

AGRICULTURAL GUIDE

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Leases

Verbal farm rental agreements under Missouri law

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Two parties, a landowner and a tenant, discuss a rental farm, the method of sharing expenses and receipts, and shake hands. They've made a verbal rental agreement. Many agricultural leases are formed this way. Unfortunately, informal verbal leases do not cover the problems and possible conflicts that may arise under leases. It is important for landowners and prospective tenants to know the laws that control verbal and written agreements.

A dispute arises when a disagreement over terms of the contract cannot be settled. This can lead to a costly lawsuit and a loss of valuable farming time. Making a written agreement will not prevent a lawsuit in all situations. But, the terms of written agreements are not as subject to dispute as verbal agreements.

This guide sheet deals with problems of lease duration, notice of termination, invalid verbal agreements, subleases and assignments, death of a landlord or tenant, life estates, security for rent, holdover remedies, sharecropper agreements, and the rights, duties, and liabilities of both the landlord and the tenant.

With regard to the landlord-tenant relationship, some parts of the law are not clear. Also, landlord-tenant cases are often settled out of court because of the small amount of money involved. Therefore, there are not answers to every question that might arise. Some answers, given by courts, were expressed years ago when farming practices were much different. Courts today might give a different answer.

This publication is merely a guideline to help you understand problems created with verbal agricultural leases. Check with an attorney for legal advice regarding your own situation.

Lease duration

A verbal agricultural lease for less than one year is the

same as *tenancy at will*. It would be specifically enforceable (valid) for the stated time period and is not invalidated by the statute of frauds.

A periodic tenancy, year-to-year, is created when the agricultural tenant holds over (keeps possession of the land) for another year. Common law is applicable to convert a tenancy at will into a periodic tenancy, year-to-year. A periodic tenancy is continuous and of indefinite duration. At each anniversary of the verbal agreement, the lease continues, unless notice of termination is given.

A verbal lease for longer than one year is invalid under the statute of frauds. Under an invalid oral lease, farmland is in a year-to-year tenancy.

These rules are generally applicable to verbal agricultural leases. If the property is not being used for agricultural purposes, a verbal lease that is held over will be considered as a month-to-month tenancy.

Termination of the lease

The important distinction between a year-to-year tenancy and a month-to-month tenancy is the notice required to terminate the verbal agreement. To terminate a periodic, year-to-year tenancy, Missouri law requires that written notice be made by the party wishing to terminate the lease to the other party not fewer than 60 days before the end of the lease. Month-to-month tenancies can be terminated with one month's notice in writing.

The notice to terminate the agreement must be *written*, even though the original agreement is verbal. If proper written notice is not given, the other party can enforce another term of tenancy.

A Missouri court decided that where the landlord and tenant agreed verbally on a specific termination date, no notice was necessary. So, if a verbal agreement is to end at a certain time, the tenant must vacate without notice. If no certain time is set for the tenancy to end, the agricultural tenancy will be considered as a year-to-year tenancy, which requires 60 days notice. By special agreement, a landlord and tenant can agree that no notice is required to terminate the lease.

The tenancy begins on the day of the verbal agreement, not on the day possession is given. So, if the parties enter a verbal agreement on March 1, 1981, the last effective date of the lease is February 28, 1982, if the proper notice is given. If there is no termination, the new lease year begins on March 1, 1982. This is important in determining when to give notice.

In Missouri, landlords traditionally rent farm land from and to March 1. There is some indication that southern Missouri landlords rent to and from December 31.

The place where notice is served is not important if it is delivered to the tenant or landlord in person, and if it's received within the specified time. If personal service cannot be made, it is sufficient if notice is left with a member of the family over the age of 15 at the usual place of residence. The person serving notice should retain a copy for his protection. If notice is sent by mail, it could be sent either by registered mail or certified mail with return receipt requested.

Invalid oral agreements

Generally, a verbal agreement to lease land for more than one year is invalid and unenforceable. The one-year period means one year from the time of the making of the agreement, not one year from the time of first possession. So, a verbal lease made in February under which the tenant was to take possession on March 1, and was to run to next March 1, would be longer than one year and unenforceable. If the landlord will not deliver possession, the tenant has no recourse.

Courts will usually enforce a verbal lease for more than a year as a year-to-year tenancy if there has been part performance such as when crops have been planted. The court usually does this to prevent the defaulting party from making use of the written requirement to commit a fraud. When the tenant has taken possession, the full extent of the agreement will be enforced as a tenancy at will, if the court recognizes the doctrine of part performance. The best protection for the tenant would be a written agreement.

Sublease and assignments

Under a sublease, the original tenant retains some rights or obligations in the leased property. Under an assignment, the entire interest is transferred to the new tenant, and the original tenant has no rights or obligations under the original lease.

