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## COMMENT

### Leases: Farmland Lease Provisions in Oklahoma

#### *Introduction*

One might think that in today's society the "agreement sealed with a handshake" is almost extinct. Today's business world is portrayed as a vicious arena wherein a person's word is only as good as the paper on which it is written. However, one segment of society that still holds to traditions of oral commitments is the Oklahoma farmer. In 1989 a farmland leasing survey revealed that less than fifty percent of all Oklahoma farm lease agreements were written.<sup>1</sup>

One explanation for the small percentage of written lease agreements is that many farmers take great pride in being persons of their word and are offended if asked to put an agreement in writing. The request is viewed as a personal attack on the farmer's integrity. Additionally, many farming relationships occur between friends and relatives, thus naturally creating relationships built upon mutual trust and respect.

A written farm lease agreement may seem unnecessary to a farming client. However, an attorney should strongly urge his client to have a written lease. The attorney must convince the farmer that a written agreement is not a sign of distrust, but rather an intelligent planning tool that recognizes the uncertainty of the future. Aside from the numerous legal justifications for having a written lease, the instrument helps the parties clearly understand and remember what it is they have agreed to do. A written agreement minimizes future misunderstandings and conflicts.

Much of Oklahoma's landlord-tenant law is codified in title 41 of the Oklahoma Statutes.<sup>2</sup> However, a substantial part of title 41 consists of the Residential Landlord and Tenant Act,<sup>3</sup> which does not apply to farm leases.<sup>4</sup> Thus, agricultural landlord-tenant relations are governed by the general landlord-tenant statutes in force prior to the enactment of the Residential Landlord and Tenant Act.

This comment will explain the purpose and effect of typical clauses included in an Oklahoma farm lease. As each clause is examined, any desirable additions or modifications will be noted along with related issues

1. Doye, *Oklahoma Farm Lease Agreements: 1989*, 63 CURRENT FARM ECON. 4, 17 (1990).

2. 41 OKLA. STAT. §§ 1-136 (1981 & Supp. 1990).

3. 41 OKLA. STAT. §§ 101-136 (1981).

4. Title 41, § 104(6) provides that leased land used primarily for agricultural purposes is not governed by the Residential Landlord and Tenant Act even though the tenant lives on the land. 41 OKLA. STAT. § 104(6) (1981). For a discussion of reasons why residential landlord-tenant codes *should* apply to farm residences, see Hannah, *Illinois Farm Tenancy Law — Static or Evolving?*, 1977 S. ILL. U.L.J. 359, 363-65.

that should be considered. Each clause will be discussed in the order it appears in the sample Oklahoma farm lease reprinted at the end of this comment.<sup>5</sup> The reader should refer to the sample farm lease as the clauses are covered. The main headings below correspond to the headings in the sample lease.

There are many economic factors to consider when drafting a farm lease. The landlord and tenant will usually know how they want the economic aspects of the lease to be structured. Therefore, an attorney's primary responsibility is to make the agreement legally sound. However, an attorney should be generally familiar with the economic considerations of farm leasing to effectively represent his client. Otherwise, important considerations or alternatives may be overlooked by the parties.<sup>6</sup> This comment will focus on the legal aspects of the landlord-tenant relationship in the agricultural setting.<sup>7</sup>

### *I. Names of Parties and Description of Property*

Part I of the lease sets forth the date of the agreement, the names and addresses of the parties, and the description of the property. These items are standard to all farm leases. The date in Part I refers to the date on which the parties enter the lease agreement. It is not necessarily the date the lease term begins.<sup>8</sup> Part II contains the lease term commencement date. It is important to distinguish the starting date of the lease from the date the lease agreement is entered. Otherwise, the lease could unexpectedly terminate.

Another important point to remember is that the property description should be the "legal" description. Oklahoma law requires the legal description of real property to be used in a lease agreement before the tenant can record it in the county clerk's office.<sup>9</sup> The county clerk has no statutory authority to record or index a lease lacking the legal description of the property.<sup>10</sup> Thus, to be fully protected from third parties, the tenant should record a lease that contains the legal description of the property. The

5. Special thanks to Marcia L. Tilley, Assistant Professor of Agricultural Law at Oklahoma State University, for providing this lease form and other valuable farm lease information. The Oklahoma State University Cooperative Extension Centers, located at each county seat in Oklahoma, are valuable sources of information when researching agricultural issues.

6. The following sources contain valuable checklists that both attorney and client can use to insure that all aspects of the landlord-tenant relationship have been addressed: 2 VERNON'S OKLAHOMA FORMS § 1812 (rev. 1979); 23 WEST LEGAL FORMS § 77.3 (2d ed. 1986) (same checklist as Vernon's); J. LOONEY, J. WILDER, S. BROWNBACK & J. WADLEY, AGRICULTURAL LAW, A LAWYER'S GUIDE TO REPRESENTING FARM CLIENTS 570-72 (1990).

7. Economic issues are beyond the scope of this comment but should not be ignored when preparing a farm lease. For a general overview of economic issues to be considered see Looney, *Legal and Economic Considerations in Drafting Arkansas Farm Leases*, 35 ARK. L. REV. 395 (1981).

8. See *infra* notes 45-49 and accompanying text.

9. 19 OKLA. STAT. § 298 (Supp. 1990).

10. *Id.*

language in Part I does not state that a legal description is required. Therefore, the clause should be rewritten to make clear that a legal description is necessary.

## II. *Term of Lease*

A general discussion of tenancy classifications is necessary to explain the effect of Part II of the sample lease. There are four types of tenancies: tenancy at sufferance; tenancy at will; tenancy from year to year (periodic tenancy); and tenancy for a term of years. The parties' rights are affected by the tenancy classification, primarily the right to notice of termination.

### A. *Tenancy at Sufferance*

A "tenant at sufferance" is a tenant who, at one point, was rightfully in possession of the leased property, but continues in possession after expiration of the lease term without the landlord's express or implied consent.<sup>11</sup> Thus, if a tenant has a two year lease, but stays on the premises beyond two years without the landlord's consent, the tenant is a tenant at sufferance. A tenant at sufferance is also called a "holdover tenant," or one who wrongfully "holds over" past the end of the lease.

Notice is not required to terminate a tenancy at sufferance.<sup>12</sup> The landlord can require the tenant to leave at any time because the tenant has no rights in the property. If the tenant does not leave, the landlord has a statutory right to collect damages equal to the actual damage caused by the holdover.<sup>13</sup> For example, the tenant's holdover occupation of the premises may cause the landlord to lose a prospective tenant. If the holdover tenant prevents the landlord from re-leasing the property, the time for planting the next crop may pass, causing the landlord to be damaged in an amount equal to the value of an entire crop.

In addition to actual damages caused by the wrongful holdover, the tenant must pay rent for the period of time he stays past the lease term.<sup>14</sup> The statutory rental rate is double the yearly value of the property.<sup>15</sup> Although the landlord may terminate a tenancy at sufferance without notice, the landlord must give notice to quit and demand possession of the property to receive damages under the "double rent" statute.<sup>16</sup> A three-day written notice in which the landlord demands possession of the property is sufficient.<sup>17</sup>

11. *Gambill v. Rohrer*, 198 Okla. 136, 176 P.2d 1012, 1013 (1947); *see also Berry v. Opal*, 194 Okla. 670, 154 P.2d 575, 576 (1945); *Hancock v. Maurer*, 103 Okla. 196, 229 P. 611, 613 (1924).

12. 41 OKLA. STAT. § 8 (1981).

13. *Id.* § 70.

14. *Id.*

15. *Id.*

16. *Id.*; *see also Shields v. Mitchell*, 92 Okla. 135, 218 P. 696, 697 (1923); *Miller v. Gorman*, 88 Okla. 229, 212 P. 983, 984 (1923); *Meyer v. White*, 79 Okla. 257, 192 P. 801, 802 (1920).

17. *Seidenbach's v. Ault*, 149 Okla. 121, 299 P. 442, 443 (1931).

### B. Tenancy at Will

A person in possession of real property with the consent of the landlord is presumed to be a tenant at will, unless proven otherwise.<sup>18</sup> A tenant at will is also referred to as a holdover tenant. However, the holdover is not wrongful as in the case of a tenant at sufferance. The key difference between a tenant at will and a tenant at sufferance is that the tenant at will is occupying the land with the consent of the landlord, whereas the tenant at sufferance does not have the landlord's consent. Generally, the landlord's knowledge of a tenant occupying the premises past the lease term will not change a tenancy at sufferance to a tenancy at will unless there is express or implied consent.<sup>19</sup> Implied consent may be found where the landlord fails to demand possession at the end of the lease term.<sup>20</sup> Rental payments are not necessary to create a tenancy at will.<sup>21</sup> The essential factor is the landlord's consent.

Oklahoma has two conflicting statutes as to when a tenancy at will is created. Title 41, section 2 provides that a tenant who holds over beyond the lease term with the landlord's assent is deemed to be a tenant at will.<sup>22</sup> However, section 35 of title 41 states that a lease is renewed for one year if the landlord accepts rent from a tenant who holds over past the lease term.<sup>23</sup> Therefore, section 35 creates a tenancy for a definite term, whereas section 2 creates a tenancy at will.<sup>24</sup> The effect of the above statutes is that at the end of a year, the tenant under section 35 is not entitled to notice of termination because the lease is renewed for a definite term.<sup>25</sup> In contrast, the tenant under section 2 is entitled to notice of termination<sup>26</sup> because a tenancy at will is created.<sup>27</sup>

Oklahoma courts resolved the statutory conflict.<sup>28</sup> Section 2 was enacted after section 35. Therefore, because section 2 was the last legislative expression on the subject, section 2 implicitly repealed section 35.<sup>29</sup> Thus, when a farm lease for a definite term ends and the tenant remains on the premises with the landlord's consent, a tenancy at will is created rather than a one year renewal of the expired lease. Moreover, section 35 would not

18. 41 OKLA. STAT. § 1 (1981).

19. *Hancock v. Maurer*, 103 Okla. 196, 229 P. 611, 613 (1924); *Gambill v. Rohrer*, 198 Okla. 136, 176 P.2d 1012, 1013 (1947).

20. *Berry v. Opal*, 194 Okla. 670, 154 P.2d 575, 576 (1944).

21. *Id.*

22. 41 OKLA. STAT. § 2 (1981).

23. *Id.* § 35.

24. *Id.*

25. *See infra* note 49.

26. *See infra* note 31.

27. *See Note, Real Property: Landlord and Tenant: Effect of Tenant's Holding Over After Expiration of Written Lease for Term of Years*, 1 OKLA. L. REV. 311 (1948).

28. *Simmons v. Fariés*, 289 P.2d 372, 373-74 (Okla. 1955).

29. *Id.*; *see also Mulhauser v. Conley*, 199 Okla. 414, 186 P.2d 830, 832 (1947); *Stephenson v. O'Keefe*, 195 Okla. 28, 154 P.2d 757, 759 (1944).

apply to many farm leases even if section 2 did not exist. Under agricultural leases, rent is usually paid at the end of the year.<sup>30</sup> Section 35 refers to rent being paid in advance, not at the end of the term.

