



# Farmland Leasing

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# Introduction to Ag Leases

Significance of leases to success

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## Property leased in agriculture

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- Cropland
- Pastureland
- Hunting lease
- Agricultural equipment and facilities
- Livestock

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## Who is involved

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- Lessor
  - This is the asset owner, who provides the land, livestock, equipment or farm buildings, bins and facilities to lease to another
- Lessee
  - This person controls or uses the land, livestock, equipment or farm buildings, bins and facilities during the lease period

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## Advantages of leases

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- Keep assets in good condition
- Increase farmland value over time
- Manage financial and production risk; land is the biggest expense for many farmers

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## Important financial tool

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- Gives farmers access to capital and is often the only way for new farmers to get started
- Makes it easier to pass on farmland or other assets to heirs
- Provides a source of income for retired landowners

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### What's at stake?

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- Financial resources or assets
- Income for both lessor and lessee
- Reputation and relationships



### Creating an equitable lease

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- Set parameters for the exchange of value
- Communicate your expectations



### Leases depend on good relationships

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- Open and honest communication is crucial
- Lessor and lessee should feel confident in their agreement and be able to trust one another
- The relationship should be fair and equitable for both parties
- Leases are only as good as the people who sign them



### Verbal communication

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- Responsibility of both parties
- Keep it respectful and professional
- Maintain communication throughout agreement
- Address communication issues or concerns as they arise



### Written communication

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- Clarify expectations and requirements to prevent disputes
- Hedge against unforeseen events, such as impairment, death or foreclosure
- Create a record of how provisions have previously been handled
- Avoids many issues that can arise when terminating a lease



### Written Lease Provisions

Items to include in a lease with an emphasis on cropland leases



### Good forms help

- Find free, fillable forms at [AgLease101.org](http://AgLease101.org)
- Forms have been created and reviewed by university economists and attorneys in the upper Midwest for many types of ag leases.



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### Minimum contract provisions (Essential 5)

- Names and addresses of lessor and lessee
- Description of property to be leased
- Duration of the lease
- Rental rates and method of compensation
- Signatures of lessor and lessee

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### Name all parties on the lease

Part of the "Essential 5"

- List all parties entering the agreement
- List contact information for the principals

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### Describe what is being leased

Part of the "Essential 5"

- Legal description
- Metes and bounds might be unnecessary, but at lease be sure descriptions are clear about what is included and, if necessary, what is excluded.

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### Set a term for the lease

Part of the "Essential 5"

- List specific beginning and ending dates
  - For example, Mar 1, 2018 to Feb 28, 2019
- Leases can be for any length, depending on the preference of the parties involved

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### Describe compensation

Part of the "Essential 5"

- Amount
  - Per head, per acre, etc.
- How is compensation calculated and when is it due?
  - Multiple or single payments per year
  - Which payment option is best for you?

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### Sidebar on rate adjustments

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- Can lessor or lessee adjust the rental rate?
  - How is this done in an oral lease? A written lease?
  - What other situations could we get into.



### Signatures

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- All parties must sign the lease

Part of the "Essential 5"



### Right of entry clause

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- Gives the lessor the right to be on the property during the lease period



### No partnership clause

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- Specifically states that a partnership is not created by the lease



### No subletting clause

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- Under Missouri law, tenants can sublet. If you do not want this to occur, the lease should contain a specific clause barring tenants from subleasing.



### Land use and practices

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- By law, tenants are required to control noxious weeds.
- There might be other points to outline in the lease
  - Tillage practices
  - Plant or not plant certain crops in certain fields
  - Timber harvest



## Conservation structures

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- What is the plan to maintain or build conservation structures?

## Soil fertility management

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- Land use affects soil nutrient levels and should be addressed in the lease
- Long-term improvements, such as lime, are the responsibility of the lessor
- Other soil nutrients should be replaced by the lessee as they are consumed

## Transparency, records and reports

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- Operating costs
  - Itemize how these are shared. Use third-party budgets and good farm records
  - Pay particular attention to lime and fertility
- Consider reporting obligations
  - Yields, applications, soil tests, etc.
  - Expense records for both parties
  - Crop progress, news, photos, treatments

## Carry-over inputs

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- The lessee might be entitled to recover the costs of inputs they applied upon termination of the lease
  - Advanced communication of the lease termination can help avoid such an outcome

