

# What To Know & Do When a Landman Comes

*This guide is not intended as, and is not, legal advice.*

*This guide is not intended to, and does not, form an attorney-client relationship.*

*Nothing in this guide is meant to, or can, serve as a substitute for obtaining legal representation.*

*This guide is not intended as, and is not, a solicitation for legal representation.*

## **What is a “Landman”?**

A “landman” is someone who works for coal, oil, and gas companies in the United States. They may also be called “land agents” or “land managers.” Both men and women may be “landmen.”

Landmen research courthouse records to determine property ownership, negotiate mineral deeds sales and leases, ensure compliance with contracts, prepare land for development, and generally act as middlemen between companies and landowners.

## **What Might a Landman Do?**

If you’re dealing with a landman, it most likely means he is trying to negotiate with you on behalf of a company in order to persuade you to sign a lease or make a sale for some kind of mining, drilling, or infrastructure activity on your land. Landmen may also be independent speculators.

If you don’t own your subsurface/mineral rights,<sup>1</sup> the landman might not be there to persuade you to lease or sell your land, but to inform you that the owner of those rights is going to go forward with development, and to act as the middleman between you and the owner of the subsurface rights.

In Pennsylvania, you have certain rights as a “surface estate owner.” For more information, see “The Marcellus Shale Natural Gas Rush: The Impact of Drilling on Surface Owner Rights,”

[https://pennstatelaw.psu.edu/file/aglaw/Natural\\_Gas/The\\_Marcellus\\_Shale\\_Natural\\_Gas\\_Rush-The\\_Impact\\_of\\_Drilling\\_on\\_Surface\\_Owner\\_Rights.pdf](https://pennstatelaw.psu.edu/file/aglaw/Natural_Gas/The_Marcellus_Shale_Natural_Gas_Rush-The_Impact_of_Drilling_on_Surface_Owner_Rights.pdf). This document is primarily concerned with how landowners who own their subsurface rights can protect themselves, but many of the same principles concerning landmen apply to surface estate owners.

Landmen may be pressured by their companies to get as many leases as possible very quickly, and they likely stand to make money by doing so. Some unethical landmen may resort to certain “tactics” to pressure or manipulate people into making a quick decision. Some of these tactics may be identifiable right away, while others may not become clear until it’s too late. This is why it’s

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<sup>1</sup> Some landowners may need to do research to determine whether they own their subsurface rights or not. Not all surface owners own the rights to oil and natural gas beneath their property, and very few own the coal rights. In many instances, subsurface property interests were severed from the surface estate long ago, sold or leased to a company or individual or retained by a previous owner of the property. These “severed estates,” where one party owns the surface and another party owns the subsurface interests, are common in Appalachian areas with a history of coal mining.

important to follow the guidelines discussed below on how to protect your interests when dealing with a landman.

Tactics that will be clear right away include making high-pressure statements to try to get you to sign immediately. Such statements could include saying, “I’m only in town until tomorrow”; “All of your neighbors have already signed”; “If you don’t sign, we’ll take the gas/oil anyway without paying you”; “This lease is non-negotiable”; and “I’ll lose my job if you don’t sign.” They may also try to motivate you by offering large amounts of money for signing a lease on the spot, telling you that it’s your patriotic duty to allow extraction because it will make the United States more energy-independent, or telling you that it’s not necessary to consult an attorney because the landman has already explained everything.

The tactics that won’t become clear until further down the road concern the representations landmen may make during negotiations. In the process of trying to secure leases, landmen make representations about the nature of the development that will take place on your land, as well as the nature of the financial terms of the agreement you’re entering. Some landowners have complained that landmen have drastically understated the impact development would have on the landowners’ quality of life, while drastically overstating the financial benefits of the deal.

