lease requires some legal knowledge and a lot of common sense on the part of the mineral owners. The information provided here is intended to increase your knowledge about oil and gas leasing. Your success in obtaining some or all of the more important lease clauses in your contract depends largely on your ability to negotiate. If you do not feel competent in negotiating a lease contract, secure the services of a lawyer, lease consultant, or another landsman.