



Fact Sheet

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“Shale Oil and Gas Development” Fact Sheet Series

Facing the Possibility of Leasing for Shale Gas Development on Your Land

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Introduction

Ohio has a long history of oil and gas development, but recent interest in shale resources is rapidly increasing gas production activity around the state. Many landowners are being approached by landmen with oil and gas lease offers, or are hearing that development activity is coming to their area. If you're one of those landowners, you may be trying to think through your options. What should you do when faced with the potential of leasing your land for shale gas development?

Initial Questions to Consider

A landowner has several options, when it comes to signing a lease. Below are important initial questions to consider and an explanation of laws and options that apply to the questions.

1. *Why are landmen knocking on my door and what do they want?*

Whether you spoke with a landman in person, received a notice in the mail, or discovered a business card left in the door, you should consider why a landman is interested in leasing your minerals. Has there been a resurgence in oil and gas activity in the area? Are you located in an area with the potential for horizontal drilling to be utilized? What specific mineral is the landman interested in purchasing? What other rights or uses is the landman requesting?

Landmen working in throughout Ohio have a number of different interests. Some landmen do not work directly for companies which operate oil and gas drilling operations. They may want to purchase a lease from you and then sell (or “flip”) it to an oil and gas company at a profit. You should ask a landman to clarify who they represent.

These are important questions which may not be completely clear in the beginning. It is up to you, the landowner, to evaluate a landman's interest in your property. You may want to speak with your neighbors or local leaders to see if any others have been approached by landman.

2. Who owns the minerals beneath your land?

Ohio law allows the owner of real property to separate and transfer the property interests that attach to a parcel of property. Mineral rights are one of those property interests that an owner can separate and transfer. For example, an owner can sell the property but retain the rights to the minerals. In this case, the new owner would own the land surface while the previous owner would own the mineral interests. Likewise, an owner can split off the mineral rights and transfer those to another party while remaining the owner of the surface rights, or can split the minerals and land and sell each to separate parties.

These types of separations of the mineral interest exist in Ohio, but a current landowner might not be aware of a mineral interest separation that occurred long ago. County property records should contain a record of a mineral severance. A title search on the property should reveal whether a landowner retained mineral rights before transferring the property, whether a landowner transferred mineral rights to another party, or whether one who owned severed mineral rights later transferred the rights to yet another party. If you are not sure whether you own the rights to the minerals beneath your land, the first step to take is to conduct a title search on your property or hire a professional to do so. Be aware that title searches involving mineral ownership are generally more extensive and costly than a basic title search. The cost of a mineral title search is subject to a number of factors such as the size of the parcel being researched and the accessibility of county records.

3. What if someone else owns the minerals beneath your land?

Under Ohio law, the mineral interest owner has a legal right to reasonably develop the minerals even if the development interferes with the land's surface, unless agreed otherwise. This means that the mineral owner can lease his or her minerals beneath another's land and the land surface could be impacted without the surface owner's consent. If you are in this situation, it is important to obtain a copy of the oil and gas lease and understand its provisions. The lease might prohibit such surface disturbance, or might contain conditions that limit disturbance or require repair or restoration of the surface. An attorney can interpret the provisions that relate to surface disturbance and can assist with possible remedies if there are problems with development activities on your land surface. Be aware, however, that the technique of horizontal drilling for shale resources can occur without any surface impact to most landowners in the drilling unit.

4. What if someone else owns the minerals beneath your land, but hasn't leased or developed the minerals?

Perhaps the mineral rights beneath your land were severed, but no action has ever occurred to develop the minerals. Sometimes the mineral severance occurred so long ago and has been transferred so many times that the current mineral owner is unaware of his or her rights to the minerals, has forgotten about the rights, or has never considered developing the minerals. In this situation, Ohio law offers the owner of the land surface an opportunity to force "abandonment" of the mineral rights through the Dormant Minerals Act. The act establishes a legal process that includes notification to the mineral interest holder of the landowner's intent to have the minerals declared abandoned and an opportunity for the mineral owner to protect his or her interest. If the landowner meets the statutory requirements and the mineral owner fails to protect the mineral interest, the law deems the mineral abandoned and the mineral interest again becomes part of the landowner's property interest. If you have inactive mineral rights beneath

your land, it is important to visit an attorney and discuss the possibility of using the Dormant Minerals Act to extinguish the mineral interest. For more information on the Dormant Minerals Act, see OSU's fact sheet on the topic.

