

Access to Land: The Leasing Option

Legal Aspects of Leasing Land For Beginners

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Webinar Series



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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



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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)



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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.



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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?



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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



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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



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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?



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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)



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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)



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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?



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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



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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?



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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



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Fences

- Who will repair fences?
- When do fences need to be repaired?
- Who will pay the expenses to repair?



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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?



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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?



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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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