

**AMERICAN ASSOCIATION
OF PROFESSIONAL LANDMEN**

*Licensing Task Force 2007-08
Report & Recommendations
August 13, 2008*

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Report & Recommendations

to

AAPL Executive Committee

SYNOPSIS

Based upon the findings and conclusions stated below, the members of the Licensing Task Force unanimously recommend that AAPL *should* initiate legislative acts to license Landmen as soon as possible. The Task Force strongly recommends that AAPL support and encourage legislative acts to license Landmen in Texas and in other states where (a) there are large numbers of landmen interacting with members of the public or (b) proposed or existing regulations or restrictions so impede the performance of Landwork (through unlicensed practice of law statutes, real estate licensing requirements and the like) that successful licensing legislation will likely result in meaningful relief. Our recommendation presumes that each such legislative act to license Landmen initiated by AAPL can reasonably be expected to include *all* of the key elements contained in the Outline of Proposed Legislation for Licensing Petroleum Landmen annexed hereto as Exhibit (the "Outline").

In preparation for the introduction of a bill to license - whether or not our recommendation to initiate legislation is heeded, we recommend that AAPL immediately cause to be prepared and submitted to the Texas Legislative Council for final drafting a model form bill which follows the Outline. (We recommend the preparation of such a model form bill for future use even if AAPL does not elect, at this time, to initiate licensing on its own.) If, at any time during the legislative process, it appears likely that licensing legislation will be adopted which

departs significantly from the Outline, excludes key elements of the Outline, or is in some other way so unpalatable to AAPL in the opinion of the Executive Committee that its adoption will result in significant harm to the practice of Landwork, AAPL should do all in its power to cause such unfavorable legislation to be defeated. Whether working in support of its own preferred form of licensing legislation or to defeat hostile legislation, AAPL has the opportunity to bring to bear considerable political connections and formidable cash reserves to affect AAPL's desired outcome. All of these resources should, in the opinion of the Task Force, be generously and aggressively employed. AAPL is not likely in the future to enjoy such a convergence of clout, connections and capital.

BACKGROUND

The original charge to the Licensing Task Force in mid 2007 was to update the study conducted in 1990-91 by AAPL's Licensing Study Committee and to recommend to the Executive Committee a course to take with respect to the licensing of landmen in light of current and reasonably anticipated industry circumstances. The Task Force recommends that the AAPL Executive Committee and others receiving this report also review the 1990-91 report of the Licensing Study Committee.

Since the Licensing Study Committee began its work in 1990, a number of events have occurred and there has been a measurable shift in public policy towards regulation. Bills to license landmen have been introduced in the Texas legislature but all have been successfully guided to committees where they were allowed to die. This does not count the Texas act which was passed to require individuals acquiring pipe line rights-of-way to register with the Texas Real Estate Commission. The ill effects of an act which would have made the practice of Landwork in Texas unlawful unless it was practiced by or through licensed attorneys were

avoided when AAPL successfully caused the legislative addition of an eleventh-hour amendment to the Occupation Code to exempt landmen.

After the 1991 report by the Licensing Study Committee, when the states of California, Florida and North Carolina and the provinces of Alberta, Manitoba and Saskatchewan were known to have in their real estate licensing acts provisions requiring a license to perform at least some types of Landwork, more states have developed restrictions to prohibit or impede the practice of Landwork. The states of Wyoming and West Virginia, for example, have unlicensed practice of law (“UPL”) statutes which restrict much traditional Landwork to attorneys or those working through attorneys, and the Illinois state bar is known to be studying the West Virginia UPL statutes as they relate to Landwork.

In New York, the state attorney general has attempted to crackdown on Landwork. The state has passed a consumer protection law requiring those performing Landwork to state on every lease whether or not the landman is a member of a professional association which has an enforceable code of ethics.

Other states, like Colorado and New Mexico, have made unsuccessful attempts to license or regulate those performing Landwork. A North Dakota legislator tells us there are rumblings in that state, too, about licensing. Record high gasoline and fuel prices make the oil and gas industry a bigger villain than ever in the eyes of the American public. The industry is an easy target for politicians to demagogue and the media to bash. With the greatly expanded level of oil and gas leasing - especially into regions of the country which have not historically experienced significant levels of exploration activity, including urban and more densely populated areas - the Task Force strongly believes that further, accelerated efforts to regulate Landwork on a state-by-state piecemeal basis are likely to occur. Even if further efforts to regulate Landwork are not

forthcoming, the Task Force argues that AAPL has a clear responsibility, spelled out under its own Bylaws, to initiate licensing in order to fulfill AAPL's mission and duty to its members.