The landlord must give the tenant thirty days written notice to terminate a tenancy at will.<sup>31</sup> If the tenant decides to terminate the relationship, the tenant is also required to give thirty days notice before leaving.<sup>32</sup> These notice requirements give the tenant time to find another farm to rent and give the landlord time to find another tenant so the land will not lay dormant. Two Oklahoma statutes address termination of tenancies at will.<sup>33</sup> The thirty-day notice provision in section 4 of title 41 is the controlling statute for farm leases.<sup>34</sup> The other statute, section 44 of title 60, has similar requirements but is expressly limited in scope to situations in which the notice provisions in title 41 do not apply.<sup>35</sup>

After the landlord gives the required notice of termination, the tenant is wrongfully holding over if he remains on the premises longer than thirty days. Therefore, the tenant at will becomes a tenant at sufferance and can be held liable for damages and double rent under section 70 of title 23.<sup>36</sup> Section 70 applies when the landlord gives notice of termination to the tenant.<sup>37</sup> If the tenant gives notice of termination to the landlord, section 69 of title 23 imposes a double rent penalty upon the tenant for failure to leave.<sup>38</sup> Recovery under section 69 is limited to double rent, whereas section 70 permits recovery of double rent along with other damages.<sup>39</sup> As a result, the total damages a landlord receives from a wrongful holdover will differ depending upon whether the landlord or the tenant gives the thirty-day notice of termination.<sup>40</sup>

Imposing double damages on tenants who fail to leave after giving notice to the landlord is a good policy because a landlord relying on the notice may have another tenant waiting to take possession of the property. If the old tenant remains in possession when a new tenant's lease begins, the

30. 41 OKLA. STAT. § 37 (1981).

31. *Id.* § 4.

32. *Kester v. Disan Eng'g Corp.*, 591 P.2d 344, 347-48 (Okla. Ct. App. 1979).

33. *See* 41 OKLA. STAT. § 4 (1981); 60 OKLA. STAT. § 44 (1981).

34. 41 OKLA. STAT. § 4 (1981).

35. Title 60, § 44 requires written notice to terminate of not less than one month. 60 OKLA. STAT. § 44 (1981). Thus, in February, title 60 requires two days less notice than title 41, whereas in May, title 60 requires one day more. The distinction seems trivial but in a given case application of the correct statute could make the difference between proper notice or wrongful termination.

36. 23 OKLA. STAT. § 70 (1981); *see supra* notes 13-17 and accompanying text.

37. *Id.*

38. 23 OKLA. STAT. § 69 (1981).

39. *Id.* §§ 69, 70.

40. Compare the language in section 69 which reads, "[T]he measure of damages is double the rent which he ought otherwise to pay," with the language in section 70 which reads, "[T]he measure of damages is double the yearly value of the property, for the time of withholding, in addition to compensation for the detriment occasioned thereby." *Id.*

landlord is liable for breach of an implied covenant to place the new tenant in actual possession.<sup>41</sup> Even after collecting double rent from the old tenant, the landlord may not break even.

### C. *Tenancy from Year to Year*

The year-to-year tenancy is an express agreement that the lease continue from year to year with annual rental payments for an indefinite period of time.<sup>42</sup> A tenancy from year to year is also called a periodic tenancy. Terminating this tenancy requires that three months written notice be given before the end of the calendar year.<sup>43</sup> A tenancy from year to year differs from a tenancy at will in that the former renews itself in one year increments, whereas the latter only continues until thirty days notice of termination is given.

One reason for the landlord's duty to provide notice of termination is that the tenancy is for an indefinite period; therefore, the tenant should be given an opportunity to protect his crops and property.<sup>44</sup> The damage provisions of sections 69 and 70 in title 23 also apply to tenancies from year to year if the tenant holds over after notice of termination is given.<sup>45</sup>

### D. *Tenancy For a Term of Years*

A tenancy for a term of years is an express lease agreement between landlord and tenant for a fixed number of years.<sup>46</sup> The lease normally provides a specific beginning and ending date.<sup>47</sup> However, if the ending date is specified but the beginning date is omitted, the date on which the lease was executed can be used as the start of the lease term.<sup>48</sup> If the ending date is omitted the lease is statutorily presumed to run for one year.<sup>49</sup> A tenancy for a term of years differs from a tenancy from year to year in that the former has a specific ending date, whereas the latter continues indefinitely until notice of termination is given.

Notice is not required to terminate a tenancy for years.<sup>50</sup> The time of termination is clearly stated in the lease; therefore, the lease serves as notice of termination to the parties and no other notice is necessary.<sup>51</sup> When a tenant remains in possession of the property after expiration of a term

41. *Dieffenbach v. McIntyre*, 208 Okla. 163, 254 P.2d 346, 348 (1952).

42. *Sooner Pipe & Iron Co. v. Bartholomew*, 207 Okla. 191, 248 P.2d 225, 226-27 (1952).

43. 41 OKLA. STAT. § 5 (1981); *see also* *Harley v. Paschall*, 115 Okla. 294, 243 P. 167, 168 (1926).

44. *Chi-Okla Oil & Gas Co. v. Shertzer*, 105 Okla. 111, 231 P. 877, 880 (1924).

45. *See supra* notes 36-40 and accompanying text.

46. *Francis v. Superior Oil Co.*, 102 F.2d 732, 734 (10th Cir. 1939).

47. *Id.*

48. *Id.*

49. 41 OKLA. STAT. § 33 (1981).

50. *Id.* § 8.

51. *Bledsoe v. United States*, 349 F.2d 605, 607 (10th Cir. 1965); *see also* *Simmons v. Fariss*, 289 P.2d 372, 373 (Okla. 1955).

lease, the tenant becomes a tenant at will with the landlord's consent.<sup>52</sup> Otherwise, the holdover tenant becomes a tenant at sufferance.<sup>53</sup>

### *E. Classification of Sample Farm Lease*

Part II of the sample lease contains the following provision:

The term of this lease shall be \_\_\_\_year(s) from \_\_\_\_, 19\_\_\_\_ to \_\_\_\_, 19\_\_\_\_, and this lease shall continue in effect from year to year thereafter until written notice of termination is given by either party to the other on or before the \_\_\_\_day of \_\_\_\_, before the expiration of this lease or any renewal thereof.

If Part II were deleted from the lease, Oklahoma law would presume that the lease was a term of years for one year.<sup>54</sup> As written, the initial language of Part II creates a lease for a term of years.<sup>55</sup> Thus, the lease normally terminates on the ending date specified, without notice from the landlord. However, the language in the middle portion of Part II contains continuation language. This language creates a tenancy from year to year upon expiration of the fixed term.<sup>56</sup>

Having the lease continue from year to year after the fixed lease term ends is important. The continuation language eliminates the possibility of holdover problems.<sup>57</sup> Even though a tenancy for a term of years expressly contains the ending date in the lease, the parties may forget about that date two or three years later. Thus, the term lease could end unexpectedly. Under the sample lease, however, the tenant will be notified by the landlord before the lease terminates.

As a result of the continuation language, a three month statutory notice of termination applies.<sup>58</sup> The language in Part II, nonetheless, allows the parties to specify any length of notice they desire. In some states, statutory notice of termination cannot be waived or shortened in the lease agreement.<sup>59</sup> However, in Oklahoma the law is unclear as to whether the parties can contractually shorten the notice period. Therefore, the notice of termination provision should be modified to require written notice at least three months before the end of the year.

### *III. Rental Rates and Arrangements*

Part III provides for three popular farm leasing arrangements: crop share, livestock share, and cash. There are numerous other agricultural leasing

52. See *supra* notes 18-41 and accompanying text.

53. See *supra* notes 11-17 and accompanying text.

54. 41 OKLA. STAT. § 33 (1981).

55. See *supra* notes 46-51 and accompanying text.

56. See *supra* notes 42-44 and accompanying text.

57. See *Standard Parts Co. v. D & J Inv. Co.*, 288 P.2d 369, 371 (Okla. 1955) (statutory presumption of tenancy at will after expiration of lease term not applicable where parties provide for continued tenancy).

58. 41 OKLA. STAT. § 5 (1981).

59. *Schmitz v. Sondag*, 334 N.W.2d 362, 365 (Iowa Ct. App. 1983).



arrangements a landlord and tenant may enter into.<sup>60</sup> The crop share and livestock share arrangements are unique to the farm lease. Cash rent is a standard payment form for all leases. Therefore, discussion will be focused on crop and livestock share leases.<sup>61</sup> However, one unique feature of agricultural cash leases that does exist is time of payment. Under agricultural cash leases, rent is normally due at the end of the year, rather than the beginning of the lease term as most leases require.<sup>62</sup>

#### A. *Payment of Rent*

In a crop share lease, rent consists of the crop itself. Payment is made when the tenant gives the landlord an agreed percentage of the crops or gives the landlord the cash equivalent after selling the crops. Option A of the sample lease provides space to specify the landlord's share and the tenant's share of each crop. Option A also provides space for the parties to specify whether the landlord is to be paid by an actual share of the crop or a cash equivalent. The livestock share lease under Option B works the same way. The livestock constitute rent, and the tenant gives the landlord an agreed number of livestock or a cash equivalent.

Crop rent is normally due when crops are mature and ready for harvest.<sup>63</sup> If there is no customary time when rent is payable, and the lease does not state a specific time, then by statute, rent for Oklahoma agricultural land is payable on a yearly basis at the end of each year.<sup>64</sup> The parties should specify in the lease when rent is due to eliminate the potential problem of the landlord or tenant having to prove that rent under crop and livestock share leases is customarily payable at a time other than when payment is actually made.

Although the lease contains an express agreement for the tenant to pay rent, the obligation to pay does not arise until possession of the premises is delivered to the tenant.<sup>65</sup> The above rule is unnecessary under a crop or livestock share lease because crops cannot be grown, or livestock raised, unless the tenant is in possession. Therefore, the tenant does not owe rent because the landlord's share is nothing. The nature of a share lease makes rent automatically contingent upon delivery of possession.

If the tenant fails to pay rent when it is due, the lease can be terminated.<sup>66</sup> Before the landlord can terminate the lease for nonpayment of rent, he must make a demand for payment<sup>67</sup> and serve a ten-day notice of termination

60. For an overview of many of the agriculture leases available, see Looney, *supra* note 7, at 397-409.

61. A good introduction to agricultural cash leases is contained in *Fixed and Flexible Cash Rental Arrangements For Your Farm* (Cooperative Extension Service Publication #75).

62. 41 OKLA. STAT. § 37 (1981).

63. *Pruitt v. Carter*, 52 Okla. 284, 152 P. 1081, 1081-82 (1915); *Crump v. Sadler*, 41 Okla. 26, 136 P. 1102, 1103 (1913).

64. 41 OKLA. STAT. § 37 (1981).

65. *Harley v. Jobe*, 207 Okla. 296, 249 P.2d 468, 470 (1952).

66. 41 OKLA. STAT. § 6 (1981).

67. *Black v. McLendon*, 308 P.2d 300, 301 (Okla. 1957); *R.T. Stuart & Co. v. Graham*,

on the tenant.<sup>68</sup> The tenant can avoid termination for failure to pay rent by paying the rent within the ten-day notice period.<sup>69</sup>

When a tenant breaches a covenant in the lease, the landlord must be cautious about accepting rental payments. Continued acceptance of rent may constitute waiver of the landlord's right to terminate for breach of the lease covenant.<sup>70</sup> However, the landlord must have full knowledge of the breach to be held to have waived the right to terminate.<sup>71</sup> Therefore, the landlord must weigh the benefits of continuing to receive rent against the harm caused by the breach.

