Session 7

Understanding Rural Legal Issues

What You Don’t Know Can Hurt You and Your Pocketbook!

Objectives

1. Gain a broad understanding of the main types of legal issues rural landowners face.
2. Identify where to find information and get help on legal issues.

Legal issues

Important topics for farmers include:
- Leases
- Fences and boundaries
- Farm visitors and trespassers
- Noxious weeds and brush
- Waste disposal
Leases

Leasing land is common today.
• Types of leases include:
  – Oral (non-written) lease
  – Written lease
  – Share-cropper lease
  – Recreational lease

Oral lease agreements

• Still the most common in Missouri
• Not recommended
• Lead to many conflicts and misunderstandings
• Are binding contracts
• Only valid for one year

Oral lease agreements issues

• Termination requires 60-day written notice after first year
• 60 days is based on date original agreement reached, not possession or new ownership
• If 60-day written notice is not given, either party can force another year
• Termination notice does not affect:
  – Payment of rent
  – Keeping up property
  – Crops already in ground or to be harvested
Written lease minimum requirements

• Duration (term) of lease
• Name, address—all parties
• Property's legal description
• Rental rate
• Rent payment arrangements
• Signatures

Written lease agreements issues

• How does a written lease terminate? – should be specified in the contract
• Unless specified, no notice before that date has to be given
• In effect if death or sale of property occurs unless otherwise specified
• Tenant can harvest crops in ground at termination (e.g., wheat) unless other arrangements made

Share-crop agreement

• With crop-share, no notice has to be given after crop is harvested
• Wheat in ground could be exception if tenant wasn’t notified before planted
• Biggest confusion: In order to qualify as share crop, no other agreement with tenant can be in place
• Any cash-rented land means whole farm fails to meet share-cropper rules
Common lease issues

• Questions and concerns are common to any kind of lease

• Free resources worth review

 Boundary fences

• Depends on county
• Building “new” is traditionally the landlord’s responsibility
• For repairs, common for tenant to provide labor and the landlord materials
• Best to get in writing

 Maintaining soil fertility

• Normally landlord pays for lime and may share fertilizer costs
• However, many tenants share fertilizer and lime costs on multi-year leases
Common lease issues

Hunting Rights
• Tenant has hunting rights to the property
• However, many tenants allow landlord to hunt if specific family members only are allowed

Common lease issues

Repair and maintenance
• Basic maintenance of buildings and equipment is normally done by tenant with landlord paying
• Major repairs and maintenance are normally the landlord or owner’s responsibility

Common lease issues

Subleases
• Tenants can sublease
• Unless written contract says no
Common lease issues

Non-payment of rent
• Landowners have “landowner lien” on crops for rent security
• Could also file a Uniform Commercial Code, UCC, document to protect in extreme cases

Written lease versus oral
• Reasons a lease needs to be in writing, include:
  – No termination date worries
  – Many potential conflicts covered
  – Heirs, new owners know what was agreed upon
• Protects all parties

Building leases
Use DIRTI method
• Depreciation
• Insurance
• Repairs
• Taxes
• Interest
House lease issues

- Rental rates in rural areas often lower than in cities
- Rural areas often have fewer rules and regulations than areas near cities
- Written lease essential
- Forms available

Lease hunting concerns

- More landowners renting land for hunting
- Things you need to be aware of

Lease hunting concerns

- Liability
  - If you charge to hunt on your property, you need additional liability insurance
  - Also be certain that those hunting on your land (especially groups) have their own insurance
- Outline common rural sense rules:
  - Shut gates remain shut
  - Do not use someone else’s stuff without asking
  - Stay on the property you’re supposed to be on
Lease hunting concerns

**Other concerns**
- Make hunters on your property aware of hazards (abandoned wells, etc.)
- Everyone should know rights of landlord and tenants
- To determine fees, review references, check with the extension office, talk to neighbors who have experience leasing

Lease case study

Read Exercise 7-1

Fence laws

- In Missouri, depends on county
- Most of state currently under revised/updated general fence law
- 18 counties in the state have the local option fence law (mostly northern Missouri)
Where Missouri is at right now...

