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Chapter 11 Revivor of Oil & Gas Leases

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This chapter discusses issues concerning the revivor and ratification of oil and gas leases. As revivor becomes an issue only after leases are terminated, it is important to understand some of the ways that leases may be terminated. This chapter, therefore, will first discuss the termination of oil and gas leases, and then turn to a discussion of the revivor of terminated leases.

§ 11.01. Termination of Leases.

The most obvious manner in which a lease may be terminated is simply by expiration of the term of the lease. Termination in this manner

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may be subject to lease provisions allowing for the extension or renewal of the lease for a certain period of years.

Leases may also be terminated for reasons not expressly stated in the lease document.

[1] — Failure to Develop the Lease on a Timely Basis.

It is commonly held that the *habendum* provision in lease agreements contains an implied covenant that the lessee will actively develop the lease in order to produce oil or gas.² Some leases may contain a specific provision requiring production within a certain period of time after the execution of a lease agreement. In the absence of such a provision, however, courts will fall back on the *habendum* clause containing the implied covenant to produce. In such a circumstance, the court will determine whether production began within a reasonable period of time following the execution of the lease. Failure to produce the lease within what the court deems to be a reasonable period of time may result in a default under the lease.³

With the understanding that the lease must be produced in order to prevent a default, the next issue becomes the amount of production that is necessary to sustain the lease. It is universally held that production must be in paying quantities, or commercial quantities.⁴ Obtaining minuscule production from the lease will not be sufficient to sustain it. For example, in *Jolynne Corp. v. Michels*,⁵ the lessee began to develop a lease but did not obtain paying quantities. The lessee did, however, provide free gas from a well drilled on the lease to the lessor. The lessor was not satisfied with merely receiving free gas, and sought to terminate

² See *Wellman v. Energy Res., Inc.*, 557 S.E.2d 254, (W.V. 2001); *Tanner v. Reeves*, 249 S.W.2d 526 (Ky. 1952); *Union Gas & Oil Co. v. Gillem*, 279 S.W. 626 (Ky. 1926).

³ See *Tanner v. Reeves*, 249 S.W.2d 526, 528 (Ky. 1952).

⁴ *Doty v. Key Oil, Inc.*, 404 N.E.2d 246 (Ill. App. 1980); *Fisher v. Grace Petroleum Corp.*, 830 P.2d 1380 (Okla. 1992).

⁵ *Jolynne Corp. v. Michels*, 446 S.E.2d 494 (W. Va. 1994).