

LEGAL GUIDE

BASICS OF LANDLORD TENANT LAW

Farmers regularly enter into agricultural rental agreements either as landlord or as tenant. Although this relationship is essentially contractual in nature, certain provisions in the Wisconsin Statutes can and will become part of the rental arrangement unless otherwise agreed to in writing. The following discussion briefly explains the rules affecting agricultural rental arrangements.

Rental Agreements - Leases

Leases are oral or written agreements, transferring possession of real property, or both real and personal property from the owner to the tenant. They are distinguishable from other rental arrangements because they are for a definite period of time. Although oral leases for a year or less are enforceable, it is much better to have a written lease for many reasons:

- i. Without a written agreement, a court will have to determine what the agreement between the parties was in the event of a dispute.
- ii. A written lease will help resolve disputes since the parties can refer to the written instrument when questions arise.
- iii. Certain provisions in the Wisconsin Statutes automatically become part of an oral lease, even though the parties may have agreed otherwise.

Wisconsin law requires that a lease for more than a year, or a contract to make such a lease, must be in writing and meet certain other requirements or it will not be enforceable. For example, if a landlord and a tenant enter into an oral lease for two and one-half years, but one party later decides to back out of the deal, the wronged party may be unable to hold the other party to the agreement because the law says the oral agreement is unenforceable because it is over a year in length.

Leases for more than a year must identify the parties; identify the land by a "reasonably definite description," set forth all material terms of the lease, state the start and end of the lease and the amount of rent or other consideration. Leases for farm purposes should provide for such things as taking and perfecting a security interest in crops to secure payment of the rent; terms for renewal; special provisions relating to machinery and livestock; the planting and plowing of the lands; the spreading of manure; improvements or repairs to be undertaken by the parties; the farming methods to be used; the treatment of timber, gravel pits and fruit that may be on the land; what ought happen in the event of floods, fire or

drought; who's responsible for insurance, taxes and utilities; and on what conditions the lease will be terminated prior to its expiration. Several of these provisions are discussed below.

Lease Provisions Unique to Farming

Farm leases can be divided into two categories, the cash and the share lease.

1) Cash Lease

The cash lease calls for periodic cash payments. A cash lease should also contain specific provisions unique to farming.

a) Good husbandry provision

This provision requires the tenant to farm the premises in a manner consistent with reasonable farming expectations in the community. A tenant who fails to farm in such a reasonable manner may become liable to the landlord for any damages resulting from this failure. Even in the absence of an express good husbandry provision in the lease, a court may hold that this provision is implied in any agricultural landlord-tenant relationship.

b) Improvements clause

This clause should set forth the improvements the tenant is responsible for. It also should state the landlord's responsibility for supplying any needed materials for improvements. If the tenant anticipates making any major improvements during the term of the lease, the lease should discuss whether the tenant will receive any compensation for the improvements. In the absence of such a provision, the tenant generally will be unable to recover the costs of improvements.

c) Growing crops

This clause typically provides that the landlord will obtain a security interest in the crops to assure payment of rent. In order to protect the landlord's security interest in the crops, the tenant must sign a "security agreement." The landlord then must file a financing statement with the Wisconsin Department of Financial Institutions and should file a financing statement in the county where the crops are grown. If landlords do not take these steps, they may have no legal right to the crops, nor will they have the right to interfere with the tenant's harvesting and use of the crops. When there is more than one creditor attempting to take a security interest in the crops, the first to properly file a financing statement generally is given priority.

The landlord and tenant should be aware that some preprinted form leases grant the landlord the right to seize and sell a tenant's property. Such a provision is contrary to Wisconsin statutory law. Because a lease relationship is contractual in nature, however, such a provision may be upheld by a court.

2) Share leases

Share leases hold several advantages over cash arrangements. These advantages can benefit both the tenant and the landlord. The most common form of share leases are crop-share leases.

The share lease apportions crop returns between the landlord and tenant. The most important advantage of the crop-share lease is that it takes into account variations in price and production. This protects the tenant against sharp decreases in prices or production and allows the landlord to share in increased profits during economic upswings. The crop-share lease also provides for uniform returns over different types of crops, thereby taking into account variations in output. The main disadvantage of the crop-share lease is crop delivery disputes between the tenant and the landlord.

