

Hunting Leases

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Besides renting out property for agricultural production, landowners may also have the ability to rent out their land for hunting, fishing, hiking and other recreational purposes. Depending on the species available, the right to hunt or fish on the property may be more valuable than the rental value earned through agricultural activities! As a landowner, you may wish to evaluate your property's potential for a recreational lease. Some landowners may be in position to not only rent out their property for agricultural purposes, but also for recreational purposes at the same time.

Evaluating your willingness to enter into a hunting lease will be the first step to take. Hunting leases are not a viable option for every landowner, so deciding what you are comfortable with will be critical before considering any form of leasing arrangement. Once you decide you are interested in leasing your property for recreational purposes, the rest of this chapter will focus on factors to consider before entering into a lease agreement. Lease agreements, whether agricultural or hunting, are extremely flexible before the lease is executed; however it can be very difficult to amend a lease later on without the consent of all lease parties. Because of this reality, it is important for both the landlord and the tenant to carefully negotiate the scope of the lease before entering into the agreement.

There are numerous examples of sample hunting and fishing leases that can be found on the internet. It is important to note that since no two pieces of property (or owners for that matter) are identical, it is impossible to draft one lease form that will fit every possible leasing situation. This can be further complicated by various state laws. For example, in Arkansas, any oral agricultural lease does not include the right to hunt and fish on the property unless permission is specifically granted in writing. Ark. Code Ann. § 18-16-113. The landowners in that situation can either use the hunting rights themselves or they can lease them to a third party without any input from the agricultural tenant.

The majority of this chapter will look at possible issues that you may wish to address in your written lease agreement. As stated before, it is impossible to create a form or even a list of potential issues that addresses every potential problem that may arise; however, the list below identifies many common issues attorneys find when handling lease disputes.

The information contained in this factsheet is provided for **educational purposes only**. It is **not legal advice**, and is not a substitute for the potential need to consult with a competent attorney licensed to practice law in the appropriate jurisdiction.

Payment

Every lease agreement should address payment. The payment amount is typically negotiated as a first step in any lease agreement, but one payment issue is often left out. When is the payment due? It is important to receive payment before the tenant has used the property for their intended purpose. If you lease out your property for deer season then it may be a good idea to require full payment on the lease before the season opens. If you try and collect payment after the hunting season and the tenant refuses to pay then litigation may be the only alternative.

Activities of the Tenant

A good lease will address more than just payment for the lease. It should also clearly state what activities the tenant can and cannot do. What species can be hunted under the lease? Can the tenant use the land for other recreational purposes such as camping, ATV use, horseback riding, etc...? Limiting the activities of the tenant will also help address the problem of landowner liability by curtailing riskier uses of the property.

Assignment and Subleasing

Generally, a tenant has the right to either transfer a lease agreement to a third party (called an assignment) or they can lease out certain rights (or all rights) for a period of time within the lease. This makes it very difficult for the landowner to know who has the right to be on the property at any given time. A landlord may have a history with a particular tenant and knows that they will pay on time and not abuse the relationship; however if the tenant assigns the lease to someone else then the landlord may not have the same familiarity. To avoid this situation a clause can be inserted forbidding a tenant from assigning or subleasing without express written consent from the landlord.

Guests on the Property

Tenants will often want to allow guests to use the leased property. Landlords often want to restrict the number of guests for several reasons. One reason is liability. The more people on the property the greater the risk of an accident occurring. The second reason deals with wildlife management. If many guests are allowed to hunt on the property then the amount of game harvested will increase. When you evaluate your property for its value as a hunting lease, one factor that should be considered is how much game can be harvested without adversely affecting the game population in the future. Many hunting leases will contain a clause limiting the amount of guests or only allowing close family members of the tenant, such as children and grandchildren, and to use the property only when the tenant is present.

