

Grazing Leasing and Liability Guidelines and Examples

To Honor and Protect the Ranching Way of Life

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What Is a Lease?

A lease is a legally enforceable agreement between two or more parties that require the performance of some action for the exchange of some good. Leases are a specific kind of contract.

Key terms:

Lessor – landlord or owner of the land

Lessee – the tenant or person who pays the lease

Lender – bank, farm credit association and sometimes individuals

Obliger – person whom the duty of performance under the contract is owed

Obligee – person obligated to perform

Basic Lease Structure

A basic lease includes the offer, subject matter, considerations, acceptance, and capacity. The offer is when someone wants to lease the property. The subject matter is the specific piece of property in question. Considerations include the cost of the lease and any other terms. The next step is that the offer is accepted and capacity is determined.

Example

“I, John Doe, agree to lease my ranch in Somewhere, Texas to Jane Doe for \$500.”

This is a binding contract, but leaves a tremendous amount of room for guesswork.

Types of Leases

There are many different types of leases. Before beginning an agreement, the type of lease must first be determined, as each type of lease may require a different set of guidelines.

Types of Leases:

- Grazing
- Farming
- Hunting
- Fishing
- Oil and Gas
- Wind
- Etc.

Lengths of Leases

Tenancy at Will

Tenancy at will can be cancelled by the lessor or the lessee at any time. This lease is generally not well-liked by the courts. A tenancy at will lease is often more uncertain than what most people prefer.

Periodic Tenancy

Periodic tenancy covers most oral agricultural leases and usually lasts for one year or less. This type of lease renews automatically unless adequate notice is given by one of the parties, or the parties have mutually agreed to end the lease.

Tenancy for a Term of Years

This lease is longer than one year and must be in writing. It terminates at the end of the lease unless a new agreement is made. The “Four Corners Rule” applies to this type of lease.

Four Corners Rule:

A rule holding that if a document (as a contract, deed, or will) appears on its face to be complete, no outside evidence may be used to challenge it.

Tenancy at Sufferance

This refers to a situation when there is a contract like one of the above and the lessee refuses to leave. This can be addressed through eviction, fine, double rent or simply allowing a renewal.

Oral Leases and Contracts

Basic Rules of Oral Leases:

Valid if:

- Performed in less than one year
- Goods sold are worth less than \$500

Oral leases and contracts are enforceable under certain circumstances. The terms need to be decided upon by both parties. Use of oral leases should be determined by the situation and lessee/lessor involved. If the verbal agreement fits any criteria within the Statute of Frauds, the agreement must be in writing.

Examples of Valid Oral Leases

- A verbal agreement to lease land that begins on January 1 and ends on December 31
- A verbal agreement to gather and ship cattle in the spring of a certain year
- A verbal agreement for a season-long hunting lease

Types of Agricultural Leases

In a **Cash Rent Lease**, the tenant or lessee has agreed to pay either a fixed dollar per acre amount or a set rent for the entire farm or ranch. This means the lessor gets a steady stream of income, regardless of the profitability of the lessee with little or no concern about commodity prices. If desired, the lessor can put in the written contract a clause that takes into account the profitability of the lessee that either increases rent in good years or lowers rent in poor years. The lessee generally has more control over the operation because of the assumption that the lessor is more interested in the rental payment than the farming or ranching practices of the lessee.

Some federal programs and statutes require than an individual be “actively engaged in farming” in order to participate. Cash renting farm land is often not considered to meet this standard because the lessor is not subject to the traditional risks associated with farming. Because the lessor is not “actively engaged in farming” (or materially participating), the cash income is not subject to self-employment tax and is not considered to be earned income for the purposes of determining how a social security check will be modified if the landlord has already retired.

Things to consider about Cash Rent Leases:

- When is rent due? (at the beginning or end of the lease?)
- Is insurance required?
- Are there any activities that the lessee is prohibited from doing on the property?

In a **Crop-Share Lease**, the landlord will typically share in the input costs (feed, seed, fertilizer, fuel, etc.) and provide the land. The tenant or lessee will provide labor and the rest of the inputs. After the crop is harvested or the cattle sold, the landlord will take an agreed upon percentage in exchange for rent and their share of the inputs.

This provides an opportunity for increased or decreased revenue, depending upon success of the operation. The landlord shares the risks with the tenant, which may satisfy the “actively engaged in farming” requirement of some government programs and statutes. This type of lease also gives the landlord a share in the decision-making process.

Money collected by the landlord will be subject to self-employment taxes and may lower the amount of a landlord’s social security check if he or she is retired.

Things to consider about Crop-Share Leases:

- Can you get along with the tenant?
- Should it be oral or written?
- What do you know about the tenant’s reputation?

Hybrid Leases

Hybrid leases are generally a combination of cash rent and crop-share leases. They usually require a minimum rent with a bonus if profitability is greater than a certain amount. Hybrid leases should always be in writing.

