

Hunting Lease Checklist



Tiffany Dowell
Assistant Professor and Extension Specialist
Texas A&M Agrilife Extension Service

Leasing property for hunting purposes is big business across the United States. Oftentimes, landowners are able to generate additional income by leasing their property to a hunter during hunting season. Additionally, hunting can help prevent crop damage and diseases in livestock by managing wildlife in the area.

As with all lease agreements, it is advisable that the agreement be reduced to writing in order to ensure the parties' rights are protected. The following items are intended to provide a checklist of many of the most common terms found in hunting leases. The list is certainly not exhaustive, and it is possible that not all of these terms are necessary in every lease. This list was written from the landowner's point of view, but may also be useful to a lessee in the negotiation process.

Importantly, **this list is not a substitute for legal advice.** All parties—landowners and lessees—should consult with their own attorney when entering into a hunting lease to ensure that the lease is complete, legally binding, and protects their interest.

Names of the parties: The lease should include the name and address of the parties, both the landowner and the lessee. Additionally, if the lessee intends to allow others to hunt on the property with him, it may be wise to require each of those parties to sign the lease as well so that they will be bound by its terms.

Duration of lease: The duration of the lease may be from a matter of days to several years. The length of the lease should be specified with particularity. It is important to note that certain leases may be required to be in writing in order to be enforceable. For example, pursuant to the Statute of Frauds, many states will require a lease of real property lasting for more than 1 year to be in writing. Another important consideration is whether the lease will automatically renew for the next year and what type of notice may be required by either party to terminate the lease.

Description of the land: The land need be described so that both parties (and a judge or jury if there ever were to be a dispute over the lease) can understand exactly where the lessee had permission to hunt. This can be done by legal metes-and-bounds descriptions, a photograph or diagram showing the specific location, or simply by words if a specific description can be conveyed.

Price: The price for a hunting lease varies greatly based on numerous factors including the duration of the lease, the species of animals to be hunted, the hunting method allowed, and the number of acres available. Leases may require payment per animal, per acre, per year, per person, or any hybrid of these. If using an installment payment scheme (i.e. monthly payments), the landowner may want to impose a penalty for late payments.

Payment method: Payments may be made in any manner agreed upon by the parties. Frequently, payments are set up either as one lump sum prior to hunting season, or a landowner may require a partial payment up front and the remainder on the first day of the lease.

Security deposit: A landowner may want to consider requiring a security deposit to cover any damage caused to the property, improvements, fences, crops, or livestock while the lessee is on the property.

Access to land: The lease should provide how the lessee is to access the property, including designating the points at which the lessee may enter the property, any gates that the lessee may utilize, and the roads on the property the lessee is permitted to use.

Use of vehicles or ATVs: The lease should state whether the lessee is permitted to use vehicles or ATVs on the property and, if so, whether there are any areas where such vehicles are prohibited.

Requirement gates be kept closed: A landowner will likely require that all gates be kept closed at all times, particularly if there are livestock on the property. A landowner may also include a requirement that the lessee is liable for the death or injury of any livestock or damages to a third party caused by any livestock that escape due to a gate being left open by the lessee.

Use of facilities on property: The lease should discuss the right of the lessee to use any facilities on the property including deer blinds, tree stands, camping areas, bunk houses, barns or sheds.

Hunting methods permitted: The lease should specify the type of hunting method allowed. This includes both the type of weapon that may be used (rifle, shotgun, bow, etc.) as well as other considerations, such as whether the lessee may use dogs during the hunt.

Any requirements or limitations on hunt: If there are to be any limitations or requirements imposed on the lessee (i.e. each hunter may kill only one trophy buck or each hunter must kill one doe before killing a buck) these should be expressly set forth in the lease.

Cleaning and disposal of animal: The landowner may wish to specify a limited area where any animal may be cleaned on the property and make certain requirements for disposal of the carcass.

Information provided to landowner after kill: A landowner may require the lessee to provide certain information about the animals killed. This could include photographs and measurements for use in advertising purposes.

