

FRIEDMAN & FEIGER

ATTORNEYS AT LAW

PREVENTATIVE LAW



OUR CLIENTS challenged us to meet one of their greatest concerns: the rising cost of legal services due, in part, to the mounting number of federal and state regulations affecting their businesses and the increasing number of lawsuits and other claims they were facing in today's litigious business environment. We are proud to report that we have met the challenge, teamed up with our clients, and developed a program of Preventative Law designed to help reduce our clients' overall legal expenses.

Today, I have newfound respect for the person who made up all of those sayings that we heard growing up, but ignored. One of those sayings is, "An ounce of [legal] prevention is worth [more than] a pound of cure." The avoidance of legal problems through education, awareness, and training (an ounce of prevention) goes a long way towards reducing the amount of legal fees your company will spend in the future paying to resolve lawsuits involving claims for breach of contract, theft of trade secrets, wrongful termination, or sexual harassment (a pound of cure)—just to name a few. Preventative Law focuses on avoiding these types of legal problems rather than fixing them.

We focus our efforts up front to examine your business, review your method of operations, analyze your contracts--purchase orders, non-disclosure and non-compete agreements and other important documents--in order to identify legal matters that frequently arise in your business. After that, we educate you and others in management in advance about the proper ways to address those legal matters, so that management can make the best most informed decisions they can make, under the circumstances, or know when to seek legal advice up front before they make costly legal mistakes. Putting the right information in the hands of the right people and training them how to use it, is the key to our success.

The essence of Preventative Law is being "ready" and being "prepared"--no matter what business you are in. Benjamin Franklin said, "By failing to prepare, you are preparing to fail." We agree. We think ahead, learn your business, identify common legal issues, and educate and train our clients how to solve problems, create opportunities, and use the company's strengths in a strategic way. We generate new knowledge and techniques to teach management awareness of legal issues before they arise. On the job training engages management in educational activities and training that is practical in preparation for improvement in dealing with the company's legal matters.

Preparation is designed to harness the skills, talent, knowledge, and passion of management into a system of developing steps to accomplish a good legal outcome. Preparation is used in business transactions and management all the time. It transfers naturally into Preventative Law. Many times an important part of preparation is the concept that time is of the essence especially in contract law. Preparation allows time needed to do the right steps sequentially in the correct order, instead of panicking and doing quick steps haphazardly with no thought as to what should come first, who should be consulted, and what should come next. Preparation in dealing with legal matters will result in better work, better records, better supporting evidence, and better outcomes. Preparation time and preparation increases the chances of achieving the desired results.

The people who win battles at the courthouse are generally the people who are the most prepared. The people who lose battles are the people who make few preparations beforehand. Thus, much preparation leads to victory, and little preparation leads to defeat. It is by attention to this point that one can foresee who is likely to win or lose.

Our Preventative Law Program includes the following ingredients:

1. Examine the common legal issues your business faces.
2. Monitor changes in the laws that affect your products and services.
3. Identify legal issues likely to arise in your business.
4. Educate the client regarding reoccurring legal issues.
5. Train the client regarding the importance of considering the legal consequences of his/her actions.
6. Review and explain pertinent legal document, contracts, purchase agreements, policy manuals, social media and employment policies.

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In The Spotlight—Lance A. Pool



The Firm welcomes its new Managing Partner. For nearly 40 years, Mr. Pool has practiced law in both the corporate and private law firm setting in the areas of civil and commercial law. His practice has included regulatory and commercial litigation, as well as plaintiff civil litigation. Mr. Pool has been General Counsel for Fortune 500, insurance, and intellectual property companies, as well as the Executive Director of a multi-billion dollar trust. He has served as Managing Partner for both large and small law firms, representing his clients in state and federal courts across the nation, including the Supreme Court of the United States.

Fifth and Tenth Circuits, and the United States District Courts for the District of Kansas, Northern and Western Districts of Oklahoma, and the Northern District of Texas.

Lance is a member of the Texas Bar, the Oklahoma Bar, the Dallas Bar Association, the American Association of Justice, the Texas Trial Lawyers Association, the Dallas Trial Lawyers Association, and the American Bar Association.

Recognitions: Mr. Pool has attained the rating of AV Preeminent by Martindale Hubbell, and is recognized as a Trial Advocate by the National Institute for Trial Advocacy.

Lance has remained active in his community by volunteering his time with the Boy Scouts of America and as a Member of the Board of Directors of the Circle Ten Council of BSA. Mr. Pool also volunteers with the National Organization for Veterans Advocates (NOVA) and the Texas Lawyers for Veterans. Lance can be reached at 972-788-1400 or email at lpool@fflawoffice.com.