Drafting Considerations

- Soil and water quality – are background samples needed?
- Determine sustainability of the use.
- Identify responsibility for maintenance of fences, roads, barns, etc.
- Clarify all uses of the property (including prohibited activities).
- Determine when the lease terminates.
- In the event of the death of a party, what happens to the lease?
- Clarify stance on assignment and subleasing.

Allowed Agricultural Practices

- Row Crops – Identify what the lessee is allowed to grow and where this is permitted. Determine how fertilizer and chemical use is regulated.
- Livestock Operations – Identify what species the lessee is allowed to raise. Determine stocking rates for specific pastures to make sure land is not being overgrazed.
- Crop Rotation – Determine water usage and buffer zones around water.
- Restricted Wildlife Habitat – This includes land maintained for personal use, protection, or government programs. These areas need to be defined in the lease.

Maintenance of Fences, Roads, etc.

It is important to determine who has the responsibility of maintenance of some parts of the property. This includes houses, fences, and roads. If there are houses on the property, it needs to be determined who will be responsible for the repairs, taxes, electricity, etc. If fences need to be built, the lessor should provide specifics on how the fence is to be constructed. Once a fence is built by a tenant, the fence stays. Define road usage. If roads are not to be used when it's muddy, during certain times of the year or by certain people, this must be addressed in your lease.

Property Use

If the land is being used for hunting, the lessor needs to clarify if there are certain days or areas where hunting is not permitted. The lease should address trash pickup (hulls, brass, etc.). Any other restricted activities should be addressed in the lease. The lease should address subleasing. If a restriction on subleasing is not in the lease, the tenant can generally sublease.

If restrictions are not communicated, then they do not exist!

Death of a Party

In the event of the death of a party, the estate of the decedent will usually continue the lease until its natural termination.

Termination of the Lease

In the event of a breach of a lease condition determine if there is a right to terminate after the breach. Generally, there isn't a right to terminate unless it is clear in the lease. If it's not clear, you must sue for damages or injunctive relief. A breach of contract (failure to pay, etc.) gives the right to terminate the lease. Parties can terminate the lease by agreement.

Landowner Liability

Chapter 75 of the Texas Civil Practices and Remedies Code (TCP) is the Limitation of Landowner's Liability. The landowner has no duty of care to a trespasser and is not liable for injury except in the event of willful or wanton acts of gross negligence by the owner, lessee, or other occupant of agricultural land.

The landowner has the same duty of care as to a trespasser to invited guests with no charge for entry and is responsible only for deliberate, willful, or malicious injury to a person or property. This includes relatives and neighbors who are invited, but not being paid.

The landowner must give fee paying users adequate and timely notice of dangerous conditions on the property that are 1) personally known or 2) a reasonable inspection would reveal.

Invited, fee paying guests cannot ignore open and obvious dangerous conditions.

If the invited guest is charged a fee, the landowner has no greater duty than is owed a trespasser until the total charges collected during the previous calendar year exceeds 20 times the amount of the ad valorem taxes imposed on the premises for the previous year.

Example

Taxes for 2010 were \$2,000. If revenue generated by invited guests exceeds \$40,000, then landowner is no longer protected by the statute.

There is liability insurance available through umbrella policies. Farm and Ranch liability covers bodily injury, property damage, medical, chemical drift, and recreational land use activities. Contract labor assumes the risk of their profession so long as they are engaged in activities of their profession.

The "Attractive Nuisance Doctrine" covers unaccompanied, trespassing children under 16. It applies when a child is too young to appreciate or realize a dangerous condition; the location of the condition is one the landowner knew or should have known that children frequent; and the utility of maintaining the condition is slight compared to the probability of injury to children.

Grazing Lease Agreement

State of Texas

County of _____

This Grazing Lease is made and entered into as of this _____ day of _____, 20____ by and between PARTIES _____ as Lessor, and _____, as Lessee.

Lessor, for and in consideration of _____ and No/100 Dollars (\$###) and good and other valuable consideration, hereby leases to Lessee the Leased Premises located in _____ County, Texas, and described as follows:

Lessee shall, during the term of this lease, use the Leased Premises for the purpose of _____ (i.e. pasturing, feeding, grazing cattle) limited to the number of _____ (i.e. cattle) allowed per acre as established by the Texas Agricultural Extension Service.

This lease is to commence on the date hereof and end in one year to be automatically renewed and extended from year to year, unless terminated in writing by Lessor or Lessee.

Lessee shall occupy the premises at Lessee's own risk and Lessor shall not be liable to anyone for the action or omissions of Lessee, Lessee's agents, servants, employees, customers, visitors or licensees, and Lessee agrees to indemnify and hold Lessor harmless from all claims and causes of action resulting from or alleged to have resulted from such actions or omissions including attorney's fees and expenses incurred. Lessee shall not be liable to anyone for the actions or omission of Lessor, Lessor's agents, servants, employees, visitors, or licensees, and Lessor agrees to indemnify and hold Lessee harmless from all claims and causes of action resulting from or alleged to have resulted from such actions or omissions including attorney's fees and expenses incurred.

