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Elisabeth N. Radow: Land grab sets up taxpayers for fracking fallout

By **Elisabeth N. Radow**

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Gas drilling companies, which covet the gas deposits in New York's Marcellus Shale, have executed an aggressive land grab for gas leases from homeowners across the Southern Tier to allow "fracking" — high-volume hydraulic horizontal fracturing. Dangling promises of royalties that could go unfulfilled, the leasing brokers fail to inform homeowners of the heavy industrial, uninsurable risks fracking entails. Based on decades of conventional vertical drilling, homeowners signed preprinted lease agreements without negotiation.

Today, these homeowners are trapped indefinitely by leases that give strangers free rein to take over their property while relinquishing basic home ownership benefits they once took for granted. Since upstate homeowners did not know about the hazards of fracking when they signed the gas leases, it did not occur to them to check their mortgages. Residential mortgages prohibit heavy industrial activity and hazardous materials on the property. Fracking brings both.

The mortgaged property needs to stay safe and uncontaminated because lenders sell 90 percent of all home mortgage loans to the secondary mortgage market in exchange for funds to make new home loans. Gas leases allow gas companies to truck in tankers with chemicals, transport flammable gas and toxic waste, operate heavy equipment 24/7 and store gas underground, for years, all in a person's back yard.

Gas leases also create easements that continue after the gas company leaves, with

no funds for upkeep. Gas drillers can sell the lease without telling the homeowner, so there's no way for a family to control who drills on their property. Homeowners insurance doesn't cover risks from fracking and neither does the gas lease. Industrialized risks are so expensive that even gas companies don't get fully insured for them. Homeowners can get slammed with risks for the dangerous activity they don't even control.

A growing number of banks won't give new mortgage loans on homes with gas leases because they don't meet secondary mortgage market guidelines. As a result, homeowners with a gas lease can be out of luck selling their homes, since the lease impacts stick with the property. The impact falls not only on homeowners and taxpayers, but also affects the banking, housing, insurance and secondary mortgage market interests and their investors. New construction, the sign of economic recovery, is threatened because construction loans require a property to be free of the very risks that gas drilling brings.

For New Yorkers seeking the return of a healthy state economy, this shift of drilling risks from the gas companies to the housing sector, homeowners and taxpayers begs for immediate attention.

Elisabeth N. Radow practices law in White Plains and chairs the state League of Women Voters Hydraulic Fracturing Committee. Her in-depth article on this topic is the cover story of the November/ December New York State Bar Association-NYSBA Journal Magazine.

Comments

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The Fracking issue brings to mind one of my favorite movie scenes from Ghostbusters. Dr. Peter Venkman: This city is headed for a disaster of biblical proportions. Mayor: What do you mean, "biblical"? Dr Ray Stantz: What he means is Old Testament, Mr. Mayor, real wrath of God type stuff. Dr. Peter Venkman: Exactly. Dr Ray Stantz: Fire and brimstone coming down from the skies! Rivers and seas boiling! Dr. Egon Spengler: Forty years of darkness! Earthquakes, volcanoes... Winston Zeddemore: The dead rising from the grave! Dr. Peter Venkman: Human sacrifice, dogs and cats living together... mass hysteria! Mayor: All right, all right! I get the point! I can't wait to see what other calamity will befall us if we embrace fracking!

PAUL HALSEY, LANCASTER, NY on Tue Nov 1, 2011 at 09:33 AM

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