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Kansas Agricultural Lease Law

It is estimated that more than 50 percent of Kansas farmland and pastureland is rented. In some areas of the state, this figure is higher. Many producers cannot maintain a viable business without operating through lease arrangements. Leases are growing in prominence and will play an increasingly important role in production agriculture as fewer and fewer producers manage and operate our state's agricultural resources.

Different lease types have developed to meet the needs of the modern Kansas farmer and rancher. For example, some agribusinesses use standard cash leases involving a flat rental fee for the use of land. For other farm operations, a crop-share or crop-share cash lease is appropriate. Those involved in raising livestock may operate on either a pasture rental basis or a livestock share lease. Publications are available at your local K-State Research and Extension Office and online at www.agmanager.info/farmmgmt/land/lease that explain and provide examples of these lease arrangements.

It is important that both parties to a farm or ranch lease understand the details of their lease agreement and the laws that affect their lease. A lease is a contract and terms of the lease will be interpreted and enforced in light of contract law. Furthermore, if a farm or pasture lease is oral, not in writing, certain provisions in the Kansas Statutes *automatically* become a part of the lease.

Some leases are simple oral arrangements, while others are complex, lengthy written documents. An oral agreement may be legally enforceable, but it is

much more desirable to spell out the agreement's details in writing.

By definition, a lease is a contract for the exclusive use of land for a specific period. There are at least two parties to any lease: 1) the landowner who owns the land, also known as the lessor; and 2) the tenant who farms or operates the land, also known as the lessee. Certain rights and obligations binding both parties arise from the relationship. When land is leased, the lease is equivalent to a sale of the premises for the length of the lease. The tenant essentially becomes the owner for a time and has the responsibilities of one who is in possession of the land.

Parties to a lease are presumed to know of laws existing at the time the lease is entered. Provisions of statutes, ordinances, and regulations are read into and become a part of the contract by implication as though they were expressly written into the contract, *except where the parties have shown a contrary intention*. For example, if a written lease says the lease will terminate December 31 and Kansas law states oral leases on farm and pastureland will terminate March 1, the lease will terminate December 31 under the written agreement. When a court construes a lease agreement, it will consider the lease agreement, the negotiations, and communications between the parties to determine their intent. However, if the terms of a lease are clear, plain, and unambiguous, the intent of the parties will be determined solely by the contents of the lease. Further, when asked to interpret a lease, a court does not just consider individual provisions of the lease but considers and construes the lease in its entirety.

Lease agreements that cannot be performed within 1 year from the time the lease agreement is made must be in writing to be legally enforceable. For example, if a landowner and tenant orally agree to a 2-year lease of property, the agreement is unenforceable if either party decides to back out. Other legal arguments exist that can be raised that *might* require the parties to fulfill their agreement. However, to avoid the problem of an unenforceable contract, the parties are best advised to put the lease in writing.

If a farm or pastureland tenant decides to improve the leased land or sow perennial crops, the tenant should have a written, long-term lease in order to reap the future bounty of his or her labor. Otherwise,

the landowner may in certain circumstances be able to terminate the agreement and keep the improvements, leaving the tenant with little to show for it.

A written lease will help resolve disputes that might arise between the parties because they can refer to the written instrument to review their agreement. Memories of an oral agreement might be selective and certainly less than perfect.

A written lease does not have to be a detailed contract. A memorandum or note concerning the lease may be sufficient if the party against whom it will be enforced signs it. A written lease is a contract and should be approached with the same careful and thorough consideration given when entering into any binding contractual agreement.

Terms of the Lease

Though an oral lease is unenforceable if it cannot be performed within one year, a written lease may cover any period of time. Thus, any beginning and ending dates may be used in the lease.