## **Who Oversees Landmen? What Rules Are They Subject to?**

Landmen are generally not regulated. In Pennsylvania, they are not required to be registered or have a license. However, a substantial number of landmen are members of the American Association of Professional Landmen (AAPL). See [www.landman.org](http://www.landman.org). The AAPL has a Code of Ethics, as well as ethical standards in its Bylaws and Standards of Practice. If a landman who is a member of the AAPL does something that violates those standards, he can be subject to disciplinary action through the AAPL.

Even non-AAPL member landmen are subject to the rules of the common law. This means that they could be held liable for trespass, deliberately making material misrepresentations in contract negotiations, or pressuring someone into an extremely imbalanced contract, among other things. However, holding someone responsible under the common law is difficult, time-consuming, and expensive, because it requires going to court. It’s better to avoid problems from the beginning by being cautious and well-informed.

## **What Should You Do When Dealing with a Landman?**

### **1) Be skeptical.**

Landmen are not necessarily untrustworthy. Many of them go into the profession because they are friendly and people like them. But remember: the landman does NOT work for you. He has a legal duty to his client (the company), or his own interests in mind, and has very limited legal obligations to any landowner. Sometimes landowners mistakenly believe that the landman is there to serve the landowner’s interests too, but the landman may give the landowner biased information.

Landowners are not being mean or impolite if they question the landman's assertions, take firm stances during negotiations, and take some time to make decisions.

**2) Ask who the landman works for.**

You're not only dealing with the landman, but you're dealing with the company that employs the landman if the landman is not working independently. You should research the company to ensure that their violation history is minimal. The Pennsylvania Department of Environmental Protection has a compliance reporting webpage, where you can look up inspection and violation reports for specific companies: [http://www.depreportingservices.state.pa.us/ReportServer/Pages/ReportViewer.aspx?/Oil\\_Gas/OG\\_Compliance](http://www.depreportingservices.state.pa.us/ReportServer/Pages/ReportViewer.aspx?/Oil_Gas/OG_Compliance). You can also ask around in your community to see if the company or the landman has a reputation locally.

**3) Ask if the landman is a member of the AAPL or an attorney.**

As mentioned above, landmen who are members of the AAPL are subject to specific ethical standards. If an AAPL member does something you think is suspicious, you can report it to the AAPL. Landmen who are NOT members of the AAPL have much less accountability. A substantial portion of landmen are also attorneys, however, and it is also worth finding out if you're dealing with a landman-attorney. Attorneys are subject to even stricter ethical obligations than AAPL members if the attorneys are admitted to a state bar. If you believe an attorney admitted to the Pennsylvania Bar has done something unethical, you can file a complaint with the Disciplinary Board of the Supreme Court of Pennsylvania. See <http://www.padisiplinaryboard.org/consumers/faqs/>.

**4) Consult your own attorney before signing.**

The danger of landmen is that they are usually there to represent an energy company in dealings with you, but you may not be represented. This makes negotiations imbalanced, because it is difficult to represent yourself in a negotiation, especially if you don't have expertise in oil and gas law. The best thing to do is to get your own representation with an attorney who is experienced with oil and gas contract law.

**5) Make sure everything that was said in conversation ends up in writing.**

Get as many aspects of the deal in writing as possible. The landman may say you don't need to read the contract closely because he's already summed up its terms for you. He may also say that while the contract doesn't include details you've discussed, such as the specific nature of development or financial terms, he can explain to you verbally how development and payments will progress. Don't let him convince you of that. Confirm that every representation he makes is part of the written contract.

**6) Know that there is no such thing as a "non-negotiable contract."**

You have the right to participate in decision-making over what happens on your land. You can negotiate lease terms shorter than five years, and negotiate the terms of where and when certain

activities take place. Royalty amounts are also negotiable. Having an experienced attorney negotiate for you is the best strategy, as well as knowing common elements that landmen or companies may try to convince you are not negotiable.

