

Checklist For Reviewing Lease Forms

1. Granting Clause

- Description of leased substance
- Cover project objective coalbed methane, helium, CO₂ or other commercial gases
- Describe the leased substances consistently throughout the document
- Did you intend to include all “other minerals”
- Description of leased premises
 - Properly describe depth limitations
 - Provide surface access and subsurface easement rights related to the severed depth limitations
 - Mother Hubbard clause
- Easement and access rights
 - Are the access rights specifically described
 - Consider whether lease is taken from a split estate or the owner of the fee estate
 - Specific access rights to consider: canals, roads, ditches, ponds, levees, dams, fences, buildings, yards, pipelines, telephone and power lines, compressors, dehydration facilities, tanks, batteries, pits, meters, waterlines, and water disposal facilities
 - Coordinate the access rights with any later reversion or partial termination provisions in the lease
 - Have you provided for operations on the leased premises which may benefit adjacent lands
- Rights of the lessor
 - Surface use obligations related to lessor’s operations or restricting lessee’s operations, such as set-backs or depth or gathering or flow lines
 - Reclamation of surface facilities, including addition of surface damage provisions

2. Term

- Is the habendum clause a “fee simple determinable” under state law
- Automatic termination—are saving clauses adequate
- Consider definition of paying quantities
- Partial termination provisions or Pugh clause

3. Royalty

- Value
 - Market value
 - Proceeds
 - Fixed price
 - Affiliate sales
 - Definition of affiliate
 - Amounts actually received
- Quantity
 - Measurement point
 - Lost or used gas on and off leased premises
- Deductions
 - Type: gathering, marketing, compression, dehydration, transportation, removal of liquid or gaseous substances or impurities from the affected production, and any other treatment or processing, losses or produced volumes whether by use as fuel, line loss, flaring, venting or otherwise
 - Actual costs of deductions or market value
 - Lessee or affiliate facilities
 - Taxes

4. Operational Savings Clause

- Cover all possible scenarios: (1) the drilling of a well over the end of the primary term which results in a dryhole: (2) drilling or other operations occurring at the end of the primary term which result in production in paying quantities: and (3) the cessation of production in paying quantities after the end of the primary term
- Definition of operations covered including (i) drilling or any act preparatory to drilling (such as obtaining permits, surveying a drill site, staking a drill site, building roads, clearing a drill site, or hauling equipment or supplies): (ii) reworking, plugging back, deepening, treating, stimulating, refitting, installing any artificial lift or production-enhancement equipment or technique; (iii) constructing facilities related to the production, treatment, transportation and marketing of substances produced from the lease premises; (iv) contracting for marketing services and sale of Oil and Gas Substances; and (v) construction of water disposal facilities and the physical movement of water produced from the leased premises
- On and off leased premises
- Coordinate timing provisions with other clauses

5. Pooling

- Lands, formations and substances covered

- Scope of authority
 - Before or after drilling
 - Lessee's sole discretion
 - Acreage limitations for oil and gas wells
 - Definitions for oil and gas wells
 - Default if no spacing order
- Horizontal wells – definition
- Effect of drilling or operations in the pooled unit
- Effect of payments in pooled unit
- Good faith application
- Written declaration, recording
- Ability to pool again or revise existing unit

6. Unitization

- Definition of unit plan or agreement
- Not cross conveyance
- Written declaration

7. Shut-in Royalty

- Avoid automatic termination-well capable holds lease not shut in payments
- Amount to pay: per well, per acre
- Timing for payments
- Who to pay
- Definition of shut-in well – how broad
- Cover gas and oil

8. Change of Ownership

- Recognition of right to assign all or part
- Release lessee liability upon assignment of all or portion of leased premises
- Lessor notification requirements
 - Information required
 - Timing
 - Effect
- Address all types of payments
- Appointment of trustee or agent if lessor divides ownership

9. Warranty Clause

- Full or limited warranty (by, through and under)
- Describe remedies
- Right to pay taxes, mortgages and liens
 - Subrogation of rights
 - Right to recover expenditures
- Right to suspense

10. Rental Provision

- Paid up
- Notification upon default
- Designate depository or agent for payment (and successor depository)

11. Release of Lease – allow partial release of lands or formations

12. Force Majeure Clause

13. Lesser Interest Clause

14. Other Provisions

- Indemnity Provisions
- Judicial Ascertainment Provision
- Free gas clause
- Preferential purchase
- Extensions
- Surface damage issues
- Partial termination clause (Pugh clause)
- Required execution of division order
- Notice and demand before default
- Designation of depository for all payments
- Gas measurement