

Tips for Developing a Fair Cash Farm Lease Agreement

J.J. Barrett, WVU Extension Agent, Wood County – Agriculture and Natural Resources

David Richmond, WVU Extension Agent, Raleigh and Summers Counties – Agriculture and Natural Resources

Tom McConnell, Program Leader, WVU Extension Small Farm Center

Having a good farm lease agreement is important and considers the goals of landowners and farm operators. Lease agreements need to be in writing as it is a business agreement between the owner and the tenant operator who rents the land. Variations in leasing arrangements appear because of the differences in the productive capacity of the resources, the contributions made by each party and the personal goals of the parties involved. A successful lease creates equitable opportunities for both parties to discuss and resolve issues to avoid legal risk.

A fixed cash lease has advantages and disadvantages for landlords and tenants alike. The tenant has maximum freedom in planning and developing the cropping and livestock programs on the farm, but is also required to supply more operating capital and bear all the risk of production shortfalls.

The landlord is relieved of making day-to-day operation decisions and has little financial risk involved in livestock and crops. However, cash lease rates may be set too low in times of high selling prices or yields. The landlord may put some restrictions on what crops can be grown and the management practices that should be followed.

According to recent research, more than 50 percent of farm leases are still an oral agreement. However, a written farm cash lease protects both parties if circumstances change and gives the landowner and farmer an opportunity to discuss specific details of the lease. A written lease ensures the parties have read and understood the terms of the agreement, spells out the specific dates and provisions for renewal and explains termination procedures. Agreements that treat both parties fairly are more likely to be renewed, more likely to be followed and are more enforceable.

Farm cash leases are binding agreements. Both parties may want to get legal advice before entering into any legally binding agreement. Cash farm leases involve many factors to be considered, and communication between landlord and tenant is vital to create a fair lease that will benefit both parties.

Creating an agreement

Make sure you put it in writing

You should have a written lease agreement. Many oral agreements have been used in the past with farm rentals but a written agreement ensures everyone is on the same page. The written agreement should include everything that you discuss during lease negotiations. This protects the renter and the landowner on the details of the lease agreement if any circumstances change.

Identify both parties

Both parties must sign and date the agreement using their legal name, not the farm or business name. It is also helpful to add a physical address to the lease. Parties should be identified as landlord or tenant or as lessor or lessee. For example, John Smith of 125 Common Lane, Farmtown, West Virginia is identified as the tenant or lesser and John Doe of 111 Gravel Road, Farmtown, West Virginia is identified as the landlord or lessor. Doe's farm name is Ridge Rock Farm, but the rental agreement needs his legal name on it.

If a limited liability company is leasing land, the signer should sign for it. For example, John Smith, member of Anywhere Farms, LLC. By doing so, the entity assumes liability, not you personally. Farmers can lose the liability protections of an LLC when they form the entity but continue to do things personally.

Identify terms of the lease

The duration of the lease must be identified clearly with beginning and end dates. Many agreements are for one year, but some are multiple year agreements. It is important to remember if there is no written lease, then the lease will be inferred to be year-to-year. In some states, if the terms are longer than three years then the lease must be recorded in the property records office just like a deed or a mortgage. Some states outline the maximum length of a farm lease. Check your state laws on these issues.

Renewal terms

You need to include provisions to allow for lease renewal and for the notice of intent to renew or not renew by an agreed date. A good farm property lease should also establish compensation for completing any fall fieldwork in the event of nonrenewal.

Establishing a fair price

Lease price and payment terms

Your lease price should be clearly spelled out, no matter if your agreement involves crop sharing, fixed-cash, flex-cash or some other arrangement. Payment terms should be specific, including when payment is due, where it should be sent and the payment method.

Determining lease pricing is dependent on many factors. The production capacity of the land, available fencing and water, local supply and demand and goals of the landowner and renter are just some of the criteria used to determine rental values.

Tenant considerations

Reimbursement of expenses and improvements

In some leases, the tenant may seek reimbursement for crop nutrients (e.g., lime), the cost of improvements (building fence and corrals) or other operational expenses. The right to make improvements on the property, buildings and fixtures should also be addressed. This should include the rate of depreciation for the tenant's improvement, which determines reimbursement.



Fencing issues are extremely important for leasing farmland for grazing livestock. Reflection in rental rates, compensation or cooperation for fencing between parties must be negotiated.

Lease termination

The lease should include procedures for voluntary or involuntary termination. It should also include requirements for advance notice of termination. Consider reimbursement provisions for a crop still in the ground and any reimbursement of crop nutrients, lime and completed fieldwork. Provisions should also include the tenant's rights to use the property if it is transferred or condemned during the lease period. Make sure that the notice provisions comply with state law requirements.

Landlord considerations

Landlord rights

The lease should discuss the landlord's right to enter the property for narrowly defined purposes. This typically includes the right to make a reasonable inspection, make repairs and installations, show the premises to prospective buyers, collect rent and deliver a notice to terminate the tenancy. The lease might also note the landlord's right to a security interest in the crops and livestock and means of securing payment.

Rights to natural resources

The lease should state which party, the tenant or landlord, has the right to negotiate separate agreements involving natural resources on the property including, but not limited to: wind rights, solar rights, mineral rights, timber rights, fishing rights and hunting rights.

