

Farm Lease Termination

Author's note: *The Need for Personal Legal Advice.* Farm leases and real estate transactions require a consideration of law and facts unique to each case. The information provided in this newsletter is for educational purposes only: It is **not** a substitute for competent legal advice.

Many farm leases, especially those between family members, are not written but are verbal "handshake" agreements. Because nothing is in writing, the parties may have different recollections of their agreement, making lease disputes more difficult to resolve. The most common legal issue associated with verbal farm leases is how a lease may legally be terminated. For unwritten leases, six months advance notice must be given to legally terminate the lease. In contrast, the termination of a written lease is determined by the terms of the written lease. If nothing is specified, a written lease terminates automatically on the last day of the lease with no automatic renewal.

Rising crop prices lead many landowners to seek higher cash rents; falling crop prices lead tenants to seek lower cash rents. Many Nebraska leases are unwritten, which means that notice of termination must be given at least six months in advance, usually by September 1. If—during rising crop prices—the landowner cannot terminate the lease, the landowner cannot require the tenant to accept a higher rent in order to avoid immediate lease termination. However, prudent tenants would renegotiate the lease with the landowner in order to keep the lease longer. If a tenant refuses to renegotiate the rent, the tenant could end up ultimately losing the lease. The opposite dynamic operates during periods of falling crop prices. If the tenant does not terminate the lease by September 1, the tenant is bound to last year's cash rental rate (which may be more than the tenant wants to pay).

Verbal year-to-year leases. Verbal (i.e. unwritten) leases are legally presumed to be year-to-year leases. A year-to-year lease has no fixed time period and is automatically renewed for another year until proper notice has been received by the tenant from the landowner (or vice versa) that the lease is terminated. Many farm leases in Nebraska are unwritten year-to-year leases, and automatically renew for another year unless termination notice has been received by September 1.

Verbal year-to-year lease termination. For year-to-year leases, the Nebraska Supreme Court has ruled that the lease year begins on March 1. *Moudry v. Parkos*, 217 Neb. 521 (1984). Notice to a tenant to terminate the lease must be given *six months in advance* of the end of the lease, or no later than the preceding September 1. For example, termination notice received by September 1, 2015 would terminate the lease at the end of the current crop year—on February 29, 2016. The new tenant (or landowner) could take possession free of the lease March 1, 2016. However, termination notice received after September 1, 2015 would not terminate the lease at the end of the current crop year, but would terminate the lease at the end of the following crop year (beginning on March 1, 2017 and ending February 28, 2018).

The September 1 lease termination deadline has important practical implications. The three common verbal lease questions I receive are (1) the landowner has sold the land without first properly terminating the verbal lease; (2) the landowner wants to raise the rent for the next crop year but doesn't begin rent negotiations with the tenant until after September 1; and (3) the tenant wants a lower cash rent for the upcoming crop year but September 1 has passed.

In the first situation—the land was sold without first terminating an unwritten lease—the landowner has sold the land subject to the lease (probably unintentionally—the landowner should have worked with his/her attorney to avoid this) and the tenant is still entitled to continue the lease for the next crop year. In this situation the former landowner (or new landowner or some combination thereof) may have to buy the tenant out if the new owner wants to farm the land immediately.

In the second case—landlord wants a higher cash rent for the upcoming crop year—the tenant is under no legal obligation to renegotiate the cash rent after September 1 unless the tenant voluntarily agrees to do so. The landowner cannot force the tenant to pay a higher cash rent, and the tenant has the land for the next crop year (because it is too late for the landowner to terminate the lease if the owner

doesn't get the cash rent the owner wants). If the tenant wants to farm the land beyond the upcoming crop year, however, the tenant should negotiate with the landowner on the rent.

In the third case—tenant wants lower cash rent for upcoming crop year—tenant is locked into last year's cash rent unless the tenant terminates the lease before September 1. Landlord and tenant can negotiate reduced cash rent after September 1 but if they cannot reach agreement, the previous unwritten agreement carries forward to the next crop year. This is a complex issue: tenants don't want to lose rented land but also can't afford to lose money on the lease (at least not indefinitely). Landlords probably have rising property taxes that haven't been reduced yet by falling commodity prices. Landlord may also want to hang onto a good tenant. So there are many often competing factors to consider, and the outcome will likely vary with each case.

To avoid these September 1 deadline issues, landowners can use a properly drafted written lease (see your attorney). Helpful educational information is available at www.aglease101.org

Oral Pasture Lease Termination. The six-month notice of termination required for unwritten cropland leases is not required for unwritten pasture leases where the pasture lease is only for the normal pasture season, May 1 to October 1. *Barnes v Davitt*, 160 Neb 595 (1955). If the pasture were leased a year at a time under an unwritten lease, however, the tenant would likely be entitled to six-months notice of termination.

Written leases. Written leases are in effect only for the period specified in the lease itself, which could be one year, five years, etc. For written leases, no notice is required from the owner to the tenant that the lease will not be renewed unless the lease specifically states that notice of termination is required. Unless it contains a renewal clause, the lease automatically terminates at the end of the lease period. The tenant generally has no right to have a written lease renewed unless the lease contains a renewal clause. For example, if a written lease stated nothing at all regarding renewal, the lease would automatically terminate at the end of the lease period and would not be renewed. A written lease could, however, state that the lease was automatically renewed unless either party notified the other (usually by a certain date) that the lease would not be renewed.

Termination notice. The formal notice to a tenant (or landowner) that a lease is terminated should be written and possibly sent registered mail (consult your attorney). A copy of the written notice should also be kept. A verbal termination notice might be adequate, but could be difficult to prove in court if litigation were necessary to enforce the lease termination. The six month prior notice deadline for verbal leases applies to the date the notice is received by the tenant, not the date the notice is sent by the landowner.

Voluntary modification of legal rules. All the legal rules about lease termination discussed above may be modified through negotiation and voluntary agreement of the parties. For example, a landowner would like to renegotiate the cash rent after harvest based on rising crop prices. Even though September 1 has passed, the savvy tenant would negotiate with the landowner in order to keep the lease over the long term. If the tenant relies on the short-term legal advantage (the six month termination notice requirement) to keep the lease at the lower cash rent, the tenant could end up losing the lease after the next crop year.

Conclusion. A written lease generally is preferable to a verbal lease because it provides a written record of the lease provisions. However, written leases for farmland under Nebraska law are not required to contain advance notice of termination, as is required in Iowa. Because a verbal lease does require six months advance notice of lease termination, it may provide more legal protection for the tenant than a written lease, at least for one additional crop year.

If you have legal questions regarding a farm lease, contact an attorney. Again—helpful educational information is available at www.aglease101.org