An example of the waiver problem occurs when Landlord leases a farm to Tenant for seven years with a covenant that soil erosion be controlled. Landlord soon becomes aware that Tenant is not attempting to prevent soil erosion. At first the erosion is small, so Landlord continues to accept his share of the crops each year. However, five years pass, huge gullies wash out on Landlord's property, and he is desperate to terminate the lease and find a better tenant. It is too late to terminate the lease for prior breaches of the erosion covenant. Landlord has waived his right to terminate by accepting rent with full knowledge of the breach for the last five years. However, if Tenant continues to make no effort to control soil erosion after Landlord informs Tenant that the covenant will be enforced, Landlord can terminate the lease for the subsequent breaches of the covenant.<sup>72</sup>

### B. Landlord's Lien for Rent

Under a farm lease, the landlord is given a statutory lien on crops grown or growing on the premises to secure rental payments.<sup>73</sup> The statutory lien is commonly called a "landlord's lien." The lien extends to all products produced on the farm.<sup>74</sup> Attachment, an enforcement procedure, is not required to bring the lien into existence.<sup>75</sup> Crops grown during the year are subject to the lien for rental payments due that same year only.<sup>76</sup> The landlord may not enforce a lien on the current year's crops for a previous year's rent.<sup>77</sup> When the tenant makes the rental payment the landlord's lien disappears.<sup>78</sup>

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117 Okla. 117, 245 P. 608, 610 (1926); *Welch v. Church*, 55 Okla. 600, 155 P. 620, 623 (1916).

68. 41 OKLA. STAT. § 6 (1981).

69. *Id.*

70. *Holt v. Warren*, 176 F.2d 479, 481 (10th Cir. 1949); *In re Ferris*, 415 F. Supp. 33, 38 (W.D. Okla. 1976).

71. *Holt*, 176 F.2d at 481.

72. *Ferris*, 415 F. Supp. at 38.

73. 41 OKLA. STAT. § 23 (1981).

74. *Dorsett v. Watkins*, 59 Okla. 198, 158 P. 608, 609 (1916).

75. *Markley v. Ott*, 192 Okla. 550, 138 P.2d 67, 70 (1943); *Witmering v. Hinkle*, 61 Okla. 82, 160 P. 60, 60 (1916).

76. *Aikins v. Huff*, 133 Okla. 268, 272 P. 1025, 1026 (1928).

77. *Cunningham v. Moser*, 91 Okla. 44, 215 P. 758, 759 (1923).

78. *Cherokee Grain Co. v. Osborne*, 93 Okla. 74, 219 P. 664, 665 (1923).

Three methods exist for enforcement of the landlord's lien. One method is to levy on the crops by obtaining an order of attachment.<sup>79</sup> The attachment is limited to a levy on the crops growing or grown upon the land.<sup>80</sup> It cannot extend to other property of the tenant.<sup>81</sup> Levying on the crops performs the same function as an execution upon foreclosure.<sup>82</sup> Title 41, section 27 provides that a landlord can commence an attachment action when the tenant has either removed crops from the leased property within the last thirty days, is currently removing crops, or intends to remove crops.<sup>83</sup> However, it appears that the limitations imposed by section 27 have little effect. Oklahoma courts do not require proof that the tenant intends to remove, is removing, or has removed crops from the property within the past thirty days.<sup>84</sup>

The attachment method of enforcement is not dependant upon the crop being physically available. If the landlord's share of the crop has been taken or sold, he can still enforce his lien by obtaining an order of attachment.<sup>85</sup> The two enforcement methods discussed next depend on the crop being physically available. Thus, if crops are still available, the landlord has a choice of three enforcement methods. Otherwise, the landlord is limited to attachment.<sup>86</sup>

Replevin is the second enforcement method. The tenant is entitled to exclusive possession of the entire crop until the crop is harvested and divided,<sup>87</sup> even though the landlord is statutorily deemed the owner of his crop share.<sup>88</sup> At harvest, if the tenant refuses to deliver the landlord's share of the crops, replevin can be used to obtain possession of the landlord's share.<sup>89</sup>

"Self-help," the third method for enforcing a landlord's lien, is the least expensive.<sup>90</sup> Statutory law entitles a landlord to enter the land and physically take possession of his crop share when the tenant refuses to deliver.<sup>91</sup> Self-help remedies are not recommended because of the potential for confrontations between the parties.

Normally, the landlord's resort to enforcement proceedings means that the tenant has done something with the crops. If the tenant removes crops

79. 41 OKLA. STAT. §§ 27, 28 (1981); *see also* Crump v. Sadler, 41 Okla. 26, 136 P. 1102, 1103 (1913).

80. Greeley v. Greeley, 12 Okla. 659, 73 P. 295, 297 (1903).

81. *Id.*

82. Markley v. Ott, 192 Okla. 550, 138 P.2d 67, 70 (1943).

83. 41 OKLA. STAT. § 27 (1981).

84. Shiflett v. Wright, 184 Okla. 188, 86 P.2d 314, 316 (1938).

85. Collier v. Gannon, 40 Okla. 275, 137 P. 1179, 1181 (1914).

86. *Id.*

87. Chicago, R.I. & P.R. Co. v. Hale, 208 Okla. 141, 254 P.2d 338, 339-40 (1953); Jackson v. Bowlin, 111 Okla. 299, 239 P. 637, 638-39 (1925); Yeldell v. Hines, 73 Okla. 1, 174 P. 229, 230 (1918); De Spain v. Coley, 65 Okla. 31, 162 P. 756, 757-58 (1916); Gvosdanovic v. Harris, 38 Okla. 787, 134 P. 28, 29 (1913).

88. 41 OKLA. STAT. § 24 (1981).

89. *Id.*

90. *Id.*

91. *Id.*

from the premises, with the intent to avoid paying rent, the tenant is guilty of embezzlement.<sup>92</sup> As with many crimes, intent is the key element. Removal of the crops from the leased property alone is not enough.<sup>93</sup>

In most cases of embezzlement, the tenant will remove the crops from the property and sell them to a third party. Title 41, section 26 provides that a purchaser of the crop with notice of the landlord's lien is liable to the landlord.<sup>94</sup> Notice can be actual or constructive.<sup>95</sup> The landlord can recover both the value of his crop share and damages from the purchaser.<sup>96</sup>

Rather than remove the crops, the tenant may sell growing or stored crops to a third party while the crops are still on the leased property. In this situation, the purchaser is deemed to have constructive notice of the lien.<sup>97</sup> Apparently, no other requirements, such as filing the lease, must be met to give the purchaser constructive notice. Therefore, the landlord's lien takes priority over the purchaser's right to the crops and can be enforced against the purchaser.<sup>98</sup>

Landlord liens do not always have priority. A farm laborer hired by the tenant to help produce the crop has a "laborer's lien" for the amount of his services.<sup>99</sup> A laborer's lien takes priority over a landlord's lien on the same crops.<sup>100</sup> There are many additional statutory liens for workers that are given special priority.<sup>101</sup> Therefore the landlord must be careful when the tenant hires outside workers.

### C. Distress for Rent

Distress for rent is another self-help procedure available to the landlord. It is a common law right to enter the leased premises and seize personal property of the tenant as security for the payment of overdue rent. Oklahoma refused to adopt the common law right to distrain for rent.<sup>102</sup> However, in 1988 the Oklahoma legislature adopted a statutory variation of distress for rent that can be utilized by agricultural landlords.<sup>103</sup> Under the statute, a landlord can enter the premises *after the tenant is gone* and seize personal property to satisfy rent due and other expenses.<sup>104</sup> The statute's requirements, primarily that of notice to the tenant, eliminate the constitutional due process problems of the common law counterpart.<sup>105</sup>

92. 41 OKLA. STAT. § 25 (1981).

93. *Crittenden v. State*, 21 Okla. Crim. 347, 207 P. 747, 748 (1922).

94. 41 OKLA. STAT. § 26 (1981).

95. *Butler v. Corey*, 35 Okla. 471, 130 P. 137, 137 (1913).

96. 41 OKLA. STAT. § 26 (1981); *see also* *Butler v. Corey*, 35 Okla. 471, 130 P. 137, 137 (1913).

97. *Witmering v. Hinkle*, 61 Okla. 82, 160 P. 60, 60 (1916); *Shelp v. Lewis*, 188 Okla. 156, 107 P.2d 360, 361 (1940).

98. *Witmering*, 160 P. at 60; *Shelp*, 107 P.2d at 361.

99. 42 OKLA. STAT. § 92 (1981).

100. *Id.* § 96; *see also* *Stallings v. Key*, 180 Okla. 238, 68 P.2d 842, 843 (1937).

101. *See* 42 OKLA. STAT. §§ 1-180 (1981).

102. *Smith v. Wheeler*, 4 Okla. 138, 44 P. 203, 204 (1896).

103. 41 OKLA. STAT. §§ 51, 52 (Supp. 1990).

104. *Id.* § 52.

105. *See* *Hannah*, *supra* note 4, at 366-70 (discussion of distress for rent and its constitutional problems).

#### IV. Farm Operation

In Part IV, the landlord and tenant must make economic decisions about who will furnish equipment and pay for expenses.<sup>106</sup> The parties should use this section to set forth in detail the equipment which each party will contribute, and the share of expenses for which each party will be responsible. Share leases also require an understanding between the parties as to who will make management decisions. For instance, someone must make decisions as to when crops or livestock should be sold to get the best price. The landlord and tenant may not always agree. Therefore, a section detailing which management decisions will be made by each party should be added to Part IV.

The main legal implications of Part IV are the effects it has on the categorization of the farming relationship. Using the words "landlord and tenant" throughout a document does not necessarily mean that a landlord-tenant relationship exists. An employer-employee relationship or a partnership could exist, depending on how labor, management decisions, equipment, income, and expenses are being shared. Thus, use of Part IV is important for purposes of showing that equipment, expenses, and management decisions are being shared in a manner consistent with a landlord-tenant relationship. How to avoid a partnership is discussed below in Part VII.<sup>107</sup>

#### V. Conservation and Improved Farming Practices

##### A. Conservation

In today's society, people are becoming more and more conservation minded. In agriculture, farmers have been aware of the importance of soil conservation for many years. Part V(A) of the sample lease requires tenants to comply with a soil conservation plan prepared by the county soil conservation district. Soil conservation provisions are probably considered "material provisions" under Part XI(b) of the sample lease. Therefore, the landlord can terminate the lease if the tenant does not comply with the soil conservation plan.<sup>108</sup>

Part V(B) specifies the parties' contributions toward other conservation practices and the share of government payments each party is entitled to receive. Payments from numerous government farm programs can be substantial. As a result, government payment provisions are necessary to avoid subsequent misunderstandings.<sup>109</sup>

Every farm lease contains an implied covenant to work the farm in a farmer-like manner.<sup>110</sup> If the tenant does not use good farming practices the

106. An overall guide for determining the contribution of each party is contained in Looney, *supra* note 7, at 409-13.

107. See *infra* notes 146-52 and accompanying text.

108. See Hamilton, *Legal Aspects of Farm Tenancy in Iowa*, 34 *DRAKE L. REV.* 267, 306-09 (1984) (discussion of soil erosion and the covenant of good husbandry).

109. Payments under some farm programs are statutorily required to be divided between landlord and tenant in a certain manner. Looney, *supra* note 7, at 451 n.235.

110. See Hannah, *supra* note 4, at 379-80.

covenant is breached and the landlord can recover damages. What constitutes a “farmer-like manner” can be shown by custom, practices of area farmers, or county extension agents. Farming practices listed in Part V(C) of the sample lease may constitute express written covenants of the lease. Therefore, failure to farm in the manner specified would most likely constitute breach of a material provision in the lease and give the landlord both the right to terminate and the right to recover damages under Part XI(b) of the sample lease.

