

Solar Leases: Legal Considerations for Landowners

PUBLISHED ON

May 17, 2023

Over the past six years, Pennsylvania landowners, and farmers in particular, have witnessed a surge in the number of solar companies seeking to lease their land for the purpose of constructing solar facilities. The nature of agricultural land, typically being undeveloped and of high acreage, makes Pennsylvania's farmland ideal for commercial solar projects. The first question many landowners ask when confronted with any proposed use of their land is "how much will I be paid?" Because solar companies offer higher per-acre rental payments than typical agricultural rental rates, solar leasing tends to be appealing. While payment is imperative, the questions and conversations should not stop there.

Payment provisions are far from the only issues that need to be addressed in the lease negotiation process. Some of the more serious issues presented in many solar leases include the restrictions on the landowner's use of the land, how much of the land will actually be utilized if and when the solar project comes to fruition (as this is often the basis for determining the payments), and what are the requirements for removing the solar project and restoring the land once the solar lease terminates.

For instance, when a solar company approaches a landowner seeking to lease his 150-acre farm, there is a high likelihood that the company does not intend to utilize the entire 150 acres for its solar facilities. Instead, the company may propose to use only 50 acres while reserving easements over the rest of the acreage. These easements are not typically "paid" for and restrict the landowner's use of his remaining unleased land. In this case, the landowner who thought he would receive \$150,000 per year (\$1,000 per acre based on 150 acres), will end up only receiving \$50,000 per year. Negotiating a minimum acreage requirement can solve this problem. If the solar company fails to utilize the minimum requirement, payments will not be calculated on an acreage lower than the set amount.

Landowners must also exercise caution in their negotiations of the terms concerning the expiration of the solar lease. Solar leases tend to last 30 or more years and although distant at the time of lease negotiations, what happens at the end of a lease is extremely important. The lease must contain proper decommissioning terms, such as the removal of both above-ground and below-ground solar improvements and the restoring of the disturbed soils. A properly negotiated solar lease should also require the delivery of a security bond or other financial guarantee to the landowner that secures the performance of the decommissioning of the solar facility, especially in the case that the local government does not require any similar type of bonding for the project. The landowner should also have the right to demand that such financial security be re-evaluated every few years to ensure that the amount of the bond or security is adequate to cover the costs of decommissioning.

These are only a few of the many issues which should be considered prior to entering into a solar lease arrangement. Any proposal received from a solar company should be reviewed by an attorney prior to its execution.

If you have any questions pertaining to solar leases and land protection, please contact [Jacob Kiessling](#) or any

member of the Barley Snyder [Real Estate Practice Group](#).

WRITTEN BY:



Jacob H. Kiessling

Associate

Tel: (717) 208-8829

Email: jkiessling@barley.com