Extension
University of Missouri

Verbal Farm Rental Agreements Under Missouri Law

Verbal farm leases are a tradition in Missouri agriculture. Oral farm leases continue to make up around one-half of all farm leases. Two parties, a landowner and a tenant, discuss a rental farm, the method of sharing expenses and income, and shake hands. They've made a verbal rental agreement. Many agricultural leases are formed this way. Unfortunately, informal verbal leases cannot cover all of the problems and possible conflicts that may arise under leases. It is important for landowners and prospective tenants to know the laws that control verbal and written agreements.

A dispute arises when a disagreement over contract terms cannot be settled. Memories fade, circumstances change or the parties involved can change — all of which lead to questions over the terms of the lease. This can lead to a costly lawsuit and a loss of valuable farming time. Making a written agreement will not prevent a lawsuit in all situations. But the terms of written agreements are not as subject to dispute as verbal agreements and a well-written farm lease will cover and address the "gaps" that are inevitable in a verbal lease.

This publication deals with problems of lease duration, notice of termination, invalid verbal agreements, subleases and assignments, death of a landlord or tenant, life estates, security for rent, holdover remedies, sharecropper agreements, and the rights, duties and liabilities of both the landlord and the tenant. With regard to the landlord-tenant relationship, some parts of the law are not clear. Also, landlord-tenant cases are often settled out of court because of the amount of money involved. Therefore, there are not answers to every question that might arise. Some answers, given by courts, were expressed many years ago when farming practices were much different. Courts today might give a different answer.

This publication is merely a guideline to help you understand problems and risks created with verbal agricultural leases. It is for informational purposes only and does not constitute a substitute for competent legal advice. Check with an attorney for legal advice regarding your specific situation.

Figure 1. Written farm leases are important for landowners and tenants to outline responsibilities, duties and liabilities of an agreement.

Lease duration

A verbal agricultural lease for less than one year is the same as tenancy at will (Section 441.060, No. 1, Revised Statutes of Missouri [RSMO]). It would be specifically enforceable (valid) for the stated time period and is not invalidated by the statute of frauds, which generally requires certain agreements to be in writing in order to be enforceable.

A periodic tenancy, year-to-year, is created when the agricultural tenant holds over (keeps possession of the land) for another year. Common law is applicable to convert a tenancy at will into a periodic tenancy, year-to-year. A periodic tenancy is continuous and of indefinite duration. At each anniversary of the verbal agreement, the lease continues, unless notice of termination is given. A verbal lease for longer than one year is generally invalid under the Missouri statute of frauds. Under an invalid oral lease, farmland is in a year-to-year tenancy.

Revised by
Joe Koenen, County Engagement Specialist, Agricultural Business and Policy Extension

These rules are generally applicable to verbal agricultural leases. If the property is not being used for agricultural purposes, a verbal lease that is held over will be considered as a month-to-month tenancy.

Termination of the lease

The important distinction between a year-to-year tenancy and a month-to-month tenancy is the notice required to terminate the verbal agreement. To terminate a periodic, year-to-year tenancy, Missouri law (Section 441.050 RSMO) requires that written notice be made by the party wishing to terminate the lease to the other party not fewer than 60 days before the end of the lease period. Month-to-month tenancies can be terminated with one month's notice in writing (Section 441.060 RSMO).

The notice to terminate the agreement must be written, even though the original agreement is verbal. If proper written notice is not given, the other party can enforce another term of tenancy.

There is a Missouri court that decided when the landlord and tenant agreed verbally on a specific termination date, no notice was necessary. However, there are more cases where the notice requirement was upheld.

If no certain time is set for the tenancy to end, the agricultural tenancy will be a year-to-year tenancy, which requires 60 days notice. By special agreement, a landlord and tenant can agree that no notice is required to terminate the lease (Section 441.070 RSMO). That can work in a one-year situation but will be difficult to remember after multiple years.

In Missouri, tenancy begins on the day of the verbal agreement, not on the day possession is given. So, if the parties enter a verbal agreement on March 1, 2020, the last effective date of the lease is Feb. 28, 2021, assuming the proper notice is given. If there is no termination, the new lease year begins on March 1, 2021. This is important in determining when to give notice. Notice (written) in this situation would need to be given by the last week of December 2020.

Missouri tradition is that landlords rent farmland from and to March 1. There is some indication that southern Missouri landlords rent to and from Dec. 31. Neither of these is the law however, it is just a tradition and not a common or legal date.