- Most of the state currently has the updated general law.
- 19 counties in the state (mostly in Northern Missouri) have the local option law.

Missouri’s Other Fence Law...
Local option Law Counties
- Bates
- Clinton
- Daviess
- Gentry
- Grundy
- Harrison
- Knox
- Linn
- Macon
- Cedar
- Mercer
- Newton
- Putnam
- Schuyler
- Scotland
- Shelby
- Sullivan
- Saint Clair
- Worth

Where Missouri is at right now...
- Chapter 272 is where the fence law statute is located. You can find it on the web too at http://www.moga.mo.gov/mostatutes/chapters/chapText272.html
- The revised general law starts at 272.010 while the local option begins at 272.210
Comparing the 2 laws...

- **New General Law**
  - only if a landowner owns livestock can he/she be required to build a boundary fence.

- **Optional Law**
  - if 1 landowner has a “need” for a boundary fence, then both landowners are required to contribute 1/2.

Comparing the 2 laws...

- **New General Law**
  - the definition of livestock can be an issue such as:
    - ~ is 1 horse livtk?
    - ~ can I run wire 25 feet off property line and not contribute?

- **Optional Law**

Comparing the 2 laws... (con’t)

- **New General Law**
  - if both landowners have livestock, they are to meet and within a “reasonable” time build or repair the boundary fence.

- **Optional Law**
  - The landowner can give notice to the other(s) as to their “need” for a boundary fence, within 90 days the other is expected to “do this” or face legal action.
Comparing the 2 laws... (con’t)

• **New General Law**

  There is NO specific legal recourse if one landowner refuses to build their portion of the fence.

• **Optional Law**

  A specific legal recourse is in place if 1 landowner refuses to build their portion, how good it is depends in large part to the judge.

Comparing the 2 laws... (con’t)

• **New General Law**

  There is a specific legal remedy for a landowner(s) who puts livestock against a neighbor’s fence later. How well it’s working is subject to interpretation (not very well according to most).

Comparing the 2 laws... (con’t)

• **New General Law**

  The definition of a legal fence is now “wire or wood at least 4 foot high with posts no more than 12 feet apart”. Other types of fences must be approved by the judge.

• **Optional Law**

  “A legal fence is 4 barbed wire or the equivalent with posts no farther than 12 feet apart with no stays & 15 feet apart with one stay”.

Comparing the 2 laws...(con’t)

• New General Law
  If more than a legal fence is required (woven wire, etc.) you are still required to pay for ½ of a legal fence.

• Optional Law
  same as new law

Comparing the 2 laws...(con’t)

• New General Law
  The part of the fence to build/maintain is the right 1/2 as you face each other at the midpoint of your boundary fence.

• Optional Law
  The part of the fence to build/maintain is traditionally the right 1/2 as you face each other at the midpoint of your boundary fence.

Comparing the 2 laws...(con’t)

• New General Law
  You have the legal right to go onto your neighbor’s property to repair your or his/her portion of the fence.

• Optional Law
  You have the implied right to go onto your neighbor’s property to repair your or his/her portion of the fence.
Comparing the 2 laws...(con’t)

- **New General Law**
  
  You do not have the legal right to remove a fence without your neighbor’s okay. You can remove brush/trees that are obstructing the fence.

- **Optional Law**

  SAME AS NEW LAW

Fences & Adverse Possession...

- Many people run into adverse possession issues on a fence line. It is a legal term that essentially says if a fence has been in a location for more than 10 years, a new owner may not be able to move it if the neighbor refuses.

- It is a legal process (has to go to court) but it is critical to know a survey alone typically does not overturn it if requirements are met.

- Evidence to argue adverse possession include survey, photos, witnesses, use of land during period (timber cut, hunting, etc.).

- If both landowners agree, a simple phrase can be put on both deeds to avoid this problem.

