

Texas General Land Office

Guidelines for Leasing Relinquishment Act Lands

DEFINITIONS

“**Board**” refers to the School Land Board.

“**Commissioner**” refers to the Commissioner of the General Land Office.

“**GLO**” refers to the General Land Office.

“**Owner of the soil**” and “**surface owner**” refers to the same individual and is used interchangeably.

“**RAL**” refers to Relinquishment Act Lands, also known as mineral classified lands.

“**RAL Lease Form**” refers to the State of Texas RAL Lease Form.

HISTORY

Enacted in 1919, the Relinquishment Act, as interpreted by the Courts, reserves all minerals to the State in those lands sold with a mineral classification between September 1, 1895 and June 29, 1931. Under the Relinquishment Act the, “owner of the soil”, also commonly known as the surface owner, acts as the agent for the State of Texas in negotiating and executing oil and gas leases on Relinquishment Act Lands (RAL). The State surrenders to the surface owner one-half (½) of any bonus, rental and royalty as compensation for acting as its agent, and in lieu of surface damages. The owner of the soil’s agency power is somewhat limited, however, because the General Land Office publishes a standard RAL lease form which must be used to lease Relinquishment Act Lands. Additionally, the GLO must approve all terms including bonus consideration, royalty rates, and rental amounts, and any additional provisions for any RAL Lease. **No lease is effective until it has been approved and a certified copy of the approved lease is accepted for filing in the General Land Office.**

The following information will provide some guidelines for negotiating an RAL Lease.

NEGOTIATING RAL LEASES

FIDUCIARY DUTY OF THE OWNER OF THE SOIL

The owners of the soil owe a fiduciary duty to the State. They must act in the best interest of the State and must fully disclose any facts affecting the State’s interest. When the interests of the owner of the soil conflict with those of the State, the owner of the soil is obligated to put the State’s interest before his or her personal interest.

When the Commissioner determines that an owner of the soil has breached any duty or obligation, the Commissioner may request that the Attorney General file an action or proceeding, either to enforce the duties and obligations of the owner of the soil, or to forfeit the surface owner’s agency rights. Self-dealing could also subject a surface owner to damages.

SELF-DEALING BY OWNER OF THE SOIL

The owner of the soil **may not lease**, either directly or indirectly, to:

(1) certain individuals related to him including a person related by adoption, or any corporation or subsidiary in which that person is a principal stockholder, or to a partnership in which that person is a partner, or to an employee of such a corporation or subsidiary or partnership;

(2) himself or to a nominee. If the owner of the soil is a corporation or a partnership, then the owner of the soil may not lease, either directly or indirectly, to a principal stockholder of the corporation or to a partner of the partnership, or any employee of the corporation or partnership. The owner of the soil may not lease, either directly or indirectly, to his fiduciary, including but not limited to a guardian, trustee, executor, administrator, receiver or conservator.

EXCEPTION: An owner of the soil who wishes to lease to a person, corporation or partnership described in Subdivision (1) above may request the approval of the Board for authority to execute such a lease before its execution. The owner of the soil requesting approval must also execute and file with the Commissioner a sworn affidavit stating that the owner of the soil will not receive any benefit under a lease approved by the Board that will not be shared equally with the Permanent School Fund.

CHANGES TO RAL LEASE FORM AND ADDENDUMS TO THE LEASE:

Please do not make any changes to the RAL Lease Form other than striking certain provisions such as the delay rental paragraph for leases with a primary term of less than one year or the warranty clause. Language can be added to indicate the addition of an Addendum or a paid-up lease paragraph such as follows:

“37. PAID UP OIL AND GAS LEASE: This is a three-year paid-up lease and the delay rental payments in the amount of \$_____ per acre per year for years two and three of this lease have been prepaid with the bonus consideration.”

If additional provisions are to be added to the prescribed RAL Lease Form, such as surface use protections, they should conform with the terms of the lease and be added as an Addendum attached to the lease. The proposed Addendum (and please be concise) must be submitted to the GLO with the proposed lease and the Addendum may only be added to the lease if approved by the GLO. Any provision providing for the payment of surface use or damages other than those authorized in the RAL Lease Form must provide that the payments be shared equally with the State.

The Retained Acreage clause, being Paragraph 7 of the RAL Lease Form, is preferred by the GLO.