Traditionally, crop-share leases provided for a 50%-50% split between the tenant and the landlord. Because of the increasing complexity of farm operations, however, this division is no longer strictly adhered to. In order to arrive at an equitable distribution, many factors should be considered. For example, the parties should consider the application of weed control measures and lime or corrective fertilizer. The tenant and landlord should decide who will provide the necessary inputs for crop production. Crops to be grown and any agreed rotation patterns should be determined jointly between the parties.

Other areas that may need to be negotiated include: 1) grain harvesting and handling changes; 2) irrigation costs; and 3) livestock facilities. The parties should discuss whether they will participate in government programs and how benefits will be divided between the parties. In determining a fair return to the landlord and the tenant under a crop-share lease, the parties need to take into account the anticipated inputs contributed by each party. Often, only fixed costs are considered in this calculation; to arrive at a truly equitable determination, however, variable costs such as repairs, fuel and fertilizer, also should be considered.

In calculating the contributions of landlord and tenant, the use of a worksheet is particularly helpful. The University of Wisconsin Cooperative Extension office in the county has worksheets that can assist in these calculations. The worksheet

should include the landlord's contributions such as land and buildings, taking into account depreciation and taxes; the tenant's contribution of labor; and the contributions of each with respect to management, machinery, variable costs and the various improvements outlined earlier in this chapter. The contributions of the parties are then divided by total contributions to arrive at a percentage, representing the return each should realize from the farm's output.

The share lease can be used for livestock, dairy and grain. In livestock-share agreements, absent an express agreement on the division of livestock, Wisconsin courts generally award any increase in livestock numbers to the tenant at the end of the lease term.

Rental Agreements - Informal Rental Arrangements

What happens if the parties do not have a valid, written lease stating the duration of the tenancy? In these instances, the law usually will classify the tenancy as either a "periodic tenancy" or a "tenancy-at-will."

Periodic tenancies

A periodic tenancy is one in which rent is payable at regular intervals. If the tenant rents property and agrees to pay rent by the month, but there is no agreement to stay for any definite period, the tenant would be a tenant from month-to-month.

Perhaps more common to agricultural rentals is the situation where there is tenancy under an invalid lease, such as where the parties have agreed orally to a lease for more than a year or where the written lease fails to comply with Wisconsin law. In the case of agricultural use, the tenant becomes a year-to-year tenant without regard to the rent payment periods. The landlord and tenant are stuck with one another for an entire year, and the tenancy can be terminated only upon 90 days notice given before the end of the year. This situation, perhaps more than any other, highlights the importance of having a valid written lease.

A periodic tenancy also arises when a tenant under a lease "holds over" (that is, fails to leave the premises) after the lease expires. The landlord then can elect to hold the tenant as a periodic tenant or evict the tenant. The acceptance of rent from the "holdover" tenant normally will be regarded as an election by the landlord to hold a tenant to a periodic tenancy. If the premises were leased for a year or more for agricultural use, the lease will be renewed on a year-to-year basis, binding the landlord and tenant by the terms of the lease as if it had been extended for a year. Again, the arrangement then can be terminated only at the end of the year and only after 90 days prior notice.

A periodic tenancy does not end with the death of a party. Unless the tenancy is a year-to-year, periodic tenancies are not assignable by the tenant.

Tenancies-at-will

A tenancy-at-will is one where a person is in possession without any definite agreement for regular payment of rent. A tenancy-at-will would be created if a father permitted his son to take possession of the farm and the son made payments to his father equal to the underlying mortgage payments without any type of written agreement between father and son. Such a tenancy is nontransferable and ends with the death of either party.

Rights and Duties of the Parties Where No Written Agreement

Exists

When there is no written agreement, the Wisconsin Statutes outline the rights and duties of the landlord and tenant, which may or may not be what the parties want or agreed to.

