Farm Rental Agreement Checklist

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It has been said that a “contract is no better than the word of those who sign it.” On the other hand, a written contract is still an essential business practice when leasing farm property. It forces detailed consideration, communication, and understanding by both parties. It serves as a handy reference in case details are forgotten or there is a death of the tenant or landlord.

The contract should encourage the most profitable, long-term operation of the farm and be beneficial for both parties. Are the returns proportional to the contributions both tenant and landlord make to the business? Will the lease prevent or discourage a tenant from operating the farm in the same way a well-financed owner-operator would run it? Are the best farming methods, conservation practices, and/or environmental practices utilized? What is the plan for needed improvements? Every contract or lease agreement will one day terminate; how is termination to be handled? What method(s) will be used to settle accounts?

The following checklist will assist tenants and landlords to consider components of a well-designed lease agreement. It is advisable to have an attorney for one party prepare the lease, with a review by the attorney for the other party.

Parties to Lease and Description

___ Date the lease is entered into.
___ Names and addresses of the landlord and tenant.
___ Legal description of the leased property.
___ Signatures of the landlord and tenant.

General Terms

___ Time period of the lease, including beginning and ending dates.
___ Rental amount for cash lease; respective shares and contributions if a crop-share lease.
___ When and how rent will be paid and penalties for late payments.
___ Who will carry insurance on the property and the crop.
___ Statement that the landlord and tenant do not intend to create a partnership by entering into the agreement. Neither party will obligate the other for debts/liabilities or damages.
___ Conditions under which the tenant may or may not sublease the property.

___ If the land is enrolled in an agricultural district, providing protection against nuisance suits over farm operations and additional review if land is taken by eminent domain.

Termination

___ When and how the lease may be terminated and requirements for notice of termination.
___ Reimbursement provisions for crop nutrients, lime and/or completed fieldwork upon termination of the lease.
___ Acts of the tenant that would constitute default of the lease.
___ Tenant’s rights if the property is transferred or condemned during the lease period.
___ Reimbursement provisions for a crop still in the ground when the lease is terminated.

Operation and Maintenance

___ Desired or prohibited farming practices, including types of chemicals that may not be used on the property.
___ Process of measuring and maintaining soil fertility and pH levels.
___ Which party is responsible for controlling noxious weeds.
___ Which party is responsible for maintaining fences.
___ Whether the tenant has the right to make improvements and be compensated for improvements.
___ Whether the tenant has the right to utilize improvements made by the landlord.
___ Provisions for soil-conservation practices.
___ Statement regarding the existing environmental status of the property and responsibility to minimize activities that may cause contamination.
___ Use of non-cropland, garden plots, trees, buildings, grain bins, pasture or other areas not rented for cropland.

Landlord Rights and Government Payment

___ Landlord's right to enter the property for specific purposes.
___ Landlord's right to a security interest in the crops or other provisions for ensuring payment.
___ Statement of which party will participate in federal farm programs, including responsibility for eligibility and receipt of payments.
Nature of landlord participation in management. This may relate to issues regarding income and self-employment, taxes, social security payments, and estate planning.

Arbitration of Differences
____ Provision that any amendments must be in writing and signed by both parties.
____ Procedure for resolving disputes, including the applicable state statutes.

Crop-Share Provisions
____ General agreement, sharing of crops and tenant's contribution of machinery and labor. Each party should share returns in the same proportion as resources are contributed.
____ Sharing of operating expenses, generally variable expenses are shared in the same percentage as the crop share; if there are adjustments for no-till, custom application, liming or any new technologies adopted.
____ Storage and/or delivery of landlords share of crops.
____ Compensation upon termination of the lease.
____ What records are to be kept by whom and how will this information be shared.

Summary

If the term of the lease is for more than one year, it must be written to be legally enforceable. It also should be reviewed each year to ensure the terms are still desirable. Multiple year agreements require the following:

<table>
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<tr>
<th>Term</th>
<th>Legal Requirements</th>
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<tbody>
<tr>
<td>Up to 1 year</td>
<td>Verbal can be enforceable</td>
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<tr>
<td>1 to 2 years</td>
<td>Must be in writing and signed by the parties.</td>
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<tr>
<td>2 to 3 years</td>
<td>Must be in writing, signed by the parties, notarized, and recorded in the county where the land is located.</td>
</tr>
<tr>
<td>3 years or more</td>
<td>Must be in writing, signed by the parties before two witnesses, notarized, and recorded in the county where the land is located.</td>
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</table>

This checklist does not include all possible considerations for flexible-cash rent provisions or a number of other items that tenants or landlords may want to include in the written agreement. Furthermore, each state has different statutes and local communities have unique customs. This fact sheet is not intended to take the place of sound legal advice required by any party entering into a contractual relationship.

Use the checklist as a guide to judge an agreement as to the components normally required or advisable to be included within a leasing contract.

References


NCR75: Fixed & Flexible Cash Rental Agreements
NCR105: Crop Share Rental Arrangements
Producer Bulletins on Farm Leasing, National Center for Agricultural Law Research & Information, University of Arkansas.

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