However, if a continuous drilling clause is agreed to by the surface owners and Lessee and is in the best interest of the State and approved by the GLO, one can be added as an Addendum to the lease and it should be in the form shown below, provided that the minimum number of wells per year can be increased as negotiated by the surface owners and Lessee and as approved by the GLO.

“37. CONTINUOUS DEVELOPMENT: Notwithstanding subsections 7(a) and 7(b), if this lease is held at the end of the primary term pursuant to its terms, it shall continue to be held in its entirety (subject to the further conditions of this section 37) for so long as Lessee continuously develops the leased premises by drilling and completing no fewer than two wells per year on the leased premises (or lands pooled therewith) during every year after the end of the primary term. For the first year after the end of the primary term, any well commenced prior to the

end of the primary term does not count as a well for purposes of this section. Only wells spud and completed during an anniversary year period will count toward the minimum drilling requirements for that year. If Lessee fails to drill and complete at least two wells during any anniversary year after the end of the primary term, then this lease shall automatically terminate at the end of that year as to the acreage amounts and depths as provided in section 7(a) and 7(b), and Lessee shall execute a release as provided in section 7(c). Notwithstanding anything contained herein to the contrary, during the period of continuous development the lease must be maintained by production in paying quantities or as otherwise may be provided in the lease or it shall automatically terminate.”

NO COLLATERAL AGREEMENTS

Any term, condition or agreement relating to the mineral development of a RAL tract must be included in an RAL lease form or attached addendum which is submitted to the GLO. Consequently, a surface owner cannot enter into a separate agreement for surface damages or surface easements (including pipeline easements). Participation by the owner of the soil in the bonus, rentals and royalties is in lieu of surface damages and any such collateral agreement could render the lease invalid and subject the surface owner’s agency rights to forfeiture.

LEASE DATE

The date filled in at the top of the lease will be used to set the anniversary date. This date will usually be the date when the lessee and the owner of the soil reach an agreement. Regardless of the date of the lease, the GLO will evaluate the lease consideration by using market conditions which exist when the proposed lease is received by the GLO.

TOP-LEASING

Top leasing is **prohibited**; the owner of the soil **does not have** the authority to execute a new lease while a prior lease is in effect.

NAMING OWNERS OF THE SOIL

If there are several surface owners, the lessee may take one lease which includes all surface owners or lessee may take a separate lease from each surface owner. If undivided interest leases are taken on a tract, it is preferred that they have the same lease date and terms. Anyone with an interest in the surface estate (for example, owners of a community property interest, life tenants, remaindermen, etc.) shall execute a lease. If all interests do not execute a lease, then, upon commencement of production, the Commissioner of the General Land Office shall be paid the value of the whole production allocable to any undivided interest not covered by a lease, less the proportionate development and production cost allocable to such undivided interest. However, in no event shall the Commissioner of the General Land Office receive as a royalty on the gross production allocable to the undivided interest not leased an amount less than the value of one-sixteenth (1/16) of such gross production. (See Paragraph 20 of September 1997 RAL forms).

The lessee must provide the GLO with a schedule of the percentage ownership of each surface owner under the tract, indicating whether they are leased or unleased at the time the schedule is provided.

EXECUTION BY THE OWNER OF THE SOIL

The surface owner of Relinquishment Act Land acts as the State's leasing agent and executes the lease as agent for the State. An agent of the surface owner, including an attorney-in-fact, cannot execute a Relinquishment Act Lease, unless a power of attorney expressly authorizes the attorney-in-fact to execute Relinquishment Act Lease. Said power of attorney shall be submitted to the GLO concurrently with the lease. Both the surface owner and attorney-in-fact shall owe the state the full fiduciary duty as provided by law. A

minor or a person of unsound mind, as these terms are defined in the Texas Probate Code, cannot act as the state's agent. However, a person authorized by law to act on such a person's behalf may do so. If the surface owner is a corporation, a Relinquishment Act Lease may be executed by any duly authorized officer or agent of the corporation. If the surface owner is a Trust or Estate, a Relinquishment Act Lease may be executed by any duly authorized person with authority to act on behalf of the Trust or Estate.

ADDRESS

All RAL Leases must contain an address where each party can be reached. Where several undivided interest surface owners are included on one lease form, the parties may designate one address where all the surface owners can be contacted.