A lease is subject to the landowner's title. A landowner can only convey or lease that which he has. For example, if the landowner has only a life estate, or interest for life, he generally cannot give the tenant the right to occupy the property longer than the landowner lives. Similarly, where the landowner has conveyed permanent or temporary rights to others, such as conservation easements or hunting leases, subsequent production leases are usually subject to the prior conveyances. It is important to understand the scope and nature of any outstanding agreements affecting the property before finalizing a new lease.

A person in the possession of real property with the agreement of the owner is presumed to be a tenant at will. A tenant at will holds possession of premises by permission of the owner but without a fixed length of time. When land is leased for one or more years and the tenant, with the consent of the landowner, continues to occupy the premises after the expiration of the agreed term, the tenant is deemed to be a tenant from year-to-year and holds the land for succeeding year-long leases until the landowner gives proper notice to terminate.

Notice to Terminate a Lease

For all leases, *except written leases signed by the parties that provide otherwise*, Kansas law provides that notice to terminate farm and pastureland leases must be given as follows:

1. in writing
2. at least 30 days prior to March 1, and
3. must fix March 1 as the termination date of the tenancy.

Any notice to terminate which does not comply with the above requirements is inadequate and the tenancy will continue.

The law previously applied to "farm" leases and some question existed whether the termination requirements applied to pasture leases. The Kansas legislature recently amended the law, and it is now clear that pastureland leases also must be terminated in this manner except when the parties agree otherwise in writing. For purposes of this termination rule, "pastureland" means land used for livestock grazing or hay production, or both, and includes perennial vegetation

Sample Notice of Termination of Farm or Pastureland Tenancy

TO: Mr. & Mrs. John Smith
Rural Route 1
Wildcat, Kansas 77777

You should take notice that your farm or pastureland tenancy to any portion of the following described real estate is terminated as of March 1, 2006:

The Northwest Quarter (NW 1/4) and the Northeast Quarter (NE 1/4), all in Section Twenty (20), Township Eight (8) South, Range Two (2) East of the 6th P.M., Wildcat County, Kansas.

However, as to that part of the above described premises which is currently planted to a fall-seeded grain crop on cropland which has been prepared in conformity with normal practices in that area, the termination date as to that portion of the described premises will be deemed to be the day following the last day of harvesting such crop in 2006, or August 1, 2006, whichever day comes first.

Dated at Wildcat, Kansas, this 20th day of November, 2005.

/s/ John Brown

John Brown, Owner

such as native vegetation, grasslike plants, forbs, shrubs, savannas, shrublands, marshes, and meadows.

It is important to note that in two instances a termination notice may be effective, but the termination date will be modified by statute. First, where proper notice is given more than 30 days before March 1 but the land has already been planted to a fall-seeded crop, the notice will be construed as fixing the termination as to that ground on the day after the fall-seeded crop is harvested or August 1st, whichever comes first.

Second, during a year in which a fall-seeded crop has been or will be harvested on the leased land and written notice is given after 30 days before March 1 but before a new fall-planted crop is sowed, a slightly different rule applies. Specifically, *if* the crop ground has already been prepared for fall sowing in conformance with normal practices in the area, the notice of termination will be construed as fixing termination as to that ground in the *following* year, either on the day after the yet-to-be sowed fall-seeded crop is harvested or August 1st, whichever comes first.

Some examples will help explain the Kansas laws regarding the termination of an oral lease on farm or pastureland.

Example 1

Written notice to terminate is personally delivered to the tenant on February 1, 2005, fixing termination of the lease on March 1, 2005. No fall-seeded crops are present on the leased ground. Is this proper notice?

Answer: No! Notice was given only 28 days prior to March 1. This is inadequate notice and the lease will continue until March 1, 2006, if proper notice is given to terminate then.

Example 2

Written notice to terminate is personally delivered to the tenant on January 15, 2005, fixing termination of the lease on the last day of wheat harvest. The leased ground is all currently sowed to wheat. Is this proper notice to terminate the lease?

