

Gas Lease Termination

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How to terminate a gas lease in New York State under General Obligation Law 15-304

Updated August 2013.

Accessible at: <http://fleas.files.wordpress.com/2013/08/lease-termination-packet.pdf>

Having a gas lease encumbers the title on the leased property. Even when the lease has expired, property owners usually have to take action to get the termination recorded and clear their title. Below are the steps to follow that will help you terminate an expired lease. Follow these steps carefully, and keep accurate records and copies. If you have any questions or require assistance, please contact us at FleasNY@gmail.com or 607 539-7133.

I. Overview of steps that are detailed below:

1. Check the expiration date of your current gas lease. If your lease has expired, wait 10 days or more from the expiration date and follow these procedures.
2. Determine if your lease has been re-assigned to another gas company.
3. Write a notice letter to each company holding your gas lease following the “Notice Letter and Affidavit Templates” below.
4. Send the original letter(s) by certified mail, return receipt requested 10 days or more after the expiration of the lease.
5. Prepare and have notarized an affidavit of service following the template “Notice Letter and Affidavit Templates” below.
6. If the gas company has not responded to your notice letter for termination within 30 days of receipt of your notice letter, file your notice letter(s) and affidavit(s) of service at the County Clerk’s Office in the county where the leased land exists. That’s it - the lease is terminated.
7. If the gas company responds and denies that the lease has expired and should be terminated, contact us at Fleas.

II. Details related to each of the above steps:

- 1. Check the expiration date of your current gas lease.**

Your lease should have a primary lease term with the beginning and ending dates usually included. Most leases were for a 5-year term. However, most leases also have an *extension of term* that allows the gas company to extend the lease if they follow the requirements spelled out in the lease. Usually that requires the company to “tender” a check before the primary lease term expires. Unfortunately simply “tendering” the check (writing and sending it) is usually all that is required. If your lease has an extension clause and the company follows the requirements, your lease will remain in force through the extension date. If you have questions about whether this pertains to your lease, send a copy of your lease and all correspondence to Fleased and we will review it for you. Note: This “legitimate” extension does not apply to the claims of gas companies to extend leases through *Force Majeure*. The “Notice Letter” template below has a paragraph that should be included if you are subject to such a claim but would be deleted from the template if you have not received a *Force Majeure* claim.

2. Determine if your lease has been re-assigned to another gas company.

Leases are often assigned (sold) by the original gas company in whole or in parts to other companies or parties without notification to you. Thus you likely will not have received notice of any lease assignment. To determine if your lease has been assigned, you will need to search the County Clerk’s Office in the county where the leased land is located. Some County Clerk’s offices have records available on-line, while others require you go to the Clerk’s office in person and use the public access computers available. When searching for records, look under the name of the original gas company that was named in the lease. Note: This is probably not the company that the landman worked for. Search through all the records of that gas company within the dates of your lease term. Ask for assistance in obtaining records from county clerk staff. This may take some time. You will need to send notice letters to the original gas company who signed the lease and to each company that holds any share or assignment of your lease. **Be sure to get a mailing address** for each of these companies from the Clerk’s office. You should make a copy of each assignment on record as well as a copy of the lease for your files.

3. Write a notice letter to the gas company that signed the lease and to each company assigned to your lease following the “Notice Letter” template below.

Note that the landowner is the “lessor” and the gas company is the “lessee.” **Follow the template carefully, as all of this detailed information must be included in your letter(s).** If there is more than one “lessor” or landowner who signed the lease, all names must be listed on the notice letter. You will need to include the tax parcel(s) ID #. This number is likely on the lease, or you can check your tax bill payment records for these numbers or find them at the County Assessment Office. Make a copy of the letter(s) for your records.

4. Send signed letter(s) to all gas companies holding the lease.

The original letter(s) should be sent to all gas companies or other parties holding the lease by certified mail, return receipt requested 10 days or more after the expiration of the lease. Be sure to use the current address for the gas companies. Keep the postal receipts and a copy of the letter(s) in your records.

5. Prepare an affidavit of service following the “Notice Letter and Affidavit Templates” below for each gas company. Have the affidavit notarized.

Make copies of the affidavit(s) for your file.

Check to see if the gas company or other party has filed an affidavit in response to your notice letter. If the gas company claims that the lease has not been terminated, but is still in effect, it must do so within 30 days of receipt of your notice letter. They must file an affidavit in the County Clerk’s office and serve a copy of this affidavit on the landowner within 10 days of filing in the Clerk’s office. If the gas company claims the lease is in effect, they may be citing other clauses within your lease that they claim extends the lease. Ask for a copy of this filing, which may list these clauses for your records.

6. If the gas company (companies) holding the lease or a portion of the lease has not filed an affidavit with the County Clerk contesting the expiration within 30 days of receipt of your notice letter, file your notice letter(s) and affidavit(s) of service at the County Clerk’s Office in the county where the leased land exists.