LEGAL DESCRIPTION

A complete legal description set out on the lease must state the abstract number and the part (i.e., N/2) of the section and the gross acres. If applicable, the township, block and survey must be set out. A scaled plat shall also be provided for each description, including situations where metes and bounds descriptions are not available. If deed references are used, a copy of the referenced documents shall accompany the lease. Depth limitations, where applicable, shall also be recited in the legal description. Up to four sections (2,560 acres) may be leased on one RAL lease form; however, the tracts must be contiguous or within ½ mile of the nearest tract described in the lease. Touching corners will be construed contiguous.

STATEMENT OF BONUS

By statute, each RAL Lease must state on the lease form the true and actual consideration paid for the lease. The amount of bonus consideration paid to the State must equal or exceed the bonus consideration paid to the owner of the soil. The owner of the soil, however, may waive his share of the cash bonus or defer his bonus. The RAL Lease must also state on the lease form the number of net acres leased. If a lease covers a full interest in the entire tract, the gross and net acres will be the same.

PRIMARY TERM

The primary term is negotiable. Options to extend the primary term are prohibited.

DELAY RENTALS

Paragraph 3 reflects delay rentals of equal amounts will be paid to the owner of the soil and to the State. The actual delay rental amount due to the state and to the owner of the soil must be included in Paragraph 3 unless the lease is paid-up. If a lease is a paid-up lease, this fact must be stated in Paragraph 3 and an additional paragraph outlining the payments made must be added to the lease. Paragraph 3 shall cross-reference the additional paragraph. The bonus consideration and paid up rental amounts must be shown separately.

If a lease contains a one-year primary term, Paragraph 3 shall be stricken or reflect that no rentals are due.

Late payment and/or underpayment of a delay rental will automatically terminate the lease.

ROYALTY

The gross royalty rate shall be stated in the lease. All subparagraphs of Paragraph 4 must recite the gross royalty.

ROYALTY PAYMENTS PROVISIONS

Paragraph 9 sets out the schedule for payments of royalties to the State. The owner of the soil may insert additional language in Paragraph 9 or in an addendum so that the payment of his royalties coincides with the payment of the State's royalties.

PERMITS AND REPORTS

Paragraph 10 requires the word “State” to appear in the name of any well and on signs at the well and tank battery on the leased premises or in any report or document relating to a well or tank battery on the leased premises. This requirement will allow the GLO to easily identify State property when out in the field or when reviewing documents, including drilling permits. Paragraph 10 also lists certain Railroad Commission documents which must be filed in the GLO.

There are several contractual and statutory responsibilities for the Lessee which are material provisions of the lease as outlined in the agreement such as Section 10(B) which requires submission of written notice for all drilling, production and related activities. When forms are filed with the Texas Railroad Commission, they are required to be submitted to the General Land Office as well. Examples are W-1, Application to Drill; W-2, Oil Well Completion Report and Log; G-1, Gas Well Completion Report and Log; W-3, Plugging Report; G-5, Gas Well Classification Report; G-10, Gas Well Status Report; W-10, Oil Well Status Report; W-12, Inclination Report; electric logs; directional surveys.

DAMAGE PAYMENTS

Chapter 52 of the Texas Natural Resources Codes specifies that the surface owner's right to receive a portion of the revenues generated by the lease shall be in lieu of all damages to the soil. Therefore, any payments made for surface use or damages other than the authorized damages set out in the lease form must be shared equally with the state.

WARRANTY OF TITLE

The warranty of title provision in Paragraph 19 may be deleted.

PROPORTIONATE REDUCTION CLAUSE

If the surface interest owned by the owner of the soil is less than 100%, lessee may proportionately reduce royalties in accordance with Paragraph 20 of the lease.

A release of acreage will entitle a lessee to reduce rental payments and other payments on a per acre basis.

FIDUCIARY DUTY

Paragraph 31 of the lease form explains the fiduciary duty that the owner of the soil owes to the State. This duty requires the owner of the soil to fully disclose to the GLO any facts which affect the State's interest in the leased premises. This duty has been codified at Section 52.189(b) of the Texas Natural Resources Code.

FORFEITURE

Paragraph 32 of the lease form explains the statutory authority of the Commissioner to forfeit an RAL lease. This is codified at Section 52.176 of the Texas Natural Resources Code.

