

Basics of Farm Lease Agreements

Tenants and property owners will find the information in this guide useful for developing mutually agreeable rental agreements. A properly designed lease meets the objectives of both property owners and tenants. Property owners and tenants should routinely discuss their lease to ensure that it continues to meet their objectives and modify it when necessary. Reasons to review a lease include changes in objectives for owning land or for farming, production technology and practices, government programs and regulations, and input and commodity prices.

Leases, whether written or verbal, are legally binding contracts between two parties. Attorneys can offer valuable advice and service when creating or modifying a lease contract.

Value of a written lease

Before two parties enter a lease, they need to discuss many details for which each party will be responsible. Each person needs to understand their own objectives and, hopefully, the objectives of the other. They also need to know the limits of each party. The value of a written lease contract is that it helps the property owner and prospective tenant think about, discuss and agree upon the essential elements of the leasing agreement.

Writing the lease agreement has become more important over time. Tenants with multiple landlords document different agreements they may have made with different landowners. Landowners change their needs, desires and business capacity as they age. Memories fade over time and a written lease documents previous discussions and agreements.

The following elements of a farm lease are presented as discussion points between the tenant and landowner. Once both parties have agreed to any point, it should be written as a record of the agreement.

Elements of a lease agreement

- Name of parties
- Description of property
- Beginning and ending dates
- Rental rates and agreements
- Farm operating expenses
- Allowable activities
- New technologies and practice
- Conservation practices
- Improvements and repairs
- Records
- Not a partnership
- Right of entry
- Arbitration
- Additional modifications
- Signatures

Names of parties

Leases should clearly identify the parties entering into the contract, using full legal names. Be specific as to whether each party is an individual person(s), a partnership, a corporation, or a limited liability partnership (LLP) or company (LLC).

Description of property

The leased property should be designated with its legal description (e.g., township, range, section). In addition to the legal description, other descriptors that might be used are a physical address (such as a 911 address), a common farm name (the “Smith Place”) and the FSA farm number. Including aerial photographs of the property with outlines of the land being leased helps clarify exactly what property the tenant can access. For example, an aerial photograph might exclude forested land or some structures that lie within the land’s legal

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description but which the landowner is not leasing to the tenant.

Beginning and ending dates

The beginning and ending dates are not always straightforward. Questions to consider when determining these dates:

- When does the lease begin?
- When is the tenant allowed to begin farming?
- When must the tenant vacate the land?

The beginning of the lease has legal implications for termination. The dates the tenant is allowed to enter and must vacate are critical for determining farming activities. Writing these dates in a lease helps alleviate termination and transition problems.

The lease agreement can be for any length of time. Most leases in Missouri are for one year. This means the tenant could change each year. However, in practice, landowners continue to rent to the same tenants for many years after the initial annual lease has expired. Sometimes the tenant wants the lease to specify that they will be able to lease the land for multiple years.

Many written lease agreements include an automatic renewal clause and the date when notice to terminate needs to be given to either party. Unless specified otherwise in writing, notice to terminate the lease must be given to the tenant 60 days prior to the anniversary of the lease agreement. The anniversary of the lease agreement is not always the same as the date the tenant was granted access to the land. The date when a lease was agreed upon can be difficult to establish for an oral lease – another reason for a written lease.

The planting of fall seeded crops such as wheat or cover crops can create problems for leases that typically cover either a calendar year or the corn and soybean growing season. A written agreement can specify that notice of continuation or termination of the lease should be communicated prior to the time when fall crops are planted.

The duration of the lease is often important to both tenant and landowner. Tenants may seek longer term leases to justify capital investments. Tenant improvements to the land, such as liming or terracing, are fostered by either a multiyear lease or an agreement on how the landowner will compensate the tenant for any improvements made. Landowners may favor a short-term lease on the basis that a longer-term lease may make the property more difficult to sell. This problem can be solved by including a termination clause that would apply in case the farm was sold. Early termination clauses can specify how the tenant would be compensated for any tenant improvements to the land if the lease is terminated early.

Rental rates and arrangements

Rental rates and payment arrangements are often major discussion points between landlord and tenant. Although the rental rate can be renegotiated as often as desired and discussed each time the contract is renewed, rental rates typically do not change every year. Tenants and landowners who want rental rates to closely reflect yields and prices every year might benefit from either a flexible cash lease or a share lease (discussed below).

