

# Law Bulletin

OSU EXTENSION AGRICULTURAL &amp; RESOURCE LAW PROGRAM

January 2014

## Creating an Enforceable Farm Lease

A farm lease is a valuable transaction for landowners and farm operators alike, so it is important to ensure that the lease conforms to Ohio's legal requirements. Here's what Ohio law requires for creating a legally enforceable lease:

*The lease must be in writing.* Enforcing a verbal farm lease is very difficult in Ohio due to our "Statute of Frauds." The statute states that a lease of land must be in writing to be legally enforceable in Ohio. Despite this law, many verbal farm leases do exist. If a problem arises under a verbal farm lease, the law would not uphold the verbal lease unless a party could prove that the court should grant an exception from the Statute of Frauds writing requirement. This is a risky position and forces a party to go to court simply to try to prove that there is a valid lease.

*The lease must identify the land.* Include the legal description, address and acreage of the land parcel.

*Both parties should sign the lease.* Ohio law requires that the landowner must sign the lease, and Ohio's Statute of Frauds states that a lease agreement is not enforceable against a party who did not sign the lease. So that the lease is enforceable against both landlord and operator, both should sign the lease.

*The lease must properly name the parties and all owners.* Be sure to list all owners, using the proper legal names or business names. In the case of joint landowners, such as a married couple or partnership, both owners must sign the lease. If an LLC or similar business entity owns the land, the business entity should be the named party entering into the lease, and the individual who signs the lease on behalf of the entity must have legal authority to do so.

*A lease over three years must be acknowledged.* Parties to a lease of more than three years must have their signatures acknowledged and certified by a notary public or local official such as a judge, mayor or clerk of court.

*The parties should file a memorandum of lease.* Ohio law requires that the lease transaction be filed with the county recorder in the county where the land exists, which gives notice of the lease arrangement to potential purchasers and others. Rather than requiring the parties to divulge all details of the lease, the law allows the parties to file a shortened "memorandum of lease" that must include names and addresses of each party, a legal description of the land, the lease period and rights of renewal.

The terms of a farmland lease are also important. For information on terms and other lease issues, refer to our other resources on farmland leasing.

Author: Peggy Kirk Hall, Asst. Professor, Agricultural & Resource Law

### ***Ensure that your lease is enforceable***

Ohio law requires these steps to create a legally enforceable farm lease:

- Put the agreement in writing.
- Identify the land parcel by legal description, address and acreage.
- Don't leave out a spouse or other co-owner of the land; all owners must be included in the lease and listed properly.
- Have all parties sign the lease.
- For businesses, make sure the person signing has legal authority to represent the business.
- For a lease over three years, have a notary or official certify the parties' signatures.
- Take a shortened "memorandum of lease" to the county recorder's office for recording.

To fully ensure that your lease is valid, rely on the expertise of an attorney.



**THE OHIO STATE UNIVERSITY**

COLLEGE OF FOOD, AGRICULTURAL,  
AND ENVIRONMENTAL SCIENCES