

FACTORS AFFECTING LEASE AGREEMENTS IN EAST TEXAS

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Economic factors require that farm operators continually expand their business to maintain a satisfactory level of living. This is primarily due to the continued increase of production costs. Obtaining control of additional land is necessary. Land prices are inflated above their agricultural value because of the desire of city dwellers or non-farmers to own land for sentimental or speculative reasons. Because these owners are not interested personally in using this land for agricultural purposes, it often remains idle and nonproductive. The nonuse of land in the East Texas area results in the rapid invasion of undesirable species of brush and weeds.

Leasing the land on a long term basis to an operating producer can assure land use and income to both owner and producer. However, landowners and potential operators find that most standard lease arrangements result in an operating partnership which is undesirable to both parties. It may be unacceptable because the landowner does not desire to become involved in the operation of the business, or obligated by the legal liabilities of a partnership. It may be unacceptable because the producer usually does not want the additional involvement of a management and profit-sharing partner. The cash farm lease is a valuable tool for overcoming these problems.

Productive use of land will contribute to community growth, increase income to the producers and landowners and enhance the value of the land. To achieve these benefits, improvement and acceptance of cash farm leasing are needed.

Value of a Written Farm Lease

The primary value of a written contract is in assisting the landowner and operator to consider and agree upon the essential points of leasing and operation.

The beginning point for arriving at an equitable lease is for the interested parties to discuss

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the basic considerations involved in the leasing arrangement and in managing the farm. Interested parties should then make a contract, preferably written, based on these considerations.

PROVISIONS OF THE FARM LEASE AGREEMENT

The minimum essentials of a written lease are few. However, a written lease should include at least the first four of the following sections. Because verbal agreements usually do not cover as much as a written lease, misunderstandings occur. This happens when terms of a verbal agreement tend to differ from established customs of the community. Therefore, this leasing form is a guide in developing a written contract.

Section I: Names of Parties and Description of Property

This section identifies the parties entering the lease contract and gives a legal description of the property involved. In addition to the legal description, the distance and direction from town, road on which located and rural route may be given.

Section II: Term of Lease

The term or length of time that the lease will be in effect should always be stipulated in the contract. The length of the lease is important because a long term lease is often necessary to develop a profitable business over time, due to the need for permanent or long term capital investments. This is especially true for a cow-calf operation. The operator will not want to make investments in permanent facilities on a short term lease.

Usually landowners favor a short term lease on the basis that a long term lease lowers the value of the land, since it will remain in effect even though the property is sold. When leasing land for use in cropping or winter stocker programs, a one-year lease period may be satisfactory. However, for a cow-calf operation where improved perennials such as coastal bermudagrass are to be established, a minimum 3-year (and preferably 5-year) lease period is almost essential for the operator. This would benefit the landowner, as well, through productivity and increased value

The lease probably should contain an automatic renewal clause and should allow flexibility in terms of the lease when the parties give adequate notice.

Section III: Rental Rates and Arrangements

Rental rates and arrangements for payment or disposition of the rent are significant parts of the lease, whether written or verbal. Among the various types of leases, the cash rental arrangement is both popular and flexible. Arrangements which imply the existence of a partnership between the landlord and tenant may prove undesirable for the East Texas operator as well as for the nonfarm, urban-dwelling owner.

The cash lease is normally uniform and relatively simple. The operator pays the owner a cash sum per acre or a lump sum for the entire acreage under consideration. Provisions in the lease should state the terms of the agreement. The landowner may desire to place certain restrictions on the use of land or fields for certain crops. The agreement might state the degree of productivity and the minimum condition to be maintained. The amount and method of paying rent should be clearly stated.

Section IV: Improvements and Other Conditions

To improve or maintain the productivity of the land, conservation and improved production practices are usually required. Normally, these require additional labor and expenditures. It is important that the responsibilities and costs of implementing these practices be agreed upon.

Improvements and repairs can also provide an opportunity for misunderstandings. In many instances, operators provide equipment that may legally become permanent fixtures on the farm. Disagreement can be avoided and the farm resources more fully used if landowner and operator agree on improvements and further agree to an amortization schedule. The compensation schedule should be based on the local situation and individual farm. It should be clearly understood what will be done, how much will be done, and what each party will furnish.

