

# Legal Aspects of Ohio Farmland Leases



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Farm lease arrangements are an important component of farming operations in Ohio. The contractual nature of a farm lease necessitates that farmland owners and tenant farmers understand the legal aspects of farm lease agreements. The following offers a brief explanation of legal aspects of Ohio farmland leases.

## Types of Farmland Leasing Arrangements

An initial step in the leasing process is determining the type of lease the parties prefer. Generally, there are two types of land leasing arrangements: the *cash lease* and the *crop share lease*. The major differences between the two center on inputs, risks, and returns. Legally, the two types differ in terms of impacts on estate taxes, social security benefits and farm program payments. Because of these potential legal implications, landowners and tenants should consult their attorneys, accountants, or similar professionals to determine which type of lease meets individual needs.

*The cash lease.* The cash lease involves cash payment of a specified sum in exchange for the use of farmland. Typically, the sum is a fixed amount based on total farm acreage. A cash lease may be paid in periodic payments or as a lump sum payment. The parties can structure the lease as a flexible-cash lease or a hybrid-cash lease, which ties the amount paid to production or price fluctuations. In Ohio, approximately 75% of land rents are cash leases.

*The crop share lease.* In a crop share lease, the landlord receives a specified share of the crop as the rent payment. The landlord may or may not also provide a portion of the labor, equipment, or supplies for the crop. The proportion of each party's inputs usually determines the respective crop share that each receives.

Many available resources provide detailed information on cash leases and crop share leases. For example, see other Fact Sheets on Ohioline at <http://ohioline.osu.edu/fr-fact/index.html>.

## Verbal versus Written Leases

Research suggests that most farm leases in Ohio are based on verbal agreements between the landowner and the tenant farmer. Ohio law does allow some types of verbal agreements to constitute valid contracts, but certain types of leases cannot be enforced at law if not in writing and signed by the party against whom enforcement is sought. The risk of being unable to legally enforce a lease agreement is a significant drawback to relying on a verbal rather than written agreement.

In addition to the issue of legal enforceability, parties operating under a verbal agreement subject themselves to lease problems due to differing assumptions, failure to fully address all details a lease arrangement requires, inability to precisely remember the terms of their verbal agreement, or lack of a plan for resolving disputes before the disputes occur. For these reasons, a written lease agreement is advantageous to both parties. A written lease can clarify the leasing arrangement, detail and document each party's rights and obligations, manage disputes and misunderstandings and help avoid legal proceedings.

## Legal Requirements for Enforceability

A farm lease must meet the following requirements if the parties wish to be able to legally enforce the agreement and protect their interests at law.

### *1. Putting it in Writing – Ohio's Statute of Frauds*

The Statute of Frauds is a law that aims to prevent abuse of verbal agreements by mandating that certain contracts be in writing. According to the law, five different “types” of contracts will not be legally enforceable unless in writing and signed by the party against whom enforcement is sought. Two types of contracts addressed by the Statute of Frauds are pertinent to farm lease agreements: a contract that will not be completed within one year and a contract pertaining to an interest in land.

A farm lease might fit the first type of contract—an agreement that will not be completed within one year of making the agreement. However, a multiple-year lease agreement would *not* be completed within one year, so it would be subject to the Statute of Frauds writing requirement. All farm leases also clearly qualify as the second type of contract—one involving a legal interest in land, which would suggest that all farm leases are subject to the Statute of Frauds requirements. However, Ohio law recognizes an important exception to the Statute of Frauds that could allow a verbal farm lease agreement to be legally enforced even if it is a type of contract that the statute requires to be in writing. This exception is known as “partial performance.”

The legal rule of “partial performance” states that a verbal agreement can be enforced if one party has already begun to perform under the verbal agreement. The Statute of Frauds will not apply to the partially performed verbal agreement, so it can be legally enforced even though the agreement is not in writing. Factors such as payment, possession of the land and the making of improvements can prove that a verbal agreement has been partially performed. Where these factors exist, courts have been willing to uphold the verbal agreement on the basis of fairness,

despite the Statute of Frauds rule that requires the agreement to be in writing. For example, in a situation where a landowner and tenant farmer agree to a farm lease and the landowner later changes his mind about renting the land, the Statute of Frauds states that the tenant farmer will not be able to legally enforce the contract against the landowner without a written agreement. The partial performance rule could change this outcome and do away with the writing requirement if the tenant farmer had taken actions such as paying rent, working ground and purchasing inputs. The tenant farmer would have the burden of proving that the Statute of Frauds does not apply to the lease because he had already “partially performed” under the agreement.

A second requirement of the Statute of Frauds is that the party *against whom enforcement is sought* must have signed the written agreement. If a landowner and tenant put their farm lease in writing but neither party signs the agreement, then the agreement is not enforceable against either party. If only the landowner signs the agreement, then the agreement may be enforced against the landowner but is not enforceable against the tenant who did not sign the agreement. Because of this provision of the law, it is important for each party to ensure that the other party signs the written agreement.