Answer: No! Timely notice was given, but the termination date was inappropriate. Termination of the tenancy must be set to take place on March 1, even when the land is all planted to a fall-seeded crop. The lease will continue until a termination date is set by proper notice.

Example 3

Written notice to terminate is personally delivered to the tenant on January 15, 2005, fixing termination of the lease on March 1, 2005. The leased ground

is currently one-half in wheat and the other half is pastureland. Is this proper notice? If so, when will the lease terminate?

Answer: Yes, this is proper notice. The lease will terminate on the pastureland portion of the ground on March 1, 2005. As to the land in wheat, the lease will terminate on the day after the last day of harvest or August 1, 2005, whichever comes first.

Example 4

Written notice to terminate is personally delivered to the tenant on August 15, 2005, fixing the termination of the lease on March 1, 2006. The tenant harvested wheat on the leased ground in 2005 but has neither planted a new crop on the ground nor begun preparing the ground for a crop to be sowed in fall 2005. Is this proper notice? If so, when will the lease terminate?

Answer: Yes, this is proper notice. The lease will terminate on March 1, 2006, even if the tenant plants a crop before that date.

Remember, if the landowner and tenant, in a written lease signed by both of them, agree to a different notice of termination procedure and/or date, their agreement supersedes the Kansas statutory law regarding notice of termination.

A situation also not subject to the notice of termination statute is that of the agricultural tenant who becomes a tenant from year-to-year by occupying the premises after the expiration of the term fixed in a written lease. If an agricultural tenant becomes a tenant from year-to-year, the notice of termination of the tenancy must fix the termination to take place on the same day and month as was specified in the original lease under which the tenant first occupied the premises. Notice still must be given to the tenant at least 30 days prior to the termination date.

Example 5

A tenant leases a landowner's 160 acres under a written lease entered August 1, 2003, and terminating August 1, 2005. Tenant turns cows out to graze the property after August 1, 2005, and the written lease mentions nothing about the terms governing such a situation. Landowner allows tenant to continue grazing the property but soon decides to terminate tenant's possession. When is the earliest lease termination date available to landowner?

Answer: Landowner may terminate the lease on August 1, 2006, provided landowner gives written notice to tenant at least 30 days prior to that date and

the notice sets August 1, 2006, as the lease termination date.

Delivering Termination Notice

When the day of termination of the tenancy is stated in a written contract, a notice to vacate the premises is not necessary. When a notice of termination is necessary, the termination notice may be served: 1) on the tenant; 2) if the tenant cannot be found, by leaving a copy at the tenant's usual place of residence; 3) by delivering a copy to a person over 12 years of age residing on the lease premises; 4) if no person is found upon the premises, by posting a copy of the notice of the termination in a conspicuous place; or 5) by sending the notice by registered mail addressed to the tenant at the tenant's usual place of residence.

The best way to serve notice of termination is probably by registered mail because the tenant must sign a receipt for the notice. If notice is given by mail, it must be done by registered or certified mail, and it is important that the landowner keep the return receipt for proof of notice of termination.

A sample "Notice of Termination of Farm Tenancy" letter is on page 2.

Reimbursing Tenant for Preparing the Land Before Termination

In the event the landowner has given proper termination notice and the tenant, *prior to receiving the notice*, has tilled, applied or furnished fertilizers, herbicides, or pest control substances and has not planted the ground, the landlord must pay the tenant for the fair and reasonable value of the services furnished. This value includes the cost of the fertilizers, herbicides, and/or pest control substances applied to the land.

A special reimbursement statute applies to stands of alfalfa. Where the tenant has planted and obtained a satisfactory stand the previous fall and proper notice to terminate has been given by the landowner, the landowner must pay the tenant for the fair and reasonable value of all the tenant's services performed in preparing and planting the alfalfa. This value includes the tenant's expenses for seed, fertilizer, herbicides and/or pest control chemicals.

