OHIO LANDMAN REGISTRATION ROLLOUT
Navigating Ohio’s new registration requirements

Ohio wants you to dot the i...
... and cross your t’s.

DISCLAIMER
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AGENDA

• Dundics v. Eric Petroleum Corp.
  • The Dundics Opinion
• Real Estate License Exemption
• Registration and Disclosure Forms
• FAQs
• Definition of “Profession” - Ethics
• Questions or Comments
Eric Petroleum Corp. was an operator of over 750 wells throughout eastern Ohio.

When EPC assigned acreage to shale drillers, it generally reserved shallow rights, and participated in a number of shale wells.

Dundics agreed to locate open acreage, and negotiate and acquire oil and gas leases.

As payment for services, Dundics was to be paid $10 per net acre leased, and receive a 1% working interest in all wells drilled on the leased acreage.

EPC never filed an answer or pled affirmative defenses in this case, but argued that no action seeking compensation for the activities of a real estate broker shall accrue without proof of a valid broker’s license, and moved for dismissal.
In this appeal, we address whether oil and gas land professionals, who help obtain oil and gas leases for oil and gas development companies, must be licensed real estate brokers when they engage in the activities described in R.C. 4735.01(A) with respect to oil and gas leases. More specifically, we address whether R.C. 4735.21 precludes a person who is not a licensed real estate broker from bringing a cause of action to recover compensation allegedly owed for negotiating oil and gas leases.

Because the plain language of R.C. 4735.01 does not exclude oil and gas land professionals or oil and gas leases from the relevant definitions set forth in the statute, we hold that appellants, Thomas Dundics and his company, IBIS Land Group, Ltd., engaged in activities that required a real estate broker’s license and are precluded from bringing a cause of action to recover compensation for those activities. Therefore, we affirm the judgment of the Seventh District Court of Appeals affirming the trial court’s dismissal of appellants’ complaint.
OHIO REAL ESTATE BROKER’S LICENSE REQUIREMENTS

• Must hold an active salesperson license for two of the last five years
• 120+ hours of designated real estate education
• A minimum of 60 semester hours of postsecondary education
• 20 real estate transactions
  • Listing agent in the sale of property – ½ transaction
  • Selling agent in the sale of property – ½ transaction
  • Listing or procuring agent in a commercial lease – ½ transaction
• Submit an application with a $100 fee (no felony convictions)
• Pass the Ohio Real Estate Broker exam

ADDITIONAL BACKGROUND

• AAPL submitted multiple *amicus* briefs, in support of the Dundics position, at both the appellate and Ohio Supreme Court levels.
• AAPL simultaneously sought a solution in the Ohio legislature to protect our landman members by engaging an Ohio lobbyist while the case was pending.
• AAPL engaged a lobbyist to seek a legislative solution during the lame duck session through the end of 2018, which resulted in the passage of SB263, which was signed into law by Governor Kasich.
REAL ESTATE LICENSE EXEMPTION

The terms "real estate broker, and "real estate
salesperson"...do not include a person or entity who
performs any of the acts or transactions specified:

- (h) As an oil and gas land professional in the performance of the oil
and gas land professional's duties, provided the oil and gas land
professional is not engaged in the purchase or sale of a fee simple
absolute interest in oil and gas or other real estate and the oil and
gas land professional complies with division (A) of section 4735.023
of the Revised Code;

- (i) As an oil and gas land professional employed by the person,
partnership, association, limited liability company, limited liability
partnership, or corporation for which the oil and gas land
professional is performing the oil and gas land professional's
duties.

DEFINITION

"Oil and gas land professional" means a person
regularly engaged in the preparation and
negotiation of agreements for the purpose of
exploring for, transporting, producing, or
developing oil and gas mineral interests, including,
but not limited to, oil and gas leases and pipeline
easements.
SECTION 4735.023

• Sec. 4735.023. (A) An oil and gas land professional who is not otherwise permitted to engage in the activities described in division (A) of section 4735.01 of the Revised Code may perform such activities, if the oil and gas land professional does all of the following:

• (1)(a) Registers on an annual basis as an oil and gas land professional with the superintendent of real estate by such date specified and on a form approved by the superintendent, which form includes both of the following:
  • (i) The name and address of the oil and gas land professional;
  • (ii) Evidence of the oil and gas land professional's membership in good standing in a national, state, or local professional organization that has been in existence for at least three years and has, as part of its mission, developed a set of standards of performance and ethics for oil and gas land professionals.

