



OIL & GAS LEASES IN NORTH CAROLINA: LANDOWNERS' RIGHTS

Deciding whether or not to allow drilling for oil and gas on your land is a serious and difficult decision. Oil and gas leases can impact the value of your land and how you use it. Before you sign an oil or gas lease, read the following definitions and tips for landowners.

- **Oil and Gas Leases.** An **oil or gas lease** is a legal document where a landowner grants an individual or company the right to extract oil or gas from beneath the landowner's property. Courts generally find leases to be legally binding, so it is very important that you understand all the terms of a lease before you sign it.
- **Hydraulic fracturing or "fracking"** is a process in which water, sand and chemicals are injected deep underground to crack shale rock and release natural gas. Hydraulic fracturing often involves **horizontal drilling**, where one or more horizontal drill shafts, which can extend for up to two miles, are drilled off an existing vertical shaft.
- **Fracking in North Carolina.** In 2012, the North Carolina General Assembly legalized fracking and horizontal drilling by passing Session Law 2012-143 (S. 820), the Clean Energy and Economic Security Act. However, drilling cannot take place until the North Carolina Mining and Energy Commission establishes rules for fracking, no later than January 1, 2015. In addition, no company can drill unless it first obtains a permit from the North Carolina Department of Environment and Natural Resources (DENR), and DENR cannot issue permits for fracking until the General Assembly votes to allow it to.

TIPS FOR LANDOWNERS

If you're considering leasing your land for oil or gas exploration, learn about the possible risks and the protections you're entitled to under North Carolina law.

- **Contact an attorney.** Oil and gas leases are complex legal documents. Before you sign an oil or gas lease, contact an attorney and ask them to review it, especially provisions about payment and damages. If you do not know an attorney with expertise in real estate law, contact the North Carolina Bar Association at 1-800-662-7660 for a referral. You also may be able to join with neighboring landowners to consult an attorney.
- **Contact your mortgage lender, conservation easement holder, or Farm Service Agency office.** If you have a mortgage loan, signing an oil or gas lease could violate the terms of your mortgage. It could also prevent you from being able to refinance your mortgage in the future. **Before you sign an oil or gas lease, talk to your lender and get their approval.** If your property is subject to a conservation easement, contact your conservation easement holder to find out about any restrictions on signing a lease. If you have received federal farm program benefits, contact your Farm Service Agency office to find out if you face any restrictions.
- **Check out the landman.** Oil or gas leases are often offered by salesmen called **landmen**. Some landmen work for oil and gas companies; others are independent contractors. In North Carolina, anyone who contacts you to offer you an oil or gas lease is required to register with DENR and provide his or her contact information. To check out a landman, visit <http://portal.ncdenr.org/web/lr/registry-of-landmen> or call 919-707-8605.
- **Research the company.** If you lease your land to a company for oil and gas exploration, you'll be dealing with that company for years to come. Before you sign a lease, check with the North Carolina Secretary of State's office at www.secretary.state.nc.us/corporations or 919-807-2000 to find out if the company is registered to do business in North Carolina. Also, ask your attorney to check out the company.

- **Know the risks to your land and water supply.** Exploring for oil or gas on your property will likely disrupt and possibly damage your land, your home, your crops and your water supply. Different kinds of leases allow different levels of impact. A **non-development lease** allows oil or gas to be extracted, but does not allow access to the surface of the landowner's property. A **development lease** allows access to the surface of the land for drilling and operating the well. This means the operator is generally allowed to clear trees, build roads, and construct a well pad and pipelines on your land, among other things. Each well pad disturbs 7 to 9 acres of land on average. Drilling can also cause noise and increased truck traffic around your property.
- **Make sure your payment is reasonable.** Oil and gas leases usually include three kinds of payments. (1) A **bonus payment** is made when the lease is signed, often based on the number of acres leased. North Carolina law requires that any bonus payment be made within 60 days of the lease being signed. (2) **Payment for surface damages to the property.** North Carolina law requires that landowners be paid for any damage to livestock, crops, timber, or personal property that's damaged, as well as for damage to an existing water supply. (3) **Royalties.** Royalties are a percentage of the proceeds of the sale of any oil or gas produced, and you'll only receive royalties if your land produces oil or gas. North Carolina law requires that landowners be paid a minimum royalty of 12.5 percent for any oil or gas produced, without any deductions for costs.
- **Make sure it covers damages and costs.** Oil and gas exploration on your property may damage your land, home, crops and/or water supply, and you may also face unexpected costs. Provisions of the lease that spell out how you would be paid for any damages need to be broad enough to cover all the types of damages or costs that you may face. For example, if you farm, you could face additional federal or state taxes if a certain percentage of your land is taken out of agricultural production due to oil and gas production. Find out whether you will be paid back for any additional taxes you may owe.
- **Talk with your neighbors.** There is strength in numbers, so you may want to consider negotiating your lease together with a group of neighbors. By working together, you may be able to get more favorable lease terms, including higher payments and better reimbursement for damages and costs.
- **Get all promises in writing, and get a copy of your lease.** Make sure any promises or conditions you discuss are in writing and are part of the lease. Also, be sure to get a copy of your lease. North Carolina law requires that all leases and any lease assignments be recorded with the register of deeds for the county where the property is located. Know that if you sign a lease to allow oil or gas drilling on your property, it may continue for many years because the lease will last as long as oil or gas is being produced.
- **Get a copy of your legal protections.** At the time landmen or companies offer you an oil or gas lease, they are required to give you a copy of the North Carolina law that protects you. The law that legalized fracking also provides important protections for landowners (see North Carolina General Statute Chapter 113, Article 27, Part 3, Landowner Protection, available online at www.ncleg.net.) A detailed summary of these protections is available on the North Carolina Attorney General's website at www.ncdoj.gov. Ask your lawyer to be sure your lease complies with North Carolina law or provides greater protections.
- **Don't be pressured to sign, and know your right to cancel.** Take your time before you sign an oil or gas lease, and don't let high-pressure sales tactics force you to make a decision before you're ready. If you sign, you will have seven days to cancel it under North Carolina law without any penalty. To cancel your lease, send the company a written notice that you want to cancel.
- **Where to turn for help.** If you have questions about oil and gas leases, contact the North Carolina Cooperative Extension Service in your county. Visit www.ces.ncsu.edu/local-county-center or call (919) 515-2813 for a list of Cooperative Extension county offices. If you have questions about the regulation of oil and gas exploration and development in North Carolina, or about environmental impacts, contact DENR at www.ncdenr.org, 919-707-8605. To report a scam or unfair business practice, contact the Attorney General's Consumer Protection Division at www.ncdoj.gov or 1-877-5-NO-SCAM.