Lessee shall not assign, sublease or permit third parties to occupy or use any portion of the Premises during the term of the lease without the written consent of Lessor.

This Lease is the entire agreement of the parties, and there are no oral representations, warranties, agreements or promises pertaining to this Lease not incorporated in writing in this Lease.

This Lease may be amended only by an instrument in writing signed Lessor and Lessee.

Notwithstanding anything contained herein to the contrary, this lease may be terminated at any time by Lessee, provided, however, that Lessee has given thirty (30) days written notice to Lessor. Upon termination of this Grazing Lease by either Lessor or Lessee, Lessor shall be responsible for fencing the property should they desire to keep the cattle from their property.

Executed on _____.

LESSOR:

LESSEE:

SAMPLE

**Release of Liability and Acknowledgment and Acceptance
of Dangers, Risks and Hazards of Hunting Lease**

I hereby acknowledge that I have knowingly and willingly entered a Hunting Lease Agreement, or became a party bound by the terms and conditions of a Hunting Lease Agreement by and between _____, et al. (hereinafter the Lessor, whether one or more), and _____, et al., dated _____, 20___. I understand the terms, provisions and conditions of that Hunting Lease Agreement and agree to abide by its terms, provisions and conditions.

I further acknowledge and understand that no warranty, either express or implied, is made by the Lessor as to the condition of the hunting lease (hereinafter the leased premises) located in _____ County, Texas, or of any roads, buildings, gates or other improvements located thereon. This document to warn me that dangerous conditions, risks and hazards do exist. My presence and activities on the leased premises expose both me and my property to dangerous conditions, risks and hazards, including but not limited to: poisonous snakes, insects and spiders; blinds and tree stands, whether or not erected by Lessor; erosion and general condition of the land, both on and off roadways or senderos, creating rough, hazardous and dangerous driving and walking conditions; animals both wild and domestic that may be diseased and/or potentially dangerous; deep water; persons with firearms both on or off the leased premises; and the use of vehicles. I hereby state that I expressly assume all such dangers, risks and hazards.

In consideration for the right to enter the leased premises, I hereby release and agree to protect, indemnify and hold harmless the Lessor and his or her respective heirs, agents, employees and assigns from and against any and all claims, demands, causes of action and damages, including attorneys' fees, resulting from any accident, incident or occurrence arising out of, incidental to or in any way resulting from the use of the leased premises and all improvements thereon, whether or not caused by the Lessor's negligence or gross negligence. This release applies during the time that I am permitted on the leased premises. I hereby further covenant and agree that I, my heirs, successors and assigns will not make any claim or institute any suit or action at law or in equity against the Lessor or his or her respective heirs, agents, representatives, employees, successors or assigns by reason of conditions of the leased premises or activities occurring thereon.

As used in this release, the terms I, my person and myself include minors in my care while on the leased premises.

Date and signed this _____ day of _____, 20__.

(Hunter's Signature)

(Hunter's Printed Name)

(Hunter's Address)

Guest Liability and Indemnification Agreement

_____ (hereinafter referred to as Guest)
Guest has been given permission to come upon the
_____ RANCH located in
_____ COUNTY, TEXAS (hereinafter referred to as
the Owners Premises) operated by _____
(hereinafter referred to as "Owner").

Guest acknowledges and understands that no warranty, either express or implied, is made by the Owner as to the condition of the Owner's Premises. This document is to warn Guest that dangerous conditions, risks and hazards do exist on the owners premises. Guest acknowledges that hunting and other activities on rural property such as the Owner's Premises does have unknown hazards and risks and can result in injury or property damage to the person/persons involved in these activities. The many possibilities and sources of injury or damage are acknowledged by Guests, and he/she comes on the Owners Premises with full knowledge that hazards and risks exist.

As a part of the consideration for being allowed by Owner to enjoy hunting activities on the Owner's Premises, Guest HEREBY INDEMNIFIES (RELEASES) OWNER from all liability for personal injury (including wrongful death) or property damage suffered by Guest which is caused, in whole or in part, by any activity or condition on the Owner's Premises. Guest understands this agreement and has agreed that neither he/she, nor his heirs or personal representatives will be able to sue Owner or his associates for any injury or property damage that Guest suffers while on the Owners Premises. Guest INDEMNIFIES AND RELEASES OWNER FROM ALL LIABILITY.

As used in this release agreement, the term *Guest/Guests will* include any minors in the Guests care while on the Owners Premises. All Guests who bring minors understand the Owner is not responsible for the care or safety of minors. The Guests who bring minors onto the Owners Premises assume the responsibility for watching and caring for the minor's safety and guarding against hazards at all times.

Guest has read this document and understands it.
He/She is signing it freely and voluntarily.

Dated _____

Guest(s) _____

Witness _____

END OF AGREEMENT



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