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FARM TENANCY LAWS IN NORTH DAKOTA

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FOREWORD

This report is a product of a cooperative research program jointly conducted by the School of Law, University of North Dakota, and the Department of Agricultural Economics, North Dakota State University. The joint Agricultural Law-Economics Research Program comes from a felt need to analyze such problems as estate planning, rural zoning, fence laws, water and drainage problems, farm leases and partnerships, and condemnation of farmland. The research funds are provided by the North Dakota State University Agricultural Experiment Station Project S-3-19.

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FARM
TENANCY LAWS
IN NORTH DAKOTA

by
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Robert K. Rushing*

Laws That Affect The Landlord And Tenant

This report discusses some of the laws which regulate leasing agreements and enumerates the obligations, rights, and duties of a landlord and tenant. This information applies to both cash renting and share leasing unless stated otherwise. The information is of a general nature and is not a substitute for sound legal advice.

LEASING AGREEMENTS

A lease is a contract between two parties by which one party, the landlord, gives to the other, the tenant, the temporary possession and use of property in exchange for some reward or rent. In exchange, the tenant agrees to pay rent and to return possession of the property to the landlord at a future time. Once the lease is created the tenant has the right to possess the property and occupy or use it exclusively for all purposes except those prohibited by the terms of the lease.

A lease may be written or oral; however, a written lease has many advantages. For example, the landlord and tenant are forced to sit down and talk about the details of the lease when the terms and conditions are to be put into writing. Neither party has to rely upon his or the other's memory to clear up any misunderstandings that may arise. It is considered good business to have discussed the lease and recorded the intentions of the landlord and tenant in writing. The parties may create an oral lease if they wish. An oral lease requires that the landlord and the tenant agree on all of the conditions and provisions. The term of an oral lease may not exceed one year.

A lease contract always includes at least four items: names of the landlord and tenant; an identification of the land and description of any other property included in the lease; the period of time that the lease is to be in effect; and the amount of the rent. The lease may contain other agreements such as farming practices to be followed, a method for sharing farm costs, responsibility for weed control, and the cutting of timber. It is important that the intentions of both the landlord and tenant be stated in the lease, since it may be used by a court to decide a lawsuit if the leasing arrangement fails. All things assumed or understood by the landlord

and tenant about the leasing transaction should be in the lease itself. Further, all terms and conditions of a lease should be stated in words that are clear in their meaning. A person who is not a party to the lease should be able to know the intentions of each party just by reading the lease.

The landlord and the tenant are both responsible for carrying out the terms of their oral and written agreements. The failure of either to fulfill his obligations may constitute a "breach of contract" in which case the other may cancel the contract and attempt to recover money for damages, or in some cases, seek legal action to force compliance.

SUBJECT OF THE LEASE

Agricultural land may not be leased for more than ten years at a time. The ten-year limitation does not apply if the land to be leased is suitable for agricultural purposes but not actually used for that purpose. Farmland for a nonfarm use may be leased for more than ten years.

GENERAL DUTIES OF THE LANDLORD AND THE TENANT

Whenever a landlord leases real property he guarantees to the tenant that the land is his to lease and that the tenant is legally entitled to possession of the land. The landlord has the responsibility for repair and maintenance of the property. The landlord may hold the tenant responsible for the property's safety or may consider the contract as terminated if the tenant uses the property for a purpose other than the particular purpose for which it was leased.

The tenant, when leasing real property, has certain duties to the landlord. He must pay his rent within three days of its due date. The tenant must use ordinary care to keep the property safe, to keep it in good condition, and to repair all deteriorations or injuries caused by his ordinary negligence. Should the tenant receive notice of any legal action involving the leased property, he must immediately notify the landlord. By failing to do so the tenant may be held liable for all damages the landlord may sustain because the landlord was not informed of the action.

Other obligations are created for both the landlord and tenant when leased real property includes a building intended for human occupation. The landlord must meet various minimum standards in adapting and keeping the building in a condition fit for human

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habitation. The landlord and tenant may, however, agree that the tenant is to perform a part of the landlord's duties. The tenant must keep the premises and plumbing fixtures as clean as their condition permits, use appliances in a reasonable manner, and not deliberately or negligently destroy or impair any part of the premises.