Missouri law specifically denies the tenant the right to assign the lease interest without obtaining written consent from the landlord. This law applies to any tenant with a lease for a period of less than two years, so it would apply to verbal leases. If the tenant assigns the lease to someone without the permission of the landlord, the landlord, after giving 10 days notice, can re-enter the premises.

This law does not prohibit the tenant from subletting. A tenant can sublease under a verbal lease in the absence of a valid and binding agreement prohibiting such a sublease. When the original lease was for farming purposes only, a sublease without the same restrictions has been held void. For example, if the

original lease restricted the use of the land by the tenant to the planting of row crops, the sublease must also contain this restriction for the subtenant. Also, it has been held that a tenant from year-to-year has no authority to sublease the farm so as to tie it up with a crop the following year.

A landlord can prevent assignment and subletting by the tenant by entering such a clause in the lease, preferably in writing.

Death of landlord or tenant

Unless otherwise specified, a lease is binding on the heirs of a landlord or tenant. The surviving party and a representative of the deceased party may want to terminate the lease and can do so by mutual agreement.

One of the biggest disadvantages of oral leases is death of a party to a verbal agreement. The law does not permit one party to testify to the terms of a agreement or lease in a court when the other party to the agreement or lease is deceased. This means that survivors may have difficulty proving the contents of the agreement because they cannot testify. For this reason, agreements should be in writing.

When landlord owns life estate

A prospective tenant should determine whether the landlord is the owner of a fee interest or only a life estate in the land. A life estate means the landlord owns and controls the land only for the duration of his life. At death, title to the land is automatically transferred to others as specified in the original deed creating the life estate. However, this does not prevent the life estate owner from leasing interest held in the land. A *fee interest* is more of an ownership interest than is a life estate. A *fee simple absolute* is the best ownership interest possible in land.

The tenant must be careful when making the agreement. If an ordinary life estate landlord dies, the tenancy ends because the life estate owner cannot transfer an interest not owned. If the landlord only holds a life estate, the tenant may want the remaindermen (those who take at the landlord's death) to enter the agreement, so the tenancy will continue at the death of the life estate owner.

The tenant must be given the required statutory notice by subsequent owners to be removed from the land. If the subsequent owner forces the tenant to leave, the tenant retains the right to harvest crops planted even though rights of tenancy have been terminated.

Landlord security for rent

The tenant leaving the farm prematurely is still liable for any rent due under the agreement. The landlord

has a lien on any crops for the year in which the crops were grown as security for the rent due. A lien is a right or claim on property by a creditor to secure payment of a debt from the debtor. The lien continues for eight months after the rent becomes due and payable. The statutory lien is not only for the protection of the landlord, but it operates as well to the benefit of the tenant. It enables a tenant to secure land without having to provide a security deposit for rent.

The landlord can recover rent due from a person who purchased the crops from the tenant if the purchaser knew the crops were grown on rented land. The landlord can recover from the purchaser only up to the amount of crops the purchaser received from the tenant.

If the tenant endangers the landlord's rent, the landlord may attach by court order any personal property of the tenant. (There are certain exemptions.) The principal advantage to attachment of personal property over the lien on crops is that attachment may be used whenever the rent is endangered (even if the rent is not yet due). The landlord may have a lien on crops only when the rent is actually due.

Landlord remedies for holdover

Failure to vacate

If a tenant willfully holds over after the termination of his tenancy, the landlord has several remedies. The landlord can hold the tenant as a tenant for another tenancy. This is the procedure that creates a year-to-year tenancy. This alternative is not often used.

The landlord can treat the tenant as a trespasser and have him evicted. He can also take the tenant to court under an unlawful detainer action. In this proceeding, if the landlord proves the right to possession, possession will be restored, and the tenancy will be terminated.

Under Missouri law, the landlord has the option of holding the tenant liable for double rental value of the premises during any holdover. In most situations, the landlord simply wants possession of the land. Therefore, the unlawful detainer action would be the proper procedure.

Rights, duties, and liabilities of landlords

Entry by landlord

A landlord cannot enter upon the rental premises for any purpose unless that right is in the agreement. If bound to make repairs, the landlord has the right to enter upon the premises. If the tenant has abandoned the premises before the lease has expired, the landlord may re-enter. If the right to re-enter is desired by the landlord, it should be specifically written in the agreement.

Repairs

Generally, the landlord is neither obligated to repair the premises nor to pay for repairs that may be made by the tenant. This includes ordinary repairs; that is, those necessary to keep the premises in a safe condition. In Missouri, however, it has been held that a landlord gives an implied warranty that a dwelling will be habitable and fit for living at the beginning of the term and that it will remain so during the entire term. This case involved a dwelling in a municipality, but it might be extended to farmhouses so that the landlord would be responsible for the dwelling being in a habitable condition.

