

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.

CHECK YOUR OIL AND GAS LEASE



Michel W. Stefanowicz
works in the West Fargo office and devotes his practice to estate planning, probate, real estate, and oil, gas and mineral law.

An Oil and Gas Lease is a unique legal instrument that incorporates both the principles of a conveyance and a contract. Its consequences can be relatively short-term or they can be for a very long time. It is incumbent on the mineral owner to understand how an Oil and Gas Lease might affect him. Some basic considerations follow:

1. **Granting Clause:** This clause is usually the first paragraph in an Oil and Gas Lease. The granting clause sets out the rights that are granted by the mineral owner to the lessee (oil company). In most cases these rights should be narrowly defined to provide as closely as possible for the drilling, exploring and operating for and producing oil and gas and associated hydrocarbons. Some granting clauses provide for collateral uses such as the mining of coal and coal bed methane gas, the construction of plants, injection wells, telephone lines and other uses that may not be in the best interests of a mineral owner, especially if the mineral owner is also the surface owner.
2. **Term:** The initial term, called the primary term, is stated in years. The usual primary term is between three and five years. Generally, the shorter the term, the better for the

mineral owner. The primary term sets the maximum period of time for which a lessee can maintain the lease without drilling or beginning drilling operations.

3. **Royalty Clause:** The royalty clause establishes the compensation that the mineral owner is entitled to receive if there is production under the Oil and Gas Lease. It is usually stated as a percentage of production. Until the 1970s, the standard royalty was one-eighth (1/8). Currently, one finds royalties varying from one-sixth (1/6) to twenty-five percent (25%), depending upon location and lessee. Caution should be used to insure that the mineral owner's royalty is free of costs of production. It is not unusual for the royalty clause to include language which allows the lessee to deduct certain production costs. In some instances, the oil royalty is free of costs but the gas royalty is subject to certain cost burdens. It is best to eliminate all cost burden language from both oil royalty and gas royalty clauses.
4. **Shut-in Royalty Clause:** Historically, the shut-in royalty clause allowed the lessee to shut in production waiting for a market for that production without giving up the lease in the interim. The lessee's obligation was to pay the mineral owner a shut-in royalty of \$1.00 per mineral acre per year. The lessee could maintain the lease so long as shut-in royalties were paid. These clauses still find their way

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

into modern Oil and Gas Lease forms and have sometimes been abused by lessees. The mineral owner should insist on language limiting the scope of shut-in royalty clauses which may affect either or both oil and gas.

5. **Damage Clause:** The damage clause found in most Oil and Gas Leases is generally limited to growing crops. The mineral owner should insist on a general damage clause covering all of the lessee's operations on the leased premises.
6. **Surface Clause:** The mineral owner who is also a surface owner should contemplate how far his residence might be from a potential oil well and insist that the lease restrict the proximity of his residence from any drilling operations. The surface/mineral owner may also consider requesting additional clauses to be added to the lease to accommodate his surface use with potential drilling and production activities.
7. **Warranty Clause:** The warranty provision of every Oil and Gas Lease should be struck or deleted for the mineral owner's protection. One does not want to warrant title if it is not absolutely necessary. Most mineral title has not been maintained in the same manner as surface title. There may be unknown mineral title issues that the mineral title owner can avoid or ameliorate by striking or deleting the warranty clause.
8. **Pugh Clause:** Not all Oil and Gas Leases contain a Pugh clause. Usually a Pugh clause has to be added to the lease form by way of an addendum. The purpose of a Pugh clause is to prevent the lessee from holding excess acreage under the lease when there is production on only a portion of the acreage described in the Oil and Gas Lease. Insertion of a Pugh clause in the Oil and Gas Lease is extremely important to the mineral owner.
9. **Force Majeure Clause:** This clause excuses failure of the lessee (oil company) to perform its obligations

under the Oil and Gas Lease because of factors beyond the control of the lessee. Most force majeure clauses are too broad and require amendment to restrict the factors that would preclude the lessee from performing under the lease.

10. **Breach of Lease:** Many Oil and Gas Leases contains a provision which allows the lessee to remedy a breach of the lease even after the mineral owner has successfully litigated the breach of lease issue against the lessee. Such a provision gives the lessee a right which the mineral owner may not want to extend under those circumstances.
11. **Option Provision:** The mineral owner should make sure that option to extend the lease language does not appear in the Oil and Gas Lease unless it is intended and the terms of the option are agreed between the parties.

The above clauses and provisions present only a portion of the considerations present in negotiating and approving and Oil and Gas Lease. Not all Oil and Gas Lease forms are the same and most of the clauses and provisions contained therein are subject to negotiation. In addition to Oil and Gas Lease issues, the mineral owner may also encounter Division Orders, Well-Site Agreements, and Pipeline Easements, all of which should be carefully reviewed and, if necessary, amended to foster the best interests of the mineral owner.

Your Ohnstad Twichell attorney can assist you in understanding, evaluating, and amending your oil and gas documents, as well as help you in negotiating with oil companies.

