

# MESSAGE FROM OUR STATE ATTORNEY

## LEGAL CORNER -

### “New Texas Law on Wind Farms”



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#### **Question:**

*I'm interested in signing a lease with a wind farm, but I'm worried they'll leave the windmill on my property when the lease expires. How can I protect myself from such an occurrence?*

Towering windmills are quickly becoming a frequent sight to those traveling along rural Texas highways. As more and more landowners are enticed by wind farm leases, many questions regarding the responsibilities and duties of the wind farm

upon the termination of their leases have arisen.

To alleviate these concerns, the Texas Legislature has passed a law (House Bill 2845) that mandates that all wind lease agreements entered into after September 1, 2019 must contain several mandatory landowner favorable provisions.

These newly mandated lease provisions are broad, but they more or less require that the wind farm lease contain language making the grantee (the company operating the wind farm) responsible for removing the wind power facilities from the landowner's property upon termination of the lease. More specifically, the lease must contain provisions making the wind farm company responsible for the removal of the wind turbine, tower, and concrete foundation, as well as most buried cables and overhead power or communication

lines.

Further, the lease must include provisions making the wind farm company responsible, upon the request of the landowner, for the removal of roads constructed by the wind company and the backfilling of each hole or cavity created by the wind farm.

Lastly, and potentially most importantly, the new law requires the wind farm to obtain and deliver to the landowner evidence of financial assurance to secure performance on the aforementioned obligation to remove the wind power facilities, so that in the event the wind farm company is no longer in business at the termination of the lease there will be monies set aside to pay for the removal and remediation of the landowner's property.

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a shareholder in the law firm of Wadler, Perches, Hundl & Kerlick with offices in Wharton, El Campo, Richmond and Fulshear, Texas. Special thanks to Shea Krauskopf, law clerk at WPHK, for his research and contribution to this article. State Attorney's note: The information in this column is not intended as legal advice but to provide a general understanding of the law. Readers with legal problems, including those whose questions are addressed here, should consult attorneys for advice on their particular circumstances.

Submit your questions for this column via email to [phundl@wphk-law.com](mailto:phundl@wphk-law.com) or via U.S. Mail to Wadler, Perches, Hundl & Kerlick, Philip J. Hundl, KJT State Attorney c/o KJT Legal Column, 101 W. Burleson Street, Wharton, Texas 77488 or at [www.wphk-law.com](http://www.wphk-law.com).