

Written versus Oral Leases



The typical farm lease is oral rather than written. The landowner and the tenant often view a verbal lease as showing trust in one another. Although an oral lease may convey trust, written leases actually record what the two parties have agreed to and as such can avoid misunderstandings. Most oral leases will be valid under Maryland law if they are for one year or less. Oral leases that violate the Maryland's Statute of Frauds will not be valid. The Statute of Frauds requires certain contracts to be in writing and signed by both parties. In

Maryland, any lease with a set term longer than one year must be in writing and signed by both parties to be valid. If the landlord orally agrees to rent his farm to a Tenant for one year with an understanding that the lease can be renewed each year, the lease will be valid. This oral lease would be valid since the lease could be performed within one year. Even though the lease can be renewed at the end of the one year period, it does not mean it will be renewed. But if Landlord orally agreed to rent his farm to Tenant for 3 years, this lease *must* be in writing and signed by both parties to be valid and enforceable in a court of law.

Some exceptions to the Statute of Frauds apply which may render an otherwise invalid oral lease enforceable. One exception is when one of the parties has partially performed in reliance of the oral lease. For instance, Maryland courts ruled in some cases that an otherwise invalid oral agreement will be upheld where a tenant has made payments of rent or has made improvements to the property (*Schluderberg*, 1929). For example, say the Landlord and Tenant have an oral lease to rent Landlord's farm for three years. Ordinarily, this would be an invalid agreement because it is not in writing. But if Tenant takes over the farm, pays rent on time, and improves the pasture portion of the farm, he has partially performed by paying rents and improving the property. As such the landlord would not be able to argue the oral lease is invalid under the Statute of Frauds. However, a written agreement provides both landlord and tenant greater legal certainty especially when the term exceeds one year.

Getting a court to enforce an oral lease requires a party in court to present evidence as to what constituted the oral agreement—a potentially difficult matter of evidence. All parties present at the time the oral lease was made could be called to testify. The credibility of each witness to the oral lease will need to be established. A court will take the testimony of the witnesses and each witness's credibility into consideration when determining the enforceable terms of an oral lease.

Given the evidentiary difficulties for proving the terms of oral leases and the costs and uncertainties of the court system, written leases can have many obvious advantages over oral leases. Written leases remove the need for the parties to prove the existence of each term in an oral lease. Parties should consider a written lease as a necessity similar to obtaining receipts from input suppliers and other documents to provide parties with a record of other farming transactions. Reducing negotiations to a written document can allow parties to determine the issues that will be driving their leasing relationship. As will be discussed later, parties can define who is responsible for what repairs, how a lease is to be terminated, the types of farming practices to be employed, the crops to be grown, and rights to any growing crops after the formal termination of the lease, etc.

In addition to giving parties to a lease greater legal certainty, in some cases written leases may be required for other reasons. For instance, lenders may require written leases as proof or verification that a tenant farmer actually does have the acreage he/she claims. Federal and state conservation programs may require a written lease to prove that the tenant has control of the land where conservation practices are to be installed.

Types of Leases

Landlords and tenants have a variety of lease types from which to choose depending on their various goals. The following discussion is an overview of four common arrangements between landlords and tenants: the *cash lease*, the *flex lease*, the *crop-share lease*, and the *custom farming contract*. Parties will want to pick the best leasing arrangement that works for their needs.

Under a *cash lease* or a *fixed cash lease*, the tenant pays the landlord a cash sum per acre or lump sum for the rights to use the land and other farm resources. For a landlord, a cash rent lease represents a fixed income per year with little involvement in the management of the agricultural operation. Landowners need not concern themselves over the types of crops grown or amount of production costs, nor about price and yield fluctuations. For a tenant, a cash lease allows the tenant to make all the management decisions, provides an incentive for the tenant to reap the highest yields possible, and allows the tenant to retain windfall profits from yield or price increases.¹

Cash leases face the challenge of determining the right per acre rental rate that should be charged. The two parties can agree to use the current cash rental rate in the area, but cash rental rates can also be set using a variety of factors and the current rate may just be a starting point. Factors in calculating the cash rent rate may include: 1) the amount of federal and state farm program “payment acres;” 2) expected crop returns; 3) improvements on the land and whether or not those improvements (e.g. barn, lots, irrigation, or other fixtures) could be used by the tenant during the lease term; 4) the size of the farm; 5) location of the farm; 6) land quality; and 7) the reputations of the two parties. These factors provide some examples of items that could drive the cash rental rate for the land but others might exist and if so, should be incorporated. Worksheets are available through organizations, such as AgLease101.org, to aid the parties in calculating a fair rental rate.²

With cash rent leases, tenant will pay the crop insurance premiums, because the landlord has no interest in crops grown. The tenant will also receive 100 percent of all federal and state farm program payments that may come from the rented farmland. Federal and state farm program regulations require that a party actively participate and take some risk to be eligible for program payments. Under a cash rent lease, a landlord does not meet these requirements.

A hybrid cash rent lease is a *flexible cash rent lease* or a *flex lease*. A flex lease is similar to a cash lease in that the landlord charges the tenant an amount per acre. Unlike a cash rent lease, rent under a flex rent lease can fluctuate up or down depending on crop yield, market price, or a combination of both.³ A flex lease allows the landlord to gain when market prices or crop yields increase during the crop year. But in return for the possible increase in rental payments, a landlord also loses when market prices or crop yields decrease. Under a flex

¹ For a more detailed review of the advantages and disadvantages of a cash lease for either party, see North Central Farm Management Extension Committee, *Fixed and Flexible Cash Rental Agreements For Your Farm* (Dec. 2011), available at <http://aglease101.org/DocLib/docs/NCFMEC-01.pdf>.

² See North Central Farm Management Extension Committee, *Fixed and Flexible Cash Rental Agreements For Your Farm* (Dec. 2011), available at <http://aglease101.org/DocLib/docs/NCFMEC-01.pdf>.

³ For information on how to set a flexible rental rate, see North Central Farm Management Extension Committee, *Fixed and Flexible Cash Rental Agreements For Your Farm* (Dec. 2011), available at <http://aglease101.org/DocLib/docs/NCFMEC-01.pdf>.