

## Surface Access and Compensation Statutes

STATE	NOTICE	NOTICE CONTENT/ NEGOTIATION	BONDING	DAMAGE/ LIABILITY	DAMAGE DETERMINATION	OTHER
<b>Alaska</b> Alaska.Admin.Code Tit. 11, § 83.158 (private minerals)  Alaska.Stat. § 38.05.130 (state- owned minerals)	None	State minerals- must negotiate with surface owner. Private minerals- no notice.	State minerals- if agreement not reached, operator to post bond determined by Dep't of Nat. Res. Private-none	State minerals- as determined by agreement  Private minerals- no bond	By agreement or law.	No application to federal minerals
<b>Arkansas</b> Ark.CodeAnn. § 15-72-214	Prior to entry to drill	Yes, if surface owner can be located	Yes	Liability for operator negligence Surface owner has lien on equipment and hydrocarbons or can obtain recovery through the operator's bond, but subordinated to state's rights.	Determined by lease	1 year stat/lim from date of APD
<b>Colorado</b> Colo.Rev.Stat. § 34-60-127	None 30 days prior to operations; during irrigation season; final reclamation notice	None	None	Compensatory damages or equitable relief to minimize intrusion but not prevent operator from entering	By litigation if operator fails to meet statutory requirements	Legislative codification of Accommodation Doctrine
<b>Indiana</b> Ind.Code § 32-23-7-6	None	None	None	Actual damages from operations to surface of the land; improvements to the land; or growing crops on the land	Court	No punitive damages. Does not enlarge damages provided in lease, if lease specifies damages.
<b>Illinois</b> 765 Ill.Comp.Stat. 530	Prior to commencement of operations	In notice, Operator must offer to meet with owner, and if owner requests, discuss operations	None	Crops, trees, shrubs, fences, roads, structures, improvements, and livestock	Operator tenders check within 90 days after completion. Owner may accept offer or sue. Attorney fees for failure to offer or unreasonable offer.	

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<b>Kentucky</b> KyRevStatAnn § 353.595	Prior to commencement of operations	In notice, Operator must offer to meet with owner and, if owner requests, discuss operations	None	Crops, trees, shrubs, fences, roads, structures, improvements, and livestock	Operator tenders offer within 90 days after completion. Owner may accept offer or sue. Attorney fees if owner recovers more than offer, unless offer based on third party appraisal.	
<b>Montana</b> Mont.CodeAnn §§ 82-10-501 et seq.	A) 15 days prior to entry for surveying activities; B) 20 to 180 days prior to entry for surface disturbance activities	Prior to entry Operator must attempt good faith negotiations, obtain an agreement, but no bond required. New negotiations if plans change.	None	Lost agricultural production and income, lost land value, lost value of improvements. Damage to real or personal property caused by mineral development.  Operator to send surface owner written offer within 60 days of surface owner's claim.	Surface owner can agree to offer or litigate. If court award exceeds offer, surface owner may obtain attorney fees.	Stat./Lim. 2 years

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<p><b>New Mexico</b> NMStatAnn §§ 70-12-1 et seq.</p>	<p>A) 5 days prior to non-surface disturbance activities B) not less than 30 days prior to planned oil and gas operations.</p>	<p>Under B) Notice must include offer of compensation. If owner does not accept operator's comp agreement within 20 days, operator may proceed with bonding. Owner can negotiate, or go to binding mediation or arbitration.</p>	<p>\$10,000 bond/well or \$25,000 blanket bond, LOC, cash, or CD. CD must be with NM surety company or financial institution.</p>	<p>A) lost agricultural production and income, lost land value, lost use and access of land, lost value of improvements. B) Attorney fees if operator conducts operations without notice; conducts operations without agreement or bonding on; or outside of scope of agreement. C) Attorney fees and treble damages for operator willfully and knowingly not giving notice, or entry without agreement or bond, or for violation of access and compensation agreement. Surface owner subject to attorney fees for not exercising good faith in complying with Act or agreement / treble damages for willfully and knowingly violating access and compensation agreement.</p>	<p>By agreement, arbitration, mediation, or litigation.</p>	<p>Notice requires disclosure of plan of operations; copy of Act; proposed surface use agreement; name and contact information for operator.</p> <p>Proposed agreement must contain minimum requirements specified by Act.</p>
<p><b>North Dakota</b> N.D.Cent.Code §§ 38-11.1-01 et seq.</p>	<p>20 days prior to commencement of operations</p>	<p>Written offer for damages with the notice.</p>	<p>None</p>	<p>Lost agricultural production and income, lost land value, lost use of and access to land, lost value of improvements. Damage to water source or for run-off of contaminated water.</p>	<p>Surface owner can agree to offer or litigate. If court award exceeds offer, surface owner may recover attorney fees.</p>	<p>Stat./Lim. 2 years; 6 years for water</p>

