

SURFACE RIGHTS and the LAND AGENT



A Guide for Landowners and Occupants

INTRODUCTION

Land titles in Alberta are subject to the rights of the mineral rights holders, (e.g. oil and gas companies) or possible expropriating authorities (e.g. public utilities and transportation companies or agencies).

If a person who holds the mineral rights or the right to construct something on your property cannot negotiate an agreement with you, they can access your property without your consent by way of a right of entry order or by expropriation. The people who negotiate with you for an agreement to access your property for these types of activities must be licensed land agents.

When you negotiate with a land agent you should know about the laws that govern land agents, as well as which agencies and departments are available to assist you.

Who is a land agent?

A land agent is a person who negotiates for or acquires an interest in land, whether for himself/herself or on behalf of someone else.

Who is a landowner?



An owner is a person who has a right to dispose of an interest in land including:

- A person registered in the Land Titles Office as the owner of an estate in fee simple of the land surface.
- A person who is shown by the records of the Land Titles Office as having a particular estate or interest in the land surface.
- A person registered in the Metis Settlements Land Registry as the owner of a Metis title, a provisional Metis title, an allotment or any other interest in land.
- A person who is in possession or occupation of the land surface.
- In the case of Crown land, a person shown on the records of the department

administering the land as having an estate in the land surface. For the purposes of the Land Agents Licensing Act, the Crown is not included as a landowner.

LICENSING OF LAND AGENTS

A person who engages in the activities of a land agent must hold a land agent licence. A landowner should ensure he/she is dealing with a licensed land agent when negotiating. Every legitimate land agent is issued a licence card every two years. A landowner can also verify if a land agent is licensed by contacting the office of the Registrar of Land Agents.

Land Agents Licensing
Employment and Immigration
7th Floor, Labour Building
10808 – 99 Avenue, Edmonton, Alberta T5K 0G5
Telephone: (780) 415-4619* or (780) 415-4600*
Fax: (780) 422-7173; Email: land.agents@gov.ab.ca
Website: www.employment.gov.ab.ca/lal

The following activities do not require a licensed land agent:

- Acquiring mineral (subsurface) interests.
- Surface agreement compensation reviews (rental reviews).
- Settling damage claims or reclamation disputes.
- Obtaining access for survey or seismic work only.
- Charging a fee for giving or offering advice to a landowner regarding a negotiation for an interest in their land.

The following people are exempt from the requirement to hold a land agent licence:

- Lawyers engaged in land agent activities in the course of their law practice.

- Members of a municipal council, Metis Settlement Council or their employees when they are negotiating for or acquiring an interest in land within the boundaries of the municipality or Metis Settlement.
- Members or employees of an association under the Rural Utilities Act when they are negotiating for or acquiring an interest in land on behalf of the association.
- Persons negotiating for or acquiring an interest in land on behalf of irrigation districts.
- Employees of the Government of Canada or the Government of Alberta (including Crown corporations) when they are negotiating for or acquiring an interest in land on behalf of their employer.
- Persons negotiating for or acquiring an interest in land that could be expropriated under federal but not provincial legislation (e.g., employees or agents of Interprovincial Pipe Line Inc. operating under the National Energy Board Act).

A person who does not hold a licence and is engaging in activities that require a licence could be fined up to \$5000. A second offence could result in a fine plus a prison term.

NEGOTIATING PROCEDURES



A licensed land agent is required to follow certain negotiation procedures and standards of conduct, according to the Land Agents Licensing Act and Regulation. If a land agent contravenes the Act or Regulation, his/her licence could be suspended or cancelled.

A land agent who enters into negotiations to acquire an interest in land must provide the landowner or his/her agent with a completed copy of the proposed agreement (offer) and explain the provisions of Section 17 of the Land Agents Licensing Act. The agreement must have a sketch or survey plan attached to it and be completed with the proposed terms of the agreement, which the land agent must offer to explain. This includes, but is not limited to:

- An offer of compensation.
- The name and business address of each of the parties to the agreement.
- The nature of the interest to be acquired.
- The legal description of the property.

After the agreement is left with the landowner, the land agent cannot resume negotiations or accept a signed agreement from the landowner until at least 48 hours has passed (not including Sundays or statutory holidays). This 48-hour rule need only be complied with once during negotiations on the same transaction, even if the terms of the proposed agreement are changed. The landowner may waive his/her right to this 48-hour period by signing a waiver form.

If a landowner signs an agreement, a true copy of it must be left with him/her at that time.

