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## Farm Lease Termination

*Author's Note: The Need for Personal Legal Advice. Farm leases and real estate transactions require a consideration of law and facts unique to each case. The information provided in this newsletter is for education purposes only: It is NOT a substitute for competent legal advice.*

Many farm leases, especially those between family members, are not written but are verbal "handshake" agreements. Because nothing is in writing, the parties may have different recollections of their agreement, making lease disputes more difficult to resolve. The most common legal issue associated with verbal farm leases is how a lease may legally be terminated. For unwritten leases, six months advance notice must be given to legally terminate the lease. In contrast, the termination of a written lease is determined by the terms of the written lease. If nothing is specified, a written lease terminates automatically on the last day of the lease with no automatic renewal.

Rising crop prices have led many landowners to seek higher cash rents. Many Nebraska leases are unwritten, which means that notice of termination must be given at least six months in advance, usually by September 1. If the landowner cannot terminate the lease, the landowner cannot require the tenant to accept a higher rent in order to avoid immediate lease termination. However, prudent tenants would renegotiate the lease with the landowner in order to keep the lease longer. If a tenant refuses to renegotiate the rent, the tenant could end up ultimately losing the lease.

**Verbal year-to-year leases.** Verbal (i.e. unwritten) leases are legally presumed to be year-to-year leases. A year-to-year lease has no fixed time period and is automatically renewed for another year until proper notice has been received by the tenant from the landowner (or vice versa) that the lease is terminated. Many farm leases in Nebraska are unwritten year-to-year leases, and automatically renew for another year unless termination notice has been received by September 1.

**Verbal year-to-year lease termination.** For year-to-year leases, the Nebraska Supreme Court has ruled that the lease year begins on March 1, *Moudry v. Parkos*, 217 Neb. 521 (1984). Notice to a tenant to terminate the lease must be given *six months in advance* of the end of the lease, or no later than the preceding September 1. For example, termination notice received by September 1, 2011 would terminate the lease at the end of the current crop year—on February 29, 2012. The new tenant (or landowner) could take possession free of the lease March 1, 2012. However, termination notice received after September 1, 2011 would not terminate the lease at the end of the current crop year, but would terminate the lease at the end of the following crop year (beginning on March 1, 2012 and ending February 28, 2013).

The September 1 lease termination deadline has important practical implications. The two most common verbal lease questions I receive are (1) the landowner has sold the land without first properly terminating the verbal lease, and (2) the landowner wants to raise the rent for the next crop year but doesn't begin rent negotiations with the tenant until after September 1. In the first situation, the landowner has sold the land subject to the lease (probably unintentionally – the landowner should have worked with his/her attorney to avoid this), and the tenant is still entitled to continue the lease for the next crop year. In this situation the former landowner (or new landowner or some combination thereof) may have to buy the tenant out if the new owner wants to farm the land immediately. In the second case, the tenant is under no legal obligation to renegotiate the cash rent after September 1, unless the tenant voluntarily agrees to do so. The landowner cannot force the tenant to pay a higher cash rent, and the tenant has the land

for the next crop year (because it is too late for the landowner to terminate the lease if the owner doesn't get the cash rent the owner wants). If the tenant wants to farm the land beyond the upcoming crop year, however, the tenant should negotiate with the landowner on the rent. To avoid these September 1 deadline issues, landowners can use a properly drafted written lease (see your attorney).

**Written leases.** Written leases are in effect only for the period specified in the lease itself, which could be one year, five-years, etc. For written leases, no notice is required from the owner to the tenant that the lease will not be renewed unless the lease specifically states that notice of termination is required. Unless it contains a renewal clause, the lease automatically terminates at the end of the lease period. The tenant generally has no right to have a written lease renewed unless the lease contains a renewal clause. For example, if a written lease stated nothing at all regarding renewal, the lease would automatically terminate at the end of the lease period and would not be renewed. A written lease could, however, state that the lease was automatically renewed, unless either party notified the other (usually by a certain date) that the lease would not be renewed.

**Termination notice.** The formal notice to a tenant (or landowner) that a lease is terminated should be written and possibly sent registered mail (consult your attorney). A copy of the written notice should also be kept. A verbal termination notice might be adequate, but could be difficult to prove in court if litigation were necessary to enforce the lease termination. The six-month prior notice deadline for verbal leases applies to the date the notice is received by the tenant, not the date the notice is sent by the landowner.

**Voluntary modification of legal rules.** All the legal rules about lease termination discussed above may be modified through negotiation and voluntary agreement of the parties. For example, a landowner would like to renegotiate the cash rent after harvest based on rising crop prices. Even though September 1 has passed, the savvy tenant would negotiate with the landowner in order to keep the lease over the long-term. If the tenant relies on the short-term legal advantage (the six-month termination notice requirement) to keep the lease at the lower cash rent, the tenant could end up losing the lease after the next crop year.

**Conclusion.** A written lease generally is preferable to a verbal lease because it provides a written record of the lease provisions. However, written leases for farmland under Nebraska law are not required to contain advance notice of termination, as is required in Iowa. Because a verbal lease does require six-months advance notice of lease termination, it may provide more legal protection for the tenant than a written lease, at least for one additional crop year. If you have legal questions regarding a farm lease, contact an attorney.

Source: Cornhusker Economics, January 4, 2012 Issue

## Private Pesticide Applicator Trainings

If your Private Pesticide Applicator card will expire on April 15, 2012, or you do not have a card and will need to purchase a restricted use pesticide, you will need to attend a training soon. A \$30 fee will be collected the day of the training. If you received a letter from the State of Nebraska Department of Agriculture, please bring that with you.

Training provided in our area:

January 24	1:00 p.m. & 6:00 p.m.	Creighton Senior Center
January 30	1:30 p.m.	O'Neill Courthouse Annex
February 6	1:30 p.m.	Elgin KC Hall
February 7	1:30 p.m. & 6:30 p.m.	Neligh Courthouse
February 7	1:00 p.m.	Norfolk Lifelong Learning Center
February 16	1:00 p.m. & 6:00 p.m.	Hartington City Auditorium Basement
February 23	1:00 p.m. & 6:00 p.m.	Pierce Courthouse Extension Meeting Room
February 27	1:30 p.m. & 6:30 p.m.	O'Neill Courthouse Annex
March 1	1:00 p.m.	Bloomfield Community Center
March 13	1:30 p.m.	Neligh Courthouse
March 13	1:00 p.m.	Norfolk Lifelong Learning Center