

A tenant terminating the lease would want to consider setting the termination date with enough time to harvest any growing crops. For example, Tenant has a year-to-year tenancy with Landlord for the past 10 years. Tenant has decided to scale back his operation and sends written notice to the landlord that tenant plans to terminate the lease on May 31. Because a portion of the leased farmland would have crops ready to harvest after May 31, tenant reserves in the termination letter that “termination for the portion of the above described farm with growing fall-seeded crops which was prepared in conformity with normal growing practices in the county, termination will be deemed to be the day after following the last day of harvest or August 1, whichever comes first.”

Lease Consideration

Improvement/Fixtures

A *fixture* is personal property attached to the land that is regarded as a non-moveable part of the real property. An example of a fixture would include a shed, cattle lots, diesel and oil storage tanks, etc. In Maryland, unless the lease contract specifies otherwise, tenants would have the right to remove any fixtures he has erected on the property once the lease terminates (MD. CODE REAL PROP. Section 8-114 (2013)). Of course, a tenant does not have the right to remove fixtures which the landlord has placed on the property.

Good Husbandry Practices

Many state courts and commentators view an agricultural lease as carrying the implied duties that the tenant use good husbandry or good agricultural practices on the leased property (Hamilton, 1990). Good husbandry practices conserve the fertility, usefulness, and value of the soil (Hamilton, 1990). For example, Tenant is using the leased property for cattle and constantly over grazes the leased property damaging the pasture and promoting soil erosion. This agricultural practice would not meet the duty to use good husbandry practices. But if Tenant is properly grazing the leased property and not damaging the property then Tenant would be meeting the duty to use good husbandry practices.

Death of Tenant/Landlord

The death of a landlord or a tenant does not terminate the lease. If the landlord dies, the tenant’s lease continues for the lease term until the lease is properly terminated. The tenant must pay rent to the landlord’s estate as it becomes due and the landlord’s estate will include any rent payments on its 1040 Form. The executor of the landlord’s estate or the heir to the property can decide whether or not to allow the lease to renew or to properly terminate the lease.

Right of Reentry

By law or by custom, a landlord has no right to enter onto leased property during the lease period. In fact, unless the landlord reserves a right of reentry in the terms of the lease agreement, the landlord could be charged with trespassing for entering the leased premises. Those landlords considering new tenants after the current lease expires or those landlords expecting to prepare the property for a new crop after the expiration of the current lease should reserve a right of reentry in the lease agreement. If a right to reentry has not been reserved in a lease, a tenant has the option to forbid the landlord or new tenants to enter the property to begin tillage operations. Reentry provisions are also important for those landlords wishing to make repairs, improvements, or inspections on the leased property.

One special note for those tenants producing tobacco on leased property, Maryland law allows a landlord the right to enter the property six months after September 1 to strip, pack, ship, and sell any tobacco on the leased property if the tenant has made no reasonable progress in harvesting the tobacco (MD. CODE REAL PROP. Section 8-116 (2013)). This will be done at the tenant's expense. Even if the lease does not have a right to reentry a landlord can remove and market grown tobacco under this condition.

Third Party Contractors

The landlord has no control over third party contractors used by the tenant, such as crop scouts, aerial sprayers, etc. By leasing the property to the tenant, the landlord is giving to the tenant the right to choose who enters the property to perform certain jobs to carry out the lease or agricultural operations. A landlord could try to limit this right, but issues would arise of materially participation in the operation. A landlord choosing to limit the tenant's right to decide who can enter the leased property may be seen as participating in the farm operation. This can have an impact on the landlord's tax situation and other liability issues. A landlord limiting this right could also run afoul of the tenant's implied duty to use good husbandry practices. The tenant employs third party contractors to help maintain the fertility and general usefulness of the soil as well as other good agricultural practices. Before limiting a tenant's rights to allow third parties to enter, a landlord would want to talk with a licensed attorney to fully understand the implications.

Amending the Lease

At any time during a lease term or after a lease has been renewed, the tenant and landlord can agree to amend the lease. As with all contracts, a lease can be amended to ensure the contractual relationship operates more smoothly. Both parties must agree to any amendments and these should be put in writing, to both provide the parties with a written record and, in many cases, satisfy Maryland's Statute of Frauds.

