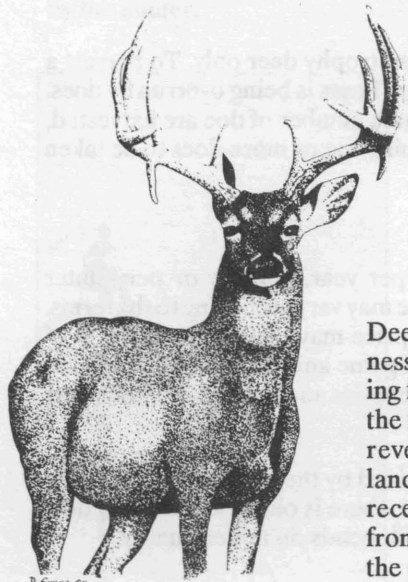


Texas Agricultural Extension Service



The Texas Deer Lease

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Deer hunting is big business in Texas. Lease hunting for deer remains one of the few constant sources of revenue for many Texas landowners following the recent decline in revenues from both agriculture and the petroleum industry.

Elements of lease agreement

The so-called Texas hunting lease is not, in fact, a lease at all but rather a license. Technically, a lease is a contract that conveys exclusive possession or control of land to another for a specified period. A license, on the other hand, grants permission to do something that otherwise would not be allowed or would be illegal. Because the typical Texas hunting lease does not grant the hunter exclusive possession or control of the land, it is better characterized as a license. However, in this booklet, the common term "lease" is used.

Texas landowners have a unique position for lease hunting. Unlike other states, Texas has little state-owned land available for public hunting. Thus, the private landowners control the supply of most huntable land in the state. This unique position affords Texas landowners a source of income not shared by landowners in other states.

Granting the hunting lease may take numerous forms--it may be given orally on the payment of a specified amount of money to the landowner; or, it may be given by way of an elaborate written document covering all aspects of the hunt, including an exact description of how the landowner's property may be used.

Location of the deer and not the **ownership** of the animals, however, is what generates the revenue. In Texas, all naturally occurring wild animals such as white-tailed deer belong to the state. As such, the state can regulate the taking of game through hunting laws.

Whether the lease is oral or written, the landowner and hunter should concur on certain essential points. By doing so, each party will know what to expect of the other and avoid possible misunderstandings. The terms of the agreement constitute the basis for the lease price.

Although the state regulates when and how deer may be taken, the state cannot authorize trespassing on privately owned land by a hunter in pursuit of deer. Independent permission from the private landowner must be secured first by the hunter. Granting the right to enter and hunt on private property generates the landowner's income.

The property owner and hunter should resolve all the major issues before signing the agreement.

Duration of the lease term

Historically, permission to hunt was granted with the asking. Recently, however, Texas landowners have begun exacting a price for this privilege in the form of an agreement commonly referred to as a **hunting lease**. Depending upon the size of the lease tract, the abundance of game and the amenities available to the hunter, prices may range from \$20 per day to \$3,500 per season. The lease may last a few hours, a few days, several months or the duration of the hunting season.

The agreement should specify the length of the lease by stating when it begins and ends. If the hunter has the privilege to scout the premises, set up feeders, erect blinds or conduct other similar projects before the season, this should be stated.

Description of the lease tract

The exact acreage on which the hunting privilege is granted to the exclusion of all other land should be described. The lease should state that the hunter is not authorized to trespass on other property. Such trespassing may be grounds for terminating the lease.

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Access to lease tract

If the land does not have a public access, the specific route or routes of ingress and egress the hunter must take should be delineated. When there is more than one public access, the landowner may wish to restrict the hunter's use to only one or two.

Game to hunt

Generally, the primary game animal is white-tailed deer. Other game may be present, however, such as doves, quail, ducks, turkey, exotics, and varmints. The agreement should state what other game may be taken and when. Some leases may deny quail hunting until the deer season closes. Other limitations may be added. The price of the hunting lease may rise as more game animals are added to the list.

Hunting weapons

The parties need to agree on types of weapons that may be used to take game. The list may include all legal weapons or be limited to centerfire rifles, muzzle-loaders, shotguns or bows, depending on the game hunted.



Hunting method

The hunting method is related to the types of weapons that may be used. The agreement may limit shooting to blinds only, may restrict shooting from vehicles or may allow stalking only during bow season. Some leases may allow hunting only when a guide accompanies the hunter.

Density of hunters

The number of hunters who may participate in a particular lease needs to be specified. Generally, the landowner will specify the maximum number or have an individual agreement with each hunter or group of hunters. However, the lease needs to state whether guests of hunters will be allowed and when. If hunting guests are

allowed, the quantity of game the guests may take must be determined. For instance, if the game limit on deer is four per hunter per season--i.e., two bucks and two does, can a guest hunter harvest any deer in addition to the four allowed the lease hunter who invited the guest?