• (b) Pays an annual fee, established by the superintendent in an amount not to exceed one hundred dollars, which shall accompany the registration.
**SECTION 4735.023**

2) At or prior to first contacting any landowner or other person with an interest in real estate for the purpose of engaging in the activities of an oil and gas land professional, and on a form approved by the superintendent, discloses to the landowner or other person all of the following:

- (a) The oil and gas land professional's name and address as registered with the superintendent;
- (b) That the oil and gas land professional is registered as such with the superintendent and is a member in good standing in a national, state, or local professional organization that has been in existence for at least three years and has, as part of its mission, developed a set of standards of performance and ethics for oil and gas land professionals;
- (c) That the oil and gas land professional is not a licensed real estate broker or real estate salesperson under Chapter 4735 of the Revised Code;
- (d) That the landowner or other person with an interest in real estate may seek legal counsel in connection with any transaction with the oil and gas land professional;
- (e) That the oil and gas land professional is not representing the landowner or other person with an interest in real estate.

3) At or prior to entering into any agreements for the purpose of exploring for, transporting, producing, or developing oil and gas mineral interests including, but not limited to, oil and gas leases and pipeline easements with any landowner or other person with an interest in real estate, and on a form approved by the superintendent, discloses to the landowner or other person with an interest in real estate all of the following:

- (a) The oil and gas land professional's name and address as registered with the superintendent;
- (b) That the oil and gas land professional is registered as such with the superintendent and a member in good standing in a national, state, or local professional organization that has been in existence for at least three years and has, as part of its mission, developed a set of standards of performance and ethics for oil and gas land professionals;
- (c) That the oil and gas land professional is not a licensed real estate broker or real estate salesperson under Chapter 4735 of the Revised Code;
- (d) That the landowner or other person with an interest in real estate may seek legal counsel in connection with any transaction with the oil and gas land professional;
- (e) That the oil and gas land professional is not representing the landowner or other person with an interest in real estate.
SECTION 4735.023

• (B) Any oil and gas land professional who must be registered as such with the superintendent pursuant to this section who ceases to be a member in good standing of an organization described in division (A)(1)(a)(ii) of this section shall report the change in membership status to the superintendent within thirty days of that change. Failure to report such change in membership status shall result in the automatic suspension of registration status and subject the registrant to the penalties for unlicensed activity as found in section 4735.02 of the Revised Code.

SECTION 4735.023

• (C) Any oil and gas land professional who fails to register with the superintendent pursuant to this section is subject to the penalties for unlicensed activity as found in section 4735.02 of the Revised Code.
PENALTY

• 4735.99 Penalty.
  • (A) Whoever violates section 4735.02 or 4735.021 of the Revised Code is guilty of a misdemeanor of the first degree.

• 4735.052 Civil penalty.
  • (C)(4) The commission shall decide whether to impose disciplinary sanctions upon a party for a violation of section 4735.02 of the Revised Code. If the commission finds that a violation has occurred, the commission may assess a civil penalty, in an amount it determines, not to exceed one thousand dollars per violation. Each day a violation occurs or continues is a separate violation. The commission shall determine the terms of payment.

REGISTRATION FORMS

• Land Professional Registration Form
• Land Professional Disclosure Statement
• Land Professional Change Application
• Land Professional Reactivation Application
• Wallet Card
REGISTRATION FORMS

• Land Professional Registration Form
  • Grace period until April 30, 2019

• Land Professional Disclosure Statement

• Land Professional Change Application

• Land Professional Reactivation Application

• Wallet Card

FAQs

• Do independent landmen with an LLC have to register with the state?
  • Yes

• Should in-house landmen register with the state as a best practice even though it is not required under the new changes?
  • The State of Ohio does not give such advice, but several attorneys have stated that might be a best practice that company landmen also register.
FAQs

• Will the Department of Commerce prescribe a specific form for the certificate of good standing from the association of land professionals of which the applicant is a member?
  • It was requested that AAPL develop (and submit for approval) a standard form to provide to the applicant that confirms that the named member is in good standing as of the date shown (a membership card is not sufficient). Said form will be provided to the locals to use as they see fit. Eventually the State would like to see development of an electronic verification process.

FAQs

• If you are operating on your own behalf for your own benefit under an entity you are a Member/President, whether it be buying minerals or leasing, are you required to register?
  • No.

