



# Land and Leasing

Second Edition



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# Contents

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Figures	vi
Tables	viii
Foreword	ix
Preface	xi
Acknowledgments	xiii
About the Authors	xv
Introduction	1
1 Privately Owned Land	3
Private Ownership	3
Types of Ownership	4
Rights to Mineral Ownership	5
Limitations on Mineral Ownership	7
Landowners and Types of Estates They Own	11
Surface Owners and Mineral Owners	11
Life Tenants and Remaindermen	12
Cotenants	12
Married Persons	13
Landowners as Agents of the State	14
Representatives of Mineral Estate Owners	15
Fiduciaries	15
Executors and Administrators	15
Guardians	16
Trustees	16
Persons Acting under Powers of Attorney	16
Representatives of Unknown or Missing Heirs	17
Summary	17
2 State and Federal Lands	19
State Lands	20
Federal Lands	22
Public Domain Lands	23
Acquired Lands	25
Indian Lands	25
Offshore Lands	26
Summary	28
3 Land Measurement and Land Description	29
Units of Measurement	30
Methods of Description	32
Metes and Bounds	32
Public Land Survey System	35
Urban Subdivisions	38
Completeness of Description	39

	Summary	39
<b>4</b>	<b>Preparations for Leasing</b>	<b>41</b>
	Preliminary Explorations	41
	Geologists and Geophysicists	42
	Landmen	43
	Lease Brokers	44
	Preliminary Title Checks	44
	Purpose	44
	Sources of Information	45
	Preliminary Negotiations	49
	Concerns of the Landman	49
	Concerns of the Landowner	51
	Summary	53
<b>5</b>	<b>Elements of the Lease</b>	<b>55</b>
	Lease Forms	55
	State and Federal Forms	56
	Forms Published by Private Companies	56
	Forms Prepared for Individuals and Associations	59
	Elements of the Lease	60
	Title	60
	Date	60
	Parties	60
	Consideration	62
	Granting Clause	62
	Description	64
	Mother Hubbard Clause	64
	Habendum Clause	66
	Royalty Clause	67
	Shut-In Royalty Clause	69
	Drilling and Delay Rental Clause	70
	Dry Hole, Cessation of Production, and Continuous	
	Drilling Clauses	72
	Pooling and Unitization Clause	72
	Surrender Clause	76
	Damage Clause	76
	Assignment Clause	77
	Warranty and Proportionate Reduction Clauses	78
	Force Majeure Clause	78
	Legal Effect Clause and Lessor's Signature	79
	Acknowledgment	79
	Summary	79
<b>6</b>	<b>Execution of the Lease</b>	<b>81</b>
	Final Negotiations	81
	Special Terms and Provisions	82
	Execution and Acknowledgment	85
	Variations in Proper Execution	85

The Importance of Proper Acknowledgment	86
Recording of the Executed Lease	86
Memorandum of Lease	86
Bonus Drafts	87
Recording Procedures	87
Ratification	88
Summary	88
<b>7 Preparations for Drilling, Producing, and Selling</b>	<b>91</b>
Examining Titles	92
Title Examiners	92
Title Opinions	92
Curing Titles	96
Affidavits	96
Other Kinds of Documents	98
Permitting and Drilling	100
Executing Division Orders	100
Summary	103
<b>8 Agreements to Explore and Develop</b>	<b>105</b>
Support Agreements	107
Dry-Hole Contribution Agreements	108
Bottomhole Contribution Agreements	109
Farmout Agreements	110
Letter Agreements and Formal Contracts	112
Joint Operating Agreements	113
Model Forms	114
Special Provisions	115
Summary	117
<b>9 Pooling, Unitization, and Release of Oil and Gas Leases</b>	<b>119</b>
Pooling	120
Voluntary Pooling	120
Involuntary Pooling	123
Unitization	123
Private Lands	124
Federal and State Lands	125
Release	126
Summary	128
References	131
Appendices	133
Figure Credits	167
Glossary	171
Index	197

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Deborah would like to thank PETEX and Dan McCue for giving her this opportunity—and for their patience throughout the project. She would also like to thank Owen Anderson for teaching her the fundamentals of oil and gas law. Finally, she would like to thank Meg Molleston for her mentorship and teaching her about “all things land.”



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Dan McCue obtained a B.B.A. in Petroleum Land Management from The University of Texas at Austin. Afterwards, he spent 18 years with Amoco Production Company as a Senior Land Negotiator, assigned to various regions of the United States including Alaska. He then served Spinnaker Exploration Company as Senior Landman. While at that company, from 1998 to 2007, he was responsible for the acquisition of leases, the negotiation of commercial deals, the drafting of operating, farmout, and production handling agreements, and the coordination of competitor analysis for federal lease sales in both shelf and deepwater Gulf of Mexico (GOM). Following the sale of Spinnaker Exploration Company to Norsk Hydro ASA, Dan joined newly formed Beryl Oil and Gas, L.P. as Vice President of Land in 2007. There, he was responsible for creating Beryl's Land Department for the integration of newly acquired Gulf of Mexico assets. In 2009, Beryl was sold to Dynamic Offshore Resources, L.L.C. Prior to joining BP America Production Company, he served as Director of Land Management for Calera Corporation of Los Gatos, California.

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## Introduction

Before a petroleum company can develop oil or gas reserves on land belonging to someone else, it must acquire the legal rights to explore, drill, and produce on that land. How these rights are acquired and from whom differ from country to country. In most oil-producing nations, mineral resources are owned by the national government, and petroleum companies must negotiate with government representatives to secure contracts for mineral development. The complexity, cost, and, in some cases, the instability of these arrangements can be very great.

This book focuses on land management in the United States. (Appendix J treats briefly the subject of mineral leasing in Canada.) In the United States, as in other countries, much of the land and mineral wealth are publicly owned. But, in addition to the resources belonging to state and federal governments, vast amounts of land—about two-thirds of onshore territory—are privately owned. The mineral rights to this privately owned land are also commonly owned by individuals. So companies that wish to exploit domestic oil and gas reserves must often acquire the rights to do so from private citizens. The legal instrument that both the government and private owners use to grant those rights is the oil and gas lease. The term *oil and gas lease* is a generic term and as used in this book also implies the terms *oil, gas, and minerals lease* and *oil, gas, and associated liquid hydrocarbons lease*.

The legal obligations established by an oil and gas lease differ markedly from those set up by an ordinary commercial lease. Because the relationship between the landowner and the oil and gas company under a lease is highly interconnected—both legally and economically—regular monitoring is needed to ensure that all the provisions of the lease are met. Companies have responded to the complexities of the leasing relationship by hiring personnel with more legal training than in the past; today, many of their employees are attorneys. Private landowners, for their part, are increasingly aware of the complexity of the arrangement and the value of their mineral resources.

They often employ specialists of their own—attorneys, accountants, financial analysts, and estate planners—to make informed decisions about the leasing of their mineral rights. State and federal governments, of course, use their own specialists to assess the value of publicly owned mineral wealth.

