

Protect yourself if you sign a lease. Include these important points.

A lease is just a piece of paper; it can't guarantee that your property and health won't be adversely affected by drilling. It will just guide scrupulous drillers about what to do and may allow you to recoup some of your losses if something goes wrong.

Unfortunately, a multinational energy company's cadre of attorneys is much more experienced than any attorney you could pay to represent you. You are at a distinct disadvantage, if you have to enforce any of the terms of the lease.

After weighing the numerous environmental, health and safety risks, long-term liability, and the temporary and permanent impacts to the land, if you do decide to sign a lease, it is critical that you hire an experienced oil and gas attorney who can develop a protective oil and gas lease.

According to State law, an energy or drilling company has the right to reasonably do whatever it takes to extract the oil and gas, which includes overriding all normal land protections (e.g. tearing down your barn if it's in the way). A detailed lease, specific to your property, that's signed by you and the energy company is your only protection.

Several important points to keep in mind:

- There is no such thing as a standard lease
- All points are negotiable
- Everything must be written down and included in the signed lease
- Verify that the oil and gas attorney you choose does not work for the industry or won't benefit if more leases are signed.

To protect you, the following points should be included in a lease. (The attorney should draft the actual legal language for each point.) This is only a partial list. Additional items should be included after researching the issue and working with an experienced attorney.

- The location of the wellhead(s), tank batteries, pipelines (only those for gas produced on the premises), access roads, etc. should be precisely described and depicted in the lease, or they must be mutually agreed to in writing prior to drilling.
- Setbacks from the wellhead, tanks, etc. to all structures, especially homes, should be established. Ohio law allows very small setbacks of only 100 to 150 feet. Fort Worth Texas requires a 600-foot setback. The new hydraulically fractured shale wells are quite industrial, and so large setbacks are recommended.
- Environmental impacts must be minimized, by including items such as: requirement to follow water management and sediment and erosion measures, establish sufficient riparian, wetland, pond and floodplain setbacks, use maximum decibel level maximum for noise mitigation, cite specific restoration requirements, etc.
- Only oil and gas, no other minerals, should be included in the lease. Additionally, only one strata or layer should be negotiated per lease. Decide if directional or horizontal drilling can take place and specify the exact terms.
- Compression stations, pump stations, large transfer lines, etc. should be expressly excluded from the lease. These are huge, invasive and/or dangerous industrial components.
- Exclude injection wells, gas storage or carbon sequestration wells.
- The royalty payment is negotiable, and the going rate is higher than 12.5%. The royalty payment should be calculated at the point of sale, not at net proceeds price or after costs are subtracted. All natural gas byproducts should be included in the lease. Include a specific royalty payment schedule and time-period. A minimum payment should be written into the lease, in case the well is shut in. If the lease is sold, negotiate a percent of profit for the "flip."