**7) Talk to your neighbors and consider collaborating with an organization that will protect your interests.**

Many landowners are now effectively banding together to make the most out of natural gas leasing. For example, the Columbia County Landowners Coalition “was formed to help land owners in their respective communities to obtain the best value and lease options for a comprehensive gas lease on their property in the Marcellus Shale and other formations.” [www.columbiacoalition.org](http://www.columbiacoalition.org). Consider reaching out to an organization like this before signing anything. If you’ve been approached, your neighbors have also likely been approached. Ask them what financial offers have been made to them, and what lease terms. The Penn State Extension Office also has many informational resources for landowners in Pennsylvania.

**8) Do your research and don’t jump the gun.**

The effects of certain methods of natural resource extraction are not 100% understood. Epidemiological and environmental research is still being done on the effects of hydraulic fracturing on health and water, for example. Some landowners have made a lot of money through leasing their land and have been happy with the results, but other landowners have regretted the decision to go forward. Be as well-informed as possible before undertaking these serious decisions with lasting impacts, and don’t let the landman pressure you into anything hasty. It is in the landman’s best interest to reassure you that everything is safe, but you should consult resources that have your best interests in mind.

**9) Keep in mind a few key provisions that you may want to include and keep an eye out for in a lease.<sup>2</sup>**

- a. DO include a process for you to file a complaint if you feel the company is not complying with the terms of your lease.
- b. DO include a process for you to exercise your right to see and copy the company’s records.
- c. DO require the company to pay 100% of any local taxes for road maintenance or damaged water supplies.
- d. DO insist on being paid based on the highest field market price.

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<sup>2</sup> This list is not comprehensive. To accommodate the specific circumstances of your situation and to keep up to date with constantly evolving oil and gas law, the best option is to consult an attorney. These provisions are also mainly relevant to natural gas extraction, but other considerations will come into play both for natural gas and for other possible developments.

- e. DO include a “Pugh Clause,” which gives you the ability to lease different portions of your land to different companies if you so desire.
- f. DO consider putting an expiration limit for “shut-in wells.” Shut-in wells are a type of well that may be drilled and not used, but considered “active,” potentially making your lease continue indefinitely.
- g. DO require that water sources be tested comprehensively as to quality and quantity *before* any development takes place.
- h. DO require that any damage to your water supplies caused by the company’s operations must be corrected within a specific timeframe.
- i. DO consider prohibiting the company from using any water from your springs, wells, or ponds.
- j. DO clarify in the lease the size and type of any impoundments to be constructed on your property and provide a timeframe and guidelines for their removal after well development.
- k. DO clarify in the lease the size of any roads to be constructed on your property. Consider requesting that gates be installed to prevent access to the roads.
- l. DO establish distances from your home and other buildings where drilling and other activities may take place.
- m. DO include a time period for removal of all equipment and fixtures after completion of extraction, and for restoration of the surface of your land.
- n. Do NOT state that you will be responsible for damages caused by the company, including nuisances or pollution.
- o. Do NOT accept language stating, “Lessor [you] agrees to sign additional documents as may be requested by the company to show you have title to the gas they want to lease.”<sup>3</sup>
- p. Do NOT accept a provision allowing for renewals of the lease without your approval unless you want a lease lasting the maximum length of time possible with such renewals (the contract could state that a maximum of one or two renewals can occur, each for a specific time period) .

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<sup>3</sup> This language means that you are “warranting” title to your land and/or gas, meaning you guarantee that you own those rights and if you are mistaken, it is your fault. However, it is the company’s responsibility to do proper title research and establish ownership before offering the lease.

- q. You may have multiple types of gases and minerals under your property. Be sure to only lease rights for the ones you want to have developed.

### **Additional Resources**

- Penn State Extension  
College of Agricultural Sciences  
Penn State University  
County Offices: <http://extension.psu.edu/counties>
- A Landowner's Guide to Leasing Land in Pennsylvania  
Penn State Cooperative Extension  
<http://extension.psu.edu/publications/ua448>
- Fact Sheet: Landowners and Oil and Gas Leases in Pennsylvania  
Department of Environmental Protection  
Commonwealth of Pennsylvania  
[www.depweb.state.pa.us](http://www.depweb.state.pa.us)