The place where notice is served is not important if it is delivered to the tenant or landlord in person, and if it is received within the specified time. The person serving notice should retain a copy for their protection. If notice is sent by mail, it should be sent either by registered mail or certified mail with return receipt requested.

Invalid oral agreements

Generally, a verbal agreement to lease land for more than one year is invalid and unenforceable. The one-year period means one year from the time of the making of the agreement, not one year from the time of first possession. So, a verbal lease made in February under which the tenant was to take possession on March 1, and was to run to next March 1, would be longer than one year and unenforceable. If the landlord will not deliver possession, the tenant has no recourse.

However, courts will typically enforce a verbal lease for more than a year regardless of the statute of frauds and will treat such lease as a year-to-year tenancy if there has been part performance such as when crops have been planted. The court does this to prevent the defaulting party from making use of the written requirement to commit a fraud. When the tenant has taken possession, the full extent of the agreement will be enforced as a tenancy at will, if the court recognizes the doctrine of part performance. The best protection for the tenant would be a written agreement.

Sublease and assignments

Under a sublease, the original tenant retains some rights or obligations in the leased property. Under an assignment, the entire interest is transferred to the new tenant and the original tenant has no rights or obligations under the original lease.

Missouri law specifically denies the tenant the right to assign the lease interest without obtaining written consent from the landlord. This law applies to any tenant with a lease for a period of less than two years, so it would apply to verbal leases. If the tenant assigns the lease to someone without the permission of the landlord, the landlord, after giving 10 days notice, can re-enter the premises.

This law does not prohibit the tenant from subletting. A tenant can sublease under a verbal lease in the absence of a valid and binding agreement prohibiting such a sublease. When the original lease was for farming purposes only, a sublease without the same restrictions has been held void. A tenant cannot sublease and convey greater rights to the subtenant than what the tenant held under the lease. For example, if the original lease restricted the use of the land by the tenant to the planting of row crops, the sublease must also contain this restriction for the subtenant. Also, it has been held that a tenant from year-to-year has no authority to sublease the farm so as to tie it up with a crop the following year.

A landlord can prevent assignment and subletting by the tenant by entering such a clause in the lease, one in writing.

Death of landlord or tenant

Unless otherwise specified, the death of the landlord or the tenant does not terminate a verbal lease and the estate of the deceased party is obligated to perform the terms of the lease. The surviving party and a representative of the deceased party may want to terminate the lease and can do so by mutual agreement. There is one case where the death of the landlord was held to terminate a year-to-year lease and the 60-day notice was not required (Estate of Keifer vs. Gegg, 1981) but that case has some specifics that may not apply in other circumstances.

One of the biggest disadvantages of oral leases is death of a party to a verbal agreement. The law generally does not permit one party to testify to the terms of an agreement or lease in a court when the other party to the agreement or lease is deceased. This means that survivors may have difficulty proving the contents of the agreement because they cannot testify. For this reason, agreements need to be in writing.

When landlord owns life estate

A prospective tenant should determine whether the landlord is the owner of a fee interest or only a life estate in the land by researching title to the property. A life estate means the landlord owns and controls the land only for the duration of his/her life. At death, title to the land is automatically transferred to others as specified in the original deed creating the life estate. However, this does not prevent the life estate owner from leasing interest held in the land. A fee interest is more of an ownership interest than is a life estate. A fee simple absolute is the best ownership interest possible in land.

The tenant must be careful when making the agreement. If an ordinary life estate landlord dies, the tenancy ends because the life estate owner cannot transfer an interest not owned. If the landlord only holds a life estate, the tenant may want the remaindermen (those who take ownership at the landlord's death) to enter the agreement, so the tenancy will continue at the death of the life estate owner. The tenant must be given the required statutory notice by subsequent owners, however, to be removed from the land. If the subsequent owner forces the tenant to leave, the tenant retains the right to harvest crops planted even though rights of tenancy have been terminated.

Landlord security for rent

The tenant leaving the farm prematurely remains liable for any rent due under the agreement. The landlord has a lien on any crops for the year in which the crops were grown as security for the rent due. A lien is a right or claim on property by a creditor to secure payment of a debt from the debtor. The lien continues for eight months after the rent becomes due and payable. Waiting until after the eight months leaves the landlord generally out or not in a good position This lien is by law thus no UCC agreement needs to be in place. The statutory lien is not only for the protection of the landlord, but it operates as well to the benefit of the tenant. It enables a tenant to secure land without having to provide a security deposit for rent.