An application for a right of entry order under the Surface Rights Act can not be made to the Surface Rights Board or an expropriation of land cannot be made until Section 17 of the Land Agents Licensing Act has been complied with and negotiations have resumed or have been attempted to be resumed.

COMPLAINTS ABOUT LAND AGENTS

The Registrar of Land Agents administers and enforces the provisions of the Land Agents Licensing Act, including the standards of conduct found in Section 10 of the Land Agents Licensing Regulation. The Registrar can investigate any complaint concerning land agent conduct or any matter that pertains to the Land Agents Licensing Act or Regulation.

If you have any questions or concerns about the conduct of a land agent, or require further information about the Land Agents Licensing Act or Regulation, please contact:

Land Agents Licensing
Employment and Immigration
7th Floor, Labour Building

10808 – 99 Avenue, Edmonton AB T5K 0G5
Telephone: (780) 415-4619* or (780) 415-4600*
Fax: (780) 422-7173; Email: land.agents@gov.ab.ca
Website: www.employment.gov.ab.ca/lal

OTHER SURFACE RIGHTS AGENCIES TO ASSIST YOU

Most surface rights problems are resolved by contacting the operator or company directly and you are encouraged to do this. If your concerns are not being addressed, several agencies can assist you.

Exploration Activities

Seismic exploration is the first step in oil and gas operations. Subsurface geological formations containing oil and gas can be located by sending sound waves into the earth. Seismic work cannot be conducted on private land or occupied public land without the consent of the owner/occupant. If the owner/occupant refuses access for a seismic operation, the operator has no recourse.

Seismic work is governed by the Exploration Regulation under the Mines and Minerals Act. A person does not need to be a licensed land agent to negotiate access for seismic purposes. If you have any concerns or inquiries regarding seismic activity, contact:

Land Use Management - Public Lands Division
Alberta Sustainable Resource Development
3rd Floor, Petroleum Plaza, South Tower
9915 – 108 Street Edmonton, Alberta T5K 2G8
Telephone: (780) 427-3932* Fax: (780) 422-4251
Email: lfs.seismic@gov.ab.ca Website: www.gov.ab.ca/env/land.html

Surveys



The Surface Rights Act and the Expropriation Act authorize access onto any land for surveying, provided a reasonable attempt is made to give notice to the person in possession of the land. This only applies to surveying done for operations or activities that are subject to these two Acts. A person does not have to be a licensed land agent to obtain the consent of an owner for this access.

If entry is refused, the operator or expropriating authority may apply for a court order. The operator or expropriating authority is liable for any damage caused by such surveys.

In addition, Section 16 of the Surveys Act authorizes an Alberta land surveyor and his authorized assistants, using reasonable care, to pass over or through the land of any person to measure along and ascertain the bearings of any line or boundary. The surveyor is liable for any damage caused.

If you have any concerns or questions about a particular survey, contact:

Alberta Land Surveyors' Association
2501 CN Tower, 10004 – 104A Avenue
Edmonton, Alberta T5J 0K1
Telephone: (780) 429-8805 or 1-800-665-2572
Fax (780) 429-3374; Email: info@alsa.ab.ca
Website: www.alsa.ab.ca and www.alsa.ab.ca/surveyors/easement.htm

Licences, permits and approvals

The Alberta Energy Resources Conservation Board (ERCB) is responsible for the economic, orderly and efficient development of the energy resources of Alberta. This includes issuing licenses, permits and/or approvals for oil and gas wells, pipelines and power lines.

When considering energy development applications, the ERCB is obligated to treat all parties fairly. This means all parties who may be affected are entitled to be made aware of energy developments, to voice their concerns, and to

have their concerns heard. If it appears to the ERCB that a decision on an application may directly and adversely affect a person's rights, the ERCB is required by law to consider objections before an approval is granted. This includes site location, construction details, safety, etc.

If a person contends that they are affected by an ERCB approval, they have 30 days from the date of the approval to apply to the ERCB for a hearing under Section 40 of the Energy Resources Conservation Act.

Upon filing their objections with the ERCB, the affected person may request that the approval be suspended until such time as the ERCB hears the affected person's objections. For more information about a proposed well site, pipeline or power line, contact:

Alberta Energy Resources Conservation Board
640 – 5 Avenue, SW
Calgary, Alberta T2P 3G4
Telephone: (403) 297-8311*
Fax: (403) 297-7336; Website: www.eub.gov.ab.ca
24 hour EMERGENCY Response Line: (403) 297-8303*

Compensation



The Surface Rights Board has jurisdiction over compensation for oil and gas activity and right-of-entry orders. If a mineral rights owner cannot obtain the consent of a landowner to enter the land, the mineral rights owner may enter the land by obtaining a right of entry order from the Surface Rights Board under the Surface Rights Act. An application for a right of entry order under the Surface Rights Act can not be made to the Surface Rights Board until Section 17 of the Land Agents Licensing Act has been complied with and negotiations have resumed or have been attempted to be resumed.

