

STRATEGIES TO DRAFT BETTER CONTRACTS

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STRATEGIES TO DRAFT BETTER CONTRACTS - GENERAL

- Pay close attention to accurate and thorough completion of each section of any model contracts.
- If a form section is not applicable, explicitly state such, along with a rationale.
- Ensure all contracts and other written documents are carefully and thoroughly drafted and reviewed prior to execution.
- Ensure all contracts and other written documents align with the intent of all parties to reduce potential future disputes.
- Contracting in the oil and gas business is affected by both “industry custom” and by the invention of form contracts. These contracts and customs serve as a barometer for “fairness.” If a producer or contractor has been used to certain ways of conducting business for a long period of time, there develops a sense that this way is the only fair way to do business.
- When looking at form agreements, check who the authors are.
- If the form has been generated by a trade association that represents the industry with whom you are negotiating, the forms are likely slanted away from your objective.

STRATEGIES TO DRAFT BETTER CONTRACTS - LEASES

- **Oil and Gas Leases**

- The mineral owner (Lessor) may want to consider several items before signing a lease.
- An examination of both the potential lessee and the lease provisions protecting the lessor's potential cash flows. Much money has been lost because one party was unfamiliar with the other party.
- Scrutinize the lessee.
- If the lease is being taken by a company and the words corporation, incorporated, LP, LLC, et cetera or an abbreviation thereof are used in the name, call the secretary of state or check with the SoS Website and find the name and address of the registered agent.
- If the company has a duly authorized registered agent on file, the company is legally authorized to conduct business in Texas.
- If the lease is being taken in an individual's name, determine whether the individual intends to explore and produce the property or assign it.
- If an assignment is likely, find out who the assignee is. If the prospective assignee is a company, check them out with the SoS.

STRATEGIES TO DRAFT BETTER CONTRACTS - LEASES

Oil and Gas Leases (Continued)

- The following terms may be considered by mineral owners when negotiating a lease.
 - If the land contains several producing formations at varying depths, lease each strata separately. This is accomplished by negotiating a horizontal severance clause. If the severance cannot be based on formations, condition it on how deeply the lessee drills during the primary term.
 - Insert provisions allowing free access to books, records and drilling data accumulated pursuant to operations conducted on the leased premises. Always try to obtain copies of the logs for the mineral owner's files.
 - By the same token, obtain copies of all title opinions and abstracts of title acquired by the lessee. These will bolster the lessor's negotiating position with any subsequent lessee.
 - If possible, negotiate some provisions whereby the mineral owner may assume control of the casing when operations are abandoned. The casing could be used to withdraw any remaining gas or extract fresh water for domestic or agricultural purposes. However, the mineral owner may be required to assume the cost and liability for plugging the well.
 - Explicitly define when drilling operations commence. The criteria may be the time the well is spudded with appropriate equipment on site to drill to the depth indicated on the drilling permit. Otherwise, Texas case law is quite lenient and vague in defining the term.
 - Define when a well is completed. This may be the time the drilling rig is released from the drill site. The definitions are indispensable when calculating the 90-day period between wells for continuous drilling operations.
 - Require lessee to indemnify, save and hold lessor harmless from all claims, demands and causes of actions stemming from activities undertaken by lessee or lessee's assignees, their employees, agents, contractors and subcontractors during operations conducted on the leased premises. Make sure the indemnification covers infractions of environmental laws. If possible, require the lessee to post bond and carry comprehensive liability insurance of a specified amount as added security from such claims.
 - If a Pugh clause cannot be negotiated, never place noncontiguous tracts in the same lease. Otherwise, production from one tract or the pooling of one tract will hold all the noncontiguous acreage even though miles apart.

STRATEGIES TO DRAFT BETTER CONTRACTS - LEASES

- Even if the lessee is liable for damages, the Lessor's inconvenience of unwarranted structures/entries may be avoided by.
- (The suggestions are also good for the Lessee's reputation).
 - Limit unrestricted underground disposal of salt water in abandoned wells on the property – require prior written consent of the lessor.
 - Lessee's routes of ingress/egress to existing roadways on the leased premises.
 - For deviations, require them from the nearest roadway.
 - Specify who removes roadways built by lessee when lease terminates.
 - Specify where cattleguards are required/who will maintain locked gates.
 - Specify erosion prevention techniques along roadways/around drill sites.
 - Do not permit wells within 200 feet (or some greater distance) of a dwelling.
 - Provide that all underground pipelines and telephone lines must be buried below plow depth.
- Mineral owners cultivating/grazing the land above pipelines should specify the double ditch method for laying pipe.
 - Method requires the top soil to be placed on one side of the trench and the subsoil on the other.
 - When backfilling, subsoil is replaced first, then the top soil.
- Specify that the lessee's structures and equipment must be removed within a certain time after the lease or be forfeited.
- If the lessee must cut a fence to build a road or a pipeline, describe the methods for bracing the fence prior to its breach.

STRATEGIES TO DRAFT BETTER CONTRACTS - JOAs

Pay close attention to accurate and thorough completion of each section of the Model Form JOA.

Consider additions if horizontal drilling is contemplated.

STRATEGIES TO DRAFT BETTER CONTRACTS - MSAs

- It is important to understand how the MSA will interact with other contracts, particularly the drilling contract, and how the risk allocation provisions will be impacted by applicable law.
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The MSA may include payment terms and restrictions that conflict with work orders and other contracts. Make sure the MSA does not include language that could limit your company's ability to work and make a profit on the project.

Most MSAs include a termination clause. This spells out what is expected from all parties and what is considered breach of contract. Avoid clauses that call for automatic termination for work not performed in a certain time frame. Avoid termination clauses that are too specific or demanding.

Do not sign anything you do not understand. If your company has never negotiated an MSA before, have a lawyer look at the agreement. If you are familiar with MSAs, there may be terms that are difficult to understand.

STRATEGIES TO DRAFT BETTER CONTRACTS - GAS BALANCING AGREEMENT

- Include a gas balancing agreement, especially in cases of oil and gas wells/gas wells which are jointly operated.
- If a gas balancing agreement is not required or not applicable, document the rationale to the client.

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