### *B. Waste*

Even if a farm lease does not contain an express requirement to control soil erosion, excessive soil erosion would probably constitute “waste.” Failure to act as well as affirmative acts may constitute waste.<sup>111</sup> When the landlord leases property, he retains a reversionary interest.<sup>112</sup> Injury to the landlord’s reversionary interest constitutes waste and gives the landlord a statutory action for waste against the tenant.<sup>113</sup> The measure of damages in an action for waste is the reasonable cost of restoring the property to its former condition.<sup>114</sup>

Oklahoma does not have a statute providing for termination of a tenancy for a term of years or from year to year as a remedy for waste.<sup>115</sup> Unless the lease contains an express provision allowing forfeiture for waste, the landlord is limited to obtaining damages.<sup>116</sup> A provision should be added to Part V of the sample lease making the tenant’s duty not to commit waste an express covenant, thereby giving the landlord a choice between damages or termination.

Oklahoma law does provide for termination of tenants at will who commit waste.<sup>117</sup> If a tenant at will commits waste, the tenancy can be terminated. Notice of termination is not required.<sup>118</sup>

### *C. Water Rights*

The landlord should also consider what water rights to give the tenant. When property is leased, use of the ground water is automatically included in the conveyance.<sup>119</sup> However, an agricultural tenant has no authority to sell water from the premises unless the provisions in the lease specifically so allow.<sup>120</sup>

111. *Caldwell v. Boedeker*, 199 Okla. 467, 187 P.2d 236, 238-39 (1948).

112. 60 OKLA. STAT. § 29 (1981); *see also* *Ferguson v. District Court*, 544 P.2d 498, 499 (Okla. 1975); *Watson v. McSoud*, 566 P.2d 171, 172 (Okla. Ct. App. 1977).

113. 41 OKLA. STAT. § 22 (1981).

114. *Creekmore v. Redman Indus.*, 671 P.2d 73, 78-79 (Okla. Ct. App. 1983); *Reinheimer v. Mays*, 75 Okla. 131, 182 P. 230, 232-33 (1919).

115. *Creekmore*, 671 P.2d at 77.

116. *Id.*; *see also* *Phillips v. Hill*, 555 P.2d 1043, 1046 (Okla. 1976) (forfeiture provisions in a lease for committing waste are enforceable).

117. *Caldwell v. Boedeker*, 199 Okla. 467, 187 P.2d 236, 237 (1947).

118. 41 OKLA. STAT. § 8 (1981).

119. *Mack Oil Co. v. City of Laurence*, 389 P.2d 955, 961-62 (Okla. 1964). Use of groundwater by landlord or tenant is governed by the Oklahoma Groundwater Law. 82 OKLA. STAT. §§ 1020.1-1020.22 (1981).

120. *Mohawk Drilling Co. v. Wolf*, 262 P.2d 892, 893 (Okla. 1953).

#### D. Mineral Rights

Generally, a farm lease gives the tenant rights only to the surface estate.<sup>121</sup> Regardless of whether the landlord owns the mineral rights to the property, the lease conveys no rights in the mineral estate to the tenant.<sup>122</sup> Oil and gas production by the tenant is prohibited because it constitutes waste of the landlord's reversionary interest.<sup>123</sup>

### VI. Improvements and Repairs

#### A. Improvements as Fixtures

Generally, a fixture is personal property that has become so attached to the land that it becomes part of the realty.<sup>124</sup> Many improvements, such as barns and corrals, may be regarded as fixtures. Unless the parties agree otherwise, permanent improvements and fixtures that the tenant attaches to the land belong to the landlord.<sup>125</sup> In Part VI(C) of the sample lease, the tenant is given the right to remove improvements added to the land with the consent of the landlord, even if the improvements are legally fixtures. This provision makes inapplicable the statutory rules on what type of property constitutes fixtures and the right to remove fixtures.<sup>126</sup>

Allowing the tenant to remove an improvement, even if that improvement is legally a fixture, is a good policy. It encourages the tenant to make improvements. More importantly, arguments over what the tenant can and cannot take with him are avoided. Determining what is and is not a fixture is difficult in many cases, even though the term is statutorily defined.<sup>127</sup>

The right to remove fixtures includes the right to do such damage to the real property as would normally occur.<sup>128</sup> Assuming the lease does not contain language to the contrary, the tenant is only liable for damage due to negligence.<sup>129</sup> Thus, the landlord may want a provision in the lease that requires the tenant to repair any damage caused by the removal of improvements.

A tenant has a "reasonable time" to remove the fixtures.<sup>130</sup> If the fixtures are not removed within a reasonable time the tenant loses the right to

121. R. HEMINGWAY, *THE LAW OF OIL AND GAS* § 5.5 (2d ed. 1983).

122. *Id.*

123. *Id.*

124. *BLACK'S LAW DICTIONARY* 574 (5th ed. 1979).

125. 60 OKLA. STAT. § 334 (1981); *see also* *White v. Webber-Workman Co.*, 591 P.2d 348, 351 (Okla. Ct. App. 1979); *Revell's Estate v. Herron*, 187 Okla. 618, 105 P.2d 426, 429 (1940); *McDowell v. King*, 186 Okla. 90, 96 P.2d 37, 38 (1939); *Etchen v. Ferguson*, 59 Okla. 280, 159 P. 306, 308 (1916).

126. *Fox v. Cities Serv. Oil Co.*, 201 Okla. 17, 200 P.2d 398, 401 (1948); *Shelton v. Jones*, 66 Okla. 83, 167 P. 458, 460-61 (1917).

127. 60 OKLA. STAT. § 7 (1981).

128. *Fox*, 200 P.2d at 401.

129. *Id.*

130. *Smith v. United States*, 113 F.2d 191, 193 (10th Cir. 1940); *Gaither v. Byers*, 221 F. Supp. 996, 1000 (E.D. Okla. 1963).

remove them and they become the property of the landlord.<sup>131</sup> The parties can specify in the lease what constitutes a reasonable time.<sup>132</sup> Otherwise, determination of what constitutes a reasonable time is left to the courts. One court determined that three months was a reasonable time to remove sheet iron buildings from the property.<sup>133</sup> Including a timetable for removal of fixtures in the lease is desirable. The parties can then agree to a period of time which they consider reasonable.

Some improvements, whether fixtures or not, cannot be removed. Fertilizer applied to the soil is one example of a nonremovable fixture. Therefore, Part VI(D) compensates the tenant for the unexhausted value of the improvement, prorated over five years. Without this provision, a year-to-year tenant would not make long-term improvements. The provision eliminates the risk of the lease being terminated before the tenant can recoup his investment.

### B. Repairs

An agricultural landlord has no duty to keep the premises in repair.<sup>134</sup> If the tenant makes repairs to the property he cannot recover his expenses from the landlord, absent an agreement.<sup>135</sup> Therefore, repair provisions must be set forth in the lease. Part VI(A) of the sample lease requires that the landlord furnish materials and the tenant furnish labor for ordinary repairs. For complex repairs, the landlord agrees to furnish materials and labor.

Fence repair is one exception to the general rule that the landlord has no duty to repair. Title 4, section 142 requires the "owner" to keep all partition fences in good repair.<sup>136</sup> However, the duty only arises if the "owner" encloses the property.<sup>137</sup> The tenant is statutorily deemed the "owner" of the property if the landlord does not reside in the county.<sup>138</sup> Thus, the duty to repair fences on the leased property may fall on the tenant.

Determining who has the duty to repair can be important if an animal escapes and causes damage. Domestic animals, such as cattle and horses, are required to be kept from running at large.<sup>139</sup> An animal owner is liable for all damages caused by animals breaking through or over lawful fences and trespassing upon enclosed lands of another.<sup>140</sup> Thus, the animal owner is liable for trespass and must pay for crop, fence, and pasture damage caused by the animal.<sup>141</sup>

131. *Smith*, 113 F.2d at 193.

132. *Id.*

133. *Gaither*, 221 F. Supp. at 1000.

134. *Beard v. General Real Estate Corp.*, 229 F.2d 260, 262 (10th Cir. 1956); *Alfe v. New York Life Ins. Co.*, 180 Okla. 87, 67 P.2d 947, 949 (1937); *Gordon v. Reinheimer*, 167 Okla. 343, 29 P.2d 596, 598 (1934).

135. *Bradley v. McCabe*, 438 P.2d 468, 473-74 (Okla. 1967).

136. 4 OKLA. STAT. § 142 (1981).

137. *Id.* § 143.

138. *Id.* § 148.

139. *Id.* § 98.

140. *Id.* § 155.

141. *Carver v. Ford*, 591 P.2d 305, 308 (Okla. 1979).



However, a person cannot automatically recover for personal injuries sustained in an automobile collision with an escaped animal. The injured party must prove negligence to recover.<sup>142</sup> The duty to repair becomes important when personal injuries are involved. Liability for failure to properly maintain fences may be imposed upon the person who has the duty to repair. Part VI(A) is worded broadly enough to cover fence maintenance. Such a clause is good because it avoids the problem of determining who has the duty to maintain fences.

If the landlord fails to repair and fence the property after expressly agreeing to do so, the tenant can recover damages.<sup>143</sup> The measure of damages is the difference between the rental value of the premises as is and the rental value had the property been repaired and fenced.<sup>144</sup>

### VII. Records

Record keeping is a good business practice. Part VII makes record keeping a requirement. If the parties are going to share expenses, the expenses must be documented so that a proper division is made. To aid future management decisions, the landlord may also want to record the type of seed and fertilizer used to produce the best crops.

A more important reason to keep records is to comply with various federal regulations. Participation in some federal farm programs is contingent upon adequate record keeping. The Federal Crop Insurance Program is one example of a federal farm program which requires harvest and crop production records to be maintained and made available for inspection.<sup>145</sup>

### VIII. Nonpartnership Agreement

A partnership is defined as two or more persons carrying on a business for profit.<sup>146</sup> A person taking a share of the profits from a business is prima facie evidence that the person is a partner.<sup>147</sup> Under a crop share lease, the landlord-tenant relationship resembles a partnership. Both parties are working together to make a profit. Moreover, any profits from the crops or livestock are shared.

Part VIII of the sample lease expressly states that the agreement between the landlord and tenant is not a partnership. This provision creates a presumption that no partnership exists.<sup>148</sup> Words alone, however, are not enough to prevent a partnership from arising. If the parties act like partners, a court may find a partnership by estoppel even though the lease expressly

142. *Id.*; see also *Shuck v. Cook*, 494 P.2d 306, 309 (Okla. 1972).

143. *Partridge v. Dykins*, 28 Okla. 54, 113 P. 928, 929 (1911).

144. *Id.*

145. 7 U.S.C. §§ 1501-1520 (1988 & Supp. 1991).

146. 54 OKLA. STAT. § 206 (1981).

147. *Id.* § 207.

148. *McCullough v. Leede Oil & Gas, Inc.*, 617 F. Supp. 384, 390 (W.D. Okla. 1985).

states that the parties are not partners.<sup>149</sup> Because partners are jointly and severally liable for the debts and torts of the other partners, the landlord and tenant want to avoid a partnership.<sup>150</sup> The landlord does not want to be held liable for torts the tenant commits during the tenancy, or for debts the tenant incurs other than those the landlord expressly agrees to pay.

The distinguishing feature between a partnership and a crop share lease is the existence of “community of interest” in the assets and “community of power” in decisions made. Community of interest exists when all parties own an interest in each asset. Community of power exists when all parties have the power to make decisions that bind each other.

