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Written Sugarcane Leases: Protecting the Interests of the Farmer and Landowner

Rusty W. Rumley
Staff Attorney
&
Benjamin L. Thomas
Graduate Assistant

Though more common than written leases[1], oral leasing arrangements are often not enough to fully protect the interests of the farmer and the landowner. One major problem caused by oral leasing agreements is that leases which are meant to last for longer than one year are unenforceable as a matter of law. Because crops such as sugarcane require a significant initial investment and last for a term of years, an enforceable written lease should be the rule rather than the exception.

Often, oral leases are relied on when there is an established relationship between the farmer and the landlord. However, unexpected changes in circumstances – such as death or bankruptcy of either party – may drastically alter these relationships during the lease term. If an oral lease for more than one year is challenged or breached, one party may be unfairly benefited or harmed when the lease agreement is held to be unenforceable.

I. Lease Term

Perennial crops, such as sugarcane, typically require a large initial investment for planting and leveling during the first year. Revenues may vary from year to year depending on the maturity of the crop, as well as unforeseeable circumstances ranging from weather variations to natural disasters. For these reasons, the parties generally prefer a lease period of several years, five years being typical for sugarcane, which reflects the natural cycle of the crop.

The lease term provisions may include an option for the farmer to renew the lease for another term (such as 5 years) so long as the lease was not breached, or violated, during the first term. This option provides an additional incentive for the farmer to invest time and money into the property, if

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See, e.g., Michael E. Salassi and Michael A. Deliberto, *Agricultural Cropland Lease Structures for Major Row Crops in Louisiana: Statewide Survey* Results, Staff Report No. 20099-07, LSU Agricultural Center (June 2009), *available at* http://agfax.com/updates/la/2009/misc/lsucrops0609.pdf. Salassi reported that 61% of sugarcane leases were oral, and 29% of sugarcane as a percentage of total leased sugarcane farmed was under an oral leasing arrangement.

they are guaranteed with the opportunity to lease the land again at the end of the term. Depending on the nature of the relationship between the parties, they may also include a provision granting the farmer the right of first refusal in the event the landowner decides to sell the land during the lease term.

II. Landowner Compensation

Agricultural leases typically provide for either a fixed cash payment, called a "cash lease," or a payment based upon some share of the crop's proceeds, called a "crop-share lease." The option of whether to use a cash lease or crop-share lease is left to the leasing parties based upon preference and risk management. In Louisiana, crop-share arrangements outweigh cash arrangements by approximately 3 to 1.[2] In fact, more than 90% of the total acreage leased in 2009 was leased under a crop share arrangement.[3]

a. Cash Leases

A cash lease is generally a much simpler option. However, use of cash leases for perennial crops and for long-term lease terms may expose one of the parties to disproportionate risk in the event of poor weather patterns or other unexpected circumstances. If the lease is for multiple blocks of land of differing quality, or if multiple crops will be planted on the leased land – a common occurrence, especially if irrigation is used – a more detailed provision based upon acreage may provide for a more accurate matching of expected revenue and rent payment. The lease may provide for a single lump-sum annual payment, or it may require periodic installments to be made throughout the lease term.

b. Crop Share Leases

Under a crop share arrangement, the farmer pays the landowner in one of two ways, depending on the language of the lease. First, the farmer may pay the landowner a specific amount based upon the amount of crop produced. Second, the lease may require the farmer to pay rent as a percentage of proceeds. Generally, a sugarcane crop share lease will require a payment to the landowner of 1/6 of all proceeds – including both revenue from sales and government benefits. If there are other crops grown upon the leased land as well, the lease may provide for another percentage based upon the value of that crop.

III. State of Cultivation at the End of the Lease

Many sugarcane leases and leases for other perennial crops provide for the possibility that the farmer will discontinue farming the land at the conclusion of the lease term, leaving some portions of the crop at varying stages of maturity. These leases also recognize that the land may be under production prior to the beginning of the lease term, meaning that some harvestable crop may be present on the land from the beginning.

There are several different options available to provide for proper compensation for the varying stages of maturity. The first option is to require a specific composition of the land upon lease

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Id. at 3.

Id.

termination. For example, the landowner may require a set amount of acreage be plant, first year, second year, and third year cane. This would prevent the renter from simply refusing to establish plant cane when they know that they will be discontinuing the lease. The landlord can further protect against this possibility by including provisions allowing for damages or early termination of the lease if the tenant is not honoring the agreement.