He received both a B.A. and a J.D. from Washburn University of Kansas, and attended the Executive Business Program of Stanford University Graduate School of Business, Palo Alto, CA. He is licensed in Texas (1986), Oklahoma (1979), and Kansas (1976), and is admitted to practice before the United States Supreme Court, the United States Court of Appeals for the

Oil and Gas Lease Basics By Michael Donohue



Oil and gas development in Texas has reached unprecedented heights due to technological innovations like horizontal drilling and hydraulic fracturing or fracking. This technology allows oil and gas operators to develop production in lands previously drilled with dry holes and the lost hope of economic mineral production.

the lessor allows the lessor to receive a fraction of mineral production revenue free from drilling and operating expenses.



Generally, a lessee has a two to three-year period, known as a primary term, during which to drill and attain profitable mineral production to avoid termination of the lease. If profitable production is accomplished by the end of the primary term, the lease is then “held by production” into the secondary term and, generally, will terminate if and when oil and gas production ceases, either completely or profitably. If production is not attained by the end of the primary term or ceases during the secondary term, the lease will terminate; however, certain savings provisions in the lease, such as a shut-in royalty clause, a dryhole clause, or a continuous-operations clause, may perpetuate the lease after the primary terms until production begins or resumes.

If an individual owns a fee simple absolute interest in property, then under the common law doctrine of *ad coelum*, that individual owns the surface of the land, all of the space above it, and everything below it, including the mineral estate. Before executing an oil and gas lease, that person would own the entire “bundle of sticks” in the mineral estate, i.e., (1) the right to execute an oil and gas lease (i.e., the executive rights); (2) the right to receive a bonus payment for executing a lease; (3) the right to receive delay rental payments; (4) the right to receive royalty payments; and, (5) the right to produce oil and gas from the property (including necessary rights of ingress and egress).

Often the mineral owner is also the surface owner. Under Texas law, the mineral estate is dominant over the surface estate, and, thus, a mineral lessee has the right to use as much of the surface as is reasonably necessary to access the mineral estate. This can include building new roads and well-site locations utilizing sand or caliche, accessing the property at unknown times, or even injecting produced salt water back into disposal wells on the land. Surface use agreements may be necessary to define land usage parameters and lay out applicable surface damages to be paid by the lessee to the surface owner.

Given the considerable expense and expertise necessary to profitably drill, develop and produce oil and gas, mineral owners typically convey the right to produce, known as the working interest, to an experienced lessee/operator by executing an oil and gas lease. While the word “lease” suggests conveying a limited right of possession for a definite period of time, an oil and gas lease actually conveys a fee simple determinable of the working interest to the lessee. Given the conveyance’s determinable nature, while in theory this transfer could last in perpetuity, typically it terminates upon the occurrence of some future condition (e.g., the cessation of production in profitable quantities), causing the working interest to revert back to the mineral owner.

As the oil and gas industry expands into new areas and enhances production in others, the chance of oil and gas related conflict also increases, which creates a greater need for attorney involvement. Friedman & Feiger’s experienced legal team will work with and assist you in protecting your rights, whether you are a mineral owner, royalty owner, surface owner or an oil and gas operator.

Although there are numerous other important details to an oil and gas lease, the basic economic structure of the lease is that for an up-front lease bonus payment, plus a royalty percentage of the value of any production, the mineral owner grants the lessee/oil and gas operator the right to drill, develop and produce the minerals. By acquiring the working interest, the lessee gains the right to a net revenue interest from hydrocarbon production. This is typically 100 percent less the value of the royalty interest retained by the lessor. The royalty interest retained by Mike Donohue can be reached at (972) 788-1400 or email him at mtonohue@fflawoffice.com

The “Contractual-ization” of Personal Relationships **By Marla Pittman**

Contracts exist in every aspect of our lives. They define our business relationships and set forth rights and obligations. Ideally they protect us when things do not go as planned. There are instances when it is desirable and appropriate to contractually define personal relationships as well.

The most common personal “contract” is a Premarital Agreement. The purpose of a Premarital Agreement is to define (and potentially alter) the rights and obligations of couples who are about to marry. Texas is a community property state. All property (and liabilities) accrued and incurred during a marriage are presumed to be community—or belonging to both spouses equally. Separate property on the other hand is defined as property owned by a spouse prior to the marriage or property gifted to or inherited by a spouse during the marriage. Growth of some separate property assets and income from some separate property assets that occurs during the marriage is also considered to be community property in Texas.



With a Premarital Agreement, the intended spouses contract to prevent or limit the creation of community property—typically by specifically stating that all growth and/or income of any existing or future separate property remains the separate property of that spouse. Perhaps the desire is to maintain a family legacy within the family or to specifically limit or define future alimony obligations. Other reasons for a Premarital Agreement may not be monetary—the provisions may relate to how taxes will be filed; managerial rights over property; rights and duties with regard to child care, career sacrifices and household duties; and, even the religious upbringing of a child.