Number of hunters permitted on property: The lease should specify the maximum number of hunters allowed to be on the property at any one time and/or a total number of hunters allowed during the lease. This provision serves to ensure the safety of the hunters on the land and the number permitted will depend on the size and geography of the property.

Guests of lessee: The lease should address whether the lessee is permitted to bring guests onto the property. It may be wise to require that any guest be approved in writing by the landowner and be required to sign a liability release and indemnification agreement (discussed below). Additionally, if any minors are to be present with the lessee, it is important that the lease require the minors to be under direct adult supervision at all times, the adult supervisors shall be fully responsible for the safety of the children, and the adult supervisors will be liable for any injury and indemnify the landowner.

Right to erect improvements on property: The lease should address whether the lessee has the right to erect any improvements on the property including deer blinds, feeders, or tree stands. Some leases require the lessee to obtain written permission from the landowner before taking any such action. Further, the lease should specify whether the lessee has the right to remove the improvements at the end of the lease and set a deadline for such removal.

Requirement that lessee abide by all federal and state laws: The lease should require the lessee and any other hunters to have a valid hunting license covering the species identified in the lease. Further, the lease should require compliance with all other state and federal hunting laws, such that if the lessee were to break the law, he would also breach the contract.

Safety practices: The lease should outline safe hunting practices that should be honored such as maintaining safe gun practices, not shooting in the direction of people, livestock or buildings, not shooting across property lines, not using alcohol or drugs, and using care to prevent fires on the property.

Damages to property: The lease should prohibit damage to the property and require the lessee to repair or pay for any damage caused including the destruction of crops, death or injury to livestock, harm to fences, gates or improvements, and trash or other debris left on the premises.

Landowner's right of inspection: The landowner may want to reserve the right to enter the property for various reasons during the lease, including to care for crops or livestock and to inspect the premises. Importantly, a landowner should discuss this issue with his or her attorney to determine if the right to inspection might be outweighed by liability concerns that such right might impose.

Landowner's right to hunt on property: The lease should specify whether the landowner and his family have permission to hunt on the property during the term of the lease, or if the lease grants exclusive hunting rights to the lessee only.

Other surface uses: There are likely to be other surface users of the property during the lease term. Examples include oil and gas companies who may have a mineral estate lease, farmers or ranchers who may have leased the property for raising crops and livestock, and the landowner himself. The lease should expressly identify all such surface users so the lessee is aware of these uses and should require that the lessee will act in good faith to accommodate and cooperate with

these other surface owners. Because the law regarding surface estate versus mineral estate rights differs by state, it is important to understand the law in your state and the impact it may have on the rights of a hunting lessee.

Transferability: The lease should address the rights of the parties as to assignment or sublease. May the lessee sublease or assign his rights to a third party without the landowner's permission? What happens to the lease if the landowner dies or sells the property? Laws vary by state on this issue, so it is important to know the law in your state and address this in the lease agreement.

No Warranty of Success: A landowner may want to include a lease provision that states he or she is not making any promise or warranty that the lessee will be successful in killing any animal during the lease term.

Effect of breach: Many hunting leases include a clause stating that the violation of any term, covenant, or condition of the lease agreement by the lessee allows for the landowner, at his option, to terminate the lease upon notice to the lessee. This provision allows the landowner the option of terminating the lease if any term is violated, rather than merely having the right to sue the lessee for damages. If included, this clause should address the type of notice required to the lessee and whether any refund of payment or security deposit will be available.

Lessee Insurance: A landowner may require the lessee to acquire liability insurance prior to hunting on the property and require such insurance be maintained throughout the lease term. If so, the landowner should also require that the lessee include the landowner as an "additional insured." This should offer insurance coverage to the landowner pursuant to the lessee's policy in the event of a claim made by a third party against the lessee and landowner. The landowner may also want to require a specific minimum level of coverage.