Section V: Right of Entry

This item should be considered in all leases by both parties. Legally, the tenant has the right to treat as trespassers any entrant on the property, including the landowner. Consequently, this statement is inserted in the contract to give the landowner the legal right of entry and avoid future misunderstandings.

Section VI: Arbitration

In spite of all due care and planning, differences of opinion can arrive unexpectedly. One section

of the lease could be included to encourage the use of disinterested persons for settling differences promptly and in a friendly manner, rather than by litigation. Also, provision for additional remedies required in the event of breach of agreement by either party should be included.

Section VII: Signatures

The final section should be for the signature of each party. All co-owners of the property should sign the lease agreement, including husband and wife. The agreement becomes a contract when signed.

SUMMARY

Long term, written leases are of benefit to the land owner, the producer and the community. Leases are legal contracts, and competent legal assistance should be secured to handle all facets of the document, including the "how to" sections. The preparation and completion of contractual agreements constitute the practice of law; therefore, attorneys should be used in drawing up binding legal documents. The local County Extension Agent-Agriculture can provide information on production practices and any factors in the lease which may bear on the performance of the land under lease.

The lease agreement should be flexible enough to allow the producer to exercise the management skills he has acquired through experience. Discretion in management decisions is a particular skill of the producer. It should not be artificially obstructed by the lease arrangement.

If land is leased and then sold, the lease usually remains in effect, even if the property is purchased by a third party. Legal assistance should be obtained on this and all other matters pertaining to the lease document. Unless otherwise specified, leases of this nature generally may be assigned to others, with or without the landowner's consent. This ability to assign the lease will aid the farm operator's estate in the event of his untimely death or personal disability.

The landowner should be aware, however, that the lessee suffers economic damage in excess of the amount of the cash lease when the landowner breaks the lease. The lessee's investments, production plans and commitments have all been geared to the use of this resource. Similarly, involuntary conversion of the land (e.g., parks, rights-of-way, lakes, by agencies and governmental units) is a problem which should be considered in drawing up the lease.

A sample farm lease follows:

SAMPLE FARM LEASE

THE STATE OF TEXAS, }
County of

KNOW ALL MEN BY THESE PRESENTS:

This agreement of lease, made the.....day of.....A.D. 19.....
by and between.....
.....known herein as Lessor, acting
through the under-signed Broker or Agent, and.....
.....known herein as Lessee.

(The terms "Lessor" and "Lessee" shall be construed in a singular or plural number according as they respectively represent one or more than one person.)

WITNESSETH: That the said Lessor does by these presents lease and demise unto the said Lessee all that certain tract of land situated in the County of..... State of Texas, together with the improvements thereon, described as follows:

and containing.....acres, more or less, for the term of..... beginning the.....day of..... A.D. 19..... and ending the.....day of..... A.D. 19..... upon the conditions and covenants following:

FIRST. That the Lessee will well and punctually pay all rents in the manner and form herein after specified, and quietly deliver up the premises on the day of the expiration of this lease, in as good condition as the same were in when received, reasonable wear and tear thereof excepted, and Lessor shall have a first lien on all crops and/or livestock, both for rental and to keep said premises in such repair at all time.

SECOND. That said Lessee shall pay Lessor therefor the sum of..... Dollars, payable

THIRD.

FOURTH. That said Lessee will not sublet the said premises, or any part thereof, to any person whatsoever without the written consent of Lessor.

FIFTH. That on failure to pay rent in the manner above provided, or to comply with any of the obligations or covenants of this lease, the Lessor may declare this lease forfeited at..... discretion, and.....agent or attorney shall have the power to enter and hold, occupy and repossess the entire premises hereinbefore described as before the execution of these presents, or in addition to the liens before provided, or to be provided by law, said Lessor may and is hereby fully empowered to take in his possession and sell at the current market price the first products of said crops and/or livestock as fast as the same can be prepared for market, to amount sufficient to repay all advances made by Lessor to Lessee and to pay all rent due and to become due on said land, and the sale of any of the said crops and/or livestock without the payment of all rental due and to become due shall, without written permission of Lessor, be an express violation of above clause.

SIXTH. In consideration of the services rendered by Broker or Agent in negotiating this lease, Lessor shall pay a commission to Broker or Agent as follows:

IN TESTIMONY WHEREOF, The said parties have hereunto set their hands, in duplicate, the day and year above written.

Executed and delivered in the presence of

.....
Lessor
.....
Lessor

.....
Lessee
.....
Broker or Agent

