

# **Kansas Agricultural Lease Law**

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## Definition of a Lease

- Contract for the exclusive use of land for a specific period. Landowner – *Lessor*; Tenant – *Lessee*.
- A full lease is characterized as equivalent to a sale of the premises for the length of the lease.
- Landowner cannot use the land for his or her own purposes without permission of the tenant.
- Landowner may retain rights to use of the property in a written lease.

# Contract Rules – Oral vs. Written Lease

- Lease agreements that cannot be performed within one year must be in writing to be enforceable.
  - Statute of Frauds – K.S.A. 33-105
  - An oral lease for one year is enforceable in court but a multi-year lease must be in writing to be enforceable.
  - Memo signed by party against whom it will be enforced.
- If the farm or pasture lease is oral, then certain Kansas Statutes automatically are part of the lease.
  - Oral ag lease runs from March 1 to March 1, and must be terminated in accordance with K.S.A. 58-2506.

# Five Reasons a Written Lease Improves Communication Between Landlords and Tenants

- Source and checklist for brainstorming and discussions
- Clarity on objectives of both Landlord and Tenant
- Dealing with the unexpected ~ Anticipating changes
- Review of farming or livestock management practices
- Eliminates opportunities for conflict and misunderstanding

## 5 Tips to Improve a Verbal Farm Lease

- ***Put the verbal farm lease in writing***
  - “We’ve always operated on a verbal agreement and a handshake.”
    - Changing can be awkward and uncomfortable. Consider using a third party to facilitate: farm manager, mediator, attorney, accountant or Extension agent
  - “A written lease is overwhelming or too much detail.”
    - Consider making a gradual transition. Even a simple lease or a checklist can bring certainty to the relationship by outlining key obligations.
- ***Pay attention to lease payments and possession.***
  - Two indicators that a farm lease agreement is in place are:
    - possession of the property by the tenant,
    - acquiescence by the landowner, or a lease payment made by the tenant.
  - Both parties should be mindful of these important actions and should maintain records to document these occurrences.

## 5 Tips to Improve a Verbal Farm Lease

- ***Address financial fairness***
  - Disagreement over the lease price can quickly end a verbal farm lease.
  - Thorough research and equitable approaches can maintain the lease relationship by ensuring a financial arrangement that is responsive to the market and fair to both parties.
- ***Maintain records of the lease relationship***
  - Good records that document the leasing history can help establish a "course of dealing" between the parties.
  - Both parties should maintain thorough records of payments, agreements, farm management practices, nutrient applications, improvements and any other facts or data that establish the details of the leasing relationship.

## 5 Tips to Improve a Verbal Farm Lease

- ***Maintain communication.***
  - Don't underestimate the power of good communication between the leasing parties.
  - A landowner can provide a tenant with valuable certainty by keeping the tenant informed on potential changes with land ownership or financial management.
  - Tenants can keep a landowner apprised of the condition of the farm property by providing reports on a regular basis, especially in the case of an absentee landowner or a crop share lease.

***By Peggy Kirk Hall - Attorney and director of the Ohio State University  
Agricultural & Resource Law Program; Ag Web / Farm Journal 4-12-13***

## Lease Forms and Checklists

<http://www.agmanager.info/land-leasing>

- Land Rental Rates
- Papers and Presentations
- Land Leasing Forms

<http://aglease101.org/>

North Central Farm Management Extension Committee website

<http://nationalaglawcenter.org/research-by-topic/ag-leases/>

National Agricultural Law Center, University of Arkansas Law School

<http://www.ksre.ksu.edu/bookstore/pubs/c668.pdf>

Kansas Agricultural Lease Law – Pub. 668



# Contract Rules Governing a Lease

- In construing or interpreting a lease the court will look to the parties intent.
- The parties intent in a written lease, where terms are clear and unambiguous, will be determined by the “four corners” and not by oral statements made by the parties.
- Negotiations and other communications will only be considered if the terms of the lease are not clear.

# Interpretation of a Written Farm Lease

## *Mears v. Webber*; KS Court of Appeals, 1-23-15

- Five year (5-2-06 to 12-31-11), cash rent (half on 7-15, 12-15)
- In March 2011, LL gave a written notice to end the lease on 12-31-11 which notice included language that it is “...owner’s demand that you not plant any fall seeded grain crop on the land after the date of this notice.”
- T objected in writing and planted wheat anyway.
- LL sued asking the court to evict the T and give LL the wheat. The T asked for an extension of the lease and the wheat crop.
- Trial court found in favor of the LL and awarded the wheat crop to the LL.

# Interpretation of a Written Farm Lease

*Mears v. Webber*; KS Crt of Appeals, 1-23-15

- “...T in exercise of T’s complete and independent discretion, shall have the right to plant the leased land to any crop T determines to be advantageous, and to pasture any crops or crop residue, and be entitled to all crops produced...”
- “...LL covenants that LL will secure the T in peaceable possession for the term of the lease, including... land upon which crops are growing in the year of termination through and including harvest by T...”

