

With all these leases, the landlord will be able to deduct expenses for repairs to keep the property in working condition, depreciation on the property, uncollected rents, and operating expenses. For landlords collecting Social Security benefits, rental income will not adversely affect Social Security benefits. An alternative to leasing is a **custom farming contract** where a landowner contracts with a custom operator to perform all the machine operations on the landowner's land. The landowner takes all the risks involved in the operation and pays the custom operator a set fee for performing the work. The landlord will receive all profits, incur all production costs, pay all crop insurance premiums, and collect 100 percent of eligible federal and state farm program payments. Income earned on the farm will be reported on the landowner's Schedule F. This type of arrangement works well for landowners who still want to control the operation but may not have the time or ability to do the work required. This type of arrangement is also attractive for custom operators—those who wish to earn extra income from the equipment they currently lease or own.

One special note on types of lease agreements: the type of leasing agreement can have federal estate tax implications specifically Internal Revenue Code § 2032A. Landlords looking to qualifying for this federal estate tax provision need to discuss the implications of various leasing arrangements with an estate tax planning specialist. Current federal estate tax law allows for qualifying agricultural lands' value to be reduced below the fair market value if the land continues in agriculture under a qualifying family member. IRS currently views farms operating under a cash lease as ineligible for this reduction in the land's fair market value. For more information see University of Maryland Extension Factsheet entitled "Estate Planning for Farm Families."

Lease Renewal and Termination



Renewal and termination of a lease depends on the type of tenancy—the type of legal relationship between landlord and tenant—the lease creates. Certain types of tenancies may allow the lease to automatically renew, unless the parties give proper notice of termination. Renewing a lease will always be the responsibility of a tenant. Tenants should be the ones to request a renewal. By contrast, a landlord has the option of either agreeing to the renewal or giving

the tenant the proper notice that the lease will terminate at the end of a lease term. Contract provisions may be written to govern the rights of the tenant to renew the lease or the method by which the landlord may exercise her right of termination.

A **periodic tenancy** has a set period of time such as month-to-month or year-to-year. The periodic tenancy will be classified based on when rent payments are made. For example, if you pay rent once a year, you have a **year-to-year periodic tenancy**. If you pay rent once a month, you would have a month-to-month tenancy. The typical oral farm lease would be a year-to-year periodic tenancy. Periodic tenancies renew automatically at the end of lease period unless the landlord or tenant gives proper notice of termination. In Maryland, agricultural leases require *at least 6 months'*



notice to terminate a year-to-year tenancy (MD. CODE REAL PROP. Section 8-402(b) (4) (2013)). Notice of termination can be given orally or in writing by the landlord to the tenant or by the tenant to the landlord, even with a written lease, unless the lease says it must be in writing (MD. CODE REAL PROP. Section 8-402(b)(3)-(4) (2013)). Unless proper notice is given, a periodic tenancy will automatically renew at the end of the term. This also

means the terms of the original lease will continue to apply until the parties agree to terminate the original terms or the parties agree to a new lease.

Under a *tenancy for a term of years*, the landlord and tenant agree the lease will end after a certain period of time. For example, Tenant and Landlord sign a lease stating “the lease will run for 4 years from March 1, 2011.” This lease will end on February 28, 2015. A lease for a term of years requires the landowner to give written notice one month before the end of the lease that the landlord desires to repossess the property (MD. CODE REAL PROP. Section 8-402(b)(1)(i) (2013)). Once the landlord gives notice, the tenant must surrender the property back to the landlord at the end of the term. The tenant can also decide to terminate the lease once the term has expired, but—unlike the landlord—is not required to give notice under Maryland law unless the terms of the written lease require the tenant to do so.

When a tenancy for a term of years renews automatically at the end of its period, the lease typically becomes a periodic tenancy. For example, a lease could state that “the term shall extend from June 1, 2010 to May 31, 2011 or if no written notice is given then the lease will extend as a year-to-year tenancy until properly terminated.” In these situations, the tenant and the landlord will be bound by the same duties and rights as stated in the original lease. In other cases, a lease could contain language that only allows renewal if a *lease extension*, a written document stating the intention to continue the lease, is signed by both parties. If an extension is signed, a landlord’s and tenant’s rights and duties under the extended lease will be dictated by the terms of the extension.

While parties can specify how the lease will be terminated, both parties must have the same period of time to give notice; one party cannot be given a longer notice period than the other party (MD. CODE REAL PROP. Section 8-501 (2013)). If the contract specifies how a lease is to be terminated, the exact procedure must be followed; courts are traditionally not forgiving of parties that do not follow the proper notice termination procedures. For example, if the lease states notice should be given “in writing and delivered by certified mail within 6 months before the lease terminates”, then notice must be given within 6 months of the end of the lease.

When a lease is for a term of years and the tenant knows when the lease will expire, a tenant will not be able to harvest crops maturing after the lease expires. This rule has long been settled by Maryland courts (*Carmin*, 1906). Tenants should exercise good judgment before planting crops they know they cannot harvest before the lease expires. The one exception to this rule is when custom and practice in an area allows for harvest after termination or there is an agreement between landlord and tenant to allow the harvest after termination. For example, Tenant plants a fall crop knowing the lease expires before the fall crop will be ready to harvest; the tenant must ask the landlord if tenant can harvest the crop after the termination of the lease. If the landlord does not reply or says nothing, tenant should be entitled to harvest the crops, the landowner’s lack of response could be viewed as agreeing.

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.