Violation of lease

If a tenant violates the conditions of a lease or commits waste (an abuse or destructive use of the property) of the leased premises, the landlord, after giving 10 days notice, can re-enter the premises and take possession. These conditions do not include the nonpayment of rent because there are other statutory remedies, including unlawful detainer and the statutory lien which can be used to collect rent.

Fences

Generally, the landlord is responsible for major repair and construction of fences, and the tenant is responsible for ordinary repairs. Again, this is a matter that should be specifically agreed on in writing by the parties.

Rights, duties, and liabilities of tenants

Crops

The doctrine of emblements gives the tenant the right to come on the premises and harvest crops planted even though rights of tenancy have expired. Of course, the tenant harvests the crops subject to any lien the landlord may hold against them.

Tenants, who have been given notice to vacate before planting, may not have the benefit of the doctrine. For example, if the landlord gives the tenant notice on September 1, 1980, to vacate on February 28, 1981, the tenant may not be able to recover winter wheat planted on October 15, 1980.

This doctrine might not apply when a new owner buys the premises without knowledge of the rental agreement. This is another good reason for having a recorded, written lease to protect the tenant. If the lease is recorded with the county recorder, a purchaser would automatically be put on notice that the land is leased to the tenant.

Condition of premises

In the absence of a covenant for the tenant to repair, the tenant is not liable for ordinary wear and tear of

the premises. The tenant's obligation is, in effect, an implied covenant or promise not to commit waste and to return the premises to the landlord at the end of the term unimpaired by the negligence.

Insurance

The tenant is not responsible for property insurance of the premises unless it is specifically included in the lease agreement. (Many times, it is included.) If the landlord wishes to require the tenant to carry insurance, the written agreement should be clear as to the kind of insurance and the amount of coverage. Of course, the tenant should carry liability insurance and property insurance for personal belongings.

Destruction of improvements

When buildings or improvements on the premises are destroyed, the tenant is still obligated to pay rent unless the lease agreement relieves the rent obligation. So, if a building on the farm is destroyed by fire, the tenant is still responsible for the full amount of the rent. If the lease provides that the landlord is to keep the premises in general repair, and the destruction is not caused by the negligence of the tenant, courts will sometimes excuse the tenant from the payment of rent when the building has been totally destroyed.

Sale of premises

A sale of the landlord's interest does not terminate the lease if the tenant is in possession under a recorded valid lease, or a lease of which purchaser has knowledge. Sale would simply result in the substitution of a new landlord.

Fixtures

Tenants have the right to remove fixtures they have placed on the land if they can be removed without injury to the land. A fixture is more properly defined as an article of personal property which has been physically annexed to the land or to a building which is a part of the land, and therefore, cannot be removed without the consent of the landlord. Examples of fixtures include fences, portable buildings, gas tanks, or water lines. The tenant must remove fixtures before surrendering possession, for the right to remove them expires with the tenancy.

Improvements and alterations

In the absence of any express agreement, a landlord does not have to pay for any improvement the tenant may make, including fixtures. The tenant cannot offset the value of the improvement against the rent. Also, in the absence of any express agreement, a tenant has no right to make material or permanent alterations to the land.

Sharecropper agreements

In agreements where the tenant can farm the land but does not have exclusive possession, then the agreements are not leases but are instead sharecropping agreements. These agreements can be oral or written. The right to exclusive possession is the distinguishing element between landlord-tenant and owner-cropper relationships.

No notice is necessary to terminate a sharecropper agreement, for when the crop is harvested the cropper's rights to the premises are extinguished.

The cropper must exercise reasonable care and diligence in planting, cultivating, and gathering a crop. If the use of the land by the cropper results in injury to the crop or to the land, the landlord may be able to recover damages from the cropper.

Why a written lease?

Violation of verbal agreements is difficult to prove and is often reduced to arguments in court. For example, if a dispute arises concerning payment of rent in a year-to-year tenancy, it is the landlord's word against the tenant's. Additional testimonies from witnesses to the verbal agreement may be helpful but do not conclusively prove what was contained in the original agreement.

When they make a written agreement, prospective landlords and tenants are forced to think about and agree upon the essential considerations of the leasing and operating of a farm. Differences of opinion can arise unexpectedly. Time tends to make verbal agreements hazy while a written agreement is always available for reference and recall. There is also the problem of proving the elements of the verbal agreement since the survivor cannot testify when the other party to the agreement is dead.

There are only a few minimum requirements for a written lease. The basic lease provides the duration of the lease, names and addresses of the parties, the legal description of the property, rental rates, arrangements for payment of rent, and the signatures of each party. In addition, special agreements between parties regarding insurance, repairs, fences, land restrictions, improvements, and the landlord's right to re-enter should be included. Any changes made after the contract is signed should also be made a part of the written contract.

For standard lease forms, contact your University Extension Center. For a crop-share lease form, ask for NCR 77. For a cash-lease form, ask for NCR 76. For a pasture lease, ask for NCR 109, and for a livestock-share lease, get NCR 108.