In a landlord-tenant relationship the landlord is the sole owner of the land, and the tenant is the sole owner of the equipment that the tenant contributes. Therefore, no community of interest exists in the assets used. In contrast, each partner owns an interest in all partnership property.<sup>151</sup> The landlord and tenant should avoid buying equipment or other assets together. Joint ownership increases the risk that a court will find the parties to be partners despite a lease provision to the contrary.

The landlord and tenant normally do not have the power to bind each other when they make decisions. Although one party may be given the authority to make management decisions that bind the other party, the decision-making power is not mutual. Therefore, no community of power exists in the decisions made. A partnership, however, contains community of power because a decision by any partner binds the partnership.<sup>152</sup>

As a result, provisions in Part IV of the sample lease affect whether a partnership is created.<sup>153</sup> If Part IV of the sample lease provides that certain equipment will be jointly owned, or that decisions made by either party are binding on the other, a partnership is likely to arise, despite the contrary language in Part VIII.

## IX. *Right of Entry*

### A. *Right to Re-enter*

When the landlord leases property to the tenant, the tenant is entitled to exclusive possession.<sup>154</sup> During the term of the lease the tenant’s interest in the property is equivalent to absolute ownership.<sup>155</sup> Therefore, the landlord does not have the right to re-enter the property without the tenant’s permission.<sup>156</sup> Unauthorized entry by the landlord may constitute breach of the

149. 54 OKLA. STAT. § 204(2) (1981); *see also* *Cobb v. Martin*, 32 Okla. 588, 123 P. 422, 424 (1912); *McKallip v. Geese*, 30 Okla. 33, 118 P. 586, 589 (1911).

150. 54 OKLA. STAT. § 215 (1981).

151. *Id.* § 208.

152. *Id.* § 209.

153. *See supra* note 106 and accompanying text.

154. *Buck v. Del City Apartments, Inc.*, 431 P.2d 360, 363 (Okla. 1967).

155. *Ferguson v. District Court*, 544 P.2d 498, 499 (Okla. 1975).

156. *Watson v. McSoud*, 566 P.2d 171, 172 (Okla. Ct. App. 1977).

implied covenant of quiet enjoyment.<sup>157</sup> Damages for breach of the covenant of quiet enjoyment are provided by statute.<sup>158</sup>

If the landlord desires access to the property during the lease term, a right of entry must be included in the lease agreement. Part IX gives the landlord the right to enter the property for inspections, repairs, or improvements. If the lease is not renewed, Part IX allows the landlord or succeeding tenant to enter early and work on the farm. A re-entry provision is important because the old tenant will not prepare the fields for the following year if that tenant will not reap the benefits. Unless a right to re-enter exists, ensuring a new tenant the right to enter and prepare the land, the landlord may lose a year of crop production.

The landlord should consider broadening the right to re-enter to include additional activities. Oklahoma law requires a person to get the tenant's permission to fish or hunt upon leased premises.<sup>159</sup> The landlord might want to reserve the right for his guests to fish and hunt on the land during the lease term.<sup>160</sup> Additionally, the landlord might want to reserve the right to remove timber from the property for a fireplace or woodburning stove.

In the absence of a provision in the lease, a statutory right to enter exists in limited form. The landlord can only enter the property to take possession of his share of the crop when the tenant refuses to deliver the landlord's share.<sup>161</sup> This is the self-help method for enforcing a landlord's lien discussed earlier.<sup>162</sup>

### *B. Actions to Recover Possession*

When the lease terminates, the landlord is entitled to possession. If the tenant stays on the property, i.e., wrongfully holds over, the landlord must take steps to remove the tenant from the premises. The landlord should not personally attempt to remove the tenant.<sup>163</sup> Self-help is an improper means of regaining possession.<sup>164</sup> Therefore, possession must be obtained through an action at law.<sup>165</sup>

An action for forcible entry and detainer is the proper way to remove a tenant.<sup>166</sup> In fact, forcible entry and detainer is the exclusive procedure for removing a holdover tenant.<sup>167</sup> This possessory action is strictly limited to

157. *Mullen v. Earnes*, 65 Okla. 47, 162 P. 936, 937 (1917); *Holden v. Tidwell*, 37 Okla. 553, 133 P. 54, 56 (1913).

158. 23 OKLA. STAT. § 25 (1981); *see also* *Copeland Oil Co. v. Parker*, 306 P.2d 714, 716 (Okla. 1957).

159. 29 OKLA. STAT. §§ 5-202, 6-304 (1981 & Supp. 1990).

160. For an example of a clause reserving hunting rights, *see* Comment, *A New Look at Agricultural Leases*, 29 S.D.L. REV. 428, 442 (1984).

161. 41 OKLA. STAT. § 24 (1981).

162. *See supra* notes 90-91 and accompanying text.

163. Using self-help is a misdemeanor. 21 OKLA. STAT. § 1351 (1981).

164. *Case-Aimola Properties, Inc. v. Thurman*, 752 P.2d 1120, 1122 (Okla. 1988).

165. *Id.* *But see infra* notes 199-201 and accompanying text.

166. 12 OKLA. STAT. § 1148.1 (1981).

167. *Ramirez v. Baran*, 730 P.2d 515, 517 (Okla. 1986); *see also* *Warren v. Stansbury*, 199 Okla. 683, 189 P.2d 948, 950 (1948) (forcible entry and unlawful detainer specifically designed to oust hold-over tenant).

determining which party has the immediate right to possession of the premises.<sup>168</sup> Other issues, such as the right to crops growing on the property, are not involved.<sup>169</sup>

After the landlord obtains a judgment against the tenant, the landlord asks the court to issue a writ of execution.<sup>170</sup> The writ commands the sheriff to remove the tenant from the premises and to levy on the personal property of the tenant to cover the costs of rent, attorney fees, and court costs.<sup>171</sup> The sheriff is required to remove the tenant and all of the tenant's personal property from the leased premises.<sup>172</sup> It is a misdemeanor for the tenant to move back onto the property after being removed.<sup>173</sup>

Ejectment is another method the landlord can use to regain possession of the property. Forcible entry and detainer and ejectment are both possessory actions, but they apply in different circumstances.<sup>174</sup> In some cases the tenant will assert that the lease is still valid when the landlord is attempting to regain possession. This can occur when the tenant claims that valid notice of termination was not given. If the tenant claims possession under a valid lease, a forcible entry and detainer action cannot be used.<sup>175</sup> The landlord must use an action in ejectment to regain possession of the property.<sup>176</sup>

At first glance, Oklahoma does not appear to have an ejectment statute. Title 12, section 1142 is not labeled as an ejectment statute. However, section 1142 requires proof of the common law elements of ejectment.<sup>177</sup> To recover possession by ejectment, the landlord must prove that he has title to the property, that he has a present right to possession, and that the tenant's possession is wrongful.<sup>178</sup>

After the landlord has gained possession through a forcible entry and detainer action or an action in ejectment, an additional action to quiet title may be required. The purpose of a quiet title action is to resolve all claims that constitute a cloud on the landlord's title to the property.<sup>179</sup> If the tenant records the lease and refuses to release it, the lease is a cloud on the landlord's title. Normally, the landlord must already be in possession to

168. *Parkening v. Mullen*, 396 P.2d 487, 489 (Okla. 1964); *Coddington v. Andrews*, 179 Okla. 63, 64 P.2d 666, 667 (1937); *Douglas v. Cutlip*, 118 Okla. 21, 246 P. 392, 394 (1926); *Rourke v. Bozarth*, 103 Okla. 133, 229 P. 495, 497 (1924).

169. *Douglas v. Cutlip*, 118 Okla. 21, 246 P. 392, 394 (1926).

170. 12 OKLA. STAT. § 1148.10 (1981).

171. *Id.*

172. *Case-Aimola Properties, Inc. v. Thurman*, 752 P.2d 1120, 1122 (Okla. 1988).

173. 21 OKLA. STAT. § 1352 (1981).

174. *Warren v. Stansbury*, 199 Okla. 683, 189 P.2d 948, 950 (1948).

175. *Ferguson v. District Court*, 544 P.2d 498, 499-500 (Okla. 1975); *Richardson v. Lewis*, 301 P.2d 358, 360 (Okla. 1956); *Clark v. Gray*, 204 Okla. 221, 228 P.2d 654, 656 (Okla. 1951).

176. 12 OKLA. STAT. § 1148.6 (1981).

177. *Warner v. Coleman*, 107 Okla. 292, 231 P. 1053, 1055 (1924).

178. *Hodges v. Paschal*, 195 Okla. 560, 159 P.2d 715, 716 (1945); *Cook v. Hammett*, 192 Okla. 298, 135 P.2d 962, 964 (1943); *Gentry v. McCurry*, 134 Okla. 182, 273 P. 222, 223 (1928).

179. 12 OKLA. STAT. § 1141 (1981); *see also* *Schultz v. Evans*, 204 Okla. 209, 228 P.2d 626, 628 (1951).

bring a quiet title action.<sup>180</sup> However, if the landlord is not in possession, an action to quiet title can be joined with an action in ejectment.<sup>181</sup> A petition alleging that the landlord owns the property, is in possession, and that the tenant's claimed interest is a cloud on the landlord's title states a valid cause of action to quiet title.<sup>182</sup>

### X. Arbitration

Part X of the sample lease contains an arbitration clause. Arbitration is a form of "alternative dispute resolution." The principle behind arbitration is to give the parties a structured format for resolving difficulties outside of the courtroom. Parties using an arbitration committee spend less money on attorney fees and court costs. Arbitration increases the chance that the dispute can be resolved in a manner that allows the lease to continue.

However, from a practical standpoint, the benefits of an arbitration clause are unclear. If the relationship between the landlord and tenant disintegrates to a point requiring arbitration, the tenancy will probably not last. The landlord or the tenant will terminate the relationship. Nevertheless, the decision of the arbitrator is binding. Thus, the arbitration clause may help resolve some problems and allow the landlord-tenant relationship to continue.

An alternative to arbitration is mediation. The key difference between arbitration and mediation is that mediation is voluntary. The parties meet together with a neutral mediator and try to reach a settlement. Mediation is closer to the normal settlement negotiations that parties go through during litigation. Thus, parties are usually more comfortable with mediation than arbitration. Mediation does not settle that many more disputes than are settled in the normal litigation process. What mediation does, however, is settle the dispute earlier. Placing a mediation clause in the lease is a new idea that should be considered.

### XI. Mutual Agreements

#### A. Death of Party

Part XI(a) provides that the lease will continue even if the landlord or tenant dies. The parties' heirs or executors are required to honor the lease. Even without this provision, case law holds that the landlord's death does not terminate the lease.<sup>183</sup> Furthermore, if the landlord dies after the lease agreement is signed but before the tenant takes possession, the lease agreement is still valid.<sup>184</sup>

180. Choate v. Muskogee Elec. Traction Co., 295 P.2d 781, 783 (Okla. 1956); Magnolia Petroleum Co. v. Ball, 203 Okla. 514, 223 P.2d 136, 141 (1950); Stone v. Merrell, 195 Okla. 18, 154 P.2d 953, 954 (1945).

181. 12 OKLA. STAT. § 1141 (1981); see also Hale v. Hall, 383 P.2d 653, 654 (Okla. 1963).