Thirty days or more after the gas company has received your notice letter, go to the County Clerk’s office with copies of your notice letter(s) and affidavit(s) of service. This filing with the Clerk will result in the termination of the lease and will clear your title. General Obligations Law 15-304 states, “by such filing the lease shall be cancelled and of no further effect.” If any company files an affidavit with the county clerk claiming the lease is still in effect [they don’t have to provide a reason or justification] then a court [or arbitration] fight would be needed to end the lease. However, if any of the companies only sends a letter to you that is *not* filed with the Clerk, this has no legal significance and you can file the notice letters and affidavits of service (described above and for which we provide templates titled “Notice and Affidavit Templates” below) which will end the lease.

*Note: The information contained herein is provided “as is” for educational and information purposes only, and does not provide legal advice on any specific legal matter or factual situation. Legal advice is dependent on the specific circumstances of each situation, so some information may not be correct for your situation. This information is not intended to create or provide a lawyer-client relationship. No one should act on this advice without seeking professional counsel. This information is not soliciting clients for legal work. This information is provided at your sole risk. There is no warranty of any kind, express or implied. Therefore, this information is not a substitute for and cannot replace the advice of your own legal counsel. If you choose to hire a lawyer, be sure that lawyer has specific and extensive experience in negotiating gas lease.

Notice Letter and Affidavit Templates for Termination of an Expired of Gas Lease

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Fill in and send the following letters to the gas company 10 days or more after the lease expires. Send via certified mail, return receipt requested. See full instructions on the Fleasid.org website.

Delete the header above the asterisks before writing, printing and sending your letter.

* * * * *

(Your name)
(Your address)
(Today's date)
(Gas company name)
(Gas company current address)

RE: Termination of oil and gas lease
(Tax map ID number of the leased land)
Town of (your town), County of (your county), New York

Dear Sir/Madam:

(If more than one lessor signed the lease use this paragraph)

I write on behalf of myself and fellow lessors: (their names here), who each have authorized me to write this letter and make the demands contained herein below. As your records indicate, collectively we are the lessors in this now terminated lease.

OR

(If only one signature is on the lease use this paragraph)

I write to remind you of your obligation under New York General Obligations Law 15-304 (1) (Forfeiture and cancellation of oil, gas or mineral land leases), to send me the required "document in recordable form cancelling the lease as of record in the county where the leased land is situated."

(Include the following paragraph if the company tried to extend your lease by invoking *force majeure*)

Our lease expired by its own terms on (date), and your company's attempt to extend it beyond its primary term by invoking *force majeure* has now been rejected by the United States District Court for the Northern District of New York when Judge David Hurd ruled on November 15, 2012, in the case of *Aukema, et al. vs. Chesapeake, et al.*, Docket No. 3:11-cv-00489 that: "accordingly, force majeure whether common law or express, does not extend the lease."

This lease was signed on (date), and therefore was terminated by its own terms on (date.) Since you have failed to meet this statutory obligation within the 30-day period in 15-304 (1), (we/I) hereby exercise (our/my) rights under 15-304 (2) and (are/am) serving you with notice that:

1. The lease was terminated by its own terms on (date).
2. You are obligated to send me the cancellation document mandated by 15-304 (1).
3. If such cancellation document/release is not received within 30 days of your receipt of this Notice, please be further advised, that pursuant to 15-304 (2) (a), the lease will be terminated and no longer in effect.
4. Further, as required by 15-304 (2) (a), the following information is being provided:
 - The lessee is: (gas company name and address)
 - The lessor/s are: (name and current addresses)
 - The leased premises are located in the town of (town), County of (county), State of NY; tax parcel ID # (enter here), which is a parcel of (number) acres.
 - The leased premises are not in a unit.
 - There are no oil or gas wells on the leased premise.
 - The lease was executed on: (enter here)
 - The lease was terminated on: (date) due to the provision of the lease.

As noted, all correspondence in response to this Notice should be sent to me at the address at the beginning of this letter, and also contained above. Thank you for your attention to this matter.

Sincerely,
(Your name)

cc: (other lessors name here)

Sample Affidavit of Service

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Fill in this document and have it notarized. Keep a copy for your records. See the instructions for Terminating an Expired Lease at Fleased.org for when and how to file with the County Clerk.

Delete the header above the asterisks before writing, printing and sending your letter.

* * * * *

Affidavit of Service

STATE OF NEW YORK
COUNTY OF (your county)

(Letter writer's name), being duly sworn, deposes and says that:

On (date), I served a letter which contained a Notice of Termination of an Oil and Gas Lease, pursuant to New York General Obligations Law 15-304 (2), upon (gas company name), by mailing an original thereof to: (gas company address) via certified mail, return receipt requested.

Sworn to before me this

(Day) day of (Month, year)

NOTARY PUBLIC