Assignment of Leases

A tenant may not transfer or assign a lease to another person without the written consent of the landowner unless the lease is for more than 2 years. For example, a tenant with an oral or written lease for 1 year may not assign, transfer or sublet the lease without the consent of the landowner. If the lease is for

fewer than 2 years and the tenant transfers the lease in any way, the landowner, after giving 10 days notice to leave, has a right to re-enter the land, take possession and remove the person currently holding the property. When a tenant properly assigns his lease, the new tenant has the same legal rights as the prior tenant.

The tenant does not have to agree to become the tenant of a new landowner when the former landowner sells the land. If the tenant pays rent to the previous landowner before receiving notice of the sale, the tenant is not required to pay the new landowner for the same rent period. The tenant must pay rent to the previous landowner and not some other party unless the previous landowner has consented to the arrangement or a court has ordered payment to be made to another.

If someone legally subleases property from a tenant, the person subleasing has the same rights and remedies against the landowner as they have against the original tenant. Furthermore, a new landowner who purchases the property has the same rights against the tenant as the original landowner. Also, a landowner, after selling leased property, may sue for past due rent from a tenant who abandoned the property before the sale.

Unpaid Rent and Ownership of Crops

If a tenant neglects or refuses to pay rent when due, the landowner may terminate the lease after giving 10 days written notice unless the tenant pays the rent within that 10 days. If a tenant is vacating or intending to vacate the premises, the landowner may get a court order and attach or seize the tenant's property for the rent, whether or not it is due, so long as it becomes due within a year. A tenant may waive, in writing, all the benefits he is entitled to under Kansas Exemption Laws (for example, tools of the trade exemption) for all debts for rent.

Any rent due on farmland is an automatic lien or encumbrance on the crops growing or harvested off the leased premises. This lien attaches to the entire crop and the landowner has a right to possession of the crop until the rent is paid. This encumbrance is enforceable against a purchaser of a crop who has actual or constructive notice of the lien.

For example, Joe Tenant sells grain to the local elevator and then takes off for Las Vegas where he gambles his money away. When Joe returns, Bob Landowner wants to know where his rent money is for the farmland. Joe tells him it's in the slot machine. If the elevator that purchased the grain knew or should have known that the grain was from rented ground,

Bob Landowner can force the *elevator* to pay him the rent that is due. This is because the elevator knew that the grain was from rented ground, therefore they bought the grain from Joe *subject to any lien the landowner had on the grain for past due rent*.

Unpaid rent creates a lien only on the crop growing on, or harvested from, the leased ground. "Crop" has been defined as any product of the soil that is grown and raised annually and that is gathered during a single season. One case held that nursery stock is not a crop and presumably the word "crop" would not include livestock.

For the grain buyer to fully protect himself from paying twice for the grain, he should ask the landowner to sign a written consent removing the landowner's lien and allowing the tenant to sell the crop. This may be an impractical alternative for grain buyers, but is one of the few that currently exist to fully protect them in this situation.

When rent is payable in a share of a crop, the landowner is deemed to be the owner of that share of the crop. If the tenant refuses to deliver the share owed to the landowner, the landowner may enter upon the leased land and take possession of his portion of the crop, but only once his share of the crop is mature. While the landowner in a share crop arrangement has a distinct interest in the crop from the time it is planted, absent an agreement to the contrary, that interest does not become full and complete until the crop matures.

In the situation where a landowner rents or leases his lands exclusively for pasture purposes, he has a first, prior, and superior lien upon all the pasturing livestock for the payment of rent. This is commonly referred to as an "Agister's Lien." To protect this lien right, the unpaid landowner must record a verified notice of his claim upon the livestock at the Register of Deeds in the county where the livestock were pastured within 15 days of removal of the livestock by the tenant. If the rent remains unpaid, the livestock may eventually be sold by the landowner and the proceeds used to pay the rent if certain statutory procedures are followed.