Order deer are taken

Many Texas hunters want trophy deer only. To harvest a doe is an insult. However, Texas is being overrun by does. To ensure that an adequate number of doe are harvested, the landowner may require one or more does to be taken before a buck.

Lease price

The price of the lease per year, per day or per hunter needs to be set. The price may vary according to the terms. For instance, the lease price may rise as the duration of the lease, the number of game animals allowed, the lease tract size, the types of weapons and hunting methods permitted increase.

Some deer leases are priced by the sex and quality of the deer killed. For instance, there is one price for each doe, and the price for bucks depends on antler quality.

Payment schedule

The lease may be paid either in lump sum when privileges begin or periodically throughout the year. Generally, the landowner will want some money before the hunting season to ensure the hunter will honor the contract on opening day.

Use of facilities

The price of the lease should reflect the quantity and quality of hunting facilities available to the hunter. Any hunting facilities on the lease usually are at the disposal of the hunter, but this should be clarified before hunting begins. The manner in which the facilities are maintained should be spelled out. For instance, who has the duty to clean the premises, repair broken appliances, windows, plumbing or other property should be stated.

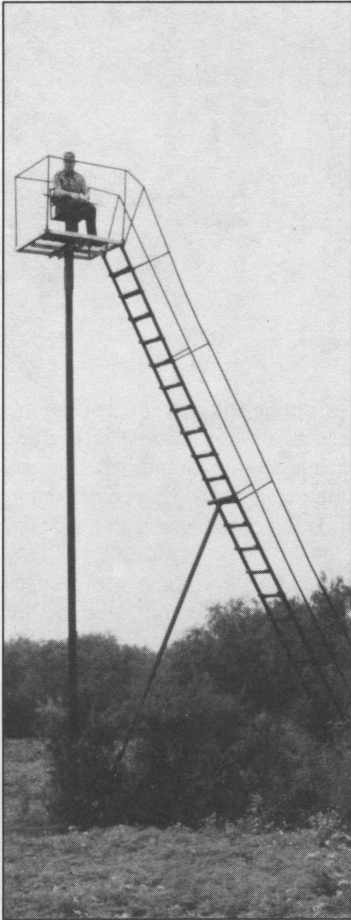
If the lease does not have overnight accommodations, or if they are not available to the hunter, the parties need to decide if overnight camping will be permitted and where. Some restrictions on use of fires and the elimination of litter may be imposed by the landowner.

Vehicular travel

Travel in vehicles may be restricted. Some landowners may prefer that the hunter stay on existing roads. The use of off-road or four-wheel drive vehicles, except on existing roads, may be prohibited. Others may allow off-road travel but not across improved pastures, cropland or other inappropriate areas.

Blinds and game feeders

Most Texas deer are taken from deer blinds. The blinds may be provided by the landowner or erected by the hunter. Either way, permission to use pre-existing blinds should be discussed as well as the installation of new ones by the hunter.



In particular, an agreement should be reached regarding:

- the landowner's liability, if any, for injuries incurred by hunters using the landowner's blinds,
- the necessity of getting the landowner's permission for both the erection and location of blinds and game feeders installed by the hunter,
- the fate of blinds and feeders installed by the hunter but not removed within a designated period after the lease terminates and,
- the duty of the landowner, if any, to fill and maintain feeders both before and during the hunting season.

NOTE: To lure game off adjacent property, hunters may erect both blinds and feeders on fence lines and kill crossing game. Although the practice is legal, it may create hard feelings. Landowners may require his or her prior permission for the location and installation of blinds and game feeders as a result of past disputes with neighboring landowners about fence hunting.

Gates and keys

The lease usually requires the hunter to keep all gates shut and possibly locked. If the hunter is given a key, it should be returned at the termination of lease privileges.

Transferability of lease

If the lease is in writing, the rights and obligations of either party to the contract may be transferred to another party. The parties may wish to make the lease non-transferable except when the landowner sells the land to a third party.

Hunting rights of landowner

Generally, the lease grants the hunter or hunters the exclusive right to hunt the land. However, if it is not so stated, some understanding should be reached as to whether the landowner or his or her guests have the right to hunt the lease tract.

Right of renewal

The hunter and the landowner may want to undertake long-term projects to enhance the habitat and hunting facilities. Because most leases are on a short-term basis, the hunter may want to include a right of renewal in the lease so the hunter can reap the long-term benefits from such projects. Likewise, the landowner may insert a renewal clause because of the favorable relationship the two parties have established in the past.

Compliance with game laws

Obviously, the hunter must comply with state hunting laws, but the agreement should cover this. Compliance should include not only taking of game, but also completion of the daily hunting log required by state law.