A complex lease agreement may also include detailed tables for determining the value of growing crops before and at the termination of the lease term in case a lease is terminated for other reasons (such as failure to pay rent). Another option is to simply require that the land be returned with the same amount of planted crop, without differentiating between crops or between states of maturity. A written lease is critical in situations such as these to ensure that crops such as sugarcane are kept in rotation. Otherwise, the landowner may be forced to bear the time and expense of re-establishing the crop before he is able to lease it out again.

IV. Soil Fertility and Pest Testing

Many written leases require the farmer to facilitate annual or regular testing by professionals of the soil and the land. This professional will generally be certified by the state's Department of Agriculture or may be associated with the state's extension service. The testing requirements typically focus on two elements: 1) soil testing to determine fertilizer requirements; and 2) scouting for the purposes of weed, insect, and disease control. Who pays the costs of these tests is up to the landowner and tenant to decide. Once the results are in, one or both of the parties are expected to act on the recommendations made by the expert. Typically, the landlord pays for activities that have a long term impact on the soil, such as liming, while the tenant is responsible for insect and weed control. However, these requirements can be changed in a written lease.

V. Surface Damages

Proper land preparation and maintenance, which improves drainage, reduces soil compaction, and reduces mechanical stress on farm machinery, is extremely important in growing sugarcane. Advances in technology – such as laser-guided leveling – have vastly improved productivity, but they also come at a significant cost. One issue that often arises in regards to surface damages relates to the exploration and recovery of minerals. The mineral leaseholders will typically have a right of access to the property for exploration and drilling, actions which could either directly destroy growing crops or disrupt land leveling efforts. Most provisions account for this possibility by absolving the landowner of any direct liability (so long as they are not also the mineral owner) but requiring that any damages paid to the farmer by responsible leaseholders be split between the landowner and the farmer. As with other potential issues, the problems relating to surface damages may be resolved before the problem arises so long as an adequate written lease is used.

VI. Early Termination of Lease

A lease relationship can be terminated or altered early by breaking the lease, bankruptcy, incapacity, or various other situations. A general early termination clause may simply require that upon termination of the lease for any cause, the farmer must return the land with a specific balance of cultivation (i.e. 25% of land in plant cane, 25% in first year stubble, etc.). How the parties choose to address this issue should be set out in the written lease agreement.

Many leases contain specific breach provisions or actions that result in the breaking of the lease. A breach will typically grant the other party the right to end the lease unless the breach is cured and the right to recover damages even if there is not a written lease. There is quite a bit of risk in ending a lease because of a breach in an oral contract however. For example:

> Say that the owner of the land believes that the renter has breached the lease because he does not feel that the renter is taking care of the land. The landowner terminates the lease and sues for damages. If there is only an oral lease then the court will have to decide whether the owner was correct in determining if a breach of the lease had occurred. If the landowner was correct then he is safe, but if the court finds that the renter did not do enough harm to end the lease, then the landowner may be sued.

It is always risky ending an oral lease because of a breach. With a written lease agreement the parties can spell out what specific actions will violate the lease, but with an oral lease it is up to the courts to decide. Both sides in an oral lease have a right to end the lease if they think that there was a breach; however they may be sued later if a court decides that they were wrong.

Another set of problems that a written lease can correct is to give the landowner the right to terminate the lease immediately if the farmer dies, becomes incompetent, or is declared bankrupt. There may be some limitations on this ability in certain circumstances (especially dealing with some forms of bankruptcy) and in some cases the landowner may want to continue the lease with the farmer's heirs. A written lease gives the landowner more options in case something unexpected happens during a multi-year lease. The landowner and the farmer may have a great working relationship (maybe even strong enough that they did not see a need for a written lease), but how strong is the relationship between the landowner and a farmer's children or grandchildren? Sometimes a lease agreement may not work out as expected through no fault of either the farmer or the landowner, and written leases are one excellent way to address these issues before they become a problem.

VII. Conclusion

The leasing of agricultural land has been and will continue to be an extremely important part of agriculture in this country. As legal issues have become more complicated, it is important to have some record of a lease agreement between the landowner and the tenant. This is especially true when dealing with leases that last longer than one year, since oral leases are not even valid in these cases. Banks and government agencies are beginning to require some form of written documentation regarding the lease agreement before they will loan money out to a farmer because there is always a danger that they might lose access to the property because of an unenforceable oral lease. While oral leases will continue to be used on one year leases, it is important to realize that these oral leases will not work for long-term leases. Unfortunately, the farmers and landowners involved in these long-term oral leases may not realize there is a problem until it is too late.