A grasp of the basic legal issues and terms, as well as some attention to the economic and social complexities, is essential to understanding how the petroleum industry leases and develops mineral reserves in the United States. To facilitate that understanding, related topics are grouped in sequential chapters in this book. Chapters 1 to 3 deal with land ownership: who owns land and minerals, who may lease, and under what conditions. Chapters 4 to 7 describe the leasing process: how oil and gas leases are acquired, and by whom. Chapters 8 and 9 discuss a number of related arrangements often needed to exploit leased minerals effectively—operating agreements, joint ventures, and unitization, for example. These last arrangements frequently involve the same company personnel who help to secure leases.

Terms that appear in italics are defined in the glossary at the end of the book. Throughout, the word *landman* is used to refer to the professional in the petroleum industry who negotiates leases with landowners and production agreements with operators in the field. In spite of how it appears, it is intended as a gender-neutral term: Today, the profession counts many women in its ranks. In the coming years, another term such as *land professional* or *land negotiator* may take its place, but the original term is still overwhelmingly used in the industry today.





*In this chapter:*

- Limitations to the rights of landowners to use and dispose of their property
- Severance of estates: surface and mineral estates
- Definitions of oil and gas lease, lessor, and lessee
- Government restrictions on oil and gas operations
- Disputes between parties under an oil and gas lease
- Types of land ownership in the context of the oil and gas lease
- Powers of fiduciaries with respect to oil and gas leases

# 1

## Privately Owned Land

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The word *landowner* describes a person who holds the title to a specific piece of property. Some people think a property owner can do almost anything with the land he or she owns—sell or lease it, build on it or dig into it, plant it, or leave it to anyone in a last will and testament. Many laws affect what the landowner may do with his or her property, however. Besides federal and state laws and regulations, city ordinances might also influence the owner's actions. Zoning ordinances, for example, might prohibit an owner from drilling a well in the backyard. It would seem that a rural landowner would have fewer restrictions than a landowner in an urban area and could explore, develop, and profit from his or her property without hindrance. But is the rural landowner unhindered either? And does that landowner's property include anything that might be found beneath the surface of the land as well as whatever is standing or growing on top?

### PRIVATE OWNERSHIP



*In this chapter:*

- Obtaining information on leasing state lands
- Types of federal leased lands: onshore public domain land, acquired land, Indian land, and offshore land
- Government agencies involved in leasing federal lands: the Bureau of Land Management, the Bureau of Indian Affairs, and the Bureau of Ocean Energy Management
- Procedures for leasing each type of federal leased land

## 2

### State and Federal Lands

While much of our nation's oil and gas is located on privately owned land, large amounts of both are to be found on state and federal lands. (Extensive private ownership of mineral resources is the exception, not the rule, among nations. See Appendix J to learn about mineral ownership in Canada.) The various state legislatures, as well as the United States Congress, have made provisions for the leasing of some (though by no means all) of this publicly held land to the petroleum industry. Chapter 1 discusses one set of conditions—in Texas—under which a mineral estate severed from the surface estate can be leased by the surface owner acting as agent for the state. On such mineral-classified lands, the government and the private citizen may share the economic rewards of successful mineral development. When the government owns both surface and mineral estates, leasing might still be possible if the appropriate procedures are carefully followed.



*In this chapter:*

- Purpose of the land description
- Units of measurement used in land descriptions
- Types of land descriptions used in the United States
- Metes and bounds land descriptions
- Public Land Survey System land descriptions
- Descriptions of urban subdivisions
- Importance of having a complete description of property

# 3

## Land Measurement and Land Description

To be valid, a conveyance of land—by lease, by deed, or by will—must include a *legal description* of the property being transferred. An adequate description, whether it appears in the conveying instrument or in an earlier document cited by the instrument, should permit the tract to be identified on the ground; it should also distinguish the tract from neighboring properties. In the United States, however, this task of describing land is somewhat complicated by history. The fact that various parts of U.S. territory were acquired from other countries—gradually, and by means ranging from purchase to conquest—means that there is often not a single, consistent method of identifying and describing land. There is no single, uniform set of measurements for setting out the lengths, breadths, and areas of individual pieces of property. Most landowners know the dimensions of their tracts in acres, feet, and miles, but to obtain those measurements, some owners—particularly in the southwestern states—must convert various traditional Spanish or French units of measurement to U.S. customary units. Many landowners will identify their property by means of the U.S. government’s *Public Land Survey System (PLSS)*, but some must use a considerably older method known as *metes and bounds*,

A legal description is one that situates the property geographically so that it can be located.



*In this chapter:*

- Preliminary explorations before a company attempts to negotiate leases
- Roles of geologists, landmen, lease brokers, and attorneys early in the leasing process
- Preliminary title checks
- Sources of information for title checks
- Concerns of the landman and of the landowner in negotiating a lease

# 4

## Preparations for Leasing

When negotiating an oil and gas lease in preparation to explore for hydrocarbons, many operators find that they must take into account a greater degree of business savvy and bargaining power on the part of mineral interest owners than was once the case. Whether these owners are public agencies or private citizens, today more of them are treating their mineral rights as assets to be rationally managed rather than as unfathomable mysteries best managed by others. Private owners, for example, are organizing themselves into groups like the *National Association of Royalty Owners (NARO)* to keep up with relevant tax laws, plan lobbying strategies, and exchange information on everything from accounting systems to the going royalty rate in the area and the royalty language in a lease. Not all owners are this concerned about their minerals, of course, and some mineral owners are still unaware that they even own mineral interests outside their home county or state. Nevertheless, owners have responded to a variety of conditions—including a series of highly publicized energy crises and a shaky national economy—by becoming better-informed custodians of their mineral resources. The work of geologists and geophysicists, landmen, and lease brokers in identifying and leasing oil and gas properties has become correspondingly more sophisticated and challenging.

### PRELIMINARY EXPLORATIONS



*In this chapter:*

- Form leases
- Elements of the lease
- Preamble: the basics of the lease
- Provisions: the various “clauses” of the lease
- Signature block: execution of the lease
- Acknowledgment: verification to make the lease recordable

# 5

## Elements of the Lease

While many standard lease forms varying by state or geographic region are still used today in negotiating a lease (table 5.1), most sophisticated lessors hire attorneys to prepare *addendums* to attach to these standard lease forms or draft a lease form to meet their demands. Regardless of the form, each oil and gas lease contains several basic elements. These include a description of the land, a conveyance of specified rights, consideration for the rights conveyed, and an obligation to drill and to pay a percentage of the production to the landowner.

### LEASE FORMS

An addendum is an addition to a completed document. It may correct the document, offer clarification, or add terms to it.

**Table 5.1**  
*Types of Standard Lease Forms*

Leases from state and federal agencies	
Leases from private companies	<ul style="list-style-type: none"> <li>• Producers 88 leases</li> <li>• Revised Producers 88 leases</li> </ul>
Leases from individuals and associations	<ul style="list-style-type: none"> <li>• Landowner's leases</li> <li>• Attorney's leases</li> </ul>



*In this chapter:*

- Special provisions added to leases
- Acceptable variations in the execution of a lease
- Importance of proper acknowledgment and recording of a lease
- Method of payment of bonuses: bank drafts
- Procedures for recording a lease
- Ratification of a lease

# 6

## Execution of the Lease

Many lease forms are completed and signed without additions or amendments. Often, though, the lessor will bargain to include some changes that make the lease provisions more detailed and specific. For example, the pipelines and flow lines needed for oil or gas production are ordinarily buried in the ground rather than set above the surface. Many leases describe the depth at which such lines will be buried (upon the lessor's request for their burial) as "below plow depth." Landowners sometimes wish to amend such phrases to make them more specific. They ask that the depth be specified as 36 inches or some other measurement that suits their particular circumstances. They may also request that the topsoil be replaced after the lines are buried.