Release of Liability and Indemnification: A landowner should require the lessee to agree to a release of liability. If there are to be guests with the lessee, a similar document should be required signed by each of them. The legal requirements for a valid waiver of liability and the scope of such waiver vary by state, so it is important to understand the requirements for this release to be effective. For example, states may require any such release to be conspicuously written or contain specific language. In addition to the liability release, the lease should provide that the lessee will indemnify and hold the landowner harmless from any claim, demand, loss, damage, attorney fees, and cost resulting from any such claim. It is important to discuss this type of clause with your attorney to ensure that the clause includes all of the required information in order to be valid in your state.

Choice of law: A choice of law provision in a lease allows the parties to determine which state's law will govern the lease in the event of a dispute. Generally choice of law clauses are enforced by a court so long as they are not against public policy and are reasonably related to the contract. Because many laws vary by state and a choice of law provision could significantly impact rights under a lease, a landowner should consult with an attorney with regard to this provision to

determine the potential options available and to determine which would be most advantageous to the landowner.

Forum clause: A forum clause provides that a dispute over a lease will be heard in a particular location or court. For example, a lease could require that any dispute over the lease be filed in the county where the land is located. This clause may be important for a landowner by requiring suit to be filed in his or her county, particularly if the lessee lives some distance away.

Dispute resolution: A landowner should consider the inclusion of a dispute resolution clause. The purpose of these types of clauses is to limit the time and expenses of a court action in the event of a dispute. There are two primary types of dispute resolution: arbitration and mediation. In arbitration, a third party arbitrator (usually an attorney) will hear evidence and render a decision. If the arbitration is “binding” that judgment is final on the parties absent evidence of fraud by the arbitrator. Mediation, on the other hand, involves a neutral third party who will work with the landowner and lessee to attempt to reach a mutually-acceptable resolution. If both parties refuse to agree to settle, the case will then proceed on to court. A dispute resolution clause should identify how the arbitrator or mediator will be selected. It is important to understand the difference between these options and determine which option is best in consultation with an attorney.

Liquidated damages: A lease may provide for certain liquidated damages, which essentially mean contractually agreed upon damage amounts. These damages are often used in situations where the calculation of actual damages might be difficult. Instead, the parties agree up front to a set amount of damages for certain actions.

Attorney’s Fees: Generally, a successful litigant is not entitled to recover his or her attorney fees from the other party absent a contractual agreement or a statute so authorizing. A landowner should consider including a provision providing that if the landowner is successful in a dispute (whether in arbitration or in court) with the lessee, the lessee will be responsible for the landowner’s reasonable costs and attorney’s fees. The lessee will likely request a reciprocal clause requiring payment of his or her attorney fees if the lessee is successful.

Confidentiality clause: The landowner may want to consider the use of a confidentiality clause if there is any information that he or she does not want made public. For example, a landowner may not want the fee charged to one party disclosed if the landowner intends to charge an increased fee to another party or in the future.

Statutory Provisions: In addition to drafting a thorough lease, it is critical for landowners to be aware of any recreational land use or agritourism statutes in their state that might have an effect on their rights and liability. Many states have these type of statutes to add additional legal protections for landowners. For example, in Texas, there is a recreational guest statute that limits

the liability of landowners to hunters on agricultural land of certain requirements are met. *See* Tex. Civ. Practice & Remedies Code Chapter 75. It is critical that landowners consult with an attorney in their state to determine if these types of statutes exist and to ensure that the requirements necessary in order to fall within the statutory protections are met.

Sample Leases: There are numerous sample lease forms available online that may be useful in preparing an initial draft of a hunting lease. Here are links to a few examples:

https://www.michfb.com/MI/uploadedFiles/Documents/Farm_Business_Resources/Hunting20Lease20Agreement.pdf

<http://msucares.com/pubs/publications/p2310.pdf>

<http://www.reynwoodforest.com/docs/SampleHuntingLease.pdf>

<http://www.agmanager.info/farmmgmt/land/lease/hunting/example%20leases.pdf>

<http://osufacts.okstate.edu/docushare/dsweb/Get/Document-2708/NREM-5032web-survey.pdf>