The landlord can recover rent due from a person who purchased the crops from the tenant if the purchaser knew the crops were grown on rented land. The landlord can recover from the purchaser only up to the amount of crops the purchaser received from the tenant.

If the tenant endangers the landlord's rent, the landlord may attach by court order any personal property of the tenant (there are certain exemptions.). The principal advantage to attachment of personal property over the lien on crops is that attachment may be used whenever the rent is endangered (even if the rent is not yet due). The landlord may have a lien on crops only when the rent is actually due.

Landlord remedies for holdover

If a tenant willfully holds over after the termination of his tenancy, the landlord has several remedies. The landlord can hold the tenant as a tenant for another tenancy. This is the procedure that creates a year-to-year tenancy. This alternative is not often used.

The landlord can treat the tenant as a trespasser and have them evicted. The landlord can also take the tenant to court under an unlawful detainer action. In this proceeding, if the landlord proves the right to possession, their possession will be restored and the tenancy will be terminated.

Under Missouri law, the landlord has the option of holding the tenant liable for double rental value of the premises during any hold over. This is a case where the tenant was legally terminated yet refuses to vacate the premises. In most situations, the landlord simply wants possession of the land. Therefore, the unlawful detainer action would be the proper procedure.

Rights, duties and liabilities of landlords

Entry by landlord

A landlord cannot enter upon the rental premises for any purpose unless that right is in the agreement. Yet most landlords assume they can continue to access their property for hunting and other recreational

purposes even if it is rented. Which in turn leads to the question of what property is included in the lease. For example, in a verbal crop lease, does the leased property include the adjacent timber or other non-tillable areas? If landlord is bound to make repairs, the landlord has the right to enter upon the premises. If the tenant has abandoned the premises before the lease has expired, the landlord may re-enter. If the right to re-enter is desired by the landlord, it should be specifically written in the agreement.

Repairs

Generally, the landlord is neither obligated to repair the premises nor to pay for repairs that may be made by the tenant. This includes ordinary repairs; that is, those necessary to keep the premises in a safe condition. In Missouri, however, it has been held that a landlord gives an implied warranty that a dwelling will be habitable and fit for living at the beginning of the term and that it will remain so during the entire term. This case involved a dwelling in a municipality, but it might be extended to farmhouses so that the landlord would be responsible for the dwelling being in a habitable condition.

Violation of lease

If a tenant violates the conditions of a lease or commits waste (an abuse or destructive use of the property) of the leased premises, the landlord, after giving 10 days notice, can re-enter the premises and take possession. These conditions do not include the nonpayment of rent because there are other statutory remedies, including unlawful detainer and the statutory lien that can be used to collect rent.

Fences

In the local option law counties, the landlord is responsible for major repair and construction of fences, and the tenant is responsible for ordinary repairs, at least traditionally. In the general law counties, it is the livestock owner that is legally responsible. Again, this is a matter that should be specifically agreed on and spelled out in writing by the parties.

Rights, duties and liabilities of tenants

Crops

The doctrine of emblements gives the tenant the right to come on the premises and harvest crops planted even though rights of tenancy have expired. Of course, the tenant harvests the crops subject to any lien the landlord may hold against them.

Tenants, who have been given legal notice to vacate before planting, may not have the benefit of the doctrine. For example, if the landlord gives the tenant notice on Sept. 1 to vacate on Feb. 28 of the following year, the tenant may not be able to recover winter wheat planted on Oct. 15.

This doctrine might not apply when a new owner buys the premises without knowledge of the rental agreement. This is another good reason for having a recorded, written lease to protect the tenant. If the lease is recorded with the county recorder, a purchaser would automatically notified that the land is leased to the tenant.

Condition of premises

In the absence of a covenant for the tenant to repair, the tenant is not liable for ordinary wear and tear of the premises. The tenant's obligation is, in effect, an implied covenant or promise not to commit waste and to return the premises to the landlord at the end of the term unimpaired by the negligence. Another clause in the law prevents the tenant from committing gross negligence on the property. This has been interpreted to mean lessening the value of the landlord's property. This can be hard to prove unless it is obvious (e.g., all trees removed from property, etc.).

Insurance

The tenant is not responsible for property insurance of the premises unless it is specifically included in the lease agreement. Many times, it is included. If the landlord wishes to require the tenant to carry insurance, the written agreement should be clear as to the kind of insurance and the amount of coverage. Of course, the tenant should carry liability insurance and property insurance for personal and business belongings.

