



AGRICULTURAL LAW AND TAXATION BRIEFS

DEPARTMENT OF AGRICULTURAL AND CONSUMER ECONOMICS, UNIVERSITY OF ILLINOIS AT URBANA-CHAMPAIGN

SHOULD A FARM LEASE BE WRITTEN AND IS AN ILLINOIS FARM TENANT PROTECTED IF THE LEASE IS ORAL?

By Donald L. Uchtmann*

Synopsis: As a practical matter a farm lease generally should be in writing for many reasons. However, a farm tenant in possession of Illinois farmland under an oral lease has some protection under the law because such leases are considered to be leases “from year to year” in Illinois. This article discusses why it is generally wise to have a written lease, rather than an oral lease, and also describes how the law protects a farm tenant even if the lease is not in writing. This article is part of a law-related educational program for family farmers in Illinois made possible by a gift from the Illinois Bar Foundation. The assistance of the Agricultural Law Section Council of the Illinois State Bar Association in reviewing and otherwise assisting with the preparation of the article also is appreciated.

Should a Farm Lease Be Written, Rather than Oral?

Yes! There are many reasons why, as a general rule, an agricultural lease should be in writing. Reducing the agreement between the farm owner and the farm operator to a written document brings discipline to the negotiation process, helps the parties focus on key leasing issues to be resolved, helps the parties realize when they are in agreement and when they are not, and preserves the agreement for future reference when memories may have faded.

A written lease is especially valuable if a dispute later arises between the landowner and the tenant. Matters such as a clear description of the rented property, the time period covered by the lease, the amount of rent to be paid, and the specific rights and duties of the parties (especially any that differ from the customary rights and duties in that community) are usually included in a written lease and preserved for use in resolving future disputes.

Also, under an oral lease, common law and local custom normally control. Any special agreements, such as an oral agreement that the tenant, upon leaving the property, is entitled to payment for permanent improvements, often are difficult to prove.

Another disadvantage is that an oral lease entered into before the tenant is to take possession may be unenforceable. Illinois law provides that oral agreements that cannot be performed within one year from the date of the agreement are unenforceable as a general rule. A one year lease entered into on November 1 to begin the following March 1 cannot be performed within one year; thus, either the landowner or the tenant may have the legal right to

back out of the agreement anytime before the tenant takes possession on March 1.

To encourage landowners and tenants with oral leases to reduce their agreements to writing, blank forms for both crop share and cash leases are available on *farmdoc* (www.farmdoc.uiuc.edu). A landowner and tenant wanting to convert their existing oral lease agreement into a written lease could simply complete the forms by inserting the terms of their existing oral arrangement into the written lease form, sign two copies of the written lease, and give one signed copy to the owner and one to the tenant. This step at least gives the parties a written record of their existing oral arrangement, bringing to both parties the advantages of a written lease.

Parties to a farm lease also should realize that a lease creates both legal rights and obligations and the assistance of legal counsel may be very helpful. When one or both parties seeks legal counsel, the lease forms on the *farmdoc* website may serve as a starting point for the lease. These “form” provisions may be substantially modified as the lease is tailored, with the benefit of legal counsel, to meet the specific needs of the landowner or tenant.

Is an Illinois Farm Tenant Protected if the Lease is Oral Rather than Written?

Under Illinois law, a farm tenant without a written lease usually is viewed as a tenant from year to year. See, for example, the case of *Rhodes v. Sigler*, 27 Ill. App. 3d 1 (3rd Dist. 1975). A tenant from year to year is given some protection by a minimum notice period, imposed by statute, that prevents the farm tenancy from being immediately terminated by either party to the lease.



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The minimum notice period for an oral year to year farm tenancy in Illinois is four months, as seen in the following provision in the Illinois Compiled Statutes:

In order to terminate tenancies from year to year of farm lands . . . the notice to quit shall be given in writing not less than 4 months prior to the end of the year of letting. Such notice may not be waived in a verbal lease (735 ILCS 5/9-206).

For example, March 1 to the last day of February is a customary farm lease year in Illinois (see *Daugherty v. Burns*, 331 Ill. App. 3d 562 (2002) and *Ames v. Saylor*, 267 Ill. App. 3rd 672 (1994)). For oral year to year farm tenancies beginning March 1, notice to terminate the farm lease must be given not later than October 31 – four months before the last day of February. If the parties clearly agreed that the lease year is January 1 to December 31, notice to terminate the oral lease must be given not later than August 31 – four months before December 31. Unless proper notice is given, the lease will continue another year.

Illinois law also specifies how the written notice is to be delivered (see 735 ILCS 5/9-211). Generally, the courts rigidly adhere to these notice requirements.

Courts have held that the written notice must be timely, must be signed by one having authority, and must accurately describe the property. In addition, the statute requires that the notice be delivered to the tenant, or to a person at least 13 years of age who resides on the premises or is in possession of the land, or if no one is in actual possession of the land then by posting a copy of the notice on the premises. Proper notice may also be sent to the tenant by certified or registered mail, with a returned receipt from the addressee.

Tenants who do not receive proper notice to terminate probably have the right to remain on the farm another year. However, in such circumstances this additional year may be very difficult for both the tenant and landowner. Tenants in such a situation may benefit from legal counsel who can assist in various ways, e.g., perhaps by negotiating a voluntary termination agreement incorporating terms mutually beneficial to the tenant and landowner.

The four month notice period required to terminate an oral year to year lease may be insufficient to protect the tenant, since the notice may be given after fields have been tilled in the fall, fertilizer spread, or winter wheat seeded. Whether the landowner is required to pay the departing tenant for work done in the fall can be a difficult question, absent a written lease provision addressing this matter or a voluntary settlement of the issue. However, Illinois law clearly gives such a tenant the right to return after the lease is terminated to harvest a fall seeded crop like winter wheat, if the crop was seeded in good faith before the landowner gave notice of termination. For example, this right (the “Doctrine of Emblements”) is noted in the case of *Leigh v. Lynch*, 112 Ill. 2d 411 (1986).

Tenants who find themselves in such a situation may benefit from legal counsel. Perhaps a voluntary settlement can be negotiated. Sometimes it is better for all involved if the tenant voluntarily surrenders this right (the right to return to harvest a fall seeded crop) in exchange for reasonable compensation.

Summary

As a practical matter a farm lease generally should be in writing for many reasons. However, a farm tenant in possession of Illinois farmland under an oral lease has some protection under the law because such leases are considered to be tenancies “from year to year” in Illinois. Among these protections is the requirement that the tenant be given at least four months written notice before the farm lease can be terminated. Also, a tenant who plants a fall seeded crop in good faith before receiving a timely written notice to terminate has a right to return to the farm to harvest the crop, as a general rule.

Tenants with oral leases who are facing termination of a farm lease often benefit from legal counsel. An attorney can help assess whether a notice to terminate was proper, whether the tenant may lawfully return to harvest fall seeded crops like winter wheat, and whether the tenant has a legal argument that might entitle the tenant to reasonable compensation for fall work performed in anticipation of the next lease year. An attorney may be able to help negotiate settlements to such issues – settlements that are agreeable to both the tenant and landowner.

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