

Farmers' Advocate Office

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November 4th, 2019

The Landowner Landscape

How Can the Farmers' Advocate Office (FAO) assist rural Albertans with the challenges they face?

- **Surface Rights**
 - Annual Rental Payments
 - Industry Insolvency
 - Access to Land
 - Participant Involvement
- **Operational**
 - Grain Distributors
 - Wildlife Compensation
 - AFSC Appeals
 - Water Act Enforcement

Advocacy

The FAO helps bridge the gap between rural Alberta and the provincial government, bringing the concerns of farmers and ranchers to decision-makers and advocating for legislative and policy change on behalf of rural communities and groups.

Landowner Challenges

- **Industry Insolvency**
- **Confidence in Regulator**



Trending Issues for Energy

- **Surface Rights Board**
 - New Section 36 Application Form
 - Condition of Site
 - Unjust Enrichment
- **Incorrect Registration of Builders Liens**
- **Working Interest Participants (WIP's)**
- **Denying Access to a Wellsite**



What to Do When a Company Fails to Make Annual Surface Lease Payments

Under section 36 of the *Surface Rights Act*, a landowner may apply to the Surface Rights Board (SRB) for a Recovery of Rentals when an operator fails to make its annual rental payments or offers a unilaterally reduced payment under a private surface agreement or Right of Entry order.

(3) Where any money payable by an operator under a compensation order or surface lease has not been paid and the due date for its payment has passed, the person entitled to receive the money may submit to the Board written evidence of the non payment.

Surface Rights Board

Recovery of Compensation (Section 36)

- Part 1: Applicant
- Part 1 (a): Additional Parties Entitled to Compensation
- Part 1 (b): Applicant's Representative
- Part 2: Operator Responsible for Annual Payments
- Part 3: Location and Lease Information
 - Condition of Site (new)
- Part 4: Payment Information
- Part 5: Supporting Documents
- Part 6: Statutory Declaration (new)

Condition of Site

- Is the following true?
 - is the site fenced
 - there is equipment or structures on the site, such as a wellhead
 - The site is still being visited by the workers (including reclamation work)
- The Surface Rights Board will consider how you are using the site, how it is affecting the rest of your land, and losses you are suffering because of it.

Unjust Enrichment

- The SRB uses **discretion** in its decisions to ensure a landowner would not receive an award that results in “unjust enrichment”. Unjust enrichment is a legal concept that is normally assessed as follows:
- To successfully claim unjust enrichment against another person, a claimant must prove three things:
 - the person received a benefit,
 - the claimant suffered a loss corresponding in some ways to the benefit, and
 - there was no juristic reason for the benefit and the loss.

Builders' Liens continued

A landowner is not directly liable for the amount claimed under a lien related to a company's energy interest. A landowner will be able to check if the builders' lien is registered properly by:

- Reviewing the *Statement of Lien (Form A)* that they have received.
- Obtaining a current copy of their Certificate of Title through Alberta Land Titles.

An incorrectly registered builders' lien can impact a farmers operational status with financial institutions

- Operational loans

Incorrect Registration of Builders' Liens

- Builders' liens are specific, limited registrations against Certificates of Title. To help ensure payment for supplies purchased or services rendered, the *Alberta Builders' Lien Act RSA 2000, c B-7* permits any person who has provided work or materials for an improvement on land to register a lien against the estate or interest of the owner in the land.
- **For the purposes of a lien, an owner can include a lessee under an oil and gas surface lease.**

Understanding Working Interest Participants (WIPS)

- Under provincial legislation a company with a beneficial or legally undivided share in the licence are referred to as Working Interest Participants (WIPS)
 - Received some sort of financial benefit when energy resources were being developed
- When a primary licensee becomes insolvent, the AER can look to the WIPs to lead on the abandonment or reclamation of the site
- The WIP would be responsible for the cost proportionate to their share of the investment, and the rest would be covered by the Orphan Well Association (OWA)

Can a landowner deny access to an energy site?

Section 36 *Surface Rights Act (SRA)*

(8) The Board may direct the Minister not to make any further payments due under subsection (6) if it considers that the person entitled to receive them is refusing access for operations, abandonment or reclamation allowed by law. [emphasis added]

Keep in Touch

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Farmers' Advocate of Alberta

Thank you!