Whether such changes are acceptable to the lessee will depend, in part, on the lessee's bargaining position. If the property to be leased is highly promising, the lessee might be willing to make a number of concessions in the form of amendments and special clauses; a lessee who is wildcatting in unproved country is likely to refuse such requests. The desirability of the property is not the only factor, of course, in any final bargaining that might occur before a lease is signed. Company policy and resources have their effect, as does the eagerness of the landowner to lease.

### FINAL NEGOTIATIONS



*In this chapter:*

- Examination of title in preparation for drilling
- Title opinions
- Methods of curing title
- Procedures for obtaining a permit to drill
- Examination of title to accompany division orders
- Preparation of division orders

# 7

## Preparations for Drilling, Producing, and Selling

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Once a landowner has signed a lease and received a bonus, his or her paperwork is, for the moment, complete. The landowner might monitor the situation, update files, or negotiate leases on other properties, but without access to venture capital, there isn't much that he or she can contribute to the drilling of a well. This is not the case for the landman, whose work has often just begun. Depending on the landman's experience and the needs of the company or client, he or she might be called upon to arrange—in the most precise terms—the financing of exploration and drilling. The trades, joint ventures, and operating agreements that might be required to drill and then develop property are a complex subject in their own right and will be considered together in Chapter 8. This chapter will assume that the money to drill has been found. It will look at the other preliminary steps the landman might take part in, particularly the examining and curing of titles to leased properties.



*In this chapter:*

- Reasons companies seek partnerships to explore and develop
- Support agreements: dry-hole and bottomhole contribution agreements
- Farmout agreements
- Joint operating agreements
- Forms of agreements between companies
- Special provisions in joint operating agreements

# 8

## Agreements to Explore and Develop

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After oil and gas leases have been acquired, companies commonly seek partnerships with other companies for the joint exploration of their leased lands or for support of their exploration efforts. At first glance, some might wonder why a company would spend months or even years acquiring leases and developing a prospect, and then consider sharing its efforts with another company when the other company is considered a competitor. Actually, in many cases, it is the right business decision. For instance, Company A might seek to reduce its risk and exposed drilling dollars by entering into a *joint operating agreement (JOA)* with Company B, by which Company B pays a disproportionately higher percentage of well costs to casing point. After that, if the logs look good and the well is completed, Company B's interest might decrease, while Company A's interest might increase. Or perhaps Company B also has leases in the area and offers to give Company A money towards the drilling of Company A's well in exchange for data from *well logs*.





*In this chapter:*

- Definitions of pooling and unitization
- Reasons for pooling and unitization
- Voluntary and involuntary pooling and unitization
- Legal processes for forming pooled units and unitized fields
- Instruments for lease terminations
- Awareness of changing regulations in leases on public lands

# 9

## Pooling, Unitization, and Release of Oil and Gas Leases

Oil and gas leases normally include a clause empowering the lessee to pool or unitize the lease with other leased tracts to comply with state well-spacing regulations and to conduct operations more efficiently. (See the section on pooling and unitization clauses in Chapter 5.) “Pooling” is the term usually applied to combining small tracts into a unit large enough to satisfy spacing requirements. The immediate aim of pooling is the formation of a drilling unit. Another term used in reference to the formation of a drilling unit, “unitization,” generally refers to field-wide or reservoir-wide operations that are planned and carried out as if all the tracts in a field were held under a single lease. Geologic structures know nothing of property lines, and the optimum use for some technologies of reservoir exploration and stimulation is on a large scale, so unitization can be crucial to long-term success. The final aim of both pooling and unitization is successful, efficient production. Operators hope to extract oil and gas with a minimum of waste and in amounts that will earn steady profits.

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# Index

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- AAPG. See *American Association of Petroleum Geologists (AAPG)*.
- abandonment, 126
- absolute ownership, 8
- abstract-based opinions, 93–94, 103
- abstract companies, 45, 46–47, 54, 103. See also *abstract plants; title companies*.
- abstract plants, 46–47, 94. See also *abstract companies; title companies*.
- abstracts of title, 45–46, 54, 103
- accounting procedure, 100, 115, 116–117
- acknowledgment
- as part of lease, 61, 80
  - purpose of, 79, 80, 86
  - requirements of, 88, 96
- acquired lands, 22, 23, 25, 28
- acts of God, 78
- addendums/addenda, 55, 79, 135
- administrative law, 7
- administrators and executors, 15–16
- adverse possession affidavits, 96, 97–98
- AFE. See *authorization for expenditure (AFE)*.
- affiant, 96–97
- affidavits
- adverse possession, 96, 97–98
  - corroborating, 97
  - in curing titles, 96
  - death and heirship, 96
  - identity, 96
  - nonproduction, 96, 97
  - for title opinions, 94
  - use, occupancy, and possession, 96, 97
- agencies. See *federal agencies; state agencies*.
- agreements to explore and develop
- about, 105–106
  - farmout agreements, 110–111
  - joint operating agreements (JOAs), 113–116
  - letter agreements and formal contracts, 112–113
  - support agreements, 107–109
  - summary, 117
- Alabama, 21, 35
- Alaska
- federal lands, 24, 136–138
  - land ownership, 20
  - leasing agency for state lands, 21
  - leasing in, 136–138
  - native lands, 25, 136–138
  - offshore lands, 152, 136–138

- ranking as a top oil-producing state, 133
  - state regulatory agency, 52
- aliens (noncitizens), 24, 153
- allotted land, 23, 25–26, 149
- American Association of Petroleum Geologists (AAPG), 42, 144
- AMI. See *area of mutual interest (AMI)*.
- animal protection (provision), 82, 83–84, 88
- annual rental, 12, 24, 27, 49, 50, 51, 54
- antitrust laws, 125
- area considerations, 50–51
- area of mutual interest (AMI), 112, 115, 116
- Arizona, 21, 30
- arm's length transaction, 67
- arpents (unit of measurement), 30–31, 39, 146, 164
- assign (transfer), 24
- assignees, 77
- assignment clause, 61, 77
- attorney-in-fact, 16, 85
- attorney's forms, 55, 59
- authorization for expenditure (AFE), 115, 117
  
