

Law Bulletin



OSU EXTENSION AGRICULTURAL & RESOURCE LAW PROGRAM

January 2015

Legal Aspects of Ohio Farmland Leases

*Peggy Kirk Hall, Asst. Professor
OSU Extension Agricultural & Resource Law Program*

Farm lease arrangements are an important component of farming operations in Ohio. The contractual nature of a farm lease necessitates that farmland owners and tenant farmers understand the legal aspects of farm lease agreements. The following offers a brief explanation of legal aspects of Ohio farmland leases.

Types of Farmland Leasing Arrangements

An initial step in the leasing process is determining the type of lease the parties prefer. Generally, there are two types of land leasing arrangements: the *cash lease* and the *crop share lease*. The major differences between the two center on inputs, risks, and returns. Legally, the two types differ in terms of impacts on estate taxes, social security benefits and farm program payments. Because of these potential legal implications, landowners and tenants should consult their attorneys, accountants, or similar professionals to determine which type of lease meets individual needs.

The cash lease. The cash lease involves cash payment of a specified sum in exchange for the use of farmland. Typically, the sum is a fixed amount based on total farm acreage. A cash lease may be paid in periodic payments or as a lump sum payment. The parties can structure the lease as a flexible-cash lease or a hybrid-cash lease, which ties the amount paid to production or price fluctuations. In Ohio, approximately 75% of land rents are cash leases.

The crop share lease. In a crop share lease, the landlord receives a specified share of the crop as the rent payment. The landlord may or may not also provide a portion of the labor, equipment, or supplies for the crop. The proportion

of each party's inputs usually determines the respective crop share that each receives.

Verbal versus Written Leases

Research suggests that most farm leases in Ohio are based on verbal agreements between the landowner and the tenant farmer. Ohio law does allow some types of verbal agreements to constitute valid contracts, but certain types of leases cannot be enforced at law if not in writing and signed by the party against whom enforcement is sought. The risk of being unable to legally enforce a lease agreement is a significant drawback to relying on a verbal rather than written agreement. For more information about legal enforceability of farmland leases, see our Law Bulletin on *Creating an Enforceable Farmland Lease*.

In addition to the issue of legal enforceability, parties operating under a verbal agreement subject themselves to lease problems due to differing assumptions, failure to fully address all details a lease arrangement requires, inability to precisely remember the terms of their verbal agreement, or lack of a plan for resolving disputes before the disputes occur. For these reasons, a written lease agreement is advantageous to both parties. A written lease can clarify the leasing arrangement, detail and document each party's rights and obligations, manage disputes and misunderstandings and help avoid legal proceedings.

Terms of the Lease Agreement

The following list provides basic terms to include in a farm lease agreement. Many resources available on the internet provide additional detail on these components. Note that the parties to a farmland leasing arrangement should take care to tailor the provisions to the individual leasing situation. Each party should also work with its own attorney, accountant and other professionals to fully consider the implications of the leasing situation on personal issues such as taxation, social security,

retirement, estate planning and business and transition planning, insurance and farm management.

Important terms for a farmland lease include the following:

- Date the parties entered into the lease.
- Names and addresses of the landlord and tenant.
- Legal description of the leased property.
- Time period of the lease, including beginning and ending dates.
- Rental amount for cash lease; respective shares and contributions if a crop share lease.
- When and how rent will be paid and penalties for late payments.
- Obligations for insurance on the property and the crop.
- When and how the lease may be terminated and requirements for notice of termination.
- Reimbursement provisions for crop nutrients and/or completed fieldwork upon termination of the lease.
- Process for measuring and maintaining soil fertility and pH levels.
- Reimbursement provisions for a crop still in the ground when the lease is terminated.
- Desired or prohibited farming practices, including types of chemicals that may not be used on the property.
- Party responsible for controlling noxious weeds.
- Party responsible for maintaining fences.
- Whether the tenant has the right to make and receive compensated for capital improvements.
- Whether the tenant has the right to utilize improvements made by the landlord.
- Landlord's right to enter the property for specific purposes.
- Landlord's right to a security interest in the crops, or other provisions for ensuring payment.
- Statement of which party will participate in federal farm programs, including responsibility for eligibility and receipt of payments.
- Procedure for resolving disputes.
- Statement that the landlord and tenant do not intend to create a partnership by entering into the agreement.
- Conditions under which the tenant may or may not sublease the property.
- Acts of the tenant that would constitute default of the lease.
- How the parties may alter or amend the agreement.
- Tenant's rights if the property is transferred or condemned during the lease period.
- Hold harmless and indemnification provisions.
- Signatures of the landlord and tenant.

Termination of the Lease

There are two common ways to address termination of the farmland lease. The parties may agree to an initial period of time for the lease and allow the term to automatically renew for another term until either party gives notice to terminate the lease. The lease automatically renews for another period if neither party takes action to terminate the agreement. A second approach is to establish the lease period and automatically terminate the lease at the end of the lease period unless the parties agree to renewal or extension of the lease prior to its termination date. Termination is automatic unless the parties take action to renew the agreement.

Using Model Leases and Attorneys

A number of model lease forms are available on the internet. Using a model lease might be preferable to relying upon a verbal agreement, but the model might not allow flexibility for addressing unique situations and individual needs. Additionally, the model may not account for variations in state laws and requirements for proper execution of the agreement. For these reasons, the parties will benefit from a legal review of a model lease to ensure that the lease meets the parties' individual needs and conforms to state law.

There are many other reasons to consider utilizing the services of an attorney in a farm lease arrangement. As mentioned above, the leasing of farmland can create tax, social security, farm program and estate planning implications. A legal advisor, as well as an accountant, can ensure that these implications are properly managed. An attorney who understands agriculture can be particularly useful, as many lease provisions pertain to farm management issues and awareness of laws that are specific to agriculture, such as drainage, noxious weeds, farm programs and fence laws. A few hours of time with an agricultural attorney will likely translate into a sound leasing arrangement and the minimization of lease problems.

For more resources and information from the OSU Agricultural & Resource Law Program:

- Visit our website at <http://aglaw.osu.edu>.
- Sign up to receive our blog postings by e-mail for timely articles on legal issues of importance to Ohio agriculture. <http://aglaw.osu.edu/blog>.
- Contact us by e-mail at aglaw@osu.