

Chapter 18

Can a Terminated Lease Be Cured?

Scott M. Zurakowski

Gregory W. Watts

*Krugliak, Wilkins, Griffiths & Dougherty Co., L.P.A.*¹

Canton, Ohio

Synopsis

§ 18.01.	Introduction	682
§ 18.02.	Termination by Operation of Law	683
	[1] — Termination Based on the Failure to Timely Develop a Lease Under the Lease’s Habendum Clause.....	683
	[a] — Ohio	683
	[b] — West Virginia	684
	[c] — Pennsylvania	685
	[d] — Kentucky	686
	[2] — Termination Based on the Failure to Maintain Production Under a Lease	687
	[a] — Ohio	687
	[b] — West Virginia	688
	[c] — Pennsylvania	689
	[d] — Kentucky	689
	[3] — The Failure to Pay Delay Rentals.....	690
	[a] — Ohio	691
	[b] — Pennsylvania	691
	[c] — Kentucky.....	692
	[d] — West Virginia	692
	[4] — The Failure to Pay Shut-In Royalties	693
	[a] — Ohio	693
	[b] — West Virginia	695
	[c] — Pennsylvania	695
	[d] — Kentucky	696
§ 18.03.	Statutory Requirements to Record a Release of Lease	696

¹ The authors wish to thank Attorneys Aletha Carver, Ian Hoke and Joseph Pasquarella for their significant contributions to this chapter.

§ 18.04.	Statutory Requirements for Forfeiture of Lease.....	698
	[1] — Ohio.....	698
	[2] — Pennsylvania.....	700
	[3] — Kentucky and West Virginia.....	700
§ 18.05.	Ratification and Revivor	702
	[1] — Generally.....	702
	[2] — Ratification	703
	[a] — Ohio	703
	[b] — West Virginia	706
	[c] — Kentucky.....	707
	[d] — Pennsylvania.....	709
	[3] — Revivor.....	710
	[a] — Ohio	711
	[b] — West Virginia	711
	[c] — Pennsylvania	713
	[d] — Kentucky	713
§ 18.06.	The Renewal or Extension of the Lease	714
	[1] — Ohio.....	715
	[2] — Pennsylvania.....	717
§ 18.07.	The First Right of Refusal Provision.....	719
	[1] — Ohio.....	719
	[2] — West Virginia.....	720
	[3] — Pennsylvania.....	721
§ 18.08.	The Doctrine of Novation	722
§ 18.09.	Tolling.....	725
	[1] — Pennsylvania	726
	[2] — Ohio	728

§ 18.01. Introduction.

This chapter reviews the different legal theories and trends currently being utilized by courts in the Appalachian Basin regarding the curing of a terminated lease. The chapter begins with a discussion of the different provisions of an oil and gas lease that may cause expiration or termination. Thereafter, the chapter will discuss the impacts of such expiration or termination and the resulting impact on Renewal and Right of First Refusal provisions and the legal theories of Ratification, Revivor, and Novation. Finally, the chapter will address recent decisions regarding tolling of the lease term during landowner challenges.