OVERVIEW OF THE TASK FORCE'S WORK

The Task Force members were provided with copies of the 1990-91 Licensing Study Committee's report. The Task Force met a number of times in 2007 and 2008 (in person and via conference call) to discuss the benefits of and the detriments to licensing. We interviewed the Texas Geoscientists, who had their own Texas licensing act adopted several legislative sessions ago. We met in Austin with AAPL's lobbyists HillCo Partners and bill author attorney Charles "Chuck" Bailey. Soape met with Lieutenant Governor Dewhurst (who was opposed to AAPL's effort to gain UPL statute exemption on the grounds that even an expelled AAPL member was free to practice Landwork and was no fan of AAPL's "patch" legislation to amend the Occupation Code). Representatives of exploration and production companies who engage large numbers of landmen were also consulted. Discussion was also had with the American Bar Association (ABA) - thought by some to be the source of UPL statutes troublesome to landmen and adopted in several key states (see below).

It was agreed that an outline should be prepared to reflect the primary elements desirous in any act to license landmen. Such an outline was drafted and circulated among all of the Task Force members for comment and for the members to review with their respective companies and contemporaries. Each Task Force member provided comments and suggested changes to the outline and the outline, as thus revised, on several occasions. The Outline which is attached to this report was unanimously adopted by voice vote of the members of the Task Force, all of whom were present and voting on August 5, 2008.

Our deliberations were framed within the context of the Mission Statement which is Article IV of AAPL's Bylaws, namely, **“to promote the highest standards of performance for all Land Professionals, to advance their stature, and to encourage sound stewardship of energy and mineral resources.”** The Bylaws, in Article VI, call for the establishment of a Certification Program, the Goal of which **“is to provide both processes and standards (which will be accepted by the industry, the public, official groups and others) whereby individuals may enter the land profession, develop competence under supervision, demonstrate competence through testing and peer verification and carry professional designations evidencing compliance with the standards herein set forth including adherence to the Code of Ethics.”** Two of the Objectives of the Certification Program are (a) **“to improve and strengthen the professionalism and status of Landmen within the industry”** and (b) **“to protect the public from incompetent and/or unscrupulous practitioners by eliminating such practitioners from the public practice.”** The Task Force does not see how AAPL's Mission, much less the Goal and Objectives of the Certification Program, can be achieved absent licensing. There are simply too many people working as landmen who are not members of any professional association with a code of ethics, and not enough insistence by industry that those who perform landwork be members of such professional associations.

UPL AND THE ABA

It has been theorized that the UPL statutes enacted or sought to be enacted in various states are the result of a “master plan” of the ABA, by which the ABA proposed to states that the ABA's definition of the practice of law - one that would preclude Landwork by non-attorneys - be adopted. Conversations were had with John Holtaway, an employee of the ABA, and Andy Kerr, an attorney and key member of the ABA. We learned that, while it is true that the ABA's

House of Delegates voted in about 2001 on a draft Model Form Definition of the Practice of Law (the very definition which has plagued landmen), the Model Form Definition failed and was *not* approved. However, in spite of not being approved by the ABA, the draft survived and has been adopted in a few states. Perhaps six states have adopted UPL statutes or definitions of the practice of law.

LICENSING INEVITABLE

The Task Force is surprised that landmen have avoided a licensing requirement for so many years. We think it very unlikely that this avoidance can continue, even if AAPL makes a concerted effort to defeat every attempt. The political climate has changed such that the pronounced trend is *towards* greater governmental regulation of business.

Texas legislators who have previously introduced licensing legislation or who have threatened to do so have informed that they plan to continue to press the issue. Texas Lieutenant Governor Dewhurst has stated that he favors licensing landmen and has advised that he thinks it appropriate - so much so that the Task Force would not be surprised were he to foster legislation in the Texas Senate.

We have seen evidence of this same pro-licensing or -regulation mood in other states, too. As discussed above, Wyoming, West Virginia, Illinois, New York, Colorado, New Mexico and North Dakota are known to have some appetite for licensing or regulation of landmen (or to have considered the same). Greatly increased leasing activity in such states as Ohio and Pennsylvania will likely bring more scrutiny of landmen than ever.

Couple the political environment with the exponentially increased levels of interaction between landmen and members of the public, the publicly available media and internet news sources, the high prices of oil and natural gas, and the incredibly competitive environment for leases - including previously unheard of per-acre lease bonuses, and one must conclude that licensing of landmen is not only likely. It is inevitable.

CONCLUSION

The Licensing Task Force strongly recommends that AAPL initiate action to license landmen in Texas, and to follow a successful effort in Texas with similar actions in other states where the need is greatest. While a Texas bill that formally captures the elements of the Outline is being drafted for review and approval by AAPL, our Task Force suggests that its members and/or other AAPL officials personally visit with leaders at exploration and production companies who utilize large numbers of landmen whose employees and contractors will be most affected to explain the proposed act, share the Outline and evaluate responses. It is vital, too, that AAPL directors circulate the Outline among their AAPL member constituents, explain the reasoning behind the proposal to pursue licensing, and answer members' questions that are sure to arise. We think it will be important for our members to *refrain* from broaching the subject of licensing with their state representatives and senators until HillCo Partners asks us to initiate those contacts.

