

COMMERCIAL REAL ESTATE LAW

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Look Before You Lease

One of the most exciting developments for Pennsylvania landowners is the exponential growth of natural gas leasing in the Commonwealth. The Marcellus Shale is a tremendous



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deposit of natural gas located in western New York and much of Pennsylvania. Improvements in technology have made natural gas extraction in the Marcellus Shale possible and exploration and drilling operations have commenced in earnest. The financial possibilities for real property owners in "hotbed" northern tier counties are stunning. Initial "bonus" payments have exceeded \$2000 per acre leased and, by law, a minimum 1/8 royalty must be paid on proceeds of extracted natural gas. Furthermore, expansion into the central counties and Pocono region has only begun.

A potential windfall may tempt owners to lease their property as soon as possible on whatever terms the gas company offers. Before leasing, however, an owner should consider the following:

1. Do I Still Have the Mineral Rights?

A century before anyone knew the Marcellus region was rich in natural gas, timbering was the area's dominant industry. Landowners commonly sold the fee interest in their timber rights, which often included all mineral rights, including subsurface oil and gas. Consequently, it is in an owner's best interest to order an extensive title search (150 years is appropriate) to ensure they actually own their mineral rights to lease. There's no worse situation than spend-

ing time and money negotiating a gas lease only to find out the mineral rights were sold long ago.



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2. What's the Real Term? Five years appears to be a typical term for a Marcellus Shale natural gas lease. Caution! A closer look often reveals several possibilities that could make the lease term far longer. First, leases often contain an automatic, one-

term renewal at the option of the gas company in a separate paragraph. Also, leases often continue for so long as gas is being produced or stored on the property or if operations in furtherance of production (such as mere "investigations") are occurring. These terms should be scrutinized closely and can be negotiated.

3. Am I Subject to Unitization?

Almost certainly, the gas company will include a clause permitting it to "unitize" all or a portion of the leased property with other properties to form a

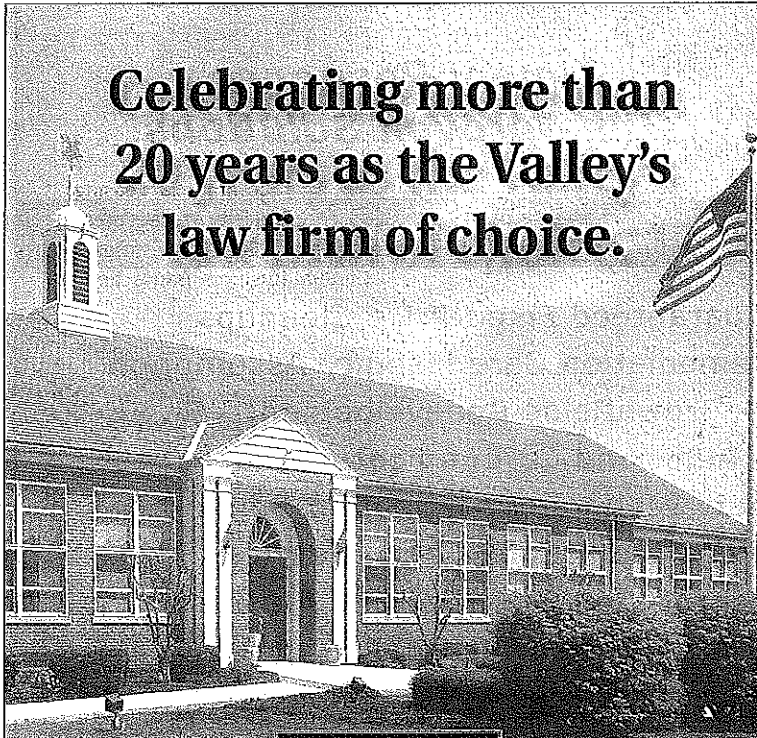
"production unit" from which the owner is paid a pro rata share of royalties. While seemingly harmless, this clause is dangerous if an owner has a large parcel leased and only a small portion is put into a production unit. This typically triggers the "gas being produced" language that extends the lease term for the entire parcel, although only a small portion of the leasehold is generating royalties. Owners can address this potential issue by adding a so-called "Pugh Clause" to their lease. This clause frees acreage not in a production unit from

the lease within a set period of time, often one year after a portion is placed into a production unit.

With proper due diligence and guidance, Pennsylvania landowners can act confidently in leasing their natural gas rights. As with any binding contract, however, it is critical that owners look before they lease.

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illegal disposal of material. Historically, there are parties, such as waste oil producers, that were held liable for illegal dumping by third parties. We want our customers to have complete peace of mind.

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Patricia Haftek is president of New York Concrete Washout Systems. ■