

Farm Lease Law 101

A lease is an agreement that gives someone the ability to use or poses real property for a designated period of time in return for some type of payment.

Basic elements of a lease are:

- A valid contract. Oral contracts may be enforceable if partial performance is proven.
- Provision of payment for use of the land.
- Transfer of substantial rights to the tenant.
- Possession and control in the tenant.
- A reversionary interest in the landlord

Other terms typically laid out in a lease include:

- Time and period of termination
- Amendments
- Transfer of property
- Right of re-entry
- Subleases
- Binding on heirs

Traditionally agriculture uses two types of real property leases: cash lease and crop share lease. Livestock share, labor share and flexible rent leases also exist.

Oral vs. written leases. Traditionally vast majority of leases are oral rather than written. There are advantages though to putting a lease agreement in writing.

- Putting the details down together helps both parties understand expectations
- Reminder of the terms originally agreed upon
- Opportunity to lay out terms of termination
- Guidance for heirs if either the tenant or landlord die/become incapacitated

Statutes of Fraud state a lease for more than one year must be in writing and signed by the parties to be enforceable. Wis. Stat. § 704.03.

Two exceptions can occur. The first is for 'partial performance.' Partial performance is payment or other action that indicates a person believes such contract exists. Partial performance is decided on a case by case basis.

The second exception occurs when one of the parties has misrepresented or otherwise taken advantage of the other party. The Statutes of Fraud cannot be used to accomplish fraud.

Verbal leases for one year or less are enforceable if the terms of the lease can be proven.

Except for private residences, if a premise is leased for one year or longer and the lessee holds over after the expiration of the lease, the lessor may elect to hold the tenant on a year-to-year basis. The terms and conditions of the year-to-year lease are the same as those of the original lease except that any right of the lessee to renew or extend the lease, or to purchase the premises, or any restriction on the power of the lessor to sell without first offering to sell the premises to the lessee, does not carry over to the year-to-year lease. Wis. Stat. § 704.25 (2)(a) and (3).

A lease of agricultural land for more than 15 years is void under the Wisconsin Constitution, Article I, Section 14.

Unless otherwise stated in the lease, the lessor and lessee have the following rights and duties:

- Lessee has the right of exclusive possession other than lessor's right to enter to protect the property or to show it to prospective buyers. Wis. Stat. § 704.05(2).
- Lessee cannot make physical changes to the property without the lessor's consent. Wis. Stat § 704.05(3).
- Lessor must repair or replace any plumbing, electrical wiring, machinery or equipment furnished with the premises and no longer in reasonable working condition.
- Lessee must repair damage caused by his or her negligence or improper use.

These rights and duties can be altered by the parties in the lease.

Terminating the lease.

- If there is a set term to a lease, it ends at the end of that term unless otherwise stipulated in the lease.
- Unless otherwise agreed, a year-to-year agricultural lease requires 90 days notice before the end of the term to terminate the lease. Wis. Stat § 704.19(3)

Unlike some states, Wisconsin does not have a standard date that agricultural leases expire, therefore, the end of the term goes back to when the lease was originally signed. Also note, the first year of a lease does not constitute periodic tenancy, and thus does not require 90 days notice to terminate.

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