


The Nation's Leading Source for Agricultural and Food Law Research and Information
THE NATIONAL AGRICULTURAL LAW CENTER
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Practical Considerations for Hunting Leases



DIVISION OF AGRICULTURE
 RESEARCH & EXTENSION
 University of Arkansas System

Rusty Rumley
 Senior Staff Attorney

(479) 575-2636 rrumley@uark.edu

Topic Areas

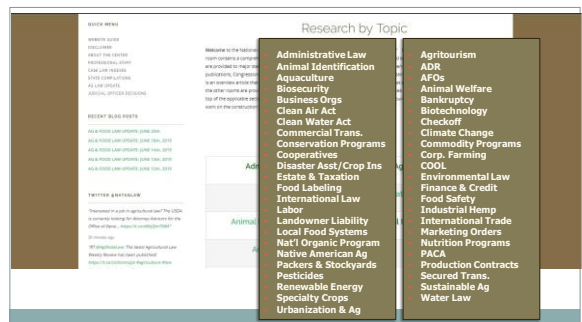
- National Agricultural Law Center
 - Mission, Stakeholders, Research & Info Activities
- What is a Lease?
- Considerations for Hunting Leases



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 THE NATION'S LEADING SOURCE FOR AGRICULTURAL AND FOOD LAW RESEARCH AND INFORMATION

OUR NEXT **WEBINAR**
 Practical Considerations for Hunting Leases
 Featuring: **Rusty Rumley**
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What is a Lease?

Leases...What are they?

- **Legally enforceable** agreements between two or more parties for the use of some good or property.
- Leases are just one of many different forms of contracts



Parts of a Contract:

- Subject Matter – at least “reasonably certain”
- Offer
- Consideration
- Acceptance
- Capacity

Many leases for hunting or ag use merely meet this threshold.

- A good lease agreement will also address additional potential issues before they become problems

Lease Duration

- **Tenancy for a term of years**
 - Written leases that may cover more than one year and they terminate at the end of the lease unless other arrangements are made.
 - Majority of recreational use leases fall in this category.
 - Remember: it's usually in everyone's best interest to have an ending date!
- **Periodic Tenancy**
 - The lease is for a relatively short period of time (less than 1 year)
 - The lease renews itself at the end of the term *unless* the parties have either given adequate notice to terminate or have agreed to end the lease.
 - Typically, oral agricultural leases fall in this category.

Watch for State Specific Laws...

- Over time some states have enacted additional wrinkles for ag or hunting leases.
- You need an attorney that is licensed to practice law in your jurisdiction to make sure that there are not statutes, regulations, or case law that may change things up.
- For example...

Terminating Oral Leases in Arkansas:

- **18-16-105. Termination of oral lease of farmlands**
 - The owner of farmlands that are rented or leased under an oral rental or lease agreement may elect not to renew the oral rental or lease agreement for the following calendar year by giving written notice by certified mail to the renter or lessee on or before June 30 that the oral rental or lease agreement will not be renewed for the following calendar year.
- **Nothing specific for recreational/hunting leases**

Hunting Rights

AR § 18-16-113. Hunting and fishing rights--Leased farmland

- (a)(1) A tenant of leased or rented farmland **shall have no right to hunt or fish** or grant the right to hunt or fish on the farmland that he or she leases or rents unless the right to hunt or fish or to grant the right to hunt or fish is expressly granted **in writing** by the owner of the farmland.
- (2) The right to hunt or fish or to grant the right to hunt or fish on farmland shall reside solely with the owner of the farmland.
- The landowner may also hunt on the land or lease out the hunting rights at any time.

Considerations for Hunting Leases

Why are you Leasing?



The reason why you are leasing and the property itself matter!

- Are you trying to make a bit of money on the side and keep farming the land?
- Are you developing the property for commercial hunting leases
- Are you wanting family or friends to help take care of the property?
- What do you use the property for?
 - Farming, forestry, investment, etc...

Considerations to Address

- Payment
- Use of the property
- Liability Issues & Insurance
- Boundaries
- Fixed assets
- Assignment and subleasing
- Termination of the lease
- Restricting access to the property
- Other potential Clauses

Payment

- How and when will the landlord be paid?
 - Should be before the hunting season
- Also specify who should receive the payment and what form it will take.
 - Ex. A money order shall be mailed to Joe Smith before August 1, 2019.



Payment

- How do you set the price for the lease?
- Talk to local landowners to see what they are charging...not all property is created equally
 - Set up game cameras to include pictures of wildlife
 - If you capture a picture of a large black bear on your game camera then you may be able to charge a bit more!