- base abstracts, 47–48, 94
- base line, 35, 36, 40
- bearing of survey line, 32, 33, 39
- bequeath (personal property), 4
- BIA. See *Bureau of Indian Affairs (BIA)*.
- BLM. See *Bureau of Land Management (BLM)*.
- blocks and lots, 38
- BOEM. See *Bureau of Ocean Energy Management (BOEM)*.
- bonus
  - authorization to pay by landman or lease broker, 44, 49
  - Bureau of Land Management (BLM) lease sales
    - figures, 24, 27
    - as concern of landman, 50, 54
    - as concern of landowner, 51, 54
    - confidentiality of, 63, 86
    - defined, 62
    - method of payment, 86–87, 90
    - with paid-up leases, 70
    - parties receiving payment of, 12
    - variations in figures from state to state, 50
  - bonus drafts, 87
  - bottomhole contribution agreements, 106–107, 109, 117
  - bound, defined, 32
  - boundary descriptions, Pennsylvania, 65
  - Bureau of Indian Affairs (BIA), 23, 25–26, 28, 145, 148, 149, 150, 151
  - Bureau of Land Management (BLM)
    - approved unit operating agreements, 125
    - competitive leasing, 23–24
    - federal lands in individual states, 137–138, 145, 150–151
    - form agreements, 129
    - as information source, 46
    - leases, 128–129
    - lease sales, 24
    - as mineral owner, 10
    - noncompetitive leasing, 24
    - onshore federal lands, 22–23, 28, 125
    - SI (International System of Units) conversion, 31
    - as source of records on Indian lands, 26
    - as source of records on public lands, 46
    - tribal and allotted lands, 26
    - unit and unit operating agreements, 125
  - Bureau of Ocean Energy Management (BOEM), 125
    - jurisdiction over offshore lands, 22–23, 28
    - Outer Continental Shelf (OCS), 26–28
    - SI (International System of Units) conversion, 31
    - as source of records on federal lands, 46
  - by-products, 60, 67
- California
  - Bureau of Land Management (BLM) lease sales, 24
  - community property, 13
  - foreign grants (grant-based land titles), 30, 34
  - leasing agency for state lands, 21, 152
  - leasing in, 139–143
  - offshore operations, 152
  - procedural differences in leasing, 146
  - ranking as a top oil-producing state, 133
  - state regulatory agency, 52
  - U.S. Public Land Survey System (PLSS), 34
- Canada
  - accounting procedure, 116
  - Canadian Association of Professional Landmen (CAPL), 155–156
  - CAPL 99 form lease, 114
  - leasing in, 155–156
  - mineral ownership in, 19
- caption, 85
- capture, 8–9
- case law, 4, 7, 8, 12, 17, 146, 156
- cessation of production clause, 61, 72
- C.F.R. See *Code of Federal Regulations (C.F.R.)*.
- chain of title, 92, 96, 97, 103, 140
- chains (unit of measurement), 30, 39, 161–163
- civil law, 4, 146

- clerk of court for the parish (source of public records in Louisiana), 47
- cloud on title, 96, 103, 126
- Code of Federal Regulations (C.F.R.)*, 23, 26, 28, 128–129, 153, 154
- Colorado, 21, 30, 52, 133, 151
- commencement of drilling, 70
- commercial/paying quantities, 66
- common/case law, 4, 7, 8, 12, 17, 146, 156
- community property, 13
- compensatory royalty payments, 82, 83
- competitive leasing, 23–24
- complete/base abstracts, 46–47, 48, 94
- compulsory/involuntary unitization, 123, 125, 128
- confidential terms, 62, 63, 86, 90, 139
- Congressional townships, 35–37, 40
- conservation laws, 8, 9, 100, 106, 120
- consideration, 55, 61, 70, 76, 80, 125, 135
  - bonus as consideration, 50, 62
  - confidentiality of bonus, 63
  - defined, 62
  - nominal, 62
  - as requirement of contract, 62, 79
  - serious, 62
  - types of, 62
- constitutional law, 7
- continuous drilling clause, 61, 72
- contract area, 113, 115, 116
- controlling date, 60
- co-owners/cotenants, 12–13, 17, 61, 88, 90
- co-ownership/cotenancy, 12–13, 17
- COPAS. See *Council of Petroleum Accountants Societies, Inc. (COPAS)*.
- correlative rights, 9, 51
- corroborating affidavits, 97
- cost recovery, 111, 115, 123
- cotenancy/co-ownership, 12–13, 17
- cotenants/co-owners, 12–13, 17, 61, 88, 90
- Council of Petroleum Accountants Societies, Inc. (COPAS), 116
- county clerk's office, 26, 45, 47, 54
- coverall clause/Mother Hubbard clause, 61, 65
- curing titles
  - affidavits used in, 96–98
  - documents other than affidavits used in, 98–99
  - of leased properties, 91
  - methods of, 103
  - after title examination, 94
  - well permit application after titles have been cured, 100
- damage, 11, 25, 53, 76, 80, 134, 148
- damage clause, 61, 76
- date
  - controlling date, 60
  - effective date, 60, 61, 63, 71, 80
  - date of acknowledgment, 60, 61
  - date of execution, 60, 61, 80
  - date of recordation, 60
  - undated leases, 60
- day-after-sale offer, 24
- death and heirship affidavits, 96
- deeds of trust, 98–99
- deep wells, 53, 144
- defects in titles. See *curing titles*.
- delay rental clause, 61, 70, 71
- delay rentals, 62, 66, 70, 72, 77, 92, 97, 122, 126, 129, 146
- density (well), 43, 51, 53, 54, 72, 120, 128
- Department of the Interior (DOI), 22–23, 25, 128, 138, 152
- depth limitations, 65
- descent and distribution laws, 15
- description (legal)
  - about, 29–30
  - importance of completeness, 39
  - methods of, 32–38
- determinable fee, 4
- development agreements, types, 106
- development/continuous drilling clause, 72
- devise (real property), 4, 5, 62
- disclaimers, 98–99
- division orders
  - in California, 140
  - defined, 92, 100
  - execution of, 100–102
  - paying process, 104
  - purpose of, 102, 104
  - revocability/revocation provision, 102
  - sample, 101
  - signing of, 102
- division order (title) opinions, 92–93, 100, 103
- DOI. See *Department of the Interior (DOI)*.
- domestic animals, 82, 84, 88
- draft payments, 62, 87, 90
- drilling and delay rental clause, 61, 70