- You can contact me if you want to find out more on this or go to http://extension.missouri.edu/p/G811.
Animal Trespass Issues...

- The other area where there are major differences is that of animal trespass.
- Animal liability where boundary fences exist differs between laws.

Comparing the 2 laws...(con’t)

<table>
<thead>
<tr>
<th>New General Law</th>
<th>Optional Law</th>
</tr>
</thead>
<tbody>
<tr>
<td>If livestock get out through your portion of the fence, you can collect actual damages or nothing depending on the condition of the fence.</td>
<td>If livestock get out through your portion of the fence, you have no legal right to collect damages of any kind.</td>
</tr>
</tbody>
</table>

Comparing the 2 laws...(con’t)

<table>
<thead>
<tr>
<th>New General Law</th>
<th>Optional Law</th>
</tr>
</thead>
<tbody>
<tr>
<td>If livestock get out through the other side of the fence, you can collect actual damages, again depending on the condition of the fence.</td>
<td>If livestock get out through the neighbor’s portion of the fence, you can legally repair his part and be reimbursed for your costs of that only.</td>
</tr>
</tbody>
</table>
Comparing the 2 laws...(con’t)

• New General Law
  If livestock get out through a non-boundary fence (road, creek), you can receive double damages and distrain them after the 1st trespass.

• Optional Law
  same as general law.

Comparing the 2 laws...(con’t)

• New General Law
  railroads are unique situation. Statute 389.650 requires them to maintain their fences from livestock.

• Optional Law
  same as general law.

Law Interpretation Issues...

• Another cause for potential cloudiness is that the law is subject to a lot of interpretation by the county’s Associate Circuit Judge.
Fence Cases & Court...

- Cases below $5,000 can be heard in small claims court. This can be done without an attorney if you wish.
- Again, remember these laws are still subject to a lot of interpretation.

Miscellaneous issues...

- Keep in mind that the Local Option can be voted on more than once.
- If a landowner refuses to do their part, it is extremely difficult to force them under either law.
- If voted in, it will require education on the part of your judge and attorneys too!

Fence case study

Read Exercise 7-2
Farm visitors and trespass

- Trespass can be major concern for landowners
- Laws depend on type of visitor

Employees or contractors

- Property should be safe for all employees and contractors
- You must post appropriate signs and warnings.
- Follow state and federal rules so you don’t pay later

Other farm visitors and your responsibilities

Other types of “visitors” to your farm bring different levels of liability:
- Invitees
- Non-invitees
- Trespassers
Other farm visitors and your responsibilities

- “Invitees” include persons that you invite or request to come on your property for business
- Include livestock buyers, someone doing custom work for you, your insurance agent
- You are responsible for invitees’ care and safety while they are on your property: Make them aware of, remove or post any known hazards.
- Your insurance should help protect these folks, too

Other farm visitors and your responsibilities

- “Non-invitees” include persons who have a “business” reason to come on your property but were not invited by you
- Include salesman, insurance agents
- You are still responsible for non-invitees’ safety while they’re on your property: Remove or post any known hazards.
- Your insurance should help protect you

Other farm visitors and your responsibilities

- “Trespassers” are persons coming onto your property for no real reason except to trespass
- Could include hunters without permission, mushroom hunters, drivers of four-wheelers
- Could include those who plan to do some kind of harm
- Courts have held that you have little responsibility here, except for cases of “willful or intentional” harm (but that can be hard to define)
Other farm visitors and your responsibilities

- Against trespassers, you normally have responsibility to warn: Post signs or use purple paint markings
- Post known hazards, such as an abandoned cistern well or vicious dog, for all types of visitors, even trespassers

Other farm visitors and your responsibilities

- Keep in mind: You generally have a higher responsibility to minors than to adults
- Law assumes minors can’t reason and are not able to as easily determine what might or might not pose a hazard

Dogs and your responsibility

- Separate statute applies to trespass and property damage by dogs (Chapter 273)
- Dogs on your property can be more than a nuisance
- Dog owner should be notified
- If happens a second time, law allows livestock owner to kill a dog if it attacks livestock
Dog case study