A mineral owner cannot apply for a right of entry order until a licence, permit or approval is granted by the Energy Resources Conservation Board. This also applies to some power transmission lines and most pipelines. For more information about right-of-entry orders, entry fees and compensation hearings, contact:

Alberta Surface Rights Board
18th Floor, Phipps McKinnon Building
10020 – 101A Avenue
Edmonton, Alberta T5J 3G2
Telephone: (780) 427-2444* Fax: (780) 427-5798

The Land Compensation Board (LCB) deals with expropriations that can affect landowners, and is governed by the Expropriation Act. These include acquisitions for public works of any kind carried out by the provincial government or its agencies, and all expropriations by municipal governments. A common example is Alberta Transportation acquiring land for roads or highways. If a negotiated settlement cannot be reached, the landowner may have the compensation determined by the LCB or, in some cases by the courts.

For more information, contact:

Land Compensation Board
18th Floor, Phipps McKinnon Building
10020 – 101A Avenue
Edmonton, Alberta T5J 3G2
Telephone: (780) 422-2988* Fax: (780) 427-5798

Landowner Assistance

The Farmer's Advocate Office was established in 1972 to provide information and assistance to landowners. It provides publications about landowners' and occupants' rights, and surface rights agreements (e.g. surface leases, right of way agreements) and periodically conducts public information meetings throughout the province. The office is also available to mediate and resolve disputes.

The Farmer's Advocate Office also administers the Water Well Restoration or Replacement Program, which assists with concerns or claims relating to water well damage caused by seismic or drilling operations. For more information, contact:

Farmer's Advocate
Alberta Agriculture, Food and Rural Development
305, 7000 – 113 Street
Edmonton, Alberta T6H 5T6
Telephone: (780) 427-2433* Fax: (780) 427-3913
Email: lien@agri.gov.ab.ca

Reclamation



Alberta Environment has the responsibility, under the Environmental Protection and Enhancement Act and Regulations, to ensure that operators conserve and reclaim the lands disturbed by industrial activity. Before an operator is relieved of their responsibilities on disturbed land, the operator must obtain a reclamation certificate to demonstrate that the land has been satisfactorily reclaimed. The following three government agencies are designated to carry out inspections and to hold inquiries as specified by the Environmental Protection and Enhancement Act and Regulations. For more information, contact:

For Green (Forested) Area Public Lands

Alberta Sustainable Resource Development
Land Administration Branch
3rd Floor, 9915 – 108 Street
Edmonton, Alberta T5K 2G8
Telephone: (780) 415-4643* Fax: (780) 422-4251
Website: www3.gov.ab.ca/srd/land/LAD

For White (Agricultural) Area Public Lands

Alberta Sustainable Resource Development
Public Lands
200 J G O'Donoghue Building
7000 – 113 Street
Edmonton, Alberta T6H 5T6
Telephone: (780) 427-4661* Fax: (780) 422-4244
Website: www3.gov.ab.ca/srd/land

For all Other Lands

Alberta Environment
Environmental Sciences Division
4th Floor, 9820 – 106 Street
Edmonton, Alberta T5K 2J6
Telephone: (780) 427-5883* Fax: (780) 422-4192
Email: land.management@gov.ab.ca
Website: www.gov.ab.ca/env/protenf/landrec/index.html

Spills

Responsibility for spills is divided between the Energy Resources Conservation Board (ERCB) and Alberta Environment. The ERCB is responsible for ensuring that a spill is adequately contained and recovered. After the spill is cleaned up, an operator is responsible to Alberta Environment for any decontamination that may be required. Both the ERCB and Alberta Environment have 24-hour emergency response systems throughout the province with the telephone numbers published on the front pages of all telephone directories. For further information regarding spills, contact:

Alberta Energy Resources Conservation Board
640 – 5 Avenue, SW
Calgary, Alberta T2P 3G4
Telephone: (403) 297-8303*
Fax: (403) 297-7040

Alberta Environment
Regional Director, Northeast Boreal Region
#111 Twin Atria Building
4999 – 98 Avenue
Edmonton, Alberta T6B 2X3
Telephone: (780) 422-4505* or 1-800-222-6514;
Fax: (780) 427-3178

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Telephone: (780) 415-4619* or (780) 415-4600*
or visit: www.employment.gov.ab.ca/lal