A tenant has a remedy if the landlord fails to maintain the building as he should. First, the tenant must notify the landlord of the need for repairs and wait a reasonable time to allow the repair. If the landlord still has not made the repairs the tenant has three alternatives: (1) make the repairs himself and deduct the cost from the rent; (2) vacate the premises and be discharged from the lease contract and further payment of rent; or (3) recover in some other manner provided by law.

IMPROVEMENTS AND FIXTURES

The tenant and landlord should have a complete understanding about tenant-made improvements and tenant-installed fixtures. Fixtures are items attached to the land, permanently resting upon it, or permanently attached to a permanent structure. They generally become the property of the landlord unless otherwise agreed. The landlord may require the tenant to remove them. For example, windmills, fences, and wells are ordinarily fixtures and if constructed by a tenant would remain on the land after the lease had terminated.

Two exceptions exist which allow the tenant to remove a fixture without the landlord's approval. First, a tenant may remove anything which he has affixed for the purpose of trade, manufacture, ornament, or domestic use, unless it has become an integral part of the property. The removal though must not injure the premises. The second exception is when a tenant has erected a structure to store grain and there is no agreement with the landlord about its removal. The tenant may remove it any time within eight months after termination of the lease if he has filed a notice with the county register of deeds of his intention to remove it upon termination of the lease. The tenant must file his notice within 60 days after placing the structure to reserve his right to remove it.

Improvements are generally treated in the same manner. A landlord has no obligation to pay the tenant for any improvements made voluntarily by the tenant even though the improvement may be permanent and immovable. An agreement between the landlord and the tenant may provide that the landlord will reimburse the tenant for the improvements. A tenant cannot be forced to pay for improvements made by a landlord, since it will increase the value of the property and will benefit the landlord.

It is important that the tenant and landlord have a complete understanding about the fixtures and improvements which may and may not be removed. Also, there should be an agreement about compensation to

the tenant for his labor or materials used in making improvements. The tenant could find himself denied the fruits of his labors after the lease has terminated unless there are agreements covering these areas.

RENT

Rent is what the tenant gives to the landlord in exchange for the temporary use and possession of real property. Rent may be in the form of labor, services, farm production, or money. A lease usually specifies when the rent is due. If it does not, rent of agricultural land is due at the end of the calendar year. Most crop share leases specify that the rent is due and payable within a reasonable time after the crop matures or is ready for market.

RENEWAL AND TERMINATION OF LEASE

A lease may be renewed by agreement; by a provision in the original lease for automatic renewal, unless one party notifies the other to the contrary; or by operation of law. A lease is renewed by operation of law when, after the original term has expired, the landlord and tenant continue as if the lease were still in effect. They are presumed to have renewed the lease under the same terms if the tenant stays in possession of the leased property and continues to pay rent and if the landlord accepts the rent. The landlord could refuse the rent and treat the tenant as a trespasser.

The term of the lease expires by mutual consent of the parties; by the tenant purchasing the property; or by the destruction of the leased property. In addition, either the landlord or tenant may terminate the lease at their discretion. The landlord may terminate the lease when the tenant uses or permits a use contrary to the lease or does not make the repairs he is required to make. A tenant may terminate a lease if the landlord fails to fulfill his obligations according to the lease. Death of one of the parties does not terminate the lease since his heirs can act in his place. If a lease is terminated prematurely, the tenant must still pay rent for the use of the property during the time the lease was in effect. In addition, the landlord will have a right to possession of the leased property and, if the lease was terminated due to the tenant's fault, may have a claim for damages due to the breach of the rental agreement.

LANDLORD'S DUTIES AND RIGHTS UPON TERMINATION

A landlord is responsible for minimizing any damages he would suffer if a tenant defaults on a lease contract and terminates the lease before it was to have expired. The same is also true if a tenant abandons the property. The landlord's claim for damages against a tenant in such a situation may be lost rental income he would have received if the tenant had not defaulted. A landlord, after the default, may not let the leased property sit idle until the time when the lease would have expired. This means that in a resulting suit against the

tenant, the landlord will be held responsible for minimizing his damages. A landlord will not be able to recover those damages he could have avoided unless he makes a good faith effort to minimize his damages. For example, a landlord must make a good faith effort to re-rent the leased property after the first tenant defaults on the lease. A landlord is presumed to have made a good faith effort unless there is an assertion to the contrary. A tenant might successfully claim lack of good faith if the landlord attempted to re-rent the property at a higher rental and because of the higher rental was unable to re-rent.