# Interpretation of a Written Farm Lease

*Mears v. Webber*; KS Court of Appeals, 1-23-15

- The primary rule for courts in interpreting written contracts is to determine the parties' intent.
- Intent is determined by considering the contract as a whole from its "four corners."
- The lease was clear in giving the T full discretion to plant a crop as the T saw fit, and to harvest the same.
- The LL's attempt to terminate the lease early breached the T's right under the lease to plant crops T deemed best.
- *Lesson:* Understand, anticipate circumstances, and seek professional advice in drafting and reviewing the lease.

# Kansas Statutes on Ag Lease Termination, Abandonment and Rent Recovery

- K.S.A. 58-2506 –
  - Termination of farm lease
- K.S.A. 58-2506a –
  - Landlord Liabilities in termination of farm lease
- K.S.A. 58-2510 –
  - Service of notice of termination
- K.S.A. 58-2519 –
  - Executors & administration
- K.S.A. 58- 2524 to 2526
  - Recovery of rent owed

# Termination of Verbal Farm Lease

## *Basic Rule*

- **Written notice required**
  - 30 days prior to March 1<sup>st</sup>
  - Must fix date of termination to be March 1<sup>st</sup>
  - Give legal description of land
- **Applies to both pastureland and farmland**
  - “Pastureland” – land used for livestock grazing or hay production which includes perennial vegetation.
- **K.S.A. 58-2506(a)**

## Termination of Verbal Lease

*Exception for planted fall seeded grain crop (FSGC)*

- **Notice given after planting of FSGC**
  - Written notice given 30 days prior to March 1<sup>st</sup>
  - After a fall seeded grain crop is planted
  - As to that part of land planted to fall seeded grain crop
  - Prepared in conformance with normal practices in the area
- **Effective date of termination**
  - Day following last day of harvest; or
  - August 1<sup>st</sup>, whichever comes first.
- **K.S.A. 58-2506(b)**

## **K.S.A. 2506(b) - Example**

- Notice given October 1, 2014 terminating lease on 320 acres effective March 1, 2015. 160 acres was planted to wheat on 9-15-14.
- As to land planted to a FSGC, the lease ends on the day following last day of harvest or August 1, 2015, whichever occurs first.
- As to the land not prepared for or planted to a FSGC, the lease ends March 1, 2015.



## Termination of Verbal Lease

*Exception for land prepared, but not planted, for FSGC*

- **Notice after 30<sup>th</sup> day prior to **March 1<sup>st</sup>** and prior to planting a FSGC**
  - If at the time of the notice cropland has been prepared for planting a FSGC in conformance with normal practices in the area,
  - In any year in which a FSGC has been or will be harvested,
  - Then as to that part of land to be planted to a FSGC,
- **Effective date of termination**
  - Day following last day of harvest of FSGC in the next year,
  - Or, August 1<sup>st</sup> of the next year, whichever comes first.
- **K.S.A. 58-2506(c)**

## **K.S.A. 2506(c) - Example #1**

- Written notice terminating lease effective March 1, 2015, given September 2, 2014, after land has been prepared in conformance with normal practices but not planted to a FSGC.
- Tenant would be allowed to plant a FSGC.
- The tenancy ends on the day after the last day of harvest of that crop or August 1, 2015, whichever occurs first.

## K.S.A. 2506(c) - Example #2

- Written notice given June 2, 2015 terminating lease effective March 1, 2016. At time of notice tenant is harvesting the wheat crop planted in 2014. Land which tenant intends to plant to a FSGC has not been planted or prepared for planting.
- Result: Tenant would not have a right to be on the land March 1, 2016 and after, so would not be able to harvest a FSGC in 2016. Tenant is prohibited from planting a FSGC.
- Mere intent to plant not sufficient. (*Orebaugh v. Leatherwood*, 27 Kan. App. 2d 730)
- Purchase of a combine in preparation for harvest not sufficient. (*Buckle v. Caylor*, 10 Kan. App. 2d 443)

## **Termination of Holdover Tenant After a Prior Written Lease has Expired**

- If a farm or pastureland tenant continues to occupy the premises after expiration of a term fixed in written lease, then:
  - Tenant becomes a year-to-year tenant.
  - Notice must fix termination on the same day and month of termination fixed in the original lease.
  - Notice must be given in writing at least 30 days prior to the above stated termination date.
- **K.S.A. 58-2506(d)**

## **K.S.A. 58-2506(d) Example**

- Original lease for 3 years (2009 – 2011) was to terminate December 31, 2011. At the end of written lease the tenancy continued on with no amendment to the lease.
- In 2014 the landlord wants to terminate the lease to rent to a new tenant for the 2015 crop year.
- Written notice must be given to the tenant 30 days prior to December 31, 2014.

