

Ohnstad Twichell, P.C., is a full service law firm having a general and trial practice in North Dakota, Minnesota, and federal courts and offering services in the fields of probate, real estate, estate planning, corporate, labor/employment law, family law, elder law, municipal finance and bonding, taxation, personal injury, criminal, negligence, commercial, insurance defense, water rights, oil, gas and wind law, and automobile law.

## FARMLAND SALES



**David L. Wanner**  
Attorney

The attorneys at Ohnstad Twichell are available to consult with and represent clients concerning land sales, including assistance to clients in the various aspects of land sales from beginning to end. Ohnstad Twichell helps our clients with the sale of farmland, when the need or desire to do so arises, in the usual course of the practice of law.



**Robert E. Rosenvold**  
Attorney

Unlike other professionals, the attorneys at Ohnstad Twichell can provide a full range of legal services and advice from the beginning of a land sale through the completion of a land sale. These services include the following:

- Review of income tax ramifications
- Tax-free exchanges
- Review of abstracts and title opinions
- Resolution of title issues prior to sale
- Determination of sale procedures with client
- Preparation of bidder's information packet
- Arranging advertisements for sale
- Direct mailing of sale information to prospective buyers
- Review of bids
- Scheduling and conducting final bidding as directed by client
- Preparation of purchase agreement
- Title work as required
- Closing of sale transaction
- Tax basis investigation and determination

Ohnstad Twichell works with each individual client to structure each sale in accordance with the client's directions and requirements. Please call us if you need any assistance in a land sale. Bob Rosenvold, Marshall McCullough, Dave Wanner, and Lukas Andrud are available to assist clients with land sales from the West Fargo office. John Juelson and Ross Keller are available to help clients with land sales from our Hillsboro office.



**Marshall W. McCullough**  
Attorney



**Lukas D. Andrud**  
Attorney



**John A. Juelson**  
Attorney



**Ross V. Keller**  
Attorney

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## BURGUM LAW FIRM MERGES WITH OHNSTAD TWICHELL LAW FIRM



**Delvin J. Losing** works in the Casselton office and devotes his practice to real estate, estate planning and probate law.

The law firm of Ohnstad Twichell, P.C., is pleased to announce that Delvin J. Losing joined the firm on July 1, 2010, as a shareholder and practicing attorney. Del previously was a shareholder

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*A legal  
newsletter from  
Ohnstad Twichell, P.C.,  
with offices in  
West Fargo,  
Hillsboro,  
Casselton,  
and Page,  
North Dakota.*

## OIL AND GAS LEASING CONSIDERATIONS



*Lukas D. Andrud works in the West Fargo office and devotes his practice to real estate law, water law, and oil, wind and gas law.*

The oil boom in western North Dakota has created an increasingly common situation across the state and nation for that matter. Mineral interest owners are receiving a phone calls from oil companies offering to lease mineral interests that may be long forgotten or perhaps not even known about in the first place. Mineral owners are then presented with a “standard lease form” often offering substantial sums of money but containing no shortage of confusing language and oil industry jargon. Before signing an oil and gas lease, mineral owners should understand and be comfortable with all lease provisions. This article is by no means an exhaustive discourse on the topic, rather it is intended to give mineral interest owners a basic understanding of three of the most important oil and gas lease terms. It is almost impossible to understand an oil and gas lease as a whole without understanding these key concepts. These three main components are: 1) the bonus, 2) the habendum clause, and 3) the royalty clause.

The bonus is the amount of money initially paid to the lessors (mineral rights owners) for entering into a lease. It is a fixed amount per acre and varies greatly due to numerous geological and economic factors dictating just how much an oil and gas company is willing to pay. The bonus could very well be the only payment you receive from the oil company because drilling never occurs on the vast majority of leased lands. The oil company is essentially paying for the exclusive right to drill within a certain amount of time—with no promise that it will drill. The bonus is typically paid in the form of a sight draft. A sight draft looks like an ordinary check but there is one important difference. Instead of having relatively immediate access to the funds as with an ordinary check, a sight draft is not payable until a certain period of time has passed from its deposit (typically 30 days). This provides the oil company with additional time to take care of any title issues that may arise before the draft becomes payable.

in Burgum Law Firm, P.C., of Casselton, North Dakota. He joined the Burgum Law Firm in 2002 and practiced with attorney Brad Burgum until Brad’s unexpected death on February 14, 2010.

Del’s primary practice areas are real estate, estate planning, probate, elder law, and municipal law. He prepares wills, trusts, powers of attorney and health directives. In the real estate area, his representation includes preparation of lease agreements, title opinions, purchase agreements and deeds. Del is the city attorney for the cities of Casselton, Arthur and Buffalo.