TASK FORCE MEMBERS

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EXHIBIT A

Outline of Proposed Legislation for Licensing Petroleum Landmen

1. There are approximately 10,000 petroleum landmen working in Texas. These landmen perform the following tasks (“Landwork”):
 - a. Negotiating with property owners for the acquisition or divestiture of mineral rights.
 - b. Negotiating business arrangements for exploring for and developing minerals, including surface use agreements, damage settlements and rights-of-way related thereto.
 - c. Determining ownership in minerals through the research of public and private records.
 - d. Reviewing the status of title to minerals and curing title defects related to mineral titles.
 - e. Managing rights or obligations derived from ownership of minerals.
 - f. Unitizing or pooling mineral interests.

Under current Texas law there is no requirement that persons performing Landwork obtain a license or register with the State of Texas.

The American Association of Professional Landmen (AAPL) is a national association with approximately 11,000 members, based in Fort Worth, Texas. Some 5,500 of AAPL’s members reside in Texas and many others reside outside of but perform Landwork in Texas or with respect to minerals located in Texas. AAPL’s mission statement is to promote the highest standards of performance for all land professionals, to advance their stature, and to encourage sound stewardship of energy and mineral resources. The AAPL has entry requirements, as well as a certification program requiring a college degree, minimum levels of experience, competency testing and continuing education. AAPL also has a code of ethics, standards of practice and a structure for enforcement. AAPL has an educational program that operates dozens of seminars a year throughout Texas and other oil states, including instruction in ethical business practices.

AAPL has specific policies and procedures in place to address complaints of unethical or improper behavior by its members. However, the majority of complaints that are registered with AAPL are complaints against non-AAPL members, over whom AAPL has no jurisdiction. Further, since there is no statutory basis to require membership, certification, training or regulation of the profession in any way, members who have been disciplined by AAPL may continue to practice Landwork outside the scope of any authority. Therefore, for the protection of the public, licensing is needed.

2. Who and what services are covered?

In the act, a Landman performing Landwork will be defined as either a Registered Landman (“RL”), a Registered Professional Landman (“RPL”) or a Certified Professional Landman (“CPL”), all being designations offered by the AAPL. A licensed Landman will have a four year college degree from a regionally accredited college or university (subject to the “grandfathering” provision contained in no. 4 below).

3. Who will regulate the industry?

Appointed by the Governor, the Board will be made up of six Certified (and licensed) Professional Landmen and two public members. They will serve 4 year staggered terms. The Board will issue licenses to applicants who have met the licensing requirements administered by AAPL.

4. What will be required to obtain and maintain a license?

The licensing application requirements will be the same as the application requirements for Active Membership in AAPL, and the process will be administered by AAPL subject to approval by the Board except that all applicants must have a college degree as provided in no. 1 above; however, there will be a “grandfathering” provision waiving, for one year after enactment, the degree requirement for those who can demonstrate that they were engaged in the Public Practice of Landwork (as defined in no. 8 below) at the time of enactment. Continuing education – including instruction in ethics – will be required of the licensee to conform to AAPL’s continuing education requirements for RLs, RPLs or CPLs, as the licensee’s case may be. Once granted, the license shall be for the life of the licensed Landman so long as the licensed Landman pays the annual renewal fee, maintains at least the minimum levels of required continuing education, adheres to the code of ethics and standards of practice, and whose license has not been denied, revoked or suspended.

5. When can the Board take disciplinary action?

The grounds for disciplinary action are:

- a. the use of fraud or deceit to obtain a license;
- b. incompetence, misconduct, fraud, gross negligence or repeated acts of negligence in performing Landwork as determined by the AAPL’s Ethics Committee;
- c. conviction of a felony or a crime having fraud among its primary elements;
and
- d. violation of the licensing act or rules.

6. What are the disciplinary actions?

The Board may refuse to issue or renew a license, may revoke a license, may suspend a license, may grant a license or renewal with conditions, may reprimand a licensee or may order a licensee to undergo peer review and/or additional training and/or restitution.

7. What is the disciplinary process?

The Board may not suspend or revoke a license prior to a hearing. The Board may pass rules to implement all portions of the act evidencing administrative penalties. The appeal, if any, is to the District Court subject to the substantial evidence rule.

8. To whom does the licensing requirement apply?

A license shall be required for the Public Practice of Landwork (when the practice is done for members of the public or industry or when engaging members of the public or industry). A license shall be required for any individual engaging in the practice of Landwork dealing with property (including mineral and royalty interests) located in Texas. Non-residents of Texas may engage in the practice of Landwork dealing with property located in Texas if they are licensed in Texas or if they are similarly licensed in another state which has a reciprocity agreement with Texas.

9. Residents of Texas and non-residents are eligible to be licensed under this act, so long as they otherwise qualify.

10. Attorneys licensed in Texas are exempt from this act and attorneys from other states are exempt if the state in which they are licensed has a reciprocity agreement with Texas.

11. A licensed Landman performing Landwork, unless he holds himself out to be an attorney, shall not be considered to be practicing law nor shall he be required to register with the Texas Real Estate Commission as an easement or right-of-way agent.