

Law Bulletin

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

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Protecting Interests in a Verbal Farm Lease Arrangement

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A written lease is a valuable tool to use in a farm lease situation, but many farm lease arrangements never progress beyond a conversation and a handshake. A written lease brings certainty to the farming arrangement by laying out important terms such as lease duration, notice of termination, payment provisions and conservation practices. Without an understanding of these provisions, the parties to a verbal farm leases are more likely to experience uncertainty and disputes about each party's rights and obligations. If you are dealing with a verbal lease situation, here are a few strategies for protecting your interests.

Be aware: a verbal lease might not be enforceable

Imagine that one party announces that it's time to terminate the lease, while the other party thinks that termination is improper and will harm that party. If the harmed party wants to ask a court to resolve the issue or enforce the agreement, that party will run into problems due to Ohio's "Statute of Frauds." The law requires that the lease be in writing and signed by the party against whom enforcement is sought. Failing to follow this directive to have a written lease can mean that a court won't recognize or enforce the verbal agreement. There are a few legal exceptions that could apply to the situation and allow enforcement of the lease, but utilizing the exceptions will likely require hiring an attorney to make a legal argument to the court. Avoiding this risk is easy: use a written farmland lease.

Address hurdles to converting to a written lease

A farmland lease doesn't have to remain verbal just because it started that way. But suggesting that it's time to convert to a written lease may be uncomfortable, for many reasons. Here are several of the concerns we often hear that can hinder the transition to a written lease, and recommendations for addressing the concerns:

"Don't you trust me?" One party may react negatively to putting the lease agreement in writing because it suggests a lack of trust between the parties. To avoid the blame game, consider using a third party to "intervene" and facilitate the process of converting to a written agreement. Have a farm manager, attorney or accountant explain why moving to a written agreement can help both parties. Provide the other party with ample time to consider and respond with its own concerns about the leasing arrangement and a potential transition to a written lease.

"We don't want everyone to know our financial agreement." Landowners and tenants often express concern that the other party will share the contract or record it in the county recorder's office, thus revealing private terms such as the price paid for the lease. While a written lease must be recorded in order to ensure enforceability, the parties may utilize a tool under Ohio law referred to as the "memorandum of lease." Ohio Revised Code section 5301.251 allows the parties to record a shortened form of the farmland lease rather than the entire agreement. The only provisions the parties must include in a recorded memorandum of lease are the names and addresses of the landowner and tenant, the date of executing the agreement, a description of the leased property, the starting date and duration of the lease and any rights of renewal or extension. With the recorded memorandum of lease, there is public notice that the lease exists but key terms remain confidential between

the landowner and tenant. The parties can include a provision in written lease that obligates each party to execute and record a memorandum of lease for recording purposes. See our Law Bulletin on “Creating an Enforceable Farmland Lease” for more information.

“A written lease is overwhelming or too much detail.” It is true that farmland leases can be lengthy and detailed, although attorneys usually have sound reasons for drafting detailed leases. Note that the parties can make a gradual transition from a simple to a more complex lease, however. Starting with a simple lease or a check list can alleviate the discomfort of a lengthy lease and still bring more certainty to the relationship. The parties can address other needs with additional terms in future leases. But don’t give up on a longer lease too quickly, as there are many good resources that explain farm lease provisions. Learning more about lease provisions and reviewing a few good “model” leases might make both parties comfortable with all of an attorney’s recommended lease provisions. For helpful resources, see our other Law Bulletins and visit the website <http://aglease101.org>.

At a minimum, document what you do

If the parties can’t convert a verbal lease to a written lease, good records that document the leasing history can help establish a “course of dealing” between the parties. While a written farm lease is preferable, a record of how the parties managed the lease or handled issues in the past can be a useful point of reference for ensuring consistency in the relationship. If there is litigation over the lease, a court might rely on proof of the parties’ course of dealing to help resolve an issue.

Be aware that a major problem with a verbal lease is that it’s not clear when the lease agreement actually begins and ends, which raises questions about when one party can terminate the lease and whether there was sufficient advance notice of the termination. In the event of a dispute about the period of the lease and proper notice of termination, Ohio courts often look to factors such as when the tenant takes possession of the property, when the tenant makes lease payments, and whether the original lease period included fall tillage or winter wheat activities. Both parties should be mindful of these important actions

and should maintain records to document these occurrences. Other details to document include farm management practices, soil sampling, nutrient applications, improvements and any other actions involved in the parties’ relationship.

Address financial fairness

Determining the payment amount for a farm lease is a challenging task, particularly when the farm economy is in flux. Disagreement over the lease price can quickly end a verbal farm lease relationship. Thorough research and equitable approaches can maintain the lease relationship by ensuring a financial arrangement that is responsive to the market and fair to both parties. OSU’s Farm Office website at <http://farmoffice.osu.edu> contains farm management tools that can be helpful, such as data on farmland values and cash rental rates. Consider a flexible cash lease to accommodate economic changes; information on flexible cash leases is also available on OSU’s Farm Office website and at <http://www.aglease101.org>.

Maintain communication

Don’t underestimate the power of good communication between the leasing parties. A landowner can provide a tenant with valuable certainty by keeping the tenant informed on potential changes with land ownership or the farm’s financial management. Tenants can keep a landowner apprised of the condition of the farm property by providing reports on a regular basis, especially in the case of an absentee landowner or a crop share lease. A report that includes pictures and a brief summary of improvements made, management practices adopted or crop share calculations may go a long way toward ensuring a solid leasing relationship.

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- Sign up at <http://farmoffice.osu.edu/blog> to receive our blog postings by e-mail with timely articles on legal issues of importance to Ohio agriculture.
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