Dear New Yorker:

In the first decade of the 21st Century, gas exploration has evolved from a predominately regional operation into a large-scale business, attracting national and global companies. As a result, production of natural gas has significantly increased.

This evolution is a direct result of higher natural gas prices coupled with improvements in both gas exploration and extraction technologies.

These advancements have furthered the exploration and extraction of natural gas from two formations that had been previously difficult to tap - the Trentron-Black River and Marcellus Shale.

If done properly, and with proper environmental safeguards, the increased production of natural gas can be a benefit to the landowners, economy, and all New Yorkers. It has already generated significant revenue for energy companies, and some landowners. The companies and the government must be vigilant to protect our environment throughout the process.

In addition to raising environmental concerns, some landowners have complained to my office about abusive, misleading, and/or fraudulent tactics used by certain exploration and development companies, or their agents, in an effort to obtain a lease. If you believe that you have been defrauded by an unscrupulous landman or gas exploration company, or if you have environmental concerns, please contact my office at 1-800-771-7755.

I want to share with you some general information in the event you or someone you know is approached and asked to sign a lease. I hope you find the information contained in this pamphlet useful.

Sincerely,

Eric T. Schneiderman
Attorney General

How to Enter Into an Oil and Gas Lease

Most landowners who have entered into an oil and gas lease have been approached by a person directly or indirectly representing a gas operator.

This person is commonly referred to as a **landman**. The landman's main purpose is to secure leases on as large an area as possible.

Landmen may approach landowners at their homes or businesses, or may contact landowners preliminarily by telephone before meeting with them in person.

What is an Oil and Gas Lease?

In very general terms and in the context of mineral rights and exploration, a lease is a written instrument where the landowner (the "lessor") grants to a business (the "lessee") the right to extract oil and natural gas from beneath a landowner's property.

Like many other types of leases, the rights and obligations of the lessor and the lessee are detailed in the lease and, in most cases, landowners will be bound for the duration of the lease to those terms and conditions.

In addition, the lessee will record either the lease or a memorandum of lease at the local county clerk's office.

Thereafter, if you want to sell your property, the buyer will have to accept that lease along with it. In other words, the rights and obligations set forth in the lease are connected to your land.

For this reason, and because of the complexity of oil and gas leases, **the Attorney General strongly recommends that before signing a lease you contact an attorney to secure professional, personalized advice in this important transaction.**

Landowner's Tips

If you are thinking about signing an oil and gas lease, consider the following:

1. **CONSULT AN ATTORNEY** before you sign a lease, and review each term and condition of the lease with your attorney.
2. **ASK ALL NECESSARY QUESTIONS** to ensure that you understand all terms and conditions on the lease.
3. **OBTAIN IN WRITING** all promises and conditions, and make sure those written promises are part of the lease.
4. **NEGOTIATE** as you may get better terms than those initially offered to you.
5. **SEARCH FOR** and negotiate with more than one gas operator.
6. **THERE IS STRENGTH IN NUMBERS** so consider negotiating your lease together with a group of neighbors or interested parties.
7. **OBTAIN COPIES** of the lease you sign and a copy of the lease signed by both you and the gas operator to make sure that the lease reflects the agreement reached with the landman.
8. **THE RIGHT TO CANCEL** is yours for 3 business days after signing the lease, but to cancel, you must comply strictly with all requirements (consult your attorney).

The New York State Office of the Attorney General
1-800-771-7755
www.ag.ny.gov

April 2011

Printed on recycled paper.

Oil & Gas Leases:

Landowners' Rights

New York State
Office of the Attorney General

Eric T. Schneiderman
Attorney General

Oil & Gas Leases

Four Key Terms In Oil and Gas Leases

The Leasing Clause

This clause describes in general terms what rights the lessor is granting the lessee, such as "the right to access and extract oil, gas and their constituents" and "all exclusive rights needed to explore, develop, produce, measure and market production." This includes the right to conduct exploratory tests, drill wells, and use or install roads on a landowner's property.

