

ADMINISTRATIVE WATCH

ADDRESSING ENVIRONMENTAL, ENERGY AND NATURAL RESOURCE ISSUES



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Recording of Surrender Documents from Oil and Natural Gas Lease Act Signed Into Law

On October 22, 2014, Pennsylvania Governor Tom Corbett signed House Bill 402 into law, also known as the Recording of Surrender Documents from Oil and Natural Gas Lease Act (the "Act"). The Act imposes a duty on a lessee to deliver a surrender document to a lessor within 30 days of the termination, expiration or cancellation of an oil and gas lease.

Under the Act, if a lessee fails to timely provide the surrender document to a lessor, the Act sets forth a procedural process by which a lessor may serve notice on a lessee. The lessor's notice should contain the following statements: (i) the lease has terminated, expired or been canceled, (ii) the lessor has failed to receive a timely surrender document from the lessee, and (iii) the lessor has the right to record an affidavit of termination, expiration or cancellation of an oil or natural gas lease. Additionally, the notice shall include leasehold information, such as the name or description of a corresponding unit, if any, and the name or number of a well drilled under the lease, if any. The lessee has 30 days from the date of receiving notice to deliver a written challenge to the lessor. A lessor who has served notice and has failed to receive a timely challenge from the lessee may then record an affidavit of termination, expiration or cancellation. The Act does not apply when the parties have expressed their intent to renew the lease or to negotiate a new lease in writing. The Act shall take effect on December 22, 2014.

According to a memorandum on the Pennsylvania General Assembly's [website](#), the purpose of the Act was to create a process for the lessor to obtain a release for an expired oil and gas lease that may not be renewed under the terms of the lease, so that the lessor may then enter into a new lease with another operator in an effort to advance the development of the oil and gas under the lessor's property. However, the Act does not define the terms "terminated, expired or cancelled." The application of the Act may result in an ambiguity as to whether a lessee would be required under the Act to surrender a lease where the primary term has expired, but where the lessee has maintained the force and effect of the lease under the terms of the habendum clause, often through the production of oil or gas. Accordingly, although the goal of the Act is to clarify the record as to which lease remains in force and to help the lessor obtain a release of the lease that has indeed expired, the provisions of the Act are ambiguous and subject to interpretation.

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Typically, oil and gas leases contain both a primary term and a secondary term. The primary term is of a fixed duration, typically anywhere between three and five years. The habendum clause of an oil and gas lease sets forth the conditions that must be met to extend the lease from its primary term into its secondary term. Under most modern leases, the drilling of a well or the production of oil and gas on the leasehold, or lands pooled or unitized therewith, will trigger the commencement of the secondary term, and the lease will remain in force and effect so long as production continues. Accordingly, although the fixed duration of the primary term of a lease may have expired, the lease would remain in force and effect due to continued production.

As the terms “termination, expiration or cancellation” were not defined in the Act, it is unclear whether a lessee would have a duty to issue a surrender document when the primary term expired, regardless of whether the secondary term of the lease remains in full force and effect. Accordingly, the application of this Act will likely lead to an increased volume of disputes over the validity of leases.

Additionally, the Act does not express the intended effect that the lessor’s filing of the affidavit of termination, expiration or cancellation will have on the leasehold title. Neighboring states, including Ohio and West Virginia, have statutory lease forfeiture procedures regarding leases that have expired and are not held by production, which expressly provide that upon following procedural steps to notify the lessee that the lease has terminated pursuant to provisions therein, that the lease is deemed cancelled of record. The Pennsylvania Act does not address the effect of filing the affidavit and whether it was intended to operate as a cancellation of the lease. Although the Act does not express the effect of filing the affidavit, under 21 P.S. § 451, an affidavit may serve as admissible evidence of the facts stated therein. However, an affidavit is subject to challenge on the basis of the knowledge or reliability of the affiant.

If challenged, it is unknown how a court would apply the Act and how an affidavit of termination, expiration or cancellation, if recorded, would affect the leasehold title.

If you have any questions regarding the applicability of the Act to your leases or require assistance in challenging a notice or affidavit adverse to your lease, please contact Matthew L. Lambach at 412-253-8825 or mlambach@babstcalland.com or Christopher J. Hall at 412-253-8820 or chall@babstcalland.com.