Noxious Weed Control

Noxious weed control presents a legal conundrum under Maryland law. Even if the landlord has no right of reentry during the lease period, he can still be held liable for noxious weed control during that period. This is another reason landlords should include a right of reentry into any lease agreements. Tenants, like landlords, are also legally liable for noxious weed control (Md. CODE ANN. AGRIC. Section 9-404(c) (2013)). In Maryland, noxious weeds are defined to include: 1) Musk, Canada, nodding, plumeless, and bull thistles; 2) Johnson grass; and 3) shatter and wild canes (MD. CODE AGRIC. Section 9-401 (2013)). Because the duty to eradicate noxious weeds falls on both landlord and tenant, lease terms should clearly define who is responsible for what in terms of noxious weed control. For example, Landlord and Tenant negotiate a noxious weed control clause in their lease. The clause requires Landlord to supply the herbicide necessary to control noxious weeds and requires the tenant to apply it. Parties could also consider other solutions for sharing noxious weed control when developing their lease.

Repairs

A question often arises as to who is responsible for repairs or maintenance required in keeping up the rented property. Traditionally in Maryland, a landlord has no legal duty to make repairs to the rented property (*Miller, 1955*). A tenant on the other hand, traditionally, was only required make to ordinary repairs to the leased property (*Katz, 1965*). Ordinary repairs are those necessary

to keep the leased property in working condition. Under this traditional view, a landlord would not be required to make any repairs to a leased property during the life of a lease and a tenant would only be required to make those repairs necessary to keep the leased property in working condition. Under the traditional view, a tenant would have a legal duty to perform ordinary repairs on roads running through the property; perform lane scrapings and mowing to keep a leased property in ordinary working condition—all at the tenant’s own expense.

This traditional view can be altered by the lease agreement. Thus, the landlord and tenant can specify the types of repairs the landlord will be required to make and the level of maintenance the tenant will be required to do. For example, a lease could specify that the landlord is required to replace broken fences and that the tenant is required to keep all roads passable. The lease agreement could also specify how the tenant will be compensated for making necessary repairs, such as whether the tenant will receive a rent deduction for making repairs or whether the landlord will be required to provide supplies for repairs and the tenant contributes the labor.

Details Outside the Lease

Recording Leases

Recording of farm leases is not required under Maryland law. Currently only leases on residential property zoned for four or fewer dwelling units are required to be recorded in the county land records (MD. CODE ANN. REAL PROP. Section 8-702(a) (2013)). An agricultural lease would not qualify and does not need to be recorded in the county land records.

Farm Service Agency, U. S. Department of Agriculture (FSA) may require an agricultural producer to supply a copy of a written lease in certain cases to qualify for federal and state farm programs. For example, FSA may require the tenant to supply either a written lease proving that the rental arrangement is not a crop-share arrangement or a form signed by the landlord verifying she does not have a claim in the crop. Some programs may require copies of written leases or other documents to prove that the tenant has control of the land. Although not a formal requirement to record a lease, FSA may require a written lease to qualify for certain federal and state farm programs.

Insurance

Both parties will want to carry liability insurance on the leased property. This is good business practice and will protect both landlord and tenant from possible liability claims. The landlord will want to carry insurance on all structures located on the leased property to protect against loss. The tenant will want to carry insurance on his own personal property located on the leased property. For example, Tenant rents farm from Landlord that has a huge barn and granaries located on the property. Inside the barn, Tenant stores farm equipment and tools. Tenant also stores grain inside the granaries. Landlord would want to insure the barn and the granaries to protect against loss. Tenant would want to insure his equipment and tools located in the barn and any grain located in the granaries.

As discussed earlier, crop insurance coverage will depend on the type of lease the landlord and tenant share. If a fixed cash rent lease or a flex rent lease is used, the tenant will be responsible for insuring the crop. A landlord may want to include a clause in the lease to ensure that the tenant carries a minimum level of crop insurance coverage in order to ensure the tenant can pay the rent. Use of a crop share lease will require the landlord and tenant to split the cost of crop insurance coverage based on the percentage of the crop owned by each party. With a custom farming contract, the landowner will need to insure the entire crop.