- drilling and spacing unit (DSU)/proration unit, 113, 117, 120–121, 123, 128
- drilling/well permit, 12, 100, 103
- drill or pay, 70
- drill site opinion, 92–93, 103
- dry-hole clause, 61, 72
- dry-hole contribution agreements, 106–108
- DSU. See *drilling and spacing unit (DSU)/proration unit*.
- EEZ. See *exclusive economic zone (EEZ)*.
- effective date, 60, 61, 63, 71, 80
- elements of a lease. See *lease elements; special terms and provisions*.
- encumbrances, 93, 100, 103, 146
- English
  - origins of American law, 8, 14
  - units of measurement (in land descriptions), 30–31, 39
- entailed (property), 4
- Environmental Protection Agency (EPA), 10
- equipment installation/placement, 11, 82, 88
- estates, 4–5
- European units of measurement (in land descriptions), 30–31
- examination of title, 44, 54, 92–95. See also *preliminary title checks*.
  - title examiners, 92
  - title opinions, 92–95
- exclusive economic zone (EEZ), 7, 152
- exclusive rights, 5, 8, 12, 62
- execution of lease, 85, 88
  - acknowledgment, 86
  - date of, 60, 61, 80
  - recording of executed lease, 86–87
  - variations in proper execution, 85–86
- executors and administrators, 15–16
- exploration, 22, 23, 42, 49, 50, 53, 66
- exploration agreements, 105–117
  - types of, 106
- exploration costs, 106, 111, 113, 117
- exploration rights, 1, 5, 8, 11, 62, 111
- Exxon Corp v. Middleton*, 102
- Fagg v. Texas Co.*, 59
- farmee, 106, 110, 111
- farmor, 106, 110
- farmout agreements, 106–107, 110–113, 117
  - defined, 106, 107, 110, 117
  - forms of, 112
- federal agencies, 10, 26, 45, 46, 55, 79, 128, 152. See also *Bureau of Indian Affairs (BLA)*; *Bureau of Land Management (BLM)*; *Bureau of Ocean Energy Management (BOEM)*; *Environmental Protection Agency (EPA)*.
- federal lands, 10, 20, 126, 128, 129, 135. See also *Bureau of Indian Affairs (BLA)*; *Bureau of Land Management (BLM)*; *Bureau of Ocean Energy Management (BOEM)*.
  - about, 22
  - acquired lands, 25, 28
  - in Alaska, 136–137
  - competitive leasing, 23–24, 28
  - federal offshore lands, 152–154
  - Indian lands, 25–26, 28
  - lease forms, 56
  - leasing authorities for, 23
  - in Louisiana, 147
  - management of, 22
  - in New Mexico, 148–148
  - noncompetitive leasing, 24–25, 28
  - offshore lands, 26–28
  - public domain lands, 23–24, 28
  - unitization of, 125
- Federal Onshore Oil and Gas Leasing Reform Act of 1987, 23
- Federal Register*, 128, 153, 154
- federal regulations, 25, 26, 43, 112, 125, 126, 128
- fee, 4, 14
  - fee in surface, 5
  - fee simple, 4, 5, 8, 11, 17
  - fee tail, 4
- fiduciaries, 15, 18
- fief, 4
- final negotiations
  - about, 81
  - special terms and provisions, 81–84
- Final Notice of Sale (FNOS), 27
- financing exploration and drilling, 91
- five-day draft, 87
- Five Year Program, 26–27
- Florida
  - foreign grants (grant-based titles), 30
  - jurisdiction over submerged coastal lands, 26, 152
  - leasing agency for state lands, 21
  - U.S. Public Land Survey System (PLSS), 35
- FNOS. See *Final Notice of Sale (FNOS)*.
- forced/involuntary pooling, 13, 122–123, 128
- forced pooling laws, 123
- force majeure clause, 61, 78

- force majeure provision, 112
- foreign grants (grant-based land titles), 30
- form leases. See also *standard leases*.
- AAPL Form 610 Model Form Operating Agreement-1956, 114
  - AAPL Form 610-1989 Model Form Operating Agreement, 114
  - about, 55, 79
  - attorney's forms, 59, 81
  - Bath forms, 56
  - farmout agreement forms, 112
  - landowner's forms, 59, 81
  - model forms, 114
  - from private companies, 56, 80
  - Producers 88, 56–58, 80
  - state and federal, 56, 80
  - Texas form lease sample, 6
  - types of, 55, 80
- frac fluids, 84
- fractional interests, 64–65, 140
- fracturing, 10, 78, 106, 107, 140
- free gas, 82, 83, 88
- Freestone riders, 82–83, 122
- French units of measurement (in land descriptions), 29–31, 39, 146, 164
- gas marketing, 67
- gas purchase, 83
- gas royalties, 67
- General Land Office. See *Texas General Land Office (GLO)*.
- general warranty clause, 78
- geologists and geophysicists, 41–42, 49, 53
- GLO. See *Texas General Land Office (GLO)*.
- GOM. See *Gulf of Mexico (GOM)*.
- good title, 44, 92, 102, 104. See also *marketable title*.
- grant-based land titles (foreign grants), 30
- grantees, 4, 47, 60, 103
- granting clause, 61, 62–64, 80
- grantors, 47, 60
- Greene v. Robinson*, 14
- guardians, 15, 16, 18
- Gulf of Mexico (GOM), 27, 135, 147, 152
- habendum clause, 61, 66
- hectares, 31, 165
- helium, 60, 64
- homestead property, 13
- horizontal drilling, 106
- horizontal Pugh clause, 83. See also *Pugh clause*.
- hydraulic fracturing, 106. See also *fracturing*.
- identity affidavits, 96
- implied rights/covenants/obligations, 62–63, 83, 140
- Indian lands, 22, 23, 25–26, 28, 144, 148, 149
- initial well, 111–113
- international law, 7, 152
- International System (SI) of Units, 31, 165. See also *metric system*.
- Interstate Oil Compact Commission, 120
- intestacy, 15
- involuntary/compulsory unitization, 123, 125, 128
- involuntary/forced pooling, 13, 122–123, 128
- joint operating agreements (JOAs)
- 2002 710 AAPL Joint Operating Agreement (Shelf), 114
  - 2007 810 AAPL Joint Operating Agreement (Deepwater), 114
  - cost sharing, 111, 113, 117
  - farmout agreements, 111
  - model forms, 114
  - pooling agreement, 122, 123
  - reasons for, 105–107, 117
  - special provisions, 115–116
- joint tenancy (with a right of survivorship), 12
- judicial determination of ownership, 17
- judicial transfer, 17
- Kansas, 21, 52, 83, 133, 144, 151
- land department, 43, 100
- land description, 39, 64. See also *description (legal)*.
- landman
- authority of, 49, 54
  - compared to lease broker, 44
  - concerns of, 49–50
  - gender-neutral term, 2
  - responsibilities of, 43, 44–48, 87, 90, 91, 92, 94, 96–99, 103, 106, 113
  - role in negotiations with landowner, 49–51
  - title checks, 54
- land measurement and land description
- about, 29–30