A landlord may institute an "Action of Forcible Detainer" to recover possession of the leased property if the tenant does not vacate the premises after expiration of the lease or if he fails to pay the rent within three days after it is due. The landlord must give the tenant three-days written notice before he can start this action. The landlord may file suit with the county court if the tenant has not vacated the property at the end of the three-day period. The court will then hear the case and enter a judgment. A judgment against the tenant means he must surrender possession of the property to the landlord, pay the amount of rent and damages that have accrued, and pay the cost of the suit including the landlord's attorney's fee. The tenant may appeal the action of forcible detainer and ask the court for a delay.

When a tenant is behind on his rent payments and the landlord does not wish to institute an action of forcible detainer to recover possession of the leased property, he may be able to attach enough property of the tenant to satisfy the amount of the rent in arrears. This is done according to a process explained in state law. It specifically does not constitute a landlord's lien.

A buyer of real property ordinarily buys the title subject to the existing lease. The tenant is not deprived of his right to cultivate the land and harvest the crops. He pays his rent to the new owner unless the landlord and the purchaser agree otherwise.

Some written leases for terms of two or more years contain a provision which automatically terminates the lease at the end of the current crop year in case the land is sold. This provision usually reserves the right of a new purchaser to enter upon the land prior to the end of the current crop year for fall plowing, breaking the land, or summer fallowing provided that such field work does not interfere with the tenant's growing crops. The new owner will need to bargain with the tenant to secure permission to enter the premises to do field work if the lease does not contain this provision.

CROP OWNERSHIP

The tenant owns the products of the property during the term of the lease. A tenant can waive his right of crop ownership in a lease and agree to reserve the title to the crops for the landlord. The landlord must file a copy of the lease with the county register of deeds to accomplish this. His reservation of title to the crops is

not invalid if the landlord fails to file the lease. Filing the lease does not change his rights in relation to the tenant but does protect the landlord's interest in the crops against the tenant's creditors. The landlord records the lease to effectively notify others who may accept the tenant's crop as security that the title to the crop will pass to the tenant only after the tenant performs the conditions of the lease. The landlord reserves title to the crop to protect his share of the crop equal in amount to the rent due plus any advance he has made to the tenant.

A lease that provides for the landlord and tenant to share the crops makes them tenants-in-common for the crops and grain grown or harvested on the land each year. Although tenants-in-common own something together, each has a distinct share of the whole. The amount of each crop share would be specified in the lease. While the part or percentage owned is distinct, neither may claim his share until the crop is harvested and divided. Ordinarily the division is made at the end of the cropping season and the landlord has a duty to make this division within a reasonable time.

Under a crop share lease where the landlord has reserved title in the crops, the tenant still has an interest in the crop, even prior to the performance of the lease provisions. The tenant's interest may be mortgaged, but his interest is not superior to and does not infringe upon the rights of the landlord as reserved in the lease.

CROP LIENS

A lien is a claim upon specific property to secure the performance of an act. Most often a lien is a legal claim to insure payment of a debt such as a repairman's lien for fixing a tractor or combine. A lien does not transfer title to the property, even if the parties have agreed that it does. Crop liens can be created by contract or by law.

LIENS CREATED BY CONTRACT

The only crop liens that may be created by contract are those in favor of the United States, the state of North Dakota, any county, or any of their departments or agencies; the Bank of North Dakota, any banking institution or other agricultural lending agencies; or those created to secure money advanced or loaned for the purpose of paying government crop insurance premiums. In addition, landlords may secure the purchase price, rental, or improvement of the land upon which the crops covered by the contract are to be grown.

LIENS CREATED BY LAW

This type of lien is created by operation of law rather than by agreement of the parties. It exists by law once the act has been performed. Liens are created by law when the person who has furnished a product or a service files a written statement in the office of a county register of deeds. The contents of the statement and the time within which it must be filed vary according

to the type of lien. The following liens have a direct bearing on the landlord-tenant relationship.