## Termination of Holdover Tenant After a Prior Written Lease has Expired

- K.S.A. 58-2506(d) is subject to the other provisions of K.S.A. 58-2506, i.e. regarding a FSGC.
- In a case where the tenant with the assent of the landlord continued farming the ground after expiration of a written lease, the court found that where notice of termination was given prior to any work performed to prepare for planting a FSGC, the tenant could not plant a FSGC. [*Buckle v. Caylor*, 10 Kan. App. 2d 443]

## **Landlord Liability for Tenant Expenses when Lease is Terminated Under K.S.A. 58-2506**

- If notice to terminate is given under K.S.A. 58-2506(a) or (d) [oral lease or holdover from a written lease where FSGC is not involved], and
- Prior to receiving the notice, the tenant has performed customary tillage practices, or has applied fertilizers and chemicals but has not planted the ground, then the landlord shall pay the tenant the fair and reasonable value of:
  - The services furnished, and
  - The fertilizers, herbicides, or pest control substances furnished.
- **K.S.A. 58-2506a(a)**

## **Landlord Liability for Tenant Expenses when Lease is Terminated - Alfalfa**

- If the tenancy is terminated under K.S.A. 58-2506(a) and the tenant planted and obtained a satisfactory stand of alfalfa the preceding fall, then the landlord must pay tenant the fair and reasonable value of:
  - All services performed in preparing and planting the alfalfa;
  - All of the tenant's expenditures for seed, fertilizer, herbicide or pest control substances.
- **K.S.A. 58-2506a(b)**



## Delivery of Termination Notice

- The required notice may be served:
  - Personally on the tenant;
  - If the tenant cannot be found, then leaving it at his/her usual place of residence;
  - By delivering it to a person over 12 years of age residing on the lease premises;
  - If no person is found on the premises, by posting the notice in a conspicuous place on the premises;
  - By registered or certified mail return receipt requested to the tenant at the tenant's usual place of residence.
- K.S.A. 58-2510
- “Premises” the leased farm land - on a trailer there.  
[*Geren v. Geren*, 29 Kan. App. 565]

## Termination of Lease for Failure to Pay Rent

- When the tenant fails to pay rent when due under a lease for three months or longer:
  - Landlord must give notice in writing
  - That if the rent is not paid within 10 days the lease will be terminated.
  - If the rent is paid by the tenant before the expiration of the ten day period, then the lease will still be in effect.
- K.S.A. 58-2507

## Rent for Farm Lease

- K.S.A. 58-2524 creates a statutory lien for rent on the crop grown on land under the farm lease.
- K.S.A. 58-2525 provides that under a cropshare lease the landlord is the owner of his/her share, which gives the landlord the right to enter upon the land and take possession or take a court action to do so.
- K.S.A. 58-2526 gives that landlord the option to recover rent from the person, with notice of the lien, who purchases the crop.

## Rent for Pasture Land

- K.S.A. 58-220 provides for an “agister’s lien” consisting of a first and prior lien on all livestock pastured on the land to the extent necessary to secure payment of the rent for the pasture lands.
- Requires that the lessor record a duly verified notice of the lien in register of deeds in the county where the livestock is pastured.

## Other Legal Issues with Ag Leases

### *Liability for Injury to Others – Tenant or Landowner?*

- As a general rule the landowner is not liable to the tenant or to others injured during the term of the lease. [*Borders v. Roseberry*, 216 Kan.486]
- Exceptions:
  - Undisclosed danger known to landowner and not tenant
  - Condition dangerous to person not on the land
  - Land retained in the landowner's control
  - Agreement by the landowner to repair the condition
  - Negligent repair by the landowner
  - Premises leased for admission of the public

## Other Legal Issues with Ag Leases

- *T cannot assign the lease if term less than two years*
  - In a lease for a term of two years or less, the tenant may not assign the tenant's interest to another without the LL's written consent.
  - Provision in written lease prohibiting assignment is necessary if term of the lease is for two years or more.
- *Both LL and T are responsible for noxious weed control*
  - If County treats weeds, cost charged to the LL – lien vs. land
- *T cannot remove permanent improvements or receive compensation from the LL unless the lease provides otherwise.*

## Other Legal Issues with Ag Leases

### *Death of Tenant May Not Terminate the Lease*

- Lease continues in effect upon death of the tenant unless there is a provision in the lease otherwise.
- Lease with agreement to be binding on heirs, successors, executors and administrators not a personal services contract.
- Oral Lease - Executor/administrator of the tenant's estate has a duty to meet the obligations of the tenant.
- [K.S.A. 58-2519; *Sauder v. Sauder*]

# Other Legal Issues with Ag Leases

*If Tenant Abandons the lease:*

- If a tenant abandons, surrenders or repudiates a lease the landlord has a duty to mitigate damages – i.e. re-lease the premises.
- If the tenant is not occupying and cultivating the land, then a statutory notice to quit is not necessary such that K.S.A. 58-2506 and 2506a do not apply.
- *Sauder v. Sauder*, 283 Kan. 694



# Flex or Variable Cash Rent Lease

## Definition:

- Cash rents may be flexed (increased or decreased) for changes in crop price and/or yields or input costs.
- Put it in writing so terms and conditions are clear.
- Check compliance with FSA farm program regs.
  - True cropshare only, then government payments divided in same proportion as crops between LL and T.
  - Cash lease only then tenant gets government payments.
  - Flex lease usually treated as a cash lease.
  - May affect “actively engaged in farming” rules

## Contact Information:

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