- description completeness, 39
- methods of description, 32–38
- units of measurement, 30–31
- summary, 39–40
- land negotiator, 2
- landowners
  - as agents of the state, 14, 18
  - cotenants, 12–13, 17
  - defined, 3
  - gas marketing by, 67
  - as information source, 45, 48, 54
  - lessors, 11, 17
  - life tenants and remaindermen, 12, 17
  - married persons, 13, 17
  - mineral owners, 11
  - representatives of mineral owners, 15–17, 18
  - rights of, 11, 17
  - surface owners, 11
  - types of estates they own, 11–13, 17
  - unqualified, 5, 17
- landowner's forms, 59
- land professional, 2
- laws of descent and distribution, 15
- lease. See also *form leases*.
  - compared to other commercial leases, 1
  - defined, 1
  - release of, 76, 77, 97, 99, 126–129
  - right of landowner to execute, 11
  - “standard” forms, 5, 59
- lease brokers
  - compared to landmen, 44, 53–54
  - responsibilities of, 44, 49, 50, 53–54, 94, 139
- lease elements
  - acknowledgment, 61, 79, 80, 86, 88, 96
  - assignment clause, 61, 77
  - cessation of production clause, 61, 72
  - consideration, 55, 61, 70, 76, 80, 125, 135
  - continuous drilling clause, 61, 72
  - damage clause, 61, 76
  - date, 60, 61, 63, 71, 80
  - defined, 62
  - delay rental clause, 61, 70, 71
  - description (legal), 29–30, 32–38, 39
  - drilling and delay rental clause, 61, 70
  - dry hole clause, 61, 72
  - effective date, 60, 61, 63, 71, 80
  - force majeure clause, 61, 78
  - granting clause, 61, 62–64, 80
  - habendum clause, 61, 66
  - lease forms. See *form leases*.
  - legal description, 29–30, 32–38, 39
  - legal effect clause, 61, 79
  - lessor's signature, 61, 79
- Mother Hubbard clause/coverall clause, 61, 65
- parties' names, 60–61
- pooling and unitization clause, 61, 72–75
- preamble, 61, 80
- proportionate reduction clause, 61, 65, 78
- provisions, 59, 61, 79, 80
- royalty clause, 61, 67–68
- shut-in royalty clause, 61, 69
- signature block, 61
- signature of lessor, 61, 79
- surrender clause, 61, 76
- title, 60, 61, 63, 80
- unitization clause, 61, 72–75
- warranty clause, 61, 65, 78
- lease forms. See *form leases*.
- leasehold, 62
- lease memorandum/memo, 86, 90, 140, 142–143
- Lease Sale Notice, 20, 24
- leasing authorities for federal lands, 23
- leasing preparations
  - preliminary explorations, 41–44
  - preliminary negotiations, 49–53
  - preliminary title checks, 44–48
  - summary, 49, 53–54
- legal description
  - about, 29–30
  - importance of completeness, 39
  - methods of, 32–38
- legal effect clause, 61, 79
- legal guardians, 15, 16, 18
- legal person, 16
- lessee
  - advice for, 12, 16, 17, 20, 23, 24, 25, 56, 60
  - defined, 17, 60
  - obligations of, 11, 12, 61, 62, 66, 76
  - rights of, 11, 12, 62, 77
- lesser interest clause, 65
- lessor
  - advice for, 60
  - defined, 11, 17, 60
  - obligations of, 62
  - rights of, 62
- lessor's signature, 61, 79
- letter agreements and formal contracts (for farmouts), 112–113
- liability, 112
- life tenants, 12, 17
- links (unit of measurement), 30, 39, 161
- liquidated damages, 112
- Louisiana
  - arpents (as unit of measurement), 31, 164
  - Bath forms, 56

- civil law, 4
- clerk of court for the parish (as source for public records), 47
- division orders, 102
- forced pooling, 123
- foreign grants (grant-based land titles), 30
- jurisdiction over submerged coastal lands, 152
- lease (Bath) forms, 56
- leasing agency for state, 21
- leasing in, 146–147
- legal documents in, 47
- marital status, 60
- Napoleonic Code, 4
- ranking as a top oil-producing state, 133
- royalty payments, 51
- rule of capture, 8
- serious consideration, 62
- state regulatory agency, 52
- varas (as unit of measurement), 31
- Louisiana Revised Statute 30:10, 123
  
- marital property ownership, 13
- marketable title, 92, 103–104. See also *good title*.
- market value clause, 82–83
- married persons, 13, 17, 85, 96
- memorandum/memo of oil and gas lease, 86, 90, 140, 142–143
- meridians, 35–36, 39, 40
- mete, defined, 32
- metes and bounds
  - example of, 33
  - method of, 29, 32, 39
  - natural objects, 34
  - in South and Southwest, 34
- methods of description
  - history of, 32
  - metes and bounds, 32–34
  - urban subdivisions, 38
  - U.S. Public Land Survey System (PLSS), 35–38
- metres, 31, 65, 165
- metric system, 31. See also *International System (SI) of Units*.
- Mexico, 14, 30, 134
- “mineral,” as ambiguous term, 60
- mineral-classified (lands), 14, 18, 19, 23, 59, 135
- mineral estate, 5, 7, 10, 11, 17, 19, 23, 47, 53, 64, 146, 148
- mineral leasing, types of law affecting, 7
- Mineral Leasing Act for Acquired Lands, 25
- Mineral Leasing Act of 1920, 23, 125
  
- mineral owners, 11, 17, 83, 85, 100, 104, 120, 123, 128, 129, 158. See also *representatives of mineral owners*.
- mineral ownership
  - Bureau of Land Management (BLM), 10
  - in Canada, 155–156
  - limitations on, 3–5, 7–10, 17
  - rights to, 5–6
  - in Texas, 8–9, 14, 18, 19, 134–135
  - theories of, 8
- minerals in place, 8
- Mississippi, 21, 35, 146
- model forms, 114, 117
- Montana, 21, 26
- mortgages/mortgage instruments, 48, 98–99
- Mother Hubbard clause/coverall clause, 61, 64–65
  
- Napoleonic Code, 4
- National Association of Royalty Owners (NARO), 41
- national parks, 22, 25, 28, 137
- Native Americans, 25. See also *Indian lands*.
- negotiations. See also *preliminary negotiations*.
  - final, 81–84
  - for special provisions, 88
- Nevada, 21, 30
- New Mexico
  - Bureau of Land Management (BLM), 23
  - federal lands, 23
  - foreign grants (grant-based land titles), 30
  - leasing agency for state lands, 21
  - leasing in, 148–149
  - ranking as a top oil-producing state, 133
  - state regulatory agency, 52
- nonabsolute ownership, 8
- noncompetitive leasing, 23–24
- nonexecutive royalty owners, 122
- nonjoining co-owners, 13
- nonownership in place, 8
- nonparticipating royalty owners, 75, 122
- nonproduction affidavits, 96, 97
- notary public, 61, 79–80, 86, 88, 96
- notice
  - of public lease sales, 24, 26–27, 153
  - in public records, 86, 88, 90
  - of regulations, 20, 128
  
- OCC. See *Oklahoma Corporation Commission (OCC)*.
- OCS. See *Outer Continental Shelf (OCS)*.
- offset wells, 72, 82, 83, 88