182. Crain v. Farmers United Coop. Pool, 472 P.2d 882, 883 (Okla. 1970).

183. Marmaduke v. McDonald, 183 Okla. 517, 83 P.2d 377, 378 (1938).

184. Howard v. Manning, 79 Okla. 165, 192 P. 358, 360 (1920).

If the landlord of a tenant at will dies, the tenancy terminates.<sup>185</sup> Consent of the landlord ceases upon death; therefore, the tenant becomes a tenant at sufferance.<sup>186</sup> When the new landlord consents to the tenant's continued possession of the property, the tenant once again becomes a tenant at will.<sup>187</sup> For similar reasons, death of a tenant at will also terminates the lease.<sup>188</sup>

The tenant will normally want the lease to continue after the landlord's death. An abrupt end to the tenancy upon the landlord's death could cause the tenant many problems. The tenant may not be able to find employment from another landlord before the next crop season starts. In contrast, the landlord's desire to have the tenancy continue after the tenant's death is less certain. Many tenancies involve personal relationships built upon mutual trust and respect. The landlord may not want the executor or an unknown relative of the tenant entering the property and working the land. The newcomer's ability to properly care for the farm may be questionable.

Nevertheless, there are also several reasons why the landlord will want the tenancy to continue. The landlord wants to continue to receive rent under the lease agreement. After the tenant dies, the tenant's estate is liable for rental payments. Moreover, the landlord may not want to risk being burdened with a growing crop in the middle of the season with no tenant available to harvest it. Finding another tenant can be difficult.

Presumably, the common law rule in Oklahoma as to the effect of a tenant's death is the same as that in other states. Common law provides that the farm lease terminates upon the death of the tenant.<sup>189</sup> The effect of Part XI(a) of the sample lease is to alter the common law rule and continue the lease after the tenant's death. Whether a landlord will want this provision in the lease depends on the landlord's individual desires.

### *B. Bankruptcy*

Bankruptcy could be considered the economic death of the landlord or tenant. Farmers are under severe financial strain, and bankruptcies are common. Generally, bankruptcy of the landlord or tenant does not terminate the lease unless expressly provided for in the lease.<sup>190</sup>

### *C. Assignment and Subletting*

Part XI(a) of the sample lease contains the following provision:

This lease shall bind and shall inure to the benefits of the heirs, executors, administrators, *and assigns of both parties* (emphasis added).

185. *Hancock v. Maurer*, 103 Okla. 196, 229 P. 611, 612 (1924).

186. *Id.*

187. *Id.*

188. *Id.*

189. *In re Estate of Grooms*, 204 Iowa 746, 216 N.W. 78, 81-82 (1927).

190. There are many issues that must be considered in relation to the bankruptcy of a landlord or tenant, but they are outside the scope of this comment. See Grossman, *Property Rights in Farm Bankruptcy: Treatment of Crops and Livestock Under the Farm Lease*, 6 J. AGRIC. TAX'N & L. 579 (1984).

The above provision appears to permit assignment of the lease. The terms "assigning" and "subletting" are sometimes used interchangeably to describe the tenant's act of renting the leased premises to a third party. The third party is a sub-tenant. However, the words are not synonymous, and the above definition is too general to note the distinctions between the two terms.

A lease assignment occurs when the tenant transfers all or part of the property to a third party for the remainder of the lease term.<sup>191</sup> In contrast, the tenant creates a sublease when all or part of the property is transferred to a third party for a period less than the remainder of the lease term.<sup>192</sup> In other words, the tenant retains a reversionary interest under a sublease, whereas an assignment is a complete transfer of the tenant's entire interest in the leased property.<sup>193</sup>

The landlord of a farm tenancy usually feels differently than a commercial landlord about assigning and subletting. The commercial landlord's main focus is to collect the rent. Care for the land is secondary because the property or building is generic and thus easily replaceable. The commercial landlord-tenant relationship is impersonal and businesslike. If the assignee or sublessee continues to pay the rent, the commercial landlord is satisfied. As a result, the commercial landlord will allow a tenant to assign or sublease in many cases.

Conversely, an agricultural landlord's focus is to nurture and care for the land, preserve it, improve it, and make it as productive as possible. Good farm land is not replaced as easily as a warehouse. Moreover, the farm may be a family farm that the landlord has worked on his whole life. The property may have been in the family for many generations. Because of strong emotional ties to the land, the landlord is much more particular about the identity of the tenant. The farm tenancy involves a close, personal relationship between the parties. The parties will feel a strong personal obligation to one another. Therefore, the agricultural landlord will usually not allow the property to be assigned or sublet.

The sample lease appears to permit assignments, but fails to mention subleasing. The word "assigns" in Part XI(a) is hidden in the rest of the clause, and the parties may not even realize that the lease permits assigning. A separate clause should be added to the lease that specifically provides whether assignment and subleasing is permitted.

If the lease does not address assigning or subletting, the landlord is partially protected because Oklahoma prohibits assigning and subletting by statute in some circumstances.<sup>194</sup> Tenants at sufferance, tenants at will, and tenants under a lease for two years or less are prohibited from assigning or subletting unless the landlord consents in writing.<sup>195</sup> Thus, express prohibition of assigning and subletting is unnecessary for short-term leases.

191. Snow v. Winn, 607 P.2d 678, 681 (Okla. 1980).

192. *Id.*

193. Leckie v. Dunbar, 177 Okla. 355, 59 P.2d 275, 277-78 (1936); Caudle v. Brannon, 176 Okla. 394, 56 P.2d 131, 133 (1936).

194. 41 OKLA. STAT. § 10 (1981).

195. Powell v. Nichols, 26 Okla. 734, 110 P. 762, 763 (1910).

However, to protect the landlord under leases having terms that extend beyond two years, the sample lease should contain an express provision that completely prohibits assigning and subletting. Even though the statute requires written consent before a tenant can assign or sublet, courts have held that a landlord can waive a nonassignment covenant.<sup>196</sup> Waiver occurs if a landlord with knowledge accepts rent from the assignee or sublessee.<sup>197</sup> The covenant is for the benefit of the landlord; therefore waiver is permitted.<sup>198</sup>

If the tenant violates the nonassignment provision, the landlord has a statutory right to terminate the lease.<sup>199</sup> The statute is another self-help provision given to the landlord by the legislature. The landlord can re-enter the premises, take possession, and dispossess the tenant or subtenant.<sup>200</sup> The right to re-enter accrues after giving a ten-day notice of termination.<sup>201</sup>

#### D. Termination Upon Breach

Part XI(b) of the sample lease contains the following provision:

If either party willfully neglects or refuses to carry out any material provision, the other party shall have the right, in addition to compensation for damage, to terminate the lease. He shall do so by written notice on the party at fault, specifying the violations of the agreement. If violations are not corrected within 30 days, the lease shall be terminated.

Part XI(b) gives each party a qualified right to terminate the lease upon breach of a material provision. Termination will only occur if the breaching party does not correct the violation within thirty days after receiving written notice of termination. The term "material provision" could cause many problems. The breaching party might argue that the provision at issue is not "material," and therefore, no right to terminate arises. Defining whether the term is material may result in litigation.

A better way to handle the problem would be to exclude the word "material." The effect of removing this word is that a breach of *any* provision in the lease would give the nonbreaching party the right to terminate. Arguments over what constitutes a material breach disappear. Allowing termination for breach of any condition would not be that harsh. The right to terminate under the sample lease is a qualified right. Therefore, the breaching party could only be terminated after receiving written notice and after failing to correct the problem.

Even if Part XI(b) did not require notice before termination for breach, case law provides that breach of a condition for which forfeiture is expressly provided does not automatically terminate the lease.<sup>202</sup> An intent to terminate must be communicated to the breaching party by a clear and unequivocal

196. *Garibaldi v. Oklahoma Indus. Fin. Corp.*, 543 P.2d 555, 557 (Okla. 1975).

197. *Id.*

198. *Id.*

199. 41 OKLA. STAT. § 11 (1981).

200. *Id.*

201. *Id.*

202. *Howard v. Manning*, 79 Okla. 165, 192 P. 358, 361-62 (1920).



act.<sup>203</sup> If the lease provides for notice of default and intent to terminate, notice must be given in accordance with the lease provisions.<sup>204</sup> However, terminating a lease upon breach of an express condition is optional and can be waived.<sup>205</sup>

The landlord must be careful not to unintentionally waive the right to terminate. If the landlord waits an unreasonable length of time before enforcing the right to terminate for breach of a covenant, the right may be deemed waived.<sup>206</sup> Generally, a landlord who has full knowledge of the breach and continues to accept rent has waived the right to terminate.<sup>207</sup>

### *XII. Additional Agreements and Modifications*

Additions and modifications can be made to the sample farm lease by the parties. Part XII requires that the changes be in writing, signed, attested, and attached to the lease agreement. However, in certain circumstances oral modifications are valid even though the lease expressly requires the changes to be in writing.<sup>208</sup>

Despite a lease provision forbidding oral changes, the parties may make several oral modifications and additions during the year when written changes seem too burdensome. Therefore, routinely updating the lease provisions each year is a good idea. A yearly update keeps the lease agreement current with the needs of the parties and provides a more accurate working document for the parties to follow.

### *XIII. Signatures*

#### *A. Statute of Frauds*

Part XIII of the sample lease provides space for the lease to be signed by both parties, dated, and witnessed. The principal legal reason to have a signed, written lease agreement is to satisfy the Statute of Frauds.<sup>209</sup> An agreement to lease real property for more than one year must be in writing and signed to be valid under the Statute of Frauds.<sup>210</sup> Moreover, a conveyance of an interest in real estate, other than a lease for one year or less, must be signed and in writing to be valid under section 4 of title 16.<sup>211</sup> Thus, section 4 applies to conveyances, and the Statute of Frauds applies to contracts.<sup>212</sup>

203. *In re Ferris*, 415 F. Supp. 33, 37-38 (W.D. Okla. 1976).

204. *Id.*

205. *Id.*

206. *Id.*

207. *Id.*; see *supra* notes 70-72 and accompanying text.

208. 15 OKLA. STAT. § 237 (1981); see also *Paseo Village v. Armstrong*, 748 P.2d 1002, 1003 (Okla. Ct. App. 1987); *Pfeiffer v. Peppers Refining Co.*, 197 Okla. 603, 173 P.2d 581, 583 (1946).

209. 15 OKLA. STAT. § 136 (1981).

210. *Id.*

211. 16 OKLA. STAT. § 4 (1981).

212. *Id.*; 15 OKLA. STAT. § 136 (1981).

Oklahoma courts hold that a lease is in the nature of a contract and controlled by principles of contract law.<sup>213</sup> However, courts also hold that a lease becomes an estate in real property when the tenant takes possession.<sup>214</sup> A lease, therefore, is classified as a contract and as an interest in property.<sup>215</sup> Compliance with both the Statute of Frauds and section 4 is necessary because of this dual classification. Because statutory requirements for section 4 and the Statute of Frauds appear to be the same, compliance is not a problem.<sup>216</sup>

The purpose of the Statute of Frauds is to prevent fraud by requiring written evidence of contract terms.<sup>217</sup> An oral lease for more than one year, though not prohibited by the Statute of Frauds, is not legally enforceable.<sup>218</sup> If the terms of a written lease are drafted but the agreement is not signed, the lease is treated like an oral agreement.<sup>219</sup> Because an oral lease for more than one year is unenforceable, the method used to calculate the one-year period becomes very important.

In some states, the one-year period commences from the date the lease is executed and runs until the end of the lease term.<sup>220</sup> Thus, an oral agreement executed on June 1, 1991, for a one-year lease term beginning July 1, 1991, and ending July 1, 1992, would be unenforceable because the whole agreement spans more than one year. However, in Oklahoma the length of an oral lease of farm land is determined by the date the lease term begins, *not* the date the agreement was executed.<sup>221</sup> Therefore, if the beginning and ending dates provided in Part II of the sample lease specified a one-year period or less, the lease would be enforceable in Oklahoma even though unsigned.<sup>222</sup>

### *B. Exception to Statute of Frauds*

Under certain facts an oral lease for more than one year will be excused from the requirements of the Statutes of Frauds and thus be enforced by the courts. The doctrine of partial performance allows agreements to be removed from the provisions of the Statute of Frauds.<sup>223</sup> The three elements that must be met to constitute partial performance are: (1) possession by

213. *Mercury Inv. Co. v. F.W. Woolworth Co.*, 706 P.2d 523, 529 (Okla. 1985).