Threshing Lien

A threshing lien has priority over all other liens and encumbrances upon the grain threshed. The person who does the threshing or combining for another, upon filing the required statement, has a lien for the value of his services from the beginning date of combining. A tenant who threshes his landlord's grain could file a lien upon the landlord's portion of the crop.

Crop Production Lien

County governments in North Dakota, the United States government, or any of their agencies which furnish to any farmer in the state materials needed for crop production (seed, feed, gas, oil, etc.) can get a lien on the crop produced. A crop production lien also may be obtained by any person who furnishes motor fuel used in producing agricultural crops. A crop production lien has priority over all other liens except a threshing lien.

Fertilizer, Farm Chemicals, and Seed Lien

A person who furnishes fertilizer, farm chemicals, or seed to be applied or planted can obtain a lien upon all crops produced with those materials. A fertilizer or farm chemicals lien has priority over all other liens except a seed lien, a crop production lien, and a threshing lien.

Sugarbeet Production Lien

A person or company who contracts to furnish sugarbeet seed, insecticide, or fertilizer may obtain a lien on the crop raised equal to the amount due under the contract. A sugarbeet production lien has priority over all other liens on the crop except crop production liens.

Farm Laborer's Lien

A farm laborer employed on a farm between April 1 and December 1 is entitled to a lien on all crops grown, raised, or harvested by his employer. A farm laborer's lien acts as security for payment of any wages owed to him, the value of any product expended in performing the labor or services, and the use value of machinery supplied by and used by the laborer. A farm laborer's lien has priority over all other liens except seed, sugarbeet production, crop production, and threshing liens.

OTHER LEGAL ASPECTS OF LEASING

Abandonment

Abandonment occurs when a tenant simply walks away and intends to voluntarily relinquish the leased property before the lease expires. The landlord is responsible for minimizing his own damages should he discover that a tenant has abandoned the leased property as discussed above.

Arbitration

In the event of a controversy the parties to a contract may submit the lease to an arbitrator for resolution. An arbitration proceeding is a means of settling disputes that might otherwise involve costly court action. The lease usually specifies that the landlord is to name one arbitrator, the tenant another, and the two named arbitrators to select a third.

Emblements

Occasionally a lease may be terminated for reasons beyond the tenant's control or without his prior knowledge. The tenant may then enter the land to cultivate, harvest, and remove the crops he had planted before the lease was terminated.

Game and Fish Privileges

Persons who own or who lease land are exempted from some game and fish regulations. Persons who hunt exclusively on land which they own or operate need not take instructions on firearm safety and hunter responsibility required of all other persons before they may receive a hunting license. Nor is a license required of other residents or family members who customarily reside with him to hunt small game, fish, or trap during open season upon land owned or leased by him. Any person who owns or leases at least one-quarter of a section of land, may receive without charge a license to hunt deer or antelope on that land. A landowner or a tenant may destroy any wild fur-bearing animal which is causing damage to his crops, poultry, or domestic animals. The landowner or tenant may not commercialize in, sell, or ship the pelt or any other part of an animal caught or destroyed while the season is closed.

Liability of Landlord to Tenant and Tenant's Guests

A landlord in some situations may be held liable for injuries to the tenant or his guest while on the leased property. Concealment or failure to disclose any condition which may be dangerous to the tenant may make the landlord liable. For the landlord to be held liable, he must have known of the condition, realized or had reason to realize the risk involved, and had reason to suspect that the tenant would not discover the condition or realize the risk. Also, the tenant must not have known of the dangerous condition or had reason to know of it.

Liability of Tenant to Persons on the Property

The tenant may be held liable for injuries received by persons on the leased property. The tenant or person occupying the property must take reasonable steps to maintain the property in a safe condition. If the tenant uses the land for dangerous activities and allows dangerous conditions to exist, he must do more than just maintain the property in a safe condition. He must take measures to prevent injury to those whose presence can be foreseen. A trespasser on the property can

only expect the tenant not to willfully harm him. The tenant must exercise ordinary care to avoid injuring a trespasser when he knows of the trespasser's presence.