## Improvements and repairs

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- There is an implied covenant that leased property will be returned in a condition similar to when the lease began
- Decide in advance how responsibilities will be shared prior to making any major improvements

## Other expectations

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- Appearances
- Mowing
- Snow clearing
- Fence maintenance
- Liability insurance

## **Modifications**

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- How do you amend the agreement once it's been signed?
- Modifications allow a lease to be flexible when changes are needed



## **Reminder**

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- The above considerations, and others, are part of standard lease forms available from your county extension center and at [AgLease101.org](http://AgLease101.org)



## **Missouri Leasing Law**



## **Governed by Missouri law**

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- Missouri law outlines the rights and obligations of lessor and lessee
- Be wary of information that might not apply in Missouri, such as that from other states



## **Written and verbal leases**

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- Missouri law governs both written and verbal agreements
- Over half of agricultural leases in Missouri are probably still verbal agreements
- Attorneys and other advisors recommend business agreements be written and, if possible, recorded



## **Valid leases are binding**

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- A valid farm lease, whether written or verbal, is a binding contract
  - Either party has a legal right to force the other to comply
  - A sale, death or other extenuating circumstance does not release either party from the contract
  - The fact that a spouse or child didn't agree to or sign the lease agreement doesn't matter to the law



## Leases might apply to future owners

- With a valid lease in force:
  - In the case of a land sale, the tenant gets a new landlord but the original agreement continues
    - This assumes that the purchaser had knowledge of the lease prior to the taking ownership

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## Verbal leases

- Verbal leases are invalid for agreements lasting longer than one year
- Year-to-year tenancy is created when the tenant holds over for another year
- Verbal leases are binding for the heirs of both parties

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## Terminating a verbal lease

- The law requires a **written**, 60-day termination notice to terminate a verbal lease
  - Failure to do so can result in either party forcing another year of tenancy under the same terms with no change in the rental rate
  - If anniversary date is unknown, give plenty time of notice
  - Suggested to use a registered letter to utilize the signature of receipt
- The reference date for the 60-day notice is the anniversary date of the original agreement
  - This is not the date of acquiring the property

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## Terminating a written lease

- Fixed term described in contract
  - Specific time period with advance notice of termination given in the lease
- Fixed term not described in contract
  - 60-day written notice may be required, especially if there is no date listed whatsoever
  - Law is less clear in situation with no exact date given

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## Doctrine of emblements

- The doctrine of emblements (annual crops) gives tenants the right to enter the premises to harvest crops even though rights of tenancy have expired
- If the tenant has received proper notice, they might not have benefit of this doctrine
  - Winter wheat is a classic example of this; might become a serious issue
- The doctrine might not apply if a new owner buys the premises without knowledge of the agreement

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## Share cropping test

- Is it a crop-share or share cropping arrangement?
  - Missouri law says the distinction is slight but rights are very different
- Share cropper agreement
  - Only valid for crop year and ends after crops are removed
  - Termination notice not required

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### Hunting privileges

- Tenant has legal right to hunt on land unless that right is reserved by the landlord
- Tenants can legally sublease hunting rights and charge a fee
- Hunting privileges should be clarified in advance

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### Tenant rights and duties

- Have the right to harvest crops in case of landowner foreclosure
- Do not have the right to make permanent alterations
- Can remove fixtures they have placed, but the right to do so expires with the tenancy
  - Examples: fences, gas tanks, water lines, portable buildings
- Not automatically released from rent payment if buildings or improvements are destroyed
  - Courts can release tenants from this responsibility

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### Landlord rights and duties

- Responsible for tax and property insurance payments
- Responsible for major repairs and construction of fences, but not ordinary repairs
- Not obligated to repair or pay for repairs made by the tenant
  - Implied warranty that a dwelling remains habitable

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### Landlord recourse

- Failure to pay rent, or bankruptcy
- The law allows a landlord to terminate a contract due to waste or gross negligence
  - Might be able to collect damages
- Failure of tenant to remove a crop can be a problem

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### Some livestock considerations

- Boundary fences
  - General law counties: Livestock owners are legally responsible
  - Local option counties: Landowners are responsible for fences
- Liens against livestock
- Livestock owners are liable for damages



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### Acknowledgement

Much of the knowledge available to Missourians on how the law applies to agriculture, including major parts of this material, have been adopted from the work of Stephen F. Matthews who served as Professor of Ag Law at the University of Missouri for over 35 years.

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