• Can brokers working for an operator negotiate a purchase of oil and gas minerals?
  • An independent/broker acquiring a fee mineral or royalty interest must be a licensed real estate agent or broker in the State of Ohio.
FAQs

• Are roadway (or any other non-pipeline) easements covered under the exceptions in the statute?
  • Any agreement directly related to “exploring for, transporting, producing, or developing oil and gas mineral interests”, such as a well road, flow line easement, water line easement, water use agreement or surface use agreement would fall under the disclosure requirement.

FAQs

• When should the disclosure forms be given to the landowner? At the first meeting? When all other paper work is signed?
  • Yes and yes. The form must be presented to, and signed by, the landowner in both instances before proceeding with the terms of the offer or the execution of any instrument. Verified digital signatures are acceptable.
FAQs

• Is the disclosure form required to be provided in all instances, at the discretion of the landman, or only upon interest owner’s request?
  • The disclosure is required in all instances where a landman is attempting to or is negotiating to acquire an oil and gas lease from a landowner, both at the point of initial contact, and prior to execution of the documents.

FAQs

• What are the proposed penalties for a landman in good standing with the registration requirements, but no disclosure form voluntarily provided to interest owner at time of transaction?
  • The disclosure form is a part of the registration requirement and exemption from being required to hold a real estate license. A failure to properly provide the disclosure form would result in a lapse of registration, possibly resulting in unlicensed/unregistered activity.
FAQs

• If you have a landowner group and as a landman you are representing them, how should the disclosure form be completed?
  • The form should be prepared by the landman acting on behalf of the lessee, include ALL information required on the form, and must be presented to and signed by all mineral owners in the group. (A landman representing a group of mineral owners might want to consider the Ohio statutes against the unauthorized practice of law.)

FAQs

• How should the disclosure form be completed if you are a realtor or appraiser, but are currently acting as a landman?
  • This form is not to be used by a licensed real estate agent or broker. An appraiser would have to be registered as a landman and use the form; appraisers are not licensed to conduct this type of activity.

• Who keeps the disclosure form once signed and complete?
  • The landman must retain the signed forms for a minimum of three (3) years, but should provide an unsigned copy to the landowner.
FAQs

• If the State retains copies of the disclosure forms, who has access to the forms once provided to the State? Is the disclosure form to be used for any other "official" State purpose(s)?
  • The only reason the Division would ask for copies of executed forms would be for the purpose of investigating a complaint. Under ORC 4735.05(D), all investigative material is confidential and not subject to public record.

FAQs

• Is registration and a disclosure form required when contacting a resident of another state regarding a mineral interest in lands situated in Ohio?
  • Yes.

• Is registration and a disclosure form required when contacting an Ohio resident regarding a mineral interest in lands situated in another state?
  • No, but it might be a best practice to do so.
DEFINITION OF “PROFESSION”

Is “Landman” a Profession?

• The Oxford Dictionary tells us that a profession is a “paid occupation, especially one that involves prolonged training and a formal qualification”.
DEFINITION OF “PROFESSION”

• BusinessDictionary.com goes on to say that a profession is an “occupation, practice, or vocation requiring mastery of a complex set of knowledge and skills through formal education and/or practical experience. Every organized profession (accounting, law, medicine, etc.) is governed by its respective professional body.”

DEFINITION OF “PROFESSION”

• The Harvard Business Review adds that “True professions have codes of conduct, and the meaning and consequences of those codes are taught as part of the formal education of their members. A governing body, composed of respected members of the profession, oversees members’ compliance.”
DEFINITION OF “PROFESSION”

• “Through these codes, professional institutions forge an implicit social contract with other members of society: Trust us to control and exercise jurisdiction over this important occupational category.”

CODES OF ETHICS

• There are no barriers to entry into our “profession”. We as an association, and we as individuals, strive to enforce our rules of ethics on our peers in order to protect ourselves individually, in order to protect ourselves as a group, and in order to protect the public from unethical practices.
CODES OF ETHICS

• Some professional groups, such as doctors, lawyers and real estate agents, can prohibit the professional from practicing. These professions require a license to practice, which can be revoked or suspended for legal or ethical violations.

• AAPL and its locals are voluntary professional associations. Landmen currently are not required to be licensed in any state, therefore, the worst punishment AAPL or local landman associations can impose on a landman is expulsion from membership in the association. This does not prevent the guilty from practicing as landmen.
QUESTIONS OR COMMENTS?

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