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<b>Oklahoma</b> 52 Okla.Stat. §§ 318.2 et seq.	Prior to commencement of operations	Parties to enter into negotiations within five days of notice. Either agreement prior to commencing operations or file request for appointment of appraisers.	\$25,000 blanket bond	Any damage caused by drilling operations or maintenance of oil or gas production operations.  By agreement, or if no agreement, surface damages are recommended by appraisers. Appraiser selection process.	Appraisers appointed by court, or if appealed from appraisers by court or jury.	Treble damages for violation of statute.
<b>Pennsylvania</b> 58 Pa.Stat. §§ 601.102 et seq. 25 Pa.Stat. §§ 78.21, 78.51, 78.65	At time of application for permit to drill  Opportunity to object to permit application  Notice of entry 24 hours prior to drilling	Notice must be sent to all surface owners, and water purveyors w/water supplies w/in 1000 feet and to any owners and lessees of coal seams.	\$2500/well \$25,000 blanket bond	Nat. gas storage 58 Pa.Stat. § 601.401 Water supply 25 Pa.Stat. § 78.51 If surface agreement not reached, operator to tender bond. If surface owner believes bond not sufficient, surface owner must petition court for appointment of 3 damage assessors.		Do not appear to apply to surface damages for oil and gas operations, except as to notice.
<b>South Dakota</b> S.D.Codified Laws §§ 45-5A-1 et seq.	30 days prior to commencement of operations	Written offer of settlement within 60 days of receipt of demand from surface owner.	None	Lost agricultural production and income, lost land value, lost value of improvements. Damage to real or personal property caused by mineral development.	Surface owner can agree to offer or litigate.	Stat./Lim. 2 years
<b>Tennessee</b> Tenn.Code Ann §§ 60-1-601 et seq.	None	Operator makes written offer within 60 days of demand from owner.	None	Loss of income from existing use, market value of crops destroyed, damage to water supply in use prior to operation, cost of repair or replacement of damaged personal property, and diminution of land value for actual prior use.	If offer rejected, arbitration or court.	Stat./Lim. 3 years

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<b>Texas</b> Tx.NatResCode §§ 91.701 et seq.  Common Courtesy Act	15 business days after Railroad Commission issues permit for new well or to reenter P&A'd well	None	None	State expressly does not affect status of dominance of mineral estate over surface estate.  Failure to give notice does not affect permit or otherwise restrict, limit, or terminate right to develop.	N/A	Notice not required if A) agreement entered into regarding notice or B) surface owner has waived notice requirement.
<b>West Virginia</b> W.Va.Code §§ 22-7-1 et seq.	None	Operator makes written offer within 60 days of demand from owner.	None	Loss of income from existing use, market value of crops destroyed, damage to water supply in use prior to operation, cost of repair or replacement of damaged personal property, and diminution of land value for actual prior use.	If offer rejected, arbitration or court at surface owner's election.	Stat./Lim. 2 years
<b>Wyoming</b> Wyo.Stat. §§ 30-5-401 et seq.	A) 5 days prior to entry for non- surface disturbance activities; B) 30 to 180 days prior to entry for surface disturbance activities	Prior to entry Operator must attempt good faith negotiations, obtain an agreement or enter under bond. New negotiations if plans change.	not less than \$2,000/ well or blanket bond approved by State commission	Loss of production and income, lost land value, lost value of improvements.  Operator to send surface owner written offer within 60 days of surface owner's claim.	By court unless otherwise agreed.	Stat./Lim. 2 years
<b>BLM</b>  Onshore Order No 1 Gold Book  43 CFR § 3164.1 72 FR 10328	Good faith effort to notify surface owner.  Must certify that Surface Use Plan of Operations given to surface owner or good faith effort made if unable to provide to surface owner	Prior to approval of APD or Sundry Notice, the operator must certify as part of the application that there was a good faith effort to enter into a surface access agreement. If unable to enter into an agreement, the operator must file a bond.	If no surface access agreement, bond not less than \$1000 determined by BLM to cover compensation for reasonable and foreseeable damage to crops and damages to tangible improvements.	Private matter	Private matter	Each application for APD, NOS, or SN must contain name, address and telephone number of private surface owner. BLM will invite surface owner to inspection.

**SUBDIVISION DEVELOPMENT AND OIL AND GAS DEVELOPMENT**

<p><b>Colorado</b> Colo.Rev.Stat §§ 24-65.5-101 et seq.</p>	<p>Subdivision developer must provide mineral owner notice of impending surface development to facilitate negotiation of a surface use agreement for joint use of the surface. Statute requires agreement contain minimum oil and gas areas for surface developments for drilling windows, setbacks for existing wells and facilities, rights-of-ways or easements for existing and future pipelines and flowlines, and for non-exclusive road easements. The incremental costs to drill directional wells from drilling windows are to be deposited in an escrow account by the subdivision developer. Operator may draw up to \$87,500 from the escrow for each directional well to cover increased cost to drill. Local government involvement in the process.</p>
<p><b>Texas</b> Tx. Nat Res Code §§ 92.001 et seq. Mineral Use of Subdivided Land Act</p>	<p>Texas Railroad Commission to approve plats of subdivisions to ensure mineral resources are fully and effectively exploited and lands utilized to fullest and most efficient use. Railroad Commission to hold hearing after notice to applicant and mineral owners considering adequacy of number and location of operation sites, roads and pipeline easements. Owner of possessory mineral interest may use only surface in designated operating sites for exploration, development and production and the easements as necessary to adequately use the sites. Owner of possessory mineral interest may drill wells or extend well bores from operation sites in subdivision or from outside of subdivision under surface of subdivision if such does not unreasonably interfere with use of the surface. Restrictions on possessory mineral owner's surface uses cease to apply if within three years of the commission's order, the surface owner has not commenced actual construction of roads or utilities and a lot has not been sold to a third party.</p>

**MISCELLANEOUS**

<p><b>Louisiana</b> La.Rev.Stat.Ann. § 30:29</p>	<p>Louisiana passed Act 312 to address the problem that damage awards for remediation were not required to be expended on remediation. Under the Act, the Department of Natural Resources is involved in formulating a remediation plan and the funds are deposited in the registry of the court.</p>
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