Del is a native of Jamestown, North Dakota, and is licensed to practice in both North Dakota and Minnesota. He is a member of Cass County Bar Association, State Bar Association of North Dakota, Minnesota State Bar Association, the Red River Estate Planning Council, and is the current president of the Casselton Business Association.

*“I am excited about merging with Ohnstad Twichell, in order to best serve my clients,” said Del. “Merging with Ohnstad Twichell allows our office in Casselton to offer more services than ever before and to connect to the expertise in many different areas of the law. Burgum Law Firm, P.C., and Ohnstad Twichell, P.C., have been friendly competitors for a long time and have had a mutual respect for one another. Now we will work on the same team to better serve our clients.”*

Del is a graduate of the University of North Dakota School of Law with a bachelor’s degree in journalism from MSU-Moorhead. After law school, he clerked for Chief Justice Gerald W. VandeWalle of the North Dakota Supreme Court and North Dakota Federal Magistrate Judge Karen K. Klein.

Ohnstad Twichell, P.C., founded in 1939, is a full-service law firm offering legal services in civil and criminal litigation, estate planning, probate, real estate, labor/employment law, family law, elder law, municipal law and bonding, farm foreclosure workouts, corporate law, water and mineral rights, wind, oil, gas, and taxation. Ohnstad Twichell, P.C., maintains offices in West Fargo, Hillsboro, Page and now Casselton. Recently elected officers for 2010 were: Brian D. Neugebauer, President; John A. Juelson, Vice President; David L. Wanner, Secretary; Ross V. Keller, Assistant Secretary; and Robert E. Rosenvold, Treasurer.

*Mineral owners should understand and be comfortable with all lease provisions.*

## BUSINESS CORNER!



*Susan L. Ellison works in the West Fargo office and devotes her practice to labor/employment law, family law, and elder law.*

### PROTECTIONS WHEN VIOLENCE ENTERS THE WORKPLACE

What happens when physical violence makes its way into the workplace? How should an employer react when an employee suddenly rages against co-workers and management? When least expected, an employer may find itself liable for its employee's violent actions.

An employer should consider how to protect itself and its employees from the consequences of violence in the workplace. This should include a policy against violence in the employee handbook. It may also include collaborating with other businesses or local agencies to stay educated and exchange information about violence and how it may affect the workplace. Further, it may be wise to conduct supervisor and employee training relating to issues of violence.

Most employees are "at-will" employees who may be fired for any reason that does not breach a contract of employment, discriminate against a lawfully-protected employee, or otherwise violate a law. How do you deal with a violent employee who may be a very valued employee? Firing such an employee may not be the best solution for the employer, even though the employer may legally terminate the employee if the employer reasonably believes other employees may be harmed. There may also be mental health and disability issues to consider when dealing with an employee you believe may become violent in the workplace.

On a related note, the North Dakota Federal District Court recently denied an employer's request to dismiss an employee's lawsuit in which the employee alleged disability discrimination when the employer fired the employee after being released from a psychiatric hospital. The employee had been admitted to the hospital after he consumed alcohol, obtained a gun, and threatened to kill himself. Upon release, the employee's doctor certified him as ready to return to work without restrictions. The employer did not agree with the doctor, thinking that this person was not ready to return to work because of the "critical event" and terminated the employee. The Court found that a jury could reasonably find the employer had discriminated against the employee based upon disability under the Americans With Disabilities Act.

Here are some points to consider when preparing a policy against violence in the workplace:

- The safety and security of your employees must be of primary importance.
- Stress that any type of violence (including threats, stalking, threatening and abusive behavior, etc.) will not be tolerated in the workplace.
- Further stress that any violence against employees, visitors, customers, clients, or company facilities or property, or in connection with your business is prohibited.
- Violations of the policy will be met with corrective action, up to and including termination.
- The employer will investigate violent behavior and initiate an immediate and appropriate response.
- All employees should be responsible for notifying management of any threats or violence they become aware of or witness.

Attorneys at Ohnstad Twichell, P.C., can assist the employer in developing a policy against violence in the workplace suitable to that employer.

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### HIRE ACT

On March 18, 2010, the Federal Government enacted two new tax benefits for employers. These tax benefits appear under the Hiring Incentives To Restore Employment (HIRE) Act. The incentives are given to employers who hired unemployed workers who are deemed "qualified employees."

One of the tax benefits is a payroll tax exemption. Under this benefit, the employer gets an exemption from the employer's 6.2% share of Social Security tax on wages. This is effective for wages paid from March 19, 2010, through December 31, 2010.

The second tax benefit is given to employers who retain qualified employees for at least 52 consecutive weeks. In that event, the employer is eligible for a business tax credit of 6.2% of wages paid to that qualified employee over the 52-week period. There is a maximum credit of \$1,000.