Liability

Liability is an important issue to address in any recreational lease, but especially in a hunting lease. Tree stands, ATVs and firearms all present a risk of injury that should be handled in the lease agreement. There are two common ways of dealing with liability issues and both methods can be used together. The first method is to insert a clause into the lease contract stating that the tenant accepts the lease "as is" and that the landlord is not liable for any injuries. This clause will not work as an absolute protection, but it can be helpful for your attorney in case of a lawsuit. The other common method for dealing with liability is to purchase liability insurance. This can either be bought by the landlord or the landlord can require the tenant to purchase the policy in the written lease agreement. If the landlord requires the tenant to purchase the insurance then they should also require the tenant to include the landlord on the policy as an "additional insured" so that the landlord is given protection under the policy as well.

Property Description

Describing the property that will be included in the lease is an important step that can easily be overlooked. There may be places on the property where you do not want the tenant hunting, such as around your house, and it is a good idea to restrict the right to use these portions of the property in the lease agreement. Another benefit of the property description deals with liability protection. Many landlords are printing out a satellite photograph of their property, marking relevant landmarks and hazards, and then providing a copy of this photograph to the tenant. Not only does this provide information on the property boundaries, but it also serves as a warning about

potentially hazardous situations or as a reminder about structures in the area where the tenant will need to exercise caution. This will provide an additional layer of liability protection in the event of an injury on the property.

Following the Law

Many written hunting leases now require the tenant and their guests to obey all federal, state, and local laws. This should not only include laws associated with wildlife such as season dates, bags limits, and other restrictions, but it should also cover other laws such as providing alcohol to minors, use and manufacture of controlled substances, and activities that could be considered to be a nuisance by neighbors. A good lease clause will not only require the tenant and their guests to follow the law, but it will also spell out the consequences for breaching the clause, which is typically the termination of the lease with no refund of the lease payment.

Right to Enter

Throughout the lease a landlord may need or want to inspect the property or to perform management duties. Repairs to buildings, roads, fences, planting crops, tending to animals and other duties may need to be carried out during the lease and the landlord, or the employees of the landlord, need access to the property. A clause can be inserted into the lease agreement that should be broad enough to allow the landlord or their agents to enter on to the property and conduct whatever business they need to perform without imposing an undue burden on the tenant

Cancellation Clause

An important clause that is often left out of many lease agreements is the cancellation clause. A good cancellation clause will allow the landlord to cancel the lease for breaching any of the provisions of the lease agreement. Many clauses also allow the landlord to keep all rents paid when the tenant breaches the lease. Another possibility can allow the landlord to cancel the lease after giving a certain amount of notice and refunding any money for the remaining portion of the lease.

For example: The landlord reserves the right to cancel the hunting lease for any reason during the term of the lease. The landlord must provide written notice of at least 30 days and this notice must be mailed to the tenant by certified mail. The tenant shall be reimbursed pro rata for the remaining time left under the lease agreement.

Attorney Fees and Venue Clause

Another set of clauses that come standard in many lease contracts deal with legal issues in the event that there is a dispute. An attorney fee provision will typically make one party responsible for both sides' legal fees. Such an arrangement may make frivolous litigation much less likely. Another standard dispute clause determines where a lawsuit may be litigated. Often referred to as a venue clause, this clause will state which county court will have the ability to hear a lease dispute. When the property, the landlord, and the tenant all reside in the same county then this clause may not be important; however if one or more of the parties to the lease live in different states than it is important that the landlord requires that any litigation be held in a location that is convenient to them.

Summary

It is impossible to create a lease form, or even a list of possible issues, that addresses every potential problem that may arise from a hunting lease. Because of the number of different issues that can come up it is critical that any lease agreement be made in writing. A landlord and tenant will not be able to discuss all of the issues that are addressed in this chapter and even if they are able to talk through any potential problem that may come up in the future, they will have a difficult time proving to a court that there is evidence of such an agreement.

Another point to consider is that by law, most contracts do not end with the death of one or even both parties to a lease. A good lease should be written so that the heirs of a deceased party can step in and understand their rights and obligations under the lease agreement. A lease that is clearly written not only avoids unnecessary confusion, but it can head off any future litigation, which saves everybody time and money.