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Michel W. Stefonowicz is a graduate of the University of North Dakota School of Law. Mike practiced law in Crosby, North Dakota, for more than forty years in the areas of probate, oil and gas, and real property prior to associating with Ohnstad Twichell in 2009.

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RETIREMENT PLANNING – FOR YOUR KIDS/GRANDKIDS?



Michael D. Nelson works in the West Fargo office and devotes his practice to commercial litigation.

The importance of retirement planning is something we grown-ups can help pass on to the next generation--our kids (and grandkids) need not wait until they become fully employed as adults, and get access to 401k retirement plans at a job, to learn that lesson.

The Roth IRA provides a very good tool to get the younger generation started early. Even a young person in high school can begin learning that lesson. All that is needed is “earned” income from a job, which is what we sometimes call “W-2” income.

If parents or grandparents wish to help a young person get started, they can visit with their child (or grandchild) about making a gift that would fund all or part of a Roth IRA contribution. Presently, a young person with “earned” income can contribute up to \$5,000 per year (or up to the total amount of “earned” income for the year, whichever is less) into a Roth IRA. The principal and all income earned in a Roth IRA can be withdrawn tax-free in retirement (after age 59½), so long as the Roth IRA has been established for at least five years. The magic of compounding means that years and years of tax-free income grows without the IRS ever touching it. And, if a young person continues to add to his or her Roth IRA by making annual contributions to it over the course of a work career, they will be amazed by just how quickly it can grow.

Banks and other financial institutions typically have Roth IRAs that can be established even for minors, with the help of a parent or perhaps a grandparent.

It is never too early to start teaching the retirement planning lesson to the younger generation. The benefits of an early start, combined with tax-free compounding (growth), will be appreciated by them throughout their lives--and especially when **they** retire!

CHRISTOPHER M. McSHANE NAMED SHAREHOLDER



The law firm of Ohnstad Twichell is pleased to announce that Christopher M. McShane was named a shareholder as of January 1, 2012. McShane has been an attorney with Ohnstad Twichell for five years and practices out of the firm’s West Fargo office. He practices primarily in civil and commercial litigation, and is licensed in both North Dakota and Minnesota.

Chris graduated with distinction from the University of North Dakota School of Law in 2006. Prior to attending law school, Chris graduated summa cum laude with a degree in commercial aviation from the University of North Dakota School of Aerospace Sciences in 2003.

Chris and his wife, Jenny, currently reside in West Fargo, ND.



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

BUSINESS CORNER!

The U.S. Department of Labor has an online database of enforcement information that is available to the public. The database can be found at <http://\ogesdw.dol.gov>. The database is searchable and provides access to enforcement data regarding issues ranging from wage an hour to OSHA regulations.

This website explains that the DOL’s mission is to “enforce a variety of Federal Labor Laws and guaranty workers’ rights to safe and healthful working conditions, a minimum hourly wage and overtime pay, and freedom from employment discrimination, as well as the integrity of their pensions and health plans.” The website “aims to make the enforcement data . . . assessable and searchable. It intends, also, to

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*Public online database
of enforcement
information*



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OFFICE ADMINISTRATOR & EDITOR
PEG BUCHHOLZ, PLS

engage you the public in new and creative ways of using this data.”

For instance, you can search a particular company name to determine whether that company has been subject to a violation or penalty for violation of the wage and hour laws. Currently, the information provided by this website appears to be a work in progress. However, it does pinpoint on a map violations by various states across the nation.

As always, if your company has a question relating to State and Federal laws that impact your business, particularly your workplace, please contact our law firm for a full discussion.

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NEWS FROM OHNSTAD TWICHELL

Sean M. Fredricks was recently elected to the Board of Directors of the North Dakota Water Users Association.

Carol Stillwell and Robin Busch, paralegals at Ohnstad Twichell, celebrated 30 years with the firm. Carol is a paralegal in the municipal and bonding department; and Robin is a litigation paralegal. Congratulations to both Carol and Robin for 30 years with OT!!

GETTING PERSONAL!!

Stacy J. Schwientek joined Ohnstad Twichell in April of 2011 as an office assistant. She graduated from the Minnesota School of Business in June 2010 with an Associate’s Degree in Paralegal. Stacy completed an internship at the St. Cloud City

Attorney’s Office where she worked mostly in criminal law. Shortly after graduating Stacy moved to Fargo from St. Cloud, MN. She previously worked at Kohl’s Department Store where she enjoyed volunteering in the Kohl’s Kares for Kids programs throughout the state. In her free time Stacy enjoys going back home to visit family and spending time outdoors working on projects.

DesaRae F. Pfeifle joined Ohnstad Twichell in December of 2011 as an office assistant. She is currently attending the University of Mary and working towards her Bachelor’s Degree in Accounting. DesaRae has also been in the North Dakota Army National Guard for seven years. DesaRae resides in West Fargo and lately has been busy preparing for the arrival of her first child. In her free time, DesaRae enjoys being outside and going for walks.

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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