"Qualified employees" are persons who begin employment after February 3, 2010, and before January 1, 2011, who have been unemployed or employed for less than 40 hours during the 60-day period ending on the date such employment begins. These persons may not be family members of or related in certain ways to the employer.

More information regarding HIRE can be found at [IRS.gov](http://IRS.gov).

*Points to consider when preparing a policy against violence in the workplace.*



The habendum clause is the next area potential lessors should focus on. It consists of two main parts, the primary term and the secondary term. The primary term is the amount of time the oil company has to conduct drilling operations on your lands. If the primary term ends and no oil or gas is being produced from the leased property, the lease ends and you are free to lease it again and receive another bonus. So, it is to your advantage to lease for as short of term as possible. If drilling is commenced and oil and gas are produced from your land, the lease enters what is called the secondary term. The secondary term extends the lease for so long as oil or gas is being produced from the property, which could be many years. Therefore, you should take care to ensure that you lease to a company you feel comfortable maintaining a long-term business relationship with. Furthermore, the potential length of the secondary term emphasizes how essential it is to negotiate for a satisfactory royalty.

The royalty clause describes the share of production the lessor is to receive. Like the bonus, the royalty a mineral interest owner can expect to receive is heavily dependant on the chances a successful well can be drilled on the property. The traditional royalty is 1/8 of gross production. In North Dakota, 1/6 to 3/16 royalties have become increasingly common. While it is easy to only focus on the percentages, it is also important to consider what those percentages include, particularly in the case of royalty payments for gas production. Seemingly innocuous language often allows for deductions to be made for transportation, processing, treatment and marketing of gas before royalties are calculated. These deductions can create significant reductions in the amount of royalty payments a lessor expected to receive.

These provisions as well as all other provisions of an oil and gas lease are negotiable and can be crafted to best suit your needs while at the same time granting the oil company the rights it requires. As with any important document, it is essential that you understand each provision of an oil and gas lease before signing. Your Ohnstad Twichell attorney can assist you in both understanding lease provisions and in your negotiations with oil companies.

## PROFILE OF ATTORNEY ERIN A. MULDOON HAUG



*Erin A. Muldoon Haug works in the West Fargo office and devotes her practice to family law, oil, gas, and wind law, estate planning, and civil litigation.*

Erin A. Muldoon Haug joined the Ohnstad Twichell law firm on July 19, 2006.

Erin was raised in Red Lake Falls, Minnesota. She earned her undergraduate degree from Concordia College, Moorhead, Minnesota, where she majored in business administration and office administration. She received her law degree from the University of North Dakota School of Law in 2004.

After completing law school Erin worked for two years in private practice in East Grand Forks, Minnesota. She was the Assistant City Prosecutor for East Grand Forks and practiced in the areas of family law and real estate law.

Erin practices in the West Fargo office, and she is licensed to practice in both North Dakota and Minnesota. Erin will maintain a general practice of law, but will concentrate in the areas of family law, oil, gas, and wind law, estate planning, and civil litigation.

\* \* \* \* \*



*Profile of Attorney*

*Erin A. Muldoon Haug*



**Ohnstad Twichell**  
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OFFICE ADMINISTRATOR & EDITOR  
PEG BUCHHOLZ, PLS

**GETTING PERSONAL!!**

Jana Halling began working for Ohnstad Twichell in May 2010 as a file clerk/office assistant. She graduated from Rasmussen College in 2009 with an Associates Degree in Paralegal. She previously worked at Sr. Rosalind's School of Massage for five years as its Practicum Coordinator and as an instructor. Jana and her husband, Travis, have two dogs and enjoy fishing on Lake of the Woods during their free time.

Kimberly Olson began working for Ohnstad Twichell in July 2010. She previously worked at Burgum Law Firm for one year as a paralegal. In 2005, she graduated from Le Cordon Bleu with an associates in Culinary Arts. In 2009, she graduated from Minnesota State University Moorhead with a Bachelors in Paralegal and Accounting. Kimberly and her son, Gavin, enjoy playing baseball and spending time at the park during their free time.

Wanda Haugen started work at Burgum Law Firm in October of 1997 as a secretary/bookkeeper. She has three children and two granddaughters. Wanda loves to spend time with family and friends.

The Ohnstad Twichell law firm was also a recent 2010 ChamberChoice Nominee for the Chamber of Commerce of Fargo Moorhead.

**STOP BY OUR BOOTH  
AT BIG IRON,  
SEPTEMBER 14-16, 2010!!**

The information provided in this letter is of a general nature and should not be acted upon without prior discussion with your Ohnstad Twichell, P.C., attorney.

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