Use of Leased Property

A lease is a contract for the exclusive possession of land for a definite period, and the landowner cannot use the land for his own purposes while it is leased. For example, the landowner cannot hunt on the leased ground without the permission of the tenant unless the landowner retained these rights in a written lease. A landowner, however, may enter the premises to: 1) make reasonable inspection; 2) make repairs and/or

installations; 3) show the premises to prospective buyers; 4) collect rent; and 5) deliver a notice to terminate the tenancy.

If mineral exploration or oil and gas drilling is to be pursued by the landowner, then the written lease should contain a provision allowing the landowner or his agents and employees to enter and use the land for mineral exploration or oil and gas drilling.

If no agreement exists between the landowner and the tenant, the tenant has the right to determine which crops are planted.

Who is Responsible for Noxious Weed Control?

The Kansas Legislature has provided, by statute, that certain weeds are noxious and that it is the duty of all landowners and tenants to control the spread of and to eradicate these noxious weeds on lands owned or supervised by them. Weeds declared noxious by the Legislature are: 1) kudzu, 2) field bindweed, 3) Russian knapweed, 4) hoary cress, 5) Canada thistle, 6) quackgrass, 7) leafy spurge, 8) bur ragweed, 9) pignut, 10) musk (nodding) thistle, 11) Johnson grass, 12) sericea lespedeza, and 13) at the option of the county commissioners, multiflora rose and/or bull thistle.

Is the landowner or the tenant responsible for noxious weed control? It is best if the parties set out in the lease who is responsible for noxious weed control. If the lease contains no provision for noxious weed control, those who own the land OR supervise the use of the land have a duty to control noxious weeds. Thus, both the landowner and tenant are responsible by statute for noxious weed control. If noxious weeds are not properly controlled, the county weed supervisor has the authority to enter the infested land, perform the necessary treatment and charge the landowner for the service. The cost of the treatment is not charged against the tenant. If the county weed supervisor's cost for treatment is not paid within 30 days, it becomes a lien against the land.

Removal of Fixtures and Compensation for Improvements

A tenant who permanently improves the leased property by constructing permanent buildings, installing terraces, improving existing structures, or by other means, generally is not entitled to remove the improvements when the lease terminates. Further, the tenant generally will not be able to receive compensation from the landowner for the value of the permanent improvements unless the lease provides otherwise. This denial of compensation to the farm tenant is a

carryover from English common law and still appears to be the rule in Kansas. A tenant can usually remove those items he provided that are not considered part of the real property, such as portable sheds and hay feeders.

This harsh rule can be circumvented by a written agreement between the landowner and tenant that provides for compensation to the tenant for reasonable improvements. When costly improvements are being considered, it is especially prudent to enter a written agreement determining the person responsible for payment and providing for disposition of the improvements when the lease terminates.

Tenant's Responsibility to Others

If someone is injured while on leased property, who is responsible — the landowner or the tenant? Traditionally, the tenant as the person in possession of the land has the burden of maintaining the premises in a reasonably safe condition to protect persons who come upon the land. When land is leased to a tenant, the lease is regarded as equivalent to a sale of the premises for the term of the lease. The tenant acquires an estate in the land and all the responsibilities of one in possession. Therefore, as a general rule, the landowner is not liable either to the tenant or to others injured while the land is leased to the tenant.

The general rule of no liability of the landowner has several specific exceptions. The landowner may be liable when there is: 1) undisclosed danger known to the landowner and unknown to the tenant (e.g., a hidden well); 2) a condition dangerous to a person not on the premises (e.g., a low-hanging tree branch across a public road which causes injuries); 3) land retained in the landowner's control which the tenant is entitled to use (e.g., public hallways in an apartment complex); 4) premises leased for admission of the public (e.g., area leased for a dispersal sale); 5) an agreement by the landowner to repair something; or 6) negligent repair by the landowner.

Unless injury arises from a defective condition and one of the above exceptions applies, the landowner usually will not incur liability.

