

Grazing Leases, Hunting Leases and Easement Negotiation....Oh My!



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You Can Take the Girl Out of the Farm...

- B.S. in Agribusiness Farm and Ranch Management at Oklahoma State University
- J.D. University of New Mexico School of Law
- Private Practice in New Mexico for 4 years
- Currently Assistant Professor & Extension Specialist at Texas A&M



What do I do?

- Provide information to Texas farmers, ranchers and landowners via programs and publications
 - Oil and gas leasing
 - Pipeline easement negotiations
 - Grazing and farm leases
 - Fence law
 - Water law
 - Right to farm statutes
 - Property rights



It's not like Atkins...



<http://agrillife.org/texasaglaw>



Roadmap for Today

- General “legal terms” to consider in all leases
- Grazing Leases: Interesting provisions
- Understanding what happens if a breach occurs
- Hunting Leases: Interesting provisions
- Agritourism/recreational use statutes
- Pipeline Easement Negotiation
- Federal Land Leasing



General “Legal Terms” to Consider

- Transferability
 - Assignment, sublease
 - Death of either party
 - Sale of the land by the landowner
- Choice of Law
- Forum Clause
- Alternative Dispute Resolution
 - Ensure clients understand mediation v. arbitration
 - Who selects mediator/arbitrator



General “Legal Terms” Cont.

- Non-partnership clause
 - Know the law in your state re: partnership
- Attorney Fee Provision
 - Watch for qualifications
- Confidentiality clause
- Severability clause



Grazing Leases

- Benefits to livestock owner:
 - Allows ranchers to run livestock without the fixed expense of owning land.
 - Very useful to beginning rancher
- Benefits to landowner:
 - Additional income source
 - Keeps land in agriculture



Grazing Leases: Interesting Provisions

- 1) Care of livestock
- 2) Disaster contingencies
- 3) Description of area leased and animals allowed
- 4) Surface estate/mineral estate issue



1: Care of Livestock



- Common during drought for cattle owner to lease land & have the landowner care for livestock.
- Spell out specific requirements in detail.
 - How much feed will be given per cow, per day/week?
 - What type of feed/hay/mineral?
 - Responsibility to ensure water availability.
 - Consider incentive for high daily gain or low death loss percentage.
- Sample: *“Lessor agrees to provide adequate care for livestock. This shall include providing 10 pounds of 20% cake per week per cow; providing 20 pounds of alfalfa hay per week per cow; and ensuring constant access to Purina range mineral.”*



2: Disaster Contingencies

- What happens in the event of a drought or a fire that destroys the grass?
- Consider the following:
 - Who will make the decision to terminate the lease or decrease the number of cows permitted?
 - How will the decision be made?
 - How will payment decrease be determined?
 - What length of notice must be given to the lessee?
- Sample: *“In the event of disaster, such as drought or fire, the landlord shall have the right to terminate the lease or modify the allowable number of cattle permitted on the property if it is confirmed by the County Extension Agent that such action is necessary. The lessor must provide the lessee with at least 90 days notice prior to enforcing the termination or modification.”*



3: Descriptions

- Can use legal metes and bounds description, map or sketch, or even just words if adequate to identify.
- ***If not listed, limitations do not exist.***
 - Stocking rate, breed, species limitations
 - What may be done/not done by lessee?
 - Are any areas excluded?
 - How will property be accessed?
 - Will anyone else have rights?



4: Surface and Mineral Estate Issues

- Critical to understand the law regarding surface v. mineral estate.
 - In many states, mineral estate is dominant estate.
 - Exceptions to this rule
 - Statutes (i.e. Oklahoma)
- Questions to ask:
 - Who owns the mineral rights?
 - Is there a mineral lease in place or being negotiated?
- Potential terms
 - Require notice when any negotiation commences with a potential mineral lessee.
 - Allow right to cancel lease upon commencement of drilling operations.



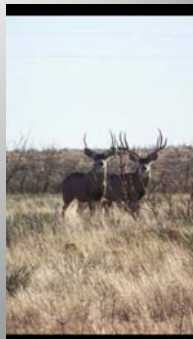
Understand Options if Breach Occurs

- Can always sue for damages.
- Magic lease language: “or the lease shall terminate.”
- Ensure clients are aware of dispute resolution requirements.
- Know which court has jurisdiction to hear a dispute.
- How do you remove the tenant from the land?
- Agricultural liens
 - What liens are applicable (agriculture, landlord, etc)
 - Requirements for attachment, perfection
 - Priority



Hunting Leases

- Benefits to lessee:
 - Ability to hunt without owning property
- Benefits to landowner:
 - Can result in substantial additional income to the landowner
 - Can still farm/ranch on the land
 - Help manage wildlife population



Hunting Leases: Interesting Provisions

- 1) Liability release and indemnification
- 2) Landowner rights/other surface uses
- 3) Information to hunter after the kill
- 4) Limitation on location of cleaning/carcass disposal
- 5) Specific weapons/methods/animals allowed
- 6) Requirement to abide by all state and federal laws
- 7) Lessee insurance requirement