## 2. *Acknowledging and Recording the Lease*

*Acknowledgement.* Ohio law addresses procedures that must be followed to formalize a conveyance of an interest in real property, such as a lease. The law requires that a person granting a property interest must sign a written instrument that conveys the interest and must have the signing acknowledged and certified by a judge or clerk of a court, county auditor, county engineer, notary public, or mayor. If the land is jointly owned by a married couple, both husband and wife must sign the lease. If an agent such as a farm manager is representing a party in the conveyance, the agent must possess the legal authority to enter into the agreement, or the agreement will be null and void. A party should require verification that an agent representing the other party has the legal authority to do so. A management agreement that clearly indicates the scope of the agent’s authority to act on behalf of the party is a common tool used to verify legal authority.

Prior to 2002, Ohio law also required that a written land conveyance be signed by two witnesses, but that requirement no longer exists under Ohio law. The law does provide, however, that a written lease conveyance should include a reference to the volume and page of the county deed record containing a copy of the landowner’s title to the property.

*Recording.* The lease interest will not be valid against later purchasers of the property who have no knowledge of the lease *unless* the lease is recorded in the county where the land is located. Recording the lease serves to notify others of the tenant’s legal interest in the land. For example, if a written five year farm lease is not recorded and a person purchases the farmland without any knowledge that the farm is still under lease, the lease will not be valid against the new purchaser. But if the lease is properly executed and recorded, the subsequent purchaser must abide by the lease until its termination.

*The Memorandum of Lease.* Parties often hesitate to record farm leases because they do not want to share the details of the agreement. Ohio law provides a remedy for this problem by allowing the parties to record a “Memorandum of Lease,” which is a shortened form of the

agreement. The Memorandum of Lease provides only enough information to notify a future buyer that the land is under lease. At a minimum, it must include the names and addresses of the parties, a legal description of the land, the lease period and rights of renewal or extension. Acknowledgment and recording requirements for the memorandum are the same as for the full written lease agreement.

## **Terms of the Lease Agreement**

The following are basic provisions that should be included in a farm lease agreement. Many resources available on the internet provide more detail on these components. The parties should take care to tailor the provisions to the individual leasing situation, and to work with their attorneys, accountants and other professionals to carefully draft the terms of the lease agreement.

- a. Date the lease is entered into.
- b. Names and addresses of the landlord and tenant.
- c. Legal description of the leased property.
- d. Time period of the lease, including beginning and ending dates.
- e. Rental amount for cash lease; respective shares and contributions if a crop share lease.
- f. When and how rent will be paid and penalties for late payments.
- g. Obligations for insurance on the property and the crop.
- h. When and how the lease may be terminated and requirements for notice of termination.
- i. Reimbursement provisions for crop nutrients and/or completed fieldwork upon termination of the lease.
- j. Process for measuring and maintaining soil fertility and pH levels.
- k. Reimbursement provisions for a crop still in the ground when the lease is terminated.
- l. Desired or prohibited farming practices, including types of chemicals that may not be used on the property.
- m. Which party is responsible for controlling noxious weeds.
- n. Which party is responsible for maintaining fences.
- o. Whether the tenant has the right to make improvements and be compensated for improvements.
- p. Whether the tenant has the right to utilize improvements made by the landlord.
- q. Landlord's right to enter the property for specific purposes.
- r. Landlord's right to a security interest in the crops, or other provisions for ensuring payment.
- s. Statement of which party will participate in federal farm programs, including responsibility for eligibility and receipt of payments.
- t. Procedure for resolving disputes including the applicable state statutes.
- u. Statement that the landlord and tenant do not intend to create a partnership by entering into the agreement.
- v. Conditions under which the tenant may or may not sublease the property.
- w. Acts of the tenant that would constitute default of the lease.
- x. How amendments or alterations to the lease may be made.
- y. Tenant's rights if the property is transferred or condemned during the lease period.
- z. Hold harmless and indemnification provisions.
- aa. Signatures of the landlord and tenant.

## Termination of the Lease

Two different approaches can address how a farm lease terminates. The parties may agree to an initial period of time for the lease, then allow the agreement to continue for additional periods unless one party gives notice to terminate the lease. This is referred to as a “*periodic tenancy*.” The periodic tenancy automatically renews for another period if neither party takes action to terminate the agreement. A second option is to establish a specific initial period of time for the lease and automatically terminate the lease at the end of the period, unless the parties agree to renewal or extension of the lease. This is referred to as a “*tenancy for years*.” Neither party need provide termination notice, as termination is automatic unless the parties take action to renew the agreement.

It can sometimes be difficult to ascertain which type of tenancy the parties have employed for their leasing arrangement, leading to questions of whether the lease has terminated or renewed. A termination clause in a written agreement can address this problem. If the type of tenancy is unclear, a court would look to the course of dealing between the parties to determine the nature of their arrangement. Research in Ohio suggests that most farm leases are periodic tenancies that automatically renew from year-to-year until a party terminates the arrangement.