214. *Ferguson v. District Court*, 544 P.2d 498, 499 (Okla. 1975); *Sublett v. City of Tulsa*, 405 P.2d 185, 200 (Okla. 1965); *Howard v. Manning*, 79 Okla. 165, 192 P. 358, 360 (1920).

215. *Ferguson*, 544 P.2d at 499; *Sublett*, 405 P.2d at 200; *Howard*, 192 P. at 360.

216. Both statutes require a signed writing.

217. *Joseph E. Seagram & Sons, Inc. v. Shaffer*, 310 F.2d 668, 673 (10th Cir. 1963); *Wells v. Shriver*, 81 Okla. 108, 197 P. 460, 483 (1921).

218. *Teel v. Harlan*, 199 Okla. 268, 185 P.2d 695, 697-98 (1947).

219. *Claiborne v. Claiborne*, 467 P.2d 157, 158 (Okla. 1970); *Boettler v. Rothmire*, 442 P.2d 511, 514 (Okla. 1968); *Cauthron v. Goodwin*, 287 P.2d 893, 896 (Okla. 1955); *National Bank of Hastings v. Pierce*, 94 Okla. 153, 221 P. 111, 112 (1924).

220. *See, e.g., Rader v. Huffman*, 125 Ill. App. 554 (App. Ct. 1906).

221. *Schwartz v. McDaniel*, 202 Okla. 324, 213 P.2d 568, 570 (1950).

222. *Rossiter v. Citizens' State Bank*, 51 Okla. 625, 152 P. 120, 120 (1915).

223. *Claiborne v. Claiborne*, 467 P.2d 157, 158 (Okla. 1970).

the tenant, (2) payment of consideration by tenant, and (3) valuable improvements by the tenant with the consent of the landlord.<sup>224</sup>

The first element should always be met. A tenant will almost always be in possession of the premises. Elements two and three are more difficult to satisfy. Payment of consideration by the tenant may be lacking because under agricultural leases, rent is normally paid at the end of the year. Furthermore, improvements must be valuable and permanent to satisfy the partial performance doctrine.<sup>225</sup> A minor expenditure in work and improvements is not sufficient.<sup>226</sup> Even if the tenant does make major improvements, the tenant must make sure that the work is done with the landlord's consent.

### C. *Acknowledgment and Recording*

The sample lease does not contain an acknowledgment section. An acknowledgment clause must be added before the lease can be validly recorded.<sup>227</sup> The acknowledgment must be under seal and taken before a notary public.<sup>228</sup> A recorded, unacknowledged lease is invalid.<sup>229</sup>

Acknowledgment and recording is not required to make a lease valid between the original landlord and tenant.<sup>230</sup> However, section 15 of title 16 requires that the lease be acknowledged and recorded to be valid against third persons.<sup>231</sup> One exception to the above requirement exists where the lease term is for one year or less and accompanied by actual possession.<sup>232</sup>

The exception appears to be unnecessary. Under section 15, "third persons" are defined as innocent purchasers for value.<sup>233</sup> Recording the lease, actual possession by the tenant, or a notice clause in the deed itself prevents a purchaser from being a "third person." Actual possession by the tenant will almost always be present. Therefore, the exception in section 15 never becomes operational because actual possession prevents innocent purchaser status.

## XIV. *Additional Provisions*

### A. *Unanticipated Economic Benefits*

Unanticipated economic benefits are unplanned income producing activities that occur during the lease. One example of an unanticipated economic

224. *Tulsa Herald, All Church Press v. National Mut. Casualty Co.*, 199 Okla. 29, 182 P.2d 496, 498-99 (1947).

225. *Johnston v. Baldock*, 83 Okla. 285, 201 P. 654, 658 (1921) (slight improvements costing considerably less than the rental is not sufficient).

226. *McMonigle v. Poorhorse*, 174 Okla. 534, 51 P.2d 288, 290 (1935) (sowing wheat in a hog lot and making minor fence repairs are insufficient improvements).

227. 16 OKLA. STAT. § 26 (1981).

228. *Id.* § 35. For an acknowledgement form, see *id.* § 33.

229. *Id.* § 26.

230. *Id.* § 15.

231. *Id.*; see also *Sargent v. Shaver*, 69 Okla. 282, 172 P. 445, 446 (1918) (agricultural lease not accompanied by actual possession is invalid against purchaser unless acknowledged and recorded).

232. *Id.*

233. *Whitehead v. Garrett*, 199 Okla. 278, 185 P.2d 686, 688 (1947); *Oklahoma State Bank of Wapanucka v. Burnett*, 65 Okla. 74, 162 P. 1124, 1126 (1917).

benefit occurs when the tenant allows an advertisement to be painted on the side of a barn close to a busy highway. The rent for the advertisement may be substantial. If the lease does not have a provision stating how unexpected economic benefits should be divided, both landlord and tenant will attempt to claim the entire amount. Other examples of lucrative economic benefits include selling pasture for grass seed rather than grazing, and subleasing the farm to a movie studio.

Oklahoma follows the presumption that the landlord only gives the tenant a limited bundle of rights to the property.<sup>234</sup> Rights not expressly conveyed are retained. Thus, the landlord has a strong argument that the rights to unexpected benefits are not conveyed in the lease unless specifically mentioned. However, the answer to this argument is not clear. The tenant can make several good arguments too.

The tenant can argue he should be entitled to the economic benefit if the activity does not harm the landlord's reversionary interest. Moreover, the tenant can argue that not engaging in a profitable activity is an inefficient use of resources. Finally, the strongest argument for the tenant is that the tenant should receive the benefit if the lease does not expressly prohibit the tenant from engaging in the activity. The general rule is to interpret most strongly against the drafter of the agreement. The drafter often may be the landlord. An unanticipated economic benefits clause should be added to the lease to avoid potential future arguments.

#### *B. Right to Harvest Growing Crop after Termination*

The general common law rule, followed by Oklahoma, is that a tenant under a lease for a term of years is *not* entitled to crops which do not mature until after the termination of the lease.<sup>235</sup> The tenant is deprived of the crop because it is the tenant's own fault that he sowed a crop he could not harvest before the end of the lease term. A term of years ends at a definite time. Thus, the term of the lease itself is notice to the tenant of when the lease will end.

However, occasionally a lease recognizes either expressly or by implication a tenant's right to sow in the last year of the lease term. Assuming the lease does not specify who is entitled to the crop, a tenant has a right to harvest the "away-going crop" upon expiration of the lease.<sup>236</sup> An "away-going crop" is a crop that is planted by the tenant during the lease term, but that is not ready for harvest until after the lease has terminated.<sup>237</sup> The away-going crop must be an "emblemment" to be removed at the end of the lease.

Traditionally, "emblemments" consisted of crops annually produced by the labor and industry of the tenant.<sup>238</sup> Corn, wheat, and rye are typical examples of emblemments.<sup>239</sup> In Oklahoma, the word "crop" is practically synonymous

234. *Mohawk Drilling Co. v. Wolf*, 262 P.2d 892, 893 (Okla. 1953).

235. *Bristow v. Carriger*, 24 Okla. 324, 103 P. 596, 598 (1909).

236. *Moore v. Coughlin*, 36 Okla. 252, 128 P. 257, 258 (1912).

237. BLACK'S LAW DICTIONARY 125 (5th ed. 1979).

238. *Id.* at 469.

239. *Id.*

with emblements. Courts have held that time is an element of the definition of crop. Ordinarily "crop" is restricted to the yield of a single year or season.<sup>240</sup>

However, Oklahoma courts have expanded the traditional meaning of emblements from strictly annual crops to any growing crop which owes its existence in its final form to the care and cultivation of man.<sup>241</sup> Perennial plants are included within this meaning. Thus, emblements in Oklahoma include certain grasses and the fruits of trees.<sup>242</sup> In Oklahoma, a crop is a "growing crop" from the time the seed is planted until harvest.<sup>243</sup> A provision allowing the tenant to harvest growing crops after termination of the lease should be added to the sample lease form to fully protect a tenant under a term lease. The clause will protect the tenant as soon as the seed is planted because of the definition of "growing crops."

Under the doctrine of emblements,<sup>244</sup> a tenant holding a tenancy which will end at an uncertain time is entitled to harvest crops after termination which were planted during the tenancy. A tenancy at will is an example of an uncertain tenancy.<sup>245</sup> The doctrine's application is conditioned upon the termination not being the fault of the tenant.<sup>246</sup> The reasoning behind the doctrine of emblements is that the person who performs the labor should get to reap the harvest. To protect the tenant, the lease should provide that the tenant gets the away-going crop whether the termination is the tenant's fault or not.<sup>247</sup>

If the lease agreement does not give the tenant the away-going crop after termination of a term lease, the tenant normally has no right to the crop. Unless the lease provides otherwise, the landlord gets the improvements on the land when the lease terminates.<sup>248</sup> Therefore, a tenant under a term lease does not get the crop at termination because the crop is an improvement and stays with the landlord. However, the tenant has another argument that can be used to give him the right to harvest the crop after termination. Under the sample lease, Part VI gives the tenant the right to remove

240. *State Mut. Ins. Co. v. Clevenger*, 17 Okla. 49, 87 P. 583, 583 (1906).

241. *Superior Oil Co. v. Griffin*, 357 P.2d 987, 990-91 (Okla. 1960); *Cities Serv. Gas Co. v. Christian*, 340 P.2d 929, 935 (Okla. 1959).

242. *Id.*

243. *Hartshorne v. Ingels*, 23 Okla. 535, 101 P. 1045, 1048 (1909).

244. For an in depth discussion of the doctrine of emblements see Grossman & Tanner, *The Farm Tenant's Right to the Away-Going Crop: A Review of the Doctrine of Emblements*, 12 J. AGRIC. TAX'N & L. 195 (1990).

245. Two other examples of uncertain tenancies are a tenancy from year to year and a tenant leasing from a "life tenant." The doctrine of emblements is best used to protect a tenant leasing from a landlord who only has a life estate in the property (i.e. a life tenant). If the life tenant dies, the lease terminates. The tenant will lose the crop without the doctrine of emblements. Application of the doctrine of emblements to year-to-year tenancies is less clear. See Grossman & Tanner, *supra* note 244, at 206-08.

246. *Bristow v. Carriger*, 24 Okla. 324, 103 P. 596, 598 (1909).

247. *Gvozdanovic v. McCracken*, 172 Okla. 111, 44 P.2d 1, 1-2 (1935) (termination for nonpayment of rent is one example of a fault of the tenant that prevents the doctrine of emblements from applying).

248. See *supra* note 125 and accompanying text.

improvements. The tenant could argue that the lease gives the tenant the right to remove a growing crop after termination because the crop is an improvement. It is best, however, to include an express provision in the lease because this argument is questionable.