POOLING CLAUSE

In order to pool an RAL Lease, a pooling application **must be submitted** for approval by the School Land Board and the Commissioner of the General Land Office.

RAL LEASE FROM STATE TO OWNER OF THE SOIL (Waiver of Agency Rights – TNRC §Section 52.190)

If an owner of the soil desires to acquire an oil and gas lease covering its own RAL lands, the owner of the soil may submit a written application to the Board. In addition to other information, the owner must provide: a statement of his experience in oil and gas exploration and production; the amount of bonus, rental, royalty (these are paid by the owner of the soil to the State of Texas), and other lease terms that the applicant proposes to pay or offer for the lease; and also copies of geological, geophysical, geochemical and other data pertinent to mineral exploration on the subject lands. GLO staff shall review the information in the

application and prepare a report for the Board containing a summary of the terms being offered and any additional factual data considered to be relevant. This report shall include, but not be limited to, data concerning the land proposed to be leased and its estimated value for oil and gas exploration and production, recommended lease terms, and information concerning the applicant, including the applicant's history of leasing State of Texas or federal lands for oil and gas. The Board shall consider the application at a regular meeting. If the Board approves the application, the Commissioner shall issue a lease to the applicant. Additional information concerning this subject may be found in Section 52.190 of the Texas Natural Resources Code.

EXECUTING AND FILING RAL LEASES

PRIOR TO RECORDING WITH THE COUNTY CLERK

Once the owners of the soil and the prospective lessee have negotiated a lease **AND BEFORE THE LEASE IS RECORDED WITH THE COUNTY CLERK**, the lease must be submitted to the GLO for review and approval, at the following address:

Texas General Land Office
1700 North Congress
Avenue Austin, Texas
78701-1495 Or
P.O. Box 12873
Austin, Texas 78711-2873

SUBMITTING THE RAL LEASE FOR APPROVAL

Lease submittals must include an **application and checklist** which is available on the web page where these guidelines are found, and which contains the following information:

Cover Letter enclosing:

- **Application and Checklist**

- **\$100.00 processing fee per tract description application [REQUIRED WITH EACH NEW PROPERTY DESCRIPTION]**

- **Plat of lands covered by the lease**

- **Lease form exactly as negotiated with and signed by the surface owner BUT NOT YET RECORDED. Any new provisions added to the RAL lease form shall be easily detectable within the form and highlighted on a copy of the original or attached as an exhibit or addendum.**

- **Schedule of names of surface owners with percentage of interest owned. If the surface is owned by more than one party, a schedule of all owners with percentage ownership must be provided.**

FILING A RECORDED RAL LEASE WITH THE GLO

If ALL ITEMS on the Application and Checklist are included, the lease will be reviewed by the GLO staff and a letter or e-mail will be sent to the party submitting the application and checklist stating either that the lease will be accepted or that changes will be required.

When the GLO has approved the lease, the lease must be recorded with the County Clerk. Lessee or applicant shall provide the following:

- The State's share of the bonus consideration for all leases.
- A certified copy of all executed, recorded leases, and said copy must contain the statement, "true and correct copy" and must have the seal of the county clerk affixed or stamped thereon.
- \$25.00 filing fee for each certified copy

Note: Section 52.183 of the Texas Natural Resources Code provides that no RAL oil and gas lease is effective until a certified copy of the recorded lease has been accepted for filing by the GLO.

Once the certified copy of the executed lease has been filed with the GLO, a "final" letter confirming receipt of the bonus consideration and all required fees will be sent to the lessee bearing the State mineral file number of the file.

Refer to this State mineral file number in all correspondence or inquiries and for making any payments due under this lease to the GLO.

IF A LEASE IS RECORDED BEFORE GLO APPROVAL

If changes are required and the lease has already been filed of record in the county courthouse, a release of the recorded lease **must be filed, and a certified copy furnished to the GLO before a new lease may be executed by the owner of the soil.** The modified lease can then be executed by the owner of the soil and resubmitted to the GLO **before recording.**

RECORDING RELEASES OF TERMINATED RAL LEASES
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Under the standard RAL lease form, lessees who release acreage from the lease must record the release in the county clerk's office and a certified copy must be filed with the GLO within 90 days of the execution date accompanied by a \$25 filing fee per RAL lease on the document.