The Leasing Term Clause

The leasing term usually consists of a primary term and a secondary term. Generally, the primary term is explicitly stated as a number of years. The secondary term, however, can extend the duration of the lease indefinitely into the future if gas production is ongoing or if one or more specific events occur, like continued rental payments.

The Bonus Payment Clause

The bonus payment is the amount of money landowners receive as consideration for signing the lease. It may be a fixed amount or it may be a dollar-per-acre amount.

The Royalty Payment Clause

A royalty is the landowners share of the proceeds from the sale of oil, gas, and other constituents. This clause will determine what percentage a landowner will receive and what deductions, if any, will be made from the sale price before the landowner receives his or her royalties.

Problems with Landmen

Misleading or Misunderstood Statements

top 5

1. **"Your property will [or won't] be in the unit:"**
   Neither the landman nor the gas operator can guarantee that any property will be part of a spacing unit because the New York State Department of Environmental Conservation (NYSDEC) makes this determination.

   A landman could let you know whether an operator has proposed a spacing unit containing or excluding a specific property, but any statement purporting to guarantee the inclusion of a property in a spacing unit is misleading.

2. **"This is the standard lease, and it's not negotiable"**
   There is no such thing as a standard lease in the oil and gas leasing business. All leases and all terms in the lease - except for those terms required by law - are negotiable.

3. **"All your neighbors have signed, and you're the sole person holding everything up"**
   It is highly unlikely that you are holding up the transaction. While it might not be misleading to state that all the neighbors have signed (if, indeed, they have signed leases), it is rarely the case that a landowner's reluctance to sign a lease alone is holding everything up.

   The NYSDEC requires gas operators to control a minimum of 60% of the property with the proposed spacing unit and 100% of the property through which the well would be drilled. If the size of one property within the proposed unit is such that the gas operator cannot reach that minimum percentage without that property, or cannot drill the well-bore without traversing through that property, than the statement would be accurate.

4. **"Don't you want to receive $X every month"**
   The amount of money a landowner receives in royalties is a function of several different factors that change from one day to the next. Therefore, no landman can give you a reasonable estimate of how much money you will receive in royalties. A landman, however, may use examples to show you how your royalties will be calculated.

5. **"If you don't sign, we'll take the gas from your property without paying you"**
   The law in the State of New York does not allow this to happen. If a landowner is located within a unit, she will share in the royalties generated within that unit in the proportion allocated to her property.

Pressure Tactics

Remember, it is your property, and you have the right to decide who can come on it, or contact you.

Feeling Under Pressure? Consider the Following:

1. Obtain the full name, address, and telephone number of both the landman and the business they represent.
2. Direct the landman to leave the property and to not return or contact you again.
3. Write a letter to the landmen and the business they represent, restating the above request.
4. Consider contacting local law enforcement to determine if additional action is necessary.

Verbal Promises vs. Written Documents

Verbal promises should be put in writing. It is essential that every single promise and agreement be in writing and included in the lease.

Failure to Provide a Copy of the Lease

Landowners should demand a copy of the lease within a reasonable time after they sign it. In addition, landowners should request the landman leave them a copy of the lease before it is signed by the gas operator.

Problems with the Lease

As noted previously, the leasing clause grants the lessee many rights beyond the right to extract oil and gas. Before deciding whether to sign a lease, landowners should pause to consider what type of uses they want to allow on their properties. For example, while one landowner would not object to allowing gathering pipelines to be installed on his property, another may find such intrusion to be unacceptable.

Lease Duration

Landowners should also be mindful of those conditions that will extend the duration of the lease beyond its primary term. Before signing a lease, the landowner should understand how the lease will operate, including whether it will trigger a secondary term, and, if so, when.

Royalties

Landowners should understand exactly what they are receiving in royalties. For instance, it the lease calls for an 18% royalty payment, know how will it be calculated and how to independently verify that you are receiving the correct amount of royalties.

Disputes

Another issue that landowners must consider is how would a dispute between the lessor and the lessee be resolved. The so-called "standard leases" contain a provision requiring the use of arbitration, typically involving a panel of three arbitrators. The lessee and lessor each pay the fee for an arbitrator and they split the fee for the third arbitrator. This can result in a significant outlay of money just to have your grievance heard.