



Fact Sheet

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What to Consider When Leasing

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When considering leasing you have several essential elements and provisions to consider in a lease agreement. Remember, every lease situation can be different and appropriate legal advice should be sought—particularly when first developing a lease—to protect the interest of all parties involved.

The following provides an overview of common lease elements and provisions. However, many of the items discussed below may vary by state. The following overview should be used only as a guide, not as legal advice.

Essential Elements

A written lease must have the date the contract begins and ends, the legal names of all the parties involved and a clear, detailed legal description of the property or properties. Be sure the lease is a valid contract. The date the lease agreement was entered is not a necessity, but the lease term (beginning and ending dates) must be included. The lessee is the person who rents land or property from a lessor. The lessee is also known as the "tenant", and must uphold specific obligations as defined in the lease agreement and by law. The lessor is the owner of land or property that is leased under an agreement to the lessee. The lessor is also known as the landlord in lease agreements that deal with property or real estate. The lease agreement is binding on both the lessor and the lessee, and spells out the rights and obligations of both parties.

Term of Lease

The length of time a lease exists is referred to as the term. It may also be referred to as a type of tenancy. There are four basic types of tenancies:

1. Tenancy for years (term lease)—Specifies usually in writing, the fixed time of the lease. At the end of the fixed time the tenancy agreement is completed and the lease is over.
2. Tenancy at sufferance—Occurrence of succession of the property after the lease is expired. The lessee may be evicted at any time without prior notice unless the lessor recognizes the tenancy as

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continuing tenancy.

3. Tenancies at will—This is leasehold, which is for an indefinite period and is terminable by either the landlord or the tenant at any time, as long as a three days' notice is given.
4. Periodic tenancy—The term of the occupancy is set for periods of time, usually parts of a year or year-by-year. If no time is expressly stated, the duration of time is between rent payments. Either party giving proper notice according to the provisions of the lease may terminate tenancy. If tenancy is never properly terminated, it will automatically and indefinitely renew.

Different situations call for different lengths of lease periods. If a lease period is too short, then the tenant will not have enough time to implement crop/production strategies or build up a herd. If the time period is too long, then problems could arise if conditions change and lease conditions do not change. Agreeing to go over the lease and amending it as necessary every few years is one solution to changing lease conditions.

Lease Termination

A lease may be terminated when:

- The term of the lease expires.
- There is surrender and acceptance. The tenant or landlord offers to terminate the lease and the other party agrees.
- There is eviction of the tenant. The landlord must provide proper notice as dictated by the lease or statute.
- There is a breach of conditions stated in the lease.

In order to terminate a lease, written notice to quit is required. Depending on the term of the lease, the time required for notice varies. A lease of one year or longer requires a three-month notice. The notice should contain a description of the property, the termination date and the signature of the party giving notice. Notice to quit may be served by providing a copy to the other party. Consult legal counsel if unsure of the process in your state for filing a notice to quit.

If the tenant refuses the landlord's demand for payment or possession, the landlord should seek legal counsel to determine legal options.

Rental Rates and Leases

The rental rate agreed upon is a very important aspect of lease. It should always be put in writing to avoid any future misunderstandings. The rental rate should be computed through careful evaluation of the farm's/ranch's capacity to produce. The best way to do this is to work together to develop an agreeable and fair rate. If participation in federal farm programs is anticipated the rights of all parties to share payments and to participate in the decision making process should be spelled out.

Land use

The land use provision specifies how the land may be used and protects the land from being abused/degraded. Husbandry practices should be discussed in detail and agreed upon by both the landlord and the tenant. See Table 1, which presents a "short list" of land use considerations.

Table 1: Land Use Considerations

- Soil Fertility.
- Number of livestock per acre.
- Where specific crops are planted.

- Types of crops.
- Land to be used for pasture.
- Weed prevention.
- Conservation methods.
- Government program participation.
- Water usage.
- Removal of minerals, gravel, etc.
- Acreage for silage.
- The ability of the tenant to assign or sublet the property.
- Environmental protection of the property on soil erosion, chemical use, care of permanent crops, and structures.
- That the property is to be in substantially the same condition at the termination of the lease as when first occupied by the tenant with consideration for normal wear and tear.
- Any unlawful use would void the contract.

Repair and Improvements

Many misunderstandings and headaches are avoided by deciding who will make the necessary repairs, how they will be made, if written request is needed, and who will pay for them. The landlord is not responsible to make any repairs unless they are stated in the lease. However, the lease usually holds the landlord liable for any repairs he/she does if the repairs are of fault or cause harm to another. Who will make repairs and how they will be paid for should be clearly stated. It is best to include a lease provision that clearly states liability.

Improvements are a little more complex because they usually become permanent fixtures of the property that can't be legally moved without the landlord's consent. Hence, it should be discussed whether or not improvements would be allowed, what will constitute a permanent versus temporary improvement, how they will be paid for, and who will keep them. For example, the landlord is responsible for the upkeep and maintenance of permanent fences. However, if the tenant installs temporary cross fencing or similar temporary structures, he or she can remove them at the end of the lease.

Records and Accounts

In crop or livestock share leases both the tenant and the landlord are interested in the farm/ranch productivity, even though it is generally assumed that the landlord is only interested in his share. Information on the operation's productivity helps to evaluate the lease and lessee's performance. Thus, you should discuss how the records will be kept, who will keep them, and what type of information you want and/or need. In most cases the tenant keeps production and operating expense records.

No Partnerships

It is advisable to include a "no partnership" statement in the lease. This is to protect the landlord-tenant relationship from being a partnership when one is not intended. This statement is especially important in share leases because the share the landlord receives can be interpreted as profit sharing, indicating a partnership.

No express agreement is necessary to form a partnership. A partnership may be formed by the conduct of the parties. Remember, all partners are liable for all debts and obligations of the partnership. Therefore, it should be clearly stated that the share received is a payment.

This statement alone does not protect you from being considered a partnership. Your actions are the primary determinants. If you present yourself as partners to others, you can be considered to be in a partnership. Hence, you should always conduct yourselves in a manner that represents a landlord-tenant relationship.

Right to Entry

The law states that the tenant may treat any person who sets foot on the property as a trespasser, including the landlord. However, the landlord's entry onto the property by itself may not be a basis to declare breach of the lease unless entry was a substantial breach of the material term of the lease. For that reason, a statement needs to be included that provides the landlord the right to enter the property and state the conditions.

Arbitration

It might be wise to include an Alternative Dispute Resolution (ADR) clause as a way to resolve disputes instead of going to court, which can be quite costly. Forms of ADR include arbitration and mediation. These are not binding decisions and don't abolish your right for court redress.

Arbitration is a hearing where one or more persons serves as a judge and determines a settlement to the dispute. The landlord and tenant pick the arbitrator.

The mediator attempts to persuade the parties to settle their differences.

Modifications

On occasions it might be necessary to make modifications to the lease. Usually this happens after the lease is signed and in effect, thus resulting changes being made orally. Even though these changes are binding, it is advisable to have them in writing to ensure that no misunderstandings arise.

Signature

This is the last requirement of a lease. All the parties involved and witnessed should sign the lease. Your signature should be your full legal name.

There are many things to consider in a lease agreement. If you have not considered all of these in detail in a current lease that does not mean it is not a good lease. You simply need to be aware of the opportunities and pitfalls when developing a lease agreement.

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