Soil fertility

Maintaining soil fertility must be discussed when negotiating a lease. Farm owners are concerned tenants will mine the soil by not applying needed fertilizer, especially phosphorus and potassium. Soil testing on a defined schedule can establish whether additional nutrients are needed. Guidelines need to be set to benefit both parties and may include minimum values for soil pH and nutrient values.

When considering lime, applications usually last for several years and their cost is usually the responsibility of the landowner. Amending the soil with lime contributes to land productivity by controlling soil acidity and is reflected in the rental rates. Tenants may pay for the lime and prorate the cost over future years with the landlord. The landlord can agree to reimburse the tenant if they do not renew their lease. Some long-term agreements divide the cost of lime.

Mutual considerations

Farm program payments

Federal (Farm Service Agency and the Natural Resource Conservation Service) and state farm program payments should be addressed. Identify whether the landlord or tenant will participate and specify who will receive the payments.

Insurance

Landowners should make sure they have adequate insurance coverage on their improvements and liability. Tenants should have some type of liability insurance. It is common for the lease to define the type of insurance protection each party needs and the minimum coverage amounts.

Good management practices

Depending on the type of operation, the parties may wish to enumerate good management practices, such as animal care and nutrition or farming techniques.

Pasture lease specifics

Pasture is typically rented on a per acre basis or on animal unit per month. Pasture rates may vary widely due to several factors, including production capacity of the land, location, local customs, the contributions and goals of one or both parties and bargaining. Consider both parties' goals when negotiating.

Stocking rate

Stocking rate should be plainly stated in the lease agreement to avoid disagreements between parties. Stocking rates can have a set maximum so that it never exceeds a particular rate during the grazing season. Rent can be established on the basis of animal-days or animal unit-days to account for the changing number and size of animals grazing at different times during the grazing season.

A defined rate provides the landowner a way to reach their goals for pasture and soil health, and provides the animal owner a way to reach production goals. It is in the interest of both parties to develop a lease agreement that achieves maximum economic returns to all resources while maintaining the grass stand and quality.

Defining an animal unit

Historically, an animal unit has been used to determine pasture lease rates. The following basis can be used for calculating animal units. Traditionally, an animal unit is 1,000 pounds of live weight. In the lease, both parties must agree to either using live weights or estimates to determine animal units. For example, one 1,500-pound bull is 1.5 animal units; one 1,300-pound cow is 1.3 animal units; one yearling steer or heifer is 0.8 animal units; a calf 6 months to 1 year is 0.6 animal units; a calf 3 to 6 months is 0.3 animal

units; sheep are 5 per animal unit and a horse is 1.25 animal units. In the table, 1,300 pounds is used for the average weight of a cow, 1,500 pounds for a bull.

Table 1. Animal Unit Values for Different Kinds of Cattle and Other Livestock.

Class of Livestock	Number of Animal Units
Cows (1,300 lb. weight)	1.3
Cow and calf pairs	1.6
Yearling cattle	0.8
Calves (6 to 12 months)	0.6
Calves (3 to 6 months)	0.3
Bulls (mature)	1.5
Saddle horses (mature)	1.25
Sheep	0.2

Disaster clause

Grazing leases should include a clause that covers how grazing pressure will be reduced in response to drought or other natural disaster. Specify who will make the decision to reduce stocking rate and how the decision will be made.

References

- Atkinson, J. and David C. Petritz. "Pasture Leases" University of Purdue Extension Fact Sheet EC-623-W. Reviewed 2000.
- Cari Rincker. "Overview of Farm Leases". National Agricultural Law Center. March 13, 2014.
- Donald J. Breece, "Farm Rental Agreement Checklist," The Ohio State University Extension Fact Sheet FR-0003-01.
- Jay Jenkins "Pasture Lease Agreements" The University of Nebraska Extension Fact Sheet. March 2014.
- Jerrold A. Westfahl. "Kansas Agricultural Lease Law". Kansas State University Extension Fact Sheet C-668. July, 2005.
- Kelvin Leibold. "Improving Your Farm Lease Agreement". Iowa State University Extension Fact Sheet C2-01. July, 2014.
- North Central Farm Management Extension Committee. "Pasture Rental Arrangements for Your Farm". Publication NCFMEC-03. December, 2011.

Valentine, John F. and Donald F. Burzlaff. "Nebraska Handbook of Range Management" E.C. 68-131, University of Nebraska.

11/16

ANR-FM-16-001

For more information contact: J.J. Barrett, WVU Extension Agent – Wood County,
JJ.Barrett@mail.wvu.edu; 304-424-1960. www.ext.wvu.edu

Programs and activities offered by the West Virginia University Extension Service are available to all persons without regard to race, color, sex, disability, religion, age, veteran status, political beliefs, sexual orientation, national origin and marital or family status. Issued in furtherance of Cooperative Extension work, Acts of May 8 and June 30, 1914, in cooperation with the U.S. Dept. Of Agriculture, Director, Cooperative Extension Service, West Virginia University

The WVU Board of Governors is the governing body of WVU. The Higher Education Policy Commission in West Virginia is responsible for developing, establishing and overseeing the implementation of a public policy agenda for the state's four-year colleges and universities.