Payment

- The price can take the form of:
 - An annual rental payment
 - Per animal basis
 - Per person basis
 - You can lease the rights to hunt certain species to one person and others to another
 - Others that you wish to create...

Use of the Property



- What can the tenant do on the property?
 - Hunt (what species?)
 - Fish
 - Camp (fires?)
 - Invite guests
 - Ride ATVs
- Will there be different parties doing different things on the property?
 - Multiple concurrent leases?

Liability Issues and Insurance

- Include a clause disclaiming liability for property and make the hunter responsible for their own tree stands.
- Ex.
 - It is understood that the lessee(s) accepts the land in an "as is" condition and further, the lessee(s) understands that hunting is a dangerous activity and that there may be hidden hazards such as holes, fence wire, snakes, wells, swamps, ponds, harmful plants, unauthorized careless persons on the land, other hunters, or other risks that may cause injury or death. The lessee(s) assumes all these risks as their own responsibility.

Liability Issues and Insurance

- Who will purchase it?
 - Landowner or tenant
 - If tenant purchases the policy make sure you get a copy.
- Who should have their name on the policy?
 - Make sure you and/or your business entity is specifically listed as an additional insured party!
- What type of insurance do they have?
 - Many common policies (general farm and homeowners) may not provide protection.

Example: Shooting accident in PA

Insurance

- Make the insurance agent aware of any changes and that they are covered by the policy (in writing)
 - Check in yearly to see if coverage has changed
 - What are the exclusions?
 - Main issues:
 - Tree stands and ATVs



Boundaries

- Helpful hints:
 - Mark boundaries carefully
 - Use Google Earth to provide a map of the property to the tenant.
 - Outline the property
 - Mark houses and roads in the area so they know what directions NOT to shoot in.
 - Mark tree stand and blind locations
 - Mark the sign-in station if multiple people are using the property



Fixed Assets on the Property

- Is the tenant going to use the hunting house?
 - If so, who is responsible for maintenance?
- May the tenant sublease out the house to someone else without the landlord's consent?
- What if the landlord rents the house to someone other than the tenant that is renting out the land?
 - Do the two tenants have to share things such as roads and water supply?
 - What if they have competing uses for the property? Ag vs. Hunting?

Assignment and Subleasing

- **Definitions**
 - **Assignment:** The original tenant transfers the lease- and the lease obligations- to another party
 - **Sublease:** The original tenant assigns the lease to a third party, remaining accountable for the lease.
- **Can a tenant assign or sublease the property that they are renting to another party without the permission of the landlord?**

Assignment and Subleasing, continued

- **Default rule (without agreement to the contrary):**
 - Tenant is generally free to either assign or sublease property that they are renting without the permission of the landlord.
 - However the tenant may still be liable if the person to whom they lease it to either breaches the lease or fails to pay rent
- **This can create a very difficult situation for the landlord!**
 - What do they know about the new tenant?
- **Rules concerning assignment and subleasing are state specific so to be safe **the attorney should address this in the written lease.****

Many lease forms include a clause in the lease forbidding this without express written permission, but you should make sure that it is there!

Termination/Cancellation

- **Can the lease or contract be cancelled before the end?**
- **If the parties agree to cancel the lease or contract than this is often enough.**
 - **Breach clause** – Some landlords have a clause that states that breaching any clause will be a breach of the lease.
 - How this should be drafted is highly dependent on your state's law.

Leasing to Hunting Clubs

- **Usually more lucrative leases, but you may need a lot of acreage**
- **Can be more complicated than standard leases**
- **Should require insurance**
- **Clubs may be incorporated so get the officers to sign as well**
- **Liability issues/planning are more difficult because of the large group of people.**
 - Sign-in boards
 - Limits on guests / game limits

Other Potential Lease Clauses


Miscellaneous Clauses

- Common contract clauses (venue, attorney fees, ADR, etc...)
- ATV use
- Prohibition on shooting from a vehicle
- Following hunting regulations
- Close gates on ingress and egress
- No damage to timber/property
 - Limitations on types of stands and the clearing of shooting lanes
- Bag limit clause
- Tree stands and blinds
- Conservation practices
- Reporting problems to the landowner

Practical Tips for Hunting Leases

- **Online lease forms can be helpful, but be careful!**
 - You need to know exactly what everything in the form means...
 - It is much cheaper to use a lawyer to prevent problems than to deal with them after they arise
- **Talk to locals to find the going rates for rent**
- **Consult with a wildlife biologist to see about improving your property**
 - Your state cooperative extension service probably has one on staff
- **Other benefits besides \$...you have someone watching your property**

Contact
Information:



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Rusty W. Rumley
Phone: (479) 575-2636
Email: rumley@uark.edu

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