Destruction of improvements

When buildings or improvements on the premises are destroyed, the tenant is still obligated to pay rent unless the lease agreement relieves the rent obligation. So, if a building on the farm is destroyed by fire, the tenant is still responsible for the full amount of the rent. If the lease provides that the landlord is to keep the premises in general repair, and the destruction is not caused by the negligence of the tenant, courts will sometimes excuse the tenant from the payment of rent when the building has been totally destroyed.

Sale of premises

A sale of the landlord's interest of the property does not terminate the lease if the tenant is in possession under a recorded valid lease, or a lease of which the purchaser has actual or constructive knowledge of the lease. Sale would simply result in buyer taking title to the

property subject to the lease and in the substitution of a new landlord.

Fixtures

Tenants have the right to remove fixtures they have placed on the land if they can be removed without injury to the land. A fixture is defined as an article of personal property that has been physically annexed to the land or to a building which is a part of the land, and therefore cannot be removed without the consent of the landlord. Examples of fixtures include fences, portable buildings, portable water tanks, gas tanks or water lines. The tenant must remove fixtures before surrendering possession, for the right to remove them expires with the tenancy.

Improvements and alterations

In the absence of any express agreement, a landlord does not have to pay for any improvement the tenant may make, including fixtures. This includes anhydrous ammonia applied in the fall. The tenant cannot offset the value of the improvement against the rent. Also, in the absence of any express agreement, a tenant has no right to make material or permanent alterations to the land.

Sharecropper agreements

In agreements where the tenant can farm the land but does not have exclusive possession, then the agreements are not leases but are instead sharecropping agreements. These agreements can be oral or written. The right to exclusive possession is the distinguishing element between landlord-tenant and owner-cropper relationships. When the intention is exclusive possession of the land to the tenant, a landlord-tenant relationship is created. In a sharecropper arrangement, the cropper has no right to the land for any period but just allowed to plant and harvest crops. Sharecropper agreements generally occur in the Missouri Bootheel only.

No notice is necessary to terminate a sharecropper agreement, for when the crop is harvested, the cropper's rights to the premises are extinguished.

The cropper must exercise reasonable care and diligence in planting, cultivating and gathering a crop. If the use of the land by the cropper results in injury to the crop or to the land, the landlord may be able to recover damages from the cropper.

Why a written lease?

Violation of verbal agreements is difficult to prove and is often reduced to arguments in court. For example, if a dispute arises concerning payment of rent in a year-to-year tenancy, it is the landlord's word against the tenant's. Additional testimonies from witnesses to the verbal agreement may be helpful but do not conclusively prove what was contained in the original agreement.

When they make a written agreement, prospective landlords and tenants are forced to think about and agree upon the essential considerations of leasing and operating a farm. Differences of opinion can arise unexpectedly. Time tends to make verbal agreements hazy while a written agreement is always available for reference and recall. There is also the problem of proving the elements of the verbal agreement since the survivor cannot testify when the other party to the agreement is dead.

There are only a few minimum requirements for a written lease. The basic lease provides the duration of the lease, names and addresses of the parties, the legal description of the property, rental rates, arrangements for payment of rent and the signatures of each party. In addition, special agreements between parties regarding insurance, repairs, fences, land restrictions, improvements and the landlord's right to re-enter should be included. If hunting rights are a concern for a landlord, those can be specified (persons with access, etc.) in a written lease too. Any changes made after the contract is signed should also be made a part of the written contract.

Written farm lease forms are available at your county University of Missouri Extension Center. You can also download forms at *www.AgLease101.org*.

This guide was reviewed and edited by R. Caleb Colbert, Lawyer, Hayden & Colbert.

Original authors: Stephen F. Matthews and Myron Bennett, University of Missouri

Extension
University of Missouri

Issued in furtherance of the Cooperative Extension Work Acts of May 8 and June 30, 1914, in cooperation with the U.S. Department of Agriculture. Director, Cooperative Extension, University of Missouri, Columbia, MO 65211 • MU Extension provides equal opportunity to all participants in extension programs and activities and for all employees and applicants for employment on the basis of their demonstrated ability and competence without discrimination on the basis of race, color, national origin, ancestry, religion, sex, sexual orientation, gender identity, gender expression, age, genetic information, disability or protected veteran status. • 573-882-7216 • extension.missouri.edu