



UNIVERSITY of
DENVER

DANIELS COLLEGE OF BUSINESS
Franklin L. Burns School of Real
Estate & Construction Management

LEASES, TITLES & CONTRACTS (LTC) CLASS DESCRIPTIONS

THE OIL & GAS LEASE: STANDARD SAVINGS, TERMINATION AND ADMINISTRATIVE CLAUSES

The oil and gas lease includes termination clauses such as the “unless” delay rental and the shut in royalty clauses and the habendum clause requiring that the well be spudded by the end of the primary term unless the lease can be saved from termination through continuous operations, the dry hole clause, application of the force majeure clause, etc. The proportionate reduction and pooling clause also can be viewed as savings clauses as they typically allow for smaller payments to the mineral owner without the risk of termination. We examine all of these clauses and consider the impact of, non-payment of delay rentals and royalties, the non-apportionment rule, entirety provisions, transfers and other actions by lessees, the effect of assignment and surrender provisions and the meaning of “producing in paying quantities and the impact of express or statutory requirements to do more. We also examine various defenses to lease termination including notice before forfeiture provisions, waiver and estoppel, production prevented by lessor’s misconduct, suspended operations during lease challenges, acceptance of free gas by lessor, adverse possession and force majeure. We also examine the special and advantages and disadvantages of owning federal leases with regard to savings and termination clauses.

MODIFICATIONS TO THE OIL & GAS LEASE IMPACTING KEEPING THE LEASE ALIVE AND ASSIGNMENTS OF INTERESTS

Modifications to oil and gas leases are growing more common and the growing use of Horizontal Drilling has created new challenges along with new modifications. Even if a lease is held by production, there may be express lease provisions, or statutory requirements which can cause the lease to be lost or other remedies applied. We examine express covenants to develop the leasehold after production has been obtained and the implied covenant to develop as it applies to undeveloped deeper formations. Other unconventional lease clauses examined include anti top lease language (right of first refusal), notice of default and grace periods, retained acreage clauses, anti-dilution clauses, judicial-ascertainment clauses, Pugh clauses and cross conveyance of interests along with due diligence issues raised when acquiring acreage by earning in a Farmout or by purchasing via assignments including limitations on use and surface restrictions, well commitments, continuous drilling clauses, royalty provisions, consents to assign, express damages provisions, free use of gas, options to extend, pooling and unitization clauses and anti-assignment clauses.

TITLE ISSUES AND DIVISION ORDER TITLE OPINIONS, CALCULATIONS AND DIVISION ORDERS

The purpose for title examination varies, but once the well is producing, the parties have entered the production and distribution phase; the Division Order Title Opinion and Division Orders must be prepared properly and the various interests calculated. This class covers details concerning initiating both as well as key considerations to get it right. Errors must be avoided, when possible, and the process of identifying uncured title or contractual problems must be understood. Operators and purchasers of production rely on these documents of ownership of the rights in the minerals produced from a property for purposes of distribution of proceeds. It reflects lessors’ royalties, working interests, overriding royalties, production payments, net profits interests, and other lease burdens. The Division Order Title Opinion usually reflects the interest of each owner in terms of “net revenue,” using a base of 1.0 to represent the whole. The corporate landman or counsel uses the Division Order Title Opinion to prepare the division orders which are circulated to the owners of mineral or leasehold interests reflected in the title opinion preliminary to and as authority for disbursement of proceeds of production. We examine the methods and procedures used to identify ownership interests and establish title requirements including reliance on voluntary curative documents, statutory curative statutes and quiet title actions. We also examine options for dealing with post-production deaths, gifts, conveyances and other matters as well as how pay decks are adjusted via the use of division orders and transfer letters.

JOINT OPERATING AGREEMENTS AND THEIR SUCCESSFUL USE AFTER THE PRODUCING TEST WELL

Once the test well is capable of producing in paying quantities, at least the first unit may be held by production for many years. Now that all the excitement of the exploration is over, the parties must work together to keep the leases alive and hopefully continue to develop within the limitations of the contract area. In this class, we consider issues that if better understood will lead to wiser choices regarding choice and removal of operators and expectation regarding important matters for both operators and non-operators. This includes operating agreement and detailed provisions concerning the drilling of a test well, title issues, the drilling of additional wells, subsequent operations, AFEs and Non-Consent Penalties, sharing of expenses and accounting methods, authority of the operator, restrictions upon the operator and the relationship between operator and non-operators. We also examine topics not included in the non-modified JOA including the following issues: Agency, Independent Contractor and Acting in Good Faith, Fiduciary Status, Standard of Conduct, Exculpatory Clauses, AMLs and the impact on Acquisition, Maintenance or Transfer of Interests, Dispute Resolution, Limitation on Well Proposals, Notice Regarding Delay Rentals, Shut-In Payments and Minimum Royalties and Pipelines and /or Gathering Lines.

JOINT OPERATING AGREEMENTS: IMPACT OF LEASE TERMS, FARMOUTS, MARKETING AGREEMENTS, GAS BALANCING AGREEMENTS AND SPECIAL TITLE AND UNIT SIZE ISSUES

The terms of leases to which a JOA is subject are controlling as between lessor and lessees and cannot be modified without the joinder of all parties to the relevant leases. Unless lessees are parties to a JOA, which seldom happens, the JOA will not alter the duties owed to lessees under applicable leases. Due diligence is required to understand the impact of express agreements on otherwise applicable implied duties. Lease terms with significant economic effects will be discussed including restrictions on the right to pool, drilling commitments and Termination for Breach vs. Right to Cure. Farmouts will be discussed in relation to whether a farmout triggers the preferential rights to purchase provision in 1989 JOA Article VIII.F. Marketing agreements and Gas Balancing Agreements are included as they relate to JOAs. Special topics include: change in unit size, title examination, curative responsibilities and how loss or failure of title is handled depending on the cause.