If the hunter is caught violating the law, the landowner may terminate the lease on these grounds.

Use for non-hunting purposes

The hunter may want to use the leased premises for non-hunting purposes both in and out of hunting season. The activities may include camping, fishing, photography, target shooting and other recreational purposes.

The uses permitted need to be described. Some limitation may be imposed as to where and when the authorized activity may be conducted.

Landowner's liability

Texas landowners have a legal responsibility to protect visitors on their property from physical injury. The responsibility depends on the legal classification of the visitor at the time of an injury.

Fee-paying hunters are classified as invitees. As such, the landowner has a legal duty to keep the premises safe for the hunter's protection. The landowner must give the invitee adequate and timely notice of concealed or latent perils, known to the landowner or that a reasonable inspection would reveal. If an invitee is injured by such conditions, whether known or those that a reasonable inspection would reveal, the landowner is liable.

The hunting lease becomes a two-edged sword for landowners. They receive an economic benefit for allowing the person to enter and hunt. At the same time, they shoulder the risk and responsibility for the hunter's safety. There are two possible solutions to the dilemma.

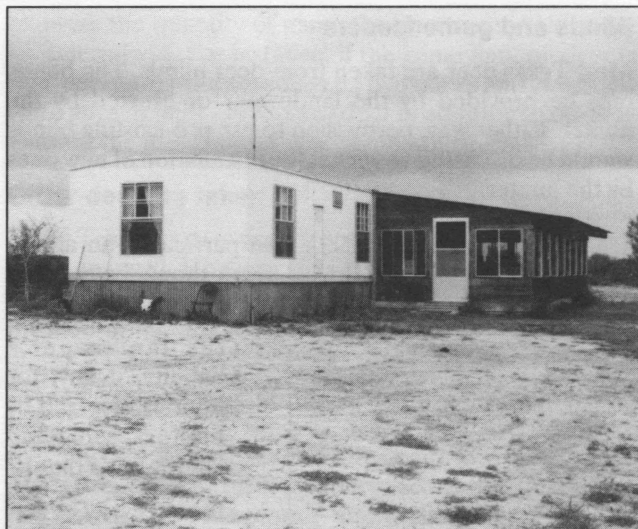
First, the landowner may stipulate in the lease that the hunters purchase and assign a liability insurance policy to the landowner covering the landowner's liability for a hunter's injury. Alternatively, the hunters may pay the additional premium to add coverage to an existing policy of the landowner's.

Purchasing additional insurance has one obvious drawback. The policy premium coupled with the lease prices may cause the overall cost of the hunting lease to become prohibitive.

Second, instead of insurance, the landowner may secure a waiver from the hunters releasing the landowner from liability if the hunter is injured. A waiver is defined as "the intentional release, relinquishment or surrender of a known right." An effective waiver must meet three or four requirements.

- First, the party granting the waiver must do so with full knowledge of the landowner's duty toward him or her. In this instance, the hunter must fully appreciate the status of being an invitee and the particular duties the landowner must exercise on the hunter's behalf to keep the premises safe.
- Second, the party granting the waiver must realize the choice he or she is making. Hunters must realize they forfeit the right to recover for injuries resulting from a breach of the landowner's duty.
- Third, the party granting the waiver must do so intentionally. There can be no trickery or fraud involved.
- Fourth, the party granting the waiver may or may not need to receive consideration for the grant. There are two schools of thought on this issue. One school adheres to the proposition a waiver is unilateral in nature. It is at the sole discretion of the party relinquishing the right whether it is granted or not. The other school of thought views a waiver in the same light as a release, which is contractual in nature. A contract requires consideration to be enforceable.

The issue of whether or not consideration is necessary may be avoided by a written waiver stating that the hunter is granting the waiver, in part, as consideration for the right to hunt.



Resolving disputes

Probably one of the most difficult issues is establishing the consequences of lease agreement violations. If neither party abides by the agreement, the agreement is useless. To ensure the terms have meaning, some way of resolving a contractual breach needs to be established in advance.

Depending on the severity of the violation, the consequences may range from immediate termination of the lease without refunding the lease fees to the denial of certain privileges granted under the lease. This may include forfeiting the right to take a full limit of deer during the season or denial of the right to conduct off-season activities such as camping and fishing.

Obviously, the resolution of disputes will be the most difficult issue to negotiate, yet it is vitally important to the overall agreement.

This list of items embodies some of the more important issues that the landowner and hunter should resolve prior to or in conjunction with granting permission to hunt. Not all items apply to every leasing arrangement. The terms must be tailored to the individual lease.

Preferably the lease agreement should be written and signed to establish the exact terms and conditions. Another benefit is to allow all parties to realize the privileges both being granted and received for the consideration paid.

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