5. *What if there's an old oil and gas lease on your land, but there is no activity under the lease or the party is not operating according to the lease?*

Sometimes an oil and gas lease exists, but no activity has ever occurred under the lease or the lease holder is not following the lease provisions. In this case, the lease might already be void or the landowner might be able to pursue legal options to terminate or forfeit the lease. These legal remedies are difficult to advance successfully, but an experienced oil and gas attorney can advise you on the merits of your situation. Be sure to have an attorney review your lease and the circumstances, and be aware that accepting any payments under the lease could affect whether the lease is still in effect or can be terminated.

6. *What if there is a lease on the land, but it's for a shallow well?*

It's common to find leases that lease only the minerals at a shallow depth, typically around 3,000 feet, for a "shallow well." Some layers of shale, such as the Marcellus and Utica layers in Ohio, are much deeper than 3,000 feet and thus are not covered by a shallow lease. Typically, the landowner can lease the deeper layers without violating the shallow well lease. If you think you have a shallow well lease on your property, be sure to review the provisions carefully to determine whether the deeper minerals are still available for leasing. An attorney can help you understand the lease provisions.

7. *You want to lease your land—now what?*

The best advice given to someone who wants to enter into an oil and gas lease is "take your time." The person offering the lease will try to convince you to sign the lease right away, but remember that you have a resource that he or she wants—there's time to address your needs. The oil and gas lease is a long term agreement, so you want to make it the best possible situation for you and your successors. Additionally, the income received from oil and gas lease creates new financial obligations--such as taxes--along with new needs for wealth management planning. When considering a lease, be sure to take the time to:

- Investigate issues such as the current rates for bonus payments and royalties, the company's reputation, development using horizontal drilling methods, and whether others in your area are leasing.
- Meet with your attorney, accountant and financial planner to determine tax, estate planning and financial implications of the lease. Timing, legal tools and other strategies taken before entering into a lease can maximize your financial position.
- Consider whether joining or forming a landowner association will benefit you. A landowner association offers the opportunity to leverage land blocks and share resources and costs. Be aware of any contracts that a landowner group may want you to sign; however, a contract may place restrictions on your ability to lease your minerals separately from the group or it may contain fees to be paid to the association or its attorney.

- If you don't want to join a landowner association, have an oil and gas attorney review the proposed lease; understand what's being offered and develop provisions that address your needs.

8. *What if you have concerns about the environmental risks associated with oil and gas development on your land?*

Many people are concerned that the horizontal drilling methods associated with shale gas development pose risks that could have immediate and long term environmental impacts, particularly in regards to water. If you have concerns about environmental issues, take the time to address your concerns by learning about horizontal drilling, hydraulic fracturing and oil and gas regulation in Ohio. Utilize resources on shale gas development offered by OSU and other universities, Ohio Department of Natural Resources, U.S. EPA, and the U.S. Department of Energy. If you do want to enter into a lease, investigate the environmental history of the developer and be sure to work with an attorney to insert leasing provisions that address your environmental concerns, such as water protection practices, water testing, water replacement, remediation and restoration.

9. *What if you don't want to lease your land for shale gas development?*

A landowner has the right to say no to an oil and gas lease offer. There is a possibility, however, that the land can be "pooled" into a drilling unit. Ohio has a mandatory pooling law that allows an oil and gas developer to force a parcel of land into a drilling unit if the developer has assembled a majority of the unit from willing landowners and there is no feasible alternative for completing the drilling unit. The developer must submit a request for mandatory pooling, meet all regulatory requirements, and obtain approval from the Ohio Department of Natural Resources. A landowner who is subject to a mandatory pooling request must receive notice of the request and has a right to testify at the mandatory pooling hearing. If the developer is successful in obtaining a pooling order, the landowner will receive royalty payments for his or her share of the production from the unit, but will not receive a bonus payment. If you are concerned about the possibility of mandatory pooling, visit the Ohio Department of Natural Resources for more information on mandatory pooling regulations.

The Importance of Professional Assistance

As indicated by many of the explanations above, professional assistance can be extremely valuable to the landowner who is considering options related to oil and gas leasing. An oil and gas lease sets up a long-term and complicated relationship between the mineral owner and developer. An oil and gas lease can impact finances, land, environmental resources, daily living and operations and the surrounding community. Such an important decision warrants careful deliberation with the assistance of educators, attorneys, consultants, accountants and financial planners, to name a few. The additional time or costs associated with seeking professional assistance will more than likely return many benefits to the landowner.

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