

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."
- Consider money instead of free gas, as raw natural gas can contain corrosive hydrocarbons and does not contain mercaptan, an odorant that can be added to raw gas to detect leaks of methane, which is an odorless, but highly explosive gas.
- Keep the drilling unit as small as possible, to maximize profits and allow the lease to expire if the land is not used for an oil or gas well.
- Determine water usage issues and write them into the contract, such as whether the energy company can use water from ponds, streams on the property or drill a water well.
- Negotiate a short primary term (from the time of the signed lease to a producing well). Beware of how the lease is extended. Sometimes, just a minor action will automatically extend the lease.

- A comprehensive water-testing procedure must be written into the lease: type of contaminants tested for, radius of testing (at least 1,000 feet), pre- and post-testing, advance notice so you can arrange for a “split sample” done with your own independent lab, etc. All this should be paid for by the energy company.
- Insist on insurance levels equivalent to the value of the land, water and livelihood (agricultural use of land) of all the landowners in the drilling unit or community. Must include environmental insurance, as well as general, workers comp, and other insurance.
- Require the energy company to give the Fire Chief all contact information and access to the well. Also require a list of all chemicals used during the entire process be given to the Fire Chief.
- If the lease is sold or transferred, all terms of the lease apply. Additionally, it is not binding until you have been notified in writing.
- “Open pits” or buried waste pits on the property should not be allowed. Open pits contain the drilling mud, plus frack fluid (potentially toxic chemicals) and radioactive material. These open pits and buried pits increase the risk of groundwater contamination and negative health issues. Instead, a closed loop system should be required.
- Utilize all Best Management Practices throughout the entire process.
- Require rigorous inspection during and after drilling and mandate that copies of all inspection logs and reports sent to you. After drilling, the Inspector and the Energy Company must sign a document stating that all Special Permit Conditions, Regulations and Rules were witnessed and followed.
- Require the company to have a remote shut-off for all wells.
- During drilling and production, the energy company should minimize impacts such as noise (decibel level maximum), dust (such as water on roads), limit time of day for activity such as truck traffic, etc.
- Require interim restoration, such as acceptable upkeep of roads, landscape / barriers during drilling, reclamation after seismic testing, etc.
- Re-fracking of a well can’t proceed without the landowner’s consent. (For instance, if the landowner notices damage to groundwater in the area, he / she might have grounds to not want to the well re-fracked.)
- If any terms of the lease are not followed, the lease may become “null and void.”
- Appoint an independent committee, with ODNR as only one member, that will investigate any possible ill-effects such as contaminated groundwater, air pollution, property devaluation, etc. The energy company should pay for all associated costs of this committee.
- If the energy company does not rectify any breach of the lease within 30 days, the energy company should pay reasonable attorney fees and reasonable investigative costs incurred in preparing for trial.
- Require compensation for all surface damages.
- Require the energy company to be liable for any problems associated with the drilling site (pipeline leaks, explosions, etc.) for 50 to 100 years. You should not assume the liability once the energy company ends their lease and leaves.
- Additional points to include: Pugh clause, Indemnification clause, and stipulate that a default on any assigned part of the lease is a default on the whole.

Even with all these provisions, the experience of landowners throughout the U.S. who’ve signed leases is that even a good lease can’t protect their health, safety, groundwater, property value, etc. when something goes wrong. **Proceed with caution!**