

LEGAL REQUIREMENTS FOR FARM LEASES

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Farmland leasing has become more commonplace as Ohio's farmland passes to more and more absentee landowners. Around one-half of all farmland is leased in Ohio, and of this, approximately 75% is on a cash rent basis. Therefore, cash leases are an important part of many crop producer's operations.

As common as farmland leasing is, the legal requirements for farmland leases are often not fully understood. Changes in the law and local customs and habits often cause producers to misinterpret the legal requirements of farm leases. It is the intent of this article to discuss the minimum requirements of farmland leases in Ohio. There are many exceptions and special rules affecting leases which are beyond the scope of this discussion, therefore, legal counsel should be sought for questions or issues relating to a specific lease or circumstances.

Is a Verbal Lease Valid?

This is an important question as it is estimated that less than half of all farmland leases in Ohio are in writing. Ohio law incorporates a concept known as "The Statute of Frauds". Generally, The Statute of Frauds requires that certain contracts and agreements be in writing in an attempt to avoid any fraudulent claims. Included in The Statute of Frauds are all transfers of any interest in land, including deeds, mortgages and easements, which must be in writing. Additionally, any lease for more than one year must be in writing as well. Therefore, a verbal lease is valid if the lease is for one year or less; all other leases must be in writing.

There is one notable exception to The Statute of Frauds regarding verbal leases for more than one year: the rule of partial performance. If a long-term lease is verbally agreed to and one party partially or fully performs on the lease, the lease can be enforced against the other party. For example, Tenant and Landlord enter into a verbal three-year lease. Tenant pays the first year's rent to Landlord with a check. The check likely constitutes partial performance on the part of the Tenant and will prevent the Landlord from backing out of the lease, at least for the first year. Partial performance might also include field work, improvements to the land, and/or possession of the land.

Although some verbal leases can be valid, it is always a good idea to get the lease in writing. Having the terms of the lease in writing can help avoid any misunderstandings between the parties and potentially prevent disputes and costly legal proceedings.

Recording and Notarizing

The law regarding recording and notarizing is simple yet often misunderstood. Ohio law requires a lease for more than three years to be notarized and recorded in the county where the land is located. The requirement for recording is not so much for making the lease binding on the tenant and landlord, but more so to put others on notice that the lease exists. For example, Tenant and Landlord enter into a five year written lease but do not record the lease. Buyer buys the land from Landlord without knowing the existence of the lease. Because the lease was not recorded, Buyer will not be bound by the lease and will have no obligation to continue to lease the farmland to Tenant. The recording of the lease would have put the Buyer on notice that a lease was in place and that Buyer would have been bound to the terms of the lease.

Often, leases can be many pages long and recording large documents can be costly. Therefore, Ohio allows a Memorandum of Lease to be recorded instead of the actual lease. The Memorandum of Lease is typically only one page and establishes that a lease exists on a certain piece of land without including the terms of the lease. Everyone is therefore put on notice that a lease is in place on the land and, if needed, can obtain the terms of the lease from the Landlord.

All signatures on a lease for more than three years must be notarized by a public notary. Failure to notarize the lease may cause the lease to be invalid. In the past, signatures were required to be witnessed as well. In 2002, the Ohio law was changed so that witnesses are no longer required, only notarization. Both parties should always sign the lease. If only one party signs the lease, the non-signing party can actually enforce the lease against the signing party, but the signing party may not be able to enforce the lease against the non-signing party. Therefore, it is critical that the other party always signs the lease.

Leases for two or three years must be in writing but do not have to be recorded or notarized. Two and three-year leases can be recorded and/or notarized as added precaution, but will not affect the validity or enforceability of the leases.

Authority of an Agent

Another Statute of Frauds requirement is that an agent's authority to act on behalf of the principal must be authorized by a writing, act, or operation of law. In the context of a farmland lease, the landlord and/or tenant (principal) may hire or appoint another person (agent) to act on his/her behalf with the other party. The intent of the Statute of Frauds is to establish some verification of the agent's authority to act on behalf of the principal so that land is not leased fraudulently.

The simplest way to conform to the Statute of Frauds is to have verification of the agent's authority in writing. This should be a document signed by both the agent and principal with a clear confirmation of the agent's authority. This written documentation is often in the form of a management agreement between the principal and agent. Courts have held

that it is the responsibility of the party dealing with the agent to verify the authority, and failure to do so could cause a lease to be null and void.

For example, Agent represents to Tenant that he represents Landlord and can enter into leases on behalf of Landlord. Landlord has no previous dealings with Agent and is unaware of Agent's actions. Agent and Tenant enter into a lease for Landlord's land. Tenant will not be able to enforce the lease against the Landlord because Tenant failed to establish Agent's authority.

This particular aspect of the Statute of Frauds is particularly fraught with exceptions and special rules of law. Legal counsel should be sought if a landlord or tenant finds himself/herself involved with a question of an agent's authority. There are means of establishing an agent's authority without a writing but this becomes a very technical and complicated part of the law. The landlord/tenant can avoid any question of the agent's authority by a simple verification in writing.

Summary of Legal Requirements of Farmland Leases

Issue	Legal Requirements
One year or less lease	Verbal can be enforceable.
Two or three year lease	Must be in writing and signed by both parties
More than three year lease	Must be in writing, signed, notarized, and recorded
Authority of Agent	Must be established by writing, act, or operation of law.

Sources:

Ohio Revised Code §1335

Ohio Revised Code §5301

Legal and Management Aspects of Ohio Farmland Leases, OSU Extension

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