Married couples can also contract to alter what is considered community or separate property by entering into a Postmarital Agreement. Similarly, couples who cohabit but do not intend to marry can define the rights and obligations of their relationship and their property by entering into a Cohabitation Agreement. Texas recognizes “informal marriage” in certain narrow circumstances. Without a Cohabitation Agreement, one party in a cohabitating relationship could allege “marriage” thereby requiring a formal divorce to end the relationship and potential division of all assets/debts acquired during the relationship.

With the U.S. Supreme Court’s recent ruling in favor of same-sex marriages, same-sex couples who have cohabited for significant periods of time and held themselves out as ‘spouses’ could potentially have created an ‘informal marriage’ relationship which would require a formal divorce proceeding to end.

The decision to enter into a personal “contract” is, of course, a very personal one, but it is important to be fully informed. For more information or to discuss your personal circumstances and what type of personal “contract” may be right for you, please contact Marla Pittman at 972-788-1400 or email her at mpittman@flawoffice.com.

Preventative Law (continued from Page 1) **By Larry Friedman**

7. Share innovative measures and alternate dispute resolution techniques—mediation, arbitration, neutral evaluations, settlement conferences.
8. Protect trade secrets and confidential information.
9. Safeguard intellectual property.
10. Develop leadership and management skills on legal issues.

Preventative Law is an effective tool to use to practice law and service our clients. Keeping our clients out of trouble is more important than helping them control the damage after mistakes are made. Preventative Law saves time, effort, money, and resources for our clients, by preventing problems instead of solving them. It enables us to partner with our clients and focus on identifying their common legal issues and determining how to deal with or avoid them. Preventative Law also contributes to higher company morale and efficiency because the Company is focused on its business instead of being disrupted by distracting legal problems. If a problem can be detected early or avoided, a lot less time will be spent on it if it is identified and dealt with up front than if it is identified too late.

The most important part of our Preventative Law program is aimed at avoiding or minimizing a company’s legal problems.

Sincerely,

Disclaimer—The information in this newsletter is for informational purposes only and not for the purpose of providing legal advice. You should contact your attorney to obtain advice with respect to any particular issue or problem. Use of and access to Friedman & Feiger, LLP’s website or any of the e-mail links contained within the site do not create an attorney-client relationship between Friedman & Feiger, LLP and the user.



Dallas native Janelle Friedman has a natural talent for entertaining. Local and national charities seek her advice to plan events that raise millions. In a city where over-the-top events are the norm, a “Janelle party” has become the stuff of legend and one of the most highly coveted invites in town. Everything she plans – from intimate dinner parties to galas – is a gift she gives her guests – one full of love, laughter, style and surprises.

“**YOU are INVITED**” by Janelle Friedman, can be purchased now on Amazon.

Kudos, Kudos, Kudos

At the State Bar of Texas Annual Meeting in June, the Dallas Bar Association accepted several awards for its programs and services. The DBA publication *Headnotes* received four awards. One of these awards was for Best Series of General Interest Articles: Ethics Column, which included the article “Understanding ‘Business Associates Agreements,’” by Friedman & Feiger’s Health Law and Healthcare Law attorney Martin Merritt and co-author Edward Vishnevetsky of K&L Gates. The entire article can be found in the November 2014 Health & Employee Benefits edition at: www.dallasbar.org/headnotes/2014. Congratulations to Martin for his continued success with published works!

On September 8, 2015, Eric Friedman was inducted into The William “Mac” Taylor American Inn of Court as an Associate Member. The mission of the Court is to foster excellence in professionalism, ethics, civility, and legal skills. Congratulations Eric!



Not only are Melissa Kingston and Marla Pittman top-notch Friedman & Feiger attorneys, they are also top-notch cooks, with each placing in the State Fair of Texas Creative Arts Competition for their canned delicacies. Melissa took home a 1st Place Blue Ribbon for her canned Mincemeat and a 2nd Place Ribbon for her Apricot Ginger Preserves. Marla took home a 3rd Place Ribbon for her Yellow Squash Relish. Their entries will be on display in the Food & Fiber Pavilion throughout the Fair. A complete list of the contest results can be found at: www.bigtex.com/creativearts/caresults. Kudos to Melissa and Marla!



Upcoming Events

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ATTORNEYS AT LAW

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- October 15, 2015 Martin Merritt speaks at the Osseus Fusion System’s **Business of Spine** NASS meeting in Chicago, IL.
- November 5, 2015 Friedman & Feiger Attorneys at Law hosts its annual Courthouse Appreciation reception.
- November 6, 2015 Write Selection hosts a book signing for Janelle Friedman’s new book, **You Are Invited**, 2 pm–4 pm, Write Selection, Preston Royal Shopping Center, 6025 Royal Lane.
- November 18, 2015 Janelle Friedman and Yvette Feiger host an Essential Energy reception for women business leaders, with a launch party celebrating the book, **You Are Invited**, 6 pm–8 pm, Tootsies, 8300 Preston Road. Please RSVP: clegrand@fflawoffice.com

Contact for Info: jfriedman@fflawoffice.com