There are four basic methods of paying rent: cash rent; flexible cash rent; share rent; and farm machinery, equipment and buildings rent.

Cash lease. The cash lease is the most common and simple type of lease. The tenant pays the landowner an annual cash rental payment per acre, per field or per farm. Rental payments can be paid at any time the lease specifies. It is common that rent is either paid fully in the spring or paid half in the spring and half at harvest time. The lease agreement should specify the amount and method of paying rent so that both tenant and landowner know the payment amounts and due dates before crops are planted.

Because cash leases require less landowner management and time compared to other types of leases, owners may receive lower returns than in other lease arrangements. Since cash rent amounts may not reflect yield and price volatility, cash leases may need to be negotiated more frequently than other leases, depending on economic situations.

Flexible cash lease. The flexible cash lease is often called a variable cash lease or a hybrid lease. Flexible cash rental agreements are increasing in use as tenants seek to share revenue risk with landowners and landowners seek to capture some portion of unanticipated high revenues. The rent adjusts more quickly than in cash leases to current economic conditions when prices and yields change.

The flexible cash lease agreement states that the tenant will pay in proportion to the estimated revenue from agricultural production on the land. The tenant pays a mutually agreed base rent, usually in the spring prior to planting. A second rental payment is made after harvest based on the revenue from that year's production. Flexible cash leases do not have to be renegotiated every year. It is important to agree on all the data used to determine base rent, percent of revenue, and prices in each year. Other types of flexible cash rental arrangements include flexing only on price, or on yield, or on both price and yield.

Share lease. The share lease is the second most common lease type. A share lease can apply to crop, pasture, hay, or livestock production. For ease of communication, this guide assumes a crop share lease.

However, the principles of rental payment apply to all types.

In a crop-share lease each party receives a share of the crop as return for their contribution of land, labor and capital. Compared to a cash lease, landowners in a share lease have more business involvement and bear more risk. The landowner's share of the crop depends on the contribution made toward crop production. Landowners frequently pay some portion of the cost of fertilizer, seed and chemicals – in addition to providing the land. After harvest, the landowner receives a designated percentage of the crop yield.

The tenant's share of the crop also depends on their contribution. Tenants normally provide all the labor and equipment. They may cost share with the landowner on fertilizer, seed and chemicals. After harvest, the tenant receives a percentage of the crop yield.

Income from share leases is unknown until the crop is harvested and sold. Each party is often responsible for selling their share of the crop. Sometimes, the landowner allows the tenant to sell the crop and pay the rent in cash rather than in delivered commodities.

Farm equipment, storage bin and buildings leases.

Landowners may have assets other than land to lease, such as machinery, storage bins and buildings. Storage bins and buildings, if not included in the land lease, need to be specifically noted as not part of the land lease and recognized as subject to a separate lease agreement.

Tenants have found that leasing unused resources can be cheaper than making new capital investments. The owner can generate revenue from rental of these assets to cover the overhead costs of owning them.

Rent paid by the tenant should cover the property owner's ownership and variable costs for these assets. Rental payments can be fixed cash payments made once a year or flexible payments based on use (e.g., number of bushels stored, square feet of building used, etc.).

Farm operating expenses

The tenant is commonly responsible for farm operating expenses. However, a share rent typically has the landowner contributing toward some of these costs. Even with a cash rent, the landowner may pay some of the costs. Discussions and agreement of who will pay for expenses such as lime application and repair of local compaction problems can be recorded in a lease.

Allowable activities on the land

Landowners lease land expecting tenants to perform certain activities on the land such as growing crops or grazing cattle. But the land can be used for more activities than initially envisioned. The right to hunt is an activity that the landlord might like to reserve for him/herself or for others. The landowner might also want to

limit the tenant's right to harvest timber and firewood. Landowners and tenants can discuss and come to agreement on what activities they want to have the right to do on the leased land. Writing these into the lease serves as a guide and reminder in the future.

New technologies and practices

Improved agricultural production technologies affect how leases are managed. Precision agriculture creates and uses large amounts of data to create yield maps, fertilizer recommendations and management information. Leases can specify who maintains and has access to this information.

New good farming practices, such as 4R nutrient management, can impact soil and water quality of land. Landowners and tenants can routinely discuss new practices and technologies to determine if any of them should be incorporated into the terms of the lease.