- offshore lands
  - Bureau of Ocean Energy Management (BOEM), 22, 23, 26–28
  - federal jurisdiction, 22–23, 26
  - leasing of, 26–28, 152–154
  - Outer Continental Shelf Lands Act of 1953, 26–27
  - Outer Continental Shelf (OCS), 26, 28
  - in ranking with top oil-producing states, 133
  - state jurisdiction, 26
- Ohio, 21, 35
- oil and gas lease. *See lease.*
- oil and gas lease form. *See form leases.*
- oil, gas, and associated liquid hydrocarbons lease, 1
- oil, gas, and mineral lease, 1
- Oklahoma
  - damage to surface estate, 11
  - federal lands, 23
  - Indian lands, 26
  - leasing agency for state lands, 21
  - leasing in, 144–145
  - Producers 88, 56
  - ranking as a top oil-producing state, 133
  - regulations in, 9, 43
  - reservations in, 26
  - rule of capture, 8
  - state regulatory agency, 52
- Oklahoma Corporation Commission (OCC), 9, 43, 52
- onshore public domain lands, 22, 23–26, 28, 125, 136.  
*See also Bureau of Indian Affairs (BLA); Bureau of Land Management (BLM).*
- operation rights, 11
- Outer Continental Shelf Lands Act of 1953, 26
- Outer Continental Shelf (OCS), 26, 28, 152
- overproduction, 8, 120, 144
- overriding royalty/royalties, 111, 157–160
- ownership. *See also privately owned land.*
  - of federal lands, 1, 22–28
  - of Indian lands, 25–26, 28
  - of minerals. *See mineral ownership.*
  - of offshore lands, 26–27, 28
  - of state lands, 1, 20–21, 28
- ownership in place, 8
- paid-up lease, 66, 70
- patenting, 14
- paying/commercial quantities, 66
- payments in cash, 62
- payments in kind, 62
- payout, 111
- Pennsylvania, 21, 60, 65, 144, 155
- per-acre bonus, 27
- permit form, 100
- permit (well/drilling), 12, 100, 103
- persons acting under powers of attorney, 15, 16, 18
- place/point of beginning (POB), 32–33, 39
- plat, 30, 33, 37
- plat map approval, 82
- plugging and abandonment, 82, 84, 88, 111
- POB. *See place/point of beginning (POB).*
- point/place of beginning (POB), 32–33, 39
- pooled units, 75, 120, 122, 128
- pooling
  - about, 119–122
  - compared to unitization, 119, 123
  - defined, 72, 119
  - forced/involuntary, 123
  - procedures to form a pooled unit, 122, 123
  - voluntary, 120–122
- pooling agreement, 122
- pooling and unitization clause, 73–74
- pooling clause, 72–75, 120
- power of attorney, 16, 18
- preamble, 61, 80
- preliminary negotiations
  - about, 49
  - area considerations, 50–51
  - bonus, rental, and royalty, 49–53
  - landman concerns, 49–50
  - landowner concerns, 51–53
  - offer evaluation, 51–53
- primary term length, 49–51, 54
  - tract size and spacing, 51–53
  - summary, 49, 54
- preliminary title checks
  - abstract companies, 46–47
  - county clerk offices, 47
  - information sources, 45
  - landowners, 48
  - purpose of, 44
  - state and federal agencies, 46
  - title companies, 46–47
- preparations for drilling, producing, and selling
  - about, 91
  - curing titles, 96–99
  - examining titles, 92–93
  - executing division orders, 100–102
  - permitting and drilling, 100
  - summary, 103–104

- primary term
- in Bureau of Ocean Energy Management (BOEM) bids, 27
  - defined, 24, 49, 66
  - in delay rental clauses, 71
  - in habendum clause, 66
  - length of, 49–51, 54
  - in paid-up leases, 70
- principal meridian, 35, 36
- private company lease forms, 55
- Producers 88, 56
  - Producers 88 lease form sample, 57–58
  - Producers 88, revised versions, 56, 59
- private law, 7
- private leases, 62, 125
- privately owned land, 3–18
- in Alaska, 20
  - economic constraints, 10
  - landowners and types of estates they own, 11–13, 17
  - landowners as agents of the state, 14, 17
  - lease filing, 87
  - legal limitations, 3, 7–10
  - limitations on mineral ownership, 4, 7–10
  - ownership types, 4
  - private ownership, 3–18
  - representatives of mineral owners, 15–17, 18
  - rights to mineral ownership, 5
  - types of ownership, 4
  - unitization, 124–125
- Producers 88, 55–59, 79
- Producers 88 lease form sample, 57–58
- Producers 88, revised versions, 55–56
- proportionate reduction clause, 61, 65, 78
- proposals (well), 115
- prorationing, 120, 128, 134, 144
- proration unit, 120. See also *drilling and spacing unit (DSU)/proration unit*.
- prospect area, 113. See also *contract area*.
- prospects, 42, 53, 106
- provisions. See *lease elements; special terms and provisions*.
- public domain lands. See *federal lands*.
- public lands. See also *federal lands; state lands*.
- leasing authorities for, 22
  - unitization of, 125, 129
- Public Land Survey System (PLSS), 29, 35–38, 39, 40
- public records, 16, 46–47, 54, 60, 79, 80, 86, 87, 90
- Pugh clause, 75, 82–83, 88, 122, 135
- quitclaims, 98–99, 103
- ranges, 35–36, 39
- ratification, 13, 88–90, 98, 99, 122, 125
- ratify, defined, 12
- recordation, 60, 87. See also *recording*.
- recordation stamp, 87
- recording, 16, 86–88
- recovery methods, 63, 75, 124, 144
- release clause, 76
- release (of lease), 76, 77, 97, 126–129
- Relinquishment Act, 14
- relinquishment (document), 126, 129
- remainderman, 12, 17
- rental, 12, 24, 27, 49, 50, 51, 54
- rental receipts, 98
- representatives of mineral owners
- attorneys-in-fact, 15, 16
  - executors and administrators, 15–16
  - fiduciaries, 15
  - guardians, 15, 16
  - persons acting under powers of attorney, 15, 16
  - representatives of unknown or missing heirs, 15, 17
  - trustees, 15, 16
- representatives of unknown or missing heirs, 15, 17
- Republic of Texas, 14
- reservations, 26
- Restricted Joint Bidders (list), 27
- revocation provision, 102
- right(s)
- to benefit from land, 5, 8
  - to bequeath property, 4
  - to build roads, 11
  - to convey land, 5
  - to devise property, 4
  - to enter property, 5, 11, 63
  - to explore, 1, 5, 8, 11, 62, 111
  - implied, 63
  - to install equipment, 11
  - to lease land, 5, 7, 11, 16
  - of life tenant to possess and use property, 12
  - of mineral-classified landowner, 14, 135
  - of mineral ownership, 1, 5, 14, 23
  - to minerals in Canada, 155
  - to minerals in Louisiana, 146
  - to produce, 5, 62
  - of remainderman to come into possession of property, 12
  - to sever an estate, 5
  - of survivorship, 12
  - to water, 83
- rods (unit of measurement), 30, 39, 161, 163

