

TSCRA Ranching 101

Laws, Leasing and Liability

Disclaimer

- Any information provided in this presentation is not intended to be legal advice, nor is it intended to be a substitute for legal services from a competent professional.

What are leases?

- Legally enforceable agreements between two or more parties that require the performance of some action or for the exchange of some good.
- Essentially just a specific kind of contract

Basic Lease Structure

- Offer – someone wants to lease
- Subject Matter – a specific piece of property
- Consideration – cost of the lease
- Acceptance
- Capacity

Example

“I, Chad Lee, agree to lease my ranch in DeLeon, Texas to John Doe for \$500.”

- Binding contract?
- Leaves a tremendous amount left to guesswork

Types of Agricultural Leases

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

Lease Terminology

- Lessor – landlord or owner of the land
- Lessee – the tenant or person who pays the lease
- Lender – bank, farm credit association and sometimes individuals
- Obligor – person whom the duty of performance under the contract is owed
- Obligee – person obligated to perform

Types/Lengths of Leases/Contracts

- Tenancy at Will
- Periodic Tenancy
- Tenancy for a Term of Years
- Tenancy at Sufferance

Tenancy at Will

- Can be cancelled by the lessor or the lessee at any time
- Not generally well-liked by courts
- Much more uncertain than what most people want

Periodic Tenancy

- Covers most oral agricultural leases
- Usually for a year or less
- 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

- Longer than one year = has to be in writing
- Terminates at the end of the lease unless a new agreement is made.
- “Four Corners Rule” applies

Tenancy at Sufferance

- You have a contract like one of the ones above and the lessee refuses to leave.
- Eviction, fine, double rent or simply allowing a renewal

Oral Leases/Contracts

- Enforceable? – under certain circumstances
- Terms – who decides?
- Statute of Frauds
- Should you use them?
 - depends on the situation and the lessee/lessor

Basic Rule of Oral Leases

- Valid IF:
 - performed in less than one year
 - goods sold are worth less than \$500

Texas Statute of Frauds

- Chapter 26, Business and Commerce Code:
- Sec. 26.01. PROMISE OR AGREEMENT MUST BE IN WRITING. (a) A promise or agreement described in Subsection (b) of this section is not enforceable unless the promise or agreement, or a memorandum of it, is
 - (1) in writing; and
 - (2) signed by the person to be charged with the promise or agreement or by someone lawfully authorized to sign for him.
- (b) Subsection (a) of this section applies to:
 - (1) a promise by an executor or administrator to answer out of his own estate for any debt or damage due from his testator or intestate;
 - (2) a promise by one person to answer for the debt, default, or miscarriage of another person;
 - (3) an agreement made on consideration of marriage or on consideration of nonmarital conjugal cohabitation;
 - (4) a contract for the sale of real estate;
 - (5) a lease of real estate for a term longer than one year;
 - (6) an agreement which is not to be performed within one year from the date of making the agreement;
 - (7) a promise or agreement to pay a commission for the sale or purchase of:
 - (A) an oil or gas mining lease;
 - (B) an oil or gas royalty;
 - (C) minerals; or
 - (D) a mineral interest;

Examples

- 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 Ag Leases

- Cash Rent Leases
- Crop-share Leases
- Hybrid Leases

Cash Rent Leases

- Cash Rent – the tenant/lessee has agreed to pay either a fixed dollar per acre amount or a set rent for the entire farm or ranch

Cash Rent Cont'd

- Lessor gets a steady stream of income regardless of the profitability of the Lessee with little or know concern about commodity prices (as long as you can collect)
- If desired, Lessor can put in written contract a clause that takes into account the profitability of the lessee either increases rent in good years or lowers rent in poor years
- Lessee generally has more control over the operation because of the assumption that Lessor is more interested in the rental payment than the farming or ranching practices of the lessee

Cash Rent Leases cont'd

- “actively engaged in farming” – some federal programs and statutes require that 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 you are 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.

*Information provided from the National Ag Law Center.

Cash Rent Leases, cont'd

- Issues to look for:
 - When is rent due? Beginning or end of lease?
 - Insurance required?
 - Activities that you do not want the lessee to do on the property?