The Wisconsin Statutes set forth certain provisions that govern the landlord's rights and duties in the event the premises are damaged by fire, water or other casualty, which is not the result of the landlord's negligence or intentional act. If the premises are damaged (by any means) by the tenant's negligence or improper use, it is the tenant's duty to repair the damage and restore the premises. The law requires the tenant to keep the premises, machinery and equipment furnished in reasonable working order if the repairs can be made at a cost that is minor in relation to the rent.

In certain circumstances, the law allows a tenant to leave the premises if it becomes uninhabitable because of damage by fire, water or other casualty, other conditions hazardous to the tenant's health, or if there is a substantial violation of the landlord's duties materially affecting the health or safety of the tenant. The landlord will be given an opportunity to repair, rebuild or eliminate the health or safety hazard. In addition, the tenant may be able to leave if the nature and period of repair, rebuilding or elimination of health or safety hazards causes undue hardship. If the tenant remains in possession, the rent can be reduced to the extent the tenant is deprived of the full normal use of the premises. If the tenant moves out under these circumstances, the tenant may not be liable for rent after the premises became uninhabitable. In addition, the landlord must repay any rent paid in advance proportionate to the period after the premises became uninhabitable.

Generally, unless otherwise agreed upon, the landlord should purchase insurance to protect against accidental loss of buildings and machinery provided by the landlord. The landlord also should purchase personal liability insurance to protect against persons who might sue for accidents that occur on the premises. The tenant should acquire insurance against loss of personal belongings and his own machinery and livestock. The tenant also may want to purchase personal liability insurance.

The law prohibits the tenant from making any physical changes to the premises, including removing, altering or adding to the structures thereon, without the landlord's prior consent. The tenant cannot use the premises for any unlawful purpose. At the termination of the tenancy, the law allows tenants to remove any fixtures installed by them if they restore the premises to its prior condition or pay the landlord the cost of such restoration.

Wisconsin law requires the landlord to make necessary repairs, unless the repairs are due to the tenant's negligence or improper use of the premises. The landlord must:

- i. keep in reasonable repair those portions of the premises over which the landlord maintains control;
- ii. keep in reasonable repair all equipment necessary to supply services that the landlord has expressly or impliedly agreed to furnish to the tenant; and
- iii. Make all necessary structural repairs and to undertake major repairs or replacements of any machinery or equipment furnished with the premises and no longer in reasonable working condition.

If the parties desire a different allocation of responsibilities, a written lease should be drafted and signed by the parties.

Termination of Informal Rental Agreements

In the absence of a written contract, the Wisconsin Statutes will govern the notice necessary to terminate tenancies for failure to pay rent or for other breaches by the tenant. An attorney will be better able to explain in detail the rights and remedies available under these provisions.

Periodic tenancies and tenancies-at-will have no definite termination date. Either the landlord or the tenant can terminate such tenancies by giving the other party written notice complying with certain statutory requirements unless:

1. The parties have agreed expressly upon another method of termination, and such agreement is established by clear and convincing proof;
2. Termination has been accepted by the landlord; or
3. A periodic tenant vacates the premises.

Conclusion

Under the rental arrangement, a tenant actually acquires the right to use the landlord's land, buildings and possibly equipment for a period of time. Because of potential for disagreement, the rental arrangement should be approached with the same degree of seriousness as purchasing land. A carefully written and well-thought out agreement defining the responsibilities of the landlord and tenant will force the parties to consider what is fair and serve to avoid future disputes.

The Legal Guide should not be relied upon as a source for legal advice and it is not a substitute for advice from a competent attorney. In preparation of this publication, every effort has been made to offer the most current, correct, and clearly expressed information possible. Nevertheless, inadvertent errors in information may have occurred as well as changes in laws, regulations and procedures following publication. The information and data included in this publication have been compiled by Wisconsin State Government staff from a variety of sources, and are subject to change without notice to the user of this publication. The State of Wisconsin and its agencies, officers, employees, authorized agents and contractors make no warranties or representations whatsoever regarding the quality, content, completeness, suitability, adequacy, sequence, accuracy, or timeliness of the information contained in this publication. The reader is advised to consult an attorney regarding any decision or action that may have legal ramifications.

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