Conservation practices

Landowners have significant resources tied up in land and want to maintain its value. Conservation practices such as grassed waterways, riparian zones and planting cover crops can preserve the value of land and water resources. Conservation practices require labor and money to install and maintain. Leases can record what practices are expected of the tenant and what involvement, if any, the landowner will have in deciding and paying for conservation practices.

If the tenant incurs the cost for long-term conservation practices (e.g., planting a grassed waterway), the lease can specify how that cost will be recovered if the lease expires before the value of the conservation practice is exhausted.

Some conservation practices generate income for providing an environmental service. Examples include carbon sequestration contracts and water quality contracts. These practices may involve a long-term contract that requires landowner approval. The lease needs to recognize the expenses associated with these activities and who receives the revenue.

Improvements and repairs

Prevent misunderstandings by agreeing ahead of time what maintenance and repairs will be done, when they will be done and what each party's responsibility is. Fence and road maintenance standards can be included in a lease. Some permanent improvements, such as irrigation systems and fences, might be installed by a tenant.

Harmonious lease relationships and the appropriate use of farm resources are fostered when both landowner and tenant agree on needed improvements and on an amortization schedule. A tax-based amortization

schedule might not be appropriate because it front loads the depreciation of any improvement. The lease can document how tenants will be paid for improvements they leave behind when they lose access to the land.

Records

In fixed and flexible cash leases, both tenant and landowner are responsible for keeping their own financial records. But in a share lease, some financial records need to be shared with each party. The lease can record the agreement about what financial records will be kept, which will be shared and who will keep the records.

The tenant usually keeps records of crop activities, inputs and yields. These records are important for management and tax decisions. These records belong to the tenant and need not be shared with the landowner unless the lease specifies that the landowner will be provided a report of yields and production information.

Not a partnership

A lease does not create a partnership. The lease agreement can clearly state that no partnership is implied.

Right of entry

Without a clear statement in the lease that the landowner has the legal right to enter the property, the tenant has the right to treat any person on the property as a trespasser - including the landowner. A lease agreement can clearly state that the landowner can access the land for various purposes such as inspection or recreation.

Arbitration (settlement)

Problems arise in business dealings. Many problems can be minimized if the landowner and tenant discuss the purposes and activities of the lease, come to various agreements, and write these in a lease document.

A written lease can also have clauses detailing how to clarify and make changes to the lease. Even a lease with a renewal clause benefits from annual discussions of each party's expectations. The lease can specify that both parties communicate plans of changes in typical activities before they are enacted. Should landowner or tenant think that the lease agreement is being violated, the lease can list disinterested persons who can arbitrate

and settle those differences promptly and in an impartial manner.

Additional modifications

An effective lease has sufficient flexibility to allow changing previously agreed decisions. Any changes made after the initiation of the original contract should be made a part of the written contract as a codicil or in subsequent signed lease agreements.

Signatures

The first element mentioned in this guide stated that a lease needs the names of all parties. Once the lease is written and reviewed, all parties need to sign the agreement.

All co-owners of the property, including husband and wife, should sign the lease agreement when property is held in joint tenancy.

If the tenant is a sole proprietor, he/she should sign the lease. If the tenant represents a partnership, corporation, LLP or LLC, the business entity would be recognized as the tenant with the signature of someone authorized to sign on behalf of it.

For further information

The following leasing publications can be found through University of Missouri.

- MU Extension publication G427, [Cash Rental Rates in Missouri](https://extension.missouri.edu/publications/g427) (extension.missouri.edu/publications/g427)
- MU Extension publication G424, [Crop-Share Leases in Missouri](https://extension.missouri.edu/publications/g424) (extension.missouri.edu/publications/g424)
- MU Extension publication G422, [Flexible Cash Leases in Missouri](https://extension.missouri.edu/publications/g422) (extension.missouri.edu/publications/g422)
- MU Extension publication G520, [Verbal Farm Rental Agreements Under Missouri Law](https://extension.missouri.edu/publications/g520) (extension.missouri.edu/publications/g520)
- MU Extension publication G9420, [Landowner's Guide to Lease Hunting in Missouri](https://extension.missouri.edu/publications/g9420) (extension.missouri.edu/publications/g9420)

Other leasing publications, leasing forms and lease spreadsheets can be found at aglease101.org.

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