*Notice of termination.* The lease agreement should state the period of time required for proper notice of termination. Failure to give timely notice can invalidate the termination and force continuance of the lease for another period. Unlike some states, Ohio does not have a statute that establishes a specific notice period if a lease has not addressed the issue. An examination of court cases in Ohio indicate varying rules for notice periods, largely dependent upon the type of tenancy the parties have established. Based on these court cases, a party would be wise to give a written notice of termination at least three months prior to the lease termination date. Be aware, however, that some courts have required a six month written notice of termination for some land leases, particularly those where the lease payment is made in one lump sum rather than monthly.

## Using Model Leases and Attorneys

A number of model leases are available through varied resources. These leases provide a form for the parties to fill in with individualized information. Using a model lease is preferable to relying upon a verbal agreement, but the model may not allow flexibility for addressing unique situations and individual needs. Additionally, the model may not account for variations in state laws and requirements for proper execution of the agreement. For these reasons, the parties will benefit from a legal review of a model lease to ensure that the lease meets the parties’ individual needs and conforms with state law.

There are many other reasons to consider utilizing the services of an attorney in a farm lease arrangement. As mentioned elsewhere in this publication, the leasing of farmland can create tax, social security, farm program and estate planning implications. A legal advisor, as well as an accountant, can ensure that these implications are properly managed. An attorney who understands agriculture can be particularly useful, as many lease provisions pertain to farm management issues and awareness of laws that are specific to agriculture, such as drainage, noxious weeds, farm programs and fence laws. A few hours of time with an agricultural attorney will likely translate into a sound leasing arrangement and the minimization of lease problems.

## Common Legal Questions on Farmland Leases in Ohio

### *What happens to a crop that is in the ground when a lease expires?*

A crop that is planted but not yet harvested when a lease terminates is referred to as an ‘away going crop.’ A written lease could clarify whether the tenant is permitted to plant and harvest an away going crop. If not addressed in the lease, Ohio law provides that a tenant does not have the right to an away going crop, since it would not be fair to allow a tenant to benefit from the proceeds of a crop that the tenant knew could not be harvested before the expiration of the lease period.

However, Ohio law recognizes a few exceptions to this general rule. First, if it is customary practice in the area for a tenant to harvest a crop after a lease terminates, then the law will consider that custom as part of the lease agreement and the tenant will have the right to the away going crop. For example, a tenant's right to plant and harvest a winter wheat crop is often a local custom. Second, if the landlord stands by and allows the tenant to plant an away going crop without objection, the landlord cannot later claim the right to the crop. Where the landlord knows of the planting and does not object, the tenant will be permitted to harvest the crop after the lease expires.

### *Will I lose my farm program payments if I lease my land?*

For federal farm programs, a producer must meet eligibility requirements to receive program payments. The producer must be a "person" who is "actively engaged in farming." A lease arrangement raises the issue of whether the landowner is still "actively engaged in farming," which requires commensurate contributions of land, capital, equipment, labor, or management that are put at risk.

As a general rule, a landowner renting land on a cash rent basis is not "actively engaged in farming." On the other hand, a landowner leasing on a crop-share basis may be able to maintain farm program payments if his or her profits are based on production, are commensurate with his or her contributions to the operation, and are at risk. A landowner concerned about losing farm program payments should consult with the Farm Service Agency about current eligibility requirements. Additionally, the lease agreement should address allocation of farm program payments.

### *What are typical lease provisions for farming practices?*

A farm lease should include provisions for soil conservation practices, fertilization and nutrient applications, noxious weed control, and crop rotations. Each provision should address which party is responsible for the practice, restricted practices or crops, sharing of costs for practices considered capital expenditures, and reimbursement to the tenant for unrecovered costs.

*What are the tenant's rights when the landlord terminates the lease after the tenant has begun field preparation work?*

This is a problem that could be avoided if addressed in a written lease. Where there isn't a written provision, the answer to the question depends upon whether the landlord had the right to terminate the lease and provided proper notice to the tenant, explained earlier in this publication.

Generally, if the landlord did not have the right to terminate or did not provide proper notice to the tenant, the tenant has two options. The tenant can either try to enforce continuance of the lease or seek compensation for field preparation work. Both options may require legal action.

*What rights does the landowner have in his share of crops under a crop-share lease?*

In a crop-share lease situation, the landowner maintains ownership over his or her share of the crop throughout the lease period. The tenant may not use the landlord's portion of the crop as a security interest. A recorded crop-share lease will aid the landowner in this regard, since the lease provides notice to the tenant's creditors that the tenant does not have complete ownership of the crop. Should the tenant sell the entire crop without distributing the landowner's share, the landowner has a legal claim against the tenant for conversion of personal property.

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