

Arkansas' Agricultural Land Leasing Laws: An Overview

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Introduction

Arkansas farmers rely heavily on land leases when it comes to where they grow their products. According to the USDA National Agricultural Statistics Service, 29 percent of all agricultural land in Arkansas is farmed by tenants who do not own the property.¹

Producers and landowners need a basic legal understanding of leases. Their understanding of lease development will be even more important as new types of land leases, such as using land for wind, mineral or solar energy development, become more prevalent in Arkansas. Understanding basic legal principles helps both producers and landowners minimize future risks.

What Constitutes a Lease?

A **lease** is a contract between two or more parties for the use of property in return for rent. The lease can be implied through the parties' actions, expressed orally or outlined in a written document.

In order to form a lease, the parties should include the following elements in their agreement:

- the extent and boundary of the property to be leased
- a definite length of time for the lease
- a definite rental rate

Under Arkansas law, a lease for a term longer than one year is required to be in writing and should be signed by all parties involved. Leases for periods less than one year do not need to be in writing in order to be valid.

For example, if a landowner agrees to rent 100 acres of cropland to a producer for a period of 10 years, the lease agreement would need to be in writing to be enforceable under Arkansas law. If the lease is instead set to expire in less than a year's time, the agreement would not need to be in writing to be enforceable under Arkansas law.

The typical agricultural land lease is a year-to-year tenancy that automatically renews for one more year if no notice of termination is given. This type of lease does not need to be in writing and meets the less-than-one-year requirement under Arkansas law. Although most farm leases are oral agreements, written leases can be advantageous because they provide certainty, particularly if a dispute arises.² Written leases can limit misunderstandings about the agreed-upon terms.

Arkansas courts have upheld some oral leases that went beyond a one-year term because of certain circumstances, such as the tenant continued to pay rent or made improvements to the property.³

This publication is intended to provide general information about legal issues and should not be construed as providing legal advice. It should not be cited or relied upon as legal authority. State laws vary, and no attempt is made to discuss laws of states other than Arkansas. For advice about how these issues might apply to your individual situation, consult a licensed attorney.

Types of Agricultural Land Leases

The most common form of a lease in agriculture is a land lease. **Cash-rent leases** and **crop-share leases** are the most frequently used lease types.

Cash-Rent Lease – Under a cash-rent lease, the tenant is obligated to pay a set price per acre or a set rate for the leased property. The tenant bears certain economic risks, and the landlord is guaranteed a predictable return, regardless of commodity prices.

The landlord risks the tenant not paying the rent or using agricultural practices on the land that could damage it in the long term. With a cash-rent lease, the landlord would be ineligible to participate in federal farm programs because the landlord has assumed no risk of loss in the production of the commodity. Only the tenant has assumed that risk in this rental arrangement.

Crop-Share Lease – Under a crop-share lease, the landlord receives a share of the crops produced in exchange for use of the land by the tenant. The share amount is usually based on local custom. Under this type of lease, the landlord typically pays a portion of the input prices. This exposes the landlord to risks, but the landlord can be rewarded with the possibility of higher commodity prices or production increases.

This type of lease allows the tenant to spread some of the production risks and reduces the capital needed to run the operation. The landlord and tenant with a crop-share lease could be eligible for federal farm programs if they meet various eligibility requirements. With a crop-share lease, the landlord is accepting some risk of loss in producing the commodity because the landlord's rental payment is based on a percentage of the crops harvested and supplying some of the inputs. Under this form of lease, the tenant and landlord would pay crop insurance premiums and receive indemnity payments based on their share of the crop.

Common Land Lease Provisions

Land leases can include a variety of provisions depending on the needs of the parties. For example, if the property has value for hunting or other recreational activities, the lease can include retention of recreational or hunting rights by the landlord.

One common lease provision includes a **lease termination process**, such as requiring a certain number of days notice from one of the parties before terminating the lease. Other common provisions are:

- limitations on subleasing to a third party.
- requirements to comply with federal and state conservation laws and programs.
- limitations on types of crops that can be planted.
- required duties to control nuisances.
- the purchase of insurance.
- the party responsible for improvements to the property.
- an option to purchase.
- responsible party for paying attorney's fees if a dispute arises.

