



04-15-2019

Important Differences Between
Sale of Oil and Gas Minerals and an Oil and Gas Lease
By: J. Richard Emens and Cody Smith
Emens & Wolper Law Firm
Columbus, Ohio

Many landowners have not focused on the major difference between selling their oil and gas minerals and leasing their oil and gas minerals. This is an extremely important difference.

Some landowners do not realize that even after they have leased their property for oil and gas, the landowners still own all their oil and gas mineral rights - - it is just that the oil and gas mineral rights are now subject to a lease.

Landowners who do not understand these facts are likely to sell their oil and gas mineral rights for much less than the mineral rights may be worth.

For example: A landowner who entered into a "Paid-Up Oil and Gas Lease" with a five-year primary term which provided for a front-end bonus of \$5,000 an acre on 50 acres received \$250,000. The Lease also provided for a 20% gross landowner's royalty. An oil and gas mineral buyer (usually from Oklahoma or Texas) has researched the records of the Ohio Department of Natural Resources and has seen that the oil and gas company owning the Lease has applied for a drilling permit. The buyer is also working with a petroleum geologist or engineer who has advised the buyer that a Utica Shale well on a drilling unit that includes the landowner's Lease may produce \$25,000 to \$30,000 of oil/gas per acre attributable to the landowner's interest over 15 or 20 years.

The Oil and Gas Mineral Buyer will approach the landowner and offer \$6,000 per acre for the oil and gas minerals. The landowner, who just received \$5,000 per acre (for the lease bonus) but has no knowledge of how much oil and gas may be produced may say to himself, "That's an even better price, I should sell" - - even though the landowner has no knowledge of what he might receive as royalty payments. Nor does the landowner realize that once the oil and gas minerals are sold that landowner will not be able to receive anything for future leasing or production from an oil and gas geological formation other than the Utica Shale.

That is the reason that our law firm strongly encourages landowners who are approached by an oil and gas mineral buyer to:

1. Understand the difference between oil and gas leases, oil and gas royalty interests, oil and gas mineral interests and oil and gas mineral deeds.
2. Hire an oil and gas geologist or oil and gas engineer to provide an estimate of the dollar valuation of oil and gas to be produced for the landowner's oil and

gas interests (We work on a regular basis with such geologists and engineers and can assist with obtaining their advice for the landowner).

3. Sell only a portion rather than all of the landowner's oil and gas mineral rights, assuming the landowner is still interested in selling oil and gas minerals after taking Step #2. Seller's remorse is painful, and we have seen landowners who sold all their oil and gas minerals have serious long-term regrets.

4. Obtain advice concerning the sale and related documents from an attorney knowledgeable about oil and gas mineral rights. We recently reviewed a mineral deed where the landowners thought they had sold only oil and gas minerals -- but the deed defined "minerals" to include "oil and gas and casinghead gas and coal and coal bed methane, sulphur, and all minerals that can be mined".

CONCLUSION:

There are major differences for the landowner between entering into an oil and gas lease and selling oil and gas minerals. As a landowner, it is important to understand the differences

04-15-2019