Crop-share Leases

- Landlord will typically share in the input costs (feed/seed, fertilizer, fuel, etc.) and provide the land
- Tenant/Lessee will provide the labor and the rest of the inputs
- After crop is harvested or cattle or sold, landlord will take an agreed percentage in exchange for rent and their share of the inputs

Crop-share Leases, cont'd

- Opportunity for increased or decreased revenue depending upon success of the operation;
- Landlord shares the risks with the tenant which may satisfy the “actively engaged in farming requirement” of some government programs and statutes;
- Landlord retains 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 they are retired

Crop-share Leases, cont'd

- Can you get along with the tenant?
- Oral or written? (Every lease looks like a great deal when you get into it or no one would ever enter one!)
- What do you know about the tenant's reputation? (Ranchers, farmers, hunters, oil men, etc. all have a reputation. Take the time to find out what it is.)

Hybrid Leases

- Generally a combination of cash rent and crop-share leases
- Basically requires a minimum rent with a bonus if profitability is greater than a certain amount
- Should **ALWAYS** be in writing

Drafting Considerations

- Soil and water quality
 - background samples needed?
- Sustainability of the use?
- Maintenance of fences, roads, barns, etc.
- ALL uses of the property
- When does the lease terminate?
- Death of a party
- Assignment and subleasing

Allowed Agricultural Practices

- Row crops – what are they allowed to grow, where can they grow it and how do you regulate fertilizer and chemicals?
- Livestock operations – stocking rate, species kept?
- Crop rotation, buffer zones around water, water usage
- Restricted wildlife habitat – maintained for personal use or protection

Maintenance of Fences, Roads, etc

- Who has the responsibility?
- Houses – repairs, taxes, electricity, etc.
- Fences – once built by tenant they stay; need specifics on how you want them built
- Roads – all weather or restricted access when muddy?

Property Use

- If restrictions are not communicated then they don't exist
- Hunting – certain days and places reserved for landlord and family; picking up of hulls, destruction of roads, etc.
- Can rancher farm or your farmer ranch?
- Oil and gas lessor?
- Agritourism?
- Subleases – landlord permission needed? (If restriction is not in the lease then tenant can generally sublease.)

Death of a Party

- Estate of the decedent will usually continue the lease until its natural termination.

Termination of the Lease

- Breach of a lease condition:
 - is there a right to terminate after breach?
 - a.) generally, no, unless it is spelled out in the contract
 - b.) if not spelled out must sue for damages or injunctive relief
- By agreement
- Breach of Contract (fail to pay, etc.)

Handout Examples

- Guest Liability (day workers, friends, etc.)
- Grazing Lease
- Hunting Lease

Lease Rates

- Grazing
- Farming
- Hunting/Fishing
- Agritourism – horseback riding, birdwatching, atv trails, etc.

Landowner Liability

- **Chapter 75 TCPRC** – Limitation of Landowner's Liability
- Trespassers
 - 1.) no duty of care to a trespasser
 - 2.) not liable for injury to a trespasser
EXCEPT: wilful or wanton acts or gross negligence by the owner, lessee, or other occupant of agricultural land

Landowner Liability, cont'd

- Invited guest with no charge for entry
 - 1.) same duty of care as a trespasser
 - 2.) only responsible for deliberate, wilful, or malicious injury to a person or property
- Includes relatives helping, “neighboring”, basically anyone invited to be there that is not being paid

Landowner Liability, cont'd

- Invited guest that is charged a fee
 - 1.) no greater duty than is owed a trespasser **UNTIL**: 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.

Landowner liability, cont'd

- Fee paying users – must give them 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.

Landowner Liability, cont'd

EX: Taxes for 2010 were \$2000. If revenue generated by invited guests exceeds \$40,000 then landowner is no longer protected by the statute.

What to do then?

Landowner Liability, cont'd

- Liability insurance – umbrella policies

Farm and Ranch liability – bodily injury/property damage, medical, chemical drift, recreational land use activities

- Contract Labor – they assume the risk of their profession so long as they are doing it.
- Who buys the insurance?

Landowner Liability, cont'd

- “Attractive Nuisance Doctrine”
 - 1.) covers unaccompanied, trespassing children under 16;
 - 2.) “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.”

Resources Used

- www.tpwd.state.tx.us/
- www.statutes.legis.state.tx.us/
- www.recenter.tamu.edu
- www.nationalaglawcenter.org

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