- Read Exercise 7-3

Marking against trespass in Missouri

- Mark your land to discourage trespassers
- Posted land helps legally establish first- and second-degree trespass: First-degree trespass has a higher fine ($500) and a criminal conviction if trespasser caught and proven guilty
- Post “No trespassing” signs
- Or use purple paint on trees or posts

“Purple paint” law

Missouri has “purple paint” law, like several other states
- Purple paint marks cannot be more than 100 feet apart
- Must be readily visible to anyone coming on your property
Noxious weeds and brush laws

- Currently 11 weeds in Missouri classified as noxious
- Landowners responsible to try to eliminate them and keep them from going to seed
- 16 counties (mainly township ones) have a brush control law

Waste disposal

- Rural trash and waste have become a critical concern
- Some rules apply statewide, others vary by county

Trash and waste

- Burning and disposing of your own trash is allowed on your property, with some exceptions
- Main exceptions: Tires, chemical containers and appliances
- Special rules apply to disposal of dead animals and livestock
- Others cannot dump on your land
Residential sewer law

- Missouri requires anyone owning three acres or less to have a home sewer system
- More lenders are requiring this with larger tracts as well
- But be aware, home septic systems don’t work in many areas

Miscellaneous legal issues

Other issues of interest to landowners:
- Government conservation programs
- Health ordinances
- Income taxes
- Timber management
- Planning and zoning

Summary

- Session 7 Chapter has more detailed information on these topics
- MU Extension can assist you with many questions
- This material is just an introduction: Not a substitute for legal counsel
Questions?

• GRADUATION!!!

Whipstaff Acres
Ben and Anna Conrad

• Own 40 acres – Lease 80 acres
• Plans
  • Produce – wants to expand
  • Chickens & ducks
  • Pigs
  • Add goats (meat and dairy)
  • Marketing plan – Social media, and word of mouth

Khan Powell

• Owns 40 acres
• Plans
  • Chestnuts
  • Hops
  • Gluten free beer
  • Interested in homesteading
Angela Garrett
- Wants to be self-sufficient and make money
- Open to new ideas

Daniel Halinar
Homestead
- Owns 28 acres
  - Well stocked pond
  - Meat rabbits
  - Mule foot hogs
  - Chestnuts
  - Goats (meat)

Butch and Joellen Ferguson
Craigdarroch Farm
- Own 190 acres
  - Scottish Highland cattle
  - Elderberries
  - Chestnuts
  - Bees
  - Chickens, eggs, guineas
  - 2nd tier market – expand bees and cattle
Ron and Marie Selfors  
Farmville  
- 200 acres available on FLW site  
- Plans  
  - Cattle  
  - Walnuts (agroforestry)  
  - Fruit trees  
  - High Tunnel  
  - Native wildflower seed production

Penelope Beache and Dennis Wodehouse  
- Own 76 acres  
  - Vintage Homesteader Veg and Herbs  
  - Sell at Farmers Market, to restaurants and to Whole Foods  
  - Ecotourism including yoga, forest bathing, medicinal herbs, certified organic wild edibles, wild food, bees, cooking,  
  - Home grown Veteran program

John and Kate Sullivan  
- Own 10 acres  
  - Fruit trees  
  - Vegetables  
  - Horse  
  - Chickens & eggs  
  - Mushrooms  
  - Plans – better land utilization
Chris and Ronni Nanney Birdsnest Farm

- Own 5 acres
- Plans
  - Chickens and eggs, Rabbits
  - Goats (meat)
  - Vegetables
  - Woodworking
  - Farmers Market
Fruit trees, bees, cut flowers, homesteading

John Zvirgzdins

- Owns 40 acres
  - Wooded
  - Cattle?

Tricia Barrett

- Owns 6.5 acres – possible 13 more adjacent
- Experimental gardens
  - Hugelkultur, Square Foot, Straw Bale
  - Forest Farming - Ginseng
  - Medicinal Herbs for Chinese medicine