Lease Termination

A lease can be terminated numerous ways. The lease can simply terminate at the end of the agreed-upon term. A written lease may include a notification process to terminate the lease, which Arkansas courts will require to be followed in order to properly end the lease.

Leases that do not include a defined termination process will use Arkansas common law – or the law developed through previous Arkansas court decisions on the subject – to determine the proper length of notification. Under common law, a tenant with a year-to-year lease is entitled to a six-month notice that the lease will be terminated. A tenant with a month-to-month lease is entitled to a 30-day notice under common law.

For oral leases, Ark. Code Ann. §18-16-105 requires the owner of leased farmland to give notice by June 30 that the lease will not be renewed for the next year. The notice must be in writing and delivered by certified mail to the tenant.

At the termination of the lease, unharvested growing crops will revert to the landlord unless the lease contains a provision that allows the tenant the right to harvest any crops after the lease termination. The Arkansas Court of Appeals has previously ruled that a tenant may be able to recover the expenses in planting unharvested crops. It would be prudent for tenants to include provisions in any written lease to retain the right to harvest any unharvested crops at the termination of a lease.

Other Types of Land Leases

Farming is not the only activity to take place under a lease in an agricultural setting.

Grazing Permits – This type of lease gives the holder a license to use public lands, typically for a period of 10 years. Arkansas has a few of these permits through the United States Forest Service. To qualify for this type of lease, the private party must own or lease a nearby property or private ranch. The party must also pay a grazing fee, which depends on various price indices and the number of livestock. The grazing permit does not create an ownership interest in the land. The government could withdraw the permit at any time without compensation for certain approved permanent improvements.

Wind Leases – Wind leases allow a company the right to enter the owner's property and place wind turbines that will be in existence for decades. A wind lease typically contains an option period, which can last from two to 10 years. Before the option period expires, tests are conducted to determine if the land is suitable for the project. The company is under no obligation to exercise the option if the property is unsuitable.

The term of a typical wind lease is between 20 to 40 years.⁴ Leases can also include provisions about the nature of activities the wind company will be allowed to undertake on the property and, in some cases, may limit the development rights of the owner. Wind leases typically include a confidentiality clause to keep the terms of the lease private and a decommission clause that details the removal of the equipment at the end of the term. Compensation can vary from lease to lease depending on the number of acres, number of turbines installed, amount of electricity produced and percentage of revenue.

Additional Reading

Pendergrass, Eric, and Terry Griffin. 2007. *Verbal Farm Leases After the Arkansas Residential Landlord-Tenant Act of 2007*. FSA32. www.uaex.uada.edu/Other_Areas/publications/PDF/FSA-32.pdf.

Footnotes

¹See National Agricultural Statistics Service, 2007 Census of Agriculture Quick Stats, available at www.agcensus.usda.gov/Publications/2007/Full_Report/Volume_1,_Chapter_1_State_Level_Arkansas/.

²Ronald L. Rainey, Bruce L. Dixon, Lucas D. Parsch, Bruce L. Ahrendsen and Ralph W. Bierlen, *Arkansas Landlord Selection of Land-Leasing Contract Type and Terms*, 8 International Food and Agribusiness Management Review 1 (2005).

³See *Phillips v. Grubbs*, 167 S.W. 101 (Ark., 1914); *Garner v. Starling*, 208 S.W. 593 (Ark., 1919); *Newton v. Mathis*, 215 S.W. 615 (Ark., 1919); *Bishop v. Johnson*, 230 S.W. 272 (Ark., 1921); *Robbins v. Gibson*, CA 82-88, 1982 WL 880 (Ark. Ct. App., Nov. 10, 1982).

⁴See Robert R. Nardi and John H. Daniels, Jr., *Wind Energy Easement and Lease Agreements* (Windustry, Sept. 2005), available at www.windustry.com/sites/windustry.org/files/LandEMain.pdf.

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