1: Liability Release and Indemnification

- Ensure everyone signs (hunter, children, guest)
- If children hunting, require adult supervision at all times and indemnification.
- Know law in your state!
 - What can be released—negligence, gross negligence, recklessness?
 - Requirements to be valid (i.e. conspicuous, express negligence doctrine)



2: Other uses (including landowner)

- Can the landowner also hunt during the lease?
- Can the landowner's family?
- Lease should identify other surface uses and require cooperation of lessee
 - Mineral lessee
 - Tenants—farming or ranching
 - Landowner



3: After the Kill

- Landowner may want to require information for recordkeeping or advertising purposes:
 - Photographs
 - Measurements
 - Rack size
- Landowner may want to limit areas where animal can be cleaned and where carcass may be disposed.



4: Specific Rules

- What species of animal may be killed?
- Gender requirements (i.e. must kill a doe before you may kill a buck)
- Other limitations (only one "trophy buck")
- Types of weapons allowed
- Are dogs permitted?
- Can the hunters use vehicles or ATVs?



5: Require Compliance with Laws

- Require compliance with all state and federal laws
- This provision ensures that breaking the law also breaches the lease.



6: Lessee Insurance Requirement

- Consider requiring lessee to obtain and have in place insurance policy
- Request to be added as an “additional insured” on the policy
- Still need to have your own liability policy in place.
 - Talk with agent to ensure hunters/guests are covered.
 - Check statutes to determine if certain level of coverage offers added protection.



Agritourism/Landowner Statutes

- Critical to be aware of your state’s agritourism or landowner liability statutes.
- For example, Texas statute limits liability of landowner to “recreational” user of agricultural land to that owed to a trespasser (no duty except to not act with intent or gross negligence) if certain conditions are met.
- NALC Agritourism statutes: <http://nationalaglawcenter.org/state-compilations/agritourism/>
- NALC Recreational Use statutes: <http://nationalaglawcenter.org/state-compilations/recreational-use/>



Example of Easement Offered Last Month in Texas

- Agreement between Company and Landowner.
- Company is currently preparing to complete several oil and gas wells in your area.
- Company agrees to pay you \$500 as total payment to allow Company to cross across your property with above ground water lines.
- It is hereby agreed that Company will repair any damage done on your property during Company’s operations upon conclusion of said operations.
- Company will indemnify, protect, defend and hold harmless landowner...



Questions You Should Have...

- When will the easement terminate?
- Is the price fair?
- How/where/when will they access the property?
- Can the landowner still use the area around lines?
- Width of the easement (depth for underground)
- Where will the lines be placed?
- How many lines will there be?
- What size of lines?
- How will the landowner get repairs or damages if company disappears or goes bankrupt?
- What constitutes "conclusion of said operations?"
- To what standards will repairs be held?



Four Key Easement Considerations

- Does eminent domain apply?
- No blanket easements!
- Set a defined termination standard.
- Require bond or up front payment for damages.



Does Eminent Domain Apply?

- First step when approached about granting an easement.
- Impacts negotiating position.
- **Tell clients not to panic!**
- Know the law in your state
 - Who can "take" property?
 - What is the definition of "public use?"
 - Procedure of condemnation action
 - Rights of landowner:

https://www.texasattorneygeneral.gov/agency/landowners_billofrights.pdf



No Blanket Easements!

- Blanket easement: “Landowner grants Company an easement over and through grantor’s lands.”
- Specific easement: “Landowner grants Company a 30 foot easement to place a single water pipeline along the north boundary of the property line, extending from the property line southward 30 feet, running parallel to FM 287.”
- Remind clients—everything must be in writing!
- Considerations: Width, depth, number of lines, size of lines, exact location



Set Defined Termination Standard

- Know how/when easements terminate in your state:
 - Merger, transfer to BFP, operation of law, failure of condition, end of necessity, abandonment
- Set a specific termination standard
 - Set time in the future
 - Define “abandonment” as a concrete standard



Require Bond or Up Front Payment

- Request up-front payments or a bond be posted for damages that are likely to occur.
- Be specific about what constitutes “damage.”
- Set specific, objective standard by which repairs will be held.

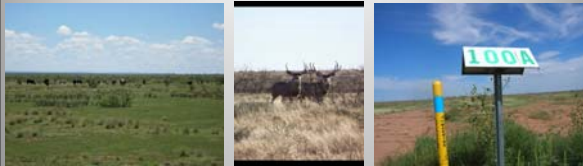


Federal Land Leasing

- BLM administers nearly 18,000 permits granted to ranchers across West
- More info:
<http://www.blm.gov/wo/st/en/prog/grazing.html>
- Beware: Subject to change by range conservationist
- Frequently 10-year permits, renewable
- Fee: Adjusted annually by formula, currently \$1.35/animal unit per month
- Strict on/off dates set, trespasser if do not follow
- Who can apply?
 - U.S. citizen or validly licensed business
 - Control of base property (deeded land) attached to allotment



Thank you!



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