- royalties/royalty payments, 43, 50–51, 62, 67. See also *compensatory royalty payments*; *overriding royalty/royalties*.  
 calculating, 158–159  
 defined, 11, 67, 157  
 in Louisiana, 146  
 under pooling and unitization, 72, 75, 120, 122
- royalty clause, 61, 67–68
- royalty owners. See also *nonparticipating royalty owners*.  
 division orders, 100–102, 104  
 National Association of Royalty Owners (NARO), 125  
 obligations of, 75  
 payments to, 69, 104  
 pooling and unitization, 120, 122, 124–125, 128  
 signatures of, 124
- rule of capture, 8–9
- runsheets, 44, 54, 94–95, 103
- secondary recovery operations, 124. See *recovery methods*.
- secondary term, 66, 72
- Secretary of the Interior, 25–27, 136, 153
- seismic studies, 28, 42, 53, 116, 144
- serious consideration, 62
- sever (an estate), 5, 11, 17
- shale plays, 50, 106
- shut-in payments/royalties, 69
- shut-in royalty clause, 61, 69
- sight draft, 87
- signature block, 61, 80
- signatures  
 captions to accompany, 85  
 conventions regarding, 79, 85  
 of cotenants, 12, 17, 90  
 of lessee, 61  
 of lessor, 61, 79, 85, 86  
 of notary, 61, 86  
 of owners for pooling and unitization, 122, 124  
 of representatives, 85  
 of spouses, 13, 17
- SI (International System of Units) conversion, 31
- site reclamation and well plugging, 64, 82, 84, 88, 126
- site restoration, 64, 82, 84, 88, 126
- spacing (well). See *well spacing*. See also *drilling and spacing unit (DSU)*/*proration unit*.
- Spain, 14, 30, 134
- Spanish units of measurement (in land descriptions), 29–31
- special terms and provisions  
 accounting procedure, 115, 116  
 animal protection, 82, 83–84  
 area of mutual interest (AMI), 112, 115, 116  
 authorization for expenditure (AFE), 115, 117  
 compensatory royalty payments, 82, 83  
 equipment placement, 82  
 free gas and gas purchase, 82, 83  
 market value clause, 82, 83  
 negotiations for, 81, 88  
 offset wells, 82, 83  
 plat map approval, 82  
 proposals (well), 115, 117  
 Pugh clause, 82, 83  
 site reclamation, 82, 84  
 water, 82, 83–84  
 well plugging, 82, 84
- special warranty clause, 78
- standard leases, 5, 49, 54, 61, 70, 75, 79, 155. See also *form leases*.
- stand-up (title) opinions, 93–94, 103
- state agencies. See also *Texas Railroad Commission (TRC or RRC)*; *Oklahoma Corporation Commission (OCC)*.  
 permits from, 100, 103  
 responsibility to lease state lands, 20–21, 28, 152  
 responsibility to regulate mineral production, 8, 9, 10, 17, 120, 128, 144  
 rules and regulations, 7, 9, 10, 43, 51, 113, 122, 125, 128  
 as sources of information, 42, 45–46, 52
- state lands, 19–21, 28, 125, 137, 141, 148, 150, 152
- statute of frauds, 45
- statute/statutory law, 4, 7, 17, 146
- statutory pooling laws, 123
- subdivided section, 36–38
- subdivisions, 38–40
- subordination, 98, 99
- substitute well, 109, 111
- sulfur, 60, 64, 67
- support agreements  
 about, 107  
 bottomhole contribution agreements, 106, 109, 117  
 dry-hole contribution agreements, 106, 108, 117
- surface estate, 5, 11, 17, 19, 135, 137, 146, 148
- surface owners, 11, 14, 17, 18, 19, 43, 53, 76, 83, 148
- surrender clause, 61, 76
- surrender (document), 61, 76, 126, 129
- takeoff, 46, 94
- tax certificates, 47, 94, 98

- tax partnership provisions, 112
- tax payment proof, 47, 94, 98
- tax receipts, 47, 94, 98
- tenancy by the entirety, 12–13
- tenancy in common, 12
- term. See *primary term*; *secondary term*; *terminology*.
- term clause, 66
- termination (of lease), 67, 71, 76, 97, 126, 129, 146
- terminology
- “fee,” 4
  - of granting clause, 62
  - “Indian lands,” 25
  - “landman” as gender-neutral term, 2
  - legal, 4
  - “mineral” as ambiguous term, 60
  - oil and gas lease, defined, 1
  - “standard” forms, 5, 59
  - statute of frauds, 45
- Texas. See also *Texas General Land Office (GLO)*; *Texas Railroad Commission (TRC or RRC)*.
- absolute ownership, 8
  - adverse possession claims, 98
  - conservation laws, 8
  - delay rental payments, 70
  - designated units, 122
  - division orders, 102
  - foreign grants (grant-based land titles), 30
  - form oil and gas lease, 6
  - history of mineral production in, 8–9, 14, 120, 134
  - jurisdiction over submerged coastal lands, 26
  - leasing agency for federal lands, 23
  - leasing agency for state lands, 21
  - leasing in, 134–135
  - metes and bounds land descriptions, 34
  - mineral-classified lands, 14, 18
  - mineral ownership theories, 8
  - ranking as top oil-producing state, 133
  - Relinquishment Act, 14
  - royalty payments, 51
  - rules and regulations, 20, 53, 120
  - Spanish units of measurement (in land descriptions), 30–31
  - Texas General Land Office (GLO), 14, 20, 21, 56, 135, 152
  - Texas Railroad Commission (TRC or RRC), 9, 43, 52, 53, 144
  - Texas Register*, 20
  - Texas Trust Act, 16
- title. See also *good title*; *lease elements (title)*; *marketable title*; *preliminary title checks*.
- about, 3, 5, 8, 39, 78, 86, 100, 102, 136, 148
  - checking, 44–48, 49, 53–54, 139–140
  - curing, 96–99, 103
  - examining, 92–95, 103–104
  - insurance, 139
- title companies, 45–47, 139–140. See also *abstract companies*; *abstract plants*.
- title examiners, 46, 92–94, 100, 103–104
- title opinions
- about, 92–93
  - abstract-based (title) opinions, 94
  - division order title opinions, 92, 100, 104
  - drill site title opinions, 92, 103
  - sample form, 93
  - stand-up (title) opinions, 94
- townships. See also *Congressional townships*.
- colonial, 32, 35
  - (tiers), 35–36, 39
- tribal land, 23, 25–26
- trust, 16, 25, 148
- trustees, 15–16, 18
- types of law affecting mineral leasing, 7
- unit agreements, 123–125
- United Nations Convention on the Law of the Sea, 7
- United States (U.S.) Code*, 25, 153, 154
- defined, 25
- unitization
- about, 119–120, 123–124, 128
  - of Bureau of Land Management (BLM) lands, 125, 128
  - compared to pooling, 119, 123
  - compulsory/statutory, 123, 125, 128
  - defined, 75, 119, 128
  - of federal and state lands, 125
  - habendum clause, 75
  - pooling and unitization clause, 61, 72–75
  - of private lands, 124–125
  - state regulatory agency approval of, 125
  - unitization clause, 61, 72–75
  - voluntary, 123, 124–125, 128
- unitization clause, 61, 72–75
- unitized field, 124, 128
- unit operating agreement, 124–125
- units of measurement (in land descriptions), 30–31
- unqualified landowner, 5, 17
- urban subdivisions, 38, 40
- U.S. Department of the Interior (DOI). See *Department of the Interior (DOI)*.
- use, occupancy, and possession affidavits, 96, 97
- U.S. public lands, leasing authorities, 22

- U.S. Public Land Survey System. See *Public Land Survey System (PLSS)*.
- Utah, 21, 30
- varas (unit of measurement), 30–31, 39, 161, 163–164
- vertical Pugh clause, 83. See also *Pugh clause*.
- Veterans Land Board, 20
- voluntary pooling, 120–122, 128
- warranty clause(s), 61, 65, 78
- water rights, 83–84
- water wells, 83
- well density, 43, 51, 53, 54, 72, 120, 128
- well/drilling permit, 12, 100, 103
- well logs, 42, 105
- well plugging, 82, 84, 88, 111, 113, 126, 129
- well proposals, 115
- well spacing. See also *drilling and spacing unit (DSU)/proration unit*.
- about, 43, 51, 53, 54, 72, 100, 119
  - compared to well density, 51
  - defined, 7, 51
  - history, 9, 120, 144, 155
- West Virginia, 8–9, 21
- working interest, 100, 110–111, 115, 157–160
- working interest owners, 100, 104, 110, 115, 116, 122, 124
- Wyoming
- federal lands, 23
  - leasing agency for state lands, 21
  - leasing in, 150–151
  - ranking as a top oil-producing state, 133
  - reservations, 26
  - state regulatory agency, 52

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