

be afraid to question the amount that a land agent throws out when he starts talking surface leases and easement agreements, especially if the land agent uses words like “standard offer.”

Lastly, get better informed. You’d be surprised how much benefit there might be to spending an hour or two on the Internet. Also, consider joining organizations like CAEPLA, or perhaps a regional surface rights group that might be in your area—especially if it publishes newsletters and related material that can help people better understand the issues. Government published information is fine, and can be helpful to some degree, but if you want to get the unvarnished details, you will likely find a landowner group to be more helpful.



CAEPLA - Who Are We?

The Canadian Association of Energy and Pipeline Landowner Associations (CAEPLA) is Canada’s foremost and leading association of landowners who have a direct and ongoing interest in energy-related issues.

Our members are the men, women, and farm families whose lives are affected by surface leases, hydro corridors, pipeline easements, and all the activities related to these types of projects.



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Landowner Rights

Trust... but Verify

How much confidence should you as landowners place in what the landman tells you?



The Fiduciary Obligations of an Oil Company Landman

The word fiduciary (pronounced fah-doo-she-airy), refers to a trust. It is an obligation that one person has to act in the best interest of another. For example, if you call a real estate agent because you want to sell your farm, the realtor has a fiduciary obligation to act on your behalf. He is obligated to tell you the absolute truth, as he knows it, about the value of your land, plus any known complications that could arise throughout the sale process.

If the realtor were to tell you that your land is worth less than he knows it to be, or if he withholds any other information from you about what he knows might be pertinent to the sale, he would be renegeing on his fiduciary obligation. Any realtor who does such a thing would be subject to prosecution.



In Alberta, Saskatchewan, and elsewhere in Canada, it is still legal for a real estate agent to represent both the seller and the buyer in a single transaction, but in many places it's against the law, and has been for some time. Why?

Because it is impossible for a realtor to faithfully and accurately represent the interests of the buyer, and the interests of the seller, at the same time.

A realtor can certainly facilitate a transaction (put a deal together) between a willing buyer and a willing seller, but that's an entirely different thing than discharging a fiduciary obligation toward a client. Even professional Real Estate Councils will often point out that when property buyers and property sellers fully understand the implications of having a real estate agent represent both parties, most people don't want anything to do with it.

Fiduciary obligations, including those that apply to an oil company landman, include:

- Obey instructions.
- Maintain undivided loyalty.
- Ensure confidentiality
- Fully disclose to the person being represented, all that is known about the situation at hand.
- Obey the law, yet at the same time, not disclose information to the other party that would compromise or weaken the stature, or negotiating position, of the person or company being represented.

Individuals that hold fiduciary obligations include lawyers (toward their clients), corporate directors (toward the company's shareholders), and oil company land agents (toward the oil company that pays them and sends them to your farm to negotiate surface leases and pipeline right of ways).

Some land agents will claim that while it is true that they hold a fiduciary obligation toward the company that employs them, they also hold a "trust" toward the landowner.

Just how that "trust" is supposed to be discharged is never fully explained. Nor do the people who make such a claim, say what they mean when they say it. That's because the simple fact is that it is impossible for any one person, including a land agent, to represent the interests of two different parties in the midst of a single transaction. The interests of the buyer and the interests of the seller are different.

This is not to suggest that every oil company land agent should be looked upon with suspicion. It is merely to point out that their fiduciary obligation is not to you—the farmer-landowner—but to the company that employs them.

How then should a farmer respond when an oil company's land agent comes calling? For starters, don't assume the land agent is going to tell you everything you want to know.

Second, trust but verify. In one situation that CAEPLA was recently involved in, a number of landowners were persuaded to sign easement agreements after having been visited by a well-liked land agent. This was for a pipeline project.

It was only after coming in contact with members of CAEPLA's staff, that these farmers and ranchers began to understand that they should have received more than 10 times the financial remuneration they were offered, and that they had already accepted. At the same time, they also discovered that there were a number of regulatory issues they knew nothing about, that were not addressed in the easement agreement they signed, and that the land agent they spoke to never told them about.



Did the land agent lie to these people? No, he didn't, not even a little bit. He simply discharged the fiduciary obligation he had toward his employer, by not telling the landowners everything he or the company knew about the project, or about the proposed offer they made to the landowners.

Most farmers would never for a minute accept as gospel, the first price that a tractor salesman or car salesman throws out. As such, no landowner should