

Texas Haying Lease Checklist

Taylor Harwood¹ and Tiffany Dowell Lashmet²

A haying lease is an agreement between landowners and tenants that protects both parties.

The following list contains the most common and relevant terms found in haying leases. This list is not exhaustive, and not every term included here is necessary in all leases. **This checklist is not a substitute for legal advice.** All parties—landowners and tenants—should consult with their own attorney when entering a haying lease to make sure the lease is complete, legally binding, and protects their interests.

It is extremely important that all lease agreements be put into writing. This is a step that, when done correctly, can protect both the landowner, the tenant, and the relationship between the two.

When drafting a haying lease, the following terms should be considered.

Basic Information

☐ Names of the Parties

- Include the names, addresses, and contact information of both the landowner and tenant.

☐ Description of the Land at Issue

- Clearly state the bounds of the property included in the lease agreement, and state the area in which the tenant will be permitted to operate for the duration of the lease. An overhead map may be a useful illustration here.

¹ Research Fellow, National Agricultural Law Center

² Professor & Extension Specialist, Texas A&M AgriLife Extension

☐ Duration of the Lease

- Specify the length of the lease. This includes the date of commencement and the date of termination. The term of the lease (in days, weeks, months, years, etc.) should be explicitly stated. Doing so provides both parties security and certainty. Describe how and when the lease may be terminated, including the type and length of notice that must be given for such termination. If the lease is subject to automatic renewal, that should also be described in detail.

☐ Purpose of the Agreement

- Describe the purpose of the agreement and the rights of the tenant to use the land. For example, expressly state that the purpose of the agreement is for haying grass only and does not include other rights such as grazing livestock or hunting on the property.

Payment Terms

☐ Price

- The lease should expressly state the price that the tenant will pay to the landowner. This may be a dollar-per-acre payment or a dollar-per-bale-produced payment. The lease could be structured as a crop-share approach in which the tenant will provide the landowner with a certain percentage of the bales produced. Whatever the desired approach, it should be written in detail and be clear to both parties. The lease should expressly state any expenses the landowner is expected to share if they exist.

☐ **Payment Method**

- Clarify acceptable forms of payment in the agreement. Provide details on when the lease payment is due and the implications of a late payment. If payment (in cash or in hay bales) is not due prior to the start of the lease, ensure the deadline to make payment is expressly included. Address how payment may be rendered, such as cash, check, Venmo, or Paypal, etc.

☐ **Failure to Pay**

- Set forth the ramifications for the tenant's failure to pay rent on time, including penalties and interest on overdue rent. Include a clause that ensures that the landowner retains the right to terminate the lease if the number of late payments, overdue rent, or interest accrue above a certain agreed-upon amount.

Obligations of the Parties

☐ **Tenant Obligations**

- The lease should specify any obligations of the tenant. This may include, but is not limited to, the obligation to fertilize, irrigate, spray herbicides or pesticides, maintain fencing, or swath and bale a certain number of times per year. The parties may want to include a list of expenses that will be borne by the tenant in this section. A lease may also include a provision requiring the tenant to provide certain information, including updates or yields to the landowner, should the parties desire this type of information. Should the tenant be required to make any long-term improvements to the property, like soil enrichments, construction of sheds, or other improvements, these should be written in detail in the lease.

☐ **Landowner Obligations**

- The lease should specify any obligations of the landowner. If such obligations include any requirement to share in the costs of hay production, these should be spelled out in detail in the lease agreement.

☐ **Selection of Time to Cut and Bale**

- The parties may want to set forth which of them has the right to determine when hay should be cut and baled under the lease agreement.

☐ **Actions Constituting Breach**

- The lease should address the actions or inactions of either party that might constitute a breach of contract.

☐ **Effect of Breach**

- The lease should spell out exactly what must be done by the non-breaching party to address the breach. This might include giving notice and an opportunity to cure, or it could be a provision that the lease will terminate as a result of the breach.

☐ **Address Sale of Property During the Term of the Lease**

- The parties may wish to address what will happen in the event the land is sold by the landowner during the term of the lease. For example, the parties could agree that the lease will terminate if the land is sold. On the other hand, the parties could agree that the landowner is required to inform any potential buyer of the lease prior to a contract being signed so that the lease will continue regardless of the sale.





