

Law Bulletin

OSU EXTENSION AGRICULTURAL & RESOURCE LAW PROGRAM

January 2014

Protecting Interests in a Verbal Farm Lease Situation

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. Verbal farm leases are risky; problems can arise with legal enforceability and disputes over rights and obligations. For those dealing with a verbal lease agreement, here are a few strategies for protecting interests in the verbal farm lease situation.

Put the verbal lease in writing. The first recommendation is no surprise; attorneys have long encouraged farmers to use written farmland leases rather than relying on verbal agreements. But many landowners and tenants are uncomfortable using a written lease, for a variety of reasons. Consider the following concerns and recommendations for addressing them:

- “We’ve always operated on a verbal agreement and a handshake.” Transitioning from a long-time verbal agreement to a written lease can be awkward and uncomfortable, and the landowner or tenant farmer who wishes to make the change may be uncertain about how to introduce the change. To address an awkward transition, 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 the reasons for moving to a written agreement and begin the process of discussing lease terms. Provide the other party with ample time to respond and to consider its own concerns and suggested lease terms.
- “We don’t want everyone to know the terms of our lease.” Landowners and tenants often express concern that a written farm lease must be recorded in the county recorder’s office, thus revealing private terms such as the price paid for the lease. In this case, the parties may utilize a provision 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. 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 term in the written lease verifying their agreement to execute and record a memorandum of lease rather than recording the entire lease.
- “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. Even a simple lease or a checklist can bring certainty to the relationship by outlining key obligations or providing resolutions if problems arise in the future. Additionally, there are many good resources that simplify and explain farm lease provisions, and a few good “model” leases for reference. For helpful resources, visit the website <http://aglease101.org>.

Pay attention to lease payments and possession. If the parties can’t convert a verbal lease to a written lease, be aware that one problem with a verbal lease is that it’s not clear when the lease agreement actually begins. In the event of a dispute, Ohio courts often look to factors such as possession and lease payments to determine the term of the lease. Two indicators that a farm lease agreement is in place are possession of the property by the tenant coupled with acquiescence by the landowner, or a lease payment made by the tenant and accepted by the landowner. Both parties should be mindful of these important actions and should maintain records to document these occurrences.

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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 Management website at <http://aede.osu.edu/programs-and-research/osu-farm-management> contains 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 through OSU's Farm Management website and at <http://www.aglease101.org>.

Maintain records of the lease relationship. 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. Both parties should maintain thorough records of payments, agreements, farm management practices, soil sampling, nutrient applications, improvements and any other facts or data that establish the details of the leasing relationship.

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 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.

A written and comprehensive farm lease is a valuable tool for farmland owners and tenant farmers alike; those who still rely on verbal farm leases should carefully consider making a transition to a written lease. Parties that continue to use a verbal farm lease face legal and financial risks, but can adopt some practices to help protect the verbal farm lease situation. For resources and examples of written farm leases, see <http://aglease101.org>.

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