### C. Sale of Landlord's Reversion

During the term of the lease, the landlord holds a reversion, which consists of the right to rental payments during the lease term and the right to possession of the property after the lease ends. For various reasons, the landlord may want to sell the property while a tenant is currently in possession. The landlord is generally allowed to sell the property with or without the consent of the tenant. A provision in the lease restricting the landlord's right to sell the property is invalid as a restraint against alienation. However, such a clause may be valid if the landlord's special skills and expertise are needed to carry out the tenant's expectations under the lease.<sup>249</sup>

"Attornment" is the act of a tenant in acknowledging that he is obligated under the lease to the new landlord.<sup>250</sup> Where the tenant makes rental payments to the new landlord, attornment has occurred, and the tenant cannot contest the relationship.<sup>251</sup> The general rule is that a tenant becomes the tenant of the new landlord after the sale.<sup>252</sup> However, if attornment by the tenant does not occur, the conveyance of the landlord's reversion is still valid.<sup>253</sup> After the sale, if the tenant pays rent to the prior landlord before having notice of the sale, such payment can be used by the tenant as a defense against a new landlord requesting payment.

The purchaser of the reversion is only required to recognize the tenancy if the purchaser has notice of it. Otherwise, the third party is a good faith purchaser for value, without notice, and takes the property free of the lease. There are three ways the purchaser can receive notice. First, the deed itself may state that the property is being sold subject to the lease. The lease agreement should contain a provision requiring the landlord to sell the property subject to the lease. If the landlord fails to comply, the tenant has an action against the landlord for breach of an express provision of the lease. The purchaser also has notice of the lease where the tenant is in actual possession of the property. A third, and most effective, way to provide the purchaser with notice is through the recording acts.

If the landlord's deed to the purchaser makes the property subject to the lease, the purchaser is estopped from disputing the tenant's right to the lease.<sup>254</sup> The purchaser is liable in damages to the tenant for refusing to recognize the lease.<sup>255</sup>

249. RESTATEMENT (SECOND) OF PROPERTY § 15.1 (1977).

250. BLACK'S LAW DICTIONARY 119 (5th ed. 1979).

251. Stookey v. Robertson, 361 P.2d 836, 837 (Okla. 1961).

252. Sevy v. Stewart, 31 Okla. 589, 122 P. 544, 545 (1912).

253. 41 OKLA. STAT. § 12 (1981).

254. Gutensohn v. McGuirt, 194 Okla. 64, 147 P.2d 777, 781 (1944).

255. Scheer v. Cihak, 42 Okla. 679, 142 P. 1007, 1009 (1914).

#### *D. Mortgage and Foreclosure*

In many cases the landlord will have a mortgage on the property. If the mortgage exists before the lease, the landlord cannot bind the mortgagee to the lease without the mortgagee's consent. The landlord must then make the lease subject to the mortgage; thus, the mortgage has priority over the lease. The lease continues as usual so long as the landlord makes the mortgage payment. However, if the landlord defaults, the mortgagee can foreclose and take possession of the property, thus terminating the lease. In this situation, the landlord would be liable to the tenant for breach of the covenant of quiet enjoyment.

After foreclosure, the mortgagee will take possession of the premises and the growing crops. When the foreclosure sale occurs, the tenant is not entitled to the crops growing on the premises at that time. However, the mortgagee is entitled only to that amount of the growing crop which is required to meet the deficiency between the land value and the amount of the debt.<sup>256</sup> In most cases the deficiency will be large enough to consume the entire value of the growing crops.

As in the sample lease, the parties can agree to treat fixtures as personalty. Therefore, the improvements would not be subject to the mortgage on the real estate.<sup>257</sup> The above rule is contingent on the fixture being capable of removal without injury to the realty. The improvement is subject to the mortgage if removal would injure the realty.<sup>258</sup>

If the lease exists before the mortgage, the lease cannot be terminated upon foreclosure, because the mortgagee has notice of the lease. The mortgagee becomes the tenant's landlord for the remainder of the lease.

#### *Conclusion*

A farm lease is an instrument that should be tailored to the individual needs of the parties involved. Some of the provisions in the sample lease are not needed in every case. Many other provisions not mentioned in the sample lease can be used to carry out the parties' desires. The important thing is to brainstorm with the client to see that as many issues as possible are covered up-front in the lease to avoid problems from arising later. Even though many rights are provided by statute, it is a good idea to specify them in the lease anyway. Including all possible rights makes the farm lease agreement a document to which the parties can refer and ascertain their rights and responsibilities, without having to turn to an attorney.

Farm leases are drastically different from residential leases. Each type of lease has its own set of rules to follow and its own set of issues and problems that must be resolved. To do an effective job, the attorney should be familiar with farming operations and issues unique to farm leases.

256. *Anderson v. Marietta Nat'l Bank*, 93 Okla. 241, 220 P. 883, 885 (1923).

257. *C.I.T. Fin. Servs. v. Premier Corp.*, 747 P.2d 934, 938 (Okla. 1987).

258. *Smith v. Bush*, 173 Okla. 172, 44 P.2d 921, 925 (1935).

Most recent cases and commentary deal only with the residential landlord-tenant acts due to the large percentage of society that lives under residential renting conditions. However, farm leases continue to comprise a sizable portion of leases, and their numbers appear to be growing. Because land is a finite resource, it is becoming more difficult each year to find good farm land for sale. Moreover, farming operations today have to be larger to be competitive. Owning a large quantity of land is expensive. Thus, leasing is becoming more of a necessity.

Despite the fact that more than half of Oklahoma farm leases are oral, the number of written farm lease agreements is on the rise. The increase in farm tenancies and the increase in written leases will require more attorneys to familiarize themselves with farm leases. Thus, practitioners should remember the special needs of the agricultural landlord and tenant and provide for them accordingly. Attorneys should continue to encourage their farm clients to put their lease agreements in writing. The "agreement sealed with a handshake" may not be around forever.

*Barry G. Burkhart*



APPENDIX

OKLAHOMA FARM LEASE AGREEMENT

I. NAMES OF PARTIES AND DESCRIPTION OF PROPERTY.

This lease is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, between \_\_\_\_\_, landlord, of \_\_\_\_\_ ADDRESS and \_\_\_\_\_, tenant, of \_\_\_\_\_ ADDRESS

hereinafter called the landlord and tenant respectively, under the terms and conditions that follow, a farm of approximately \_\_\_\_\_ acres, situated in \_\_\_\_\_ county, Oklahoma, and described as follows:

II. TERM OF LEASE

The term of this lease shall be \_\_\_\_\_ year (s) from \_\_\_\_\_ MONTH \_\_\_\_\_ DAY, 19\_\_\_\_ to \_\_\_\_\_ MONTH \_\_\_\_\_ DAY, 19\_\_\_\_, and this lease shall continue in effect from year to year thereafter until written notice of termination is given by either party to the other on or before the \_\_\_\_\_ DAY day of \_\_\_\_\_ MONTH before the expiration of this lease or any renewal thereof.

III. RENTAL RATES AND ARRANGEMENTS (Options not applicable to be stricken)

Option A. Crop Share Rent

As rent the tenant agrees to pay or give shares or quantities of the following crops:

Table with 5 columns: Crop, Approximate No. Acres, Landlord's share, Tenant's share, Distribution of landlord's share. Rows 1-4.

Option B. Livestock Share Rent.

As rent the tenant agrees to pay or give shares or quantities of the following livestock:

Table with 5 columns: Kind, Approximate No. to be kept on farm, Landlord's share, Tenant's share, Distribution of Increase. Rows 1-4.

Note:

Option C. Cash Rent

As rent or partial rent for the farm, the tenant agrees to pay the total sum of \_\_\_\_\_ dollars (\$\_\_\_\_\_) per year. Cash rent will be paid at (place) \_\_\_\_\_ and as follows: (time) \_\_\_\_\_.

**IV. FARM OPERATION.**

A. The necessary equipment shall be furnished and farm operating expenses divided between the landlord and tenant as follows:

Equipment	Furnished by		Operating Expenses	Proportionate Share	
	Landlord	Tenant		Landlord	Tenant
All Equipment			All Operating Expenses		
Exceptions			Exceptions		

Note:

**V. CONSERVATION AND IMPROVED FARMING PRACTICES:**

A. *Soil Conservation District Plan for Farm.* The farm is covered in a Cooperative agreement between the landlord and the \_\_\_\_\_ Soil Conservation District, and the tenant agrees to operate the farm in accordance with the complete soil conservation and land use prepared under the said cooperative agreement.

B. *Conservation and/or other practices.* Payments which can be earned by participation in the Government Farm Programs shall be carried out as follows:

Practice and Extent	Contributions		Share of Government Payments	
	Landlord	Tenant	Landlord	Tenant
1.				
2.				
3.				
4.				

C. *Other Improved Practices:* Other improved farming practices which the landlord and tenant agree will be mutually beneficial to both parties:

Practices and Extent	Contributions by landlord
1. _____	_____
2. _____	_____
3. _____	_____
4. _____	_____

**VI. IMPROVEMENTS AND REPAIRS**

A. The landlord agrees to furnish materials for normal maintenance and repairs to maintain the farm in its customary condition. The tenant will furnish ordinary labor and haul the materials for these repairs, it being mutually agreed that skilled labor will be provided by the landlord.

B. Additional major improvements to be provided by the landlord are as follows:

Kind	Date

C. *Construction and Removal of Fixtures by Tenant:* With the written consent of the landlord, the tenant may add improvements at his own expense. He shall have the right to remove them even though they are legally fixtures, but shall have no right to compensation for them except as mutually agreed.

D. *Compensation to Tenant for Unexhausted Value of Improvements:* In event of termination of this lease, the tenant shall be entitled to payment for the unexhausted value of his contribution to the cost of improvements made with the consent of the landlord according to the following schedule:

*Proportion remaining unexhausted after:*

Improvement	1 Year	2 Years	3 Years	4 Years	5 Years
Rock Phosphate					
Ground Limestone					
Terraces					

**VII. RECORDS.**

Records on all matters of joint interest shall be kept by the tenant and shall be available to the landlord upon request. The records shall specify the following items:

- A. \_\_\_\_\_ C. \_\_\_\_\_
- B. \_\_\_\_\_ D. \_\_\_\_\_

**VII. NONPARTNERSHIP AGREEMENT**

This lease does not give rise to a partnership. Neither party shall have authority to bind the other without his written consent.

**IX. RIGHT OF ENTRY.**

The landlord shall have the right, in person or by agent, to enter upon the farm for inspections, repairs, or improvements. In case this lease is not to be renewed, the landlord or the incoming tenant shall have the right before it expires to do plowing or other work on the farm when doing so will cause no damage or interference to the present tenant.

**X. ARBITRATION.**

If parties to this lease cannot reach an agreement on any matter, or problem, the question shall be submitted to an Arbitration Committee. This committee shall be composed of three disinterested persons, one selected by each party hereto and the third by the two thus selected.

**XI. IT IS MUTUALLY AGREED THAT**

- (a) This lease shall bind and shall inure to the benefits of the heirs, executors, administrators, and assigns of both parties.
- (b) If either party willfully neglects or refuses to carry out any material provision, the other party shall have the right, in addition to compensation for damage, to terminate the lease. He shall do so by written notice on the party at fault, specifying the violations of the agreement. If violations are not corrected within 30 days, the lease shall be terminated.

**XII. ADDITIONAL AGREEMENTS AND MODIFICATIONS:**

Any additions to this contract or changes therein shall be in writing, and when so signed and executed before witnesses and attached hereto shall become a part hereof.

XIII. In testimony whereof witness our hands at \_\_\_\_\_, Oklahoma, on this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_ A. D.

Witnesses as to both signatures,

\_\_\_\_\_  
 (Landlord) (Seal)

\_\_\_\_\_  
 (Tenant) (Seal)