

# Law Bulletin



THE OHIO STATE UNIVERSITY

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Law you need to know from OSU Extension's Farm Office

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## Creating an Enforceable Farmland Lease

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A farmland lease is a valuable transaction for landowners and farmers alike. It's important to ensure that a lease conforms to Ohio's legal requirements and can be enforced in a court of law if there is a dispute. Here's what Ohio law requires for creating a legally enforceable lease:

1. *The lease should be in writing.* Two provisions in Ohio's "statute of frauds" law require that a farm lease be written in order to be enforceable at law. One states that a "lease or interest in land" must be granted in writing, and another says that a contract dealing with an interest in land must be in writing. Despite these laws, many farmers lease land under a verbal agreement. If a problem arises under a verbal farm lease, however, the lease may not be legally enforceable because of the statute of frauds. A party seeking to enforce a verbal lease must convince the court to grant an exception to the statute, which is a difficult task. If the court does so, the party must then prove the terms of the verbal lease, which might vary significantly between the parties. To reduce this risk of litigation and ensure that the lease is valid, put the lease in writing. Ohio Rev. Code § 1335.04 and § 1335.05.
2. *The lease should identify the land.* Include the legal description, address and precise acreage of the land in the lease agreement. If known, reference the deed for the leased land parcel by volume and page. Ohio Rev. Code § 5301.011.
3. *The lease should properly name the parties and all landowners.* To avoid potential legal challenges, be sure to list all co-owners of the land. Use the correct legal names or business names of each party. For a married couple owning land, both spouses must enter into the lease. For a business entity, name the business entity as the party entering into the lease and signify the individual with legal authority to act on behalf of the entity.
4. *All parties should sign the lease.* Ohio law requires a landowner to sign a grant of an interest in land and also states that a lease agreement is not enforceable against a party who did not sign the lease. All parties and co-owners or their representatives should sign the lease. Ohio Rev. Code § 1335.04 and § 1335.05.
5. *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, county auditor, county engineer or clerk of court. Ohio Rev. Code § 5301.01 and § 5301.08.
6. *The parties should record the lease or record a short form of the lease.* Ohio law requires that the lease be recorded in the office of the county recorder where the land exists or it will not be valid against a purchaser of the land who lacks knowledge of the lease. Rather than requiring the parties to divulge all details, Ohio law allows the parties to file a shortened "memorandum of lease" that must only include the names and addresses of each party, a legal description of the land, the period of the lease and whether there are rights of renewal. As with the full lease, the parties must sign the memorandum of lease and must have signatures acknowledged if the lease is for more than three years. Ohio Rev. Code § 5301.25 and § 5301.251.

The terms of a farmland lease are also important to a successful leasing arrangement. For information on lease terms, refer to our checklist of farmland leasing in the agricultural law library at <http://farmoffice.osu.edu>.

### *Is your farm lease enforceable at law?*

These steps will help you create a legally enforceable farm lease:

- Put the lease agreement in writing.
- Include the identity of the land parcel by legal description, address and acreage amount.
- Include all owners or co-owners in the lease, including spouses that co-own the land.
- Use the correct legal names of all parties.
- Make sure 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 county official certify the parties' signatures.
- Take the lease or a "memorandum of lease" to the county recorder's office for recording.

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