Death of Landowner or Tenant

If either the landowner or tenant dies while a farm or pastureland lease is in effect, the deceased's estate executor or administrator is required to comply with the terms of the lease as if the deceased landowner or tenant were still alive. In one case, a court held an administrator of the tenant's estate was responsible for

the payment of rent under a long-term lease previously signed by the deceased tenant.

A slightly different rule applies if the landowner has only a life-estate interest in the land. A life-estate landowner can only grant a lease for as long as he lives. Thus, any lease of land from a landlord who owns a life estate terminates on the death of the landlord. However, in such situations a tenant can enter the land to cultivate and harvest crops planted before the life-estate landowner's death. In this situation, the estate of the life-estate holder will receive any landlord's share of the crop.

Conclusion

Farm and pasture leases will continue to be prevalent in production agriculture. Many landowners are becoming further removed from the intricacies of farming and ranching, increasing the possibility for misunderstandings arising from oral lease arrangements. Default statutory rules for oral leases can further complicate the matter by modifying the parties' agreement in unanticipated ways. Both the landowner and tenant are best advised to put their lease in writing. A written lease allows both parties to clearly know the terms of the lease and what happens when particular situations arise.

The chance for confusion or misunderstanding can be greatly reduced and the effect of default rules avoided when a lease is written. In addition, a good written lease will reduce conflicts between a landowner and a tenant by setting forth the rights, duties, and responsibilities of each party.

Before entering into a lease, a prudent businessperson will consult with a competent attorney concerning lease laws, the terms of the lease and its potential problem areas. Sample farm and pastureland leases and other useful information are available from your local K-State Research and Extension Office and at www.agmanager.info/farmmgmt/land/lease. Those resources will help you and your attorney draft farm or pastureland leases that meet your needs and fulfill your expectations.

Sources:

K.S.A. 58-2501 et seq. and various case law.

Elements of a Good Lease

When preparing a farmland or pastureland lease, you and your attorney should cover:

1. The proper names of the parties involved.
2. The date the lease agreement is entered into.
3. An accurate description of the property being rented — preferably a legal description.
4. The beginning and ending dates of the lease.
5. How and when the “rent” is to be paid.
6. The amount of rent to be paid.
7. The limitations on the use of the land.
8. The rights of the landowner to enter the leased premises.
9. Who decides whether to participate in government farm programs?
10. Who decides what is to be planted?
11. What each party is to furnish?
12. Who is responsible for accidents?
13. Who has hunting and other recreational rights?
14. Who gets to use the buildings?
15. Who insures the buildings?
16. Who bears responsibility for ensuring livestock have water?
17. What if the pond dries up during the lease period?
18. What happens in case of the sale of the premises?
19. If tenant makes permanent improvements, how will tenant be compensated?
20. If tenant establishes perennial crops, how will tenant be compensated?
21. Will aggressive soil improvement by tenant be compensated when the lease terminates?
22. What improvements made by the tenant will be removable?
23. Who is responsible for noxious weed control?
24. That the tenant must perform his or her duties under the lease with ordinary care and skill.
25. If a dispute arises about the terms of the lease, how will the conflict be settled?
26. The maximum number of livestock that can be placed in a particular pasture. Will the maximum number of livestock be fixed or will it be based on weather and growing conditions?
27. The renewal of the lease.
28. How amendments or alterations to the lease are made.
29. That the lease does not create a partnership between landowner and tenant.
30. Allowing or prohibiting subleasing.
31. Who pays for damages to the land or improvements?
32. Who pays for fencing materials and labor if needed?
33. Who decides if capital improvements are necessary and who pays for them?
34. What happens if either party does not perform under the contract?
35. Who is responsible for procuring and paying for crop insurance?
36. What happens in case of financial failure and/or bankruptcy of either party?
37. Add notarized signatures of the parties and their spouses to complete the lease.

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