Subleasing and Assigning the Lease

A third person becomes involved in the lease when a tenant either subleases or assigns the lease. A tenant subleases property when he rents the property out to another for a period of time less than the original term. The original tenant becomes a landlord to the new tenant. The original tenant is still responsible to the original landlord for the property. When the original tenant assigns a lease to a new tenant, he transfers his interest in the leased property to the new tenant for the duration of the original lease. In the absence of a restriction a tenant may sublet or assign a lease. The landlord may protect his interest with a clause in the lease agreement preventing sublets or assignment.

The new tenant of a subleased property is dependent upon the original tenant to continue his occupancy. The sublease will end if the original lease is forfeited or terminated. The use of the property in the original lease and the sublease must be compatible. If the original lease restricts the use of the property for a particular purpose the original landlord may hold the original tenant liable for any violation by the new tenant.

Assignment of a lease transfers from the original tenant to the new tenant the obligations that the original lease imposed upon the original tenant. The new tenant is presumed to be acquainted with the terms of the original lease.

Timber

The lease should specify if timber grown on the leased land may be cut by the tenant. If not specified in the lease timber cannot be cut without permission from the landlord. The tenant may be liable for damages if it is removed without permission.

Weeds

North Dakota law makes both the landlord and the tenant equally responsible for the control of noxious weeds growing on leased land. It is important that the lease specify who is responsible for the destruction of noxious weeds.

EFFECT ON SOCIAL SECURITY

Social security coverage and benefits should be carefully considered when leasing farmland. If the landlord "materially participates" in the production of farm commodities, the rental income is used to establish an income history for social security payments before retirement. Rental income derived from "material participation" will count toward the minimum income allowed social security recipients after retirement.

Landlords

The Social Security Administration has four tests to determine if a landlord is materially participating in the production of farm commodities:

(1) If the landlord does any three of the following (a) advances, pays, or stands good for at least half of the direct costs of production, (b) furnishes a significant part of the tools, equipment, and livestock used in producing the commodities, (c) consults with and advises the tenant periodically, or (d) inspects the production activities periodically.

(2) The landlord regularly and frequently makes or takes an important part in making final decisions contributing to or affecting the success of the enterprise. Examples of such decisions are what, when, where to plant, cultivate, dust, or spray; when to harvest; what goods to buy, sell, or rent; and what records to keep, reports to make, and bills to pay.

(3) The landlord works 100 hours or more during a period of five weeks or more in activities connected with producing the crop. Work may include purchasing, keeping records; caring for livestock; and repairing buildings, fences, and farm equipment that is used in production of the crop. This test does not apply if the landlord works as an employee of his tenant and is paid separately.

(4) The landlord takes part in activities which in total show that he is materially and significantly involved in production.

Tenants

Farm tenants can earn future social security benefits if they now contribute to the social security fund. The following conditions must be met if the cash renter or share-tenant is to contribute to the fund as a self-employed person. The four conditions are: (1) an undertaking to produce crops or livestock, (2) on the landowner's farm for which, (3) the tenant will receive a share of the crops or livestock or a share from their sale, and (4) the amount of his share depends upon the amount of the crop or the number of livestock produced.

Partnership

When a partnership operates a farm, each partner is credited with a part of the self-employment and is credited with his share of the income for social security purposes.

If an agreement does not involve a shared effort in producing the crop or livestock that agreement is not a partnership. Factors which indicate that an agreement is a partnership are: conduct of the business as a joint undertaking; contribution of capital or services by each party; sharing in management decisions; and sharing in profits and risks of loss.

A partnership may be intended by the partners yet be considered to be a leasing arrangement by the Social Security Administration. A true partnership will require social security tax payments on profits. The tax payments are then considered when social security benefits are paid.

EFFECT ON ESTATE TAXES

The 1976 Tax Reform Act permits farmland to be valued for estate purposes at its present earning capacity rather than market value. The decedent (parent) to qualify for this alternate valuation must have materially participated in the farm operation for periods aggregating five of the last eight years prior to his death. The descendant (child) must continue to use the land for farming purposes for 15 years after the decedent's death. The statute is not explicit as to what that use must be. It can be argued that material participation by the descendant is all that is necessary to comply with the statute. Material participation for estate tax purposes is defined the same as material participation by landlords for social security purposes.

This means that if family members use a share-crop lease and materially participate, they may be able to lower estate taxes by electing the alternative valuation method. The landlord and his family should give consideration to their overall estate plan when considering alternate leasing options.