Access to Land: The Leasing Option

Legal Aspects of Leasing

Land For Beginners

Jesse J. Richardson, Jr.
Associate Professor
Urban Affairs and Planning
Virginia Tech
jessej@vt.edu

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Overview

- Introduction
- Why have a written lease?
- Do not want to be a partnership!
- Use of the land
- Insurance
- Property taxes
- Government Programs
- Improvements
- Other issues- fences, hunting rights, water rights

United States Department of Agriculture
National Institute of Food and Agriculture
What is a lease?

• A contract by which one party conveys land, property, services, etc. to another party for a specified time, usually in exchange for a periodic payment

• Can be oral or written

• Contract elements: offer, acceptance, consideration

• Should include parties, dates, rent and description of property (at a minimum)
Why lease land?

• May be easier to find property to lease than to purchase
• May be able to find better/more appropriate property to lease than to buy
• Good way to start out in farming - less risk
• May be more cost effective/affordable to lease
• Enables you to have a “test period”
• You can build relationships with the landlord and others in the farming community
• Could lead to a purchase
How do you pick your landlord?

• Prove to yourself that the land fits your needs
• Check out the landlord. Can you work with them?
• Sell your farming expertise to the landlord. Convince them that you are the best person to farm the land.
• Invite the landlord to visit your farm to see how you manage.
How do you pick your landlord?

• Will you make money from this rental agreement?
• Will this land enhance or detract from your total operation?
• How is the farm located compared to your other land, or other land that could be rented or purchased?
Why have a written lease?

• **Statute of Frauds**
  - Certain contracts must be evidenced in a writing and signed by the parties to be bound
  - Contracts for more than one year
  - To prevent fraud

• **Memories sometimes fade**

• **People do not always remember things the same way**

• **Can you deal with the many issues in a lease with a verbal agreement?**

• **You do not want to be a partnership**
How long should the lease be?

• One year is customary, particularly with oral leases
• One year is not enough, for the landlord or the tenant
• Three years is ok. Five years better (usually).
• Tenants are better able to fertilize, lime and maintain fences if the lease is longer.
• Tenants cannot buy equipment or invest in the operation with a one year lease
• Rolling lease? Term stays at 3 or 5 years until notice to terminate is given
Partnership Issues

• Some landlord-tenant relationships look like partnerships

• If you are in a partnership, you are PERSONALLY liable for any debts incurred by any partner in the scope of the business

• Good written leases will have a clause stating that the agreement is not a partnership- not full proof!

• In any case, be careful about allocating risks and responsibilities/sharing profits and losses
Use of the Land

• Can the tenant use the land for whatever they wish?
  - It depends! So…

• Limit use to agriculture?

• Limit use to crops?

• Limit use to livestock?

• Limit to particular crops or livestock?

• What about oil and gas extraction, etc?
Insurance

• Who is responsible if someone is injured on the property? (Liability insurance)

• Generally, the lease should require the tenant to carry liability insurance with the landlord as an additional insured and tenant must provide certificate of insurance

• Who will carry hazard insurance for fire, flood or other damage to buildings and structures?

• Hazard insurance- generally, each covers their own property (real and personal)
Property taxes

• Usually, real property and landlord’s personal property - landlord

• Usually, tenant’s personal property - tenant

• However, this can be changed by the lease (the landlord will pass on the real property taxes to the tenant in the rent in any case)
Government Programs

• Will the property be enrolled in government programs?
• How are rights and responsibilities for the government programs allocated (including who gets the payments)?
• If requirements are breached, who pays?
• What if the landlord has to sign off on a government program for the tenant?
Land Stewardship

• Conservation Plans
• Stream bank fencing
• Grass waterways
• Hardened stream crossing
• Nutrient management plans
• Conservation Reserve Program
• Conservation Reserve Enhancement Program
• Wildlife Habitat Incentive Program
• Wetlands
Land Stewardship

• Who is responsible to do the work?
• Who is responsible for expenses?
• Lime, fertilizer, etc.
• Crop rotation
• Removal of soil?
• What if the tenant improves the soil shortly before the lease ends?
Improvements

• General rule is that improvements made by the tenant during the lease belong to the landlord when the lease ends.

• Anything different than the general rule should be clearly set out in a written lease

• Take away point: do not improve, unless its in writing
Fences

• Who will repair fences?
• When do fences need to be repaired?
• Who will pay the expenses to repair?
Hunting Rights

• Does tenant have the right to hunt?
• Does landlord retain the right to hunt?
• Does tenant have the ability to obtain kill permits from VDGIF to reduce wildlife damage to crops?
Water Rights

• Surface water? Groundwater?

• Does tenant have the right to use an unlimited amount of water from the property? Compare oil and gas leases

• Watering livestock v. irrigation

• Who maintains irrigation infrastructure?

• Does the landlord retain the right to use the water from the property?
Terminating a Lease (oral or written)

UNLESS the written lease says otherwise:

• Year to year- three months' notice, in writing, prior to the end of any year of the tenancy

• Month to month- 30 days' notice in writing, prior to the next rent due date

* How do you know when the lease started if it was an oral lease?

* How do you know what the lease term is with an oral lease?

* Emblements: a tenant has the right to go onto the property to harvest annual crops cultivated by the tenant even after the lease has ended
Conclusions

• Think about the issues

• Get it in writing

• Having an attorney draft the lease is probably worth the expense

• Work out the details between the tenant and landlord then get the attorney to draft the lease to match.
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