Land-specific Requirements

☐ Access to the Land

- The lease may need to address how the tenant will access the property. Parties may want to designate certain points of access, entry points, gates, and roads that the tenant is permitted to use or prohibited from using. A landowner may also wish to designate any areas the tenant is not permitted to access.

☐ Notice Before Entry

- The landowner may wish to require notice from the tenant prior to entering the property, particularly with equipment like tractors or swathers.

☐ Use of Vehicles and Equipment

- State what types of vehicles and equipment the tenant is permitted to use on the property, such as tractors, swathers, hay rakes, balers, trucks, semi-trucks, and trailers.

☐ Application of Fertilizers or Chemicals

- The lease could allow or prohibit the use of certain fertilizers, herbicides, pesticides, or other chemicals. If allowed or required, the lease should clarify the tenant's responsibility for the application and specify the times and quantity of the application. When drafting these requirements, keep in mind any other nearby crops that may be sensitive to pesticide or herbicide drift, and draft provisions accordingly. A landowner may also wish to include a term requiring the tenant to carry liability insurance that specifically covers

pesticide or herbicide drift and to follow all label instructions for using such products. Additionally, the lease should include an express statement of who will pay for the costs of purchasing any fertilizer or chemicals and the application thereof.

☐ Transportation and Handling of Hay

- The parties may want to agree upon the methods and procedures for cutting, loading, and transferring hay from the land. Include any requirements or limitations on gathering and hauling practices.

☐ Right to Grow Crops After Lease Ends

- Address who has the right to any growing crop after the lease terminates. For example, if there is hay ready to be cut at the end of the lease term, does the tenant have the right to harvest that hay crop even after the lease has terminated? This is particularly important with a perennial crop like grass for haying.

☐ Right to Inspect the Property

- The landowner may wish to expressly reserve the right to enter and inspect the property during the term of the lease. The tenant may want to include provisions about when such inspections are allowed and what notice may be required to the tenant before any inspection.

☐ Damages to the Property

- The lease agreement should state that there is a prohibition against any damages to the property and should identify the penalty for any damage to grass, crops, fences, or land. The landowner could consider requiring a security deposit to cover any unforeseen damages.

Common Legal Terms

☐ Attorney's Fees

- Generally speaking, regardless of outcome, both parties to a legal dispute are responsible for their own attorney's fees. This can be changed by contractual agreement. Parties may wish to include a provision that if a party prevails in a lawsuit, whether through arbitration, mediation, or court proceedings, they can recover reasonable attorney's fees.

☐ **Liability and Indemnification**

- Include a liability and indemnification clause in case one party is sued as a result of the other's conduct. These terms provide that the landowner is not liable for action or inaction by the tenant, tenant's employees, or tenant's agents. If the landowner is sued for the tenant's actions or inactions, the landowner shall be held harmless as to any attorney's fees or judgment. A tenant would also want the reverse of this provision, stating that the tenant is not responsible for and will be indemnified by the landowner for any liability for actions or inaction of the landowner.

☐ **Transferability**

- Address what rights the tenant may have for transferability or assignment of a sublease to another party. Under Texas law, a lease may not be assigned or a sublease granted without the written permission of the landowner, but this term should still be included in a lease agreement.

☐ **Confidentiality Clause**

- Create a confidentiality clause if there is any information the landowner does not want to be made public.

☐ **Alternative Dispute Resolution**

- Parties may want to consider agreeing to an alternative dispute resolution method.

Alternative Dispute Resolution can take different forms, but it generally seeks to avoid the expense and length of time required for a trial. Consider a clause that describes the process for dispute resolution. This could include different methods for resolving a dispute. For example, the first type of dispute resolution that may be agreed to in a lease is a mediation between the parties. In this case, a neutral third party works with the landowner and lessee to come to a joint agreement on how to terminate the lease or move forward with the lease after a disagreement or breach. Another method for dispute resolution is arbitration, where a third party hears the facts, positions, and interests of both parties and makes a final "binding" judgment for the parties. The dispute resolution clause should also include how an arbitrator or mediator is selected.

Sample Lease Agreements

Parties should never use a form lease agreement without carefully reviewing and editing the form to meet their specific situation and the law in their state. That said, the following forms may be a helpful starting place in drafting a haying lease.

- ▶ [Example Hay Lease Agreement](#)
- ▶ [Sample Cropland and Pasture Lease Agreement](#)

